

DAVIS WRIGHT TREMAINE LLP

1 THOMAS R. BURKE (SBN 141930)  
2 DAVIS WRIGHT TREMAINE LLP  
3 505 Montgomery Street, Suite 800  
4 San Francisco, California 94111-6533  
5 Telephone: 415.276.6500  
6 Facsimile: 415.276.6599  
7 thomasburke@dwt.com

8 Attorneys for Plaintiff JEFFERY MARTINS  
9 (additional counsel on next page)

10 MELINDA HAAG (CSBA 132612)  
11 United States Attorney  
12 ALEX G. TSE (CSBN 152348)  
13 Chief, Civil Division  
14 ABRAHAM A. SIMMONS (CSBN 146400)  
15 Assistant United States Attorney

16 U.S. Attorney's Office/Civil Division  
17 450 Golden Gate Avenue, 9<sup>th</sup> Floor  
18 San Francisco, California 94102-3495  
19 Telephone: (415) 436-7264  
20 Facsimile: (415) 436-6748  
21 Email: Abraham.simmons@usdoj.gov

22 Attorneys for Defendants

23 IN THE UNITED STATES DISTRICT COURT  
24 THE NORTHERN DISTRICT OF CALIFORNIA  
25 SAN FRANCISCO DIVISION

26 JEFFREY MARTINS,  
27 Plaintiff,

28 v.

29 UNITED STATES CITIZENSHIP AND  
30 IMMIGRATION SERVICES, an agency of the  
31 United States Department of Homeland Security;  
32 UNITED STATES DEPARTMENT OF  
33 HOMELAND SECURITY; ALEJANDRO  
34 MAYORKAS, in his official capacity as Director  
35 of United States Citizenship and Immigration  
36 Services; JANET NAPOLITANO, in her official  
37 capacity as Secretary of the Department of  
38 Homeland Security,  
39 Defendants.

) Case No. C 13-00591 LB  
)  
) SETTLEMENT AGREEMENT AND  
) [PROPOSED] ORDER OF DISMISSAL

) Action Filed: February 11, 2013

**Additional Counsel for Plaintiff**

ROBIN L. GOLDFADEN (SBN 208055)  
LAWYERS' COMMITTEE FOR CIVIL RIGHTS  
OF THE SAN FRANCISCO BAY AREA  
131 Steuart Street, Suite 400  
San Francisco, CA 94105  
Telephone: 415.543.9444 ext. 201  
Facsimile: 415.543.0296  
[rgoldfaden@lccr.com](mailto:rgoldfaden@lccr.com)

DAVIS WRIGHT TREMAINE LLP

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

DAVIS WRIGHT TREMAINE LLP

1 In consideration of the terms set forth in this Settlement Agreement and the covenants and  
2 conditions contained herein (the "Agreement"), Plaintiff Jeffrey Martins ("Plaintiff") and  
3 Defendants United States Citizenship and Immigration Services (USCIS), United States  
4 Department of Homeland Security (DHS), Alejandro Mayorkas, in his official capacity as Director  
5 of USCIS, and Rand Beers (substituted for Janet Napolitano), in his official capacity as Secretary  
6 of the DHS, (collectively, "Defendants"), by and through their undersigned counsel, hereby agree  
7 as follows:

8 WHEREAS, on February 11, 2013, Plaintiff Jeffrey Martins ("Plaintiff") filed a Complaint  
9 in the United States District Court for the Northern District of California raising claims under the  
10 Freedom of Information Act and the Administrative Procedure Act,

11 WHEREAS, among the allegations in the complaint were statements that:

- 12 A. Plaintiff is an immigration attorney who has had a practice of submitting  
13 requests under the Freedom of Information Act (FOIA) to Defendant USCIS,  
14 an agency of Defendant DHS, for the Alien Files (A-Files) of his clients;
- 15 B. Plaintiff, with the consent of his clients, submitted FOIA requests for the  
16 individual A-Files of clients who had applied affirmatively for asylum and who  
17 had been referred for removal proceedings before the Immigration Court;
- 18 C. The FOIA requests for A-Files of individual clients included:  
19 NRC2012026531, submitted on or about March 26, 2012; NRC2012033089,  
20 submitted on or about April 12, 2012; NRC2012038580, submitted on or about  
21 May 1, 2012; NRC2012046553, submitted on or about May 23, 2012;  
22 NRC2012049919, submitted on or about June 1, 2012; NRC2012055907,  
23 submitted on or about June 15, 2012; NRC2012055854, submitted on or about  
24 June 15, 2012; NRC2012003177, submitted on or about January 19, 2012;  
25 NRC2012069832, submitted on or about July 27, 2012; NRC2012099752,  
26 submitted on or about November 1, 2012 (collectively, "Plaintiff's ten FOIA  
27 requests");  
28

DAVIS WRIGHT TREMAINE LLP

1 D. For each of Plaintiff’s ten FOIA requests, responsive documents included notes  
2 taken by asylum officers to document their interviews of asylum applicants  
3 (“asylum officer interview notes”);

4 E. In response to each of Plaintiff’s ten FOIA requests, Defendants withheld the  
5 asylum officer interview notes and did not produce such notes to Plaintiff;

6 F. Plaintiff’s Complaint requested that the Court grant declaratory and injunctive  
7 relief, including production of the withheld asylum officer interview notes,  
8 attorneys’ fees and costs, and such relief as the Court found to be just and  
9 equitable.

10 WHEREAS, Defendants produced to Plaintiff, without redaction, the full set of asylum  
11 officer interview notes responsive to each of the Plaintiff’s ten FOIA requests enumerated above;

12 WHEREAS, after good-faith negotiations, Plaintiff and Defendants (collectively, the  
13 “Parties”) have agreed to resolve this matter including all claims that were made or could have  
14 been made in Plaintiff’s Complaint filed in this action on February 11, 2013, upon the terms, and  
15 subject to the conditions, set forth in this Agreement.

16 IT IS HEREBY AGREED AS FOLLOWS:

17 1. The Parties agree that the above-entitled action shall be conditionally dismissed without  
18 prejudice upon the Court’s execution of the instant proposed order in exchange for Defendants’  
19 agreement that, within three months from the date of execution of this Agreement, USCIS shall  
20 instruct officers, employees, and agents involved in the processing of FOIA requests, including  
21 those made by Plaintiff on behalf of his clients, for A-Files or for asylum officer interview notes  
22 specifically, that records reflecting information, instructions, and questions asked by officers and  
23 responses given by applicants in asylum interviews, consistent with the “Interviewing Part II –  
24 Note-Taking” lesson module of the Asylum Officer Basic Training Course, dated August 10,  
25 2009, shall be produced. This instruction will preclude the withholding of such documents on the  
26 basis that asylum interview notes are generically protected by the deliberative process privilege by  
27 virtue of their status as asylum interview notes. This Agreement will not prevent the withholding  
28 or redaction of such documents on the basis of any other applicable privilege or FOIA Exemption.

1 By no later than three months after the Court executes its order conditionally dismissing this  
 2 action in accordance with this paragraph, Defendants shall provide to the Court and Plaintiff's  
 3 counsel written confirmation demonstrating their compliance with the terms of the Agreement.

4 2. The Parties agree that upon the execution of this Agreement and dismissal of the  
 5 Complaint with prejudice, except as provided in paragraph 4 regarding attorneys' fees and costs,  
 6 Plaintiff hereby releases and forever discharges Defendants, and their successors, the United States  
 7 of America, and any federal employee, department or agency, from any and all claims and causes  
 8 of action that Plaintiff asserts or could have asserted in this litigation regarding the FOIA requests  
 9 enumerated in the Complaint ("Released Claims"). Such released claims include any and all  
 10 claims raised in Plaintiff's Complaint filed on February 11, 2013, and any additional claims that,  
 11 as of the date this agreement is signed, Plaintiff could have raised regarding the withholding of  
 12 asylum officer interview notes covered by the FOIA requests enumerated in the Complaint. The  
 13 Agreement bars further action on the Released Claims in any judicial or administrative forum.

14 3. The Parties acknowledge that this Agreement is entered solely for the purpose of  
 15 settling and compromising any remaining claims in this action without further litigation, and it  
 16 shall not be construed as an admission by any party of the truth of any allegation or the validity of  
 17 any claim asserted in this action. This Agreement shall not be used in any manner to establish or  
 18 dispute liability for fees, amounts, or hourly rates in any other case. In addition, the Parties agree  
 19 that none of the facts as alleged in paragraphs 52 through 61 of Plaintiff's Complaint filed  
 20 February 11, 2013, shall be included in any subsequent action to serve as the basis for a claim by  
 21 Plaintiff that Defendants are or have engaged in a pattern and practice of withholding of asylum  
 22 officer interview notes in violation of the Freedom of Information Act or other laws, provided  
 23 however that Plaintiff shall not be limited in his ability to seek enforcement of this Agreement and  
 24 shall not be limited in his ability to file any future FOIA request or to dispute, appeal, challenge,  
 25 or otherwise seek redress for any future withholding or redaction of records he requests under  
 26 FOIA or otherwise.

27 4. The Parties shall continue to confer and attempt to reach agreement as to fees and costs.  
 28 If no agreement is reached Plaintiff shall file a Motion for Attorney Fees and Costs by no later

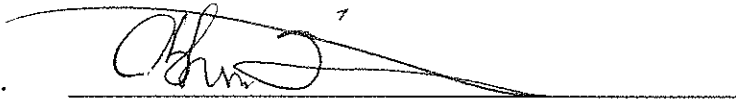
DAVIS WRIGHT TREMAINE LLP

1 than January 16, 2014. The parties agree that the Court shall retain jurisdiction for the purpose of  
2 resolving any motion for attorneys' fees and costs.

3 5. This Agreement shall be binding on Plaintiff, Defendants, and all successors, assignees,  
4 employees, and all those working for or on behalf of Defendants. If any provision of this  
5 Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability  
6 of the remaining provisions shall not in any way be affected or impaired thereby.

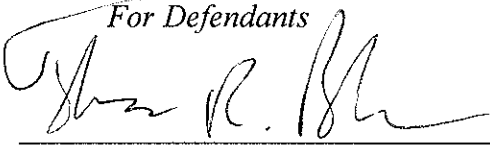
7 MELINDA HAAG  
8 United States Attorney

9  
10 Dated this 18th day of November, 2013.

11   
12 By: ABRAHAM A. SIMMONS  
13 Assistant United States Attorney  
14 Office of the United States Attorney  
15 for the Northern District of California

16 *For Defendants*

17  
18 Dated this 18th day of November, 2013.


19   
20 Thomas R. Burke  
21 Davis Wright Tremaine LLP  
22 505 Montgomery Street, Suite 800  
23 San Francisco, CA 94111

24 Robin Goldfaden  
25 Lawyers' Committee for Civil Rights of the  
26 San Francisco Bay Area  
27 131 Steuart Street, Suite 400  
28 San Francisco, CA 94105

*For Plaintiff*

IT IS SO ORDERED:

Dated this 19th day of November, 2013.

  
Honorable Laurel Beeler  
United States District Judge  
United States District Court for the Northern  
District of California