



increasing staffing within the units of ICE Enforcement and Removal Operations (“ERO”) that oversee the non-detained docket and providing clear instruction to ERO personnel making enforcement decisions regarding consideration of pending applications (which include, inter alia, the provisional waiver process) when deciding whether to arrest, detain or execute the removal order of an alien. *See* Ex. A. ICE ERO is also mandating training for its officers on the requirement that they consider pending applications throughout the process of arrest, detention, and removal decision making. *See* Ex. A at ¶ 3.

3. **USCIS:**

a. **Petitioners’ Statement:**

i. So long as Respondents do not refuse discovery from USCIS on the basis that USCIS is not a named party, Petitioners do not see a need to formally add USCIS as a party at this time. Respondents are considering their position on this point. Petitioners will continue to meet and confer with Respondents.

b. **Respondents’ Statement:**

i. Respondents do not consent to formally adding USCIS as a named party, especially while they consider whether there is a need to add USCIS as a party at all. Respondents require some time to determine whether they would, in the absence of an amended petition adding USCIS as a party, refuse to produce discovery if Petitioners propound any on USCIS.

4. **How The Case Should Proceed:**

a. Petitioners' Statement:

- i. *Motion for Class Certification:* Petitioners respectfully request that the Court schedule a hearing on the motion in October. To the extent the Court deems it helpful, Petitioners propose supplemental briefing on the issue first raised by Respondents during oral argument on August 20, 2018, that is, when the rights associated with provisional waiver applications attach (upon the filing of an I-130 Petition, as Petitioners contend, or upon the approval of an I-212 application, as Respondents apparently contend). Petitioners propose that Respondents file their supplemental brief on September 26, 2018 and Petitioners file their response 14 days later on October 10, 2018.
- ii. *Motion for Temporary Restraining Order and Preliminary Injunctive Relief:* In view of the August 23 Order, and the Court's directive regarding Respondents' compliance with the legal obligations defined in that Order, Petitioners agree to stay the Motion provided that the case proceed to discovery and Respondents provide Petitioners' counsel with information regarding, among other things: (i) how participation in the provisional waiver process (starting with the filing of an I-130 application) is being accounted for, i.e., what instruction or training is provided on how it should be assessed as a criterion; (ii) a list of the particular cases for which ICE took participation in the provisional waiver process into account (starting with the filing of an I-130 application); and (iii) the outcome of such cases.

iii. *Rule 16(b) Conference and Case Schedule*: Petitioners respectfully request that the Court schedule a conference pursuant to Fed. R. Civ. P. 16(b) and L.R. 16.1(a) within 30 days of the filing of this status report so that the parties can participate in a Rule 26(f) conference and negotiate a case schedule.

b. Respondents' Statement:

- i. *Motion for Class Certification*: Respondents request that this Court stay Petitioners' motion for class certification because (1) any decision on the entire merits of this case will necessarily affect briefing on class certification, just as the Decision made additional briefing on class certification necessary; and (2) ICE ERO's actions to comply with the legal obligations as defined in the Decision encompass the proposed class such that staying a decision on class certification will not cause putative class members irreparable harm.
- ii. *Motion for Preliminary Injunctive Relief*: Respondents request that this Court stay Petitioners' motion for preliminary injunctive relief to allow Respondents time to make the changes necessary to comply with the legal obligations stated in the Decision, and to consider whether any additional measures should be taken to ensure compliance.
- iii. *Rule 16(b) Conference and Case Schedule*: Respondents agree with Petitioners and likewise request that the Court schedule a conference pursuant to Fed. R. Civ. P. 16(b) and L.R. 16.1(a) within 30 days of the filing of this status report so that the parties can participate in a Rule 26(f)

conference and negotiate a case schedule. However, Respondents oppose any request by Petitioners to conduct further discovery as unnecessary to resolve the purely legal issues presented in the motion for summary judgment and because extensive expedited discovery has already been conducted.

Respectfully submitted this 12th day of September 2018.

*Counsel for the Respondents*

JOSEPH H. HUNT  
Assistant Attorney General

WILLIAM C. PEACHEY  
Director  
Office of Immigration Litigation

J. MAX WEINTRAUB  
Senior Litigation Counsel

/s/ Mary L. Larakers  
MARY L. LARAKERS  
(Texas Bar # 24093943)  
Trial Attorney  
U.S. Department of Justice, Civil Division  
Office of Immigration Litigation,  
District Court Section  
P.O. Box 868, Ben Franklin Station  
Washington, DC 20044  
(202) 353-4419  
(202) 305-7000 (facsimile)  
mary.l.larakers@usdoj.gov

EVE A. PIEMONTE, BBO No. 628883  
Assistant United States Attorney  
United States Attorney's Office  
1 Courthouse Way, Suite 9200  
Boston, MA 02210  
(617) 748-3100  
Eve.Piemonte@usdoj.gov

*Counsel for the Petitioners*

/s/ Kevin S. Prussia  
Kevin S. Prussia (BBO # 666813)  
Michaela P. Sewall (BBO # 683182)  
Jonathan A. Cox (BBO # 687810)  
Stephen Provazza (BBO # 691159)  
Colleen M. McCullough (BBO # 696455)  
WILMER CUTLER PICKERING  
HALE AND DORR LLP  
60 State Street  
Boston, MA 02109  
Telephone: (617) 526-6000  
Facsimile: (617) 526-5000  
kevin.prussia@wilmerhale.com  
michaela.sewall@wilmerhale.com  
jonathan.cox@wilmerhale.com  
stephen.provazza@wilmerhale.com

Matthew R. Segal (BBO # 654489)  
Adriana Lafaille (BBO # 680210)  
AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION OF MASSACHUSETTS, INC.  
211 Congress Street  
Boston, MA 02110  
(617) 482-3170

Kathleen M. Gillespie (BBO # 661315)  
Attorney at Law  
6 White Pine Lane  
Lexington, MA 02421  
(339) 970-9283

**CERTIFICATE OF SERVICE**

I, Mary L. Larakers, Trial Attorney, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants.

Dated: September 12, 2018

/s/ Mary L. Larakers  
Mary L. Larakers  
Trial Attorney