

SETTLEMENT AGREEMENT

This settlement agreement (hereinafter “Agreement”) is entered between Plaintiffs and Defendants (collectively, “the parties”), with reference to the facts and terms recited herein. A complete list of the Plaintiffs who are parties to this Agreement is set forth on Exhibits 1 and 2, inclusive. These exhibits are incorporated by reference in this Agreement for all purposes. The terms of this Agreement only apply to the entities specifically identified herein.

WHEREAS ITServe Alliance, Inc. commenced litigation styled as *ITServe Alliance, Inc. v. United States Citizenship and Immigration Services*, No. 1:18-cv-02350-RMC in the United States District of Columbia (“*ITServe* Litigation”) on October 11, 2018;

WHEREAS Judge Huvelle entered an order, dated March 6, 2019, consolidating certain separate lawsuits as part of the *ITServe* Litigation for the limited purpose of resolving three legal issues;

WHEREAS Judge Collyer entered an order, dated March 10, 2020 granting summary judgment, in part, with respect to certain issues in favor of the Plaintiffs set forth in Exhibits 1 and 2;

WHEREAS in recognition that the parties and the interests of justice are best served by settling the disputes between them, the parties, through their counsel, have engaged in settlement negotiations and have agreed to settle their disputes in connection with the petitions set forth on Exhibits 1 and 2, inclusive, without the need for further litigation;

NOW, THEREFORE, in consideration of the mutual agreements and promises entered into between the parties and intending to be legally bound, the parties agree as follows:

TERMS OF AGREEMENT

1. Effective Date of the Agreement. This Agreement will become effective upon execution of the Agreement by all parties or their authorized representatives (the “Effective Date”).
2. 2018 Policy Memorandum. USCIS will rescind the 2018 Contract and Itinerary Memorandum (PM-602-0157) in its entirety within ninety (90) days of the Effective Date of this Agreement.
3. 1991 Regulatory Establishment of Itinerary Requirement at 8 C.F.R. § 214.2(h)(2)(i)(B). USCIS will abstain from the application of the 1991 itinerary requirement, 8 C.F.R. § 214.2(h)(2)(i)(B), in the limited instance of applicable H-1B adjudications until such

time that the Department of Homeland Security or USCIS issue new adjudicative and/or regulatory guidance on this requirement.

4. Re-adjudication. USCIS agrees to reopen and re-adjudicate the administrative decisions set forth in Exhibits 1 and 2, inclusive, as follows:

- A. Within ninety (90) days of the Effective Date of this Agreement, USCIS will re-open and adjudicate the decisions (i) listed in Exhibit 1, but which are not before Judge Collyer, and (ii) listed in Exhibit 2. If USCIS issues a Request for Evidence (“RFE”), USCIS will issue a decision within sixty (60) days of the receipt of the RFE response. The parties further agree that the timeline set forth in this paragraph does not apply if the matter is the subject of an investigation for fraud or for national security concerns. The matters listed in Exhibit 1 that are before Judge Collyer have already been addressed by the March 10, 2020 order entered in *ITServe Alliance, Inc. v. Cissna*, Civil No. 18-2350 (D.D.C.), and are outside the scope of this paragraph.
- B. With respect to the matters referenced in paragraph No. 4(A) (above), USCIS agrees that it will not apply the interpretation of the current regulatory language in 8 C.F.R. § 214.2(h)(4)(ii), defining “United States employer” to require an analysis of employer-employee relationship under common law, and USCIS agrees to comply with Judge Collyer’s March 10, 2020 decision in *ITServe Alliance, Inc. v. Cissna*, Civil No. 18-2350 (D.D.C.).
- C. With respect to the matters referenced in paragraph No. 4(A) (above), USCIS will not issue approvals for H-1B petitions with validity periods shorter than the time period requested by the H-1B petitioner, *unless* such decisions include or are accompanied by a brief explanation as to why the validity period has been limited and in compliance with Judge Collyer’s March 10, 2020, decision in *ITServe Alliance, Inc. v. Cissna*, Civil No. 18-2350 (D.D.C.).

5. Force-Majeure. If USCIS is unable to meet any of the deadlines, as stated in paragraph No. 4(A) above, because of the COVID-19 pandemic or the limited availability of resources to receive or adjudicate RFE responses due to the COVID-19 pandemic, USCIS may extend the deadlines stated in paragraph No. 4(A) above by sixty-days, provided USCIS notifies Plaintiffs’ counsel by email identifying the petitions subject to this paragraph No. 5 before the deadlines expire.



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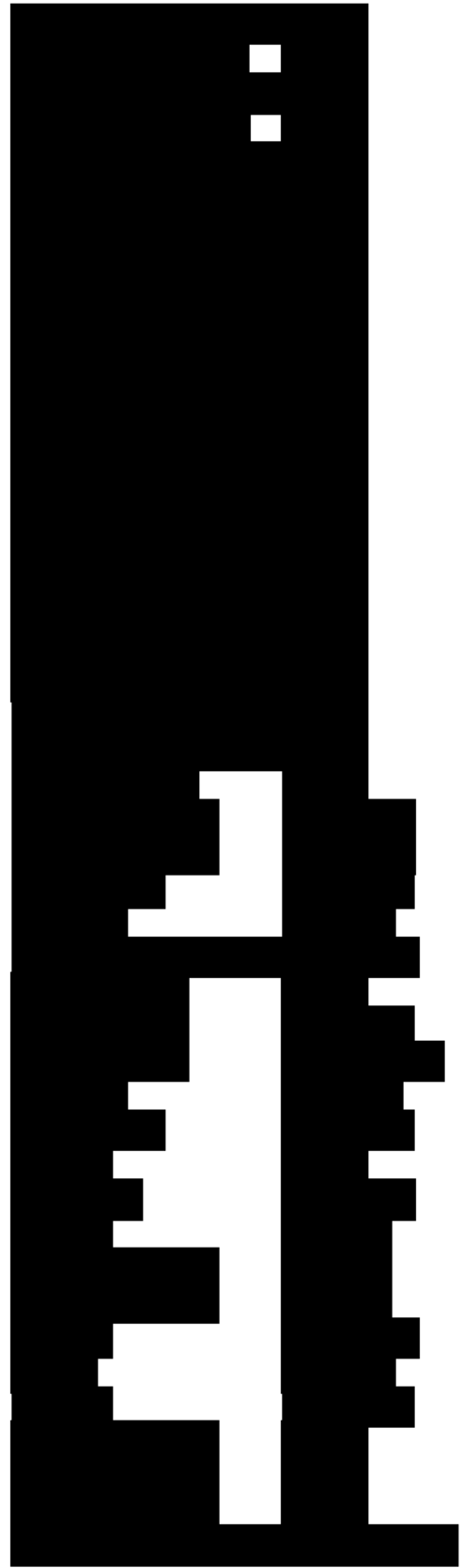
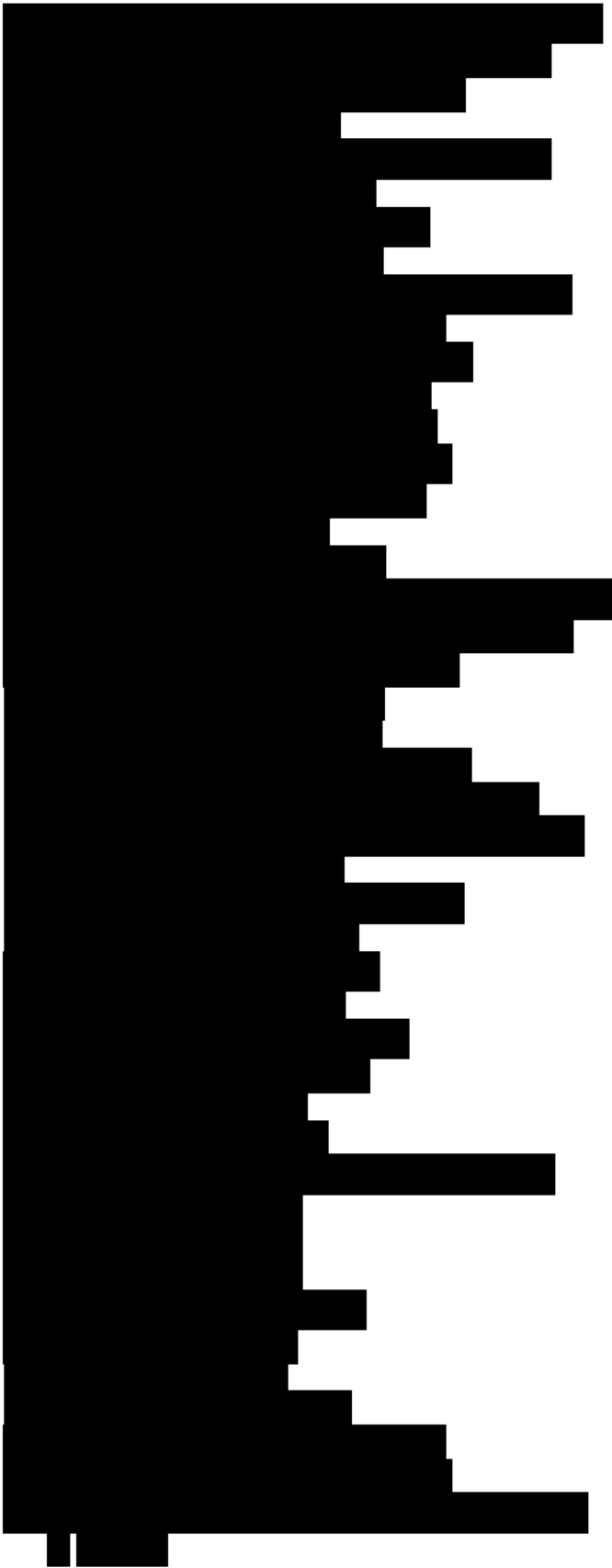
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7. Dismissal. Plaintiffs agree to dismiss with prejudice the litigation referenced as nos. 17, 25, 29, and 38 through 61, inclusive, in paragraph 6 above, within 30 days of receipt of the Settlement Payment referenced in paragraph 6 above. Defendants agree to withdraw and dismiss with prejudice their appeal, in the litigation referenced as No. 1 in paragraph 6 above, filed in the Court of Appeals for the District of Columbia Circuit, within ten days of the Effective Date of the Agreement.

8. Authority. The parties recognize and agree that this Agreement shall not be construed in any way limiting the authority of the Department of Homeland Security or USCIS to issue new regulatory guidance or sub-regulatory guidance (including, but not limited to, policy memoranda) regarding the H-1B program or any other topic. The parties further recognize and agree that this Agreement shall not limit in any way Plaintiffs' ability, individually or collectively, to challenge in administrative proceedings or through a civil action the substantive or procedural validity of any new regulatory guidance or sub-regulatory guidance (including, but not limited to, policy memoranda) regarding the H-1B program or any other topic, as contrary to the requirements under the Administrative Procedure Act or any other statute, regulation, or decisional law.

9. No Acknowledgment of Wrongdoing. The parties enter into this Agreement for the sole purpose of settling and disposing civil actions referenced in paragraph 4 and to avoid additional unnecessary litigation. This Agreement does not constitute an admission of guilt or wrongdoing by any of the parties.

10. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to this action and supersedes all prior discussions, agreements, and understandings, both written and oral, among the parties in connection with the settlement of this action.

11. Exhibits. Exhibits 1 and 2 are incorporated into and made a part of this Agreement.

12. Headings. Any headings or titles preceding any of the sections or provisions of this Agreement are inserted solely for the convenience of reference, shall not constitute a part of this Agreement, and shall not otherwise affect the meanings, content, effect, or construction of this Agreement.

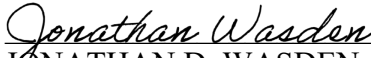
13. Enforcement and Venue. Any civil action to enforce this Agreement or any civil action seeking remedies, legal or equitable, for breach or non-performance of this Agreement shall be brought only in the United States District Court for the District of Columbia.

14. Counterparts. This Agreement may be executed in counterparts, each one of which constitutes an original, and all of which constitute one and the same Agreement. Facsimiles and electronic transmissions of signatures shall constitute acceptable binding signatures for the purposes of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement, and the undersigned represent that they are authorized to execute and deliver this Agreement on behalf of the respective parties.

DATED: May 16, 2020

CONSENTED AND AGREED TO BY:



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Dated: May 20, 2020

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EXHIBIT 1

ITSERVE v. USCIS

1:18-cv-02350-RMC

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