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15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA
17 WESTERN DIVISION

18 CAROLYN ROBB HOOTKINS,) Case No. CV07-05696 (CAS)
19 et al.,)
20 Plaintiffs,) Date: April 20, 2009
21 v.) Time: 10:00 a.m.
22) Courtroom: 5
23) Honorable Christina A. Snyder
24 JANET NAPOLITANO, Secretary,)
25 U.S. Department of Homeland) DEFENDANTS' NOTICE OF MOTION
26 Security, et al.,) AND MOTION FOR PARTIAL
27) SUMMARY JUDGMENT AS TO
28) PLAINTIFFS OUTSIDE THE
) NINTH CIRCUIT
) AND
) MEMORANDUM OF POINTS AND
) AUTHORITIES IN SUPPORT OF
) DEFENDANTS' MOTION FOR
) PARTIAL SUMMARY JUDGMENT

29 PLEASE TAKE NOTICE that on April 20, 2009, at 10:00 a.m., or as soon
30 thereafter as the parties may be heard, Defendants Janet Napolitano, Secretary of
31 Homeland Security, and Michael Aytes, Acting Deputy Director, U.S. Citizenship
32 Defendants' Motion for Partial Summary Judgment as to Non-9th Plaintiffs CV07-05696 (CAS)

1 and Immigration Services (collectively, the "Defendants"), will bring for hearing a
2 motion pursuant to Federal Rules of Civil Procedure 56 for partial summary
3 judgment with respect to the Plaintiffs whose cases arise outside the jurisdiction of
4 the Ninth Circuit, and a separate motion for partial summary judgment with
5 respect to the class certified on January 6, 2009. The hearing will take place
6 before the Honorable Christina A. Snyder, Courtroom 5, 312 North Spring Street,
7 Los Angeles, California 90012.
8

9 This motion is based on the Memorandum of Points and Authorities
10 attached hereto, all pleadings, papers and files in this action, and such oral
11 argument as may be presented at the hearing on this motion.
12

13 This Motion is made following the ongoing conference of counsel pursuant
14 to L.R. 7-3 which took place between January 20, 2009, and February 27, 2009.
15

16 Dated: March 13, 2009

17 Respectfully submitted,

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20 Acting Assistant Attorney General

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 450 F. Supp. 2d 736 (E.D. Mich. 2006). 8

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Immigration and Nationality Act of 1952, as amended:

Section 201(b)(2)(A)(i),
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendants, by and through their undersigned counsel, respectfully move this Court for an order granting partial summary judgment in favor of Defendants as to the claims of Plaintiffs whose cases arise outside the jurisdiction of the Ninth Circuit and who therefore are not identified members either of the class or subclass certified by this Court pursuant to the Order Granting Plaintiff’s Motion for Class Certification (Order Granting Class Certification) (dkt # 108).¹

The Court certified the following class of alien spouses whose citizen spouse filed an immediate relative petition on their behalf:

All aliens whose United States citizen spouse died before the couple’s two-year wedding anniversary, and whose citizen spouse filed an I-130 petition and a Form I-864 or I-864EZ affidavit of support on behalf of the alien spouse, so long as he or she can also demonstrate that (1) the Form I-130 petition is now pending with or was adjudicated by a USCIS office located within the jurisdiction (2) at the time of the citizen spouse’s death, either the citizen spouse or the alien spouse resided within the jurisdiction of the Ninth Circuit.

The Court further certified the following subclass of alien spouses who entered the United States on fiancé(e) visas:

All aliens who, within ninety days of admission to the United States as a nonimmigrant fiancé, married the petitioning United States citizen, and whose citizen spouse died before the couple’s two-year wedding anniversary, so long as he or she can also demonstrate that the citizen spouse filed an I-129F petition and a Form I-864 or I-864EZ affidavit of support on behalf of the alien spouse, and (1) the Form I-129F petition is now pending with or was adjudicated by a USCIS office located within the

¹ Plaintiffs whose cases arise outside the jurisdiction of the Ninth Circuit are Yelena Arias-Angulo, Farah Batool, Sarah Baylor, Agnieszka Bernstein, Maria del Carmen Diaz-Ruiz, Diana G. Engstrom, Dahianna Heard, Stella Standifer, and Gladys Walsh.

1 jurisdiction of the Ninth Circuit, or (2) at the time of the citizen spouse's
2 death, either the citizen spouse or the alien spouse resided within the
3 jurisdiction of the Ninth Circuit.

4 *Id.*

5 Pursuant to the Court's Order Directing Notice to Class (dkt # 112), Defendants
6 file the instant motion as to Plaintiffs whose cases arise outside the jurisdiction of
7 the Ninth Circuit, and a separate Motion for Partial Summary Judgment as to
8 Ninth Circuit Class Plaintiffs. This memorandum is within the 35-page limit
9 ordered by the Court (dkt #14).

10
11 Plaintiffs filed a putative class action seeking injunctive, declaratory, and
12 mandamus relief. Plaintiffs alleged that Defendants wrongfully determined that
13 Plaintiffs are not entitled to "immediate relative" status under 8 U.S.C.
14 § 1151(b)(2)(A)(i), following the death of their United States citizen spouses prior
15 to the two-year anniversary of their respective marriages.

16
17 In its Order Granting in Part and Denying in Part Defendants' Motion to
18 Dismiss Complaint Under Fed. R. Civ. P. 12(b)(1) and 12(b)(6) (Order re: Motion
19 to Dismiss) (dkt # 36), the Court ruled that judicial review under the
20 Administrative Procedure Act (APA), 5 U.S.C. § 551 *et seq.*, is not available for
21 lack of final agency action as to certain Class Plaintiffs and Plaintiffs outside the
22 Ninth Circuit. However, the Court retained jurisdiction to adjudicate their claims
23 under the Mandamus Act, 28 U.S.C. § 1361. (Order re: Motion to Dismiss at 17).

24
25 Accordingly, Defendants respectfully submit that under either the APA or
26 Mandamus Act, Defendants are entitled to judgment as a matter of law because
27 United States Citizenship and Immigration Services ("USCIS") did not abuse its
28 Defendants' Motion for Partial Summary Judgment as to Non-9th Plaintiffs CV07-05696 (CAS)

1 discretion in denying or revoking Plaintiffs' immediate relative petitions (Form I-
2 130) and adjustment of status applications (Form I-485), and there is no genuine
3 issue at to any material fact. *See* Fed. R. Civ. P. 56(c).

4 **II. BACKGROUND**

5 **A. Standards of Review**

6 **1. Motion for Summary Judgment**

7 Summary judgment is appropriate when the evidence, viewed in the light
8 most favorable to the nonmoving party, demonstrates that there are no genuine
9 issues of material fact and the moving party is entitled to judgment as a matter of
10 law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23, 106 S. Ct. 2548, 2552, 91 L.
11 Ed. 2d 265 (1986); Fed. R. Civ. P. 56(c). The requirement that a fact dispute be
12 genuine means that "the mere existence of some alleged factual dispute between
13 the parties will not defeat an otherwise properly supported motion for summary
14 judgment." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48, 106 S. Ct.
15 2505, 2510, 91 L. Ed. 2d 202 (1986).

16 **2. Administrative Procedure Act**

17 The APA provides for judicial review of final agency decisions. *See* 5
18 U.S.C. §§ 702 and 706. Under the APA, a court can only hold unlawful and set
19 aside agency action, findings, and conclusions it finds to be "arbitrary, capricious,
20 an abuse or discretion, or otherwise not in accordance with the law." 5 U.S.C.
21 § 706(2)(A); *Family Inc. v. U.S. Citizenship and Immigration Services*, 469 F.3d
22 1313, 1315 (9th Cir. 2006). A court may not "substitute its own construction of a
23 statutory provision for a reasonable interpretation made by the administrator of an
24 Defendants' Motion for Partial Summary Judgment as to Non-9th Plaintiffs CV07-05696 (CAS)

1 agency.” *Chevron, U.S.A., Inc., v. Natural Res. Def. Council, Inc.*, 467 U.S. 837,
2 844, 104 S. Ct. 2778, 2782, 81 L. Ed. 2d 694 (1984).

3 **3. Mandamus Act**

4 Under the Mandamus Act, 28 U.S.C. § 1361, the district court is vested with
5 “original jurisdiction of any action in the nature of mandamus to compel an officer
6 or employee of the United States or an agency thereof to perform a duty owed to
7 the plaintiff.” 28 U.S.C. § 1361. Plaintiffs must demonstrate that “(1) [his or her]
8 claim is clear and certain; (2) the official duty is nondiscretionary, ministerial, and
9 so plainly prescribed as to be free from doubt; and (3) no other adequate remedy if
10 available.” *Patel v. Reno*, 134 F.3d 929, 931 (9th Cir. 1997).

11 **B. Relevant Facts**

12 A separate Proposed Statement of Uncontroverted Facts and Conclusions of
13 Law accompanies this Memorandum as required by Local Rule 56-1.

14 **III. ARGUMENT**

15 **A. The Court Should Adopt *Robinson v. Napolitano* And Dismiss**
16 **Plaintiffs Whose Cases Arise Outside the Ninth Circuit.**

17 In denying Defendants' Motion to Dismiss (dkt #8), the Court
18 acknowledged that *Freeman v. Gonzales*, 444 F.3d 1031 (9th Cir. 2006), is not
19 binding precedent with respect to the claims of Plaintiffs whose cases arise outside
20 the Ninth Circuit; the Court nevertheless determined it to be “persuasive
21 authority.” Order re: Motion to Dismiss at 31 (dkt #36). However, in
22 determining that Plaintiffs residing outside the Ninth Circuit had stated a claim for
23 relief, the Court noted that “Defendants have cited no conflicting law from another
24 circuit,” *id.* at 32, and advised that “when and if another circuit reaches a
25 Defendants’ Motion for Partial Summary Judgment as to Non-9th Plaintiffs CV07-05696 (CAS)
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1 conclusion that is inconsistent with *Freeman*, defendants may bring such ruling to
2 the attention of this Court.” *Id.* at 32-33, n.18. In the recent precedent decision in
3 *Robinson v. Napolitano*, the Third Circuit made the precise finding that the terms
4 in 8 U.S.C. § 1151(b)(2)(A)(i) are clear and unambiguous, and do not permit an
5 immediate relative classification to be applied to widow(er)s who were married to
6 their U.S. citizen spouse for less than two years, like Plaintiffs. *See Robinson*, 554
7 F.3d 358, 364 (3rd Cir. 2009) (rehearing denied). For the reasons set forth *infra*,
8 Defendants respectfully request that this Court reconsider this point, apply
9 *Robinson* to cases arising outside the Ninth Circuit and dismiss those Plaintiffs
10 from this action.
11
12

13 **1. *Robinson* follows Board Precedent and Should Be Applied**
14 **to Cases Outside the Ninth Circuit.**

15 Decisions of the Board of Immigration Appeals (BIA or Board) are binding
16 on the government in the immigration context and apply nation-wide. *See* 8
17 C.F.R. § 1003.1(g). When a United States Court of Appeals renders a decision
18 that is contrary to the position of the Board’s, that decision must be followed only
19 as to cases arising within the Circuit in which the case was decided; USCIS
20 follows the Board’s decision for cases arising outside the Circuit. Therefore,
21 USCIS is not required to follow *Freeman* with respect to Plaintiffs’ cases arising
22 outside the Ninth Circuit but instead follows BIA precedent established in *Matter*
23 *of Sano*, 19 I & N. Dec. 299 (BIA 1985), and *Matter of Varela*, 13 I & N. Dec. 453
24 (BIA 1970). In *Sano* and *Varela*, the BIA held that an I-130 petition is to be
25 denied if the couple is married less than two years at the time of the death of the
26 U.S. citizen spouse. Since *Robinson* reached the same conclusion, Defendants
27
28 Defendants’ Motion for Partial Summary Judgment as to Non-9th Plaintiffs CV07-05696 (CAS)

1 urge this Court to adopt the reasoning of the Board and Third Circuit with respect
2 to the claims of Plaintiffs arising outside the jurisdiction of the Ninth Circuit.

3 _____ Section 204 of the Immigration and Nationality Act ("INA"), 8 U.S.C.
4 § 1154 (2007), provides United States citizens and alien spouses, under certain
5 conditions, the right to petition the Attorney General (now the Secretary of
6 Homeland Security) for classification of an alien as an "immediate relative." The
7 INA allows a United States citizen to file a petition (Form I-130) on behalf of a
8 spouse claiming the spouse is entitled to classification as an "immediate relative."
9 8 U.S.C. § 1154(a)(1)(A)(i). "Immediate relative" is a defined term, as set forth in
10 8 U.S.C. § 1151(b)(2)(A)(i):
11

12
13 For purposes of this subsection, the term "immediate relatives" means the
14 children, spouses, and parents of a citizen of the United States, except that,
15 in the case of parents, such citizens shall be at least 21 years of age. In the
16 case of an alien who was the spouse of a citizen of the United States for at
17 least 2 years at the time of the citizen's death and was not legally separated
18 from the citizen at the time of the citizen's death, the alien (and each child of
19 the alien) shall be considered, for purposes of this subsection, to remain an
20 immediate relative after the date of the citizen's death but only if the spouse
21 files a petition under section 204(a)(1)(A)(ii) of this title within 2 years after
22 such date and only until the date the spouse remarries.

23 *Id.*

24 As a result, those married less than two years at the time of the death of the
25 petitioning spouse no longer qualify for "immediate relative" status as legally
26 married spouses of United States citizens. *Varela*, 13 I. & N. Dec. 453. In *Varela*,
27 the Board determined that the death of the citizen spouse ends the legal marriage,
28 and thus also ends "immediate relative" status as well. *Id.* The Board reaffirmed
the result in *Varela* in a later decision, although the Board stressed the lack of the

1 alien's standing even to pursue the matter after the citizen spouse had died. *Sano*,
2 19 I. & N. Dec. 299.

3 Nevertheless, the *Freeman* Court concluded that the death of the United
4 States citizen spouse did not necessarily strip the alien spouse of immediate
5 relative status. *Freeman*, 444 F.3d at 1040-43. The Court also concluded it was
6 not required to follow the rule of deference to an authoritative administration
7 interpretation, *see National Cable & Telecomm. Ass'n v. Brand X Internet*
8 *Services*, 545 U.S. 967, 125 S. Ct. 2688, 162 L. Ed. 2d 820 (2005); *Chevron*, 467
9 U.S. 837, because, according to the panel, the Board decision in *Sano* undermined
10 the validity of *Varela*. *Freeman*, 444 F.3d at 1038, n.10. Without acknowledging
11 the general rule that marriage ends at death, moreover, the Court held that *Varela*
12 did not reflect a permissible interpretation of the statute. *Id.* at 1038.

13 By contrast, the Third Circuit in *Robinson* followed the general rule in the
14 United States that marriage legally ends when one spouse dies, and made the
15 precise finding that the terms in 8 U.S.C. § 1151(b)(2)(A)(i) are clear and
16 unambiguous, and do not permit an immediate relative classification to be applied
17 to widow(er)s who were married to their U.S. citizen spouse for less than two
18 years, like Plaintiffs. *Robinson*, 554 F.3d at 364. The first sentence in section
19 1151(b)(2)(A)(i) cannot be divorced from the second. *Id.* If the citizen spouse
20 dies, the two-year marriage requirement applies to the widow(er), and this rule
21 applies both to surviving spouses whose citizen spouse filed an immediate relative
22 petition prior to death and to surviving spouses whose citizen spouse did not file
23 the petition. *Id.* In the Third Circuit, therefore, widow(er)s, like Plaintiffs, who
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1 were married to their U.S. citizen spouse for less than two years, and did not
2 obtain conditional permanent resident status before the U.S. citizen's death, may
3 not immigrate on the basis of their former marital relationship. *Id.* The Agency's
4 interpretation has been endorsed by at least two decisions from federal district
5 courts considering this precise issue. *See Turek v. Dep't of Homeland Security*,
6 450 F. Supp. 2d 736 (E.D. Mich. 2006); *Burger v. McElroy*, 1999 WL 203353
7 (S.D.N.Y. 1999); *cf. Taing v. Chertoff*, 526 F. Supp. 2d 177 (D. Mass. 2007);
8 *Lockhart v. Chertoff*, 2008 WL 80225 (N.D. Ohio Jan. 7, 2008).

9
10
11 **2. Plaintiff Standifer's Claim Must Be Heard By the Third**
12 **Circuit.**

13 As discussed *supra*, the law of the Third Circuit establishes that the death of
14 a citizen while the citizen's Form I-130 petition is pending adjudication ends the
15 alien beneficiary's claim to immediate relative status as the spouse of a citizen.
16 *Robinson*, 554 F.3d at 364. Plaintiff Standifer lives in Pennsylvania. First
17 Amended Complaint for Declaratory and Injunctive Relief and Petition for Writ of
18 Mandamus (First Amended Complaint) at ¶ 142 (dkt #37). As Pennsylvania is
19 located in the jurisdiction of the Third Circuit, 28 U.S.C. § 41, Plaintiff Standifer's
20 claims should be heard by a court sitting in the Third Circuit. Thus, in addition to
21 the reasons set forth *supra*, Defendants respectfully request summary judgment as a
22 matter of law as to Plaintiff Standifer because she resides in the jurisdiction of the
23 Third Circuit.
24

25
26 //

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1 **B. Plaintiff Heard Was Granted Adjustment of Status.**

2 On January 16, 2008, Defendants approved the Form I-130 alien relative
3 petition that U.S. citizen Jeffrey L. Heard had filed on behalf of Plaintiff Heard.
4
5 *See* Declaration of Michael J. Sheridan and Evidence in Support of Defendants’
6 Motion for Partial Summary Judgment as to Plaintiffs Outside the Ninth Circuit
7 (Sheridan Declaration as to Plaintiffs Outside Ninth Circuit), Attachment A.
8 Defendants approved the Form I-130 under FY2004 National Defense
9 Authorization Act, Pub. L. No. 108-136, Division A, § 1703, 117 Stat. 1392, 1693-
10 96 (2003). On February 6, 2008, Defendants approved the Form I-495 adjustment
11 of status application filed by Plaintiff Heard. *Id.* Thus, Plaintiff Heard possesses
12 Lawful Permanent Resident status and her claims in the instant action are therefore
13 moot. Accordingly, in addition to the reasons set forth *supra*, Defendants
14 respectfully request summary judgement as to Plaintiff Heard because she has been
15 granted Lawful Permanent Resident status.
16
17

18 **C. The Petition Filed On Behalf Of Plaintiff Lu Was Properly Revoked.**

19 Although USCIS approved the Form I-130 filed by the late U.S. citizen Paul
20 Unger on behalf of Plaintiff Lu, upon his death, the approval was automatically
21 revoked as of the date of decision. *See* 8 C.F.R. § 205.1(a)(3)(i)(C). However, it is
22 not clear whether Plaintiff Lu has filed a request for reinstatement and a substitute
23 sponsor’s affidavit of support (USCIS Form I-864) and request for reinstatement of
24 the approval of her deceased husband’s Form I-130 under 8 C.F.R.

25 § 205.1(a)(3)(i)(C). Accordingly, in addition to the reasons set forth *supra*, in the
26 absence of such a request, Defendants respectfully request summary judgment as to
27
28

1 Plaintiff Lu and acknowledge that any judgment in her case would be without
2 prejudice to her ability to request reinstatement, as specified in 8 C.F.R.
3 § 205.1(a)(3)(i)(C).
4

5 **D. There Has Been No Final Agency Action on Plaintiff Walsh's**
6 **Reinstatement Request and Form I-485.**

7 The APA permits a court with jurisdiction over a civil action to review a
8 “final agency action.” 5 U.S.C. § 704. Although USCIS approved the Form I-130
9 filed by the late U.S. citizen Jeffrey Walsh on behalf of Plaintiff Walsh, upon his
10 death, the approval was automatically revoked as of the date of decision. *See* 8
11 C.F.R. § 205.1(a)(3)(i)(C). In 2008, however, Plaintiff Walsh filed a Form I-485
12 with USCIS, which included a substitute sponsor’s affidavit of support (USCIS
13 Form I-864) and request for reinstatement of the approval of her deceased
14 husband’s Form I-130 under 8 C.F.R. § 205.1(a)(3)(i)(C). Both the reinstatement
15 request and her Form I-485 are currently pending with USCIS. *See* Sheridan
16 Declaration as to Plaintiffs Outside Ninth Circuit, Exhibit B. Accordingly, because
17 there has been no “final agency action” on the Form I-485, this Court does not have
18 jurisdiction over Plaintiff Walsh’s claims under the APA. *See Rattlesnake*
19 *Coalition v. U.S. EPA*, 509 F.3d 1095, 1103-04 (9th cir. 2007).
20
21

22 **E. Plaintiffs Are Not Immediate Relatives Under 8 U.S.C.**
23 **§ 1151(b)(2)(A)(i).**

24 In the alternative, if this Court declines to adopt *Robinson* and Plaintiffs
25 whose cases arise outside the Ninth Circuit are not dismissed from the instant
26 action on that basis, Defendants are nevertheless entitled to judgment as a matter of
27 law because Plaintiffs claims should be rejected pursuant to a straightforward
28

1 application of the express terms of 8 U.S.C. § 1151(b)(2)(A)(i). Alternatively,
2 even if there is some ambiguity in the statute, numerous factors including two
3 recent legislative enactments and the subsequent legislative history of the statute
4 make it clear that Congress did not intend to enact the interpretation that Plaintiffs
5 invite this Court to adopt. The arguments submitted in the Motion for Partial
6 Summary Judgment as to Ninth Circuit Class Plaintiffs, Part III. A, are
7 incorporated by reference herein.

8
9 **F. Defendants Properly Require a Substitute Affidavit of Support**
10 **After the Death of the Petitioner/Sponsor.**

11 Additionally, Plaintiffs ask this Court for declaratory relief stating that
12 Defendants "improperly attempt to revoke the approval of an I-130 petition unless
13 plaintiffs-petitioners present a request under 8 C.F.R. § 205.1(a)(3)(C)(2) for
14 humanitarian reinstatement, supported by a Form I-864 executed by an individual
15 who qualifies under section 213A(f)(5)(B) of the Immigration and Nationality Act
16 as a qualifying substitute sponsor." First Amended Complaint at ¶ 172 (dkt #37).
17 For those individuals whose spouses die after an I-130 relative petition has been
18 approved, revocation of that petition is automatic. 8 C.F.R. § 205.1(a)(3)(i)(C)
19 (2006). USCIS may reinstate the approval of I-130 petition, as a matter of
20 discretion, when the beneficiary of the petition requests reinstatement for
21 humanitarian reasons and another relative (as described in 8 U.S.C.
22 § 1183a(f)(5)(B)) is willing and able to file an affidavit of support as a substitute
23 sponsor. For the reasons set forth in the Motion for Partial Summary Judgment as
24 to Ninth Circuit Class Plaintiffs, Part III. B., which are incorporated by reference
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1 herein, Defendants are entitled to judgment as a matter of law on this issue because
2 the policies followed by Defendant USCIS in handling requests by beneficiaries
3 residing in the Ninth Circuit for humanitarian reinstatement are fully consistent
4 with *Freeman*.

6 III. CONCLUSION

7 In view of the fact that *Robinson* in adopting the outcome in *Varela* follows
8 Board precedent, which is binding on USCIS, Defendants urge this Court to
9 dismiss Plaintiffs from this action whose cases arise outside the jurisdiction of the
10 Ninth Circuit because their claims should be decided under *Robinson* and *Varela*.
11 Plaintiff Standifer's claims should be rejected for the additional reason that she
12 resides within the jurisdiction of the Third Circuit. Plaintiff Heard's claims are
13 now moot because she was granted adjustment of status by USCIS. Additionally,
14 Defendants are entitled to judgment as a matter of law with respect to Plaintiff Lu
15 because the petition filed on her behalf was properly revoked. Finally, Petitioner
16 Walsh has failed to state a claim under the APA because there has been no final
17 agency action taken on her pending Form I-485. In the alternative, if this Court
18 declines to apply *Robinson* to the claims of the Plaintiffs arising outside the Ninth
19 Circuit, Defendants are nonetheless entitled to judgment as a matter of law because
20 it is clear that USCIS correctly interpreted the term "immediate relative" in
21 adjudicating the respective Form I-130s filed on behalf of Plaintiffs, and
22 appropriately required a substitute affidavit of support following the death of the
23 citizen spouses. Because USCIS did not abuse its discretion, neither the APA nor
24 the Mandamus Act afford relief to Plaintiffs. On the basis of the foregoing,
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1 Defendants request that this Court grant partial summary judgment in favor of
2 Defendants with respect to the claims of Plaintiffs outside the Ninth Circuit.
3

4
5 Date: March 13, 2009

6 Respectfully Submitted,

7
8 MICHAEL F. HERTZ
9 United States Department of Justice
10 Assistant Attorney General
11 Civil Division

12 /s/Elizabeth J. Stevens
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2 **CERTIFICATE OF SERVICE**

3 Case No. CV07-05696 (CAS)

4 I hereby certify that on this 13th day of March 2009, true and correct copies
5 of the foregoing **DEFENDANTS' MOTION FOR PARTIAL SUMMARY**
6 **JUDGMENT AS TO PLAINTIFFS OUTSIDE THE NINTH CIRCUIT** was
7 served pursuant to the district court's ECF system as to ECF filers on March 13,
8 2009, to the following ECF filers:
9

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