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11 Attorneys for Plaintiffs-Petitioners and  
12 Class Members

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

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

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

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

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

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

5 **JURISDICTION**

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

13 **VENUE**

14 2. Venue is proper in this Court under 28 U.S.C. § 1391(e)  
15 because defendants Michael Chertoff and Emilio Gonzalez are officers of  
16 the United States acting in their official capacities, and the Department of  
17 Homeland Security ("DHS"), the United States Citizenship and Immigration  
18 Services ("USCIS") are agencies of the United States. Additionally,  
19 plaintiffs-petitioners Carolyn Robb Hootkins, Ana Maria Moncayo-Gigax,  
20 Susanne De Mailly, Sara Cruz Vargas De Fisher, and many class members  
21 reside in this judicial district. Further, a substantial part of the events giving  
22 rise to the claim occurred in this district, in that the Los Angeles District  
23 Office of USCIS, an agency of DHS located at 300 Los Angeles Street, Los  
24 Angeles, California 90012, was the local office that denied many of  
25 plaintiffs-petitioners' immigration petitions and applications, as well as  
26 petitions and applications filed by class members.  
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1 and immigrant visa (DS-230) applications, require an approved I-130  
2 immigrant petition.

3 **DEFENDANTS**

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

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

13 **STATUTORY AND REGULATORY BACKGROUND**

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

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

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

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

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

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23                           **PLAINTIFFS-PETITIONERS**

24                           **Plaintiff-petitioner HOOTKINS**

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

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

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

9  
10 **The Petition and Application**

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

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

22 **The Denial**

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

3 **Plaintiff-petitioner MONCAYO-GIGAX**

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

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

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

13 **The Petition and Application**

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

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

2 28. On March 2, 2004, defendants-respondents denied the Petition  
3 and Application that were jointly filed by the couple solely on the basis that  
4 plaintiff-petitioner was no longer the spouse of a U.S. citizen. A motion to  
5 reopen was filed in November 2006, which was granted on February 10,  
6 2007. Although the motion to reopen has been granted, defendants-  
7 respondents have not approved plaintiff-petitioner's adjustment of status  
8 following the initial denial.

9 **Plaintiff-petitioner DE MAILLY**

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

12 30. Plaintiff-petitioner lived in Los Angeles, California until June  
13 2005 when she was forced by defendants-respondents to return to Belgium  
14 following the denial of her application and revocation of work authorization.  
15 Plaintiff-petitioner entered the United States as a visitor prior to her  
16 application, and was inspected and admitted.

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

19 **The Petition and Application**

20 32. On February 21, 2003, plaintiff-petitioner's U.S. citizen spouse  
21 filed with the required fee a Form I-130, Petition for Alien Relative  
22 ("Petition") establishing his citizenship and that his spouse is an immediate  
23 relative, and executed an I-864 Affidavit of Support. On the same day,  
24 plaintiff-petitioner filed with the required fee a Form I-485, Application to  
25 Register Permanent Residence or to Adjust Status ("Application"), seeking  
26 adjustment of status to lawful permanent resident, relying on the citizen  
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1 spouse's Petition attesting to the alien's status as spouse. The petition and  
2 application were filed with the Los Angeles office of USCIS, and plaintiff-  
3 petitioner was assigned an Alien Number "A-Number", which is A95 623  
4 420.

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

### 7 **The Denial**

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

### 11 **Plaintiff-petitioner VARGAS DE FISHER**

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

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

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

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

### 22 **The Petition and Application**

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

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

### 8 **The Denial**

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

### 16 **Plaintiff-petitioner LOCKETT**

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

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

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

### 24 **The Petition and Application**

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

8  
9 46. On June 5, 2006, plaintiff-petitioner's spouse Catharine  
10 Martinet died of spontaneous pneumothorax leading to respiratory failure.

### 11 **The Denial**

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

### 18 **Plaintiff-petitioner BRENTESON**

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

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

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

### 26 **The Petition and Application**

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

9  
10 52. On January 16, 2005, Plaintiff-petitioner's spouse Donald Irvin  
11 Brenteson died of cardiac arrest.

### 12 **The Denial**

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

### 25 **Plaintiff-petitioner GOBEIL**

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

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

#### 6 **The Petition and Application**

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

#### 19 **The Denial**

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

#### 23 **Plaintiff-petitioner HEARD**

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

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

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

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

### 6 **The Petition and Application**

7 64. On October 27, 2004, plaintiff-petitioner's U.S. citizen spouse  
8 filed with the required fee a Form I-130, Petition for Alien Relative  
9 ("Petition") establishing his citizenship and that his spouse is an immediate  
10 relative, and executed an I-864 Affidavit of Support. On the same day,  
11 plaintiff-petitioner filed with the required fee a Form I-485, Application to  
12 Register Permanent Residence or to Adjust Status ("Application"), seeking  
13 adjustment of status to lawful permanent resident, relying on the citizen  
14 spouse's Petition attesting to the alien's status as spouse. Plaintiff-petitioner  
15 was assigned an Alien Number "A-Number", which is A99 204 406.  
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17 65. On March 20, 2006, plaintiff-petitioner's spouse Jeffrey Loren  
18 Heard was killed in an ambush outside Fallujah, Iraq, while working for a  
19 private security contractor in Iraq assisting United States military operations  
20 through the delivery of supplies to U.S. troops. Mr. Heard died of a gunshot  
21 wound to the head.

### 22 **The Denial**

23 66. On September 27, 2006, Defendants-respondents denied the  
24 Petition and Application that were jointly filed by the couple solely on the  
25 basis that plaintiff-petitioner was no longer the spouse of a U.S. citizen. On  
26 January 16, 2008, defendants-respondents approved the I-130 petition filed  
27 by Mr. Heard on behalf of Mrs. Heard, under section 1703(a) of Public Law  
28

1 108-136, a different section of law. Her adjustment of status application was  
2 approved on February 7, 2008.

3 **Plaintiff-petitioner FISHMAN-CORMAN**

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

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

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

11 **The Petition and Application**

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

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

23 **The Denial**

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

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

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

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

9 **The Petition and Application**

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

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

21 **The Denial**

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

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

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

5 **Plaintiff-petitioner ENGSTROM**

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

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

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

14 **The Petition and Application**

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

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

26 **The Denial**

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

8 **Plaintiff-petitioner DIAZ-RUIZ**

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

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

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

17 **The Petition and Application**

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

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

1 Rodriguez died of congenital heart disease.

2 **The Denial**

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

8 **Plaintiff-petitioner WALSH**

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

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

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

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

21 **The Petition and Application**

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

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

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

#### 6 **The Denial**

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

#### 11 **Plaintiff-petitioner LU**

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

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

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

#### 17 **The Petition and Application**

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





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

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

#### 4 **The Denial**

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

#### 12 **Plaintiff-petitioner POINDEXTER**

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

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

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

#### 20 **The Petition and Application**

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

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

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

### 6 **The Denial**

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

### 16 **Plaintiff-petitioner RUDL**

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

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

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

### 24 **The Petition and Application**

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

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

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

### 11 **The Denial**

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

### 17 **Plaintiff-petitioner NGUYEN**

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

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

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

### 27 **The Petition and Application**



1 **Plaintiff-petitioner BERNSTEIN**

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

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

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

9 **The Petition and Application**

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

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

21 **The Denial**

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

26 **Plaintiff-petitioner BAYOR**

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

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

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

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

7 **The Petition and Application**

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

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

20 **The Denial**

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

24 **Plaintiff-petitioner STANDIFER**

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

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

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

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

#### 6 **The Petition and Application**

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

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

#### 19 **The Denial**

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

#### 25 **Plaintiff-petitioner BATOOL**

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

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

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

#### 6 **The Petition and Application**

7 150. On February 23, 2004, plaintiff-petitioner's U.S. citizen spouse  
8 filed with the required fee a Form I-130, Petition for Alien Relative  
9 ("Petition") establishing his citizenship and that his spouse is an immediate  
10 relative, and executed an I-864 Affidavit of Support. On the same day,  
11 plaintiff-petitioner filed with the required fee a Form I-485, Application to  
12 Register Permanent Residence or to Adjust Status ("Application"), seeking  
13 adjustment of status to lawful permanent resident, relying on the citizen  
14 spouse's Petition attesting to the alien's status as spouse. Plaintiff-petitioner  
15 was assigned an Alien Number "A-Number", which is A98 067 884.  
16

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

#### 19 **The Denial**

20 152. Plaintiff-petitioner was scheduled by defendants-respondents  
21 for an interview on March 11, 2005. Plaintiff-petitioner did not attend the  
22 interview because her attorney at that time advised her on January 20, 2005  
23 in a letter that the application would be denied solely due to her husband's  
24 death. On May 17, 2005, defendants-respondents denied the Petition and  
25 Application that were jointly filed by the couple due to abandonment, but  
26 plaintiff-petitioner filed a motion to reopen with the required fee on August  
27 5, 2005 which is currently pending. Had plaintiff-petitioner appeared at the  
28



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

4 **CLASS ACTION ALLEGATIONS**

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

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

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

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

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

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

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

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

13           158. The proposed classes meet the numerosity requirement of Fed.  
14 R. Civ. P. 23(a)(1) because the members of each of the two classes are so  
15 numerous that joinder of all members is impractical. Counsel for plaintiffs-  
16 petitioners are aware of 136 class members across the country. Because  
17 counsel learned of these cases through lawyer-to-lawyer referrals, it is  
18 believed that the numbers of class members across the country is  
19 substantially greater, by many times, than the number of identified class  
20 members. Counsel for plaintiffs-petitioners, for example, have not been able  
21 to locate any surviving spouses of Hurricane Katrina victims, although U.S.  
22 Representative F. James Sensenbrenner, Jr. (R-WI) introduced legislation in  
23 the 109<sup>th</sup> Congress (never voted upon) to assist such surviving spouses,  
24 leading counsel to believe such victims do, in fact, exist. It is believed that  
25 there are many hundreds, if not thousands, of surviving spouses throughout  
26 the country whose petitioning relatives died prior to beneficiaries’  
27  
28

1 adjudication and approval of lawful permanent resident status.

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

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

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

23 162. The instant action should be maintained as a class action under  
24 Fed. R. Civ. P. 23(b)(2) because the defendants-respondents have acted on  
25 grounds generally applicable to each member of the classes by  
26 misinterpreting the term “spouse” for purposes of the immediate relative  
27  
28

1 definition found at 8 U.S.C. 1151(b)(2)(A)(i), and of defendants-respondents  
2 illegal actions in denying lawful permanent resident status to plaintiffs-  
3 petitioners solely due to the death of their spouse.

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

## 18 CLAIMS FOR RELIEF

### 19 FIRST CAUSE OF ACTION

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

22 165. Plaintiffs-petitioners are immediate relatives for purposes of  
23 INA § 201(b)(2)(A)(i), 8 U.S.C. § 1151(b)(2)(A)(i) and are eligible for  
24 adjustment of status under INA § 245(a), 8 U.S.C. § 1255(a) (Subclass I)  
25 and for issuance of an immigrant visa under INA § 204(b), 8 U.S.C. 1154(b)  
26 (Subclass II).  
27  
28

1           166. Plaintiffs-petitioners were not stripped of the status of an  
2 "immediate relative" spouse by the death of plaintiffs-petitioners' spouses.

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

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

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

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

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

21           172. Defendants-respondents improperly attempt to revoke the  
22 approval of an I-130 petition unless plaintiffs-petitioners present a request  
23 under 8 CFR § 205.1(a)(3)(C)(2) for humanitarian reinstatement, supported  
24 by a Form I-864 executed by an individual who qualifies under section  
25 213A(f)(5)(B) of the Immigration and Nationality Act as a qualifying  
26 substitute sponsor.  
27  
28

1 173. The regulation found at 8 CFR § 205.1(a)(3)(C)(2) is invalid as  
2 a matter of law.

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

10 **SECOND CAUSE OF ACTION**

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

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

17 177. Defendants-respondents have unlawfully and erroneously  
18 interpreted the definition of the term “immediate relative” in INA §  
19 201(a)(b)(2)(A)(i). Based on this erroneous interpretation, defendants-  
20 respondents have erroneously denied both the immediate relative petitions  
21 filed on plaintiffs-petitioners’ behalf and plaintiffs-petitioners’ adjustment of  
22 status or immigrant visa applications in violation of Congressional intent.  
23 Plaintiffs-petitioners are entitled to injunctive relief to “compel agency  
24 action unlawfully withheld or unreasonably delayed” and to hold unlawful  
25 and set aside agency action that, as here, is not in accordance with the law.  
26 5 U.S.C. §§ 706(1) and (2).  
27  
28

1 **THIRD CAUSE OF ACTION**

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

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

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

16 181. Plaintiffs-petitioners have no other adequate remedy.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiffs-petitioners respectfully request that this  
19 Court:

- 20
- 21 1. Assume jurisdiction over this action;
  - 22 2. Declare that plaintiffs-petitioners filed the necessary petition  
23 and application for lawful permanent resident status, and were  
24 not stripped of the status of "spouse" of a United States citizen  
25 upon the death of the citizen spouse;
  - 26 3. Declare that plaintiffs-petitioners are entitled to the process that  
27 flows from a properly filed petition and application, and must  
28

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

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

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

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

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

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

26 9. Issue an injunction prohibiting defendants-respondents from  
27  
28



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



1 PROOF OF SERVICE

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

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

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

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

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

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

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

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