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11 Attorneys for Plaintiffs-Petitioners and
12 Class Members

13 UNITED STATES DISTRICT COURT
14 FOR THE CENTRAL DISTRICT OF CALIFORNIA
15 WESTERN DIVISION

16 CAROLYN ROBB HOOTKINS, ANA) Case No. CV 07-5696 CAS (MANx)
17 MARIA MONCAYO-GIGAX, (cont.), on)
18 behalf of themselves and all others)
19 similarly situated,) FIRST AMENDED COMPLAINT FOR
20) DECLARATORY AND INJUNCTIVE
21 Plaintiffs-petitioners,) RELIEF AND PETITION FOR WRIT
22) OF MANDAMUS
23 vs.)
24) CLASS ACTION
25 MICHAEL CHERTOFF, Secretary, U.S.)
26 Department of Homeland Security;)
27 EMILIO GONZALEZ, Director, U.S.)
28 Citizenship and Immigration Services,)
Defendants-respondents.)

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(Plaintiffs-petitioners cont.) SUZANNE
HENRIETTE DE MAILLY, SARA CRUZ
VARGAS DE FISHER, RAYMOND
LOCKETT, ELSA CECILIA
BRENTESON, PAULINE MARIE
GOBEIL, DAHIANNA HEARD, ROSE
FREEDA FISHMAN-CORMAN, KHIN
THIDAR WIN, DIANA GEJAC
ENGSTROM, MARIA DEL CARMEN
DIAZ-RUIZ, GLADYS WALSH, LI JU
LU, YELENA ARIAS ANGULO, PURITA
MANUEL POINTDEXTER, TRACY LEE
RUDL, DIEU NGOC NGUYEN,
AGNIESZKA BERNSTEIN, SARAH
BAYOR, STELLA STANDIFER, AND
FARAH BATOOL, on behalf of
themselves and all others similarly situated,

Plaintiffs-petitioners

1
2 **PETITION FOR WRIT OF MANDAMUS AND**
3 **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

4 This first amended complaint is filed as a matter of right pursuant to
5 Fed. R. Civ. P. 15(a)(1)(A), because plaintiffs-petitioners have not been
6 served with a responsive pleading. The Ninth Circuit has held that “a
7 motion to dismiss is not a ‘responsive pleading’ within the meaning of the
8 Rule.” *Doe v. U.S.*, 58 F.3d 494, 497 (9th Cir. 1995). This amended
9 pleading is necessitated, in part, due to actions taken by defendants
10 following the filing of the initial complaint. *See* Mot. to Dismiss, Ex. 1
11 (USCIS Interoffice Mem. From Mike Aytes, Assoc. Dir. Of Domestic
12 Operations, USCIS, to Field Leadership (Nov. 8, 2007) (USCIS
13 Memorandum)).

14 Plaintiffs-petitioners challenge defendants-respondents’
15 determinations that, as a matter of law, plaintiffs-petitioners lost status as
16 “immediate relative” spouses of United States citizens when the citizen
17 spouses of each tragically died while plaintiffs-petitioners’ immigration
18 applications were filed and awaiting agency action. Plaintiffs-petitioners
19 respectfully petition this Court for injunctive, declaratory and mandamus
20 relief to compel defendants-respondents and their subordinates to: (a) find
21 that, as a matter of statutory interpretation, plaintiffs-petitioners remain
22 “immediate relatives” under INA § 201(b)(2)(A)(i), 8 U.S.C.
23 § 1151(b)(2)(A)(i) due to marriage to United States citizens; (b) reopen and
24 readjudicate the immigrant petitions (I-130 petitions) that were filed on
25 behalf of plaintiffs-petitioners by the U.S. citizen spouse; and (c) reopen and
26 readjudicate the (i) adjustment of status applications (I-485 applications) that
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1 plaintiffs-petitioners filed as immediate relative spouses of U.S. citizens; or
2 (ii) the immigrant visa applications (DS-230 applications) that plaintiffs-
3 petitioners filed as immediate relative spouses of U.S. citizens. Plaintiffs-
4 petitioners allege as follows:

5 **JURISDICTION**

6 1. This action arises under the Immigration and Nationality Act of
7 1952 ("INA"), 8 U.S.C. § 1151(b)(2)(A)(i) and 8 U.S.C. § 1255. This Court
8 has jurisdiction over this action under 28 U.S.C. § 1331 (federal question),
9 the INA, the Administrative Procedure Act, 5 U.S.C. § 701 et seq., and the
10 Mandamus Act, 28 U.S.C. § 1361. Plaintiffs-petitioners additionally seeks
11 relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 et. seq.
12 (declaratory relief).
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14 **VENUE**

15 2. Venue is proper in this Court under 28 U.S.C. § 1391(e)
16 because defendants Michael Chertoff and Emilio Gonzalez are officers of
17 the United States acting in their official capacities, and the Department of
18 Homeland Security ("DHS"), the United States Citizenship and Immigration
19 Services ("USCIS") are agencies of the United States. Additionally,
20 plaintiffs-petitioners Carolyn Robb Hootkins, Ana Maria Moncayo-Gigax,
21 Susanne De Mailly, Sara Cruz Vargas De Fisher, and many class members
22 reside in this judicial district. Further, a substantial part of the events giving
23 rise to the claim occurred in this district, in that the Los Angeles District
24 Office of USCIS, an agency of DHS located at 300 Los Angeles Street, Los
25 Angeles, California 90012, was the local office that denied many of
26 plaintiffs-petitioners' immigration petitions and applications, as well as
27 petitions and applications filed by class members.
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1 3. Defendants waived objection to venue by making a motion
2 pursuant to Fed. R. Civ. P. 12 and omitting the defense. Fed. R. Civ. P.
3 12(h)(1)(A).

4 **EXHAUSTION**

5 4. There are no administrative remedies available for plaintiffs-
6 petitioners to exhaust.

7 5. There is no administrative appeal of the denial of an application
8 for adjustment of Status (I-485). 8 CFR § 245.2(a)(5)(ii).

9 6. There is no administrative appeal of a denial of an immigrant
10 visa application (DS-230) abroad. 22 C.F.R. § 42.81.

11 7. While plaintiffs-petitioners who filed to adjust status (I-485)
12 may renew the adjustment of status application in removal proceedings
13 before the Executive Office for Immigration Review ("EOIR"), initiation of
14 removal proceedings is at the sole discretion of DHS, and DHS has not
15 elected to initiate removal proceedings against most plaintiffs-petitioners
16 and class members. One cannot apply for initiation of removal proceedings.
17 As such this is not a mandatory exhaustion requirement and cannot be
18 imposed on Petitioner's APA action. *See Darby v. Cisneros*, 509 U.S. 137
19 (1993).

20 8. There also is no administrative appeal of the I-130 immigrant
21 petition, even before EOIR, because the Board of Immigration Appeals
22 ("BIA") has held that the immigration courts (within EOIR) and the BIA
23 (administrative courts of limited and not general jurisdiction) lack
24 jurisdiction under the administrative regulations to review such a denial.
25 See *Matter of Sano*, 19 I&N Dec. 299 (BIA 1985). Both procedures for
26 obtaining lawful permanent resident status, the adjustment of status (I-485)
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1 and immigrant visa (DS-230) applications, require an approved I-130
2 immigrant petition.

3 **DEFENDANTS**

4 9. Defendant-respondent Michael Chertoff is sued in his official
5 capacity as Secretary of Department of Homeland Security ("DHS"). As
6 Secretary of DHS, Mr. Chertoff is responsible for the administration and
7 enforcement of the immigration laws of the United States.

8 10. Defendant-respondent Emilio Gonzalez is sued in his official
9 capacity as Director of the United States Department of Homeland Security,
10 United States Citizenship and Immigration Services ("USCIS"). As Director
11 of USCIS, Dr. Gonzalez is responsible for the overall administration of
12 USCIS and the implementation of the immigration laws of the United States.

13 **STATUTORY AND REGULATORY BACKGROUND**

14 11. Plaintiffs-petitioners seek lawful permanent resident status, and
15 applied for such status. Plaintiffs-petitioners challenge defendants-
16 respondents' determinations that, as a matter of law, plaintiffs-petitioners
17 lost status as "immediate relative" spouses of United States citizens when
18 the citizen spouses of each tragically died while plaintiffs-petitioners'
19 immigration applications were awaiting adjudication.

20 12. A United States citizen who marries a non-citizen may apply
21 for his or her spouse to reside permanently in the United States with the
22 citizen. Pursuant to 8 U.S.C. § 1154(1)(A)(i), a United States citizen may
23 file a petition (Form *I-130*) on behalf of a spouse claiming the spouse is
24 entitled to classification as an "immediate relative." The term "immediate
25 relative", as applicable to the United States citizen's petition, is set forth in
26 the *first* sentence of 8 U.S.C. § 1151(b)(2)(A)(i) as the "children, spouses,
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1 and parents of a citizen of the United States, except that, in the case of
2 parents, such citizens shall be at least 21 years of age.”

3 13. An alien spouse whose United States citizen *never filed* a
4 petition on the alien’s behalf, may also file a petition (Form *I-360* self-
5 petition) on his or her own behalf, pursuant to 8 U.S.C. § 1154(1)(A)(ii),
6 which states, “An alien spouse described in the *second sentence* of section
7 201(b)(2)(A)(i) *also* may file a petition...”. *Id.*, (emphasis supplied) In such
8 a case, the immediate relative definition set out in the *second* sentence of 8
9 U.S.C. § 1151(b)(2)(A)(i) is applicable: “In the case of an alien who was the
10 spouse of a citizen of the United States for at least 2 years at the time of the
11 citizen’s death and was not legally separated from the citizen at the time of
12 the citizen’s death, the alien (and each child of the alien) shall be considered,
13 for purposes of this subsection, to remain an immediate relative after the
14 date of the citizen’s death but only if the spouse files a petition under section
15 204(a)(1)(A)(ii) of this title within 2 years after such date and only until the
16 date the spouse remarries.”

17 14. Defendants-respondents have uniformly applied the incorrect
18 immediate relative definition to plaintiff-petitioners’ petitions and
19 applications. Specifically, defendants-respondents have taken the position
20 that if the citizen spouse dies before the second anniversary of the marriage,
21 the alien spouse is no longer considered a “spouse” entitled to immediate
22 relative status. In doing so, defendants-respondents have confused the
23 immediate relative definition applicable to *I-130* petitions filed by United
24 States citizen spouses (the *first* sentence of 8 U.S.C. § 1151(b)(2)(A)(i)) with
25 the immediate relative definition applicable to *I-360* self-petitions filed by
26 alien spouses (the *second* sentence of 8 U.S.C. § 1151(b)(2)(A)(i)).
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1 15. Courts have refused to follow the government's position. See
2 *Freeman v. Gonzales*, 444 F.3d 1031 (9th Cir. 2006); *Robinson v. Chertoff*,
3 2007 WL 1412284 (D.N.J. May 14, 2007) *appeal docketed*, No. 07-2977 (3d
4 Cir. July 5, 2007); *Taing v. Chertoff*, 2007 U.S. Dist. LEXIS 911411 (D.
5 Mass 2007), *appeal docketed*, No. 08-1179 (1st Cir. Feb. 11, 2008);
6 *Lockhart v. Chertoff*, 2008 U.S. Dist. LEXIS 889 (D. Ohio 2008); *But see*
7 *Burger v. McElroy*, 97 Civ. 8775 (RPP), 1999 U.S. Dist. LEXIS 4854
8 (S.D.N.Y. Apr. 12, 1999); and *Turek v. Dep't of Homeland Security*, 450 F.
9 Supp. 2d 736 (E.D. Mich. 2006).

10 16. Through the consistent, nation-wide application of the improper
11 standard, defendants-respondents have compounded the loss of innumerable
12 surviving spouses of United States citizens across the country. Defendants-
13 respondents have stripped plaintiffs-petitioners of immediate relative status,
14 denied their applications for adjustment of status and for immigrant visas,
15 and denied work and travel authorization. These actions have exacted grief,
16 suffering, loss of work authorization, loss of travel authorization, separation
17 of family members, and countless other injuries flowing from forced
18 unlawful status such as loss of entitlement to estate benefits, loss of driving
19 privileges due to state laws requiring proof of legal status, and loss of
20 accrued lawful residence time that is a prerequisite for eventual United
21 States citizenship.

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23 **PLAINTIFFS-PETITIONERS**

24 **Plaintiff-petitioner HOOTKINS**

25 17. Plaintiff-petitioner Carolyn Robb Hootkins was born in South
26 Africa in 1966. Plaintiff-petitioner is a citizen of the United Kingdom.

27 18. Plaintiff-petitioner has lived in Santa Monica, California since
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1 2006. Plaintiff-petitioner entered the United States in nonimmigrant status,
2 and was inspected and admitted. She is currently the beneficiary of an O-1
3 nonimmigrant work visa (Alien of Extraordinary Ability) as a chef of
4 international renown, having served as Head Chef for TRH Prince Charles
5 and Princess Diana.

6 19. On July 24, 2005, plaintiff-petitioner married William "Bill"
7 Hootkins, a United States citizen and well-known actor, having been cast in
8 the movies Star Wars and Raiders of the Lost Ark, among others.

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10 **The Petition and Application**

11 20. On September 23, 2005, plaintiff-petitioner's U.S. citizen
12 spouse filed with the required fee a Form I-130, Petition for Alien Relative
13 ("Petition") establishing his citizenship and that his spouse is an immediate
14 relative, and executed an I-864 Affidavit of Support. On the same day,
15 plaintiff-petitioner filed with the required fee a Form I-485, Application to
16 Register Permanent Residence or to Adjust Status ("Application"), seeking
17 adjustment of status to lawful permanent resident, relying on the citizen
18 spouse's Petition attesting to the alien's status as spouse. Plaintiff-petitioner
19 was assigned an Alien Number "A-Number", which is A96 637 769.

20 21. On October 23, 2005, plaintiff-petitioner's spouse Bill Hootkins
21 died of pancreatic cancer.

22 **The Denial**

23 22. On March 16, 2006, defendants-respondents denied the Petition
24 and Application that were jointly filed by the couple solely on the basis that
25 plaintiff-petitioner was no longer the spouse of a U.S. citizen. On August
26 21, 2006, plaintiff-petitioner filed a motion to reopen with the required fee
27 which was granted on August 3, 2007. No action has been taken on the
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1 Petition and Application, however, and plaintiff-petitioner has not been
2 accorded adjustment of status to lawful permanent resident status.

3 **Plaintiff-petitioner MONCAYO-GIGAX**

4 23. Plaintiff-petitioner Ana Maria Moncayo-Gigax was born in
5 Ecuador in 1972. Plaintiff-petitioner is a citizen of Ecuador.

6 24. Plaintiff-petitioner has lived in Santa Clarita, California since
7 2000. Plaintiff-petitioner entered the United States on a nonimmigrant F-1
8 student visa, and was inspected and admitted. Plaintiff-petitioner later
9 changed status to an H-1B work visa.

10 25. On August 28, 1998, plaintiff-petitioner married John Charles
11 Gigax, a United States citizen and United States Border Patrol Agent serving
12 with legacy Immigration and Naturalization Service.

13 **The Petition and Application**

14 26. On April 29, 1999, plaintiff-petitioner's U.S. citizen spouse
15 filed with the required fee a Form I-130, Petition for Alien Relative
16 ("Petition") establishing his citizenship and that his spouse is an immediate
17 relative, and executed an I-864 Affidavit of Support. On the same day,
18 plaintiff-petitioner filed with the required fee a Form I-485, Application to
19 Register Permanent Residence or to Adjust Status ("Application"), seeking
20 adjustment of status to lawful permanent resident, relying on the citizen
21 spouse's Petition attesting to the alien's status as spouse. Plaintiff-petitioner
22 was assigned an Alien Number "A-Number", which is A77 128 166.

23 27. On November 7, 1999, plaintiff-petitioner's spouse John
24 Charles Gigax was killed in a car accident in Virginia while on duty with the
25 United States Border Patrol, traveling in a U.S. government vehicle from a
26 temporary assignment in Washington, D.C.
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The Denial

28. On March 2, 2004, defendants-respondents denied the Petition and Application that were jointly filed by the couple solely on the basis that plaintiff-petitioner was no longer the spouse of a U.S. citizen. A motion to reopen was filed in November 2006, which was granted on February 10, 2007. Although the motion to reopen has been granted, defendants-respondents have not approved plaintiff-petitioner's adjustment of status following the initial denial.

Plaintiff-petitioner DE MAILLY

29. Plaintiff-petitioner Suzanne Henriette De Mailly was born in the Belgian Congo in 1953. Plaintiff-petitioner is a citizen of Belgium.

30. Plaintiff-petitioner lived in Los Angeles, California until June 2005 when she was forced by defendants-respondents to return to Belgium following the denial of her application and revocation of work authorization. Plaintiff-petitioner entered the United States as a visitor prior to her application, and was inspected and admitted.

31. On February 13, 2003, plaintiff-petitioner married Mark William Hubel, a United States citizen.

The Petition and Application

32. On February 21, 2003, plaintiff-petitioner's U.S. citizen spouse filed with the required fee a Form I-130, Petition for Alien Relative ("Petition") establishing his citizenship and that his spouse is an immediate relative, and executed an I-864 Affidavit of Support. On the same day, plaintiff-petitioner filed with the required fee a Form I-485, Application to Register Permanent Residence or to Adjust Status ("Application"), seeking adjustment of status to lawful permanent resident, relying on the citizen

1 spouse's Petition attesting to the alien's status as spouse. The petition and
2 application were filed with the Los Angeles office of USCIS, and plaintiff-
3 petitioner was assigned an Alien Number "A-Number", which is A95 623
4 420.

5 33. Plaintiff-petitioner's spouse Mark William Hubel died on
6 October 13, 2003.

7 **The Denial**

8 34. On July 1, 2004, defendants-respondents denied the Petition
9 and Application that were jointly filed by the couple solely on the basis that
10 plaintiff-petitioner was no longer the spouse of a U.S. citizen.

11 **Plaintiff-petitioner VARGAS DE FISHER**

12 35. Plaintiff-petitioner Sara Cruz Vargas de Fisher was born in
13 Mexico in 1961. Plaintiff-petitioner is a citizen of Mexico.

14 36. Plaintiff-petitioner has lived in Riverside, California since
15 2001. Plaintiff-petitioner entered the United States on a nonimmigrant B-1
16 visa in 2001, and was inspected and admitted.

17 37. On July 19, 2004, plaintiff-petitioner married Newton Edgar
18 Fisher, a United States citizen.

19 38. Plaintiff-petitioner has two children from a previous marriage,
20 Aldo David Angrade Vargas (born 1988) and Edson Daniel Andrade Vargas
21 (born 1989).

22 **The Petition and Application**

23 39. On November 22, 2004, plaintiff-petitioner's U.S. citizen
24 spouse filed with the required fee a Form I-130, Petition for Alien Relative
25 ("Petition") establishing his citizenship and that his spouse is an immediate
26 relative, and executed an I-864 Affidavit of Support. On the same day,
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1 plaintiff-petitioner filed with the required fee a Form I-485, Application to
2 Register Permanent Residence or to Adjust Status ("Application"), seeking
3 adjustment of status to lawful permanent resident, relying on the citizen
4 spouse's Petition attesting to the alien's status as spouse. Plaintiff-petitioner
5 was assigned an Alien Number "A-Number", which is A95 692 884.

6 40. On June 27, 2005, plaintiff-petitioner's spouse Newton Edgar
7 Fisher died of cancer.

8 **The Denial**

9 41. On May 13, 2005, defendants-respondents denied the Petition
10 filed by the couple solely on the basis that plaintiff-petitioner was no longer
11 the spouse of a U.S. citizen. No action has been taken on the Application for
12 adjustment of status. By denying the Petition and withholding approval on
13 the Application, defendants-respondents in effect denied the Petition and
14 Application that were jointly filed by the couple solely on the basis that
15 plaintiff-petitioner was no longer the spouse of a U.S. citizen.

16 **Plaintiff-petitioner LOCKETT**

17 42. Plaintiff-petitioner Raymond Lockett was born in the United
18 Kingdom in 1964. Plaintiff-petitioner is a citizen of the United Kingdom.

19 43. Plaintiff-petitioner has lived in Washougal, Washington since
20 2006. Plaintiff-petitioner entered the United States as a visitor in January
21 2006 and was inspected and admitted.

22 44. On March 25, 2006, plaintiff-petitioner married Catharine
23 Martinet, a United States citizen.

24 **The Petition and Application**

25 45. On June 1, 2006, plaintiff-petitioner's U.S. citizen spouse filed
26 with the required fee a Form I-130, Petition for Alien Relative ("Petition")
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1 establishing her citizenship and that her spouse is an immediate relative, and
2 executed an I-864 Affidavit of Support. On the same day, plaintiff-
3 petitioner filed with the required fee a Form I-485, Application to Register
4 Permanent Residence or to Adjust Status ("Application"), seeking
5 adjustment of status to lawful permanent resident, relying on the citizen
6 spouse's Petition attesting to the alien's status as spouse. Plaintiff-petitioner
7 was assigned an Alien Number "A-Number", which is A96 857 050

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9 46. On June 5, 2006, plaintiff-petitioner's spouse Catharine
10 Martinet died of spontaneous pneumothorax leading to respiratory failure.

11 **The Denial**

12 47. On September 26, 2006 defendants-respondents interviewed
13 plaintiff-petitioner and withheld approval, indicating that guidance from
14 headquarters would be required. By withholding approval, defendants-
15 respondents in effect denied the Petition and Application that were jointly
16 filed by the couple solely on the basis that plaintiff-petitioner was no longer
17 the spouse of a U.S. citizen.

18 **Plaintiff-petitioner BRENTESON**

19 48. Plaintiff-petitioner Elsa Cecilia Brenteson was born in Costa
20 Rica in 1958. Plaintiff-petitioner is a citizen of Costa Rica.

21 49. Plaintiff-petitioner has lived in Phoenix, Arizona since 2006.
22 Plaintiff-petitioner entered the United States on a nonimmigrant B-1/B-2
23 visa in 1998, and was inspected and admitted.

24 50. On January 18, 2003, plaintiff-petitioner married Donald Irvin
25 Brenteson, a United States citizen.

26 **The Petition and Application**

27 51. On May 14, 2003, plaintiff-petitioner's U.S. citizen spouse filed
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1 with the required fee a Form I-130, Petition for Alien Relative ("Petition")
2 establishing his citizenship and that his spouse is an immediate relative, and
3 executed an I-864 Affidavit of Support. On the same day, plaintiff-
4 petitioner filed with the required fee a Form I-485, Application to Register
5 Permanent Residence or to Adjust Status ("Application"), seeking
6 adjustment of status to lawful permanent resident, relying on the citizen
7 spouse's Petition attesting to the alien's status as spouse. Plaintiff-petitioner
8 was assigned an Alien Number "A-Number", which is A99 278 074.

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10 52. On January 16, 2005, Plaintiff-petitioner's spouse Donald Irvin
11 Brenteson died of cardiac arrest.

12 **The Denial**

13 53. On December 19, 2005, defendants-respondents denied the
14 Petition and Application that were jointly filed by the couple solely on the
15 basis that plaintiff-petitioner was no longer the spouse of a U.S. citizen. On
16 May 24, 2006, plaintiff-petitioner filed a motion to reopen. On February 21,
17 2008, defendants-respondents requested a Form I-864 from an individual
18 who qualifies as a substitute sponsor under section 213A(f)(5)(B). Mrs.
19 Brenteson is unable to comply with this unlawful requirement, and through
20 counsel has advised defendants-respondents of this fact. According to the
21 policy of defendants-respondents under the USCIS Memorandum (See Mot.
22 to Dismiss, Ex. 1, USCIS Interoffice Mem. From Mike Aytes, Assoc. Dir.
23 Of Domestic Operations, to Field Leadership, Nov. 8, 2007), Mrs.
24 Brenteson's petition and application will be denied.

25 **Plaintiff-petitioner GOBEIL**

26 54. Plaintiff-petitioner Pauline Gobeil was born in Canada in 1944.
27 Plaintiff-petitioner is a citizen of Canada.
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1 55. Plaintiff-petitioner has lived in Mesa, Arizona since 2003.
2 Plaintiff-petitioner entered the United States as a nonimmigrant visitor in
3 2003, and was inspected and admitted.

4 56. On August 7, 2003, plaintiff-petitioner married Leon Max
5 Everitt, a United States citizen.

6 **The Petition and Application**

7 57. On September 30, 2003, plaintiff-petitioner's U.S. citizen
8 spouse filed with the required fee a Form I-130, Petition for Alien Relative
9 ("Petition") establishing his citizenship and that his spouse is an immediate
10 relative, and executed an I-864 Affidavit of Support. On the same day,
11 plaintiff-petitioner filed with the required fee a Form I-485, Application to
12 Register Permanent Residence or to Adjust Status ("Application"), seeking
13 adjustment of status to lawful permanent resident, relying on the citizen
14 spouse's Petition attesting to the alien's status as spouse. Plaintiff-petitioner
15 was assigned an Alien Number "A-Number", which is A97 339 035.
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17 58. On October 7, 2004, plaintiff-petitioner's spouse Leon Max
18 Everitt died of cardiac arrest

19 **The Denial**

20 59. On May 31, 2005, defendants-respondents denied the Petition
21 and Application that were jointly filed by the couple solely on the basis that
22 plaintiff-petitioner was no longer the spouse of a U.S. citizen.

23 **Plaintiff-petitioner HEARD**

24 60. Plaintiff-petitioner Dahianna Heard was born in Venezuela in
25 1971. Plaintiff-petitioner is a citizen of Venezuela.

26 61. Plaintiff-petitioner has lived in Orlando, Florida since March
27 2007. Plaintiff-petitioner entered the United States on a nonimmigrant B-
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1 1/B-2 visa in 2001, and was inspected and admitted.

2 62. On July 9, 2004, plaintiff-petitioner married Jeffrey Loren
3 Heard, a United States citizen and an Army veteran.

4 63. Plaintiff-petitioner and her husband have a son, Bryan Harley
5 Heard, age one and one-half years old. Their son is a United States citizen.

6 **The Petition and Application**

7 64. On October 27, 2004, plaintiff-petitioner's U.S. citizen spouse
8 filed with the required fee a Form I-130, Petition for Alien Relative
9 ("Petition") establishing his citizenship and that his spouse is an immediate
10 relative, and executed an I-864 Affidavit of Support. On the same day,
11 plaintiff-petitioner filed with the required fee a Form I-485, Application to
12 Register Permanent Residence or to Adjust Status ("Application"), seeking
13 adjustment of status to lawful permanent resident, relying on the citizen
14 spouse's Petition attesting to the alien's status as spouse. Plaintiff-petitioner
15 was assigned an Alien Number "A-Number", which is A99 204 406.

16 65. On March 20, 2006, plaintiff-petitioner's spouse Jeffrey Loren
17 Heard was killed in an ambush outside Fallujah, Iraq, while working for a
18 private security contractor in Iraq assisting United States military operations
19 through the delivery of supplies to U.S. troops. Mr. Heard died of a gunshot
20 wound to the head.

21 **The Denial**

22 66. On September 27, 2006, Defendants-respondents denied the
23 Petition and Application that were jointly filed by the couple solely on the
24 basis that plaintiff-petitioner was no longer the spouse of a U.S. citizen. On
25 January 16, 2008, defendants-respondents approved the I-130 petition filed
26 by Mr. Heard on behalf of Mrs. Heard, under section 1703(a) of Public Law
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1 108-136, a different section of law. Her adjustment of status application was
2 approved on February 7, 2008.

3 **Plaintiff-petitioner FISHMAN-CORMAN**

4 67. Plaintiff-petitioner Rose Freeda Fishman-Corman was born in
5 Canada in 1930. Plaintiff-petitioner is a citizen of Canada.

6 68. Plaintiff-petitioner has lived in Clearwater, Florida since 2005.
7 Plaintiff-petitioner entered the United States as a nonimmigrant visitor in
8 2004, and was inspected and admitted.

9 69. On December 2, 2004, plaintiff-petitioner married Irving Jacob
10 Corman, a United States citizen.

11 **The Petition and Application**

12 70. On April 14, 2005, plaintiff-petitioner's U.S. citizen spouse
13 filed with the required fee a Form I-130, Petition for Alien Relative
14 ("Petition") establishing his citizenship and that his spouse is an immediate
15 relative, and executed an I-864 Affidavit of Support. On the same day,
16 plaintiff-petitioner filed with the required fee a Form I-485, Application to
17 Register Permanent Residence or to Adjust Status ("Application"), seeking
18 adjustment of status to lawful permanent resident, relying on the citizen
19 spouse's Petition attesting to the alien's status as spouse. Plaintiff-petitioner
20 was assigned an Alien Number "A-Number", which is A95 711 606.

21 71. Plaintiff-petitioner's spouse Irving Jacob Corman died on
22 September 1, 2005 in California.

23 **The Denial**

24 72. On May 19, 2006, defendants-respondents denied the Petition
25 and Application that were jointly filed by the couple solely on the basis that
26 plaintiff-petitioner was no longer the spouse of a U.S. citizen.
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1 **Plaintiff WIN**

2 73. Plaintiff-petitioner Khin Thidar Win was born in Sri Lanka in
3 1981. Plaintiff-petitioner is a citizen of Myanmar (Burma).

4 74. Plaintiff-petitioner has lived in Las Vegas, Nevada since 2002.
5 Plaintiff-petitioner entered the United States on a nonimmigrant F-1 student
6 visa, and was inspected and admitted in 2002.

7 75. On March 5, 2005, plaintiff-petitioner married Donn Stephen
8 Mauro, a United States citizen.

9 **The Petition and Application**

10 76. On May 22, 2005, plaintiff-petitioner's U.S. citizen spouse filed
11 with the required fee a Form I-130, Petition for Alien Relative ("Petition")
12 establishing his citizenship and that his spouse is an immediate relative, and
13 executed an I-864 Affidavit of Support. On the same day, plaintiff-
14 petitioner filed with the required fee a Form I-485, Application to Register
15 Permanent Residence or to Adjust Status ("Application"), seeking
16 adjustment of status to lawful permanent resident, relying on the citizen
17 spouse's Petition attesting to the alien's status as spouse. Plaintiff-petitioner
18 was assigned an Alien Number "A-Number", which is A96 533 069.

19 77. On February 6, 2006, plaintiff-petitioner's spouse Donn Stephen
20 Mauro was killed by a drunk driver.

21 **The Denial**

22 78. On March 2, 2006, defendants-respondents denied the Petition
23 and Application that were jointly filed by the couple solely on the basis that
24 plaintiff-petitioner was no longer the spouse of a U.S. citizen.

25 79. On September 26, 2006, plaintiff-petitioner filed a motion to
26 reconsider the denial, which was granted on March 12, 2007 in an order
27
28

1 which stated, "Upon review of the file, it has been determined that the
2 applicant may be eligible for the benefit sought." No action has been taken
3 on the Petition and Application, however, and plaintiff-petitioner has not
4 been accorded adjustment of status to lawful permanent resident status.

5 **Plaintiff-petitioner ENGSTROM**

6 80. Plaintiff-petitioner Diana Gejac Engstrom was born in Kosovo
7 in 1980. Plaintiff-petitioner is a citizen of Kosovo, the former Yugoslavia.

8 81. Plaintiff-petitioner has lived in Bloomington, Illinois since
9 May, 2005. Plaintiff-petitioner entered the United States on a nonimmigrant
10 B-2 visa in 2003, and was inspected and admitted.

11 82. On December 29, 2003, plaintiff-petitioner married Todd
12 Engstrom, a United States citizen and United States Army Contractor
13 responsible for training Iraqi security forces in Iraq.

14 **The Petition and Application**

15 83. On January 29, 2004, plaintiff-petitioner's U.S. citizen spouse
16 filed with the required fee a Form I-130, Petition for Alien Relative
17 ("Petition") establishing his citizenship and that his spouse is an immediate
18 relative, and executed an I-864 Affidavit of Support. On the same day,
19 plaintiff-petitioner filed with the required fee a Form I-485, Application to
20 Register Permanent Residence or to Adjust Status ("Application"), seeking
21 adjustment of status to lawful permanent resident, relying on the citizen
22 spouse's Petition attesting to the alien's status as spouse. Plaintiff-petitioner
23 was assigned an Alien Number "A-Number", which is A99 103 420.

24 84. On September 14, 2004, plaintiff-petitioner's Todd Engstrom
25 was killed in Iraq when his convoy was hit by a rocket-propelled grenade.

26 **The Denial**

1 85. Defendants-respondents have not denied the Petition and
2 Application that were jointly filed by the couple. Based on defendants-
3 respondents actions in other cases, plaintiff-petitioner fears that defendants-
4 respondents may deny her application solely on the basis that plaintiff-
5 petitioner was no longer the spouse of a U.S. citizen. In addition, no action
6 has been taken on the Petition and Application, and plaintiff-petitioner has
7 not been accorded adjustment of status to lawful permanent resident status.

8 **Plaintiff-petitioner DIAZ-RUIZ**

9
10 86. Plaintiff-petitioner Maria Del Carmen Diaz-Ruiz was born in
11 Spain in 1973. Plaintiff-petitioner is a citizen of Spain.

12 87. Plaintiff-petitioner has lived in Glencoe, Illinois since July
13 2005. Plaintiff-petitioner entered the United States on a nonimmigrant B-
14 1/B-2 visa, and was inspected and admitted.

15 88. On June 29, 2004, plaintiff-petitioner married Christopher
16 Rodriguez, a United States citizen.

17 **The Petition and Application**

18 89. On December 30, 2004, plaintiff-petitioner's U.S. citizen spouse
19 filed with the required fee a Form I-130, Petition for Alien Relative
20 ("Petition") establishing his citizenship and that his spouse is an immediate
21 relative, and executed an I-864 Affidavit of Support. On the same day,
22 plaintiff-petitioner filed with the required fee a Form I-485, Application to
23 Register Permanent Residence or to Adjust Status ("Application"), seeking
24 adjustment of status to lawful permanent resident, relying on the citizen
25 spouse's Petition attesting to the alien's status as spouse. Plaintiff-petitioner
26 was assigned an Alien Number "A-Number", which is A99 235 659.

27 90. On June 13, 2005, plaintiff-petitioner's spouse Christopher
28

1 Rodriguez died of congenital heart disease.

2 **The Denial**

3 91. On December 22, 2005, defendants-respondents denied the
4 Petition and Application that were jointly filed by the couple solely on the
5 basis that plaintiff-petitioner was no longer the spouse of a U.S. citizen. On
6 May 18, 2006, plaintiff-petitioner filed a motion to reopen which was denied
7 in a written opinion October 25, 2006.

8 **Plaintiff-petitioner WALSH**

9 92. Plaintiff-petitioner Gladys Walsh was born in Columbia in
10 1961. Plaintiff-petitioner is a citizen of Columbia.

11 93. Plaintiff-petitioner has lived in Hopkinton, MA since 2002.
12 Plaintiff-petitioner entered the United States on a nonimmigrant B-1/B-2
13 visa, and was inspected and admitted.

14 94. On January 20, 2001, plaintiff-petitioner married Jeffrey John
15 Walsh, a United States citizen.

16 95. Plaintiff-petitioner and her husband have a son, Anthony
17 Patrick Walsh, born October 2001. Their son is a United States citizen, and
18 is being treated for severe club feet deformity in Springfield, Massachusetts
19 – treatment not available in Columbia. He will need treatment until he is
20 eighteen years old.

21 **The Petition and Application**

22 96. In 2001, plaintiff-petitioner's U.S. citizen spouse filed with the
23 required fee a Form I-130, Petition for Alien Relative ("Petition")
24 establishing his citizenship and that his spouse is an immediate relative, and
25 executed an I-864 Affidavit of Support. Because plaintiff-petitioner was
26 physically in Columbia, the U.S. Department of State began immigrant visa
27
28

1 processing. Plaintiff-petitioner was assigned an immigrant visa case
2 number, BGT2002002012.

3 97. On September 11, 2002 while in the United States, plaintiff-
4 petitioner's spouse died of a heart attack. Plaintiff-petitioner, then in
5 Columbia, was issued a visitor visa to attend her husband's funeral.

6 **The Denial**

7 98. On September 16, 2002, defendants-respondents notified
8 plaintiff-petitioner through counsel that her petition was automatically
9 revoked solely on the basis that plaintiff-petitioner was no longer the spouse
10 of a U.S. citizen.

11 **Plaintiff-petitioner LU**

12 99. Plaintiff-petitioner Li Ju LU was born in China in 1972.
13 Plaintiff-petitioner is a citizen of China.

14 100. Plaintiff-petitioner resides in Guangzhou, China.

15 101. On February 25, 2005, plaintiff-petitioner married Paul Michel
16 Unger, a United States citizen.

17 **The Petition and Application**

18 102. On April 28, 2005, plaintiff-petitioner's U.S. citizen spouse
19 filed with the required fee a Form I-130, Petition for Alien Relative
20 ("Petition") with the California Service Center of USCIS, located in Laguna
21 Niguel, California, establishing his citizenship and that his spouse is an
22 immediate relative. The Petition was assigned a case number WAC-05-147-
23 54736 and was approved. Because plaintiff-petitioner was physically in
24 China, the approval was forwarded to the U.S. Department of State and the
25 Consulate in Guangzhou, China began immigrant visa processing. Plaintiff-
26 petitioner was assigned an immigrant visa case number GUZ20058221347.
27
28

1 103. On February 3, 2006, plaintiff-petitioner's spouse died of a
2 heart attack while in the United States.

3 **The Denial**

4 104. Following the death, defendants-respondents notified plaintiff-
5 petitioner that her petition was automatically revoked solely on the basis that
6 plaintiff-petitioner was no longer the spouse of a U.S. citizen. Plaintiff-
7 petitioner was unable to receive a visa to attend her husband's funeral, and
8 has not been allowed to visit her husband's grave site or visit the family of
9 her husband.

10 **Plaintiff-petitioner ARIAS-ANGULO**

11 105. Plaintiff-petitioner Yelena Arias Angulo was born in Bolivia in
12 1970. Plaintiff-petitioner is a citizen of Bolivia.

13 106. Plaintiff-petitioner has lived in Falls Church, Virginia since
14 December 2001. Plaintiff-petitioner entered the United States on a
15 nonimmigrant B-1/B-2 visa in 2001, and was inspected and admitted.

16 107. On May 27, 2005, Plaintiff-petitioner married Donald Arias, a
17 United States citizen.

18 **The Petition and Application**

19 108. On September 21, 2005, plaintiff-petitioner's U.S. citizen
20 spouse filed with the required fee a Form I-130, Petition for Alien Relative
21 ("Petition") establishing his citizenship and that his spouse is an immediate
22 relative, and executed an I-864 Affidavit of Support. On the same day,
23 plaintiff-petitioner filed with the required fee a Form I-485, Application to
24 Register Permanent Residence or to Adjust Status ("Application"), seeking
25 adjustment of status to lawful permanent resident, relying on the citizen
26 spouse's Petition attesting to the alien's status as spouse. Plaintiff-petitioner
27
28

1 was assigned an Alien Number "A-Number", which is A96 628 021.

2 109. On March 3, 2006, plaintiff-petitioner's spouse Donald Arias
3 died.

4 **The Denial**

5 110. In June 2006, defendants-respondents interviewed plaintiff-
6 petitioner and withheld approval, asking plaintiff-petitioner to instead file a
7 widow self-petition (I-360) for which she is not eligible because she was not
8 married two years at the time of her spouse's death. On August 2, 2007,
9 defendants-respondents denied the Petition and Application that were jointly
10 filed by the couple solely on the basis that plaintiff-petitioner was no longer
11 the spouse of a U.S. citizen.

12 **Plaintiff-petitioner POINDEXTER**

13 111. Plaintiff-petitioner Purita Manuel Poindexter was born in the
14 Philippines in 1954. Plaintiff-petitioner is a citizen of the Philippines.

15 112. Plaintiff-petitioner has lived in Hercules, California since April
16 2007. Plaintiff-petitioner entered the United States on a nonimmigrant B-2
17 visa in 2002, and was inspected and admitted.

18 113. On November 10, 2006, plaintiff-petitioner married Richard
19 Daniel Poindexter, a United States citizen.

20 **The Petition and Application**

21 114. On December 3, 2006, plaintiff-petitioner's U.S. citizen spouse
22 filed with the required fee a Form I-130, Petition for Alien Relative
23 ("Petition") establishing his citizenship and that his spouse is an immediate
24 relative, and executed an I-864 Affidavit of Support. On the same day,
25 plaintiff-petitioner filed with the required fee a Form I-485, Application to
26 Register Permanent Residence or to Adjust Status ("Application"), seeking
27
28

1 adjustment of status to lawful permanent resident, relying on the citizen
2 spouse's Petition attesting to the alien's status as spouse. Plaintiff-petitioner
3 was assigned an Alien Number "A-Number", which is A89 629 770.

4 115. Plaintiff-petitioner's spouse Richard Daniel Poindexter died on
5 January 29, 2007.

6 **The Denial**

7 116. Plaintiff-petitioner was scheduled by defendants-respondents
8 for an interview on February 15, 2007. Plaintiff-petitioner did not attend the
9 interview because her husband had only recently passed away. On March 7,
10 2007, defendants-respondents denied the Petition and Application that were
11 jointly filed by the couple due to abandonment, but plaintiff-petitioner filed
12 a motion to reopen with fee which is currently pending. Had plaintiff-
13 petitioner appeared at the interview, defendants-respondents would have
14 denied the Petition and Application solely on the basis that Petitioner was no
15 longer the spouse of a U.S. citizen.

16 **Plaintiff-petitioner RUDL**

17 117. Plaintiff-petitioner Tracy Lee Rudl was born in Canada in 1972.
18 Plaintiff-petitioner is a citizen of Canada.

19 118. Plaintiff-petitioner has lived in La Jolla, California since 2002.
20 Plaintiff-petitioner entered the United States on a nonimmigrant H-1B work
21 visa in 2002, and was inspected and admitted.

22 119. On July 24, 2004, plaintiff-petitioner married Corey Nicholas
23 Rudl, a United States citizen and well-known internet marketing guru.

24 **The Petition and Application**

25 120. On March 30, 2005, plaintiff-petitioner's U.S. citizen spouse
26 filed with the required fee a Form I-130, Petition for Alien Relative
27
28

1 ("Petition") establishing his citizenship and that his spouse is an immediate
2 relative, and executed an I-864 Affidavit of Support. On the same day,
3 plaintiff-petitioner filed with the required fee a Form I-485, Application to
4 Register Permanent Residence or to Adjust Status ("Application"), seeking
5 adjustment of status to lawful permanent resident, relying on the citizen
6 spouse's Petition attesting to the alien's status as spouse. Plaintiff-petitioner
7 was assigned an Alien Number "A-Number", which is A98 806 945.

8
9 121. On June 2, 2005, plaintiff-petitioner's spouse Corey Nicholas
10 Rudl was killed while riding as a passenger in a car on a raceway.

11 **The Denial**

12 122. On November 14, 2005, defendants-respondents denied the
13 Petition and Application that were jointly filed by the couple solely on the
14 basis that plaintiff-petitioner was no longer the spouse of a U.S. citizen. On
15 June 13, 2006, plaintiff-petitioner filed a motion to reopen which has not
16 been acted upon.

17 **Plaintiff-petitioner NGUYEN**

18 123. Plaintiff-petitioner Dieu Ngoc Nguyen was born in Vietnam in
19 1966. Plaintiff-petitioner is a citizen of Vietnam.

20 124. Plaintiff-petitioner has lived in Elk Grove, California since
21 2004. Plaintiff-petitioner entered the United States on a K-1 visa as the
22 fiancée of a United States citizen, and was inspected and admitted on March
23 20, 2004.

24 125. On April 19, 2004, plaintiff-petitioner married Loc Van
25 Nguyen, a naturalized United States citizen, within the 90 days from her
26 entry as required by the K-1 visa.

27 **The Petition and Application**

Plaintiff-petitioner BERNSTEIN

1
2 129. Plaintiff-petitioner Agnieszka Bernstein was born in Poland in
3 1974. Plaintiff-petitioner is a citizen of Poland.

4 130. Plaintiff-petitioner has lived in Spring Valley, New York since
5 April 2005. Plaintiff-petitioner entered the United States on a nonimmigrant
6 J-1 visa, and was inspected and admitted September 14, 1998.

7 131. On April 17, 2005, plaintiff-petitioner married Bryan Bernstein,
8 a United States citizen.

The Petition and Application

9
10 132. On July 25, 2005 plaintiff-petitioner's U.S. citizen spouse filed
11 with the required fee a Form I-130, Petition for Alien Relative ("Petition")
12 establishing his citizenship and that his spouse is an immediate relative, and
13 executed an I-864 Affidavit of Support. On the same day, plaintiff-
14 petitioner filed with the required fee a Form I-485, Application to Register
15 Permanent Residence or to Adjust Status ("Application"), seeking
16 adjustment of status to lawful permanent resident, relying on the citizen
17 spouse's Petition attesting to the alien's status as spouse. Plaintiff-petitioner
18 was assigned an Alien Number "A-Number", which is A 96 588 669.

19
20 133. Plaintiff-petitioner's spouse Bryan Bernstein died on March 10,
21 2006.

The Denial

22
23 134. On March 29, 2006, defendants-respondents denied the Petition
24 and Application that were jointly filed by the couple solely on the basis that
25 plaintiff-petitioner was no longer the spouse of a U.S. citizen.

Plaintiff-petitioner BAYOR

26
27 135. Plaintiff-petitioner Sarah Bayor was born in the Philippines in
28

1 1966. Plaintiff-petitioner is a citizen of the Philippines

2 136. Plaintiff-petitioner has lived in Jamaica, New York since 2002.
3 Plaintiff-petitioner entered the United States on a nonimmigrant C-1 visa,
4 and was inspected and admitted.

5 137. On January 5, 2006 plaintiff-petitioner married Stephen R.
6 Bayor, a United States citizen.

7 **The Petition and Application**

8 138. On February 20, 2006, plaintiff-petitioner's U.S. citizen spouse
9 filed with the required fee a Form I-130, Petition for Alien Relative
10 ("Petition") establishing his citizenship and that his spouse is an immediate
11 relative, and executed an I-864 Affidavit of Support. On the same day,
12 plaintiff-petitioner filed with the required fee a Form I-485, Application to
13 Register Permanent Residence or to Adjust Status ("Application"), seeking
14 adjustment of status to lawful permanent resident, relying on the citizen
15 spouse's Petition attesting to the alien's status as spouse. Plaintiff-petitioner
16 was assigned an Alien Number "A-Number", which is A99 806 135.

17
18 139. On May 5, 2007 plaintiff-petitioner's spouse Stephen R. Bayor
19 died.

20 **The Denial**

21 140. On August 9, 2007 defendants-respondents denied the Petition
22 and Application that were jointly filed by the couple solely on the basis that
23 plaintiff-petitioner was no longer the spouse of a U.S. citizen.

24 **Plaintiff-petitioner STANDIFER**

25 141. Plaintiff-petitioner Stella Standifer was born in Kenya in 1974.
26 Plaintiff-petitioner is a citizen of Kenya.

27 142. Plaintiff-petitioner has lived in Philadelphia, Pennsylvania since
28

1 2003. Plaintiff-petitioner entered the United States on a nonimmigrant F-1
2 student visa in 1999, and was inspected and admitted. She is currently in H-
3 1B nonimmigrant work status.

4 143. On October 11, 2003, plaintiff-petitioner married Glenn Collin
5 Standifer, a United States citizen.

6 **The Petition and Application**

7 144. On March 31, 2004, plaintiff-petitioner's U.S. citizen spouse
8 filed with the required fee a Form I-130, Petition for Alien Relative
9 ("Petition") establishing his citizenship and that his spouse is an immediate
10 relative, and executed an I-864 Affidavit of Support. On the same day,
11 plaintiff-petitioner filed with the required fee a Form I-485, Application to
12 Register Permanent Residence or to Adjust Status ("Application"), seeking
13 adjustment of status to lawful permanent resident, relying on the citizen
14 spouse's Petition attesting to the alien's status as spouse. Plaintiff-petitioner
15 was assigned an Alien Number "A-Number", which is A98 085 420.
16

17 145. On December 9, 2004, plaintiff-petitioner's spouse Glenn Collin
18 Standifer suffered a sudden heart attack and died.

19 **The Denial**

20 146. On June 8, 2005, defendants-respondents denied the Petition
21 and Application that were jointly filed by the couple solely on the basis that
22 plaintiff-petitioner was no longer the spouse of a U.S. citizen. On July 5,
23 2007, plaintiff-petitioner filed a motion to reopen. On February 11, 2008,
24 defendants-respondents denied the motion.

25 **Plaintiff-petitioner BATOOL**

26 147. Plaintiff-petitioner Farah Batool was born in Pakistan in 1970.
27 Plaintiff-petitioner is a citizen of Pakistan.
28

1 148. Plaintiff-petitioner has lived in Floral Park, New York since
2 2006. Plaintiff-petitioner entered the United States on a nonimmigrant B-
3 1/B-2 visa in 2003, and was inspected and admitted.

4 149. On July 14, 2003, plaintiff-petitioner married Dale Allen Davis,
5 a United States citizen.

6 **The Petition and Application**

7 150. On February 23, 2004, plaintiff-petitioner's U.S. citizen spouse
8 filed with the required fee a Form I-130, Petition for Alien Relative
9 ("Petition") establishing his citizenship and that his spouse is an immediate
10 relative, and executed an I-864 Affidavit of Support. On the same day,
11 plaintiff-petitioner filed with the required fee a Form I-485, Application to
12 Register Permanent Residence or to Adjust Status ("Application"), seeking
13 adjustment of status to lawful permanent resident, relying on the citizen
14 spouse's Petition attesting to the alien's status as spouse. Plaintiff-petitioner
15 was assigned an Alien Number "A-Number", which is A98 067 884.

16 151. On July 24, 2004, plaintiff-petitioner's spouse Dale Allen Davis
17 died of cancer.

18 **The Denial**

19 152. Plaintiff-petitioner was scheduled by defendants-respondents
20 for an interview on March 11, 2005. Plaintiff-petitioner did not attend the
21 interview because her attorney at that time advised her on January 20, 2005
22 in a letter that the application would be denied solely due to her husband's
23 death. On May 17, 2005, defendants-respondents denied the Petition and
24 Application that were jointly filed by the couple due to abandonment, but
25 plaintiff-petitioner filed a motion to reopen with the required fee on August
26 5, 2005 which is currently pending. Had plaintiff-petitioner appeared at the
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28

1 interview, defendants-respondents would have denied the Petition and
2 Application solely on the basis that Petitioner was no longer the spouse of a
3 U.S. citizen.

4 **CLASS ACTION ALLEGATIONS**

5 153. The named plaintiffs-petitioners bring this action pursuant to
6 Rule 23 of the Federal Rules of Civil Procedure on behalf of themselves and
7 all other persons similarly situated in the following classes. The named
8 plaintiffs-petitioners seek to represent the following class and subclasses:
9

10 Class: All beneficiaries of immediate relative petitions
11 whose petitioning relatives died prior to
12 beneficiaries' adjudication and approval of lawful
13 permanent resident status.

14 Subclass I: All beneficiaries of immediate relative petitions
15 who applied for adjustment of status in the United
16 States, and whose petitioning relatives died prior to
17 beneficiaries' adjudication and approval of lawful
18 permanent resident status.

19 Subclass II: All beneficiaries of immediate relative petitions
20 who applied for immigrant visas abroad, and
21 whose petitioning relatives died prior to
22 beneficiaries' adjudication and approval of lawful
23 permanent resident status.

24 154. Class members may belong to more than one class.

25 155. The members of the plaintiffs-petitioners classes warrant class
26 action treatment because they fulfill the certifying requirements under Rule
27 23(a) of the Federal Rules of Civil Procedure.
28

1 156. The proposed classes meet the commonality requirement of
2 Fed. R. Civ. P. 23(a)(2) because there are questions of law and fact common
3 to the class. Common questions of law include whether defendants-
4 respondents improperly stripped plaintiffs-respondents of immediate relative
5 status upon the death of their petitioning relative, and the proper definition
6 of “spouse” for purposes of 8 U.S.C. § 1151(b)(2)(A)(i). Common questions
7 of fact include whether plaintiffs-respondents met the essential prerequisites
8 for immediate relative status including marriage to a United States citizen
9 and the filing by the citizen of a petition.

10 157. The variances in the class members’ and plaintiffs-petitioners
11 marriage and are irrelevant to their complaints against defendants-
12 respondents for immediate relative status.

13 158. The proposed classes meet the numerosity requirement of Fed.
14 R. Civ. P. 23(a)(1) because the members of each of the two classes are so
15 numerous that joinder of all members is impractical. Counsel for plaintiffs-
16 petitioners are aware of 136 class members across the country. Because
17 counsel learned of these cases through lawyer-to-lawyer referrals, it is
18 believed that the numbers of class members across the country is
19 substantially greater, by many times, than the number of identified class
20 members. Counsel for plaintiffs-petitioners, for example, have not been able
21 to locate any surviving spouses of Hurricane Katrina victims, although U.S.
22 Representative F. James Sensenbrenner, Jr. (R-WI) introduced legislation in
23 the 109th Congress (never voted upon) to assist such surviving spouses,
24 leading counsel to believe such victims do, in fact, exist. It is believed that
25 there are many hundreds, if not thousands, of surviving spouses throughout
26 the country whose petitioning relatives died prior to beneficiaries’
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1 adjudication and approval of lawful permanent resident status.

2 159. The proposed classes meet the typicality requirement of Fed. R.
3 Civ. P. 23(a)(3) because the claims of the named plaintiffs-petitioners are
4 typical of the claims of each of the class members. The named plaintiffs-
5 petitioners complain of the defendants-respondents misinterpretation of the
6 term “spouse” for purposes of the immediate relative definition found at 8
7 U.S.C. § 1151(b)(2)(A)(i), and of defendants-respondents illegal actions in
8 denying or withholding lawful permanent resident status to plaintiffs-
9 petitioners solely due to the death of their spouse. The claims of each class
10 representative are typical of the claims of each member of that class.

11 160. The named plaintiffs-petitioners will fairly and adequately
12 protect the interests of the classes as required by Fed. R. Civ. P. 23(a)(4)
13 because their interests are identical to those of the other members of the
14 classes. Plaintiffs-petitioners know of no conflicts between their interests
15 and those of the class they seek to represent.

16 161. Fair and adequate protection of the interests of the classes will
17 be further ensured because the named plaintiffs-petitioners are represented
18 by competent legal counsel. Plaintiffs-petitioners’ counsel are experienced
19 in federal litigation, and with respect to the narrow issue raised in the instant
20 action are among the most knowledgeable in the country. Plaintiffs-
21 petitioners’ counsel are undertaking representation on a pro bono basis, and
22 have adequate resources and commitment to represent the class as a whole.

23 162. The instant action should be maintained as a class action under
24 Fed. R. Civ. P. 23(b)(2) because the defendants-respondents have acted on
25 grounds generally applicable to each member of the classes by
26 misinterpreting the term “spouse” for purposes of the immediate relative
27
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1 definition found at 8 U.S.C. 1151(b)(2)(A)(i), and of defendants-respondents
2 illegal actions in denying lawful permanent resident status to plaintiffs-
3 petitioners solely due to the death of their spouse.

4 163. Furthermore, as contemplated by Fed. R. Civ. P. 23(b)(1), if the
5 individual members of the classes were to bring separate suits to address the
6 defendants-respondents' policies, practices and actions and inactions, the
7 defendants-respondents may address the cases of the named plaintiffs-
8 petitioners but ignore the applications and concerns of the remaining class
9 members, thereby exacerbating the defendants-respondents violations of the
10 law. Resolving this matter as a class action would also serve judicial
11 economy since the courts would not be burdened with lawsuits by many
12 individual adjustment of status and immigrant visa applicants. Such lawsuits
13 are already beginning to emerge. *Robinson v. Chertoff*, 2007 WL 1412284
14 (D.N.J. May 14, 2007) *appeal docketed*, No. 07-2977 (3d Cir. July 5, 2007);
15 *Taing v. Chertoff*, 2007 U.S. Dist. LEXIS 911411 (D. Mass 2007), *appeal*
16 *docketed*, No. 08-1179 (1st Cir. Feb. 11, 2008); *Lockhart v. Chertoff*, 2008
17 U.S. Dist. LEXIS 889 (D. Ohio 2008).

18 **CLAIMS FOR RELIEF**

19 **FIRST CAUSE OF ACTION**

20 164. Plaintiffs-petitioners reallege and incorporate by reference
21 paragraphs 1 through 163 above.

22 165. Plaintiffs-petitioners are immediate relatives for purposes of
23 INA § 201(b)(2)(A)(i), 8 U.S.C. § 1151(b)(2)(A)(i) and are eligible for
24 adjustment of status under INA § 245(a), 8 U.S.C. § 1255(a) (Subclass I)
25 and for issuance of an immigrant visa under INA § 204(b), 8 U.S.C. 1154(b)
26 (Subclass II).
27
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1 166. Plaintiffs-petitioners were not stripped of the status of an
2 "immediate relative" spouse by the death of plaintiffs-petitioners' spouses.

3 167. Plaintiffs-petitioners remain eligible to receive adjustment of
4 status or an immigrant visa as the "immediate relative" surviving spouse of a
5 United States citizen.

6 168. Plaintiffs-petitioners are admissible to the United States as
7 lawful permanent residents.

8 169. An immigrant visa was immediately available to plaintiffs-
9 petitioners at the time plaintiffs-petitioners' applications were filed, pursuant
10 to INA § 245(a), 8 U.S.C. 1255(a).

11 170. Plaintiffs-petitioners have suffered and will continue to suffer
12 significant and irreparable harm because of defendants-respondents'
13 policies, procedures, acts and failures to act as described herein.

14 171. Defendants-respondents violated plaintiffs-petitioners' statutory
15 right to apply for relief which Congress has provided under the INA,
16 depriving plaintiffs-petitioners of the opportunity to adjust status to lawful
17 permanent resident and live lawfully in the United States under INA § 245, 8
18 U.S.C. 1255(a), or to obtain an immigrant visa to enter as lawful permanent
19 residents and live lawfully in the United States under INA § 204(b), 8 U.S.C.
20 1154(b).

21 172. Defendants-respondents improperly attempt to revoke the
22 approval of an I-130 petition unless plaintiffs-petitioners present a request
23 under 8 CFR § 205.1(a)(3)(C)(2) for humanitarian reinstatement, supported
24 by a Form I-864 executed by an individual who qualifies under section
25 213A(f)(5)(B) of the Immigration and Nationality Act as a qualifying
26 substitute sponsor.
27
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1 173. The regulation found at 8 CFR § 205.1(a)(3)(C)(2) is invalid as
2 a matter of law.

3 174. The substitute sponsor provisions of section 213A(f)(5)(B) of
4 the Immigration and Nationality Act (INA) do not apply to plaintiffs-
5 petitioners whose U.S. citizen spouses executed an I-864 Affidavit of
6 Support under section 213A(f)(1) of the INA, thereby fulfilling the
7 requirement of section 212(a)(4)(C)(ii) of the INA that the person
8 petitioning for the alien’s admission has executed an I-864 Affidavit of
9 Support.

10 **SECOND CAUSE OF ACTION**

11 175. Plaintiffs-petitioners reallege and incorporate by reference
12 paragraphs 1 through 174 above.

13 176. Plaintiffs-petitioners have suffered a “legal wrong” or have
14 been “adversely affected or aggrieved” by agency action. 5 U.S.C. § 702.
15 Plaintiffs-petitioners are each a person aggrieved by agency action, for
16 which there is no other adequate remedy in a court. 5 U.S.C. § 704.

17 177. Defendants-respondents have unlawfully and erroneously
18 interpreted the definition of the term “immediate relative” in INA §
19 201(a)(b)(2)(A)(i). Based on this erroneous interpretation, defendants-
20 respondents have erroneously denied both the immediate relative petitions
21 filed on plaintiffs-petitioners’ behalf and plaintiffs-petitioners’ adjustment of
22 status or immigrant visa applications in violation of Congressional intent.
23 Plaintiffs-petitioners are entitled to injunctive relief to “compel agency
24 action unlawfully withheld or unreasonably delayed” and to hold unlawful
25 and set aside agency action that, as here, is not in accordance with the law.
26 5 U.S.C. §§ 706(1) and (2).
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THIRD CAUSE OF ACTION

178. Plaintiffs-petitioners reallege and incorporate by reference paragraphs 1 through 177 above.

179. Defendants-respondents owe plaintiffs-petitioners a clear and certain duty to adjudicate plaintiffs-petitioners' applications on the basis that each remains an "immediate relative" spouse of a United States citizen, and were not stripped of this status by the death of plaintiffs-petitioners' spouses. See *Freeman v. Gonzales*, 444 F.3d 1031 (9th Cir. 2006).

180. Defendants-respondents denied or withheld approval of plaintiffs-petitioners' applications solely on the basis that each was stripped of the status of spouse, and not for discretionary reasons. Defendants-respondents have failed to perform their duties by determining that plaintiffs-petitioners were no longer the "spouses" of U.S. citizens and therefore not entitled to adjustment of status and for issuance of an immigrant visa, and by failing to exercise discretion.

181. Plaintiffs-petitioners have no other adequate remedy.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs-petitioners respectfully request that this Court:

1. Assume jurisdiction over this action;
2. Declare that plaintiffs-petitioners filed the necessary petition and application for lawful permanent resident status, and were not stripped of the status of "spouse" of a United States citizen upon the death of the citizen spouse;
3. Declare that plaintiffs-petitioners are entitled to the process that flows from a properly filed petition and application, and must

1 be considered a spouse for purposes of the petition and
2 application;

3 4. Declare that plaintiffs-petitioners are immediate relatives under
4 8 USC § 1151(b)(2)(A)(i) and for the purposes of adjudicating
5 an I-130 petition;

6 5. Declare that defendants-respondents improperly attempt to
7 revoke the approval of an I-130 petition unless plaintiffs-
8 petitioners present a request under 8 CFR § 205.1(a)(3)(C)(2)
9 for humanitarian reinstatement, supported by a Form I-864
10 executed by an individual who qualifies under section
11 213A(f)(5)(B) of the Immigration and Nationality Act as a
12 qualifying substitute sponsor;

13 6. Declare that 8 CFR § 205.1(a)(3)(C)(2) is invalid as a matter of
14 law;

15 7. Declare that plaintiffs-petitioners whose citizen spouses
16 executed a Form I-864 Affidavit of Support have satisfied the
17 requirements of 212(a)(4)(C)(ii) of the INA in that the person
18 petitioning for the alien's admission has executed an I-864
19 Affidavit of Support, and that plaintiffs-petitioners are not
20 required to submit a Form I-864 from a qualifying substitute
21 sponsor under section 213A(f)(5)(B) of the INA;

22 8. Declare that I-130 petition procedure is not the forum for
23 determining substantive questions of admissibility under the
24 immigration laws, and when eligibility for immediate relative
25 classification is established, the petition shall be granted;

26 9. Issue an injunction prohibiting defendants-respondents from
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1 using the death of the U.S. citizen spouse as a discretionary
2 factor in the adjudication of the petition and application;

- 3 10. Issue an injunction prohibiting defendants-respondents from
4 using factors flowing from the unlawful denial of the
5 application to again deny the petition and application upon
6 reopening, including but not limited to claims of abandonment
7 of the application due to departure from the United States, and
8 bars to admissibility related to "unlawful presence" caused by
9 the wrongful denial;
- 10 11. Issue an injunction prohibiting defendants-respondents from
11 revoking approval of an I-130 petition where plaintiffs-
12 petitioners do not present a request under 8 CFR §
13 205.1(a)(3)(C)(2) for humanitarian reinstatement, supported by
14 a Form I-864 executed by an individual who qualifies under
15 section 213A(f)(5)(B) of the Immigration and Nationality Act
16 as a qualifying substitute sponsor, where plaintiffs-petitioners'
17 citizen spouse previously executed a Form I-864.
- 18 12. Issue a writ of mandamus compelling defendants-respondents
19 to (a) reopen plaintiffs-petitioners' adjustment of status and
20 immigrant visa applications on the ground that the applications
21 were unlawfully denied on the basis of defendants-respondents'
22 erroneous determination that plaintiffs-petitioners' status as
23 "immediate relative" spouses of United States citizens were
24 stripped by the death of plaintiffs-petitioners' spouses, (b) treat
25 plaintiffs-petitioners as "immediate relative" spouses and
26 adjudicate the immigrant petitions ("petitions") filed on their
27
28

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 March 20, 2008, true and correct copies of the plaintiffs': FIRST AMENDED
6 COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION
7 FOR WRIT OF MANDAMUS CLASS ACTION, were served pursuant to the district
8 court's ECF system as to ECF filers, to the following ECF filers:

9 Elizabeth Stevens
10 Office of Immigration Litigation
11 USDOJ Civil Division
12 P.O. Box 878
13 Ben Franklin Station
14 Washington, DC 20044

15 Sheri R. Glaser
16 Office of Immigration Litigation
17 USDOJ Civil Division
18 P.O. Box 878
19 Ben Franklin Station
20 Washington, DC 20044

21 Melissa S. Leibman
22 Office of Immigration Litigation
23 USDOJ Civil Division
24 P.O. Box 878
25 Ben Franklin Station
26 Washington, DC 20044

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

EXECUTED on March 20, 2008, at Lake Oswego, Oregon.

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