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

11 CAROLYN ROBB HOOTKINS, et al.) Case No. CV07-05696 (CAS)
12 Plaintiffs,)
13) Date: January 28, 2008
14 v.) Time: 10:00 a.m.
15 MICHAEL CHERTOFF, Secretary, U.S.) Courtroom: 5
Department of Homeland Security,) Honorable Christina A. Snyder
16 et al.)
17 Defendants.)
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Defendants Michael Chertoff, Emilio Gonzalez, Condoleeza Rice, and
3 Maura Harty (collectively "Defendants"), by and through the
4 undersigned counsel, respectfully move this Court for an Order
5 denying Plaintiffs' motion for a preliminary injunction.

6 Plaintiffs fail to meet their burden to demonstrate probability of
7 success on the merits and immediate irreparable injury; and
8 Plaintiffs request a preliminary injunction that would change the
9 status quo.

10
11 **I. INTRODUCTION**

12 Plaintiffs are individuals who seek lawful permanent resident
13 status through their prior status as legally married spouses of
14 United States citizens. Petition for Writ of Mandamus and
15 Complaint for Declaratory and Injunctive Relief ("Complaint"),
16 page 1.

17 Plaintiffs seek a preliminary injunction enjoining Defendants
18 from (1) removing Plaintiffs and class members from the United
19 States who filed for adjustment of status (Subclass I); and (2)
20 denying Employment Authorization Documents ("EAD") and Advance
21 Parole Travel Documents ("AP") to Plaintiffs and class members who
22 filed for adjustment of status (Subclass I).

23
24 **II. STATEMENT OF RELEVANT FACTS**

25 Defendants denied or revoked Plaintiffs' Hootkins, Moncayo-
26 Gigax, De Mailly, Vargas De Fisher, Brentenson, Gobeil, Heard,
27 Fishman-Corman, Win, Diaz-Ruiz, Arias-Angulo, Poindexter, Rudl,
28 Bernstein, Bayor, Standifer, and Batool's application for

1 adjustment of status and/ or Form I-130 petition or I-129F
2 petition. Complaint at ¶¶ 22, 28, 34, 41, 53, 59, 72, 78, 91, 104,
3 110, 116, 122, 128, 134, 140, 146, and 152.

4 Out of those Plaintiffs, De Mailly, Vargas De Fisher, Gobeil,
5 Heard, Fishman-Corman, Arias-Angulo, Poindexter, Bernstein, and
6 Bayor never filed a motion to reopen or a motion for
7 reconsideration with the Board of Immigration Appeals ("Board").
8 *Id.* at ¶¶ 34, 41, 59, 66, 72, 110, 116, 134, 140.

9 Plaintiff Heard's Form I-130 petition was reopened on USCIS
10 motion. See Reopening of Visa Petition Proceeding And Request for
11 Evidence, attached as Exhibit ("Exh.) 1 at 16-20.

12 Plaintiffs Hootkins and Moncayo-Gigax each filed a motion to
13 reopen that was granted. *Id.* at ¶¶ 22, 28. Plaintiff Win filed a
14 motion for reconsideration that was granted. *Id.* at ¶ 79.
15 Plaintiff Diaz-Ruiz filed a motion to reopen that was denied. *Id.*
16 at ¶ 91. Plaintiff Nguyen filed a motion for reconsideration that
17 was denied. *Id.* at ¶ 128.

18 Plaintiffs Brentenson, Poindexter, Rudl, Standifer, and Batool
19 filed motions to reopen that remain pending. *Id.* at ¶¶ 53, 116,
20 122, 146, and 152.

21 Plaintiffs Engstrom and Lockett's applications for adjustment
22 of status remain pending. *Id.* at ¶¶ 47, 85.

23 Furthermore, Plaintiff De Mailly does not currently reside in
24 the United States. *Id.* at ¶ 30.

25 There is no evidence in the motion for preliminary injunction
26 that any Plaintiffs in Sub-class I were working before this case
27 was filed. There is also no evidence that any Plaintiffs in Sub-
28 class I have an imminent need to travel outside the United States.

1 Also, Defendants are not aware that any Plaintiffs in Sub-class I,
2 who reside in the United States have a final order of removal.

3 Also, out of Plaintiffs in Sub-class I, ten Plaintiffs never
4 filed to renew their EADs after it expired, seven Plaintiffs' EADs
5 are current, and United States Citizenship and Immigration
6 Services ("USCIS") has no record of one Plaintiff having ever
7 applied for an EAD. Declaration of Dianne E. Armenteros, attached
8 as Exhibit ("Exh.") 2, at 22-23.

9 **III. THE COURT SHOULD DENY PETITIONER'S MOTION FOR A**

10 **PRELIMINARY INJUNCTION.**

11 **A. Preliminary Injunction Standard**

12 The standard for considering a preliminary injunction motion
13 is well known:

14 A preliminary injunction is appropriate where
15 plaintiffs demonstrate "either: (1) a
16 likelihood of success on the merits and the
17 possibility of irreparable injury; or (2) that
18 serious questions going to the merits were
19 raised and the balance of hardships tips
20 sharply in [their] favor." The district court
21 must also consider whether the public interest
22 favors issuance of the injunction.

23 *Sw. Voter Registration Educ. Project v. Shelley*,
24 344 F.3d 914, 917 (9th Cir. 2003) (en banc) (citations omitted).

25 The analysis is often compressed into a single continuum where
26 the required showing of merit varies inversely with the showing of
27 irreparable harm. *Prudential Real Estate Affiliates, Inc. v. PRP*
28 *Realty, Inc.*, 204 F.3d 867, 874 (9th Cir. 2000). The moving party
may meet its burden by demonstrating either: (1) a probability of
success on the merits and the possibility of irreparable injury;
or (2) that serious legal questions are raised and the balance of
hardship tips sharply in petitioner's favor. *Los Angeles Memorial*

1 *Coliseum Comm'n v. Nat'l Football League*, 634 F.2d 1197, 1201 (9th
2 Cir.1980) ("*Memorial Coliseum*").

3 Under any formulation of the test, the moving party must
4 demonstrate that there exists a significant threat of irreparable
5 injury. *Am. Passage Media Corp. v. Cass Commc'ns, Inc.*, 750 F.2d
6 1470, 1473 (9th Cir. 1985). "Speculative injury does not
7 constitute irreparable injury sufficient to warrant granting a
8 preliminary injunction." *Caribbean Marine Servs. Co., Inc. v.*
9 *Baldrige*, 844 F.2d 668, 675 (9th Cir. 1988) (citing *Goldie's*
10 *Bookstore, Inc. V. Superior Court of the State of Calif.*, 739 F.2d
11 466, 472 (9th Cir. 1984) (disagreeing with the district court's
12 conclusion that the balance of harms tipped in favor of
13 plaintiffs, most importantly, because plaintiffs failed to show
14 harms alleged by plaintiffs were "imminent or likely").

15 However, in certain cases, the movant has an even
16 greater burden: to show that the "requirements for injunctive
17 relief weigh 'heavily and compellingly in his or her favor.'"
18 William W. Schwarzer, A. Wallace Tashima & James M. Wagstaffe,
19 *Federal Civil Procedure Before Trial* ¶ 13:77 (The Rutter Group
20 2006). Such cases include where the preliminary injunction
21 would alter the status quo; constitute a mandatory injunction;
22 would grant the movant substantially the relief it would obtain
23 after a decision on the merits; and would enjoin governmental
24 action taken in the public interest pursuant to a statutory or
25 regulatory scheme. *Id.* at ¶¶ 13:78-13:79.20.

26 **B. Plaintiffs Seek Not To Preserve The Status Quo.**

27 Plaintiffs request an order which seeks to change the status
28 quo before the Court has made any determination on the merits of

1 their claims. See *Senate of the State of Calif. v. Mosbacher*, 968
2 F.2d 974 (9th Cir. 1992); *Bricklayers, Masons, Marble & Tile*
3 *Setters, Protective Benevolent Union No. 7 of Nebraska v. Lueder*
4 *Construction Co.*, 346 F. Supp. 558, 561 (D. Neb. 1972). In *Tanner*
5 *Motor Livery, Ltd. v. Avis, Inc.*, 316 F.2d 804 (9th Cir. 1963),
6 *cert. denied*, 375 U.S. 821, 84 S. Ct. 59, 11 L. Ed. 2d 55 (1963),
7 the Court said:

8 | It is so well settled as not to require citation of
9 authority that the usual function of a preliminary
10 injunction is to preserve the status quo ante lite
11 pending a determination of the action on the merits. The
12 hearing is not to be transformed into a trial of the
13 merits of the action upon affidavits, and it is not
14 usually proper to grant the moving party the full relief
15 to which he might be entitled if successful at the
16 conclusion of a trial.

13 *Id.* at 808; see also *Litton Sys., Inc. v. Sundstrand Corp.*, 750
14 F.2d 952, 961 (Fed. Cir. 1984).

15 In this case, Plaintiffs are not seeking to preserve the
16 status quo. The status quo is "the last uncontested status which
17 preceded the parties' controversy." *Dep't of Parks and Recreation*
18 *for State of Calif. v. Bazaar Del Mundo Inc.*, 448 F.3d 1118, 1124
19 (9th Cir. 2006). Plaintiffs offer no evidence that their status
20 preceding this controversy was that they were employed or had a
21 need for travel.

22 Therefore, this injunction is mandatory since it "'goes well
23 beyond simply maintaining the status quo pendente lite [and] is
24 particularly disfavored.'" *Stanley v. Univ. of Southern Calif.*,
25 13 F.3d 1313, 1320 (9th Cir. 1994). Thus, since Plaintiffs are
26 seeking to change the status quo, they are required to show that
27 the "requirements for injunctive relief weigh 'heavily and
28 compellingly in [their] favor. *Schwarzer, Tashima & Wagstaffe,*

1 *Federal Civil Procedure Before Trial* ¶ 13:77. Plaintiffs fail to
2 meet that burden.

3 **C. The Court Should Deny Plaintiffs' Motion For A**
4 **Preliminary Injunction.**

5 1. *Plaintiffs Fail To Demonstrate Immediate Threatened*
6 *Irreparable Injury.*

7 Plaintiffs erroneously argue that they will suffer
8 "substantial and irreparable harm" without a preliminary
9 injunction. Plaintiffs' Motion for a Preliminary Injunction ("Pl.
10 Motion") at 4-6. "A preliminary injunction is . . . a device for
11 preserving the status quo and preventing the irreparable loss of
12 rights before judgment." *Textile Unlimited, Inc. v. A..BMH and*
13 *Co., Inc.*, 240 F.3d 781, 786 (9th Cir. 2001) (citation omitted).
14 To demonstrate irreparable injury, the moving party must
15 demonstrate immediate threatened irreparable injury. . ." *Memorial Coliseum*, 634 F.2d at 1201 (citation omitted) (emphasis
16 added).
17

18 Plaintiffs' argument centers on harms that allegedly will
19 result if they cannot work. Pl. Motion at 4-5. For example,
20 Plaintiffs claim that they will lose the ability to support their
21 family and themselves. *Id.* They also assert that "[w]ith no
22 income to pay financial obligations such as mortgage, rent or car
23 payments, plaintiffs-petitioners could also lose their homes,
24 cars, and personal effects," they will lose career advancement
25 opportunities, and may become depressed. *Id.*

26 These arguments leave out one very essential point: there is
27 no evidence in the motion for preliminary injunction that the
28 status quo is Plaintiffs are working; need to travel; and face

1 imminent removal. Therefore a preliminary injunction will not
2 resolve any immediate harm from the status quo. "A preliminary
3 injunction can only be employed for the "limited purpose" of
4 maintaining the status quo." *Zepeda v. U.S. I.N.S.*, 753 F.2d 719,
5 728 n.1 (9th Cir. 1984) (citing *Univ. of Texas v. Camenisch*, 451
6 U.S. 390, 395, 101 S. Ct. 1830, 1834, 68 L. Ed. 2d 175 (1981)).

7 Furthermore, the named Plaintiffs' applications for adjustment
8 of status and/or petition I-130 or petition I-129F were denied
9 from as early as September 2002 through August 2007. Plaintiffs
10 do not explain why they are so concerned with not having the
11 ability to work or travel now, which could be more than five years
12 since their application and/or petition was denied. They do not
13 offer any evidence that they are now in a position of immediate
14 and irreparable harm. This Court should deny Plaintiffs' motion
15 for a preliminary injunction on that point alone.

16 Moreover, the Complaint alleges that named Plaintiff De Maily
17 is not presently residing in the United States. See Complaint at
18 ¶¶ 30. Thus, there is no immediate harm to her as a result of not
19 being able to work in the United States or travel from the United
20 States to a foreign country. Also, she is not under an imminent
21 threat of removal.

22 In addition, Plaintiffs argue that they "will be ineligible
23 for work and will lose the ability to support themselves and their
24 family." Pl. Motion at 4. Plaintiffs also argue that their only
25 other alternative is to obtain unlawful employment which could
26 subject them to criminal sanctions. *Id.* These arguments also
27 fail to demonstrate immediate threatened irreparable injury.

28

1 Plaintiffs Hootkins, De Mailly, Vargas De Fisher, Lockett,
2 Gobeil, Diaz-Ruiz, Rudl, Nguyen, Bernstein, and Standifer never
3 requested renewal of EADs after it expired. Exh. 2 at 22-23.
4 Plaintiffs Hootkins' EAD has been expired since 11/27/06; De
5 Mailly's EAD has been expired since 3/29/05; Vargas De Fisher's
6 EAD has been expired since 3/15/06; Lockett's EAD has been expired
7 since 8/9/07;¹ Gobeil's EAD has been expired since 1/5/06; Diaz-
8 Ruiz's EAD has been expired since 3/13/06; Rudl's EAD has been
9 expired since 4/24/06; Nguyen's EAD has been expired since
10 8/29/06; Bernstein's EAD has been expired since 10/13/06; and
11 Standifer's EAD has been expired since 1/9/06. *Id.* This cuts
12 severely against Plaintiffs' argument that they are in imminent
13 threat of irreparable injury from Defendants' alleged denial of
14 EADs or refusal to renew EADs, since their EAD expired and they
15 took no action to renew it.

16 Moreover, many Plaintiffs have current EADs. Plaintiffs
17 Moncayo-Gigax's EAD is current; Brenteson's EAD is current;
18 Engstrom's EAD is current,² Arias-Angulo's EAD is current;
19 Poindexter's EAD is current; Bayor's EAD is current; and Plaintiff
20 Win's EAD is current.³ *Id.* at 2-3. This further demonstrates that

21
22 ¹ Plaintiff Lockett's application for adjustment of status is
23 pending; thus he can apply for an EAD and/or AP. *See infra* at 11;
24 Complaint at ¶ 47. Thus, he cannot show he is under an immediate
25 threat of irreparable injury for this Court to issue Plaintiffs'
26 requested preliminary injunctive relief.

27 ² Plaintiff Engstrom's application for adjustment of status is
28 pending; thus she can apply for an EAD and/or AP. *See infra* at 11;
Complaint at ¶ 85. This further cuts against Plaintiffs' argument
that she is under an immediate threat of irreparable injury.

³ Plaintiff Moncayo-Gigax filed a motion to reopen which was
granted; and Plaintiff Win filed a motion for reconsideration which

1 Plaintiffs are not in imminent threat of irreparable injury from
2 Defendants' alleged denial of EADs or refusal to renew EADs since
3 they have current EADs.

4 Furthermore, USCIS has no record of Fishman-Corman ever having
5 applied for an EAD. *Id.* This also shows that Plaintiff Fishman-
6 Corman is not under an immediate threat of irreparable injury.
7 Plaintiffs fail to explain why, after three years of no legal
8 employment authorization, she is suddenly under an immediate
9 threat of irreparable injury from not having an EAD. Complaint at
10 ¶¶ 67-72.

11 As a side note, the above also demonstrates that Plaintiffs'
12 class-wide "likelihood of success on the merits" argument is
13 premised on an absolute falsehood, because Defendants have not
14 denied EADs on a class-wide basis and have not refused to renew
15 Plaintiffs' EADs on a class-wide basis. Plaintiffs' argument is
16 that "[d]efendants-respondents decision not to renew Plaintiffs-
17 petitioners' EAD and AP documents is capricious." Pl. Motion at
18 2-4.⁴ This Court cannot grant class-wide injunctive relief under
19 such circumstances.

20
21
22 was granted. These Plaintiffs also cannot demonstrate immediate
23 irreparable injury, because they are able to apply for EADs and/or
24 APs, since their applications remain pending. *See infra* at 11.

25 ⁴ Plaintiff Batool's EAD expired on 5/3/05. She applied to
26 renew her EAD on 4/22/05, but her application was denied on 6/27/05.
27 Exh. 2 at 24. Defendants' denial to renew her EAD occurred after
28 her petition and application for adjustment of status were denied
due to abandonment. Complaint at ¶ 152. Plaintiff filed a motion
to reopen, which is pending. *Id.* In light of these facts,
Plaintiff Batool has no right to an EAD or AP; and this Court should
not grant certain relief to Plaintiffs that they have no right to
receive. *See infra* at 12.

1 In addition, even though Plaintiff Heard was denied an EAD on
2 2/14/07, USCIS has reopened her case. Exh. 2 at 24; Exh. 1 at 18-
3 19. USCIS has given her sixty days to submit evidence that the
4 petitioner of her Form I-130 died under combat conditions while he
5 was employed by a private contractor supporting the U.S. armed
6 forces in Iraq; and that petitioner served honorably on active
7 duty in the U.S. armed forces prior to the civilian employment.
8 See Exh. 1 at 18-19. If Plaintiff Heard submits the requested
9 evidence, then her Form I-130 will be converted to, and
10 adjudicated as, a widow's Form I-360. *Id.* She will then be
11 eligible to apply for an EAD and AP. Thus she cannot demonstrate
12 she is under a threat of immediate and irreparable injury.

13 The only evidence Plaintiffs offer on their immediate
14 necessity to travel abroad is that "[p]laintiffs-petitioners and
15 class members have an urgent need to be able to travel on short
16 notice, as relatives abroad may need their presence. . ." Pl.
17 Motion at 2.

18 Plaintiffs offer no showing that they are under immediate
19 irreparable injury from removal in their motion for preliminary
20 injunction, except for their unsupported statement that "[s]ome
21 class members have been placed in removal proceedings." *Id.*

22 Therefore, Plaintiffs fail to meet their heightened burden of
23 demonstrating they are under a threat of immediate and irreparable
24 harm.⁵

25 ⁵ Plaintiffs cite *Grijalva v. Ilchert*, 815 F. Supp. 328, 332
26 (N.D. Cal. 1993) in support of their argument, but this case is
27 distinguishable from the case at bar. Foremost, the Plaintiffs'
28 asylum application in *Grijalva* was still pending. *Id.* at 329; Pl.
Motion at 5. In contrast, in the present case, except for named
Plaintiffs Engstrom and Lockett, the Plaintiffs' adjustment of

1 2. *Plaintiffs Fail To Demonstrate Probable Success on*
2 *The Merits.*

3 Plaintiffs also fail to meet their burden to show probable
4 success on the merits. Plaintiffs argue that Defendants acted
5 arbitrarily and capriciously when they when they refused to renew
6 Plaintiffs' EADs and APs. Pl. Motion at 3-4. That argument is
7 incorrect.

8 First and foremost, adjudication of both the EAD and AP are
9 matters entrusted to agency discretion. See INA 212(d)(5); 8 CFR
10 § 274a.13(a)(1).⁶ Therefore, this Court cannot order Defendants to
11 grant EADs and AP to Plaintiffs and class members.

12 In addition, Plaintiffs cite 8 C.F.R. § 274a.12(c)(9) as
13 support for a class-wide preliminary injunction.⁷ That section

14 _____
15 status applications are no longer pending: they have already been
16 denied. With regard to named Plaintiffs Engstrom and Lockett, this
17 case is also distinguishable. In *Grijalva*, the Court relied on its
18 determination that the plaintiff was "likely to succeed on her claim
19 that Defendants abused their discretion in concluding that her
20 asylum application was frivolous." *Grijalva*, 815 F. Supp. at 330.
21 In the case at bar, with respect to Engstrom, Plaintiffs simply make
an unsupported statement that named Plaintiff Engstrom "fears that
22 defendants-respondents may deny her application. . ." Complaint at
23 ¶ 85. With respect to Lockett, Plaintiffs merely make an
24 interesting statement that Defendants denied his application for
adjustment of status, since defendants withheld approval on his
25 application. Complaint at ¶ 47.

26 ⁶ 8 CFR § 274a.13(a)(1) reads in relevant part: "The approval
of applications filed under [8 C.F.R. § 274a.12(c)] of this part,
27 except for [8 C.F.R. § 274a.12], shall be within the discretion of
28 the director or such other officer as the Commissioner may
designate."

⁷ 8 C.F.R. § 274a.12(c)(9) reads in pertinent part that "[a]n
26 alien who has filed an application for adjustment of status to
lawful permanent resident . . . will not be deemed to be an
27 'unauthorized alien' . . . while his or her properly filed I-485
application is pending final adjudication . . . if the alien had
28 been granted employment authorization prior to the filing of the

1 does not support class-wide relief for employment authorization.
2 Out of Plaintiffs Engstrom and Lockett, whose applications for
3 adjustment of status are still pending: Lockett never applied for
4 EAD and Engstrom's EAD is current. Complaint at ¶¶ 47, 85; Exh. 2
5 at 22-23. Out of Plaintiffs' Hootkins and Moncayo-Gigax, whose
6 applications are still pending since their motions to reopen were
7 granted: Hootkins' EAD expired and she never filed to renew and
8 Moncayo-Gigax's EAD is current. Complaint at ¶¶ 22, 28; Exh. 2 at
9 22-23. Also, Plaintiff Win's application for adjustment of status
10 is still pending, since her application for reconsideration was
11 granted: and her EAD is current. Complaint at ¶ 79; Exh. 2 at 23.

12 The remaining Plaintiffs' applications are not pending;
13 therefore 8 C.F.R. § 274a.12(c)(9) is not applicable. USCIS
14 denied the application for adjustment of status and/or petition
15 Form I-130 of Plaintiffs De Mailly, Vargas De Fisher, Gobeil,
16 Heard, Fishman-Corman, Arias-Angulo, Bernstein, and Bayor; and
17 these Plaintiffs never filed a motion to reopen or motion for
18 reconsideration. Complaint at ¶¶ 34, 41, 59, 66, 72, 110, 116,
19 134, 140. Thus, these Plaintiffs cannot be legally issued an EAD
20 or AP, because their applications are not pending. See 8 C.F.R. §
21 274a.12(c)(9).

22 In addition, USCIS denied the application for adjustment of
23 status and/or petition Form I-130 of Plaintiffs Brenteson,
24 Poindexter, Rudl, Standifer, and Batool; and these Plaintiffs
25 filed motions to reopen that remain pending. Complaint at ¶¶ 53,
26 116, 122, 146, and 152. The mere filing of a motion to reopen or

27
28 adjustment application and such authorization does not expire during
the pendency of the adjustment application" (emphasis added).

1 motion for reconsideration does not affect the finality of their
2 previous denial of their application for adjustment of status. See
3 8 C.F.R. § 103.5(a)(1)(iv); 8 C.F.R. § 274a.12(c)(9).

4 Furthermore, Plaintiff Diaz-Ruiz's motion to reopen was
5 denied. *Id.* at ¶ 91. Plaintiff Nguyen filed a motion for
6 reconsideration that was denied. *Id.* at ¶ 128. Therefore they are
7 also not eligible for an EAD and AP since their applications for
8 adjustment of status are not pending. See 8 C.F.R. §
9 274a.12(c)(9).

10 In light of the above, most of the named Plaintiffs are not
11 legally eligible for the relief they are requesting through this
12 class-wide motion for a preliminary injunction. Thus, it was not
13 unreasonable for Defendants to deny EADs and APs to these named
14 Plaintiffs, and this Court should not grant Plaintiffs' requested
15 preliminary injunction.⁸

16 In addition, this Court cannot enjoin Defendants from removing
17 Plaintiffs and class members who applied for adjustment of status
18 (Sub-class I) as Plaintiffs request. 8 U.S.C. § 1252(g) states
19 that ". . . no court shall have jurisdiction to hear any cause or
20 claim by or on behalf of any alien arising from the decision by
21 the Attorney General to commence proceedings, adjudicate cases, or
22 execute removal orders against any alien under this chapter."

23 Furthermore, 8 U.S.C. 1252(f)(1) prevents the extraordinary
24 remedy of a class-wide injunction against the application of
25 certain provisions of the Immigration and Nationality Act ("INA"):

26
27 ⁸ If they are legally eligible, then they either have current
28 EAD or never filed to renew their EAD after it expired, which
destroys any imminent injury argument. See *supra* at 11.

1 Regardless of the nature of the action or claim or of the
2 identity of the party or parties bringing the action, no
3 court (other than the Supreme Court) shall have
4 jurisdiction or authority to enjoin or restrain the
5 operation of the provisions of chapter 4 of title II [8
6 U.S.C. §§ 1221-1231], as amended by the Illegal
7 Immigration Reform and Immigrant Responsibility Act of
8 1996, other than with respect to the application of such
9 provisions to an individual alien against whom
10 proceedings undersuch chapter have been initiated.

11 INA § 242(f)(1), 8 U.S.C. § 1252(f)(1).

12 Section 1252(f)(1) demonstrates that it was the intent of
13 Congress to eliminate the jurisdiction of federal courts, other
14 than the Supreme Court, to entertain class action challenges
15 seeking to enjoin the operation or enforcement of the removal
16 provisions of the INA. INA § 242(f), 8 U.S.C. § 1252(f). Thus,
17 although a court may possess jurisdiction to enjoin or restrain
18 the operation of the specified provisions of the INA with respect
19 to "an individual alien," section 242(f)(1) deprives any court
20 (except the Supreme Court) of "jurisdiction or authority" to award
21 class-wide injunctive relief prohibiting courts from enforcing
22 removal orders as such enforcement falls squarely within the
23 statutory provisions covered by section 1252(f). See 8 U.S.C. §
24 1231 (detention and removal of aliens ordered removed).

25 Furthermore, this Court should note that Defendants are not
26 aware of any Plaintiff who has a final order of removal who is
27 presently residing in the United States.

28 Therefore, Plaintiffs fail to meet their heightened burden to
 show their probability of success on the merits.

C. The Public Interest

 Indeed, any injunctive order that enjoins a governmental
 entity from enforcing statutes enacted by the duly elected

1 representatives of the people constitutes an irreparable injury
2 that weighs heavily against the entry of injunctive relief. See
3 *Coalition for Economic Equity v. Wilson*, 122 F.3d 718, 719 (9th
4 Cir. 1997) (citing *New Motor Vehicle Bd. v. Orrin W. Fox Co.*, 434
5 U.S. 1345, 1351, 98 S. Ct. 359, 363, 54 L. Ed. 2d 439 (1977)
6 (Rehnquist, J., in chambers)); *INS v. Miranda*, 459 U.S. 14, 19,
7 103 S. Ct. 281, 284, 74 L. Ed. 2d 12 (1982) (noting the
8 "increasingly important interest, implicating matters of broad
9 public concern [that] is involved in cases of this kind [that
10 involve] [e]nforcing the immigration laws and the conditions of
11 residency in this country" and thus refusing to estop the
12 government).

13 In this case, Plaintiffs seek an injunction that would prevent
14 removal and grant EAD and AP to Plaintiffs who have no status; and
15 are thus not entitled to an EAD or AP. See *supra* at 11-13.

16 CONCLUSION

17 For the foregoing reasons, this Court should deny Plaintiffs'
18 motion for a preliminary injunction.

19 Respectfully Submitted,

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CERTIFICATE OF SERVICE

Case No. C-07-5696-CAS

I hereby certify that on this 7th day of January 2008,
true and correct copies of the Defendants' **OPPOSITION TO
PLAINTIFFS MOTION FOR PRELIMINARY INJUNCTION** were served
pursuant to the district court's ECF system as to ECF filers on
January 7, 2008, to the following ECF filers:

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