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

12 CAROLYN ROBB HOOTKINS, et. al.,) Case No. CV07-05696 CAS (MANx)
13)

14 Plaintiffs-petitioners,)

Date: March 3, 2008

) Time: 10:00 a.m.

15 vs.)

Courtroom: 5

) Honorable Christina A. Snyder

16 MICHAEL CHERTOFF, U.S. Department)
17 of Homeland Security, et. al.,)

18 Defendants-respondents.)

19) PLAINTIFFS' RESPONSE IN
20) OPPOSITION TO DEFENDANTS'
21) SUPPLEMENTAL MEMORANDUM
22) OF LAW IN SUPPORT OF MOTION
23) TO DISMISS
24)

25) CLASS ACTION
26)
27)
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BACKGROUND

Defendants' Supplemental Memorandum of Law in Support of Motion to Dismiss (Def.'s Supp.) largely restates Defendants' previous arguments in this case. Specifically, the following pages of the Memorandum (Def.'s Supp.) are covered almost verbatim from the following previous filings: Def.'s Supp. 4 (see Def.'s Mot. Dism. 8-9); Def.'s Supp. 5-7 (see Def.'s Reply Mot. Dism. 9-12); Def.'s Supp. 7 (see Def.'s Mot. Dism. 12-13); Def.'s Supp. 7-9 (see Def.'s Mot. Dism. 10-12); Def.'s Supp. 13-15 (see Def.'s Reply Mot. Dism. 3-5); Def.'s Supp. 16 (Def.'s Mot. Dism. 15); Def.'s Supp. 18-21 (see Def.'s Reply Mot. Dism. 7-9); Def.'s Supp. 21 (see Def.'s Reply Mot. Dism. 13). Because plaintiffs have already responded to those arguments, plaintiffs will not restate them here.

Nevertheless, because the Court expressed an interest in two discrete issues, those issues are covered here in response to defendants' arguments, or lack thereof. Further, to the extent that defendants raise additional arguments, plaintiffs respond accordingly below.

I. RES JUDICATA DOES NOT APPLY

Defendants first raised the *res judicata* argument in Defendants' Reply in Support of Motion to Dismiss and Opposition to Plaintiffs' Motion for Summary Judgment (Doc. No. 19), Section IV, pages 12-13. The Court requested elaboration on Defendants' defense. In an attempt to clarify the *res judicata* argument, Defendants virtually reproduced their previous arguments. Def.'s Supp. 9-10. Defendants add a citation to *Avila-Sanchez v. Mukasey*, -- F.3d --, 2007 WL 4225793, at *3 (9th Cir. Dec. 3, 2007) (citing *Alvarenga-Villalobos v. Ashcroft*, 271 F.3d 1169, 1172-73 (9th Cir. 2001), for the proposition that "[I]t has long been established that a final civil judgment entered under a given rule of law may withstand subsequent judicial change in that rule." *Alvarenga*, 271 F.3d at 1173. Defendants fail to note that *Avila-Sanchez* and *Alvarenga*

1 *Villalobos* sought review of final orders of removal, which are beyond the scope of the
2 Administrative Procedures Act (APA). See *Ardestani v. INS*, 502 U.S. 129, 112 S. Ct.
3 515 (1991); *Silveyra v. Moschorak*, 989 F.2d 1012, 1015 (9th Cir. 1993). Additionally,
4 the quote in *Alvarenga-Villalobos* comes directly from the Supreme Court’s decision in
5 *Teague v. Lane*, 489 U.S. 288, 308 (1989), a criminal case involving the operation of the
6 Writ of habeas corpus. A review of the *Teague* case will quickly dispel any notion that
7 the quoted passage has anything to do at all with the instant case.

8 In the deportation context, review procedure through the Immigration
9 Courts, the Board of Immigration Appeals, and the Courts of Appeal has been
10 established, and constitutes the process by which an alien in removal proceedings can
11 receive due process. The instant lawsuit, on the other hand, involves plaintiffs and class
12 members who have had no such review, and have valid claims under the APA as persons
13 who have been “adversely affected or aggrieved by agency action”. 5 USC § 702.
14 Plaintiffs and class members have not received “final civil judgment” as contemplated by
15 the cases invoking *res judicata* to bar judicial review.

16 No administrative procedures have been provided to enable plaintiffs and
17 class members to effectively appeal adverse agency action in this circumstance, unlike
18 aliens in removal proceedings. As plaintiffs have argued previously, the Board in *Matter*
19 *of Sano*, 19 I&N Dec. 299 (BIA 1985) determined that the Board itself, due to limitations
20 on its own jurisdiction by agency regulations, could not hear an appeal of a denial of an I-
21 130 petition by the beneficiary of that petition. Without an approved I-130 immigrant
22 petition, plaintiffs and class members can have no effective review of their denials
23 through the Immigration Courts and the BIA, since the immigration courts also lack
24 jurisdiction to rule on I-130 petitions, and any attempt to renew an I-485 adjustment of
25 status application will be met with cursory denial for lack of an approved visa petition.
26 There is simply no “appeal” to file. See *Lockhart v. Chertoff*, No. 07-823 (KMO), 2008
27
28

1 WL 80225, slip op. at *10 (N.D. Ohio Jan. 7, 2008).

2 The alien in *Alvarenga-Villalobos* was convicted in California of assault by
3 force likely to produce great bodily injury in 1983, and of oral copulation in 1992.
4 *Alvarenga-Villalobos, supra*, 271 F.3d at 1171. He was charged with being deportable,
5 and given a hearing before an immigration judge (IJ). The IJ pretermitted his application,
6 ruling that he had been convicted of an aggravated felony, and ordered his deportation to
7 El Salvador. *Alvarenga-Villalobos* had the right to appeal the IJ's decision to the BIA,
8 and to the federal courts, but chose to waive his right to appeal. Five months after his
9 removal, he reentered the United States illegally, and was indicted for illegal reentry. He
10 then attempted to reopen his immigration proceedings. *Id.* The Court in *Alvarenga-*
11 *Villalobos* relied upon the Supreme Court's decision in *United States v. Mendoza-Lopez*,
12 481 U.S. 818, 107 S.Ct. 2148, (1987) (due process requires a collateral challenge to the
13 use of a deportation proceeding as an element of a criminal offense be permitted where
14 the deportation proceeding effectively eliminates the right of the alien to obtain judicial
15 review):

17 “a collateral challenge to the use of a deportation proceeding as an element of a
18 criminal offense must be permitted where the deportation proceeding effectively
19 eliminates the right of the alien to obtain judicial review.’ *Mendoza-Lopez*, 481
20 U.S. at 839, 107 S.Ct. 2148...Additionally, *Mendoza-Lopez* requires judicial
21 review of a deportation in a subsequent proceeding only when the alien was
22 deprived of the right to judicial review in the initial proceeding. See *Mendoza-*
23 *Lopez*, 481 U.S. at 839, 107 S.Ct. 2148. This did not occur here. Alvarenga was
24 not deprived of the right to judicial review in his initial deportation proceeding; he
25 voluntarily waived his right to appeal... Thus, another hearing is denied only to
26 those aliens who have already been excluded, deported, or removed *after having*
27 *been given one full and fair hearing, including the right to judicial review of that*
28 *hearing*. To preclude a second bite at the apple after an illegal reentry does not
offend due process.” (emphasis in original)

Alvarenga-Villalobos, 271 F.3d 1169, 1173-74. Plaintiffs are asking not for a second bite
at the apple, but for a first bite. Paradoxically, to deny plaintiffs and class members

1 judicial review at this stage would deny them a full and fair hearing guaranteed under the
2 due process clause of the Fifth Amendment to the United States Constitution, including
3 the right to judicial review of adverse agency action, which would in turn be amenable to
4 judicial review.

5 Motions to reopen or reconsider are also ineffective, and do not constitute
6 meaningful review. Such motions are simply an optional mechanism to ask the agency to
7 re-review the adverse decision. It is clear from defendants November 8, 2007 Aytes
8 Memorandum that cases outside the Ninth Circuit's jurisdiction will be met with
9 summary denial. It would be futile to request review outside the Ninth Circuit.

10 Additionally, defendants have decided to impose certain illegal requirements on the cases
11 arising within the Ninth Circuit. As such, plaintiffs and class members in the Ninth
12 Circuit should not be required to file a motion to reopen as a precondition to seeking
13 judicial review, where the additional requirements are challenged in this APA action.

14 The fee for a motion to reopen or reconsider is \$385, and is not a mandatory step.
15

16 Plaintiffs ask this Court to determine the correct legal standard, and require
17 defendants to adhere to the statute and the Constitution. In doing so, plaintiffs believe
18 that many of plaintiffs' and class members' I-130 petitions will be approved, since the
19 relevant showing is straightforward and non-discretionary. In contrast, the I-485
20 applications of some of the plaintiffs and class members may be denied by the defendant
21 USCIS in the agency's discretion. If plaintiffs and class members face such a denial,
22 review of the I-485 adjustment of status application can be sought in removal
23 proceedings, and then again before the BIA and the Courts of Appeal. The foregoing
24 process comports with due process.

25 **II. NON-MUTUAL COLLATERAL ESTOPPEL DOES NOT APPLY**

26 The Court asked the parties to address whether the doctrine of nonmutual
27 collateral estoppel applies in the instant case. Defendants did not clearly address the
28

1 issue, but plaintiffs nevertheless do not seek to bind the government under this doctrine.
2 Defendants are not bound to follow a ruling of a Circuit Court outside the confines of the
3 Circuit, even on a case involving identical facts. See *United States v. Mendoza*, 464 U.S.
4 154, 159 (1984) (refusing to allow nonmutual offensive estoppel against the
5 government). Plaintiffs do not seek to estop the government.

6 Rather, plaintiffs seek to require defendants to follow a statute enacted by
7 Congress, and ask this Court to instruct defendants on the proper interpretation of the
8 statute within and without the Ninth Circuit. In doing so, the Court is not bound by the
9 interpretation of the Ninth Circuit in *Freeman v. Gonzales*, 444 F.3d 1031 (9th Cir. 2006)
10 with respect to plaintiffs and class members outside of the Ninth Circuit, and may
11 interpret the statute independently as have the District Courts in Massachusetts,
12 Michigan, New Jersey, New York, and Ohio.¹

13 **III. PLAINTIFFS OUTSIDE THE NINTH CIRCUIT ARE ALSO IMMEDIATE** 14 **RELATIVES**

15
16 Recent legislation ameliorating the effects of the death of a family member
17 for 9/11 victims and military members do not support defendants' claims that it is
18 Congress' intent to strip immediate relative status from an applicant who has complied
19 with all the statutory prerequisites for lawful permanent residence. Defendants cite to the
20 USA Patriot Act of 2001, Pub. L. 107-56, 115 Stat. 272, §§ 421(a), (b)(1)(B)(i) (2001)
21 (Exhibit A) and the National Defense Authorization Act for Fiscal Year 2004, Pub. L.
22 108-136, 117 Stat. 1693, § 1703(a) – (e) (2003) (Exhibit B) to evidence Congress' intent.
23 Yet those specific exceptions were independent Acts which did not amend the
24

25 ¹ *Robinson v. Chertoff*, No. 06-5702 (SRC), 2007 WL 1412284 (D. N.J. May 14, 2007),
26 *appeal docketed*; *Taing v. Chertoff*, - F. Supp. 2d -, 2007 WL 4348060 (D. Mass. Dec.
27 12, 2007); *Lockhart v. Chertoff*, No. 07-823 (KMO), 2008 WL 80225, slip op. (N.D.
28 Ohio Jan. 7, 2008); *Turek v. DHS*, 450 F.Supp. 2d 736 (E.D. Mich. 2006); and *Burger v.*
McElroy, No. 97 CIV. 8775 (RPP), 1999 WL 203353 (S.D.N.Y. Apr. 12, 1999).

1 Immigration and Nationality Act, and do not appear anywhere within the INA.
2 Moreover, each of the foregoing Acts merely created a separate right for immediate
3 relatives to self petition under the second sentence of the immediate relative definition.
4 Neither law referenced in any way the first sentence of the immediate relative definition,
5 nor the effect of a properly filed immediate relative petition.

6 Defendants state incorrectly that,

7 “Section 421 of Pub. L. 107-56 is particularly telling on this point. For family-
8 sponsored and immediate relative cases, Congress intended section 421 to benefit
9 an alien relative whose relative’s visa petition “was revoked or terminated (or
10 otherwise rendered null)” by the petitioner’s death. Pub. L. 107-56, §
11 421(b)(1)(B)(i), 115 Stat. at 356. There would be no need for the enactment of
12 section 421 if, as the *Freeman* panel found, the petitioner’s death does not render
the visa petition invalid.”

13 Def. Supp. 18. No immediate relative cases are covered in the cited provision. In fact,
14 the section referenced deals only with family preference aliens under 203(a) of the INA
15 (not immediate relatives), employment based immigrants under 203(b) of the INA, and
16 K-1 nonimmigrants (also not immediate relatives prior to marrying the petitioning
17 sponsor within the 90 days of entry). Rather, immediate relatives under the 9/11
18 legislation were dealt with in Section 423 of the USA Patriot Act, Pub. L. 107-56:

19 (a) Treatment as Immediate Relatives. – (1) Spouses. – Notwithstanding the second
20 sentence of section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8
21 U.S.C. 1151(b)(2)(A)(i), in the case of an alien who was the spouse of a citizen
22 of the United States at the time of the citizen’s death and was not legally
23 separated from the citizen at the time of the citizen’s death, if the citizen died as
24 a direct result of a specified terrorist activity, the alien (and each child of the
25 alien) shall be considered, for purposes of section 201(b) of such Act, to remain
26 an immediate relative after the date of the citizen’s death, but only if the alien
27 files a petition under section 204(a)(1)(A)(ii) of such Act within 2 years after
28 such date and only until the date the alien remarries. For purposes of such
section 204(a)(1)(A)(ii), an alien granted relief under the preceding sentence
shall be considered an alien spouse described in the second sentence of section
201(b)(2)(A)(i) of such Act.

1
2 Pub. L. 107-56, § 423(a)(1), 115 Stat. 360, 361. Therefore, because the 9/11 legislation
3 provided surviving spouses of immediate relatives the separate right to self-petition,
4 conditioned of course on filing a self-petition within two years of the death, this
5 legislation has everything to do with the second sentence of the immediate relative
6 definition, and not the first.

7 The language governing immediate relatives found in the National Defense
8 Authorization Act is identical to that of the 9/11 legislation. See. Pub. L. 108-136, §
9 1703(a), 117 Stat 1693. Because both the USA Patriot Act and the National Defense
10 Authorization Act provided special language allowing aliens, *other than immediate*
11 *relatives*, with the ability to have adjustment of status applications “adjudicated as if such
12 death had not occurred”, but chose to provide *immediate relatives* with the distinct right
13 to self-petition under the second sentence of the immediate relative definition, and under
14 the second clause of 8 USC § 1154(a)(1)(A)¹, the conclusion that defendants seek to draw
15 cannot be made. Specifically, neither Act speaks to the case in which an immediate
16 relative is the beneficiary of an immigrant petition filed by his or her relative in the first
17 place (first sentence spouse, first clause petition). If Congress thought that immediate
18 relatives, on whose behalf a properly executed immigrant petition and adjustment of
19 status application were already filed and accepted, would be automatically stripped of the
20 status upon the death of the petitioner, Congress surely could have provided that their
21 adjustment of status applications should also be “adjudicated as if such death had not
22 occurred.” Because Congress did not, one might conclude that Congress assumed that
23 such automatic stripping was not intended. Whether or not one can gain any insight into
24

25 _____
26 ¹ 8 USC § 1154(a)(1)(A)(i) (the first clause) provides that a citizen of the United States
27 may file a petition, and 8 USC § 1154(a)(1)(A)(ii) (the second clause) provides that an
28 alien spouse described in the second sentence of the immediate relative definition “also
may file a petition.”

1 the intent of Congress from two Acts passed outside of the INA, the wording of those
2 Acts lends no support to defendants' futile arguments that Congress intended that
3 immediate relatives be automatically stripped of the status upon the death of the
4 petitioning relative. Congress did not intend such absurd results.

5 Regardless of these other Acts, however, recourse to legislative history to
6 determine the intent of Congress is unnecessary. The language of the statute is clear, and
7 plaintiffs and class members are entitled to be considered immediate relatives under the
8 first sentence of the immediate relative definition, because the United States citizen
9 relative of each properly filed an immediate relative petition under the first clause of the
10 statute providing for petitions for immediate relatives, and were merely awaiting
11 adjudication when the death occurred.

12 **IV. THE AUTOMATIC REVOCATION REGULATION IS ULTRA VIRES**

13 Automatic revocation does not constitute discretionary action. Discretion is
14 founded in judgment and conscience. Further, even if automatic revocation were deemed
15 sufficiently discretionary an act to fall within the ambit of the "good and sufficient cause"
16 language of 8 USC § 1155, automatic revocation is not a "permissible construction of the
17 statute" and is "arbitrary, capricious, or manifestly contrary to the statute." *Chevron*
18 *U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 843-44 (1984).

19 Defendants argue to the contrary, stating that the regulation requiring
20 automatic revocation of a relative petition upon the death of the petitioner is long
21 standing and entitled to deference. Def.'s Supp. 22-23, citing 41 Fed. Reg. 55849 (Dec.
22 23, 1976). Plaintiffs admit that defendants' automatic revocation practice is long
23 standing, and submit as Exhibit C a copy of the 1959 regulation, which states,

24 "206.1 Automatic revocation. The approval of a petition made under section 204,
25 205, or 214(c) of the act and in accordance with Part 204, 205, or 214 of this
26 chapter is revoked as of the date of approval in any of the following circumstances:
27 ...

28

1 (b) As to a petition approved under section 205 [now 204] of the act:

2 ...

3 (4) As to a spouse beneficiary, the marriage of the petitioner to the beneficiary
4 terminates by death, divorce, or annulment before the beneficiary's journey to the
United States commences."

5 24 Fed. Reg. 6476 (Aug. 11, 1959) (Ex. C). The Second Circuit Court of Appeals had
6 occasion to review the automatic revocation provisions of 8 CFR § 206.1 (now 8 CFR §
7 205.1) almost ten years later. In *Pierno v. INS*, 397 F.2d 949 (2d. Cir. 1968), the Court
8 reviewed the automatic revocation of a petition approved prior to the death of the
9 petitioner, but where the adjustment of status application had not been adjudicated at the
10 time of the death,

11 [T]he Service contends that the automatic revocation of approval pursuant to
12 Regulation 206.1(b)(2), when Mr. Pierno died, precludes the Service from granting
13 Mrs. Pierno's application for an adjustment of status. We disagree. Section 206,
14 under which the automatic revocation regulations are promulgated, provides: The
15 Attorney General may, at any time, for what he deems to be good and sufficient
16 cause, revoke the approval of any petition (for nonquota status) approved by
him***

17 The section is permissive; it grants the Attorney General *discretion* in determining
18 what shall constitute good and sufficient cause and whether revocation of approval
19 shall occur or be withheld in those cases where there is good and sufficient cause
20 for revocation. *It should not be interpreted to authorize the Attorney General's*
21 *wooden application of rules for automatic revocation.* In *Stellas v. Esperdy*, 388
22 U.S. 462, 87 S.Ct. 2121, 18 L.Ed. 2d 1322 (1967), reversing 366 F.2d 266 (2 Cir.
23 1966), the Supreme Court remanded the cause before it for further proceedings
24 before the Service when the Service applied its rule that petition approval is
25 automatically revoked when the petitioning citizen-spouse withdraws his petition.
26 Regulation 206.1(b)(1). See also, *United States ex rel. Stellas v. Esperdy*, 366 F.2d
27 at 272-274 (Moore, J., dissenting). *We can hardly imagine that Congress would*
28 *have intended Mrs. Pierno to be deported as a result of her husband's death had*
he been, for instance, killed in action while the status adjustment proceedings were
pending. Yet, such a result would follow from the Service's decision. The purpose
of placing such discretion regarding immigration in the hands of the Attorney
General, rather than having that field governed by a detailed statute, is to give
some flexibility in treating a myriad of possible situations. Regulations issued by

1 *the Attorney General should not be so applied as to frustrate that Congressional*
2 *intent.*” (emphasis supplied).

3 *Id.* at 950-51. The Court held that the wooden application of rules mandating automatic
4 revocation was not a permissible interpretation of the statute, and expressed disbelief that
5 automatic revocation could have been intended by Congress in enacting the “good and
6 sufficient cause” statute.

7 The *Pierno* case dealt with the statutes and regulations prior to amendment
8 by the 1965 legislation, Pub. L. 89-236, 79 Stat 911 (Oct. 3, 1965) (Ex. C). Yet the
9 renumbering of § 205 to §204 and § 206 to § 205 did not materially affect the analysis.
10 Provided at Exhibit C is a copy of the 1965 version of 8 CFR § 206.1 and the version as
11 amended after renumbering - 8 CFR § 205.1. 30 Fed. Reg. 14775 (1965) (Ex. C). There
12 is no material change other than the section numbers. The first appearance of the
13 mandate in *Pierno* appears in the 1976 regulation cited by defendants. There, for the first
14 time, was recognition that the death of the petitioner does not automatically revoke the
15 petition. Specifically, in the November 12, 1976 Federal Register, it was stated,

16 *Proposed amendments to Part 205...*In § 205.1(a)(2), it is proposed to delete the
17 words “petitioner or”, and add a new § 205.1(a)(3) which will provide that a
18 relative visa petition will not be automatically revoked upon the death of the
19 petitioner.”

20 41 Fed. Reg. 49996 (Nov. 12, 1976) (Ex. C). Following this proposed rule, a new
21 version of 8 CFR § 205.1 emerged:

22 § 205.1 Automatic revocation. The approval of a petition made under section 204
23 of the Act and in accordance with Part 204 of this chapter is revoked as of the date
24 of approval if the Secretary of State shall terminate the registration of any
25 beneficiary pursuant to the provisions of section 203(e) of the Act or if any of the
26 following circumstances occur before the beneficiary’s journey to the United
27 States commences or, if the beneficiary is an applicant for adjustment of status to
28 ... (3) Upon the death of the petitioner unless the Attorney General in his discretion

1 determines that for humanitarian reasons revocation would be inappropriate.”
2
3 41 Fed. Reg. 55847 (Dec. 23, 1976) (Ex. C). Yet the regulation still went well beyond
4 the statute authorizing revocation only for good and sufficient cause. Ever present was
5 the automatic revocation language. Defendants’ position, however, was the subject of
6 harsh criticism early on. *Pierno, supra*, at 950-51. The regulations have continually been
7 utilized to frustrate Congressional intent, and should not enjoy particular deference.
8 Deference is only required in any event where the agency’s interpretation is permissible.
9 The wooden automatic revocation regulations were never based on the intent of
10 Congress, and are *ultra vires*. The automatic revocation regulations do not constitute a
11 “permissible construction of the statute” found at 8 USC § 1155, and are “arbitrary,
12 capricious, or manifestly contrary to the statute.” *Chevron, supra*, 467 U.S. at 843-44.
13 Defendants’ interpretation of 8 USC § 1155 is directly contrary to 8 USC § 1154.
14 Defendants, when required to treat plaintiffs and class members as immediate relatives by
15 Order of a Circuit Court, chose to frustrate that mandate by using the same facts known
16 to it in the context of the § 1154 determination to revoke under § 1155. This is not
17 reasonable.

18 **V. STATE DEPARTMENT IS A NECESSARY AND PROPER DEFENDANT**

19 Defendants argue for the first time on supplemental briefing that the
20 Department of State (DOS) should be dismissed as a defendant. Yet, DOS has been
21 acting in concert with USCIS in the challenged conduct, even announcing the
22 humanitarian reinstatement factors for its officers to follow in its own Foreign Affairs
23 Manual. 9 FAM 42.42 PN2, Recommending Reinstatement of Petition. Plaintiffs do not
24 challenge the admissibility determinations of DOS, but rather whether admissibility
25 concerns play a role in the immigrant petition context at all – plaintiffs claim that such
26 concerns are not part of the immigrant petition process. *Matter of O*, 8 I&N Dec. 295,
27 296-97 (BIA 1959). Plaintiffs seek a determination, *as a matter of law*, that defendants’
28

1 actions are not in accordance with law, contrary to constitutional right, and in excess of
2 statutory jurisdiction. As such, review is available under the APA. 5 USC § 706. To the
3 extent that DOS returns approved I-130 petitions back to USCIS for automatic
4 revocation, precluding automatically any consideration of admissibility, DOS is a
5 necessary and proper defendant in the instant proceeding, and should not be dismissed.

6 DATED this 15th day of February, 2008.

7
8
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1 PROOF OF SERVICE

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

5 On February 15, 2008, true and correct copies of the plaintiffs': PLAINTIFFS'
6 RESPONSE IN OPPOSITION TO DEFENDANTS' SUPPLEMENTAL
7 MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS, were served
8 pursuant to the district 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 I declare under penalty of perjury under the laws of the United States of America
22 that the foregoing is true and correct.

23 EXECUTED on February 15, 2008, at Portland, Oregon.

24 S/ Brent W. Renison
25 Brent W. Renison, Declarant
26
27
28