

The Honorable James Robart

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AT SEATTLE
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WESTERN DISTRICT OF WASHINGTON DEPUTY
BY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NORTHWEST IMMIGRANT RIGHTS)
PROJECT, et al.,)
Plaintiffs,)

NO. C88-379R

v.)
UNITED STATES CITIZENSHIP AND)
IMMIGRATION SERVICES, et al.,)
Defendants)

STIPULATION AND ORDER
OF PROTECTION
REGARDING PRIVACY ACT
INFORMATION AND
INFORMATION COVERED BY 8
U.S.C. § 1255a(c)(5)



88-CV-00379-ORD

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1 Plaintiffs, by and through their attorneys, and Defendants, by and through their
2 attorneys, stipulate and agree to the following:

3 1. This Stipulation and Order is agreed to and entered pursuant to Fed. R. Civ. P.
4 26(c), which provides for the issuance of protective orders limiting the disclosure of
5 privileged and confidential documents and information in appropriate circumstances, and
6 5 U.S.C. § 552a(b)(11) and (g)(1), which provide an exception to the Privacy Act of 1974
7 for documents and information released pursuant to a court order.

8 2. This Stipulation and Order relates to a class action brought pursuant to Section
9 245A of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1255a (legalization
10 applications); 28 U.S.C. § 1331 (federal question jurisdiction); 28 U.S.C. § 2201 (the
11 Declaratory Judgment Act); and 5 U.S.C. § 701 (the Administrative Procedures Act).
12 The class action challenges Defendants' procedures for the adjudication of INA §245A
13 legalization applications.

14 3. The parties have entered into a Settlement Agreement dated [DATE TO BE
15 SUPPLIED], which contemplates the disclosure of documents and information that may
16 be protected from release by the Privacy Act of 1974, 5 U.S.C. § 552(a) and/or by 8
17 U.S.C. § 1255a(c)(5). Specifically, the Settlement Agreement provides that United States
18 Citizenship and Immigration Services ("USCIS") will provide class counsel with
19 identifying information on legalization applicants that fall within the class, i.e. name, date
20 and place of birth, last known mailing address, SSN, counsel name and contact
21 information and all other available identifying information. It also provides that

1 Defendants shall provide copies to Plaintiffs' counsel of all denials of legalization, and
2 for Defendants to provide periodic reports to class counsel concerning notice to class
3 members and adjudication of their legalization applications.

4 4. While disclosure of such information ordinarily is prohibited in civil
5 litigation, the Privacy Act provides, as an exception, that such records may be released
6 "pursuant to the order of a court of competent jurisdiction." 5 U.S.C. § 552a(b)(11). An
7 order of this Court, therefore, would provide a basis for release of the requested
8 information pursuant to the Privacy Act and Fed. R. Civ. Pro. 26(c), as well as insulate
9 Defendants from potential liability for improper disclosure. See 5 U.S.C. § 552a(g)(1)..

10 5. While 8 U.S.C. § 1255A(c)(5) ordinarily limits the disclosure of information
11 furnished by an applicant in a legalization application, an order of this court would provide a
12 basis for release of the requested information and insulate Defendants from potential liability for
13 improper disclosure. See Zambrano v. INS, 972 F.2d 1122 (9th Cir. 1992), vacated on other
14 grounds, 509 U.S. 918 (1993).

15 6. The purposes of this Stipulation and Order include protecting the
16 confidentiality of certain information while ensuring that the parties are able to quickly
17 and accurately identify and contact potential class members and provide them the relief
18 they may be entitled to under the Settlement Agreement, as well as to monitor
19 compliance with the Settlement Agreement. Accordingly, the parties, subject to the
20 Court's approval, stipulate and agree that the procedures set out in the ensuing paragraphs

1 shall be followed with respect to information provided by Defendants pursuant to the
2 Settlement Agreement and this Stipulation and Order.

3 6. All information provided pursuant to the Settlement Agreement and this
4 Stipulation and Order shall be used solely in connection with this lawsuit. No
5 information may be released or disclosed to any person other than:

- 6 a. the potential class member the information relates to or Class
7 Counsel in this action, or other counsel or representative of
8 the class member;
- 9 b. secretaries, paralegal assistants, and other employees and
10 agents of Class Counsel who are engaged in assisting Class
11 Counsel in the preparation of this action;
- 12 c. outside consultants and experts consulted or retained for the
13 purpose of assisting in the preparation of this action, upon
14 condition that, before making disclosure, Class Counsel must
15 obtain and retain an agreement in writing from the outside
16 expert or consultant reciting that he or she has read a copy of
17 this Stipulation and Order and agrees to be bound by its
18 provisions; and
- 19 d. any other person mutually authorized by all counsel to
20 examine such information and materials.

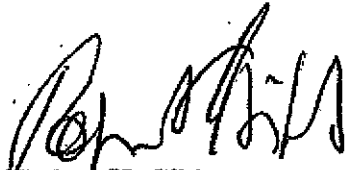
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22 7. Any person having access to the information disclosed by Defendants
23 pursuant to the Settlement Agreement and this Stipulation and Order, such as paralegals
24 or other staff or agents of Plaintiffs' counsel, shall be informed that the information is
25 confidential and subject to a non-disclosure Order of the Court. No such person shall
26 release or disclose the information to any person other than those specifically identified
27 in paragraph 6, above, without further order of the Court or stipulation of the parties.

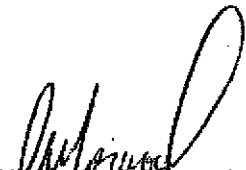
28 8. If Class Counsel intends to file any motion, opposition, reply or any other
29 filing with the Court and attach thereto or set forth therein any document or information

1 that Defendants have provided pursuant to the Settlement Agreement or this Stipulation
2 and Order, Class Counsel shall file the document under seal or redact identifying
3 information.

4 9. Within sixty days following the termination of jurisdiction pursuant to the
5 Settlement Agreement, any originals or reproductions of any the information provided by
6 Defendants under the Settlement Agreement and this Stipulation and Order shall be
7 destroyed by Class Counsel or returned to the custody of counsel for the Defendants. If
8 the documents are destroyed, Class Counsel shall so notify Defendants' counsel in
9 writing.

10 10. Any specific part or parts of the restrictions imposed by this Stipulation and
11 Order may be terminated at any time by a letter from counsel for Defendants to Class
12 Counsel or by an order of the Court.

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15
16 /s/ Robert H. Gibbs
17 ROBERT H. GIBBS
18 1000 Second Avenue, Suite 1600
19 Seattle, WA 98104
20 206-224-8790
21 Counsel for Plaintiffs
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16 /s/ Anthony Norwood
17 ANTHONY NORWOOD
18 Office of Immigration Litigation
19 Box 878
20 Washington, DC 20044
21 Counsel for Defendants
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2 The parties having stipulated, it is hereby **ORDERED** as follows:

3 1. Notwithstanding any other provision of the Privacy Act, 5 U.S.C. § 552a, et
4 seq., United States Citizenship and Immigration Services ("USCIS"), its officers, agents,
5 employees and representatives (including, but not limited to, the United States Attorney's
6 Office for the Western District of Washington) are hereby authorized under 5 U.S.C. §
7 552a(b)(11) to release to Class Counsel the information identified herein.

8 2. Notwithstanding any provision of 8 U.S.C § 1255A(c)(5), USCIS, its
9 officers, agents, employees and representatives (including, but not limited to, the United
10 States Attorney's Office for the Western District of Washington) are hereby authorized to
11 release to Class Counsel the information identified herein.

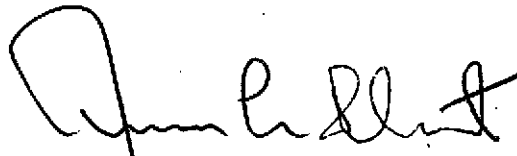
12 3. Class Counsel shall utilize such information only for the purpose of
13 locating potential class members in order to notify them of their rights under the
14 Settlement Agreement, and to monitor compliance with the Settlement Agreement, and
15 shall make no further disclosure of such information beyond what is necessary to
16 accomplish these purposes.

17 4. The USCIS, its officers, agents, employees and representatives are hereby
18 relieved of any obligation under 5 U.S.C. § 552a(c) to make or keep any accounting of
19 any disclosure or, under 5 U.S.C. § 552a(e)(8), to provide notice of any disclosure to any
20 individual, made under the authority of this order.

21 5. The purpose of this order is to enable the USCIS its officers, agents,
22 employees and representatives to provide information which they might otherwise be

1 prohibited from disclosing under the Privacy Act, 5 U.S.C. § 552a and/or 8 U.S.C. §
2 1255a(c)(5). However, it is understood and agreed that this order does not constitute an
3 agreement or a ruling that any particular evidence is discoverable, relevant or admissible
4 in this matter, nor, except in so far as may be necessary to ensure that any disclosure does
5 not violate an provision of 8 U.S.C. § 1255a(c)(5), may this order be construed to compel
6 any action on the part of the USCIS or any of its officers, agents, employees or
7 representatives.

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9 DATED this 14 day of Sept, 2008.

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JAMES ROBART
United States District Judge