

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ISADORA LOPEZ-VENEGAS, ET AL.

v.

JEH JOHNSON, ET AL.

Case No. 13-cv-03972

**NOTICE OF CLASS ACTION AND PROPOSED SETTLEMENT**

**If between June 1, 2009 and August 28, 2014 you agreed to return to Mexico while being detained by U.S. Border Patrol or U.S. Immigration and Customs Enforcement in Southern California and you then returned to Mexico, subject to restrictions stated below you may be eligible to return to the United States.**

*A federal court authorized this notice. This is not a solicitation from a lawyer.*

The settlement will provide a process by which Class Members (defined in Section 5 below) can apply to return to the United States and the legal position they occupied prior to their departure from the United States.

**YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT**

|                                      |   |  |
|--------------------------------------|---|--|
| <b>OBJECT</b>                        | If you are a Class Member, you may write to the Court about why you object to (i.e., don't like) the Settlement and think it shouldn't be approved.   | Deadline: <b>December 26, 2014</b>                 |
| <b>ATTEND THE "FAIRNESS HEARING"</b> | <p>The Court will hold a "Fairness Hearing" to consider the Settlement and the request for attorneys' fees and costs of the lawyers who brought the Action.</p> <p>If you are a Class Member, you may, but are not required to, speak at the Fairness Hearing about any Objection you filed to the Settlement. If you intend to speak at the Fairness Hearing, you must also submit a "Notice of Intention to Appear" to the Court and the parties' attorneys, indicating your intent to do so.</p> | Hearing Date: <b>February 9, 2015 at 8:30 a.m.</b> |

## YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT (CON'T)

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|--|---|---|
| <b>REQUEST PERMISSION TO RETURN TO THE UNITED STATES</b> | If you are a Class Member and you would like to be eligible to return to the United States (subject to certain restrictions), you must complete a form demonstrating your status as a Class Member. | <p><i>To Be Determined.</i></p> <p>If the Court grants final approval and there are no appeals of the order, it is presently anticipated that the application period will run from <b>June 9, 2015 to December 6, 2015.</b></p> <p>Please check this website for further updates as to the timing of the application period</p> |
|--|---|---|

These rights and options—and the deadlines to exercise them—are explained in more detail below.

The Court in charge of this Action has preliminarily approved the Settlement and must decide whether to give final approval to the Settlement. The relief provided to Class Members will be provided only if the Court gives final approval to the Settlement at the Fairness Hearing described below and, if there are any appeals, after the appeals are resolved in favor of the Settlement. ***Please be patient.***

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**BACKGROUND INFORMATION**

**1. *What is the purpose of this Notice?***

This Notice explains the nature of the Action, the general terms of the proposed Settlement, and your legal rights and obligations. To obtain more information about the Settlement, including information about how you can see a copy of the Settlement Agreement (which defines certain capitalized terms used in this Notice), see Section 18 below.

**2. *What is this lawsuit about?***

The Action asserts claims arising from the administration of the Voluntary Return authority (“Voluntary Return”) in Southern California by U.S. Border Patrol (“Border Patrol”), which is part of U.S. Customs and Border Protection (“CBP”) and U.S. Immigration and Customs Enforcement (“ICE”), all entities within the U.S. Department of Homeland Security (“DHS”). Under Voluntary Return, non-citizens unlawfully residing in the United States may voluntarily agree to leave the United States by signing a document waiving their right to appear before a judge. Plaintiffs contend that, as administered in Southern California, Voluntary Return violates their rights under both the Constitution and the statutes and regulations that apply to Border Patrol and ICE. Among other relief, on behalf of the putative class, Plaintiffs seek a declaration that their returns to Mexico from the United States were unlawful and an order that they be returned to the United States in the legal position that they occupied before returning to Mexico. Defendants deny any wrongdoing and any liability whatsoever.

**The issuance of this Notice is not an expression of the Court’s opinion on the merits or the lack of merits of the Representative Plaintiffs’ claims in the Action.**

For information about how to learn about what has happened in the Action to date, please see Section 18 below.

**3. *Why is this a class action?***

In a class action lawsuit, one or more people called “Representative Plaintiffs” (in this Action, Isidora Lopez-Venegas, Ana Maria Dueñas, Gerardo Hernandez-Contreras, Efrain Garcia-Martinez, Alejandro Serrato, and Arnulfo Sierra (collectively, the “Representative Plaintiffs”)), sue on behalf of other people who have similar claims. For purposes of this proposed Settlement, one court will

resolve the issues for all Class Members. The persons sued in this case, various representatives of Border Patrol, CBP, ICE, and DHS, are called the Defendants.

#### **4. Why is there a Settlement?**

The Representative Plaintiffs have made claims against Defendants. Defendants deny that they have done anything wrong or illegal and admit no liability. The Court has **not** decided that the Representative Plaintiffs or Defendants should win this Action. Instead, both sides agreed to a Settlement. That way, they avoid the cost of a trial, and the Class Members will receive relief now rather than years from now, if at all.

#### **5. How do I know if I am part of the Settlement?**

The Court has decided that everyone who fits the following description is a Class Member for purposes of the proposed Settlement:

All Individuals who returned to Mexico pursuant to a Qualifying Voluntary Return, and who are described in both paragraphs (a) and (b) of this section:

- (a) Based on the facts as they existed at the time of his or her Qualifying Voluntary Return, the Individual:
  - (i) Last entered the United States with inspection prior to his or her Qualifying Voluntary Return and satisfied the non-discretionary criteria for submitting an approvable application to adjust status under 8 U.S.C. § 1255(a), based on a *bona fide* immediate relative relationship defined in 8 U.S.C. § 1151(b)(2)(A)(i);
  - (ii) Was the beneficiary of a properly filed Form I-130 Petition for Alien Relative based on a *bona fide* family relationship, which was pending or approved at the time of the Qualifying Voluntary Return;
  - (iii) Satisfied the non-discretionary criteria to apply for cancellation of removal under 8 U.S.C. § 1229b; or
  - (iv) His or her Qualifying Voluntary Return occurred on or after June 15, 2012, and at that time he or she satisfied the bulleted criteria for consideration for Deferred Action for Childhood Arrivals (“DACA”) listed on page one of the June 15, 2012 memorandum from former Secretary of Homeland Security Janet Napolitano; and
- (b) At the time of application for class membership, the Individual:
  - (i) Is physically present within Mexico; and
  - (ii) Is inadmissible under 8 U.S.C. § 1182(a)(9)(B), due to his or her Qualifying Voluntary Return, except that this requirement does not apply to an Individual seeking recognition as a Class Member under Paragraph (a)(i) above.

The term “Qualifying Voluntary Return” means any Voluntary Return that occurred within the Relevant Area during the period starting June 1, 2009, and ending on August 28, 2014. The term “Voluntary Return” means the process by which an Individual in the custody of ICE or Border Patrol admits being unlawfully present in the United States, and returns to his or her country of citizenship or nationality under 8 U.S.C. § 1229c(a), in lieu of formal removal proceedings. This

term does not include voluntary departure granted by an immigration judge during or at the conclusion of formal removal proceedings. The term “Relevant Area” means the geographic area covered by Border Patrol’s San Diego Sector and ICE’s San Diego and Los Angeles Field Offices.

**6. *I’m still not sure if I am included.***

If you are still not sure whether you are included, for free help you can write Bardis Vakili, ACLU of San Diego & Imperial Counties, Box 87131, San Diego, CA 92138-7131. Mr. Vakili can also be reached at [avd@aclusandiego.org](mailto:avd@aclusandiego.org).

**THE PROPOSED SETTLEMENT**

**7. *What relief does the Settlement provide to the Class Members?***

As part of the proposed Settlement, Class Members who complete an application process are eligible to return to the United States (subject to certain restrictions).

Further specifics regarding the application process are further described in paragraph 2.3 of the Settlement.

**8. *What do I have to do to begin the process to request to return to the United States if the Settlement is approved?***

If the Court grants Final Approval of the Settlement (see section 15 below), persons who believe they are Class Members will be allowed to apply for the relief provided for under the Settlement.

Guidelines for the application that may be used to obtain the relief are available at [www.SalidaVoluntariaAcuerdo.com](http://www.SalidaVoluntariaAcuerdo.com). You may also obtain the guidelines by contacting Dahl Administration LLC at Lopez-Venegas Settlement Administrator c/o Dahl Administration, PO Box 3614, Minneapolis, MN 55403-0614 or Plaintiffs’ Counsel by telephone at (619) 398-4189, by e-mail at [avd@aclusandiego.org](mailto:avd@aclusandiego.org), or by mail directed to Bardis Vakili, ACLU of San Diego & Imperial Counties, Box 87131, San Diego, CA 92138-7131. Completed applications may only be submitted to the Government by Plaintiffs’ counsel or by an “Approved Service Provider.” The list of “Approved Service Providers” is available at [www.SalidaVoluntariaAcuerdo.com](http://www.SalidaVoluntariaAcuerdo.com) and will be updated periodically.

The time period for submitting an application will be determined once the Court holds the fairness hearing. Please check this website again for further updates. It is presently anticipated, however, that the time period for submitting applications will run from June 9, 2015 until December 6, 2015.

**9. *I am a Class Member. If the Defendants determine I am eligible to return to the United States, when will I be able to return to the United States?***

The Court in charge of this Action has preliminarily approved the Settlement and must decide whether to give final approval to the Settlement. The relief provided to Class Members will be provided only if the Court gives final approval to the Settlement at the Fairness Hearing described below and, if there are any appeals, after the appeals are resolved in favor of the Settlement. If there are appeals related to the settlement, it could take months or years before you will be permitted to return to the United States. ***Please be patient.***

## THE LAWYERS IN THIS CASE AND THE REPRESENTATIVE PLAINTIFFS

### **10. Do I have a lawyer in this case?**

The Court has ordered that the ACLU of San Diego & Imperial Counties, the ACLU of Southern California, the ACLU Immigrants' Rights Project, and Cooley LLP ("Class Counsel") will represent the interests of all Class Members. You will not be separately charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

### **11. How will the lawyers be paid?**

Class Counsel will request \$700,000 for their attorneys' fees and costs (total). The Court will make the final decision as to the amounts to be paid to Class Counsel. As noted in Section 10 above, you will not be separately charged for these lawyers.

### **12. Will the Representative Plaintiffs receive any benefits for their efforts in bringing this Action?**

The Representative Plaintiffs are being permitted to return to the United States under similar limitations as Class Members.

## DISMISSAL OF ACTION AND RELEASE OF ALL CLAIMS

### **13. What am I giving up to obtain relief under the Settlement?**

If the Court approves the proposed Settlement, you will be releasing your claims against Defendants. This generally means that you will not be able to file a lawsuit, continue prosecuting a lawsuit, or be part of any other lawsuit against Defendants regarding the allegations in the Action. The Settlement Agreement, available on the Internet at the website [www.SalidaVoluntariaAcuerdo.com](http://www.SalidaVoluntariaAcuerdo.com) contains the full terms of the release.

## HOW TO OBJECT TO THE SETTLEMENT

### **14. How do I tell the Court that I do not like the Settlement?**

At the date, time, and location stated in Section 16 below, the Court will hold a Fairness Hearing to determine if the Settlement is fair, reasonable, and adequate, and to also consider Class Counsel's request for an award of attorneys' fees and costs.

If you are a Class Member and wish to object to the fairness, reasonableness, or adequacy of the Settlement Agreement or the proposed Settlement, or to the award of attorneys' fees and costs, you must file a written objection with the Court and serve such objection on Class Counsel and Defendants' Counsel at the addresses set forth below no later than (*i.e.*, postmarked by) December 26, 2014.

| CLASS COUNSEL   | DEFENDANTS' COUNSEL   | COURT   |
|---|---|---|
| SEAN RIORDAN<br>AMERICAN CIVIL LIBERTIES<br>UNION OF SAN DIEGO &<br>IMPERIAL COUNTIES<br>P.O. BOX 87131<br>SAN DIEGO, CA 92138-7131 | CRAIG A. DEFOE<br>U.S. DEPARTMENT OF<br>JUSTICE<br>BEN FRANKLIN STATION<br>P.O. BOX 868<br>WASHINGTON, DC 20044 | HON. JOHN A. KRONSTADT<br>U.S. DIST. CT., C.D. CAL.,<br>255 EAST TEMPLE STREET,<br>ROOM 750<br>LOS ANGELES, CA 90012-3332 |

Any written objections must state: **(a)** the name and case number of the Action, “*Lopez-Venegas v. Johnson*, Central District of California Case No. 13-cv-03972”; **(b)** the full name, address, and telephone number and/or email address of the person objecting; **(c)** the words “Notice of Objection” or “Formal Objection”; and **(d)** in clear and concise terms, the legal and factual arguments supporting the objection, including an attestation under the penalty of perjury of facts demonstrating that the person objecting is a Class Member. You may, but need not, file and serve your objection through counsel of your choice. If you do make your objection through an attorney, you will be responsible for your personal attorney’s fees and costs.

**IF YOU DO NOT TIMELY MAKE YOUR OBJECTION, YOU WILL BE DEEMED TO HAVE WAIVED ALL OBJECTIONS AND WILL NOT BE ENTITLED TO SPEAK AT THE FAIRNESS HEARING.**

If you file and serve a written objection, you may appear at the Fairness Hearing, either telephonically or through personal counsel hired at your expense, to object to the Settlement Agreement. You are not required, however, to appear. If you or your attorney intend to make an appearance at the Fairness Hearing, you must also deliver to Class Counsel and Defendants’ Counsel, and file with the Court, no later than (*i.e.*, postmarked by) December 26, 2014 a “Notice of Intention to Appear.” If you are in Mexico and will not be appearing through counsel, after you submit a “Notice of Intention to Appear,” you will be sent information so that you can attend the Fairness Hearing telephonically.

If you intend to appear at the Fairness Hearing through counsel, you must also identify the attorney(s) representing you who will appear at the Fairness Hearing and include the attorney’s(s’) name, address, phone number, e-mail address, and the state bar(s) to which counsel is admitted. Also, if you intend to request the Court to allow you to call witnesses at the Fairness Hearing, such request must be made in your written brief, which must also contain a list of any such witnesses and a summary of each witness’ expected testimony.

**FAIRNESS HEARING**

**15. What is the Fairness Hearing?**

The Court has preliminarily approved the Settlement and will hold a hearing to decide whether to give final approval to the Settlement. The purpose of the Fairness Hearing will be for the Court to determine whether the Settlement should be approved as fair, reasonable, adequate, and in the best interests of the Settlement Class and to consider the award of attorneys’ fees and expenses to Class Counsel.

**16. When and where is the Fairness Hearing?**

On February 9, 2015 at 8:30 a.m., a hearing will be held on the fairness of the proposed Settlement. At the hearing, the Court will be available to hear any objections and arguments concerning the

proposed Settlement's fairness. The hearing will take place before the Honorable John A. Kronstadt in Courtroom 750 - 7th Floor of the U.S. District Court for the Central District of California, located at the Edward R. Roybal Federal Building and United States Courthouse, 255 East Temple Street, Los Angeles, CA 90012-3332.

The hearing may be postponed to a different date or time or location without notice. Please check [www.SalidaVoluntariaAcuerdo.com](http://www.SalidaVoluntariaAcuerdo.com) for any updates about the Settlement generally or the Fairness Hearing specifically. If the date or time of the Fairness Hearing changes, an update to the Settlement website will be the only way you will be informed of the change.

**17. *May I speak at the hearing?***

At that hearing, the Court will be available to hear any Objections and arguments concerning the fairness of the Settlement.

You may attend, but you do not have to. As described above in Section 14, you may speak at the Fairness Hearing only if (a) you have timely served and filed an Objection, and (b) you have timely served and filed a Notice of Intent to Appear.

**GETTING MORE INFORMATION**

**18. *How do I get more information?***

To see a copy of the Settlement Agreement, the Court's Preliminary Approval Order, Class Counsel's application for attorneys' fees and costs, the operative complaint and other relevant pleadings filed in the Action, please visit the Settlement website located at: [www.SalidaVoluntariaAcuerdo.com](http://www.SalidaVoluntariaAcuerdo.com). Alternatively, you may contact Dahl Administration LLC at the postal mailing address:

Lopez-Venegas Settlement Administrator  
c/o Dahl Administration  
PO Box 3614  
Minneapolis, MN 55403-0614

You can also contact Class Counsel at the postal mailing address:

Bardis Vakili  
American Civil Liberties Union of San Diego & Imperial Counties  
P.O. Box 87131  
San Diego, CA 92138-7131  
Tel: 619-398-4189  
Email: [avd@aclusandiego.org](mailto:avd@aclusandiego.org)

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**DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR THE LITIGATION TO THE CLERK OF THE COURT OR THE JUDGE.**

Dated: August 28, 2014

By: Order of the Central District of California  
HONORABLE JOHN A. KRONSTADT  
UNITED STATES DISTRICT COURT JUDGE