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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

15 SAN FRANCISCO DIVISION

16 SONYA RENEE; CANDICE JOHNSON, a minor, by
17 Sonya Renee, her guardian ad litem; MARIBEL
18 HEREDIA; JOSE ALDANA, a minor, by Maribel
19 Heredia, his guardian ad litem; N. DOE; B. DOE, a
20 minor, by N. Doe, her guardian ad litem; MARIEL
21 RUBIO; DANIELLE RUBIO, a minor, by Mariel
22 Rubio, her guardian ad litem; STEPHANIE RUBIO, a
23 minor, by Mariel Rubio, her guardian ad litem;
24 GUADALUPE GONZALEZ; DAISY GONZALEZ, a
25 minor, by Guadalupe Gonzalez, her guardian ad litem;
26 JAZMINE JOHNSON, a minor, by Deanna Bolden, her
27 guardian ad litem; ADRIANA RAMIREZ, a minor, by
28 Arcelia Trinidad Ramirez, her guardian ad litem; JANE
DOE, a minor, by John Doe, her guardian ad litem;
CALIFORNIANS FOR JUSTICE EDUCATION
FUND; CALIFORNIA ASSOCIATION OF
COMMUNITY ORGANIZATIONS FOR REFORM
NOW,

Plaintiffs,

v.

MARGARET SPELLINGS, in her official capacity;
UNITED STATES DEPARTMENT OF EDUCATION,
Defendants.

Case No. 3:07-cv-04299-PJH

**FIRST AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

[ADMINISTRATIVE PROCEDURE ACT
CASE]

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INTRODUCTION

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3 1. This action challenges Defendant U.S. Department of Education’s (“ED”) and
4 Defendant Secretary of Education Margaret Spellings’s (“Secretary Spellings”) (together
5 “Defendants”) regulation implementing the “highly qualified” teacher provisions of the No Child
6 Left Behind Act (“NCLB” or “the Act”). The regulation eviscerates Congress’s explicit standard
7 for the “highly qualified” teacher owed every student by relabeling over 10,000 novice teachers
8 still in training in California and tens of thousands of such teachers nationwide as “highly
9 qualified.” Congress expressly mandated that only teachers that have *completed* their teacher
10 preparation programs and have received full state certification are to be deemed “highly qualified.”
11 Defendants’ regulation countermands this clear directive by designating teachers who are merely
12 *participating* in alternative preparation routes as “highly qualified.” Over a dozen different
13 provisions of NCLB operate independently and in tandem to ensure ultimately, that a “highly
14 qualified” teacher, who has received full state certification, teaches every core academic course for
15 all students in the country. Defendants’ actions in evading this critical Congressional standard by
16 regulatory fiat has undermined the promise of No Child Left Behind for plaintiffs, for hundreds of
17 thousands of California public school students, and for the nation as a whole.

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21 2. NCLB serves as the current foundation for federal education policy. The ultimate goal
22 of NCLB is for all students to attain proficiency in reading and math by 2014. In turn, NCLB’s
23 “highly qualified teacher” provisions are intended to ensure that students have teachers who will
24 enable them to reach this goal. As Secretary of Education Margaret Spellings has stated, “[The
25 NCLB] recognizes that teacher quality is one of the most important factors in improving student
26 achievement and eliminating [] achievement gaps.” Exhibit 1, Letter from Margaret Spellings to
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1 Chief State School Officers (Oct. 21, 2005), *available at*

2 <http://www.ed.gov/policy/elsec/guid/secletter/o51021.html>.

3 3. Accordingly, NCLB contains numerous provisions relating to “highly qualified”
4 teachers. Underlying all provisions are NCLB’s mandates that every child be taught by a “highly
5 qualified” teacher in his or her core classes and that poor and minority students not be taught by
6 inexperienced, non-“highly qualified” teachers at higher rates than other students. To meet these
7 mandates, the Act requires that every state and local school district develop plans to deliver
8 “highly qualified” teachers in all core academic classes and to provide for equitable distribution of
9 these teachers.
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11 4. The Act also sets forth several reporting requirements to ensure that parents, students,
12 policy makers, and the public have accurate information regarding the numbers and distribution of
13 “highly qualified” teachers. Schools receiving Title I funds must inform individual parents when a
14 non-“highly qualified” teacher teaches his/her child for more than four weeks. Moreover, every
15 year, states and school districts are required to report to the public accurate information regarding
16 the progress that schools, districts, and states are making towards meeting NCLB’s “highly
17 qualified” requirements and the numbers of teachers who are not “highly qualified.” States, in
18 turn, must provide this information to the U.S. Department of Education, which then reports to
19 Congress the nationwide statistics on “highly qualified” teachers.
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21 5. Defendants’ conduct, in undermining the standard of a “highly qualified” teacher,
22 contravenes the Congressional mandates that all students receive “highly qualified” teachers and
23 that non-“highly qualified” teachers are distributed equitably. In addition, Defendants’ regulation
24 frustrates Congress’s intent that schools, districts, and states provide relevant, meaningful
25 information concerning the experience and qualifications of the teachers of the nation’s children.
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1 6. The text of NCLB defines the term “highly qualified” teacher as a teacher who “has
2 obtained full State certification. . . or passed the State teacher licensing examination and holds a
3 license to teach. . . .” 20 U.S.C. § 7801(23)(A)(i). Defendants’ regulation, however, flouts the
4 letter and spirit of the Act by deeming as “highly qualified” those teachers who are still
5 “*participating* in an alternative route to certification” (34 C.F.R. § 200.56(a)(2)(ii) (emphasis
6 added)) and who have not yet obtained their full teaching credential. Congress did not intend that
7 an individual with no prior training in how to teach would be labeled “highly qualified” on her first
8 day in the classroom merely because she is “participating” in an alternative route to certification.
9 Yet Defendants’ regulation permits individual schools, school districts, and states to present these
10 untrained teachers as “highly qualified” to parents, students, policy makers, and the public.

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12 7. The burden of Defendants’ conduct falls hardest on those served least by the
13 educational system. A disproportionate number of teachers still in training whom Defendants
14 mischaracterize as “highly qualified” teach in schools with a preponderance of poor and/or
15 minority students. Defendants’ regulation labeling “intern” teachers as “highly qualified” makes a
16 mockery of Congress’s mandate to ensure that poor and minority students are not more likely than
17 their more affluent, white peers to be taught by inexperienced, non-“highly qualified” teachers. By
18 allowing schools, districts, and states to mask the true picture of teacher qualifications, these
19 entities may continue disproportionately to place untrained, inexperienced teachers in schools
20 serving large numbers of poor and minority students, without consequence.

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22 8. States such as California have relied heavily on Defendants’ watered-down definition,
23 and labeled thousands of current teachers who are merely participating in “alternative route[s] to
24 certification” as “highly qualified.” In California, these teachers—still on the road to full state
25 certification—are most commonly in university or district-based intern programs and are known
26 certification—are most commonly in university or district-based intern programs and are known
27 certification—are most commonly in university or district-based intern programs and are known
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1 generically as intern teachers. Intern teachers in California are disproportionately assigned to
2 teach in low-performing schools serving high numbers of low-income and minority students.

3 9. Student Plaintiffs Candice Johnson, Jose Aldana, B. Doe, Danielle Rubio, Stephanie
4 Rubio, Daisy Gonzalez, Jazmine Johnson, Adriana Ramirez, and Jane Doe, along with members of
5 organizational Plaintiffs Californians for Justice (“CFJ”) and California ACORN, attend schools in
6 which they are taught by an intern teacher and/or have been taught by an intern and/or in which
7 there are significant numbers of interns creating a substantial likelihood that they will be taught by
8 intern teachers again. Defendants’ regulation, undermining the standard for “highly qualified”
9 teachers, permits the continued concentration of intern teachers at the schools Plaintiffs and their
10 members attend and deprives the public and parents—including parent Plaintiffs Sonya Renee,
11 Maribel Heredia, N. Doe, Mariel Rubio, and Guadalupe Gonzalez—of accurate information about
12 non-“highly qualified” teachers teaching in their schools and school districts. Moreover, the
13 misrepresentation and misreporting of “highly qualified” teachers permitted by Defendants’
14 regulation frustrates CFJ’s and ACORN’s efforts to provide access to qualified teachers for all
15 students.
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19 10. For these reasons, as described more fully below, Defendants’ regulation defining the
20 term “highly qualified” teacher is arbitrary, capricious, contrary to law, and exceeds the agency’s
21 scope of statutory authority in violation of the Administrative Procedure Act, 5 U.S.C. §§ 701-06.
22 The regulatory provision permitting alternative preparation program participants to be considered
23 “highly qualified” should be deemed null and void. Moreover, Defendants should be enjoined
24 from continuing to utilize the improper regulation, whether in enforcing compliance by schools,
25 school districts, and/or states with NCLB’s “highly qualified” teacher provisions or in applying the
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1 unlawful standard for “highly qualified” teachers when fulfilling Defendants’ reporting obligations
2 to Congress.

3 **JURISDICTION**

4 11. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 706 (actions under
5 the Administrative Procedure Act) and 28 U.S.C. § 1331 (federal question).

6 12. The Court has authority to grant the relief sought pursuant to 28 U.S.C. § 2201
7 (declaratory judgment) and 28 U.S.C. § 2202 (injunctive relief). The Court has authority to review
8 the actions of Defendants and to grant the relief requested pursuant to 5 U.S.C. §§ 701-706
9 (Administrative Procedure Act).

10 13. The Court has jurisdiction to award costs and attorneys’ fees pursuant to the Equal
11 Access to Justice Act, 28 U.S.C. § 2412 *et seq.*

12 **VENUE**

13 14. Venue is proper in this judicial district under 28 U.S.C. § 1391(b) because this is a civil
14 action, and a substantial part of the events or omissions giving rise to Plaintiffs’ claims occurred in
15 this district. Venue is also proper under 28 U.S.C. § 1391(e) because this is a civil action in which
16 Defendant Secretary Spellings is an officer of an agency of the United States acting in her official
17 capacity and also Defendant ED is an agency of the United States, and: (1) a substantial part of the
18 events or omissions giving rise to Plaintiffs’ claims occurred in this district, and also (2) one or
19 more Plaintiffs reside in this district.

20 15. Individual Plaintiffs Johnson, Ramirez, and Jane Doe reside and attend school in Contra
21 Costa County. Individual Plaintiffs Heredia, Aldana, N. Doe, and B. Doe reside in, and Plaintiffs
22 Aldana and B. Doe attend school in, Alameda County. Plaintiff CFJ has an office in Oakland,
23 California within the county of Alameda and has members who live in the county of Alameda and
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1 are adversely affected there by Defendants’ regulation. Plaintiff California ACORN has its office
2 in Oakland, California within the county of Alameda and has members who live in Alameda and
3 Contra Costa counties and are adversely affected there by Defendants’ regulation.

4 16. Pursuant to Local Rule 3-2(d), intradistrict assignment to the San Francisco or Oakland
5 division is proper because a substantial part of the acts or omissions giving rise to this action
6 occurred in the counties of Alameda and Contra Costa.
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8 **PARTIES**

9 **Plaintiffs**

10 17. Plaintiff SONYA RENEE and Plaintiff CANDICE JOHNSON are residents of Los
11 Angeles County, California. Sonya Renee is a member of Plaintiff CALIFORNIA ACORN’S Los
12 Angeles chapter. Sonya Renee is the mother of four children, including daughter Candice.
13 Candice is a sophomore at Washington Prep High School, in Los Angeles Unified School District
14 (“LAUSD”). Pursuant to Defendants’ definition of “highly qualified” teachers, Washington Prep
15 High School and LAUSD report intern teachers as “highly qualified” when responding to
16 California and NCLB teacher reporting requirements. According to a summary of teachers’
17 credentials at Washington Prep High School, obtained from the California Department of
18 Education’s online “Dataquest” database, a true and correct copy of which is attached hereto as
19 Exhibit 2 and incorporated herein by this reference, during the 2006-2007 school year, 11% of the
20 teachers at Washington Prep—more than one in ten—were intern teachers. During her freshman
21 year, the 2006-2007 school year, Candice had an intern teacher deemed “highly qualified”
22 according to Defendants’ regulation, for English and Algebra 1. Although Washington Prep
23 receives Title I funds, Plaintiff Sonya Renee received no notice from Washington Prep or LAUSD
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1 stating that Candice was being taught, during the 2006-2007 school year, by a teacher who is not
2 “highly qualified.”

3 18. Defendants’ regulation regarding “highly qualified” teachers adversely affects Sonya
4 Renee’s and Candice Johnson’s interests by (1) allowing the continued concentration of non-
5 “highly qualified” intern teachers at Washington Prep High School and in LAUSD, (2) creating a
6 substantial likelihood that Candice will be taught personally again by intern teachers whom
7 Congress has deemed, in fact, not to be “highly qualified,” (3) depriving Sonya and Candice of the
8 benefit of state and local district plans to redress the hiring and placement of non-“highly
9 qualified” teachers, including interns, and (4) depriving Sonya and Candice of accurate
10 information about non-“highly qualified” teachers teaching at Candice’s school and within
11 LAUSD. Candice Johnson brings suit through her parent and guardian ad litem, Sonya Renee.
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14 19. Plaintiff MARIBEL HEREDIA and Plaintiff JOSE “Joey” ALDANA are residents of
15 Alameda County, California. Maribel is the mother of two children, including son Joey. Joey is a
16 first grade student at East Avenue Elementary School, in Hayward Unified School District
17 (“HUSD”). Pursuant to Defendants’ definition of “highly qualified” teachers, East Avenue
18 Elementary School and HUSD report intern teachers as “highly qualified” when responding to
19 California and NCLB teacher reporting requirements. An intern teacher is assigned to teach Joey’s
20 first grade class for the 2007-2008 school year.
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22 20. Defendants’ regulation regarding “highly qualified” teachers adversely affects Maribel
23 Heredia’s and Joey Aldana’s interests by: (1) allowing Joey’s current first grade intern teacher to
24 be hired and assigned to him and mislabeled as “highly qualified,” (2) depriving Maribel and Joey
25 of the benefit of state and local district plans to redress the hiring and placement of non-“highly
26 qualified” teachers, including interns, and (3) depriving Maribel and Joey of accurate information
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1 about non-“highly qualified” teachers teaching at Joey’s school and within HUSD. Jose “Joey”
2 Aldana brings suit through his parent and guardian ad litem, Maribel Heredia.

3 21. Plaintiff N. DOE and Plaintiff B. DOE are residents of Alameda County, California. B.
4 Doe is the daughter of N. Doe. B. Doe is a second grade student at Longwood Elementary School,
5 in Hayward Unified School District (“HUSD”). Pursuant to Defendants’ definition of “highly
6 qualified” teachers, Longwood Elementary School and HUSD report intern teachers as “highly
7 qualified” when responding to California and NCLB teacher reporting requirements. Longwood
8 Elementary receives Title I funds. An intern teacher is assigned to teach B. Doe’s second grade
9 class during the 2007-2008 school year, and has been teaching B. Doe for more than four weeks.
10 Plaintiff N. Doe has received no notice from Longwood Elementary or HUSD stating that daughter
11 B. Doe is being taught, during the 2007-2008 school year, by a teacher who is not “highly
12 qualified.”
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15 22. Defendants’ regulation regarding “highly qualified” teachers adversely affects N. Doe’s
16 and B. Doe’s interests by: (1) allowing B. Doe’s current second grade intern teacher to be hired
17 and assigned to her and mislabeled as “highly qualified,” (2) depriving N. Doe and B. Doe of the
18 benefit of state and local district plans to redress the hiring and placement of non-“highly
19 qualified” teachers, including interns, and (3) depriving N. Doe and B. Doe of accurate
20 information about non-“highly qualified” teachers teaching at B. Doe’s school and within HUSD,
21 including a letter informing N. Doe that B. Doe has been taught for four or more consecutive
22 weeks by a teacher who is not “highly qualified.” B. Doe brings suit through her parent and
23 guardian ad litem, N. Doe.
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26 23. Plaintiff MARIEL RUBIO and Plaintiffs DANIELLE RUBIO and STEPHANIE
27 RUBIO are residents of Los Angeles County, California. Mariel is the mother of four children,
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1 including daughters Danielle and Stephanie. Danielle is a junior at Hawthorne High School, in
2 Centinela Valley Union High School District (“CUHSD”); Stephanie is a freshman at Hawthorne.

3 24. From October 2006-June 2007, Plaintiff Danielle Rubio attended Lawndale High
4 School. For the 2005-2006 school year, and from September 2006-October 2006, Danielle
5 attended Hawthorne High School. On information and belief, pursuant to Defendants’ definition
6 of “highly qualified” teachers, Hawthorne High School, Lawndale High School and CUHSD
7 report intern teachers as “highly qualified” when responding to California and NCLB teacher
8 reporting requirements. According to a summary of teachers’ credentials for CUHSD, obtained
9 from the California Department of Education’s online “Dataquest” database, a true and correct
10 copy of which is attached hereto as Exhibit 3 and incorporated herein by this reference, during the
11 2006-2007 school year, 11% of the teachers at Lawndale High School and 15% of the teachers at
12 Hawthorne High School were intern teachers.
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15 25. During her sophomore year at Lawndale High School, the 2006-2007 school year,
16 Plaintiff Danielle Rubio had an intern teacher deemed “highly qualified” according to Defendants’
17 regulation, for English and Spanish. Lawndale High School received Title I funds during the
18 2006-2007 school year. Plaintiff Mariel Rubio received no notice from Lawndale High School or
19 CUHSD stating that Danielle was being taught, during the 2006-2007 school year, by a teacher
20 who is not “highly qualified.” According to Dataquest, during the 2005-2006 school year, 19% of
21 the teachers at Hawthorne High School—24 out of 125—were intern teachers. During her
22 freshman year at Hawthorne High School, the 2005-2006 school year, Danielle had an intern
23 teacher deemed “highly qualified” according to Defendants’ regulation, for Spanish. Hawthorne
24 High School received Title I funds during the 2005-2006 school year. Plaintiff Mariel Rubio
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1 received no notice from Hawthorne High School or CUHSD stating that Danielle was being
2 taught, during the 2005-2006 school year, by a teacher who is not “highly qualified.”

3 26. Defendants’ regulation regarding “highly qualified” teachers adversely affects Mariel
4 Rubio’s and Danielle Rubio’s interests by (1) allowing the continued concentration of non-“highly
5 qualified” intern teachers at Lawndale and Hawthorne High Schools and in CUHSD, (2) creating a
6 substantial likelihood that Danielle will be taught personally again by intern teachers whom
7 Congress has deemed, in fact, not to be “highly qualified,” (3) depriving Mariel and Danielle of the
8 benefit of state and local district plans to redress the hiring and placement of non-“highly
9 qualified” teachers, including interns, and (4) depriving Mariel and Danielle of accurate
10 information about non-“highly qualified” teachers teaching at Lawndale and Hawthorne High
11 Schools and within CUHSD. Danielle Rubio brings suit through her parent and guardian ad litem,
12 Mariel Rubio.
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15 27. Plaintiff STEPHANIE RUBIO is a resident of Los Angeles County, California, another
16 daughter of Plaintiff Mariel Rubio. Stephanie is a freshman at Hawthorne High School, in
17 CUHSD. During the 2006-07 school year, the last year for which data are available, 15% of the
18 teachers at Hawthorne were interns. The likelihood that Stephanie will be taught by at least one
19 intern teacher in one of her core classes during her remaining seven semesters of high school is
20 statistically high, as she will enroll in at least five core classes during each semester.
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22 28. Defendants’ regulation regarding “highly qualified” teachers adversely affects
23 Stephanie Rubio’s interests by (1) allowing the continued concentration of non-“highly qualified”
24 intern teachers at Hawthorne High School and in CUHSD, (2) creating a substantial likelihood that
25 Stephanie will be taught in the future by intern teachers whom Congress has deemed, in fact, not to
26 be “highly qualified,” (3) depriving Stephanie of the benefit of state and local district plans to
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1 redress the hiring and placement of non-“highly qualified” teachers, including interns, and (4)
2 depriving Stephanie and her parents of accurate information about non-“highly qualified” teachers
3 teaching at her school and within CUHSD. Stephanie Rubio brings suit through her parent and
4 guardian ad litem, Mariel Rubio.

5 29. Plaintiff GUADALUPE GONZALEZ and Plaintiff DAISY GONZALEZ are residents
6 of Los Angeles County, California. Guadalupe Gonzalez is a member of Plaintiff CALIFORNIA
7 ACORN’S Los Angeles chapter. Guadalupe is the mother of four children, including daughter
8 Daisy. Daisy is a sophomore at New Tech High School, a small learning community within
9 Jefferson High School in LAUSD. Pursuant to Defendants’ definition of “highly qualified”
10 teachers, Jefferson High School and LAUSD report intern teachers as “highly qualified” when
11 responding to California and NCLB teacher reporting requirements. According to a summary of
12 teachers’ credentials at Jefferson High School, obtained from the California Department of
13 Education’s online “Dataquest” database, a true and correct copy of which is attached hereto as
14 Exhibit 2 and incorporated herein by this reference, during the 2006-2007 school year, 12.4% of
15 the teachers at Jefferson were intern teachers who were deemed “highly qualified” according to
16 Defendants’ regulation. (Separate data for New Tech High School, which is within Jefferson High
17 School, is not available from Dataquest.) The likelihood that Daisy will be taught by at least one
18 intern teacher in one of her core classes during her remaining five semesters of high school is
19 statistically high, as she will enroll in at least five core classes during each semester.

20 30. Defendants’ regulation regarding “highly qualified” teachers adversely affects
21 Guadalupe’s and Daisy Gonzalez’s interests by (1) allowing the continued concentration of non-
22 “highly qualified” intern teachers at Jefferson High School and in LAUSD, (2) creating a
23 substantial likelihood that Daisy will be taught in the future by intern teachers whom Congress has
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1 deemed, in fact, not to be “highly qualified,” (3) depriving Guadalupe and Daisy of the benefit of
2 state and local district plans to redress the hiring and placement of non-“highly qualified” teachers,
3 including interns, and (4) depriving Guadalupe and Daisy of accurate information about non-
4 “highly qualified” teachers teaching at Daisy’s school and within LAUSD.

5 31. Plaintiff JAZMINE JOHNSON is a resident of Contra Costa County, California. She is
6 a junior at Richmond High School, in the West Contra Costa Unified School District
7 (“WCCUSD”). Pursuant to Defendants’ regulatory standard of “highly qualified” teachers,
8 Richmond High School and WCCUSD report intern teachers as “highly qualified” when
9 responding to California and NCLB teacher reporting requirements. Based on information
10 provided by WCCUSD in response to a public records request, as well as a school staff roster
11 cross-referenced with individual teachers’ credential information from the online database of the
12 California Commission on Teacher Credentialing (true and correct copies of which are attached
13 hereto as Exhibit 4 and incorporated herein by this reference), during the 2006-2007 school year,
14 approximately 1 in 8 teachers at Richmond High School were intern teachers. During her
15 sophomore year, the 2006-2007 school year, Jazmine had an intern teacher deemed “highly
16 qualified” according to Defendants’ regulation, for English. During the 2005-2006 school year,
17 Jazmine’s freshman year, she had intern teachers, who were deemed “highly qualified” according
18 to Defendants’ regulation, for English, Spanish, and Geography.

19 32. Defendants’ regulation regarding “highly qualified” teachers adversely affects Jazmine
20 Johnson’s interests by: (1) allowing the continued concentration of non-“highly qualified” intern
21 teachers at Richmond High School and in WCCUSD, (2) creating a substantial likelihood that
22 Jazmine will be taught personally again by intern teachers whom Congress has deemed, in fact, not
23 to be “highly qualified,” (3) depriving Jazmine of the benefit of state and local district plans to
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1 redress the hiring and placement of non-“highly qualified” teachers, including interns, and (4)
2 depriving Jazmine and her parents of accurate information about non-“highly qualified” teachers
3 teaching at her school and within WCCUSD. Jazmine Johnson brings suit through her parent and
4 guardian ad litem, Deanna Bolden.

5 33. Plaintiff ADRIANA RAMIREZ is a resident of Contra Costa County, California. Like
6 Plaintiff Jazmine Johnson, Adriana is a junior at Richmond High School, in WCCUSD. During
7 the 2006-2007 school year, Adriana’s sophomore year, she had intern teachers, who were deemed
8 “highly qualified” according to Defendants’ regulation, for English and Spanish.

9 34. Defendants’ regulation regarding “highly qualified” teachers adversely affects Adriana
10 Ramirez’s interests by: (1) allowing the continued concentration of non-“highly qualified” intern
11 teachers at Richmond High School and in WCCUSD, (2) creating a substantial likelihood that she
12 will be taught personally again by intern teachers whom Congress has deemed, in fact, not to be
13 “highly qualified,” (3) depriving Adriana of the benefit of state and local district plans to redress
14 the hiring and placement of non-“highly qualified” teachers, including interns, and (4) depriving
15 Adriana and her parents of accurate information about non-“highly qualified” teachers teaching at
16 her school and within WCCUSD. Adriana Ramirez brings suit through her parent and guardian ad
17 litem, Arcelia Trinidad Ramirez.

18 35. Plaintiff JANE DOE is a resident of Contra Costa County, California. Like Plaintiffs
19 Jazmine Johnson and Adriana Ramirez, Plaintiff Jane Doe is a junior at Richmond High School, in
20 WCCUSD. Jane Doe currently has an intern teacher, deemed “highly qualified” according to
21 Defendants’ regulation, teaching her Biology class for the 2007-2008 school year. During the
22 2006-2007 school year, Plaintiff Jane Doe’s sophomore year, one of Plaintiff Jane Doe’s two
23 English classes was taught by an intern teacher deemed “highly qualified” according to
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1 Defendants' regulation. This English class focused on California's English-Language Arts content
2 standards and was intended to help Plaintiff Doe prepare for the California High School Exit Exam
3 ("CAHSEE"), a test she must pass in order to graduate from high school. To date, Plaintiff Jane
4 Doe has been unable to pass the CAHSEE.

5 36. Defendants' regulation regarding "highly qualified" teachers adversely affects Plaintiff
6 Jane Doe's interests by: (1) allowing Jane Doe's current Biology teacher, an intern, to be hired
7 and assigned to her and mislabeled as "highly qualified;" (2) allowing the continued concentration
8 of non-"highly qualified" intern teachers at Richmond High School and in WCCUSD; (3) creating
9 a substantial likelihood that Jane Doe will be taught personally again by intern teachers whom
10 Congress has deemed, in fact, not to be "highly qualified," (4) depriving Jane Doe of the benefit of
11 state and local district plans to redress the hiring and placement of non-"highly qualified" teachers,
12 including interns, and (5) depriving Jane Doe and her parents of accurate information about non-
13 "highly qualified" teachers teaching at her school and within WCCUSD. Plaintiff Jane Doe brings
14 suit through her parent and guardian ad litem, John Doe.
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17 37. Plaintiff Californians for Justice Education Fund ("CFJ") is a non-profit, grassroots
18 membership organization dedicated to empowering youth, communities of color, and poor people.
19 The current primary efforts of CFJ and its members are focused on improving the educational
20 opportunities in California's public schools for all students, including furthering an education
21 system that provides qualified and diverse teaching staff and fighting for the rights of students of
22 color, low-income students, and immigrant students and their families so that CFJ and its members
23 can achieve justice in their schools. A primary focus of CFJ's education work has been to
24 mobilize public support for significant policy changes around the issue of students' access to
25 qualified teachers. CFJ has expended funds and resources in its attempt to monitor and remedy
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1 teacher quality issues. Among other efforts, CFJ has supported major legislative initiatives to
2 increase students' access to qualified teachers in California, including SB 1209 (Scott) (2006), a
3 bill which increased training and support for intern teachers and the Quality Education Investment
4 Act which, *inter alia*, requires participating districts to equalize the distribution of experienced,
5 qualified teachers across their schools. CFJ's membership includes four regional networks with
6 offices in Oakland, Long Beach, Fresno, and San Jose. Overall, CFJ has a total of over 1,500
7 members across the state. Comprised primarily of youth from low-income communities and
8 communities of color, CFJ's members meet bi-weekly to discuss educational issues that arise in
9 their local communities, identify issues having a statewide impact, and strategize for effective
10 solutions.
11

12 38. CFJ brings this action on its own behalf and on behalf of its members, including
13 various members who are currently taught by intern teachers. One such member is Sayra Reyes, a
14 junior at Oakland Technical High School in Oakland Unified School District, who has an intern
15 teacher teaching her Chemistry class for the 2007-2008 school year. Defendants' regulation
16 regarding "highly qualified" teachers adversely affects CFJ's organizational interests as well as the
17 interests of CFJ's members, including, *inter alia*, Sayra Reyes. The mislabeling and misreporting
18 of "highly qualified" teachers permitted by Defendants' regulation hinders CFJ's goal of
19 improving access to qualified teachers for all students and its members' interests in having fully
20 qualified teachers. This misreporting also deprives CFJ and its members of accurate information
21 regarding the qualifications of the teachers throughout California as well as in school districts
22 where CFJ carries out its work and/or its members reside. Moreover, Defendants' regulation
23 labeling teachers participating in alternative routes as "highly qualified" perpetuates the
24 disproportionate placement of untrained, inexperienced teachers in schools serving large numbers
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1 of low-income and minority students, contrary to CFJ's goals and its members' interests. CFJ
2 works specifically on behalf of such students, and many of its members are low-income students of
3 color.

4 39. The national Association of Community Organizations for Reform Now ("ACORN") is
5 the nation's largest community organization of low- and moderate-income families, with more
6 than 350,000 member families, organized in 850 neighborhood chapters in over 100 cities across
7 the United States. Since 1970, ACORN's priorities have included better housing, schools,
8 neighborhood safety, health care, and job conditions. Plaintiff CALIFORNIA ACORN, the
9 statewide affiliate of national ACORN, was formed in 1996 and has more than 37,000 members
10 across California. California ACORN, based in Oakland, organizes communities across the state
11 through outreach from its thirteen chapters, including Chula Vista, Contra Costa, Fresno, Long
12 Beach, Los Angeles, Oakland, Orange County, Sacramento, San Bernardino, San Diego, San
13 Fernando Valley, San Francisco, and San Jose. One of California ACORN's four major current
14 campaigns is "Great Schools NOW!," a campaign to improve the quality of public schools for
15 ACORN members and their families, including ensuring qualified teachers. California ACORN
16 has expended funds and resources in its attempts to address teacher quality issues. Among other
17 efforts, California ACORN has supported major legislative initiatives to increase students' access
18 to qualified teachers in California, including SB 1209 (Scott) (2006), a bill which increased
19 training and support for intern teachers and the Quality Education Investment Act which, *inter*
20 *alia*, requires participating districts to equalize the distribution of experienced, qualified teachers
21 across their schools. In addition, California ACORN and its members have participated in
22 trainings on teacher quality issues, advocated for improvements in teacher quality before state
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1 legislators and other officials, and conducted and disseminated research on teacher quality issues
2 within individual school districts.

3 40. California ACORN brings this action on its own behalf and on behalf of its members,
4 including Plaintiffs Sonya Renee and Guadalupe Gonzalez. Defendants' regulation regarding
5 "highly qualified" teachers adversely affects California ACORN's organizational interests as well
6 as the interests of California ACORN's members. The mislabeling and misreporting of "highly
7 qualified" teachers permitted by the challenged regulation hinders California ACORN's goal of
8 improving access to qualified teachers for all students and its members' interests in having fully
9 qualified teachers. The misreporting also deprives California ACORN and its members of
10 accurate information regarding the qualifications of the teachers throughout the state as well as in
11 school districts where California ACORN carries out its work and/or its members reside.
12 Moreover, Defendants' regulation labeling teachers participating in alternative routes as "highly
13 qualified" perpetuates the disproportionate placement of untrained, inexperienced teachers in
14 schools serving large numbers of low-income and minority students, contrary to California
15 ACORN's goals and its members' interests. California ACORN works specifically on behalf of
16 such students and their families, and many of its members are low-income families of color.

17 **Defendants**

18 41. Defendant MARGARET SPELLINGS is the Secretary of the United States Department
19 of Education. She serves as the chief administrative officer of the Department and is responsible
20 for overseeing implementation and enforcement of NCLB, including issuing such regulations as
21 are necessary to ensure reasonably that there is compliance with the Act (20 U.S.C. §§ 6571,
22 6578). Secretary Spellings is sued in her official capacity.
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1 42. Defendant UNITED STATES DEPARTMENT OF EDUCATION is the federal agency
2 responsible for implementing NCLB, including issuing such regulations as are necessary to ensure
3 reasonably that there is compliance with NCLB (20 U.S.C. §§ 6571, 6578).

4 **LEGAL FRAMEWORK**

5 *The No Child Left Behind Act*

6 43. In January 2002, President Bush signed into law the No Child Left Behind Act of 2001,
7 Pub. L. No. 107-110, 115 Stat. 1425, a sweeping piece of legislation that serves as the current
8 foundation for federal education policy. Congress is currently considering a reauthorization of the
9 Act.
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11 44. The ultimate goal of NCLB is for all students to be “proficient” in reading and math by
12 2014. 20 U.S.C. § 6311(b)(2)(F). To reach this goal, the Act requires that states test students
13 regularly to assess their progress, 20 U.S.C. § 6311(b)(3)(A), and that states and districts be held
14 accountable when students are not making “Adequate Yearly Progress” according to test results,
15 *see* 20 U.S.C. §§ 7325, 6316(b)(5). In particular, NCLB holds states accountable for closing the
16 achievement gap between low-income and minority students and their more affluent, white peers.
17 20 U.S.C. § 6311(b)(2)(B).
18

19 45. A cornerstone of NCLB’s accountability scheme is that in order for students to learn
20 and to make steady academic progress, they must be taught by “highly qualified” teachers. In a
21 letter to the nation’s chief state school officers, a true and correct copy of which is attached hereto
22 as Exhibit 1 and incorporated herein by this reference, Defendant Spellings described the
23 importance of teacher quality as follows:
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25

26 On January 8, 2002, President George W. Bush and the U.S. Congress agreed to a plan
27 to eliminate our Nation’s significant academic achievement gaps, especially in
28 mathematics and reading. This plan, embodied in the No Child Left Behind Act of 2001

1 (NCLB), recognizes that teacher quality is one of the most important factors in
2 improving student achievement and eliminating these achievement gaps. As a result,
3 the law set the important goal that all students be taught by a “highly qualified teacher”
4 (HQT) who holds at least a bachelor’s degree, *has obtained full State certification*, and
5 has demonstrated knowledge in the core academic subjects he or she teaches.

6 Exhibit 1, Letter from Margaret Spellings to Chief State School Officers (Oct. 21, 2005) (emphasis
7 added).

8 *The NCLB’s “Highly Qualified” Teacher Requirement*

9 46. NCLB defines the term “highly qualified” as follows:

10 (i) the teacher has obtained full State certification as a teacher (including certification
11 obtained through alternative routes to certification) or passed the State teacher licensing
12 examination, and holds a license to teach in such State, except that when used with
13 respect to any teacher teaching in a public charter school, the term means that the
14 teacher meets the requirements set forth in the State’s public charter school law; and

15 (ii) the teacher has not had certification or licensure requirements waived on an
16 emergency, temporary, or provisional basis.

17 20 U.S.C. § 7801(23)(A).

18 47. Under NCLB, states must satisfy minimum qualifications for new and current teachers.

19 Beginning with the 2002-03 school year, all new teachers hired in schools with low-income
20 students receiving federal Title I funds were to be “highly qualified.” 20 U.S.C. § 6319(a)(1-2).

21 By the end of the 2005-06 school year, all students were to be taught by “highly qualified”
22 teachers in core academic classes. 20 U.S.C. § 6319(a)(2). “Core academic subjects” are English,
23 reading or language arts, mathematics, science, foreign languages, civics and government,
24 economics, arts, history, and geography. 34 C.F.R. § 200.55(c).

25 48. During the time it takes to provide all students with “highly qualified” teachers in core
26 academic classes, NCLB further mandates that teachers who are not “highly qualified” may not be
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1 disproportionately concentrated in schools with high percentages of low-income and minority
2 students. 20 U.S.C. § 6311(b)(8)(C).

3 49. To ensure that the states make progress toward the goal of providing all students with
4 “highly qualified” teachers, NCLB also requires that:

- 5 a. States establish a statewide plan for carrying out activities to make sure that
6 students are taught by “highly qualified” teachers, “including steps the State
7 educational agency will take to ensure that poor and minority children are
8 not taught at higher rates than other children by inexperienced, unqualified,
9 or out-of-field teachers, and the measures that the State educational agency
10 will use to evaluate and publicly report the progress of the State educational
11 agency with respect to such steps.” 20 U.S.C. §§ 6311(b)(8)(C), 6319(a)(2).
12
13 b. States seeking Title I money must submit a detailed plan as to how the state
14 will ensure that schools receiving Title I funding will provide “highly
15 qualified” instructional staff. *See* 20 U.S.C. §§ 6311(a)(1), 6311(b)(8).
16
17 c. Each school district must establish a district-level plan for how it will meet
18 the NCLB’s mandate that all students be taught by a “highly qualified”
19 teacher by the end of the 2005-2006 school year, 20 U.S.C. §§
20 6312(b)(1)(N), 6319(a)(3), and provide assurances in the plan that it will
21 meet this goal, 20 U.S.C. § 6312(c)(1)(I).
22

23 50. Further, NCLB establishes several reporting requirements at the school, district, state,
24 and national levels to ensure parents, students, policy makers, and the public have accurate
25 information regarding students’ access to “highly qualified” teachers.
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- 1 a. Schools receiving Title I funds must provide “timely notice” to parents of a child
2 who has, for more than four consecutive weeks, been taught by a teacher who is not
3 “highly qualified.” 20 U.S.C. § 6311(h)(6)(B)(ii).
- 4 b. Districts must prepare and publicly disseminate an “annual report card” that
5 includes district-level data regarding (i) the percentage of teachers teaching with
6 emergency or provisional credentials, and (ii) the percentage of classes not taught
7 by “highly qualified” teachers, in the aggregate and disaggregated by high-poverty
8 compared to low-poverty schools. 20 U.S.C. § 6311(h)(2).
- 9 c. Districts must also report to the public annually district- and school-level data
10 regarding progress made towards meeting the “highly qualified” teacher goal. 20
11 U.S.C. § 6319(b)(1)(A).
- 12 d. States must prepare an “annual state report card” that includes state-level data
13 regarding: (i) the percentage of teachers teaching with emergency or provisional
14 credentials, and (ii) the percentage of classes not taught by “highly qualified”
15 teachers, in the aggregate and disaggregated by high-poverty compared to low-
16 poverty schools. 20 U.S.C. § 6311(h)(1)(C).
- 17 e. States must submit annual reports to the U.S. Secretary of Education on “the quality
18 of teachers and the percentage of classes taught by highly qualified teachers in the
19 State, local educational agency, and school,” (20 U.S.C. § 6311(h)(4)(G)), and
20 make this report “widely available within the State,” (*id.*). This report must include
21 data regarding progress made towards meeting the “highly qualified” teacher goal.
22 20 U.S.C. § 6319(b)(1)(B).
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1 f. The Secretary of Education annually must submit a report to Congress that presents
2 national- and State-level data regarding “the quality of teachers and the percentage
3 of classes taught by highly qualified teachers.” 20 U.S.C. § 6311(h)(4)-(5).

4 51. Not a single state met the deadline for ensuring that all students are taught by a “highly
5 qualified” teacher in their core classes by the end of the 2005-2006 school year. *See* Exhibit 10,
6 Letter from Margaret Spellings to Chief State School Officers (July 23, 2007), *available at*
7 <http://www.ed.gov/policy/elsec/guid/secletter/070723.html>. In October 2005, Defendant
8 Spellings, on a state-by-state basis, extended until the end of the 2006-2007 school year the
9 deadline by when all students were to be taught by a “highly qualified” teacher in their core
10 classes. *See* Exhibit 1, Letter from Margaret Spellings to Chief State School Officers (Oct. 21,
11 2005).
12

13 52. In order to receive an extension, states were required to demonstrate a “good faith
14 effort” to reach the “highly qualified” teacher goal and submit a revised state plan for meeting the
15 goal by the end of 2006-2007. Defendants analyzed four elements in deciding whether to grant
16 individual state extensions: (1) the State’s definition of a “highly qualified teacher,” (2) how the
17 State reports to parents and the public on classes taught by “highly qualified” teachers, (3) the
18 completeness and accuracy of “highly qualified” teacher data reported to the U.S. Department of
19 Education, and (4) the steps the State has taken to ensure that experienced and qualified teachers
20 are equitably distributed among classrooms with poor and minority children and those with their
21 peers. Exhibit 1, Letter from Margaret Spellings to Chief State School Officers (Oct. 21, 2005).
22

23 53. According to a press release issued by Defendants on August 16, 2006, a true and
24 correct copy of which is attached hereto as Exhibit 5 and incorporated herein by this reference, all
25 50 states—plus the District of Columbia and Puerto Rico—received extensions, including
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1 California. Exhibit 5, *U.S. Department of Education Releases Results of State Plans for Highly*
2 *Qualified Teachers in Every Classroom* (Aug. 16, 2006), available at
3 <http://www.ed.gov/teachers/nclbguide/improve-quality.html>.

4 54. To date, it is unclear if any state has met the 2006-2007 extended deadline. On July 23,
5 2007, Defendant Secretary Spellings issued a letter to Chief State School Officers informing them
6 that “[i]n the fall, we will also begin a new round of monitoring in all States; this monitoring will
7 focus intensively on State implementation of the HQT plans. . . .” Exhibit 10, Letter from
8 Margaret Spellings to Chief State School Officers (July 23, 2007), available at
9 <http://www.ed.gov/policy/elsec/guid/secletter/070723.html>. In this letter, the Secretary assured
10 States that they would not be sanctioned for failing to meet the 100% “highly qualified teacher”
11 extended 2006-2007 deadline:
12

13 . . . I intend to maintain the policy of not penalizing States financially solely because
14 they have not reached 100 percent HQT. In the course of monitoring, however, if the
15 Department finds that any particular State is not making an adequate effort to reach the
16 goal of having all core academic classes taught by highly qualified teachers, the
17 Department may take appropriate actions. Such actions may include, but are not
18 limited to, imposition of grant conditions or high-risk status, compliance agreements, or
19 withholding of funds. All decisions about sanctions will be made on a case-by-case
20 basis, taking the circumstances of and conditions in individual States into account.

21 55. To date, no state has been sanctioned for failing to meet the “highly qualified teacher”
22 (“HQT”) goal. The Secretary’s letter notes that, as of July 23, 2007, one state still did not have an
23 approved “HQT” plan setting forth the actions the State and districts would take to reach the HQT
24 goal by the end of the 2006-2007 school year—nearly one year after the Department first requested
25 additional revisions and one month after the 2006-2007 school year had ended. On information
26 and belief, Defendants have not sanctioned this state for failing to submit, by the end of the 2006-
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1 2007 school year, a valid plan setting forth the actions the State and districts would take to reach
 2 the HQT goal by the end of the 2006-2007 school year.

3 56. Although data is not yet available for the 2006-2007 school year, Secretary Spellings's
 4 correspondence, dated July 23, 2007, suggests that the Department anticipates that most, if not all
 5 states, were unable to meet the goal of having "highly qualified" teachers in all core classes by the
 6 2006-2007 extended deadline, and unlikely will meet this goal in the near future. Thus, the many
 7 other NCLB provisions relating to "highly qualified" teachers are even more important. Indeed, it
 8 is essential that states and districts establish real plans for ensuring that all students are taught by
 9 "highly qualified" teachers and that poor and minority children are not disproportionately taught
 10 by non-"highly qualified" teachers. It is also just as important that accurate information on
 11 students' access to "highly qualified" teachers be reported to parents, students, policymakers, and
 12 the public.
 13
 14

15 FACTUAL ALLEGATIONS

16 *Defendants' Regulatory Definition of "Highly Qualified" Teacher Conflicts With NCLB*

17 57. On December 2, 2002, then Secretary of Education Rod Paige issued final regulations,
 18 which became effective January 2, 2003, defining the term "highly qualified teacher." These
 19 regulations conflict with NCLB's statutory definition of "highly qualified" teacher. Specifically,
 20 the regulations provide:
 21

22 (a) In general

23 (1) Except as provided in paragraph (a)(3) of this section, a teacher covered under
 § 200.55 must –

- 24 i. Have obtained full State certification as a teacher, which may include
 certification obtained through alternative routes to certification; or
 25 ii. (A) Have passed the State teacher licensing examination; and (B) Hold a
 license to teach in the State.

26 (2) A teacher meets the requirement in paragraph (a)(1) of this section if the teacher –
 27
 28

- 1 i. Has fulfilled the State’s certification and licensure requirements
2 applicable to the years of experience the teacher possesses; or
3 ii. *Is participating in an alternative route to certification program* under
4 which –
5 (A) The teacher –
6 (1) Receives high-quality professional development that is
7 sustained, intensive, and classroom-focused in order to
8 have a positive and lasting impact on classroom instruction,
9 before and while teaching;
10 (2) Participates in a program of intensive supervision that
11 consists of structured guidance and regular ongoing support
12 for teachers or a teacher mentoring program;
13 (3) Assumes functions as a teacher only for a specified
14 period of time not to exceed three years; and
15 (4) Demonstrates satisfactory progress toward full
16 certification as prescribed by the State; and
17 (B) The State ensures, through its certification and licensure
18 process, that the provisions in paragraph (a)(2)(ii) of this section
19 are met.
20 (3) A teacher teaching in a public charter school in a State must meet the certification
21 and licensure requirements, if any, contained in the State’s charter school law.
22 (4) If a teacher has had certification or licensure requirements waived on an emergency,
23 temporary, or provisional basis, the teacher is not highly qualified.

24 34 C.F.R. § 200.56(a) (emphasis added).

25 58. Although the NCLB statute defines a “highly qualified” teacher as one who “*has*
26 *obtained full State certification as a teacher (including certification obtained through alternative*
27 *routes to certification)* or passed the State teacher licensing examination, and holds a license to
28 teach in such State,” (20 U.S.C. § 7801(23)(A)(i) (emphasis added)), Defendants’ regulation *also*
includes as “highly qualified” teachers those individuals who are merely “*participating in an*
alternative route to certification program” and who have not yet completed full state certification,
(34 C.F.R. § 200.56(a)(2)(ii) (emphasis added)).

59. NCLB also provides that any teacher who has “had certification or licensure
requirements waived on an emergency, temporary, or provisional basis” may not be considered

1 “highly qualified.” 20 U.S.C. § 7801(23)(A)(ii). Contrary to this statutory provision, Defendants’
 2 regulation permits “participant[s] in an alternative route to certification program” (34 C.F.R.
 3 §200.56(a)(2)(ii)) who are serving on a provisional basis “not to exceed three years” (*id.*) to satisfy
 4 the definition of “highly qualified.”

5 *California Has Implemented Defendants’ Unlawful Regulation*

6 60. The California State Board of Education has adopted “highly qualified” teacher
 7 regulations in order to implement NCLB in California. In doing so, the California State Board of
 8 Education has taken full advantage of the scope of Defendants’ “highly qualified” teacher
 9 regulations and, as such, has deemed intern teachers in California to constitute “highly qualified”
 10 teachers for purposes of NCLB for as long as three years. *See* 5 C.C.R. §§ 6101, 6110.

11 *Effect of Defendants’ Unlawful Regulation*

12 61. As a result of Defendants’ regulation permitting teachers *participating* in alternative
 13 certification programs to be deemed “highly qualified” (as opposed to only those alternative route
 14 teachers who have *completed* their programs):

- 15 a. states and school districts are able to skirt NCLB’s provisions by hiring and then
 16 not prohibiting the concentration of non-“highly qualified” teachers in schools
 17 serving large numbers of poor and minority students (*see* 20 U.S.C. §§
 18 6311(b)(8)(C), 6319(a)(2);
 19 b. schools receiving Title I funds do not have to inform parents when their child is
 20 taught for more than four consecutive weeks by an intern or other alternative route
 21 teacher even though that teacher does not have a full state credential (*see* 20 U.S.C.
 22 § 6311(h)(6(B)(ii));
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- 1 c. states' plans regarding how they will meet NCLB's mandates for "highly qualified"
2 teachers are based on inaccurate data and improper premises where teachers
3 participating in alternative routes are counted as "highly qualified" teachers (*see* 20
4 U.S.C. §§ 6311(b)(8)(C), 6319(a)(2), 6311(a)(1), 6311(b)(8));
- 5 d. school districts' plans regarding how they will meet NCLB's mandates for "highly
6 qualified" teachers are based on inaccurate data and improper premises where
7 teachers participating in alternative routes are counted as "highly qualified"
8 teachers (*see* 20 U.S.C. §§ 312(b)(1)(N), 6319(a)(3), 6312(c)(1)(1));
- 9 e. states' annual report cards and annual reports containing information on the
10 percentages of classes being taught by "highly qualified" teachers misreport such
11 percentages where teachers participating in alternative routes are counted as "highly
12 qualified" teachers (*see* 20 U.S.C. §§ 6311(h)(1)(C), 6319(b)(1)(B));
- 13 f. school districts' annual report cards and annual reports regarding "highly qualified"
14 teachers in the districts misreport such percentages where teachers participating in
15 alternative routes are counted as "highly qualified" teachers (*see* 20 U.S.C. §§
16 6311(h)(2), 6319(b)(1)(A)); and
- 17 g. the U.S. Secretary of Education's annual report to Congress with national- and
18 state-level data regarding "the quality of teachers and the percentage of classes
19 taught by highly qualified teachers," (20 U.S.C. § 6311(h)(4)-(5)), is based on
20 inaccurate, inflated numbers regarding the number of "highly qualified" teachers as
21 states and school districts are labeling teachers participating in alternative
22 certification programs as "highly qualified" in accord with Defendants' improper
23 regulation.
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1 62. Nationally, an estimated 59,000 individuals obtained their teaching credentials in 2005-
2 2006 through alternative route certification programs. *See* Emily Feistritz, *Alternative Teacher*
3 *Certification: A State-by-State Analysis*, Introduction (National Center for Alternative Certification
4 2007), *available at* <http://www.teach-now.org/intro.cfm>. On information and belief, pursuant to
5 Defendants' unlawful regulation, these 59,000 individuals were mislabeled as "highly qualified"
6 while participating in alternative route to certification programs.
7

8 63. The effect of Defendants' regulation defining participants in "alternative route[s] to
9 certification" as "highly qualified" is particularly dramatic in California. Since Defendants issued
10 the challenged regulation in 2002, the number of intern teachers in California has risen by
11 approximately 50%. According to a statewide summary of teachers' credentials obtained from the
12 California Department of Education's online "Dataquest" database, a true and correct copy of
13 which is attached hereto as Exhibit 6 and incorporated herein by this reference, in 2001-2002 when
14 NCLB was initially adopted, 7,251 California teachers served on university and district intern
15 credentials. According to the statewide summary report for 2006-2007, a true and correct copy of
16 which is attached hereto as Exhibit 7 and incorporated herein by this reference, by 2006-2007 the
17 number of university and district interns increased by approximately 50% to a total of 10,716, all
18 of whom are considered "highly qualified." This significant increase in the number of intern
19 teachers in California has coincided with a significant decrease in the number of emergency-
20 credentialed teachers, who are not considered "highly qualified" under the NCLB or its
21 implementing regulations. *See* Center for the Future of Teaching and Learning, *The Status of the*
22 *Teaching Profession 2005*, at 31, *available at*
23 <http://www.cftl.org/documents/2005/stp05fullreport.pdf>.
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1 64. This increase in the number of interns in California has been visited precisely upon the
2 very students for whom Congress has taken special care to ensure access to “highly qualified”
3 teachers. In California, low-income and minority students are disproportionately taught by intern
4 teachers, when compared with their more affluent, white peers. Forty-four percent (44%) of all
5 interns are placed in schools serving the highest proportion of minority students, while only 7% of
6 interns serve in schools serving the lowest proportion of minority students. *See* Center for the
7 Future of Teaching and Learning, *Teaching and California’s Future: California’s Teaching Force*
8 *2006*, at 21, *available at* <http://www.cftl.org/documents/2006/TCF2006FINAL.pdf>.

10 65. The distribution of intern teachers by school achievement shows a similar pattern in
11 California. Fifty-eight percent of interns teach in schools that fall in the lowest achievement
12 quartile on California’s Academic Performance Index (“API”), while only 6% teach in schools in
13 the highest achievement quartile. *See* Center for the Future of Teaching and Learning, *The Status*
14 *of the Teaching Profession 2005*, at 73.

16 66. Plaintiff Candice Johnson, daughter of Plaintiff Sonya Renee, attends Washington Prep
17 High School, a low-performing school in Los Angeles Unified School District (“LAUSD”) with a
18 student population comprised primarily of low-income minority students. Washington Prep is
19 ranked “1” on California’s Academic Performance Index (“API”), which means it is among the
20 bottom 10% of schools in California in terms of academic achievement. It is a Year 5 “Program
21 Improvement” school under NCLB, which means it has failed to meet Adequate Yearly Progress
22 (“AYP”) benchmarks and must implement additional services and interventions to increase student
23 achievement. Nearly all of the students at Washington Prep are African-American or Latino.
24 Two-thirds of the students qualify for the free or reduced price school lunch program, the indicator
25 typically used to determine the socioeconomic status of a public school population. During the
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1 2006-2007 school year, 11% of teachers at Washington Prep High School were “intern” teachers.
2 *See* Exhibit 2. Defendants—as well as the State of California and LAUSD—labeled these interns
3 as “highly qualified” even though they were still in training to obtain their full California teaching
4 credential.

5 67. Plaintiff B. Doe, daughter of Plaintiff N. Doe, attends Longwood Elementary School, a
6 low-performing school in HUSD with a student population comprised primarily of low-income
7 minority students. Longwood Elementary is ranked a “2” on the API. It is a Year 2 “Program
8 Improvement” school under NCLB. Ninety-three percent of the students at Longwood are
9 students of color. Over three-quarters qualify for free or reduced price lunch. During the 2006-
10 2007 school year, 3% of teachers at Longwood were “intern” teachers; data for the 2007-2008
11 school year are not yet available. *See* Exhibit 11. Defendants—as well as the State of California
12 and HUSD—labeled these interns as “highly qualified” even though they are still in training to
13 obtain their full California teaching credential.

14 68. Plaintiffs Danielle Rubio and Stephanie Rubio, daughters of Plaintiff Mariel Rubio,
15 attend Hawthorne High School in CUHSD, a low-performing school with a student population
16 comprised primarily of low-income minority students. Hawthorne is ranked “2” on California’s
17 API. It is a Year 5 “Program Improvement” school under NCLB. Over 90% of the students at
18 Hawthorne are African-American or Latino. Over two-thirds of students qualify for the free or
19 reduced price school lunch program. During the 2006-2007 school year, 15% of teachers at
20 Hawthorne High School were “intern” teachers; data for the 2007-2008 school year are not yet
21 available. *See* Exhibit 3. Defendants—as well as the State of California and CUHSD—labeled
22 these interns as “highly qualified” even though they were still in training to obtain their full
23 California teaching credential.

1 69. During most of the 2006-2007 school year, Plaintiff Danielle Rubio attended Lawndale
2 High School in CUHSD. Over 90% of Lawndale students are students of color. Nearly two-thirds
3 qualify for the free or reduced price school lunch program. During the 2006-2007 school year,
4 11% of teachers at Lawndale High School were “intern” teachers. *See* Exhibit 3. Defendants—as
5 well as the State of California and CUHSD—labeled these interns as “highly qualified” even
6 though they were still in training to obtain their full California teaching credential.
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8 70. Plaintiff Daisy Gonzalez, daughter of Plaintiff Guadalupe Gonzalez, attends New Tech
9 High School, a small learning community within Jefferson High School in LAUSD, a low-
10 performing school with a student population comprised primarily of low-income minority students.
11 (Separate data for New Tech High School, which is within Jefferson High School, is not available
12 from the California Department of Education’s “Dataquest” database.) Jefferson is ranked “1” on
13 California’s API. It is a Year 5 “Program Improvement” school under NCLB. Nearly all of the
14 students at Jefferson are African-American or Latino. Eighty-six percent of the students qualify
15 for the free or reduced price school lunch program. During the 2006-2007 school year, 12.4% of
16 teachers at Jefferson High School were “intern” teachers. *See* Exhibit 2. Defendants—as well as
17 the State of California and LAUSD—labeled these interns as “highly qualified” even though they
18 were still in training to obtain their full California teaching credential.
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21 71. Plaintiffs Jazmine Johnson, Adriana Ramirez, and Jane Doe attend Richmond High
22 School, a low-performing school in WCCUSD with a student population comprised primarily of
23 low-income minority students. Richmond High School is ranked as a “1” on the API. It is a Year
24 5 “Program Improvement” school under NCLB. Ninety-seven percent of the students at
25 Richmond High School are students of color. Nearly three-quarters qualify for the free or reduced
26 price school lunch program. During the 2006-2007 school year, at least one in eight teachers at
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1 Richmond High School was an “intern” teacher. *See* Exhibit 4. Defendants—as well as the State
2 of California and WCCUSD—labeled these interns as “highly qualified” even though they were
3 still in training to obtain their full California teaching credential.

4 72. Plaintiff CFJ’s members attend schools in districts with large numbers of intern
5 teachers who are mislabeled as “highly qualified” under Defendants’ regulation. For example,
6 according to a district summary of teachers’ credentials, obtained from the California Department
7 of Education’s online “Dataquest” database, a true and correct copy of which is attached hereto as
8 Exhibit 8 and incorporated herein by this reference, in the Oakland Unified School District—
9 where many CFJ members reside and attend school—10.7% of teachers (278 teachers total) were
10 “intern” teachers during the 2006-2007 school year. According to a district summary of teachers’
11 credentials, a true and correct copy of which is attached hereto as Exhibit 9 and incorporated
12 herein by this reference, in the East Side Union High School District—where many CFJ members
13 reside and attend school—9.3% of teachers (103 teachers total) were “intern” teachers during the
14 2006-07 school year.

15 73. At Oakland Technical High School (“Tech”) in OUSD, where CFJ member Sayra
16 Reyes attends school and is taught by an intern teacher, 6% of teachers were interns during the
17 2006-2007 school year. *See* Exhibit 8. Oakland Tech is ranked “2” on the API. It is a Year 3
18 “Program Improvement” school under NCLB. Over 90% of the students at Tech are students of
19 color. Nearly half qualify for the free or reduced price school lunch program. Defendants—as
20 well as the State of California and OUSD—label intern teachers at Tech “highly qualified” even
21 though they are still in training to obtain their full California teaching credential.

22 74. Plaintiff California ACORN’s members and/or children of members attend schools in
23 districts with large numbers of intern teachers who are mislabeled as “highly qualified” under
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1 Defendants' regulation, such as Oakland Unified School District, East Side Union High School
 2 District in San Jose and LAUSD. In LAUSD—where many California ACORN members reside
 3 and attend school, including Plaintiffs Sonya Renee, Candice Johnson, Guadalupe Gonzalez, and
 4 Daisy Gonzalez—7.3% of teachers, or 2,538 teachers, were “interns” during the 2006-2007 school
 5 year. *See* Exhibit 2. LAUSD exemplifies the inequitable distribution of intern teachers, as many
 6 schools in LAUSD had over 25% intern teachers during the 2006-2007 school year. *See* Exhibit 2.

PLAINTIFFS' CLAIMS FOR RELIEF

First Claim

(5 U.S.C. § 706 – Violation of Administrative Procedure Act)

11 75. Plaintiffs reallege and incorporate by reference paragraphs 1 to 74, above.

12 76. Defendants' final regulation defining “highly qualified” teachers (34 C.F.R. §
 13 200.56(a)(2)(ii)) constitutes an “agency action” (5 U.S.C. § 551(13)) under the APA. Defendants'
 14 regulatory standard, which deems “participant[s]” in alternative routes to certification programs as
 15 “highly qualified” (34 C.F.R. § 200.56(a)(2)(ii)) even though they have not yet completed a
 16 teacher training program and obtained “full State certification” (20 U.S.C. § 7801(23)(A)),
 17 conflicts with the definition of the term “highly qualified” under the NCLB statute. Defendants
 18 have, thus, acted in a manner that is arbitrary, capricious, an abuse of discretion, and otherwise not
 19 in accordance with law, and have acted in excess of their statutory authority, in violation of the
 20 APA, 5 U.S.C. § 706(2)(A) and (D).

21 77. Defendants' adoption and promulgation of this regulation adversely affects and
 22 aggrieves Plaintiffs as described above.

Second Claim

(28 U.S.C. § 2201 – Declaratory Relief)

1 78. Plaintiffs reallege and incorporate by reference paragraphs 1 to 77, above.

2 79. An actual and substantial controversy exists between Plaintiffs and Defendants as to
3 their respective legal rights and duties. Plaintiffs contend that Defendants' regulation is unlawful
4 and in excess of Defendants' statutory authority. Plaintiffs are informed and believe, and thereby
5 allege, that Defendants contend to the contrary.

6 80. A declaration of legal rights and duties is needed from this Court to resolve the
7 controversy between the parties.
8

9 *Third Claim*

10 *(28 U.S.C. § 2202 – Injunctive Relief)*

11 81. Plaintiffs reallege and incorporate by reference paragraphs 1 to 80, above.

12 82. If an injunction does not issue enjoining Defendants from further use of their unlawful
13 standard of "highly qualified" teachers set forth at 34 C.F.R. § 200.56(a)(2)(ii) which deems
14 teachers participating in alternative preparation programs as "highly qualified," Plaintiffs will
15 continue to suffer by not receiving the full benefit of the "highly qualified" teacher provisions of
16 NCLB intended by Congress. As a result of Defendants' unlawful regulation, states (including
17 California), districts and schools will continue to mislabel intern teachers and other alternative
18 preparation program teachers as "highly qualified" and will not thereby plan to deliver, ultimately
19 deliver, and accurately report delivery of teachers to Plaintiffs' classrooms who have received full
20 state certification and who are truly "highly qualified" as Congress intended.
21

22 83. In addition, if an injunction does not issue from this Court, Defendants themselves will
23 submit to Congress, pursuant to NCLB (*see* 20 U.S.C. § 6311(h)(5)), their inaccurate and
24 misleading 2005-2006 report—as well as all future such reports—on teacher quality and the
25 percentage of classes nationwide taught by "highly qualified" teachers. Using these reports,
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1 Congress will make decisions regarding national education policy and the reauthorization of the
2 No Child Left Behind Act based on an inaccurate, falsely-inflated percentage of classes nationwide
3 taught by “highly qualified” teachers.

4 84. Plaintiffs will be irreparably harmed by these injuries.

5 85. Plaintiffs have no plain, speedy, and adequate remedy at law.

6 86. Defendants, if not enjoined by the Court, will continue to authorize states, districts, and
7 schools to utilize a watered-down standard of a “highly qualified” teacher contrary to
8 Congressional intent and will continue to issue reports to Congress based on the substandard
9 definition of “highly qualified” set forth in Defendants’ regulation, in derogation of the rights of
10 Plaintiffs.
11

12 **PRAYER FOR RELIEF**

13
14 WHEREFORE, Plaintiffs respectfully request that this Court:

- 15 1. Enter a declaratory judgment that Defendants’ regulation set forth at 34 C.F.R. §
16 200.56(a)(2)(ii), defining a “highly qualified” teacher as one who “is participating in an
17 alternative route to certification program,” is unlawful and void pursuant to the APA (5
18 U.S.C. § 706) for the reason that Defendants’ regulation contravenes the definition of
19 “highly qualified” established by Congress in the No Child Left Behind Act (20 U.S.C.
20 § 7801(23)(A));
- 21 2. Enjoin defendants from utilizing, enforcing, or relying upon 34 C.F.R. §
22 200.56(a)(2)(ii) in any way, including revising official guidance issued to third parties
23 to reflect the fact that alternative route participants are not to be considered “highly
24 qualified” teachers;
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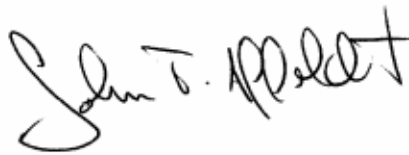
- 1 3. Enjoin Defendants from submitting the 2005-2006 report to Congress on teacher
2 quality and the percentage of classes nationwide taught by “highly qualified” teachers,
3 pursuant to 20 U.S.C. § 6311(h)(5)—as well as any further outstanding reports or future
4 reports due to Congress relating to “highly qualified” teachers under NCLB—that fail
5 to designate teachers participating in alternative certification programs as not “highly
6 qualified”;
- 7
- 8 4. Order Defendants to notify Congress that the 2002-2003 report provided to Congress
9 pursuant to 20 U.S.C. § 6311(h)(5) relied on an unlawful definition of “highly
10 qualified” teacher and was therefore inaccurate;
- 11
- 12 5. Order Defendants to notify states that: (a) Defendants’ regulation defining a “highly
13 qualified” teacher as one who “is participating in an alternative route to certification
14 program” (34 C.F.R. § 200.56(a)(2)(ii)) is unlawful and void; and (b) states should use
15 the definition of “highly qualified” provided in the No Child Left Behind Act (20
16 U.S.C. § 7801(23)(A)) and in 34 C.F.R. § 200.56(a) absent 34 C.F.R. § 200.56(a)(2)(ii)
17 in complying with their “highly qualified” teacher obligations under NCLB and in
18 enforcing compliance by individual districts and schools, including, but not limited to,
19 obligations pursuant to 20 U.S.C. § 6319(a) (students’ right to be taught by a “highly
20 qualified” teacher), 20 U.S.C. §§ 6311(a)(1), 6311(b)(8) (state plan ensuring that
21 schools receiving Title I funding will provide “highly qualified” instructional staff), 20
22 U.S.C. § 6311(h)(4)(G) (annual report to Secretary on teacher quality), 20 U.S.C. §
23 6311(b)(8)(C) (statewide plan for meeting the “highly qualified” teacher mandate,
24 including for “ensur[ing] that poor and minority children are not taught at higher rates
25 than other children by inexperienced, unqualified, or out-of-field teachers. . .”), 20
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1 U.S.C. § 6311(h)(1)(C) (state annual report card), 20 U.S.C. §§ 6312(b)(1)(N),
2 6312(c)(1)(I) (district plan), 20 U.S.C. § 6311(h)(2) (district annual report card), and 20
3 U.S.C. § 6311(h)(6)(B)(ii) (four week letter to parents);

- 4 6. Award Plaintiffs their costs, attorneys' fees, and other disbursements in this action
5 pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d); and
6
7 7. Grant Plaintiffs such other and further relief as the Court may deem just and proper.
8
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10 Dated: November 27, 2007

11 Respectfully submitted,
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17 _____
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