

Memorandum of Understanding: *Fogg, et al. v. Garland*

- A. The parties agree that the terms and conditions herein constitute a “Memorandum of Understanding” (“MOU”) between the parties regarding the initial agreement to settle *Fogg v. Garland*, subject to a final, comprehensive settlement agreement (“Settlement Agreement”) that will cover the currently certified class: All current and former African American Deputy U.S. Marshals who were subjected to USMS policies and practices regarding promotions under the Merit Promotion Process, Management Directed Reassignments, and Headquarters Divisions assignments, and all African American current and former Deputy U.S. Marshals, Detention Enforcement Officers, and applicants never employed who were subjected to USMS policies and practices for hiring and recruitment of Deputy U.S. Marshal positions from January 23, 1994 to date on which the Settlement Agreement is fully executed. Any individuals with a pending EEO complaint asserting claims alleged in the class definition, that was filed after a date to be determined in 2017, will be provided with the option of continuing with their individual claim or participating as a class member. Any EEO complaints filed in or after 2017 where the claimant was provided written notice that the claims were subsumed by this matter will not be provided with the option to continue their individual claim.
- B. The parties agree to have further discussion with regard to how to facilitate notice of class action and/or settlement.
- C. Notice of settlement provided to the class members shall be transmitted via individualized mail and/or email for all class members for whom the Agency has email or mail addresses. Supplemental notice shall also include print publication, internet advertising, and mailings to relevant African American membership organizations and will be reasonably calculated to reach a majority of the potential class.
- D. The parties agree to request to stay the matter for at least 30 days, and to propose that the parties provide the Administrative Judge with status updates every 30 days until a final resolution has been reached.
- E. A settlement fund in the amount of \$15 million will be created (the “Settlement Fund”). All attorneys’ fees and expenses (except those specified in J and K) and all payments to class members will be paid from the Settlement Fund.
- F. Attorneys’ fees for Class Counsel will be 33% of the Settlement Fund. Expenses advanced by Class Counsel will be reimbursed from the Settlement Fund after the allocation of attorneys’ fees.
- G. The remainder of the Settlement Fund will be distributed to Class Agents and class members under a plan of allocation to be negotiated by the parties, which may include

- a third-party neutral. The Settlement Fund will include incentive awards for Class Agents and some class members.
- H. The parties agree the distribution of payments shall include back wages, interest, and compensatory damages and shall be reportable in accordance with the Internal Revenue Code.
 - I. The Agency denies all allegations in the Second Amended Class Charge.
 - J. The provision of the requisite notice of settlement shall be the responsibility of the Agency. The parties agree to further negotiate the necessity of a third-party neutral to allocate settlement funds and related matters.
 - K. The parties agree to negotiate on injunctive and equitable relief in good faith. The parties agree that these negotiations will begin no later than March 28, 2022. All expenses associated with any and all injunctive and equitable relief agreed to by the parties will be borne by the Agency. The parties agree that any resolution of this matter is contingent upon successful negotiation of injunctive and equitable relief.
 - L. The class shall release claims against the Agency alleging race discrimination in USMS policies and practices regarding promotions under the Merit Promotion Process, Management Directed Reassignments, and Headquarters Divisions assignments, and hiring and recruitment of Deputy U.S. Marshal positions from January 23, 1994 to the date on which the Settlement Agreement is fully executed.
 - M. The parties agree that they will fully cooperate with each other in the drafting and execution of the Settlement Agreement setting forth and implementing these provisions in fuller detail, and to cooperate fully in the performance of any additional acts necessary to effectuate the terms of this MOU. Class Counsel will submit motions for approval of the Settlement Agreement. The Agency agrees to not oppose any settlement term set forth in this MOU.
 - N. The parties understand with regard to any obligations under any Settlement Agreement, this MOU shall be governed by the applicable statutes or regulations.
 - O. The parties will confer in good faith to develop a mutually acceptable public statement relating to all settlement matters. In the interim, if a media inquiry is made regarding this case, the response shall be: “The parties have commenced settlement discussions and are continuing to negotiate in good faith. We will offer no further comment at this time.”

THE PARTIES ACKNOWLEDGE THAT THEY HAVE READ AND AGREE TO BE BOUND BY THE FOREGOING MOU.

COUNSEL FOR CLASS MEMBERS

COUNSEL FOR USMS

Name: David Sanford

Name: Lisa Dickinson

Title: Chairman, Sanford Heisler Sharp LLP

Title: General Counsel

Signature: 

Signature: _____

Date: March 8, 2022

Date: March 8, 2022