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2008 JUN 20 PM 1:05
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CENTRAL DIST. OF CALIF.
LOS ANGELES

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Attorneys for Plaintiffs

**THE UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA**

TERESITA G. COSTELO, and
LORENZO P. ONG,
Individually And On Behalf Of All
Others Similarly Situated,

Plaintiffs,

v.

MICHAEL CHERTOFF, Secretary Of
The Department Of Homeland
Security;
UNITED STATES CITIZENSHIP
AND IMMIGRATION SERVICES;
EMILIO T. GONZALEZ, Director,
United States Citizenship And
Immigration Services; DAVID
TYLER, Director, National Visa
Center; CHRISTINA POULOS,

SAC V08-688 JVS (SHx)

) Case No.
)
)
)
) COMPLAINT FOR
) DECLARATORY, MANDAMUS
) AND INJUNCTIVE RELIEF
)
)
) [CLASS ACTION]

1 Acting Director, California Service)
2 Center, United States Citizenship and)
3 Immigration Services; And)
4 CONDOLEEZA RICE, Secretary of)
5 State,)

6 Defendants.)
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COME NOW Plaintiffs TERESITA G. COSTELO and LORENZO P. ONG (hereinafter "Plaintiffs"), by their undersigned attorneys, and bring this civil action for declaratory, mandamus and injunctive relief on behalf of themselves and all others similarly situated against the above-named Defendants. They complain and allege as follows:

I. PRELIMINARY STATEMENT

1. Congress enacted the Child Status Protection Act of 2002 (CSPA), codified at § 203(h) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1153(a)(3), to provide immigration relief to children of immigrant parents. Prior to CSPA children who reached the age of 21 were no longer eligible to obtain an immigrant visa with the rest of their family. These children became known as "age-outs." One provision of CSPA, specifically INA § 203(h)(1), provides relief from government adjudication delays by allowing the amount of time the United States Citizenship and Immigration Service (USCIS) takes to adjudicate the visa

1 petition to be subtracted from the child's age on the date he or she becomes eligible
2 to immigrate to the United States. This provision alone would still leave some
3 children behind when families immigrate to the United States. However, Congress
4 also enacted Section 3 of CSPA, codified as INA § 203(h)(3), to keep children
5 together with their parents.
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8 2. INA § 203(h)(3) states “(3) *Retention of priority date.*- If the age of
9 an alien is determined under paragraph (1) to be 21 years of age or older for the
10 purposes of subsections (a)(2)(A) and (d), the alien's petition shall automatically
11 be converted to the appropriate category and the alien shall retain the original
12 priority date upon receipt of the original petition.”¹ As such, an aged-out child,
13 who is a derivative beneficiary of the visa petition of his parent, can now reunite
14 with their family more quickly by utilizing their parent's earlier priority date. A
15 child abroad who aged-out is eligible under CSPA for an immigrant visa, and if the
16 child is in the United States, he or she will be able to adjust to legal resident status.
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21 3. When a child who is a derivative beneficiary under the visa petition
22 filed for their parent turns twenty one, he or she is considered to have aged-out. As
23 an age-out, the child is ineligible to immigrate as a derivative beneficiary under the
24 petition filed for their parent. Some parents have to wait up to 20 years for their
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27 ¹ (a)(2)(A) refers to § 203(a)(2)(A) of this chapter which provides the statutory authority to issue visas to unmarried
28 sons and daughters of permanent resident aliens. Section (d) refers to 203 of this chapter which provides the
statutory authority to issue visas to derivative beneficiaries i.e. spouses and children to immigrate with the principal
beneficiary such as the immigrating parent.

1 visa number to become available and during this time their children age-out.
2 Under INA § 203(a)(2)(B), a permanent resident parent has the right to petition his
3 unmarried adult children. The child's priority date would then be the date the
4 immigrant visa petition was filed. Because of the limited number of visas and the
5 backlog, the child would have to wait several more years to be reunited with his
6 family. Under CSPA, however, the priority date under which the parent
7 immigrated becomes the priority date of the aged-out child. This eliminates the
8 lengthy wait and makes the child's immigrant visa immediately available in most
9 cases.
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14 4. Although the USCIS has granted some visa petitions and permitted
15 retention of the earlier priority dates pursuant to INA § 203(h)(3), there appears to
16 be no uniform policy from USCIS as a whole. The lack of any regulations
17 regarding INA § 203(h)(3) or even policy memorandum has lead to arbitrary and
18 inconsistent decision-making affecting thousands on a global level. Furthermore,
19 Defendants' failure to promulgate regulations implementing CSPA benefits
20 violates the Administrative Procedure Act (APA), 5 U.S.C. § 551 et seq.; the Due
21 Process Clause and equal protection guarantee of the Fifth Amendment to the
22 United States Constitution; and Article II, §§ 1 and 3 of the United States
23 Constitution.
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1 5. This class action lawsuit presents two different classes of aggrieved
2 individuals. The members of the first class are those who filed petitions with
3 requests for retention of the parent's original priority date which were denied. The
4 named plaintiff in the first class, Teresita Costelo, is a mother who properly
5 petitioned for her two daughters but suffers the repercussions of inconsistent
6 decisions involving the unlawful denial for one child and an approval for another
7 child. Plaintiff Costelo is among thousands of persons in this class who will have
8 to wait several more years before she may reunite with both daughters in the
9 United States.
10

11 6. The members of the second class are those who have received no
12 response at all to their requests for retention of the original priority date. The
13 named plaintiff of this class, Lorenzo Ong, is a father who filed more than three
14 years ago a petition requesting retention of his original priority date under CSPA.
15 Defendants have failed to respond. Plaintiff Ong is among a class of thousands of
16 parents who continue to wait year after year for Defendants to adjudicate their
17 cases pursuant to § 203(h)(3).
18

19 7. For the foregoing reasons, Plaintiffs Costelo and Ong, on behalf of
20 themselves and those similarly situated, bring this class action complaint to compel
21 Defendants to properly adjudicate all cases filed under CSPA, or INA § 203(h)(3),
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1 and comply with the requirements of retaining the parent's original priority date in
2 subsequent petitions filed by the parent.
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5 **II. JURISDICTION AND VENUE**
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7 8. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §
8 1331 (federal question jurisdiction) and 8 U.S.C. § 1361 (the Mandamus and
9 Venue Act to compel an officer to perform a duty owed to plaintiffs.)
10

11 9. This Court also retains jurisdiction under the Fifth Amendment to the
12 United States Constitution and the Declaratory Judgment Act, 28 U.S.C. §§ 2201
13 and 2202, to issue Orders regarding the construction and application of Section 3
14 of the Child Status Protection Act, Pub. L. No. 107-208, 116 Stat. 927 (2002),
15 codified at INA § 203(h), 8 U.S.C. § 1153(h). Similarly, this Court has jurisdiction
16 to compel the Defendants to recognize the Plaintiffs' automatic conversion and
17 retention of the original priority date pursuant to INA § 203(h)(3), 8 U.S.C. §
18 1153(h)(3).
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22 10. The Administrative Procedure Act, 5 U.S.C. §§ 702-706, provides
23 additional legal authority for this Court to review, hold unlawful and set aside
24 actions of administrative agencies that are unconstitutional; that exceed statutory
25 jurisdiction or authority; that fail to abide by statutory or regulatory procedures;
26 and that are arbitrary, capricious, an abuse of discretion or are otherwise not in
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1 accordance with the applicable law. See 5 U.S.C. § 706. The Administrative
2 Procedure Act authorizes reviewing courts to entertain “any applicable form of
3 legal action,” including “actions for declaratory judgments or writs of prohibitory
4 or mandatory injunction” that challenge the actions of administrative agencies and
5 to issue all necessary and appropriate orders to redress grievances resulting from
6 agency action. See 5 U.S.C. §§ 703, 706.
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9 11. Venue is proper in the United States District Court for the Central
10 District of California, pursuant to 28 U.S.C. § 1391(b) because this is a civil action
11 in which the Defendants are either officers of the United States acting in their
12 official capacities or an agency of the United States; because Plaintiffs reside in
13 this judicial district; and because many of the events or omissions giving rise to the
14 claim occurred in this judicial district.
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19 III. CLASS ALLEGATIONS

20 12. Plaintiffs bring this action on behalf of themselves and all other
21 persons similarly situated pursuant to Fed. R. Civ. Proc. Rule 23(a) and 23(b)(2).
22 Plaintiffs provisionally propose this action be certified on behalf of the following
23 class:
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26 All persons who have filed an immigrant visa petition(s) for their child or
27 children with a request for the original priority date or are the derivative
28 beneficiary of an immigrant visa petition who face future and/or ongoing
separation from family members as a result of the Defendants failure to

1 automatically convert and retain the original visa petition priority date
2 pursuant to Section 3 of the Child Status Protection Act.

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4 13. Members of the proposed class number are in the thousands. The
5 class members are so numerous that joinder of all members is impracticable.

6
7 14. The claims of the proposed class representative and those of the
8 proposed class members raise common questions of law and fact concerning
9 whether the Defendants may refuse to recognize a statute that preserves a parent's
10 original priority date for use by their sons and daughters after they turn 21. This
11 and similar questions are common to the named Plaintiffs and to the members of
12 the proposed class because Defendants have acted and will continue to act on
13 grounds generally applicable to both the named Plaintiffs and proposed class
14 members. The individual named Plaintiffs' claims are typical of the class claims.

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18 15. The individual named Plaintiffs will adequately represent all members
19 of the proposed class.

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21 16. The prosecution of separate actions by individual members of the
22 class would create a risk of inconsistent or varying adjudications establishing
23 incompatible standards of conduct by Defendants. The issuance of regulations,
24 forms, standards and/or procedures is a national function of the Department of
25 Homeland Security, not a function performed differently in each individual case or
26 in each USCIS district or region.
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1 17. Prosecution of separate actions would also create the risk that
2 individual class members will secure court orders that would as a practical matter
3 be dispositive of the claims of other class members not named parties to this
4 litigation, thereby substantially impeding the ability of unrepresented class
5 members to protect their interests.
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8 18. Defendants, their agents, employees and predecessors and successors
9 in office have acted or refused to act, and will continue to act or refuse to act, on
10 grounds generally applicable to the class, thereby making appropriate injunctive
11 relief or corresponding declaratory relief with respect to the class as a whole. The
12 individual named Plaintiffs will vigorously represent the interests of unnamed class
13 members. All members of the proposed class will benefit from the action brought
14 by the individual named Plaintiffs. The interests of the individual named Plaintiffs
15 and those of the proposed class members are identical.
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21 IV. PARTIES

22 A. PLAINTIFFS
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24 FIRST CLASS: Parents who have filed an immigrant visa petition or are the
25 adult children beneficiaries of an immigrant visa petition who face separation from
26 each other as a result of the Defendants refusal to automatically convert and retain
27 the original priority date of the original visa petition pursuant to Section 3 of the
28 Child Status Protection Act.

1 19. On July 22, 2004, Plaintiff TERESITA G. COSTELO obtained U.S.
2 lawful permanent resident status through an approved Petition for Alien Relative
3 filed by her U.S. citizen mother on January 5, 1990. Also named in the petition as
4 derivative beneficiaries were Plaintiff Costelo's two daughters, Angelyn G.
5 Costelo and Anne Theresa G. Costelo. When the petition by Plaintiff Costelo's
6 mother was filed in 1990, Angelyn was 10 years old, and Anne Theresa was 13
7 years old. When Plaintiff Costelo's priority date became current in 2004, Angelyn
8 and Anne Theresa aged-out because they were over 21 years old. Plaintiff Costelo
9 filed new immigrant visa petitions for her daughters on September 23, 2004, and
10 also requested retention of the January 5, 1990 priority date. Defendants
11 responded with an approval of the original priority date for Angelyn, and a denial
12 of the original priority date for Anne Theresa. Plaintiff Costelo resides in Long
13 Beach, California, and her daughters remain in the Philippines.
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21 SECOND CLASS: Parents who have filed an immigrant visa petition who face
22 separation from their children as a result of the Defendants failure to act regarding
23 the automatic conversion and retention of the original priority date of the original
24 visa petition pursuant to Section 3 of the Child Status Protection Act.

25 20. On June 16, 2004, Plaintiff LORENZO P. ONG obtained U.S. lawful
26 permanent resident status through an approved immigrant visa petition filed by her
27 U.S. citizen sister on May 7, 1981. Also named in the petition as derivative
28

1 beneficiaries were Plaintiff Ong's two daughters, Vernilee M. Ong and
2 Lucheevette M. Ong. When the petition by Plaintiff Ong's sister was filed in 1981,
3 Vernilee was 4 years old, and Lucheevette was 2 years old. When Plaintiff Ong's
4 priority date became current in July of 2002, they had aged-out because they were
5 over 21 years old. Plaintiff Ong filed new immigrant visa petitions for his
6 daughters on March 8, 2005, and also requested retention of the May 7, 1981
7 priority date. As of today, Defendants have not responded. Plaintiff Ong resides
8 in Artesia, California, and his daughters remain in the Philippines.
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14 B. DEFENDANTS

15 21. Defendant MICHAEL CHERTOFF is the Secretary of the Department
16 of Homeland Security. He has a mandate, pursuant to 8 U.S.C. § 1103(a) and 6
17 U.S.C. § 202(3), to administer and enforce the Immigration and Nationality Act,
18 and to enforce other laws related to the immigration and naturalization of aliens.
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21 22. Defendant UNITED STATES CITIZENSHIP AND IMMIGRATION
22 SERVICES is a department within the United States Department of Homeland
23 Security. That agency has a mandate, pursuant to 6 U.S.C. §§ 271(a)(2) and
24 271(b), to process and adjudicate immigrant visa petitions and other petitions for
25 immigration relief, and to process and adjudicate applications for immigration
26 benefits.
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1 23. Defendant EMILIO T. GONZALEZ is the Director of United States
2 Citizenship and Immigration Services, a department within the United States
3 Department of Homeland Security. He has a mandate, pursuant to 6 U.S.C. §§
4 271(a)(2) and 271(b), to supervise the processing and adjudication of immigrant
5 visa petitions and other petitions for immigration relief.
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8 24. Defendant CONDOLEEZZA RICE is the Secretary of the Department
9 of State. She has a duty, pursuant to 8 U.S.C. § 1104(a), to administer and enforce
10 the provisions of the INA and all other immigration and nationality laws related to
11 the powers, duties, and functions of diplomatic and consular officers. She also has
12 the power, pursuant to 8 U.S.C. § 1104(a), to establish regulations necessary for
13 carrying out her statutory authority.
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16 25. Defendant DAVID TYLER is the Director of the National Visa
17 Center, an office within the Bureau of Consular Affairs for the United States
18 Department of State. He has a duty delegated by the Secretary of the United States
19 Department of State, pursuant to 8 U.S.C. § 1104(c), to administer and enforce the
20 immigration and nationality laws, and to process all approved immigrant visa
21 petitions transferred from United States Citizenship and Immigration Services,
22 including applications for immigrant visas.
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26 26. Defendant CHRISTINA POULOS is the Acting Director of the
27 California Service Center of USCIS. She has a duty, delegated by the Director of
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1 USCIS, to oversee the filing and processing of applications for immigration
2 benefits and relief at the California Service Center.
3

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5 IV. STATUTORY REFERENCES
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7 27. Section 204 of the Immigration and Nationality Act, 8 U.S.C. § 1154,
8 governs petitions for classification as a family-sponsored preference immigrant.
9 See INA § 204(a)(1)(B), 8 U.S.C. §1154(a)(1)(B)(i) “[a]ny alien lawfully admitted
10 for permanent residence claiming that an alien is entitled to a classification by
11 reason of the relationship described in § 203(a)(2) [of the INA] may file a petition
12 with the Attorney General for such classification.” INA § 204(a)(1)(B)(i), 8
13 U.S.C. § 1154(a)(1)(B)(i).
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16 28. Section 204(b) of the Immigration and Nationality Act, 8 U.S.C. §
17 1154(b) governs the approval of petitions for classification as a family-sponsored
18 preference immigrant. See INA § 204(b), 8 U.S.C. § 1154(b) (“[a]fter an
19 investigation of the facts in each case...the Attorney General shall, if he determines
20 that the facts stated in the petition are true and that the alien in behalf of whom the
21 petition is made is an immediate relative specified in § 201(b) [of the INA] or is
22 eligible for preference under subsection (a) or (b) of § 203 [of the INA], approve
23 the petition and forward one copy thereof to the Department of State. The
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1 Secretary of State shall then authorize the consular office concerned to grant the
2 preference status.”).

3
4 29. Section 203 of the Immigration and Nationality Act sets forth the
5 preference allocation of immigrant visas for family-sponsored aliens. Specifically,
6 “[q]ualified immigrants who are the unmarried sons or daughters of citizens of the
7 United States” fall into the first preference, or F1, family-sponsored immigrant visa
8 preference category. INA, § 203(a)(1), 8 U.S.C. § 1153(a)(1). Other “[q]ualified
9 immigrants (A) who are the spouses or children of an alien lawfully admitted for
10 permanent residence, or (B) who are the unmarried sons or unmarried daughters
11 (but are not the children) of an alien lawfully admitted for permanent residence,”
12 fall into the second preference family-sponsored immigrant visa preference
13 category, or F2A and F2B preference categories, respectively. INA §§
14 203(a)(2)(A) and 203(a)(2)(B), 8 U.S.C. §§ 1153(a)(2)(A) and 1153(a)(2)(B).
15 Other “[q]ualified immigrants who are the married sons or married daughters of
16 citizens of the United States” fall into the third preference family-sponsored
17 immigrant visa preference category, or F3 preference category. INA § 203(a)(3), 8
18 U.S.C. § 1153(a)(3).
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25 30. The statutory provision for the admission of immediate relatives of
26 United States citizens, who are not subject to limitations on immigrant visas, is
27 located at § 201(b)(2)(A)(i) of the INA. See INA § 201(b)(2)(A)(i), 8 U.S.C. §
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1 1151(b)(2)(A)(i) (defining “immediate relatives” as “the children, spouses, and
2 parents of a citizen of the United States, except that, in the case of parents, such
3 citizens shall be at least 21 years of age.”)

5 31. The allocation of immigrant visas for family-sponsored immigrants,
6 based upon the priority date, or filing date, of the petition for classification under §
7 204 of the INA, 8 U.S.C. § 1154, is governed by § 204(e)(1) of the INA and 22
8 C.F.R. §§ 42.53(a) and 42.54(a)(1). See INA § 203 (e)(1), 8 U.S.C. § 1153(e)(1)
9 (declaring that “[i]mmigrant visas made available under subsection (a) or (b) shall
10 be issued to eligible immigrants in the order in which a petition in behalf of each
11 such immigrant is filed with the Attorney General...as provided in § 204(a) [of the
12 INA]”); 22 C.F.R. § 42.53(a) (stating that “[t]he priority date of a preference visa
13 applicant under INA 203(a) or (b) shall be the filing date of the approved petition
14 that accorded preference status”); 22 C.F.R. § 42.54(a)(1) (declaring that
15 “[c]onsular officers shall request applicants to take the steps necessary to meet the
16 requirements of INA 222(b) in order to apply formally for a visa as follows (1) In
17 the chronological order of the priority dates of all applicants within each of the
18 immigrant classifications specified in INA 203(a) and (b).”)

25 32. The statutory provisions defining a child, for purposes of petitions for
26 classification under § 204 of the INA, are located at § 101(b)(1) of the INA. Under
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1 those statutory sections, “[t]he term ‘child’ means an unmarried person under
2 twenty-one years of age.” INA § 101(b)(1), 8 U.S.C. § 1101(b)(1).
3

4 33. CSPA relief from government adjudication delays is provided under
5 INA § 203(h)(1). Under this provision, a child’s age is adjusted by subtracting the
6 amount of time the United States Citizenship and Immigration Service (USCIS)
7 takes to adjudicate the visa petition from the child’s age on the date he or she
8 becomes eligible to immigrate to the United States. If the adjusted age is now
9 under 21, that child has no longer aged-out and may immigrate with the parent.
10
11

12 INA § 203(h)(1) provides,

13
14 [f]or purposes of subsections (a)(2)(A) and (d) [of § 203 of the INA], a
15 determination of whether the alien satisfies the age requirement in the matter
16 preceding subparagraph (A) of § 101(b)(1) [of the INA] shall be made using
17 -- (A) the age of the alien on the date on which an immigrant visa number
18 becomes available for such alien...but only if the alien has sought to acquire
19 the status of an alien lawfully admitted for permanent residence within one
20 year of such availability; reduced by (B) the number of days in the period
21 during which the applicable petition described in paragraph (2) was pending.

22 If, after performing that calculation, “the age of an alien is determined under
23 paragraph (1) to be 21 years of age or older for the purposes of subsections
24 (a)(2)(A) and (d).”² Under INA § 203(h)(3), the alien’s petition shall then
25 “automatically be converted to the appropriate category and the alien shall retain
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27
28 ² (a)(2)(A) refers to § 203(a)(2)(A) of this chapter which provides the statutory authority to issue visas to unmarried sons and daughters of permanent resident aliens. Section (d) refers to 203 of this chapter which provides the statutory authority to issue visas to derivative beneficiaries i.e. spouses and children to immigrate with the principal beneficiary such as the immigrating parent.

1 the original priority date issued upon receipt of the original petition.” INA §
2 203(h)(3), 8 U.S.C. § 1153(h)(3) (emphasis added).
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6 V. STATEMENT OF FACTS

7 FIRST CLASS: Plaintiff TERESITA G. COSTELO:
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9 34. On or about January 5, 1990, Plaintiff Teresita G. Costelo’s United
10 States citizen mother filed a Petition for Alien Relative naming her the primary
11 beneficiary.
12

13 35. Plaintiff Costelo’s daughters, Angelyn G. Costelo (born on November
14 3, 1980) and Anne Theresa Costelo (born on July 6, 1977) were derivative
15 beneficiaries of the petition. When the petition by Plaintiff Costelo’s mother was
16 filed in 1990, Angelyn was 10 years old, and Anne Theresa was 13 years old.
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19 36. On or about January 22, 1990, the legacy Immigration and
20 Naturalization Service approved the visa petition.
21

22 37. On or about February 2004, the approved visa petition became
23 available. The delay since 1990 is the result of the oversubscription of visa
24 numbers that created an availability backlog until 2004. At that time, Plaintiff
25 Costelo’s daughters aged-out because they were over 21 years old.
26

27 38. On or about July 22, 2004, Plaintiff Costelo immigrated to the United
28 States.

1 39. On or about September 23, 2004, Plaintiff Costelo filed petitions on
2 behalf of her daughters with the California Service Center (CSC) of the United
3 States Citizenship and Immigration Service (USCIS). The new priority date is
4 September 20, 2004. The current priority date for the Philippines for family-based
5 petitions filed by lawful permanent residents for unmarried sons or daughters (21
6 years of age or older) is February 22, 1997.
7

8
9 40. On or about August 2, 2007, Plaintiff Costelo requested Defendants to
10 retain her January 5, 1990 priority date for her daughters' immigrant visa petitions,
11 so that they could join the rest of the family in the U.S.
12

13 41. On or about February 12, 2008, Defendants approved Angelyn
14 Costelo's petition and retained the January 5, 1990 priority date.
15

16 42. On or about February 12, 2008, Defendants denied Anne Theresa's
17 request to retain the original priority date.
18

19 43. The denial of Anne Theresa's petition has and continues to cause
20 Plaintiff Costelo emotional distress. She worries that Anne Theresa will never be
21 reunited with her family. Plaintiff Costelo experiences stress-related issues
22 including headaches and tremors in her hands, and difficulty concentrating at work
23 due to the separation from her daughter. She struggles daily knowing that Anne
24 Theresa has been left behind alone in the Philippines. Despite her education and
25 strong work ethic, Anne Theresa will also have difficulty supporting herself in the
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1 Philippines due to its high unemployment. What disturbs Plaintiff Costelo the
2 most is that Defendants can issue random denials for otherwise eligible applicants
3 such as her daughter. If Anne Theresa were allowed to enter the U.S. with
4 Angelyn, she would be able to work to help her family financially.
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8 B. SECOND CLASS: Plaintiff LORENZO P. ONG

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10 44. On or about May 7, 1981, Plaintiff Lorenzo Ong's United States
11 citizen sister filed an immigrant visa petition for Lorenzo Ong. He became the
12 primary beneficiary of his sister's petition.
13

14 45. Plaintiff Ong's daughters, Vernilee Ong and Lucheevette, were named
15 derivative beneficiaries in the visa petition filed on behalf of Plaintiff Ong. When
16 the petition was approved on August 4, 1981, Vernilee was 4 years old, and
17 Lucheevette was 2 years old.
18

19 46. On or about July of 2002, the visa became available. The delay since
20 1981 is the result of the oversubscription of visa numbers that created an
21 availability backlog until 2002. At that time, Plaintiff Ong's daughters aged-out
22 because they were over 21 years old.
23
24

25 47. On or about June 16, 2004, Plaintiff Ong immigrated to the United
26 States.
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1 48. On October 20, 2005, Plaintiff Ong sent a letter to Defendants
2 requesting retention of his priority date pursuant to INA § 203(h)(3) for his
3 daughters to immigrate to the U.S. Defendants failed to respond. On December 1,
4 2005, Plaintiff sent another letter to Defendants with the same request. Again
5 Defendants failed to respond.
6
7

8 49. On or about March 8, 2005, Plaintiff Ong filed immigrant visa
9 petitions for his daughters with the California Service Center (CSC) of the United
10 States Citizenship and Immigration Service (USCIS). The current priority date for
11 the Philippines for family-based petitions filed by lawful permanent residents for
12 unmarried sons or daughters (21 years of age or older) is February 22, 1997.
13
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15 50. On or about April 9, 2007, Plaintiff Ong, by and through counsel,
16 filed a request for immigrant visa processing and retention of priority date under
17 CSPA. Defendants have not responded to this request.
18

19 51. The immigrant visa petitions that Plaintiff Ong filed for his daughters
20 are currently pending. Defendants have not responded to Plaintiff Ong's request to
21 retain the May 7, 1981 priority date.
22

23 52. Plaintiff Ong has and continues to suffer emotional distress as a result
24 of Defendants failure to respond to his pleas. His daughters have suppressed their
25 own personal and professional ambitions because of the delay. Because of their
26 limited income, they are unable to support themselves. Plaintiff Ong worries every
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1 time his daughters get sick and he is unable to care for them. He spends over \$100
2 per month for phone cards in order to keep in touch with his daughters. Phone
3 contact cannot substitute for personal contact.
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7 VI. LEGAL ARGUMENT

8 A. Claim For Declaratory And Injunctive Relief, Regarding The
9 Application Of Section 3 Of The Child Status Protection Act, INA §
10 203(h)(3), 8 U.S.C. § 1154(h)(3).

11
12 53. The plaintiffs hereby incorporate by reference all of the above-
13 mentioned paragraphs of the instant complaint.

14 54. Section 3 of the Child Status Protection Act provides as follows:

15
16 (3) Retention of Priority Date. – If the age of an alien is determined under
17 paragraph (1) to be 21 years of age or older for the purposes of subsections
18 (a)(2)(A) and (d), the alien’s petition shall automatically be converted to the
19 appropriate category and the alien shall retain the original priority date
issued upon receipt of the original petition.³

20 Codified as INA § 203(h)(3), 8 U.S.C. § 1153(h)(3).

21
22 55. The Defendants have failed to issue the Plaintiffs’ visa petition with
23 the “original priority date.” Specifically, the Defendants have refused to
24 acknowledge Plaintiffs’ eligibility for the automatic conversion and retention of
25 the original priority date as specified at INA § 203(h)(3), 8 U.S.C. § 1153(h)(3).
26

27
28 ³ (a)(2)(A) refers to § 203(a)(2)(A) of this chapter which provides the statutory authority to issue visas to unmarried sons and daughters of permanent resident aliens. Section (d) refers to 203 of this chapter which provides the statutory authority to issue visas to derivative beneficiaries i.e. spouses and children to immigrate with the principal beneficiary such as the immigrating parent.

1 Demand for visa numbers is often oversubscribed creating an availability backlog
2 spanning many years and even decades.

3
4 56. The Defendants' refusal to issue the visa petition with the original
5 priority date is at odds with the language, structure, history and purpose of the
6 Child Status Protection Act.
7

8 57. The history and purpose of the Child Status Protection Act supports a
9 reading of Section 3 that is as ameliorative as it is inclusive. Indeed, Congress
10 enacted the Child Status Protection Act "to address the 'enormous backlog of
11 adjustment of status (to permanent residence) applications' which had developed at
12 the [former] INS." Padash v. INS, 358 F.3d 1161, 1172 (9th Cir. 2004)(*quoting*
13 Child Status Protection Act of 2001, H.R. Rep. No. 107-45, 107th Cong., 1st Sess.,
14 at 2 (2001), reprinted in 2002 U.S.C.C.A.N. 640). The House Judiciary Committee
15 noted that at the time of enactment "the backlog of unprocessed visa[] applications
16 was close to one million," and that "approximately one thousand of the
17 applications reviewed each year by the agency were for individuals who had aged-
18 out of the relevant visa category since the time they had filed their petitions," due
19 to delays in processing. Padash, *supra* at 1172-73 (*citing* H.R. Rep. No. 107-45).
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25 58. Congress expressly enacted the Child Status Protection Act to
26 "address[] the predicament of those aliens, who through no fault of their own, lose
27 the opportunity to obtain [a]...visa." Padash, *supra* at 1173 (*quoting* H.R. Rep.
28

1 No. 107-45, at 2). The United States Court of Appeals for the Ninth Circuit has
2 found that the Child Status Protection Act “was intended to address the often harsh
3 and arbitrary effects of the age out provisions under the previously existing
4 statute.” Padash, *supra* at 1173.
5

6
7 59. This Court should adhere to the general canon of construction that “a
8 rule intended to extend benefits should be ‘interpreted and applied in an
9 ameliorative fashion.” Padash, *supra* at 1173 (*quoting Hernandez v. Ashcroft*, 345
10 F.3d 824, 840 (9th Cir. 2003).)
11

12 60. The Defendants’ interpretation and application of INA § 203(h)(3), 8
13 U.S.C. § 1153(h)(3) is anything but ameliorative. Rather, the Defendants have
14 ignored both the clear language of the statute and Congressional intent regarding
15 this section of law.
16
17

18 61. Because Defendants have failed to abide by statutory procedures, their
19 actions are arbitrary, capricious and an abuse of discretion.
20

21 62. Accordingly, Plaintiffs respectfully request that this Court enter an
22 Order consistent with Congressional intent and the clear language of the Child
23 Status Protection Act and declare the Plaintiffs’ and class members’ visa petitions
24 automatically convert and retain the original priority date pursuant to INA §
25 203(h)(3), 8 U.S.C. § 1153(h)(3).
26
27
28

1 B. Petition For Writ Of Mandamus. Pursuant To 28 U.S.C. § 1361 And
2 1651(A).

3
4 63. The plaintiffs hereby incorporate by reference all preceding
5 paragraphs of the instant complaint, as stated therein.
6

7 64. The All Writs Act specifies, “all courts established by Act of
8 Congress may issue all writs necessary or appropriate in aid of their respective
9 jurisdictions and agreeable to the usages and principles of law.” 28 U.S.C. §
10 1651(a). When the “obligation of a Court of Appeals to review on the merits
11 may be defeated by an agency that fails to resolve disputes,” the All Writs Act
12 authorizes courts to “resolve claims of unreasonable delay in order to protect its
13 future jurisdiction.” Confederated Tribes of the Umatilla Indian Reservation v.
14 Bonneville Power Admin., 342 F.3d 924, 930 (9th Cir. 2003) (*quoting* Telecomm.
15 Research & Action Ctr. v. FCC, 750 F.2d 70, 76 (D.C. Cir. 1984)).
16
17
18

19 65. The Mandamus and Venue Act of 1962 authorizes district courts to
20 issue writs of mandamus “to compel an officer or employee of the United States or
21 any agency thereof to perform a duty owed to the plaintiffs.” 28 U.S.C. § 1361.
22

23 66. A federal court may issue a writ of mandamus to compel a federal
24 official’s performance of official duties, pursuant to 28 U.S.C. § 1361 when “(1)
25 the individual’s claim is clear and certain; (2) the official’s duty is
26 nondiscretionary, ministerial, and so plainly prescribed as to be free from doubt,
27
28

1 and (3) no other adequate remedy is available.” Kildare v. Saenz, 325 F.3d 1078,
2 1084 (9th Cir. 2003).

3
4 67. Mandamus relief is available, in particular, to remedy executive
5 officials' failure to act on visa petitions for lawful admission into the United States.
6
7 See Patel v. Reno, 134 F.3d 929, 931-32, 933 (9th Cir. 1997) (recognizing
8 availability of mandamus relief for failure of consulate to act on visa applications
9 by spouse and children of United States citizen for an eight-year period).

10
11 68. Plaintiffs have a clear and certain right to have the Defendants issue
12 visa petitions in a reasonable time, and in a reasonable manner. See Greater Los
13 Angeles Council on Deafness, Inc. v. Baldrige, 827 F.2d 1353, 1362 (9th Cir.
14 1987) (noting that “the plaintiffs have a clear right to have the Department [of
15 Health and Human Services] act on their administrative complaint and the
16 Department has a duty to act,” even if the agency ultimately does not afford the
17 plaintiffs relief on their disability claims); See also, Paunescu, 76 F. Supp. 2d at
18 900-01 (holding that 8 U.S.C. § 1255 “provide[s] a right to an adjudication [of an
19 adjustment of status application]...within a reasonable time,”) (quoting
20 Agbemape v. INS, 1998 U.S. Dist. LEXIS 7953 (N.D. Ill. 1998).) Here, a
21 reasonable manner is one in accordance with the statutory framework.
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1 69. A petitioner for a writ of mandamus has a “clear and certain claim”
2 when he or she has a “legal entitlement to the relief sought” that is judicially
3 enforceable. Lowry v. Barnhart, 329 F.3d 1019, 1021-22 (9th Cir. 2003).

4
5 70. For the reasons stated above, the language, structure, history and
6 purpose of Section 3 of the Child Status Protection Act make clear that Congress
7 intended that visa petitions of child beneficiaries who turn twenty-one years of age
8 while awaiting immigrant visa processing automatically convert to the proper
9 category and retain the original priority date.
10

11 71. An agency action is ministerial, for purposes of mandamus relief,
12 when the action “has been defined as a clear, non-discretionary agency obligation
13 to take a specific affirmative action, which obligation is positively commanded and
14 ‘so plainly prescribed as to be free from doubt.’” Independence Mining Co. v.
15 Babbitt, 105 F.3d 502, 508 (9th Cir. 1997) (*citing* Azurin v. Von Raab, 803 F.2d
16 993, 995 (9th Cir. 1986)).
17

18 72. The Defendants have a non-discretionary duty to issue the correct
19 priority date of approved visa petitions.
20

21 73. Because Congress specifically provided for the “automatic” conversion
22 and retention of the original priority date, Defendant’s duty is non discretionary
23 and has been clearly defined.
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1 74. There is no other adequate remedy at law for the Defendants' refusal
2 to recognize the plaintiffs' right to retain the original priority date. The plaintiffs
3 have jointly filed numerous requests with the defendants to enable them. See Sun
4 v. Ashcroft, 370 F.3d 932, 943 (9th Cir. 2004) (declaring that ““where the agency's
5 position on the question at issue appears already set, and it is very likely what the
6 result of recourse to administrative remedies would be, such recourse would be
7 futile and is not required””) (*quoting* El Rescate Legal Services, Inc. v. Executive
8 Office for Immigration Review, 959 F.2d 742, 747 (9th Cir. 1991)).

9
10
11
12 75. Accordingly, the plaintiffs respectfully request that this Court issue a
13 writ of mandamus, compelling the Defendants to perform their non-discretionary
14 duty to issue the correct original priority date pursuant to INA § 203(h)(3), 8
15 U.S.C. § 1153(h)(3).
16
17
18

19 C. Claim Under The Administrative Procedure Act: Violation Of Due
20 Process Clause Due To Defendants' Failure To Abide By Their Own
21 Regulations.
22

23 76. The Administrative Procedure Act (“APA”) permits lawsuits by
24 people “suffering legal wrong because of agency action, or adversely affected or
25 aggrieved by agency action within the meaning of a relevant statute.” 5 U.S.C. §
26 702.
27
28

1 77. The APA defines “agency action” as “the whole or part of an agency
2 rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to
3 act.” 5 U.S.C. § 551(13).
4

5 78. An “order” and “relief” signify “a final disposition...in a matter other
6 than rule making,” or the “taking of other action on the application or petition of,
7 and beneficial to, a person.” 5 U.S.C. §§ 551(4), 551(11).
8

9 79. A “failure to act,” in turn, is “properly understood as a failure to take
10 one of the agency actions,” or their equivalents, specified in § 551(13). Norton v.
11 Southern Utah Wilderness Alliance, 542 U.S. 55, 62 (2004).
12

13 80. The APA also allows a reviewing court to “compel agency action
14 unlawfully withheld or unreasonably delayed.” 5 U.S.C. § 706(1).
15

16 81. The Ninth Circuit specifies adherence to the following guidelines to
17 ascertain whether an unreasonable delay in agency action warrants the issuance of
18 relief under the APA:
19

- 20
21 1) a ‘rule of reason’ governs the time agencies take to make decisions;
22 2) delays where human health and welfare are at stake are less
23 tolerable than delays in the economic sphere; 3) consideration should
24 be given to the effect of ordering agency action on agency activities of
25 a competing or higher priority; 4) the court should consider the nature
26 of the interests prejudiced by delay; and 5) the agency need not act
27 improperly to hold that agency action has been unreasonably delayed.
28

1 In re California Power Exchange Corp., 245 F.3d 1110, 1124-25 (9th Cir. 2001)
2
3 (*citing* Towns of Wellesley, Concord, and Nordwood, Mass. v. FERC, 829 F.2d
4 275, 277 (1st Cir. 1987)) (*citations omitted*)).

5 82. In determining agency compliance with the “rule of reason,” courts
6 will consider “the complexity of the task at hand, the significance (and
7 permanence) of the outcome, and the resources available to the agency.” The
8 Mashpee Wampanoag Tribal Council, Inc. v. Norton, 336 F.3d 1094, 1103 (D.C.
9 Cir. 2003) (*amended opinion*).

10 83. Here, the Defendants’ assessment of Plaintiffs’ priority date is not a
11 complex task. Indeed, the plain and clear language of INA § 203(h)(3) provides
12 for automatic conversion and retention of the original priority date. The failure to
13 implement concrete regulations grounded in Congressional intent and the plain
14 language of CSPA to safeguard families from separation has lead to arbitrary and
15 inconsistent decision-making affecting thousands on a global level. Defendants’
16 failure to promulgate regulations implementing CSPA benefits violates the
17 Administrative Procedure Act (APA), 5 U.S.C. § 551 et seq.; the Due Process
18 Clause and equal protection guarantee of the Fifth Amendment to the United States
19 Constitution; and Article II, §§ 1 and 3 of the United States Constitution.

20 84. The outcome of the Defendants’ determination of the priority date is
21 significant and permanent. A current priority date is a statutory prerequisite for
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1 admission as an alien lawfully admitted to the United States for permanent
2 residence.

3
4 85. There is no indication that the Defendants lack the resources to make
5 the necessary determinations of Plaintiffs' priority dates.

6
7 86. The instant case involves paramount issues of human health and
8 welfare – Plaintiffs' fundamental interest in reuniting and remaining with their
9 family in the United States.

10
11 87. No competing or higher agency priorities justify the delay in the
12 refusal to issue the correct visa petition with the correct priority date.

13
14 88. Plaintiffs have significant, fundamental interests that have been
15 prejudiced by the errors and inaction in their cases. Plaintiffs have a fundamental
16 interest protected by the Fifth Amendment in family unity and in maintaining their
17 familial ties. To be sure, the Fifth Amendment's Due Process Clause "applies to
18 all 'persons' within the United States, including aliens." Kaur v. Ashcroft, 388
19 F.3d 734, 737 (9th Cir. 2004) (quoting Zadvydas v. Davis, 533 U.S. 678, 693
20 (2001)). Plaintiffs' fundamental interest in the unity and integrity of their families
21 is protected by the Due Process Clause. See Stanley v. Illinois, 405 U.S. 645, 651
22 (1972) (recognizing that "the integrity of the family unit has found protection in the
23 Due Process Clause of the Fourteenth Amendment").
24
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1 89. The Defendants have identified no other interests that would be
2 prejudiced by an Order compelling the immediate issuance of the visa petitions
3 with the correct original priority date pursuant to INA § 203(h)(3), 8 U.S.C. §
4 1153(h)(3).
5
6
7

8 **VIII. IRREPARABLE INJURY**

9
10 90. As a result of Defendants' actions (and inactions) families are being
11 torn apart, lives are destroyed and hope is vanquished.

12
13 91. To be sure, the Plaintiffs and those similarly situated to the individual
14 named Plaintiffs will suffer irreparable injury unless this Court orders equitable
15 relief. Such injury includes but is not limited to deprivation of due process and
16 equal protection creating indefinite lengths of family separation.
17

18 92. Such separation causes Plaintiffs insufferable despair and extreme
19 psychological, emotional, physical and economic hardship. Damages cannot
20 adequately address the injuries suffered by Plaintiffs and their proposed class
21 members.
22

23 ///

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25 ///

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28 ///

1 IX. CLAIM FOR RELIEF

2 93. The Plaintiffs are entitled to a writ of mandamus from this Court,
3 which would compel the immediate and correct issuance of the visa petition,
4 pursuant to 28 U.S.C. §§ 1651(a) and 1361, and 5 U.S.C. § 706(1).
5

6 94. The Plaintiffs are eligible for the payment of attorneys' fees, related
7 expenses, and costs, pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.
8

9
10
11 X. PRAYER FOR RELIEF

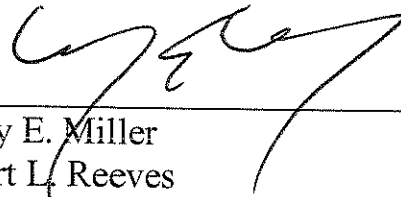
12
13 WHEREFORE, Plaintiffs pray that this Court:

- 14 1. Assume jurisdiction over this action;
- 15 2. Certify this action as a class action pursuant to Rule 23(b)(2),
16 Fed.R.Civ.Proc.;
- 17 3. Declare that Defendants' denial of original priority date retention for
18 derivative beneficiaries of approved petitions for alien relatives who
19 have reached the age of 21 or over, violate the Child Status Protection
20 Act; the Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.; the
21 due process clause and equal protection guarantee of the Fifth
22 Amendment to the United States Constitution; and Article II, Sections
23 1 and 3 of the United States Constitution;
24
25
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28

- 1 4. Issue preliminary and permanent injunctions requiring that
2 Defendants, their agents, employees, and successors in office timely
3 adjudicate Form I-130 petitions presented by the individual named
4 Plaintiffs, their proposed class members, and uphold the tenets of the
5 CSPA.
6
7
8 5. Award Plaintiffs costs of suit and attorney's fees reasonably incurred
9 as a result of this lawsuit; and
10
11 6. Grant such further relief as the Court may deem just and proper.
12

13
14 Dated: June 19, 2008

Respectfully Submitted,

15
16 

17 _____
18 Nancy E. Miller
19 Robert L. Reeves
20 Jeremiah Johnson
21 Joyce A. Komanapalli
22 REEVES & ASSOCIATES, A PLC
23 2 North Lake Ave., Ninth Floor
24 Pasadena, CA 91101

25
26
27
28 Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge James V. Selna and the assigned discovery Magistrate Judge is Stephen J. Hillman.

The case number on all documents filed with the Court should read as follows:

SACV08 - 688 JVS (SHx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

Western Division
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

Southern Division
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

Eastern Division
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

Nancy E. Miller, SBN 120031
Robert L. Reeves, SBN 92878
Jeremiah Johnson, SBN 227275
Joyce A. Komanapalli, SBN 231436
2 North Lake Ave., Suite 950
Pasadena, CA 91101 (626)795-6777

COPY

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

TERESITA G. COSTELO; LORENZO P. ONG,
Individually and On Behalf of All
Others Similarly Situated;

Plaintiff(s)

CASE NUMBER:
SACV08-688 JVS (SHx)

v.

MICHAEL CHERTOFF, Secretary of the
Department of Homeland Security,
See Attached

Defendant(s)

SUMMONS

TO: THE ABOVE-NAMED DEFENDANT(S):

YOU ARE HEREBY SUMMONED and required to file with this court and serve upon plaintiff's attorney
Nancy E. Miller, whose address is:

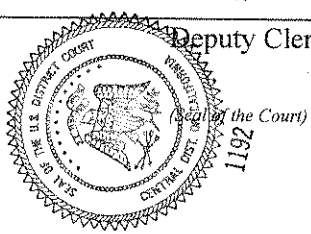
Reeves and Associates, APLC
2 North Lake Ave., Suite 950
Pasadena, CA 91101
(626) 795-6777

an answer to the complaint _____ amended complaint counterclaim cross-
claim which is herewith served upon you within 60 days after service of this Summons upon you, exclusive
of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded
in the complaint.

CLERK, U.S. DISTRICT COURT

Date: JUN 20 2008

By: LA'REE HORN
Deputy Clerk



SUMMONS ATTACHMENT

TERESITA G. COSTELO, and LORENZO P. ONG,
Individually And On Behalf Of All Others Similarly Situated,

Plaintiffs,

v.

MICHAEL CHERTOFF, Secretary Of The Department Of Homeland Security;
UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES;
EMILIO T. GONZALEZ, Director, United States Citizenship And Immigration
Services; DAVID TYLER, Director, National Visa Center; CHRISTINA
POULOS, Acting Director, California Service Center, United States Citizenship
and Immigration Services; and CONDOLEEZA RICE, Secretary of State,
Defendants.

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT CALIFORNIA
CIVIL COVER SHEET**

<p>(a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) TERESITA G. COSTELO; LORENZO P. ONG, Individually and On Behalf of All Others Similarly Situated</p> <p>(b) County of Residence of First Listed Plaintiff (Except in U.S. Plaintiff Cases):</p>	<p>DEFENDANTS MICHAEL CHERTOFF, Secretary of the Department of Homeland Security, et al;</p> <p>County of Residence of First Listed Defendant (in U.S. Plaintiff Cases Only):</p>
--	--

<p>(c) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself provide same.)</p> Nancy E. Miller, SBN 120031 Robert L. Reeves, SBN 92878 Jeremiah Johnson, SBN 227275 Joyce A. Komanapalli, SBN 231436 2 North Lake Ave., Suite 950 Pasadena, CA 91101 (626)795-6777	<p>Attorneys (If Known)</p>
--	-----------------------------

<p>II. BASIS OF JURISDICTION (Place an X in one box only.)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input checked="" type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.)</p> <table style="width:100%;"> <tr> <td style="width:33%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:33%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td align="center"><input type="checkbox"/> 1</td> <td align="center"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in this State</td> <td align="center"><input type="checkbox"/> 4</td> <td align="center"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td align="center"><input type="checkbox"/> 2</td> <td align="center"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td align="center"><input type="checkbox"/> 5</td> <td align="center"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td align="center"><input type="checkbox"/> 3</td> <td align="center"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td align="center"><input type="checkbox"/> 6</td> <td align="center"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. ORIGIN (Place an X in one box only.)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify): 6 Multi-District Litigation 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: Yes No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: Yes No **MONEY DEMANDED IN COMPLAINT: \$** _____

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Complaint for Declaratory, Mandamus and Injunctive Relief [Class Action]

VII. NATURE OF SUIT (Place an X in one box only.)

<p>OTHER STATUTES</p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 410 Antitrust</p> <p><input type="checkbox"/> 430 Banks and Banking</p> <p><input type="checkbox"/> 450 Commerce/ICC Rates/etc.</p> <p><input type="checkbox"/> 460 Deportation</p> <p><input type="checkbox"/> 470 Racketeer influenced and Corrupt Organizations</p> <p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 490 Cable/Sat TV</p> <p><input type="checkbox"/> 810 Selective Service</p> <p><input type="checkbox"/> 850 Securities/Commodities/Exchange</p> <p><input type="checkbox"/> 875 Customer Challenge 12 USC 3410</p> <p><input checked="" type="checkbox"/> 890 Other Statutory Actions</p> <p><input type="checkbox"/> 891 Agricultural Act</p> <p><input type="checkbox"/> 892 Economic Stabilization Act</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 894 Energy Allocation Act</p> <p><input type="checkbox"/> 895 Freedom of Info. Act</p> <p><input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice</p> <p><input type="checkbox"/> 950 Constitutional of State Statutes</p>	<p>CONTRACT</p> <p><input type="checkbox"/> 110 Insurance</p> <p><input type="checkbox"/> 120 Marine</p> <p><input type="checkbox"/> 130 Miller Act</p> <p><input type="checkbox"/> 140 Negotiable Instrument</p> <p><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)</p> <p><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits</p> <p><input type="checkbox"/> 160 Stockholders' Suits</p> <p><input type="checkbox"/> 190 Other Contract</p> <p><input type="checkbox"/> 195 Contract Product Liability</p> <p><input type="checkbox"/> 196 Franchise</p> <p>REAL PROPERTY</p> <p><input type="checkbox"/> 210 Land Condemnation</p> <p><input type="checkbox"/> 220 Foreclosure</p> <p><input type="checkbox"/> 230 Rent Lease & Ejectment</p> <p><input type="checkbox"/> 240 Torts to Land</p> <p><input type="checkbox"/> 245 Tort Product Liability</p> <p><input type="checkbox"/> 290 All Other Real Property</p>	<p>TORTS</p> <p>PERSONAL INJURY</p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel & Slander</p> <p><input type="checkbox"/> 330 Fed. Employers' Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p> <p><input type="checkbox"/> 362 Personal Injury-Med Malpractice</p> <p><input type="checkbox"/> 365 Personal Injury-Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p>	<p>TORTS</p> <p>PERSONAL PROPERTY</p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p> <p>BANKRUPTCY</p> <p><input type="checkbox"/> 422 Appeal 28 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p>CIVIL RIGHTS</p> <p><input type="checkbox"/> 441 Voting</p> <p><input type="checkbox"/> 442 Employment</p> <p><input type="checkbox"/> 443 Housing/Accommodations</p> <p><input type="checkbox"/> 444 Welfare</p> <p><input type="checkbox"/> 445 American with Disabilities - Employment</p> <p><input type="checkbox"/> 446 American with Disabilities - Other</p> <p><input type="checkbox"/> 440 Other Civil Rights</p>	<p>PRISONER PETITIONS</p> <p><input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus</p> <p><input type="checkbox"/> 530 General</p> <p><input type="checkbox"/> 535 Death Penalty</p> <p><input type="checkbox"/> 540 Mandamus/Other</p> <p><input type="checkbox"/> 550 Civil Rights</p> <p><input type="checkbox"/> 555 Prison Condition</p> <p>FORFEITURE/PENALTY</p> <p><input type="checkbox"/> 610 Agriculture</p> <p><input type="checkbox"/> 620 Other Food & Drug</p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 630 Liquor Laws</p> <p><input type="checkbox"/> 640 R.R. & Truck</p> <p><input type="checkbox"/> 650 Airline Regs</p> <p><input type="checkbox"/> 660 Occupational Safety/Health</p> <p><input type="checkbox"/> 690 Other</p>	<p>LABOR</p> <p><input type="checkbox"/> 710 Fair Labor Standards Act</p> <p><input type="checkbox"/> 720 Labor/Mgmt. Relations</p> <p><input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act</p> <p><input type="checkbox"/> 740 Railway Labor Act</p> <p><input type="checkbox"/> 790 Other Labor Litig.</p> <p><input type="checkbox"/> 791 Empl. Ret. Inc. Security Act</p> <p>PROPERTY RIGHTS</p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 840 Trademark</p> <p>SOCIAL SECURITY</p> <p><input type="checkbox"/> 861 HIA (1395ff)</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 DIWC/DIWWW (405(g))</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI (405(g))</p> <p>FEDERAL TAX SUITS</p> <p><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)</p> <p><input type="checkbox"/> 871 IRS - Third Party 26 USC 7609</p>
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VIII(a). IDENTICAL CASES: Has this action been previously filed and dismissed, remanded or closed? No Yes

If yes, list case number(s):

FOR OFFICE USE ONLY: Case Number: _____

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

VIII(b). RELATED CASES: Have any cases been previously filed that are related to the present case? No Yes

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) A. Arise from the same or closely related transactions, happenings, or events; or
 B. Call for determination of the same or substantially related or similar questions of law and fact; or
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: List the California County, or State if other than California, in which EACH named plaintiff resides (Use an additional sheet if necessary)

Check here if the U.S. government, its agencies or employees is a named plaintiff.

Los Angeles County

List the California County, or State if other than California, in which EACH named defendant resides. (Use an additional sheet if necessary).

Check here if the U.S. government, its agencies or employees is a named defendant.

Orange County; Washington D.C.

List the California County, or State if other than California, in which EACH claim arose. (Use an additional sheet if necessary)

Note: In land condemnation cases, use the location of the tract of land involved.

Orange County; Washington D.C.

X. SIGNATURE OF ATTORNEY (OR PRO PER): _____ Date 06/19/2008

Nancy E. Miller, SBN 120031

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.G. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))