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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CONCELY DEL CARMEN MENDEZ
ROJAS, et al.,

Plaintiffs,

v.

JOHN F. KELLY, SECRETARY OF
HOMELAND SECURITY, et
al.,

Defendants.

CASE NO. C16-1024 RSM

**STIPULATED
PROTECTIVE ORDER**

I. PURPOSES AND LIMITATIONS

Disclosure and discovery in this action is likely to involve production of confidential, privileged information, including law enforcement information protected from disclosure by the Freedom of Information Act, 5 U.S.C. § 552 et seq., the Privacy Act, 5 U.S.C. § 552a, and the Immigration and Nationalization Act, for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords

1 from public disclosure and use extends only to the limited information or items that are entitled
2 to confidential treatment under the applicable legal principles, and it does not presumptively
3 entitle parties to file confidential information under seal.

4 **II. DEFINITIONS**

5 a. Challenging Party: A Party that challenges the designation of information or items
6 under this Order.

7 b. “CONFIDENTIAL” Information or Items:

8 1. Information, documents or tangible things protected by the Privacy Act, 5
9 U.S.C. § 552a, et seq., if the subject of the information is a U.S. citizen or a
10 person lawfully admitted for permanent residence.

11 2. Personally identifiable information, and any information that is protected
12 or restricted from disclosure by statute or regulation, but which the Court may
13 order to be produced.

14 3. Information, documents or tangible things, which would be protected from
15 disclosure under FOIA, 5 U.S.C. § 552, et seq., including under the exemption
16 found at 5 U.S.C. § 552(b)(7)(E).

17 4. Information contained in or pertaining to: (1) an individual’s asylum,
18 statutory withholding of removal, refugee, or Convention Against Torture
19 (“CAT”) claims or applications, or credible fear or reasonable fear
20 determinations; (2) legalization applications under 8 U.S.C. § 1255a; (3) Special
21 Agricultural Worker applications under 8 U.S.C. § 1160; (4) applications for
22 temporary protected status (“TPS”) under 8 U.S.C. § 1254a.

23 5. Information which relates to an alien who is the beneficiary of an
24 application for relief under paragraph (15)(T), (15)(U), or (51) of section 101(a)
25 of the Immigration and Nationality Act [8 U.S.C. 1101(a)(15)(T), (U), (51)] or
26 section 240A(b)(2) of such Act [8 U.S.C. 1229b(b)(2)]; information contemplated

1 by 8 U.S.C. § 1186a(c)(4)(C) concerning any abused alien spouse or child,
2 including information regarding the whereabouts of such spouse or child (see 8
3 C.F.R. §§ 216.5(a)(1)(iii) and 1216.5(a)(1)(iii)).

4 6. All other protected documents, information or tangible things not
5 identified above that the parties agree in writing or the Court orders qualify for
6 protection under Federal Rule of Civil Procedure 26(c).

7 7. If a designating party determines that information not described above
8 should be designated “CONFIDENTIAL,” the parties shall negotiate the
9 appropriateness of that designation in good faith and endeavor to resolve any
10 dispute prior to the production of that information.

11 c. Designating Party: A Party or Non-Party that designates information or items that
12 it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

13 d. Disclosure or Discovery Material: All items or information, regardless of the
14 medium or manner in which it is generated, stored, or maintained (including, among
15 other things, testimony, transcripts, and tangible things), that are produced or generated in
16 disclosures or responses to discovery in this matter.

17 e. Expert: A person with specialized knowledge or experience in a matter pertinent
18 to the litigation who has been retained by a Party or its counsel to serve as an expert
19 witness or as a consultant in this action.

20 f. Non-Party: Any natural person, partnership, corporation, association, or other
21 legal entity not named as a Party to this action.

22 g. Party: Any party to this action.

23 h. Producing Party: A Party or Non-Party that produces Disclosure or Discovery
24 Material in this action.

25 i. Professional Vendors: Persons or entities that provide litigation support services
26 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and

1 organizing, storing, or retrieving data in any form or medium) and their employees and
2 subcontractors.

3 j. Protected Material: Any Disclosure or Discovery Material that is designated as
4 “CONFIDENTIAL.”

5 k. Receiving Party: A Party that receives Disclosure or Discovery Material from a
6 Producing Party.

7 **III. SCOPE**

8 The protections conferred by this Order cover not only Protected Material (as defined
9 above), but also (1) any information copied or extracted from Protected Material; (2) all copies,
10 excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
11 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
12 However, the protections conferred by this Order do not cover the following information: (a) any
13 information that is in the public domain at the time of disclosure to a Receiving Party or becomes
14 part of the public domain after its disclosure to a Receiving Party as a result of publication not
15 involving a violation of this Order, including becoming part of the public record through trial or
16 otherwise; and (b) any information known to the Receiving Party prior to the disclosure or
17 obtained by the Receiving Party after the disclosure from a source who obtained the information
18 lawfully and under no obligation of confidentiality to the Designating Party. Any use of
19 Protected Material at trial shall be governed by a separate agreement or order.

20 The Parties do not waive their right to assert other or further privileges over Protected
21 Material and redact such information. For instance, Defendants may withhold or redact
22 information that is subject to a claim of privilege such as withholding classified national security
23 information or withholding or redacting any other information subject to a claim of privilege or
24 exemption from disclosure, including but not limited to the Deliberative Process Privilege, Law
25 Enforcement Privilege, Attorney Client Privilege, or Attorney Work Product.

26 **IV. DURATION**

1 Even after final disposition of this litigation, the confidentiality obligations imposed by
2 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
3 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all
4 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after
5 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this
6 action, including the time limits for filing any motions or applications for extension of time
7 pursuant to applicable law.

8 **V. DESIGNATING PROTECTED MATERIAL**

9 a. Exercise of Restraint and Care in Designating Material for Protection. Each Party
10 or Non-Party that designates information or items for protection under this agreement must take
11 care to limit any such designation to specific material that qualifies under the appropriate
12 standards. The Designating Party must designate for protection only those parts of material,
13 documents, items, or oral or written communications that qualify, so that other portions of the
14 material, documents, items, or communications for which protection is not warranted are not
15 swept unjustifiably within the ambit of this agreement.

16 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
17 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
18 unnecessarily encumber or delay the case development process or to impose unnecessary
19 expenses and burdens on other parties) expose the Designating Party to sanctions.

20 If it comes to a Designating Party's attention that information or items that it designated
21 for protection do not qualify for protection, the Designating Party must promptly notify all other
22 parties that it is withdrawing the mistaken designation.

23 b. Manner and Timing of Designations.

24 Parties should use their best efforts to clearly designate Disclosure or Discovery Material
25 that qualifies for protection under this Order before the material is disclosed or produced.

26 Designation in conformity with this Order requires:

1 (1) For information in documentary form: (e.g., paper or electronic
2 documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the
3 Producing Party affix the legend “CONFIDENTIAL” to each page that contains confidential
4 material. If only a portion or portions of the material on a page qualifies for protection, the
5 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate
6 markings in the margins).

7 A Party or Non-Party that makes original documents or materials available for inspection
8 need not designate them for protection until after the inspecting Party has indicated which
9 material it would like copied and produced. During the inspection and before the designation, all
10 of the material made available for inspection shall be deemed “CONFIDENTIAL.” After the
11 inspecting Party has identified the documents it wants copied and produced, the Producing Party
12 must determine which documents, or portions thereof, qualify for protection under this Order.
13 Then, before producing the specified documents, the Producing Party must affix the appropriate
14 “CONFIDENTIAL” legend to each page that contains Protected Material. If only a portion or
15 portions of the material on a page qualifies for protection, the Producing Party also must clearly
16 identify the protected portion(s) (e.g., by making appropriate markings in the margins).

17 (2) For testimony given during a deposition or in other pretrial or trial
18 proceedings, any Party may designate a deposition or portion thereof as “CONFIDENTIAL” by
19 doing so on the record at the deposition or by serving written notice of the page and line of the
20 confidential deposition portions. Such designations must be made within twenty (20) days of
21 receiving the final transcript. Until the aforesaid period to designate the deposition has passed,
22 the entire transcript shall be deemed as Confidential Information under the terms of this
23 Agreement unless the Party waives designation in writing. A Party may also orally designate
24 testimony during the course of a deposition by making a statement to that effect, on the record at
25 the deposition. In this case, the court reporter shall transcribe the designated pages in a separate
26 volume marked with the appropriate designation. Any individual attending the deposition must

1 leave the room prior to discussion of whether material is designable if that person is not
2 authorized to view Confidential Information under the terms of this Order.

3 (3) For information produced in some form other than documentary and for
4 any other tangible items, that the Producing Party affix in a prominent place on the exterior of
5 the container or containers in which the information or item is stored the legend
6 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,
7 the Producing Party, to the extent practicable, shall identify the protected portion(s).

8 c. Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
9 designate qualified information or items does not, standing alone, waive the designating party’s
10 right to secure protection under this Order for such material. Upon timely correction of a
11 designation, the Receiving Party must make reasonable efforts to assure that the material is
12 treated in accordance with the provisions of this Order.

13 **VI. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

14 a. Timing of Challenges. Any Party may challenge a designation of confidentiality
15 at any time, but no later than seven (7) days before the date of hearing or trial. Unless a prompt
16 challenge to a Designating Party’s confidentiality designation is necessary to avoid foreseeable,
17 substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the
18 litigation, a Party does not waive its right to challenge a confidentiality designation by electing
19 not to mount a challenge promptly after the original designation is disclosed.

20 b. Meet and Confer. The Challenging Party shall initiate the dispute resolution
21 process by providing written notice of each designation it is challenging and describing the basis
22 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written
23 notice must recite that the challenge to confidentiality is being made in accordance with this
24 specific paragraph of the Order. The parties shall attempt to resolve each challenge in good faith
25 and must begin the process by conferring directly (in voice-to-voice dialogue attempted within
26 the normal business day (9:00 a.m. to 5:00 p.m., Monday through Friday, Eastern time) of

1 counsel for the parties; other forms of communication are not sufficient) within ten (10) business
2 days of the date of service of notice. In conferring, the Challenging Party must explain the basis
3 for its belief that the confidentiality designation was not proper and must give the Designating
4 Party an opportunity to review the designated material, to reconsider the circumstances, and, if
5 no change in designation is offered, to explain the basis for the chosen designation. Any motion
6 regarding confidential designations or for a protective order must include a certification, in the
7 motion or in a declaration or affidavit, that the movant has engaged in a good faith meet and
8 confer conference with other affected parties in an effort to resolve the dispute without court
9 action. The certification must list the date, manner, and participants to the conference.

10 c. Judicial Intervention. If the parties cannot resolve a challenge without court
11 intervention after a good-faith effort to resolve the disagreement, either the Designating or the
12 Challenging Party may apply to the Court for a ruling that the Confidential Material objected to
13 shall (as applicable) be treated or not treated as Confidential. Until this Court enters an order
14 determining the status of the information whose designation under this Order is being objected
15 to, such material shall be treated as designated under this Order, unless the Parties otherwise
16 agree by written stipulation. The burden of persuasion in any such motion shall be on the
17 Designating Party. Frivolous challenges, and those made for an improper purpose (*e.g.*, to harass
18 or impose unnecessary expenses and burdens on other parties) may expose the challenging party
19 to sanctions.

20 **VII. ACCESS TO AND USE OF PROTECTED MATERIAL**

21 a. Basic Principles. A Receiving Party may use Protected Material that is disclosed
22 or produced by another Party or by a Non-Party in connection with this case only for
23 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
24 disclosed only to the categories of persons and under the conditions described in this Order.
25 When the litigation has been terminated, a Receiving Party must comply with the provisions of
26 section XII(d) below (“Return of Documents”).

1 Protected Material must be stored and maintained by a Receiving Party at a location and
2 in a secure manner that ensures that access is limited to the persons authorized under this Order.

3 b. Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
4 ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may
5 disclose any information or item designated “CONFIDENTIAL” only to:

6 (1) Counsel of record in this action;

7 (2) Secretarial, clerical, or paralegal personnel employed full-time or part-time by
8 counsel of record for a Party, provided such counsel deems the disclosure reasonably necessary
9 for the conduct of this litigation;

10 (3) The Parties to this action and those employees, officers, and directors of the
11 parties who reasonably need access to the Confidential Information in connection with and to
12 assist with the prosecution or defense of this action, and who have signed the “Acknowledgment
13 and Agreement to Be Bound” (Exhibit A);

14 (3) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
15 reasonably necessary for this litigation and who have signed the “Acknowledgment and
16 Agreement to Be Bound” (Exhibit A);

17 (4) The Court (whether District or Appellate) and its personnel;

18 (5) Court reporters and their staff, professional jury or trial consultants, and
19 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who
20 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

21 (6) During their depositions, witnesses in the action to whom disclosure is reasonably
22 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
23 A), unless otherwise agreed by the Designating Party or ordered by the Court. Pages of
24 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be
25 separately bound by the court reporter and may not be disclosed to anyone except as permitted
26 under this Stipulated Protective Order;

1 (7) Any mediator who may be selected jointly by the parties to provide mediation services.

2 **VIII. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
3 **OTHER LITIGATION**

4 If a party is served with a subpoena or a court order issued in other litigation that compels
5 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that
6 Party must:

7 a Notify in writing within three (3) days of service of the subpoena the
8 Designating Party. Such notification shall include a copy of the subpoena or court order;

9 (b) Notify in writing within three (3) days of service of the subpoena the party
10 who caused the subpoena or order to issue in the other litigation that some or all of the material
11 covered by the subpoena or order is subject to this Order. Such notification shall include a copy
12 of this Order; and

13 (c) Cooperate with respect to all reasonable procedures sought by the
14 Designating Party whose Protected Material may be affected. If the Designating Party timely
15 seeks a protective order, the Party served with the subpoena or court order shall not produce any
16 information designated in this action as “CONFIDENTIAL” before a determination by the Court
17 from which the subpoena or order issued, unless the Party has obtained the Designating Party’s
18 permission. The Designating Party shall bear the burden and expense of seeking protection in
19 that court of its confidential material. Nothing in these provisions shall be construed as
20 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from
21 another court.

22 **IX. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**
23 **THIS LITIGATION**

24 a. The terms of this Order are applicable to information produced by a Non-Party in
25 this action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in
26 connection with this litigation is protected by the remedies and relief provided by this Order.

1 Nothing in these provisions shall be construed as prohibiting a Non-Party from seeking
2 additional protections.

3 b. In the event that a Party is required, by a valid discovery request, to produce a
4 Non-Party's confidential information in its possession, and the Party is subject to an agreement
5 with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

6 (1) Promptly notify in writing the Requesting Party and the Non-Party that
7 some or all of the information requested is subject to a confidentiality agreement with a Non-
8 Party;

9 (2) Promptly provide the Non-Party with a copy of this Order in this
10 litigation, the relevant discovery request(s), and a reasonably specific description of the
11 information requested; and

12 (3) Make the information requested available for inspection by the Non-Party.

13 c. If the Non-Party fails to object or seek a protective order from this Court within
14 fourteen (14) days of receiving the notice and accompanying information, the Receiving Party
15 may produce the Non-Party's confidential information responsive to the discovery request. If the
16 Non-Party timely seeks a protective order, the Receiving Party shall not produce any information
17 in its possession or control that is subject to the confidentiality agreement with the Non-Party
18 before a determination by the Court.¹ Absent a court order to the contrary, the Non-Party shall
19 bear the burden and expense of seeking protection in this Court of its Protected Material.

20 **X. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

21 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
22 Material to any person or in any circumstance not authorized under this Order, the Receiving
23 Party must immediately (a) notify in writing the Designating Party of the unauthorized
24 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material,

25 ¹ The purpose of this provision is to alert the interested parties to the existence of confidentiality
26 rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality
interests in this Court.

1 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of
2 this Order, and (d) request such person or persons to execute the “Acknowledgment and
3 Agreement to Be Bound” that is attached hereto as Exhibit A.

4 **XI. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
5 **PROTECTED MATERIAL**

6 When a Producing Party gives notice to Receiving Parties that certain inadvertently
7 produced material is subject to a claim of privilege or other protection, the obligations of the
8 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
9 provision is not intended to modify whatever procedure may be established in an e-discovery
10 order that provides for production without prior privilege review. Pursuant to Federal Rule of
11 Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a
12 communication or information covered by the attorney-client privilege or work product
13 protection, the parties may incorporate their agreement in the stipulated protective order
14 submitted to the Court. The parties agree to the entry of a non-waiver order under Fed. R. Evid.
15 502(d) as set forth herein.

16 **XII. MISCELLANEOUS**

17 a. Right to Further Relief. Nothing in this Order abridges the right of any person to
18 seek its modification by the Court in the future.

19 b. Right to Assert Other Objections. By stipulating to the entry of this Order, no
20 Party waives any right it otherwise would have to object to disclosing or producing any
21 information or item on any ground not addressed in this Order. Similarly, no Party waives any
22 right to object on any ground to use in evidence of any of the material covered by this Order.

23 c. Filing Protected Material. Before filing confidential material or discussing or
24 referencing such material in court filings, the filing party shall confer with the Designating Party
25 to determine whether the Designating Party will remove the confidential designation, whether
26 the document can be redacted, or whether a motion to seal or stipulation and proposed order is

1 warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the
2 standards that will be applied when a party seeks permission from the court to file material under
3 seal.

4 d. Return of Documents. Within three (3) months of the conclusion of this litigation
5 (commencing from the date on which the time for filing an appeal from entry of judgment with
6 no Party taking an appeal, or in the event an appeal is taken, from the date of exhaustion of any
7 and all appeals), all materials that continue to be designated as Confidential Information and all
8 copies thereof shall either be returned to the Producing Party or destroyed. A Party who elects to
9 destroy the copies shall submit a certification to the disclosing Party, attesting that all copies
10 were destroyed, within fourteen (14) days of the destruction of the copies. In no event may any
11 materials that continue to be designated as Confidential Information or any copies thereof –
12 obtained in connection with this litigation – be used in any other litigation or administrative
13 action against a Plaintiff, class member, or the federal government, its agencies or department, or
14 any of its agents or officers in their official or individual capacity. Nothing in this Protective
15 Order shall limit or in any way restrict the use of information obtained outside of this litigation.
16 Copies that contain markings constituting attorney work product need not be returned or
17 destroyed, provided they remain subject to the provisions of this Protective Order.

18 e. Use at Trial. In the event any Party desires to exhibit documents or disclose
19 material covered under this Order to witnesses during trial or pretrial proceedings, such Party
20 shall meet and confer with opposing counsel to reach an agreement, in accordance with the
21 Court’s rules and procedures, on an appropriate method for disclosure. If the Parties cannot reach
22 an agreement, the dispute shall be submitted to the Court.

23
24 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

25
26 DATED: August 28, 2017

Respectfully submitted,

1 s/Matt Adams

2 Matt Adams, WSBA No. 28287

3 s/Glenda Aldana

4 Glenda M. Aldana Madrid, WSBA No.
46987

5 Northwest Immigrant Rights Project

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United States Department of Justice

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1 (202) 742-5619 (fax)

2 *Attorneys for Plaintiffs*

3
4
5 **PURSUANT TO STIPULATION, IT IS SO ORDERED** this 31st day of August 2017.

6
7 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
8 documents in this proceeding shall not, for the purposes of this proceeding or any other
9 proceeding in any other court, constitute a waiver by the producing party of any privilege
10 applicable to those documents, including the attorney-client privilege, attorney work-product
11 protection, or any other privilege or protection recognized by law.

12 Dated this 31st day of August 2017.

13
14 

15
16 RICARDO S. MARTINEZ
17 CHIEF UNITED STATES DISTRICT JUDGE

18
19 Presented this 28th day of August, 2017 by:

20 *s/Glenda Aldana*

21 Glenda M. Aldana Madrid, WSBA No. 46987

22 Northwest Immigrant Rights Project

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Counsel for Plaintiffs

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of

4 _____ [print or type full address], declare under penalty of

5 perjury that I have read in its entirety and understand the Stipulated Protective Order that was

6 issued by the United States District Court for the Western District of Washington on [date] in the

7 case of *Mendez Rojas, et al. v. Kelly, et al.*, Case No. 2:16-cv-01024-RSM. I agree to comply

8 with and to be bound by all the terms of this Stipulated Protective Order and I understand and

9 acknowledge that failure to so comply could expose me to sanctions and punishment in the

10 nature of contempt. I solemnly promise that I will not disclose in any manner any information or

11 item that is subject to this Stipulated Protective Order to any person or entity except in strict

12 compliance with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for the

14 Western District of Washington for the purpose of enforcing the terms of this Stipulated

15 Protective Order, even if such enforcement proceedings occur after termination of this action.

16 Date: _____

17 City and State where sworn and signed: _____

18 Printed name: _____

19 Signature: _____