

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

NOLBERTA AGUILAR, SEBASTIAN AGUILAR, TERESA  
AGUILAR, DIEGO AJPOP; 174 additional named  
Petitioners/Plaintiffs listed on Schedule A attached hereto;  
and others similarly situated,

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Petitioners and Plaintiffs,

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v.

UNITED STATES IMMIGRATION AND CUSTOMS  
ENFORCEMENT DIVISION OF THE DEPARTMENT  
OF HOMELAND SECURITY; JULIE L. MYERS,  
Assistant Secretary of Homeland Security for Immigration  
and Customs Enforcement; BRUCE CHADBOURNE, Field  
Office Director for Detention and Removal, Boston Field  
Office, Immigration and Customs Enforcement; MICHAEL  
CHERTOFF, Secretary, Department of Homeland Security;  
and ALBERTO GONZALES, Attorney General of the  
United States,

CA No. 07-10471

Respondents and Defendants.

**AMENDED CLASS PETITION FOR WRIT OF HABEAS CORPUS AND  
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

This is a class petition for a writ of habeas corpus and complaint for declaratory and injunctive relief filed by the one hundred and seventy-eight (178) named Petitioners/Plaintiffs (hereinafter "Plaintiffs" or "Detainees") listed on Schedule A attached hereto, and others similarly situated. Petitioners seek a class writ and declaratory and injunctive relief to remedy violations of their constitutional and statutory rights. Petitioners and class members were the victims of the massive workplace raid on March 6, 2007, conducted by Respondent Immigration and Customs Enforcement Division of Homeland Security's ("ICE") that resulted in the Petitioners' and class members' detention, separation from their families and community, and

removal to remote detention centers. The prolonged detention of the Petitioners and class members in remote detention centers has impaired and continues to impair their right to consult with counsel and their ability to exercise rights that are guaranteed to them by the Constitution and laws of the United States.

**Jurisdiction**

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1. This action arises under the Constitution of the United States, and the Immigration and Nationality Act (“INA”), 8 U.S.C. §§ 1101 et seq., as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), Pub. L. No. 104-208, 110 Stat. 1570.

2. This Court has jurisdiction under 28 U.S.C. § 1331 and 28 U.S.C. § 2241, art. I, § 9, cl.2 of the United States Constitution (“Suspension Clause”), as Detainees and class members are presently in custody under color of authority of the United States. This Court may grant relief pursuant to 28 U.S.C. §§ 1651, 2201, 2002, 2241, and 2242 and Rule 57 of the Federal Rules of Civil Procedure.

**Venue**

3. Venue lies in the United States District Court for the District of Massachusetts, the judicial district in which Respondent ICE carried out the raid, where the events giving rise to the claims alleged herein occurred, where some of Petitioners are being held, and where ICE’s regional field office is located.

**Parties**

4. The one hundred and seventy-eight (178) named Petitioners and others similarly situated are or recently were employees at Michael Bianco Inc. (“MBI”) in New Bedford, MA. At the time of filing this Amended Petition, Petitioners are being detained at numerous detention

centers in Massachusetts, Rhode Island, and Texas. All Detainees are under the direct control and custody of ICE.

5. Respondent ICE, the largest investigative arm of the Department of Homeland Security (DHS), is responsible for eliminating vulnerabilities in the nation's border and for economic, transportation and infrastructure security. DHS is charged with, among other things, administering ICE and implementing and enforcing the Immigration and Nationality Act. As such, it has decision-making authority over the matters alleged in this Amended Petition and over Petitioners' custody.

6. Julie L. Myers ("Myers"), is the Assistant Secretary of Homeland Security for ICE.

7. Alberto Gonzales is the Attorney General of the United States and is responsible for the implementation and enforcement of the immigration laws.

8. Michael Chertoff is Secretary of the Department of Homeland Security and has delegated his authority to administer the laws of the United States to ICE, a component of the Directorate of Border and Transportation Security.

9. Respondent Bruce Chadbourne is the Field Office Director for Detention and Removal in the Boston Field Office of the Bureau of Immigration and Customs Enforcement and has legal custody of the Petitioners.

### **Facts**

10. On information and belief, it is the established policy and practice of the Respondents to conduct large scale "sweeps" or "raids" in which large numbers of persons suspected of being unlawfully present in the United States are arrested without a warrant and taken into custody. Although such persons are entitled by law to consult with counsel and be

heard on the question of release on bond pending determination of their status, it is further practice and policy of Respondents to hold Detainees and class members initially at facilities which are some distance from the site of arrest and under conditions where access to counsel by family members is impracticable, if not impossible. Respondents then remove the Detainees and class members from the jurisdiction in which they were arrested and transport them to remote detention facilities scattered across the country, often thousands of miles away with limited access to legal services.

### **Progression of Detention**

11. On information and belief, on March 6, 2007, acting pursuant to the foregoing policy, agents of the Respondents conducted what has been described as a raid on the premises of MBI in New Bedford, Massachusetts. In the course of this raid, three hundred and one (301) people employed by MBI were taken into custody. Petitioners and class members are informed and believe that this number included persons who were lawfully present in the United States and a number of minor children employed at MBI.

12. According to various media reports, Petitioners and class members were taken into custody because of investigations concerning the employer's hiring of illegal immigrants and the employer's encouragement of the use of fraudulent immigration documents. According to a news release posted on the ICE website on March 6, 2007:

Boston – Early this morning in an Immigration and Customs Enforcement-led investigation, federal authorities executed a search warrant at the New Bedford business Michael Bianco, Inc. (MBI). The owner of the company and three managers were arrested on charges in connection with alleged hiring of illegal aliens. Another individual was arrested on charges that he provided fraudulent identification documents to workers at the factory, announced United States Attorney Michael J. Sullivan, Assistant Secretary of the Department of Homeland Security Julie L. Myers,

and Immigration and Customs Enforcement special agent in charge  
Bruce M. Foucart.

13. Petitioners and class members were initially transported from New Bedford to Fort Devens in Ayers, Massachusetts where they were temporarily held at the Devens Reserve Forces Training Area within Fort Devens.

14. Pro bono counsel from local bar associations and nonprofit legal services providers in Massachusetts promptly organized to respond to the Detainees' and class members' needs for legal advice and representation, but due to the massive numbers of individuals arrested by Respondents, these resources could not be deployed effectively. Without sufficient time for attorneys, accompanied by language-appropriate interpreters, to conduct legally adequate interviews of each detainee prior to transfer, the attorneys were unable to identify which of the Detainees and class members could assert meritorious claims for release on bond or grounds for relief from deportation proceedings.

15. On information and belief, on March 8, 2007, a group of attorneys and paralegals went to Fort Devens seeking to meet with a number of the Detainees and class members. They arrived at the institution at approximately 5:45 p.m. These legal professionals presented a list of Detainees and class members, including approximately twenty-five (25) who were among those transferred out of Massachusetts that evening. Their request to meet with those Detainees and class members prior to the transfer was denied.

16. Despite pro bono counsel's presence at Fort Devens and the more than 15 hours on both March 7, 2007, and March 8, 2007, spent by more than 20 attorneys, law students and paralegals at the detention center, they were permitted to meet with only thirty (30) Detainees and class members.

17. Almost immediately following their arrest, a majority of the Detainees and class members were transported to locations outside the Commonwealth of Massachusetts. On March 7, 2007, ninety (90) detainees were flown to Harlingen, Texas.

18. On information and belief, the following day, on March 8, 2007, one hundred and sixteen (116) Detainees and class members were flown to El Paso, Texas, three (3) Detainees and class members were flown to Miami, Florida, and one (1) "adult and juvenile family unit" was taken by ground transportation to Leesport, Pennsylvania.

19. On information and belief, as of March 12, 2007, only ninety (90) of the Detainees and class members remained in Massachusetts, in both Bourne and North Dartmouth.

20. On information and belief, on March 12, 2007, attorneys Jodi Goodwin and Penny Curry visited the Port Isabel Service Processing Center, presented a list of Detainees and class members who had been transferred to the center from Massachusetts. Jodi Goodwin practices immigration law in Texas and regularly visits with Detainees and class members at the Port Isabel Service Processing Center. In response to her request of March 12, Center staff refused to allow her to visit with the Detainees and class members, placing numerous restrictions on her access. These restrictions had not been placed on her previous visits with other detainees who were not part of this group.

21. Since the initial raid, a limited number of Detainees and class members have been released on personal recognizance and for humanitarian reasons.

#### **Statutory, Constitutional, and Humanitarian Violations**

22. On information and belief, as a result of the raid, approximately one hundred (100) minor children of Petitioners and class members were stranded with baby-sitters, caregivers, and others, or were left alone. Although Respondents knew or should have known

that the mass arrests at MBI would result in the abandonment of these children, they failed to take any measures to insure for their care and safety.

23. Respondents have taken some measures to alleviate the harm to Petitioners, class members, and their families, but in each case it is either limited or incomplete. On information and belief, some, but not all, Detainees and class members who are primary caregivers to young children have been released to date. Case 1:07-cv-10471-RGS Document 9 Filed 03/13/2007 Page 7 of 19

24. Further, on information and belief, after DSS and Respondent agreed that the minors who were detained and transported to Florida be returned to Massachusetts, the Respondent refuses to allow DSS to release minors to parents who authorities believe may be undocumented. In such cases, Respondents have ordered DSS to release the minors to a next of kin or, if no other family is available, to the custody of DSS only.

25. The families and children affected by the Petitioners' and class members' detention have suffered the fear and hardship of having a loved one detained initially at a location nearly 100 miles away from their homes, and then at other locations as far as twenty-four hundred (2,400) miles away in other states. On information and belief, many of the spouses and children of the detained Petitioners and class members are in the United States legally and many are United States citizens.

26. On information and belief, Detainees' and class members' access to adequate representation outside of Massachusetts is limited. For example, on information and belief, the United States Executive Office for Immigration review has provided the Detainees in El Paso, Texas with a list of legal services organizations in the area. The list contains only four such organizations, one of which is in Lubbock, Texas, over four hundred (400) miles away from the detention center in El Paso. On information and belief, one of the other four organizations listed,

Las Americas Refugee Asylum Project, will only represent individual juveniles and individuals with asylum cases.

27. On information and belief, some Petitioners and class members are indigenous Guatemalan women who may be retraumatized by separation from their families, given the history of massacres and persecution that decimated indigenous communities in that country.

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28. Significantly, some Detainees and class members are Guatemalan and Salvadoran, according to media reports, and may not even be properly subjected to detention under the terms of a national class action lawsuit, as reflected in the Nicaraguan Adjustment and Central American Relief Act (NACARA) and American Baptist Churches v. Thornburgh, 760 F. Supp. 796 (N.D. Cal. 1991) (“ABC”), or pursuant to the injunction issued in Orantes-Hernandez v. Messe, 685 F. Supp. 1488 (C.D. Cal. 1988), aff’d, 919 F.2d 549 (9th Cir. 1990). These agreements arose in response to civil wars and horrific conditions in those countries, and many Salvadorans and Guatemalans still have bona fide asylum claims arising from those conditions. However, this cannot even be determined by the lawyers struggling to conduct all the interviews before the Detainees and class members are transferred to remote locations out of this Court’s jurisdiction.

#### **Class Allegations**

29. Pursuant to Fed. R. Civ. P. 23(a) and 23(b)(2) and (b)(3), or by analogy, Petitioners bring this action on behalf of themselves and all other similarly situated individuals. The Petitioners’ class consists of all persons taken into custody by ICE on March 6, 2007 and who remain in custody.

30. Petitioners bring this action on behalf of themselves and a sub-class consisting of all persons who are or will in the future be subject to arrest and detention by ICE, and to immediate transfer to ICE detention facilities outside the Commonwealth of Massachusetts.

31. On information and belief, class members number approximately three hundred (300) currently.

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32. The class is so numerous that joinder of all members is impracticable.

33. The difficulty in accessing all class members due to their geographic disparity and conditions of confinement make joinder impracticable.

34. On information and belief, class members are being detained in at least six (6) scattered locations across four (4) different states including El Paso, Texas; Los Fresnos, Texas; Central Falls, Rhode Island; North Dartmouth, Massachusetts; and Bourne, Massachusetts. There are questions of law and fact that are common to the named Petitioners and class members.

35. On information and belief, legal service organizations continue to face substantial difficulties accessing Detainees at the various detention centers.

36. Questions of law common to Petitioners and class members include whether Petitioners' and class members' continued confinement violates their Due Process rights pursuant to the Fifth and Fourteenth Amendments of the United States Constitution. Other common questions include whether Respondents have violated Petitioners' and class members' right to effectively consult with counsel, and whether Respondents' conduct towards Petitioners and class members violates the INA.

37. Questions of fact common to Petitioners and class members are alleged in paragraphs 1-36 and are incorporated herein.

38. The claims of the named Petitioners are typical of the claims of the class.

39. Petitioners know of no conflict between their interests and those of the class they seek to represent. In defending their own rights, the Petitioners will defend the rights of all class members.

40. The representative parties will fairly and adequately protect the interests of the class. Case 1:07-cv-10471-RGS Document 9 Filed 03/13/2007 Page 10 of 19

41. Petitioners are represented by a team of law firms and legal aid organizations experienced in class action litigation, immigration matters, and habeas petitions, including Greater Boston Legal Services, the American Civil Liberties Union of Massachusetts, Catholic Social Services of Fall River, Inc., Dechert, LLP, Kaplan, O'Sullivan and Friedman, and Foley Hoag, LLP. On March 6, 2007, counsel for the Petitioners took immediate action to protect Detainees' and class members' rights and will continue to do so.

42. Respondents have acted on grounds generally applicable to each member of the class insofar as they have denied class members their constitutional right to freedom from prolonged and indefinite detention, interfered with their right to effectively consult with counsel, and violated their statutory rights under the INA, such that injunctive, habeas, and any other relief would be appropriate for the class as a whole pursuant to Rule 23(b)(2).

43. Common questions of law or fact predominate over any questions unique to individual class members.

44. Class action is superior to other methods available to Petitioners and members. Class certification will promote uniform treatment of class members scattered throughout the United States, will limit the possibility of inconsistent rulings between different class members, and will provide substantial savings in time, effort, and expense.

**Claims for Relief**

**Count I  
(Constitutional Claim)**

45. Petitioners allege and incorporate by reference paragraphs 1-44.

46. Respondents are liable for the conduct of the agencies they administer.

47. By the actions described above, Respondents, acting under color of law, have

violated and continue to violate the right of the detained Petitioners and class members to be free from arbitrary prolonged and indefinite detention, in violation of the Due Process Clause of the Fifth and Fourteenth Amendments to the Constitution of the United States.

48. To the extent that Petitioners' and class members' detention is without basis in law or fact and violates common law principles of due process and the Due Process Clause of the Fifth Amendment to the Constitution, Petitioners' and class members' detention is unlawful.

49. Respondents have violated Petitioners' and class members' right to consult with counsel by denying them access to counsel or any means to obtain counsel in a prompt and effective manner. This includes a meaningful opportunity to make decisions concerning the care of their children, a task for which proper access to counsel is fundamental.

50. Respondents willfully violated Petitioners' and class members' due process rights by removing them from the Commonwealth of Massachusetts prior to a bond hearing. At a bond hearing, Petitioners and class members must show that they are entitled to bond because they are not a flight risk, by showing, inter alia, that they have strong ties to the community. Petitioners and class members reside in Massachusetts and are able to show ties to the community by calling witnesses who live in the jurisdiction, such as family members, friends, employers, and religious advisors. Once Petitioners and class members are removed from the jurisdiction, showing such

ties to the community becomes a much more difficult task since witnesses and evidence are far away from the site of the hearing.

51. Respondents' willful interference with the rights of Petitioners and class members to keep their families together and to control the care and custody of their children violates the right to substantive due process guaranteed by the Fifth amendment to the United States Constitution.

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**Count II  
(Statutory Claim)**

52. Petitioners allege and incorporate by reference paragraphs 1-51.

53. Respondents' actions violate the INA.

**Prayer for Relief**

WHEREFORE, Petitioners respectfully request that the Court grant the following relief:

1. Assume jurisdiction over this matter;
2. Issue process to the Respondents with an order to show cause why the writ should not be granted;
3. Certify this action as a class action on behalf of the classes identified herein;
4. Enter a declaratory judgment that the policies and practices of the Respondents providing for summary and for immediate transfer of the petitioners to ICE detention facilities outside the Commonwealth of Massachusetts violates the Fifth Amendment to the United States Constitution and the Immigration and Nationalization Act;
5. Enter preliminary and permanent injunctions restraining the Respondents, the employees, agents, and attorneys and their successors in office from removing members of the class from the jurisdiction of the Commonwealth of Massachusetts for a period of seven (7)

business days from the date of arrest or from the date an attorney files a G-28 form of entry of appearance, whichever is longer;

6. Award petitioners the cost of this action, including reasonable attorneys fees; and

7. Grant such other relief as the Court may deem necessary and appropriate to

protect Petitioners' rights under the common law, the United States Constitution, and federal statutory law.

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Dated: March 13, 2007

Counsel for Petitioners,

/s/ Bernard J. Bonn, III

Bernard J. Bonn, III (BBO #049140)

Michael Shin (BBO #658134)

DECHERT LLP

200 Clarendon Street, 27<sup>th</sup> Floor

Boston, MA, 02116

(617) 728-7100

Nancy Kelly (BBO #44562)

John Willshire (BBO #547200)

GREATER BOSTON LEGAL SERVICES

197 Friend St.

Boston, MA 02114

(617) 371-1234

Iris Gomez

MASSACHUSETTS LAW REFORM INSTITUTE

99 Chauncy St., Suite 500

Boston, MA 02111

(617) 357-0700

Harvey Kaplan (BBO #258640)

KAPLAN, O'SULLIVAN AND FRIEDMAN

Ten Winthrop Square

Boston, MA 02110

(617) 482-4500

Michael P. Boudett (BBO #558757)  
Jennifer Stam (BBO #663709)  
FOLEY HOAG LLP  
155 Seaport Boulevard  
Boston, Massachusetts 02210-2600  
(617) 832-1000

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John Reinstein (BBO #416120)  
Laura Rótolo (BBO #665247)  
AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION OF MASSACHUSETTS  
211 Congress St.  
Boston, MA 02110  
(617) 482-3170

Ondine Sniffin (BBO #638899)  
Catholic Social Services of Fall River, Inc.  
1600 Bay St.  
Fall River, MA 02724  
(508) 674-4681

**SCHEDULE A  
NAMED PETITIONERS/DETAINEES**

	<b>First Name</b>	<b>Last Name</b>
1	Nolberta	Aguilar
2	Sebastian	Aguilar
3	Teresa	Aguilar
4	Diego	Ajpop
5	Mark	Ajsuiniac
6	Maria Angela	Alfaro
7	Veronica	Alfaro
8	Dora Maricela	Alvarado
9	Maria	Alvarado
10	Marisela	Alvarado
11	Maura	Alvarado
12	Victor Manuel	Alvarado Valladares
13	Yesenia Lisbeth	Alvarado Valladora
14	Morena	Alvarado-Mejia
15	Adai	Alvarez
16	Briselda	Amaya
17	Cristian	Andres
18	Wilber Neptali	Angel Alfaro
19	Bernaldo	Arevalo
20	Juana	Argueta Morlaes
21	Maria Amparo	Arias Ramirez
22	Sigfredo	Arrieta
23	Erica Karolina	Avilez Matute
24	Carlos Alirio	Ayala
25	Yoli	Ayala de Reyes
26	Ricardo	Boaregez
27	Paulo	Braga
28	Daniel Antonio	Carranza
29	Guadalupe	Carranza
30	Victor	Castellanos Balan
31	Andrea	Castro
32	Hipolita	Castro
33	Nasaria	Castro Calcas
34	Ana	Castro Castro
35	Lucia	Castro Morales
36	Josefina	Chacaj
37	Dilema	Chach Ciprian
38	E Duar	Chacon
39	Julian	Chamorro
40	Claudia	Chanchavac
41	Ambrocio	Chic Lox
42	Domingo	Chijal

43	Nicolas	Chimilan Vicente
44	Manuel	Chingo
45	Jose	Choc
46	Santa	Chuj
47	Martina	Ciprian
48	Soyias	Ciprian
49	Andres	Ciprian Mateo
50	Maria	Ciprian Velasquez
51	Consuelo Olmos	Colaj
52	Rita	Colmanza
53	Sandra Emilia	Corvera
54	Enrique	Coxic
55	Balvina	Coxic Lopez
56	Deibin	Cubas
57	Teresa	del Rosario Rivas
58	Efrain	Deleon
59	Lilian	Deleon Zelonda
60	Berta Amaya	Diaz
61	Adela Antonia	Duran
62	Fatima del Carmen	Duran Cornejo
63	Baltazar	Estierrez G.
64	Luis	Fernando Itzap
65	Susana Eneida	Flores
66	Jose	Galileo
67	Camilo	Garcia
68	Eliselo	Garcia
69	Victor	Garcia
70	Maria Leticia	Garcia Aguilar
71	Andres	Garcia Ajqui
72	Juana	Garcia Delacruz
73	Pedro	Garcia Garcia
74	Sabino	Garcia Garcia
75	Ada	Gedory Aleron
76	Maria	Gomez
77	Marta	Gomez
78	Maria	Gomez Cruz
79	Santos	Gonzales
80	Tomas	Gonzalez Guerra
81	Rolando	Gonzalez Senca
82	Jose	Guerra
83	Wilfredo	Guiles
84	Andres	Gutierrez
85	Ana Victoria	Hernandez
86	Filberto	Hernandez
87	Jose	Hernandez
88	Ruth	Hernandez
89	Miriam	Ixcuna
90	Pedro	Ixcuna

91	Juana Candelina	Jovel
92	Sonia	Jovel Alverado
93	Angelly	Jovel Jovel
94	Josie Francisca	L. Martin
95	Gaspar	L. Suar
96	Maya Milla	Lindaf
97	Brenda	Lopez
98	Fatima	Lopez
99	Maximo	Lopez
100	Ignacio	Lopez
101	Feliz Miguel	Lopez Trejo
102	Rigoberto	Luis
103	Esperanza	Luis Grave
104	Wilson	Mancia
105	Andres	Maric
106	Miguel	Maric Yax
107	Josue	Martinez Chavez
108	Jose Enrique	Matute
109	Jhann Carlos	Matute Vallecillo
110	Pedro	Matzatz I.
111	Francisco	Matzatz Sam
112	Oscar	Mauricio Abarca
113	Vicente	Mejia
114	Miriam Marlene	Melara de Perez
115	Aydi	Mencia A.
116	Hector	Mendez
117	Ricardo	Mesa
118	Antonio	Morales
119	Petronita	Morales
120	Analia	Nunez
121	Zenona	Olmos
122	Manuel	Ordonez
123	Nelei	Ortiz
124	Manuel	Pajoj
125	Jose Alejandro	Palacios
126	Hector Estuardo	Perez
127	Oscar	Perez
128	Manuel	Perez Colaj
129	Rolando	Perez Perez
130	Juan	Perez Segura
131	Cecilia	Petrona
132	Juan	Pinto
133	Bertila	Pinto Cordova
134	Lilian	Pinto Ramires
135	Victor	Pixcar Gonzalez
136	Elmer	Portillo
137	Juana	Prion
138	Nicolas	Quinilla

139	Domingo	Quino
140	Tomas	Quino
141	Erika	Ramirez
142	Nery	Ramos
143	Maritza M.	Ramos Cruz
144	Maria	Reyes
145	Maria Isabel	Rivas
146	Lillian	Rivera Martinez
147	Ana Dolores	Rives
148	Reina	Rives
149	Margarita	Riz
150	Adan	Riz de la Cruz
151	Otoniel	Ruiz
152	Virginia	Ruiz
153	Pedro	Ruiz Gomez
154	Virginia	Ruiz Simar
155	Valencio	Salas R.
156	Juan	Salvador
157	Juan	Sam
158	Juan	Sam Castro
159	Manuel	Sam Lucas
160	Ivette Los Angeles	Sanabria Henriquez
161	Edelmira	Sandoval
162	Blanca	Serrano
163	Santos	Simaj
164	Carlols	Simaj Morente
165	Bacilia	Sinci Paujoj
166	Hector	Suarez
167	Alberto	Tebelanixchop
168	Abel	Tema Lopez
169	Luis	Tiniguar Tamul
170	Maximo	Tiquiram
171	Valerio	Tix Olmos
172	Gonzalez	Trejo Lopez
173	Arnulfo	Tzarax Carillo
174	Esteban	Tzoc Tamup
175	Catarina	Tzor Mendoza
176	Sonia	Varela
177	Nora	Ventura
178	Maria del Carmen	Villeda

**Certificate of Service**

I, Bernard J. Bonn, III, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on March 13, 2007.

/s/ Bernard J. Bonn, III

Bernard J. Bonn, III

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