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16 UNITED STATES DISTRICT COURT
17 CENTRAL DISTRICT OF CALIFORNIA
18 SOUTHERN DIVISION

19 ROSALINA CUELLAR DE OSORIO,) No. SACV08-840 JVS(SHx)
20 ELIZABETH MAGPANTAY; EVELYN)
21 Y. SANTOS; MARIA ELOISA)
22 LIWAG; NORMA UY; RUTH UY,) Date: December 8, 2008
23) Time: 1:30 p.m.
24 Plaintiffs,) Courtroom: 10C
25) Honorable James V. Selna

26 v.)

27) 1. DEFENDANT'S NOTICE OF
28) MOTION AND MOTION TO
DISMISS OR ALTERNATIVE
MOTION TO HOLD IN ABEYANCE
PURSUANT TO COSTELO ET
AL., v. CHERTOFF, ET AL.
JONATHAN SCHARFEN, Acting)
Director of the United States) 2. MEMORANDUM OF POINTS AND
Citizenship and Immigration)
Services; MICHAEL CHERTOFF,)
Secretary, U.S. Department of) 3. DECLARATION of AARON D.
Homeland Security; CONDOLEEZZA)
RICE, Secretary of State,) 4. [PROPOSED] ORDER
5. [PROPOSED] JUDGMENT
et al.,)
Defendants.)

Defendants' Motion to Dismiss

SACV08-840 JVS (SHx)

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NOTICE OF MOTION AND MOTION TO DISMISS OR ALTERNATIVE
MOTION TO HOLD IN ABEYANCE.

INTRODUCTION 1

ARGUMENT 3

 I. PLAINTIFFS ARE PUTATIVE CLASS MEMBERS IN COSTELO
 V. CHERTOFF AND THIS COURT SHOULD HOLD
 PLAINTIFFS’ CASE IN ABEYANCE 3

 II. IN THE ALTERNATIVE, DISMISSAL IS APPROPRIATE BECAUSE
 PLAINTIFFS FAIL TO STATE FACTS UPON WHICH RELIEF
 MAY BE GRANTED UNDER RULE 12 (b) (6). 8

 III. LIKE IN COSTELO, PRUDENTIAL EXHAUSTION APPLIES. 11

CONCLUSION 15

DECLARATION OF AARON D. NELSON

CERTIFICATE OF SERVICE

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8 C.F.R. 204.2(a)(4)	8
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1 NOTICE OF MOTION AND MOTION TO DISMISS OR ALTERNATIVE MOTION TO

2 HOLD IN ABEYANCE

3 PLEASE TAKE NOTICE that on December 8, 2008, at 1:30 p.m.,
4 or as soon thereafter as the matter may be heard in Courtroom No.
5 10C of the above-entitled Court, located at 411 West Fourth
6 Street, Santa Ana, California, Defendants Jonathan Scharfen,
7 Acting Director of the United States Citizenship and Immigration
8 Services; Michael Chertoff, Secretary, U.S. Department of
9 Homeland Security; Condoleezza Rice, Secretary of State, et al.,
10 ("Defendants" or "Government"), will and hereby do move this
11 Court for an order dismissing the Complaint for Mandamus relief,
12 relief under the Administrative Procedures Act, and Equal Access
13 to Justice Act relief, pursuant to Rule 12(b)(6) of the Federal
14 Rules of Civil Procedure for failure to state a claim upon which
15 relief may be granted by this Court; or in the alternative to
16 hold the case in abeyance in accordance with Costelo et al., v.
17 Chertoff et al., (No. SACV08-688).

18 This motion is made following the conference of counsel
19 pursuant to Rule 7-3 of the Local Rules of the Central District
20 of California, which took place on September 18, 2008. See
21 Declaration of Aaron D. Nelson at ¶ 2 ("Nelson Decl.").

22 This motion is based upon this Notice of Motion and Motion
23 to Dismiss or Alternative Motion to Hold in Abeyance, the
24 Memorandum of Points and Authorities filed herewith, the
25 Declaration of Aaron D. Nelson, the pleadings, records and papers
26 filed herein, and such other and further oral and documentary
27
28

1 evidence and legal memoranda as may be presented at or by hearing
2 on this Motion to Dismiss.

3 Respectfully submitted,

4 GREGORY G. KATSAS
5 Assistant Attorney General

6 VICTOR M. LAWRENCE
7 Principal Assistant Director
8 District Court Section

9 s/Aaron D. Nelson
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