JUDGE PECHMAN

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NORTHWEST IMMIGRANT RIGHTS PROJECT; TRAVELERS & IMMIGRANTS AID OF CHICAGO; INTERNATIONAL INSTITUTE (San Francisco); JOHN DOES Nos. 1 through 8; JANE DOES Nos. 1 through 3, Plaintiffs, vs. UNITED STATES BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES; USCIS DIRECTOR EDUARDO AGUIRRE; DEPARTMENT OF HOMELAND SECURITY; TOM RIDGE, SECRETARY OF DEPARTMENT OF HOMELAND SECURITY; DEPARTMENT OF JUSTICE; ATTORNEY GENERAL JOHN ASHCROFT; DEPARTMENT OF STATE; COLIN POWELL, SECRETARY OF STATE, Defendants.	No. C88-00379MJP THIRD AMENDED COMPLAINT - CLASS ACTION

I. INTRODUCTION

1. This is a class action lawsuit brought on behalf of persons who are statutorily eligible for legalization pursuant to the Immigration Reform and Control Act of 1986 (IRCA), but who have been unlawfully denied access to legalization benefits by the Immigration and Naturalization Service ("INS") and now the Department of Homeland Security ("DHS"). They are subject to removal by the Department of Justice, and to being denied visas by the Department of State. In addition to individual plaintiffs, three immigrant legal services programing this action on behalf of their clients who have been injured by the challenged policies.

GIBBS HOUSTON PAUW
1000 SECOND AVENUE, SUITE 1600
SEATTLE, WASHINGTON 98104-1094
(206) 682-1080

2. IRCA comprehensively amended the Immigration and Nationality Act (INA), providing, *inter alia,* for a mechanism by which certain deportable aliens can legalize their status in the United States to permanent residents.

3. To qualify for legalization, a deportable alien must establish, *inter alia,* that s/he entered the United States "before January 1, 1982, and that he has resided continuously in the United States in an unlawful status since such date and through the date the applications filed..." INS §245A(a)(2), 8 U.S.C. §1255a(a)(2).

4. If the applicant entered the United States with a non-immigrant visa before January 1, 1982, the applicant must establish that (1) his or her period of authorized stay as a nonimmigrant expired before January 1, 1982 through the passage of time, or (2) his or her unlawful status (i.e. violation of non-immigrant status) was "known to the Government" as of such date. INA §245A(a)(2)(B), 8 U.S.C. §1255a(a)(2)(B).

5. The legalization provisions of IRCA created a right to apply for and have adjudicated applications for legalization during a twelve month period designated by the Attorney General. The Act provides mandatory benefits to those who meet the eligibility qualifications of the statute. The statute provides that "The Attorney General shall adjust the status" to lawful temporary resident.

6. Throughout the legalization application period, the Immigration and Naturalization Service ("INS") implemented regulations, policies and practices deterring plaintiffs and class members who entered the United States on non-immigrant visas from applying for legalization and preventing such individuals from applying. INS had a policy of rejecting applications from individuals deemed to be statutorily ineligible for legalization. This "pre-filing rejection policy" was applied at the front desk of INS offices, and is known as "front-desking". Pursuant to this "front-desking policy", INS refused to accept applications from the class members of this lawsuit. INS broadly disseminated information that plaintiffs and class members were not eligible to participate in the legalization program. INS instructed and/or trained Qualified Designated Entities (QDE's), established by Congress for the purpose of accepting legalization applications pursuant to INA §245A©), 8 U.S.C. §1255a©), not to prepare or accept applications from

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1000 SECOND AVENUE, SUITE 1600
SEATTLE, WASHINGTON 98104-1094
(206) 682-1080

plaintiffs and class members. The INS's "front-desking policy" was well known throughout the legalization application period, and many class members failed to apply for legalization substantially because of the front-desking policy. INS's regulations, policies and practices prevented plaintiffs and class members form accessing the administrative and judicial review procedure established by IRCA.

7. On September 30, 1996, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), Pub.L.No. 104-208, 110 Stat. 3009 (Sept. 30, 1996). According to §377 of IIRIRA:

> [N]o court shall have jurisdiction of any cause of action or claim by or on behalf of any person asserting an interest under this section unless such person in fact filed an application under this section [during the application period from May 6, 1987 to May 5, 1988], or attempted to file a complete application and application fee with an authorized legalization officer of the Service but had the application and fee refused by that officer.

The INS has used this provision to unlawfully and unconstitutionally block class members from access to the IRCA legalization program.

8. The INS and defendants have unlawfully denied and has refused to grant the benefits of interim stays of deportation and work authorization to plaintiffs and class members who qualify for legalization as required by INA §245©), 8 U.S.C. §1255a(e)(2).

9. The INS failed to properly and accurately publicize the benefits of the legalization program, as required INA §245A(I), 8 U.S.C. §1255a(I), and because of this failure plaintiffs and class members who would otherwise have completed the application process and been granted legalization did not complete the application process. Plaintiffs and class members were informed by INS and by its agents, including QDE's, that they did not qualify for legalization and were ineligible to apply. As a result, plaintiffs and class members were not legalized as Congress intended.

10. The INS and defendants have unlawfully withheld benefits of legalization from plaintiffs and class members who filed timely applications for legalization. INS and defendants have unlawfully refused to approve their applications, holding their applications in abeyance for the past fifteen years. During this time class members have been unable to travel outside the United States; they have been unable to obtain the permanent resident status to which they are entitled; they have

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1000 SECOND AVENUE, SUITE 1600
SEATTLE, WASHINGTON 98104-1094
(206) 682-1080

been unable to rejoin and live with family members, as is permitted under the immigration laws of the United States; and they have been denied administrative and judicial review.

11. The plaintiffs also complain that the INS and defendants have adjudicated legalization applications in an unlawful manner. The procedures arbitrarily and without a rational basis as applied to the plaintiffs and class members are substantially more burdensome than the procedures applied to other similarly situated applicants for legalization. The INS and defendants have not provided plaintiffs and class members a full and fair opportunity to establish that they are eligible for legalization. The INS and defendants have not permitted plaintiffs and class members access to relevant information included in agency files, information that would establish their eligibility for legalization. In adjudicating legalization applications, the INS and defendants have arbitrarily and without a rational basis imposed a burden of proof on plaintiffs and class members higher than the "preponderance of the evidence" standard which is required under IRCA and the Administrative Procedures Act, and which is used for other similarly situated applicants.

12. The plaintiffs also complain that timely applicants have had their applications wrongly denied, leaving them without work authorization, and depriving them of ability to obtain legal status for their family members.

13. The plaintiffs also complain that some class members who were approved initially for legalization, have since been subject to unlawful termination of their status, based on known to the government procedures challenged herein.

II. JURISDICTION

14. This court has jurisdiction pursuant to 28 U.S.C. §1331 (federal question jurisdiction); 28 U.S.C. §2201 (jurisdiction to render declaratory judgments); 28 U.S.C. §1361 (mandamus jurisdiction).

15. Declaratory judgment is sought pursuant to 28 U.S.C. §2202.

III. PARTIES

16. Plaintiff NORTHWEST IMMIGRANT RIGHTS PROJECT is a non-profit, legal services organization in the State of Washington which provides immigration legal services to low-income immigrants since [date]. It is the successor plaintiff organization to the WASHINGTON

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1000 SECOND AVENUE, SUITE 1600
SEATTLE, WASHINGTON 98104-1094
(206) 682-1080

ASSOCIATION OF CHURCHES Legalization Project, having merged that project into its programs some years ago. Its predecessor, former Plaintiff NORTHWEST IMMIGRANT RIGHTS PROJECT, and its predecessor, Washington Association of Churches, had and have clients who have been injured by defendants in a variety of ways relating to "known to the government procedures," including but not limited to, refusal to accept their applications, refusal to properly adjudicate their applications, denial of their applications, and refusal to provide application forms. Other clients did not file their applications substantially because of defendants' front desking policies. These clients are otherwise eligible for legalization but for the challenged practices of defendants. Plaintiff WASHINGTON ASSOCIATION OF CHURCHES sues on behalf of its clients.

17. Plaintiff TRAVELERS & IMMIGRANTS AID OF CHICAGO is an organization which provides, and at all relevant times has provided, legal and other assistance to individuals seeking immigration assistance. At all relevant times it was a Qualified Designated Entity ("QDE") authorized by the INS to accept legalization applications and assist in the preparation of such applications. It has, since 1968, assisted immigrants and refugees in, inter alia, legal matters regarding their status under the Immigration and Nationality Act. Plaintiff TRAVELERS & IMMIGRANTS AID OF CHICAGO, during the legalization application period and at all subsequent times, it has been prohibited from accepting and forwarding to INS legalization applications from Plaintiffs and class members Plaintiff TRAVELERS & IMMIGRANTS AID OF CHICAGO has statutory right, pursuant to INA §245A©), to accept and forward to INS late applications from plaintiffs and class members. Otherwise eligible clients of the TRAVELERS & IMMIGRANTS AID OF CHICAGO are deemed ineligible for legalization under defendants' challenged policies. Clients of Plaintiff TRAVELERS & IMMIGRANTS AID OF CHICAGO have been injured by defendants in a variety of ways relating to "known to the government procedures," , including but not limited to, refusal to accept their applications, refusal to properly adjudicate their applications, denial of their applications, and refusal to provide application forms. Other clients did not file their applications substantially because of defendants' front desking policies. These clients are otherwise eligible for legalization but for the challenged practices of defendants. TRAVELERS &

GIBBS HOUSTON PAUW
1000 SECOND AVENUE, SUITE 1600
SEATTLE, WASHINGTON 98104-1094
(206) 682-1080

IMMIGRANTS AID OF CHICAGO on behalf of its members and clients.

18. Plaintiff INTERNATIONAL INSTITUTE (SAN FRANCISCO) is a non-profit corporation dedicated, inter alia, to protecting the social and legal rights of immigrants, including immigrants seeking legalization under IRCA. At all relevant times, plaintiff INTERNATIONAL INSTITUTE (SAN FRANCISCO) has provided legal assistance to immigrants seeking legalization under IRCA. . Clients of Plaintiff INTERNATIONAL INSTITUTE (SAN FRANCISCO) had and have clients who have been injured by defendants in a variety of ways relating to "known to the government procedures," including but not limited to, refusal to accept their applications, refusal to properly adjudicate their applications, denial of their applications, and refusal to provide application forms. Other clients did not file their applications substantially because of defendants' front desking policies. These clients are otherwise eligible for legalization but for the challenged practices of defendants. Plaintiff INTERNATIONAL INSTITUTE (SAN FRANCISCO) sues on behalf of its clients.

19. Plaintiff JOHN DOE NUMBER 1, a resident of the State of Pennsylvania, entered the United States from Nigeria on an F-1 student visa on January 20, 1980. Prior to January 1, 1982 he violated the terms of his nonimmigrant visa by working without authorization, and he has federal tax records to establish this fact. In addition, he violated his status prior to January 1, 1982 by failing to take a full course of studies and by failing to file address reports as required under INA §265. He has since then maintained a continuous unlawful residence in the United States. He is a member of category 1 and category 2, as defined below. JOHN DOE NUMBER 1 attempted to file a complete application and application fee with an authorized legalization office of the Service but had the application and fee refused by such authorized representative because of the INS's policies and practices challenged in this lawsuit. JOHN DOE NUMBER 1 was told that he was not eligible for the legalization program and that the INS legalization office would not accept his application for filing. JOHN DOE NUMBER 1 is eligible for legalization, but for the fact that he was prevented from applying during the application period because of INS's unlawful policies and practices challenged herein.

20. Plaintiff JANE DOE NUMBER 1, a resident of the State of California, entered the

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1000 SECOND AVENUE, SUITE 1600
SEATTLE, WASHINGTON 98104-1094
(206) 682-1080

United States from Malaysia on an F-1 student visa in 1977. Prior to January 1, 1982 she violated the terms of her nonimmigrant visa by working without authorization. In addition, she failed to comply with the address reporting requirements of INA §265. She has since then maintained a continuous unlawful residence in the United States. She is a member of category 1, as defined below. JANE DOE NUMBER 1 took all of the steps that she reasonably could to file an application for legalization during the application period, but was prevented from completing the application process substantially because of INS's front-desking policy. During the legalization application period JANE DOE NUMBER 1 went to an INS Office in Los Angeles, California to apply for legalization. The Immigration Officer at the front counter refused to give JANE DOE NUMBER 1 the necessary application forms for the legalization program. JANE DOE NUMBER 1 was not made aware of any appeal from the decision to block her from completing the legalization process. She is informed and believes that no administrative appeal exists. INS's failure to publicize correct information regarding eligibility criteria was also a cause of her failure to complete the application process. JANE DOE NUMBER 1 is eligible for legalization, but for the fact that she was prevented from applying because of INS's unlawful policies and practices challenged herein.

21. Plaintiff JOHN DOE NUMBER 2, a resident of the State of Illinois, entered the United States from Cameroon on an F-1 student visa on January 14, 1981. Prior to January 1, 1982 he violated the terms of his nonimmigrant visa by working without authorization, and he has records from the Social Security Administration establishing this fact. He also failed to comply with the address reporting requirements of INA section 265. He has since then maintained a continuous unlawful residence in the United States. He is a member of category 1, as defined below. JOHN DOE NUMBER 2 took all of the steps that he reasonably could to file an application for legalization during the application period; he failed to file an application for legalization substantially because of INS's front-desking policy. He received incorrect information concerning eligibility requirements through the INS outreach program. JOHN DOE NUMBER 2 was aware that pursuant to INS's front-desking policy, INS had refused to accept applications and application fees from similarly-situated individuals who attempted to apply for legalization, and

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that the Immigration Officers at the front counter refused to accept their applications. Based on these events, JOHN DOE NUMBER 2 understood that he was not eligible to participate in the legalization program, that the Immigration Service would not accept his application and application fee, and that he would not be issued work authorization if he attempted to apply. INS's failure to publicize correct information regarding eligibility criteria was also a cause of his failure to complete the application process. JOHN DOE NUMBER 2 is eligible for legalization but for the fact that he failed to apply substantially because of INS's front-desking policy.

22. Plaintiff JOHN DOE NUMBER 3, a resident of the State of California, entered the United States from Nigeria as a student on December 26, 1980. Prior to January 1, 1982 JOHN DOE NUMBER 3 violated the terms of his nonimmigrant visa by by working without authorization, and he has income tax returns and Social Security records to establish this fact. In addition, he failed to comply with the terms of his visa by failing to file required address reports and by dropping out of school prior to January 1, 1982. He is a member of categories 1 and 2, as defined below. JOHN DOE NUMBER 3 filed an application for legalization during the application period, and his application should have been approved and he should be a permanent resident by this time. However, his application has not yet been approved because of the INS's "known to the government" policies and practices challenged in this lawsuit. But for INS's unlawful policies and practices, JOHN DOE NUMBER 3 would have been approved for permanent residence many years ago.

23. JOHN DOE NUMBER 4, a resident of the Western District of the State of Washington, entered the United States from Canada in 1981without inspection. After a three week trip back to his homeland, the Cameroon, he re-entered the United States in 1984 on an F-1 student visa that was invalid. He is a member of category 3 as defined below. JOHN DOE NUMBER 4 attempted to file a completed amnesty application with application fee at the Seattle INS office in December 1987. The INS employee at the front counter reviewed his application and told him that he was not eligible to apply and refused to accept his application and application fee because of the INS's "known to the government" policies and practices challenged in this lawsuit. JOHN DOE NUMBER 4 was told that he is not eligible for the legalization program and that the INS

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1000 SECOND AVENUE, SUITE 1600
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(206) 682-1080

legalization office would not accept his application for filing.. JOHN DOE NUMBER 4 is eligible for legalization but for the fact that he was prevented from applying because of INS's unlawful policies and practices challenged herein.

24. Plaintiff JOHN DOE NUMBER 5, a resident of the Western District of the State of Washington, entered the United States from Nigeria on an F-1 student visa in 1980. Prior to January 1, 1982 he violated the terms of his nonimmigrant visa by transferring schools without prior INS approval. In addition, he failed to comply with the address reporting requirements of INA §265. He has since then maintained a continuous unlawful residence in the United States. He is a member of categories 1 and 2, as defined below. JOHN DOE NUMBER 5 took all of the steps that he reasonably could to file an application for legalization during the application period, but was prevented from completing the application process substantially because of INS's front-desking policy. During the legalization application period JOHN DOE NUMBER 5 went to the INS Office in Seattle to apply for legalization. The Immigration Officer at the front counter refused to give JOHN DOE NUMBER 5 the necessary application forms for the legalization program. JOHN DOE NUMBER 5 was not made aware of any appeal from the decision to block him from completing the legalization process. He is informed and believes that no administrative appeal exists. INS's failure to publicize correct information regarding eligibility criteria was also a cause of his failure to complete the application process. JOHN DOE NUMBER 5 is eligible for legalization, but for the fact that he was prevented from applying because of INS's unlawful policies and practices challenged herein.

25. Plaintiff JANE DOE NUMBER 2, a resident of the State of South Carolina, entered the United States from Egypt on August 22, 1979. JANE DOE NUMBER 2 violated the terms of her nonimmigrant visa by dropping out of school prior to January 1, 1982. In addition, she failed to comply with the address reporting requirements of INA §265 prior to January 1, 1982. She is a member of categories 1 and 2, as defined below. JANE DOE NUMBER 2 filed an application for legalization during the application period, and her application was denied on the basis that she failed to satisfy the "known to the government" requirement. The Legalization Appeals Unit has issued a final denial of her application for legalization. In denying JANE DOE NUMBER 2's

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application for legalization, INS failed to follow the procedures required by law for adjudicating "known to the government" cases. JANE DOE NUMBER 2 is eligible for legalization and her application for legalization would be approved, but for the failure of the defendants to follow correct and lawful procedures for adjudicating "known to the government" cases.

26. Plaintiff JOHN DOE NUMBER 6, a resident of the State of Oregon, entered the United States from Saudi Arabia on an F-1 student visa in December 1979. Prior to January 1, 1982 he violated the terms of his nonimmigrant visa by failing to take a full course of studies and by failing to file address reports as required under INA §265. He has since then maintained a continuous unlawful residence in the United States. He is a member of category 1 and category 2, as defined below. JOHN DOE NUMBER 6 attempted to file a complete application and application fee with an authorized legalization office of the Service in Portland, Oregon prior to the May 5, 1988 deadline, but had the application and fee refused because of the INS's policies and practices challenged in this lawsuit. JOHN DOE NUMBER 6 was told that he was not eligible for the legalization program and that the INS legalization office would not accept his application for filing. JOHN DOE NUMBER 6 is eligible for legalization, but for the fact that he was prevented from applying during the application period because of INS's unlawful policies and practices challenged herein.

27. Plaintiff JANE DOE NUMBER 3 is a citizen of the Philippines, residing in Seattle, Washington. She entered the United States in April 1981 on a visitor visa. In May 1981 JANE DOE NUMBER 3 began attending high school in violation of her status. She subsequently submitted an application to change status to F-1 student status. Prior to January 1, 1982 JANE DOE NUMBER 3 willfully failed to comply with the address report requirements of INA 265. She filed a timely application for amnesty pursuant to INA 245A at Seattle, Washington, but was denied by the Regional Processing Facility in 1988. She filed a timely appeal to the Legalization Appeals Unit, and the appeal was denied on September 19, 2000. JANE DOE NUMBER 3's application for legalization was denied because INS failed to follow correct and lawful procedures concerning proof of a pre-1/1/82 violation that was "known to the government". If the Immigration Service had followed correct and lawful procedures relating to the "known to the government"

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requirement, then her application would have been approved. Since her application was denied, JANE DOE NUMBER 3 has been unable to renew her work authorization card and she no longer has a stay of removal because her application for legalization is no longer pending.

28 Plaintiff JOHN DOE NUMBER 7 is a citizen of Iran, residing in the greater Los Angeles. He entered the United States in 1978 as an F-1 student. Prior to January 1, 1982, he violated the address reporting requirements of INA 265, though he was informed of the requirements in the I-20 forms issued by the schools he attended. He has resided continuously in the United States since 1978 and meets all the eligibility requirements for INA 245A. In December 1987 he filed a timely I-687 application with an INS office in Los Angeles and was granted work authorization. He was interviewed by INS in Los Angeles in February 1988 and recommended for approval. In 1989, he was approved for lawful temporary resident status by the INS and issued an INS Temporary Resident card to show his status. Subsequently JOHN DOE NUMBER 7 applied for adjustment to permanent resident status under the legalization program. In 1990, INS issued a Notice of Intent to Terminate his status as a Temporary Resident. The notice informed him of the intent to terminate his status unless he provided evidence that his violation of status prior to January 1, 1982 was "known to the government." He provided further evidence as requested, but INS has still not approved his application for adjustment to permanent resident status. JOHN DOE NUMBER 7 is unable to complete the legalization process and obtain the benefits he is entitled to under the legalization program because INS has failed to follow correct and lawful procedures concerning proof of a pre-1/1/82 violation that was "known to the government". If the Immigration Service had followed correct and lawful procedures relating to the "known to the government" requirement, then JOHN DOE NUMBER 7 would have obtained permanent resident status under the legalization program many years ago.

29. Plaintiff JOHN DOE NUMBER 8, a resident of the Western District of the State of Washington, entered the United States from the Philippines on or about April 15, 1981 on a nonimmigrant visitor visa, and shortly thereafter he changed status to a nonimmigrant student. Prior to January 1, 1982 JOHN DOE NUMBER 8 violated the terms of his nonimmigrant visa by by working without authorization, and by failing to comply with the address reporting

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1000 SECOND AVENUE, SUITE 1600
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requirements. He is a member of category 1. JOHN DOE NUMBER 8 has maintained a continuous unlawful residence in the United States since that time. JOHN DOE NUMBER 8 filed an application for legalization during the application period. His application for legalization should have been approved and he should be a permanent resident by this time. His application has not yet been approved because of the INS's "known to the government" policies and practices challenged in this lawsuit. But for INS's unlawful policies and practices, JOHN DOE NUMBER 8 would have been approved for permanent residence many years ago.

30. Defendant UNITED STATES BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES ("USCIS" or "Immigration Service") is the federal agency within the Department of Homeland Security responsible for the lawful administration and implementation of the provisions of the Immigration and Nationality Act that are at issue in this lawsuit. Prior to March 1, 2003, the IMMIGRATION AND NATURALIZATION SERVICE (INS) was the federal agency responsible for the lawful administration and implementation of these provisions. The USCIS is the successor agency of the INS.

31. Defendant EDUARDO AGUIRRE is the Director of Defendant CIS. He is sued in his official capacity.

32. Defendant DEPARTMENT OF HOMELAND SECURITY is the federal agency which includes Defendant CIS since March 1, 2003.

33. Defendant TOM RIDGE is the Secretary of the Department of Homeland Security. Defendant RIDGE is the official responsible for the administration of the INS and the implementation and enforcement of the Immigration and Nationality Act. Defendant RIDGE is sued in his official capacity.

34. Defendant DEPARTMENT OF JUSTICE is the federal agency of which INS was a part prior to March 1, 2003. The Department of Justice continues to be responsible for detention and removal of aliens.

35. Defendant JOHN ASHCROFT is the Attorney General of the United States and is sued in his official capacity only. Defendant ASHCROFT is charged with the enforcement of the Immigration and Nationality Act, including the handling of immigration cases pending before the

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1000 SECOND AVENUE, SUITE 1600
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(206) 682-1080

Immigration Court under the Executive Office of Immigration Review.

36. Defendant SECRETARY OF STATE is responsible for overseas issuance of visas to enter the United States and for implementation of the INA abroad.

37. Defendant COLIN POWELL is the Secretary of State. He is sued in his official capacity only. He is charged with the implementation of the Immigration and Nationality Act at U.S. consulates abroad.

IV. BACKGROUND

38. The Immigration Reform and Control Act (IRCA) comprehensively amended the Immigration and Nationality Act (INA), 8 U.S.C. §1101 et seq., providing, inter alia, for a mechanism by which certain deportable aliens were able to legalize their status in the United States, by first adjusting to lawful temporary resident status, and then to lawful permanent resident status.

39. To qualify for legalization, a deportable alien must establish, inter alia, that he entered the United States before January 1, 1982, and that he has resided continuously in the United States in an unlawful status since such date and through the date the application is filed . INA §245A(a)(2), 8 U.S.C. §1255a(a)(2).

40. If the applicant entered the United States with a non-immigrant visa before January 1, 1982, the applicant must establish that (a) his or her period of authorized stay as a nonimmigrant expired before January 1, 1982, through the passage of time, or (b) his or her unlawful status (i.e. violation of non-immigrant status) was "known to the Government" as of such date. INA §245A(a)(2)(B), 8 U.S.C. §1255a(a)(2)(B).

41. The Immigration Service adopted policies and practices designed to disqualify from the legalization program plaintiffs and class members who entered the United States on ;nonimmigrant visas prior to January 1, 1982 and whose visas were facially valid until after January 1, 1982. The Immigration Service had a policy and practice, on a nationwide basis, of deterring plaintiffs and class members from applying and making it significantly more difficult for them to file applications. Through its Congressionally mandated publicity program, INS disseminated information that such individuals were not eligible for legalization and should not file applications.

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(206) 682-1080

42. Plaintiffs challenge the INS's regulations and INS practices defining and interpreting the term "known to the Government", as that term is used in INA §245A. Based on such regulations and practices, INS deemed the plaintiffs and class members to have non-meritorious applications for legalization, and INS refused to accept applications submitted by plaintiffs and class members. Plaintiffs and class members were turned away by the Immigration Service during the one year legalization application period. The Immigration Service refused to accept applications from such individuals; INS refused to provide application forms to such individuals; INS informed such individuals that they were not eligible to apply for legalization and told such individuals that they should not apply for the legalization program; and INS widely publicized their policy of deeming such individuals statutorily ineligible for the legalization program and refusing to accept such applications. INS told its QDE's that such persons were not eligible under its regulations and their applications would be rejected. This program of disinformation was specifically targeted at plaintiffs and class members who had entered the United States on nonimmigrant visas.

43 The front-desking policy was one aspect of the policies and practices used by INS to discourage and deter many otherwise eligible individuals from applying for legalization. Many class members of this lawsuit failed to file an application for legalization during the one year application period substantially because of INS's front-desking policy.

44. As a result of INS's policies and practices, the community of individuals and agencies assisting legalization applicants became aware that the Immigration Service deemed plaintiffs and class members statutorily ineligible for legalization and would not accept their legalization applicants. Qualified Designated Entities ("QDE's") were contractually obligated to INS to follow INS regulations and policies, and pursuant to such contractual obligation QDE's turned away plaintiffs and class members. QDE's, other voluntary agencies and community organizations, and attorneys advised potential applicants, specifically the plaintiffs and class members of this lawsuit, that they were not eligible to participate in the legalization program, that the Immigration Service would not accept their applications, that such individuals would not be granted work authorization if they applied for legalization, and that they might be deported if they attempted to apply.

45. Under the regulations as originally promulgated, the statutory term "known to the

GIBBS HOUSTON PAUW
1000 SECOND AVENUE, SUITE 1600
SEATTLE, WASHINGTON 98104-1094
(206) 682-1080

Government" "means [known to] the Immigration and Naturalization Service." 8 C.F.R. §245a.1(d); 52 Federal Register at 16208 (May 1, 1987). The regulations further provided that:

> An alien's unlawful status was "known to the Government" only if:
>
> (1) The Service received factual information constituting a violation of the alien's nonimmigrant status from any agency, bureau or department, or subdivision thereof, of the Federal government, and such information was stored or otherwise recorded in the official Service alien file, whether or not the Service took follow-up action on the information received. In order to meet the standard of "information constituting a violation of the alien's nonimmigrant status," the alien must have made a clear statement or declaration to the other federal agency, bureau or department that he or she was in violation of nonimmigrant status; or
>
> (2) An affirmative determination was made by the Service prior to January 1, 1982 that the alien was subject to deportation proceedings ...

8 C.F.R. §245a.1(d)(1) and (2) (1987), 52 Federal Register 16208 (May 1, 1987).

46. On November 17, 1987, defendants caused publication in the Federal Register of an "interim rule" which amended their "known to the Government" policy. Defendants added the following categories of applicants to those whose violation of status prior to January 1, 1982 was deemed "known to the Government":

> [4] [Applicants who produce] documentation from a school approved to enroll foreign students under §214.3 which establishes that the said school forwarded to the Service a report that clearly indicated the applicant had violated his or her nonimmigrant student status prior to January 1, 1982. In order to be eligible under this part, the applicant must not have been reinstated to nonimmigrant status ...
>
> [11] A nonimmigrant who entered the United States for the duration of status ("D/S") in one of the following classes, A, A-1, A-2, G, G-1, G-2, G-3 or G-4, whose qualifying employment terminated ... prior to January 1, 1982 ...
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> [12] A nonimmigrant who entered the United States for duration of status ("D/S") in one of the following classes, F, F-1 or F-2 who completed a full course of study ... and whose time period to depart if any ... after completion of study expired prior to January 1, 1982 ...
>
> [13] [A]n alien from an independent country of the Western hemisphere who was present in the United States prior to March 11, 1977 and was known by the INS to have a priority date for the issuance of an immigrant visa between July 1, 196 and December 31, 1976 ... [and]
>
> [14] An alien who filed an asylum application prior to January 1, 1982 ...

8 C.F.R. §245a.1(d)(4) and §245a.2(b)(11) - (14), 52 Federal Register 43845 (November 17, 1987).

47. On June 22, 1988, after the legalization application period was over, defendant INS

GIBBS HOUSTON PAUW
1000 SECOND AVENUE, SUITE 1600
SEATTLE, WASHINGTON 98104-1094
(206) 682-1080

promulgated regulations in the Federal Register and again modified 8 C.F.R. §245a.1(d)(4), the rule governing students who violated their student status prior to January 1, 1982. 53 Federal Register 23880. Said regulation now reads as follows:

> §245a.1 Definitions
>
> (d) ...
> (4) The applicant produces documentation from a school approved to enroll foreign students under §214.3 which establishes that the said school forwarded to the Service a report that clearly indicated the applicant had violated his or her nonimmigrant student status prior to January 1, 1982. A school may submit an affirmation that the school did forward to the Service the aforementioned report and that the school no longer has available copies of the actual documentation sent. In order to be eligible under this part, the applicant must not have been reinstated to nonimmigrant student status. [Emphasis supplied to indicate new language.]

48. Plaintiffs and their proposed class members in the following categories are eligible for legalization under the statute but have been deemed ineligible under defendants' unlawful regulations and policies, and have been discouraged or prevented from applying for legalization substantially because of INS's front-desking policy:

> [1] Those who violated the terms of their nonimmigrant status prior to January 1, 1982 in a manner known to the government because documentation (including the absence of records) existed in one or more government agencies which, taken as a whole, would warrant a finding that the applicant was in an unlawful status prior to January 1, 1982; or
>
> [2] Those who violated the terms of their nonimmigrant visas and whose violations were required to be made known to the INS pursuant to then existing regulations, but who are unable pursuant to 8 C.F.R. §245a.1(d) and §245a.2(d) to establish to the satisfaction of INS for purposes of legalization eligibility, that such violation was made known to INS because INS either destroyed such records or failed to store, input or otherwise record such information in the official Service alien file; or
>
> [3] Those who after January 1, 1982 continuously maintained an unlawful residence in the United States, and who applied for and unlawfully received reinstatement to nonimmigrant status or change of nonimmigrant status pursuant to INS §248, or adjustment or status pursuant to INA §245, or some other immigration benefit from INS, or the Department of State.

48. Section 245A(e)(2) of the INA, provides that an alien who presents a prima facie application for legalization may not be deported and must be granted work authorization until a final determination on the application has been made. Under INS's policies and practices, plaintiffs and class members of have been deemed not to have prima facie applications. Because of defendants' practice and policy of deterring plaintiffs and class members from applying for legalization and preventing such individuals from applying, plaintiffs and class members have been

GIBBS HOUSTON PAUW
1000 SECOND AVENUE, SUITE 1600
SEATTLE, WASHINGTON 98104-1094
(206) 682-1080

denied their statutory rights to stays of deportation and temporary work authorization or extension of same pursuant to §245A(e)(2), and have not been able to obtain access to administrative and judicial review of their claims to their statutory benefits.

49. Because of INS's unlawful policies and practices, plaintiffs and class members were turned away when they attempted to file applications for legalization. These individuals were not granted work authorization and stays of deportation; their applications were not accepted; they were denied the benefits Congress intended to bestow upon them; and they were prevented from obtaining administrative and judicial review as provided in IRCA.

50. Throughout the legalization application period, the Immigration Service refused to accept applications from plaintiffs and class members of this lawsuit; INS deemed such applicants to be statutorily ineligible for legalization, and deemed their applications to be frivolous. INS informed such individuals that they could be put in deportation proceedings if they attempted to file applications for legalization. INS told plaintiffs and class members not to apply for legalization and denied them their right to apply.

51. Throughout the legalization application period, the Immigration Service failed to provide correct and accurate information to plaintiffs and class members concerning their rights to apply for legalization and concerning their rights to legalization under IRCA; widely disseminated erroneous information that caused individuals to fail to apply; and caused a wide array of attorneys, immigration consultants, organizations and the media to disseminate INS's misinformation to plaintiffs and class members.

55. On September 30, 1996, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), section 377 of which provides:

> [N]o court shall have jurisdiction of any cause of action or claim by or on behalf of any person asserting an interest under this section unless such person in fact filed an application under this section within the period specified by subsection (a)(1) [May 5, 1987 to May 4, 1988], or attempted to file a complete application and application fee with an authorized legalization officer of the Service but had the application and fee refused by that officer.

According to the DHS, the only individuals who are authorized to bring claims are individuals who tendered a complete application and application fee to on Immigration Service office. DHS refuses to acknowledge claims of class members who "attempted to file a complete application

GIBBS HOUSTON PAUW
1000 SECOND AVENUE, SUITE 1600
SEATTLE, WASHINGTON 98104-1094
(206) 682-1080

and application fee". Furthermore, DHS refuses to acknowledge claims of class members who failed to file applications substantially because of INS's front-desking policy.

56. Plaintiffs and members of the proposed class who filed applications in a timely manner have been subjected to unfair and discriminatory adjudication procedures. Such plaintiffs and class members have been required to meet an impossibly difficult burden of proof, one which contravenes the Administrative Procedures Act and governing case law.

57. When INS adjudicates legalization applications, it has a policy of reviewing only information contained in an applicant's INS "A" file, but not other information in INS records maintained elsewhere, such as "alpha files", I-94 files, and address report lists. When INS adjudicates an application to determine whether a violation of status was "known to the Government," INS does not review all relevant INS records; INS does not provide the applicant with access to all relevant INS records; and INS does not disclose that it does not review all INS records. As a result, a determination as to whether the "known to the Government" standard has been met is made without a review of all relevant information; and a record adequate for administrative and judicial review is not compiled.

58. The INS has a policy and practice of not adjudicating legalization applications timely filed by individuals who fall in one or more of the proposed classes in this lawsuit. As a result, these plaintiffs and class members have not been able to adjust their status and have been unlawfully denied benefits to which they are statutorily entitled. Because they have not been approved for legalization, their family members have been unable to obtain legal status. The applicants have been unable to obtain administrative and judicial review of INS's unlawful practices and policies.

59. At various times during the course of this litigation, the INS has finally denied pending legalization applications of class members for “known to the government” reasons, which are challenged herein. Class members with a finally denied legalization application are not able to obtain work authorization nor a stay of removal. Such class members cannot obtain judicial review of the denial without turning themselves in to DHS to be placed in removal proceedings.

60. Some class members did obtain approval of their applications, but INS or its successor

GIBBS HOUSTON PAUW
1000 SECOND AVENUE, SUITE 1600
SEATTLE, WASHINGTON 98104-1094
(206) 682-1080

agency later decided to rescind the approval and/or terminate the applicant's temporary resident status. The INS has taken steps to terminate, or has terminated the temporary resident status granted to class members, and has refused to adjust their status to permanent resident.

V. CLASS ACTION ALLEGATIONS

61. Plaintiffs bring this action on behalf of themselves and all other persons similarly situated pursuant to F.R.C.P. Rules 23(a) and 23(b). The subclasses, as proposed by plaintiffs, consist of:

> All persons who entered the United States in a non-immigrant status prior to January 1, 1982, who are otherwise eligible for legalization under INA §245A, 8 U.S.C. §1255a, who were deterred from filing an application for legalization substanially because of INS's regulations and policies, INS's dissemination of incorrect information on eligibility, or who filed a legalization application which has been rejected, denied, approved and then subsequently subjected to the termination process, or not adjudicated, and who:
>
> [1] Violated the terms of their nonimmigrant status prior to January 1, 1982 in a manner known to the government because documentation (including the absence of certain records) existed in one or more government agencies which, taken as a whole, would warrant a finding that the applicant was in an unlawful status prior to January 1, 1982; and/or
>
> [2] Violated the terms of their nonimmigrant visas before January 1, 1982, but INS records for the relevant period, including required school and employer reports of status violations, were not maintained in the official Service alien file or were destroyed by INS and the person is unable to meet the requirements of 8 C.F.R. §245a.1(d) and §245a.2(d) without such records; and/or
>
> [3] After January 1, 1982 continuously maintained an unlawful residence in the United States and who, after January 1, 1982 applied for and unlawfully received a reinstatement to nonimmigrant status, change of nonimmigrant status pursuant to INA §248, adjustment of status pursuant to INA §245, or some other immigration benefit from INS, or the Department of State.

62. The requirements of Rules 23(a) and 23(b)(2) are met in that the class is so numerous that joinder of all members is impracticable (plaintiffs estimate that there are thousands of class members), there are questions of law and fact common to the class (including whether defendants' interpretation of §245A(a)(2)(B) and §245A(a)(2)(A) is in compliance with the statute, and the equal protection and due process guarantees of the Fifth Amendment, whether class members' violation of their nonimmigrant visas was "known to the Government" as required by statute, and whether class members continue to maintain an unlawful residence), the claims of the representative parties are typical of the claims of the class, the representative parties will fairly

GIBBS HOUSTON PAUW
1000 SECOND AVENUE, SUITE 1600
SEATTLE, WASHINGTON 98104-1094
(206) 682-1080

and adequately represent the interests of the class because they are represented by pro bono counsel with extensive expertise in class action litigation regarding the rights of immigrants, and the party opposing the class has acted on grounds generally applicable to the class, thereby making appropriate final injunctive relief with respect to the class as a whole.

VI. IRREPARABLE INJURY

63. Plaintiffs, the members and clients of the plaintiff organizations, and members of the plaintiff class, have suffered and will suffer irreparable harm because of defendants' challenged policies and practices as described throughout this complaint. Plaintiffs, members and clients of the plaintiff organizations, and members of the plaintiff class have experienced and will continue to experience improper denial of the right to apply for legalization, issuance of employment authorization, loss of employment, loss of family unity benefits, delays in obtaining lawful permanent resident status, and possible deportation.

VII. CLAIMS FOR RELIEF

A. First Claim for Relief
Defendants' Policy of Deterring Applicants From Filing Applications

64. Plaintiffs reallege and by this reference incorporate the allegations contained in paragraphs 1 through 63.

65. The defendants' regulations adopted at 8 C.F.R. §245a.1(d)(2), 245.2(b) and .2(c), and the policies and practices adopted pursuant thereto, including refusing to provide application forms, deterring students and other individuals who entered the United States before January 1, 1982 on nonimmigrant visas that were facially valid after January 1, 1982 and who were otherwise qualified for legalization, from applying for legalization, making it more difficult for such individuals to submit applications for legalization, and such regulations, practices and policies constitute a violation of and are inconsistent with §245A(a) (application rules and procedures), §245A(e) (work authorization and stays of deportation), §245A(f) (administrative and judicial review) and §245A(I) (dissemination of information) of the Immigration and Nationality Act, §§701-706 of the Administrative Procedures Act, and also constitute a violation of and are inconsistent with the Due Process Clause and the Equal Protection Guarantee of the United States

GIBBS HOUSTON PAUW
1000 SECOND AVENUE, SUITE 1600
SEATTLE, WASHINGTON 98104-1094
(206) 682-1080

Constitution.

B. Second Claim for Relief
Defendants' Dissemination and Publication of Incorrect Information Concerning the Legalization Program

66. Plaintiffs reallege and by this reference incorporate the allegations contained in paragraphs 1 through 63.

67. Defendants' policy and practice of failing to provide correct and accurate information to individuals eligible for legalization concerning both their rights to apply for legalization and concerning their rights to legalization under IRCA; widely disseminating erroneous and unlawful regulations policies, practices that (1) caused individuals to fail to apply, (2) caused a wide array of attorneys, immigration consultants, organizations and the media, relying on such illegal and incorrect regulations, policies and practices, to misinform otherwise eligible individuals, and refuse to assist them in filing legalization applications, resulting in the failure of plaintiffs and class members to timely complete the application process, and (3) resulted in improper expulsions of and denials of temporary stays of deportation and work authorization to individuals eligible for legalization, violates the rights of plaintiffs and class members under §245A(a), (e), (f) and (I), and under the Due Process Clause and the Equal Protection Guarantee of the Fifth Amendment to the U.S. Constitution.

C. Third Claim for Relief
Defendants' Front-Desking Policy

68. Plaintiffs reallege and by this reference incorporate the allegations contained in paragraphs 1 through 63.

69. Defendants' front-desking policy, which (1) caused individuals to fail to apply for legalization during the one year application period, (2) caused a wide array of attorneys, immigration consultants, organizations and the media to misinform otherwise eligible individuals, and refuse to assist them in filing legalization applications, resulting in the failure of plaintiffs and class members to timely complete the application process, and (3) resulted in improper

GIBBS HOUSTON PAUW
1000 SECOND AVENUE, SUITE 1600
SEATTLE, WASHINGTON 98104-1094
(206) 682-1080

expulsions of and denials of temporary stays of deportation and work authorization to individuals eligible for legalization, violates the rights of plaintiffs and class members under §245A(a), (e), (f) and (I), and under the Due Process Clause and the Equal Protection Guarantee of the Fifth Amendment to the U.S. Constitution.

D. Fourth Claim for Relief
Defendants' Denial of Temporary Stays of Deportation and Employment Authorization

70. Plaintiffs reallege and by this reference reincorporate the allegations contained in paragraphs 1 through 63.

71. Defendants' regulations, policies and practices as challenged above have denied and continue to deny temporary stays of deportation and employment authorization to plaintiffs and class members in violation of INA §245A(e)(2), 8 U.S.C. §1255a(e)(2), and the due process and equal protection guarantees of the Fifth Amendment to the United States Constitution.

E. Fifth Claim for Relief
Defendants' Regulations and Policies of Refusing to Accept Evidence of Government Knowledge of a Violation of Status

72. Plaintiffs reallege and by this reference incorporate the allegations contained in paragraphs 1 through 63.

73. The defendants' regulations and policies defining acceptable proof of government knowledge to meet the "known to the government" element, including regulations promulgated at 8 C.F.R. §245a.1(d) and procedures for adjudicating legalization applications, impose a much higher burden of proof and impose greater procedural burdens on plaintiffs and class members, including (1) individuals whose violation of status was not recorded in an "official Service alien file" ("A-file"), but can be shown by an I-94 card or other credible documentation (or the absence of records, such as the lack of required quarterly or annual address reports or AR-11 forms) that exists in one or more federal agency (including INS); (2) students and temporary workers who can establish that their violation of status was reported to INS, but who are unable to obtain records in INS files showing that such a report was made (while not requiring such proof from students with

GIBBS HOUSTON PAUW
1000 SECOND AVENUE, SUITE 1600
SEATTLE, WASHINGTON 98104-1094
(206) 682-1080

duration of status visas who graduated before January 1, 1982, or from diplomats, consular officers and other officials and employees of accredited foreign governments or international organizations and their immediate families); and (3) nonimmigrants who were improperly reinstated to status after January 1, 1982, all of whom are unable, under INS practices and procedures, including destruction of records after a specified time period or failure to retain them in the "official Service alien files", to obtain reasonable access to relevant records and documents maintained by INS in order to support their claims to legalization. These regulations, policies and procedures are in violation of and inconsistent with §245A(a)(2)(B) of the Immigration and Nationality Act, the Administrative Procedures Act, 5 U.S.C. §§551, et seq., the Due Process Clause of the Fifth Amendment and the Equal Protection Guarantee of the United States Constitution.

F. Sixth Claim for Relief
Defendants' Failure to Adopt Its Policies and Procedures in Compliance with the APA

74. Plaintiffs reallege and by this reference incorporate the allegations contained in paragraphs 1 through 63.

75. The defendants' policies and practices challenged in the prior claims, *inter alia* its Legalization Wires, were not published in the Federal Register although such instructions constitute substantive rules of general applicability, statements of general policy, and interpretations of general applicability within the meaning of the Freedom of Information Act, 5 U.S.C. §552(a)(1)(D), and are thereby required to be published in the Federal Register. The failure to solicit and consider public comment regarding such instructions violates the APA, 5 U.S.C. §553(b)-(c). The failure to comply with such Acts renders the instructions void and inapplicable to plaintiffs and the class. The legalization regulations issued by defendants on May 1, 1987, were similarly issued without publication of proposed regulations, the opportunity for public comment, and consideration of public comment, in violation of the Administrative Procedure Act, 5 U.S.C. §553(b)-(c).

GIBBS HOUSTON PAUW
1000 SECOND AVENUE, SUITE 1600
SEATTLE, WASHINGTON 98104-1094
(206) 682-1080

G. Seventh Claim for Relief
Defendants' Failure to Grant Advance Parole

76. Plaintiffs reallege and by this reference incorporate the allegations contained in paragraphs 1 through 63.

77. Defendants' policy and practice of refusing to grant advance parole to plaintiffs and class members to permit brief, innocent and casual absences from the United States other than for family emergencies involving the illness or death of immediate family members, and defendants' policy and practice of subjecting plaintiffs and class members who travel abroad for brief, casual and innocent reasons without INS advance parole to detention, exclusion and deportation, violates INA §245A(a)(3)(B), and the due process and equal protection guarantees of the Fifth Amendment to the U.S. Constitution.

H. Eighth Claim for Relief
Defendants' Policy of Holding Applications In Abeyance

78. Plaintiffs reallege and by this reference incorporate the allegations contained in paragraphs 1 through 63.

79. INS's policy of indefinitely holding class members' legalization applications in abeyance and failure to adjudicate and approve such applications within a reasonable time after filing violates §245A(a),(b) and (f) of the Immigration and Nationality Act, the Administrative Procedures Act, 5 U.S.C. §§551, et. seq, and the Due Process Clause and the Equal Protection Guarantee of the United States Constitution.

I. Ninth Claim for Relief
Refusal to Accept Applications From QDE's

80. Plaintiffs reallege and by this reference incorporate the allegations contained in paragraphs 1 through 63.

81. INS' refusal to permit QDE's to accept legalization applications filed by plaintiffs and class members, and INS' refusal to allow such applications when forwarded by QDE's to the Immigration Service, constitute a violation of INA §245A(c), 8 U.S.C. §1255a(c).

GIBBS HOUSTON PAUW
1000 SECOND AVENUE, SUITE 1600
SEATTLE, WASHINGTON 98104-1094
(206) 682-1080

J. Tenth Claim for Relief
Agency's Interpretation of IIRIRA §377

82. Plaintiffs reallege and by this reference incorporate the allegations contained in paragraphs 1 through 63.

83. INS's interpretation of §377, and its refusal to accept applications from class members who "attempted to file a complete application and application with an authorized legalization officer", violates INA §245A(f)(4), 8 U.S.C. §1255a(f)(4), and a violation of the Due Process Clause and the Equal Protection Guarantee of the United States Constitution.

K. Eleventh Claim for Relief
IIRIRA §377

84. Plaintiffs reallege and by this reference incorporate the allegations contained in paragraphs 1 through 63.

85. Section 377 of the Illegal Immigration Reform and Immigrant Responsibility Act violates the Due Process Clause and the Equal Protection Guarantee of the United States Constitution.

L. Twelfth Claim for Relief
Final Denials of Applications for §245A Legalization

86. Plaintiffs reallege and by this reference incorporate the allegations contained in paragraphs 1 through 63.

87. The policy of INS and DHS to issue final denials of legalization applications filed by class members, and the failure to follow the procedures established by this court, are in violation of and inconsistent with §245A(a)(2)(B) of the Immigration and Nationality Act, the Administrative Procedures Act, 5 U.S.C. §§551, et seq., the Due Process Clause of the Fifth Amendment and the Equal Protection Guarantee of the United States Constitution.

M. Thirteenth Claim for Relief
Termination, or Intent to Terminate Temporary Resident Status, Based on Challenged Known to the Government Policies and Procedures

GIBBS HOUSTON PAUW
1000 SECOND AVENUE, SUITE 1600
SEATTLE, WASHINGTON 98104-1094
(206) 682-1080

88. Plaintiffs reallege and by this reference incorporate the allegations contained in paragraphs 1 through 63.

89 The policy of INS and DHS to terminate and/or issue notices of intent to terminate, on the basis of their challenged "known to the government" policies, the lawful permanent resident status previously granted to class members, violates and is inconsistent with §245A(a)(2)(B) of the Immigration and Nationality Act, the Administrative Procedures Act, 5 U.S.C. §§551, et seq., the Due Process Clause of the Fifth Amendment and the Equal Protection Guarantee of the United States Constitution.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs request that this Court:

1. Assume jurisdiction over this case;

2. Certify this case as a class action lawsuit, as proposed herein;

3. Issue declaratory judgment that defendants' challenged policies, practices and regulations are in violation of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986, the Administrative Procedures Act, and the due process and equal protection guarantees of the Fifth Amendment;

4. Issue a preliminary and permanent injunction enjoining defendants from expelling plaintiffs and class members from the country, preventing their return to the United States following improper expulsions from the country, refusing to accept and process applications filed by plaintiffs and class members after the termination of the legalization application period, refusing to grant temporary employment authorization and stays of deportation based on the challenged regulations, policies, and practices, refusing to grant advance parole, and further enjoining implementation and of defendants' challenged policies, practices and regulations as described throughout this complaint, and preventing defendants from relying on these unlawful regulations and the adverse determinations made based on them.

5. Issue a preliminary and permanent injunction requiring defendants to reopen on its own

GIBBS HOUSTON PAUW
1000 SECOND AVENUE, SUITE 1600
SEATTLE, WASHINGTON 98104-1094
(206) 682-1080

motion all final §245A denials based in whole or in part on the"known to the government" policies and procedures challenged herein, reinstate employment authorization without fee for all such cases, provide notice to the applicants in these reopened cases of the orders of this court, provide the applicants in such reopened cases with an opportunity to review their legalization files and all other government records, and an opportunity to supplement their legalization application files, and requiring the defendants to readjudicate the application in accordance with the orders issued by this court.

6. Issue a preliminary and permanent injunction requiring defendants to reopen on its own motion all cases in which INS or DHS has issued a final order terminating §245A temporary resident status based in whole or in part on the"known to the government" policies and procedures challenged herein, reinstate employment authorization without fee for all such cases, provide notice to the applicants in these reopened cases of the orders of this court, provide the applicants in such reopened cases with an opportunity to review their legalization files and all other government records, and an opportunity to supplement their legalization application files, and requiring the defendants to readjudicate the application in accordance with the orders issued by this court;

7. Issue a preliminary and permanent injunction requiring defendants to provide notice to any class members whose applications are pending before DHS; such notice to inform such class member that (1) the class members of this lawsuit will have their applications adjudicated under certain evidentiary standards and procedures as ordered by the court, (2) class members will have an opportunity to obtain a copy of their legalization files and evidence from any other records maintained by the government; (3) defendants shall not deny the applications filed by class members or terminate the status of class members until they have had an opportunity to review their files and all relevant government records, including records concerning their violation of status and the government's actual or imputed knowledge of same, (4) class members are entitled to obtain a stay of removal and an employment authorization document during the pendency of the adjudication process;

8. Issue a preliminary and permanent injunction requiring the defendants to accept

GIBBS HOUSTON PAUW
1000 SECOND AVENUE, SUITE 1600
SEATTLE, WASHINGTON 98104-1094
(206) 682-1080

legalization applications from individuals who were deterred from applying during the legalization application period, and requiring further that such applications be deemed to have been filed not later than May 4, 1988, and requiring further that individuals who submit such applications be granted work authorizations and stays of deportation pursuant to INA §245A(e)(2).

9. Issue a preliminary and permanent injunction requiring the defendants to comply with the terms of IRCA as applicable to plaintiffs' claims raised herein, and to adopt proper and lawful procedures for adjudicating legalization applications;

10. Issue a preliminary and permanent injunction requiring that if the Bureau of Citizenship and Immigration Services approves any pending legalization application pursuant to the orders of this court, then such application shall be deemed to have been approved nunc pro tunc as of December 1, 1990; and if the Bureau of Citizenship and Immigration Services approves a class member's application for permanent resident status under INA §245A(b), 8 U.S.C. §1255a(b), then such application for permanent residence shall be deemed to have been approved nunc pro tunc as of December 1, 1995.

11. Issue a preliminary and permanent injunction requiring that the defendants reopen and vacate any exclusion, deportation, or removal orders entered against any class members on or after May 1, 1987, and requiring that defendants readmit without delay all class members, and their family members who are eligible for benefits under the Family Unity program, who were removed from or who departed from the United States, including under “voluntary departure”, so that such class members and their family members may pursue the benefits that they are entitled to under this lawsuit;

12. Award plaintiffs their costs, reasonable attorneys' fees, and such other relief as the Court deems just and proper to remedy the injuries suffered by the plaintiffs and their class members.

Dated this 6th day of February, 2004.

Respectfully submitted,

GIBBS HOUSTON PAUW
1000 SECOND AVENUE, SUITE 1600
SEATTLE, WASHINGTON 98104-1094
(206) 682-1080

/s/ Robert H. Gibbs
Robert Pauw
Robert H. Gibbs
1000 Second Ave., Suite 1600
Seattle, WA 98104

Peter Schey
Center for Human Rights and
Constitutional Law
256 South Occidental Blvd.
Los Angeles, CA 90057

Michael Rubin
Altshuler, Berzon, Nussbaum,
Rubin & Demain
177 Post Street, Suite 300
San Francisco, CA 94108

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on February 6, 2004, I electronically filed the foregoing Third Amended Complaint with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following CM/ECF participants:

Christopher Pickrell
Assistant United States Attorney
Western District of Washington
601 Union Street, Suite 5100
Seattle, WA 98101-3903
Email: Chris.Pickrell@usdoj.gov

David E Dauenheimer
US DEPARTMENT OF JUSTICE (BOX 878)
PO BOX 878
WASHINGTON, DC 20044
Phone: 202-616-9777
Email: david.dauenheimer@usdoj.gov

/s/ Robert H. Gibbs
Robert H. Gibbs, WSBA 5932
GIBBS HOUSTON PAUW
1000 Second Ave. Suite 1600
Seattle, WA 98104
Phone: (206) 682-1080
Fax: (206) 689-2270

GIBBS HOUSTON PAUW
1000 SECOND AVENUE, SUITE 1600
SEATTLE, WASHINGTON 98104-1094
(206) 682-1080