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12 **UNITED STATES DISTRICT COURT**
 13 **NORTHERN DISTRICT OF CALIFORNIA**

14 SAN JOSE DIVISION

15	J.L. <i>et al.</i> , on behalf of themselves and all others similarly situated,)	CASE NO. 5:18-CV-4914 NC (DMR)
16	Plaintiffs,)	DEFENDANTS' FOURTH
17	v.)	"NOTICE OF COMPLIANCE" REPORT
18	KENNETH T. CUCCINELLI II, Principal)	
19	Deputy Director and Senior Official)	
20	Performing the Duties of Director, United)	
21	States Citizenship and Immigration)	
22	Services, CHAD F. WOLF, Acting)	
23	Secretary, Department of Homeland)	
	Security, <i>et al.</i> ,)	
	Defendants.)	

24

25 Defendants submit the below "Notice of Compliance" Report in accordance with Section

26 VI.B of the Settlement Agreement (ECF No. 211-2), effective December 18, 2019 (ECF No.

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1 228) and the Modification Agreement (ECF No. 279-1 at 4–10).¹

2
3 USCIS reports that it has taken the following adjudicatory actions to comply with the
4 terms of the Settlement Agreement and the Modification Agreement:

- 5
6 1. As of May 19, 2020—the close of the adjudication timeline for all of the petitions
7 identified on the Class List per the Modification Agreement and the date USCIS ran the
8 data reported in this Fourth Compliance Report (*see infra*)—USCIS has taken or
9 completed adjudicatory action on two thousand seven hundred and eighty-five (2,785)
10 petitions out of the two thousand seven hundred and ninety-six (2,796) total petitions
11 identified on the Class List.² The eleven (11) cases for which the agency has reviewed
12 but not yet taken specific adjudicative action are nonetheless compliant with the
13 Settlement Agreement. Eight (8) of these cases were referred for background checks and
14 are in a tolled status. *See* ECF No. 211-2 at § V.B.3 (allowing for tolling of the
15 processing times listed in the Settlement Agreement when case is referred for background
16 checks). Of the remaining three (3) cases, USCIS previously agreed not to take
17 adjudicatory action on one (1) of these cases until after May 15, 2020, as described in
18 particularity in this report *infra* ¶¶ 2.c.iii.A (describing petitioner E.A). And as previously
19 noted, USCIS need not and will not adjudicate the other two (2) remaining cases because
20 they are outside the scope of the Settlement Agreement (*see* ECF No. 271 at 4, ¶ 2.c.iii.A
21 (no I-360 petition is pending); *infra* ¶ 2.f.iv (not a *J.L.* Class Member; the I-360 receipt
22 date is from 1991; the case status is unknown)).

23
24 ¹ This modification was made pursuant to Section X.C of the Settlement Agreement which
25 states: “The Parties may agree in writing to modify the deadlines established in this [Settlement]
26 Agreement without Court approval, but such writing must be lodged with the Court.” Dkt. 211-2
27 at 19. *See* ECF No. 279 at 2; *see also*, ECF No. 279-2 Exhibit 1 (the Modification Agreement).

28 ² According to the Settlement Agreement, “‘Class List’ means the system-generated list, dated
October 1, 2019, of individuals who were between 18- and 21-years old on the date of filing of
the I-360 (SIJ petition) and included a California residence on their petition. The Class List may
be both overinclusive and underinclusive. *See* ECF No. 132-2 at ¶¶ 5–8.” ECF No. 211-3 at 6.

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2. Section V.A. of the Settlement Agreement contained staggered adjudication timelines (“buckets”)—five agreed-upon deadlines ranging from 7 days to 180 days that started running from the Effective Date of the Settlement Agreement for adjudication of various categories of petitions. *See* ECF No. 253 at 2, ¶ 2. As outlined in the Modification Agreement, the Parties subsequently agreed to accelerate the final adjudication deadline from June 15, 2020 to May 19, 2020. ECF No. 279-1 at 4, ¶ 1.

a. As already reported, within **7 days** of the Effective Date of the Settlement Agreement, USCIS adjudicated four (4) of the four (4) Named Plaintiffs’ petitions, resulting in four (4) approvals. Thus, USCIS fully complied with Section V.A.1 of the Settlement Agreement.

b. As already reported, within **30 days** of the Effective Date of the Settlement Agreement, USCIS reopened, readjudicated, and approved thirty-five (35) of the sixty-seven (67) total petitions for individuals identified on the Class List who previously received a denial of their SIJ petition or a revocation of their SIJ classification. USCIS did not reopen the remaining thirty-two (32) petitions after determining that they were appropriately denied for a variety of reasons that did not include the Reunification-Authority Requirement. Thus, USCIS fully complied with Section V.A.2 of the Settlement Agreement.

c. As already reported, within **60 days** of the Effective Date of the Settlement Agreement, USCIS had adjudicated two hundred and twenty (220) of the two hundred and sixty-six (266) total petitions for individuals on the Class List originally identified as “in removal proceedings” or “having received final removal orders” as of October 16, 2019 (the date when ICE provided the data

1 identifying who in the Class List were in removal proceedings).

2 Since that time, USCIS has continued to adjudicate the remaining petitions.³

3 i. As of March 17, 2020, as noted in the 95-day Compliance Report
4 (ECF No. 271), USCIS reported adjudicative action on two
5 hundred and sixty-four (264) petitions of the two hundred and
6 sixty-six (266) total petitions for individuals on the Class List
7 originally identified as “in removal proceedings” or “having
8 received final removal orders” as of October 16, 2019.

9 Specifically, USCIS had completed adjudication of two hundred
10 and thirty-nine (239) petitions, including two hundred and thirty-
11 seven (237) approved petitions, two (2) denied petitions, zero (0)
12 NOIRs, and zero (0) revocations. And, as of March 17, 2020,
13 twenty-five (25) cases remained pending in a tolled status due to
14 USCIS’s issuance of evidentiary requests.

15 ii. USCIS now reports that, as of May 19, 2020, USCIS has taken
16 adjudicative action on two hundred and sixty-four (264) petitions
17 of the two hundred and sixty-six (266) total petitions for this
18 group. Specifically, USCIS has completed adjudication of two
19 hundred and fifty-seven (257) petitions, including two hundred and
20 fifty-one (251) approved petitions, six (6) denied petitions, zero (0)
21 NOIRs, and zero (0) revocations.

22 iii. And, as of May 19, 2020, seven (7) cases remain pending in a
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24 ³ In the Modification Agreement, USCIS agreed to adjudicate the remaining SIJ petitions for all
25 possible Class Members identified on the Class List by May 19, 2020—moving up the final
26 adjudication timeline from the original June 15, 2020 deadline. ECF No. 279-1 at 5, ¶ 1. This
27 necessarily includes the adjudication of “miscategorized” individuals’ petitions discussed in the
28 65-day Compliance Report (*see* ECF No. 253 at 5–6). In the instant Compliance Report, the
“miscategorized” individuals are referenced and discussed according to their original
adjudication bucket deadlines.

1 tolled status due to USCIS's issuance of evidentiary requests.⁴
 2 Specifically, six (6) remain pending with RFEs, and one (1)
 3 remains pending with a NOID. By law, petitioners have 87 days to
 4 respond to an RFE and 33 days to respond to a NOID. *See* 8 C.F.R.
 5 § 103.2.⁵ Accordingly, these cases remain pending at this time, and
 6 USCIS will fully adjudicate the petitions after receiving the
 7 responses or after the applicable response periods have passed. *See*
 8 ECF No. 211-2 at §§ V.B.1, 2 (allowing for tolling of the
 9 processing times listed in the Settlement Agreement when an RFE
 10 or NOID must be issued). USCIS reports that these RFEs and
 11 NOIDs were issued on permissible ground(s) pursuant to the terms
 12 of the Settlement Agreement.

13 A. In the 65-day Compliance Report, USCIS noted that at the
 14 conclusion of the 60-day adjudication timeframe, four (4)
 15 petitions remained pending or unadjudicated. *See* ECF No. 253
 16 at 4–5, ¶ 2.c.iii. In the 95-day Compliance Report, USCIS
 17 provided updates on the resolution of three (3) of those

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 19 ⁴ One of these seven (7) petitions is that of R.M.N. As previously reported, USCIS issued an
 20 RFE to R.M.N. on February 14, 2020. *See* ECF No. 253 at 4, n.4; *see also*, ECF No. 252 at 6, ¶ 2
 21 (the Court's Amended Contempt Order supersedes the timelines outlined in the Settlement
 22 Agreement that would have applied to the five individuals removed without notice). As of May
 23 19, 2020, USCIS had received a response to the RFE from R.M.N. Thus, R.M.N.'s petition
 24 remains pending and will be adjudicated within one week of his return to the U.S.. *See id.*, ¶ 3.
 25 Due to the COVID-19 global pandemic, R.M.N. has been unable to leave Guatemala and return
 26 to the U.S. *See* ECF Nos. 268, 268-1, 273 at 2–3. Defendants continue to monitor this situation
 27 and will be providing an update to the Court on June 15, 2020.

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 29 ⁵ On March 30, 2020, due to the COVID-19 global pandemic, USCIS announced flexibility
 30 guidelines in order to provide applicants and petitioners additional time to respond to evidentiary
 31 requests if the issuance date listed on the request, notice, or decision is between March 1, 2020
 32 and July 1, 2020, inclusive. Specifically, before taking action, USCIS will consider a response to
 33 RFEs and NOIDs that it receives within 60 calendar days after the response due date set in the
 34 RFE or NOID. Thus, for individuals on the Class List who received NOIDs or evidence requests
 35 issued between these dates, they will benefit from an additional 60 days to respond. *See*
 36 <https://www.uscis.gov/news/alerts/uscis-extends-flexibility-responding-agency-requests>.

1 petitions. ECF No. 271 at 4, ¶ 2.c.iii. With regard to the fourth
2 petition (for E.A.), referenced *id.*, ¶ 2.c.iii.D, USCIS reported
3 that it was holding his petition in abeyance per Plaintiffs’
4 request and, accordingly, did not adjudicate his I-360 within
5 the 60-day compliance period. *See* ECF No. 253 at 5; *see also*,
6 ECF No. 252 at 6, ¶ 3. Subsequently, Defendants learned that
7 E.A. did not wish to return to the U.S. ECF No. 267-1, ¶ 8.
8 Therefore, in the 95-day Compliance Report, Defendants
9 relayed that if E.A. did not communicate to the U.S.
10 Immigration and Customs Enforcement (“ICE”) a desire to
11 return to the U.S. by May 15, 2020, USCIS would proceed
12 with adjudicating his I-360 petition. *See* ECF Nos. 271 at 5–6;
13 267 at 15, n.5. Because E.A. did not communicate a desired
14 intent to return to the U.S., USCIS is no longer holding his case
15 in abeyance and has commenced adjudication of his case.

16 iv. Thus, USCIS has complied with Section V.A.3 of the Settlement
17 Agreement.

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19 d. As already reported in the 95-day Compliance Report, within **90 days** of the
20 Effective Date of the Settlement Agreement, USCIS adjudicated one hundred
21 (100) of the one hundred and one (101) total petitions for individuals identified on
22 the Class List who previously received an RFE, a NOID, and/or a NOIR.

23 i. As already reported, USCIS approved ninety-seven (97) of these
24 petitions and denied three (3) of these petitions. USCIS issued zero
25 (0) NOIRs and zero (0) revocations.

26 ii. As already reported, the denials it issued, *supra* ¶ i, were issued on
27 permissible ground(s) pursuant to the terms of the Settlement
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Agreement.

iii. USCIS noted that at the conclusion of the 90-day adjudication timeframe, one (1) petition remained pending or unadjudicated for the following reason:

A. USCIS referred one of the petitioners for background checks. As of May 19, 2020, that issue had not yet been resolved. *See* ECF No. 211-2 at 13 (Section V.B.3).

iv. Thus, USCIS has complied with Section V.A.4 of the Settlement Agreement.

e. The **180-day-adjudication timeframe** was accelerated to May 19, 2020 from its original compliance date of June 15, 2020, per the Modification Agreement. *See* ECF No. 279-1 at 4, ¶ 1. As of May 19, 2020, USCIS had taken adjudicative action on two thousand three hundred and fifty-four (2,354) of the two thousand three hundred and sixty-two (2,362) total petitions for individuals on the Class List originally identified as falling within the 180-day-adjudication timeframe.

i. USCIS has fully adjudicated two thousand one hundred and sixty-two (2,162) petitions.

A. Two thousand one hundred and forty-two (2,142) adjudications resulted in approval decisions.

B. Twenty (20) adjudications resulted in denial decisions.

C. USCIS issued zero (0) NOIRs and zero (0) revocations.

ii. One hundred and sixty-seven (167) petitions remain pending with RFEs and twenty-five (25) remain pending with NOIDs. By law, petitioners have 87 days to respond to an RFE and 33 days to respond to a NOID. *See* 8 C.F.R. § 103.2. Accordingly, these cases remain pending at this time, and USCIS will fully adjudicate the petitions after

1 receiving the responses or after the applicable response periods have
2 passed. *See* ECF No. 211-2 at §§ V.B.1, 2 (allowing for tolling of the
3 processing times listed in the Settlement Agreement when an RFE or
4 NOID must be issued).⁶

5 A. USCIS reports that the RFEs and NOIDs it issued, referenced
6 *supra* ¶ ii, were issued on permissible ground(s) pursuant to the
7 terms of the Settlement Agreement.

8 iii. Seven (7) petitions remained in a tolled status after being referred for
9 background checks. *See* ECF No. 211-2 at § V.B.3 (allowing for
10 tolling of the processing times listed in the Settlement Agreement
11 when a case is referred for background checks).

12 iv. One (1) petition was receipted at the California Service Center in
13 1991, and USCIS cannot confirm the status of the case at this time.
14 Based on the date of filing of the petition in 1991, this individual is not
15 a *J.L.* Class Member. No further action will be taken on this case.

16 v. USCIS reports that the denials it issued, *supra* ¶ i, were issued on
17 permissible ground(s) pursuant to the terms of the Settlement
18 Agreement.

19 vi. Thus, USCIS has complied with Section V.A.5 of the Settlement
20 Agreement.

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24 ⁶ On March 30, 2020, due to the COVID-19 global pandemic, USCIS announced flexibility
25 guidelines in order to provide applicants and petitioners additional time to respond to evidentiary
26 requests if the issuance date listed on the request, notice, or decision is between March 1, 2020
27 and July 1, 2020, inclusive. Specifically, before taking action, USCIS will consider a response to
28 RFEs and NOIDs that it receives within 60 calendar days after the response due date set in the
RFE or NOID. Thus, for individuals on the Class List who received NOIDs or evidence requests
issued between these dates, they will benefit from an additional 60 days to respond. *See*
<https://www.uscis.gov/news/alerts/uscis-extends-flexibility-responding-agency-requests>.

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f. To date, per Section V.A.6 of the Settlement Agreement, USCIS has been made aware of a total of twenty-three (23) Self-Identified Potential Class Members. USCIS has taken adjudicatory action on all 23 of these cases, resulting in twenty-two (22) approvals and one (1) case that is pending subsequent to issuance of a NOID. By law, petitioners have 33 days to respond to a NOID. *See* 8 C.F.R. § 103.2. Accordingly, this case remains pending at this time, and USCIS will adjudicate the petition after receiving the response or after the applicable response period has passed. *See* ECF No. 211-2 at § V.B.2 (allowing for tolling of the processing times listed in the Settlement Agreement when a NOID must be issued).⁷

i. Thus, USCIS has complied with Section V.A.6 of the Settlement Agreement.

g. USCIS confirms it has not applied the Reunification-Authority Requirement to any SIJ petitions since the return of the executed of the Settlement Agreement.

⁷ On March 30, 2020, due to the COVID-19 global pandemic, USCIS announced flexibility guidelines in order to provide applicants and petitioners additional time to respond to evidentiary requests if the issuance date listed on the request, notice, or decision is between March 1, 2020 and July 1, 2020, inclusive. Specifically, before taking action, USCIS will consider a response to RFEs and NOIDs that it receives within 60 calendar days after the response due date set in the RFE or NOID. Thus, for individuals on the Class List who received NOIDs or evidence requests issued between these dates, they will benefit from an additional 60 days to respond. *See* <https://www.uscis.gov/news/alerts/uscis-extends-flexibility-responding-agency-requests>.

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May 26, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Catherine M. Reno, hereby certify that on this 26th day of May, 2020, I electronically filed the foregoing document with the Clerk of the Court by using the CM/ECF system, which will provide electronic notice and an electronic link to this document to all attorneys of record.

/s/ Catherine M. Reno
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