

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into as of July 1, 2021, by and between Plaintiff Freedom for Immigrants (“FFI”) and Defendants U.S. Department of Homeland Security (“DHS”), Alejandro N. Mayorkas, U.S. Immigration and Customs Enforcement (“ICE”), and Tae D. Johnson (collectively, “Defendants”). FFI and the Defendants are referred to in this Agreement collectively as the “Parties.”

1. RECITALS

- 1.1 On December 10, 2019, FFI commenced an action against Defendants in the United States District Court for the Central District of California (“Court”) entitled *Freedom for Immigrants v. U.S. Department of Homeland Security, et al.*, Case No. 19-CV-10424-AB (“Action”), alleging that Defendants’ shutdown of the free and confidential extension *9233 constituted retaliation in violation of the First Amendment.
- 1.2 Concurrent with the filing the Action, FFI filed an Application for Preliminary Injunction to enjoin Defendants from further interference with the extension and to order it immediately restored. On February 11, 2020, the Court granted FFI’s Application and entered an Order (“Preliminary Injunction”) ordering that Defendants are:
 1. ENJOINED AND RESTRAINED from further interference with the operation of the free and confidential extension used by Freedom for Immigrants and Friends of Miami Dade Detainees as a hotline for communicating with immigrants in detention; and
 2. ORDERED to restore Freedom for Immigrants and Friends of Miami Dade Detainees’ free and confidential extension at all detention facilities operated, controlled, and/or overseen by ICE.
- 1.3 The Parties have agreed to resolve the Action, without the time and expense of further litigation.

2. SETTLEMENT AND RELEASE

- 2.1 **Effective Date of Agreement:** The Agreement will become effective upon execution of the Agreement by all of the parties (“Effective Date”).
- 2.2 **Free and Confidential Extension:** ICE shall continue to provide FFI an extension that was ordered restored pursuant to the district court’s preliminary injunction order on the ICE Detainee Telephone Service (“DTS”) pro bono platform (“Extension”) that is free and confidential, without interruption or interference, so long as FFI abides by the terms regarding restricted calls as set forth in Paragraph 2.3 of this Agreement. ICE shall not monitor or record calls on FFI’s Extension to ensure that the line remains confidential. The Extension shall be accessible at all detention facilities operated, controlled, and/or overseen by ICE, including but not limited to any contracted facilities operated by municipalities or private entities, subject to any unforeseen future changes to the DTS pro bono platform that universally affect all organizations and extensions on the pro bono list. The Extension shall be included on a list of DTS numbers available at each detention facility in which the Extension is accessible.

- 2.3 **Restricted Calls:** FFI understands that three-way calling and/or call forwarding activities with third parties is strictly prohibited through the current DTS pro bono platform subject to the exceptions enumerated herein. If ICE discovers that FFI has engaged in three-way calling and/or call forwarding activity through the DTS pro bono platform other than the enumerated exceptions, such use may result in initial removal from the system for twelve months but only following completion of the Dispute Resolution procedure set forth in Paragraph 2.4. After this 12-month period, FFI may apply for reinstatement of pro bono privileges. FFI agrees that it will not use the Extension to engage in three-way calling or call forwarding. FFI shall educate its staff and volunteers not to engage in three-way calls or call forwarding over the Extension, and FFI shall monitor use of the extension to prevent three-way calling and call forwarding. However, FFI's use of a private branch exchange ("PBX") or similar technology to route calls to FFI's volunteers and staff (so long as those individuals agree not to engage in three-way call or call forwarding), and connections to professional/certified translators or third-party translation services, are expressly permitted and shall not be deemed as prohibited three-way calling and/or call forwarding activity.
- 2.4 **Dispute Resolution:** Inadvertent or one-off three-way calling and/or call forwarding activity shall result in only a written warning to FFI and its undersigned counsel, detailing any specific information evidencing that such calls took place and how ICE gathered that information. In the event that ICE discovers three-way calls or call forwarding activity occurring on the Extension within twenty-one (21) days after the aforementioned warning has been issued and received by FFI and FFI's undersigned counsel, undersigned counsel for Defendants shall contact undersigned counsel for FFI within twenty-one (21) days of the additional activity to provide notice of these violations and information regarding such activity. Upon receipt of this report, counsel for FFI shall have twenty-one (21) days to respond to the information provided by counsel for Defendants. Within seven (7) days of FFI's response, counsel for the Parties shall meet and confer in good faith regarding the information exchanged and whether any additional action is required. To be clear, the parties must engage in a meaningful meet and confer, including but not limited to ICE providing FFI any additional information it has obtained regarding the calling activity and the Parties discussing means by which they can resolve the dispute without requiring the Court's assistance. Should the meet and confer not resolve the dispute, at that point ICE may seek enforcement of the terms of this agreement in Court, including temporary suspension of FFI's operation of the Extension while such motion is pending. ICE shall not suspend, terminate, or otherwise interfere with FFI's operation of the Extension unless it complies with its obligations regarding the dispute resolution process. Routine emergency procedures that allow ICE to temporarily restrict telephone access at a particular facility for emergency events such as riots shall not be considered an interference with operation of the Extension to the extent that any such restrictions are applied equally to all extensions on the DTS pro bono platform.
- 2.5 **Dismissal:** Within seven (7) business days following the complete execution of this Agreement, the Parties will file a joint stipulation of settlement and dismissal of the Action.
- 2.6 **Application for Extension:** Within 60 days of executing this Agreement, FFI agrees to apply for an extension on the DTS pro bono platform through the current process for non-governmental organizations ("NGOs") not appearing on the Executive Office

for Immigration Review list ("EOIR List"), which is attached as Exhibit A to this Agreement.

- 2.6.1 The Parties acknowledge that the current application process requires the NGO to confirm its understanding that any discovery of three-way calling and/or call forwarding activity on an extension shall result in permanent removal from the platform. The Parties further acknowledge that this conflicts with the Dispute Resolution provision of this Agreement set forth in Paragraph 2.4. Accordingly, ICE agrees that the Dispute Resolution provision at Paragraph 2.4 will govern FFI's operation of the Extension for the term of this Agreement, such that ICE shall not be permitted to remove the Extension from the DTS pro bono platform except pursuant to the procedures outlined in that provision, so long as this Agreement remains in effect.
 - 2.6.2 ICE agrees to make a determination regarding FFI's eligibility for an extension on the DTS platform in a fair and equal manner consistent with ICE's treatment of all non-EOIR List NGOs. ICE further agrees to issue a written determination regarding FFI's eligibility for an extension on the DTS platform within sixty (60) days of receiving FFI's application. Should ICE determine that FFI is not eligible for an extension and deny FFI's request, ICE shall provide a detailed, written explanation of its denial along with the determination.
 - 2.6.3 Should ICE deny FFI's request for an extension on the DTS pro bono platform pursuant to Paragraph 2.6, the other terms of this Agreement remain in force. A denial of FFI's request pursuant to Paragraph 2.6 shall not preclude FFI from applying again for an extension on the DTS pro bono platform in the future, or attempting to challenge that denial.
 - 2.6.4 Neither the fact of FFI's application nor any documents or materials in FFI's application shall (i) constitute, be alleged to constitute, or be construed as an admission that FFI did not apply for, did not obtain access to, or was not granted the Extension, or (ii) be alleged or deemed to be an acknowledgement as to the validity of Defendants' claim that FFI was or is not authorized to use the Extension.
 - 2.6.5 ICE's determination as to FFI's eligibility pursuant to Paragraph 2.6 for an extension on the DTS platform shall not affect FFI's continued operation of the Extension for the term of this Agreement, except pursuant to the procedures outlined in Paragraph 2.4.
- 2.7 **Termination of Agreement:** This Agreement, and the obligations pursuant to this Agreement, terminates or otherwise expires five (5) years from the Effective Date. The parties may meet and confer to discuss a possible extension of the terms of this Agreement beyond this five (5) year term.
- 2.7.1 Should ICE determine pursuant to the process set forth in paragraph 2.6.2 that FFI is eligible for an extension, the termination of this Agreement shall not result in the termination of the Extension, subject to the provisions set forth in 2.7.2 and 2.7.3.

- 2.7.2 If, before the five (5) year termination date, ICE establishes a new public-facing policy/procedure/guideline that is applied equally to all organizations using the DTS pro bono platform, the Parties agree that: (1) FFI will receive notice of the policy change at least six (6) months before the termination of this Agreement; (2) the Parties shall remain bound by the terms of this Agreement for the duration of the five (5) year term of this Agreement, even if a new policy/procedure/guideline is instituted that applies to all organizations; and (3) at the termination of this five (5) year Agreement, FFI will be required to comply with the new policy/procedure/guideline to continue operating the Extension as an unmonitored, pro bono line on the DTS pro bono platform.
- 2.7.3 In the event a new public-facing policy/procedure/guideline that is applied equally to all organizations which use the DTS pro bono platform is established within six (6) months of the termination of this five (5) year Agreement, FFI will have six (6) months from the date of notice of the new policy to comply to continue operating the Extension as an unmonitored, pro bono line on the DTS pro bono platform. In this event, the Parties agree to meet and confer to discuss a possible extension of the terms of this Agreement for the limited purpose and term (no more than six (6) months from the date of notice) necessary for FFI to comply with the new policy.
- 2.8 **Continuing Jurisdiction:** The Parties agree, and the stipulation shall specify, that the Court shall retain continuing jurisdiction to enforce the Agreement, including but not limited to the performance of the obligations contemplated thereunder, and to resolve any disputes that may arise. The Court's jurisdiction ends when this Agreement terminates.
- 2.9 **Fees:** The Parties agree that ICE shall pay FFI attorneys' fees in the amount of \$100,970.34 within sixty (60) days of the execution of this Agreement. Apart from the payment of that sum, FFI agrees that it shall not otherwise seek, solicit, or request additional attorneys' fees and/or litigation costs for this Action under the Equal Access to Justice Act, 28 U.S.C. § 2412, or any other provision.
- 2.10 **No Admission of Wrongdoing:** The parties enter into this Agreement for the sole purpose of settling and disposing of this Action. This Agreement does not constitute an admission of guilt or wrongdoing by any of the parties. Further, each party is precluded from using this Agreement to establish liability.
- 2.11 **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 this Agreement.
- 2.12 **Applicable Law:** This Agreement shall be interpreted in accordance with the laws of the United States without respect to the law of any particular State or territory.
- 2.13 **Execution of Agreement and Multiple Counterparts:** This Agreement may be signed in counterparts. Facsimile and email transmissions of the original signatures to this Agreement shall have the same effect as the original signatures.

2.14 **Amendments to be in Writing:** The parties reserve the right to amend this Agreement. No amendment, change, or modification to this Agreement shall be valid unless executed in writing and signed by both parties or their counsel.

Dated: July 1st, 2021

Freedom for Immigrants

By: Sierra Kraft

Sierra Kraft

Its: Director of Finance & Donor
Stewardship

Dated: _____

Counsel for Defendants
U.S. Department of Homeland Security
Alejandro N. Mayorkas
U.S. Immigration and Customs
Enforcement Tae D. Johnson

By: Colin A. Kisor
Deputy Director
U.S. Department of Justice
Civil Division
Office of Immigration Litigation
District Court Section

Exhibit A

V. **DTS Pro Bono Platform Access for Other NGOs**

New requests to add numbers to the DTS pro bono platform, other than those entities actively registered on the DOJ EOIR List, will be reviewed by the ICE DTS COR. Any decisions to include or remove numbers from the DTS pro bono system are made at the sole discretion of the ICE DTS COR on a case-by-case basis after proper due diligence is exercised in investigating the applicant's need for access. NGOs not otherwise providing legal services subject to the EOIR List requirements stated in Section IV of this broadcast message for non-profit bona fide legal organizations must apply for DTS pro bono access privileges through the following process:

Entities requesting a DTS pro bono system call line shall provide a letter addressed to CMD on the entity's letterhead including each of the following:

1. The entity's mission and its specific need for pro bono system access;
2. The entity's website details and/or other supporting information or documentation of its mission;
3. A statement including all of the following: "*(Insert Entity Name) understands that three-way calling and/or call forwarding activities with third parties is strictly prohibited through the Detainee Telephone System (DTS) pro bono platform and that any discovery of three-way calling and/or call forwarding activity by (Insert Entity Name) through the DTS pro bono platform shall result in permanent removal from the system*".
4. Signature by the Executive official of the organization.