

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Benjamin Casper, Katherine Evans, and
Robert Koulish,

Civ. No. 16-cv-380 (ADM/BRT)

Plaintiffs,

**STIPULATION OF SETTLEMENT
AND DISMISSAL**

v.

U.S. Department of Homeland Security, and
U.S. Immigration and Customs
Enforcement,

Defendants.

Plaintiffs Benjamin Casper, Katherine Evans, and Robert Koulish and Defendants U.S. Department of Homeland Security (“ICE”) and U.S. Immigration and Customs Enforcement (“ICE”), by and through their undersigned counsel, hereby stipulate and agree to the following settlement and dismissal of Plaintiffs’ Amended Complaint filed May 31, 2016.

WHEREAS, in October and November 2014 Plaintiffs submitted five FOIA requests to ICE seeking information related to ICE’s use of the Risk Classification Assessment tool (“RCA”);

WHEREAS, these requests were assigned internal FOIA tracking numbers of 2015-ICFO-03041, 2015-ICFO-03027, 2015-ICFO-03004, 2015-ICFO-02993, and 2015 ICFO-08279.

WHEREAS, Plaintiffs were not satisfied by ICE's response to these FOIA requests;

WHEREAS, Plaintiffs sought administrative review but remained unsatisfied by ICE's response;

WHEREAS, on February 16, 2016, Plaintiffs filed the instant lawsuit against Defendants based on the first four requests, and Plaintiffs filed an Amended Complaint including claims based on all five FOIA requests on May 31, 2016;

WHEREAS, on August 30, 2016, Plaintiff Koulish submitted an additional FOIA request seeking certain RCA Detailed Summaries for the ICE Baltimore Field Office, No. 2016-ICFO-56008;

WHEREAS, the parties have agreed to resolve this litigation and the six FOIA requests referenced above on the following terms;

NOW THEREFORE,

The parties have agreed to a resolution of all claims in this lawsuit on the following terms:

1. **RCA Summaries.** In relation to FOIA requests 2015-ICFO-03004, 2015-ICFO-02993, and 2016-ICFO-56008, ICE will produce RCA Detailed Summaries as follows:

a. Updated RCA entry chart. ICE will provide counsel for Plaintiffs an updated RCA entry chart with approximately 1.4 million entries. The chart will contain the same data fields ICE previously produced in charts provided to Plaintiffs on December 11, 2015 in response to FOIA requests

2015-ICFO-03004 and 2015-ICFO-02993. ICE will provide the chart within two (2) weeks of execution of this Stipulation.

- b. Plaintiffs identify sample. Within 60 days of ICE's provision of the updated RCA entry chart, Plaintiffs will identify by the identification number ("ID#") on the chart a sample of 2,500 entries from the updated RCA entry chart, and provide the list of those entries to AUSA Ann Bildtsen, counsel for ICE.
- c. ICE provides RCA Detailed Summaries. ICE will generate RCA Detailed Summaries for the selected 2,500 entries redacted in accordance with the FOIA. These RCA Detailed Summaries will be generally consistent with the exemplar RCA Detailed Summary attached as Exhibit A to this Stipulation.
- d. Time. ICE will produce RCA Detailed Summaries on a rolling basis starting within 45 days of Plaintiffs' provision of the list of 2,500 entries to ICE. ICE will provide at least 250 summaries per month until it has produced all 2,500.

2. **RCA System and Training Documents.**

- a. Search and production of documents. In response to FOIA requests 2015-ICFO-03041, 2015-ICFO-03027, and 2015 ICFO-08279, ICE will undertake all reasonable efforts to locate and produce to Plaintiffs the most recent versions of the following documents or categories of documents if

they exist and are producible under the FOIA, even if prior versions of the documents were previously produced to Plaintiffs:

- i. Updated versions of the RCA Intake Worksheet and Instructions
 - ii. Special Vulnerabilities Additional Resources
 - iii. RCA Executive Action Scoring Update
 - iv. Command Center Job Aid
 - v. Detainee Transfer Policy (also known as Intake Risk Assessment)
 - vi. Job Aids for End Users (may be more than one set of job aids)
 - vii. Additional Guidance issued with a 2/5/13 Lessons Learned document
 - viii. Business Requirements for versions of the RCA after 1.0 (8/2011) and any other document modifying, revising or updating these business requirements even if not titled "Business Requirements." Item iii (RCA Executive Action Scoring Update) is an example of a change to the business rules.
 - ix. Updated versions of the RCA Quick Reference Guide 3.0 (3/2013)
 - x. Updated version of RCA Playbook 1.1 (9/2012)
 - xi. U.S. ICE, Enforcement and Removal Operations, Land Enforcement Systems and Analysis, Risk Classification Assessment (RCA) Quick Reference Guide Versions 1.0 (5/2012) and earlier and later versions of this document (other than March 2013, which ICE already provided to Plaintiffs)
 - xii. United States Department Homeland Security Scratch RCA sheet, revised 5/29/12, and any earlier or later versions of this document
 - xiii. November 2012 PowerPoint entitled "Risk Classification Assessment (RCA) Phase III & IV Workflow Overview," and any earlier or later versions of this document
 - xiv. November 2012 training PowerPoint entitled "Risk Classification Assessment POC and Training SME," and any earlier or later versions of this document (other than the May 2012 version ICE already produced to Plaintiffs).
 - xv. Screenshots or other format to allow full viewing of a web-based training, also referred to as the Virtual University (VU) Training, produced to Plaintiffs, specifically the pages bates numbered: 54, 62, 63, 67, 71-73, 76, 77, 83, 84, 89, 90, 91, 106-08, 127, 128, 153, 175, and 186.
- b. Confirmation that certain documents do not exist. With regard to the following documents or categories of documents, ICE has conducted a

search and does not believe it has any additional such documents other than the materials that have already been produced to Plaintiffs. ICE will conduct a follow-up search for any additional responsive documents and will produce any that it finds. In its production of documents that follows this Stipulation, ICE will provide a statement that either (1) the further search has been completed and no documents were found; or (2) additional documents in one or more of these categories were located and are being produced.

- i. Training, guidance, or protocols as to when an ICE Supervisor may reject the RCA recommendations;
 - ii. Training, guidance, or protocols as to how an ICE officer enters information into the RCA that indicates whether a specific crime requires mandatory detention; and
 - iii. Training, guidance, or protocols as to when information concerning a special vulnerability is communicated by RCA users to the detention facility and/or information concerning whether a special vulnerability identified by the detention facility is used to revise the RCA recommendations and decisions.
- c. Substantially similar document. If ICE locates a document that is substantially similar to the documents listed in sections 2(a) or 2(b) above but that does not identically match the description above, ICE will produce the substantially similar document if it is producible under the FOIA.
- d. Time. ICE will complete its search for and production of the documents listed above in paragraph 2(a) and 2(b) within 90 days of the execution of this Stipulation. If ICE is unable to meet this deadline it will contact

Plaintiffs before the expiration of the 90 days and request a reasonable extension of no longer than 45 days.

- e. No modification of FOIA exemptions. By entering into this Stipulation, ICE does not waive any right to assert any FOIA defense or exemption.
- f. Redactions and withheld documents. ICE may redact or withhold the documents referenced above pursuant to a FOIA exemption. If a document has been withheld in its entirety, ICE will either produce that document with every page fully redacted but with the title of the document unredacted, or will provide a list of the document titles for fully-withheld documents.
- g. Procedure for challenging redactions and/or withholdings. Within 30 days of the final production of the documents referenced in this paragraph 2, Plaintiffs will notify Defendants of any pages or documents it seeks to challenge. ICE will provide a Vaughn index for such pages or documents within 45 days. The parties and litigation counsel will then meet and confer in an attempt to resolve any remaining disputes. If Plaintiffs remain unsatisfied, they may request an administrative review of any disputed redaction or withholding by different ICE personnel than those who made the initial determination. If a dispute remains after the administrative review, or if the administrative review is not completed in the time allotted by statute, Plaintiffs may challenge the redaction or withholding by seeking to enforce this Stipulation in the U.S. District Court of the District of

Minnesota. The standard of review for any such challenge under this Stipulation is whether the FOIA allows the redaction or withholding.

3. Fees. Each party agrees to release the other from any other liability for costs and attorney's fees incurred through the date of this Stipulation, and for all fees ICE could have charged for searches executed and records produced pursuant to this Stipulation. Plaintiffs reserve the right to seek costs and attorney's fees for future litigation costs, including time spent enforcing this Stipulation and litigating claimed exemptions. Plaintiffs will not seek costs or attorney's fees for future non-litigation activities, such as reviewing records produced or conferring with Defendants.

4. Release of claims and dismissal of the action with prejudice. The parties agree that this Stipulation resolves the five FOIA requests specified in the First Amended Complaint, and Plaintiff Koulish's subsequent FOIA request dated August 30, 2016 for RCA summaries from the Baltimore field office. In exchange for Defendants' agreement to the terms of this Stipulation, Plaintiffs release all claims against Defendants, its successors, the United States of America, and any United States department or agency that Plaintiffs asserted or could have asserted in this litigation or which arise out of any of the matters alleged in the Amended Complaint with regard to the six FOIA requests encompassed by this Stipulation, except to the extent provided for in this Stipulation.

Plaintiffs hereby dismiss with prejudice the Amended Complaint under Fed. R. Civ. P. 41(a)(2). Upon the execution of this Stipulation, the parties will file the Stipulation in this action and provide to the Court the proposed order attached to this

Stipulation as Exhibit B. The dismissal of the Amended Complaint will be effective upon the Court's entry of the proposed Order.

5. Binding. The parties hereby declare that they have voluntarily entered into this Stipulation in good faith, have read and fully understand the entire Stipulation, and consider it to be a fair and reasonable agreement. The parties hereby declare further that the undersigned counsel are fully authorized to enter into this Stipulation on behalf of their respective clients. This Stipulation shall be binding upon and inure to the benefit of the parties hereto and their respective predecessors, successors, agents, and assigns.

6. Counterparts. The parties may execute this Stipulation in counterparts, each of which constitutes an original and all of which constitute one and the same Stipulation. Facsimiles and pdf versions of signatures shall constitute acceptable, binding signatures for purposes of this Stipulation.

7. Court's jurisdiction to enforce Stipulation. The parties agree that the Court will retain jurisdiction to adjudicate any dispute arising out of, relating to, or alleging a breach of this Stipulation.

IT IS SO STIPULATED:

DORSEY & WHITNEY LLP

Dated: January 19, 2017

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Exhibit A



Risk Classification Assessment Detailed Summary (point-in-time)
United States Department of Homeland Security
Immigration & Customs Enforcement
ENFORCEMENT AND REMOVAL OPERATIONS

Person ID: ██████████ Sex: M DOB: ██████████ 1993 Current Age: 23 COB: ELSAL COC: ELSAL Subject ID: 346322259 Processing Disposition: Bag and Baggage Case #: ██████████ Case Category: 8C Docket: WCD - Closed Docket	Status as of 07/01/2013 1516 : Inactive (archived) Initialized On: 07/01/2013 Man Det Stat/Alleg: N/A Custody Decision: Detailed by the Department of Homeland Security Last Decision Date: 07/01/2013 Risk to Public Safety: Medium Custody Classification: High Special Vulnerabilities: None Risk of Flight: High
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Recommendations and Decision Results as of 07/01/2013 1516

Date / Time	Decision	Recommendation(Rec.)/Decision Outcome	Man Det Stat/Alleg	Special Vulner.	Risk to Public Safety	Risk of Flight	Decision By
08/19/2013 1152	Assessment Inactive (Archived)	Rec: EARM Case Closed	N/A	N/A	N/A	N/A	██████████
07/01/2013 1516	Custody Classification Level Decision	High	N/A	None	Medium	High	██████████
07/01/2013 1457	Submitted for Custody Classification Supervisory Approval	Rec: High	N/A	None	Medium	High	██████████
07/01/2013 1440	Detain / Release Decision	Detained by the Department of Homeland Security	N/A	None	Medium	High	██████████
07/01/2013 1342	Submitted for Detain/Release Supervisory Approval	Rec: Detained by the Department of Homeland Security	N/A	None	Medium	High	██████████
07/01/2013 1338	Risk Classification Assessment Initiated	N/A	N/A	N/A	N/A	N/A	██████████

Special Vulnerabilities as of 07/01/2013 1516

Added On	Added By	Description
07/01/2013 1338	██████████	None

Additional information relevant to the users observations and assessment:
N/A

The values above represent all special vulnerabilities that existed on the assessment as of 07/01/2013 1516 .

Mandatory Detention per Statutes and Allegations as of 07/01/2013 1516

Evaluation Criteria	Outcome
Is the alien subject to mandatory detention based on statutes and allegations?	N/A
Is the alien's case in a final order of removal status?	Yes (Final Order: 02/02/2009)
Is the final order date within 90 days of the current date?	No
If the final order date is outside 90 days of the current date, is the alien's removal likely in the reasonably foreseeable future?	Yes
Is the alien a re-entry after a previous removal order (executed Final Order)?	No

The values above represent the results of the mandatory detention per statutes and allegations and all case status checks on the assessment as of 07/01/2013 1516 .

* The table below lists all INA charges that have been added to the arrest record (encounter associated with the risk classification assessment).

Charged On	Section	Description
05/27/2008	212a6Ai	ALIEN PRESENT WITHOUT ADMISSION OR PAROLE - (PWAs)

★ Indicates an INA charge that will flag the alien as mandatory detention per statutes and allegations.

Risk to Public Safety as of 07/01/2013 1516

Risk to Public Safety: Medium

Criminal Record Evaluation Criteria	Outcome
Severity of pending charges or convictions associated with the ICE encounter.	Increased risk to public safety - Highest Severity *(a)
Number of special public safety factors (such as DUI) (excluding those used above).	No relevant criminal history *(b)
Single most serious conviction remaining in criminal history (excluding those used above).	Increased risk to public safety - Moderate Severity *(c)
Number of felony / misdemeanor convictions remaining (excluding those used above).	No relevant criminal history *(d)
History/Pattern of Violence (excluding those used above).	No relevant criminal history. Minimum Threshold: 2 *(e)

The table below lists all criminal charges and convictions used in the criminal record checks described above.

	Date Added	NCIC	Description	Offense Severity	Charge Date	Conviction Date	Disposition	Sentence Length
*(a)	05/02/2013	1103	Rape - Strongarm	Highest	05/02/2013		Pending	0y 0m 0d
N/A	05/02/2013	1399	Assault	High	05/02/2013		Pending	0y 0m 0d
N/A	05/02/2013	3562	Marijuana - Possession	Moderate	03/07/2012		Pending	0y 0m 0d
*(c)	06/28/2013	3699	Sex Offense	Moderate	05/02/2013	06/27/2013	Convicted	8y 0m 0d

- *(a) Indicates a conviction used to score the severity of crimes associated with the ICE encounter check (if applicable).
- *(b) Indicates convictions used to score the number of special public safety factors check (if applicable).
- *(c) Indicates the single conviction used to score the single remaining most serious conviction check (if applicable).
- *(d) Indicates the convictions used to score the remaining misdemeanors / felonies check (if applicable).
- *(e) Indicates charges used to score the remaining violent criminal charges check (if applicable).

Other Public Safety Factors Evaluation Criteria	Outcome
Type of open wants / warrants.	None

Supervision history (e.g., bond breaches, conditions of supervision violations).	None
Security Threat Group (STG) status.	No confirmed or suspected STG/gang affiliation

The values above represent the results of the Public Safety Factors evaluation criteria results on the assessment as of 07/01/2013 1516 .

Risk of Flight as of 07/01/2013 1516
Risk of Flight: High

Immigration / Substance Abuse / Identification Evaluation Criteria	Outcome
Immigration violation history.	No prior VR(s) and/or VD(s)
History of absconding.	None
Substance abuse history.	No Known History of Receiving Treatment
The individual possesses a valid government issued document from their COC.	No
Does the individual possess invalid identification documents (IDs) from any country?	No Number of unique names/aliases: N/A
Immigration case status.	Alien Has a Final Order of Removal, and No Pending Appeals
Home Stability Evaluation Criteria	
The individual has lived at his/her address for 6 months or more	
Ties To Local Community Evaluation Criteria	
The Individual has family or support in local community.	
The individual has family in the US but not in the local community	

The values above represent the results of the Flight Risk Factors evaluation criteria results on the assessment as of 07/01/2013 1516 .

The following scoring and list of value (LOV) versions were utilized at the time this decision was completed and data snapshot was stored.

- RCA Scoring Version 2.32
- Special Vulnerabilities Version 1.0
- Subject to Mandatory Detention Version N/A
- Disciplinary Infractions Version N/A