UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

HANAD ABDI; JOHAN BARRIOS RAMOS, on behalf of himself and all others similarly situated, Petitioners, v. ALEJANDRO MAYORKAS, in his official capacity as Secretary of U.S. Department of Homeland Security; THOMAS BROPHY, in his official capacity as Acting Director of Buffalo Field Office of Immigration and Customs Enforcement; JEFFREY SEARLS, in his official capacity as Acting Administrator of the Buffalo Federal Detention Facility; and MERRICK GARLAND, in his official capacity as Attorney General of the United States, Respondents.	Case No. 17-cv-721 (EAW)

DECLARATION OF ROBERT HODGSON IN SUPPORT OF PETITIONERS' MOTION FOR PRELIMINARY APPROVAL OF PROPOSED CLASS ACTION SETTLEMENT AND NOTICE

I, ROBERT HODGSON, declare as follows:

1. I am a Senior Staff Attorney of the New York Civil Liberties Union, and I represent Petitioners in the above-captioned action. I submit this declaration in support of Petitioners' Motion for Preliminary Approval of Proposed Class Action Settlement and Notice.

2. Annexed hereto as Exhibit A is a true and correct copy of the Settlement Agreement and Release, between Petitioners and Respondents, executed August 10, 2021.

3. Annexed hereto as Exhibit B is a true and correct copy of the Notice of Proposed Settlement.

4. I declare under penalty of perjury that the foregoing is true and correct.

Dated: October 7, 2021
New York, New York

Respectfully submitted,

/s/ Robert Hodgson

ROBERT HODGSON
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Counsel for Petitioners

Exhibit A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

HANAD ABDI and JOHAN BARRIOS RAMOS, on behalf of himself and all others similarly situated, Petitioners, v. ALEJANDRO MAYORKAS,[1] in his official capacity as Secretary of U.S. Department of Homeland Security; THOMAS BROPHY, in his official capacity as Acting Director of Buffalo Field Office of Immigration and Customs Enforcement; JEFFREY SEARLS, in his official capacity as Acting Administrator of the Buffalo Federal Detention Facility; and MERRICK GARLAND,[2] in his official capacity as Attorney General of the United States, Respondents.	Case No. 17-cv-721 (EAW)

SETTLEMENT AGREEMENT AND RELEASE

WHEREAS, Petitioners filed a class action challenging certain government actions and procedures pertaining to arriving asylum-seekers in federal immigration custody at the Buffalo Federal Detention Facility ("BFDF");

WHEREAS, the Court issued a class-wide preliminary injunction in this action on November 17, 2017 (ECF 56), followed by related orders on February 9, 2018 (ECF 83), April 30, 2019 (ECF 129), and September 24, 2019 (ECF 151);

WHEREAS, the Court certified a class and subclass in the matter on December 19, 2017 (ECF 66), and decertified the subclass on September 24, 2019 (ECF 151);

WHEREAS, since the initiation of this action, Respondents have provided Petitioners with ongoing data regarding the certified class and parole procedures at BFDF;

[1] Alejandro Mayorkas is the current U.S. Secretary of Homeland Security. Accordingly, he is substituted as a Respondent in this action. *See* Fed. R. Civ. P. 25(d).
[2] Merrick Garland is the current Attorney General of the United States. Accordingly, he is substituted as a Respondent in this action. *See* Fed. R. Civ. P. 25(d).

WHEREAS, the parties have engaged in settlement negotiations and voluntarily wish to enter into this Settlement Agreement to resolve this action;

WHEREAS, the parties agree and represent that this Settlement Agreement is fair, reasonable, and adequate to protect the interests of all parties and the class;

WHEREAS, the parties have negotiated in good faith and have agreed to settle this action on the terms and conditions set forth herein;

WHEREAS, nothing in this Settlement Agreement shall be construed as an admission of law or fact or acknowledgement of liability, wrongdoing, or violation of law by Respondents regarding any of the allegations in the First Amended Complaint, or as an admission or acknowledgement by Respondents that Petitioners are the prevailing party in this action by virtue of this Settlement Agreement; and

WHEREAS, no party hereto is an infant or incompetent;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among the parties to this Settlement Agreement, through their respective attorneys, subject to the approval of the Court pursuant to Federal Rule of Civil Procedure 23(e), in consideration of the benefits flowing to the parties hereto from the Settlement Agreement, that all claims be compromised, settled, forever released, barred, and dismissed with prejudice, upon the following terms and conditions:

1. **Agreement to Abide by the Court's Preliminary Injunction Regarding Parole Procedures for the Length of this Settlement Agreement:** Respondents agree to continue to abide by the terms of ICE Directive No. 11002.1: *Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture* (Dec. 8, 2009) ("Directive"), attached as Exhibit A to this Settlement Agreement, as it applies to the class. Consistent with this provision, Respondents will continue to adjudicate the parole applications of all members of the class[3] in conformance with their obligations under the Directive, including:

   - providing each arriving asylum-seeker an advisal setting forth the requirements to obtain parole;
   - a translation of that information into a language understood by the asylum-seeker;
   - a parole interview with an immigration officer;
   - an individualized explanation of any denials; and
   - notification of the opportunity to seek reconsideration, consistent with the requirements of the Directive.

2. **Notice to the Settlement Class:** ICE shall post notices in areas prominently visible to civil immigration detainees at BFDF in the five (5) written languages most commonly used by noncitizens appearing at the Batavia Immigration Court. The notice, attached as Exhibit B to this Settlement Agreement, informs detainees at BFDF:

   a. Which noncitizens fall within the *Abdi* class covered by this Settlement Agreement;

   b. The rights and protections guaranteed under this Settlement Agreement; and

[3] Defined as "[a]ll arriving asylum-seekers who have passed a credible fear interview and who are or will be detained at the Buffalo Federal Detention Facility in Batavia, New York, and who have not been granted parole." *Abdi v. Duke*, 323 F.R.D. 131, 145 (W.D.N.Y. 2017).

c. Instructions for contacting class counsel.

3. Enforcement: The parties commit to work in good faith to avoid enforcement actions. If Petitioners believe Respondents are not in compliance with a provision of this Settlement Agreement, Petitioners shall provide written notice to counsel for Respondents that identifies with specificity the alleged non-compliance. Upon Respondents' receipt of such written notice, the parties will promptly engage in good faith negotiations concerning the alleged non-compliance and appropriate measures to cure any non-compliance. If the parties have not reached an agreement on the existence of the alleged non-compliance and curative measures within fourteen (14) calendar days after receipt of such written notice of alleged non-compliance, Petitioners may seek all appropriate judicial relief with respect to such alleged non-compliance.

Notwithstanding the dispute resolution procedures set forth in the paragraph above, if exigent circumstances arise, Petitioners may seek expedited judicial relief against Respondents based upon an alleged breach of this Settlement Agreement upon three (3) business days' (72 hours, not including weekends and holidays) prior written notice to counsel for Respondents.

The failure by any party to enforce any provision of this Settlement Agreement with respect to any deadline or other provision herein shall not be construed as a waiver of that party's right to enforce all deadlines or timing-related provisions of the Settlement Agreement.

Pursuant to paragraph 9, the parties agree that any judicial action or proceeding to enforce the terms of this Settlement Agreement shall be brought exclusively in the U.S. District Court for the Western District of New York.

4. Modification: This Settlement Agreement may not be modified without the approval of the Court.

5. **Settlement Term:** This Settlement Agreement is effective immediately upon the final approval of the Court and shall expire three (3) years from the date of such approval, or upon revocation, rescission, or amendment of the Directive, whichever occurs first.

6. **Interpretation:** The parties acknowledge and agree that they have all had the opportunity to have this Settlement 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 Settlement Agreement.

7. **Authority to Execute Settlement Agreement:** Each party acknowledges and represents that the person executing this Settlement Agreement on its behalf has the requisite authority to execute and enter into the Settlement Agreement for that party and thereby bind that party. Each individual executing this Settlement Agreement on behalf of any party acknowledges and represents that he or she has the requisite authority to execute and enter into the Settlement Agreement and thereby bind the party on whose behalf he or she executes the Settlement Agreement. The terms and conditions of this Settlement Agreement, and the commitments and obligations of the parties, shall inure to the benefit of and be binding upon the successors and assigns of each party.

8. **Counterpart Signatures:** The parties may execute this Settlement Agreement in counterparts, each of which may be considered an original when executed. Signatures by facsimile, e-mail, or.pdf shall be considered as originals.

9. **Release, Dismissal, and Retention of Jurisdiction:** The parties agree that this action shall be dismissed as to the Respondents pursuant to the terms of this Settlement Agreement. As of the effective date of this Settlement Agreement, Petitioners and the class members, on behalf of themselves, their heirs, executors, administrators, representatives, attorneys, successors,

assigns, agents, affiliates, and partners, and any persons they represent, by operation of any final judgment entered by the Court, fully, finally, and forever release, relinquish, and discharge the Respondents of and from any and all of the settled claims. The foregoing release includes all claims for injunctive or declaratory relief pertaining to the Respondents' adherence to the Directive, whether known or unknown, that could have been brought on behalf of class members at any time prior to the effective date of this Settlement Agreement. This release shall not apply to claims that arise or accrue after the termination of this Settlement Agreement.

Respondents agree and acknowledge that this Settlement Agreement, and specifically this release, shall not impact the ability of the parties to obtain relief from this Court in the event of non-compliance with the terms of the Settlement Agreement. This Court shall retain exclusive jurisdiction over the Settlement Agreement solely 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.

10. Notifications to Counsel: Notices and other written communications pursuant to this Settlement Agreement shall be in writing. Notices shall be addressed to the attorneys of the respective parties specified on the signature pages of this Settlement Agreement. In the event that any substitution is to be made in counsel to receive communications under this Settlement Agreement, all counsel shall be informed, and the name and contact information for substitute counsel shall be provided.

11. Attorneys' Fees and Costs: The parties agree to bear their own costs and fees incurred in this litigation.

Dated: August 11, 2021

/s/Robert Hodgson

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Counsel for Petitioners

Dated: August 10, 2021

/s/ T. Monique Peoples

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Counsel for Respondents

SO ORDERED:

Hon. Elizabeth A. Wolford
U.S. District Judge

EXHIBIT A

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture

DISTRIBUTION:	**ICE**
DIRECTIVE NO.:	**11002.1**
ISSUE DATE:	**December 8, 2009**
EFFECTIVE DATE:	**January 4, 2010**
SUPERSEDES:	**See section 3.**
FEA NUMBER:	**601-05**

1. **PURPOSE.** The purpose of this ICE policy directive is to ensure transparent, consistent, and considered ICE parole determinations for arriving aliens seeking asylum in the United States. This directive provides guidance to Detention and Removal Operations (DRO) Field Office personnel for exercising their discretion to consider the parole of arriving aliens processed under the expedited removal provisions of section 235 of the Immigration and Nationality Act (INA) who have been found to have a "credible fear" of persecution or torture by U.S. Citizenship and Immigration Services (USCIS) or an immigration judge of the Executive Office for Immigration Review. This directive establishes a quality assurance process that includes record-keeping requirements to ensure accountability and compliance with the procedures set forth herein.

1.1. This directive does not apply to aliens in DRO custody under INA § 236. This directive applies only to arriving aliens who have been found by USCIS or an immigration judge to have a credible fear of persecution or torture.

2. **AUTHORITIES/REFERENCES.**

2.1. INA §§ 208, 212(d)(5), 235(b), and 241(b)(3); 8 U.S.C. §§ 1158, 1182(d)(5), 1225(b), and 1231(b)(3); 8 C.F.R. §§ 1.1(q), 208.30(e)-(f), 212.5 and 235.3.

2.2. Department of Homeland Security Delegation Number 7030.2, "Delegation of Authority to the Assistant Secretary for the Bureau of Immigration and Custom Enforcement" (Nov. 13, 2004).

2.3. ICE Delegations of Authority to the Directors, Detention and Removal and Investigations and to Field Office Directors, Special Agents in Charge and Certain Other Officers of the Bureau of Immigration and Customs Enforcement, No. 0001 (June 6, 2003).

3. **SUPERSEDED POLICIES AND GUIDANCE.** The following ICE directive is hereby superseded:

3.1. ICE Policy Directive No. 7-1.0, "Parole of Arriving Aliens Found to Have a 'Credible Fear' of Persecution or Torture" (Nov. 6, 2007).

4. **BACKGROUND.**

4.1. Arriving aliens processed under the expedited removal provisions of INA §235(b) may pursue asylum and related forms of protection from removal if they successfully demonstrate to USCIS or an immigration judge a credible fear of persecution or torture.

4.2. Arriving aliens who establish a credible fear of persecution or torture are to be detained for further consideration of the application for asylum. INA § 235(b)(1)(B)(ii). Such aliens, however, may be paroled on a case-by-case basis for "urgent humanitarian reasons" or "significant public benefit," provided the aliens present neither a security risk nor a risk of absconding. 8 C.F.R. § 212.5(b); *see also* 8 C.F.R. § 235.3(c) (providing that aliens referred for INA § 240 removal proceedings, including those who have a credible fear of persecution or torture, may be paroled under § 212.5(b) standards).

4.3. The applicable regulations describe five categories of aliens who may meet the parole standards based on a case-by-case determination, provided they do not present a flight risk or security risk: (1) aliens who have serious medical conditions, where continued detention would not be appropriate; (2) women who have been medically certified as pregnant; (3) certain juveniles; (4) aliens who will be witnesses in proceedings being, or to be, conducted by judicial, administrative, or legislative bodies in the United States; and (5) aliens whose continued detention is not in the public interest. *See* 8 C.F.R. § 212.5(b). *But compare* 8 C.F.R. § 235.3(b)(4)(ii) (stating that arriving aliens who have not been determined to have a credible fear will not be paroled unless parole is necessary in light of a "medical emergency or is necessary for a legitimate law enforcement objective").

4.4. While the first four of these categories are largely self-explanatory, the term "public interest" is open to considerable interpretation. This directive explains how the term is to be interpreted by DRO when it decides whether to parole arriving aliens determined to have a credible fear. The directive also mandates uniform record-keeping and review requirements for such decisions. Parole remains an inherently discretionary determination entrusted to the agency; this directive serves to guide the exercise of that discretion.

5. **DEFINITIONS:**

5.1. **Arriving Alien.** For purposes of this directive, "arriving alien" has the same definition as provided for in 8 C.F.R. § 1.1(q) and 1001.1(q).

5.2. **Credible Fear.** For purposes of this directive, with respect to an alien processed under the INA § 235(b) "expedited removal" provisions, "credible fear" means a finding by USCIS or an immigration judge that, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts

as are known to the interviewing USCIS officer or immigration judge, there is a significant possibility that alien could establish eligibility for asylum under INA § 208, withholding of removal under INA § 241(b)(3), or protection from removal under the Convention Against Torture.

5.3. **Parole.** For purposes of this directive, "parole" is an administrative measure used by ICE to temporarily authorize the release from immigration detention of an inadmissible arriving alien found to have a credible fear of persecution or torture, without lawfully admitting the alien. Parole does not constitute a lawful admission or a determination of admissibility, *see* INA §§ 212(d)(5)(A), 101(a)(13)(B), and reasonable conditions may be imposed on the parole, *see* 8 C.F.R. § 212.5(d). By statute, parole may be used, in the discretion of ICE and under such conditions as ICE may prescribe, only for urgent humanitarian reasons or for significant public benefit. As interpreted by regulation, "urgent humanitarian reasons" and "significant public benefit" include the five categories set forth in 8 C.F.R. § 212.5(b) and listed in paragraph 4.3 of this directive, including the general category of "aliens whose continued detention is not in the public interest."

6. **POLICY.**

6.1. As soon as practicable following a credible fear determination by USCIS for an arriving alien detained by DRO, DRO shall provide the alien with the attached *Parole Advisal and Scheduling Notification*. This form informs the alien that he or she will be interviewed for potential parole from DRO custody and notifies the alien of the date of the scheduled interview and the deadline for submitting any documentary material supporting his or her eligibility for parole. The contents of the notification shall be explained to such aliens in a language they understand. In determining whether detained arriving aliens found to have a credible fear should be paroled from custody, DRO shall proceed in accordance with the terms of this directive.

6.2. Each alien's eligibility for parole should be considered and analyzed on its own merits and based on the facts of the individual alien's case. However, when an arriving alien found to have a credible fear establishes to the satisfaction of DRO his or her identity and that he or she presents neither a flight risk nor danger to the community, DRO should, absent additional factors (as described in paragraph 8.3 of this directive), parole the alien on the basis that his or her continued detention is not in the public interest. DRO Field Offices shall uniformly document their parole decision-making processes using the attached *Record of Determination/Parole Determination Worksheet*.

6.3. Consistent with the terms of this directive, DRO shall maintain national and local statistics on parole determinations and have a quality assurance process in place to monitor parole decision-making, as provided for in sections 7 and 8 of this directive.

6.4. In conducting parole determinations for arriving aliens in custody after they are found to have a credible fear of persecution or torture, DRO shall follow the procedures set forth in section 8 of this directive.

6.5. DRO shall provide every alien subject to this directive with written notification of the parole decision, including a brief explanation of the reasons for any decision to deny parole. When DRO denies parole under this directive, it should also advise the alien that he or she may request redetermination of this decision based upon changed circumstances or additional evidence relevant to the alien's identity, security risk, or risk of absconding. DRO shall ensure reasonable access to translation or interpreter services if notification is provided to the alien in a language other than his or her native language and the alien cannot communicate effectively in that language.

6.6. Written notifications of parole decisions shall be provided to aliens subject to this directive and, if represented, their representative within seven days of the date an alien is initially interviewed for parole or the date the alien requests a parole redetermination, absent reasonable justification for delay in providing such notification.

6.7. A decision to grant or deny parole shall be prepared by a DRO officer assigned such duties within his or her respective DRO Field Office. The decision shall pass through at least one level of supervisory review, and concurrence must be finally approved by the Field Office Director (FOD), Deputy FOD (DFOD), or Assistant FOD (AFOD), where authorized by the FOD.

7. RESPONSIBILITIES.

7.1. The **DRO Director** is responsible for the overall management of the parole decision-making process for arriving aliens in DRO custody following determinations that they have a credible fear of persecution or torture.

7.2. The **DRO Assistant Director for Operations** is responsible for:

1) Ensuring considered, consistent DRO parole decision-making and recordkeeping nationwide in cases of arriving aliens found to have a credible fear;

2) Overseeing monthly tracking of parole statistics by all DRO Field Offices for such cases; and

3) Overseeing an effective national quality assurance program that monitors the Field Offices to ensure compliance with this directive.

7.3. **DRO Field Office Directors** are responsible for:

1) Implementing this policy and quality assurance processes;

2) Maintaining a log of parole adjudications for credible fear cases within their respective geographic areas of responsibility, including copies of the *Record of Determination/Parole Determination Worksheet*;

3) Providing monthly statistical reports on parole decisions for arriving aliens found to have a credible fear;

4) Making the final decision to grant or deny parole for arriving aliens found to have a credible fear within their respective areas of responsibility or, alternatively, delegating such responsibility to their DFODs or AFODs (in which case, FODs nevertheless retain overall responsibility for their office's compliance with this directive regardless of delegating signatory responsibility to DFODs or AFODs); and

5) Ensuring that DRO field personnel within their respective areas of responsibility who will be assigned to make parole determinations are familiar with this directive and corresponding legal authorities.

7.4. **DRO Deputy Field Office Directors** are responsible for reviewing, and forwarding for their respective FODs' approval, parole decisions prepared by their subordinates in the cases of arriving aliens found to have a credible fear of persecution or torture. Alternatively, DFODs delegated responsibility under paragraph 7.3 of this directive are responsible for discharging final decision-making authority over parole determinations in such cases within their respective areas of responsibility.

7.5. **Assistant Field Office Directors** are responsible for reviewing, and forwarding for their respective DFODs' or FODs' approval, parole decisions prepared by their subordinates in the cases of arriving aliens found to have a credible fear of persecution or torture. Alternatively, AFODs delegated responsibility under paragraph 7.3 of this directive are responsible for discharging final decision-making authority over parole determinations in such cases within their respective areas of responsibility.

7.6. As applicable, **DRO field personnel** so assigned by their local chains-of-command are responsible for providing detained arriving aliens found to have a credible fear with the attached *Parole Advisal and Scheduling Notification* and for fully and accurately completing the attached *Record of Determination/Parole Determination Worksheet* in accordance with this directive and corresponding legal authorities.

8. **PROCEDURES.**

8.1. As soon as practicable following a finding that an arriving alien has a credible fear, the DRO Field Office with custody of the alien shall provide the attached *Parole Advisal and Scheduling Notification* to the alien and explain the contents of the notification to the alien in a language he or she understands, through an interpreter if

necessary. The Field Office will complete the relevant portions of the notification, indicating the time when the alien will receive an initial interview on his or her eligibility for parole and the date by which any documentary evidence the alien wishes considered should be provided, as well as instructions for how any such information should be provided.

8.2 Unless an additional reasonable period of time is necessary (e.g., due to operational exigencies or an alien's illness or request for additional time to obtain documentation), no later than seven days following a finding that an arriving alien has a credible fear, a DRO officer familiar with the requirements of this directive and corresponding legal authorities must conduct an interview with the alien to assess his or her eligibility for parole. Within that same period, the officer must complete the *Record of Determination/Parole Determination Worksheet* and submit it for supervisory review. If the officer concludes that parole should be denied, the officer should draft a letter to this effect for the FOD's, DFOD's, or AFOD's signature to be provided to the alien or the alien's representative and forward this letter for supervisory review along with the completed *Record of Determination/Parole Determination Worksheet*. The letter must include a brief explanation of the reasons for denying parole and notify the alien that he or she may request redetermination of parole based upon changed circumstances or additional evidence relevant to the alien's identity, security risk, or risk of absconding.

8.3. An alien should be paroled under this directive if DRO determines, in accordance with paragraphs (1) through (4) below, that the alien's identity is sufficiently established, the alien poses neither a flight risk nor a danger to the community, and no additional factors weigh against release of the alien.

1) Identity.

a) Although many individuals who arrive in the United States fleeing persecution or torture may understandably lack valid identity documentation, asylum-related fraud is of genuine concern to ICE, and DRO must be satisfied that an alien is who he or she claims to be before releasing the alien from custody.

b) When considering parole requests by an arriving alien found to have a credible fear, Field Office personnel must review all relevant documentation offered by the alien, as well as any other information available about the alien, to determine whether the alien can reasonably establish his or her identity.

c) If an alien lacks valid government-issued documents that support his or her assertion of identity, Field Office personnel should ask whether the alien can obtain government-issued documentation of identity.

d) If the alien cannot reasonably provide valid government-issued evidence of identity (including because the alien reasonably does not wish to alert that government to his or her whereabouts), the alien can provide for consideration sworn affidavits from third parties. However, third-party affiants must include copies of valid, government issued photo-identification documents and fully establish their own identities and addresses.

e) If government-issued documentation of identity or third-party affidavits from reliable affiants are either not available or insufficient to establish the alien's identity on their own, Field Office personnel should explore whether the alien is otherwise able to establish his or her identity through credible statements such that there are no substantial reasons to doubt the alien's identity.

2) Flight Risk.

a) In order to be considered for release, an alien determined to have a credible fear of persecution or torture must present sufficient evidence demonstrating his or her likelihood of appearing when required.

b) Factors appropriate for consideration in determining whether an alien has made the required showing include, but are not limited to, community and family ties, employment history, manner of entry and length of residence in the United States, stability of residence in the United States, record of appearance for prior court hearings and compliance with past reporting requirements, prior immigration and criminal history, ability to post bond, property ownership, and possible relief or protection from removal available to the alien.

c) Field Office personnel shall consider whether setting a reasonable bond and/or entering the alien in an alternative-to-detention program would provide reasonable assurances that the alien will appear at all hearings and depart from the United States when required to do so.

d) Officers should exercise their discretion to determine what reasonable assurances, individually or in combination, are warranted on a case-by-case basis to mitigate flight risk. In any event, the alien must be able to provide an address where he or she will be residing and must timely advise DRO of any change of address.

3) Danger to the Community.

a) In order for an alien to be considered for parole, Field Office personnel must make a determination whether an alien found to have a credible fear poses a danger to the community or to U.S. national security.

b) Information germane to the determination includes, but is not limited to, evidence of past criminal activity in the United States or abroad, of activity contrary to U.S. national security interests, of other activity giving rise to concerns of public safety or danger to the community (including due to serious mental illness), disciplinary infractions or incident reports, and any criminal or detention history that shows that the alien has harmed or would likely harm himself or herself or others.

c) Any evidence of rehabilitation also should be weighed.

4) Additional Factors.

a) Because parole remains an inherently discretionary decision, in some cases there may be exceptional, overriding factors that should be considered in addition to the three factors discussed above. Such factors may include, but are not limited to, serious adverse foreign policy consequences that may result if the alien is released or overriding law enforcement interests.

b) Field Office personnel may consider such additional factors during the parole decision-making process.

8.4. Assigned DRO officers should, where appropriate, request that parole applicants provide any supplementary information that would aid the officers in reaching a decision. The *Record of Determination/Parole Determination Worksheet* should be annotated to document the request for supplementary information and any response from the detainee.

8.5. After preparing and signing the *Record of Determination/Parole Determination Worksheet*, and in the case of a denial of parole, drafting a written response to the alien, the assigned DRO officer shall forward these materials and the parole request documentation to his or her first-line supervisor for review and concurrence.

8.6. Upon his or her concurrence, the first-line supervisor shall sign the *Record of Determination/Parole Determination Worksheet* where indicated and forward it, along with any related documentation, to the FOD (or, where applicable, the DFOD or AFOD) for final approval.

8.7. The FOD (or, where applicable, the DFOD or AFOD) shall review the parole documentation, consult with the preparing officer and supervisor as necessary, and

either grant or deny parole by signing the *Record of Determination/Parole Determination Worksheet* where indicated and, in the case of a denial, signing the written response to the alien.

8.8. Following a final decision by the FOD to deny parole (or, where applicable, the DFOD or AFOD), the Field Office shall provide the written response to the alien or, if represented, to the alien's legal representative, indicating that parole was denied. If parole is granted, the Field Office shall provide the alien with a date-stamped I-94 Form bearing the following notation: **"Paroled under 8 C.F.R. § 212.5(b). Employment authorization not to be provided on this basis."**

8.9. If an alien makes a written request for redetermination of an earlier decision denying parole, the Field Office may, in its discretion, reinterview the alien or consider the request based solely on documentary material already provided or otherwise of record.

8.10. The supporting documents and a copy of the parole decision sent to the alien (if applicable), the completed *Record of Determination/Parole Determination Worksheet*, and any other documents related to the parole adjudication should be placed in the alien's A-file in a record of proceeding format. In addition, a copy of the *Record of Determination/Parole Determination Worksheet* shall be stored and maintained under the authority of the FOD for use in preparing monthly reports.

8.11. On a monthly basis, FODs shall submit reports to the Assistant Director for Operations, or his or her designee, detailing the number of parole adjudications conducted under this directive within their respective areas of responsibility, the results of those adjudications, and the underlying basis of each Field Office decision whether to grant or deny parole. The Assistant Director for Operations, or his or her designee, in conjunction with appropriate DRO Headquarters components, will analyze this reporting and collect individual case information to review in more detail, as warranted. In particular, this analysis will rely on random sampling of all reported cases for in-depth review and will include particular emphasis on cases where parole was not granted because of the presence of additional factors, per paragraph 8.3(4) of this directive. Any significant or recurring deficiencies identified during this monthly analysis should be explained to the affected Field Office, which will take appropriate corrective action.

8.12. At least once every six months, the Assistant Director for Operations, or his or her designee, shall prepare a thorough and objective quality assurance report, examining the rate at which paroled aliens abscond and the Field Offices' parole decision-making, including any noteworthy trends or corrective measures undertaken based upon the monthly quality assurance analysis required by paragraph 8.11 of this directive.

9. **ATTACHMENTS.**

- *Parole Advisal and Scheduling Notification.*
- *Record of Determination/Parole Determination Worksheet.*

10. **NO PRIVATE RIGHTS CREATED.** This directive is an internal policy statement of ICE. It is not intended to, shall not be construed to, may not be relied upon to, and does not create, any rights, privileges, or benefits, substantive or procedural, enforceable by any party against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

Approved: _____

John Morton
Assistant Secretary
U.S. Immigration and Customs Enforcement

EXHIBIT B

NOTICE OF SETTLEMENT AGREEMENT

HANAD ABDI, ET AL. V. MAYORKAS, ET AL., Case No. 1:17-cv-00721

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

Immigration and Customs Enforcement and the Department of Homeland Security provide this notice of the Settlement Agreement entered in *Abdi v. Mayorkas*, No. 1:17-cv-00721 (W.D.N.Y.). This notice has three purposes:

1. To inform you who falls within the class of noncitizens affected by the Settlement Agreement;

2. To inform you what rights and protections class members have under the Settlement Agreement; and

3. To provide you with contact information for attorneys who can assist you with any questions concerning your membership in the class and the terms of the Settlement Agreement.

Are you a member of the *Abdi* Settlement Class?

This Settlement Agreement applies to "[a]ll arriving asylum-seekers who have passed a credible fear interview and who are or will be detained at the Buffalo Federal Detention Facility in Batavia, New York, and who have not been granted parole."

1. **Are you an arriving alien?**

    - Were you attempting to come into the United States through a port of entry (ports of entry include, but are not limited to, sea ports, airports and official border crossings)? If you answered yes, you are an arriving alien.

    - Were you detained in international waters before arriving in the United States? If you answered yes, you are an arriving alien.

2. **Have you asked for asylum in the United States?**

3. **Have you passed a credible fear interview?**

    - Did you have an interview with an immigration officer concerning your claim for asylum where the officer determined that you had a credible fear of persecution if returned to your home country? If you answered yes, you have passed a credible fear interview.

If you are an arriving alien, have applied for asylum, have passed a credible fear interview, AND have not been granted parole, you are a member of the *Abdi* Settlement Class.

Rights of *Abdi* Class Members Under the Settlement Agreement

If you are a member of the *Abdi* Settlement Class, U.S. Immigration and Customs Enforcement must adjudicate your parole application in accordance with the terms set forth in the Settlement Agreement. As a class member you are eligible to apply for release on parole pending a final decision on your claim for asylum. As part of that process ICE must:

- Provide you with a *Parole Advisal and Scheduling Notification* informing you that you will be interviewed for parole. The *Parole Advisal* must notify you of the date for the scheduled interview, explain the requirements to obtain parole, provide a deadline for you, or your counsel to submit any evidence supporting your eligibility for parole, and provide instructions describing how to submit evidence. The information in the *Parole Advisal* must be explained to you in a language you understand.

- Provide you with written notification of the parole decision. If you are denied parole, ICE must explain why your application for parole was denied and advise you of your right to request a redetermination of this decision, and to present evidence of changed circumstances or additional evidence relevant to your identity, the danger you pose to the community, and the likelihood you will appear for any proceedings in immigration court. This notification must also be provided to your attorney, if you are represented by counsel.

Legal Assistance

If you have any questions concerning your membership in the *Abdi* Settlement Class, your rights under the Settlement Agreement, or if you believe ICE has failed to meet its obligations under the Settlement Agreement, you may contact class counsel at the address and phone number below:

ATTN: ABDI CLASS COUNSEL
New York Civil Liberties Union
125 Broad St., 19th Floor
New York, NY 10004
Tel: (631) 615-9115

Exhibit B

NOTICE OF PROPOSED SETTLEMENT

HANAD ABDI, ET AL. V. MAYORKAS ET AL., Case No. 1:17-cv-00721

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

A proposed settlement has been reached in a class action lawsuit in the United States District Court for the Western District of New York, called *Abdi v. Mayorkas et al.*, Case No. 1:17-cv-00721-EAW. A federal court must now decide whether to approve the class action settlement.

This notice will tell you about your rights under this proposed settlement. The notice is only a summary. For the precise terms and conditions of the settlement, please see the Settlement Agreement and Release (the "Settlement Agreement"). A copy of the Settlement Agreement may be viewed on tablets available to civil detainees at the Buffalo Federal Detention Facility, or by visiting https://www.nyclu.org/sites/default/files/abdi_executed_proposedsettlementagreement.pdf, or by contacting Class Counsel at the contact information provided on Page 4 of this Notice.

What is this lawsuit about?

This lawsuit concerns the Government's parole practices at the Buffalo Federal Detention Facility (BFDF). It was filed in 2017 by an asylum-seeker detained at BFDF who alleged that the Government was not following its own rules when considering whether to release arriving asylum-seekers on parole. This lawsuit seeks to obligate the Government to abide by a December 8, 2009 directive implemented by U.S. Immigration and Customs Enforcement (ICE), entitled "Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture" (the "Parole Directive"), which provides procedural safeguards for the parole application process.

This lawsuit is a **class action lawsuit**, which means that the lawsuit is not just for the people who brought the lawsuit, but also on behalf of a defined group of people in a similar situation. The group of people represented in a class action are called **Class Members.**

The lawyers for the class members in this lawsuit are the New York Civil Liberties Union Foundation (NYCLU), the International Refugee Assistance Project (IRAP), and Sidley Austin LLP. They are called **Class Counsel**.

What is a proposed settlement?

A settlement is an agreement between both sides of a lawsuit to end the case. In a class action lawsuit, it is important that the settlement agreement is fair to every Class Member. For that reason, Class Counsel will propose the Settlement Agreement to the judge, who must decide whether the settlement is fair and whether to approve the settlement.

Am I a member of the *Abdi* settlement class?

This Settlement Agreement applies to **all arriving asylum-seekers who have passed a credible fear interview and who are or will be detained at the Buffalo Federal Detention Facility in Batavia, New York, and who have not been granted parole.**

1. **Are you an arriving alien?**

    - Were you attempting to come into the United States through a port of entry (ports of entry include, but are not limited to, sea ports, airports and official border crossings)? If you answered yes, you are an arriving alien.

    - Were you detained in international waters before arriving in the United States? If you answered yes, you are an arriving alien.

2. **Have you asked for asylum in the United States?**

3. **Have you passed a credible fear interview?**

    - Did you have an interview with an immigration officer concerning your claim for asylum where the officer determined that you had a credible fear of persecution if returned to your home country? If you answered yes, you have passed a credible fear interview.

If you are an arriving alien, have asked for asylum, have passed a credible fear interview, are at the Buffalo Federal Detention Facility, AND have not been granted parole, you are a **Class Member** of the *Abdi* Settlement Class.

What happens if this settlement gets approved?

If you are a Class Member of the *Abdi* Settlement Class, ICE must adjudicate your parole application in accordance with the terms set forth in the Settlement Agreement. As a Class Member, you are eligible to apply for release on parole pending a final decision on your claim for asylum. As part of that process, ICE must:

- Provide you with a *Parole Advisal and Scheduling Notification* informing you that you will be interviewed for parole. The *Parole Advisal* must notify you of the date for the scheduled interview, explain the requirements to obtain parole, provide a deadline for you or your counsel to submit any evidence supporting your eligibility for parole, and provide instructions describing how to submit evidence. The information in the *Parole Advisal* must be explained to you in a language you understand.

- Provide you with written notification of the parole decision. If you are denied parole, ICE must explain why your application for parole was denied and advise you of your right to request a redetermination of this decision, and to present evidence of changed circumstances or additional evidence relevant to your identity, the danger you pose to

the community, and the likelihood you will appear for any proceedings in immigration court. This notification must also be provided to your attorney, if you are represented by counsel.

YOUR RIGHTS AND CHOICES:

As a Class Member, you have legal rights and choices about what to do next.

I like this settlement. What do I do now?

- **Do nothing.** If you like the settlement and want the Court to approve it, you can do nothing. If you do nothing and the Court approves the settlement, the settlement will apply to you and you will give up your right to bring a different lawsuit about these same claims.

I don't like this settlement. What are my rights?

1. **You have a right to object to the settlement.**
   - If you do not like the settlement, you have a right to tell the Court that you object to the settlement. You can't ask the Court to change the settlement. The Court can only approve or reject this settlement. If the Court rejects the settlement, the lawsuit will continue.

   - Any objection to the proposed settlement must be in writing. The deadline to submit an objection is _____ ___, ____.

   - All written objections must:
     - Clearly identify the Class Member's name and signature (and, if represented by counsel, the name and telephone number of counsel), case name, and case number (*Abdi v. Mayorkas et al.*, Case No. 1:17-cv-00721-EAW); AND
     - State whether you (or your attorney) intend to appear at the Final Approval Hearing; AND
     - Be submitted to the Court either by (1) mailing to the Clerk of Court, United States District Court for the Western District of New York, 2 Niagara Square, Buffalo, NY 14202-3498, or by (2) mailing them to Class Counsel; AND
     - Be filed or postmarked on or before _____ ___, ____.

2. **The Final Approval Hearing.**
   - If you file a timely written objection, you or your attorney may attend the Final Approval Hearing. You are not required to attend the Final Approval Hearing. If you want an attorney to attend for you, you are responsible for hiring and paying that attorney.
   - The Final Approval Hearing is scheduled to take place on _____ ____, _____ at _____. This date may change without notice to you. Information about any changes to the Final Approval Hearing date will be

available, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system, available at https://ecf.nywd.uscourts.gov.

I don't know what I think. How can I get more information?

- Class Counsel are available to answer your questions.
- You can call, email, or mail your questions to Class Counsel. Class Counsel's contact information is listed below.

For the precise terms and conditions of the settlement, please see the Settlement Agreement. You can access the Settlement Agreement by:

- Accessing it online at https://www.nyclu.org/sites/default/files/abdi_executed_proposedsettlementagreement.pdf;
- Contacting Class Counsel using the contact information listed below;
- Viewing it on a tablet at the Buffalo Federal Detention Facility; or
- Accessing the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at https://ecf.wdny.uscourts.gov.

Legal Assistance:

If you have any questions concerning your membership in the *Abdi* Settlement Class, or your rights under the Settlement Agreement, you may contact Class Counsel using the contact information listed below:

ATTN: ABDI CLASS COUNSEL
New York Civil Liberties Union Foundation
125 Broad St., 19th Floor
New York, NY 10004
Tel: (631) 615-9115
abdivm@nyclu.org