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

ENTERED  
CLERK, U.S. DISTRICT COURT  
AUG 17 2006  
CENTRAL DISTRICT OF CALIFORNIA  
BY *[Signature]* DEPUTY

LUIS JAVIER PEREZ-OLANO;  
MANUEL GOMEZ; MICHAEL YUBAN  
OBANDO; CASA LIBRE YOUTH  
SHELTER; LUCIA UREY; MAEJEAN  
ROBINSON; LUIS MIGUEL  
MORALES; YAN JUN LI; FREDDY  
GARRIDO-MARTINEZ,

Plaintiff,

v.

ALBERTO GONZALEZ, Attorney  
General; ~~ROBERT S. MUELLER,~~  
~~Director Federal Bureau of~~  
~~Investigation;~~ MICHAEL  
CHERTOFF, Secretary of  
Homeland Security; OFFICE OF  
REFUGEE RESETTLEMENT ,

Defendants.

Case No. CV 05-03604 DDP (RZx)

**AMENDED ORDER DENYING IN PART  
AND GRANTING IN PART MOTION TO  
DISMISS**

[Motion filed on 06/02/06]

**THIS CONSTITUTES NOTICE OF ENTRY  
AS REQUIRED BY FRCP, RULE 77(d).**

This matter is before the Court on the Defendants' motion to  
dismiss pursuant to Federal Rules of Procedure 12(b)(1) and  
12(b)(6). After reviewing the submissions of the parties and  
hearing oral argument, the Court grants the motion in part and  
denies the motion in part.

50

1 I. BACKGROUND

2 This is an action for declaratory, injunctive, and mandamus  
3 relief against certain policies, practices, and regulations  
4 promulgated and followed by the Defendants - Attorney General  
5 Alberto Gonzalez, Secretary of Homeland Security Michael Chertoff,  
6 and the Office of Refugee Resettlement ("ORR"). The Plaintiffs  
7 challenge the implementation of the special immigrant juvenile  
8 ("SIJ") provisions of the Immigration and Nationality Act. 8 U.S.C.  
9 §§ 1101(a)(27)(J) & 1255(a)(2000). These provisions create a  
10 method for abused, neglected, and abandoned minors to become lawful  
11 residents of the United States. Section 1101(a)(27)(J) outlines the  
12 procedure for obtaining SIJ status. If a minor is granted SIJ  
13 status, he may apply for the status of lawful permanent resident  
14 under section 1255. The Plaintiffs' claims arise out of both the  
15 process for attaining SIJ status and the process of attaining  
16 lawful permanent resident status that often follows the SIJ  
17 determination.

18 The operative complaint is the Third Amended Complaint  
19 ("TAC"). The Plaintiffs bring five causes actions on their behalf  
20 and on behalf of those similarly situated: (1) unlawful  
21 interference with access to courts for in-custody minors; (2)  
22 denial of due process for in-custody minors; (3) promulgation of  
23 and adherence to regulations without statutory authority; (4)  
24 unreasonable delays in adjudicating applications for SIJ  
25 classification and adjustment; and (5) denying minors in removal  
26 proceedings adjudication of SIJ-based adjustment applications.

27 The Defendants now move to dismiss all five claims for lack of  
28 subject matter jurisdiction and for failure to state a claim.

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1 Additionally, the Defendants seek to dismiss certain Plaintiffs and  
2 claims for lack of standing.

3

## 4 II. DISCUSSION

### 5 A. Article III Standing Requirements

6 Standing is a jurisdictional limitation on all federal courts  
7 and an essential part of the Article III "case or controversy"  
8 requirement. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560  
9 (1992). To establish standing to bring a claim, the Plaintiffs must  
10 show three elements: (1) an injury in fact, which is "(a) concrete  
11 and particularized, and (b) actual or imminent, not conjectural or  
12 hypothetical;" (2) a causal connection between the injury and the  
13 challenged conduct; and (3) a likelihood that the injury will be  
14 redressed by a favorable decision, i.e., that the prospect of  
15 obtaining relief is not "too speculative." Bras v. Cal. Pub. Util.  
16 Comm., 59 F.3d 869, 872 (9th Cir. 1995) (citing Lujan, 504 U.S. at  
17 559).

18 The Defendants argue that four of the Plaintiffs (Perez-Olano,  
19 Obando, Gomez, and Casa Libre) lack standing to bring any of the  
20 five asserted claims. The Defendants also argue that some of the  
21 claims should be dismissed because none of the Plaintiffs have  
22 standing to bring the claims. The Court begins by examining the  
23 allegations regarding the four plaintiffs.

#### 24 1. Perez-Olano, Obando, & Gomez

25 The Defendants contend that the named-plaintiffs Perez-Olano,  
26 Obando, and Gomez should be dismissed for lack of standing because  
27 they have not "demonstrated a semblance of threatened or actual  
28 injury." (Mot. 38.) These Plaintiffs have not suffered an actual

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1 injury because all were granted adjustment of status as SIJs before  
2 they were beyond the age eligible for SIJ status (i.e. these  
3 Plaintiffs were not "aged-out.")

4       However, because of the nature of this case, there is a  
5 possibility that any named-plaintiff's case would become moot  
6 before trial. Therefore, this presents a situation potentially  
7 avoiding review. Where changes in the circumstances of certain  
8 plaintiffs make their claims moot, the Ninth Circuit has held that  
9 such cases are not moot as long as the challenged governmental  
10 policy is on-going. Or. Advocacy Ctr. v. Mink, 322 F.3d 1101, 1118  
11 (9th Cir. 2003). Thus, because the TAC challenges governmental  
12 policies and not just the specific injuries of Perez-Olano, Obando,  
13 and Gomez, they have standing.

14               2.    Casa Libre

15       The Defendants also contend that Casa Libre lacks standing  
16 "separate and apart" from the individually-named Plaintiffs and  
17 should be dismissed because it "has no personal stake in the  
18 instant litigation." (Mot. 41.) The Plaintiffs argue that Casa  
19 Libre has associational standing.

20       In Hunt v. Washington State Apple Advertising Commission, the  
21 Supreme Court laid out a three-pronged test for determining when an  
22 organization has standing to bring claims. 432 U.S. 333, 343  
23 (1977). The Court explained that an association has standing to  
24 bring suit on behalf of its members when: "(a) its members would  
25 otherwise have standing to sue in their own right; (b) the  
26 interests it seeks to protect are germane to the organization's  
27 purpose; and (c) neither the claim asserted nor the relief

28    ///

1 requested requires the participation of individual members in the  
2 lawsuit." Id.

3 Here, the Plaintiffs describe the juveniles that Casa Libre  
4 serves as members of the organization. (Opp'n 17.) Organizations  
5 that serve to protect certain classes of persons may bring standing  
6 on behalf of the beneficiaries of their efforts if the other  
7 standing requirements are met. Or. Advocacy Ctr., 322 F.3d at 1110.  
8 First, Perez-Olano, Obando, and Gomez were residents (i.e. members)  
9 of Casa Libre and all three have standing to sue in their own  
10 right. Second, Casa Libre represents the interests of abused,  
11 abandoned, and neglected children. Third, the Plaintiffs seek  
12 general equitable relief, which does not require individual  
13 participation. (Opp'n 17-18.) Thus, Casa Libre satisfies all three  
14 Hunt prongs for associational standing.

15 3. Standing for Claim One: Unlawful Interference with  
16 In-custody Minors Access to Courts

17 Claim one presents contentions of statutory and constitutional  
18 violations associated with the Defendants' treatment of in-custody  
19 minors who may be eligible for SIJ status. The TAC describes  
20 general and specific allegations regarding when the Defendants give  
21 their consent for in-custody minors to have a state dependency  
22 hearing. The claim presents five prongs. The third prong argues  
23 that the Defendants are only giving consent to minors that they  
24 plan to release. (Claim 1(c).) The fourth prong asserts that the  
25 Defendants are discouraging and preventing third parties from  
26 seeking state hearings. (Claim 1(d).) The Defendants argue that  
27 these two prongs should be dismissed because the Plaintiffs have

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1 not presented any specific allegations describing such  
2 circumstances.

3 The Defendants are correct. The TAC does not contain  
4 allegations of these facts in reference to any of the presented  
5 plaintiffs. The Plaintiffs submitted three different declarations  
6 asserting that contracts with the ORR prohibit facilities and  
7 shelters "from assisting youth become state court dependents even  
8 when they know that a given youth has been abused, abandoned, or  
9 neglected." (Batra Decl. 1.; see also Kim Decl. 2.; Upton Decl. 2.)  
10 Although these declarations support the allegations of claim 1(d),  
11 they are not part of the TAC. Therefore, the Court dismisses claim  
12 1(c) without prejudice.

13 As the Plaintiffs have not presented any allegations or  
14 documentation regarding their assertion that the Defendants are  
15 only giving consent to minors that they plan to release, the Court  
16 also dismisses claim 1(d) without prejudice.

17 4. Claim Two: Denial of Due Process in Decision to Give  
18 In-Custody Minors Consent to State Hearings

19 Claim two sets forth allegations regarding violations of the  
20 due process rights for in-custody minors when they seek consent to  
21 proceed to a state dependency court. The Plaintiffs describe a  
22 situation with several due process concerns. They allege inter alia  
23 that there are no evidentiary hearings, no chances to review or  
24 rebut witnesses and evidence, and no rights of appeal. This cause  
25 of action is divided into six prongs presenting six different  
26 examples of alleged due process violations. The Defendants urge  
27 dismissal of the second and third claims based on lack of standing.

28 ///

1 The second prong asserts that the Defendants wrongfully deny  
2 in-custody minors their "right to see or rebut adverse witnesses  
3 and secret evidence." (Claim 2(b).) The Defendants argue that this  
4 prong fails for lack of standing, as no named Plaintiffs have  
5 suffered an injury of that nature.

6 Plaintiff Li presents sufficient allegations to demonstrate  
7 standing for this claim. Li was an in-custody minor who requested  
8 permission to have a state dependency hearing. The Defendants  
9 withheld consent to such a hearing. The Plaintiffs allege that the  
10 Defendants used information from Li's shelter file to make its  
11 decision to withhold consent, but did not provide that information  
12 to Li or her counsel. (TAC 24-25.)

13 The Defendants argue that such evidence should not be  
14 considered "secret" because Li "the source of the germane  
15 information" and therefore "undoubtedly aware of what she had  
16 informed others." (Mot. 31.) The Defendants argue Li should have  
17 known what others wrote about her in her shelter file. According to  
18 the allegations, Li was neither informed of the nature of the  
19 evidence used in reviewing her case, nor was she allowed to review  
20 the evidence. Being the subject of a report or file does not  
21 necessarily inform one of what the file contains. By not allowing  
22 Li to review the material, she was not able to challenge it, check  
23 it for errors, or even verify that the file was indeed about her.  
24 Therefore, the Court finds that the Plaintiffs have standing to  
25 present this claim.

26 The third prong of claim two asserts that the Defendants  
27 wrongfully deny in-custody minors "right[s] to appointed counsel,  
28 guardians ad litem or interpreters." (TAC 28.) The Defendants argue

1 that they Plaintiffs do not have standing because no one has  
2 requested interpreters or guardians ad litem. At this stage in the  
3 pleadings, the Court takes all allegations in the TAC as true. The  
4 Defendants' assertion that no one has requested such assistance is  
5 a factual dispute. Therefore, the Court denies the motion dismiss  
6 this claim for lack of standing.

7           5.    Claim Four: Delay and Deprivation of Lawful Right of  
8                    Permanent Residence

9           The fourth claim for relief asserts that the Defendants  
10 unreasonably, unnecessarily, and unlawfully delay in adjudicating  
11 applications for SIJ classification and adjustment of status. (TAC  
12 28-29.) The Defendants argue that the Plaintiffs lack standing to  
13 bring this claim. (Mot. 35.) The Defendants discuss the

14 circumstances surrounding each of the currently-named Plaintiffs,  
15 arguing that none of them have been subject to unreasonable delay.

16           However, the Plaintiffs have set forth allegations of delay  
17 and denial of permanent residence status. Whether such delay  
18 actually occurred and whether such delay was unreasonable are  
19 questions of fact. Therefore, the Court holds that the Plaintiffs  
20 have set forth adequate allegations, and the Court denies the  
21 motion to dismiss claim four for lack of standing.

22           B.    Failure to State a Claim

23           Dismissal under Federal Rule of Civil Procedure 12(b)(6) is  
24 appropriate "only if it is clear that no relief could be granted  
25 under any set of facts that could be proved consistent with the  
26 allegations." Newman v. Universal Pictures, 813 F.2d 1519, 1521- 22  
27 (9th Cir. 1987) (quoting Hishon v. King & Spaulding, 467 U.S. 69,  
28 73 (1984)). Accordingly, the Court must "accept all factual

1 allegations of the complaint as true and draw all reasonable  
2 inferences in favor of the nonmoving party." Arpin v. Santa Clara  
3 Valley Transp. Agency, 261 F.3d 912, 923 (9th Cir. 2001).

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4 When a federal court reviews the sufficiency of a complaint,  
5 the issue is not whether a plaintiff will ultimately prevail but  
6 whether the claimant is entitled to offer evidence to support the  
7 claims. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). The Court need  
8 not accept conclusory legal assertions as true. Benson v. Ariz.  
9 State Bd. of Dental Exam'rs, 673 F.2d 272, 275-76 (9th Cir. 1982).

10 1. Claim One: Unlawful Interference with Access to  
11 Courts

12 The Plaintiffs' first claim for relief is "unlawful  
13 interference with in-custody minors' access to state dependency  
14 courts" and is subdivided in five prongs. (TAC 26-27.) The  
15 Plaintiffs assert that the Defendants interfere with in-custody  
16 minor's access to state courts by requiring the minors to get the  
17 Defendants' permission before going to state court. (Claim 1(a).)  
18 The Plaintiffs assert that this usurps the state role. (Claim  
19 1(b).) Additionally, the Plaintiffs complain that the Defendants  
20 only give consent for minors they plan to release. (Claim 1(c).)  
21 The Plaintiffs also assert that the minors' rights are violated by  
22 the Defendants preventing and discouraging third parties from  
23 seeking state hearings on the minors' behalf. (Claim 1(d).)  
24 Finally, the Plaintiffs contend that the minors' rights are  
25 violated because the Defendants do no take any affirmative steps to  
26 help in-custody minors with this process. (Claim 1(e).) The Court  
27 addresses these components in turn.

28 ///

1 a. Prongs (a) and (b)

2 The Defendants argue that elements (a) and (b) should be  
3 dismissed because they fail to state a claim upon which relief may  
4 be granted. (Mot. 22.) The Plaintiffs argue that the Defendants  
5 improperly withhold their consent from minors who wish to have a  
6 state juvenile court proceeding. The Plaintiffs argue that the  
7 Defendants are violating 8 U.S.C. section 1101(a)(27)(J) by  
8 requiring Department of Homeland Security ("DHS") consent as a  
9 precondition to a state court exercising jurisdiction over an in-  
10 custody minor. The parties offer differing interpretations of  
11 section 1101(a)(27)(J), which states:

12 The term "special immigrant" means--  
13 (J) an immigrant who is present in the United States--  
14 (i) who has been declared dependent on a juvenile  
15 court located in the United States or whom such  
16 a court has legally committed to, or placed under  
17 the custody of, an agency or department of a  
18 State and who has been deemed eligible by that  
19 court for long-term foster care due to abuse,  
20 neglect, or abandonment;  
21 (ii) for whom it has been determined in administrative  
22 or judicial proceedings that it would not be in  
23 the alien's best interest to be returned to the  
24 alien's or parent's previous country of  
25 nationality or country of last habitual  
26 residence; and  
27 (iii) in whose case the Attorney General expressly  
28 consents to the dependency order serving as a  
precondition to the grant of special immigrant  
juvenile status; except that--  
(I) no juvenile court has jurisdiction to  
determine the custody status or placement of  
an alien in the actual or constructive  
custody of the Attorney General unless the  
Attorney General specifically consents to  
such jurisdiction; and  
(II) no natural parent or prior adoptive parent  
of any alien provided special immigrant  
status under this subparagraph shall  
thereafter, by virtue of such parentage, be  
accorded any right, privilege, or status  
under this chapter;

28 8 U.S.C. § 1101(a)(27)(J).

1 The Plaintiffs interpret this statute to bar a state court  
2 from exercising jurisdiction to determine the custody status (or  
3 placement) of an in-custody minor without the Defendants' consent.  
4 (Opp'n 2.) They assert that the Defendants are going beyond this to  
5 bar state courts from exercising any jurisdiction whatsoever over  
6 an in-custody minor "whether or not that court attempts to  
7 determine the minor's custody status or placement." (Id. at 3  
8 (emphasis omitted).) Specifically, the Plaintiffs argue that  
9 nothing in the statute necessarily requires that a state court  
10 determination of whether a minor is abused, abandoned, or neglected  
11 to result in an alteration of the child's custody status.

12 The Defendants dispute the Plaintiffs' interpretation of the  
13 statute. They argue that the where a state court issues an order  
14 finding a minor "dependent on a juvenile court located in the  
15 United States or whom such a court has legally committed to, or  
16 placed under the custody of, an agency or department of a State,"  
17 that court is altering the custody status of that minor. The  
18 Defendants assert that a declaration that a minor is a dependent of  
19 a court is the equivalent of an alteration in custody status. (Mot.  
20 23.) Therefore, the Defendants argue, DHS consent is required  
21 before any state court can exercise jurisdiction over an alien  
22 minor.

23 The Court disagrees with the Defendants' interpretation of the  
24 statute. The plain language of the statute does not require DHS  
25 consent in all cases. Pursuant to section 1101(a)(27)(J), if a  
26 state juvenile court either (1) declares a minor dependent on the

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1 court or (2) legally commits<sup>1</sup> the minor to a state agency, the  
 2 minor may be eligible for SIJ status if he meets additional  
 3 criteria. The state juvenile court must also deem the minor  
 4 eligible for foster care due to "abuse, neglect, or abandonment." §  
 5 1101(a)(27)(J)(I). No minor may obtain SIJ status without the  
 6 express consent of the Attorney General. Further, no state court  
 7 has the jurisdiction to determine "the custody status or placement  
 8 of an alien in the actual or constructive custody of the Attorney  
 9 General." § 1101(a)(27)(J)(iii)(I).

10 The Defendants argue that this language prohibits state courts  
 11 from holding dependency hearings because such hearings would  
 12 necessarily involve alterations of custody status. (Mot. 23.)  
 13 However, such hearings need not involve alterations of custody  
 14 status. If a state hearing determines that a minor is eligible for  
 15 foster-care and declares the minor to be a dependant of the court,  
 16 the minor may qualify for SIJ status. The SIJ statute explains that  
 17 the state court could declare the minor dependant on the court OR  
 18 legally commit the minor to state agency (or place the minor under  
 19 the custody of a state agency). Thus, although the SIJ statute  
 20 envisions some state dependency courts making decisions that may  
 21 affect the custody status of minors, they need not do so to enable  
 22 the minor to attain SIJ status. Therefore, the Court holds that the  
 23 Plaintiffs have adequately stated a claim under these two prongs.

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28 <sup>1</sup> "or place[s] under the custody of"

1                   b.    Prongs (c) & (d)

2           The Defendants argue that these claims should be dismissed for  
3 lack of standing. As discussed above, the Court dismisses claim  
4 1(c) and 1(d) without prejudice.

5                   c.    Prong (e)

6           In their fifth prong, the Plaintiffs contend that the  
7 Defendants have failed in their obligation to take affirmative  
8 steps to assist in-custody minors seeking state dependency court  
9 protection. However, the Defendants have no such a duty. Therefore,  
10 the Court dismisses prong (e) with prejudice for failure to state a  
11 claim.

12                   2.    Claim Two: Denial of Due Process

13           The Plaintiffs' second claim for relief is "[d]enial of due  
14 process in consent to jurisdiction determinations" and contains  
15 specific assertions of due process concerns. (TAC 27-28.) According  
16 to these allegations, in-custody minors are denied essential  
17 elements of due process.

18           The Defendants determine whether these minors may have state  
19 dependency hearings. When making that assessment, the Defendants  
20 review evidence to determine what they believe a state court will  
21 find. The Defendants do not have evidentiary hearings during this  
22 process, do not give the minors access to the information used in  
23 making the assessment, do not allow appeal of the decision, and do  
24 not provide guardians ad litem or interpreters. Additionally, the  
25 Plaintiffs complain that the Defendants use confidential  
26 information such as therapists' reports. The Plaintiffs argue that  
27 the current policy does not enable decision-making by a neutral and  
28 ///

1 detached decision-maker, and the decisions are not made under  
2 clearly defined and consistent legal standards.

3 The Plaintiffs present their arguments based on a scenario of  
4 due process concerns. The Defendants do not deny the allegations  
5 but instead discuss each individual assertion, arguing that the in-  
6 custody minors are not entitled to that asserted due process right.  
7 Determining the level of due process the law requires involves a  
8 balancing of factors outlined by the Supreme Court in Mathews v.  
9 Eldridge:

10 First, the private interest that will be affected by the  
11 official action; second, the risk of an erroneous  
12 deprivation of such interest through the procedures used,  
13 and the probable value, if any, of additional or substitute  
14 procedural safeguards; and finally, the Government's  
15 interest, including the function involved and the fiscal  
16 and administrative burdens that the additional or  
17 substitute procedural requirement would entail.

18 At this stage in the proceedings, it is not clear what  
19 procedures and resources are currently available to the minors nor  
20 can the Court determine what type of proceedings will be necessary  
21 to satisfy the requirements of due process. The Plaintiffs have  
22 adequately alleged a host of due process concerns. Instead of  
23 engaging in a piecemeal analysis of each alleged deprivation or  
24 faulty procedure, the Court finds it proper to allow this case to  
25 go forward through discovery. Resolution of the proper level of due  
26 process for these minors' belongs more properly in a summary  
27 judgment proceeding.

28 3. Claim Three: Promulgation of and adherence to  
regulations without statutory authority

The third claim for relief asserts that the Defendants  
promulgated and adhered to regulations without statutory authority.

1 Specifically, the Plaintiffs assert that 8 C.F.R. parts 204.11(c)  
2 and 205.1(d) are invalid and violate federal statutes. (TAC 28.)

3 Section 204.11(c) states:

4 Eligibility. An alien is eligible for classification as a  
5 special immigrant under section 101(a)(27)(J) of the Act if  
the alien:

- 6 (1) Is under twenty-one years of age;
- 7 (2) Is unmarried;
- 8 (3) Has been declared dependent upon a juvenile court  
located in the United States in accordance with  
state law governing such declarations of  
dependency, while the alien was in the United  
States and under the jurisdiction of the court;
- 9 (4) Has been deemed eligible by the juvenile court  
for long-term foster care;
- 10 (5) Continues to be dependent upon the juvenile court  
and eligible for long-term foster care, such  
11 declaration, dependency or eligibility not having  
been vacated, terminated, or otherwise ended; and
- 12 (6) Has been the subject of judicial proceedings or  
administrative proceedings authorized or  
13 recognized by the juvenile court in which it has  
been determined that it would not be in the  
14 alien's best interest to be returned to the  
country of nationality or last habitual residence  
15 of the beneficiary or his or her parent or  
parents; or
- 16 (7) On November 29, 1990, met all the eligibility  
requirements for special immigrant juvenile  
17 status in paragraphs (c)(1) through (c)(6) of  
this section, and for whom a petition for  
18 classification as a special immigrant juvenile is  
filed on Form I-360 before June 1, 1994.

19

20 The Plaintiffs have not explained which element of this  
21 regulation violates the federal law, nor have they presented  
22 arguments explaining how they violate the statute. Further, section  
23 205.1(d) does not exist; 8 C.F.R. part 205.1 only contains subparts  
24 (a) and (b). Because of the lack of clarity in the TAC, the Court  
25 dismisses this claim without prejudice. The Plaintiffs must set  
26 forth the specific portions of the regulations that they believe  
27 violate the statutes. Broad allegations of invalidity provide

28 ///

1 neither the Defendants nor the Court with adequate information  
2 regarding claims.

3 4. Claim Five: Denying minors in removal proceedings  
4 adjudication of SIJ-based adjustment applications

5 The fifth claim asserts that the Defendants unlawfully "deny  
6 minors in removal proceedings adjudication of SIJ-based adjustment  
7 applications." (TAC 29.) This claim relates to minors who may be  
8 eligible for SIJ status (and therefore adjustment of status based  
9 on their SIJ status) who have removal proceedings pending. The Code  
10 of Federal Regulations states that "[i]n the case of any alien who  
11 has been placed in deportation proceedings or in removal  
12 proceedings ..., the immigration judge hearing the proceeding has  
13 exclusive jurisdiction to adjudicate any application for adjustment  
14 of status the alien may file." 8 C.F.R. § 1245.2(a)(1)(I) (2006).  
15 The Plaintiffs challenge this regulations which grant immigration  
16 judges the exclusive authority to decide SIJ adjustment  
17 applications filed by individuals in removal proceedings. The  
18 Plaintiffs assert that in some situations this exclusive  
19 jurisdiction effectively bars statutorily eligible minors from even  
20 applying for SIJ adjustment.

21 Once removal proceedings have ended, immigrations judges have  
22 exclusive authority to decide SIJ adjustment applications. They may  
23 do so through a motion to reconsider the removal decision. The  
24 regulations state that a motion to reconsider must be filed within  
25 ninety days of the immigrations judges final order. 8 C.F.R. §  
26 1003.23(b)(1).

27 A problem arises when there are delays in the process to  
28 attain SIJ status. The Plaintiffs have alleged that in some

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1 situations it has taken several years for eligible minors to obtain  
2 SIJ status. Potentially eligible minors may not file adjustment  
3 applications until they obtain SIJ status. Because of the ninety  
4 day limit imposed by the regulations, potentially eligible youths  
5 do not have the opportunity for their SIJ adjustment application to  
6 be considered.

7 The Defendants describe the Plaintiffs' claim as seeking to  
8 create a new legal rule that would allow unlimited reopening of  
9 removal proceedings. The arguments set forth by the Plaintiffs are  
10 not unlimited; they pertain to a class of minors who are SIJ-  
11 eligible but have not yet had the opportunity to apply for SIJ -  
12 adjustment. It is not clear that the ninety-day limit is  
13 appropriate. It may frustrate congressional intent to allow SIJ-  
14 based adjustment of status. Therefore, the Court denies the motion  
15 to dismiss this claim.

16

17 **III. CONCLUSION**

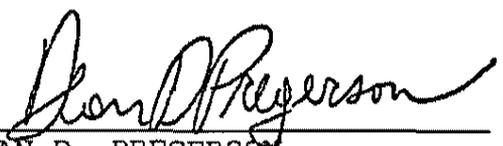
18 For the foregoing reasons, the Court grants in part and denies  
19 in part the defendants' motion to dismiss. The Court grants the  
20 motion to dismiss claims 1(c), 1(d), and 3 without prejudice, and  
21 dismisses claim 1(e) with prejudice. The Court denies the motion to  
22 dismiss as it pertains to all other claims. The Plaintiffs have  
23 thirty (30) days from the date of this order to file an fourth  
24 amended complaint.

25

26 IT IS SO ORDERED.

27 Dated: 8-16-06

28

  
DEAN D. PREGERSON  
United States District Judge