PRIVILEGED ATTORNEY-CLIENT COMMUNICATION

Office of the General Counsel
U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

August 30, 2010

MEMORANDUM FOR THE SECRETARY

From: Ivan K. Fong
General Counsel

Subject: Recommendation for Indemnification in (b)(6), (b)(7)c (b)(6), (b)(7)c, Pursuant to DHS Management Directive No. 0415

Purpose: To recommend you approve indemnification of four current and former Special Agents and Officers, all with U.S. Immigration and Customs Enforcement (ICE), pursuant to Department of Homeland Security (Department or DHS) Management Directive No. 0415, to enable settlement of a *Bivens* action before a potential adverse judgment.

Background: As detailed in the attached Department of Justice (DOJ) Memorandum requesting indemnification, four current and former ICE employees—retired Senior Special Agent (b)(6), (b)(7)c (b)(6), (b)(7)c former Supervisory Special Agent (b)(6), (b)(7)c Senior Special Agent (b)(6), (b)(7)c (b)(6), (b)(7)c and Supervisory Detention and Deportation Officer (b)(6), (b)(7)c (no relation)—were named as defendants in their individual capacity under *Bivens* in (b)(6), (b)(7)c (b)(6), (b)(7)c, based on allegations concerning the nearly eight-month long detention of plaintiff (b)(6), (b)(7)(C) a naturalized U.S. Citizen and U.S. Army veteran.

In 2005, after (b)(6), (b)(7)c completed a state prison sentence, the defendants detained (b)(6), (b)(7)c and sought his removal under the belief that he did not have legal status in the United States. The defendants' belief, however, was based on a serious error in the Central Index System immigration database, which mistakenly contained two alien file (A-file) numbers for (b)(6), (b)(7)c—only one of which reflected his naturalization. That file, however, was inaccessible using his name (or "sound-alike" names) or Social Security number because of data errors. Thus, despite (b)(6), (b)(7)c repeated assertions of U.S. citizenship and military service, database queries returned only the A-file that did not include his naturalization records. Investigation by (b)(6), (b)(7)c counsel discovered the second A-file number, reflecting naturalization, which led to (b)(6), (b)(7)c release.

(b)(6), (b)(7)c filed the instant *Bivens* action in 2008, and the ICE defendants filed a motion to dismiss asserting qualified immunity. The district court denied the motion, and on appeal the case was referred to mediation where the parties reached a settlement in principle for $400,000 in monetary damages and a statement of regret. The proposed settlement is contingent upon indemnification of the named defendants and would resolve all claims against the defendants as well as against any other unnamed DHS employees that could be subject to suit. Plaintiff's counsel has agreed not to seek attorneys' fees or costs.

Discussion: Management Directive No. 0415 provides that DHS may indemnify employees against rendered monetary awards if the Secretary determines their conduct was within the scope of employment and that indemnification is in the interest of the United States. The Directive also requires "exceptional circumstances" when the request is made before an adverse judgment.

There is no question that the *Bivens* action here is based on conduct undertaken within the scope of the defendants' employment. The gravamen of plaintiff's complaint is that the defendants improperly detained and sought the removal of a U.S. Citizen despite having the means to verify his naturalization—actions that were taken pursuant to their official ICE duties.

Indemnification also is in the interest of the United States, and these reasons also largely demonstrate why exceptional circumstances merit indemnification before a potentially adverse judgment. Most obvious is that the facts are highly sympathetic and favorable to plaintiff. Thus, judgment in favor of the plaintiff is likely and could result in damages (and attorneys' fees) greater than the proposed settlement amount. Notably, the pending *Bivens* action is now plaintiff's sole source of relief since tort claims against the United States are time-barred. That circumstance could lead a potential jury to rule for (b)(6), (b)(7)c because it would be the only way to compensate him. Although there are grounds for a legitimate defense, evaluations by both DOJ and ICE raise doubts about a complete escape from liability.

Moreover, there has been significant negative media attention, which is likely to continue if settlement fails. Furthermore, discovery could lead to the disclosure of additional adverse facts. Specifically, plaintiff has not yet focused on facts that Agents (b)(6), (b)(7)c and (b)(6), (b)(7)c initiated removal proceedings without the written approval of the regional Special Agent in Charge as per standard ICE practice; that proper documentation required for a Notice to Appear does not appear in (b)(6), (b)(7)c file; and that Agent (b)(6), (b)(7)c later resigned under indictment (though unrelated to this matter). Further litigation also could result in the naming of additional ICE defendants.

Perhaps most importantly, the locus of the problem here is the Department's mismanagement of the A-files. Not only does DHS bear risk from judicial scrutiny of its recordkeeping practices should the litigation continue, but employee morale would be harmed severely if individual ICE employees were required to bear personal liability for broader Departmental failings.

Finally, settlement is contingent upon indemnification, and settling at this early stage is merited and in the interest of the United States for the reasons discussed above. If DHS forgoes approving indemnification, thus losing this settlement opportunity, then the cost of this litigation likely will be much higher—both in terms of actual monetary value and potential exposure.

Recommendation: The Office of the General Counsel recommends that you approve indemnification of four current and former ICE employees to enable settlement.

Approve/date (b)(6), (b)(7)c 9-23-10 Disapprove/date _____

Modify/date _____ Needs more discussion/date _____

Attachments: A. DOJ Memorandum Requesting Indemnification

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U.S. Department of Homeland Security
Washington, DC 20528

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Recommendation: The Office of the General Counsel recommends that you approve indemnification of four current and former ICE employees to enable settlement.

Approve/date (b)(6), (b)(7)c 7-23-10 Disapprove/date _____

Modify/date _____ Needs more discussion/date _____

Attachments: A. DOJ Memorandum Requesting Indemnification

Office of the Principal Legal Advisor

U.S. Department of Homeland Security
LESC Counsel's Office
188 Harvest Lane
Williston, VT 05495-7554

U.S. Immigration and Customs Enforcement

December 18, 2012

MEMORANDUM FOR: Dallas Finance Center
OPLA Payment Team

THROUGH: (b)(6), (b)(7)(C), Chief, Financial Management Unit, ERO

FROM: (b)(6), (b)(7)c Deputy Chief, DCLD (b)(6), (b)(7)c

SUBJECT: Settlement Agreement in (b)(6), (b)(7)c

Pursuant to a settlement agreement, Immigration and Customs Enforcement has agreed to pay Lowenstein Sandler PC a total of $295,000, charged to ERO.

The following information is provided to facilitate this payment:

Payee name:	(b)(6), (b)(7)c
Taxpayer ID#:	(b)(6), (b)(7)c
Bank name:	Bank of America
ABA #:	(b)(6), (b)(7)c
Account #:	
Payment amount:	$295,000
Funding should be charged to:	ERO
Funding payment code:	(b)(7)(E)

DALLAS FINANCE CENTER: Upon completion of the funding request and payment of this matter, please fax (802-872-6018) or e-mail a copy of the proof of payment to (b)(6), (b)(7)c @ice.dhs.gov. Thank you for your assistance.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

(b)(6), (b)(7)c Plaintiffs, v. UNITED STATES IMMIGRATION & CUSTOMS ENFORCEMENT, et al., Defendants.	Hon. Peter G. Sheridan Hon. Douglas E. Arpert (b)(6), (b)(7)c **SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS RELATING TO THE ACTION**

This Settlement Agreement and Release of Claims Relating to the Action (the "Agreement") is made and entered into between (b)(6), (b)(7)c (b)(6), (b)(7)c by and through his parents, (b)(6), (b)(7)c and (b)(6), (b)(7)c (b)(6), (b)(7)c (collectively, "Plaintiffs"); the persons identified in the action captioned above (the "Action") as ICE (United States Immigration & Customs Enforcement) Agents 1-31; and the United States of America.

This Agreement is made in view of the following facts:

A. In this Action, Plaintiffs claim and claimed that they are entitled to, *inter alia*, damages from federal officials sued in their individual capacities under *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971), and

injunctive relief from the United States of America.

B. This Agreement shall not constitute a concession to jurisdiction or an admission of liability or fault on the part of the United States of America or any of its agencies, current or former officers, agents, or employees of the United States of America, including but not limited to Defendant ICE Agents 1-31.

C. The parties to this Agreement desire to resolve finally and completely all outstanding differences, disputes, and claims, known or unknown, which have been or could have been asserted in the Action.

NOW, THEREFORE, for and in consideration of the mutual promises herein contained, and other consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned parties to this Agreement agree as follows:

1. In resolution of the damages claims brought against federal officials pursuant to *Bivens* and with the agreement that Plaintiffs consent to the dismissal with prejudice of their injunctive claim, the United States of America, using appropriated funds, shall pay to Plaintiffs, upon the terms indicated below, the sum of TWO HUNDRED AND NINETY-FIVE THOUSAND DOLLARS ($295,000.00) (the "Settlement Amount") by electronic funds transfer to the client trust account of (b)(6), (b)(7)c counsel for Plaintiffs. Wire instructions for this electronic transfer are set forth in Exhibit A hereto. The United States of America shall cause

this Settlement Amount to be paid upon notification that this Agreement has been executed by Plaintiffs and their counsel.

2. Plaintiffs, individually, and on behalf of all their personal representatives, guardians, heirs, executors, administrators, agents, assigns, and attorneys, hereby fully release, forever discharge and agree to hold harmless all persons and entities, including but not limited to the United States of America and all of its divisions, subdivisions, agencies, assigns, present and former officers, agents, employees, including ICE Agents 1-31 (and all of their agents, employees, successors, predecessors, executors, administrators, personal representatives, heirs, insurers, and assigns), from all claims, liability, losses, charges, actions, causes of action, demands, damages, judgments and executions, and suits at law or in equity or before any court or administrative tribunal of any and every kind whatsoever, which Plaintiffs now have, have had, may have, may have had, or in the future may have, whether known or unknown, which arise out of or in connection with, or which relate in any manner to, the Action. This release specifically includes but is not limited to all matters which are, have been, or could have been the subject of the Action and any matters pertaining or relating to the United States of America, or any current or former officers, agents, or employees of the United States of America, including Defendant ICE Agents 1-31, which were raised or could have been raised in any of the pleadings

filed in the Action and any claims for relief of any kind based on the subject matter of those pleadings. Plaintiffs agree to accept payment of the Settlement Amount as a complete compromise of matters involving disputed issues of law and fact in the Action and to assume fully the risk that the facts or law may be otherwise than they believe. The release set forth in this paragraph shall become effective as of the date of the final signature on this Agreement.

3. The parties to this Agreement agree that none of them shall file a claim, lawsuit, or other action against any other party to this Agreement arising out of or relating to the Action.

4. The parties to this Agreement agree that this Agreement is entered into for the purpose of compromising disputed claims and avoiding the expenses and risks of further litigation and that neither this Agreement nor any action taken pursuant thereto shall constitute a concession to jurisdiction or an admission of liability or fault on the part of the United States or any of its agencies, current or former officers, agents or employees, including Defendant ICE Agents 1-31.

5. All parties to the litigation, both present and former, shall each bear his or her own attorney's fees and costs. Plaintiffs agree that they will not seek, solicit or request attorneys' fees or litigation costs.

6. Each Plaintiff and his or her personal representatives, guardians, heirs,

executors, administrators, assigns, and attorneys (collectively referred to in the remainder of this paragraph as "Plaintiff") agrees to reimburse, indemnify, and hold harmless the United States of America and all of its divisions, subdivisions, agencies, assigns, present and former officers, agents, and employees, including Defendant ICE Agents 1-31 (and all of their agents, employees, successors, predecessors, executors, administrators, personal representatives, heirs, insurers, and assigns) (collectively referred to in the remainder of this paragraph as "the United States"), from and against any and all causes of action, claims, liens, rights or subrogated or contribution interests asserted against the United States by any third party based on any alleged injury to that Plaintiff or caused by that Plaintiff arising out of facts alleged in the Action.

7. The terms of this Agreement are contractual and not merely a recital, and shall be binding upon and inure to the benefit of the parties to this Agreement. This Agreement shall be fully enforceable by the parties in an action at law or in equity, and nothing contained herein shall preclude or be construed to preclude an action at law or in equity by the parties against each other to enforce the provisions of this Agreement.

8. This Agreement embodies the entire agreement between the parties to this Agreement. There are no promises, terms, conditions, or obligations other than

those contained in the Agreement. All prior negotiations, understandings, conversations, and communications are merged into this Agreement and have no force and effect other than as expressed in the body of this Agreement. The parties to this Agreement agree that a copy of the fully executed Agreement shall have the same legal effect and shall be equally enforceable in law and/or at equity as the original fully executed Agreement.

9. The persons signing this Agreement warrant and represent that they possess full authority to bind to the terms of this Agreement the persons on whose behalf they are signing this Agreement.

10. Each of the undersigned parties to this Agreement agrees that he or she has completely read and fully understands the terms of this Agreement and voluntarily accepts those terms of his or her own free will. Plaintiffs and their attorneys each represent that, to the extent necessary for full comprehension of the terms and conditions of this Agreement, this Agreement was translated for Plaintiffs into Spanish before Plaintiffs executed the Agreement.

11. It is contemplated that this Agreement may be executed in several counterparts, with a separate signature page for each party. All such counterparts and signature pages, together, shall be deemed to be one document.

(b)(6), (b)(7)c

U.S. Department of Justice
Office of Immigration Litigation
District Court Section

(b)(6), (b)(7)c

Washington, DC 20044
Attorney for the United States of America

Executed this ___ of _____, 2012

(b)(6), (b)(7)c

Trial Attorney, Torts Branch
United States Department of Justice, Civil Division

(b)(6), (b)(7)c

Washington, D.C. 20044
Attorney for Defendant ICE Agents 1-31

Executed this ___ of _____, 2012

(b)(6), (b)(7)c

(b)(6), (b)(7)c

Roseland, NJ 07068
Attorney for Plaintiffs (b)(6), (b)(7)c *by and through his parents,* (b)(6), (b)(7)c *and* (b)(6), (b)(7)c (b)(6), (b)(7)c *and* (b)(6), (b)(7)c

Executed this 12th of December 2012

(b)(6), (b)(7)c

U.S. Department of Justice
Office of Immigration Litigation
District Court Section

(b)(6), (b)(7)c

Washington, DC 20044
Attorney for the United States of America

Executed this 10th of December 2012

(b)(6), (b)(7)c

Trial Attorney, Torts Branch
United States Department of Justice, Civil Division

(b)(6), (b)(7)c

Washington, D.C. 20044
Attorney for Defendant ICE Agents 1-31

Executed this 10th of Dec., 2012

(b)(6), (b)(7)c

Roseland, NJ 07068
Attorney for Plaintiffs (b)(6), (b)(7)c *by and through his parents,* (b)(6), (b)(7)c (b)(6), (b)(7)c *and* (b)(6), (b)(7)c

Executed this ___ of _____, 2012

(b)(6), (b)(7)c

Plaintiff

Executed this 12th of December, 2012

(b)(6), (b)(7)c

Plaintiff

Executed this 12th of December, 2012

(b)(6), (b)(7)c

Plaintiff

Executed this 12th of December, 2012

(b)(6), (b)(7)c

ough his legal guardian (b)(6), (b)(7)c **(print)**

Executed this 12th of December, 2012

(b)(6), (b)(7)c

Plaintiff

Executed this 12th of December, 2012

(b)(6), (b)(7)c

Plaintiff

Executed this 12th of December, 2012

(b)(6), (b)(7)c

Plaintiff

Executed this ___ of _____, 2012

(b)(6), (b)(7)c

Plaintiff

Executed this 12th of December, 2012

(b)(6), (b)(7)c
Plaintiff

Executed this ___ of _____, 2012

(b)(6), (b)(7)c
Plaintiff

Executed this ___ of _____, 2012

(b)(6), (b)(7)c
Plaintiff

Executed this 11 of 30, 2012

(b)(6), (b)(7)c
Plaintiff

Executed this ___ of _____, 2012

EXHIBIT A

WIRE INSTRUCTIONS FOR CLIENT TRUST ACCOUNT

Wire Room of: Bank of America
100 W. 33rd. St.
New York, NY 10001

(b)(6), (b)(7)c

For credit to: (b)(6), (b)(7)c
Attorney Trust Account
IOLTA

(b)(6), (b)(7)c

For further credit to sub account # (b)(6), (b)(7)c

For International wires please use SWIFT Code: (b)(6), (b)(7)c

Please notify (b)(6), (b)(7)c .com) **of the amount and the date of the transaction(s).**

UNITED STATES DEPARTMENT OF HOMELAND SECURITY

Immigration And Customs Enforcement — Miscellaneous Obligation Screen Printout

Document Number (b)(7)(E) **Date** 21-DEC-2012

Document Type TORT **Vendor Name** (b)(6), (b)(7)c **Vendor Taxpayer ID (TIN)** (b)(6), (b)(7)c

Item Number: 1 **Description:** ABA: (b)(6), (b)(7)c ACCOUNT (b)(6), (b)(7)c
BANK OF AMERICA

QUANTITY	UNIT	UNIT PRICE	FUNDING LOCATION	BENEFIT LOCATION	FUND CODE	PROGRAM	PROJECT	SPENDING PLAN CODE	SUB-OBJECT CLASS	OBLIGATION AMOUNT
1.00	EA	295,000.00	(b)(7)(E)	------	(b)(6), (b)(7)c	25-49-00-000	NONE000-000	000	42-02	295,000.00

(b)(6), (b)(7)c

12/26/12
Date

Signature of (b)(6), (b)(7)c
(Certification of Funds Availability)

21-DEC-2012
Date

Interim Form
(PENDING FINALIZATION)

From: (b)(6), (b)(7)c
Sent: Friday, July 13, 2012 10:29 AM
To: (b)(6), (b)(7)c
Cc: (b)(6), (b)(7)c
(b)(6), (b)(7)c
Subject: (b)(6), (b)(7)c. U.S. Immigration & Customs Enforcement (b)(6), (b)(7)c

Dear (b)(6), (b)(7)c

As you are aware, following the breakdown of settlement negotiations between the parties last year, the Magistrate Judge offered to conduct an independent assessment of the allegations in the lawsuit, the relevant case law and published jury verdicts in order to determine a dollar amount for which he believes this lawsuit should settle.

The settlement number the Magistrate Judge recommended is $295,000, broken down by plaintiff as follows:

(b)(6), (b)(7)c	$50,000
	$40,000
	$40,000
	$40,000
	$40,000
	$30,000
	$30,000
	$25,000

The Magistrate Judge made clear that as part of his settlement procedure, no further negotiations are permitted; the settlement figure is firm and final. Each party may only report back to the Magistrate Judge whether it accepts or rejects the final number. The Magistrate Judge has assured us that he will maintain each party's decision in confidence—unless of course a settlement is reached.

We believe this number, which averages approximately $37,000 per plaintiff, is on the outer perimeter of what could be considered a reasonable settlement given the allegations in this case. However, because so many of the litigative risks and cost considerations will be borne principally by the agency, we defer to the Department of Homeland Security and Immigration and Customs Enforcement on whether settlement at this figure is appropriate. As explained in more detail below, although it is unclear whether a jury will award Plaintiffs $295,000, the expense of litigating this case, the disruption to government operations at the New Jersey Field Offices (and likely ICE Headquarters), and the risk for an even higher jury award (which is always present in cases where punitive damages are available), all may tip the agency towards settlement. If ICE believes that avoiding these risks is worth the expense now, we would support the agency's decisions to resolve this lawsuit and to authorize pre-judgment indemnification of the individual defendants for a total payment of $295,000.

We are in the process of consulting with our individual clients and will confirm with each of them that they are requesting pre-judgment indemnification and agree to the proposed settlement if it is authorized by DHS and agreed upon by Plaintiffs. We will advise ICE when we have received the clients' decisions. We, of course, would not support a settlement that did not include dismissal of the claims for injunctive relief that are being handled by DOJ's Office of Immigration Litigation. However, we have not specifically consulted with OIL on the issues discussed in this email. You may wish to consult with them.

TIME LIMIT

The Magistrate Judge has scheduled a conference for July 23, 2012, to commence discovery planning efforts. At your request, we asked for three weeks in which to report back to the Magistrate Judge as to whether the proposed settlement number is acceptable to the agency. Therefore, we must notify the Court of the agency's position on settlement by August 1, 2012.

BACKGROUND

We have attached to this email our communication to you last year seeking authority to engage in settlement discussions for this case. See 8/15/11 Email to (b)(6), (b)(7)c That settlement correspondence describes in detail the factual and procedural background of this lawsuit. In that same correspondence, we identified some of the weakness we perceived in our defenses and outlined our views of the potential risks to ICE in proceeding into discovery in this case, including the high cost of discovery, the disruption to ICE operations and the weaknesses of our qualified immunity and other defenses. Those concerns remain. At the time of that correspondence, we asked for authority to settle the case for $150,000. While we considered that level of authority sufficient to engage in good-faith negotiations, Plaintiffs held fast to their estimation of damages amounting to $1.26 million and their assessment of the value of the case given related jury verdicts. See 8/31/11 and 9/26/11 Letters from Counsel for Plaintiffs. Therefore, the discussions did not result in a settlement at that time.

CONSIDERATIONS FOR SETTLEMENT

Since we last assessed the valuation of this lawsuit, two primary events have occurred. First, the Court issued its decision on the scope of discovery it will permit in this case and declined to limit the scope of discovery. Second, a lawsuit with similar allegations of misconduct during ICE residential enforcement actions settled. In (b)(6), (b)(7)c (b)(6), (b)(7)c, the government settled the case for $350,000, which averaged to approximately $32,000 per plaintiff. That settlement agreement also included immigration benefits for the plaintiffs. In our case, the Magistrate Judge specifically referred to the (b)(6), (b)(7)c settlement as support for his recommendation.

In determining whether settlement of this case for $295,000 is reasonable, we believe that the agency should take into consideration several factors. First, as we mentioned in our prior settlement correspondence, full discovery in this case presents a serious risk of disrupting ICE's enforcement efforts in New Jersey and would be unusually costly. As we now know from the

Court's position on discovery, and as discussed below, the discovery permitted by the Court will impose costs both in terms of monetary expenditures and in terms of disruption to the work functions of the twenty-seven ICE agent defendants and their colleagues. Second, on a per-plaintiff basis, the settlement figure is somewhat higher than that agreed to in (b)(6), (b)(7)c The $37,000 per plaintiff average figure may be used by plaintiffs in other litigation as an example of an appropriate settlement. On the other hand, if discovery in this case were to proceed, this case may even foment additional litigation, given the broad discovery permitted by the Court. Below, we discuss each consideration in more detail.

1. Cost of Discovery and Disruption to ICE Operations

As described in our prior settlement correspondence, the costs of participating in discovery and trial will be higher than those in most immigration or Bivens cases. These costs are exacerbated by the number of parties in the case and the lengthy time during which the operative events occurred. Plaintiffs' discovery demands are already extensive. For instance, Plaintiffs have requested information dating back to 2004 about every Operation Return to Sender enforcement action in the state of New Jersey. Furthermore, because the key allegations date back to 2006 — and now involve officers located across the Eastern United States — ICE Information Technology personnel will need to be heavily involved in attempts to locate and restore electronic information and databases. Counsel for the United States has estimated that discovery in this case would cost over one million dollars. See Attached Email from (b)(6), (b)(7)c (b)(6), (b)(7)c The government will bear a disproportionate share of these costs because the cost-shifting contemplated by the Federal Rules is less likely to be applied to individual civil-rights plaintiffs.

More troubling than the cost alone is the potential for discovery and trial to disrupt ICE law enforcement operations, particularly in New Jersey. Any case against the government requires some employee time, but the number of employees diverted by this litigation would be extraordinary. In addition to leaving open the potential for wide-ranging discovery, the Court's recent discovery decision permitted the parties to take 80 depositions and ordered that the individual defendants respond to 1,080 interrogatory requests. The Court stated that these were not firm limits; it would be open to requests for additional discovery, if needed. At a minimum, then, all defendants as well as other ICE personnel who have relevant information will have to be deposed. Depositions alone will require careful and sustained attention from line-level agents, supervisors, ICE attorneys, and other officials. The currently-named defendants — Plaintiffs purport to sue an additional thirty-three Doe defendants — include an Assistant Field Office Director, several Supervisory Detention and Deportation Officers, Deportation Officers, Immigration Enforcement Officers, the Newark Field Office's Public Affairs Officer, and at least two training instructors based at DRO Headquarters. Disclosure requirements have obligated us to identify still other ICE and CIS employees as potential witnesses. Every ICE employee called to testify will need to take time away from his or her official duties to prepare and sit for deposition. Additionally, ICE personnel may have to serve as representatives of the United States at a deposition pursuant to Federal Rule of Civil Procedure 30(b)(6). Further, because this is an individual-capacity case, each of the defendants will need to assist the attorneys in separately responding to interrogatories, requests for admission, and document requests on his or her behalf.

At trial, these difficulties will be exacerbated. All defendants and witnesses will need to travel to Trenton, New Jersey, where not a single defendant is stationed. All of the defendants, some of whom are currently stationed outside of New Jersey, will need to be absent from their respective duty stations for pre-trial preparation and the entire trial, which we anticipate will last several weeks. All of the witnesses likely will need to be on-call in Trenton for several days at best and the entire duration of the trial at worst. Furthermore, because the trial schedule is set by the Court, our ability to choose when it is scheduled and manage its duration will be limited.

ICE is in the best position to evaluate the effect these expenditures of time and money will have on the agency and its employees. While all litigation is costly, this case is unusual in terms of the number of employees individually sued, the number of offices implicated and the duration of the requested discovery. Those costs and effects can be avoided by this early settlement.

2. Potential Implications for Other ICE Litigation

Were ICE to agree to settle this case for $295,000, that total settlement figure (and the per plaintiff breakdown) will likely serve as a point of reference for demands and settlements in other cases. Only ICE knows how many other related cases are pending or whether ICE has further potential exposure given its current enforcement practices and procedures. This proposed settlement figure on an average per-plaintiff basis is slightly higher than the amount distributed to the plaintiffs in (b)(6), (b)(7)c Thus, ICE could experience a "slow-creep upward" of settlement demands in the future. However, it is not clear that there is actually any disparity between the two settlement figures. All of the plaintiffs in (b)(6), (b)(7)c were out of status and received affirmative immigration benefits as part of the settlement agreement, which significantly increased the value of the settlement to the plaintiffs beyond the monetary payout. Here, by contrast, all but one plaintiff currently have status – which could translate into a significantly higher award from a jury – and those with status do not qualify for immigration benefits and thus monetary compensation is the only available remedy. This blunts the "settlement creep" argument as, while the proposed settlement may be slightly larger in monetary terms, it is not attached to other concessions of value from ICE.

In addition, the potential effect of this proposed settlement on the law governing similar Bivens claims is minimal. The primary legal decision published in this case is extremely favorable to ICE. See (b)(6), (b)(7)c (b)(6), (b)(7)c) (dismissing Assistant Secretary for ICE and other ICE supervisors from the lawsuit). No court has weighed in on the merits of Plaintiffs' case against the ICE officers or called into question any of ICE's practices. A settlement now ensures that this case ends before any bad precedent is established.

Finally, there is the possibility that proceeding into discovery could result in additional lawsuits against the ICE defendants or their colleagues. The Court's discovery order keeps open the possibility that Plaintiffs could inquire into not only the ICE defendants' conduct at the Plaintiffs' residences, but into similar enforcement actions at other residences in New Jersey. In our prior settlement correspondence, we highlighted some significant weaknesses in defending the use of ruses and routine protective sweeps during warrantless home entries. Once Plaintiffs learn that ICE officers used these tactics during other enforcement actions, they may be in a

position to locate additional plaintiffs or file additional lawsuits. Moreover, decisions by the Court on the legality of certain practices may not be in the government's interests.

ADVANTAGES TO SETTLEMENT NOW

While DOJ defers to the agency on its assessment of the reasonableness of this settlement number, we do want to reiterate an issue we highlighted in our prior correspondence to you about the advantages to settling now. As we explained in our prior settlement correspondence to you, we recognize that both Department of Justice and Department of Homeland Security guidelines limit pre-judgment indemnification to "exceptional circumstances." 28 C.F.R. § 50.15(c)(3); Department of Homeland Security Management Directive 0415, Part IV(c). For several reasons, we believe that DHS could reasonably conclude that the circumstances here are exceptional. First, by settling now, the government avoids the extraordinary costs and burdens to ICE operations that discovery in this case would occasion. Second, Plaintiffs do not yet know how little the agents remember, how limited ICE's records are, and how difficult it will be for us to secure the cooperation of third-party witnesses. As we observed in our prior correspondence, discovery will not strengthen our case; indeed, if discovery reveals what we expect, the agents face a very serious risk of being found liable in damages. These developments will only embolden Plaintiffs and raise the cost of settlement. Third, having received no discovery yet, Plaintiffs cannot use this case as a vehicle for identifying new plaintiffs or ICE defendants. Therefore, we believe that the government will be able to secure the most advantageous settlement now and the costs and potential exposure to liability will only escalate as the case progresses.

CONCLUSION

Given all of the considerations above, we would support DHS's authorization of pre-judgment indemnification of the individual defendants for a total payment of $295,000 to settle this case.

(b)(6), (b)(7)c
Trial Attorney
U.S. Department of Justice
Civil Division, Torts Branch
Constitutional Torts Section
(b)(6), (b)(7)c
Washington, DC 20044

for overnight deliveries:
(b)(6), (b)(7)c
Washington, DC 20005

Tel: (202) 616-(b)(6), (b)(7)c

From: (b)(6), (b)(7)c
To: (b)(6), (b)(7)c usdoj.gov"
Subject: (b)(6), (b)(7)c indemnification PRIVILEGED and CONFIDENTIAL
Date: Wednesday, September 12, 2012 4:44:15 PM

(b)(6), (b)(7)c

ICE concurs that pre-trial indemnification of the Bivens defendants in the total amount of $295,000 is appropriate to settle this suit. The money will be paid from agency funds.

(b)(6), (b)(7)c
Deputy Chief, DCLD
ICE/OPLA
188 Harvest Lane
Williston, VT 05495
Ph. 802-8(b)(6), (b)(7)(C)

Sent using BlackBerry

Office of the Principal Legal Advisor
U.S. Department of Homeland Security
500 12th Street, S.W., 9th Floor
Washington, DC 20536

U.S. Immigration and Customs Enforcement

July 30, 2012

MEMORANDUM FOR: Janet Napolitano
Secretary

THROUGH: Ivan Fong
General Counsel

FROM: (b)(6), (b)(7)c
Principal Legal Advisor, U.S. Immigration and Customs Enforcement

SUBJECT: Requests for pre-trial indemnification pursuant to DHS Management Directive 0415.1 in (b)(6), (b)(7)c ((b)(6), (b)(7)c ; interlocutory appeal (b)(6), (b)(7)c (b)(6), (b)(7)c

Issue

Whether to approve the pre-trial indemnification requests of the defendants in this *Bivens* suit, in the total amount of $295,000.

Background

The suit stems from five warrantless, residential law enforcement operations between August 2006 and April 2008 by U.S. Immigration and Customs Enforcement (ICE) Fugitive Operations teams operating in and around Newark, NJ. The defendants are 27 ICE Enforcement and Removal Operations (ERO) officers.[1]

Plaintiffs allege that during these enforcement operations immigration officers misidentified themselves as police and often entered without securing consent at all or after securing consent through use of a ruse. They also allege that immigration officers pointed weapons, were verbally and physically abusive, and questioned individuals without any reasonable basis for believing that those individuals were illegally present.

[1] The original defendants included former Assistant Secretary Julie Myers, former ERO Director (and current ICE Special Agent in Charge for Washington, D.C.) John Torres, former ERO Newark Field Office Director (FOD) Scott Weber and former Deputy FOD (b)(6), (b)(7)(C) . In June 2011, the Third Circuit Court of Appeals dismissed those four defendants from the suit on the basis of qualified immunity.

The magistrate judge overseeing settlement discussions has informed the parties that he believes the settlement value of this suit is $295,000. The plaintiffs have agreed to settle for that amount. The settlement would resolve all claims against the defendants, and the plaintiffs would not seek attorney's fees or costs.

Analysis

(b)(5)

Recommendation

For the reasons stated above, the Office of General Counsel recommends approval of the defendants' requests for pre-trial indemnification in the total amount of $295,000.

Approve: _____ Disapprove: _____

Modified: _____ Needs Discussion: _____

[2] ERO has issued new guidance requiring the documentation of consent to enter residences and has implemented multiple changes and enhancements to its Fourth Amendment and Equal Protection training.

Office of the Principal Legal Advisor
U.S. Department of Homeland Security
500 12th Street, S.W., 9th Floor
Washington, DC 20536

U.S. Immigration and Customs Enforcement

July 30, 2012

MEMORANDUM FOR: Janet Napolitano
Secretary

THROUGH: Ivan Fong
General Counsel

FROM: (b)(6), (b)(7)c
Principal Legal Advisor, U.S. Immigration and Customs Enforcement

SUBJECT: Requests for pre-trial indemnification pursuant to DHS Management Directive 0415.1 in (b)(6), (b)(7)c (b)(6), (b)(7)c interlocutory appeal (b)(6), (b)(7)c (b)(6), (b)(7)c

Issue

Whether to approve the pre-trial indemnification requests of the defendants in this *Bivens* suit, in the total amount of $295,000.

Background

The suit stems from five warrantless, residential law enforcement operations between August 2006 and April 2008 by U.S. Immigration and Customs Enforcement (ICE) Fugitive Operations teams operating in and around Newark, NJ. The defendants are 27 ICE Enforcement and Removal Operations (ERO) officers.[1]

Plaintiffs allege that during these enforcement operations immigration officers misidentified themselves as police and often entered without securing consent at all or after securing consent through use of a ruse. They also allege that immigration officers pointed weapons, were verbally and physically abusive, and questioned individuals without any reasonable basis for believing that those individuals were illegally present.

[1] The original defendants included former Assistant Secretary Julie Myers, former ERO Director (and current ICE Special Agent in Charge for Washington, D.C.) John Torres, former ERO Newark Field Office Director (FOD) Scott Weber and former Deputy FOD (b)(6), (b)(7)(C) In June 2011, the Third Circuit Court of Appeals dismissed those four defendants from the suit on the basis of qualified immunity.

The magistrate judge overseeing settlement discussions has informed the parties that he believes the settlement value of this suit is $295,000. The plaintiffs have agreed to settle for that amount. The settlement would resolve all claims against the defendants, and the plaintiffs would not seek attorney's fees or costs.

Analysis

(b)(5)

Recommendation

For the reasons stated above, the Office of General Counsel recommends approval of the defendants' requests for pre-trial indemnification in the total amount of $295,000.

Approve: _____ Disapprove: _____

Modified: _____ Needs Discussion: _____

[2] ERO has issued new guidance requiring the documentation of consent to enter residences and has implemented multiple changes and enhancements to its Fourth Amendment and Equal Protection training.

Office of the Principal Legal Advisor
U.S. Department of Homeland Security
500 12th Street, S.W., 9th Floor
Washington, DC 20536

U.S. Immigration and Customs Enforcement

July 25, 2012

MEMORANDUM FOR: Janet Napolitano
Secretary

THROUGH: Ivan Fong
General Counsel

FROM: (b)(6), (b)(7)c
Principal Legal Advisor, U.S. Immigration and Customs Enforcement

SUBJECT: Requests for pre-trial indemnification pursuant to DHS Management Directive 0415.1 in (b)(6), (b)(7)c (b)(6), (b)(7)c; interlocutory appeal (b)(6), (b)(7)c (b)(6), (b)(7)c

Issue

Whether to approve the pre-trial indemnification requests of the defendants in this *Bivens* suit, in the total amount of $295,000.

Background

The suit stems from five warrantless, residential law enforcement operations between August 2006 and April 2008 by U.S. Immigration and Customs Enforcement (ICE) Fugitive Operations teams operating in and around Newark, NJ. The defendants are 27 ICE Enforcement and Removal Operations (ERO) officers.[1]

Plaintiffs allege that during these enforcement operations immigration officers misidentified themselves as police and often entered without securing consent at all or after securing consent through use of a ruse. They also allege that immigration officers pointed weapons, were verbally and physically abusive, and questioned individuals without any reasonable basis for believing that those individuals were illegally present.

[1] The original defendants included former Assistant Secretary Julie Myers, former ERO Director (and current ICE Special Agent in Charge for Washington, D.C.) John Torres, former ERO Newark Field Office Director (FOD) Scott Weber and former Deputy FOD (b)(6), (b)(7)(C) In June 2011, the Third Circuit Court of Appeals dismissed those four defendants from the suit on the basis of qualified immunity.

The magistrate judge overseeing settlement discussions has informed the parties that he believes the settlement value of this suit is $295,000. The plaintiffs have agreed to settle for that amount. The settlement would resolve all claims against the defendants, and the plaintiffs would not seek attorney's fees or costs.

Analysis

(b)(5)

Recommendation

For the reasons stated above, the Office of General Counsel recommends approval of the defendants' requests for pre-trial indemnification in the total amount of $295,000.

Approve: _____ Disapprove: _____

Modified: _____ Needs Discussion: _____

[2] ERO has issued new guidance requiring the documentation of consent to enter residences and has implemented multiple changes and enhancements to its Fourth Amendment and Equal Protection training.

(b)(6), (b)(7)c

From: (b)(6), (b)(7)c
Sent: Friday, August 17, 2012 10:44 AM
To:
Cc: (b)(6), (b)(7)c
Subject: (b)(6), (b)(7)c ndemnification request
Attachments: Signed (b)(6), (b)(7)c ndemnification Request.pdf; Signed (b)(6), (b)(7)c Settlement Recommendation Memo.pdf

(b)(6), (b)(7)c

We are in the process of settling (b)(6), (b)(7)c which is a Bivens suit. DHS Management Directive No. 0415 requires the approval of the Secretary of Homeland Security to settle Bivens suits. The magistrate judge overseeing the settlement process has been pushing us and DOJ to move it along. As a result, a couple of weeks ago when Peter Vincent was out of town he gave us e-mail approval to send an unsigned memo in his name to DHS OGC so it could begin its review process. Earlier this week, Peter signed the memo, which is the attached .pdf file titled "Signed (b)(6), (b)(7)c ndemnification request." We also sent OGC a memo from (b)(6), (b)(7)c which is the attached .pdf file titled 'Signed (b)(6), (b)(7)c ettlement recommendation."

(b)(6), (b)(7)c asked me and (b)(6), (b)(7)c to ask ECU to create a "blue folder" to archive Peter's memo in case we ever need to retrieve it. Can you have someone do that? I'd like to include (b)(6), (b)(7)c memo in the blue folder, too, because it provided additional information to OGC. If we ever have to recreate this settlement process it will be helpful to have both memos.

Thank you.

(b)(6), (b)(7)c
Deputy Chief, DCLD
ICE/OPLA
(b)(6), (b)(7)c
Williston, VT 05495
Ph. 802-872 (b)(6), (b)(7)c

Office of the Principal Legal Advisor

U.S. Department of Homeland Security
500 12th Street, S.W., 9th Floor
Mail Stop - 5900
Washington, DC 20536-5706

U.S. Immigration and Customs Enforcement

ATTORNEY WORK PRODUCT

(Insert date)

MEMORANDUM FOR: Janet Napolitano, Secretary of Homeland Security

THROUGH: Ivan Fong, General Counsel

FROM: (b)(6), (b)(7)c Principal Legal Advisor

SUBJECT: Requests for pre-trial indemnification pursuant to DHS Management Directive (b)(6), (b)(7)c; interlocutory appeal (b)(6), (b)(7)c (b)(6), (b)(7)c

INTRODUCTION

I recommend that the Secretary approve the pre-trial indemnification requests of the defendants in this *Bivens* suit, in the total amount of $295,000.

BACKGROUND

The suit stems from five warrantless, residential law enforcement operations between August 2006 and April 2008 by Enforcement and Removal Operations' (ERO) Newark, NJ Fugitive Operations teams. The defendants are 27 ERO line officers.[1]

In lawsuits such as this, a central issue is whether the officers obtained consent to enter and to search the plaintiffs' residences. A primary weakness for the government is that the officers later are unable to remember whether they obtained consent. To the officers, these routine enforcement actions were indistinguishable from the many operations they participate in. Testimony about standard practice is likely the best testimony the agents will be able to muster. In contrast, there was nothing routine about the enforcement actions from the plaintiffs' perspectives. They will vividly recount pre-dawn confrontations and arrests in their homes by armed police officers whom they allege entered and searched without consent.

[1] The original defendants included former Assistant Secretary Julie Myers, former ERO Director (and current SAC-Washington) John Torres, former Field Office Director (FOD) Scott Weber and former Deputy FOD (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) In June 2011 the 3d Circuit Court of Appeals dismissed those four defendants from the suit on the basis of qualified immunity.

(b)(5)

EXCEPTIONAL CIRCUMSTANCES

(b)(5)

CONCLUSION

For the reasons stated above, I recommend approval of the defendants' requests for pre-trial indemnification in the total amount of $295,000.

(b)(6), (b)(7)c

From: (b)(6), (b)(7)c
Sent: Monday, July 30, 2012 10:17 AM
To: Vincent, Peter S
Cc: (b)(6), (b)(7)c
Subject: (b)(6), (b)(7)cMemos for OGC

*****SENSITIVE/PRIVILEGED***PRE-DECISIONAL***ATTORNEY WORK PRODUCT*****

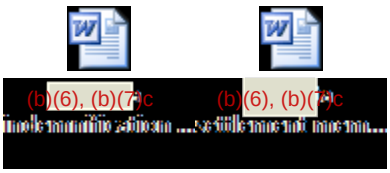
Good morning, Peter.

(b)(5), (b)(6), (b)(7)(C)

Could you please review and sign the indemnification memo? Also, if you'd like a briefing, I'm happy to bring the SMEs by to discuss in detail.

Thanks and regards,

(b)(6), (b)(7)c



(b)(6), (b)(7)c
Director of Enforcement and Litigation
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
Desk: 202-73(b)(6), (b)(7)c
Cell: 202-904-
E-mail: (b)(6), (b)(7)c @ice.dhs.gov

(b)(6), (b)(7)c

From: (b)(6), (b)(7)c
Sent: Tuesday, October 02, 2012 5:10 PM
To: (b)(6), (b)(7)c

Subject: (b)(6), (b)(7)csettlement

(b)(6), (b)(7)c and (b)(6), (b)(7)c

I'm writing to notify you that the appropriate authority at the Department of Homeland Security has approved the pre-judgment indemnification of ICE Agents 1-31, in the total amount of $295,000.

If you have questions or need more information please do not hesitate to contact me.

(b)(6), (b)(7)c
Deputy Chief, DCLD
ICE/OPLA
(b)(6), (b)(7)c
Williston, VT 05495
Ph. 802-872-(b)(6), (b)(7)c

Office of the Principal Legal Advisor
U.S. Department of Homeland Security
500 12th Street, S.W., 9th Floor
Washington, DC 20536

U.S. Immigration and Customs Enforcement

July 30, 2012

MEMORANDUM FOR: (b)(6), (b)(7)(C)
Deputy General Counsel

THROUGH: (b)(6), (b)(7)(C)
Acting Associate General Counsel for Legal Counsel

FROM: (b)(6), (b)(7)c
Director of Enforcement and Litigation

SUBJECT: Proposed settlement of (b)(6), (b)(7)c (b)(6), (b)(7)c ; interlocutory appeal (b)(6), (b)(7)c

Issue

The U.S. Immigration and Customs Enforcement (ICE) Office of the Principal Legal Advisor (OPLA) seeks the Office of General Counsel's approval to settle this lawsuit for $295,000. ICE senior management has been briefed and concurs with a settlement in that amount. Magistrate Judge (MJ) Douglas E. Arpert has informed the parties he believes the settlement value of this suit is $295,000, and the plaintiffs have agreed to settle for this amount $295,000. The eight plaintiffs make *Bivens* claims against 27 ICE Enforcement and Removal Operations (ERO) employees. One family of three plaintiffs also seeks injunctive relief. The Department of Justice's (DOJ) Constitutional and Specialized Torts (Con Torts) section represents the *Bivens* defendants. DOJ's Office of Immigration Litigation represents the United States on the claim for injunctive relief.

Background

The suit stems from five warrantless ("knock-and-talk"), residential law enforcement operations between August 2006 and April 2008 by ERO Newark, NJ Fugitive Operations teams pursuant to (b)(7)e The remaining defendants are 27 ERO line officers. The original defendants included former Assistant Secretary Julie Myers, former ERO Director (and current ICE Special Agent in Charge for Washington, D.C.) John Torres, former Field Office Director Scott Weber and former Deputy Field Office Director (b)(6), (b)(7)(C) In June 2011, the Third Circuit Court of Appeals dismissed those four defendants from the suit on the basis of qualified immunity. The allegations against the remaining defendants state claims for unreasonable search, seizure and excessive force that are adequate to withstand a motion to dismiss under the standards the Supreme Court stated in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) and *Bell Atlantic Corp. v. Twombly*, 550 US 544 (2007).

MJ Arpert held an unsuccessful settlement conference on September 14, 2011. Prior to the conference, ICE and OGC had agreed on settlement authority of up to $225,000 but had conveyed to Con Torts only the $150,000 authority it had sought. The plaintiffs' demand was $1.26 million. At the close of the conference, MJ Arpert told the parties he would tell them his settlement valuation within 30 days, but unfortunately, it was July 2012 before he was able to do so.

Analysis

(b)(5), (b)(6), (b)(7)(C)

(b)(5), (b)(6), (b)(7)(C)

Recommendation

OPLA recommends that OGC concur with the settlement (technically a pre-trial indemnification) of this suit for $295,000.

Approve: _____ Disapprove: _____

Modified: _____ Needs Discussion: _____

Attachment

DOJ Settlement Recommendation

Office of the Principal Legal Advisor
U.S. Department of Homeland Security
500 12th Street, S.W., 9th Floor
Washington, DC 20536

U.S. Immigration and Customs Enforcement

July 25, 2012

MEMORANDUM FOR: (b)(6), (b)(7)(C)
Deputy General Counsel

THROUGH: (b)(6), (b)(7)(C)
Acting Associate General Counsel for Legal Counsel

FROM: (b)(6), (b)(7)c
Director of Enforcement and Litigation

SUBJECT: Proposed settlement of (b)(6), (b)(7)c (b)(6), (b)(7)c interlocutory appeal (b)(6), (b)(7)c

Issue

The U.S. Immigration and Customs Enforcement (ICE) Office of the Principal Legal Advisor (OPLA) seeks the Office of General Counsel's approval to settle this lawsuit for $295,000. ICE senior management has been briefed and concurs with a settlement in that amount. Magistrate Judge (MJ) Douglas E. Arpert has informed the parties he believes the settlement value of this suit is $295,000, and the plaintiffs have agreed to settle for this amount $295,000. The eight plaintiffs make *Bivens* claims against 27 ICE Enforcement and Removal Operations (ERO) employees. One family of three plaintiffs also seeks injunctive relief. The Department of Justice's (DOJ) Constitutional and Specialized Torts (Con Torts) section represents the *Bivens* defendants. DOJ's Office of Immigration Litigation represents the United States on the claim for injunctive relief.

Background

The suit stems from five warrantless ("knock-and-talk"), residential law enforcement operations between August 2006 and April 2008 by ERO Newark, NJ Fugitive Operations teams pursuant to Operation Return to Sender. The remaining defendants are 27 ERO line officers. The original defendants included former Assistant Secretary Julie Myers, former ERO Director (and current ICE Special Agent in Charge for Washington, D.C.) John Torres, former Field Office Director Scott Weber and former Deputy Field Office Director (b)(6), (b)(7)(C) In June 2011, the Third Circuit Court of Appeals dismissed those four defendants from the suit on the basis of qualified immunity. The allegations against the remaining defendants state claims for unreasonable search, seizure and excessive force that are adequate to withstand a motion to dismiss under the standards the Supreme Court stated in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) and *Bell Atlantic Corp. v. Twombly*, 550 US 544 (2007).

MJ Arpert held an unsuccessful settlement conference on September 14, 2011. Prior to the conference, ICE and OGC had agreed on settlement authority of up to $225,000 but had conveyed to Con Torts only the $150,000 authority it had sought. The plaintiffs' demand was $1.26 million. At the close of the conference, MJ Arpert told the parties he would tell them his settlement valuation within 30 days, but unfortunately, it was July 2012 before he was able to do so.

Analysis

(b)(5), (b)(6), (b)(7)(C)

(b)(5), (b)(6), (b)(7)(C)

Recommendation

OPLA recommends that OGC concur with the settlement (technically a pre-trial indemnification) of this suit for $295,000.

Approve: _____ Disapprove: _____

Modified: _____ Needs Discussion: _____

Attachment

DOJ Settlement Recommendation

Office of the Principal Legal Advisor

U.S. Department of Homeland Security
500 12th Street, S.W., 9th Floor
Mail Stop - 5900
Washington, DC 20536-5706

U.S. Immigration and Customs Enforcement

PREDECISIONAL DOCUMENT
ATTORNEY WORK PRODUCT

(Insert date)

MEMORANDUM FOR: (b)(6), (b)(7)(C), Deputy General Counsel

THROUGH: (b)(6), (b)(7)(C), Acting Associate General Counsel for Legal Counsel

FROM: (b)(6), (b)(7)c Director, Enforcement and Litigation

SUBJECT: Proposed settlement of (b)(6), (b)(7)c; interlocutory appeal (b)(6), (b)(7)c

INTRODUCTION

OPLA seeks OGC's approval to settle this lawsuit for $295,000. ICE senior management concurs with a settlement in that amount.

In early July 2012 Magistrate Judge (MJ) Douglas E. Arpert told the parties he believes the settlement value of this suit is $295,000. The parties are to agree or not agree with that figure. If either party disagrees with it, the case will not settle at this time but will proceed to discovery. On July 20, 2012, MJ Arpert informed DOJ's Constitutional and Specialized Torts (Con Torts) section that the plaintiffs have agreed to settle for $295,000.

The eight plaintiffs make *Bivens* claims against 27 ERO employees. One family of three plaintiffs also seeks injunctive relief. Con Torts represents the Bivens defendants. OIL represents the United States on the claim for injunctive relief.

BACKGROUND

The suit stems from five warrantless ("knock-and-talk"), residential law enforcement operations between August 2006 and April 2008 by Enforcement and Removal Operations' (ERO) Newark, NJ Fugitive Operations teams pursuant to (b)(7)e The remaining defendants are 27 ERO line officers. The original defendants included former Assistant Secretary Julie Myers, former ERO Director (and current SAC-Washington) John Torres, former Field Office Director Scott Weber and former Deputy Field Office Director (b)(6), (b)(7)(C) In June 2011 the 3d Circuit Court of Appeals dismissed those four defendants from the suit on the basis of qualified immunity. The allegations against the remaining defendants state claims for

unreasonable search, seizure and excessive force that are adequate to withstand a motion to dismiss under the standards the Supreme Court stated in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) and *Bell Atlantic Corp. v. Twombly*, 550 US 544 (2007).

(b)(6), (b)(7)c held an unsuccessful settlement conference on September 14, 2011. Prior to the conference, ICE and OGC had agreed on settlement authority of up to $225,000 but had conveyed to Con Torts only the $150,000 authority it had sought. The plaintiffs' demand was $1.26 million. At the close of the conference, MJ Arpert told the parties he would tell them his settlement valuation within 30 days, but unfortunately it was July 2012 before he was able to do so.

SETTLEMENT CONSIDERATIONS

(b)(5), (b)(6), (b)(7)(C)

(b)(5), (b)(6), (b)(7)(C)

ADVANTAGES OF SETTLING NOW

(b)(6), (b)(7)c, (b)(5)

SETTLEMENT VALUATION

(b)(5), (b)(6), (b)(7)(C)

CONCLUSION

OPLA recommends that OGC concur with the settlement (technically a pre-trial indemnification) of this suit for $295,000.

Office of the Principal Legal Advisor

U.S. Department of Homeland Security
425 I Street, NW
Washington, DC 20536

U.S. Immigration and Customs Enforcement

ATTORNEY-CLIENT PRIVILEGED / ATTORNEY WORK PRODUCT

MEMORANDUM FOR: Secretary Napolitano

THRU: Ivan K. Fong
General Counsel

John Morton
Assistant Secretary

FROM: (b)(6), (b)(7)c
Principal Legal Advisor

SUBJECT: Settlement recommendation, (b)(6), (b)(7)c (b)(6), (b)(7)c)

This memorandum discusses whether to indemnify individual ICE defendants in the total amount of $400,000 in a *Bivens* action in which no adverse judgment of liability has been entered. After carefully considering the facts of this case, I recommend settling this lawsuit and authorizing DHS to pay the indemnification amount in order to end what would surely be extremely costly and ultimately unsuccessful litigation. The ICE individual defendants were involved in the seven and a half month detention of a naturalized U.S. citizen and honorably discharged U.S. Army veteran. The indemnification request, which contains a thorough analysis of the litigation risks in this case, is attached for your reference. (Attachment 1)

Background

The plaintiff, (b)(6), (b)(7)c alleges that his Fourth and Fifth Amendment rights were violated by the defendants due to material errors and omissions in his arrest warrant and ICE officers' failure to conduct a reasonable or competent investigation into his claims of citizenship. (Attachment 2).

(b)(6), (b)(7)c a native of Belize, entered the United States illegally at the age of seven with his mother in 1984. (b)(6), (b)(7)(C) received alien file number (b)(6), (b)(7)(C) on May 7, 1990, after he applied for lawful permanent residency. He was granted voluntary departure under the

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Family Fairness Program on or about June 24, 1991, after his mother became a lawful permanent resident.

Upon his return to Belize, (b)(6), (b)(7)(C) applied and received a visa to return to the United States. The Central Index System (CIS) database, which is maintained by the U.S. Citizenship and Immigration Services (USCIS), shows that INS created alien file number (b)(6), (b)(7)(C) on July 23, 1992, afte (b)(6), (b)(7)(C) arrival into the United States at the Los Angeles International Airport. It is unknown why this second alien file number was created, as (b)(6), (b)(7)(C) Mother's Petition for Alien Relative (I-130) referred to his previously issued alien file number, (b)(6), (b)(7)(C) The number from the Department of State's Immigrant Visa and Alien Registration form was used as his new alien number. (b)(6), (b)(7)(C) alien file was never cross-referenced nor consolidated with his other alien file, (b)(6), (b)(7)(C) The INS immigration inspection function was transferred to U.S. Customs and Border Protection (CBP) in 2003 when DHS was created.

In November 1996, (b)(6), (b)(7)(C) enlisted in the United States Army. (b)(6), (b)(7)(C) was issued a resident alien identification card on November 19, 1996, under (b)(6), (b)(7)(C) with his name spelled (b)(6), (b)(7)(C) On October 28, 1998, (b)(6), (b)(7)(C) was naturalized unde (b)(6), (b)(7)(C) at the INS office in Seattle, Washington. On November 3, 1998, an unidentified person changed (b)(6), (b)(7)(C) last name in (b)(6), (b)(7)(C) from (b)(6), (b)(7)(C) The CIS record for (b)(6), (b)(7)(C) did not and does not have any social security number associated with it, but it does contain (b)(6), (b)(7)(C) correct date of birth, date of entry, country of origin, mother's name, and naturalization information. (b)(6), (b)(7)(C) received an honorable discharge from the Army in July 2003.

In 2005, (b)(6), (b)(7)(C) was convicted and imprisoned for eight months for residential burglary, felony harassment, and violation of a domestic violence protective order. On September 21, 2005, he was interviewed by ICE Senior Special Agent (SSA) (b)(6), (b)(7)c (b)(6), (b)(7)c lleges he told SSA (b)(6), (b)(7)c he was a naturalized U.S. citizen and U.S. Army veteran. SSA (b)(6), (b)(7)c does not remember interviewing (b)(6), (b)(7)c but claims that her normal practice was to search the (b)(7)e database. An exact name and sounds-like search in CIS for the correct spelling of (b)(6), (b)(7)c name immediately returned the (b)(7)e record for (b)(6), (b)(7)c and did not return the (b)(7)e record for (b)(6), (b)(7)c (b)(6), (b)(7)c The (b)(7)e record for (b)(6), (b)(7)c contained the correct spelling of (b)(6), (b)(7)c ast name, his social security number, date of birth, and country of origin. It did not contain (b)(6), (b)(7)c mother's name or any indication that he was naturalized. Based on the information she found in the (b)(7)e database, SSA (b)(6), (b)(7)c initiated removal proceedings under (b)(6), (b)(7)c SSA (b)(6), (b)(7)c did not include any information on the "Record of Deportable/Inadmissible Alien" (I-213) about (b)(6), (b)(7)c claims of U.S. citizenship or military service. SSA (b)(6), (b)(7)c supervisor, Supervisory Special Agen (b)(6), (b)(7)c , later approved SSA (b)(6), (b)(7)c I-213, arrest warrant, notice to appear, and notice of custody determination. Supervisory SA (b)(6), (b)(7)c resigned from ICE in 2009 after the U.S. Attorney's Office indicted him for violating 18 U.S.C. § 922(g), Felon in Possession of Firearms, and 18 U.S.C. § 1001, False Statement. The indictment accused Supervisory SA (b)(6), (b)(7)c of being convicted of four counts of felony breaking and entering in the 1970s and falsifying his firearms permits. It is believed that plaintiff and his counsel are unaware of this indictment at this time. Both SSA (b)(6), (b)(7)c and Supervisory SA (b)(6), (b)(7)c ailed to

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obtain the Seattle Special Agent in Charge's written approval before initiating removal proceedings against (b)(6), (b)(7)c as required by ICE policy at the time.

(b)(6), (b)(7)c was detained by ICE at the Northwest Detention Center (NWDC) immediately upon his release from the jail on November 15, 2005. At NWDC, SSA (b)(6), (b)(7)c served (b)(6), (b)(7)c his immigration charging documents prepared by SSA (b)(6), (b)(7)c and approved by Supervisory SA (b)(6), (b)(7)c (b)(6), (b)(7)c alleges he told SSA (b)(6), (b)(7)c that he was a naturalized U.S. citizen and U.S. Army veteran. SSA (b)(6), (b)(7)c claims that she searched immigration computer systems thoroughly and was unable to confirm (b)(6), (b)(7)c citizenship claims. (b)(6), (b)(7)c case was then assigned to Deportation Officer (DO) (b)(6), (b)(7)c During his interview with DO (b)(6), (b)(7)c alleges that he again told DO (b)(6), (b)(7)c that he was a naturalized U.S. citizen and U.S. Army veteran. DO (b)(6), (b)(7)c does not contest these allegations, but claims that he searched the (b)(7)e database and did not find any record of naturalization for Castillo.

(b)(6), (b)(7)c first master calendar hearing was held on November 30, 2005. The matter was continued to December 21, 2005, at which tim (b)(6), (b)(7)c representing himself, asserted U.S. citizenship by naturalization. The Immigration Judge granted (b)(6), (b)(7)c another hearing to provide proof of his citizenship claim and directed ICE counsel to investigate (b)(6), (b)(7)c citizenship claims. The ICE attorney contacted USCIS counsel, who verified that there were no records showing (b)(6), (b)(7)c had been naturalized. At his next immigration hearing, on January 24, 2006, (b)(6), (b)(7)c did not provide any documentation establishing his citizenship claim, and ICE counsel represented to the Immigration Judge that there were no records showing (b)(6), (b)(7)c was naturalized. The Immigration Judge then ordered (b)(6), (b)(7)c removed to Belize.

After the removal order was entered, (b)(6), (b)(7)c obtained representation from the Northwest Immigration Rights Project (NWIRP). NWIRP attorneys appealed the removal order and during the appeal were able to find (b)(6), (b)(7)c military records showing (b)(6), (b)(7)c NWIRP requested a copy of (b)(6), (b)(7)c naturalization certificate using (b)(6), (b)(7)c from USCIS. On May 22, 2006, NWIRP, on behalf of (b)(6), (b)(7)c argued for the first time in its appellate brief that (b)(6), (b)(7)c had been naturalized under a different alien file number, (b)(6), (b)(7)c The next day, ICE Counsel filed an opposition brief arguing that (b)(6), (b)(7)c failed to establish his U.S. citizenship claim and that DHS records did not indicate (b)(6), (b)(7)c was naturalized. On June 16, 2006, the BIA remanded the case to allow (b)(6), (b)(7)c an additional opportunity to prove his U.S. citizenship. (b)(6), (b)(7)c remained at NWDC until USCIS forwarded (b)(6), (b)(7)c to ICE on June 29, 2006. ICE immediately released (b)(6), (b)(7)c after it received (b)(6), (b)(7)c which contained a copy of (b)(6), (b)(7)(C) naturalization certificate.

The U.S. Attorney Office in Western District of Washington represents the named ICE defendants. The Department of Justice has determined that these individuals acted within the scope of their employment and granted them representation pursuant to 28 C.F.R. § 50.15.

(b)(6), (b)(7)c and the NWIRP represent the plaintiff. The plaintiff failed to file any administrative tort claims with the federal government before the expiration of the two-year statute of limitations. The government is thus precluded from paying any damages to the plaintiff under the Federal Torts Claim Act (FTCA). Because the *Bivens* statute of limitations in

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Washington is longer than the FTCA statute of limitations, the plaintiff was able to file timely *Bivens* claims against the ICE officers. Indemnification for the plaintiff's claim is thus the only means to complete this settlement.

On October 2, 2009, the ICE defendants filed a motion to dismiss and motion for summary judgment based on qualified immunity. On December 12, 2009, the District Court granted in part and denied in part Defendants' Motion to Dismiss and Motion for Summary Judgment, finding that, as to the former, Plaintiff had adequately pled constitutional violations against the ICE defendants (except Assistant Field Office Director Michael Melendez who was dismissed). (Attachment 3). Based upon plaintiff's request to conduct limited discovery on qualified immunity, the District Court denied the latter motion without prejudice pursuant to Fed. R. Civ. P. 56(f)(1), and deferred any ruling on the defense of qualified immunity or reliance on a valid arrest warrant until the completion of such limited discovery. Discovery has been stayed for 60 days pending the outcome of the ICE defendants' indemnification request.

The ICE defendants filed a protective notice of appeal, and the case was referred to the Ninth Circuit's Mediation Program. The parties engaged in settlement negotiations which were finalized at the mediation. The parties agreed to settle the case for $400,000 in monetary damages and a statement of regret from the ICE defendants (or the United States Attorney in Seattle). The settlement agreement is contingent upon the ICE defendants obtaining indemnification from DHS. The appeal has also been stayed for 60 days pending the outcome of the ICE defendants' indemnification request. A status conference is currently scheduled with the Ninth Circuit mediator on May 11, 2010.

The U.S. Attorney's Office, which represents the ICE defendants, requests that DHS indemnify the individual ICE defendants to settle the *Bivens* claims against them. The proposed settlement will resolve the *Bivens* claims against the currently named individual ICE employees, all "Doe" ICE employees, and any other DHS employees who could subsequently be added to this action. Plaintiff's counsel also agreed not to seek attorneys' fees or costs.

Authority

Management Directive 0415, *Indemnification of Employees Acting in Official Capacity* (Attachment 4), states that the Department may indemnify an employee at any time if the employee was acting within the scope of employment, and if indemnification is in the best interests of the United States. However, the Management Directive authorizes indemnification prior to the entry of an adverse judgment only if exceptional circumstances are present. Paragraph VI.C states, in relevant part:

> Absent exceptional circumstances, as determined by the Secretary, the Department will not entertain a request to indemnify or to pay for settlement of a claim before entry of an adverse judgment, verdict or other determination.

Interest of the United States in Settlement

ATTORNEY-CLIENT PRIVILEGE / ATTORNEY WORK PRODUCT

(b)(5)

Scope of Employment

Section 2671 of Title 18, U.S. Code defines "[a]cting within the scope of employment" as "acting within the line of duty." The actions the ICE defendants allegedly took fall within the scope of their employment as ICE agents and officers. There is evidence that SSA (b)(6), (b)(7)c and Supervisory SA (b)(6), (b)(7)c failed to follow ICE policy by not receiving specific written authorization from the ICE Special Agent in Charge before approving (b)(6), (b)(7)c notice to appear. (b)(6), (b)(7)c alien file also does not contain documents that were required by DHS policy before issuing a notice to appear. Some of these documents, such as fingerprint cards and database search results, may have aided in the search for (b)(6), (b)(7)c naturalization records. However, these lapses do not negate the fact that the actions the ICE defendants allegedly took were performed while they were on duty enforcing U.S. immigration law on the behalf of ICE and DHS. The alleged actions by the ICE defendants are within the scope of their employment as DHS employees.

Recommendation

I recommend that you approve indemnification in this case. The "exceptional circumstances" that justify pre-judgment indemnification are the reasonableness of the officers' reliance on DHS databases and the potential for an adverse judgment. This settlement averts those possibilities. Moreover, the settlement agreement – of which this indemnification is an integral part – completes the process of clarifying and strengthening ICE policies and procedures regarding the investigation of claims of U.S. citizenship, remedies any alleged wrongs, and reduces the potential of another similar court action. It is therefore in the best interests of the United States to settle this lawsuit and to indemnify the employees whom the plaintiff sued in their individual capacities.

Approve _____ Disapprove _____

Modify _____ Needs more discussion _____

Attachments

Office of the Principal Legal Advisor

U.S. Department of Homeland Security
425 I Street, NW
Washington, DC 20536

U.S. Immigration and Customs Enforcement

ATTORNEY-CLIENT PRIVILEGED / ATTORNEY WORK PRODUCT

~~March 31~~April _, 2010

MEMORANDUM FOR: Secretary Napolitano

THRU: Ivan K. Fong
General Counsel

John Morton
Assistant Secretary

FROM: (b)(6), (b)(7)c
Principal Legal Advisor

SUBJECT: Settlement recommendation, (b)(6), (b)(7)c (b)(6), (b)(7)c

~~Purpose:~~

This memorandum discusses whether to indemnify individual ICE defendants in the total amount of $400,000~~.00~~ in a *Bivens* action in which no adverse judgment of liability has been entered. After carefully considering the facts of this case, I recommend settling this lawsuit and authorizing DHS to pay the indemnification the settlement would require in order to end what would surely be extremely costly and ultimately unsuccessful litigation. The ~~Identified~~ ICE individual defendants were involved in the seven and a half month detention of a naturalized U.S. citizen and U.S. Army veteran. The indemnification request, which contains a thorough analysis of the litigation risks in this case, is attached for your reference. (Attachment 1)

Background~~:~~

(b)(6), (b)(7)c lleges that his Fourth and Fifth Amendment rights were violated by the defendants due to material falsities and omissions in his arrest warrant and their failure to conduct a reasonable or competent investigation into his claims of citizenship. (Attachment 2). On September 21, 2005, (b)(6), (b)(7)c was interviewed by retired ICE Senior Special Agent (SSA) (b)(6), (b)(7)c while he was incarcerated at the Pierce County Jail on domestic violence

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charges (b)(6), (b)(7)c alleges he told SSA (b)(6), (b)(7)c he was a naturalized U.S. citizen and U.S. Army veteran. SSA (b)(6), (b)(7)c does not remember ever speaking with (b)(6), (b)(7)c but declared she would have searched the Central Index System (CIS) database maintained by U.S. Citizenship and Immigration Services to verify Castillo's citizenship claims. On the same day, SSA (b)(6), (b)(7)c prepared a Form I-213 "Record of Deportable/Inadmissible Alien" and an administrative arrest warrant using the alien file number (b)(6), (b)(7)c she found for (b)(6), (b)(7)c in the CIS databas (b)(6), (b)(7)c This alien file number supported SSA (b)(6), (b)(7)(C) determination that (b)(6), (b)(7)(C) was a removable alien. SSA (b)(6), (b)(7)c did not include any information on the I-213 about (b)(6), (b)(7)c claims of U.S. citizenship or military service. SSA (b)(6), (b)(7)c supervisor, Supervisory Special Agent (b)(6), (b)(7)c later approved SSA (b)(6), (b)(7)(C) I-213, arrest warrant, notice to appear, and notice of custody determination. Supervisory SA (b)(6), (b)(7)c resigned from ICE in 2009 after the U.S. Attorney's Office indicted him for violating 18 U.S.C. § 922(g), Felon in Possession of Firearms, and 18 U.S.C. § 1001, False Statement. The indictment accused Supervisory SA (b)(6), (b)(7)c of being convicted of four counts felony breaking and entering in the 1970s and falsifying his firearms permits. It is believed that plaintiff is unaware of this indictment at this time.

Two months later, when (b)(6), (b)(7)c completed his sentence, ICE took custody of him and detained him at the Northwest Detention Center (NWDC) in Tacoma, Washington ~~pending his removal proceedings~~. At NWDC, SSA (b)(6), (b)(7)c served (b)(6), (b)(7)c his immigration charging documents prepared by SSA (b)(6), (b)(7)c and approved by Supervisory SA (b)(6), (b)(7)c (b)(6), (b)(7)c alleges he told SSA (b)(6), (b)(7)c that he was a naturalized U.S. citizen and U.S. Army veteran. SSA (b)(6), (b)(7)c claims that she searched immigration computer systems thoroughly and was unable to confirm (b)(6), (b)(7)c citizenship claims. (b)(6), (b)(7)c case was then assigned to Deportation Officer (DO) (b)(6), (b)(7)c During his interview with DO (b)(6), (b)(7)c (b)(6), (b)(7)c alleges that he again told DO (b)(6), (b)(7)c that he was a naturalized U.S. citizen and U.S. Army veteran. DO (b)(6), (b)(7)c does not contest these allegations, but claims that he searched the CIS database and did not find any record of naturalization for (b)(6), (b)(7)c

After several delays to allow (b)(6), (b)(7)c to obtain counsel and proof of his U.S. citizenship ~~claims~~, an Immigration Judge ordered (b)(6), (b)(7)c removed from the United States. (b)(6), (b)(7)c represented himself during these proceedings. After the removal order was entered (b)(6), (b)(7)c obtained representation ~~through~~ from the Northwest Immigration Rights Project (NWIRP). NWIRP attorneys appealed the removal order and during the appeal were able to find records showing (b)(6), (b)(7)c naturalization. (b)(6), (b)(7)c naturalization records were located under a separate alien file number ((b)(6), (b)(7)c). The naturalization record in the CIS database was not cross referenced to (b)(6), (b)(7)c other alien file and his last name was misspelled, making it irretrievable using the correct spelling of (b)(6), (b)(7)c name or the database's "sound alike" search function. ICE released (b)(6), (b)(7)c after it received (b)(6), (b)(7)c naturalization file.

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The U.S. Attorney Office in Western District of Washington represents the named ICE defendants. The Department of Justice has determined that these individuals acted within the scope of their employment.

(b)(6), (b)(7)c and the NWIRP represent the plaintiff. The plaintiff failed to file any tort claims with the federal government. The government is thus precluded from paying any damages to (b)(6), (b)(7)c under the Federal Torts Claim Act because (b)(6), (b)(7)c failed to perfect such a ~~claim in time~~. Because the *Bivens* statute of limitations is longer in Washington, the plaintiff was able to file timely *Bivens* claims against the ICE officers. Indemnification for (b)(6), (b)(7)c claim is thus the only means to complete this settlement.

On October 2, 20~~0~~09, the ICE defendants filed a motion to dismiss and motion for summary judgment based on qualified immunity. On December 12, 2009, the District Court granted in part and denied in part Defendants' Motion to Dismiss and Motion for Summary Judgment, finding that, as to the former, Plaintiff had adequately pled ~~non-supervisory~~ constitutional violations against the ICE d~~D~~efendants (except Assistant Field Office Director (b)(6), (b)(7)(C) who was dismissed). (Attachment 3). Based upon ~~Plaintiff's~~ plaintiff's request to conduct limited discovery on qualified immunity, the District Court denied the latter motion without prejudice pursuant to Fed. R. Civ. P. 56(f)(1), and deferr~~ing~~ed any ruling on the defense of qualified immunity or reliance on a valid arrest warrant until the completion of such limited discovery. ~~*Id.*~~ Discovery has been stayed for 60 days pending the outcome of the ICE defendants' indemnification request.

The ICE d~~D~~efendants filed a protective notice of appeal, and the case was referred to the Ninth Circuit's Mediation Program. The parties engaged in settlement negotiations which were finalized at the mediation. The parties agreed to settle the case for $400,000 in monetary damages and a statement of regret from the ICE d~~D~~efendants (or the United States Attorney in Seattle). The settlement agreement is contingent upon the ICE defendants obtaining indemnification from DHS. The appeal has also been stayed for 60 days ~~to allow the ICE defendants to file and receive an answer to their indemnification request~~pending the outcome of the ICE defendants' indemnification request. A status conference is currently scheduled with the Ninth Circuit mediator on May 11, 2010.

The U.S. Attorney Office, ~~in Seattle~~ who is defending the ICE defendants, request that DHS indemnify the individual ICE ~~employee~~ defendants to settle the *Bivens* claims against them. The proposed settlement will resolve the *Bivens* claims against the currently named individual ICE employees, all "Doe" ICE employees, and any other DHS employees who could subsequently be added to this action. ~~Pursuant to the agreement, counsel for the plaintiff~~Plaintiff's counsel also agreed not to seek attorneys' fees or costs.

Authority

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Management Directive 0415, *Indemnification of Employees Acting in Official Capacity* (Enclosure 2), states that the Department may indemnify an employee at any time if the employee was acting within the scope of employment, and if indemnification is in the best interests of the United States. However, the Management Directive authorizes indemnification prior to the entry of an adverse judgement only if exceptional circumstances are present.

Paragraph VI.C states, in relevant part:

> Absent exceptional circumstances, as determined by the Secretary, the Department will not entertain a request to indemnify or to pay for settlement of a claim before entry of an adverse judgment, verdict or other determination.

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Interest of the United States in Settlement

(b)(5)

Scope of Employment

Section 2671 of Title 18, U.S. Code defines "[a]cting within the scope of employment" as "acting within the line of duty." The actions ~~that~~ the ICE defendants allegedly took fall within the scope of their employment as ICE agents and officers. There is evidence that SA (b)(6), (b)(7)c and Supervisory SA (b)(6), (b)(7)c failed to follow ICE policy by not receiving specific written authorization from the ICE Special Agent in Charge before approving (b)(6), (b)(7)c notice to appear. (b)(6), (b)(7)c alien file also does not contain documents that were required by DHS policy before issuing a notice to appear. Some of these documents, such as fingerprint cards and database search results, may have aided in the search for (b)(6), (b)(7)c naturalization records. However, these lapses do not negate the fact that the actions the ICE defendants allegedly took were performed while they were on duty enforcing U.S. immigration law on the behalf of ICE and DHS. The alleged actions by the ICE defendants are within the scope of their employment as ~~special agents and detention and removal officers in this case~~DHS employees.

Recommendation

I recommend that you approve indemnification in this case. The "exceptional circumstances" that justify pre-judgment indemnification are the reasonableness of the officers' reliance on DHS databases and the potential for an adverse judgment. This settlement averts those possibilities. Moreover, the settlement agreement – of which this indemnification is an integral part – completes the process of clarifying and strengthening ICE policies and procedures regarding the investigation of claims of U.S. citizenship, remedies any alleged wrongs, and reduces the potential of another similar court action. It is therefore in the best interests of the United States to settle this lawsuit and to indemnify the employees whom the plaintiff~~s~~ sued in their individual capacities.

Approve _____ Disapprove _____

Modify _____ Needs more discussion _____

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Attachments

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Assistant Secretary Morton
Principal Legal Advisor Vincent

Office of the Principal Legal Advisor
Date: April 6~~5~~, 2010

(b)(6), (b)(7)c

CURRENT DEVELOPMENTS: On March 26, 2010, mediation was held between the parties with Ninth Circuit mediator Chris Goelz in Seattle. This case is *Bivens* only, and DHS is not a defendant. The parties tentatively agreed to settle the case for $400,000 in monetary damages and a letter of regret signed by the U.S. Attorney in Seattle. The settlement agreement is contingent upon the approval of the ICE employees' indemnification request by the DHS Secretary and approval of the letter by the U.S. Attorney. The case is stayed pending approval of the tentative settlement agreement.

BACKGROUND: (b)(6), (b)(7)(C) a native of Belize, entered the United States illegally at the age of seven with his mother in 1984. (b)(6), (b)(7)(C) received alien file number (b)(6), (b)(7)(C) on May 7, 1990, after he applied for lawful permanent residency. (b)(6), (b)(7)(C) was granted voluntary departure under the Family Fairness Program on or about June 24, 1991.

The Central Index System (CIS) shows that alien file number (b)(6), (b)(7)(C) was created July 23, 1992, when (b)(6), (b)(7)(C) entered the United States as an immigrant. In November 1996, (b)(6), (b)(7)(C) enlisted in the United States Army. (b)(6), (b)(7)(C) received an honorable discharge from the Army in July 2003. In 2005, (b)(6), (b)(7)(C) was convicted and imprisoned for eight months for residential burglary, felony harassment, and violation of a domestic violence protective order. On September 21, 2005, he was interviewed by ICE Agent (b)(6), (b)(7)(C) who initiated removal proceedings under (b)(6), (b)(7)(C) . He was detained by ICE at the Northwest Detention Center (NWDC) immediately upon his release from the jail on November 15, 2005. His first master calendar hearing was held on November 30, 2005. The matter was continued to December 21, 2005, at which time (b)(6), (b)(7)(C) representing himself, asserted U.S. citizenship by naturalization. Nothing in alien file (b)(6), (b)(7)(C) or in the CIS under (b)(6), (b)(7)(C) indicated (b)(6), (b)(7)(C) naturalization or alternate alien number. (b)(6), (b)(7)(C) was unable to provide any documentation establishing his citizenship claim, and on January 24, 2006, the Immigration Judge ordered (b)(6), (b)(7)(C) removed.

On April 27, 2006, (b)(6), (b)(7)(C) with the assistance of counsel, received a copy of his military records that showed an assignment of two different A numbers. On April 28, 2006, (b)(6), (b)(7)(C) renewed his request for a copy of his naturalization certificate with USCIS using both A numbers. (b)(6), (b)(7)(C) remained at NWDC until June 29, 2006, when alien file (b)(6), (b)(7)(C) was forwarded to ICE from USCIS. A review of alien file (b)(6), (b)(7)(C) revealed that (b)(6), (b)(7)(C) was naturalized on October 28, 1998, at the INS office in Seattle, Washington. (b)(6), (b)(7)(C) was released from the NWDC on June 29, 2006, after spending seven and a half months in detention. Subsequent investigation revealed that (b)(6), (b)(7)(C) first and last name were misspelled in the CIS entry for alien file # (b)(6), (b)(7)(C) A search of the correct spelling of (b)(6), (b)(7)(C) name into the CIS database only retrieved alien file # (b)(6), (b)(7)(C)

On November 13, 2008, the Northwest Immigration Rights Project filed a *Bivens* complaint in the Western District of Washington on behalf of (b)(6), (b)(7)c (the two-year statute of limitations under the Federal Tort Claims Act had already lapsed). The complaint named five ICE officers: (1) the arresting ICE agent, (b)(6), (b)(7)c (currently retired); (2) the supervisor who approved the arrest warrant and notice to appear, (b)(6), (b)(7)c (resigned from ICE after being prosecuted by the USAO for violating 18 U.S.C. § 922(g), Felon in Possession of Firearms, and 18 U.S.C. § 1001, False Statement; (3) the ICE agent who served the plaintiff's arrest warrant and notice to appear, (b)(6), (b)(7)c (currently employed as ICE Special Agent); (4) the plaintiff's deportation officer, (b)(6), (b)(7)c (currently employed as Deportation Officer); and (5) the former NWDC AFOD (b)(6), (b)(7)(C) All of the ICE defendants are represented by the U.S. Attorney's Office in Seattle. The complaint alleges violations of the plaintiff's Fourth and Fifth Amendment rights. The complaint also alleges that the plaintiff told (b)(6), (b)(7)c (b)(6), (b)(7)c and (b)(6), (b)(7)c hat he was a military veteran and a naturalized U.S. citizen. (b)(6), (b)(7)c failed to timely file any tort claims with the agency or against the government related to his detention.

On December 10, 2009, Judge Settle granted in part and denied in part the ICE defendants' motion to dismiss or, in the alternate, a motion for summary judgment. The court dismissed without prejudice AFOD (b)(6), (b)(7)(C) from the case, but found the plaintiff pled sufficient constitutional violations against the remaining defendants. The court also denied the ICE defendants' alternative motion for summary judgment without prejudice and ordered the parties to engage in limited discovery to develop the factual record on application of qualified immunity to the defendants. At the conclusion of the discovery, the ICE defendants will be able to file another motion for summary judgment based on qualified immunity. The U.S. Attorney's Office reserved appeal to the Ninth Circuit on the District Court's ruling. (b)(6), (b)(7)c detention has been the subject of numerous press articles and news releases from immigrant advocacy groups. ~~An OPR investigation is pending~~There are no OPR investigations related to this case.

FURTHER ACTION/RECOMMENDATION: The USAO ~~will~~ submitted ~~to ICE~~ the employees' formal request for indemnification to ICE on April 5, 2010. OPLA will need to review and recommend action to DHS OGC. CALD recommends that OPLA recommend to OGC that DHS indemnify. A status conference is scheduled on May 11, 2010 with mediator to discuss progress of settlement approval.

(b)(6), (b)(7)c

From: (b)(6), (b)(7)c
Sent: Monday, April 05, 2010 2:12 PM
To: (b)(6), (b)(7)c
Cc:
Subject: April 2010.doc
Attachments: (b)(6), (b)(7)c April 2010.doc

(b)(6), (b)(7)c The attached SCR was updated per (b)(6), (b)(7)c equest from the last Hot Lit.

I wanted to briefly discuss the OPR investigation as well. Thanks,

(b)(6), (b)(7)c

This entire document is attorney-client / work product privileged and may not be disclosed to any non-recipient except with the express authorization of ICE OPLA.

Assistant Secretary Morton
Principal Legal Advisor Vincent

Office of the Principal Legal Advisor
Date: April 5, 2010

(b)(6), (b)(7)c

CURRENT DEVELOPMENTS: On March 26, 2010, mediation was held between the parties with Ninth Circuit mediator Chris Goelz in Seattle. This case is *Bivens* only, and DHS is not a defendant. The parties tentatively agreed to settle the case for $400,000 in monetary damages and a letter of regret signed by the U.S. Attorney in Seattle. The settlement agreement is contingent upon the approval of the ICE employees' indemnification request by the DHS Secretary and approval of the letter by the U.S. Attorney. The case is stayed pending approval of the tentative settlement agreement.

BACKGROUND: (b)(6), (b)(7)c a native of Belize, entered the United States illegally at the age of seven with his mother in 1984. (b)(6), (b)(7)c received alien file number (b)(6), (b)(7)c on May 7, 1990, after he applied for lawful permanent residency. (b)(6), (b)(7)c was granted voluntary departure under the Family Fairness Program on or about June 24, 1991.

The (b)(7)e shows that alien file numbe (b)(6), (b)(7)c was created July 23, 1992, when (b)(6), (b)(7)c entered the United States as an immigrant. In November 1996, (b)(6), (b)(7)c enlisted in the United States Army. (b)(6), (b)(7)c received an honorable discharge from the Army in July 2003. In 2005, (b)(6), (b)(7)c was convicted and imprisoned for eight months for residential burglary, felony harassment, and violation of a domestic violence protective order. On September 21, 2005, he was interviewed by ICE Agent (b)(6), (b)(7)c who initiated removal proceedings under (b)(6), (b)(7)c He was detained by ICE at the Northwest Detention Center (NWDC) immediately upon his release from the jail on November 15, 2005. His first master calendar hearing was held on November 30, 2005. The matter was continued to December 21, 2005, at which time (b)(6), (b)(7)c representing himself, asserted U.S. citizenship by naturalization. Nothing in alien file A70 709 541 or in the (b)(7)e under A70 709 541 indicated (b)(6), (b)(7)c naturalization or alternate alien number. (b)(6), (b)(7)c was unable to provide any documentation establishing his citizenship claim, and on January 24, 2006, the Immigration Judge ordered Castillo removed.

On April 27, 2006, (b)(6), (b)(7)c with the assistance of counsel, received a copy of his military records that showed an assignment of two different A numbers. On April 28, 2006, (b)(6), (b)(7)c renewed his request for a copy of his naturalization certificate with USCIS using both A numbers. (b)(6), (b)(7)c remained at NWDC until June 29, 2006, when alien file (b)(6), (b)(7)c was forwarded to ICE from USCIS. A review of alien file (b)(6), (b)(7)c revealed that (b)(6), (b)(7)c was naturalized on October 28, 1998, at the INS office in Seattle, Washington. (b)(6), (b)(7)c was released from the NWDC on June 29, 2006, after spending seven and a half months in detention. Subsequent investigation revealed that (b)(6), (b)(7)c first and last name were misspelled in the CIS entry for alien file # (b)(6), (b)(7)c A search of the correct spelling of (b)(6), (b)(7)c name into the (b)(7)e database only retrieved alien file # (b)(6), (b)(7)c .

On November 13, 2008, the Northwest Immigration Rights Project filed a *Bivens* complaint in the Western District of Washington on behalf of (b)(6), (b)(7)c the two-year statute of limitations under the Federal Tort Claims Act had already lapsed). The complaint named five ICE officers: (1) the arresting ICE agent, (b)(6), (b)(7)c (currently retired); (2) the supervisor who approved the arrest warrant and notice to appear, (b)(6), (b)(7)c (resigned from ICE after being prosecuted by the USAO for violating 18 U.S.C. § 922(g), Felon in Possession of Firearms, and 18 U.S.C. § 1001, False Statement; (3) the ICE agent who served the plaintiff's arrest warrant and notice to appear, (b)(6), (b)(7)c (currently employed as ICE Special Agent); (4) the plaintiff's deportation officer, (b)(6), (b)(7)c currently employed as Deportation Officer); and (5) the former NWDC AFOD (b)(6), (b)(7)(C) All of the ICE defendants are represented by the U.S. Attorney's Office in Seattle. The complaint alleges violations of the plaintiff's Fourth and Fifth Amendment rights. The complaint also alleges that the plaintiff told (b)(6), (b)(7)c (b)(6), (b)(7)c, and (b)(6), (b)(7)c that he was a military veteran and a naturalized U.S. citizen. (b)(6), (b)(7)c failed to timely file any tort claims with the agency or against the government related to his detention.

On December 10, 2009, Judge Settle granted in part and denied in part the ICE defendants' motion to dismiss or, in the alternate, a motion for summary judgment. The court dismissed without prejudice AFOD (b)(6), (b)(7)(C) from the case, but found the plaintiff pled sufficient constitutional violations against the remaining defendants. The court also denied the ICE defendants' alternative motion for summary judgment without prejudice and ordered the parties to engage in limited discovery to develop the factual record on application of qualified immunity to the defendants. At the conclusion of the discovery, the ICE defendants will be able to file another motion for summary judgment based on qualified immunity. The U.S. Attorney's Office reserved appeal to the Ninth Circuit on the District Court's ruling. (b)(6), (b)(7)(C) detention has been the subject of numerous press articles and news releases from immigrant advocacy groups. An OPR investigation is pending.

FURTHER ACTION/RECOMMENDATION: The USAO will submit to ICE the employees' formal request for indemnification. OPLA will need to review and recommend action to DHS OGC. CALD recommends that OPLA recommend to OGC that DHS indemnify. A status conference is scheduled on May 11, 2010 with mediator to discuss progress of settlement approval.

(b)(6), (b)(7)c

From: (b)(6), (b)(7)c
Sent: Friday, October 08, 2010 12:29 PM
To:
Cc: (b)(6), (b)(7)c
Subject: (b)(6), (b)(7)c settlement reminder
Attachments: 10-8366 Signed S1 Decision Memorandum 9.23.10.pdf

Importance: High

To be able to pay this settlement I need the employee information to create the obligation. I tried contacting (b)(6), (b)(7)c but he is out of the office until the 13th.

Thanks,

(b)(6), (b)(7)c
Chief, Financial Management Unit
Enforcement and Removal Operations
Immigration and Customs Enforcement
Phone: (202)732 (b)(6), (b)(7)c

-----Original Message-----
From: (b)(6), (b)(7)c
Sent: Monday, October 04, 2010 6:33 PM
To: (b)(6), (b)(7)c
Cc: (b)(6), (b)(7)c
Subject: RE: Castillo settlement reminder

(b)(6), (b)(7)c
I just found out that the DHS Secretary approved the indemnification request on September 23, 2010. See attached. What do you need to process the request? ERO's portion of the settlement amount is $300K.

(b)(6), (b)(7)c

(b)(6), (b)(7)c
Associate Legal Advisor
Commercial & Administrative Law Division U.S. Immigration and Customs Enforcement Department of Homeland Security 24000 Avila Road, (b)(6), (b)(7)c Laguna Niguel, CA 92677

Office Phone: (949) 360
Direct Phone: (949) 360 (b)(6), (b)(7)c
Facsimile: (949) 360-3208

-----Original Message-----
From (b)(6), (b)(7)c
Sent: Thursday, September 23, 2010 1:19 PM
To: (b)(6), (b)(7)c

Cc: (b)(6), (b)(7)c
Subject: RE: (b)(6), (b)(7)c settlement reminder
Importance: High

(b)(6), (b)(7)c

Any news on this?

(b)(6), (b)(7)c
Chief, Financial Management Unit
Enforcement and Removal Operations
Immigration and Customs Enforcement
Phone: (202)732-(b)(6), (b)(7)c

-----Original Message-----
From: (b)(6), (b)(7)c
Sent: Tuesday, September 21, 2010 5:06 PM
To:
Cc: (b)(6), (b)(7)c
Subject: RE: (b)(6), (b)(7)c settlement reminder

Let me ask OGC. Thanks for the reminder.

(b)(6), (b)(7)c

-----Original Message-----
From: (b)(6), (b)(7)c
Sent: Tuesday, September 21, 2010 4:52 PM
To: (b)(6), (b)(7)c
Cc: (b)(6), (b)(7)c
Subject: RE: (b)(6), (b)(7)c settlement reminder
Importance: High

(b)(6), (b)(7)c

Any update on the settlement? I need to know whether this requirement will be paid this FY so the funds do not lapse.

Thanks,

(b)(6), (b)(7)c
Chief, Financial Management Unit
Enforcement and Removal Operations
Immigration and Customs Enforcement
Phone: (202)732-(b)(6), (b)(7)c

-----Original Message-----
From: (b)(6), (b)(7)c
Sent: Friday, August 27, 2010 11:52 AM

To: (b)(6), (b)(7)c
Subject: RE: (b)(6), (b)(7)c settlement reminder

I've grown a long, white beard waiting for this! But I hear it's just about to hit S1's desk any minute now. ;)

Thank you.

(b)(6), (b)(7)c

-----Original Message-----
From: (b)(6), (b)(7)c
Sent: Friday, August 27, 2010 10:30 AM
To: (b)(6), (b)(7)c
Subject: RE: (b)(6), (b)(7)c settlement reminder

Thanks. How soon do you think we will see this?

-----Original Message-----
From: (b)(6), (b)(7)c
Sent: Friday, August 27, 2010 8:55 AM
To: (b)(6), (b)(7)c
Subject: Re: (b)(6), (b)(7)c settlement reminder

I stand corrected

Sent from my BlackBerry Wireless Handheld

----- Original Message -----
From: (b)(6), (b)(7)c
To: (b)(6), (b)(7)c
Sent: Thu Aug 26 17:24:14 2010
Subject: Re: (b)(6), (b)(7)c settlement reminder

The total settlement amount is $400K. The breakdown should be $300K from ERO and $100K for HSI.

(b)(6), (b)(7)c

----- Original Message -----
From: (b)(6), (b)(7)c
To: (b)(6), (b)(7)c
Cc: (b)(6), (b)(7)c
Sent: Thu Aug 26 14:17:56 2010
Subject: (b)(6), (b)(7)c settlement reminder

As the end of FY 10 approaches, I want to make sure we've set aside enough funds to pay for this settlement, once S1 approves. We need 100K from HSI and 400K from ERO (b)(6), (b)(7)c do I have thuse amounts right?).

Thank you both.

(b)(6), (b)(7)c

Sent from my BlackBerry Wireless Handheld

(b)(6), (b)(7)c

From: (b)(6), (b)(7)c
Sent: Thursday, August 26, 2010 5:18 PM
To:
Cc: (b)(6), (b)(7)c
Subject: (b)(6), (b)(7)cettlement reminder

As the end of FY 10 approaches, I want to make sure we've set aside enough funds to pay for this settlement, once S1 approves. We need 100K from HSI and 400K from ERO ((b)(6), (b)(7)c do I have thuse amounts right?).

Thank you both.

(b)(6), (b)(7)c

Sent from my BlackBerry Wireless Handheld

(b)(6), (b)(7)c

From: (b)(6), (b)(7)c
Sent: Friday, April 09, 2010 4:53 PM
To: (b)(6), (b)(7)c
Subject: (b)(6), (b)(7)c -- Recommendation on Indemnification Request
Attachments: (b)(6), (b)(7)c Indemnification Recommendation.doc; Indemnification Request - version 3 FINAL.pdf; Order denying in part Def SJM filed Dec 10 09.pdf; First Amended Complaint filed on August 21 2009.pdf

Importance: High

Tracking:

Recipient	Read
(b)(6), (b)(7)c	Read: 4/9/2010 5:04 PM

(b)(6), (b)(7)c

Attached is a draft recommendation for the indemnification request in the (b)(6), (b)(7)c case and the documents referenced in the recommendation.

Please let me know if you need further information or the recommendation needs to be revised. A status conference with the Ninth Circuit mediator is scheduled for May 11, 2010, to discuss the progress of the indemnification request.

(b)(6), (b)(7)c

(b)(6), (b)(7)c
Associate Legal Advisor
Commercial & Administrative Law Division
U.S. Immigration and Customs Enforcement
Department of Homeland Security
24000 Avila Road, Room (b)(6), (b)(7)c
Laguna Niguel, CA 92677

Office Phone: (949) 360-
Direct Phone: (949) 360 (b)(6), (b)(7)c
Facsimile: (949) 360-3208

(b)(6), (b)(7)c

From: (b)(6), (b)(7)c
Sent: Thursday, April 22, 2010 9:40 AM
To: (b)(6), (b)(7)c
Cc:
Subject: Confidential Settlement read-ahead: (b)(6), (b)(7)c

(b)(6), (b)(7)c This isn't a routine settlement – the amount is frankly astronomical, but so is the potential for liability and bad press. One of the four officers who would be indemnified is DRO, so a share of this indemnification would come out of program funds. Thank you. –(b)(6), (b)(7)c

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CURRENT DEVELOPMENTS: On March 26, 2010, mediation was held between the parties with Ninth Circuit mediator (b)(6), (b)(7)c in Seattle. This case is *Bivens* only, and the United States is not a defendant. The parties tentatively agreed to settle the case for $400,000 in monetary damages and a letter of regret signed by the U.S. Attorney in Seattle. The settlement agreement is contingent upon the approval of the ICE employees' indemnification request by the DHS Secretary and approval of the letter by the U.S. Attorney. The settlement would be paid from agency funds. The case is stayed pending approval of the tentative settlement agreement.

BACKGROUND: (b)(6), (b)(7)(C), a native of Belize, entered the United States illegally at the age of seven with his mother in 1984, (b)(6), (b)(7)(C) received alien file number (b)(6), (b)(7)(C) on May 7, 1990, after he applied for lawful permanent residency. (b)(6), (b)(7)(C) was granted voluntary departure under the Family Fairness Program on or about June 24, 1991. The Central Index System (CIS) shows that alien file number (b)(6), (b)(7)(C) was created July 23, 1992, when (b)(6), (b)(7)(C) entered the United States as an immigrant. In November 1996, (b)(6), (b)(7)(C) enlisted in the United States Army. (b)(6), (b)(7)(C) received an honorable discharge from the Army in July 2003. In 2005, (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) On September 21, 2005, he was interviewed by ICE Agent (b)(6), (b)(7)(C) who initiated removal proceedings under (b)(6), (b)(7)(C) . He was detained by ICE at the Northwest Detention Center (NWDC) immediately upon his release from the jail on November 15, 2005. His first master calendar hearing was held on November 30, 2005. The matter was continued to December 21, 2005, at which time (b)(6), (b)(7)(C), representing himself, asserted U.S. citizenship by naturalization. Nothing in alien file (b)(6), (b)(7)(C) or in the CIS under (b)(6), (b)(7)(C) indicated (b)(6), (b)(7)(C) naturalization or alternate alien number. (b)(6), (b)(7)(C) was unable to provide any documentation establishing his citizenship claim, and on January 24, 2006, the Immigration Judge ordered (b)(6), (b)(7)(C) removed.

On April 27, 2006, (b)(6), (b)(7)(C) with the assistance of counsel, received a copy of his military records that showed an assignment of two different A numbers. On April 28, 2006, (b)(6), (b)(7)(C) renewed his request for a copy of his naturalization certificate with USCIS using both A numbers. (b)(6), (b)(7)(C) remained at NWDC until June 29, 2006, when alien file (b)(6), (b)(7)(C) was forwarded to ICE from USCIS. A review of alien file (b)(6), (b)(7)(C) revealed that (b)(6), (b)(7)(C) was naturalized on October 28, 1998, at the INS office in Seattle, Washington. (b)(6), (b)(7)(C) was released from the NWDC on June 29, 2006, after spending seven and a half months in detention. Subsequent investigation revealed that (b)(6), (b)(7)(C) first and last name were misspelled in the CIS entry for alien file (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) A search of the correct spelling of (b)(6), (b)(7)(C) name into the CIS database only retrieved alien file # (b)(6), (b)(7)(C)

On November 13, 2008, the Northwest Immigration Rights Project filed a *Bivens* complaint in the Western District of Washington on behalf of (b)(6), (b)(7)(C) (the two-year statute of limitations under the Federal Tort Claims Act had already lapsed). The complaint named five ICE officers: (1) the arresting ICE agent, (b)(6), (b)(7)c

(currently retired); (2) the supervisor who approved the arrest warrant and notice to appear, (b)(6), (b)(7)c (resigned from ICE after being prosecuted by the USAO for violating 18 U.S.C. § 922(g), Felon in Possession of Firearms, and 18 U.S.C. § 1001, False Statement; (3) the ICE agent who served the plaintiff's arrest warrant and notice to appear, (b)(6), (b)(7)c (currently employed as ICE Special Agent); (4) the plaintiff's deportation officer, (b)(6), (b)(7)c (currently employed as Deportation Officer); and (5) the former NWDC AFOD (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) All of the ICE defendants are represented by the U.S. Attorney's Office in Seattle. The complaint alleges violations of the plaintiff's Fourth and Fifth Amendment rights. The complaint also alleges that the plaintiff told (b)(6), (b)(7)c and (b)(6), (b)(7)c that he was a military veteran and a naturalized U.S. citizen. (b)(6), (b)(7)c failed to timely file any tort claims with the agency or against the government related to his detention.

On December 10, 2009, Judge Settle granted in part and denied in part the ICE defendants' motion to dismiss or, in the alternate, a motion for summary judgment. The court dismissed without prejudice AFOD (b)(6), (b)(7)(C) from the case, but found the plaintiff pled sufficient constitutional violations against the remaining defendants. The court also denied the ICE defendants' alternative motion for summary judgment without prejudice and ordered the parties to engage in limited discovery to develop the factual record on application of qualified immunity to the defendants. At the conclusion of the discovery, the ICE defendants will be able to file another motion for summary judgment based on qualified immunity. The U.S. Attorney's Office reserved appeal to the Ninth Circuit on the District Court's ruling. (b)(6), (b)(7)c detention has been the subject of numerous press articles and news releases from immigrant advocacy groups. An OPR investigation is pending.

FURTHER ACTION/RECOMMENDATION: The USAO will submit to ICE the employees' formal request for indemnification. OPLA will need to review and recommend action to DHS OGC. CALD recommends that OPLA recommend to OGC that DHS indemnify. A status conference is scheduled on May 11, 2010 with mediator to discuss progress of settlement approval.

(b)(6), (b)(7)c
Deputy Chief for Tort Litigation
Commercial & Administrative Law Division
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
500 12th Street SW, (b)(6), (b)(7)c
Washington, DC 20024

(202) 732 (b)(6), (b)(7)c

Office of the Principal Legal Advisor

U.S. Department of Homeland Security
24000 Avila Road, Room 6080
Laguna Niguel, CA 92677

U.S. Immigration and Customs Enforcement

Memorandum

TO: Dallas Finance Center
OPLA Payment Team

FROM: (b)(6), (b)(7)c (
(b)(6), (b)(7)c
Associate Legal Advisor
District Court Litigation Division

DATE: January 4, 2011

SUBJECT: Settlement Agreement in (b)(6), (b)(7)c
(b)(6), (b)(7)c

Pursuant to a settlement agreement, Immigration and Customs Enforcement (ICE) has agreed to pay the (b)(6), (b)(7)c a total of $400,000.00 with $100,000.00 coming from HSI and $300,000.00 coming from ERO.

The following information is provided to facilitate this payment:

Payee Name:	(b)(6), (b)(7)c
Taxpayer ID#:	
Bank Name:	U.S. Bank
ABA#:	(b)(6), (b)(7)c
Account #:	
Payment Amount:	$400,000.00
Funding should be charged to:	$100,000 to HSI and $300,000 to ERO
Funding Payment Code:	

DALLAS FINANCE CENTER: Upon completion of the funding request and payment of this matter, please fax or email a copy of the proof that payment has been completed to (b)(6), (b)(7)c @dhs.gov. Thank you for your assistance.

Office of the Principal Legal Advisor

U.S. Department of Homeland Security
24000 Avila Road, Room 6080
Laguna Niguel, CA 92677

U.S. Immigration and Customs Enforcement

Memorandum

TO: Dallas Finance Center
OPLA Payment Team

FROM: (b)(6), (b)(7)c
Associate Legal Advisor
Commercial and Administrative Law Division

DATE: December 21, 2010

SUBJECT: Settlement Agreement in (b)(6), (b)(7)c
(b)(6), (b)(7)c

Pursuant to a settlement agreement, Immigration and Customs Enforcement (ICE) has agreed to pay the (b)(6), (b)(7)c a total of $400,000.00 with $100,000.00 coming from HSI and $300,000.00 coming from ERO.

The following information is provided to facilitate this payment:

Payee Name:	
Taxpayer ID#:	(b)(6), (b)(7)c
Bank Name:	U.S. Bank
ABA#:	
Account #:	(b)(6), (b)(7)c
Payment Amount:	$400,000.00
Funding should be charged to:	$100,000 to HSI and $300,000 to ERO
Funding Payment Code:	

DALLAS FINANCE CENTER: Upon completion of the funding request and payment of this matter, please fax or email a copy of the proof that payment has been completed to (b)(6), (b)(7)c @dhs.gov. Thank you for your assistance.

Office of the Principal Legal Advisor

U.S. Department of Homeland Security
24000 Avila Road, Room 6080
Laguna Niguel, CA 92677

U.S. Immigration and Customs Enforcement

TO: Dallas Finance Center
OPLA Payment Team

THROUGH: (b)(6), (b)(7)c
OFFICE OF ENFORCEMENT AND REMOVAL OPERATIONS

FROM: (b)(6), (b)(7)c (b)(6), (b)(7)c
Associate Legal Advisor
District Court Litigation Division

DATE: August 3, 2011

SUBJECT: Settlement Agreement in (b)(6), (b)(7)c
(b)(6), (b)(7)c

Pursuant to a settlement agreement, Immigration and Customs Enforcement (ICE) has agreed to pay the (b)(6), (b)(7)c a total of $20,000.00 via a written check. This amount was approved by the DHS Secretary to indemnify an ERO employee, who is being sued for acts arising out of the scope of her employment with ICE. The amount should come out of ERO funds. (b)(6), (b)(7)c payment should be made by check and sent to the following address:

(b)(6), (b)(7)c
U.S. Attorney's Office
Civil Division
(b)(6), (b)(7)c **Federal Building**
300 North Los Angeles Street
Los Angeles, CA 90012
(213) 894-(b)(6), (b)(7)c

The following information is provided to facilitate this payment:

Payee Name:	(b)(6), (b)(7)c
Taxpayer ID#:	
Payment Amount:	$20,000.00
Funding should be charged to:	ERO
Funding Payment Code:	

DALLAS FINANCE CENTER: Upon completion of the funding request and payment of this matter, please fax or email a copy of the proof that payment has been completed to (b)(6), (b)(7)c @dhs.gov. Thank you for your assistance.

Department of Homeland Security
Management Directive System
MD Number: 0415
Issue Date: 09/26/2005

INDEMNIFICATION OF EMPLOYEES ACTING IN OFFICIAL CAPACITY

I. Purpose

This Management Directive (MD) establishes Department of Homeland Security (DHS) policy regarding indemnification of an employee of DHS acting in his or her official capacity.

II. Scope

This MD applies to DHS Headquarters and all DHS Component's . The provisions of this MD define the circumstances under which the Department may indemnify a Department employee if he or she is named as a party in a legal proceeding in his or her individual capacity as a result of conduct within the scope of his or her employment.

III. Authorities and References

A. 5 U.S.C., "Government Organization and Employees."

B. 28 CFR § 50.15, "Representation of Federal officials and employees by Department of Justice attorneys or by private counsel furnished by the Department in civil, criminal, and congressional proceedings in which Federal employees are sued, subpoenaed, or charged in their individual capacities."

IV. Definitions

A. ***Component***: As used in this MD, the term DHS Component shall have the meaning given to the former term "Organizational Element" in DHS MD 0010.1, Management Directives System and DHS Announcements.

B. ***Employee***: An individual who has been appointed in the Federal civil service, is engaged in the performance of a Federal function under authority of law or regulation, and is not otherwise exempt from 5 USC, Sections 2301 and 2302. For purposes of this Management Directive a former employee shall be considered an employee if the actions resulting in the adverse legal proceeding occurred when he or she was an employee under this definition.

V. Responsibilities

The General Counsel: The General Counsel shall be responsible for reviewing the merits of requests for indemnification made under this MD and for preparing a recommendation to the Secretary.

VI. Policy & Procedures

A. The Department of Homeland Security may indemnify, in whole or in part, a Department employee for any verdict, judgment or other monetary award rendered against such employee, provided the Secretary determines that (1) the conduct giving rise to such verdict, judgment or award was within the scope of the employee's employment and (2) such indemnification is in the interest of the United States.

B. The Department of Homeland Security may pay for the settlement or compromise of a claim against a Department employee at any time, provided the Secretary determines that (1) the alleged conduct giving rise to the claim was within the scope of the employee's employment and (2) such settlement or compromise is in the interest of the United States.

C. Absent exceptional circumstances, as determined by the Secretary, the Department will not entertain a request to indemnify or to pay for settlement of a claim before entry of an adverse judgment, verdict or other determination.

D. When a Department employee becomes aware that he or she has been named as a party in a proceeding in his or her individual capacity as a result of conduct within the scope of his or her employment, the employee should immediately notify his or her supervisor that such an action is pending. The supervisor shall promptly thereafter notify the chief counsel, principal legal advisor or judge advocate general assigned by the General Counsel to the employee's Component, who shall inform the Office of the General Counsel. The employee shall immediately apprise the chief counsel, principal legal advisor or judge advocate general of the employee's Component of any offer to settle the proceeding. The employee is required to comply with any and all requests for information from the chief counsel, principal legal advisor or judge advocate general assigned to the employee's Component, the Office of the General Counsel, and the Department of Justice. The employee may be required to comply with substitution of the United States or representation by the United States in accordance with 28 CFR 50.15, if the Secretary deems it applicable or appropriate.

E. A Department employee may request indemnification to satisfy a verdict, judgment or monetary award entered against the employee or to compromise a claim pending against the employee. The employee shall submit a written request, with appropriate documentation including a copy of the verdict, judgment, award or other order or settlement proposal, in a timely manner to the

chief counsel, principal legal advisor or judge advocate general assigned to the employee's Component by the General Counsel for review and recommendation to the General Counsel, and for further review and recommendation to the Secretary for decision.

F. Any payment under this section either to indemnify a Department employee or to settle a claim shall be contingent upon the availability of appropriated funds for the payment of salaries and expenses of the employing Component.

VII. Questions

Address any questions or concerns regarding this MD to the Office of the General Counsel.

Hon. Benjamin H. Settle

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

(b)(6), (b)(7)c

Plaintiff,

v.

OFFICER (b)(6), (b)(7)c et. al.,

Defendants.

NO. C08-5683-BHS

STIPULATION AND ORDER TO CONTINUE THE STAY OF THE LIMITED DISCOVERY PLAN

(Please note on Motion Calendar for: August 9, 2010)

STIPULATION

Without waiver of any claim or defense any party may assert in this action, pursuant to Fed. R. Civ. P. 6(b)(1) and Local Civil Rule 7(d)(1), Defendants (b)(6), (b)(7)c (b)(6), (b)(7)c and (b)(6), (b)(7)c and Plaintiff (b)(6), (b)(7)c (collectively, the "Parties"), hereby file this Stipulation and Proposed Order requesting that the Court continue to stay, for an additional 30 days, the Limited Discovery Plan (Dkt. 29), which stay was previously stipulated to by the Parties (Dkt. 34, 36, & 38, "Stipulations") and accepted by this Court most recently in its order of July 7, 2010 (Dkt. 39, "Order of July 7"), for the following reasons:

As stated in the prior Stipulations, with the assistance of the Ninth Circuit Mediation Program, the Parties have reached a settlement in principle of this matter, which must be considered and approved by the appropriate United States governmental agencies. To permit sufficient time for such approval, the Ninth Circuit mediator stayed the appeal. *See* (b)(6), (b)(7)c *Officer* (b)(6), (b)(7)c *t al*. (No. 10-35041; 9th Cir.), Dkt. Nos. 7-10 (staying matter through at least September 10, 2010).

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As also stated in the prior Stipulations, the Parties wish to permit sufficient time for the approval of the proposed settlement and to avoid the unnecessary expenditure of the Parties' or this Court's resources.

In its Order of July 7, this Court stayed the Limited Discovery Plan for 30 days (with responses to any outstanding discovery not due prior to 60 days from that date) and ordered the parties to confer and provide a status report to this Court, should approval of the proposed settlement still be pending at the conclusion of 30 days.

To date, the parties have received no indication that the proposed settlement will not be approved, and have received every indication that the (lengthy and multi-step) approval process is progressing. Unfortunately, the approval process is not yet complete.

The stay entered pursuant to this Court's Order of July 7 expires on or about August 9, 2010.

Therefore, the parties, by and through their respective undersigned counsel, hereby STIPULATE, AGREE, and JOINTLY REQUEST that the Court enter an order staying the Limited Discovery Plan for an additional 30 days from entry of the Order below. (Responses to any outstanding discovery will not be due prior to 60 days from that date.) Should approval of the proposed settlement be denied or still pending at the conclusion of 30 days, the parties at that time will confer and provide a status report to this Court, including, if necessary, new proposed deadlines for the Limited Discovery Plan for the Court's consideration.

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So stipulated and respectfully submitted this 9th day of August, 2010.

DATED: August 9, 2010.

(b)(6), (b)(7)c

/s/ (b)(6), (b)(7)c

(b)(6), (b)(7)c

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Attorneys for Plaintiff

DATED: August 9, 2010.

(b)(6), (b)(7)c
United States Attorney

/s/ (b)(6), (b)(7)c

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Attorneys for Defendants

ORDER

The parties having so stipulated, it is so ORDERED.

DATED this 10th day of August, 2010.

BENJAMIN H. SETTLE
United States District Judge

Honorable Benjamin Settle

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

(b)(6), (b)(7)c

Plaintiff,

v.

OFFICER (b)(6), (b)(7)c et al.,

Defendants.

No. C08-5683 BHS

PLAINTIFF'S FIRST AMENDED COMPLAINT FOR DAMAGES

JURY DEMAND

Plaintiff (b)(6), (b)(7)c is a citizen of the United States who honorably served his country in the military. Defendants are federal agents of Immigration and Customs Enforcement (ICE), a component of the Department of Homeland Security (DHS), who illegally detained, interrogated, and then imprisoned (b)(6), (b)(7)c for seven-and-a-half months, charging him as a "deportable alien," despite the fact that—repeatedly and at every possible opportunity— (b)(6), (b)(7)c made clear that he is a citizen of the United States of America. Had any of the defendants conducted a reasonable search of ICE's own records for (b)(6), (b)(7)c name, social security number, military records, or fingerprints, they immediately would have discovered that he was a citizen. Instead, Defendants deliberately

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ignored (b)(6), (b)(7)c citizenship and repaid his service to this country with arbitrary and indefensible loss of the liberty for which (b)(6), (b)(7)c had served to protect.

For the violations of his Fourth and Fifth Amendment rights (b)(6), (b)(7)c raises claims under Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971), against the defendants, individual U.S. Immigration and Customs Enforcement officers. The ICE officers named as defendants here include those who personally ordered that Plaintiff be detained, interrogated and imprisoned for seven-and-a-half months, and the supervisors, who, in failing to provide necessary training and supervision, and in refusing to fulfill their role as a check on abusive practices, precipitated and prolonged the harm suffered by (b)(6), (b)(7)c

1. PARTIES

1.1. Plaintiff: (b)(6), (b)(7)c is a U.S. Citizen, born in Belize. He has lived in the U.S. since he first came as a child with his mother, and became a U.S. citizen on (b)(6), (b)(7)c while serving in the U.S. army. He is a resident of Lakewood, Washington.

1.2. Defendants:

1.2.1. At all times relevant, (b)(6), (b)(7)c was a Senior Special Agent of Immigration and Customs Enforcement, United States Department of Homeland Security (ICE). At all relevant times Officer (b)(6), (b)(7)c was acting under color of federal law and is sued in her individual capacity.

1.2.2. At all times relevant, (b)(6), (b)(7)c (who signed the form I-862, Notice To Appear, and who is the supervisor of (b)(6), (b)(7)c) was a Supervisory Special Agent of Immigration and Customs Enforcement, United States Department of Homeland Security (ICE). In addition, on information and belief, (b)(6), (b)(7)c was responsible for training and supervision of (b)(6), (b)(7)c an ICE agent whose conduct caused the injuries alleged herein. On information and belief, (b)(6), (b)(7)c was also responsible

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for acting—and had a duty to act—as a check on arbitrary or unjustified actions against U.S. citizens. At all relevant times Officer (b)(6), (b)(7)c was acting under color of federal law and is sued in his individual capacity.

1.2.3. At all times relevant, Officer (b)(6), (b)(7)c was a federal agent of Immigration and Customs Enforcement, United States Department of Homeland Security (ICE), stationed at the Northwest Detention Center in Tacoma, Washington. As part of his job responsibilities, Officer (b)(6), (b)(7)c had a duty to ensure that no U.S. citizens were detained by ICE. At all relevant times Officer (b)(6), (b)(7)c was acting under color of federal law and is sued in his individual capacity.

1.2.4. At all times relevant, Officer (b)(6), (b)(7)c was a federal agent of Immigration and Customs Enforcement, United States Department of Homeland Security (ICE), stationed at the Northwest Detention Center in Tacoma, Washington. As part of her job responsibilities, Officer (b)(6), (b)(7)c had a duty to ensure that no U.S. citizens were detained by ICE. At all relevant times Officer (b)(6), (b)(7)c was acting under color of federal law and is sued in her individual capacity.

1.2.5. At all times relevant, (b)(6), (b)(7)(C) was the Immigration and Customs Enforcement Supervising Deportation and Removal Officer for the Northwest Detention Center. On information and belief, at all times relevant, (b)(6), (b)(7)(C) was responsible for training and supervision of the ICE agents and officers whose conduct caused the injuries alleged herein. As part of his job responsibilities, Officer (b)(6), (b)(7)(C) had a duty to ensure that no U.S. citizens were detained by ICE. At all relevant times Officer (b)(6), (b)(7)(C) was acting under color of federal law and is sued in his individual capacity.

1.2.6. At all times relevant, John Does 1-50 were agents, employees, or otherwise representatives of ICE. As part of their job responsibilities, John Does 1-50 had a

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duty to ensure that no U.S. citizens were detained by ICE. On information and belief, John Does 1-50 were acting under color of law, and are sued in their individual capacity.

2. JURISDICTION AND VENUE

2.1. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. Section 1331, 1342, and 2201. Plaintiff claims a violation of his rights to be free from unreasonable searches and seizures and rights to due process (in both its procedural and substantive forms) guaranteed by the Constitution of the United States.

2.2. Venue is appropriate in the Western District of Washington because a substantial part of the events complained of occurred in this District and because upon information and belief most of the defendants reside in this District. See 28 U.S.C. § 1391(b).

3. FACTS

3.1. (b)(6), (b)(7)c was born in Belize in 1977. He emigrated to the United States when he was only seven years old. He has lived in the United States since that time. On July 26, 1990, when (b)(6), (b)(7)c was 12 years old, his mother filed an application to provide (b)(6), (b)(7)c ith legal status under the Family Fairness Program. *See* Ex. A (p. 19). That application contained (b)(6), (b)(7)c social security number (b)(6), (b)(7)c and the alien number ("A number") that ICE (then INS) had assigned to him: (b)(6), (b)(7)c Ex. B (pp. 21). That application also included both spellings of (b)(6), (b)(7)c first name: (b)(6), (b)(7)c and (b)(6), (b)(7)c

3.2. The application, which (b)(6), (b)(7)c mother filed on his behalf, was approved on July 26, 1990, via a letter that again listed (b)(6), (b)(7)c name and A number (b)(6), (b)(7)c Ex. A. (b)(6), (b)(7)c tatus was renewed on June 4, 1991. Ex. C (pp. 22-25).

3.3. On July 23, 1992, (b)(6), (b)(7)c was granted permanent resident status based on the visa petition his mother filed for him. Ex. D (pp. 26-41). His application included both his social security number and A number. Ex. D. When ICE adjusted his status, it evidently

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assigned (b)(6), (b)(7)c another A number, xx xxx (b)(6), (b)(7)c That number should have been, and was, linked to the original (b)(6), (b)(7)c through (b)(6), (b)(7)c social security number, prior A number, and his fingerprints, all of which had been provided to—and were on file with—ICE. Exs. E (pp. 42-45) and D (pp. 26-41).

3.4. (b)(6), (b)(7)c status as a lawful permanent resident remained in place throughout the 1990s. *See* Ex. F (copy of (b)(6), (b)(7)c Resident Alien card issued on Nov. 19, 1996) (pp. 47).

3.5. (b)(6), (b)(7)c enlisted in the U.S. military in November of 1996. Ex. G (pp. 48-51). At that time he was still a lawful permanent resident, as is required for all enlistees in the military. (b)(6), (b)(7)c enlistment papers contain his social security number, his date of birth and his A number. Ex. G. During his service in the Army, he received the National Defense Service Medal and an Army Service Ribbon. Ex. H (pp. 52-53).

3.6. While serving in the U.S. military, (b)(6), (b)(7)c applied to become a U.S. citizen by—among other things—filing his N-400 application for naturalization with the Immigration and Naturalization Service (INS) office in Seattle, Washington and providing his social security number and fingerprints. Ex. I (pp. 54-59). At that time he was stationed with the military at Fort Lewis, Washington.

3.7. On July 2, 1998, (b)(6), (b)(7)c ttended his naturalization interview at the Seattle INS office. His application for naturalization was approved and he was sworn in as a U.S. citizen on October 28, 1998, at the same INS office in Seattle, Washington. *See* Ex. J (citizenship certificate) (p. 61); Ex. K (oath) (p. 63-64). He attended his naturalization ceremony in his military uniform.

3.8. (b)(6), (b)(7)c was subsequently honorably discharged from the military upon completing the terms of his final tour in July of 2003. Ex. H (p. 53).

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3.9. In 2005 (b)(6), (b)(7)c was detained in the Pierce County Jail, where he was completing an eight-month sentence for violation of a protection order, harassment, and residential burglary. On September 21, 2005, while detained in the Pierce County Jail (b)(6), (b)(7)c (b)(6), (b)(7)c was approached and questioned by (b)(6), (b)(7)c Senior Special Agent of Immigration and Customs Enforcement. This interview took place approximately two months prior to (b)(6), (b)(7)c cheduled release from jail.

3.10. When questioned by Officer (b)(6), (b)(7)c regarding his immigration status, he informed her that he was a U.S. citizen. He explained his immigration history, including the facts that he had been a legal permanent resident and applied for—and received—naturalization while serving in the United States military. He also described that he was sworn in as a U.S. citizen at the INS office in Seattle.

3.11. Because (b)(6), (b)(7)c knew he was a United States citizen, he was unconcerned by the ICE Officer's visit. Yet, the record indicates that unbeknownst to (b)(6), (b)(7)c on September 21, 2005, the same day Officer (b)(6), (b)(7)c interviewed (b)(6), (b)(7)c at the Pierce County Jail, Officer (b)(6), (b)(7)c prepared and signed the Form I-213, "Record of Deportable/Inadmissible alien" regarding (b)(6), (b)(7)c Ex. L (pp. 65-67). ICE Supervisory Special Agent (b)(6), (b)(7)c also signed his approval and dated the form. On the I-213, Defendants alleged that, "there is no record to indicate subject applied for relief/immigration status." The I-213, "Record of Deportable/Inadmissible Alien" specifically excludes the information that (b)(6), (b)(7)c provided, including that he was a U.S. citizen, that he gave a detailed account of his military service, his naturalization application process, and his attendance at his naturalization ceremony.

3.12. Moreover, the form that Officers (b)(6), (b)(7)c and (b)(6), (b)(7)c filled out is contradicted by the limited "facts" that it does contain. The form states that (b)(6), (b)(7)c never applied for "immigration status," but the form itself notes—albeit in poor grammar—that (b)(6), (b)(7)c

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had been granted legal status under the "Family Farenes [sic] program." Ex. L (p. 66). Had Officer (b)(6), (b)(7)c actually looked in (b)(6), (b)(7)c immigration file, she would have seen the application and approval letters dated July 26, 1990 and June 24, 1991, which gave (b)(6), (b)(7)c (b)(6), (b)(7)c tatus. (As Officer (b)(6), (b)(7)c knew, the term "voluntary departure" as it was used in the Family Fairness program actually refers to authorization to remain in the United States for renewable two-year periods of time. These periods are renewed until the person becomes eligible to adjust their status to that of lawful permanent resident. Participants in the program eligible for "voluntary departure" were eligible to remain and work legally in the United States until they adjusted their status to lawful permanent residence. (b)(6), (b)(7)c participated in this program before adjusting to lawful permanent resident status in 1992.).

3.13. The failure to conduct any investigation into (b)(6), (b)(7)c status is further demonstrated by the Form I-213 that had been filed. That form—like (b)(6), (b)(7)c permanent residency and citizenship papers—contains (b)(6), (b)(7)c social security number, which was the same social security number listed on his application for lawful permanent residence, his military records, and his application for naturalization. In sum, the officers' determination that (b)(6), (b)(7)c was without status was patently arbitrary, unreasonable, and inconsistent with ICE's own records, and it shows a complete, and necessarily deliberate, disregard for (b)(6), (b)(7)c rights.

3.14. The officers' conduct was even more egregious in light of the fact that there was absolutely no reason for their ill-informed and unjustified actions. (b)(6), (b)(7)c was not scheduled to be released until November 2005. Unbeknownst to (b)(6), (b)(7)c however, the officers refused to investigate his claims and instead, on the day of the interview, September 21, 2005, an immigration detainer was faxed to the Pierce County Jail, advising the Department of Corrections that instead of releasing (b)(6), (b)(7)c the Jail was required to detain him for up to 48 hours to allow ICE to take custody of his person pursuant to 8 C.F.R.

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§ 287.7(d). The immigration detainer directed the Jail to notify ICE at least 30 days prior to his scheduled release. In sum, on September 21, 2005, when Officer (b)(6), (b)(7)c first interviewed (b)(6), (b)(7)c and learned that (b)(6), (b)(7)c had obtained lawful status, enlisted in the military, and become a U.S. citizen, (b)(6), (b)(7)c was still scheduled to be incarcerated for nearly two additional months. Rather than investigate any of those issues in the nearly two months that remained before any action needed to be taken, she and her supervisors prepared the Form I-213, and filed the immigration detainer on the same day.

3.15. Neither Officer (b)(6), (b)(7)c nor Special Agent (b)(6), (b)(7)(C) conducted any reasonable investigation into (b)(6), (b)(7)c credible claims of U.S. citizenship before issuing the Form I-213 and the immigration detainer. There were no exigent circumstances justifying the failure to conduct a reasonable investigation.

3.16. The officers compounded their unconstitutional conduct by issuing a Notice to Appear, Form I-862, two days later, on September 23, 2005. Ex. M (p. 68-71). In that document, which is the charging document in removal proceedings, the officers falsely allege that (b)(6), (b)(7)c was not a citizen of the United States. The Notice to Appear also charged (b)(6), (b)(7)c as deportable for being present in the United States without admission. Tellingly, (b)(6), (b)(7)c did not receive a copy of the Notice to Appear until nearly two months later on November 15, 2005, the day he was turned over to the custody of ICE, further depriving him of any ability to present evidence or contradict the complete falsity of that document before his liberty was curtailed.

3.17. On November 15, 2005, (b)(6), (b)(7)c was scheduled to be released from the Pierce County Jail. Instead of being released, he was told by officers of the jail to wait, as someone would be picking him up. A uniformed immigration officer from ICE arrived and shackled (b)(6), (b)(7)c was driven away from the jail in a van. (b)(6), (b)(7)c was not told where he was being taken.

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3.18. The van brought (b)(6), (b)(7)c to the Northwest Detention Center, a federal detention center in Tacoma, Washington. Upon arrival at the Northwest Detention Center, (b)(6), (b)(7)c sat in a locked cell for approximately six hours.

3.19. After six hours, a female ICE officer, who introduced herself as Officer (b)(6), (b)(7)c proceeded to question (b)(6), (b)(7)c again told Officer (b)(6), (b)(7)c that he was a U.S. citizen, and that he had become a U.S. citizen while serving in the military. He described his naturalization ceremony in great detail. He also told Officer (b)(6), (b)(7)c that his first name had been misspelled on his lawful permanent resident card (commonly known as a "greencard"). Officer (b)(6), (b)(7)c informed (b)(6), (b)(7)c that the information she had in her computer did not substantiate his claims. Officer (b)(6), (b)(7)c plainly did not, however, make any effort to investigate the specific and credible information (b)(6), (b)(7)c provided.

3.20. During that same interview, Officer (b)(6), (b)(7)c asked (b)(6), (b)(7)c if he wanted to go home. Thinking she meant his long time home in Washington State, (b)(6), (b)(7)c replied in the affirmative. Officer (b)(6), (b)(7)c then handed him paperwork to sign. (b)(6), (b)(7)c refused to sign after reading the paperwork and realizing that the papers were for a stipulated order of removal to Belize, his country of birth.

3.21. A second ICE officer, a male officer named (b)(6), (b)(7)c questioned (b)(6), (b)(7)c (b)(6), (b)(7)c ollowing the first Officer (b)(6), (b)(7)c interview. The second Officer (b)(6), (b)(7)c explained that he had been assigned as (b)(6), (b)(7)c Deportation and Removal Officer. Officer (b)(6), (b)(7)c questioned (b)(6), (b)(7)c at length, repeating the first Officer (b)(6), (b)(7)c questions, as well as asking (b)(6), (b)(7)c where he was born, where he'd gone to high school, and where he lived. (b)(6), (b)(7)c yet again explained to Officer (b)(6), (b)(7)c that he had obtained permanent residence and ultimately became a U.S. citizen. (b)(6), (b)(7)c explained in detail about the different schools he had attended in the United States, and then talked to Officer

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(b)(6), (b)(7)c about his enrollment in the U.S. military, and the naturalization process that he had gone through to become a U.S. citizen while serving in the military.

3.22. Nonetheless, after his interrogation, (b)(6), (b)(7)c was taken to a men's cell block and assigned a cell. He was given a prison uniform to wear. Defendants issued a notice of Custody Determination, stating that (b)(6), (b)(7)c would only be released upon posting a bond in the amount of $25,000.00. (b)(6), (b)(7)c Custody Processing Sheet makes no mention of the fact that (b)(6), (b)(7)c claimed to be a U.S. citizen, even though the form specifically asks for any family ties or applications for immigration status and the Form I-213 clearly indicates that (b)(6), (b)(7)c mother is a U.S. citizen.

3.23. As a direct and proximate result of Defendants' conduct, (b)(6), (b)(7)c has been significantly harmed. (b)(6), (b)(7)c, a U.S. Citizen, was unlawfully imprisoned by Defendants for seven-and-a-half months at the Northwest Detention Center in Tacoma, Washington. Day after day, week after week, (b)(6), (b)(7)c endured the sufferings caused by this unlawful seizure and deprivation of liberty. As a result of the wrongful detention, (b)(6), (b)(7)c suffered not only seven-and-a-half months of unlawful imprisonment, but also suffered extreme humiliation and emotional distress. Moreover, he lost the opportunity to return to his work during that time.

3.24. In addition, (b)(6), (b)(7)c uffered great harm based on his fear that he might be unlawfully deported and banished from his home and family. For seven-and-a-half months, he lived in constant fear of permanent exile from the United States, the country to which he had sworn allegiance when becoming a citizen, the country for which he had honorably served for over six years in the military, and the country that had been his only home for over twenty years.

3.25. Initially (b)(6), (b)(7)c assumed that ICE would perform its constitutional obligations and perform the minimal search necessary to locate the records demonstrating that

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he was a U.S. citizen. He believed that after ICE determined that fact, and in the absence of any legal basis to deprive (b)(6), (b)(7)c of his liberty, he would be released. Instead, for the next seven-and-a-half months ICE sought to have the Executive Office for Immigration Review order him removed from the United States, as a series of officials aggressively moved forward with deportation while refusing to perform the minimal searches for (b)(6), (b)(7)c name, social security number, military records, or fingerprint data, any one of which would promptly have revealed the truth of the specific facts he provided.

3.26. After detaining (b)(6), (b)(7)c Defendants placed (b)(6), (b)(7)c in removal proceedings by filing the Notice to Appear with the Immigration Court. Attorneys from ICE's Office of Chief Counsel proceeded to represent ICE against (b)(6), (b)(7)c in these proceedings. (b)(6), (b)(7)c appeared, unrepresented, in Immigration Court on December 21, 2005. He pleaded with the Immigration Judge Kenneth Josephson, once again explaining that he had been a legal permanent resident, applied for naturalization and been sworn in as a U.S. citizen. The Judge responded that (b)(6), (b)(7)c "can't just expect me to believe you – your claim that you're a United States citizen." The Immigration Judge asked the attorney representing ICE for ICE's position. The ICE attorney responded that they had "checked the database," and there was nothing to indicate that (b)(6), (b)(7)c had ever filed to become a U.S. citizen. However, it is clear from ICE's own records that if any ICE official had actually run a search of the ICE database using (b)(6), (b)(7)c name, fingerprints, or social security number, they would have discovered all of (b)(6), (b)(7)c records, under the various identification numbers ICE had itself assigned, including the records indicating that he was a citizen.

3.27. The Immigration Judge then reset the hearing for a month later in order to allow the two sides to gather more evidence. ICE kept (b)(6), (b)(7)c in custody during that month, thus greatly impeding any chance that (b)(6), (b)(7)c a detained, unrepresented

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individual, would be able to submit any additional evidence to demonstrate that he is a U.S. citizen. (b)(6), (b)(7)c again talked to his deportation officer to see if the deportation officer had checked (b)(6), (b)(7)c military records, his social security records, or his immigration file in order to verify (b)(6), (b)(7)c claim of citizenship. Whenever possible, (b)(6), (b)(7)c followed up with Officer (b)(6), (b)(7)c asking for updates on his case. He repeatedly informed Officer (b)(6), (b)(7)c that he was a U.S. citizen, mentioning his military record, his social security number, and other identifying information. His deportation officer simply stated that he would keep looking. However, as stated above, a simple search of the central index system using (b)(6), (b)(7)c name would have revealed that he had naturalized on October 28, 1998.

3.28. In Immigration Court the next month, on January 24, 2006, the immigration judge once again asked the attorney representing ICE if ICE had found any evidence of (b)(6), (b)(7)c (b)(6), (b)(7)c naturalization. (b)(6), (b)(7)c again explained that he had served his country in the military and had been honorably discharged after serving more than six years. Most importantly, he explained that while in the military he had applied for naturalization and been sworn in as a U.S. citizen. He testified that he had a copy of his military identification and further explained that he had his official discharge papers in the trunk of his car and that if given the opportunity he would present them to the Immigration Court. (b)(6), (b)(7)c credible testimony was ignored by the Immigration Judge and disregarded by the prosecutor. Once again, ICE's representative affirmed that they had found nothing in their database to support (b)(6), (b)(7)c laim. The Judge then ordered (b)(6), (b)(7)c removed from the United States.

3.29. After the hearing, Officer (b)(6), (b)(7)c the ICE Officer assigned as (b)(6), (b)(7)c deportation officer, laughed at (b)(6), (b)(7)c mocking him for having been ordered removed.

3.30. (b)(6), (b)(7)c filed an appeal of the judge's order of removal with the Board of Immigration Appeals. Meanwhile days, weeks, and months passed with (b)(6), (b)(7)c

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remaining unlawfully imprisoned. He obtained legal representation from Northwest Immigrant Rights Project, who filed public records requests on his behalf. The public records requests, of course, revealed the veracity of (b)(6), (b)(7)c specific statements about his immigration status and citizenship and showed that ICE had assigned him the two A numbers—xx xxx and xx xxx—which were linked by the common name, social security number, and evidently fingerprints on file. Still, the government did nothing, and forced (b)(6), (b)(7)c to request further records using both A numbers, which he did on April 28, 2006.

3.31. Notably, (b)(6), (b)(7)c immigration file contains full evidence of the various A numbers used. Thus, during the entire length of (b)(6), (b)(7)c unlawful detention, ICE had access to (b)(6), (b)(7)c complete immigration history, his social security number, and his fingerprints, his date of birth, his parents' names, and numerous other details, each of which independently would have revealed (b)(6), (b)(7)c citizenship status. Even a simple name search would have revealed (b)(6), (b)(7)c status. When confronted with repeated and credible claims of citizenship and a directive from the Immigration Court to investigate (b)(6), (b)(7)c (b)(6), (b)(7)c claims, any reasonable officer or supervisor is constitutionally mandated to perform a search of ICE records using (b)(6), (b)(7)c name, social security number, or fingerprints. Defendants' repeated failure to conduct even the most minimal investigation of their own records is patently unreasonable and arbitrary.

3.32. On June 29, 2006, after (b)(6), (b)(7)c had been unlawfully imprisoned for 226 days (seven-and-a-half months), the attorney for ICE filed a motion to dismiss the case against (b)(6), (b)(7)c advising the immigration court that the proceedings had been "improvidently begun." Shockingly, ICE did not reveal that (b)(6), (b)(7)c was a citizen in its pleading, which led the charges to be dismissed without prejudice. Ex. N (p. 73). As a result, Immigration Judge Josephson dismissed the case "without prejudice" and noted that the

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rationale for the dismissal was "DHS Request" rather than due to the fact that (b)(6), (b)(7)c is a U.S. Citizen. (b)(6), (b)(7)c ontinues to live in fear that he may be unlawfully seized and detained again by ICE in the future.

3.33. On information and belief, with deliberate indifference, intent, or reckless disregard, Defendants failed to adequately and properly train and supervise Agents (b)(6), (b)(7)c (b)(6), (b)(7)c and (b)(6), (b)(7)c nd other officers and agents involved in the arrest, detention, questioning, and removal proceedings to which (b)(6), (b)(7)c was subjected. On information and belief, Defendants' failure to provide proper and adequate training and supervision was a proximate cause of the injuries that (b)(6), (b)(7)c uffered.

4. COLOR OF FEDERAL LAW

4.1. Defendants committed the above-described acts within the scope of their authority as federal agents and under color of the laws of the United States.

5. CLAIMS FOR RELIEF

5.1. **First Cause of Action**: **Violation of Fourth Amendment Rights.** By the above- described acts, including (but not limited to) refusal to conduct any reasonable investigation into probable cause, issuing an false and invalid warrant, seizing and detaining a U.S. citizen without jurisdiction, failing to perform any subsequent investigation into his lawful status, and continuing to hold the U.S. citizen long after he had provided credible evidence of his citizenship, Defendants violated (b)(6), (b)(7)c clearly established right to be free from unreasonable searches and seizures as guaranteed by the Fourth Amendment to the Constitution of the United States. Defendants had no legal basis upon which to seiz (b)(6), (b)(7)c (b)(6), (b)(7)c and detain him for almost eight months.

5.2. Defendants' conduct proximately caused harm to (b)(6), (b)(7)c

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5.3. Defendants' conduct was done intentionally, with deliberate indifference, or with reckless disregard of plaintiff's constitutional rights.

5.4. Defendants' conduct was unreasonable and arbitrary.

5.5. **Second Cause of Action**: **Violation of Fifth Amendment Right to Due Process (Procedural and Substantive).** By the above-described acts, including (but not limited to) seizing (b)(6), (b)(7)c failing to provide him notice of the charges against him until after he was detained by ICE, failing to investigate his credible claims to citizenship, repeatedly failing to search the records in the government's own possession and detaining (b)(6), (b)(7)c (b)(6), (b)(7)c for nearly eight months, Defendants deprived (b)(6), (b)(7)c of liberty and property without due process of law as guaranteed by the Fifth Amendment to the Constitution of the United States.

5.6. Defendants' conduct proximately caused harm to plaintiff.

5.7. Defendants' conduct was done intentionally, with deliberate indifference, or with reckless disregard of plaintiff's constitutional rights.

5.8. Defendants' conduct was unreasonable and arbitrary.

6. REQUEST FOR RELIEF

WHEREFORE, plaintiff requests relief as follows:

6.1. Trial by jury.

6.2. Compensatory damages in an amount to be proven at trial.

6.3. Punitive damages in an amount to be proven at trial.

6.4. Costs and reasonable attorney fees.

6.5. The right to conform the pleadings to the proof and evidence presented at trial.

6.6. Such other relief as the Court deems just and equitable.

/ / /

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DATED this 21st day of August, 2009.

K&L GATES LLP

By s/ (b)(6), (b)(7)c

(b)(6), (b)(7)c

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NORTHWEST IMMIGRANT RIGHTS PROJECT

(b)(6), (b)(7)c

615 Second Ave., Ste. 400
Seattle, WA 98104
(206) 957- (b)(6), (b)(7)c Phone)
(206) 587-4025 (Fax)

Attorneys for Plaintiff
(b)(6), (b)(7)c

CERTIFICATE OF ECF FILING AND SERVICE

I certify that on August 21, 2009, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

(b)(6), (b)(7)c

Northwest Immigrant Rights Project
615 2nd Ave., Suite 400
Seattle, WA 98104
Attorney for Plaintiff

(b)(6), (b)(7)c

U.S. Attorney's Office
700 Stewart Street, Suite 5220
Seattle, WA 98101
Attorney for Defendants

(b)(6), (b)(7)c

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EXHIBIT A

Department of Justice
Immigration and Naturalization Service
Western Service Center-Adjudications
P.O. Box 30040
Laguna Niguel, CA 92607-0040

(b)(6), (b)(7)c
Los Angeles, CA 90037

DATE: July 26, 1990

File No: (b)(6), (b)(7)c

Dear Applicant:

Your application for voluntary departure under the Family Fairness Program has been approved. If you applied for employment authorization, your Form I-94 has been noted which allows you to be employed in the United States.

A Form I-818, Information Notice regarding Request for Voluntary Departure and Employment Authorization, is attached outlining the requirements for maintenance of your status.

If you have any questions, please direct them to the Service Center at the above address. In order to serve you more efficiently, please include your assigned A-Number and indicate your inquiry is for the Family Fairness Program.

Sincerely,

(b)(6), (b)(7)(C)
Center/Facility Director

ATTACHMENTS(S): Form I-94 (x)
Form I-818 (x)

(b)(6), (b)(7)(C) WPDOCS3/E002/LP07260.36

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EXHIBIT B

U. S. Department of Justice
Immigration and Naturalization Service

OMB # 1115-0163

Application for Employment Authorization

Do Not Write In This Block — **Please Complete Both Sides of Form**

Case ID#	Action Stamp	Fee Stamp
A# (b)(6), (b)(7)c		(b)(6), (b)(7)(C)
Applicant is filing under 274a.12		Remarks

☐ Application Approved. Employment Authorized / Extended (Circle One) _____ (Date).
until _____ (Date).
Subject to the following conditions: _____
☐ Application Denied.
☐ Failed to establish eligibility under 8 CFR 274a.12 (a) or (c).
☐ Failed to establish economic necessity as required in 8 CFR 274a.12(c), (10), (13), (14).

I am applying for:
☒ Permission to accept employment
☐ Replacement (of lost employment authorization document).
☐ Extension of my permission to accept employment (attach previous employment authorization document). 4-0

1. (b)(6), (b)(7)c
2. Other Names Used (Include Maiden Name) (None)
3. Address in the United States (Number and Street, Apt. Number) (b)(6), (b)(7)c
(Town or City) Los Angeles, (State/Country) CA (ZIP Code) 90037
4. Country of Citizenship Belize
5. Place of Birth (Town or City) (State/Province) (Country) Seine Bight Village, Stann Creek Dist. Belize
6. Date of Birth (Month/Day/Year) (b)(6), (b)(7)c
7. Sex ☒ Male ☐ Female
8. Marital Status ☐ Married ☒ Single ☐ Widowed ☐ Divorced
9. Social Security Numbers (All numbers you have ever used) (b)(6), (b)(7)c
10. Alien Registration Number (A-Number) or I-94 Number (if any) None

11. Have you ever before applied for employment authorization from INS? ☐ Yes (If yes, complete below) ☒ No
Which INS Office? Date(s) N/A
Results (Granted or Denied - attach all documentation)
12. Date of Last Entry into the U.S. (Month/Day/Year) July 16, 1984
13. Place of Last Entry into the U.S. Juarez, Texas
14. Manner of Last Entry (Visitor, Student, etc.) E.W.I.
15. Current Immigration Status (Visitor, Student, etc.) illegal
16. Go to the Eligibility Section on the reverse of this form and check the box which applies to you. In the space below, place the number of the box you selected on the reverse side:
Eligibility under 8 CFR 274a.12
(A) (11) ( )

Complete the reverse of this form before signature.

Your Certification: I certify, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct. Furthermore, I authorize the release of any information which the Immigration and Naturalization Service needs to determine eligibility for the benefit I am seeking. I have read the reverse of this form and have checked the appropriate block, which is identified in item #16, above.

Signature	Telephone Number	Date
(b)(6), (b)(7)c for (b)(6), (b)(7)c	)758-(b)(6), (b)(7)c	03/29/90

Signature of Person Preparing Form If Other Than Above: I declare that this document was prepared by me at the request of the applicant and is based on all information of which I have any knowledge.

Print Name	Address	Signature	Date
(b)(6), (b)(7)c	(b)(6), (b)(7)c	Los Angeles, Ca. 90037	03/29/90

Initial Receipt	Resubmitted	Relocated		Completed		
		Rec'd	Sent	Approved	Denied	Returned
				7/25/90 (b)(6), (b)(7)c		

EXHIBIT C