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9 Attorneys for Plaintiffs

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

12 TERESITA G. COSTELO, and )  
 13 LORENZO P. ONG, Individually And ) Case No. SACV08-688 JVS (SHx)  
 14 On Behalf Of All Others Similarly )  
 15 Situated, )  
 16 Plaintiffs, ) MOTION TO AMEND PROPOSED  
 v. ) CLASS DEFINITION  
 17 )

18 MICHAEL CHERTOFF, Secretary Of )  
 The Department Of Homeland )  
 19 Security; UNITED STATES ) Date: September 8, 2008  
 20 CITIZENSHIP AND IMMIGRATION ) Time: 1:30pm  
 SERVICES; EMILIO T. ) Courtroom: 10C  
 21 GONZALEZ, Director, United States ) Honorable James V. Selna  
 22 Citizenship And Immigration )  
 Services; DAVID TYLER, Director, )  
 23 National Visa Center; CHRISTINA )  
 24 POULOS, Acting Director, California )  
 Service Center, United States )  
 25 Citizenship and Immigration Services; )  
 26 And CONDOLEEZA RICE, Secretary )  
 of State, )  
 27 )  
 28 Defendants. )

1 Plaintiffs move this Court to amend the proposed class certification to  
2 alleviate the concerns raised in Defendants' Opposition To Plaintiffs' Motion For  
3 Class Certification. Specifically, Plaintiffs now seek certification provisionally of  
4 the following class of similarly situated persons:  
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7  
8 1) Individuals who

- 9 a) have or will have obtained lawful permanent resident status as a result  
10 of being a primary beneficiary of a prior family or employment based  
11 visa petition or diversity immigrant visa application on or after August  
12 6, 2002;
- 13 b) are the parents of an adult child or children (sons and daughters) who  
14 are or were a derivative beneficiary of their prior family or  
15 employment based visa petition or diversity immigrant visa  
16 application;
- 17 c) have or will have filed a subsequent family based immigrant visa  
18 petition(s) (Form I-130) for their adult child or children (sons and  
19 daughters) under the F2B category; and
- 20 d) whose subsequent family based immigrant visa petition(s) (Form I-  
21 130) is entitled to the automatic retention of the original priority date  
22 of the petitioner's prior family or employment based visa petition or  
23 diversity immigrant visa application pursuant to INA § 203(h)(3); and

24 2) individuals who

- 25 a) are or were a derivative beneficiary of a family or employment based  
26 visa petition or diversity immigrant visa application where the  
27 primary beneficiary obtained or will obtain lawful permanent resident  
28 status on or after August 6, 2002;
- b) whose age is 21 years or older for the purposes of INA §§  
203(a)(2)(A) and (d) as determined under INA § 203(h)(1);

- c) whose family or employment based visa petition or diversity immigrant visa application is entitled to the automatic conversion to the F2B category and retention of the original priority date of the original family or employment based visa petition or diversity immigrant visa application pursuant to INA § 203(h)(3); and
- d) face future and/or ongoing separation from family members as a result of Defendants' failure to automatically convert the immigrant visa petition and retain the original visa petition priority date pursuant to INA § 203(h)(3).

This motion is based in response to Defendants' concerns raised in the Defendants' Opposition To Plaintiffs' Motion For Class Certification and supported by Plaintiffs' Reply To Defendants' Opposition To Plaintiffs Motion For Class Certification filed concurrently here with and in support of this motion.

Dated: August 4, 2008

Respectfully Submitted,

/s/Nancy E. Miller

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