

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DIORIS RAMON RIVERA DE LOS SANTOS,

Petitioner-Plaintiff,

v.

CHAD WOLF, in his official capacity as Acting Secretary, U.S. Department of Homeland Security; THOMAS E. FEELEY, in his official capacity as Field Office Director, Buffalo Field Office, U.S. Immigration & Customs Enforcement; and JEFFREY SEARLS in his official capacity as Administrator, Buffalo Federal Detention Facility,

Respondents-Defendants.

Case No. 1:20-cv-584

SETTLEMENT AGREEMENT AND PROPOSED ORDER OF DISMISSAL

WHEREAS, the Petitioner-Plaintiff Dioris Ramon Rivera de los Santos (“Plaintiff”) has instituted the above-captioned action against Chad Wolf, the Acting Secretary of the Department of Homeland Security, Thomas Feeley, the Field Office Director of the Buffalo Field Office of Immigration and Customs Enforcement, and Jeffrey Searls, the Administrator of the Buffalo Federal Detention Facility (collectively, “Defendants”) asserting violations of the Due Process Clause of the Fifth Amendment; and

WHEREAS, Defendants disclaim any liability to Plaintiff and deny engaging in any unconstitutional activity; and

WHEREAS, Plaintiff and Defendants have come to a full and complete settlement (the “Agreement”) resolving all claims raised by Plaintiff against Defendants; and

WHEREAS, no party hereto is an infant or incompetent;

IT IS HEREBY STIPULATED, AGREED, AND ORDERED:

1. Agreement To Implement *Jones* Protections for all Medically Vulnerable Persons

Detained at the Buffalo Federal Detention Facility: Defendants agree that the current and future orders in *Jones v. Wolf*, 20-cv-361 (W.D.N.Y.) and *Ramsundar v. Wolf*, 20-cv-402 (W.D.N.Y.) (collectively, “*Jones*”) that are relevant to “vulnerable” individuals, as defined in *Jones*, shall apply to any individual who is or will be detained at the Buffalo Federal Detention Facility (“BFDF”), and who also is a “vulnerable” individual as defined in *Jones*. These protections will continue for as long as such orders remain in effect.

2. Notice to Persons Detained at the Buffalo Federal Detention Facility: Defendants further agree to provide notice to all persons detained at the Buffalo Federal Detention Facility of the above protections. Specifically, Defendants will make available the following text in the “Legal Information” section of the tablets accessible to all detained persons at the Facility:

Under a court order in the case *Jones v. Wolf* and a settlement in the case *Rivera de los Santos v. Wolf*, ICE will provide certain COVID-19-related protections to ALL people at Batavia who are medically vulnerable under the Centers for Disease Control and Prevention (“CDC”) guidelines. These protections will continue for all people who meet the CDC’s criteria for vulnerability (<https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-increased-risk.html>) for as long as the Court orders them in the *Jones* lawsuit. It is not currently known how long these ‘*Jones*’ protections will remain in effect.

3. Release of the Defendants: In exchange for the consideration provided for in this Agreement, pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, Plaintiff agrees to release Defendants of all claims, demands, or actions arising from Plaintiff’s detention at the Buffalo Federal Detention Facility, as alleged in this lawsuit. Notwithstanding the foregoing, this release does not include the Plaintiff’s right to enforce the terms of this Agreement.

4. Fees and Costs: Each party agrees to bear its own attorney fees and costs in this matter.

5. Interpretation: The Parties acknowledge and agree that they have each had the opportunity to have this Agreement reviewed by counsel of their choosing. Therefore, the

normal rule that ambiguities are construed against the drafter shall not apply in connection with interpretation and construction of this Agreement.

6. Authority to Execute Agreement: Each party acknowledges and represents that the person executing this Agreement on its behalf has the requisite authority to execute and enter into the Agreement for that party and thereby bind that party. Each individual executing this Agreement on behalf of any party acknowledges and represents that he or she has the requisite authority to execute and enter into the Agreement and thereby bind the party on whose behalf he or she executes the Agreement.

7. Counterpart Signatures: The Parties to this Agreement may execute the Agreement in counterparts each of which may be considered an original when executed. Signatures by facsimile, e-mail, or email pdf shall be considered as originals.

8. Dismissal And Retention Of Jurisdiction: The Parties agree that this action shall be dismissed as to the Defendants pursuant to the terms of this Settlement Agreement. This Court shall retain jurisdiction over the Settlement Agreement for enforcement purposes. The Parties agree that their entering into this Settlement Agreement is conditioned on the Court retaining enforcement jurisdiction, and they agree that the Settlement Agreement therefore shall not be effective if this provision retaining jurisdiction for settlement purposes is not present in the final order of dismissal.

9. Enforcement Actions: In lieu of certifying a class in this matter, the Parties agree that individuals who are or will be detained at the Buffalo Federal Detention Facility who are medically vulnerable under the Centers for Disease Control and Prevention (“CDC”) guidelines are intended third party beneficiaries of this Agreement. Accordingly, as to those medically vulnerable individuals, Plaintiff, or counsel for Plaintiff, may move this Court to enforce the

terms of this Agreement. The Defendants expressly waive any argument that the Plaintiff or counsel for the Plaintiff lack standing or capacity to seek to enforce the terms of the Agreement.

10. In any proceeding brought to enforce the terms of this Agreement where Plaintiff substantially prevails, he may seek to recover the fees, costs, and expenses incurred in litigating the matter pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412 et seq.

Dated: New York, New York
July 30, 2020

/s/Robert Hodgson
ROBERT HODGSON
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Dated: Buffalo, New York
July 30, 2020

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SO ORDERED:

U.S. District Judge

From: webmaster@nywd.uscourts.gov
To: Courtmail@nywd.uscourts.gov
Subject: Activity in Case 1:20-cv-00584-LJV Rivera de los Santos v. Wolf et al Text Order
Date: Friday, July 31, 2020 9:49:00 AM

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U.S. DISTRICT COURT

U.S. District Court, Western District of New York

Notice of Electronic Filing

The following transaction was entered on 7/31/2020 at 9:48 AM EDT and filed on 7/31/2020

Case Name: Rivera de los Santos v. Wolf et al

Case Number: [1:20-cv-00584-LJV](#)

Filer:

Document Number: 46(No document attached)

Docket Text:

TEXT ORDER: The parties' joint stipulation to dismiss this matter, Docket Item [45], is SO ORDERED. The Clerk of Court shall close the case; the plaintiffs may move to re-open this action if they later seek an order from this Court to enforce the terms of the settlement agreement. Signed by Hon. Lawrence J. Vilardo on 07/31/2020. (CEH)

-CLERK TO FOLLOW UP-

1:20-cv-00584-LJV Notice has been electronically mailed to:

Christopher T. Dunn cdunn@nyclu.org, lchavez@nyclu.org

Robert Andrew Hodgson rhodgson@nyclu.org

Joseph David Moravec moravecj13@gmail.com

Victoria Marie Roeck (Terminated) vroeck@nyclu.org

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John H. Peng jpeng@plsny.org

Megan Elaine Sallomi msallomi@nyclu.org

1:20-cv-00584-LJV Notice has been delivered by other means to: