

DEBRA W. YANG
 United States Attorney
 LEON W. WEIDMAN
 Assistant U.S. Attorney
 Chief, Civil Division
 ROBERT J. LESTER (Bar No. 116429)
 Room 7516 Federal Building
 300 North Los Angeles Street
 Los Angeles, California 90012
 Telephone: (213) 894-2464
 Fax: (213) 894-7819

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Attorneys for defendants (additional counsel listed on continuation page)

CENTER FOR HUMAN RIGHTS AND CONSTITUTIONAL LAW
 Peter A. Schey
 Carlos R. Holguin
 Center For Human Rights and Constitutional Law
 256 S. Occidental Blvd.
 Los Angeles, CA 90057

Attorneys for plaintiffs (additional counsel listed on continuation page)

ENTERED
 CLERK, U.S. DISTRICT COURT
 FEB 18 2004
 CENTRAL DISTRICT OF CALIFORNIA
 BY DEPUTY

IN THE UNITED STATES DISTRICT COURT
 FOR THE CENTRAL DISTRICT OF CALIFORNIA

FELICITY MARY NEWMAN,
et al.,
 Plaintiffs,
 v.
 UNITED STATES CITIZENSHIP AND
 IMMIGRATION SERVICES,¹ *et al.*,
 Defendants.

CIV. NO. 87-4757-WDK(CWx)

ORDER APPROVING SETTLEMENT
 OF CLASS ACTION

~~[proposed]~~

Hearing: None
 Time: None

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THIS CONSTITUTES NOTICE OF ENTRY
 AS REQUIRED BY FRCP, RULE 77(d).

¹ Pursuant to Rule 25 of the Federal Rules of Civil Procedure United States Citizenship and Immigration Services ("CIS") is substituted for the former Immigration and Naturalization Service, and Eduardo Aguirre, Jr., Acting Director, in his official capacity, is substituted for former Commissioner Doris Meissner.

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PETER D. KESSLER
Assistant Attorney General
Civil Division

DAVID J. KLINE
TERRI J. SCADRON
ANTHONY W. NORWOOD
Attorneys
Office of Immigration Litigation
Civil Division
U.S. Department of Justice
P.O. Box 878, Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 616-4883
Fax: (202) 616-9366

Additional attorneys for defendants

ASIAN PACIFIC AMERICAN LEGAL CENTER
Stewart Kwoh
1145 Wilshire Blvd. 2nd Floor
Los Angeles, CA 90017

ASIAN LAW CAUCUS, INC.
Joannie C. Chang
939 Market Street, Suite 201
San Francisco, CA 94103

NATIONAL LAWYERS GUILD
Marc Van Der Hout
Van Der Hout & Brigagliano
180 Sutter Street, Fifth Floor
San Francisco, CA 94104

Additional attorneys for plaintiffs

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This matter is before the Court pursuant to the parties' Joint Motion to Approve Settlement Agreement. The Court has read and considered the parties' motion, the comments and objection of putative class members to the proposed settlement, and the parties' joint response to those objections. The Court finds that the proposed settlement fully and fairly resolves the claims of class members herein and that it should accordingly be approved.

Rule 23(e) of the Federal Rules of Civil Procedure requires the Court to approve a settlement in a class action. Rule 23(e) provides:

A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.

Under Rule 23(e), a class settlement will be approved so long as the "proposed settlement . . . is fundamentally fair, adequate, and reasonable." *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). It is the settlement taken as a whole, rather than the individual component parts, that must be examined for overall fairness. *Officers for Justice v. Civil Serv. Comm'n of San Francisco*, 688 F.2d 615, 628 (9th Cir. 1982). There is a "strong judicial policy that favors settlements, particularly where complex class action litigation is concerned." *Class Plaintiffs v. City of Seattle, supra*, at 1276.

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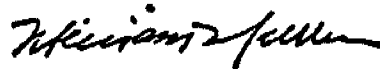
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For the reasons set out in the parties' joint motion to approve the settlement and their joint response to the objections and comments of putative class members, the Court finds that the settlement is fundamentally fair, adequate and reasonable. Accordingly,

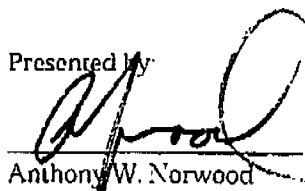
IT IS HEREBY ORDERED that the proposed settlement is approved

Dated: ~~January 16~~ ^{FEB 17 2004}, 2004.

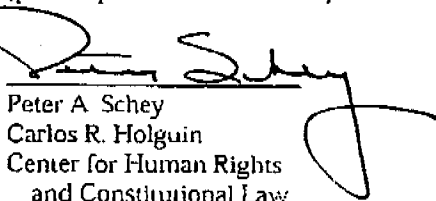


United States District Judge

Presented by



Anthony W. Norwood
U.S. Department of Justice
Office of Immigration Litigation
Civil Division
P.O. Box 878, Ben Franklin Station
Washington, D.C. 20044
Counsel for Defendants
[per telephonic authorization]



Peter A. Schey
Carlos R. Holguin
Center for Human Rights
and Constitutional Law
256 S. Occidental Blvd.
Los Angeles, CA 90057
Counsel for Plaintiffs

1 DEBRA W. YANG
United States Attorney
2 LEON W. WEIDMAN
Assistant U.S. Attorney
3 Chief, Civil Division
ROBERT I. LESTER (Bar No. 116429)
4 Room 7516 Federal Building
300 North Los Angeles Street
5 Los Angeles, California 90012
Telephone: (213) 894-2464
6 Fax: (213) 894-7819

7 Attorneys for Defendants (Additional Counsel listed on Continuation
Page)

8 CENTER FOR HUMAN RIGHTS AND CONSTITUTIONAL LAW
9 Peter A. Schey
Carlos R. Holguin
10 Center For Human Rights and Constitutional Law
256 S. Occidental Blvd.
11 Los Angeles, CA 90057

12 Attorneys for Plaintiffs (Additional Counsel listed on Continuation
Page)

13
14 IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

15 FELICITY MARY NEWMAN,)
et al.,)
16)
17)
Plaintiffs,)
18)
v.)
19)
BUREAU OF CITIZENSHIP AND)
20 IMMIGRATION SERVICES,^{1/}et al.,)
21)
Defendants.)

CIV. NO. 87-4757-WDK(CWx)

JOINT STIPULATION
OF SETTLEMENT

Hearing:
Time:

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27 ^{1/} Pursuant to Rule 25 of the Federal Rules of Civil Procedure the
28 Bureau of Citizenship and Immigration Services ("BCIS") is substituted
for the former Immigration and Naturalization Service, and Eduardo
Aguirre, Jr., Acting Director, in his official capacity, is substituted
for former Commissioner Doris Meissner.

1 ROBERT D. McCALLUM, JR.
Assistant Attorney General
2 Civil Division

3 DAVID J. KLINE
TERRI J. SCADRON
4 ANTHONY W. NORWOOD
Attorneys

5 Office of Immigration Litigation
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6 U.S. Department of Justice
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7 Washington, D.C. 20044
Telephone: (202) 616-4883
8 Fax: (202) 616-9366

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10
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Stewart Kwoh
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Los Angeles, CA 90017

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San Francisco, CA 94104

18 Additional Attorneys for Plaintiffs
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1 Plaintiffs and defendants, by and through their undersigned
2 counsel, hereby agree and stipulate, as follows:

3 1. Class Definition

4 The following subclasses are entitled to relief pursuant to this
5 Settlement Agreement:

6 A. All persons who are otherwise prima facie eligible for
7 legalization under Section 245A of the Immigration and Nationality Act
8 ("INA") who attempted to file a completed application and application
9 fee with a representative of the Immigration and Naturalization
10 Service ("INS") including a Qualified Designated Entity ("QDE"),
11 during the period from May 5, 1987, to May 4, 1988, but had the
12 application and fee refused by that representative because they had
13 traveled outside of the United States and returned with a visitor's
14 visa, student visa, or any other type of visa or travel document.

15 B. All persons who filed for class membership under Newman et
16 al. v. INS et al., 87-4757-WDK(CWx) (C.D. Cal.), and who are otherwise
17 prima facie eligible for legalization under Section 245A of the INA,
18 who were informed by an INS officer or QDE employee during the period
19 May 5, 1987, to May 4, 1988, that they were ineligible for
20 legalization because they had traveled outside of the United States
21 and returned with a visitor's visa, student visa, or any other type of
22 visa or travel document, or were refused by the INS or its QDEs
23 legalization forms on account of that travel and the facially valid
24 visa rule, and for whom such information, or inability to obtain the
25 required application forms, was a substantial cause of their failure
26 to timely file or complete a written application.

27 For purposes of the subclass definition, the phrase "filed for
28 class membership" shall be determined in accordance with 8 C.F.R.

1 § 245a.10.

2 2. Notice to Defendants' Employees

3 Commencing within fourteen (14) days of the date on which this
4 Settlement Agreement is approved by the district court, or a separate
5 settlement agreement is approved by the district court in Catholic
6 Social Services, Inc. v. Reno, CIV No. S-86-1343 LKK (E.D. Cal.),
7 ("CSS") whichever is later, defendants shall use good faith and
8 reasonable efforts to distribute this Settlement Agreement or a
9 summary attached as Exhibit 1 to all of their officers, agents and
10 employees responsible for processing class membership claims or who
11 may in the course of their duties supervise officers who detain or
12 remove putative class members. Defendants shall use good faith and
13 reasonable efforts to serve Class Counsel with copies of all
14 supplemental instructions or guidelines issued to their officers,
15 agents or employees regarding implementation of this Settlement
16 Agreement.

17 3. Notice to Subclass Members

18 In the event that this agreement is approved by the district
19 court, defendants shall, within sixty (60) days from the date of the
20 court's approval, or the approval of a separate settlement agreement
21 by the district court in CSS, whichever is later, issue a press
22 release and a Class Notice in English and Spanish (attached as Exhibit
23 2) announcing this Settlement Agreement. The press release, Class
24 Notice, and Newman Class Membership Applications (attached as Exhibit
25 3) shall be distributed to the media and community-based organizations
26 according to the BCIS's normal procedure for doing so, and defendants
27 shall provide a copy of the distribution list to class counsel. The
28 press release, Class Notice and Newman Class Membership Applications

1 shall be posted on defendants' web site until the end of the
2 application period referenced in paragraph 4 below. The press
3 release, Class Notice and Newman Class Membership Applications shall
4 also be made available at defendants' district offices until the end
5 of the application period referenced in paragraph 4 below. Within 60
6 days of this Settlement Agreement and during the remainder of the
7 application period specified in paragraph 4, defendants shall make
8 available to all persons, upon request, a copy of Form I-687, Newman
9 Class Member Applications and instructions, and Form I-765.

10 4. Application Period.

11 In the event that this agreement is approved by the district
12 court, defendants shall, within thirty (30) to sixty (60) days after
13 the issuance of Notices required in Paragraph 3 above, commence
14 accepting Newman Class Membership Applications, and Form I-687
15 Application for Status as a Temporary Resident with fee, and
16 supporting documentation, from subclass member applicants. Defendants
17 shall continue to accept such applications for subclass membership and
18 temporary permanent residence for a period of one year thereafter, and
19 no longer. Applications shall be deemed filed on the date postmarked
20 in accordance with the provisions at 8 C.F.R. § 245a.12(a).

21 5. Filing of Applications.

22 Individuals asserting a claim for relief under this Settlement
23 Agreement shall file a Newman Class Membership Application, and a Form
24 I-687, Application for Status as a Temporary Resident, with fee, and
25 supporting documentation.

1 The fee for filing a Form I-687 shall be the fee applicable by
2 regulation or Federal Register Notice at the time of filing the
3 application(s). (The fee for filing a Form I-687, which has not
4 changed since 1986, is currently \$185 per person with a family cap of
5 \$420, but may be changed to reflect the current cost of adjudication).
6 The fee for fingerprinting is currently \$50 and the fee for filing
7 Form I-765, Application for Employment Authorization, is currently
8 \$100. Except as provided for in Paragraph 10 below, applicants must
9 file a Form I-765 with fee if they wish to receive an employment
10 authorization document.

11 As to persons who previously filed for class membership, as that
12 term is defined in paragraph 1 above, Defendants shall refund the fee
13 for filing the Form I-687 if such person's application for class
14 membership is denied pursuant to paragraphs 6, 7 and 8 below.

15 As to those individuals who did not previously file for class
16 membership, as that term is defined in paragraph 1 above, there shall
17 be no refund of the fee for filing the Form I-687 if such person's
18 application for class membership is denied pursuant to paragraphs 6, 7
19 and 8 below.

20 6. Adjudication of Applications for Class Membership

21 Newman Class Membership Applications should be granted if, based
22 on responses to questions asked on the applications, it appears more
23 probable than not that the applicant meets the subclass definition. A
24 determination that an applicant is a subclass member is not binding in
25 any manner on defendants for the purposes of an adjudication on the
26 merits of the application for temporary residence which shall be
27 conducted *de novo*. Newman Class Membership Applications shall not be
28 denied solely because applicants do not possess documentary evidence

1 establishing class membership. Defendants shall treat information and
2 materials submitted in connection with a Newman Class Member
3 Application as confidential in accordance with 8 U.S.C. § 1255a(c)(5).

4 7. Intended Denials of Class Membership

5 Before denying an application for class membership, defendants
6 shall forward the applicant or his or her representative a notice of
7 intended denial explaining the perceived deficiency in the applicant's
8 Newman Class Membership Application and providing the applicant thirty
9 (30) days to submit additional written evidence or information to
10 remedy the perceived deficiency.

11 8. Denial of Applications for Class Membership.

12 Defendants shall send a written notice of the decision to deny an
13 application for class membership to the applicant and his or her
14 attorney of record, with a copy to Class Counsel. The notice shall
15 explain the reason for the denial of the application, and notify the
16 applicant of his or her right to seek review of such denial by a
17 Special Master, on the document attached as Exhibit 4. On review,
18 neither defendants nor the applicant shall be permitted to submit new
19 evidence to the Special Master.

20 9. Review by Special Master.

21 A. Selection of the Special Masters. These will be the same
22 Special Masters selected in CSS, and any appeals will be assigned in
23 the same random manner as in that case.

24 B. Review of Decisions Involving Determination of Class
25 Membership. Any decision by defendants denying an application for
26 subclass membership may be appealed to a Special Master. Any such
27 appeal must be post-marked within 30 days of the date of mailing of
28 the notice denying the application for class membership. The Special

1 Master's review shall be based on the documents and other evidence
2 submitted by the applicant, and any documentary evidence relied upon
3 by defendants in reaching the decision to deny the application for
4 class membership.

5 The Special Master shall be paid a fee of \$125 for adjudicating
6 each appeal under subparagraphs (i) and (ii) below. Payment of this
7 fee shall be borne by the parties as follows:

8 (i) If the appeal involves a denial of class membership based on
9 criminal or security-related grounds, the applicant is responsible for
10 paying the entire fee; and

11 (ii) If the appeal involves a denial of class membership on other
12 than criminal or security-related grounds, the fee shall be borne
13 equally by defendants and the applicant. The applicant's portion of
14 the fee must accompany his or her notice of appeal. Defendants must
15 submit their portion of the fee within 30 days of being notified by
16 the Special Master that an appeal has been duly filed.

17 C. Review of Other Decisions. An applicant who believes that
18 defendants have violated his or her individual rights pursuant to
19 paragraphs 3, 4, 5, 7, 10, 12, or 13 of this Settlement Agreement may
20 file a claim with the Special Master. However, prior to filing any
21 such claim, the applicant must advise defendants by certified mail, or
22 other documented delivery service to an address specified by
23 defendants, that he or she believes that Defendants have violated his
24 or her rights under Paragraphs 3, 4, 5, 7, 10, 12, or 13. Defendants
25 shall have forty-five (45) days from the date they are notified of the
26 applicant's intent to file a claim under this paragraph in which to
27 investigate and, if appropriate, rectify any deficiency. If fifty
28 (50) days after notifying defendants of his or her intent to file a

1 claim, the applicant does not receive notice that defendants have
2 sustained the applicant's challenge, then the applicant may file his
3 or her appeal to the Special Master. Any such appeal must be post-
4 marked within eighty (80) days of the date the applicant advised
5 Defendants of the alleged violation.

6 The Special Master shall be paid a fee of \$65 for adjudicating
7 each appeal under this subparagraph C. The applicant must pay the
8 entire fee at the time he or she files the notice of appeal. If the
9 applicant prevails on the merits of his or her appeal, Defendants must
10 reimburse the applicant the entire fee within a reasonable time after
11 being notified that the applicant prevailed on appeal.

12 10. Renewal of Employment Authorization Documents

13 Defendants shall, without fee, reissue or renew for a period of
14 one year employment authorization to applicants in the subclass
15 defined herein who were previously issued such employment
16 authorization pursuant to interim relief orders in Newman et al. v.
17 INS, No. 87-4757 (C.D. Cal.). An applicant shall be entitled to have
18 his or her employment authorization renewed only during the
19 application period and only one time under this provision.

20 11. Adjudication of Applications for Temporary Residence.

21 Defendants shall adjudicate each application for temporary
22 residence filed on Form I-687 in accordance with the provisions of
23 Section 245A of the INA, 8 U.S.C. § 1255a, regulations, and
24 administrative and judicial precedents the INS followed in
25 adjudicating I-687 applications timely filed during the IRCA
26 application period. In adjudicating I-687s pursuant to this
27 agreement, defendants shall utilize the standards set forth in 8 CFR
28 § 245a.18(c), or 8 CFR § 245a.2(k)(4), which ever is more favorable to

1 the applicant. Failure to provide evidence other than affidavits
2 shall not be the sole basis for finding an alien failed to meet the
3 continuous residence requirement. For purposes of establishing
4 residence and presence in 8 C.F.R. § 245a.2(b), the term "until the
5 date of filing" shall mean until the date the alien attempted to file
6 a completed application and fee or was caused not to timely file,
7 consistent with the Subclass Definitions. In evaluating the
8 sufficiency of applicant's proof of residence, defendants shall take
9 into account the passage of time and attendant difficulties in
10 obtaining corroborative documentation of unlawful residence.

11 12. Time for Determining Class Membership
12 and Legalization Applications.

13 A. Defendants shall use good faith and reasonable efforts
14 either to approve applications for class membership or issue notices
15 of intended denials within ninety (90) days. If a notice of intended
16 denial is issued, defendants shall endeavor to issue a final decision
17 on the application for class membership within ninety (90) days after
18 receipt of an applicant's supplemental evidence or explanation, if
19 any.

20 B. Defendants shall use good faith and reasonable efforts to
21 adjudicate subclass members' I-687 Forms within one hundred and eighty
22 (180) days of approval of their application for class membership.

23 C. If the aggregate volume of Form I-687 applications received
24 under this Settlement Agreement and the Settlement Agreement reached
25 in CSS exceeds two hundred forty thousand it is anticipated that the
26 approximate processing times referenced in subparagraphs A and B above
27 will double.

28

1 13. Removal of Class Applicants from the United States.

2 Defendants shall not remove from the United States or detain any
3 putative class members who appear to be prima facie eligible for class
4 membership under this Settlement Agreement and for legalization under
5 Section 245A of the INA. This paragraph shall not apply to any alien
6 who is subject to detention or removal despite his or her having been
7 previously determined to be eligible for class membership. For
8 example, if, after having been deemed a class member, it is found that
9 the alien has been convicted of a crime(s) that render(s) him or her
10 ineligible for legalization, the alien may nevertheless be detained
11 and removed from the United States.

12 14. Reporting on Implementation of This Agreement.

13 Commencing four months after the beginning of the filing period,
14 defendants shall prepare quarterly reports setting forth the number of
15 Newman Class Membership Applications, Forms I-687, and Forms I-765,
16 that were received, approved, denied and pending. Copies of such
17 report shall be provided to Class Counsel. In the event defendants
18 believe good cause exists to extend the time periods set forth in
19 paragraphs 12, defendants shall provide Class Counsel with a written
20 explanation of such cause and proposed alternative target periods.

21 15. Costs and Attorneys Fees.

22 Defendants will pay plaintiffs attorneys' fees and costs, as
23 determined by a separate agreement.

24 16. Duration of Agreement.

25 The parties agree that this agreement will become effective on
26 the date it is approved by the Court. The agreement will remain in
27 effect for one year after defendants adjudicate the last application
28 for class membership. Defendants agree to promptly notify Class

1 Counsel of the date they adjudicate the last application for class
2 membership.

3 17. Dismissal of Complaint, Dissolution of Injunctive Orders and
4 Other Decisions.

5 In the event the district court approves this Settlement
6 Agreement, plaintiffs agree to promptly move the court for dismissal
7 with prejudice of each and every claim of the complaint, as amended,
8 and the dissolution of any injunctive order(s) and other decisions
9 entered by the district court.

10 18. Continuing Jurisdiction.

11 The parties agree that notwithstanding the filing and granting of
12 any motion pursuant to paragraph No. 17, the district court will
13 retain jurisdiction in this action over only the matters described
14 immediately below.

15 A. Claims by plaintiffs that the Defendants have engaged in a
16 pattern and practice of refusing to implement any of the
17 relief set forth in this Agreement.

18 B. Claims by plaintiffs that the Defendants have expressly
19 repudiated this Agreement.

20 C. At least sixty (60) days prior to bringing any action
21 pursuant to this provision, the parties shall meet and
22 confer in a good faith effort to resolve any of their
23 differences.

24 D. Any action under this provision must be brought within one
25 year after the Defendants adjudicate the last application
26 for class membership.

27 19. Class Counsel.

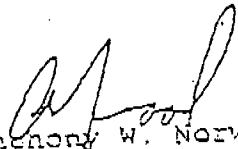
28 Class Counsel for the purposes of this Settlement Agreement are

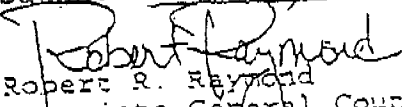
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1 Peter Schey and Carlos R. Holguin, Center for Human Rights and
 2 Constitutional Law, 256 S. Occidental Blvd., Los Angeles, CA 90057,
 3 telephone (213) 388-8693, facsimile (213) 386-9494, email
 4 amnestycoordinator@centerforhumanrights.org.

5 20. This agreement is conditioned upon approval by the Secretary
 6 of the Department of Homeland Security, and the Deputy Attorney
 7 General, United States Department of Justice.

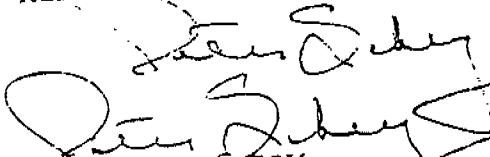
8 21. This agreement is subject to approval by the United States
 9 District Court pursuant to Federal Rule of Civil Procedure 23.

10
 11 
 12 Anthony W. Norwood
 13 U.S. Department of Justice
 14 P.O. Box 278, Ben Franklin
 15 Station
 16 Washington, DC 20044
 17 202-616-4293
 18 Counsel for Defendants

19 Dated: June 16, 2003
 20 
 21 Robert R. Raymond
 22 Associate General Counsel
 23 Bureau of Citizenship and
 24 Immigration Services
 25 U.S. Department of Homeland
 26 Security

27 Dated: 6-16-03

28 June 16, 2003


 Peter A. Schey
 Carlos R. Holguin
 Center for Human Rights
 and Constitutional Law
 256 S. Occidental Blvd.
 Los Angeles, CA 90057
 (213) 388-8693
 Counsel for Plaintiffs

Dated: June 17, 2003