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10 **THE UNITED STATES DISTRICT COURT FOR THE**
 11 **CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION**

13	TERESITA G. COSTELO, and)	
14	LORENZO P. ONG, Individually And)	Case No. SACV08-688 JVS (SHx)
15	On Behalf Of All Others Similarly)	
16	Situated,)	PLAINTIFFS' REPLY TO
17	Plaintiffs,)	DEFENDANTS' OPPOSITION TO
18	v.)	PLAINTIFFS' MOTION TO AMEND
19)	PROPOSED CLASS DEFINITION
20	MICHAEL CHERTOFF, Secretary Of)	
21	The Department Of Homeland)	Date: August 20, 2008
22	Security; UNITED STATES)	Time: 8:00am
23	CITIZENSHIP AND IMMIGRATION)	Courtroom: 10C
24	SERVICES; EMILIO T.)	Honorable James V. Selna
25	GONZALEZ, Director, United States)	
26	Citizenship And Immigration)	
27	Services; DAVID TYLER, Director,)	
28	National Visa Center; CHRISTINA)	
	POULOS, Acting Director, California)	
	Service Center, United States)	
	Citizenship and Immigration Services;)	
	And CONDOLEEZA RICE, Secretary)	
	of State,)	
)	
	Defendants.)	

1 **I. GRANTING PLAINTIFFS’ MOTION FOR CLASS**
2 **CERTIFICATION WOULD BE IN THE INTEREST OF**
3 **JUSTICE**
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6 Defendants’ opposition to Plaintiffs’ amended proposed class definition
7 misconstrues’ Plaintiffs’ pleadings and muddles the issue before this Court.
8 Specifically, Plaintiffs amended proposed class definition does not substantively
9 alter putative class members; rather the amended definition cures any possible
10 imprecision and clears any possible confusion Defendants or this Court could have.
11 As such, this Court should recognize Plaintiffs’ motion as an effort to facilitate the
12 litigation process and grant Plaintiffs’ motion.
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16 For example, Plaintiffs’ use of the original term “child or children” was in
17 keeping with Congressional language of the Child Status Protection Act – a law
18 designed to protect adult children (sons and daughters) even after the “child” ages
19 out. Despite Congress’ use of the term “Child” in the title of the Child Status
20 Protection Act, and despite Plaintiffs’ use of the original term “child or children”
21 in the class definition – the issue before this court has always been whether aged
22 out children and their parents can retain the original priority date pursuant to INA §
23 203(h)(3). The amended definition does not alter this.
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27 Furthermore, Plaintiffs’ amended definition does not substantively alter
28 putative class members by defining the original term “immigrant documents” as “a

1 subsequent family based immigrant visa petition(s) (Form I-130) for their adult
2 child or children (sons and daughters) under the F2B category.” To be sure, the
3 amended definition does not alter class membership requirements nor modify
4 putative members; rather the definition clarifies the original parameters of the
5 proposed class. Such clarification furthers the interests of justice and as such, this
6 Court should grant Plaintiffs’ motion.
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10 Moreover, and perhaps more importantly, Defendants opposition to
11 Plaintiffs’ amended proposed class definition based on “factual differences
12 between three immigrant visa categories and the interests of parents and their
13 grown sons and daughters” fails to recognize the real issue before this Court –
14 Defendants’ failure to follow the law. See Def.’s Opp. at 5. To be clear, if this
15 Court grants Plaintiffs’ motion for class certification, this Court will not be
16 required to review the factual differences of thousands of claims to determine
17 individual benefits – that is a task that would rightfully be left for the Government.
18 Rather, this Court is asked to determine whether Defendants’ failure to recognize
19 and apply INA § 203(h)(3) violates the law. Here, Plaintiffs seek declaratory relief
20 – the correct interpretation and application of the law – a task for which this Court
21 is well suited for. In short, Defendants’ concern of overburdening this Court with
22 class identification and individual adjudication is misplaced and without merit.
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1 **II. PLAINTIFFS' HAVE SATISFIED THE REQUIREMENT OF**
2 **TYPICALITY PURSUANT TO FEDERAL RULE OF CIVIL**
3 **PROCEDURE 23(a)(3).**

4 Typicality is evident for the following reasons. A plaintiff's claim is typical if:

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6 1) it arises from the same event or practice or course of conduct that gives rise to
7 the claims of other class members and 2) is based on the same legal theory as their
8 claims. See Rosario v. Livaditis (7th Cir. 1992) 963 F2d 1013, 1018.
9

10 **A. Plaintiffs' Claim Arises From the Same Event Or Practice Or**
11 **Course Of Conduct that Gives Rise To the Claims Of Other Class**
12 **Members.**

13 Plaintiffs file the instant class action because thousands of people have been
14 affected by one single course of illegal conduct by the Defendants, to wit, the
15 Defendants' course of conduct in refusing to correctly apply the original priority
16 date (whether obtained via a family-based or an employment-based petition) as
17 required under 203(h)(3). The Defendants' continuous course of conduct is in
18 violation of the law, therefore the named Plaintiffs and all class members that they
19 represent, properly seek injunctive and declaratory relief to enjoin such conduct
20 and prevent further unnecessary delay.
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24 **B. Plaintiffs' Claim Is Based On The Same Legal Theory As the**
25 **Claims Of Other Class Members.**

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27 There is one legal theory before this Court. The legal theory upon which
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1 every class member, including the named Plaintiffs rely is the correct application
2 of the plain language and Congressional intent underlying INA 203(h)(3). INA
3 203(h)(3) explicitly provides for the retention of the original priority date for aged-
4 out children. This legal theory is not only common to all class members; it is
5 typical of each and all class members, including the named Plaintiffs. The Court
6 need only rule on the law that applies to the proper application of 203(h)(3), and
7 allow Defendants to adjudicate each individual case on its own merits.

11 **III. THE NAMED PLAINTIFFS ARE PART OF THE AMENDED**
12 **CLASS DEFINITION COMPRISING ONE SINGLE CLASS OF**
13 **AGGRIEVED INDIVIDUALS WHO SUFFER IRREPARABLE**
14 **HARM AS A DIRECT RESULT OF DEFENDANTS' FAILURE**
15 **TO CORRECTLY APPLY INA 203(h)(3) IN VIOLATION OF**
16 **THE LAW SINCE 2002.**

16 **A. The Named Plaintiffs And Class Members Represent One Class.**

18 Defendants improperly claim that Plaintiffs' class action is comprised of six
19 sub(classes). In their amended class definition however, Plaintiffs simply address
20 the Defendants' concerns by outlining in detail who is included in the one, single
21 class. Every class member, including the named Plaintiffs, comprise one class of
22 all those who have suffered and continue to suffer the harm of unnecessary
23 continued separation from their family because the government refuses to apply the
24 original priority date under 203(h)(3). Plaintiffs and all class members they
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1 represent, seek class certification in the interests of justice, judicial efficiency and
2 economy, and uniform application of the decision.
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4 **B. Even If The Named Plaintiff Parents Were Never Derivative**
5 **Beneficiaries, The Harm They Suffered and The Claims For**
6 **Relief Are Typical Of The Claims Of Class Member Derivative**
7 **Beneficiaries And Therefore, The Named Plaintiffs Adequately**
8 **Represent The Class.**
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10 Both the parent and the child were named as beneficiaries of the original
11 petition with the common interest of immigrating to the United States. Whether
12 the parent or the child is the named Plaintiff is irrelevant because the agenda for
13 both are co-extensive: parents seek to reunite with their children, and children seek
14 to reunite with their parents in the United States. If the adult child has another
15 agenda, i.e. not enter the United States, they are not included in the instant class
16 action. Even if the named Plaintiff parents were never derivative beneficiaries,
17 they have suffered the same harm as their class member adult children, their claims
18 arise from the same course of conduct by the Defendants, and their claims for relief
19 are based on the same legal theory. Therefore, who is named a plaintiff and what
20 type of petition was originally filed, are irrelevant given that the single class of
21 aggrieved individuals simply request this Court to recognize their right to retention
22 of the original priority date under 203(h)(3).
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CONCLUSION

This lawsuit revolves around one simple issue: do derivative beneficiaries who age-out retain, under 203(h)(3), the priority date they had when the original immigrant visa petition¹ was filed on behalf of their parents. If the answer is yes, the government is wrong in refusing to apply that priority date. In that case, the court should order them to apply the law.

When the original immigrant visa petitions were filed, the sons and daughters were minors. Because of the backlog in visa numbers, these children have reached majority. Before CSPA, when their now immigrated parents filed petitions for them, the children (who had previously waited a decade or more) were forced to wait anywhere from 5 – 15 more years to be reunited with their parents. Congress, recognizing this inequity, passed the Child Status Protection Act. Under Section 203(h)(3) of this Act, Congress acknowledged that these children had waited long enough and provided for them to be able to reunited with their parents.

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¹ Whether it was a family-based or employment-based petition or a diversity-based petition.

1 This lawsuit asks the court to require the government to apply the law that
2 Congress passed.
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4 Dated: August 18, 2008

Respectfully Submitted,

5 /s/Nancy E. Miller
6

7 _____
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CERTIFICATE OF SERVICE

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Case No. SACV08-688 JVS (SHx)

I hereby certify that on August 18, 2008, a copy of the foregoing "PLAINTIFFS' REPLY TO DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION TO AMEND PROPOSED CLASS DEFINITION" was filed electronically using the Court's electronic filing system. I understand that notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

Dated: August 18, 2008

Respectfully Submitted,

/s/Nancy E. Miller

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