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9 UNITED STATES DISTRICT COURT  
 10 CENTRAL DISTRICT OF CALIFORNIA  
 11 WESTERN DIVISION

12	CAROLYN ROBB HOOTKINS, et al.	) Case No. CV07-05696 (CAS)
13		)
14	Plaintiffs,	) DEFENDANTS' SURREPLY TO
15		) PLAINTIFFS' UNAUTHORIZED
16		) REPLY IN SUPPORT OF
17	v.	) SUPPLEMENTAL MEMORANDUM OF
18		) LAW IN SUPPORT OF MOTION FOR
19		) CLASS CERTIFICATION
20	MICHAEL CHERTOFF, Secretary, U.S.	)
21	Department of Homeland Security,	)
22	and JONATHAN SCHARFEN, <sup>1</sup> Acting	)
23	Director U.S. Citizenship	)
24	and Immigration Services, et. al.	)
25		)
26	Defendants.	)

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24 <sup>1</sup> Dr. Emilio Gonzalez resigned as Director, U.S.  
 25 Citizenship and Immigration Services, effective April 18, 2008.  
 26 Jonathan Scharfen, Acting Director, is automatically substituted  
 for Dr. Gonzalez. FRCP 25(d).

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 INTRODUCTION

3 Defendants Michael Chertoff and Jonathan Scharfen  
4 (collectively "Defendants"), by and through the undersigned  
5 counsel, hereby present this surreply in response to Plaintiffs'  
6 unauthorized reply in support of supplemental memorandum of law  
7 in support of motion for class certification ("surreply").  
8 Plaintiffs' previous filings regarding class certification  
9 focused solely on the argument that their proposed class is  
10 maintainable under Fed. R. Civ. P. 23(b)(3). Plaintiffs' reply  
11 in support of supplemental memorandum of law in support of motion  
12 for class certification ("reply") includes a new argument that  
13 their proposed class is maintainable under Fed. R. Civ. P.  
14 23(b)(2). Defendants file this surreply, since Defendants have  
15 not yet had the opportunity to respond to this new argument.

16 ARGUMENT

17 I. The Proposed Class Is Not Maintainable Under Fed. R.  
18 Civ. P. 23(b)(2)

19 Plaintiffs incorrectly argue that the proposed class is  
20 maintainable under Fed. R. Civ. P. 23(b)(2). Plaintiffs support  
21 this argument with the statement that "defendants-respondents  
22 have acted on grounds generally applicable to each member of the  
23 class by misinterpreting the term 'spouse' for purposes of the  
24 immediate relative definition found at 8 U.S.C. 1151(b)(2)(A)(i),  
25 and of defendants-respondents' illegal actions in denying lawful  
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Supplemental Memorandum of Law In Support of Motion for Class Certification

1 permanent resident status to plaintiffs-petitioners solely due to  
2 the death of their spouse." Reply at 5.

3 First, Plaintiffs fail to explain how a nationwide class can  
4 be maintained under the standard of Fed. R. Civ. P. 23(b)(2) when  
5 the law within the Ninth Circuit stands in stark contrast to the  
6 law outside the Ninth Circuit. The standard under Fed. R. Civ.  
7 P. 23(b)(2) is that "[Defendants have] acted or refused to act  
8 on grounds generally applicable to the class, thereby making  
9 appropriate final injunctive relief or corresponding declaratory  
10 relief with respect to the class as a whole."

11 In the present case, the Court cannot "make appropriate  
12 final injunctive or corresponding declaratory relief with respect  
13 to the class as a whole." Plaintiffs request a nationwide class,  
14 and the law within the Ninth Circuit creates dramatically  
15 different results than the law outside the Ninth Circuit. As  
16 argued previously, it is not the job of a District Court to  
17 resolve a split between the Circuits, and that is precisely what  
18 Plaintiffs ask this Court to do. See Defendants' Opposition to  
19 Plaintiffs' Motion For Class Certification ("opposition") at 4,  
20 Defendants' Response to Plaintiffs' Supplemental Memorandum Of  
21 Law In Support of Motion for Class Certification ("supp.  
22 response") at 4.

23 Furthermore, as Plaintiffs concede in their reply, there are  
24 several sub-questions that need to be examined to determine  
25 whether someone remains an "immediate relative." See reply at 5.

1 For example, the Court will have to look into individual factual  
2 issues, including but not limited to: (1) whether the  
3 Plaintiff's I-130 was denied because the spouse died before its  
4 adjudication; (2) whether the Plaintiff's I-130 was initially  
5 approved then revoked after the spouse's death; (3) whether the  
6 Plaintiff and former spouse had been married for more than two  
7 years; (4) whether the Plaintiff has a substitute for his or her  
8 former spouse who is willing and able to submit a Form I-864; and  
9 (5) whether the Plaintiff can demonstrate that his or her  
10 marriage to the petitioner was legally valid.

11 This further supports Defendants' argument that this Court  
12 cannot "make appropriate final injunctive or corresponding  
13 declaratory relief with respect to the class as a whole," since  
14 the determination of whether someone remains an immediate  
15 relative is made on a "case-by-case" basis and there are a myriad  
16 of issues that surround each determination of whether someone  
17 remains an immediate relative. Therefore, the proposed class is  
18 not maintainable under Fed. R. Civ. P. 23(b)(2).

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1 CONCLUSION

2 For the foregoing reasons and the reasons set forth in  
3 Defendants' opposition and supp. response, this Court should deny  
4 class certification.

5 Respectfully Submitted,

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