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THE UNITED STATES DISTRICT COURT FOR THE

CENTRAL DISTRICT OF CALIFORNIA

TERESITA G. COSTELO, and LORENZO P. ONG, Individually And On Behalf Of All Others Similarly Situated,	SACV08-688 JVS (SHx) Case No.
Plaintiffs,	COMPLAINT FOR DECLARATORY, MANDAMUS AND INJUNCTIVE RELIEF
v.	
MICHAEL CHERTOFF, Secretary Of The Department Of Homeland Security; UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES; EMILIO T. GONZALEZ, Director, United States Citizenship And Immigration Services; DAVID TYLER, Director, National Visa Center; CHRISTINA POULOS,	[CLASS ACTION]

Acting Director, California Service Center, United States Citizenship and Immigration Services; And CONDOLEEZA RICE, Secretary of State,

Defendants.

COME NOW Plaintiffs TERESITA G. COSTELO and LORENZO P. ONG (hereinafter "Plaintiffs"), by their undersigned attorneys, and bring this civil action for declaratory, mandamus and injunctive relief on behalf of themselves and all others similarly situated against the above-named Defendants. They complain and allege as follows:

I. PRELIMINARY STATEMENT

1. Congress enacted the Child Status Protection Act of 2002 (CSPA), codified at § 203(h) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1153(a)(3), to provide immigration relief to children of immigrant parents. Prior to CSPA children who reached the age of 21 were no longer eligible to obtain an immigrant visa with the rest of their family. These children became known as "age-outs." One provision of CSPA, specifically INA § 203(h)(1), provides relief from government adjudication delays by allowing the amount of time the United States Citizenship and Immigration Service (USCIS) takes to adjudicate the visa

petition to be subtracted from the child's age on the date he or she becomes eligible to immigrate to the United States. This provision alone would still leave some children behind when families immigrate to the United States. However, Congress also enacted Section 3 of CSPA, codified as INA § 203(h)(3), to keep children together with their parents.

2. INA § 203(h)(3) states "(3) ***Retention of priority date.***- If the age of an alien is determined under paragraph (1) to be 21 years of age or older for the purposes of subsections (a)(2)(A) and (d), the alien's petition shall automatically be converted to the appropriate category and the alien shall retain the original priority date upon receipt of the original petition."[1] As such, an aged-out child, who is a derivative beneficiary of the visa petition of his parent, can now reunite with their family more quickly by utilizing their parent's earlier priority date. A child abroad who aged-out is eligible under CSPA for an immigrant visa, and if the child is in the United States, he or she will be able to adjust to legal resident status.

3. When a child who is a derivative beneficiary under the visa petition filed for their parent turns twenty one, he or she is considered to have aged-out. As an age-out, the child is ineligible to immigrate as a derivative beneficiary under the petition filed for their parent. Some parents have to wait up to 20 years for their

[1] (a)(2)(A) refers to § 203(a)(2)(A) of this chapter which provides the statutory authority to issue visas to unmarried sons and daughters of permanent resident aliens. Section (d) refers to 203 of this chapter which provides the statutory authority to issue visas to derivative beneficiaries i.e. spouses and children to immigrate with the principal beneficiary such as the immigrating parent.

visa number to become available and during this time their children age-out. Under INA § 203(a)(2)(B), a permanent resident parent has the right to petition his unmarried adult children. The child's priority date would then be the date the immigrant visa petition was filed. Because of the limited number of visas and the backlog, the child would have to wait several more years to be reunited with his family. Under CSPA, however, the priority date under which the parent immigrated becomes the priority date of the aged-out child. This eliminates the lengthy wait and makes the child's immigrant visa immediately available in most cases.

4. Although the USCIS has granted some visa petitions and permitted retention of the earlier priority dates pursuant to INA § 203(h)(3), there appears to be no uniform policy from USCIS as a whole. The lack of any regulations regarding INA § 203(h)(3) or even policy memorandum has lead to arbitrary and inconsistent decision-making affecting thousands on a global level. Furthermore, Defendants' failure to promulgate regulations implementing CSPA benefits violates the Administrative Procedure Act (APA), 5 U.S.C. § 551 et seq.; the Due Process Clause and equal protection guarantee of the Fifth Amendment to the United States Constitution; and Article II, §§ 1 and 3 of the United States Constitution.

5. This class action lawsuit presents two different classes of aggrieved individuals. The members of the first class are those who filed petitions with requests for retention of the parent's original priority date which were denied. The named plaintiff in the first class, Teresita Costelo, is a mother who properly petitioned for her two daughters but suffers the repercussions of inconsistent decisions involving the unlawful denial for one child and an approval for another child. Plaintiff Costelo is among thousands of persons in this class who will have to wait several more years before she may reunite with both daughters in the United States.

6. The members of the second class are those who have received no response at all to their requests for retention of the original priority date. The named plaintiff of this class, Lorenzo Ong, is a father who filed more than three years ago a petition requesting retention of his original priority date under CSPA. Defendants have failed to respond. Plaintiff Ong is among a class of thousands of parents who continue to wait year after year for Defendants to adjudicate their cases pursuant to § 203(h)(3).

7. For the foregoing reasons, Plaintiffs Costelo and Ong, on behalf of themselves and those similarly situated, bring this class action complaint to compel Defendants to properly adjudicate all cases filed under CSPA, or INA § 203(h)(3),

and comply with the requirements of retaining the parent's original priority date in subsequent petitions filed by the parent.

II. JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 8 U.S.C. § 1361 (the Mandamus and Venue Act to compel an officer to perform a duty owed to plaintiffs.)

9. This Court also retains jurisdiction under the Fifth Amendment to the United States Constitution and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, to issue Orders regarding the construction and application of Section 3 of the Child Status Protection Act, Pub. L. No. 107-208, 116 Stat. 927 (2002), codified at INA § 203(h), 8 U.S.C. § 1153(h). Similarly, this Court has jurisdiction to compel the Defendants to recognize the Plaintiffs' automatic conversion and retention of the original priority date pursuant to INA § 203(h)(3), 8 U.S.C. § 1153(h)(3).

10. The Administrative Procedure Act, 5 U.S.C. §§ 702-706, provides additional legal authority for this Court to review, hold unlawful and set aside actions of administrative agencies that are unconstitutional; that exceed statutory jurisdiction or authority; that fail to abide by statutory or regulatory procedures; and that are arbitrary, capricious, an abuse of discretion or are otherwise not in

accordance with the applicable law. See 5 U.S.C. § 706. The Administrative Procedure Act authorizes reviewing courts to entertain "any applicable form of legal action," including "actions for declaratory judgments or writs of prohibitory or mandatory injunction" that challenge the actions of administrative agencies and to issue all necessary and appropriate orders to redress grievances resulting from agency action. See 5 U.S.C. §§ 703, 706.

11. Venue is proper in the United States District Court for the Central District of California, pursuant to 28 U.S.C. § 1391(b) because this is a civil action in which the Defendants are either officers of the United States acting in their official capacities or an agency of the United States; because Plaintiffs reside in this judicial district; and because many of the events or omissions giving rise to the claim occurred in this judicial district.

III. CLASS ALLEGATIONS

12. Plaintiffs bring this action on behalf of themselves and all other persons similarly situated pursuant to Fed. R. Civ. Proc. Rule 23(a) and 23(b)(2). Plaintiffs provisionally propose this action be certified on behalf of the following class:

> All persons who have filed an immigrant visa petition(s) for their child or children with a request for the original priority date or are the derivative beneficiary of an immigrant visa petition who face future and/or ongoing separation from family members as a result of the Defendants failure to

automatically convert and retain the original visa petition priority date pursuant to Section 3 of the Child Status Protection Act.

13. Members of the proposed class number are in the thousands. The class members are so numerous that joinder of all members is impracticable.

14. The claims of the proposed class representative and those of the proposed class members raise common questions of law and fact concerning whether the Defendants may refuse to recognize a statute that preserves a parent's original priority date for use by their sons and daughters after they turn 21. This and similar questions are common to the named Plaintiffs and to the members of the proposed class because Defendants have acted and will continue to act on grounds generally applicable to both the named Plaintiffs and proposed class members. The individual named Plaintiffs' claims are typical of the class claims.

15. The individual named Plaintiffs will adequately represent all members of the proposed class.

16. The prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications establishing incompatible standards of conduct by Defendants. The issuance of regulations, forms, standards and/or procedures is a national function of the Department of Homeland Security, not a function performed differently in each individual case or in each USCIS district or region.

17. Prosecution of separate actions would also create the risk that individual class members will secure court orders that would as a practical matter be dispositive of the claims of other class members not named parties to this litigation, thereby substantially impeding the ability of unrepresented class members to protect their interests.

18. Defendants, their agents, employees and predecessors and successors in office have acted or refused to act, and will continue to act or refuse to act, on grounds generally applicable to the class, thereby making appropriate injunctive relief or corresponding declaratory relief with respect to the class as a whole. The individual named Plaintiffs will vigorously represent the interests of unnamed class members. All members of the proposed class will benefit from the action brought by the individual named Plaintiffs. The interests of the individual named Plaintiffs and those of the proposed class members are identical.

IV. PARTIES

A. PLAINTIFFS

FIRST CLASS: Parents who have filed an immigrant visa petition or are the adult children beneficiaries of an immigrant visa petition who face separation from each other as a result of the Defendants refusal to automatically convert and retain the original priority date of the original visa petition pursuant to Section 3 of the Child Status Protection Act.

19. On July 22, 2004, Plaintiff TERESITA G. COSTELO obtained U.S. lawful permanent resident status through an approved Petition for Alien Relative filed by her U.S. citizen mother on January 5, 1990. Also named in the petition as derivative beneficiaries were Plaintiff Costelo's two daughters, Angelyn G. Costelo and Anne Theresa G. Costelo. When the petition by Plaintiff Costelo's mother was filed in 1990, Angelyn was 10 years old, and Anne Theresa was 13 years old. When Plaintiff Costelo's priority date became current in 2004, Angelyn and Anne Theresa aged-out because they were over 21 years old. Plaintiff Costelo filed new immigrant visa petitions for her daughters on September 23, 2004, and also requested retention of the January 5, 1990 priority date. Defendants responded with an approval of the original priority date for Angelyn, and a denial of the original priority date for Anne Theresa. Plaintiff Costelo resides in Long Beach, California, and her daughters remain in the Philippines.

SECOND CLASS: Parents who have filed an immigrant visa petition who face separation from their children as a result of the Defendants failure to act regarding the automatic conversion and retention of the original priority date of the original visa petition pursuant to Section 3 of the Child Status Protection Act.

20. On June 16, 2004, Plaintiff LORENZO P. ONG obtained U.S. lawful permanent resident status through an approved immigrant visa petition filed by her U.S. citizen sister on May 7, 1981. Also named in the petition as derivative

beneficiaries were Plaintiff Ong's two daughters, Vernilee M. Ong and Lucheevette M. Ong. When the petition by Plaintiff Ong's sister was filed in 1981, Vernilee was 4 years old, and Lucheevette was 2 years old. When Plaintiff Ong's priority date became current in July of 2002, they had aged-out because they were over 21 years old. Plaintiff Ong filed new immigrant visa petitions for his daughters on March 8, 2005, and also requested retention of the May 7, 1981 priority date. As of today, Defendants have not responded. Plaintiff Ong resides in Artesia, California, and his daughters remain in the Philippines.

B. DEFENDANTS

21. Defendant MICHAEL CHERTOFF is the Secretary of the Department of Homeland Security. He has a mandate, pursuant to 8 U.S.C. § 1103(a) and 6 U.S.C. § 202(3), to administer and enforce the Immigration and Nationality Act, and to enforce other laws related to the immigration and naturalization of aliens.

22. Defendant UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES is a department within the United States Department of Homeland Security. That agency has a mandate, pursuant to 6 U.S.C. §§ 271(a)(2) and 271(b), to process and adjudicate immigrant visa petitions and other petitions for immigration relief, and to process and adjudicate applications for immigration benefits.

23. Defendant EMILIO T. GONZALEZ is the Director of United States Citizenship and Immigration Services, a department within the United States Department of Homeland Security. He has a mandate, pursuant to 6 U.S.C. §§ 271(a)(2) and 271(b), to supervise the processing and adjudication of immigrant visa petitions and other petitions for immigration relief.

24. Defendant CONDOLEEZZA RICE is the Secretary of the Department of State. She has a duty, pursuant to 8 U.S.C. § 1104(a), to administer and enforce the provisions of the INA and all other immigration and nationality laws related to the powers, duties, and functions of diplomatic and consular officers. She also has the power, pursuant to 8 U.S.C. § 1104(a), to establish regulations necessary for carrying out her statutory authority.

25. Defendant DAVID TYLER is the Director of the National Visa Center, an office within the Bureau of Consular Affairs for the United States Department of State. He has a duty delegated by the Secretary of the United States Department of State, pursuant to 8 U.S.C. § 1104(c), to administer and enforce the immigration and nationality laws, and to process all approved immigrant visa petitions transferred from United States Citizenship and Immigration Services, including applications for immigrant visas.

26. Defendant CHRISTINA POULOS is the Acting Director of the California Service Center of USCIS. She has a duty, delegated by the Director of

USCIS, to oversee the filing and processing of applications for immigration benefits and relief at the California Service Center.

IV. STATUTORY REFERENCES

27. Section 204 of the Immigration and Nationality Act, 8 U.S.C. § 1154, governs petitions for classification as a family-sponsored preference immigrant. See INA § 204(a)(1)(B), 8 U.S.C. §1154(a)(1)(B)(i) "[a]ny alien lawfully admitted for permanent residence claiming that an alien is entitled to a classification by reason of the relationship described in § 203(a)(2) [of the INA] may file a petition with the Attorney General for such classification." INA § 204(a)(1)(B)(i), 8 U.S.C. § 1154(a)(1)(B)(i).

28. Section 204(b) of the Immigration and Nationality Act, 8 U.S.C. § 1154(b) governs the approval of petitions for classification as a family-sponsored preference immigrant. See INA § 204(b), 8 U.S.C. § 1154(b) ("[a]fter an investigation of the facts in each case...the Attorney General shall, if he determines that the facts stated in the petition are true and that the alien in behalf of whom the petition is made is an immediate relative specified in § 201(b) [of the INA] or is eligible for preference under subsection (a) or (b) of § 203 [of the INA], approve the petition and forward one copy thereof to the Department of State. The

Secretary of State shall then authorize the consular office concerned to grant the preference status.").

29. Section 203 of the Immigration and Nationality Act sets forth the preference allocation of immigrant visas for family-sponsored aliens. Specifically, "[q]ualified immigrants who are the unmarried sons or daughters of citizens of the United States" fall into the first preference, or F1, family-sponsored immigrant visa preference category. INA, § 203(a)(1), 8 U.S.C. § 1153(a)(1). Other "[q]ualified immigrants (A) who are the spouses or children of an alien lawfully admitted for permanent residence, or (B) who are the unmarried sons or unmarried daughters (but are not the children) of an alien lawfully admitted for permanent residence," fall into the second preference family-sponsored immigrant visa preference category, or F2A and F2B preference categories, respectively. INA §§ 203(a)(2)(A) and 203(a)(2)(B), 8 U.S.C. §§ 1153(a)(2)(A) and 1153(a)(2)(B). Other "[q]ualified immigrants who are the married sons or married daughters of citizens of the United States" fall into the third preference family-sponsored immigrant visa preference category, or F3 preference category. INA § 203(a)(3), 8 U.S.C. § 1153(a)(3).

30. The statutory provision for the admission of immediate relatives of United States citizens, who are not subject to limitations on immigrant visas, is located at § 201(b)(2)(A)(i) of the INA. See INA § 201(b)(2)(A)(i), 8 U.S.C. §

1151(b)(2)(A)(i) (defining "immediate relatives" as "the children, spouses, and parents of a citizen of the United States, except that, in the case of parents, such citizens shall be at least 21 years of age.")

31. The allocation of immigrant visas for family-sponsored immigrants, based upon the priority date, or filing date, of the petition for classification under § 204 of the INA, 8 U.S.C. § 1154, is governed by § 204(e)(1) of the INA and 22 C.F.R. §§ 42.53(a) and 42.54(a)(1). See INA § 203 (e)(1), 8 U.S.C. § 1153(e)(1) (declaring that "[i]mmigrant visas made available under subsection (a) or (b) shall be issued to eligible immigrants in the order in which a petition in behalf of each such immigrant is filed with the Attorney General...as provided in § 204(a) [of the INA])"; 22 C.F.R. § 42.53(a) (stating that "[t]he priority date of a preference visa applicant under INA 203(a) or (b) shall be the filing date of the approved petition that accorded preference status"); 22 C.F.R. § 42.54(a)(1) (declaring that "[c]onsular officers shall request applicants to take the steps necessary to meet the requirements of INA 222(b) in order to apply formally for a visa as follows (1) In the chronological order of the priority dates of all applicants within each of the immigrant classifications specified in INA 203(a) and (b).")

32. The statutory provisions defining a child, for purposes of petitions for classification under § 204 of the INA, are located at § 101(b)(1) of the INA. Under

those statutory sections, "[t]he term 'child' means an unmarried person under twenty-one years of age." INA § 101(b)(1), 8 U.S.C. § 1101(b)(1).

33. CSPA relief from government adjudication delays is provided under INA § 203(h)(1). Under this provision, a child's age is adjusted by subtracting the amount of time the United States Citizenship and Immigration Service (USCIS) takes to adjudicate the visa petition from the child's age on the date he or she becomes eligible to immigrate to the United States. If the adjusted age is now under 21, that child has no longer aged-out and may immigrate with the parent. INA § 203(h)(1) provides,

> [f]or purposes of subsections (a)(2)(A) and (d) [of § 203 of the INA], a determination of whether the alien satisfies the age requirement in the matter preceding subparagraph (A) of § 101(b)(1) [of the INA] shall be made using -- (A) the age of the alien on the date on which an immigrant visa number becomes available for such alien...but only if the alien has sought to acquire the status of an alien lawfully admitted for permanent residence within one year of such availability; reduced by (B) the number of days in the period during which the applicable petition described in paragraph (2) was pending.

If, after performing that calculation, "the age of an alien is determined under paragraph (1) to be 21 years of age or older for the purposes of subsections (a)(2)(A) and (d)."[2] Under INA § 203(h)(3), the alien's petition shall then "automatically be converted to the appropriate category and the alien shall retain

[2] (a)(2)(A) refers to § 203(a)(2)(A) of this chapter which provides the statutory authority to issue visas to unmarried sons and daughters of permanent resident aliens. Section (d) refers to 203 of this chapter which provides the statutory authority to issue visas to derivative beneficiaries i.e. spouses and children to immigrate with the principal beneficiary such as the immigrating parent.

the original priority date issued upon receipt of the original petition." INA § 203(h)(3), 8 U.S.C. § 1153(h)(3) (*emphasis added*).

V. STATEMENT OF FACTS

FIRST CLASS: Plaintiff TERESITA G. COSTELO:

34. On or about January 5, 1990, Plaintiff Teresita G. Costelo's United States citizen mother filed a Petition for Alien Relative naming her the primary beneficiary.

35. Plaintiff Costelo's daughters, Angelyn G. Costelo (born on November 3, 1980) and Anne Theresa Costelo (born on July 6, 1977) were derivative beneficiaries of the petition. When the petition by Plaintiff Costelo's mother was filed in 1990, Angelyn was 10 years old, and Anne Theresa was 13 years old.

36. On or about January 22, 1990, the legacy Immigration and Naturalization Service approved the visa petition.

37. On or about February 2004, the approved visa petition became available. The delay since 1990 is the result of the oversubscription of visa numbers that created an availability backlog until 2004. At that time, Plaintiff Costelo's daughters aged-out because they were over 21 years old.

38. On or about July 22, 2004, Plaintiff Costelo immigrated to the United States.

39. On or about September 23, 2004, Plaintiff Costelo filed petitions on behalf of her daughters with the California Service Center (CSC) of the United States Citizenship and Immigration Service (USCIS). The new priority date is September 20, 2004. The current priority date for the Philippines for family-based petitions filed by lawful permanent residents for unmarried sons or daughters (21 years of age or older) is February 22, 1997.

40. On or about August 2, 2007, Plaintiff Costelo requested Defendants to retain her January 5, 1990 priority date for her daughters' immigrant visa petitions, so that they could join the rest of the family in the U.S.

41. On or about February 12, 2008, Defendants approved Angelyn Costelo's petition and retained the January 5, 1990 priority date.

42. On or about February 12, 2008, Defendants denied Anne Theresa's request to retain the original priority date.

43. The denial of Anne Theresa's petition has and continues to cause Plaintiff Costelo emotional distress. She worries that Anne Theresa will never be reunited with her family. Plaintiff Costelo experiences stress-related issues including headaches and tremors in her hands, and difficulty concentrating at work due to the separation from her daughter. She struggles daily knowing that Anne Theresa has been left behind alone in the Philippines. Despite her education and strong work ethic, Anne Theresa will also have difficulty supporting herself in the

Philippines due to its high unemployment. What disturbs Plaintiff Costelo the most is that Defendants can issue random denials for otherwise eligible applicants such as her daughter. If Anne Theresa were allowed to enter the U.S. with Angelyn, she would be able to work to help her family financially.

B. SECOND CLASS: Plaintiff LORENZO P. ONG

44. On or about May 7, 1981, Plaintiff Lorenzo Ong's United States citizen sister filed an immigrant visa petition for Lorenzo Ong. He became the primary beneficiary of his sister's petition.

45. Plaintiff Ong's daughters, Vernilee Ong and Lucheevette, were named derivative beneficiaries in the visa petition filed on behalf of Plaintiff Ong. When the petition was approved on August 4, 1981, Vernilee was 4 years old, and Lucheevette was 2 years old.

46. On or about July of 2002, the visa became available. The delay since 1981 is the result of the oversubscription of visa numbers that created an availability backlog until 2002. At that time, Plaintiff Ong's daughters aged-out because they were over 21 years old.

47. On or about June 16, 2004, Plaintiff Ong immigrated to the United States.

48. On October 20, 2005, Plaintiff Ong sent a letter to Defendants requesting retention of his priority date pursuant to INA § 203(h)(3) for his daughters to immigrate to the U.S. Defendants failed to respond. On December 1, 2005, Plaintiff sent another letter to Defendants with the same request. Again Defendants failed to respond.

49. On or about March 8, 2005, Plaintiff Ong filed immigrant visa petitions for his daughters with the California Service Center (CSC) of the United States Citizenship and Immigration Service (USCIS). The current priority date for the Philippines for family-based petitions filed by lawful permanent residents for unmarried sons or daughters (21 years of age or older) is February 22, 1997.

50. On or about April 9, 2007, Plaintiff Ong, by and through counsel, filed a request for immigrant visa processing and retention of priority date under CSPA. Defendants have not responded to this request.

51. The immigrant visa petitions that Plaintiff Ong filed for his daughters are currently pending. Defendants have not responded to Plaintiff Ong's request to retain the May 7, 1981 priority date.

52. Plaintiff Ong has and continues to suffer emotional distress as a result of Defendants failure to respond to his pleas. His daughters have suppressed their own personal and professional ambitions because of the delay. Because of their limited income, they are unable to support themselves. Plaintiff Ong worries every

time his daughters get sick and he is unable to care for them. He spends over $100 per month for phone cards in order to keep in touch with his daughters. Phone contact cannot substitute for personal contact.

VI. LEGAL ARGUMENT

A. Claim For Declaratory And Injunctive Relief, Regarding The Application Of Section 3 Of The Child Status Protection Act, INA § 203(h)(3), 8 U.S.C. § 1154(h)(3).

53. The plaintiffs hereby incorporate by reference all of the above-mentioned paragraphs of the instant complaint.

54. Section 3 of the Child Status Protection Act provides as follows:

> (3) Retention of Priority Date. – If the age of an alien is determined under paragraph (1) to be 21 years of age or older for the purposes of subsections (a)(2)(A) and (d), the alien's petition shall automatically be converted to the appropriate category and the alien shall retain the original priority date issued upon receipt of the original petition.[3]

Codified as INA § 203(h)(3), 8 U.S.C. § 1153(h)(3).

55. The Defendants have failed to issue the Plaintiffs' visa petition with the "original priority date." Specifically, the Defendants have refused to acknowledge Plaintiffs' eligibility for the automatic conversion and retention of the original priority date as specified at INA § 203(h)(3), 8 U.S.C. § 1153(h)(3).

[3] (a)(2)(A) refers to § 203(a)(2)(A) of this chapter which provides the statutory authority to issue visas to unmarried sons and daughters of permanent resident aliens. Section (d) refers to 203 of this chapter which provides the statutory authority to issue visas to derivative beneficiaries i.e. spouses and children to immigrate with the principal beneficiary such as the immigrating parent.

Demand for visa numbers is often oversubscribed creating an availability backlog spanning many years and even decades.

56. The Defendants' refusal to issue the visa petition with the original priority date is at odds with the language, structure, history and purpose of the Child Status Protection Act.

57. The history and purpose of the Child Status Protection Act supports a reading of Section 3 that is as ameliorative as it is inclusive. Indeed, Congress enacted the Child Status Protection Act "to address the 'enormous backlog of adjustment of status (to permanent residence) applications' which had developed at the [former] INS." Padash v. INS, 358 F.3d 1161, 1172 (9th Cir. 2004)(*quoting* Child Status Protection Act of 2001, H.R. Rep. No. 107-45, 107th Cong., 1st Sess., at 2 (2001), reprinted in 2002 U.S.C.C.A.N. 640). The House Judiciary Committee noted that at the time of enactment "the backlog of unprocessed visa[] applications was close to one million," and that "approximately one thousand of the applications reviewed each year by the agency were for individuals who had aged-out of the relevant visa category since the time they had filed their petitions," due to delays in processing. Padash, *supra* at 1172-73 (*citing* H.R. Rep. No. 107-45).

58. Congress expressly enacted the Child Status Protection Act to "'address[] the predicament of those aliens, who through no fault of their own, lose the opportunity to obtain [a]...visa.'" Padash, *supra* at 1173 (*quoting* H.R. Rep.

No. 107-45, at 2). The United States Court of Appeals for the Ninth Circuit has found that the Child Status Protection Act "was intended to address the often harsh and arbitrary effects of the age out provisions under the previously existing statute." Padash, *supra* at 1173.

59. This Court should adhere to the general canon of construction that "a rule intended to extend benefits should be 'interpreted and applied in an ameliorative fashion." Padash, *supra* at 1173 (*quoting* Hernandez v. Ashcroft, 345 F.3d 824, 840 (9th Cir. 2003).)

60. The Defendants' interpretation and application of INA § 203(h)(3), 8 U.S.C. § 1153(h)(3) is anything but ameliorative. Rather, the Defendants have ignored both the clear language of the statute and Congressional intent regarding this section of law.

61. Because Defendants have failed to abide by statutory procedures, their actions are arbitrary, capricious and an abuse of discretion.

62. Accordingly, Plaintiffs respectfully request that this Court enter an Order consistent with Congressional intent and the clear language of the Child Status Protection Act and declare the Plaintiffs' and class members' visa petitions automatically convert and retain the original priority date pursuant to INA § 203(h)(3), 8 U.S.C. § 1153(h)(3).

B. Petition For Writ Of Mandamus, Pursuant To 28 U.S.C. § 1361 And 1651(A).

63. The plaintiffs hereby incorporate by reference all preceding paragraphs of the instant complaint, as stated therein.

64. The All Writs Act specifies, "all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a)). When the "'obligation of a Court of Appeals to review on the merits may be defeated by an agency that fails to resolve disputes,'" the All Writs Act authorizes courts to "'resolve claims of unreasonable delay in order to protect its future jurisdiction.'" Confederated Tribes of the Umatilla Indian Reservation v. Bonneville Power Admin., 342 F.3d 924, 930 (9th Cir. 2003) (*quoting* Telecomm. Research & Action Ctr. v. FCC, 750 F.2d 70, 76 (D.C. Cir. 1984)).

65. The Mandamus and Venue Act of 1962 authorizes district courts to issue writs of mandamus "to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiffs." 28 U.S.C. § 1361.

66. A federal court may issue a writ of mandamus to compel a federal official's performance of official duties, pursuant to 28 U.S.C. § 1361 when "'(1) the individual's claim is clear and certain; (2) the official's duty is nondiscretionary, ministerial, and so plainly prescribed as to be free from doubt,

and (3) no other adequate remedy is available.'" Kildare v. Saenz, 325 F.3d 1078, 1084 (9th Cir. 2003).

67. Mandamus relief is available, in particular, to remedy executive officials' failure to act on visa petitions for lawful admission into the United States. See Patel v. Reno, 134 F.3d 929, 931-32, 933 (9th Cir. 1997) (recognizing availability of mandamus relief for failure of consulate to act on visa applications by spouse and children of United States citizen for an eight-year period).

68. Plaintiffs have a clear and certain right to have the Defendants issue visa petitions in a reasonable time, and in a reasonable manner. See Greater Los Angeles Council on Deafness, Inc. v. Baldridge, 827 F.2d 1353, 1362 (9th Cir. 1987) (noting that "the plaintiffs have a clear right to have the Department [of Health and Human Services] act on their administrative complaint and the Department has a duty to act," even if the agency ultimately does not afford the plaintiffs relief on their disability claims); See also, Paunescu, 76 F. Supp. 2d at 900-01 (holding that 8 U.S.C. § 1255 "'provide[s] a right to an adjudication [of an adjustment of status application]...within a reasonable time,'") (quoting Agbemaple v. INS, 1998 U.S. Dist. LEXIS 7953 (N.D. Ill. 1998).) Here, a reasonable manner is one in accordance with the statutory framework.

69. A petitioner for a writ of mandamus has a "clear and certain claim" when he or she has a "legal entitlement to the relief sought" that is judicially enforceable. Lowry v. Barnhart, 329 F.3d 1019, 1021-22 (9th Cir. 2003).

70. For the reasons stated above, the language, structure, history and purpose of Section 3 of the Child Status Protection Act make clear that Congress intended that visa petitions of child beneficiaries who turn twenty-one years of age while awaiting immigrant visa processing automatically convert to the proper category and retain the original priority date.

71. An agency action is ministerial, for purposes of mandamus relief, when the action "has been defined as a clear, non-discretionary agency obligation to take a specific affirmative action, which obligation is positively commanded and 'so plainly prescribed as to be free from doubt.'" Independence Mining Co. v. Babbitt, 105 F.3d 502, 508 (9th Cir. 1997) (*citing* Azurin v. Von Raab, 803 F.2d 993, 995 (9th Cir. 1986)).

72. The Defendants have a non-discretionary duty to issue the correct priority date of approved visa petitions.

73. Because Congress specifically provided for the "automatic" conversion and retention of the original priority date, Defendant's duty is non discretionary and has been clearly defined.

74. There is no other adequate remedy at law for the Defendants' refusal to recognize the plaintiffs' right to retain the original priority date. The plaintiffs have jointly filed numerous requests with the defendants to enable them. See Sun v. Ashcroft, 370 F.3d 932, 943 (9th Cir. 2004) (declaring that "'where the agency's position on the question at issue appears already set, and it is very likely what the result of recourse to administrative remedies would be, such recourse would be futile and is not required'") (*quoting* El Rescate Legal Services, Inc. v. Executive Office for Immigration Review, 959 F.2d 742, 747 (9th Cir. 1991)).

75. Accordingly, the plaintiffs respectfully request that this Court issue a writ of mandamus, compelling the Defendants to perform their non-discretionary duty to issue the correct original priority date pursuant to INA § 203(h)(3), 8 U.S.C. § 1153(h)(3).

C. Claim Under The Administrative Procedure Act: Violation Of Due Process Clause Due To Defendants' Failure To Abide By Their Own Regulations.

76. The Administrative Procedure Act ("APA") permits lawsuits by people "suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute." 5 U.S.C. § 702.

77. The APA defines "agency action" as "the whole or part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act." 5 U.S.C. § 551(13).

78. An "order" and "relief" signify "a final disposition...in a matter other than rule making," or the "taking of other action on the application or petition of, and beneficial to, a person." 5 U.S.C. §§ 551(4), 551(11).

79. A "failure to act," in turn, is "properly understood as a failure to take one of the agency actions," or their equivalents, specified in § 551(13). Norton v. Southern Utah Wilderness Alliance, 542 U.S. 55, 62 (2004).

80. The APA also allows a reviewing court to "compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1).

81. The Ninth Circuit specifies adherence to the following guidelines to ascertain whether an unreasonable delay in agency action warrants the issuance of relief under the APA:

> 1) a 'rule of reason' governs the time agencies take to make decisions; 2) delays where human health and welfare are at stake are less tolerable than delays in the economic sphere; 3) consideration should be given to the effect of ordering agency action on agency activities of a competing or higher priority; 4) the court should consider the nature of the interests prejudiced by delay; and 5) the agency need not act improperly to hold that agency action has been unreasonably delayed.

In re California Power Exchange Corp., 245 F.3d 1110, 1124-25 (9th Cir. 2001) (*citing* Towns of Wellesley, Concord, and Nordwood, Mass. v. FERC, 829 F.2d 275, 277 (1st Cir. 1987)) (*citations omitted*)).

82. In determining agency compliance with the "'rule of reason,'" courts will consider "the complexity of the task at hand, the significance (and permanence) of the outcome, and the resources available to the agency." The Mashpee Wampanoag Tribal Council, Inc., v. Norton, 336 F.3d 1094, 1103 (D.C. Cir. 2003) (*amended opinion*).

83. Here, the Defendants' assessment of Plaintiffs' priority date is not a complex task. Indeed, the plain and clear language of INA § 203(h)(3) provides for automatic conversion and retention of the original priority date. The failure to implement concrete regulations grounded in Congressional intent and the plain language of CSPA to safeguard families from separation has lead to arbitrary and inconsistent decision-making affecting thousands on a global level. Defendants' failure to promulgate regulations implementing CSPA benefits violates the Administrative Procedure Act (APA), 5 U.S.C. § 551 et seq.; the Due Process Clause and equal protection guarantee of the Fifth Amendment to the United States Constitution; and Article II, §§ 1 and 3 of the United States Constitution.

84. The outcome of the Defendants' determination of the priority date is significant and permanent. A current priority date is a statutory prerequisite for

admission as an alien lawfully admitted to the United States for permanent residence.

85. There is no indication that the Defendants lack the resources to make the necessary determinations of Plaintiffs' priority dates.

86. The instant case involves paramount issues of human health and welfare – Plaintiffs' fundamental interest in reuniting and remaining with their family in the United States.

87. No competing or higher agency priorities justify the delay in the refusal to issue the correct visa petition with the correct priority date.

88. Plaintiffs have significant, fundamental interests that have been prejudiced by the errors and inaction in their cases. Plaintiffs have a fundamental interest protected by the Fifth Amendment in family unity and in maintaining their familial ties. To be sure, the Fifth Amendment's Due Process Clause "applies to all 'persons' within the United States, including aliens.'" Kaur v. Ashcroft, 388 F.3d 734, 737 (9th Cir. 2004) (quoting Zadvydas v. Davis, 533 U.S. 678, 693 (2001)). Plaintiffs' fundamental interest in the unity and integrity of their families is protected by the Due Process Clause. See Stanley v. Illinois, 405 U.S. 645, 651 (1972) (recognizing that "the integrity of the family unit has found protection in the Due Process Clause of the Fourteenth Amendment").

89. The Defendants have identified no other interests that would be prejudiced by an Order compelling the immediate issuance of the visa petitions with the correct original priority date pursuant to INA § 203(h)(3), 8 U.S.C. § 1153(h)(3).

VIII. IRREPARABLE INJURY

90. As a result of Defendants' actions (and inactions) families are being torn apart, lives are destroyed and hope is vanquished.

91. To be sure, the Plaintiffs and those similarly situated to the individual named Plaintiffs will suffer irreparable injury unless this Court orders equitable relief. Such injury includes but is not limited to deprivation of due process and equal protection creating indefinite lengths of family separation.

92. Such separation causes Plaintiffs insufferable despair and extreme psychological, emotional, physical and economic hardship. Damages cannot adequately address the injuries suffered by Plaintiffs and their proposed class members.

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IX. CLAIM FOR RELIEF

93. The Plaintiffs are entitled to a writ of mandamus from this Court, which would compel the immediate and correct issuance of the visa petition, pursuant to 28 U.S.C. §§ 1651(a) and 1361, and 5 U.S.C. § 706(1).

94. The Plaintiffs are eligible for the payment of attorneys' fees, related expenses, and costs, pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.

X. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court:

1. Assume jurisdiction over this action;

2. Certify this action as a class action pursuant to Rule 23(b)(2), Fed.R.Civ.Proc.;

3. Declare that Defendants' denial of original priority date retention for derivative beneficiaries of approved petitions for alien relatives who have reached the age of 21 or over, violate the Child Status Protection Act; the Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.; the due process clause and equal protection guarantee of the Fifth Amendment to the United States Constitution; and Article II, Sections 1 and 3 of the United States Constitution;

4. Issue preliminary and permanent injunctions requiring that Defendants, their agents, employees, and successors in office timely adjudicate Form I-130 petitions presented by the individual named Plaintiffs, their proposed class members, and uphold the tenets of the CSPA.

5. Award Plaintiffs costs of suit and attorney's fees reasonably incurred as a result of this lawsuit; and

6. Grant such further relief as the Court may deem just and proper.

Dated: June 19, 2008

Respectfully Submitted,

Nancy E. Miller
Robert L. Reeves
Jeremiah Johnson
Joyce A. Komanapalli
REEVES & ASSOCIATES, A PLC
2 North Lake Ave., Ninth Floor
Pasadena, CA 91101

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge James V. Selna and the assigned discovery Magistrate Judge is Stephen J. Hillman.

The case number on all documents filed with the Court should read as follows:

SACV08- 688 JVS (SHx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

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NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

[ ] **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

[X] **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

[ ] **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

Nancy E. Miller, SBN 120031
Robert L. Reeves, SBN 92878
Jeremiah Johnson, SBN 227275
Joyce A. Komanapalli, SBN 231436
2 NOrth Lake Ave., Suite 950
Pasadena, CA 91101 (626)795-6777

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TERESITA G. COSTELO; LORENZO P. ONG, Individually and On Behalf of All Others Similarly Situated;

Plaintiff(s)

v.

MICHAEL CHERTOFF, Secretary of the Department of Homeland Security, See Attached

Defendant(s)

CASE NUMBER:

SACV08-688 JVS (SHx)

SUMMONS

TO: THE ABOVE-NAMED DEFENDANT(S):

YOU ARE HEREBY SUMMONED and required to file with this court and serve upon plaintiff's attorney Nancy E. Miller, whose address is:

Reeves and Associates, APLC
2 North Lake Ave., Suite 950
Pasadena, CA 91101
(626)795-6777

an answer to the [x] complaint [ ] _____ amended complaint [ ] counterclaim [ ] cross-claim which is herewith served upon you within 60 days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

CLERK, U.S. DISTRICT COURT

Date: JUN 20 2008

By: LA'REE HORN
Deputy Clerk

(Seal of the Court)

SUMMONS ATTACHMENT

TERESITA G. COSTELO, and LORENZO P. ONG,
Individually And On Behalf Of All Others Similarly Situated,

Plaintiffs,

v.

MICHAEL CHERTOFF, Secretary Of The Department Of Homeland Security; UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES; EMILIO T. GONZALEZ, Director, United States Citizenship And Immigration Services; DAVID TYLER, Director, National Visa Center; CHRISTINA POULOS, Acting Director, California Service Center, United States Citizenship and Immigration Services; and CONDOLEEZA RICE, Secretary of State,

Defendants.

UNITED S ES DISTRICT COURT, CENTRAL DISTRICT CALIFORNIA

CIVIL COVER SHEET

I(a) PLAINTIFFS (Check box if you are representing yourself ☐)

TERESITA G. COSTELO; LORENZO P. ONG, Individually and On Behalf of All Others Similarly Situated

(b) County of Residence of First Listed Plaintiff (Except in U.S. Plaintiff Cases):

DEFENDANTS

MICHAEL CHERTOFF, Secretary of the Department of Homeland Security, et al;

County of Residence of First Listed Defendant (In U.S. Plaintiff Cases Only):

(c) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)

Nancy E. Miller, SBN 120031
Robert L. Reeves , SBN 92878
Jeremiah Johnson, SBN 227275
Joyce A. Komanapalli, SBN 231436
2 North Lake Ave., Suite 950
Pasadena, CA 91101 (626)795-6777

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.)

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

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only

(Place an X in one box for plaintiff and one for defendant.)

	PTF	DEF		PTF	DEF
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	☐ 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 Multi-District Litigation ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☐ Yes ☒ No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: ☒ Yes ☐ No ☐ **MONEY DEMANDED IN COMPLAINT: $** _____

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Complaint for Declaratory, Mandamus and Injunctive Relief [Class Action]

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce/ICC Rates/etc.
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☒ 890 Other Statutory Actions
- ☐ 891 Agricultural Act
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Info. Act
- ☐ 900 Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loan (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Fed. Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury-Med Malpractice
- ☐ 365 Personal Injury-Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

TORTS PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/Accommodations
- ☐ 444 Welfare
- ☐ 445 American with Disabilities - Employment
- ☐ 446 American with Disabilities - Other
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence Habeas Corpus
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus/ Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt. Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litig.
- ☐ 791 Empl. Ret. Inc. Security Act

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS - Third Party 26 USC 7609

VIII(a). IDENTICAL CASES: Has this action been previously filed and dismissed, remanded or closed? ☒ No ☐ Yes

If yes, list case number(s):

FOR OFFICE USE ONLY: Case Number: _____

SACV08-688

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

CIVIL COVER SHEET

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

VIII(b). RELATED CASES: Have any cases been previously filed that are related to the present case? [X] No [ ] Yes

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

(Check all boxes that apply) [ ] A. Arise from the same or closely related transactions, happenings, or events; or

[ ] B. Call for determination of the same or substantially related or similar questions of law and fact; or

[ ] C. For other reasons would entail substantial duplication of labor if heard by different judges; or

[ ] D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: List the California County, or State if other than California, in which **EACH** named plaintiff resides (Use an additional sheet if necessary)

[ ] Check here if the U.S. government, its agencies or employees is a named plaintiff.

Los Angeles County

List the California County, or State if other than California, in which **EACH** named defendant resides. (Use an additional sheet if necessary).

[X] Check here if the U.S. government, its agencies or employees is a named defendant.

Orange County; Washington D.C.

List the California County, or State if other than California, in which **EACH** claim arose. (Use an additional sheet if necessary)

Note: In land condemnation cases, use the location of the tract of land involved.

Orange County; Washington D.C.

X. SIGNATURE OF ATTORNEY (OR PRO PER): _____ **Date** 06/19/2008

Nancy E. Miller, SBN 120031

Notice to Counsel/Parties: The CV-71 (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. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.G. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))