

**UNITED STATES DISTRICT COURT for the CENTRAL DISTRICT OF
CALIFORNIA (Southern Division – Santa Ana)
CIVIL DOCKET FOR CASE #: 8:08-cv-00688-JVS-SH**

Costello v. Chertoff
Assigned to: Judge James V. Selna
Referred to: Magistrate Judge Stephen J. Hillman
Related Cases: [2:08-cv-05301-JVS-SH](#)
[2:08-cv-06919-JVS-SH](#)
[5:08-cv-00840-JVS-SH](#)

Date Filed: 06/20/2008
Date Terminated: 11/18/2009
Jury Demand: None
Nature of Suit: 890 Other Statutory
Actions
Jurisdiction: U.S. Government Defendant

Case in other court: 9th CCA, 09-56846
Cause: 05:551 Administrative Procedure Act

Plaintiff

Teresita G. Costello

represented by **Nancy Ellen Miller**
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Plaintiff

Lorenzo P. Ong
Individually and on Behalf of all Others
Similarly Situated

represented by **Nancy Ellen Miller**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Robert L Reeves
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V.

Defendant

Michael Chertoff
Secretary of The Department of
Homeland Security

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Defendant

**United States Citizenship and
Immigration Services**

represented by **Elizabeth J Stevens**
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LEAD ATTORNEY
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Gisela A Westwater
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Emilio T. Gonzalez
*Director, United States Citizenship and
Immigration Services*

represented by **Elizabeth J Stevens**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Gisela A Westwater
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

David Tyler
Director, National Visa Center

represented by **Elizabeth J Stevens**
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Defendant

Christina Poulos

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Amicus

**American Immigration Law
Foundation**

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Date Filed	#	Docket Text
06/20/2008	<u>1</u>	COMPLAINT against defendants David Tyler, Christina Poulos, Michael Chertoff, United States Citizenship and Immigration Services, Emilio T. Gonzalez.(Filing fee \$ 350). Filed by plaintiffs Teresita G. Costello, Lorenzo P. Ong.(ade) (Entered: 06/24/2008)
06/20/2008	<u>2</u>	CERTIFICATION of Interested Parties filed by PLAINTIFFS Teresita G. Costello, Lorenzo P. Ong, (ade) (Entered: 06/24/2008)
06/24/2008	<u>3</u>	INITIAL ORDER FOLLOWING FILING OF COMPLAINT by Judge James V. Selna, (see order for details) (db) (Entered: 06/25/2008)
07/11/2008	<u>4</u>	NOTICE OF MOTION AND First MOTION to Certify Class Action (Part 1) filed by Plaintiffs Teresita G. Costello, Lorenzo P. Ong. Motion set for hearing on 8/11/2008 at 01:30 PM before Judge James V. Selna. (Miller, Nancy) (Entered: 07/11/2008)
07/11/2008	<u>5</u>	NOTICE OF MOTION AND First MOTION to Certify Class Action (Part2) filed by Plaintiffs Teresita G. Costello, Lorenzo P. Ong. Motion set for hearing on 8/11/2008 at 01:30 PM before Judge James V. Selna. (Miller, Nancy) (Entered: 07/11/2008)
07/11/2008	<u>6</u>	NOTICE OF MOTION AND First MOTION to Certify Class Action (Part 3) filed by plaintiffs Teresita G. Costello, Lorenzo P. Ong. Motion set for hearing on 8/11/2008 at 01:30 PM before Judge James V. Selna. (Miller, Nancy) (Entered: 07/11/2008)
07/14/2008	<u>7</u>	NOTICE TO FILER OF DEFICIENCIES in Electronically Filed Documents. The following error(s) was found: Title page is missing RE: First MOTION to Certify Class Action (Part2) <u>5</u> , First MOTION to Certify Class Action (Part 3) <u>6</u> . In response to this notice the court may order (1) an amended or correct document to be filed (2) the document stricken or (3) take other action as the court deems appropriate. (rrp) (Entered: 07/14/2008)
07/14/2008	<u>8</u>	NOTICE OF MOTION AND First MOTION to Certify Class Action filed by Plaintiffs Teresita G. Costello, Lorenzo P. Ong. Motion set for hearing on 8/11/2008 at 01:30 PM before Judge James V. Selna. (Miller, Nancy) (Entered: 07/14/2008)
07/14/2008	<u>9</u>	MEMORANDUM in Support of First MOTION to Certify Class Action <u>8</u> filed by Plaintiffs Teresita G. Costello, Lorenzo P. Ong. (Miller, Nancy) (Entered: 07/14/2008)
07/18/2008	<u>10</u>	NOTICE TO FILER OF DEFICIENCIES in Electronically Filed Documents. The following error(s) was found: Local Rule 11-8 Memorandum/brief exceeding 10 pages shall contain table of contents. RE: Memorandum in Support of Motion <u>9</u> . In response to this notice the court may order (1) an amended or correct document to be filed (2) the document stricken or (3) take other action as the court deems appropriate. (nca) (Entered: 07/18/2008)
07/18/2008	<u>11</u>	NOTICE OF MOTION AND Amended MOTION to Certify Class Action filed by Plaintiffs Teresita G. Costello, Lorenzo P. Ong. Motion set for hearing on 8/11/2008 at 01:30 PM before Judge James V. Selna. (Miller, Nancy) (Entered: 07/18/2008)
07/18/2008	<u>12</u>	MEMORANDUM in Support of Amended MOTION to Certify Class Action <u>11</u> filed by Plaintiffs Teresita G. Costello, Lorenzo P. Ong. (Miller, Nancy) (Entered: 07/18/2008)
07/28/2008	<u>13</u>	NOTICE of Appearance filed by attorney Elizabeth J Stevens on behalf of Defendants David Tyler, Christina Poulos, Michael Chertoff, United States Citizenship and Immigration Services, Emilio T. Gonzalez (Stevens, Elizabeth) (Entered: 07/28/2008)
07/28/2008	<u>14</u>	OPPOSITION to First MOTION to Certify Class Action <u>8</u> , Amended MOTION to Certify Class Action <u>11</u> filed by Defendants David Tyler, Christina Poulos,

		Michael Chertoff, United States Citizenship and Immigration Services, Emilio T. Gonzalez. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Appendix)(Stevens, Elizabeth) (Entered: 07/28/2008)
07/29/2008	<u>15</u>	PROOF of Service OF SERVICE filed by Plaintiffs Teresita G. Costello, Lorenzo P. Ong, re Amended MOTION to Certify Class <i>Action</i> <u>11</u> served on 07/21/2008. (Miller, Nancy) (Entered: 07/29/2008)
08/04/2008	<u>16</u>	REPLY Reply In Support of Motion <i>To Certify Class Action</i> filed by Plaintiffs Teresita G. Costello, Lorenzo P. Ong. (Miller, Nancy) (Entered: 08/04/2008)
08/04/2008	<u>17</u>	DECLARATION of Nancy E. Miller In Support of Amended MOTION to Certify Class <i>Action</i> <u>11</u> filed by Plaintiffs Teresita G. Costello, Lorenzo P. Ong. (Miller, Nancy) (Entered: 08/04/2008)
08/05/2008	<u>18</u>	NOTICE OF MOTION AND First MOTION to Amend Amended MOTION to Certify Class <i>Action</i> <u>11</u> filed by Plaintiffs Teresita G. Costello, Lorenzo P. Ong. Motion set for hearing on 9/8/2008 at 01:30 PM before Judge James V. Selna. (Miller, Nancy) (Entered: 08/05/2008)
08/06/2008	<u>19</u>	NOTICE TO FILER OF DEFICIENCIES in Electronically Filed Documents. The following error(s) was found: Local Rule 11-6 Memorandum/brief exceeds 25 pages RE: Reply (Motion related) <u>16</u> . In response to this notice the court may order (1) an amended or correct document to be filed (2) the document stricken or (3) take other action as the court deems appropriate. (rrp) (Entered: 08/06/2008)
08/06/2008	<u>20</u>	ORDER Continuing Plaintiffs Motion for Class Certification <u>8</u> and Setting Hearing for Motion to Amend the Proposed Class Definition <u>18</u> by Judge James V. Selna. Motion for Class Certification is continued to 08/11/08. (db) (Entered: 08/06/2008)
08/06/2008	<u>24</u>	MINUTES OF IN CHAMBERS ORDER by Judge James V. Selna Continuing Plaintiff's Motion for Class Certification and Setting Hearing for Motion to Amend the Proposed Class Definition <u>11 18</u> . Motions set for hearing on 8/20/2008 at 08:00 AM before Judge James V. Selna. (nbo) (Entered: 08/07/2008)
08/07/2008	<u>21</u>	First NOTICE of Appearance filed by attorney Gisela Ann Westwater on behalf of Defendants David Tyler, Christina Poulos, Michael Chertoff, United States Citizenship and Immigration Services, Emilio T. Gonzalez (Westwater, Gisela) (Entered: 08/07/2008)
08/07/2008	<u>22</u>	RESPONSE IN SUPPORT of Amended MOTION to Certify Class <i>Action</i> <u>11</u> filed by Plaintiffs Teresita G. Costello, Lorenzo P. Ong. (Miller, Nancy) (Entered: 08/07/2008)
08/07/2008	<u>23</u>	RESPONSE IN SUPPORT of Amended MOTION to Certify Class <i>Action</i> <u>11</u> filed by Plaintiffs Teresita G. Costello, Lorenzo P. Ong. (Attachments: # <u>1</u> Exhibit)(Miller, Nancy) (Entered: 08/07/2008)
08/13/2008	<u>25</u>	NOTICE of Related Case(s) filed by Attorney for Defendants David Tyler, Christina Poulos, Michael Chertoff, United States Citizenship and Immigration Services, Emilio T. Gonzalez. Related Case(s): 5:08-cv-00840 (Westwater, Gisela) (Entered: 08/13/2008)
08/13/2008	<u>26</u>	OPPOSITION to First MOTION to Amend Amended MOTION to Certify Class <i>Action</i> <u>11 18</u> and to Motion to Amend Proposed Class Definition filed by Defendants David Tyler, Christina Poulos, Michael Chertoff, United States Citizenship and Immigration Services, Emilio T. Gonzalez. (Westwater, Gisela) (Entered: 08/13/2008)
08/15/2008	<u>27</u>	SUPPLEMENT to Defendants' Opposition to Motion to Amend Proposed Class Definition filed by Defendants David Tyler, Christina Poulos, Michael Chertoff, United States Citizenship and Immigration Services, Emilio T. Gonzalez. (Westwater, Gisela) (Entered: 08/15/2008)
08/18/2008	<u>28</u>	RESPONSE IN SUPPORT of First MOTION to Amend Amended MOTION to Certify Class <i>Action</i> <u>11 18</u> filed by Plaintiffs Teresita G. Costello, Lorenzo P. Ong. (Miller, Nancy) (Entered: 08/18/2008)

08/20/2008	<u>29</u>	MINUTES OF Motion Hearing held before Judge James V. Selna taking under submission Plaintiffs' MOTION for Certification of Class Action <u>8</u> ,and Plaintiffs' MOTION to Amend the Proposed Class Definition <u>18</u> . Court Reporter: Sharon Seffens. (db) (Entered: 08/21/2008)
08/22/2008	<u>30</u>	NOTICE OF MOTION AND MOTION to Dismiss Case filed by Attorney for Defendants David Tyler, Christina Poulos, Michael Chertoff, United States Citizenship and Immigration Services, Emilio T. Gonzalez. Motion set for hearing on 10/27/2008 at 01:30 PM before Judge James V. Selna. (Attachments: # <u>1</u> Exhibit Documentation of Patel Referral, # <u>2</u> Exhibit Documentation of Wang Referral, # <u>3</u> Appendix Complaint, # <u>4</u> Proposed Order Proposed Order to Dismiss)(Westwater, Gisela) (Entered: 08/22/2008)
08/22/2008	<u>31</u>	NOTICE OF MOTION re MOTION to Dismiss Case <u>30</u> filed by Defendants David Tyler, Christina Poulos, Michael Chertoff, United States Citizenship and Immigration Services, Emilio T. Gonzalez. Motion set for hearing on 10/27/2008 at 01:30 PM before Judge James V. Selna. (Westwater, Gisela) (Entered: 08/22/2008)
08/25/2008	<u>32</u>	MINUTES OF IN CHAMBERS ORDER by Judge James V. Selna: DENYING MOTIONS TO Amend Class Definition and to Certify Class, and Staying action for 180 days: (See document for details.) Accordingly, this action is stayed in its entirety for 180 days to afford the BIA an opportunity to issue an interpretation of § 203 (h)(3) in the first instance. Costelo's motions to amend the class definition and to certify the class are therefore denied without prejudice. If appropriate, Costelo may renew those motions or submit revised motions after the expiration of the stay. Chertoff shall keep both Costelo and the Court apprised of any relevant developments in the pending § 203 cases and shall also file the following documents: (1) within 14 days, a copy of all briefs submitted by any parties in the pending § 203 cases thus far; (2) within 14 days of their filing, a copy of any briefs submitted in the pending § 203 cases in the future; and (3) within 90 days, a report detailing the status of the pending § 203 cases. (rla) (Entered: 08/25/2008)
09/16/2008	<u>33</u>	SUPPLEMENT filed by Defendants David Tyler, Christina Poulos, Michael Chertoff, United States Citizenship and Immigration Services, Emilio T. Gonzalez. (Attachments: # <u>1</u> Supplement certification document, # <u>2</u> Proposed Order Final Certification, # <u>3</u> Supplement Patel's Brief to BIA, # <u>4</u> Supplement USCIS brief to BIA, # <u>5</u> Supplement Patel request for supp brief)(Westwater, Gisela) (Entered: 09/16/2008)
09/16/2008	<u>34</u>	SUPPLEMENT filed by Defendants David Tyler, Christina Poulos, Michael Chertoff, United States Citizenship and Immigration Services, Emilio T. Gonzalez. (Attachments: # <u>1</u> Supplement Certification, # <u>2</u> Supplement Final Certification, # <u>3</u> Supplement Wang's brief to BIA, # <u>4</u> Supplement USCIS Supplement, # <u>5</u> Supplement Wang request for Supplemental Brief)(Westwater, Gisela) (Entered: 09/16/2008)
09/18/2008	<u>35</u>	NOTICE TO FILER OF DEFICIENCIES in Electronically Filed Documents. The following error(s) was found: Incorrect document is attached to the docket entry RE: Supplement (non-motion), Supplement (non-motion) <u>34</u> , Supplement (non-motion), Supplement (non-motion) <u>33</u> . In response to this notice the court may order (1) an amended or correct document to be filed (2) the document stricken or (3) take other action as the court deems appropriate. (rrp) (Entered: 09/18/2008)
09/25/2008	<u>36</u>	ORDER by Judge James V. Selna: the following document(s) be STRICKEN for failure to comply with the Local Rules, General Order and/or the Courts Case Management Order: Supplement <u>34</u> , Supplement <u>33</u> , for the following reasons: Document lacks face page, case number and name of document. It is unclear from the filing what action or purpose the document requests or serves; (twdb) (Entered: 09/25/2008)
10/01/2008	<u>37</u>	SUPPLEMENT filed by Defendants David Tyler, Christina Poulos, Michael Chertoff, United States Citizenship and Immigration Services, Emilio T. Gonzalez. (Attachments: # <u>1</u> Exhibit USCIS Certification Package, # <u>2</u> Exhibit Respondent Brief, # <u>3</u> Exhibit USCIS Brief and Request to Submit Suppl, # <u>4</u> Exhibit USCIS Suppl Brief, # <u>5</u> Exhibit Respondent Request to Submit Suppl)(Westwater, Gisela) (Entered: 10/01/2008)

10/01/2008	<u>38</u>	SUPPLEMENT filed by Defendants David Tyler, Christina Poulos, Michael Chertoff, United States Citizenship and Immigration Services, Emilio T. Gonzalez. (Attachments: # <u>1</u> Exhibit USCIS Certification Documents, # <u>2</u> Exhibit Respondent Brief, # <u>3</u> Exhibit USCIS Brief and Request to Submit Supp, # <u>4</u> Exhibit USCIS Suppl Brief, # <u>5</u> Exhibit Respondent Request to Submit Suppl)(Westwater, Gisela) (Entered: 10/01/2008)
10/16/2008	<u>39</u>	SUPPLEMENT filed by Defendants David Tyler, Christina Poulos, Michael Chertoff, United States Citizenship and Immigration Services, Emilio T. Gonzalez. (Attachments: # <u>1</u> Exhibit Supplemental Brief Submitted by Patel, # <u>2</u> Exhibit Supplemental Brief Submitted by Wang)(Westwater, Gisela) (Entered: 10/16/2008)
10/21/2008	<u>40</u>	MINUTES OF IN CHAMBERS ORDER Vacating Defendants' Motion to Dismiss <u>30</u> held before Judge James V. Selna. In light of the stay, this Court orders the Defendant's Motions to Dismiss vacated and the 10/27/08 hearing off calendar. (db) (Entered: 10/22/2008)
11/21/2008	<u>41</u>	STATUS REPORT of <i>Related Cases Pending before BIA</i> filed by Defendants David Tyler, Christina Poulos, Michael Chertoff, United States Citizenship and Immigration Services, Emilio T. Gonzalez. (Westwater, Gisela) (Entered: 11/21/2008)
12/05/2008	<u>42</u>	SUPPLEMENT filed by Defendants David Tyler, Christina Poulos, Michael Chertoff, United States Citizenship and Immigration Services, Emilio T. Gonzalez. (Attachments: # <u>1</u> Exhibit A – Amicus Request (Patel), # <u>2</u> Exhibit B – Amicus Request (Wang))(Westwater, Gisela) (Entered: 12/05/2008)
12/05/2008	<u>43</u>	NOTICE of Related Case(s) filed by Defendants David Tyler, Christina Poulos, Michael Chertoff, United States Citizenship and Immigration Services, Emilio T. Gonzalez. Related Case(s): 2:08–CV–05301 (Westwater, Gisela) (Entered: 12/05/2008)
12/10/2008	<u>44</u>	SUPPLEMENT filed by Defendants David Tyler, Christina Poulos, Michael Chertoff, United States Citizenship and Immigration Services, Emilio T. Gonzalez. (Attachments: # <u>1</u> Exhibit A – Patel, # <u>2</u> Exhibit B – Wang)(Westwater, Gisela) (Entered: 12/10/2008)
12/24/2008	<u>45</u>	SUPPLEMENT filed by Defendants David Tyler, Christina Poulos, Michael Chertoff, United States Citizenship and Immigration Services, Emilio T. Gonzalez. (Attachments: # <u>1</u> Exhibit A)(Westwater, Gisela) (Entered: 12/24/2008)
01/12/2009	<u>46</u>	SUPPLEMENT filed by Defendants David Tyler, Christina Poulos, Michael Chertoff, United States Citizenship and Immigration Services, Emilio T. Gonzalez. (Attachments: # <u>1</u> Exhibit A – USCIS Request for Clarification, # <u>2</u> Exhibit B – Amicus in Patel, # <u>3</u> Exhibit C – Amicus in Wang, # <u>4</u> Exhibit D – USCIS Response to Amicus, # <u>5</u> Exhibit E – USCIS Response to Amicus – Wang)(Westwater, Gisela) (Entered: 01/12/2009)
03/18/2009	<u>47</u>	ORDER Setting Scheduling Conference for 4/27/2009 10:30 AM before Judge James V. Selna. (Attachments: # <u>1</u> Exhibit) (kt) (Entered: 03/18/2009)
04/09/2009	<u>48</u>	STATUS REPORT on <i>Status Inquiry Filed by USCIS with BIA</i> filed by Defendants David Tyler, Christina Poulos, Michael Chertoff, United States Citizenship and Immigration Services, Emilio T. Gonzalez. (Attachments: # <u>1</u> Exhibit A – Patel, # <u>2</u> Exhibit B – Wang)(Westwater, Gisela) (Entered: 04/09/2009)
04/17/2009	<u>49</u>	NOTICE OF MOTION AND MOTION to Continue Scheduling Conference from April 27, 2009 to June 8, 2009 Re: Scheduling Order, Set Deadlines/Hearings <u>47</u> filed by Defendants David Tyler, Christina Poulos, Michael Chertoff, United States Citizenship and Immigration Services, Emilio T. Gonzalez. (Attachments: # <u>1</u> Proposed Order Proposed Order, # <u>2</u> Exhibit A – status inquiries)(Westwater, Gisela) (Entered: 04/17/2009)
04/17/2009	<u>50</u>	STATUS REPORT <i>Joint Report of Conference of Parties</i> filed by Plaintiffs Teresita G. Costello, Lorenzo P. Ong. (Miller, Nancy) (Entered: 04/17/2009)
04/21/2009	<u>51</u>	ORDER by Judge James V. Selna: granting <u>49</u> Motion to Continue: IT IS ORDERED THAT this matter is reset for a scheduling conference on May 11,

		2009, at 10:30 a.m. IT IS SO ORDERED. (rla) Modified on 4/21/2009 (rla). (Entered: 04/21/2009)
04/22/2009	<u>52</u>	SUPPLEMENT filed by Defendants David Tyler, Christina Poulos, Michael Chertoff, United States Citizenship and Immigration Services, Emilio T. Gonzalez. (Attachments: # <u>1</u> Exhibit A – BIA Reply Letter)(Westwater, Gisela) (Entered: 04/22/2009)
05/11/2009	<u>65</u>	MINUTES OF Scheduling Conference held before Judge James V. Selna. The Court directs counsel for plaintiffs to file a new notice of motion for their class certification motion not later than 05/15/2009 with a hearing date of 06/15/2009 at 1:30 p.m. Any opposition to the motion shall be filed by 05/26/2009 and any reply not later than 06/01/2009. The Court continues the Scheduling Conference to 6/15/2009 01:30 PM before Judge James V. Selna.Court Reporter: Sharon Seffens. (db) (Entered: 06/23/2009)
05/15/2009	<u>53</u>	NOTICE OF MOTION AND MOTION to Certify Class Action filed by plaintiff Teresita G. Costello, Lorenzo P. Ong. Motion set for hearing on 6/15/2009 at 01:30 PM before Judge James V. Selna. (Miller, Nancy) (Entered: 05/15/2009)
05/15/2009	<u>54</u>	MEMORANDUM in Support of MOTION to Certify Class Action <u>53</u> filed by Plaintiffs Teresita G. Costello, Lorenzo P. Ong. (Miller, Nancy) (Entered: 05/15/2009)
05/15/2009	<u>55</u>	DECLARATION of Nancy E. Miller In Support of Plaintiff's Second Amended Motion for Class Certification MOTION to Certify Class Action <u>53</u> filed by Plaintiffs Teresita G. Costello, Lorenzo P. Ong. (Attachments: # <u>1</u> Exhibit Exhibits)(Miller, Nancy) (Entered: 05/15/2009)
05/15/2009	<u>56</u>	DECLARATION of Jeremiah Johnson In Support of Plaintiff's Second Amended Motion for Class Certification MOTION to Certify Class Action <u>53</u> filed by Plaintiffs Teresita G. Costello, Lorenzo P. Ong. (Miller, Nancy) (Entered: 05/15/2009)
05/15/2009	<u>57</u>	Motion to Amend Proposed Class Definition re MOTION to Certify Class Action <u>53</u> filed by Plaintiffs Teresita G. Costello, Lorenzo P. Ong. (Miller, Nancy) (Entered: 05/15/2009)
05/15/2009	<u>58</u>	Certificate OF SERVICE filed by Plaintiff Teresita G. Costello, Lorenzo P. Ong, re Motion Related Document <u>57</u> , Memorandum in Support of Motion <u>54</u> , Declaration (Motion related), Declaration (Motion related) <u>55</u> , MOTION to Certify Class Action <u>53</u> , Declaration (Motion related) <u>56</u> served on 05/15/2009. (Miller, Nancy) (Entered: 05/15/2009)
05/26/2009	<u>59</u>	MEMORANDUM in Opposition to MOTION to Certify Class Action <u>53</u> filed by Defendants David Tyler, Christina Poulos, Michael Chertoff, United States Citizenship and Immigration Services, Emilio T. Gonzalez. (Westwater, Gisela) (Entered: 05/26/2009)
06/01/2009	<u>60</u>	REPLY Support MOTION to Certify Class Action <u>53</u> filed by Plaintiffs Teresita G. Costello, Lorenzo P. Ong. (Miller, Nancy) (Entered: 06/01/2009)
06/15/2009	<u>63</u>	MINUTES re Plaintiffs' Motion for Certify of Class Action <u>53</u> held before Judge James V. Selna. Counsel make their arguments. The Court takes the motion under submission. Court Reporter: Sharon Seffens. (db) (Entered: 06/18/2009)
06/15/2009	<u>64</u>	MINUTES OF Scheduling Conference held before Judge James V. Selna. The Court sets the case management dates with the agreement of counsel as follows: Discovery cut-off 12/1/2009. Bench Trial set for 3/16/2010 08:30 AM before Judge James V. Selna. Final Pretrial Conference set for 3/1/2010 11:00 AM before Judge James V. Selna. (See Order for further details)Court Reporter: Sharon Seffens. (db) (Entered: 06/18/2009)
06/17/2009	<u>61</u>	MINUTES OF IN CHAMBERS ORDER BY Judge James V. Selna, re Additional Briefing: The Court currently has under submission plaintiffs' motion for class certification. The Court invites the parties to submit a brief of no more than five pages discussing the impact of Matter of Wang, 25 I &N Dec. 28 (BIA 2009), decided June 16, 2009, on the motion (rla) (Entered: 06/17/2009)

06/18/2009	<u>62</u>	SUPPLEMENT filed by Defendants David Tyler, Christina Poulos, Michael Chertoff, United States Citizenship and Immigration Services, Emilio T. Gonzalez. (Attachments: # <u>1</u> Exhibit A – Matter of Wang)(Westwater, Gisela) (Entered: 06/18/2009)
06/25/2009	<u>66</u>	Briefing Schedule filed by Defendants David Tyler, Christina Poulos, Michael Chertoff, United States Citizenship and Immigration Services, Emilio T. Gonzalez (Westwater, Gisela) (Entered: 06/25/2009)
07/01/2009	<u>67</u>	NOTICE OF MOTION AND MOTION to File Amicus Brief filed by Amicus American Immigration Law Foundation. (Attachments: # <u>1</u> Proposed Order Granting Leave to File Amicus Curiae Brief, # <u>2</u> Brief of Amicus Curiae)(Prokop, Amy) (Entered: 07/01/2009)
07/01/2009	<u>68</u>	SUPPLEMENT to MOTION to Certify Class Action <u>53</u> <i>Opposing Certification</i> filed by Defendants David Tyler, Christina Poulos, Michael Chertoff, United States Citizenship and Immigration Services, Emilio T. Gonzalez. (Attachments: # <u>1</u> Exhibit A – Briefing Schedule in Related Cases, # <u>2</u> Exhibit B – Table of Immigration Classifications)(Westwater, Gisela) (Entered: 07/01/2009)
07/01/2009	<u>69</u>	SUPPLEMENT to MOTION to Certify Class Action <u>53</u> <i>Brief Regarding Matter of Wang</i> filed by Plaintiffs Teresita G. Costello, Lorenzo P. Ong. (Miller, Nancy) (Entered: 07/01/2009)
07/07/2009	<u>70</u>	OPPOSITION Opposition re: MOTION to File Amicus Brief <u>67</u> filed by Defendants David Tyler, Christina Poulos, Michael Chertoff, United States Citizenship and Immigration Services, Emilio T. Gonzalez. (Westwater, Gisela) (Entered: 07/07/2009)
07/10/2009	<u>71</u>	SUPPLEMENT to MOTION to File Amicus Brief <u>67</u> filed by Amicus American Immigration Law Foundation. (Prokop, Amy) (Entered: 07/10/2009)
07/10/2009	<u>72</u>	REPLY <i>To Defendants' Opposition to Amici Curiae Motion For Leave to File Brief</i> filed by Plaintiff Teresita G. Costello. (Miller, Nancy) (Entered: 07/10/2009)
07/10/2009	<u>73</u>	MINUTES (IN CHAMBERS) ORDER by Judge James V. Selna: granting <u>67</u> Motion to File Amicus Brief. The Court grants the motion of the American Immigration Law Foundation and American Immigration Lawyers Association to appear as amici curiae (Amici), and orders Amicis brief on the class certification motion filed. (ade) (Entered: 07/13/2009)
07/16/2009	<u>74</u>	ORDER by Judge James V. Selna: ORDER GRANTING MOTION TO CERTIFY CLASS <u>53</u> : (See document for details.) For the foregoing reasons, the Court GRANTS Plaintiffs motion for class certification subject to certain revisions. The class is defined as: Aliens who became lawful permanent residents as primary beneficiaries of third- and fourth-preference visa petitions listing their children as derivative beneficiaries, and who subsequently filed second-preference petitions on behalf of their aged-out unmarried sons and daughters, for whom Defendants have not granted automatic conversion or the retention of priority dates pursuant to § 203(h)(3). The Court recognizes that the BIA has weighed in on this matter, but the underlying legal question is still subject to debate. It is not necessary for the Court to resolve the question at this time; for purposes of class certification, it is sufficient that the question is common to the class a whole. The Court appoints the law firm of Reeves & Associates as lead class counsel. IT IS SO ORDERED. (rla) (Entered: 07/16/2009)
09/04/2009	<u>75</u>	ANSWER to Complaint – (Discovery) <u>1</u> filed by Defendants David Tyler, Christina Poulos, Michael Chertoff, United States Citizenship and Immigration Services, Emilio T. Gonzalez.(Westwater, Gisela) (Entered: 09/04/2009)
09/25/2009	<u>76</u>	Stipulated Briefing Schedule filed by Defendants David Tyler, Christina Poulos, Michael Chertoff, United States Citizenship and Immigration Services, Emilio T. Gonzalez (Westwater, Gisela) (Entered: 09/25/2009)
09/29/2009	<u>77</u>	NOTICE TO FILER OF DEFICIENCIES in Electronically Filed Documents. The following error(s) was found: Incorrect event selected, correct event is Hearing RE: Miscellaneous Document <u>76</u> . In response to this notice the court may order (1) an amended or correct document to be filed (2) the document stricken or (3) take other

		action as the court deems appropriate. (rrp) (Entered: 09/29/2009)
10/01/2009	<u>78</u>	NOTICE OF MOTION AND MOTION for Summary Judgment as to Complaint filed by Defendants David Tyler, Christina Poulos, Michael Chertoff, United States Citizenship and Immigration Services, Emilio T. Gonzalez. Motion set for hearing on 11/9/2009 at 01:30 PM before Judge James V. Selna. (Attachments: # <u>1</u> Exhibit Proposed Facts and Law, # <u>2</u> Proposed Order Granting Judgment for Defendants)(Westwater, Gisela) (Entered: 10/01/2009)
10/05/2009	<u>79</u>	STIPULATED BRIEFING SCHEDULE AND HEARING DATE re MOTION for Summary Judgment as to Complaint <u>78</u> filed by Plaintiffs Teresita G. Costello, Lorenzo P. Ong. (Miller, Nancy) (Entered: 10/05/2009)
10/05/2009	<u>80</u>	AMENDED STIPULATED BRIEFING SCHEDULE AND HEARING DATE re MOTION for Summary Judgment as to Complaint <u>78</u> filed by Plaintiffs Teresita G. Costello, Lorenzo P. Ong. (Miller, Nancy) (Entered: 10/05/2009)
10/09/2009	<u>81</u>	EXHIBIT Filed filed by Defendants David Tyler, Christina Poulos, Michael Chertoff, United States Citizenship and Immigration Services, Emilio T. Gonzalez. (Attachments: # <u>1</u> Exhibit A – Part I, # <u>2</u> Exhibit A – Part II, # <u>3</u> Exhibit B – Part I, # <u>4</u> Exhibit B – Part II, # <u>5</u> Exhibit B – Part III, # <u>6</u> Exhibit C, # <u>7</u> Exhibit D, # <u>8</u> Exhibit E)(Westwater, Gisela) (Entered: 10/09/2009)
10/09/2009	<u>82</u>	NOTICE OF MOTION AND Cross MOTION for Summary Judgment as to The Case filed by PLAINTIFF Teresita G. Costello. Motion set for hearing on 11/9/2009 at 01:30 PM before Judge James V. Selna. (Attachments: # <u>1</u> Supplement Memorandum of Points & Authorities, # <u>2</u> Supplement Statement of Uncontroverted Facts & Law, # <u>3</u> Proposed Order Proposed Order)(Miller, Nancy) (Entered: 10/09/2009)
10/12/2009	<u>83</u>	NOTICE OF MOTION AND MOTION to Stay pending Resolution of cross motions for summary judgment (<i>Stay Discovery</i>) filed by Defendants David Tyler, Christina Poulos, Michael Chertoff, United States Citizenship and Immigration Services, Emilio T. Gonzalez. Motion set for hearing on 11/9/2009 at 01:30 PM before Judge James V. Selna. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Proposed Order Staying Discovery)(Westwater, Gisela) (Entered: 10/12/2009)
10/26/2009	<u>84</u>	MEMORANDUM in Opposition to Cross MOTION for Summary Judgment as to The Case <u>82</u> filed by Defendants David Tyler, Christina Poulos, Michael Chertoff, United States Citizenship and Immigration Services, Emilio T. Gonzalez. (Westwater, Gisela) (Entered: 10/26/2009)
10/26/2009	<u>85</u>	MEMORANDUM in Opposition to MOTION to Stay pending Resolution of cross motions for summary judgment (<i>Stay Discovery</i>) MOTION to Stay pending Resolution of cross motions for summary judgment (<i>Stay Discovery</i>) <u>83</u> filed by Plaintiffs Teresita G. Costello, Lorenzo P. Ong. (Attachments: # <u>1</u> Declaration Declaration of Nancy E. Miller, # <u>2</u> Exhibit Defendants' Response to Plaintiff's Discovery Requests)(Miller, Nancy) (Entered: 10/26/2009)
10/26/2009	<u>86</u>	MEMORANDUM in Opposition to MOTION for Summary Judgment as to Complaint <u>78</u> filed by Plaintiffs Teresita G. Costello, Lorenzo P. Ong. (Attachments: # <u>1</u> Statement of Uncontroverted Facts and Conclusions of Law)(Miller, Nancy) (Entered: 10/26/2009)
11/02/2009	<u>87</u>	EXHIBIT Filed filed by Defendants David Tyler, Christina Poulos, Michael Chertoff, United States Citizenship and Immigration Services, Emilio T. Gonzalez. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(Westwater, Gisela) (Entered: 11/02/2009)
11/02/2009	<u>88</u>	REPLY in support of MOTION for Summary Judgment as to Complaint <u>78</u> filed by Defendants David Tyler, Christina Poulos, Michael Chertoff, United States Citizenship and Immigration Services, Emilio T. Gonzalez. (Westwater, Gisela) (Entered: 11/02/2009)
11/02/2009	<u>89</u>	REPLY in support of MOTION to Stay pending Resolution of cross motions for summary judgment (<i>Stay Discovery</i>) MOTION to Stay pending Resolution of cross motions for summary judgment (<i>Stay Discovery</i>) <u>83</u> filed by Defendants David Tyler, Christina Poulos, Michael Chertoff, United States Citizenship and

		Immigration Services, Emilio T. Gonzalez. (Attachments: # <u>1</u> Declaration of Gisela A. Westwater)(Westwater, Gisela) (Entered: 11/02/2009)
11/02/2009	<u>90</u>	REPLY IN SUPPORT Cross MOTION for Summary Judgment as to The Case <u>82</u> filed by Plaintiffs Teresita G. Costello, Lorenzo P. Ong. (Miller, Nancy) (Entered: 11/02/2009)
11/09/2009	<u>91</u>	MINUTES re Defendant's Motion for Summary Judgment as to Complaint <u>78</u> ; Plaintiff's Cross Motion for Summary Judgment <u>82</u> ; and Defendant's Motion to Stay Pending Resolution of Cross Motions for Summary Judgment <u>83</u> held before Judge James V. Selna. The Courts tentative ruling is issued. Counsel make their arguments. The Court takes the above referenced motions under submission. Court Reporter: Bridget Montero. (db) (Entered: 11/10/2009)
11/10/2009	<u>92</u>	MINUTES (IN CHAMBERS) ORDER re Cross-Motions for Summary Judgment and Motion to Stay Discovery <u>78</u> <u>82</u> and <u>83</u> by Judge James V. Selna. For the foregoing reasons, the Court DENIES Plaintiffs motion <u>82</u> and GRANTS Defendants motion <u>778</u> . Defendants motion to stay discovery is DENIED as moot <u>83</u> . (See Order for details) (db) (Entered: 11/12/2009)
11/18/2009	<u>93</u>	NOTICE OF APPEAL to the 9th CCA filed by Plaintiffs Teresita G. Costello, Lorenzo P. Ong. Appeal of Order on Motion for Summary Judgment,, Order on Motion to Stay Order (other),,, Order on Motion to Stay Order (other) <u>92</u> . (Filing fee \$455, receipt number 09730000000006171073.) (Miller, Nancy) (Entered: 11/18/2009)
11/18/2009	<u>94</u>	REPRESENTATION STATEMENT re Notice of Appeal to 9th Circuit Court of Appeals, <u>93</u> . (Miller, Nancy) (Entered: 11/18/2009)
11/18/2009	<u>95</u>	ORDER by Judge James V. Selna, GRANTING MOTION for Summary Judgment as to Complaint <u>78</u> . (Made JS-6. Case Terminated.) (ade) (Entered: 11/19/2009)
11/19/2009	<u>96</u>	NOTIFICATION by Circuit Court of Appellate Docket Number 09-56846, 9th CCA regarding Notice of Appeal to 9th Circuit Court of Appeals, <u>93</u> as to Plaintiff Teresita G. Costello, Lorenzo P. Ong. (dmap) (Entered: 11/20/2009)
04/20/2012	<u>97</u>	ORDER from 9th CCA filed re: Notice of Appeal to 9th Circuit Court of Appeals, <u>93</u> filed by Lorenzo P. Ong, Teresita G. Costello, CCA # 09-56846. En banc oral argument will take place during the week of 6/18/2012, in Pasadena, California. The date and time will be determined by separate order. For further information or special requests regarding scheduling, please contact Deputy Clerk. Within 7 days from the date of this Order, the parties shall forward to the Clerk of Court 25 additional paper copies of the original briefs including amicus briefs) and excerpts of record. (See attached Order for further details). The Order received in this district on 4/20/2012. (jp) (Entered: 04/25/2012)
04/20/2012	<u>98</u>	ORDER from 9th CCA filed re: Notice of Appeal to 9th Circuit Court of Appeals <u>93</u> filed by Lorenzo P. Ong, Teresita G. Costello CCA # 09-56846 Upon the vote of a majority of nonrecused active judges, it is ordered that this case be reheard en banc pursuant to Circuit Rule 35-3. This three-judge panel opinion shall not be cited as precedent by or to any court of the Ninth Circuit. Order received in this district on 4/20/2012. (dmap) (Entered: 04/25/2012)
04/27/2012	<u>99</u>	ORDER from 9th CCA filed re: Notice of Appeal to 9th Circuit Court of Appeals <u>93</u> filed by Lorenzo P. Ong, Teresita G. Costello CCA # 09-56846. Oral argument in this en bane case will be held at 10:00 a.m. on Tuesday, June 19,2012, in Courtroom Three of the Richard H. Chambers Courthouse, located at 125 South Grand Avenue in Pasadena, California 91105. Order received in this district on 4/27/2012. (dmap) (Entered: 05/02/2012)
05/23/2012	<u>100</u>	ORDER from 9th CCA filed re: Notice of Appeal to 9th Circuit Court of Appeals, <u>93</u> filed by Lorenzo P. Ong, Teresita G. Costello, CCA # 09-56846. The motions of the National Immigrant Justice Center and the American Immigration Council; the American Immigration Lawyers Association and the Catholic Legal Immigration Network, Inc.; and Active Dreams LLC for leave to file amicus briefs are granted. The Clerk shall file the briefs submitted with the motions. See the order for the rest of the details. Order received in this district on 5/23/2012.

		(Entered: 05/24/2012)
06/11/2012	<u>101</u>	ORDER from 9th CCA filed re: Notice of Appeal to 9th Circuit Court of Appeals <u>93</u> filed by Lorenzo P. Ong, Teresita G. Costello CCA # 09-56846. Appellees' motion for leave to file a brief and exhibits responding to amici is granted. See the order for the rest of the details. Order received in this district on 6/11/2012. (dmap) (Entered: 06/12/2012)
11/16/2012	<u>102</u>	ORDER from 9th CCA filed re: Notice of Appeal to 9th Circuit Court of Appeals <u>93</u> filed by Lorenzo P. Ong, Teresita G. Costello CCA # 09-56846. The unopposed motion to stay the mandate pending filing of a petition for writ of certiorari is granted. The mandate is stayed until December 26, 2012. If a petition for certiorari is filed, the stay shall continue until final disposition by the U.s.Supreme Court. Order received in this district on 11/16/2012. (dmap) (Entered: 11/19/2012)
12/19/2012	<u>103</u>	ORDER from 9th CCA filed re: Notice of Appeal to 9th Circuit Court of Appeals, <u>93</u> CCA # 09-56846. The unopposed motion to stay the mandate pending filing of a petition for writ of certiorari is GRANTED (Doc. 101). The mandate is stayed until 1/25/2013. If a petition for certiorari is filed, the stay shall continue until final disposition by the U.S. Supreme Court. Order received in this district on 12/19/12. Order received in this district on 12/19/12. (car) (Entered: 12/20/2012)