

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

JOSE SANCHEZ, *et al.*,

Plaintiffs,

v.

UNITED STATES BORDER PATROL, *et al.*,

Defendants.

NO. CV12-5378-RJB

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“Agreement”) in *Jose Sanchez, et al. v. United States Border Patrol, et al.*, Case No. CV12-5378-RJB (U.S.D.C. W.D. Wash.) is made and voluntarily and freely entered into by and between the plaintiffs, Jose Sanchez, Ismael Ramos Contreras, and Ernest Grimes (collectively, “Plaintiffs”), and the defendants, United States Border Patrol; United States Customs and Border Protection (“CBP”); Department of Homeland Security (“DHS”); John C. Bates, Chief Patrol Agent, Blaine Sector of the United States Border Patrol, in his official capacity; Janet Napolitano, Secretary, DHS, in her official capacity;

1 Thomas Winkowski,¹ Acting Commissioner of CBP, in his official capacity; Michael J. Fisher,
2 Chief of the United States Border Patrol, in his official capacity; and Jay Cumbow, Agent in
3 Charge for the Port Angeles, Washington Station of the United States Border Patrol, in his
4 official capacity (collectively, “Defendants”), by and through their undersigned counsel.
5 Plaintiffs and Defendants are jointly referred to herein as the “Parties.”

6 **RECITALS**

- 7 A. On April 26, 2012, Plaintiffs filed their Complaint in the above-referenced action,
8 seeking – for themselves and a class of persons similarly situated – an injunction
9 against the United States Border Patrol’s conducting or participating in vehicle
10 stops on the Olympic Peninsula without required reasonable suspicion that the
11 occupants of the vehicles stopped are not legally in the United States. Defendants
12 denied any wrongdoing.
- 13 B. Although Plaintiff’s Complaint was filed as a putative class action, this
14 Agreement was reached prior to the filing of a motion for class certification, and
15 no class has been certified.
- 16 C. The Parties desire to settle fully and finally all differences between them related
17 to this action.

18 NOW, THEREFORE, in consideration of the mutual terms, conditions, promises and
19 covenants set forth below, by this AGREEMENT, the Parties agree as follows:

- 20 1. Letter to ACLU and NWIRP. Within thirty (30) days of the effective date of this
21 Agreement, CBP, via its component organization, the U.S. Border Patrol, specifically the Chief

22 ¹ Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Thomas Winkowski, the Acting
23 Commissioner of CBP, has been substituted as defendant in place of his predecessor, David Aguilar.

1 of the Blaine Sector, will issue a letter to the American Civil Liberties Union of Washington
2 (“ACLU”) and the Northwest Immigrant Rights Project (“NWIRP”) containing the language
3 provided in Exhibit A attached hereto.

4 2. Training. As soon as is practicable, but no later than one year from the effective
5 date of this Agreement, the Border Patrol will provide a single refresher training on the
6 application of Fourth Amendment principles, including those relating to vehicle stops that must
7 be based on reasonable suspicion, to all Border Patrol Agents assigned to the Port Angeles,
8 Washington Station, on the date that the training is conducted. This training will also address
9 when Border Patrol Agents should contact state law enforcement authorities for vehicle-related
10 public safety concerns that they observe. As part of this training, agents in attendance will
11 receive written materials on the topics covered. Both the content and the length of the training
12 will be determined solely by CBP. Further, CBP’s Office of Chief Counsel will be involved in
13 the training’s development and implementation. Notification that the foregoing training has been
14 conducted will be provided via letter to the ACLU and the NWIRP no later than one year from
15 the effective date of this Agreement.

16 3. Production of Field Contact Data Sheets. Every six months for a period of
17 eighteen months from the effective date of this Agreement (*i.e.* three times), CBP will produce to
18 Plaintiffs’ counsel via appropriately redacted installments those Field Contact Data Sheets
19 (“FCDS”) that are issued by agents at the Port Angeles, Washington Station. Any produced
20 FCDS will be redacted consistent with applicable laws, including FOIA, to protect information
21 including, but not limited to, personally identifiable information, such as name, date of birth,
22 place of birth, alias name(s), social security number; address(es); contact information; vehicle

1 information; and any information that may be confidential, sensitive, or as otherwise protected
2 by law.

3 4. Dismissal of Action. Within seven (7) days of the execution of this Agreement,
4 Plaintiffs will present the Court with a stipulated motion for an order of dismissal of this action
5 with prejudice.

6 5. Costs of Litigation. The Parties agree that they will each bear their own costs and
7 fees, including attorney's fees, related to this action.

8 6. Release of Claims. Each of the Plaintiffs, on behalf of himself, his guardians,
9 heirs, executors, administrators, and assigns does hereby unconditionally release the United
10 States of America, the Department of Homeland Security, United States Customs and Border
11 Protection, and the United States Border Patrol, their sub-agencies, officers, agents, employees,
12 and attorneys from any and all claims, demands, rights, and causes of action he has asserted in
13 *Sanchez, et al. v. U.S. Border Patrol, et al.*, No. 12-CV-5378 (W.D. Wash.), and from any claims
14 arising from the same facts that formed the basis of the claims and causes of action therein,
15 including without limitation any claim for attorneys' fees and costs, whether for personal
16 injuries, damage to property, or economic losses, whether known or unknown, whether arising
17 under common law, statute, or the U.S. Constitution, whether for monetary damages or
18 injunctive relief, and whether, when directed against an individual, it is brought or stated against
19 him/her in an official or personal capacity. Each of the Defendants agrees and acknowledges
20 that this settlement, and specifically this Release and the dismissal with prejudice, shall not
21 impact any of the Plaintiffs' ability to bring a claim arising from or related to any future actions
22 by the United States Border Patrol, including Plaintiffs' standing to seek injunctive or
23 declaratory relief.

1 Each of the Plaintiffs agrees and acknowledges that he is currently represented by
2 counsel who has advised him regarding this Release.


3 7. No Admission of Liability. The execution of this Agreement is not, is in no way
4 intended to be, and should not be construed as an admission of liability or fault on the part of the
5 United States of America, DHS, CBP, or the United States Border Patrol, or any of their agents,
6 sub-agencies, contractors, servants, or employees, and Defendants specifically deny that they are
7 liable to Plaintiffs. Furthermore, pursuant to Federal Rule of Evidence 408, this Agreement
8 cannot be used as evidence of liability or fault on the part of the United States of America, DHS,
9 CBP, or the United States Border Patrol, or any of their agents, sub-agencies, contractors,
10 servants, or employees in any future proceeding. This Agreement is entered into by all Parties
11 for the purpose of resolving disputed claims and/or to avoid the expenses and risks of further
12 litigation.

13 8. Miscellaneous Terms.

- 14 A. The persons signing this Agreement warrant and represent that they
15 possess full authority to bind the persons on whose behalf they are signing
16 to the terms of the settlement.
- 17 B. It is contemplated that this Agreement may be executed in several
18 counterparts, with a separate signature page for each party. All such
19 counterparts and signature pages, together, shall be deemed to be one
20 document.
- 21 C. By the execution of this Agreement the Parties acknowledge its receipt
22 and sufficiency as a complete compromise of matters involving disputed
23 issues of fact and law and fully assume the risk of any mistake of fact or
law. The Parties acknowledge that this Agreement contains the entire
understanding between the Parties, and that no promise or representation
not contained in this Agreement has been made by any party hereto.

- 1 D. The Parties represent that each has been represented by counsel of choice
2 in connection with the review, approval, and execution of this Agreement;
3 that each has shown this Agreement to his, her, or its respective attorney
4 who has explained it and advised that it is a legally binding contract; that
5 each party has read and understood this Agreement; and that each party
6 intends to be bound by each provision of this Agreement.
- 7 E. This Agreement cannot be modified or amended except by an instrument
8 in writing, agreed to and signed by all of the Parties, nor shall any
9 provision of this Agreement be waived other than by a written waiver
10 signed by all of the Parties.
- 11 F. The captions of paragraphs in this Agreement are for convenience only
12 and shall not be deemed to limit, construe, affect, or alter the meaning of
13 such paragraphs.
- 14 G. The effective date of this Agreement shall be the date this Agreement is
15 executed by the last of the Parties hereto to execute this Agreement.

16 By signing below, Plaintiffs Jose Sanchez, Ismael Ramos Contreras, and Ernest Grimes,
17 and Defendants United States Border Patrol, CBP, DHS, John C. Bates, Janet Napolitano,
18 Thomas Winkowski, Michael J. Fisher, and Jay Cumbow, hereby agree to, and are bound by, the
19 terms of this Agreement.

20  9-20-13
21 _____
22 Jose Sanchez, Plaintiff
23 Date:

24 _____
25 Ismael Ramos Contreras, Plaintiff
26 Date:

27  9-20-2013
28 _____
29 Ernest Grimes, Plaintiff
30 Date:

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2 in connection with the review, approval, and execution of this Agreement;
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18 Thomas Winkowski, Michael J. Fisher, and Jay Cumbow, hereby agree to, and are bound by, the
19 terms of this Agreement.
20

21 _____
22 Jose Sanchez, Plaintiff

23 Date:



Ismael Ramos Contreras, Plaintiff

Date: 9/19/13

Ernest Grimes, Plaintiff

Date:

1 Tim Belsan

2 Timothy Belsan
3 Department of Justice, Office of Immigration Litigation
4 Attorney for Defendants

5 Date: 9-20-13

6 Rebecca J. Cohen

7 Rebecca Cohen
8 Assistant United States Attorney
9 Attorney for Defendants

10 Date: 9-20-2013

1 Exhibit A

2 “The U.S. Border Patrol is committed to abiding by the requirements of federal
3 law. This commitment extends to the Border Patrol’s initiation of vehicle stops
4 on Washington State’s Olympic Peninsula and is made with full awareness of the
5 requirements in the Fourth Amendment to the U.S. Constitution, including how
6 the Fourth Amendment has been interpreted by both the U.S. Supreme Court and
7 the Ninth Circuit Court of Appeals.

8 “Consistent with its commitment to abide by the requirements of federal law, the
9 Border Patrol acknowledges that for vehicle stops made under the Fourth
10 Amendment in non-border search situations—in other words, those brief,
11 investigatory inquiries commonly referred to as ‘*Terry*’ stops (drawing their name
12 from the seminal case of *Terry v. Ohio*, 392 U.S. 1 (1968) and its progeny)—
13 agents must have reasonable suspicion of a violation of law. To be reasonable,
14 the suspicion must be based upon articulable facts which constitute objectively
15 valid reasons for an agent to suspect that a particular individual may be involved
16 in a violation of law. Moreover, the assessment of whether or not reasonable
17 suspicion exists must be based upon all the facts and circumstances at issue, and
18 these facts and circumstances must raise a suspicion that the particular individual
19 being stopped may be engaged in wrongdoing.

20 “Because, as the U.S. Supreme Court has stated, ‘Roads near the border carry not
21 only aliens seeking to enter the country illegally, but a large volume of legitimate
22 traffic as well,’ the Border Patrol acknowledges that in many circumstances it will
23 not be sufficient to establish reasonable suspicion to justify a vehicle stop under
Terry simply that a vehicle is in an area near an international border. In addition,
the Border Patrol acknowledges that it is subject to, and is committed to act in
compliance with, applicable Department of Homeland Security guidance,
including with respect to the use of race or ethnicity in law enforcement activities,
and in particular, we call your attention to Secretary Ridge’s June 1, 2004
guidance on this topic, a copy of which is attached to this letter for your ease of
reference.”