

U.S. DISTRICT COURT
CLERK

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED-EDS

Maria Rosa Ramos, Apolinar Ochoa, Argmira)
Ochoa, Nicolas Olivares, Fermin Gutierrez,)
Fernando Carranza, Gabriel Torres, Juan)
Rodriguez, Hector Diaz, Justino Castaneda,)
and Efren de la Torre)

Plaintiffs,)

v.)

John Ashcroft, Attorney General;)
Immigration and Naturalization Service;)
James W. Ziglar, Commissioner,)
Immigration and Naturalization Service;)
Brian Perryman, Director of the Chicago)
District Office of the Immigration and)
Naturalization Service,)

Defendants.)

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Civil Action No. JUDGE LINDBERG

Judge

MAGISTRATE JUDGE BOBRICK
Mag. Judge

COMPLAINT

I. PRELIMINARY STATEMENT

1. This case concerns the actions of the Chicago District Office of the Immigration and Nationality Service (INS) in failing to properly implement Congressional and INS policies with due process to allow immigrants with close relatives in the United States to have that relationship recognized by INS pursuant to Section 245(i) of the Immigration and Nationality Act, (INA), 8 U.S.C. §1255(i) so that they later could adjust their status without having to leave the United States for a period of ten years.

2. Named Plaintiffs are themselves immigrants and long term residents of the United States whose rights under the INA and its regulations and the Due Process Clause of the Fifth

Amendment have been violated due to a combination of factors, including: congressionally imposed deadlines to file family visa applications; malfeasance by the Chicago District Office in improperly processing Adjustment of Status applications and improperly issuing work authorization permits; lack of notice by that office of how to take proper advantage of Congressional policies designed to promote such family unification; and the actions of unscrupulous persons preying on these immigrants, which the Chicago District Office knew of and supported through its malfeasance. The result was that hundreds of immigrants were preyed upon by unscrupulous individuals, filed applications too early, and wound up in a trap in which the hundreds of dollars they spent to file a premature application to adjust status resulted in deportation proceedings that defeated the whole purpose of the law they were trying to follow. The Chicago District Office apparently corrected its process sometime in 2001, but these changes did not help individuals whose applications were improperly handled before that point.

3. Plaintiffs on behalf of themselves and the class they seek to represent bring this action pursuant to the Administrative Procedure Act (APA) and the Due Process Clause of the Fifth Amendment against the governmental officials responsible for their unlawful and unconstitutional treatment. They seek equitable relief to have INS ordered to return hundreds of dollars in application fees wrongly accepted and to prevent INS from using information acquired through the Chicago District Office's malfeasance and failure to follow federal law and due process requirements.

II. JURISDICTIONAL AND VENUE ALLEGATIONS

4. The Court has jurisdiction under the APA, 5 U.S.C. §§ 701 et seq., as well as 28 U.S.C. §1331.

5. Pursuant to 28 U.S.C. §§ 2201 and 2202, the Court has power to award declaratory relief in this case.

6. Venue is proper in the Northern District of Illinois under 28 U.S.C. § 1391(e). The vast majority of Plaintiffs reside in the Northern District of Illinois; all class members filed their Adjustment of Status applications in Chicago. The INS District Office which has acted on plaintiffs' applications is located in Chicago, and in cases where class members were placed into removal proceedings, the INS has filed its charging document in Immigration Courts located in Chicago.

III. PARTIES

Plaintiffs

7. The named Plaintiffs are:

A. Maria Ramos, an individual in removal proceedings due to her attempt to become a permanent resident.

B. Apolinar Ochoa, an individual in removal proceedings due to his attempt to become a permanent resident, on appeal to the Board of Immigration Appeals;

C. Argmira Ochoa, an individual in removal proceedings due to her attempt to become a permanent resident;

D. Nicolas Olivares, an individual in removal proceedings due to his attempt to become a permanent resident;

E. Fermin Gutierrez, an individual who was placed into removal proceedings due to his attempt to become a permanent resident,

F. Fernando Carranza, an individual in removal proceedings due to his attempt

to become a permanent resident;

G. Gabriel Torres, an individual placed into removal proceedings due to his attempt to become a permanent resident, who was subsequently ordered to Voluntarily Depart the United States, and who was then granted a stay of removal; and

H. Juan Manuel Rodriguez, an individual placed into removal proceedings due to his attempt to become a permanent resident, who was subsequently ordered to voluntarily depart the United States, which order is on appeal to the Board of Immigration Appeals.

I. Hector Diaz, an individual in removal proceedings due to his attempt to become a permanent resident, who was ordered to voluntarily depart the United States, whose case is currently on appeal to the Board of Immigration Appeals;

J. Justino Castaneda, an individual who was in removal proceedings due to his attempt to become a permanent resident, who was subsequently ordered to Voluntarily Depart the United States; and

K. Efren de la Torre, an individual who was placed into removal proceedings due to his attempt to become a permanent resident, who was ordered removed in absentia.

Plaintiffs' Class Action Allegations

8. The named plaintiffs bring this action on their own behalf and on behalf of a class of other similarly situated persons pursuant to Rules 23(a) and (b)(2) of the Federal Rules of Civil Procedure.

9. The plaintiff class consists of:

Individuals whose Application for Adjustment of Status (INS form I-485) was accepted for filing by the Chicago District Office of the INS between January 29, 1997, and April 13, 2001, where there was no prima facie eligibility for that benefit, in violation of applicable law, regulations and procedures; and who were

prejudiced by such improper action. Prima facie eligibility for Adjustment of Status requires that the individual had an approved visa petition which was immediately available to them at time of filing, or a not-yet-approved visa petition whose approval would make that visa immediately available for use. Prejudice to class members includes loss of application fees, and in many cases, institution of removal proceedings.

10. Named Plaintiffs are low-income immigrants who filed facially deficient applications for "Adjustment of Status" under INA §245. Typically, they relied on the advice of unqualified and unscrupulous "immigration consultants" to do so. Due to these applications being filed too early or in inappropriate situations, Plaintiffs' sincere effort to acquire legal permanent residence and keep their families intact instead set in motion a train of events that could lead instead to their deportation. Most plaintiffs have received a denial of their Adjustment of Status applications. Many have also been placed into proceedings seeking their removal from the United States. Some plaintiffs have had their applications denied, but have not yet been placed into removal proceedings. Finally, some plaintiffs have not yet received any response from the Chicago District Office on their applications.

11. The Plaintiff class is so numerous that the joinder of all members is impractical. At least four hundred (400) individual affected by CDO's policy have contacted the Midwest Immigrant & Human Rights Center (MIHRC) and the Legal Assistance Foundation of Chicago, counsels in a multi-plaintiff suit challenging the Defendants' procedures. However, it is reasonably estimated on information and belief that 5000 or more improperly filed Adjustment of Status applications were accepted by the defendants during the time period alleged.

12. There are questions of law and fact common to the class, including the factual scenario whereby Plaintiffs and class members were enticed by Chicago District Office malfeasance and the actions of unscrupulous individuals to file an application for which they were

not yet eligible; whether Chicago District Office has violated the INA and INS regulations through its policy of accepting Adjustment of Status applications for processing where there is no prima facie eligibility for the relief; and whether the Defendants' actions violated the Plaintiffs' constitutional rights as alleged herein.

13. The claims of Named Plaintiffs are typical of the claims of the class. Named Plaintiffs, like all class members, have been negatively impacted by Chicago District Office's policies by losing their filing and processing fees, and/or having their applications used as a basis to institute removal proceedings against them.

14. Named Plaintiffs are adequate representatives of the class who will adequately and fairly protect the interests of the class because they seek relief on behalf of the class as a whole and have no interests antagonistic to other members of the class. They are represented by attorneys employed by the Midwest Immigrant & Human Rights Center (MIHRC) and the Mexican American Legal Defense and Educational Fund (MALDEF), and by Steven Saltzman, all of whom are attorneys who are experienced in federal litigation and/or immigration law and have litigated complex class action civil rights cases.

15. In addition, the defendants have acted and /or refused to act on grounds generally applicable to the plaintiff class, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the class as a whole, making class certification appropriate under Fed.R.Civ.P. 23(b)(2).

Defendants

16. John Ashcroft is the United States Attorney General. He oversees the Department of Justice and the INS, an agency of the Justice Department and is responsible for the actions of

INS including the INS District offices. Mr. Ashcroft is sued in his official capacity.

17. James W. Ziglar is Commissioner of the INS. He is responsible for the actions of INS including the INS District offices. He is sued in his official capacity.

18. The INS is an administrative agency within the Department of Justice that implements our nation's immigration laws. The INS is responsible for processing and adjudicating all section 245(i) applications for adjustment of status. The Chicago District Office of the INS is a district office responsible for processing and adjudicating all section 245(i) applications for adjustment of status. The APA claim is brought against the agency and its Chicago District Office.

19. Brian Perryman is the District Director of the Chicago District Office and is its Chief Administrative Officer. He has official responsibility for its acts, including the orders and actions described herein. The Chicago District Office has a duty to review applications for Adjustment of Status filed by persons residing in the state of Illinois to see if they are "properly filed." Mr. Perryman is sued in his official capacity.

FACTUAL ALLEGATIONS

Overview of Visa Processing and Adjustment of Status Under the INA

20. Under the INA, to obtain lawful permanent resident status through a family member, a two step process is followed. First, a petition for an immigrant visa must be filed on the immigrant's behalf by a U.S. citizen or resident alien relative (the petitioner). If the petitioner can demonstrate their own legal status, and that the family relation exists, the INS approves the visa petition. Second, the immigrant relative must file and have approved an application to adjust his/her status to a lawful resident. In order for this application to be granted, a visa must become

"immediately available." For spouses, parents, and minor, unmarried children of U.S. citizens, any approvable visa is "immediately available"; these individuals are called "immediate relatives." For all other visa categories - such as siblings of U.S. citizens or grown children or children of lawful permanent resident parents- there are waiting lists of many years before the approved visa becomes "immediately available." Once a visa is "immediately available," the beneficiary may either (a) apply for legal permanent residence at the U.S. embassy or consulate in their country of nationality ("consular processing"), or (b) if certain conditions are met, file an application for adjustment of status to legal permanent residence with their local INS office in the United States. At this point, the individual must show that they are not "inadmissible" to the United States for having committed crimes in this country, not having communicable diseases, etc. Completing this last step by filing an adjustment of status application in the U.S. is preferable to completing the process abroad, for various reasons (see ¶ 22, *infra*).

21. The INS has a policy and practice, which is well known in immigrant communities, of not using the information provided in an approved visa petition to commence removal proceedings against the immigrant beneficiary, even though the petition may reveal the beneficiary's unlawful presence in the U.S. Thus, applying for the visa petition does not cause the immigrant relative to put himself/herself in jeopardy of being deported. However, having an approved petition does not entitle the beneficiary to live or work in the U.S., nor does it protect the beneficiary from deportation if the beneficiary comes to the INS's attention through some other avenue. The approved petition only secures the beneficiary's place in line for eventual visa availability.

22. Section 245(i) of the INA was adopted to allow families to remain unified in the

United States while the family member's status is being adjusted. Beneficiaries of approved visa petitions who have entered or remained in the United States unlawfully are permitted to apply for Adjustment of Status in the United States, instead of having to return to their countries of origin for "consular processing," i.e., immigrant visa interviews at U.S. embassies or consulates there. Adjustment of Status under this provision requires payment of a \$1000 "special processing fee." INA §245(i) effectively "forgives" unlawful status, permitting immigrants to adjust their status to legal permanent residence nonetheless. It avoids the need to wait abroad for "consular processing" to be completed, which often entailed lengthy separations from family members in the U.S. Prior to Section 245(i) being adopted, family members seeking to adjust their status had to leave the United States, although only temporarily, to adjust their status.

23. INA §245(i) is also important because §301 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) introduced new rules that an immigrant seeking to "reenter" the United States after being unlawfully present in the U.S. for more than a year is barred from returning for ten years. See 8 U.S.C. § 1182(a)(9)(B), INA §212(a)(9)(B). A waiver is available only if the immigrant can show "extreme hardship" to a U.S. citizen or resident alien spouse or parent, i.e. not the immigrant actually seeking the waiver. 8 U.S.C. § 1182(a)(9)(B)(v), INA §212(a)(9)(B)(v).

24. Immigrants who are able to obtain residency within the United States under INA §245(i) do not depart the United States. Thus, they have no need to reenter the United States and they are able to avoid the 10 year bar of INA §212(a)(9)(B).

25. When a visa becomes "immediately available," a beneficiary may then file an application for "Adjustment of Status" to permanent residence, using INS form I-485. When

filing, the applicant must pay an application fee to the INS. The fee for the I-485 was \$130 before October 12, 1998; it was then raised to \$220 until February 19, 2002, when it was raised to its current level of \$255. In addition, individuals applying under §245(i) must pay a \$1,000 "special processing fee" to forgive their unlawful status.

Chicago District Office Policy

26. Prior to January 29, 1997, on information and belief, applications for Adjustment of Status had to be submitted to the Chicago District Office in person. The applicant would go to the INS office with the forms and the application fees, and wait to speak with an INS officer. That officer would then review the forms and fees to make sure that they were correct, and if they were correct, the application would be accepted for filing. If a visa was not immediately available, the application would not be processed and the fees returned. No use was made of the information contained in the rejected application.

27. On January 29, 1997, on information and belief, the Chicago District Office adopted a new procedure requiring that applications for Adjustment of Status (I-485) be submitted by mail. The former procedure, which involved screening for prima facie eligibility, was eliminated.

28. The Chicago District mail-in system permitted an application for Employment Authorization, on INS form I-765, to be submitted along with the Adjustment of Status application. As part of this new procedure, the Chicago District Office had improperly trained personnel reviewing these applications.

29. Many applications, for which a visa was not immediately available and hence there was no prima facie eligibility, were accepted and work authorization was issued. Once the

application was reviewed, it would be denied and the information contained in it that showed that the applicant was in the United States unlawfully would then be transmitted to persons charged with initiating deportation proceedings.

30. The Chicago District Office's improper actions in accepting visa adjustment applications for which there was no prima facie eligibility due to the lack of an immediately available visa and improperly granting work authorization created situations whereby inappropriate or ill-timed requests for Adjustment of Status were rewarded with a temporary work authorization card but then resulted in the Chicago District Office initiating removal proceedings against the applicant.

31. The Chicago District Office policy, as described above, was in effect from January 29, 1997, through April 13, 2001. During that time period, the INS and the Chicago District Office encouraged lawfully admitted immigrants and citizens to submit visa petitions for their family members in the United States unlawfully because there was a deadline by which such petitions had to be submitted if the immigrant was to be able to take advantage of the benefits of INA Section 245(i) and avoid having to leave the United States for ten years.

32. The Chicago District Office's policy was different from the policy employed in other INS offices around the country. The policy used in other district offices was consistent with the one used by the Chicago District Office prior to January 29, 1997, resulting in the return of a premature application (one for which no visa was immediately available) and the fees and no other use was made of the information contained in premature applications processed by these other district offices.

33. On information and belief, the Chicago District Office instituted a project

specifically targeting individuals for removal who had filed premature applications for Adjustment of Status. Through this "Special NTA Project," the Chicago District Office targeted Named Plaintiffs and the Plaintiff Class who had erroneously submitted I-485 applications that had been improperly accepted by the Chicago District Office and used the information from applications as the basis for instituting removal proceedings. On information and belief, the Chicago District Office did not target any other group of persons who submitted I-485 applications in the same manner. The targeting was in contravention of a national policy not to begin removal proceedings based upon family visa petitions.

**Practices of Unscrupulous Notarios and The Effect of Those
Practices Caused by the Chicago District Office's Policy**

34. The Chicago District Office was aware, even prior to adopting this new policy in January, 1997 due to many complaints by community organizations, its own investigations and prosecutions and civil lawsuits by state and local authorities that "Immigration consultants," called notarios in Mexican communities, often "represented" immigrants in obtaining immigration benefits. These consultants were able to use their knowledge of English, as well as some knowledge of immigration law, to be able to claim expertise within those communities, to charge fees for their services, and to, in effect, practice law without a license.

35. The Chicago District Office was also aware, well before adopting its new policy in January 1997, that the most tangible and sought-after immigration benefit is a work authorization document. The Chicago District Office and District Director Perryman thus knew or should have known that its policy of accepting premature adjustment of status applications and granting work authorization would cause notarios and "Immigration consultants" to solicit and cause immigrants to file costly but premature adjustment of status applications, instead of the simple visa petition

that should have been filed.

36. During the dates in question, community and immigrant groups told the Chicago INS Office, over and over again, of the problems caused by the District Office's improper policies. During the dates in question, the City of Chicago and the State of Illinois both handled civil and criminal actions against Notarios and Immigration Consultants. During the dates in question, the Chicago INS Office had, on information and belief, independent knowledge of the problem of fraud on immigrants caused by the District's policies. Still, the Chicago INS Office did nothing to correct its mistakes until approximately April 2001.

37. There was a direct and causal link between the Chicago INS District Office's act of granting work permits inappropriately and the massive fraud perpetrated upon unsuspecting immigrants by "Notarios" and "Immigration Consultants" during the time period in question.

38. Even after the Chicago District Office's decision to change its handling of applications for Adjustment of Status, to correct its past practices, the Chicago District Office has continued to prosecute removal cases against individuals who applied to the Chicago District Office prior to the change of policy in April 2001.

39. The Chicago District Office, on information and belief, has not processed any refund of fees for class members and has not returned any applications it improperly accepted from class members during the period of January 29, 1997 to April 13, 2001.

**Application of Defendants' Policies and Practices to Plaintiffs
and Members of the Plaintiff Class**

40. The named plaintiffs have been and continue to be subjected to the policies and practices described above in paragraphs 26-37, as follows:

a. Plaintiff Maria Rosa Ramos

i. Maria Rosa Ramos is a Mexican citizen. She last entered the United States in October 1996, without inspection. Ms. Ramos, who is divorced, is raising her three children alone: they are ages 16, 10, and 5. Her youngest child is a U.S. citizen, as is her brother.

ii. In January 1999, advised by Notary Public Antonio Perez, who charged her \$400, Ms. Ramos applied for Adjustment of Status through her brother, a legal resident alien at that time. The visa petition could not be approved because that family relationship was not recognized for passing immigration benefits under the INA; only U.S. citizens can petition for siblings. 8 U.S.C. § 1151(a), (b). There was therefore no visa "immediately available" at the time of the application.

iii. Although Ms. Ramos' application was facially deficient, the Chicago District Office accepted Ms. Ramos' application for filing. The INS then denied the application, kept the \$345 in application fees, and placed Ms. Ramos into removal proceedings. The INS has never processed a refund of Mrs. Ochoa's application fees.

b. Plaintiff Apolinar Ochoa

i. Apolinar Ochoa is a Mexican citizen, who has resided in the United States since April 1989. Mr. Ochoa resides in the United States with his wife, also a plaintiff in this suit, and their three U.S. citizen children. Mr. Ochoa's parents are both Lawful Permanent Residents in the United States. Two of his siblings are U.S. citizens, and two are permanent residents.

ii. Advised by a Notary Public at Jade Enterprises, who charged Mr. Ochoa \$1200, Mr. Ochoa applied for Adjustment of Status through his U.S. citizen brother. Because the visa through his brother was not immediately available, Mr. Ochoa was not yet prima facie eligible to apply for Adjustment of Status.

iii. Although Mr. Ochoa's application was facially deficient, the Chicago INS District accepted the application for filing. After accepting the Adjustment of Status application, the Chicago District Office then denied the application, kept the application fees, and placed Mr. Ochoa into removal proceedings. Mr. Ochoa has not received a refund of his application fees.

c. Plaintiff Argmira Ochoa

i. Argmira Ochoa is the wife of Apolinar Ochoa, the lead plaintiff in this action. See ¶40(b). She is a citizen of Mexico, and has resided in the United States since April 1989. She applied for Adjustment of Status as a derivative beneficiary of the petition filed on behalf of her husband by his U.S. citizen brother. At the time she applied for Adjustment of Status, she was not prima facie eligible for that benefit, because the visa petition was not yet "immediately available."

ii. The Chicago District Office accepted Mrs. Ochoa's Adjustment of Status application. The INS then denied the application, kept the application fees, and placed Mrs. Ochoa into removal proceedings. The INS has never processed a refund of Mrs. Ochoa's application fees.

iii. Mrs. Ochoa resides in the United States with her husband, also a plaintiff in this suit, and their three U.S. citizen children. Mrs. Ochoa's mother is a U.S. citizen. Her husband's parents are both Lawful Permanent Residents in the United States, and of her husband's siblings, two are U.S. citizens and two are permanent residents.

d. Plaintiff Nicolas Olivares

i. Nicolas Olivares is a Mexican citizen. He last entered the United States in January 1995, without inspection, but has been residing in the United States continuously since February 1988.

ii. In January 1998, Mr. Olivares paid \$300 to Alfredo Estrada, a Notary Public, to help him apply for Adjustment of Status through his lawful permanent resident brother. Because there is no visa category for siblings of permanent residents, Mr. Olivares was not prima facie eligible for Adjustment of Status when he applied.

iii. The Chicago District Office accepted Mr. Olivares's Adjustment of Status application. The INS then denied the application, kept the application fees, and placed Mr. Olivares into removal proceedings.

e. Plaintiff Fermin Gutierrez

i. Fermin Gutierrez is a Mexican citizen. He last entered the United States in 1990, without inspection. He lives with his wife and two U. S. citizen daughters. His sister, a U.S. citizen, filed a visa petition on his behalf.

ii. In November 1997, Mr. Gutierrez paid \$500 to an individual named Alfredo Estrada, and his assistant, Esteban Beltran. Through Mr. Beltran, Mr. Gutierrez applied for Adjustment of Status application through his U.S. citizen sister. However, Mr. Gutierrez had no visa number "immediately available" at the time of his application. He was thus not prima facie eligible to apply for Adjustment of Status.

iii. On July 6, 2000, Mr. Gutierrez filed a criminal complaint against Mr. Beltran for deception and fraud. Mr. Gutierrez also filed a complaint with the City of Chicago Department of Consumer Services. On January 10, 2001, Esteban Beltran pled liable to two counts of deceptive practice in an administrative hearing. In a signed statement, Beltran admitted, among other things, that he had prepared the immigration documents for Mr. Gutierrez.

iv. The Chicago District Office accepted Mr. Gutierrez's Adjustment of Status application. The INS then denied the application, kept the application fees, and placed Mr. Gutierrez into removal proceedings. He has received no refund of application fees.

f. Plaintiff Fernando Carranza

i. Fernando Carranza is a Mexican citizen. He last entered the United States in April 1993, without inspection. Mr. Carranza is married to an immigrant and has three children, all U.S. citizens under the age of 10. His U.S. citizen mother filed a visa petition on his behalf, which was approved with a priority date of May 29, 1997.

ii. In June 1999, Mr. Carranza paid \$200 to James Giuseffi of Centro Medico de Amnestia (Medical Amnesty Center), and gave him \$1,345 for the INS. Through Mr. Giuseffi, Mr. Carranza filed an application for Adjustment of Status. However, at the time he applied for Adjustment of Status, there was no visa "immediately available" to Mr. Carranza. He was therefore not prima facie eligible to apply for Adjustment of Status. The Chicago District Office denied Mr. Carranza's section 245(i) application, kept the \$1,345 in processing fees, issued him a Notice to Appear on July 6, 1999, and placed him in removal proceedings in immigration court.

iii. The Chicago District Office accepted Mr. Carranza's Adjustment of Status application. The INS then denied the application, kept the \$1,345 in processing fees, and placed Mr. Carranza into removal proceedings. Mr. Carranza has never received any refund from the INS of his application fees.

g. Plaintiff Gabriel Torres

i. Gabriel Torres is a citizen of Mexico, who has resided in the United States since 1995. His father, a permanent resident alien, filed a visa petition for him in 1997.

ii. In 1999, Mr. Torres paid Notary Public Antonio Perez \$500 to assist him in applying for legal status. Through Perez, Mr. Torres applied for Adjustment of Status. Mr. Torres' visa petition was not yet "immediately available" at the time he applied for Adjustment of Status. He was thus not prima facie eligible to apply for Adjustment of Status.

iii. The INS accepted Mr. Torres' Adjustment of Status application for filing. The INS accepted the fees, processed the application, denied it, and placed Mr. Torres into removal proceedings. Mr. Torres has never received a refund from the INS of his application fees.

iv. At an April 11, 2001, hearing before an Immigration Judge, Mr. Torres admitted the allegations that he had no permission to be in the United States, and accepted

an order of Voluntary Departure in lieu of an order of removal. As a result of this lawsuit, the INS agreed to grant him a Stay of Removal through February 12, 2002, which they subsequently extended to August 13, 2002. Mr. Torres has not departed the United States.

h. Plaintiff Juan Manuel Rodriguez

i. In May 1999, Juan Manuel Rodriguez went to Notary Public Antonio Perez, who "helped" him apply for Adjustment of Status through his U.S. citizen brother, Javier Rodriguez Cholico. There was not a visa number immediately available to Mr. Rodriguez at the time of his application. He was therefore not prima facie eligible to apply for Adjustment of Status.

ii. The Chicago District Office accepted the Adjustment of Status application. The INS then denied the application, kept the application fees, and began removal proceedings against Mr. Rodriguez.

iii. Mr. Rodriguez has never received any refund of his application fees.

i. Plaintiff Hector Diaz

i. Hector Diaz also applied for Adjustment of Status with "assistance" from Antonio Perez, a Notary Public. Mr. Diaz is unmarried, but has two U.S. children, with whom he lives. His father, a legal resident, filed a visa petition on his behalf, which was approved with a priority date of April 13, 1992. At the time Mr. Diaz applied for Adjustment of Status, there was no visa "immediately available" to him. He was thus not prima facie eligible to apply for Adjustment of Status.

ii. The Chicago District Office accepted the Adjustment of Status application. It then denied the application, kept the processing fees, and placed Mr. Diaz into removal proceedings.

iii. The INS has never issued Mr. Diaz of any application fees.

j. Plaintiff Justino Castaneda

i. Justino Castaneda is a citizen of Mexico who entered the United States in 1996. He applied for Adjustment of Status through a Fourth Preference visa petition which had earlier been filed by his brother on his behalf. The priority date of his 4th Preference petition is December 27, 1989, which was not "immediately available" at the time the application was filed.

ii. Because no visa was "immediately available" at that time, Mr. Castaneda was not prima facie eligible to apply for Adjustment of Status.

iii. The Chicago District Office accepted Mr. Castaneda's application for Adjustment of Status. It then denied the application for Adjustment of Status, kept the application fees, and placed Mr. Castaneda into removal proceedings.

iv. On December 12, 2000, Mr. Castaneda appeared in Immigration Court, and accepted Voluntary Departure. He was required to depart by April 12, 2001, with that order automatically converting into an order of removal against him if he failed to timely depart

v. Mr. Castaneda subsequently asked the INS to extend the period of his Voluntary Departure. The INS found that it was statutorily unable to extend the period of Voluntary Departure, 8 U.S.C. §1229c(a)(2), but granted him a Stay of Removal through April 5, 2002. It subsequently granted an extension of the stay through June 5, 2002.

k. Plaintiff Efren de la Torre

i. Efren de la Torre is a 23 year old citizen of Mexico, who has resided in the United States since 1994, when he was 15 years old. He paid Antonio Perez \$200 to file an application for Adjustment of Status through a U.S. citizen aunt. In fact, aunts and uncles cannot petition for nieces and nephews; this is not a visa category recognized by law.

ii. Because there was no visa "immediately available" to Mr. de la Torre at the time of the application, he was not prima facie eligible for Adjustment of Status.

iii. The Chicago District Office accepted Mr. de la Torre's application for Adjustment of Status. The INS then denied the application, kept the application fees, and put Mr. de la Torre into removal proceedings.

iv. Mr. de la Torre was ordered removed in absentia on January 10, 2001. He has filed a Motion to Rescind that order, which remains pending at the Board of Immigration Appeals. The INS granted him a Stay of Removal, in connection with this case, which expires on August 13, 2002.

v. Mr. de la Torre has never received any refund of his INS application fees.

41. Defendants' policies as described in paragraphs 26-38 have been applied, and will continue to be applied, unless enjoined, to both Named Plaintiffs and to the members of the Plaintiff class.

42. Members of the Plaintiff class have been subjected to, are being subjected to, and, unless the policies and practices of the Chicago District Office are enjoined, will continue to be subjected to, the same or similar types of injuries as have the named plaintiffs. The named plaintiffs will continue to be subject to the same or similar types of injury, unless such policies are enjoined.

V. EXHAUSTION OF ADMINISTRATIVE REMEDIES

43. Plaintiffs have exhausted their administrative remedies. The scope of exhaustion in the APA context is defined by statute at 5 U.S.C. §704 (2002). Plaintiffs have met this standard, in that the INS, in contravention of its own rules, has failed to process any refunds of the fees wrongfully accepted from named Plaintiffs and the Plaintiff class, and has refused to return the application which it wrongfully processed as alleged herein. In addition, Plaintiffs need not exhaust administrative remedies as to the constitutional claims made herein, as the Immigration courts have no power to correct those errors.

VI. CLAIMS FOR RELIEF **COUNT ONE (Administrative Procedures Act)**

1.-43. Plaintiffs reallege and incorporate by reference the allegations contained in ¶¶ 1-43 as ¶¶ 1-43 of Count I.

44. The Chicago District Office policy in effect from January 29, 1997, through April 13, 2001, is in direct violation of the INA and INS regulations.

45. The statutory requirements for adjustment of status are found in INA §245, 8 U.S.C. §1255. That section governs the circumstances under which the Attorney General can accept an Adjustment of Status application, and specifically requires that a visa be "immediately available" at the time such application is filed. Further, the regulations governing Adjustment of

Status filings are found at 8 C.F.R. §245.2. These regulations were promulgated, and are binding upon the Respondents.

46. The general rule for applications to the INS is that applications are "properly filed" when they are received, signed and with proof of proper payment affixed. 8 C.F.R. § 103.2(a)(7)(i) (2000). But this rule does not apply to Adjustment of Status applications. Instead, Adjustment of Status applications are governed by their own regulation, which states:

Proper filing of application—(i) Under section 245. Before an application for adjustment of status under section 245 of the Act may be considered properly filed, a visa must be immediately available. If a visa would be immediately available upon approval of a visa petition, the application will not be considered properly filed unless such petition has first been approved. If an immediate relative petition filed for classification under section 201(b)(2)(A)(i) of the Act or a preference petition filed for classification under section 203(a) of the Act [family-sponsored immigrants] is submitted simultaneously with the adjustment application, the adjustment application shall be retained for processing only if approval of the visa petition would make a visa immediately available at the time of filing the adjustment application. If the visa petition is subsequently approved, the date of filing the adjustment application shall be deemed to be the date on which the accompanying petition was filed.

8 C.F.R. § 245.2 (a)(2)(i) (2000) (emphasis added).

47. Thus, under the regulations issued to implement INA §245, an Adjustment of Status application is not "properly filed" unless it is signed, the proper fee is tendered, and it is accompanied by proof that the visa petition (a) has a current priority date, or (b) is of the type that creates an immediate entitlement to a visa once it is approved (i.e., the beneficiary is the "immediate relative" of a U.S. citizen petitioner).

48. An INS employee can readily determine if condition (a) is satisfied by checking the priority date on the petition's approval notice against the State Department's monthly bulletin of current priority dates. *See* Exhibit A. That same INS employee can readily determine if condition

(b) is satisfied by seeing if the visa petition is filed by a U.S. citizen on behalf of a spouse, parent, or unmarried child as defined in the INA.

49. On information and belief, most district and subdistrict offices of the INS around the U.S. comply with the regulations and review all Adjustment of Status applications to make sure that the application includes proof that a visa is "immediately available," in order to be deemed "properly filed." On information and belief, most of these offices reject for processing any applications that are not "properly filed," including those that fail to demonstrate that a visa is "immediately available," and return them to the applicant, along with the special processing and filing fees. These district and subdistrict offices do not attempt to deal with the applications on their merits without making that threshold determination, nor do they put applicants into removal proceedings based on the information disclosed in their applications.

50. The Chicago District Office's policy undercut local anti-consumer fraud enforcement, and undermined efforts by elected officials, consumer groups, and agencies that serve immigrant populations to educate immigrant communities about the perils of relying on "immigration consultants."

51. The Chicago District Office continued to adhere to its policy with respect to Adjustment of Status applications for, on information and belief, more than a year after becoming aware of these facts.

52. The Chicago District Office's failure to comply with the INA and INS regulations has resulted in thousands of unsuspecting immigrants losing the filing and processing fees they paid to the INS, and/or having their applications for legal permanent residence, which should

never have been processed, used as a basis for instituting removal proceedings against them. The actions, as applied to the named Plaintiffs and to the Plaintiff class, are final agency orders.

53. That Chicago District Office's handling of applications for Adjustment of Status was and remains an agency action which is arbitrary, capricious, or not in accordance with the law, in that it fails to comply with the INA, as well as the INS regulations. Administrative Procedure Act, 5 U.S.C. §§ 701 et seq.

54. The INS and its district and subdistrict offices are "agencies" as defined in the Administrative Procedure Act. *See* 5 U.S.C. § 701(b)(1).

55. As a direct and proximate result of Chicago District Office's policy violating provisions of the INA and its regulations, Plaintiffs suffered injuries including the loss of the significant filing fees they paid to the INS, and/or having their applications used as a basis for instituting removal proceedings against them.

COUNT TWO (Procedural Due Process)

1.-55. Plaintiffs reallege and incorporate by reference ¶¶1-55 as ¶¶1-55 of Count II.

56. Under the Fifth Amendment to the United States Constitution, those threatened with the loss of liberty or property due to actions by the federal government are entitled to due process. When Congress passed 8 U.S.C. 1255(i), it gave certain individuals the statutory right to file for lawful residency within the United States. This statute, and the INS regulations and policy implementing that right, gave the Plaintiffs a protected liberty interest in being able to apply for residency within the United States.

57. The Chicago District Office's policies, as recounted in ¶¶26-41, created a trap whereby members of the Plaintiff Class were prevented from exercising that right. Plaintiffs and

the Plaintiff Class were enticed by the INS to file an application to protect an important right established by Congress – to adjust their status without having to leave the United States for ten years – but due to the interrelationship of the statutory deadlines, the Chicago District Office's unlawful policies, and the actions of the unscrupulous notarios, of which the Chicago District Office was aware, Plaintiffs wound up filing a document that had the actual effect of undermining that very right that they thought they were protecting.

58. In these circumstances, the policy and actions of the Chicago District Office violated due process and fundamental fairness. Because of the malfeasance of the Chicago District Office in improperly accepting applications for filing, and the actions of the unscrupulous notarios, of which the Chicago District Office was aware, the effect of filing these INS forms was completely altered from their ordinary purpose. Plaintiffs and the Plaintiff class were entitled to be given meaningful and timely notice of the new rules of the game: that the filing of an application to adjust their status without a visa being immediately available would result in the loss of the substantial filing fee and the loss of the benefit given to them by Congress in being able to adjust their status without leaving the United States for ten years once a visa did become available.

59. As a result Plaintiffs and the Plaintiff Class has been denied due process and fundamental fairness by Defendants Chicago District Office, Perryman, and Ashcroft in violation of the Fifth Amendment to the United States Constitution.

COUNT THREE (Equal Protection)

1.-59. Plaintiffs reallege and incorporate by reference ¶¶1-59 as ¶¶1-59 of Count III.

60. Defendants' actions also violated the Equal Protection prong of the Due Process Clause of the Fifth Amendment to the United States Constitution. Defendants have treated and

are continuing to treat like individuals differently, without any substantial justification. Where an individual filed only an "I-130" petition, Defendants do not seek to remove that individual on the basis of the information in that petition. However, where such individual also filed form "I-485," and where that application was actually accepted for filing due to Defendants' own malfeasance, Defendants seek to remove those individuals from the country on the basis of the information in that petition, thus depriving them of the opportunity to apply for residency under INA 245(i).

61. In addition, the Chicago District Office treated Plaintiffs and the Plaintiff Class by targeting them for special action, as alleged in ¶33, that was adverse and different than that accorded other similarly situated individuals.

62. Defendants' actions are not pursuant to a Congressional command, or in furtherance of any Congressional mandate. Indeed, the actions of Defendants as alleged herein undercut the Congressional intent of the statute by limiting INA 245(i) in ways not intended by Congress. Where the actions of an agency in differentiating like groups is not pursuant to statutory command or requirement, those actions do not receive deferential "rational basis" treatment, but rather, are subject to a more searching analysis.

63. Defendants' actions, in treating like individuals differently, cannot withstand even the most lenient of standards, rational relationship and they certainly cannot withstand any kind of heightened scrutiny required when an agency treats people differently despite a Congressional mandate to treat them the same.

COUNT FOUR (Substantive Due Process--Right of Familial Association)

1.-63. Plaintiffs reallege and incorporate by reference the allegations contained in ¶¶1-63 as ¶¶1.-63 of Count IV.

64. Plaintiffs and the Plaintiff class have a constitutional right to associate with close family members, *e.g.* children, parents, grandparents and siblings, who are either United States citizens or lawful permanent residents in the United States consistent with the policies enunciated in INA Section 245(i) that as long as they applied and were eligible for a visa petition before a specific deadline, the information they provided to INS would not be used as a basis to separate them from their family members through removal procedures.

65. Through the policies and practices described in ¶¶1-42, Defendants have unconstitutionally interfered with that right.

COUNT FIVE (Declaratory Judgment)

1.-65. Plaintiffs incorporate by reference and reallege the allegations contained in ¶¶ 1-65 as ¶¶1.-65 of Count V.

66. An actual and substantial controversy has arisen between the parties, and that controversy continues to exist regarding their respective rights and duties, including without limitation the proper handling of plaintiffs' Adjustment of Status applications and the propriety of ongoing efforts to remove members of the plaintiff class.

67. Declaratory relief is necessary in that, as noted herein, the plaintiffs contend, and Defendants deny, that the plaintiffs' applications and fees should be returned to them, and that the Defendants' actions are in violation of the statutory and regulatory obligations of the INS.

IRREPARABLE INJURY ALLEGATIONS

68. Plaintiffs have no adequate remedy at law to redress the violations of law and the injuries alleged herein and this suit for declaratory judgment and injunctive relief is their only means of securing adequate redress from defendants' unlawful policy. Plaintiffs have and will

continue to suffer irreparable injury from defendants' policy and practices set forth herein unless enjoined by this court. Unless restrained and enjoined by this Court, defendants will continue their unlawful acts as alleged herein, causing the plaintiffs irreparable injury.

PRAYER FOR RELIEF

Wherefore, Plaintiffs request that this Court:

- A. Certify the Plaintiff Class pursuant to Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure.
- B. Find and declare defendants' actions are arbitrary, capricious, and not in accordance with the INA, its regulations, and Operations Instructions.

Specifically, plaintiffs pray that this Court:

1. Declare that the Chicago District Office has violated 8 U.S.C. §1255 and 8 C.F.R. §245.2(a)(2)(i) by failing to reject and return adjustment of status applications that are not "properly filed" because they fail to demonstrate that a visa is "immediately available," as well as the fees associated with those applications.
2. Declare that the promulgated regulations require the Chicago District Office to review Adjustment of Status applications to see whether a visa is "immediately available" to the applicant, prior to accepting such applications.
3. Declare that, where no visa is "immediately available," the regulations require the Chicago District Office to reject the application and return it forthwith to the applicant, along with the special processing and filing fees.
4. Declare that in no event shall the Chicago District Office's erroneous denial of an Adjustment of Status application on the ground that a visa is not "immediately available" be deemed a decision on the merits of such an application.
5. Declare that the policies and practices have violated Plaintiffs' constitutional rights as alleged herein.

C. Enjoin the INS, nationally and in the Chicago District Office from:

1. Acting on the merits of any Adjustment of Status application from Plaintiffs or Plaintiff Class members which was accepted prior to the institution of the current procedures, where there is no visa immediately available.
2. Retaining the fees for pending applications accepted prior to the currently instituted policy where there is no immediately available visa, and for applications denied prior to this lawsuit due to lack of an immediately available visa.
3. Using the information obtained from a premature Application to Adjust Status from Plaintiffs or Plaintiff Class Members for the issuance of any Notice to Appear (NTA) on the denial on the merits of an Adjustment of Status application that was not "properly filed," and should not have been accepted, or of filing any such NTAs with any immigration court.
4. Proceeding with removal proceedings where any NTA was based on the violations outlined above.
5. Taking any other steps that are not authorized under the statute, regulations, and Operations Instructions governing applications for Adjustment of Status.

D. Order the Respondents, INS and the Chicago District Office, to return all improperly filed Adjustment of Status applications, together with the fees that accompanied those applications.

E. Award Plaintiffs' costs and a reasonable attorneys' fee.

F. Grant any further relief that this Court deems necessary and proper.

DATED this 13th day of November, 2002.

Respectfully submitted:



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Attorneys for Plaintiffs and Plaintiff Class

United States Department of State
Bureau of Consular Affairs

Visa Bulletin

Number 52
Volume VIII

Washington, D.C.

IMMIGRANT NUMBERS FOR DECEMBER 2002

A. STATUTORY NUMBERS

1. This bulletin summarizes the availability of immigrant numbers during **December**. Consular officers are required to report to the Department of State documentarily qualified applicants for numerically limited visas; the Immigration and Naturalization Service reports applicants for adjustment of status. Allocations were made, to the extent possible under the numerical limitations, for the demand received by November 8th in the chronological order of the reported priority dates. If the demand could not be satisfied within the statutory or regulatory limits, the category or foreign state in which demand was excessive was deemed oversubscribed. The cut-off date for an oversubscribed category is the priority date of the first applicant who could not be reached within the numerical limits. Only applicants who have a priority date **earlier than** the cut-off date may be allotted a number. Immediately that it becomes necessary during the monthly allocation process to retrogress a cut-off date, supplemental requests for numbers will be honored only if the priority date falls within the new cut-off date.

2. Section 201 of the Immigration and Nationality Act (INA) sets an annual minimum family-sponsored preference limit of 226,000. The worldwide level for annual employment-based preference immigrants is at least 140,000. Section 202 prescribes that the per-country limit for preference immigrants is set at 7% of the total annual family-sponsored and employment-based preference limits, i.e., 25,620. The dependent area limit is set at 2%, or 7,320

3. Section 203 of the INA prescribes preference classes for allotment of immigrant visas as follows:

FAMILY-SPONSORED PREFERENCES

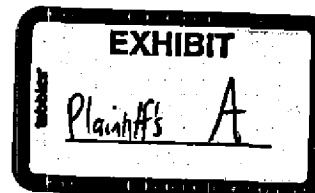
First: Unmarried Sons and Daughters of Citizens: 23,400 plus any numbers not required for fourth preference.

Second: Spouses and Children, and Unmarried Sons and Daughters of Permanent Residents: 114,200, plus the number (if any) by which the worldwide family preference level exceeds 226,000, and any unused first preference numbers:

A. Spouses and Children: 77% of the overall second preference limitation, of which 75% are exempt from the per-country limit;

B. Unmarried Sons and Daughters (21 years of age or older): 23% of the overall second preference limitation.

Third: Married Sons and Daughters of Citizens: 23,400, plus any numbers not required by first and second preferences.



Fourth: Brothers and Sisters of Adult Citizens: 65,000, plus any numbers not required by first three preferences.

EMPLOYMENT-BASED PREFERENCES

First: Priority Workers: 28.6% of the worldwide employment-based preference level, plus any numbers not required for fourth and fifth preferences.

Second: Members of the Professions Holding Advanced Degrees or Persons of Exceptional Ability: 28.6% of the worldwide employment-based preference level, plus any numbers not required by first preference.

Third: Skilled Workers, Professionals, and Other Workers: 28.6% of the worldwide level, plus any numbers not required by first and second preferences, not more than 10,000 of which to "Other Workers."

Fourth: Certain Special Immigrants: 7.1% of the worldwide level.

Fifth: Employment Creation: 7.1% of the worldwide level, not less than 3,000 of which reserved for investors in a targeted rural or high-unemployment area, and 3,000 set aside for investors in regional centers by Sec. 610 of P.L. 102-395.

4. INA Section 203(e) provides that family-sponsored and employment-based preference visas be issued to eligible immigrants in the order in which a petition in behalf of each has been filed. Section 203(d) provides that spouses and children of preference immigrants are entitled to the same status, and the same order of consideration, if accompanying or following to join the principal. The visa prorating provisions of Section 202(e) apply to allocations for a foreign state or dependent area when visa demand exceeds the per-country limit. These provisions apply at present to the following oversubscribed chargeability areas: MEXICO and PHILIPPINES.

5. On the chart below, the listing of a date for any class indicates that the class is oversubscribed (see paragraph 1); "C" means current, i.e., numbers are available for all qualified applicants; and "U" means unavailable, i.e., no numbers are available. (NOTE: Numbers are available only for applicants whose priority date is earlier than the cut-off date listed below.)

Priority Dates for Family Based Immigrant Visas

	All Chargeability Areas Except Those Listed	MEXICO	PHILIPPINES
Family			
1st	08APR99	15OCT92	01ARP90
2A*	22SEP97	08APR95	22SEP97

2B	08APR94	01NOV91	08APR94
3rd	22DEC96	01NOV92	01DEC89
4th	08DEC90	01NOV90	01DEC81

*NOTE: For December, 2A numbers **EXEMPT from per-country limit** are available to applicants from all countries with priority dates **earlier** than 08APR95. 2A numbers **SUBJECT to per-country limit** are available to applicants chargeable to all countries **EXCEPT MEXICO** with priority dates beginning 08APR95 and earlier than 22SEP97. (All 2A numbers provided for MEXICO are exempt from the per-country limit; there are no 2A numbers for MEXICO subject to per-country limit.)

Priority Dates for Employment-Based Immigrant Visas

	All Chargeability Areas Except Those Listed	MEXICO	PHILIPPINES
Employment-Based			
1st	C	C	C
2nd	C	C	C
3rd	C	C	C
Other Workers	C	C	C
4th	C	C	C
Certain Religious Workers	C	C	C
5th	C	C	C

Targeted Employment Areas/Regional Centers	C	C	C
---	---	---	---

The Department of State has available a recorded message with visa availability information which can be heard at (202) 663-1541. This recording will be updated in the middle of each month with information on cut-off dates for the following month.

B. DIVERSITY IMMIGRANT (DV) CATEGORY

Section 203(c) of the Immigration and Nationality Act provides a maximum of up to 55,000 immigrant visas each fiscal year to permit immigration opportunities for persons from countries other than the principal sources of current immigration to the United States. The Nicaraguan and Central American Relief Act (NCARA) passed by Congress in November 1997 stipulates that beginning with DV-99, and for as long as necessary, up to 5,000 of the 55,000 annually-allocated diversity visas will be made available for use under the NCARA program. **This reduction has resulted in the DV-2003 annual limit being reduced to 50,000.** DV visas are divided among six geographic regions. No one country can receive more than seven percent of the available diversity visas in any one year.

For **December**, immigrant numbers in the DV category are available to qualified DV-2003 applicants chargeable to all regions/eligible countries as follows. When an allocation cut-off number is shown, visas are available only for applicants with DV regional lottery rank numbers **BELOW** the specified allocation cut-off number:

All DV Chargeability Areas Except Those Listed Separately

Region

AFRICA: AF 9,800

ASIA: AS 4,075

EUROPE: EU 15,850

NORTH AMERICA (BAHAMAS): NA 10

OCEANIA: OC 200

SOUTH AMERICA, and the CARIBBEAN: SA 625

Entitlement to immigrant status in the DV category lasts only through the end of the fiscal (visa) year for which the applicant is selected in the lottery. The year of entitlement for all applicants registered for the DV-2003 program ends as of September 30, 2003. DV visas may not be issued to DV-2003 applicants after that date. Similarly, spouses and children accompanying or following to join DV-2003 principals are only entitled to derivative DV status until September 30, 2003. DV visa availability through the very end of FY-2003 cannot be taken for granted. Numbers could be exhausted prior to September 30. **Once all numbers provided by law for the DV-2003 program have been used, no further issuances will be possible.**

C. ADVANCE NOTIFICATION OF THE DIVERSITY (DV) IMMIGRANT CATEGORY RANK CUT-OFFS WHICH WILL APPLY IN JANUARY

For **January**, immigrant numbers in the DV category are available to qualified DV-2003 applicants chargeable to all regions/eligible countries as follows. When an allocation cut-off number is shown, visas are available only for applicants with DV regional lottery rank numbers **BELOW** the specified allocation cut-off number:

All DV Chargeability Areas Except Those Listed Separately

Region

AFRICA: AF 11,500
 ASIA: AS 5,200 Except: BANGLADESH 5,060
 EUROPE: EU 18,000
 NORTH AMERICA (BAHAMAS): NA 11
 OCEANIA: OC 256
 SOUTH AMERICA, and the CARIBBEAN: SA 700

D. OBTAINING THE MONTHLY VISA BULLETIN

The Department of State's Bureau of Consular Affairs offers the monthly *Visa Bulletin* on the INTERNET'S WORLDWIDE WEB. The INTERNET Web address to access the *Bulletin* is:

<http://travel.state.gov>

From the home page, select the VISA section which contains the *Visa Bulletin*.

Individuals may also obtain the *Visa Bulletin* by FAX. From a FAX phone, dial (202) 647-3000. Follow the prompts and enter in the code 1522 to have each *Bulletin* FAXed.

To be placed on the Department of State's E-mail subscription list for the *Visa Bulletin*, please provide your E-mail information to the following E-mail address:

VISABULLETIN@STATE.GOV

The Department of State also has available a recorded message with visa cut-off dates which can be heard at (202) 663-1541. The recording is normally updated by the middle of each month with information on cut-off dates for the following month.

The *Visa Bulletin* can also be contacted by e-mail at the following address:

VISABULLETIN@STATE.GOV

Department of State Publication 9514
 CA/VO:November 8, 2002

Go to the Visa Services Page

CIVIL COVER SHEET

The 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, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Justino Castaneda, Efren de la Torre
Maria Ramos, Apolinar Ochoa, Argmira
Ochoa, Nicolas Olivares, Fermin
Gutierrez, Fernando Carranza, Gabriel
Torres, Juan Rodriguez, Hector Diaz
Cook County, IL

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)

JUDGE LINDBERG

DEFENDANTS

John Ashcroft, Attorney General; Immigration
and Naturalization Service; James W. Ziglar,
Commissioner, INS; and Brian Perryman, Director
of Chicago District Office of the INS
COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Patricia Mendoza 312-782-1422
Mexican American Legal Defense and Ed. Fund
188 West Randolph St., Ste 1405

ATTORNEYS (IF KNOWN)

MAGISTRATE JUDGE

II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☒ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

- Citizen of This State ☐ 1 ☐ 1 Incorporated or Principal Place of Business in This State ☐ 4 ☐ 4
Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business in Another State ☐ 5 ☐ 5
Citizen or Subject of a Foreign Country ☐ 3 Foreign Nation ☐ 6 ☐ 6

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 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT

(PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 118 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 163 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 160 Other Contract <input type="checkbox"/> 165 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 910 Agriculture <input type="checkbox"/> 920 Other Food & Drug <input type="checkbox"/> 925 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 930 Liquor Laws <input type="checkbox"/> 940 R.R. & Truck <input type="checkbox"/> 950 Airline Pledge <input type="checkbox"/> 960 Occupational Safety/Health <input type="checkbox"/> 990 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 750 Other Labor Litigation <input type="checkbox"/> 751 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HRA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DHC/DHWW (405(g)) <input type="checkbox"/> 864 SSD Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 PIR - Third Party 26 USC 7609	<input type="checkbox"/> 480 State Reapportionment <input type="checkbox"/> 490 Antitrust <input type="checkbox"/> 520 Banks and Banking <input type="checkbox"/> 550 Commerce/ICC Rates/etc <input type="checkbox"/> 560 Deportation <input type="checkbox"/> 570 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 610 Selective Service <input type="checkbox"/> 650 Securities/Commodities/Exchange <input type="checkbox"/> 675 Customer Challenge 12 USC 3410 <input type="checkbox"/> 681 Agricultural Acts <input type="checkbox"/> 682 Economic Stabilization Act <input type="checkbox"/> 683 Environmental Matters <input type="checkbox"/> 684 Energy Allocation Act <input type="checkbox"/> 686 Freedom of Information Act <input type="checkbox"/> 688 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 690 Constitutionality of State Statutes <input checked="" type="checkbox"/> 695 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 250 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input checked="" type="checkbox"/> 445 Other Civil Rights PRISONER PETITIONS <input type="checkbox"/> 610 Motions to Vacate Sentence <input type="checkbox"/> HABEAS CORPUS: <input type="checkbox"/> 630 General <input type="checkbox"/> 635 Death Penalty <input type="checkbox"/> 640 Merit/Review & Other <input type="checkbox"/> 645 Civil Rights <input type="checkbox"/> 655 Prison Condition			

VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

Administrative Procedures Act, Declaratory Judgment Act, and Equal Protection and Due Process Clauses of the Fifth Amendment

VII. REQUESTED IN COMPLAINT

CHECK IF THIS IS A CLASS ACTION
UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint

JURY DEMAND: ☐ YES ☐ NO

VIII. This case ☐ is not a refiling of a previously dismissed action.

☒ is a refiling of case number 01 C 2633, previously dismissed by Judge Coar

DATE

11/14/02 AR

SIGNATURE OF ATTORNEY OF RECORD

Ally R...

1-8

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

In the Matter of

Maria Ramos, et al.,

v.

John Aschcroft, Attorney General; INS; et al.

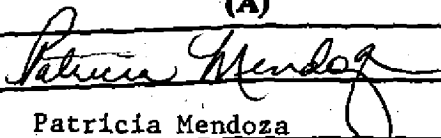
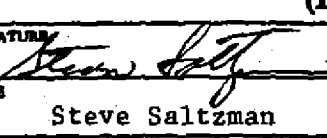
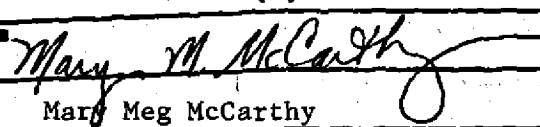
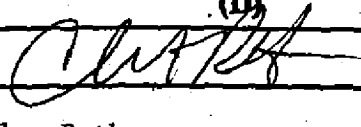
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NOV 15 2002

02C 8266Case Number: **JUDGE LINDBERG**

APPEARANCES ARE HEREBY FILED BY THE UNDERSIGNED AS ATTORNEY FOR JUDGE BOBRICK

Maria Ramos, Apolinar Ochoa, Argmira Ochoa, Nicolas Olivares, Fermin Gutierrez, Fernando Carranza, Gabriel Torres, Juan Manuel Rodriguez, Hector Diaz, Justino Castaneda, Efren de la Torre

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TRIAL ATTORNEY? YES <input type="checkbox"/> NO <input type="checkbox"/>		TRIAL ATTORNEY? YES <input type="checkbox"/> NO <input type="checkbox"/>	
		DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
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TRIAL ATTORNEY? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		TRIAL ATTORNEY? YES <input type="checkbox"/> NO <input type="checkbox"/>	
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U.S. DISTRICT COURT

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

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NOV 15 2002

In the Matter of

Maria Ramos, et al.,
v.

John Aschcroft, Attorney General, et al.

02C 8266

APPEARANCES ARE HEREBY FILED BY THE UNDERSIGNED AS ATTORNEY FOR:

See Page 1.

JUDGE LINDBERG

MAGISTRATE JUDGE BOBRICK

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		DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>	
(C)		(D)	
SIGNATURE		SIGNATURE	
NAME		NAME	
FIRM		FIRM	
STREET ADDRESS		STREET ADDRESS	
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TELEPHONE NUMBER	FAX NUMBER	TELEPHONE NUMBER	FAX NUMBER
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IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)		IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)	
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