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

12 CAROLYN ROBB HOOTKINS, et. al.,) Case No. CV07-5696 CAS (MANx)
13)
14 Plaintiffs-petitioners,) Date: June 9, 2008
15 vs.) Time: 10:00 a.m.
16) Courtroom: 5
MICHAEL CHERTOFF, U.S. Department) Honorable Christina A. Snyder
17 of Homeland Security, et. al.,) PLAINTIFFS' SUPPLEMENTAL
18) MEMORANDUM OF LAW IN
19 Defendants-respondents.) SUPPORT OF MOTION FOR
20) CLASS CERTIFICATION
21)
22) CLASS ACTION
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1 The Court has permitted this supplemental briefing on the issue of class
2 certification. Plaintiffs appreciate the further opportunity to show that the four
3 requirements of numerosity¹, commonality, typicality, and adequacy have been satisfied,
4 and that the action is maintainable as a class action.
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7 **I. THE PROPOSED CLASS IS NARROWLY LIMITED TO IMMEDIATE**
8 **RELATIVES AND NOT OVERBROAD**

9 The immediate relative definition is “straightforward and succinct”.
10 *Freeman v. Gonzales*, 444 F.3d 1031, 1039 (9th Cir. 2006). It includes “the children,
11 spouses and parents of a citizen of the United States, except that, in the case of parents,
12 such citizens shall be at least 21 years of age.” 8 USC 1151(b)(1)(A)(i). Defendants
13 argue that plaintiffs’ proposed class could include individuals, “such as an orphaned child
14 whose United States citizen parents passed away, the mother of a United States citizen
15 son or daughter who passed away, or the father of a United States citizen son or daughter
16 who passed away.” (Def.’s Opp. 5) Plaintiffs argue that while other surviving spouses
17 are situated in the same precise way as plaintiffs, the other two relationships recognized
18 under the limited immediate relative category - children and parents – are similarly
19 situated to them. There are no children or parents serving as class plaintiffs.
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21 Nevertheless, as stated in the declaration submitted by Brent W. Renison, “In addition to
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26 ¹ Numerosity appears not to be at issue. The declaration of Brent W. Renison alleges
27 more than 140 cases. The declaration of Philip Hornik reveals that a single office of
28 defendants may have “literally thousands” of cases involving automatic revocation alone.

1 spouses, there are a number of children on whose behalf an immigrant petition (Form I-
2 130) was filed, and following the death of the parent, the petition was automatically
3 terminated. The surviving parents of these children have not been willing to allow their
4 children to serve as plaintiffs, out of fear that their children will be targeted for removal.”
5 (Renison Decl., 3). It is human nature to be willing to sacrifice the safety of oneself, and
6 at the same time unwilling to expose one’s child to the same risk. Because these children
7 do not have a suitable child plaintiff to represent their interests, we respectfully request
8 the Court to hold that plaintiffs be allowed to represent them.
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12 Should the Court hold that children and parents are not similarly situated to
13 spouses, plaintiffs request that the class be established by the Court to include only the
14 immediate relative “spouses” of United States citizens. The Court should not limit the
15 class, as defendants suggest, to exclude 1) plaintiffs who have not sought humanitarian
16 reinstatement - because such requirements are illegal; 2) individuals whose applications
17 are pending - because such applications, a) will be denied outside the Ninth Circuit as a
18 matter of defendants’ stated policy, which is challenged as a matter of law; or b) will be
19 denied based on unlawful humanitarian reinstatement and affidavit of support
20 requirements challenged as a matter of law; or 3) individuals whose motions to reopen
21 have been granted - because the humanitarian reinstatement and affidavit of support
22 requirements are challenged as a matter of law. Defendants, after the filing of this
23 lawsuit, have injected additional requirements into an I-130 immigrant petition process
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1 that have no place in that adjudication, thereby seeking to confuse the issues and make
2 them appear more complicated. This case is centered on the I-130 process, and
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4 defendants’ position on that is clear and straightforward – automatic denial. The
5 proposed class is narrowly structured, and not overly broad.

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7 **II. PLAINTIFFS SATISFY THE COMMONALITY REQUIREMENT**

8 Plaintiffs meet the commonality requirement because there are shared legal
9 issues and a common core of salient facts. Under *Hanlon v. Chrysler Corp.*, 150 F.3d
10 1011, 1019 (9th Cir. 1998), either is sufficient. Defendants assert that the legal issues are
11 “disparate”. (Def.’s Opp 9-10) Plaintiffs stand on the arguments previously advanced on
12 this point. (Pl.’s Reply, 4) Defendants also assert that the factual issues are “divergent”.
13 (Def.’s Opp, 10). Plaintiffs stand on previous arguments. (Pl.’s Reply, 4-5) The
14 existence of shared legal issues is adequate alone. In further support of the common core
15 of salient facts, plaintiffs hereby submit numerous declarations from plaintiffs and class
16 members to illustrate this showing.
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21 **III. PLAINTIFFS SATISFY THE TYPICALITY REQUIREMENT**

22 In support of plaintiffs’ assertion that their claims are typical of the claims of
23 the class, plaintiffs submit declarations from representative class members. (See
24 Williams Decl.; Tamborello Decl.; Chen Decl.; Ripatti Decl.; Hassan Decl.; Monroe
25 Decl.; Blackstock Decl.; Pulley Decl.; Simpson Decl.; Yang Decl.). We also submit
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1 declarations from plaintiffs.¹

2 Each of these putative class members share claims that are typical with
3 plaintiffs. Specifically, the facts of these class members' cases are typical, forming a
4 common core of salient facts, as each class member 1) entered this country lawfully, or
5 remained abroad for consular processing; 2) married a United States citizen; 3) became
6 the beneficiary of a properly filed I-130 immigrant petition filed on his or her behalf by
7 his or her U.S. citizen relative (or an earlier filed and approved I-129F petition for
8 fiancée); 4) suffered the death of the petitioning relative prior to the bureaucracy acting
9 on the application; and 5) became subject to the defendants' automatic termination
10 practices challenged in this lawsuit. Plaintiffs and class members alike possess the same
11 interest and suffer the same injury. They each have an interest in receiving an
12 adjudication of the I-130 petition filed on their behalf that is in accordance with the law.
13 They each suffer from lack of an approved I-130 petition, a precondition for status as a
14 Lawful Permanent Resident. The claims of plaintiffs are typical of the claims of class
15 members.
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22 For example, Markku Tapio Ripatti, a class member, entered the country
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24 ¹ See Hootkins Decl.; Moncayo-Gigax Decl.; DeMaily Decl.; Lockett Decl.; Brenteson
25 Decl.; Gobeil Decl.; Fishman-Corman Decl.; Win Decl.; Engstrom Decl.; Diaz-Ruiz
26 Decl.; Walsh Decl.; Angulo Decl.; Poindexter Decl.; Nguyen Decl.; Bernstein Decl.;
27 Bayor Decl.; Standifer Decl.; Batool Decl. The remaining plaintiffs have not provided
28 declarations due to a change in circumstances rendering them inadequate class
representatives: Vargas De Fisher, Heard, Lu, Rudl.

1 lawfully and married his wife Elizabeth Agnes Brennan, a United States citizen. They
2 submitted the Forms I-130, I-485, and I-864 to the authorities and waited. While they did
3 so, they had a beautiful daughter, Molly. A year and a half passed and the interview was
4 scheduled, but Mr. Ripatti's wife had passed away from breast cancer about two months
5 before the interview, and Mr. Ripatti never heard what became of his application,
6 although he has maintained the same address. (Ripatti Decl. 4). Compare his case with
7 plaintiff Diana Engstrom, who entered the country lawfully and married her husband
8 Todd Engstrom, a United States citizen. They submitted the Forms I-130, I-485, and I-
9 864 to the agency and waited. While they did so, Mrs. Engstrom's husband was killed in
10 Iraq when a Rocket Propelled Grenade hit his convoy. Mrs. Engstrom was not
11 interviewed until February 7, 2008, at which time her file was updated but no decision
12 issued. (Engstrom Decl. 2-3) Neither Mr. Ripatti nor Mrs. Engstrom have had their I-
13 130 petitions adjudicated in accordance with law, and they have not been accorded
14 Lawful Permanent Resident status. Had Mr. Ripatti been interviewed and approved at an
15 interview held on December 11, 2000 (one day before his wife died, and roughly 14
16 months after their application), he would have become a Conditional Permanent
17 Resident, and following his wife's death would have been eligible to remove the
18 Condition by filing a simple Form I-751. He would have been eligible to apply for
19 United States citizenship on September 11, 2005, and in all likelihood be a citizen now
20 instead of fearing for the safety and security of himself and his eight-year-old daughter.
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1 Had Mrs. Engstrom been interviewed and approved at an interview held on September
2 13, 2004, she would also be nearing citizenship eligibility. Plaintiff Gladys Walsh shares
3 claims that are the same as Jasmin Simpson (Walsh Decl.; Simpson Decl.). Likewise,
4 plaintiff Ngoc Nguyen shares claims that are the same as Elaine Pulley (Nguyen Decl.;
5 Pulley Decl.).
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8 Further, consider the case of Maria Diaz Ruiz, plaintiff, who entered the
9 country lawfully and married her husband Christopher F. Rodriguez, a United States
10 citizen. They submitted the Forms I-130, I-485, and I-864 to the authorities and waited.
11 During the time that the submission sat on some shelf, waiting for the agency to look at
12 the paperwork, her husband died suddenly of an unknown congenital heart defect at age
13 31. Her case was denied, and a motion to reopen was denied. (Diaz-Ruiz Decl. 2-4) Her
14 case, just like the cases of plaintiffs Hootkins, Moncayo-Gigax, Gobeil, Win, Angulo,
15 Poindexter, Bernstein, Bayor, and Standifer, is similar to class member Zainab M.
16 Hassan's case, (Hassan Decl. 2-8), class member Blackstock's case (Blackstock Decl.),
17 and class member Maria Raquel Pascoal Williams' case (Williams Decl. 2-6). Monika
18 Monroe, class member, shares a very similar claim with plaintiff Elsa Brenteson, because
19 each resides in the Ninth Circuit but does not have a substitute sponsor. (Monroe Decl.
20 3-4; Brenteson Decl. 3) Plaintiff De Mailly's case is very similar to class member
21 Yang's case, because of the fact that they each left the U.S. under threat of removal
22 action, following the denial of their application. Yet the fact of their departure, at the
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1 urging of defendants, does not affect the claim to proper I-130 adjudication.

2 The claims of plaintiffs and class members are that the automatic
3 termination and automatic revocation provisions are unlawful. Each claims that
4 defendants are improperly stripping them of the status of spouse. The claims of plaintiffs
5 are typical of the claims of class members, meeting the requirements of Fed. R. Civ. P.
6 23(a)(3).
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9 **IV. PLAINTIFFS SATISFY THE ADEQUACY REQUIREMENT**
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11 Plaintiffs and class members all suffer from automatic termination practices
12 that are challenged as a matter of law. Each plaintiff and each class member has a
13 paramount interest in seeing this automatic termination practice halted, because the goal
14 of each is to remain in the United States lawfully as permanent residents, and the
15 automatic termination practices erect a bar to their goal. While each individual may have
16 circumstances that make each unique, that can be said of any group of people as large as
17 the class herein. Nevertheless, these individual differences do not go to the heart of the
18 claim – that the automatic termination practices are unlawful. Whether each individual
19 qualifies under lawful criteria for the benefit sought will be adjudicated by defendants
20 after receiving instruction as to lawful criteria from the Court.
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25 Plaintiffs will fairly and adequately protect the interests of the class. Class
26 members have an interest in seeing defendants' unlawful automatic termination practices,
27 which deprive them of the ability to become Lawful Permanent Residents, abolished.
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1 Plaintiffs also share this interest. No other individuals are more suited to serve as
2 representatives, than those who suffer the same injury.
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4 No conflicts exist between plaintiffs and other class members. Plaintiffs
5 have executed declarations stating that they will fairly and adequately represent the
6 interests of the class members, and that they will not allow a conflict between their
7 interests and the interests of the class to occur during the pendency of the litigation.
8 Class members have also provided declarations which state that they understand that they
9 have the ability to file their own lawsuits, and understand that they would be able to
10 individually control the prosecution of their case in that way. Each has declared that it is
11 better for their personal interests that the plaintiffs in this case represent them, and that it
12 is desirable for this Court to hear their claims.
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16 **V. PLAINTIFFS' CLASS IS MAINTAINABLE UNDER 23(b)(3)**
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18 Defendants incorrectly state that, "To demonstrate that a class action is
19 maintainable under Fed. R. Civ. P. 23(b)(3), plaintiffs must show that 'common questions
20 of law *and* fact predominate over individual issues..." (Def.'s Opp 16, emphasis
21 supplied). Instead, plaintiffs must show only that "the questions of law *or* fact common
22 to the members of the class predominate over any questions affecting only individual
23 members..." Fed. R. Civ. P. 23(b)(3) (emphasis supplied). The question of whether
24 plaintiffs and class members remain immediate relatives is a question of law that is
25 common to the members of the class. This question predominates. Additionally, whether
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1 a surviving spouse lives in the Ninth Circuit and is subjected to post approval automatic
2 revocation, or outside the Ninth Circuit and is subjected to pre-approval automatic
3 termination, the fact remains that defendants are undertaking closely intertwined
4 unlawful actions against the class as a whole due to the death of the spouse. If this Court
5 orders defendants to treat class members outside the Ninth Circuit as spouses without
6 addressing the automatic revocation conduct, it is likely that defendants will apply the
7 automatic revocation practices to those cases, just as they have attempted to do in the
8 Ninth Circuit to circumvent the decision in *Freeman*. Further, as argued previously (See
9 Pl.'s Reply 4-5, 8), the five so-called "individual factual issues" are just a smokescreen
10 invented by defendants to obscure the common core of salient facts. As we have argued
11 above (See *supra*, pp. 4-5), there are in fact five "common core" facts that bind this class
12 together.
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18 DATED this 28th day of April, 2008.

19
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1 PROOF OF SERVICE

2 I, the undersigned, say: my business address is 5285 SW Meadows Rd., Ste 175,
3 Lake Oswego, Oregon 97035. I am over the age of eighteen years and not a party to the
4 above-entitled action.

5 On April 28, 2008, true and correct copies of the plaintiffs': PLAINTIFFS'
6 SUPPLEMENTAL MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR
7 CLASS CERTIFICAITON, were served pursuant to the district court's ECF system to
8 the following ECF filers:

9 Elizabeth Stevens
10 Sheri R. Glaser
11 Melissa S. Leibman
12 Office of Immigration Litigation
13 USDOJ Civil Division
14 P.O. Box 878
15 Ben Franklin Station
16 Washington, DC 20044

17 I declare under penalty of perjury under the laws of the United States of America
18 that the foregoing is true and correct.

19 EXECUTED on April 28, 2008, at Lake Oswego, Oregon.

20 S/ Brent W. Renison
21 Brent W. Renison, Declarant