

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NORRIS POTTER III, and other)
similarly situated,)
)
Plaintiffs,)
)
v.)
)
JANET RENO, in her official)
capacity as ATTORNEY GENERAL,)
DEPARTMENT OF JUSTICE,)
)
Defendant.)

Civil Action No.
1:CV9802270

FILED

MAR - 1 1999

STEPHEN WHITTINGTON, CLERK
U.S. DISTRICT COURT

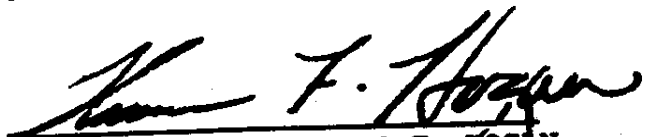
ORDER

Amendment to Settlement Agreement and Schedule Change

On December 15, 1998, the Court entered an Order preliminarily approving the Settlement Agreement entered into by the parties in this case, certifying a class for purposes of settlement, and setting a schedule for providing notice of the Agreement, submitting objections, and filing briefs in support of the Agreement. The parties have jointly moved the Court to amend the Agreement to correct a minor error in the definition of the class agreed to for purposes of settlement and to modify the schedule set by the Court to take into account this inadvertent error. The Court hereby GRANTS this motion.

The Settlement Agreement currently defines the plaintiff class to include Detention Enforcement Officers with a rank of GS-7 or higher from January 1, 1986, through the date of Preliminary Approval of the Agreement by the Court. See Settlement Agreement, ¶ I.B.2. The Settlement Agreement is hereby amended to define the class as including Detention

SO ORDERED this 1st day of ~~February~~ ^{March}, 1999.



THE HONORABLE THOMAS F. HOGAN
United States District Judge

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SETTLEMENT AGREEMENT

On January 25, 1993, named plaintiff Norris Potter III filed a class action discrimination complaint with the Equal Employment Opportunity Commission ("EEOC") against his employer, the Immigration and Naturalization Service ("INS"), seeking monetary and injunctive relief for alleged violations of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e-16 et seq. Plaintiff, on behalf of himself and the class, alleged that African American employees were not selected for supervisory or senior non-supervisory positions as a result of race discrimination and retaliation for participation in protected activities under Title VII of the Civil Rights Act, as amended, 42 U.S.C. §§ 2000e-16. By Order dated June 10, 1993, the EEOC Administrative Law Judge recommended certification of a class of employees composed of African American criminal investigators employed by INS. That decision was formally accepted by the Department of Justice on July 14, 1994. By Order dated February 16, 1994, the EEOC Administrative Law Judge recommended that the

certified class be expanded to include all present and former African-American INS employees in "Officer Corps" positions.

On March 28, 1994, the Department of Justice issued a decision conditionally certifying the expanded class, but limiting the grade levels of class members to those at or above the highest non-supervisory grade-levels in each job category.

In the interest of avoiding the expense, delay and inconvenience of further litigation of the issues raised in this action, and in reliance upon the representations contained herein, and in consideration of the mutual promises, covenants, and obligations in this Settlement Agreement, and for good and valuable consideration, plaintiffs and defendant, through their undersigned counsel, hereby stipulate and agree as follows:

I. DEFINITIONS

Terms used in this Settlement Agreement are defined as follows:

A. "Officer Corps"

This is an umbrella term covering the following positions: Border Patrol Agents, Immigration Examiners/Adjudication Officers, Immigration Inspectors, Deportation Officers, Detention Enforcement Officers and Criminal Investigators.

B. "Plaintiff class" or "Class Member(s)"

These terms refer to African-American INS "Officer Corps" employees who occupied the following grade levels at any point during the time periods specified below, except those employees

who were members of the Senior Executive Service ("SES") during any such time period:

1. Deportation Officers (1801 series): GS-9 or higher from January 1, 1986 through January 1, 1990 and GS-11 or higher from January 1, 1990 through the date of Preliminary Approval of this Settlement Agreement;

2. Detention Enforcement Officers (1802 series): GS-7 or higher from January 1, 1986 through the date of Preliminary Approval of this Settlement Agreement;

3. Criminal Investigators (1811 series): GS-11 or higher from January 1, 1986 through January 1, 1988 and GS-12 or higher from January 1, 1988 through the date of Preliminary Approval of this Settlement Agreement;

4. Border Patrol Agents (1896 series): GS-9 or higher from January 1, 1986 through the date of Preliminary Approval of this Settlement Agreement;

5. Immigration Examiners/Adjudication Officers (1816 and 1801 series): GS-11 or higher from January 1, 1986 through April 1, 1994 and GS-12 or higher from April 1, 1994 through the date of Preliminary Approval of this Settlement Agreement. In addition, Immigration Examiners/Adjudication Officers who have occupied Service Center Adjudication Officer positions at any time since April 1, 1994 belong in the class if they were GS-11 or higher from January 1, 1986 to June 12, 1995, and GS-12 or higher from June 12, 1995 through the date of Preliminary Approval of this Settlement Agreement;

6. Immigration Inspectors (1816 series): GS-9 or higher from January 1, 1986 through January 1, 1992 and GS-11 or higher from January 1, 1992 through the date of Preliminary Approval of this Settlement Agreement.

C. "Retaliation"

For purposes of this Settlement Agreement, retaliation means claims by class members that African American employees were not selected for supervisory or senior non-supervisory positions because they engaged in those activities described in 42 U.S.C. § 2000e-3(a).

D. "Effective Date of this Settlement Agreement" and "Final Approval"

For the purposes of this Settlement Agreement, the Effective Date of this Agreement or the date of Final Approval is the date that the Court enters an Order approving the Settlement Agreement as fair, reasonable and binding on the class and any appeals from that judicial determination are finally resolved or the time for taking such an appeal expires.

E. "Preliminary Approval"

This term refers to that date, following submission of this Settlement Agreement to the Court by the parties, but prior to the Fairness Hearing, on which the Court grants initial approval of the Settlement Agreement pursuant to Section VI(A) of this Settlement Agreement.

F. "Plaintiffs' counsel" and "Counsel for plaintiffs"

These terms refer collectively to all counsel of record for the plaintiff class. They are David Ross and Peter Szabadi. Where this Settlement Agreement provides for rights or responsibilities of counsel for plaintiffs, all counsel of record shall be entitled to those rights and bear those responsibilities. All counsel of record for plaintiffs must sign any motion filed to enforce any of the terms of this Settlement Agreement or to take any other action authorized to be taken by "plaintiffs' counsel" or "counsel for plaintiffs" under the terms of this Settlement Agreement.

G. "Reasonable attorneys' fees plus costs as provided by law"

This term refers to the amount of fees, expenses and costs to be paid consistent with the standards governing the payment of attorneys' fees, expenses and costs under Section 706(k) of Title VII, 42 U.S.C. § 2000e-5(k), 28 U.S.C. § 1920 and Fed. R. Civ. P. 54(d).

II. SCOPE OF THE SETTLEMENT AGREEMENT

A. Claims Precluded

This Settlement Agreement resolves and extinguishes all claims that African American employees were not selected for supervisory or senior non-supervisory positions as a result of race discrimination and/or retaliation based on a disparate impact theory of recovery or a disparate treatment theory of recovery supported by evidence of a pattern or practice, as described in sub-section II(C) below, based on events occurring

in whole or in part between January 1, 1986, and the date of the Preliminary Approval of the Settlement Agreement. Upon Final Approval of this Settlement Agreement, the class as a whole and each class member shall be bound by the doctrines of res judicata and collateral estoppel with respect to all claims described in Section II of this Settlement Agreement.

This Settlement Agreement is not intended to resolve or dismiss: (1) claims of discrimination based on gender, age, religion, or national origin; (2) claims of discrimination on the basis of race and/or retaliation arising from actions or conduct other than non-selection for supervisory or senior non-supervisory Officer Corps positions; or (3) claims that African American employees were not selected to positions in the SES as a result of race and/or retaliation. However, any claim of discrimination based on gender, age, religion, or national origin, any claim of discrimination on the basis of race and/or retaliation arising from actions or conduct other than non-selection for supervisory or senior non-supervisory Officer Corps positions, and any claim that African-American employees were not selected to positions in the SES as a result of race and/or retaliation may not be based upon or supported by evidence of a pattern or practice as described in sub-section II(C) below.

This Settlement Agreement is contingent upon the certification of a settlement class pursuant to Federal Rule of Civil Procedure 23(b)(2) ("(b)(2) class") of all African American INS Officer Corps employees described in Section I(B). It is

further contingent on the Court not allowing any class member to opt out of this Settlement Agreement. In the event that a class other than a (b)(2) class is certified, or the Court permits class members to opt out of this Settlement Agreement, the agency, at its option, may declare the Agreement null and void within 120 days of the Effective Date of any such order. The "Effective Date of any such order," for purposes of this paragraph, is defined as the date that the Court enters the order, the date that any appeals from that judicial determination are finally resolved, or the date on which the time for taking an appeal from any such judicial determination expires, whichever is later. The parties agree to negotiate in good faith before any such declaration may be made. INS shall notify the plaintiffs' counsel in writing of any decision to declare the Agreement null and void.

B. Certain Claims For Relief Based On Claim of Disparate Treatment Precluded By Receipt of Specific Relief Under This Settlement Agreement

In addition, a class member's receipt of relief pursuant to this Settlement Agreement will, as described more specifically below, affect that class member's right to seek relief based in whole or in part on a disparate treatment claim alleging that he/she was not promoted to a supervisory or senior non-supervisory Officer Corps position on account of race and/or retaliation arising from actions by the INS that allegedly occurred in whole or in part between January 1, 1986 and the date of Preliminary Approval of this Settlement Agreement.

1. Remedial promotion

Any class member who receives a remedial promotion pursuant to this Settlement Agreement is precluded from pursuing a request for relief for an award of backpay and/or a remedial promotion in any administrative, state or federal forum based in whole or in part on a disparate treatment claim alleging that he/she was not selected for a supervisory or senior non-supervisory Officer Corps position on account of race and/or retaliation arising from actions by the INS that allegedly occurred in whole or in part between January 1, 1986 and the date of Preliminary Approval of this Settlement Agreement. Accordingly, any class member who receives a remedial promotion pursuant to this Settlement Agreement and has filed such a claim or complaint seeking such relief in any administrative, state or federal forum shall, within 60 days of receiving such remedial promotion, withdraw or dismiss all requests for relief in such proceeding that could result in the award of backpay and/or a remedial promotion. In the alternative, if such class member fails to withdraw such request for relief, by the virtue of this Settlement Agreement, such class member shall be deemed to have consented to the withdrawal of such relief.

2. Monetary award

In the event that a class member receives an award of backpay after the Effective Date of this Settlement Agreement based in whole or in part on a disparate treatment claim alleging that he/she was not selected for a supervisory or senior non-

supervisory position on account of race and/or retaliation arising from actions by the INS that allegedly occurred in whole or in part between January 1, 1986 and the date of Preliminary Approval of this Settlement Agreement ("subsequent disparate treatment backpay award"), the INS shall be entitled to offset against any such backpay award the amount of any monetary award received by that class member pursuant to this Settlement Agreement and shall be liable to pay only the amount of the subsequent disparate treatment backpay award remaining, if any, after such offset.

If the amount of the monetary award received by a class member pursuant to this Settlement Agreement exceeds the amount of a subsequent disparate treatment backpay award, the INS shall owe nothing on that judgment and the class member shall not be required to remit the difference to the INS. However, in those circumstances, the INS would continue to have the right to offset subsequent disparate treatment backpay awards to the same class member by the remaining difference between the amount of monetary relief received by that class member pursuant to this Settlement Agreement and the first disparate treatment award.

For purposes of effectuating the INS's set-off rights under this Section, the plaintiffs' counsel shall advise INS of the amount of any monetary award received by each class member under the Method to be Used to Calculate and Distribute the Monetary Award to Class Members, Appendix A. The INS shall have the right to delay payment or to withhold any portion of any subsequent

disparate treatment backpay award pending the completion of plaintiffs' final calculation and disbursement of the monetary award pursuant to this Settlement Agreement.

C. Introduction of Evidence of Certain Pattern and Practice Prohibited In Other Proceedings

No class member may proceed on a disparate impact theory or disparate treatment theory of recovery supported by evidence of a pattern or practice stemming from events occurring in whole or in part between January 1, 1986 and the date of Preliminary Approval of this Settlement Agreement that are substantially similar to the following pattern or practice allegations raised in this lawsuit:

1. The claim that the Agency has a policy or practice which has the result of denying African-Americans assignments or appointments to supervisory positions or positions which are likely to lead to supervisory positions;
2. The claim that the Agency has a policy or practice which has the result of denying African-American employees the opportunity to participate in training for supervisory responsibilities;
3. The claim that the Agency's promotion plan for supervisory positions -- Merit Staffing Plan II (MSP II) -- discriminated against African-

Americans employed in INS Officer Corps positions on account of their race;

4. The claim that the Agency administers and maintains a system of evaluating candidates for promotion in a manner which discriminates against African-Americans in INS Officer Corps positions on account of their race;
5. The claim that the Agency's system of crediting the experience of candidates for promotion has the result of discriminating against African-Americans in INS Officer Corps positions on account of their race;
6. The claim that the Agency rotates its employees among different components within the INS Officer Corps positions in a manner which has the result of discriminating against African-Americans employed in INS Officer Corps positions on account of their race;
7. The claim that the Agency has a policy or practice which has the result of permitting favoritism to influence hiring and promotion decisions and which discriminates against African-Americans employed

in INS Officer Corps positions on account of their race;

8. The claim that the Agency has a policy or practice which has the result of permitting retaliation against EEO complainants and which discriminates against African-Americans employed in INS Officer Corps positions on account of their race;

9. The claim that the Agency has a policy or practice which has the result of discriminating against African-Americans employed in INS Officer Corps positions by failing to implement its Affirmative Action Plans; and

10. The claim that the Agency has a policy or practice which has the result of discriminating against African-Americans employed in INS Officer Corps positions by failing to adequately support and/or finance its EEO personnel and programs.

Any class member who already has filed a claim or complaint in any administrative, state or federal forum alleging, in whole or in part, that African-American employees were not selected for supervisory or senior non-supervisory positions as a result of race discrimination and/or retaliation arising from actions by

the INS that allegedly occurred in whole or in part between January 1, 1986 and the date of Preliminary Approval of this Settlement Agreement shall, within 60 days of the Effective Date of this Settlement Agreement, withdraw or dismiss all claims, requests for relief, or descriptions of proof based upon a disparate impact theory or disparate treatment theory supported by the pattern and practice evidence precluded by this Section. In the alternative, if such class member fails to withdraw any such claim, request for relief or description of proof, such class member shall be deemed to have consented to the withdrawal of such claim, request for relief or description of proof by virtue of this Settlement Agreement.

A class member who already has filed a claim or complaint described in the preceding paragraph may amend any such claim or complaint to assert that the discriminatory action(s) alleged therein are challenged only on a disparate treatment theory of recovery supported by evidence which is not precluded under this Section II(C). Such amendment shall not be considered time-barred under the 45-day counseling requirement contained in 29 C.F.R. § 1614.105(A) or any other rule, regulation or law; provided, however, that a class member may not amend such claim or complaint to allege discriminatory and/or retaliatory action(s) or conduct, or to assert requests for relief, that were not previously asserted in such claim or complaint and are time-barred under 29 C.F.R. § 1614.105(A)(1) or any other rule, regulation or law.

D. Preservation of Claims For Compensatory Damages

With the exception of Norris Potter III, see Section II(E), infra, the rights, if any, of class members to pursue claims for compensatory damages are not precluded by this Settlement Agreement. However, any such claims for compensatory damages may not be supported by evidence precluded under Section II(C) above.

E. Release of Claims by Plaintiffs Norris Potter III

In consideration of compensatory damages and other relief received by him pursuant to this Settlement Agreement, lead plaintiff Norris Potter III and his heirs, administrators, successors or assigns (together, the "Releasors"), hereby release and forever discharge the Defendant and any department, agency, or establishment thereof and any officers, employees, agents, or successors of any such department, agency, or establishment (together the "Releasees"):

1. From any and all claims and causes of action which have been or could have been asserted in the above-captioned action, or administratively, by reason of, or with respect to, or in connection with, or which arise out of, any of the matters alleged in the above-captioned action, including, without limitation, claims or causes of action that pertain or relate to, or that are based upon or challenge, the policies or practices described in Section II(C) of this Settlement Agreement.

2. From any and all claims and causes of action which hereafter could be asserted by reason of, or with respect to, or in connection with, or which arise out of, or that pertain or

relate to, or that are based upon or challenge, the policies or practices described in Section II(C) of this Settlement Agreement, which programs, plans, policies or practices were in effect on the date of Preliminary Approval of this Settlement Agreement or at any time prior thereto; and

3. From all other actions, causes of action, suits, claims and demands whatsoever, which the Releasors, or any of them, ever had, now have or hereafter can, shall or may have for, upon, or by reason of any matter, cause or thing whatsoever against the Releasees, or any of them, and such actions, causes of action, suits, claims and demands shall be forever barred.

Upon Final Approval of this Settlement Agreement, the Releasors agree to the dismissal with prejudice of any and all claims or causes of action described above that are presently pending in any administrative, state or federal forum, including all individual and class claims contained in the EEO Class Complaint of Norris Potter III and Janet Reno, Attorney General, Department of Justice, Immigration and Naturalization Service, EEOC No. 340-93-3770X; Agency No. I-93-6175-C.

III. RELIEF

A. Monetary Relief

Defendant shall pay to the plaintiff class the total sum of three million, nine hundred ninety thousand, six hundred and twenty two dollars (\$3,990,622), in full, complete and final satisfaction of all claims for backpay, front pay, pension, other employment benefits and/or interest arising out of plaintiffs'

allegations of discrimination in employment practices and retaliation as described in Section II of this Settlement Agreement. The money shall be distributed as follows:

1. **Class Backpay Award**

Three million, eight hundred thirty thousand, six hundred and twenty two dollars (\$3,830,622) will be paid into an interest-bearing account administered by plaintiffs' counsel, hereinafter designated as "the Backpay Fund" for the sole and express purpose of permitting plaintiffs' counsel to make disbursements to class members in accordance with the procedures outlined in Appendix A -- Method to be Used to Calculate and Distribute the Monetary Award to Class Members.

In order to facilitate such distribution under the above plan, INS shall, within forty-five (45) days after Effective Date of this Settlement Agreement, provide Class counsel with information regarding each class members' length of employment with INS and the length of time each class member was employed at each grade level. This information will be provided under the auspices of the Protective Order, appended hereto as Appendix B, entered in this action to protect the privacy interests of class members prior to releasing such information. The parties agree to cooperate and update the information to be provided to facilitate the distribution of the Class Backpay Award.

2. Individual Relief to Named Plaintiff

Ninety thousand dollars (\$90,000) will be paid to the sole lead named plaintiff, Norris Potter III.

3. Class Service Awards

Seventy thousand (\$70,000) will be paid into an interest-bearing account administered by plaintiffs' counsel, hereinafter designated as "the Class Service Award Fund," for the sole and express purpose of making disbursements to class members who have performed valuable services for the class as a whole. These disbursements will be made in accordance with the procedures outlined in Appendix A -- Method to be Used to Calculate and Distribute the Monetary Award to Class Members.

4. Deductions

The sums specified in Sections III(A)(1), III(A)(2) and III(A)(3) constitute "lump sums" from which no deductions of any kind will be taken. By agreeing to payment of these "lump sums," the defendant makes no representation as to the taxability of these lump sums. Each class member will be solely responsible for making payment to the appropriate taxing authorities for all tax liability, including any amount owed pursuant to section 104(a)(2) of Title 26 (the Tax Code), as amended by the Small Business Job Protection Act of 1996, Pub. L. 104-188, 110 Stat. 1755. The class members will also indemnify and hold harmless the INS from any liability it may incur from any taxing authority arising out of the underpayment of any taxes due and owing on the lump sums paid pursuant to this Settlement Agreement.

5. Time of Payment

Within thirty (30) days of the Effective Date of this Settlement Agreement, defendant INS shall deliver the appropriate disbursement request to the Treasury Department to enable the above payments to be made for the benefit of the class. Such disbursement request shall specify as the payees David L. Ross, Esq. and Peter Szabadi, Esq. as trustees for "The Norris Potter, III Class Settlement Account," opened for the purpose of making the distributions to the class specified herein. To further facilitate payment, plaintiffs agree to supply all necessary information to enable payment to be made by electronic funds transfer.

B. Remedial Promotions

1. Identification of Positions

The parties have agreed that twenty-six (26) class members will receive remedial promotions. Twenty-five (25) of these remedial positions will be advertised in accordance with the procedures outlined in paragraph 2 below and the remaining remedial promotion will be awarded to lead plaintiff Norris Potter as described in paragraph 3 below. The remedial positions to be advertised are as follows:

Immigration Examiners

2 GS-13

1 GS-14

Deportation Officers

2 GS-12

1 GS-13

Detention Enforcement Officers

3 GS-9

1 GS-10

Criminal Investigators

2 GS-13

1 GS-14

Immigration Inspector

8 GS-12

1 GS-13

Border Patrol

2 GS-12

1 GS-13

2. Procedures for filling positions

a. General Criteria

The 25 remedial positions will be advertised and filled in the same manner that the INS advertises and fills other positions except as otherwise specified herein. In order to be considered for one of these remedial positions, the applicant, in addition to being otherwise qualified for that position, must be a member of the class and must certify that he/she applied for an Officer Corps position as defined in Section I(B) of this Agreement, but was not selected, or felt that he/she was discouraged from applying for such a position because of his/her race. The

remedial positions to be filled pursuant to this Settlement Agreement shall be treated as any other positions and the persons placed in such positions shall have the same rights and obligations as those who obtained supervisory positions through the regular recruitment or selection, except for the selection method herein provided. The personnel records of the person obtaining such remedial position shall not in any way identify the promotion as "remedial" or anything else but a regular promotion within INS; provided, however, that INS may maintain records separate and apart from the class members' personnel files indicating which class members have received a remedial promotion pursuant to this Settlement Agreement. Records indicating which class members have received remedial promotions pursuant to this Settlement Agreement shall be maintained and used only for purposes of demonstrating compliance with and enforcing the terms of this Settlement Agreement.

Nothing in this Settlement Agreement shall be construed to require defendant to promote a class member to a remedial position who is not otherwise qualified for promotion to that position.

- b. Procedures and time frame for implementing remedial promotions**
 - (i) Initial solicitation of applications from class**

Within 30 days of the Effective Date of the Settlement Agreement, INS will issue job advertisements for each grade-level within each occupational category for which a remedial promotion

will be offered as part of this settlement. These job announcements will specify the knowledge, skills, abilities, and other characteristics ("KASOs") specifically developed by INS for these positions, but will not specify the location of the job. These KASOs will be an Exhibit to the Court Order, if any, approving the Settlement Agreement. These announcements will solicit applications from all qualified class members who wish eventually to be considered for one or more of the remedial promotions being offered and will specify that class members will have two (2) weeks from the date of the announcement in which to submit such applications.

Applications submitted in response to the job announcements must include an executed Certification, appended at Appendix C, stating that the applicant is a member of the class and that he/she either applied for an Officer Corps position as defined in Section I(B) of this Agreement, but was not selected, or felt that he/or she was discouraged from applying for such a position because of his/her race.

(ii) Scoring of applications from class

The rating panel(s) assembled by the INS to score the applications will include at least one INS EEO representative, who will serve in an advisory capacity. INS will use its best efforts to score the applications received in response to these announcements within 120 days from the Effective Date of the Settlement Agreement unless more than 400 applications are received. If more than 400 applications are received, the INS

reserves the right to modify the 120-day timetable. In the event that such modification is necessary, INS will advise Plaintiffs' counsel of the additional time required by the INS and the reasons for the inability of the INS to meet the 120-day timetable.

(iii) Designation of location of remedial positions

After the applications received by the INS from class members have been scored, the INS will publicly designate through the issuance of a vacancy announcement the location of specific remedial positions. All remedial positions (other than Border Patrol positions) will be located only in the following areas (including sub-offices): Chicago, Miami, Washington, New York, Newark, N.J., Los Angeles, Ca., San Francisco, Ca., San Diego, Ca., Houston, Tex., Dallas, Tex., El Paso, Tex., Harlingen, Tex., Atlanta, Ga., New Orleans, La. There are no geographical restrictions on the Border Patrol remedial positions. No more than one-third of the remedial promotions will be located in the any one of the locations listed above. No more than four of the Immigration Inspector positions will be located in any one of the locations listed above. In addition to above-listed locations, Immigration Inspector positions may also be located in Laguna Niguel, California. The positions will be open to all qualified class members regardless of their current geographical assignments. These requirements may be modified during implementation by mutual agreement. Class counsel will be

provided notice of the designation of the remedial positions at the same time that they are announced to the class.

(iv) Solicitation of interest in designated remedial position

Class members who wish to be considered for a designated remedial position will be asked to notify the INS of that fact within 30 days of the issuance of the vacancy announcement designating the location of the position by submitting a copy of their application and any other materials requested in the vacancy announcement to the location specified therein.

(v) Filling the designated remedial positions

The INS will review the applications already submitted by the class members and create a best-qualified list based on the scores previously assigned to the class member's applications. These best-qualified lists will be forwarded to the appropriate INS deciding official for a final decision on which class member appearing on the best-qualified list will be placed into the remedial position. All applicants referred as "best-qualified" will receive an interview (either personal or telephonic) with the selecting official. Each selecting official and the selecting official's immediate supervisor will, prior to the time that the selection decision is made, receive a written communication from the INS explaining that the selection to be made to fill the designated remedial position is part of a class action settlement and reminding the officials that a candidate's previous participation in protected EEO activities cannot be

considered as a negative factor in making the selection decision. Such notification shall be jointly prepared by the class counsel and counsel for INS. The selecting official's choice will be reviewed and approved in writing by the selecting official's supervisor before it is finalized. The defendant will fill the 25 remedial positions to be advertised within one year from the Effective Date of the Settlement Agreement.

3. Promotion for lead named plaintiff

Individual lead named plaintiff, Norris Potter III, will be promoted to a permanent supervisory GS-13, step 8, Criminal Investigator position in the INS Los Angeles office within 45 days from the Effective Date of the Settlement Agreement. Mr. Potter will subsequently be transferred into the next GS-13 Criminal Investigator supervisory position that is to be filled in Seattle, Washington. Should a GS-13 level supervisory position become available in Seattle between the date of Preliminary Approval of this Settlement Agreement and the Effective Date of this Settlement Agreement, INS agrees to hold such position open until the Effective Date of this Settlement Agreement and to transfer Mr. Potter into such position within 45 days of the Effective Date of this Settlement Agreement; provided, however, that, should an appeal be taken from the court's decision approving this Settlement Agreement as fair and reasonable to the class, INS need not hold such supervisory position open and may fill said position in the ordinary course of business.

The parties acknowledge that Mr. Potter received a temporary promotion to a GS-13 supervisory position for a total of 120 days between October 26, 1997 and April 30, 1998. Except as noted below, Mr. Potter's personnel records will be retro-actively amended to reflect an additional eight months of previous service at the GS-13 level prior to the date of such promotion. Mr. Potter acknowledges and expressly agrees that the amendment of his personnel records to reflect eight additional months of previous service at the GS-13 level is intended only to provide him with sufficient time in grade to compete for GS-14 level supervisory positions upon Final Approval of this Settlement Agreement. Mr. Potter accordingly waives all right to backpay, front pay, and other employment benefits and/or interest, if any, that might otherwise accrue to him as a result of said amendment of his records. Mr. Potter further acknowledges and agrees that the eight additional months of service at a GS-13 supervisory level attained through said amendment of his personnel records is not creditable for purposes of calculating his retirement annuity pursuant to 5 U.S.C. §§ 8331(3), (4), 8339, 8401(3), (4), and 8415 and that such service will not be reflected in his Individual Retirement Record at the conclusion of his service with the Department of Justice.

Mr. Potter will be reimbursed for all appropriate expenses pursuant to the procedures and regulations applicable to employer initiated transfers, including, but not limited to, his moving costs incurred in connection with his transfer to Seattle.

C. Equitable Relief

1. The Class Consultant

a. General Description

Within ninety (90) days of the Effective Date of the Settlement Agreement, the parties will agree on the selection of a labor force economist to perform the tasks described in this Section ("the class consultant"). The class consultant, who will be paid by the INS, will be tasked with producing two reports analyzing the pattern and distribution of African-American INS Officer Corps members and the success of the INS in improving the representation of African-American employees in supervisory and senior, non-supervisory Officer Corps positions, and formulating non-binding recommendations, if appropriate in the opinion of such class consultant, concerning additional steps that could be taken by the INS to improve such representation. The contract with the class consultant shall provide that the class consultant may not compromise any individual's privacy interest through its written reports.

The parties to this Settlement Agreement shall cooperate with and shall use their best efforts to facilitate the tasks to be performed by the class consultant under this agreement.

b. INS's Obligation To Supply Data To Class Consultant

During the three-year monitoring period, INS will provide to the class consultant the following statistical information

(except where otherwise indicated), broken down by race,
concerning Officer Corps positions:

- (1) Promotions and competitive selections by regions and districts (quarterly);
- (2) Racial make-up of applicant pools for supervisory positions (annually), subject to the limitations described in Section III(C)(1)(c)(i), below;
- (3) Selection certificates for supervisory positions (annually);
- (4) Performance ratings (annually);
- (5) Disciplinary action above the level of a reprimand (quarterly);
- (6) Awards and bonuses (quarterly);
- (7) Terminations (quarterly);
- (8) Reinstatements (annually);
- (9) Reassignments (annually);
- (10) Demotions (quarterly);
- (11) The number of EEO Complaints alleging race discrimination against African-Americans and their resolutions, subject to the limitations described in Section III (C)(1)(c)(ii) below (annually);
- (12) Racial composition of each grade for each Officer Corps position (quarterly);
- (13) Disciplinary actions against employees who engage in discriminatory conduct against African Americans: (i) the total numbers (but no names) of persons found to have engaged in discriminatory conduct by final agency decision (annually); (ii) of that number, the number for whom discipline was recommended by EEO (annually); and (iii) the number for whom discipline was imposed (annually).
- (14) INS Annual Budget (annually).

(15) Regional and the National INS Affirmative Action Reports.

(16) Copies of EEO policies generally distributed to all INS employees or managers.

Nothing in this Settlement Agreement requires the INS to gather information it does not presently gather, to computerize information it does not presently computerize, or to compromise the privacy interests of any individual. In addition to the specific categories of information specified above, INS agrees to consider, in good faith, any requests from the class consultant to be supplied with additional categories of information, including requests to be provided with information not presently maintained or gathered by the INS. In the event that the INS denies a request from the class consultant to be provided with information other than the above-specified categories, the INS will supply the class consultant with a written statement of its reasons for declining to comply with any such additional data requests, including, where appropriate, a description of the burden and expense that would be associated with complying with the class consultant's request.

c. Specific limitations on data-gathering obligations

(i) Racial make-up of applicant pools

INS tracks this information through an automated system called the INS Applicants Survey ("INSAS"). The information maintained in INSAS does not specifically identify which positions are supervisory, although the identity of supervisory

positions may sometimes be inferred. In addition, INS does not guarantee that the INSAS system will be maintained throughout the three-year monitoring period. Therefore, INS's commitment to provide the information concerning the racial make-up of applicant pools identified in Section III(C)(1)(b)(2), *supra*, is expressly conditioned on the availability of such information from INSAS or from any other source the INS may choose to maintain in lieu of INSAS. Nothing in this Settlement Agreement, however, requires INS to maintain or provide the information concerning the racial make-up of applicant pools identified in Section III C(1)(b)(2).

(ii) Confidentiality of EEO complaints

INS agrees to provide statistically aggregated information concerning EEO complaints on an annual basis. Nothing in this Settlement Agreement requires INS to reveal the identities of persons involved in the EEO complaint process.

(iii) Limitations on production of quarterly data

In recognition of the fact that the class consultant will be tasked to produce the second and final report at the end of the three-year monitoring period, INS shall not be required to provide quarterly data for the fourth quarter of the third year of the three-year monitoring period.

(iv) No obligation to violate Privacy Act

Nothing in this Settlement Agreement shall be construed to impose an obligation on the INS to make disclosures of

information which violate the Privacy Act, 5 U.S.C. § 552a, et seq.

d. Obligation of INS to respond to class consultant's report

The INS will issue written responses to both reports produced by the class consultant. Accordingly, both the class consultant's reports and the INS responses to the report shall be treated as presumptively public documents. The INS will use its best efforts to respond to each report from the class consultant within six months from the date of its issuance. In the event that the INS requires additional time to complete a response to either of the class consultant's reports, INS shall provide plaintiffs' counsel with a written statement of its need for additional time to respond and the reasons why additional time is required. The INS shall not take longer than ten months to respond to the reports from the class consultant. INS shall separately respond to each recommendation made by the class consultant. In the event that the INS accepts one or more of the recommendations included in the class consultant's report, the INS shall include in its response a non-binding estimate of the cost of implementing the recommendation(s). The inclusion of any such estimate in an INS response to the class consultant's report will not bind the INS to commit any particular level of funding to those recommendations that are made by the class consultant and accepted by the INS.

2. Competency-based promotional assessment program

During the three-year monitoring period, INS agrees to continue to develop and implement a competency-based promotional assessment program for all Officer Corps positions, except Detention Enforcement Officers; provided, however, that, during the three-year monitoring period, INS will continue to evaluate the effectiveness of the program in attracting and promoting qualified applicants and that INS may revise the program as necessary to meet these goals. This commitment by the INS is contingent on the availability of appropriated funds.

3. INS EEO Office

During the three-year monitoring period, INS agrees to maintain the existing reporting relationships between EEO field officials and INS headquarters, as described in Appendix D.

4. Targeted Recruitment

During the three-year monitoring period, INS agrees to use its best efforts to maintain INS's existing level of recruitment efforts for the trainee Officer Corps, as described in Appendix E. INS reserves the right to make changes in the specifics of such recruitment efforts, such as methods used and areas or schools targeted by such efforts. This commitment by the INS is contingent on the availability of appropriated funds.

5. Record-keeping

INS agrees not to dispose of the vacancy announcement records, which it has retained for purposes of this litigation,

and shall continue to retain all vacancy announcement records until the end of the three-year monitoring period.

6. **INS commitment to existing disciplinary policy for employees found to have engaged in discriminatory conduct**

For the duration of the three-year monitoring period, INS will continue to consider appropriate disciplinary action in accordance with applicable standards for any employee found to have engaged in discriminatory behavior by the final decision in an administrative or federal court proceeding from which the INS chooses not to appeal. If formal disciplinary action is initiated against an employee for such behavior, that employee will not be considered eligible to be selected for promotion until final disposition of the disciplinary or adverse action.

IV. ATTORNEYS' FEES AND COSTS

A. Past Attorneys' Fees

The defendant will pay to plaintiffs' counsel, in full satisfaction of all of plaintiffs' claims for any attorneys' fees arising out of this litigation up to the date that this Settlement Agreement is executed, the following amounts:

David Ross: \$ 705,000

Peter Szabadi: \$ 600,480

In accordance with the Agreement between the Class Counsel and the Class Agent said attorneys' fees will be paid as follows:

1. Seventy percent (70%) of the agreed fees upon the Effective Date of the Settlement Agreement:

David Ross: \$ 493,500

Peter Szabadi: \$ 420,336

2. The remaining thirty percent (30%) upon the final distribution of the Class Backpay Award to the members of the class:

David Ross: \$ 211,500

Peter Szabadi: \$ 180,144

Provided that the payments shall be made as herein provided; no interest will accrue or be paid on any of the above payments to be made to the Class Counsel.

B. Past and Future Costs

1. Past Costs

The defendant further agrees to pay to plaintiffs' counsel, in full satisfaction of all of plaintiffs' claims for any and all expert's fees, costs and expenses arising out of this litigation up to the date this Settlement Agreement is executed, the amount of \$260,000.

2. Future Costs

In the event that plaintiffs incur reasonable future expert fees, costs and expenses in excess of \$15,000 after the execution of this Settlement Agreement, the defendant agrees to reimburse such fees, costs and expenses in an amount not to exceed \$10,000, in addition to the \$260,000 specified in Section IV(B)(1), above; provided, however, that the defendant will not be obliged to pay any additional amount of expert fees, costs and expenses unless plaintiffs first submit supporting billing records for this time period to the defendant.

In the event that plaintiffs seek reasonable future expert fees, costs or expenses incurred in excess of \$15,000, class counsel shall submit to the defendant all billings reflecting all expert fees, costs and expenses incurred since execution of the Settlement Agreement. The defendant shall review these billings and advise class counsel whether the defendant disputes any of the amounts claimed within 30 days of receipt of such billings. In the event that the defendant disputes any of the amounts claimed, the parties shall use their best efforts to resolve such disputes and agree on reasonable expert fees, costs or expenses sought within 30 days. In the event that the parties cannot reach an agreement within 30 days, plaintiffs may apply to the court with jurisdiction over approval of this Settlement Agreement to resolve the dispute.

C. Agreement to pay fees incurred in securing Final Approval of Settlement Agreement

The defendant further agrees to pay plaintiffs' reasonable attorneys' fees and costs, at the hourly rates of \$230 for Mr. Ross and \$260 for Mr. Szabadi, and for other non-class members associated with counsel at a rate to be agreed, up to a maximum of \$35,000, for work done on behalf of the plaintiff class subsequent to the execution of this Settlement Agreement through the completion of the fairness hearing described in Section VI of this Settlement Agreement. The defendant will not be obliged to pay any attorneys' fees pursuant to this paragraph unless plaintiffs first submit supporting time records and billings for

Within thirty (30) days of the Effective Date of this Settlement Agreement, defendant shall deliver the appropriate disbursement request to the Treasury Department to enable the payments for past fees, costs, and expenses due under Sections IV(A) (1) and IV(B) (1) to be made. Within thirty (30) days after Class Counsel has delivered written notice to the defendant that final distribution had been made, defendant shall deliver the appropriate request to the Treasury department for the payment of past fees as provided in Section IV(A) (2). Such disbursement requests shall specify as the payees the class counsel, David L. Ross, Esq., and Peter Szabadi, respectively, or their designees.

F. Procedures for Processing Requests for Attorneys Fees and Costs Submitted Pursuant to Part VI(C) and VI(D)

Class counsel shall, from time to time, submit to the defendant detailed billing statements reflecting the work for which attorneys fees and costs are sought under Parts VI(B) (2), VI(C) and VI(D) above. The defendant shall review these statements and advise class counsel in writing whether the defendant disputes any of the amounts claimed within 30 days of receipt of such statements. In the event that the defendant disputes any of the amounts claimed, the parties shall use their best efforts to resolve such disputes and agree on a reasonable attorneys fee within 30 days. In the event that the parties cannot reach an agreement within 30 days, plaintiffs may apply to the court with jurisdiction over approval of this Settlement Agreement to resolve the dispute.

V. INTERPRETATION OF THE SETTLEMENT AGREEMENT

A. The parties have bargained for the terms in this Settlement Agreement. No section or subsection of this Settlement Agreement may be modified or stricken without the consent of both parties.

B. The terms of this Settlement Agreement, including all exhibits and appendices attached hereto, constitute the entire understanding among the parties with respect to the subject matter hereof and supersede all prior agreements, written or oral, with respect thereto. No statement, remark, agreement or understanding, oral or written, which is not contained herein, shall be recognized or enforced.

C. This Settlement Agreement constitutes a joint effort by counsel for the parties and should not be construed against any party.

D. This Agreement does not represent an admission of liability by the defendant. The terms of this Settlement Agreement, the negotiations leading up to this Settlement Agreement, the data, documents, or information exchanged between the parties in the course of those negotiations, may not be offered, taken, construed, or introduced as evidence of liability or as an admission or statement of wrongdoing by the defendant, either in this action or in any subsequent proceeding of any nature. However, such information exchanged between the parties as part of the discovery conducted in this action may be

presented to the Court by the parties to this Settlement Agreement solely to obtain the approval of this settlement.

E. It is an express condition of this Agreement that the class described in paragraph I(B) be certified and be bound by this Agreement. This Settlement Agreement is binding on all parties and their successors, assigns, representatives, and trustees and shall be null, void, and of no force or effect if this Court does not approve this settlement.

F. This Settlement Agreement is a contract between the parties. Judicial approval of this Settlement Agreement pursuant to paragraph VI and the retention of jurisdiction by this Court pursuant to Section VII for the sole purpose of adjudicating claims of material breach brought pursuant to Section VIII will not make this Agreement into an order of the Court enforceable by the Court's contempt powers.

G. This Settlement Agreement may be executed in one or more counterparts and each executed copy shall be deemed an original which shall be binding upon all parties to this agreement.

H. The waiver by any party hereto of any term, condition or covenant of this Settlement Agreement or the breach of any term, condition, covenant or representation herein, in any one instance, shall not operate as or be deemed to be a waiver of the right to enforce any other term, condition or representation, nor shall any failure by any party at any time to enforce or require performance of any provision hereof operate as a waiver of or

affect in any manner such party's right at a later time to enforce or require performance of such provisions or of any provision hereof.

I. The headings in this Settlement Agreement are for the convenience of the parties only and shall not limit, expand, modify, amplify or aid in the interpretation or construction of this Settlement Agreement.

VI. PROCEDURES GOVERNING FAIRNESS HEARING

The parties agree that this Settlement Agreement shall be implemented in the following manner:

A. Request For Preliminary Approval

Upon execution, the parties shall jointly and promptly file this Settlement Agreement and request that the Court enter an order (i) preliminarily certifying a class for the purposes of this Settlement Agreement as defined in Section I(B); (ii) preliminarily approving the proposed settlement as presumptively fair, reasonable and adequate; (iii) requiring that notice of the terms of this Settlement Agreement and the right to object to the proposed settlement be given to all members of the class and all other interested persons pursuant to Sections VI(B), VI(C), and VI(D) of this Settlement Agreement; and (iv) scheduling a fairness hearing to determine the fairness of the proposed Settlement Agreement with respect to the class pursuant to Section VI(E) of this Settlement Agreement. Appendix F hereto is a [Proposed] Order Granting Preliminary Approval of the

Settlement Agreement which the parties hereby request that the Court approve and sign.

B. Notice To Class Members.

Within thirty (30) days after Preliminary Approval of (1) this Settlement Agreement and (2) the "Notice of Class Action, Proposed Settlement and Fairness Hearing" ("Fairness Notice," appended as Appendix G hereto), defendant shall deliver a copy of the Fairness Notice to class members in the following manner:

1. Class Members Currently Employed By INS

Defendant will distribute by hand delivery a copy of the Fairness Notice to all class members currently employed by INS. The envelope in which the documents are delivered shall be marked "**Personnel Sensitive. To be opened by addressee only.**" Accompanying the Fairness Notice will be an "Acknowledgment of Receipt" which class members will be required to execute and return to the distributing official. To monitor completion of the notice distribution, the signatures will be returned to INS Headquarters in Washington, D.C.

2. Class Members Who Are Former Employees

Defendant shall send a copy of the Fairness Notice by certified mail, return receipt requested, to the last known home address of all class members who are former employees. Accompanying the Fairness Notice will be an "Acknowledgment of Receipt" and a pre-addressed envelope to return the confirmation of receipt to INS. Both the envelope in which the documents are delivered to the former employee and the enclosed return envelope

shall be marked "Personnel Sensitive. To be opened by addressee only."

3. Agreement To Bear Cost Of Providing Notice

INS shall bear the cost of providing notice to the class.

4. List Of Class Members

INS agrees to use its best efforts to compile a list of all African-American INS employees and former employees who are likely to be members of the class, together with their last known home addresses, which list shall be provided to the plaintiffs' counsel under the auspices of the Protective Order, appended to as Appendix B, entered in this action. INS does not warrant that the list will be a complete list of all class members. The parties expressly agree that any such list shall not be used to limit or define class membership, and that the class definition appearing in Section I(B) of this Settlement Agreement shall be the sole definition of class membership. The parties shall consult and cooperate with each other to update the above list as needed.

C. Notice To Non-Class Members

Within sixty (60) days after Preliminary Approval of the Settlement Agreement and Fairness Notice, defendant will provide a copy of the Fairness Notice to all Officer Corps employees who are not members of the class, but who occupied the occupational series and grade levels described in Section I(B) of this Settlement Agreement during the time periods specified therein. Such notice will be provided as follows:

1. Current Employees

Defendant will distribute by hand delivery a copy of the Fairness Notice to such Officer Corps employees currently employed by INS. The envelope in which the documents are delivered shall be marked **"Personnel Sensitive. To be opened by addressee only."** Accompanying the Fairness Notice will be an "Acknowledgment of Receipt" which employees will be required to execute and return to the distributing official. To monitor completion of the notice distribution, the signatures will be returned to INS Headquarters in Washington, D.C.

2. Former Employees

Defendant shall send a copy of the Fairness Notice by certified mail, return receipt requested, to all such former employees. Accompanying the Fairness Notice will be an "Acknowledgment of Receipt" and a pre-addressed envelope to return the confirmation of receipt to INS. Both the envelope addressed to the former employee and the enclosed return envelope shall be marked **"Personnel Sensitive. To be opened by addressee only."**

3. Agreement To Bear Cost Of Providing Notice

INS shall bear the cost of providing notice to the class.

D. Additional Measures To Provide Notice

In addition to the measures described in Sections VI(B) and VI(C) above, defendant will:

1. Post a copy of the Fairness Notice at INS Headquarters and in each INS Regional Office, District Office,

Border Patrol Sector Office, Border Patrol Station, District Sub-Office, Administrative Center, and Service Processing Center.

2. Post a copy of the Fairness Notice on the INS computer bulletin board.

3. Advise all INS employees of the Settlement Agreement in a communique issued by the Commissioner. This communique will advise interested employees where they may obtain a copy of the Fairness Notice and review a copy of the Settlement Agreement.

4. Make a copy of the Settlement Agreement available for review in the Main Library at INS Headquarters, and in each INS Regional Office, District Office, Border Patrol Sector Office, Border Patrol Station, District Sub-Office, Administrative Center, and Service Processing Center.

E. Fairness Hearing

A fairness hearing shall be held at such time and place as ordered by the district court to consider whether the proposed settlement should be finally approved as fair, reasonable, and binding on the class. Any person who wishes to object to the terms of this Settlement Agreement will be required to submit a written statement to the Court specifying his or her objections and the basis for such objections as provided in the Fairness Notice, with copies to defendant's counsel and to plaintiffs' counsel. Any class member who has submitted a timely written objection may appear at the hearing and show cause why the settlement and compromise proposed in the Settlement Agreement

should not be approved. Objections raised at the hearing will be limited to those matters addressed in timely written objections. Counsel for the parties shall jointly use their best efforts to obtain prompt judicial approval of this Settlement Agreement. Judicial approval will not make this Agreement, either explicitly or through incorporation by reference, an order of the Court. However, this provision shall not be construed to limit the Court's power to enforce the terms of this Settlement Agreement as provided herein. Appendix H is a [Proposed] Order Granting Final Approval of Settlement Agreement.

VII. JURISDICTION OF THE COURT

The Court shall retain jurisdiction for three (3) years from the Effective Date of this Settlement Agreement solely for the purpose of adjudicating any claim of a material breach of the Settlement Agreement that may be presented to the Court pursuant to Section VIII of the Agreement.

VIII. ENFORCEMENT OF THE SETTLEMENT AGREEMENT

A. Any allegation of a material failure to comply with the terms and conditions of this Agreement by one or more of the parties shall be made by written notice to the undersigned counsel for the alleged non-complying party. Said notice shall specify the facts supporting the allegation(s) of material breach, and shall precede the filing of any motion to enforce the terms of this Agreement. Upon receipt of said notice by counsel, the alleged defaulting party shall either remedy the alleged failure and so notify all other counsel in writing or provide

written explanation of its failure to do so within thirty (30) days. If, after thirty (30) days, the party asserting the claim is dissatisfied with the other party's response or resolution, or no response or resolution has been forthcoming, the party asserting the claim of material breach may, after providing fourteen (14) days advance written notice to counsel for the other party, petition the Court for enforcement of this Settlement Agreement.

B. Defendant shall not be obligated to carry out any term of this Settlement Agreement if any otherwise applicable current or future, state or federal, statute(s) or regulation(s) preclude the defendant from complying with, or withdraw defendant's authority to perform, that term. Defendant agrees to notify class counsel and the Court should any such change in law prevent INS from complying with any term of this Settlement Agreement during the three-year monitoring period. In the event that court proceedings regarding defendant's ability to comply with any term of this Settlement Agreement are initiated by plaintiffs, or by the Court sua sponte, defendant's obligation to comply with that term shall be suspended until final resolution of such proceedings, including all appeals.

C. In the event that changes in the law subsequent to the entry of this Settlement Agreement make any of its provisions contrary to law either as written or as applied, either party may apply to the Court for a modification of those provisions so that they comply with existing law.

AGREED:

FOR THE PLAINTIFFS:

Dated September 29, 1998

Norris Potter III

Norris Potter III
Individually and on behalf of the class

Dated: September 29, 1998

Dated: September 29 1998

David L. Ross

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FOR THE Defendant

Dated: ~~September~~ ^{November 6,} 6, 1998

OF COUNSEL:

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General Counsel

DAVID DIXON
Deputy General Counsel


FRANK W. HUNGER
Assistant Attorney General

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APPENDIX A

Method to be Used to Calculate and Distribute the Monetary Award to the Class Members

I. Members of the Class

The members of the class who are entitled to share in the Monetary Class Award in the manner described below will be the present and former African-American employees of the "Officer Corps" of the Immigration and Naturalization Service (INS) who were employed in the positions and grade levels at any point during the time period specified below, except those employees who were members of the Senior Executive Service ("SES") during any such time period:

a. Deportation Officers (1801 series): GS-9 or higher from January 1, 1986 through January 1, 1990 and GS-11 or higher from January 1, 1990 through the date of Preliminary Approval of this Settlement Agreement;

b. Detention Enforcement Officers (1802 series): GS-7 or higher from January 1, 1986 through the date of Preliminary Approval of this Settlement Agreement;

c. Criminal Investigators (1811 series): GS-11 or higher from January 1, 1986 through January 1, 1988 and GS-12 or

higher from January 1, 1988 through the date of Preliminary Approval of this Settlement Agreement;

d. Border Patrol Agents (1896 series): GS-9 or higher from January 1, 1986 through the date of Preliminary Approval of this Settlement Agreement;

e. Immigration Examiners/Adjudication Officers (1816 and 1801 series): GS-11 or higher from January 1, 1986 through April 1, 1994 and GS-12 or higher from April 1, 1994 through the date of Preliminary Approval of this Settlement Agreement. In addition, Immigration Examiners/Adjudication Officers who occupy Service Center Adjudication Officer positions, belong in the class if they were GS-11 or higher from January 1, 1986 to June 12, 1995, and GS-12 or higher from June 12, 1995 through the date of Preliminary Approval of this Settlement Agreement; and

f. Immigration Inspectors (1816 series): GS-9 or higher from January 1, 1986 through January 1, 1992 and GS-11 or higher from January 1, 1992 through the date of Preliminary Approval of this Settlement Agreement.

The above positions subparts (a) through (f) shall be referred to herein as Officer Corps positions.

II. Class Backpay Award.

A. The Allocation of the Class Backpay Award.

1. The sum of \$3,810,622 will be maintained in an interest bearing trust account to be administered by class counsel for payment of the Class Backpay Award. Said sum, plus

interest accrued on that amount, will constitute the total Class Backpay Award to those members of the class who have been employed by INS at any time from January 1, 1986 to the date of the Preliminary Approval of this Settlement (herein Effective Date). Any amount of principle or accrued interest remaining after distribution of the Class Backpay Award shall be distributed in the manner provided in II(C)(3) below.

2. The sum of \$20,000 will be set aside to cover the expense of calculating and distributing the Class Backpay Award to the members of the class. Any sum remaining from this sum will be distributed in the manner provided in II(C)(3) below.

B. Class Backpay Award

1. Each Class Member will be credited with one point for each month in which a member met the minimum time in grade requirements for promotion to a supervisory position, to a higher-grade supervisory position, but did not receive such promotion for the period from January 1, 1986 to the Effective Date, provided however that no class members shall be awarded more than 72 points under this paragraph. For the purposes of this distribution plan a senior Officer Corps position at the same grade as a supervisory position shall be treated as if a member obtained an equivalent grade supervisory position.

Example 1: Criminal Investigator "A" became GS-12 on February 1, 1989 and was appointed to a GS-13 supervisory position on February 1, 1992. Criminal

Investigator "A" will be entitled to 24 points for the 24 months between February 1, 1990 and February 1, 1992, [starting 12 months after becoming GS-12] and an additional number of points for each month he remained in the GS-13 position commencing February 1, 1993 until the Effective Date, however his total number of points under this paragraph cannot exceed 72 points.

Example 2: Criminal Investigator "A" became GS-12 on February 1, 1989 and was appointed to a GS-13 senior position on February 1, 1992. Same as under Example 1.

Example 3: Criminal Investigator "A" became GS-12 on February 1, 1987 and was appointed as a GS-13 supervisor on February 1, 1990. Subsequently, on February 1, 1994, he was appointed as a GS-14 Supervisor. Criminal Investigator "A" will be entitled to 24 points for the 24 months between February 1, 1988 and February 1, 1990, [starting 12 months after becoming GS-12]. He will also earn 36 points for the thirty-six months between February 1, 1991 and January 31, 1994. for the period he was GS-13 but was qualified to compete for a GS-14 position. He will also be entitled to an additional number of points for each month he

remained in the GS-14 position commencing February 1, 1995, starting twelve months after his appointment to the GS-14 position, until the Effective Date, however his total number of points under this paragraph cannot exceed 72 points.

2. In addition to the above, each Class Member who meets the minimum time in grade requirement for promotion to a supervisory grade Officer Corps position and who has applied for promotion to a supervisory Officer Corps position, but failed to be appointed for whatever reason, during the period from January 1, 1986 to the Effective Date will be credited with an additional ten (10) points for each succeeding supervisory grade level such member applied for, except for SES positions which are not covered under this settlement agreement. A class member may not be credited more than ten (10) points for each succeeding supervisory grade under this paragraph no matter how often such member applied for any position.

Example 4: The same as Example 1 above, except Criminal Investigator A applied for a GS-13 position in March 1991, which he failed to obtain. Now, the officer will be entitled to an additional 10 points. These points are in addition to the points earned based on being in the grade and not obtaining a supervisory position.

3. Each such class member who has been credited any points under the above II(B)(1) or (2) will be paid the minimum backpay award of \$1,000, the Minimum Award.

4. Class members who cease to be employed by INS or cease to be employed by INS in an Officer Corps position under this distribution plan, shall not be credited with any distribution points subsequent to the effective date of such termination, assignment or transfer. A class member who is re-employed or returns to a subject Officer Corps position shall be entitled to additional point credits as of the effective date of such re-employment or re-assignment, pursuant to Section II(B) of this distribution plan; provided, however, that no class member shall be awarded more than a total of 72 points for all periods of service combined.

5. After deducting from the total sum set aside for the Class Backpay Award the sum provided under section II(B)(3), the total number of points for all Class Members will be divided into the then remaining balance of the total Class Backpay Award to establish each member's per point share of such amount. Each class member will be paid the product of the number of points credited to the member and said calculated per point share. Such sum plus the Minimum Award will constitute the individual distributive share of the Class Backpay Award of each class member.

C. Distribution of any remaining, declined or unclaimed Class Award.

1. In the event after the disbursement of the class members distributive share of the Backpay Class Award any sum remains undistributed, returned or declined then such sum and any sum remaining from the \$20,000 set aside to effect the subject distribution, will be distributed in the manner provided in Section II(C)(3) herein.

2. No part of above sum may be paid to the counsel for the class except in connection with projects to be approved by the Awards Panel in manner provided in Paragraph II(C)(3) below.

3. The remaining sum under the above II(C)(1) may be used in any manner for the benefit of the class as it is deemed to be in the opinion of the Awards Panel then existing under Paragraph III(B) below, including but not limited to further distributions to be made to Class Members and/or in any endeavor to further pursue the interest of the class to promote and maintain a bias free work atmosphere at INS. All decisions of the Award Panel will be by majority vote.

D. Matters related to the Calculation and Distribution of Class Members' share of the Backpay Award and Resolution of any Disputes relating to establishing entitlement to such Share(s).

1. Mailing of Questionnaires. Within thirty (30) days of the Effective Date, class counsel shall mail to the last known

address of each known class member a questionnaire seeking information regarding each class member's employment with INS to enable class counsel to calculate each class member's share of the Class Backpay Award as described in Section II(B) of this Distribution Plan. INS will also make this questionnaire available at the local INS offices.

2. Return of the Questionnaires. Class members or their representatives must fill out and return the questionnaires to class counsel within ninety (90) days of the Effective Date in order for such the information to be considered in the class counsels' calculation of points, as described in Section II(B) of this Distribution Plan. All information to be provided by the Class Members will be attested to under the applicable penalties of perjury.

3. Calculation of the Shares and Notification of Class Members. After the close of the ninety (90) day period for the return of the questionnaires, class counsel shall evaluate the information received from class members and shall calculate the number of points each class member shall be entitled to receive under this Distribution Plan. Such calculation shall be based on information obtained from the questionnaires and any other sources which are deemed reliable by class counsel. Upon completion of the evaluation of the information and calculation of the point shares, class counsel shall notify each class member by mail of class counsel's tentative calculation of the total

number of points awarded to that class member upon which each class member's share of the Class Backpay Fund will be based. Class members will be advised that they may accept class counsel's tentative calculation, appeal the decision pursuant to Section II(D)(4) below, or decline to participate in the distribution of the Backpay Award.

4. Appeal of the Tentative Decisions. Any class member who is dissatisfied with the tentative decision of the class counsel may appeal such decision in writing to be received by class counsel within twenty (20) days of receipt of the tentative decision by a class member, otherwise such tentative decision shall constitute the Final Decision pursuant to which a class member's distributive share of the Class Backpay Award will be calculated. All timely appeals of the tentative decisions shall be reviewed by the Awards Panel named under III(B) of this plan. The awards panel shall decide all appeals within sixty (60) days of the receipt thereof and may utilize such procedures as its members may deem proper in their sole discretion. The decision of the Awards Panel shall be final and non-reviewable.

5. Distribution. Within sixty (60) days of the final decision on all appeals, class counsel shall cause to be transmitted to each class member an amount equal to each member's distributive share of the Backpay Award in accordance with such member's Final Award.

6. Calculation of the Length of Service. In determining the number of months a member has been employed in a particular position or grade, any portion of any month will be counted as a full month of employment.

7. Retroactive Promotions. In the event any class member has received any retroactive promotion as of the Effective Date of this settlement pursuant to such member's individual EEO complaint or charge, then such retroactive date will be the date of being promoted to such supervisory or senior position for the purpose of this agreement.

8. Distribution and Use of Unclaimed Funds. In the event one hundred eighty (180) days have elapsed after the date a member's share of the Class Backpay Award was calculated and disbursed by sending such payment to the last known address of such class member, and such class member had declined the subject individual backpay award, the award was returned unpaid for any reason, or a class member could not be located, the amount to which such class member was entitled will be used in the manner provided in Paragraph II(C)(3) herein.

9. Payment to Deceased Class Members. In the event a class member entitled to a backpay award under the settlement agreement is deceased at the time of the distribution of such award, the amount payable to such deceased class member will be payable to such member's estate. However, in the event such distribution cannot be made within one year of the Approval Date then such

payments will be handled in the manner provided in Paragraph II(C)(3) herein.

10. Class counsel. The term class counsel will refer to the class counsel named under the settlement agreement, David L. Ross, Esq. and Peter Szabadi, Esq. Any decision to be made by class counsel under this distribution plan will require the consent of both counsel, or their successors if any.

III. Class Service Awards.

A. The Class Service Awards are intended to reward those who assisted, aided and promoted the cause of African-Americans in INS and specifically those who played a significant role bringing this action on behalf of the class. Under the Settlement Agreement the sum of \$70,000 has been set aside for this purpose.

The following individuals will receive the following awards:

1. Class Agent Norris Potter, III, the sum of \$15,000.
2. John Washington, the sum of \$7,500.

B. The sum remaining after the above individual awards are made under Section II above, shall be disbursed as determined by the majority vote of the Awards Panel consisting of one representative of each occupational subclass of the class Criminal Investigators, Border Patrol Agents, Detention Officers, Immigration Examiners, Adjudication Officers, Deportation

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NORRIS POTTER III, and other)	
similarly situated,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No.
)	
JANET RENO, in her official)	
capacity as ATTORNEY GENERAL,)	
DEPARTMENT OF JUSTICE,)	
)	
Defendant.)	

CERTIFICATE REGARDING CONFIDENTIALITY

I hereby certify that I have carefully read the Protective Order entered by the Court in the above-captioned case and that I fully understand the terms of the Court's Order, a copy of which is attached. I recognize that I am bound by terms of the Order, and I agree to comply with those terms. I agree not to disclose Confidential Material to anyone who has not signed a copy of this Certificate. I agree to use Confidential Material only in connection with this litigation, and not for any other purpose, including without limitation business, competitive or governmental purpose or function. I hereby consent to be subject to the personal jurisdiction of the United States District Court for the District of Columbia, in respect to any proceedings relative to the enforcement of that Order, including without limitation any proceeding related to contempt of court.

APPENDIX D

REPORTING RELATIONSHIP BETWEEN INS EEO HEADQUARTERS AND INS EEO FIELD OFFICES

The Equal Employment Opportunity ("EEO") Office of the Immigration and Naturalization Service ("INS") is responsible for implementing INS and Department of Justice affirmative action programs and policies to promote equal employment opportunity and the targeted recruitment of women, minorities and disabled persons; identifying and eliminating discriminatory policies and practices at INS; and providing prompt, fair, and impartial processing of complaints of discrimination submitted by INS employees. To achieve these goals, the EEO Office at INS Headquarters in Washington, D.C. ("EEO Headquarters") provides oversight, policy guidance, and technical advice and assistance to the INS regional and district offices in the field ("EEO field office(s)"), including the following:

- **Hiring and Supervision of EEO Field Office** — EEO Headquarters assists in the hiring of some EEO field office personnel. EEO Headquarters provides limited funding to all field offices to implement EEO program goals and objectives, such as providing EEO training and contracting with EEO counselors and investigators. Most EEO field office personnel are supervised directly by INS management in the district or region in which they are employed. EEO Headquarters provides input into the annual performance appraisals of EEO field office personnel when requested, but does not directly supervise field office personnel.
- **Technical Advice and Assistance** — EEO Headquarters issues policies and guidelines to all field offices for achieving INS affirmative action goals and processing complaints of discrimination. EEO Headquarters works with EEO field offices to develop strategic action plans for implementing affirmative action goals and improving complaint processing. EEO Headquarters provides training and funding for EEO counselors and Special Emphasis Program^v managers in the EEO field offices. EEO Headquarters provides program evaluation and other support to EEO field offices as needed.
- **EEO Reports** — EEO field offices provide EEO Headquarters with reports regarding EEO activities in the regional and district offices, including, but not limited to:
 - Complaint Status Reports, which provide statistical data regarding the status of discrimination complaints filed with EEO field offices;

^v Special Emphasis Program Managers advocate the hiring and advancement of minorities, women and persons with disabilities. Special Emphasis Programs include, but are not limited to, planning and managing special observances, recognizing achievements by members of targeted groups, participating in INS targeted recruitment efforts, and/or service on EEO advisory groups.

- **EEO Counselor Reports, which are completed in connection with the processing of discrimination complaints;**
- **Affirmative Employment Program Plan Reports, which provide statistical data regarding the hiring of minorities, women, and the disabled in INS field offices;**
- **Reports of Implementation, which report on efforts EEO field offices have made to comply with remedial orders issued by the Equal Employment Opportunity Commission and the Department of Justice Complaints Adjudication Office;**
- **Strategic Action Plan Reports, which report on efforts EEO field offices have made to meet the goals of INS EEO strategic action plans; and**
- **Special Emphasis Programs Reports, which report on activities of Special Emphasis Program managers in INS field offices**

APPENDIX E

WOMEN'S AND MINORITIES' TARGETED RECRUITMENT PROGRAM

The Immigration and Naturalization Service ("INS") is committed to a workforce which is as ethnically diverse as our labor market. Many of our occupations may require relocation to the southwest, learning of a second language, carrying a firearm, and passing rigorous physical fitness requirements. These requirements can pose serious challenges to our recruitment of women, minorities, and those living outside the southwest. Still, we are committed to explore ways to improve our outreach, recruiting, and marketing efforts to women and minorities. To a large extent, minorities and women are included in our outreach to college students and exiting military; however, in addition to those efforts, the following are examples of recruitment outreach to minorities and women which we would like to pursue. Which of these activities and the extent and frequency of our participation in them is dependent on the availability of funds and human resources and the need to recruit for entry level positions:

- Identifying key national organizations and local or regional chapters of such organizations;
- Identifying, attending, and exhibiting at appropriate national and regional conferences;
- Identifying any student chapters of these key associations, and participating and exhibiting at these events;
- Identifying and participating in key community events to increase awareness of INS career opportunities among targeted groups;
- Identifying and participating in job fairs and career days targeted towards women and minorities; and
- Coordinating placement of advertising and news articles in appropriate association and organization newsletters, journals, and other publications.

APPENDIX F

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

NORRIS POTTER III, and others
similarly situated,

Plaintiffs,

v.

JANET RENO, in her official
capacity as ATTORNEY GENERAL,
DEPARTMENT OF JUSTICE, and
DORIS MEISSNER, in her official
capacity as COMMISSIONER,
IMMIGRATION AND NATURALIZATION
SERVICE,

Defendants.

Civil Action No. _____

**[PROPOSED] ORDER GRANTING PRELIMINARY
APPROVAL OF SETTLEMENT AGREEMENT**

A Proposed Settlement Agreement has been submitted to the Court which purports to resolve the individual claim of named plaintiff, Norris Potter III, and the class claims presented by the plaintiffs. The Proposed Settlement Agreement obliges the parties to submit the Agreement to this Court for a preliminary certification of the class described in the Settlement Agreement, for its preliminary approval of the settlement as fair and reasonable to the class, and for approval of the method and form of the proposed notice to the class. After reviewing the material submitted, this Court hereby preliminarily certifies a class consisting of African-American INS "Officer Corps" employees who occupied the grade levels specified in Section I(A) of the Settlement Agreement during the time periods specified

therein. In addition, the Court preliminarily approves the Settlement Agreement as fair and reasonable to the class. The attached Notice is also approved by this Court as being sufficient to provide the notice to members of the plaintiff class required by Rule 23(e) of the Federal Rules of Civil Procedure.

The parties are hereby directed to proceed with notice to the class ~~in the manner prescribed in the Settlement Agreement.~~ as follows: ~~Within fifteen (15) days after Preliminary Approval of this Settlement Agreement and the Fairness Notice, plaintiffs' counsel shall send to the last known home address of each class member a copy of the Fairness Notice by first class mail, postage pre-paid. The defendants shall pay the cost of mailing the Fairness Notice. In addition, the INS will post a copy of the fairness notice on at least one bulletin board in each INS field office. Notice shall be provided to the class in accordance with the following schedule:~~

1. Final date for notice to the class -- _____.
2. Final date for receipt of objections to the Decree -- _____.
3. Fairness Hearing -- _____ at _____ a.m./p.m.

DATE

UNITED STATES DISTRICT JUDGE

APPENDIX G

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

NORRIS POTTER III, and others
similarly situated,

Plaintiffs,

v.

JANET RENO, in her official
capacity as ATTORNEY GENERAL,
DEPARTMENT OF JUSTICE,

Defendant.

Civil Action No. _____

NOTICE OF CLASS ACTION, PROPOSED SETTLEMENT AND FAIRNESS HEARING

Pursuant to Federal Rules of Civil Procedure Rule 23(b)(2) and (e), this is to advise you that a proposed settlement has been reached in the above-captioned case. If you are a class member, this proposed settlement may extinguish any rights you have to challenge certain employment practices which may have affected you between January 1, 1986 and the date of Preliminary Approval of this Settlement Agreement. If you are a member of the class and you have any questions about the proposed settlement, you may contact one of the plaintiffs' attorneys listed below.

DEFINITION OF CLASS

The class to which the settlement applies consists of African-American Officer Corps employees who occupied the following grade levels at any point during the time periods specified below:

a. **Deportation Officers (1801 series):** GS-9 or higher from January 1, 1986 through January 1, 1990 and GS-11 or higher from January 1, 1990 through the date of Preliminary Approval of this Settlement Agreement;

b. **Detention Enforcement Officers (1802 series):** GS-7 or higher from January 1, 1986 through the date of Preliminary Approval of this Settlement Agreement;

c. **Criminal Investigators (1811 series):** GS-11 or higher from January 1, 1986 through January 1, 1988 and GS-12 or

higher from January 1, 1988 through the date of Preliminary Approval of this Settlement Agreement;

d. Border Patrol Agents (1896 series): GS-9 or higher from January 1, 1986 through the date of Preliminary Approval of this Settlement Agreement;

e. Immigration Examiners/Adjudication Officers (1816 and 1801 series): GS-11 or higher from January 1, 1986 through April 1, 1994 and GS-12 or higher from April 1, 1994 through the date of Preliminary Approval of this Settlement Agreement. In addition, Immigration Examiners/Adjudication Officers who occupy Service Center Adjudication Officer positions, which were created April 1, 1994, belong in the class if they were GS-11 or higher from January 1, 1986 to June 12, 1995, and GS-12 or higher from June 12, 1995 through the date of Preliminary Approval of this Settlement Agreement;

f. Immigration Inspectors (1816 series): GS-9 or higher from January 1, 1986 through January 1, 1992 and GS-11 or higher from January 1, 1992 through the date of Preliminary Approval of this Settlement Agreement.

DESCRIPTION OF THE LITIGATION

Named plaintiff, Norris Potter II, an INS Criminal Investigator in the Los Angeles District, filed a class action discrimination complaint seeking monetary and injunctive relief for alleged violations of federal anti-discrimination statutes. Plaintiffs alleged that the following INS policies and practices prevented class members from being promoted to supervisory or senior, non-supervisory positions: (i) the alleged lack of objective criteria governing the assignment or appointment of employees to supervisory positions or to positions likely to lead to supervisory positions; (ii) the allegedly discriminatory promotion procedures contained in the INS's Merit Staffing Promotion Plan (MSP II); (iii) the INS's allegedly discriminatory methods of evaluating candidates for promotion, including its method of crediting the experience of candidates; (iv) the INS's allegedly discriminatory policies and practices concerning the selection of which employees would be rotated among INS components; (v) the INS's alleged policy and practice of permitting favoritism to play a factor in the selection of employees for promotion; (vi) the INS's alleged practice of permitting retaliation against EEO complainants; and (vii) the alleged failure of the INS to implement its Affirmative Action Plan or to adequately support and/or finance its EEO personnel and programs.

PROPOSED SETTLEMENT

The class representatives, on behalf of the class, have entered into a settlement agreement with the defendant. The settlement agreement is not to be taken as an indication that the

defendant was in any way liable. The following summary is intended for notice purposes only and has no binding legal effect. In the event of any perceived or actual conflict between the language of the settlement agreement and the language of this notice, only the language of the settlement agreement shall determine the obligations of each party. The Proposed Settlement Agreement, and all other documents filed in this action, may be examined at the office of the Clerk of the United States District Court, United States District Courthouse, 3rd and Constitution Ave., N.W., Washington, D.C. 20001, during regular business hours. Under the settlement agreement, the defendant has agreed to do the following:

A. Retroactive Relief

1. Remedial Promotions

Defendant has agreed to advertise and fill twenty-five (25) remedial positions which can only be filled by class members. The job categories and grade levels of these 25 remedial positions are as follows:

Immigration Examiners	2 GS-13; 1 GS-14
Deportation Officers	2 GS-12; 1 GS-13
Detention Enforcement Officers	3 GS-9; 1 GS-10
Criminal Investigators	2 GS-13; 1 GS-14
Immigration Inspector	8 GS-12; 1 GS-13
Border Patrol	2 GS-12; 1 GS-13

INS will issue job advertisements for each grade-level within each occupational category for each remedial promotion within 30 days of final approval of the Settlement Agreement. The job advertisements will not specify the geographical location of each remedial promotion. Class members who are interested in applying for the remedial promotions will then have two (2) weeks to submit applications in the manner specified in the job announcement.

INS will then convene a ratings panel to score the applications. After the applications have been scored, INS will issue vacancy announcements designating the location of specific remedial positions. All remedial positions (other than Border Patrol positions) will be located only in the following areas (including suboffices): Chicago, Miami, Washington, New York, Newark, N.J., Los Angeles, Ca., San Francisco, Ca., San Diego, Ca., Houston, Tex., Dallas, Tex., El Paso, Tex., Harlingen, Tex., Atlanta, Ga., New Orleans, La. In addition to above-listed locations, Immigration Inspector positions may also be located in Laguna Niguel, California. There are no geographical restrictions on the Border Patrol remedial positions. No more than one-third of the remedial promotions will be located in the any one of the locations listed above. No more than four of the

Immigration Inspector positions will be located in any one of the locations listed above.

Class members who wish to be considered for a remedial position in a designated location will be asked to notify the INS of that fact within 30 days of the issuance of the vacancy announcement by submitting a copy of their application and any other materials requested to the specified location.

The INS will review the applications already submitted by the class members and create a best-qualified list based on the scores previously assigned to the class member's applications by the rating panel. These best-qualified lists will be forwarded to the appropriate INS deciding official for a final decision on which class member appearing on the best-qualified list will be placed into the remedial position. All applicants referred as "best-qualified" will receive an interview (either personal or telephonic) with the selecting official. The selecting official's choice will be reviewed and approved in writing by the selecting official's supervisor before it is finalized. The defendant will fill these 25 remedial positions within one year from the effective date of the Settlement Agreement.

2. Monetary Relief

Defendants will pay \$3,830,622.00 into a backpay fund to be distributed to qualified members of the plaintiff class in accordance with the distribution plan appended to the Settlement Agreement as Appendix A. In addition, defendants will pay \$70,000 into a Class Service Award Fund for the purpose of making awards to individuals who plaintiffs determine have rendered valuable service to the class.

3. Relief for Class Representative, Norris Potter III

Defendant has agreed to promote named plaintiff, Norris Potter III, to a GS-13 Criminal Investigator position and to transfer him to Seattle, Washington. Mr. Potter also will receive a backpay award of \$90,000.00. In exchange, Mr. Potter waives any right to additional remedial promotions, backpay, compensatory damages or other relief.

B. Equitable Relief

1. Class Consultant

The parties have agreed to appoint an individual with expertise in the field of personnel management to serve as a class consultant. The INS will provide the class consultant with specified statistical data, broken down by race, concerning Officer Corps positions. The class consultant will then produce

two reports analyzing the pattern and distribution of African-American INS Officer Corps members and the success of the INS in improving the representation of African-American employees in supervisory and senior, non-supervisory Officer Corps positions, and making non-binding recommendations, if appropriate, concerning additional steps that could be taken by INS to improve such representation. INS will publicly issue written responses to both reports produced by the class consultant.

2. Competency-based promotional assessment program

During the three-year monitoring period, INS agrees to continue to develop and implement a competency-based promotional assessment program for all Officer Corps positions, except Detention Enforcement Officers. INS will continue to evaluate the effectiveness of the program in attracting and promoting qualified applicants and may revise the program as necessary to meet these goals. This commitment by the INS is contingent on the availability of appropriated funds.

3. INS EEO Office

During the three-year monitoring period, INS agrees to maintain the existing reporting relationships between EEO field officials and INS headquarters.

4. Targeted Recruitment

During the three-year monitoring period, INS agrees to use its best efforts to maintain INS's existing level of recruitment efforts for the trainee Officer Corps. INS reserves the right to make changes in the specifics of such recruitment efforts, such as methods used and areas or schools targeted by such efforts. This commitment by the INS is contingent on the availability of appropriated funds.

5. INS commitment to existing disciplinary policy for employees found to have engaged in discriminatory conduct

For the duration of the three-year monitoring period, INS commits to continue to consider appropriate disciplinary action in accordance with applicable standards for any employee found to have engaged in discriminatory behavior by the final decision in an administrative or federal court proceeding from which the INS chooses not to appeal. If formal disciplinary or adverse action is initiated against an employee for such behavior, that employee will not be considered eligible to be selected for promotion until final disposition of the disciplinary or adverse action.

D. Effective Date and Terms of Settlement Agreement

This Settlement Agreement shall take effect upon final approval by a district court following a fairness hearing. This Settlement Agreement will expire three years from the effective date of this Agreement.

E. Scope of Settlement and Preservation of Certain EEO Claims

This Settlement Agreement resolves and extinguishes all claims that African American employees were not selected for supervisory or senior non-supervisory positions, based on events occurring in whole or in part between January 1, 1986 and the date of the preliminary approval of this Settlement Agreement, as a result of race discrimination and/or retaliation based on a disparate impact theory of recovery or a disparate treatment theory of recovery supported by the following:

1. The claim that the INS has a policy or practice which has the result of denying African-Americans assignments or appointments to supervisory positions or positions which are likely to lead to supervisory positions;
2. The claim that the INS has a policy or practice which has the result of denying African-American employees the opportunity to participate in training for supervisory responsibilities;
3. The claim that the INS's promotion plan for supervisory positions -- Merit Staffing Plan II (MSP II) -- discriminated against African-Americans employed in INS Officer Corps positions on account of their race;
4. The claim that the INS administers and maintains a system of evaluating candidates for promotion in a manner which discriminates against African-Americans in INS Officer Corps positions on account of their race;
5. The claim that the INS's system of crediting the experience of candidates for promotion discriminates against African-Americans in INS Officer Corps positions on account of their race;
6. The claim that the INS rotates its employees among different components within the INS Officer Corps positions in a manner which discriminates against African-Americans employed in INS Officer Corps positions on account of their race;
7. The claim that the INS has a policy or practice

which has the result of permitting favoritism to influence hiring and promotion decisions and which discriminates against African-Americans employed in INS Officer Corps positions on account of their race;

8. The claim that the INS has a policy or practice which has the result of permitting retaliation against EEO complainants and which discriminates against African-Americans employed in INS Officer Corps positions on account of their race;
9. The claim that the INS had a policy or practice which discriminated against African-Americans employed in INS Officer Corps positions by failing to implement its Affirmative Action Plans; and
10. The claim that the INS had a policy or practice which discriminated against African-Americans employed in INS Officer Corps positions by failing to adequately support and/or finance its EEO personnel and programs.

The Settlement Agreement does not preclude class members from proceeding on a claim that he or she was not selected for a supervisory or senior, non-supervisory position as a result of race discrimination and/or retaliation based on a disparate treatment claim, so long as that claim is not supported by the evidence precluded above. However, any class member who receives a remedial promotion pursuant to the Settlement Agreement may not pursue any award of backpay and/or a remedial promotion in any administrative, state, or federal forum based in whole or in part on a disparate treatment claim alleging that he/she was not selected for a supervisory or senior, non-supervisory Officer Corps position on account of race and/or retaliation arising from actions by the INS that allegedly occurred in whole or in part between January 1, 1986 and the date of preliminary approval of this Settlement Agreement. Class members receiving a remedial promotion under this Settlement Agreement must affirmatively withdraw or dismiss any such request for backpay and/or a remedial promotion.

In addition, the INS shall be entitled to reduce any backpay paid to a class member after the effective date of this Settlement Agreement based in whole or in part on a disparate treatment claim alleging that he/she was not selected for a supervisory or senior non-supervisory position on account of race and/or retaliation arising from actions by the INS that allegedly occurred in whole or in part between January 1, 1986 and the date of Preliminary Approval of this Settlement Agreement ("subsequent disparate treatment backpay award") by the amount of any monetary award received by that class member pursuant to this Settlement

Agreement.

The Settlement Agreement does not preclude any class member from pursuing compensatory damages for a claim that he or she was not selected for a supervisory or senior, non-supervisory position on account of race and or retaliation arising from actions by the INS that allegedly occurred in whole or in part between January 1, 1986 and the date of Preliminary Approval of this Settlement Agreement, so long as such claim is based on a disparate treatment theory of recovery and is not supported by evidence precluded above.

F. Attorneys Fees and Expenses

The defendants have agreed to pay \$1,565,480.00 in attorneys' fees and for costs and expenses incurred to plaintiffs' counsel.

RIGHTS AND OBLIGATIONS OF ALL INS EMPLOYEES

As to class members: The Court has approved Norris Potter III to act as class representative, and his counsel, David L. Ross and Peter Szabadi, to act as class counsel throughout the proceedings in this case. If you do not wish to be represented by class counsel, you may participate individually or by your own attorney, at your own expense. You may advise the Court if, at any time, you consider that you are not being fairly and adequately represented by the named plaintiff and class counsel.

As to class members: You will be bound by all terms of the Settlement Agreement, should the Court approve it, and thereafter prohibited from challenging any of its provisions. The Settlement Agreement will become effective according to its terms upon full and final approval by the Court. If the Court does not approve the Settlement Agreement, the litigation may continue toward a trial on the merits.

As to non-class members: You may, at your own expense, submit comments individually or retain counsel to represent your interests in this matter.

NOTICE OF HEARING ON PROPOSED SETTLEMENT AGREEMENT

The court must determine that the proposed settlement agreement is fair and reasonable. This determination will be made at a hearing on the fairness of the proposed settlement agreement. This "fairness hearing" is scheduled for _____ in the courtroom of Judge _____, 3rd and Constitution Ave., N.W., Washington, D.C.

ANY MEMBER OF THE CLASS WHO WISHES TO COMMENT ON THE SETTLEMENT

AGREEMENT MUST FILE WRITTEN COMMENTS AT LEAST 30 DAYS BEFORE THE DATE OF THE FAIRNESS HEARING.

If you choose to submit comments or objections, you must file them in writing and include: (1) a heading that reads "Potter v. Reno, Civil Action No. _____;" (2) your name, address, and telephone number; (3) a specific description of your comments or objections; and (4) whether you believe that you are a potential class member. You must send, by first-class mail, postage prepaid, an original and one (1) copy of your comments or objections to the Court, one (1) copy to counsel for plaintiffs, and one (1) copy to the counsel for defendants at the following addresses:

Court

Clerk of the Court
United States District Court
3rd and Constitution Ave., N.W.
Washington, D.C. 20001

Counsel for Defendants

Patricia M. Russotto
Department of Justice
901 E St., N.W., Room 912
Washington, D.C. 20530

Counsel for Plaintiffs

David L. Ross, Esq.
Law Offices
6404 Wilshire Blvd., Suite 950
Los Angeles, California 90048
(213) 653-7724

Peter Szabadi, Esq.
1800 Century Park East
Suite 505
Los Angeles, CA 90067
(310) 788-5450

Any class member who has submitted a timely written objection may appear at the hearing and show cause why the settlement agreement should not be approved. Unless otherwise ordered by the Court, any class member who does not make his or her objection or opposition in the manner provided shall be deemed to have waived all objections and opposition to the fairness, reasonableness and adequacy of the proposed settlement. Objections raised at the hearing will be limited to those matters addressed in timely written objections. You need not appear at this hearing unless you object to the proposed settlement agreement.

QUESTIONS REGARDING THIS ACTION

If you have any questions regarding the substance of this Settlement Agreement or the procedure for its review and possible approval by the Court, you may contact class counsel or counsel for INS. DO NOT CONTACT THE CLERK OF COURT. Employees and former employees may contact class counsel, Peter Szabadi, Esq., 1800 Century Park East, Suite 505, Los Angeles, California 90067, (310) 788-5450 or David L. Ross, Esq., Law Offices, 6404 Wilshire Blvd., Suite 950, Los Angeles, California 90048, (213) 653-7724. Employees and former employees may also contact INS counsel Peter Gregory, Office of the General Counsel, [insert room number],

Immigration and Naturalization Service, Washington, D.C. [insert zip code], (202) 616-7970, or Patricia R. Coppolino, Department of Justice, Civil Division, Washington, D.C. 20530, (202) 514-4470.

DO NOT CONTACT THE COURT OR ANY OF ITS EMPLOYEES

REGARDING THIS NOTICE

By Order of the Court, United States District Court for the District of Columbia

DATED: _____

UNITED STATES DISTRICT JUDGE

Exhibit 2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NORRIS POTTER III, and others
similarly situated,

Plaintiffs,

v.

JANET RENO, in her official
capacity as ATTORNEY GENERAL,
DEPARTMENT OF JUSTICE, and
DORIS MEISSNER, in her official
capacity as COMMISSIONER,
IMMIGRATION AND NATURALIZATION
SERVICE,

Defendants.

Civil Action No. _____

FOR CLASS MEMBERS WHO ARE CURRENT EMPLOYEES

ACKNOWLEDGMENT OF NOTICE OF CLASS ACTION,
PROPOSED SETTLEMENT AND FAIRNESS HEARING

I, _____, hereby acknowledge that I
have received the Notice of Class Action, Proposed Settlement and
Fairness Hearing ("Fairness Notice") in Potter et al. v. Reno et
al., No. _____.

I further state that I am an African American Officer Corps
employee currently employed by the Immigration and Naturalization
Service and that I have occupied at least one of the following
grade levels at some point during the time periods specified
below:

- a. Deportation Officers (1801 series): GS-9 or
higher from January 1, 1986 through January 1, 1990 and GS-11 or
higher from January 1, 1990 through insert date of Preliminary

Approvall;

b. Detention Enforcement Officers (1802 series):

GS-7 or higher from January 1, 1986 through [insert date of Preliminary Approvall;

c. Criminal Investigators (1811 series): GS-11 or

higher from January 1, 1986 through January 1, 1988 and GS-12 or higher from January 1, 1988 through [insert date of Preliminary Approvall;

d. Border Patrol Agents (1896 series): GS-9 or

higher from January 1, 1986 through [insert date of Preliminary Approvall;

e. Immigration Examiners/Adjudication Officers (1816

and 1801 series): GS-11 or higher from January 1, 1986 through April 1, 1994 and GS-12 or higher from April 1, 1994 [insert date of Preliminary Approvall. In addition, Immigration Examiners/Adjudication Officers who occupy Service Center Adjudication Officer positions, which were created April 1, 1994, belong in the class if they were GS-11 or higher from January 1, 1986 to June 12, 1995, and GS-12 or higher from June 12, 1995 through [insert date of Preliminary Approvall; and

f. Immigration Inspectors (1816 series): GS-9 or higher

from January 1, 1986 through January 1, 1992 and GS-11 or higher from January 1, 1992 through [insert date of Preliminary Approvall.

I have returned this acknowledgment form, signed and dated,

to the individual who distributed the Notice to me.

I direct counsel for the class to contact me for further communications about the class at the following address:

[please check the sentence that applies to you]

only at my business address.

only at my home address provided below:

[street]

[city, state, zip code]

[home telephone number]

Date: _____

Signature

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NORRIS POTTER III, and others
similarly situated,

Plaintiffs,

v.

JANET RENO, in her official
capacity as ATTORNEY GENERAL,
DEPARTMENT OF JUSTICE, and
DORIS MEISSNER, in her official
capacity as COMMISSIONER,
IMMIGRATION AND NATURALIZATION
SERVICE,

Defendants.

Civil Action No. _____

FOR CLASS MEMBERS WHO ARE FORMER EMPLOYEES

ACKNOWLEDGMENT OF NOTICE OF CLASS ACTION,
PROPOSED SETTLEMENT AND FAIRNESS HEARING

I, _____, hereby acknowledge that I
have received the Notice of Class Action, Proposed Settlement and
Fairness Hearing ("Fairness Notice") in Potter et al. v. Reno et
al., No. _____.

I further state that I was an African American Officer Corps
employee formerly employed by the Immigration and Naturalization
Service and that I occupied at least one of the following grade
levels at some point during the time periods specified below:

- a. Deportation Officers (1801 series): GS-9 or
higher from January 1, 1986 through January 1, 1990 and GS-11 or
higher from January 1, 1990 through [insert date of Preliminary
Approval];

b. Detention Enforcement Officers (1802 series): GS-7 or higher from January 1, 1986 through [insert date of Preliminary Approval];

c. Criminal Investigators (1811 series): GS-11 or higher from January 1, 1986 through January 1, 1988 and GS-12 or higher from January 1, 1988 through [insert date of Preliminary Approval];

d. Border Patrol Agents (1896 series): GS-9 or higher from January 1, 1986 through [insert date of Preliminary Approval];

e. Immigration Examiners/Adjudication Officers (1816 and 1801 series): GS-11 or higher from January 1, 1986 through April 1, 1994 and GS-12 or higher from April 1, 1994 [insert date of Preliminary Approval]. In addition, Immigration Examiners/Adjudication Officers who occupy Service Center Adjudication Officer positions, which were created April 1, 1994, belong in the class if they were GS-11 or higher from January 1, 1986 to June 12, 1995, and GS-12 or higher from June 12, 1995 through [insert date of Preliminary Approval]; and

f. Immigration Inspectors (1816 series): GS-9 or higher from January 1, 1986 through January 1, 1992 and GS-11 or higher from January 1, 1992 through [insert date of Preliminary Approval].

I have returned this acknowledgment form, signed and dated, to INS Headquarters in Washington D.C., via first class mail:

[insert INS address to which acknowledgment should be sent]

I direct counsel for the class to contact me for further communications about the class at the following address:

[street]

[city, state, zip code]

[home telephone number]

Date: _____

Signature

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NORRIS POTTER III, and others
similarly situated,

Plaintiffs,

v.

JANET RENO, in her official
capacity as ATTORNEY GENERAL,
DEPARTMENT OF JUSTICE, and
DORIS MEISSNER, in her official
capacity as COMMISSIONER,
IMMIGRATION AND NATURALIZATION
SERVICE,

Defendants.

Civil Action No. _____

FOR NONCLASS MEMBERS WHO ARE CURRENT EMPLOYEES

ACKNOWLEDGMENT OF NOTICE OF CLASS ACTION,
PROPOSED SETTLEMENT AND FAIRNESS HEARING

I, _____, hereby acknowledge that I
have received the Notice of Class Action, Proposed Settlement and
Fairness Hearing ("Fairness Notice") in Potter et al. v. Reno et
al., No. _____.

I further state that I am not an African American Officer
Corps employee currently employed by the Immigration and
Naturalization Service, but I have occupied at least one of the
following grade levels at some point during the time periods
specified below:

- a. Deportation Officers (1801 series): GS-9 or
higher from January 1, 1986 through January 1, 1990 and GS-11 or
higher from January 1, 1990 through insert date of Preliminary

Approvall;

b. Detention Enforcement Officers (1802 series):

GS-7 or higher from January 1, 1986 through [insert date of Preliminary Approvall;

c. Criminal Investigators (1811 series): GS-11 or

higher from January 1, 1986 through January 1, 1988 and GS-12 or higher from January 1, 1988 through [insert date of Preliminary Approvall;

d. Border Patrol Agents (1896 series): GS-9 or

higher from January 1, 1986 through [insert date of Preliminary Approvall;

e. Immigration Examiners/Adjudication Officers (1816

and 1801 series): GS-11 or higher from January 1, 1986 through April 1, 1994 and GS-12 or higher from April 1, 1994 [insert date of Preliminary Approvall. In addition, Immigration

Examiners/Adjudication Officers who occupy Service Center

Adjudication Officer positions, which were created April 1, 1994,

belong in the class if they were GS-11 or higher from January 1,

1986 to June 12, 1995, and GS-12 or higher from June 12, 1995

through [insert date of Preliminary Approvall; and

f. Immigration Inspectors (1816 series): GS-9 or higher

from January 1, 1986 through January 1, 1992 and GS-11 or higher

from January 1, 1992 through [insert date of Preliminary

Approvall.

I have returned this acknowledgment form, signed and dated,

to the individual who distributed the Notice to me.

Date: _____

Signature

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NORRIS POTTER III, and others
similarly situated,

Plaintiffs,

v.

JANET RENO, in her official
capacity as ATTORNEY GENERAL,
DEPARTMENT OF JUSTICE, and
DORIS MEISSNER, in her official
capacity as COMMISSIONER,
IMMIGRATION AND NATURALIZATION
SERVICE,

Defendants.

Civil Action No. _____

FOR NONCLASS MEMBERS WHO ARE FORMER EMPLOYEES

ACKNOWLEDGMENT OF NOTICE OF CLASS ACTION,
PROPOSED SETTLEMENT AND FAIRNESS HEARING

I, _____, hereby acknowledge that I
have received the Notice of Class Action, Proposed Settlement and
Fairness Hearing ("Fairness Notice") in Potter et al. v. Reno et
al., No. _____.

I further state that I am not an African American Officer
Corps employee currently employed by the Immigration and
Naturalization Service, but I was formerly employed as an Officer
Corps employee by INS and I occupied at least one of the
following grade levels at some point during the time periods
specified below:

- a. Deportation Officers (1801 series): GS-9 or
higher from January 1, 1986 through January 1, 1990 and GS-11 or

higher from January 1, 1990 through insert date of Preliminary Approval;

b. Detention Enforcement Officers (1802 series):

GS-7 or higher from January 1, 1986 through insert date of Preliminary Approval;

c. Criminal Investigators (1811 series): GS-11 or

higher from January 1, 1986 through January 1, 1988 and GS-12 or higher from January 1, 1988 through insert date of Preliminary Approval;

d. Border Patrol Agents (1896 series): GS-9 or

higher from January 1, 1986 through insert date of Preliminary Approval;

e. Immigration Examiners/Adjudication Officers (1816

and 1801 series): GS-11 or higher from January 1, 1986 through April 1, 1994 and GS-12 or higher from April 1, 1994 insert date of Preliminary Approval. In addition, Immigration

Examiners/Adjudication Officers who occupy Service Center Adjudication Officer positions, which were created April 1, 1994, belong in the class if they were GS-11 or higher from January 1, 1986 to June 12, 1995, and GS-12 or higher from June 12, 1995 through insert date of Preliminary Approval; and

f. Immigration Inspectors (1816 series): GS-9 or higher

from January 1, 1986 through January 1, 1992 and GS-11 or higher from January 1, 1992 through insert date of Preliminary Approval.

I have returned this acknowledgment form, signed and dated,
to INS Headquarters in Washington D.C., via first class mail:

[insert INS address to which acknowledgment should be sent]

Date: _____

Signature

APPENDIX H

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NORRIS POTTER III, and others
similarly situated,

Plaintiffs,

v.

JANET RENO, in her official
capacity as ATTORNEY GENERAL,
DEPARTMENT OF JUSTICE, and
DORIS MEISSNER, in her official
capacity as COMMISSIONER,
IMMIGRATION AND NATURALIZATION
SERVICE,

Defendants.

Civil Action No. _____

[PROPOSED] ORDER GRANTING FINAL APPROVAL OF SETTLEMENT AGREEMENT

Having been satisfied that the class has received adequate notice of this Proposed Settlement Agreement pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, and that said notice gave each member of the plaintiff class and all other persons whose interests or legal rights might be affected by entry of this Order identified above the opportunity to file objections or comments and to appear at a hearing to voice those objections before the final approval of the Settlement Agreement by the Court

UPON CONSIDERATION of this Settlement Agreement, the relief awarded herein, and all objections presented by affected class

members, and for good cause shown, it is hereby:

ORDERED, that the class described in section I(A)(2) of the Settlement Agreement is formally certified;

ORDERED, that the Settlement Agreement is **FAIR and REASONABLE** to both the individual named plaintiff, Norris Potter III, and to the class;

ORDERED, that the Settlement Agreement is finally **APPROVED** as binding on the class; and it is

ORDERED, that, pursuant to Section VII of the Agreement, this Court shall retain jurisdiction of this matter for three years from the date of this Order for the sole purpose of adjudicating any claim of a material breach of the Settlement Agreement that may be presented to the Court pursuant to Section VIII of the Agreement. Pursuant to Section V(F) of the Settlement Agreement, this order of final approval and retention of jurisdiction by the Court does not make the Agreement an order of the Court enforceable by the Court's contempt powers.

DATE

UNITED STATES DISTRICT JUDGE