IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WASHINGTON

A.B.T., K.M.-W., G.K., L.K.G., D.W., Individually and on Behalf of All Others Similarly Situated, Plaintiffs, v. U.S. CITIZENSHIP AND IMMIGRATION SERVICES; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Janet NAPOLITANO, Secretary, Department of Homeland Security; Alejandro MAYORKAS, Director, U.S. Citizenship and Immigration Services; Eric H. HOLDER, Jr., Attorney General of the United States; Juan OSUNA, Director, Executive Office for Immigration Review, Defendants.	Case No. 2:11-cv-02108 A.B.T. PLAINTIFFS' MOTION FOR CLASS CERTIFICATION Noted For Consideration On: January 13, 2012 Oral Argument Requested

I. MOTION AND PROPOSED CLASS DEFINITION

Plaintiffs bring this action to challenge Defendants' unlawful policies and practices that deprive Plaintiffs and others similarly situated of effective, timely notice of determinations having to do with the 180-day statutory waiting period before an asylum applicant is eligible to apply for employment authorization; a meaningful opportunity to correct errors in such determinations; and the opportunity to obtain a work permit, known as an Employment Authorization Document (EAD).

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Defendants' policies and practices prevent Plaintiffs and class members from working during the often prolonged period during which their asylum applications are adjudicated. This process may take months, or even years, beyond the 180-day waiting period. As a consequence of the unlawful denial of an opportunity to obtain work authorization, Plaintiffs and proposed class members are left in often untenable situations, unable to support themselves and their dependent family members, and forced to rely solely on charity to survive.

Pursuant to Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure, Plaintiffs respectfully move this Court to certify the following class with all named Plaintiffs being appointed class representatives:

> All noncitizens in the United States who have filed or will file with Defendants a complete I-589 (Application for Asylum and Withholding of Removal); who have been or will be issued a Notice to Appear or Notice of Referral for removal proceedings; whose applications for employment authorization have been or will be denied; and whose asylum EAD clock determinations have been or will be made without legally sufficient notice or a meaningful opportunity to challenge such determinations ("Notice and Review Class").

In addition, Plaintiffs seek certification of two subclasses:

> **Hearing subclass**: Individuals who have been or will be issued a Notice to Appear or Notice of Referral for removal proceedings; who have filed or sought to file or who will file or seek to file a complete asylum application with the immigration court; but whose asylum EAD clocks did not start or will not start on the date that this application was or will be filed because of Defendants' policy requiring asylum applications to be filed at a hearing before an immigration judge. ("Hearing subclass").

Plaintiffs A.B.T. and K.M.-W. move to be appointed as class representatives of this subclass. Both Plaintiffs fall within this subclass. *See* Exh. 24 and 25.

> **Remand subclass:** Asylum applicants whose asylum EAD clocks were or will be stopped following the denial of their asylum applications by the immigration court, and whose asylum EAD clocks are not or will not be started or restarted subsequent to an appeal in which either the BIA or a federal court of appeals remands their case for further adjudication of their asylum claims ("Remand subclass").

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Plaintiffs G.K., L.K.G. and D.W. move to be appointed as class representatives for this subclass. All three Plaintiffs fall within this subclass. *See* Exh. 26, 27 and 28.

The national class and subclasses consist of members who have been subjected to specific policies and practices of Defendants which they challenge as violating their constitutional right to due process and their statutory and regulatory right to apply for and be granted employment authorization. But for Defendants' unlawful policies and practices, Plaintiffs and the subclasses would be eligible for work authorization.

II. BACKGROUND

Plaintiffs have applied for asylum because they have been persecuted or fear persecution in their home countries and seek safe haven in the United States. Congress directed that agency adjudication of an asylum application must be completed within 180 days, absent exceptional circumstances. 8 U.S.C. § 1158(d)(5)(A)(iii). In recognition of the economic hardship asylum seekers may face during the asylum application process, regulations governing Defendants provide that an asylum applicant who has not committed an aggravated felony is entitled to an EAD if the asylum application is pending more than 180 days. 8 C.F.R. §§ 208.7(a)(1), 1208.7(a)(1); *see also* 8 U.S.C. § 1158(d)(2). The 180-day waiting period must be tolled for "delay requested or caused by the applicant." 8 C.F.R. §§ 208.7(a)(2), 1208.7(a)(2). Thus, where the agency is unable to complete adjudication of an asylum application within 180 days (not counting any period of time tolled for applicant delay), asylum applicants are prima facie eligible to obtain employment authorization while awaiting the final adjudication of their pending asylum applications.

Defendants use an asylum EAD clock to calculate the 180-day waiting period for EAD eligibility, including any periods during which the clock has been tolled as a result of applicant delay. The challenged policies and practices result in the 180-day waiting period being extended

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impermissibly, for reasons other than applicant delay. As a result, asylum applicants often wait much longer than the legally mandated timeframe before they are granted employment authorization. In some cases, asylum applicants never receive employment authorization because the asylum EAD clock has been impermissibly "permanently stopped." In addition, because the agency fails to provide timely and effective notice that the asylum EAD clock has been stopped or not started or restarted, asylum applicants are often unaware of the status of their asylum EAD clocks until their applications for employment authorization have been denied. Applicants also are provided no effective procedure to resolve disputes regarding whether the asylum EAD clock should be stopped or running and how many of the 180 days in the waiting period have elapsed.

Plaintiffs' claims arise out of the unlawful policies and practices of the Department of Homeland Security (DHS), through its component, U.S. Citizenship and Immigration Services (USCIS), and the Department of Justice (DOJ), through its Executive Office for Immigration Review (EOIR). This case is ideally suited for class certification as the government has uniform, nationwide policies and practices precluding Plaintiffs and others similarly situated from qualifying for and obtaining employment authorization. Specifically, Plaintiffs challenge Defendants' Notice and Review Policy and Practice, according to which Defendants fail to provide adequate notice of or a meaningful opportunity to review Defendants' decisions to stop or not start or restart the asylum EAD clock; Defendants' Hearing Policy and Practice, which allows an asylum EAD clock to be started only at a hearing before an immigration judge even when an asylum applicant has filed a complete asylum application with the immigration court; and Defendants' Remand Policy and Practice, which prohibits the asylum EAD clock from being started or restarted after a previously denied asylum claim has been remanded by a court of appeals or the BIA. These policies and

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practices violate the Immigration and Nationality Act (INA) and binding federal regulations, the Administrative Procedure Act (APA), and the Fifth Amendment to the United States Constitution.

The core issues are pure questions of law well suited for resolution on a class wide basis. *See e.g., Unthaksinkun v. Porter,* No. 11-0588, __ F. Supp. 2d __, 2011 U.S. Dist. LEXIS 111099, *38 (W.D. Wash. Sept. 28, 2011) (finding that, because all class members were subject to the same process, the court's ruling as to the legal sufficiency of the process would apply to all). On behalf of themselves and others similarly situated, Plaintiffs seek class certification to obtain declaratory and injunctive relief requiring USCIS and EOIR to conform their policies and practices to the applicable statute and regulations, consistent with applicable due process requirements, so that applicants for asylum are not unlawfully prevented from obtaining employment authorization. Plaintiffs do not ask this Court to grant them employment authorization. Instead, they ask only that the Court determine whether Defendants' policies and procedures are unlawful, and order Defendants to apply legally proper procedures to all asylum applicants.

A recent USCIS Ombudsman's report acknowledged that there are nationwide systemic problems related to employment authorization for asylum applicants, specifically citing the lack of sufficient notice about the status of their asylum EAD clocks and the lack of an adequate process for reviewing clock decisions. *See* U.S. Citizenship and Immigration Services Ombudsman, *Employment Authorization for Asylum Applicants: Recommendations to Improve Coordination and Communication,* at 3, 6 (Aug. 26, 2011), *available at* http://www.dhs.gov/xlibrary/assets/cisomb-employment-authorization-for-asylum-08262011.pdf [hereinafter USCIS Ombudsman Report]. As such, these problems should not be left to individualized local or piecemeal resolution, but rather should be resolved through class litigation.

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EOIR recently issued guidance clarifying how it administers the asylum EAD clock. Memorandum from Chief Immigration Judge, Brian O'Leary, Operating Policies and Procedures Memorandum 11-02: The Asylum Clock (Nov, 15, 2011) 5-6, *available at* http://www.justice.gov/eoir/efoia/ocij/oppm11/11-02.pdf [hereinafter OPPM 11-02]. Because this guidance does not significantly alter EOIR's previous guidance, however, the core systemic problems remain.

III. CLASS CERTIFICATION

Upon a showing that the requirement of Rule 23(a) and (b)(2) were met, numerous district courts within the Ninth Circuit have certified classes of noncitizens who challenge immigration policies and practices. *See, e.g., Santillan v. Ashcroft,* No. 04-2686, 2004 U.S. Dist. LEXIS 20824, at *40 (N.D. Cal. 2004) (certifying nationwide class of lawful permanent residents challenging delays in receiving documentation of their status); *Ali v. Ashcroft,* 213 F.R.D. 390, 409-10 (W.D. Wash. 2003), *aff'd,* 346 F.3d 873, 886 (9th Cir. 2003), *vacated on other grounds,* 421 F.3d 795 (9th Cir. 2005) (certifying nationwide class of Somalis challenging legality of removal to Somalia in the absence of a functioning government); *Walters v. Reno,* 1996 WL 897662, No. 94-1204 (W.D. Wash. 1996), *aff'd* 145 F.3d 1032 (9th Cir. 1998), *cert. denied, Reno v. Walters*, 526 U.S. 1003 (1999) (certifying nationwide class of individuals challenging adequacy of notice in document fraud cases); *Gorbach v. Reno,* 181 F.R.D. 642, 644 (W.D. Wash. 1998) *aff'd,* 219 F.3d 1087 (9th Cir. 2000) (certifying nationwide class of persons challenging validity of administrative denaturalization proceedings); *Gonzales v. U.S. Dept. of Homeland Sec.*, 239 F.R.D. 620, 628 (W.D. Wash. 2006) (certifying Ninth Circuit wide class challenging USCIS policy contradicting binding precedent), *preliminary injunction vacated,* 508 F.3d 1227 (9th Cir. 2007) (establishing new rule and vacating preliminary injunction but no challenge made to class certification); *Barahona-Gomez v. Reno*, 236 F.3d 1115, 1118 (9th Cir. 2001) (finding district

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court had jurisdiction to grant injunctive relief in certified class action challenging unlawful immigration directives issued by EOIR); *Gete v. INS*, 121 F.3d 1285, 1299 (9th Cir. 1997) (vacating district court's denial of class certification in case challenging inadequate notice and standards in INS vehicle forfeiture procedure).

Like the above cases, the instant action satisfies the requirements for class certification under Rule 23(a) and (b)(2). Each of these requirements is discussed below. Where the class certification determination is intertwined with the merits of the action, Plaintiffs address both. While Plaintiffs demonstrate that they meet the class certification requirements under the required "rigorous analysis," *Wal-Mart Stores, Inc. v. Dukes*, __ U.S. __, 131 S. Ct. 2541, 2551 (2011) (internal quotations and citations omitted), such analysis does not "equate with an in-depth examination of the underlying merits" of the case. *Ellis v. Costco*, 657 F.3d 970, 983 n.8 (9th Cir. 2011) (explaining that a court need only examine the merits to determine whether common questions exist and not to determine whether class members can actually prevail on the merits).

A. THIS ACTION SATISFIES THE CLASS CERTIFICATION REQUIREMENTS OF FEDERAL RULE OF CIVIL PROCEDURE 23(a)

1. The Proposed Class Members Are So Numerous That Joinder Is Impracticable.

a. Numerosity

Rule 23(a)(1) requires that the class be "so numerous that joinder is impracticable." "[I]mpracticability does not mean 'impossibility,' but only the difficulty or inconvenience of joining all members of the class." *Harris v. Palm Springs Alpine Est., Inc.*, 329 F.2d 909, 913-14 (9th Cir. 1964) (citation omitted). No fixed number of class members is required for numerosity. *Perez-Funez v. District Director, INS*, 611 F. Supp. 990, 995 (C.D. Cal. 1984); *Hum v. Dericks*, 162 F.R.D. 628, 634 (D. Haw. 1995) ("There is no magic number for determining when too many parties make

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joinder impracticable. Courts have certified classes with as few as thirteen members, and have denied certification of classes with over three hundred members.") (citations omitted).

Determining whether plaintiffs meet the numerosity requirement "requires examination of the specific facts of each case and imposes no absolute limitations." *Troy v. Kehe Food Distributors, Inc.*, No. 09-0785,___ F.R.D. ___, 2011 U.S. Dist. LEXIS 110012, at *25-26 (W.D. Wash. Sept. 26, 2011) (citing *Gen. Tel. Co. of the Northwest, Inc. v. EEOC*, 446 U.S. 318, 330 (1980)). Thus, courts have found numerosity when relatively few class members are involved. *See Arkansas Educ. Ass'n v. Board of Educ.*, 446 F.2d 763, 765-66 (9th Cir. 1971) (finding 17 class members sufficient); *Carey v. Greyhound Bus Co.*, 500 F.2d 1372, 1381 (5th Cir. 1974) (assuming class membership of 28 was sufficient); *Horn v. Associated Wholesale Grocers, Inc.*, 555 F.2d 270, 275 (10th Cir. 1977) (41-46 members).

Moreover, in certifying classes of noncitizens, courts have taken notice of circumstances in which "INS [now DHS] is uniquely positioned to ascertain class membership." *Barahona-Gomez v. Reno*, 167 F.3d 1228, 1237 (9th Cir. 1999). Where DHS has control of the information proving the practicability of joinder and does not make such information available, it would be improper to allow the agency to defeat class certification on numerosity grounds. In this case, Defendants are knowledgeable as to the size of the proposed class as they are uniquely positioned to know the number of asylum cases pending in immigration court in which asylum EAD clocks have stopped as a result of the challenged asylum EAD clock-related policies and practices. Defendants also know the number of EAD applications from asylum applicants they have received and how many of these have been denied based on their challenged policies and practices.

Publicly available data and information obtained through a FOIA request demonstrates the large numbers of asylum applicants that potentially fall into the proposed class each subclass. The

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EOIR FY 2010 Statistical Report on asylum applications shows that, during 2010, EOIR received over 32,000 asylum applications and granted almost 10,000 after individual hearings. *See* U.S. Department of Justice, Executive Office for Immigration Review, Figure 13 at I1, *available at* http://www.justice.gov/eoir/statspub/fy10syb.pdf [hereinafter FY 2010 Statistical Yearbook]. Presumably, if proceedings extended beyond 180 days, most of the 32,000 applicants sought, or would have sought if not deterred by Defendants' policies and practices, work authorization. EOIR also has stated, in a response to a May 23, 2011 FOIA request, that 285,101 asylum cases were pending before EOIR between 2007 and May 2011, *see* Exh. 1 at 2, and that the vast majority of those applicants appearing in immigration courts across the country had "stopped clocks" at some point during the pendency of their asylum case. *Id*. at 3.[1] For example, the New York immigration court, with 61,752 asylum cases pending between 2007 and May 2011, had one of the largest asylum dockets of any immigration court. Of these cases, 51,224 (approximately 82%) had "stopped" asylum EAD clocks at some point in the proceedings. *Id* at 3.

Moreover, recurring clock issues are so widespread that the USCIS Ombudsman recently issued recommendations to USCIS on improving administration of the asylum EAD clock. *See* USCIS Ombudsman Report, at 4. The report verifies the core problems that Plaintiffs challenge with regard to Defendants' Notice and Review Policies and Practices, including the absence of adequate notice to asylum seekers of the status of their asylum EAD clocks and the lack of a meaningful process for reviewing contested asylum EAD clock decisions. *Id.* at 2 (". . . when a delay that was caused by or requested by the applicant comes to an end, there is no easy way for the

[1] While this EOIR reference to "stopped clocks" is to the 180-day period during which an immigration judge must adjudicate an asylum application and not the 180-day asylum EAD clock, delays for the two clocks, as prescribed by regulation, are the same, *see* 8 C.F.R. §§ 208.7(a)(2) and 1208.7(a)(2), and Defendants rely on the adjudications clock to measure both periods.

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applicant to work with the Federal Government to restart the clock"). The USCIS Ombudsman also found that the lack of a mechanism for asylum seekers to accurately learn how much time had accrued on their asylum EAD clocks creates confusion about employment eligibility. *Id.* at 1, 5-6. Attached declarations from thirteen immigration attorneys who represent asylum applicants in immigration courts across the country support the Ombudsman's determination that systemic problems exist with respect to Defendants' Notice and Review Policies and Practices. *See* Exh. 2-14. The recently issued guidance from EOIR does not remedy these systemic problems.

The Notice and Review class challenges these systemic problems. Plaintiffs assert that, under Defendants' Notice and Review Policies and Practices, no asylum applicant whose EAD application has been or will be denied receives legally sufficient notice of asylum EAD clock determinations or a meaningful opportunity to correct errors on the asylum EAD clock. Consequently, the Notice and Review class consists of all asylum applicants in removal proceedings (including defensive cases and those that were initially filed as affirmative cases) whose EAD applications have been or will be denied. Of the over 33,000 new asylum cases filed in 2010, the last year for which statistics are available, it is reasonable to assume that at least several hundred – if not thousands – of the applicants whose applications remain pending at this time have filed EAD applications and had such applications denied. *Ali v. Ashcroft*, 213 F.R.D. at 408 (" . . . the Court does not need to know the exact size of the putative class, 'so long as general knowledge and common sense indicate that it is large'") (citing *Perez-Funez*, 611 F. Supp. at 995). This reasonable inference is supported by the attached attorney declarations reflecting the prevalence of such cases throughout the country. Exh. 2-14. The sampling of attorneys represented by these declarations, which emphasize the high rate of improper denials, verifies the existence of at least several hundred class members in the Notice and Review class.

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All members of the two subclasses are also members of the Notice and Review class. Declarations from individuals and organizations that provide legal services to asylum applicants demonstrate that the number of asylum applicants who would fall within the two subclasses are too numerous for joinder to be practicable. In particular, the declarations of attorneys Ashley Huebner, Natalie Hansen, Paula Enguidanos, Sherizaan Minwalla, and Vanessa Allyn provide evidence of 45 asylum applicants who have been adversely impacted by Defendants' Hearing Policy and Practice over the past year. *See* Exh. 3, 9, 10, 11, and 13. Because these declarations represent only a small sample of attorneys in the United States who represent asylum applicants, it is reasonable to assume that these numbers do not represent all asylum applicants who fall within this subclass because they have been harmed by this policy and practice.

Similarly, the 24 asylum applicants discussed in the Declarations from Ashley Huebner, Jonathan Kaufman, Judy London, Megan Kludt, Sherizaan Minwalla, Stacy Tolchin and Yeimi G. Martinez Michael is a low estimate of the number of asylum applicants who are or will be harmed by Defendant's Remand Policy and Practice. *See* Exh. 3, 6, 7, 8, 11, 12, and 14. The Remand subclass includes all asylum applicants whose asylum cases have been remanded following an appeal to the BIA and in some cases, a federal court of appeals. More than 800 cases were remanded by courts of appeals to the BIA in FY 2010. *See* FY 2010 Statistical Yearbook, Table 16, at T2. If only five percent – or 40 – of these remanded cases fit within the subclass definition, numerosity would be met. Moreover, this number would still not include all the asylum cases remanded to the immigration courts by the BIA without a further appeal to the court of appeals. *See id*. (indicating that over 15,000 cases were taken up to the BIA from immigration courts).

Thus, although Plaintiffs currently cannot determine the precise number of potential class members, Plaintiffs assert that numerosity is met with respect to the class and both subclasses.

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While Defendants are in possession of the precise number of applicants currently in question, Plaintiffs have demonstrated that the number of potential class members makes class certification appropriate as the class is "so numerous that joinder is impracticable."

b. Impracticability

In addition to class size, factors that inform impracticability include: (1) geographical diversity of class members; (2) the ability of individual claimants to institute separate suits; and (3) the type of review sought. *Jordan v. Co. of Los Angeles,* 669 F.2d 1311, 1319 (9th Cir. 1982), *vacated on other grounds,* 459 U.S. 810 (1982). *See also Gonzales,* 239 F.R.D. at 628 (geographic diversity over several states, inability of some claimants to bring individual claims, and the fact that class will grow with future claims all support circuit-wide class certification)

Application of these factors shows impracticability of joinder in the present case. First, joinder is impracticable where, as here, the geographic location of proposed class members spans the entire country. *See Levya v. Buley,* 125 F.R.D. 512, 515 (E.D. Wash. 1989) (joinder of 50 individual migrant workers with limited English skills and limited knowledge of the American legal system dispersed throughout Washington, California, New York and Mexico would be "extremely burdensome"). As the USCIS Ombudsman's report acknowledges, and as the attached declarations reflect, harmful asylum clock policies and practices are a nationwide problem. The declarations demonstrate that the challenged policies and practices are implemented by Defendants in immigration courts in Washington, New York, Illinois, Wisconsin, Indiana, California, Washington D.C., Maryland, Virginia, Massachusetts and Texas. *See* Exh. 2-14.

Second, joinder is impracticable when proposed class members, by reason of such factors as financial inability, fear of challenging the government, lack of understanding that a cause of action exists, lack of representation, and fear of persecution, are unable to pursue their claims individually.

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Morgan v. Sielaff, 546 F.2d 218, 222 (7th Cir. 1976) ("Only a representative proceeding avoids a multiplicity of lawsuits and guarantees a hearing for individuals … who by reason of ignorance, poverty, illness or lack of counsel may not have been in a position to seek one on their own behalf.") (internal citation omitted); *Sherman v. Griepentrog*, 775 F. Supp. 1383, 1389 (D. Nev. 1991) (holding that poor, elderly plaintiffs dispersed over a wide geographic area could not bring multiple lawsuits without great hardship).

EOIR statistics demonstrate that 57% of all noncitizens appearing in immigration court in 2010 were unrepresented. *See* FY 2010 Statistical Yearbook, Figure 9, at G1**.** The proposed class members are, by definition, not authorized to work and accordingly many have limited financial resources to support themselves, let alone retain legal counsel, and free legal services are limited. *Wong Yang Sung v. McGrath*, 339 U.S. 33, 46 (1950) ("…in … deportation proceeding[s], … we frequently meet with a voteless class of litigants who not only lack the influence of citizens, but who are strangers to the laws and customs in which they find themselves involved and … often do not even understand the tongue in which they are accused."). Equity favors certification where class members lack the financial ability to afford legal assistance. *Lynch v. Rank*, 604 F. Supp. 30, 38 (N.D. Cal. 1984), *aff'd* 747 F.2d 528 (9th Cir. 1984) (certifying class of poor and disabled plaintiffs represented by public interest law groups).

Third, where, as here, injunctive or declaratory relief is sought, the requirements of Rule 23 are more flexible. *See Goodnight v. Shalala*, 837 F. Supp. 1564, 1582 (D. Utah 1993). In particular, smaller classes are less objectionable and the plaintiffs' burden to identify class members is substantially reduced. *Weiss v. York Hospital*, 745 F.2d 786, 808 (3d Cir. 1984) (citing *Horn v. Associated Wholesale Grocers, Inc*., 555 F.2d 270, 276 (10th Cir. 1977) and *Jones v. Diamond*, 519 F.2d 1090, 1100 (5th Cir. 1975)); *Doe v. Charleston Area Medical Ctr*., 529 F.2d 638, 645 (4th Cir.

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1975) ("Where 'the only relief sought for the class is injunctive and declaratory in nature . . .,' even 'speculative and conclusory representations' as to the size of the class suffice as to the requirement of many.") (citation omitted). Plaintiffs here challenge DHS' unlawful policies and practices and are seeking declaratory and injunctive relief. Because Plaintiffs satisfy the stricter numerosity requirement of Rule 23(a)(1), *a fortiori*, they meet the requirements of the rule when liberally construed.

Finally, "'where the class includes unnamed, unknown future members, joinder of such unknown individuals is impracticable and the numerosity requirement is therefore met,' regardless of class size." *Ali*, 213 F.R.D. at 408-09 (citations omitted); *see also Pederson v. Louisiana State Univ.*, 213 F.3d 858, 868 n.11 (5th Cir. 2000) ("…the fact that the class includes unknown, unnamed future members also weighs in favor of certification").

2. The Class Presents Common Questions of Law and Fact

Rule 23(a)(2) requires that there be questions of law or fact common to the class. To satisfy the commonality requirement, "[a]ll questions of fact and law need not be common." *Ellis v. Costco Wholesale Corp*., 657 F.3d at 981 (quoting *Hanlon v. Chrysler*, 150 F.3d 1011, 1019 (9th Cir. 1998)). To the contrary, one shared legal issue can be sufficient. *See, e.g., Walters*, 145 F.3d at 1046 ("What makes the plaintiffs' claims suitable for a class action is the common allegation that the INS's procedures provide insufficient notice."); *Rodriguez v. Hayes*, 591 F.3d 1105, 1122 (9th Cir. 2010) ("[T]he commonality requirement asks us to look only for some shared legal issue or a common core of facts.").

"Commonality requires the plaintiff to demonstrate that the class members 'have suffered the same injury.'" *Wal-Mart*, 131 S. Ct. at 2551. In determining that a common question of law exists, the putative class members' claims "must depend upon a common contention" that is "of such a

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nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Id*. Thus, "[w]hat matters to class certification is not the raising of common 'questions' . . . but, rather the capacity of a class wide proceeding to generate common *answers* apt to drive the resolution of the litigation." *Id.* (internal citation and quotation marks omitted).

Here, Plaintiffs and the proposed class and subclasses challenge as unlawful specific nationwide policies and practices of Defendants. As discussed in detail below, the class and the subclasses each limit membership to asylum applicants who have been or will be harmed by the application of one of these challenged policies and practices to their cases. Consequently, the common question of law for each is whether the policy and practice violates the law. Should Plaintiffs prevail, all who fall within the class and subclasses will benefit. Thus, a common answer as to the legality of each challenged policy and practice "will drive the resolution of the litigation." *Ellis*, 657 F.3d at 981 (citing *Wal-Mart*, 131 S. Ct. at 2551).

Although factual variations in individual cases may exist, these are insufficient to defeat proof of commonality. *Califano v. Yamasaki*, 442 U.S. 682, 701 (1979) ("It is unlikely that differences in the factual background of each claim will affect the outcome of the legal issue."); *Walters*, 145 F.3d at 1046 ("Differences among the class members with respect to the merits of their actual document fraud cases, however, are simply insufficient to defeat the propriety of class certification"). Rather, the legal policies and practices challenged here apply equally to all class members regardless of any other factual differences. For this reason, questions of law such as whether Defendants' policies and practices provide adequate notice and review are particularly well-suited to resolution on a class-wide basis because "the court must decide only once whether the application" of Defendants' policies and practices "does or does not violate" the law. *Troy*, 2011

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U.S. Dist. LEXIS 110012, at *31; *see also LaDuke v. Nelson*, 762 F.2d 1318, 1332 (9th Cir. 1985) (holding that the constitutionality of an INS procedure "plainly" created common questions of law and fact). As such, resolution on a class-wide basis also serves a purpose behind the commonality doctrine: practical and efficient case management. *Rodriguez v. Hayes,* 591 F.3d at 1122.

The following legal and factual questions are common to the class and to each subclass.

a. Notice and Review Class

The Notice and Review class consists of asylum applicants who are or will be placed in removal proceedings and whose asylum EAD clock determinations and EAD application decisions have been or will be made based upon notice and review procedures that they contend are not legally sufficient. Neither Defendant USCIS nor Defendant EOIR requires asylum applicants to be informed when or why their asylum clocks are stopped, not started, or not restarted. *See, e.g.,* OPPM 11-02 at 8 (stating that an immigration judge "*may* inform the parties how many days are on the clock and whether the clock is running or stopped") (emphasis added); Exh. 5 (attaching USCIS letters denying EAD applications but not explaining *why* the EAD clock was stopped).

Instead, the only two mandatory notices related to the asylum EAD clock do not provide information to the asylum applicant about the status of the clock, what actions have been taken to stop or start the clock, or the reason for any such action. First, an immigration judge only is required to state on the record the reason for a case adjournment. OPPM 11-02 at 8. While the immigration judge "may" also inform the asylum applicant of the number of days on the clock and whether it is running, this additional notice is entirely optional. *Id.* Further, when an immigration judge adjourns a case at a time other than a hearing, there is no requirement of notice to the applicant at all. *Id.* at 12-13. Similarly, court administrators make decisions about the asylum EAD clock, as EOIR has determined that they are "responsible for ensuring that … the asylum clock is accurate"

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and for taking "corrective measures" when necessary. OPPM 11-02 at 15. Like immigration judges, when a court administrator makes a decision about the asylum EAD clock, there exists no policy requiring notice to the applicant.

Second, USCIS is required by regulation to issue decisions when it denies EAD applications. While these decisions sometimes (although not always) reference the number of days on the asylum EAD clock, they do not explain when or why the asylum EAD clock was stopped or not started or restarted. Importantly, they also do not provide any information about how an applicant can resolve or contest miscalculations on the asylum EAD clock. To the contrary, many times the decisions inform the applicant that USCIS has no authority over the asylum EAD clock and thus no ability to change it. *See* Exh. 5 (attaching decision letters stating that USCIS relies on electronic records entered and/or changed by the Immigration Court in determining the number of days elapsed when processing applications for employment authorization).

Additionally, there is no meaningful opportunity for Plaintiffs to challenge or remedy improper asylum EAD clock determinations. As the declarations of thirteen attorneys from around the United States demonstrate, the limited administrative review that may be available to an asylum applicant is arbitrary, inconsistent, and ineffective. *See, e.g.*, Exh. 2-14.

The common question of law that all Notice and Review class members seek to have resolved in this litigation is: Whether Defendants' Notice and Review Policies and Practices violate the U.S. Constitution, the INA, the governing regulations, and the APA. Should Plaintiffs and class members prevail on this legal question, Defendants will be required to provide legally sufficient notice and review procedures regarding asylum EAD eligibility determinations, including erroneous asylum EAD clock determinations.

b. Hearing Subclass

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The Hearing subclass includes only those asylum applicants whose asylum EAD clocks have not started or will not start on the date that a complete asylum application was or will be filed with the immigration court. Plaintiffs A.B.T. and K.M.-W. and the members of this subclass have been or will be adversely impacted by the Defendants' Hearing Policy and Practice. This nationwide policy and practice mandates that, with respect to asylum applications to be decided during removal hearings, an asylum application is not considered "filed" until the next hearing before an immigration judge. *See* OPPM 11-02 at 5-6 ("A defensive asylum application is 'filed' for asylum clock purposes when it is accepted by the judge at a hearing."); Department of Justice, Immigration Court Practice Manual (2009) § 3.1(b)(iii)(A) ("Defensive asylum applications are filed in open court at a master calendar hearing.").

As a direct result of this policy and practice, the asylum applications of Plaintiffs and subclass members that are filed with the immigration court at a time other than a hearing are not considered "filed" until the next hearing. Plaintiffs contend that this policy violates the regulations and that an asylum application is "filed" for purposes of the asylum EAD clock when an asylum applicant submits a complete asylum application to an immigration court, whether or not at a hearing before an immigration judge. Because an asylum applicant's asylum EAD clock only begins when a complete application is filed, the asylum EAD clocks of Plaintiffs and subclass members are not started on the date that a complete asylum application was or will be filed at the immigration court, but instead are delayed – sometimes by months or even a year – until the next hearing date before an immigration judge. In Plaintiff K.M.-W."s case, for example, the delay between the filing of his complete asylum application and his next scheduled hearing was just two weeks short of a year. In Plaintiff A.B.T.'s case, the delay between the two dates is nine months.

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The common question of law that all members of the Hearing subclass seek to resolve in this litigation is: Whether Defendants' Hearing Policy and Practice violates the INA, the regulations, and/or the APA. Should Plaintiffs K.M.-W. and A.B.T. and subclass members prevail on these legal questions, Defendants will be required to start their asylum EAD clocks as of the date that their complete asylum application was or will be filed with the immigration court.

c. Remand Subclass

The Remand subclass includes only those asylum applicants whose asylum EAD clocks have not started or restarted, or will not start or restart, following a remand of their asylum cases by the BIA or a court of appeals for further adjudication of their asylum application. As such, every member of this subclass shares a common procedural history:

- Their asylum cases were all denied by an immigration judge;
- Their asylum EAD clocks were stopped (or, if never previously started for some other reason, remained stopped at zero days) as a result of this denial of the asylum application;
- Following an appeal, their asylum cases were remanded by either the BIA or a federal court of appeals for further adjudication of the asylum application; and
- Their asylum EAD clocks did not start or restart following the remand decision due solely to Defendants' Remand Policy and Practice.

The central shared fact is that all have been adversely affected by Defendants' Remand Policy and Practice. This policy and practice mandates that the asylum clock remains permanently stopped when an asylum application is denied and does not restart following a remand for further adjudication of the asylum application. *See* EOIR's OPPM 11-02 at 16; Exh. 15 at 29 (USCIS PowerPoint presentation released in response to a Dec. 14, 2010 FOIA request submitted by the Massachusetts Law Reform Institute).

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The common question of law that all members of the Remand subclass seek to have resolved in this litigation is: Whether the Remand Policy and Practice violates the INA, the immigration regulations, and/or the APA. Should Plaintiffs G.K., L.K.G., and D.W. and subclass members prevail on these legal questions, Defendants will be required to restart their asylum EAD clocks as of the date of the remand.

3. The Claims of the Named Plaintiffs are Typical of the Claims of the Members of the Proposed Class.

Rule 23(a)(3) specifies that the claims of the representatives must be "typical of the claims … of the class." Meeting this requirement usually follows from the presence of common questions of law. *Gen. Tel. Co. of the Southwest v. Falcon*, 457 U.S. 147, 157 n.13 (1982). To establish typicality, "a class representative must be part of the class and possess the same interest and suffer the same injury as the class members." *Id.* at 154. As with commonality, factual differences among class members do not defeat typicality provided there are legal questions common to all class members. *La Duke*, 762 F.2d at 1332 ("The minor differences in the manner in which the representative's Fourth Amendment rights were violated does not render their claims atypical of those of the class."); *Smith v. U. of Wash. Law Sch.*, 2 F. Supp. 2d 1324, 1342 (W.D. Wash. 1998) ("When it is alleged that the same unlawful conduct was directed at or affected both the named plaintiff and the class sought to be represented ... typicality ... is usually satisfied, irrespective of varying fact patterns which underlie individual claims.") (citation omitted).

The claims of the named Plaintiffs are typical of the claims of the proposed classes. All Plaintiffs represent the Notice and Review class challenging Defendants' policy and practice of failing to provide notice to asylum applicants when EOIR unilaterally takes action to stop or not start or restart their asylum EAD clocks. Plaintiffs K.M.-W. and A.B.T., like all members of the Hearing subclass, have been unable to get their asylum clocks started upon their filing a complete asylum

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application because of the Defendants' Hearing Policy and Practice. Plaintiffs G.K., L.K.G. and D.W., like all members of the Remand subclass, have not been able to get their asylum EAD clocks started or restarted following a remand of their cases by the BIA or a federal court of appeals for further action on the asylum application due to Defendants' Remand Policy and Practice.

Because the named Plaintiffs and the proposed classes are united in their interest and injury and raise common legal claims, the element of typicality is met.

4. The Named Plaintiffs Will Adequately Protect the Interests of the Proposed Class and Counsel are Qualified to Litigate this Action.

Rule 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class." "Whether the class representatives satisfy the adequacy requirement depends on 'the qualifications of counsel for the representatives, an absence of antagonism, a sharing of interests between representatives and absentees, and the unlikelihood that the suit is collusive.'" *Walters*, 145 F.3d at 1046 (citation omitted).

a. *Named Plaintiffs*

The named Plaintiffs will fairly and adequately protect the interests of the proposed class and subclasses because they seek relief on behalf of the classes as a whole and have no interest antagonistic to other members of the classes. Their mutual goal is to declare Defendants' challenged policies and practices unlawful and to enjoin further violations. *Cf. Hanberry v. Lee*, 311 U.S. 32, 41 (1940). The interest of the class representatives are not antagonistic to those of the proposed class members, but in fact coincide.

All of the Plaintiffs are asylum applicants seeking employment authorization pursuant to 8 U.S.C. § 1158(d)(2), as implemented by 8 C.F.R. §§ 274a.12(c)(8), 274a.13(a) and 1208.7. All Plaintiffs contend that Defendants' policies and practices controlling the asylum EAD clock violate

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the Constitution, the statute and implementing regulations. Thus, in each case their respective goals are the same.

b. *Counsel*

The adequacy of Plaintiffs' counsel is also satisfied here. Counsel are deemed qualified when they can establish their experience in previous class actions and cases involving the same area of law. *Lynch v. Rank*, 604 F. Supp. 30, 37 (N.D. Cal. 1984), *aff'd* 747 F.2d 528 (9th Cir. 1984), *amended on rehearing*, 763 F.2d 1098 (9th Cir. 1985); *Marcus v. Heckler*, 620 F. Supp. 1218, 1223-24 (N.D. Ill. 1985); *Adams v. Califano*, 474 F. Supp. 974, 979 (D. Md. 1979), *aff'd without opinion*, 609 F.2d 505 (4th Cir. 1979).

Plaintiffs' are represented by Northwest Immigrant Rights Project, American Immigration Council, Massachusetts Law Reform Institute and a private law firm that specializes in immigration litigation. Counsel are able and experienced in protecting the interests of noncitizens and, among them, have considerable experience in handling complex and class action litigation. *See* Exh. 16-23 (Declarations of Matt Adams, Chris Strawn, Melissa Crow, Mary Kenney, Emily Creighton, Robert Pauw, Robert Gibbs and Iris Gomez). Thus, Counsel are able to demonstrate that they are counsel of record in numerous cases focusing on immigration law that successfully obtained class certification and class relief. In sum, Plaintiffs' counsel will vigorously represent both the named and absent class members.

B. THIS ACTION SATISFIES THE REQUIREMENTS OF RULE 23(b)(2) OF THE FEDERAL RULES OF CIVIL PROCEDURE

In addition to satisfying the four requirements of Rule 23(a), Plaintiffs also must meet one of the requirements of Rule 23(b) for a class action to be certified. This action meets the requirements of Rule 23(b)(2), namely "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding

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declaratory relief with respect to the class as a whole." Plaintiffs challenge—and seek declaratory and injunctive relief from—systemic policies and practices that create tremendous hardship for asylum applicants who are forced to wait for prolonged time periods without employment authorization before final adjudication of their asylum claims. *See Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1195 (9th Cir. 2001) (finding certification under Rule 23(b)(2) appropriate "where the primary relief sought is declaratory or injunctive.").

In this case, Defendants have created and applied policies and practices that affect all asylum applicants. The class and subclasses describe nationwide groups of applicants for asylum who have been or will be subjected to Defendants' unlawful policies and practices denying them their statutory and regulatory right to apply for and obtain employment authorization, for which they would otherwise be eligible. 8 U.S.C. § 1158(d)(2); 8 C.F.R. § 208.7(a); 8 C.F.R. § 274a.12(c)(8).

As noted, the Government itself has already acknowledged that there is a systemic problem, which led to the USCIS Ombudsman's Report. The policies and practices have been further delineated in OPPM 11-02 at 8 (absence of any notice required when a decision is made to stop or not (re)start the asylum EAD clock); the Immigration Court Practice Manual and Operating Policies and Procedures Memorandum (ICPM), in particular with reference to ICPM rule 3.1(b)(iii)(A) and OPPM 11-02 at 5-6 (requiring defensive asylum applications to be filed at a master calendar hearing); and OPPM 11-02 at 16 (requiring that the asylum EAD clock remain stopped upon a denial by an immigration judge even if, subsequently, the case is remanded to the immigration judge for a new asylum decision).

These policies and practices and the government's own reports demonstrate that Defendants have acted "on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." Defendants' actions

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therefore are more than "generally applicable" to Plaintiffs and unnamed class members alike. Hence, the first requirement of subsection (b)(2) is met.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant this motion and enter the attached order certifying this proceeding as a class action and defining the class and sub-Classes as set forth in Section I of this Motion.

Dated this 20th day of December, 2011.

Respectfully submitted,

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s/ Christopher P. Strawn
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CERTIFICATE OF SERVICE

RE: *A.B.T., et al. v. U.S. Citizenship and Immigration Services, et al.*
Case No. 2:11-cv-02108

I, Matt Adams, am an employee of Northwest Immigrant Rights Project. My business address is 615 Second Ave., Ste. 400, Seattle, Washington, 98104. I hereby certify that on December 20, 2011, I electronically filed the foregoing motion and proposed order with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all registered partiers. In addition I sent two copies by U.S. certified mail postage prepaid, to:

Amy Hanson
Assistant U.S. Attorney
Western District of Washington
700 Stewart Street, Suite 5220
Seattle, WA 98101-1271

Colin Kisor and Max Weintraub
Office of Immigration Litigation, Civil Division
P.O. Box 868, Ben Franklin Station
Washington, DC 20044

Executed in Seattle, Washington, on December 20, 2011.

s/ Matt Adams

Matt Adams
Attorney for Petitioners

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EXHIBITS IN SUPPORT OF MOTION FOR CLASS CERTIFICATION

Exhibit 1: Excerpt from Executive Office for Immigration Review's response to May 23, 2011 FOIA request

Exhibit 2: Declaration of Anita Sharma in Support of Plaintiffs' Motion for Class Certification

Exhibit 3: Declaration of Ashley Huebner in Support of Plaintiffs' Motion for Class Certification

Exhibit 4: Declaration of Christine Cooney Mansour in Support of Plaintiffs' Motion for Class Certification

Exhibit 5: Declaration of Iris Gomez in Support of Plaintiffs' Motion for Class Certification

Exhibit 6: Declaration of Jonathan M. Kaufman in Support of Plaintiffs' Motion for Class Certification

Exhibit 7: Declaration of Judy London in Support of Plaintiffs' Motion for Class Certification

Exhibit 8: Declaration of Megan Kludt in Support of Plaintiffs' Motion for Class Certification

Exhibit 9: Declaration of Natalie Hansen in Support of Plaintiffs' Motion for Class Certification

Exhibit 10: Declaration of Paula Enguidanos in Support of Plaintiffs' Motion for Class Certification

Exhibit 11: Declaration of the Tahirih Justice Center in Support of Plaintiffs' Motion for Class Certification

Exhibit 12: Declaration of Stacy Tolchin in Support of Plaintiffs' Motion for Class Certification

Exhibit 13: Declaration of Vanessa Allyn in Support of Plaintiffs' Motion for Class Certification

Exhibit 14: Declaration of Yeimi G. Martinez Michael in Support of Plaintiffs' Motion for Class Certification

Exhibit 15: Excerpt from USCIS PowerPoint presentation titled "Application for Employment Authorization (Form I-765): Applicants for Asylum" (February 2008). Received from USCIS in response to a Dec. 14, 2010 FOIA request submitted by the Massachusetts Law Reform Institute.

Exhibit 16: Declaration of Matt Adams in Support of Plaintiffs' Motion for Class Certification

Exhibit 17: Declaration of Christopher Strawn in Support of Plaintiffs' Motion for Class Certification

Exhibit 18: Declaration of Melissa Crow in Support of Plaintiffs' Motion for Class Certification

Exhibit 19: Declaration of Mary Kenney in Support of Plaintiffs' Motion for Class Certification

Exhibit 20: Declaration of Emily Creighton in Support of Plaintiffs' Motion for Class Certification

Exhibit 21: Declaration of Robert Pauw in Support of Plaintiffs' Motion for Class Certification

Exhibit 22: Declaration of Robert H. Gibbs in Support of Plaintiffs' Motion for Class Certification

Exhibit 23: Declaration of Iris Gomez in Support of Plaintiffs' Motion for Class Certification

Exhibit 24: Declaration of Paula H. Enguidanos With Respect to Plaintiff A.B.T. in Support of Class Certification

Exhibit 25: Declaration of Paula H. Enguidanos With Respect to Plaintiff K.M.-W. in Support of Class Certification

Exhibit 26: Declaration of Avantika Shastri With Respect to Plaintiff G.K. in Support of Class Certification

Exhibit 27: Declaration of Paul Zoltan With Respect to Plaintiff L.K.G. in Support of Class Certification

Exhibit 28: Declaration of Melanie Yang With Respect to Plaintiff D.W. in Support of Class Certification

EXHIBIT 1

Executive Office of Immigration Review
Office of Planning, Analysis, and Technology

OPAT#11-124

(7) For each of the 59 immigration courts in the United States:

(a) The number of cases pending between 2007 and the date of this request in which asylum applications have been filed;

Base City	Count
	12
AGA	220
ATL	5,956
BAL	6,170
BLM	2,493
BOS	8,568
BUF	1,076
CHI	5,877
CHL	1,677
CLE	5,700
DAL	1,854
DEN	2,507
DET	2,418
ELO	775
ELP	945
ELZ	1,012
FLO	585
HAR	1,225
HLG	1,175
HOD	504
HON	804
HOU	3,180
IMP	680
KAN	1,865
KRO	1,979
LAN	861
LOS	51,370
LVG	2,730
MEM	2,992
MIA	25,365
NEW	7,196
NOL	608
NYC	61,752
NYD	1,104
OAK	208
OMA	4,475
ORL	13,844
PHI	3,978

PHO	2,920
PIS	627
POO	1,789
SAJ	2,664
SDC	122
SEA	4,918
SFR	17,744
SLC	821
SNA	3,318
SND	3,406
SPD	1
TAC	1,040
TUC	391
ULS	68
WAS	8,498
YOR	1,034
Total	285,101

(b) The number of cases referenced in (7)(a) in which the asylum adjudication clock was at any time stopped

Base City	Count
	10
AGA	215
ATL	5,776
BAL	6,016
BLM	2,340
BOS	8,400
BUF	1,010
CHI	5,197
CHL	1,633
CLE	4,747
DAL	1,751
DEN	2,347
DET	2,351
ELO	766
ELP	876
ELZ	981
FLO	581
HAR	1,187
HLG	954
HOD	485
HON	803
HOU	3,038
IMP	623
KAN	1,759
KRO	1,931

LAN	840
LOS	47,114
LVG	2,629
MEM	2,874
MIA	25,112
NEW	6,997
NOL	529
NYC	51,224
NYD	1,065
OAK	191
OMA	3,821
ORL	13,624
PHI	3,893
PHO	2,737
PIS	557
POO	1,727
SAJ	2,641
SDC	118
SEA	4,555
SFR	16,973
SLC	792
SNA	3,130
SND	3,322
SPD	1
TAC	1,012
TUC	387
ULS	66
WAS	7,342
YOR	975
Total	262,025

EXHIBIT 15

Analyzing the 150-day and 180-day Clock

- The clock begins running from the date of initial receipt of a complete Form I-589, stops when the alien causes processing delays, and only restarts when an Asylum Office or IJ resumes processing of Form I-589.
- If an Asylum Office denies Form I-589, the clock stops. The form may be refiled with EOIR, but the clock does not restart-it starts anew.
- If an IJ denies Form I-589, the clock stops. The form may be appealed, but the clock does not restart or start anew if the case is later remanded.
  - A motion to reopen/ reconsider may be filed, and if it is granted, the IJ may not restart the clock, or restart the clock from the original decision date, or restart the clock from the date the motion is granted.

EXHIBIT 2

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WASHINGTON

A.B.T., K.M.-W., G.K., L.K.G., D.W., Individually and on Behalf of All Others Similarly Situated, Plaintiffs, v. U.S. CITIZENSHIP AND IMMIGRATION SERVICES; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Janet NAPOLITANO, Secretary, Department of Homeland Security; Alejandro MAYORKAS, Director, U.S. Citizenship and Immigration Services; Eric H. HOLDER, Jr., Attorney General of the United States; Juan OSUNA, Director, Executive Office for Immigration Review, Defendants.	Civil Action No. **COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF** **CLASS ACTION**

SWORN DECLARATION OF ANITA SHARMA IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

SWORN DECLARATION OF ANITA SHARMA IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

I, Anita Sharma, declare under penalty of perjury as follows:

1. I am an attorney admitted to practice law. I am also admitted to practice before the United States District Court, District of Massachusetts. I graduated from law school in 2000 and completed my Masters in Law in 2002.
2. I have been practicing immigration law for approximately 10 years. I am currently the Asylum Staff Attorney of the Political Asylum/ Immigration Representation Project ("PAIR"). My current business address at the PAIR Project is 254 Friend St., Boston, MA.
3. PAIR is a nonprofit organization that is the foremost provider of *pro bono* immigration legal services to asylum-seekers and immigrants detained in Massachusetts. PAIR's Pro Bono Asylum Program is the leading program in Massachusetts to recruit, mentor and train attorneys from private law firms to represent without charge low-income asylum-seekers who have fled from persecution throughout the world. At any given time, I represent approximately 40 asylum applicants. I also mentor over 500 *pro bono* attorneys who represent approximately 600 applicants per year.
4. In my capacity as the PAIR Asylum Staff Attorney, I assist asylum applicants and their pro bono attorneys in efforts to secure work authorization while pursuing the applicants' asylum cases. Since all PAIR clients are low-income, prompt access to employment authorization is critical in order for them to obtain adequate food and shelter as well as any non-emergency medical care they may need during the period that their asylum cases are pending.

5. When assisting PAIR clients and pro bono attorneys to apply or renew client work authorization applications during the course of their asylum cases, I have repeatedly experienced problems with the "asylum clock." Because asylum clock issues have become increasingly pervasive, I also track these "asylum clock" problems in the PAIR docket as I become aware of them. Since 2009, PAIR has obtained direct documentation of specific "asylum clock" problems in at least eighteen (18) PAIR cases, although at any time between 85-90 % of all our asylum cases that are "referred" to the Immigration Court in Boston have clock problems.

6. In none of the cases did the applicant and/or pro bono counsel receive written notification at the time that a negative decision was made regarding the applicant's clock. In addition, the applicant and/or the pro bono counsel were never given the reason for why the clock was stopped, not started at all, or not restarted following the cessation of a delay. In some PAIR cases, the applicant's pro bono counsel did not learn that the clock had stopped, had never started, or had not restarted until after he or she had submitted an employment authorization application request to USCIS and received a denial. In other PAIR cases, pro bono counsel discovered that their clients' cases were affected by clock problems, but only after affirmatively calling the automated agency 1-800 number. The number did not provide the reasons for the decisions affecting the clock. In some PAIR cases, pro bono counsel were given altogether new or different reasons for stopping, not starting, or not restarting a clock in the course of trying to correct the original clock error.

7. In one illustrative case, the application for work authorization was denied due to an applicant caused delay, but the rejection notice did not specify the reason for the delay (attached as Exhibit A). In that case, the clock was not corrected until two years later, although the PAIR pro bono attorney filed multiple written requests documenting the problem. The belated correction was of limited utility, as the applicant was granted asylum approximately two months later, automatically qualifying him for an EAD.

8. In order to correct the failure to restart the applicant's clock after an applicant-caused delay had been cured, to correct clock errors that had been misattributed to an applicant, or to determine the reason that an applicant's clock had not started or had been stopped, PAIR pro bono attorneys frequently have had to submit multiple requests to the Immigration Court and the Chief Immigration Judge. Generally, if the error was corrected, it was long after the applicant should have qualified for employment authorization. In numerous instances, the responsive letters from the Court administrator stated that EOIR's asylum clock is not maintained for employment authorization purposes. (See Exhibits B, C, D, E, F, G, H, I and J.)

9. PAIR pro bono counsel have collectively expended hundreds of donated hours trying to ascertain the basis for the agencies' clock actions and to correct the clock problems through correspondence and other communications with personnel at various levels of EOIR and USCIS. T he pro bono resources required to determine the basis for agency clock actions and to correct clock errors affects the overall number of asylum cases PAIR can place with pro bono firms at any given time

and potentially affects the length of time new clients may have to remain on a waiting list before their cases can be placed.

10. In one example illustrative of the inadequate review process, a Rwandan political activist and survivor of the Rwandan Genocide filed for asylum affirmatively and was referred to the Immigration Court for a hearing. He then requested a continuance in order to obtain legal representation. The Court rescheduled, and the clock was stopped, but when the applicant appeared at the re-scheduled hearing with his new pro bono attorney, the clock was not restarted. His pro bono counsel wrote the Court to correct the clock problem, but the request was denied due to a clerical pleadings error irrelevant to the pending asylum application. Even though pro bono counsel corrected the error and submitted a second request to restart the applicant's clock, that request was denied in a letter suggesting that the clock could *never* be restarted – because "past adjournment codes are not altered by a subsequent filing or attempt to cure after the adjournment is made." Accordingly, the clock was not restarted, and the Court did not schedule the applicant's asylum hearing for yet another year – deterring pro bono counsel from applying for an EAD for the applicant until the clock could be restarted. Pro bono counsel therefore submitted a third request, this time to the Chief Immigration Judge, to correct the clock problem. Unable to work throughout this process, the applicant suffered extreme financial and emotional hardship. In addition to being forced to rely on the charity of a few fellow Rwandan refugees with limited resources themselves, he was found to be on the verge of starvation when he was diagnosed with Post-Traumatic Stress Disorder and Major Depressive Disorder.

A bright individual who had trained as a telecommunications engineer and was fluent in five languages, the applicant could have provided valuable services to his community and accelerated his recovery from the torture and psychological trauma he had experienced in Rwanda had he been permitted to work sooner rather than wait the two years it took until his asylum request was finally granted.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 12, 2011.

Anita Sharma

EXHIBIT 3

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WASHINGTON

A.B.T., K.M.-W., G.K., L.K.G., D.W., Individually and on Behalf of All Others Similarly Situated, Plaintiffs, v. U.S. CITIZENSHIP AND IMMIGRATION SERVICES; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Janet NAPOLITANO, Secretary, Department of Homeland Security; Alejandro MAYORKAS, Director, U.S. Citizenship and Immigration Services; Eric H. HOLDER, Jr., Attorney General of the United States; Juan OSUNA, Director, Executive Office for Immigration Review, Defendants.	Civil Action No. **COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF** **CLASS ACTION**

SWORN DECLARATION OF ASHLEY HUEBNER IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

SWORN DECLARATION OF ASHLEY HUEBNER IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

I, Ashley Huebner declare under penalty of perjury and in accord with 28 U.S.C. § 1746 as follows:

1. I am an attorney admitted to practice law by the Supreme Court of Illinois. I graduated from Boston University School of Law in 2007. My current business address is the National Immigrant Justice Center, 208 S. La Salle Street, Suite 1818, Chicago IL 60604.
2. I have been practicing immigration law for three years. I am currently the Supervising Attorney of the Jeanne and Joseph Sullivan Project for Protection of Asylum Seekers ("Asylum Project") at Heartland Alliance's National Immigrant Justice Center (NIJC).
3. A large percentage of the individuals that NIJC represents are asylum applicants. In the past year, NIJC's Asylum Project has provided legal representation for more than 280 asylum applicants. NIJC provides representation for the majority of these clients through its network of *pro bono* attorneys in Illinois, Wisconsin, and Indiana. NIJC maintains a retainer agreement with all asylum clients referred to *pro bono* attorneys and remains of counsel in all of their cases.
4. In my capacity as an attorney with NIJC, I represent asylum seekers in immigration proceedings and provide technical legal assistance to *pro bono* attorneys representing asylum seekers through NIJC. In both positions, I

often assist asylum applicants in their efforts to secure work authorization while they pursue their asylum cases.

5. When NIJC *pro bono* attorneys and I assist NIJC clients with work authorization applications or renewals during the course of their asylum cases, we repeatedly experience problems with the "asylum EAD clock." In the past year, more than 28 NIJC asylum clients, or 10% of the asylum clients NIJC has represented in the past year, have experienced problems with the "asylum EAD clock" in their cases.

6. One problem with the clock that I am aware of occurs when an NIJC client is not permitted to "file" a complete asylum application with the court until the first scheduled hearing. During the weeks and months before the first scheduled hearing date, the client's asylum clock does not run, even though he or she has submitted a complete application to the immigration court. Over the last year, NIJC's Asylum Project has represented approximately five clients in which this was a problem. As a result, these clients were or continue to be without work authorization for long periods.

7. In one illustrative case, an NIJC client was placed into removal proceedings in March 2011, shortly before he and his wife were prepared to file an affirmative application for asylum with USCIS. The client's first Master Calendar hearing was scheduled for June 2012. In June 2011, the client's NIJC *pro bono* attorneys filed the client's asylum application with the immigration court clerk, along with a motion requesting that the judge advance the client's hearing. Despite repeated advocacy by the client's *pro*

bono attorneys, the judge has not yet decided the motion or started the client's asylum clock. As a result, the client and his wife remain ineligible for employment authorization. If the clock is not started until the next hearing in June 2012, the client will have been set back an entire year in the EAD process. The earliest he will be eligible to apply for an EAD will be December 2012 (180 days following the next Master Calendar Hearing). Had the clock been started when the application was filed, my client would be eligible to apply for an EAD in December of 2011.

8. In addition, problems with the asylum clock occur when the Board of Immigration Appeals or a federal court remands an NIJC client's case back to the immigration court and the clock does not restart. I have experienced this problem on numerous occasions. Over the last year, NIJC's Asylum Project has represented approximately nine clients in which this was a problem. I have not been able to resolve this problem. As a result, these clients have been without work authorization for long periods.

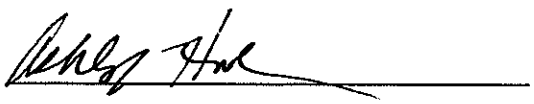
9. In one illustrative case, the immigration judge granted asylum to an 18-year-old NIJC client in August 2008. The clock "permanently stopped" on the date of the judge's order. At the time the judge granted asylum, the client did not have 180 days on his clock. ICE subsequently appealed the judge's decision, and in 2011, the Board of Immigration Appeals granted the appeal and remanded the client's case back to the judge for further findings. The client's case remains pending before the immigration court and the client is

unable to obtain employment authorization because his clock remains "permanently stopped" at less than 180 days.

10. Immigration judges or court administrators only occasionally notify NIJC clients of decisions regarding the asylum clock or the impact of the asylum clock on the client's applications for work authorization. This is only after a NIJC client, with the help of counsel, inquires about the status of the clock. To my knowledge, NIJC clients have never been provided with adequate instructions on what actions can be taken to address clock problems.
11. The lack of adequate notice of decisions regarding the asylum clock is particularly problematic when delays in proceedings are incorrectly attributed to an NIJC client and the immigration judge or court administrator improperly stops the clock based on the alleged respondent-caused delay. Because it is generally very difficult to get immigration judges to correct the clock when it is improperly stopped, NIJC clients in this situation were or continue to be without work authorization for long periods.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 30, 2011.



Ashley Huebner

EXHIBIT 4

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WASHINGTON

A.B.T., K.M.-W., G.K., L.K.G., D.W., Individually and on Behalf of All Others Similarly Situated, Plaintiffs, v. U.S. CITIZENSHIP AND IMMIGRATION SERVICES; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Janet NAPOLITANO, Secretary, Department of Homeland Security; Alejandro MAYORKAS, Director, U.S. Citizenship and Immigration Services; Eric H. HOLDER, Jr., Attorney General of the United States; Juan OSUNA, Director, Executive Office for Immigration Review, Defendants.	Civil Action No. **COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF** **CLASS ACTION**

SWORN DECLARATION OF CHRISTINE COONEY MANSOUR IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

SWORN DECLARATION OF CHRISTINE COONEY MANSOUR IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

I, Christine Cooney Mansour, declare under penalty of perjury and in accord with 28 U.S.C. § 1746 as follows:

1. I am an attorney admitted to practice law by the State Bar of Texas. I am also admitted to practice before the State of New York, the State of Wisconsin (inactive), the State of Ohio (inactive) and several federal courts. I graduated from the University of Michigan Law School in 1998. My current business address is Human Rights Initiative of North Texas, 2801 Swiss Avenue, Dallas, TX 75204.
2. I have been practicing immigration law for over 3 years. I am currently the Legal Director of Human Rights Initiative of North Texas ("HRI").
3. A large percentage of the individuals I represent are asylum applicants. At any given time I (with the help of my staff and volunteer attorneys) represent approximately 15-20 asylum applicants. In the past year, the staff and pro bono attorneys at HRI represented approximately 47 asylum applicants, including those applicants I represented.
4. In my capacity as an attorney at HRI, I represent asylum seekers in immigration proceedings and often assist asylum applicants in their efforts to secure work authorization while they pursue their asylum cases. I also help the volunteer attorneys who work on HRI's asylum cases pro bono in their efforts to do the same.

5. When I assist my clients with work authorization applications or renewals during the course of their asylum cases, I repeatedly experience problems with the "asylum clock."

6. On occasion, an immigration judge will tell me or my client of decisions regarding the asylum clock or the impact of the asylum clock on the client's applications for work authorization. This is generally after I or my client inquires about the status of the clock. There is not any set procedure for such notification. The court administrator has never notified me or my clients of decisions regarding the asylum clock or the impact of the asylum clock on the client's applications for work authorization. The court administrator has only occasionally provided information about the asylum clock when my client or I have inquired about the status of the clock and often we are told we must submit our requests in writing. Neither I, nor my clients, have ever been provided with adequate instructions on what actions can be taken to address the clock stoppage.

7. In one illustrative case, a client filed an asylum application on or about September 4, 2010 and the Immigration Court scheduled a master calendar hearing on January 25, 2011. At that time, the client was told she could have her individual hearing before March 9, 2011 (which was when her EAD clock would reach 180 days) or in early 2012, but was not given a specific date for her individual hearing. Instead, my office received a call from the Immigration Court on February 18, 2011 indicating that the hearing would be on March 2, 2011. The pro bono attorneys on this client's case had begun

preparing for the individual hearing, but were not prepared to proceed on March 2, 2011, the date offered by the court. The Immigration Court stated that the next available date would be January 17, 2012. HRI asked the court clerk by phone if there was any other available hearing date during the ten months between March 2, 2011 and January 17, 2012. The Immigration Court responded that there was not. On February 16, 2011, when the client had 157 days on her EAD clock, the client submitted her I-765. At that point the clock was still running. On March 16, 2011, the Immigration Court sent HRI a Notice of Hearing indicating that her hearing would be April 23, 2012, three months later than the January 17, 2012 date the court had offered. The EAD was denied on April 27, 2011 because at some point the client's clock was stopped and backdated to 137 days. HRI only received notice that this action was taken after applying for the EAD and receiving a denial notice indicating the clock stopped at 137 days. HRI did not receive any notice from the Immigration Court or USCIS about why the clock was backdated. The client is still without an EAD and must rely on her brother for all forms of support, including housing and food. She is not able to contribute to this household, where 10 other people live. She does not have adequate food or clothing because she cannot work to support herself during the long period of time she must wait to get her case heard.

8. In another illustrative case, the clock was stopped and it took extraordinary efforts to get the clock restarted after a delay caused by the Immigration Court. Our client had a master calendar hearing on January 12, 2010 and was

offered an individual hearing date in January or in May. The individual hearing was set for May 20, 2010 and the clock was stopped at some point because the client did not take the January date (although neither my office, her pro bono attorney nor the client was ever informed by the Immigration Court that accepting the May date would stop the clock). On May 18, 2010, the Immigration Court notified my office that the hearing was cancelled because the Immigration Court could not locate a translator for the client's case. We asked that the client's clock be restarted because this delay was not caused or requested by her and she was ready to proceed. The Immigration Court told us that the clock was permanently stopped and could not be restarted. This is typical. The trial was reset for November 23, 2010. After numerous phone calls and extraordinary effort on the part of the client's pro bono attorney, including contacting the Immigration Court's supervisors in San Antonio, we eventually got the clock started again. The hearing was then reset by the immigration court for August 3, 2010.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 1, 2011.

Christine Cooney Mansour

EXHIBIT 5

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WASHINGTON

A.B.T., K.M.-W., G.K., L.K.G., D.W., Individually and on Behalf of All Others Similarly Situated, Plaintiffs, v. U.S. CITIZENSHIP AND IMMIGRATION SERVICES; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Janet NAPOLITANO, Secretary, Department of Homeland Security; Alejandro MAYORKAS, Director, U.S. Citizenship and Immigration Services; Eric H. HOLDER, Jr., Attorney General of the United States; Juan OSUNA, Director, Executive Office for Immigration Review, Defendants.	Civil Action No. **COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF** **CLASS ACTION**

SWORN DECLARATION OF IRIS GOMEZ IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

SWORN DECLARATION OF IRIS GOMEZ IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

I, Iris Gomez, declare under penalty of perjury and in accord with 28 U.S.C. § 1746 as follows:

1. I am an attorney admitted to practice law by the Massachusetts Supreme Judicial Court. I graduated from Boston University School of Law in 1980. I am also admitted to practice before the United States Supreme Court, the United States Court of Appeals for the First Circuit, and the United States District Court of Massachusetts, and I have appeared *pro hac vice* in federal courts in Rhode Island and Minnesota and in Washington courts. Since 1992, I have been employed as a staff attorney at the Massachusetts Law Reform Institute, the state's legal services support center, where I direct the Immigrants Protection Project (IPP). My current business address is 99 Chauncy St., Suite 500, Boston, MA 02111. Previously, I was employed as a Senior Staff Attorney at Greater Boston Legal Services, where I specialized in asylum law, and as a farm worker attorney and a public defender. I have also taught Immigration Law at Boston area law schools, including Boston University School of Law and Boston College Law School, for over 20 years.
2. In my capacity as the director of the IPP, I carry out litigation on asylum and other immigration-related matters and provide legal support, technical assistance, and systemic advocacy coordination for a statewide coalition of staff from nonprofit organizations that provide free or low-cost immigration-related legal services throughout Massachusetts. The asylum-related litigation

I have counseled, co-counseled or appeared in as *amicus curiae* includes the following federal court cases: *Ngwanyia v. Ashcroft,* 302 F.Supp. 2d 1076 (D. Minn. 2004) (nationwide class action); *Morales v. INS*, 208 F.3d 323 (1st Cir. 2002); *Jobe v. INS*, 238 F.3d 96 (1st Cir. 2001) (*en banc*); *INS v. Aguirre-Aguirre*, 526 U.S. 415 (1999); *Gabriel v. INS*, No. 96-11131-DPW (1st Cir. 1996); *Cordero-Trejo v. INS,* 40 F.3d 482 (1st Cir. 1994); and *Bajwa v. Cobb*, 727 F.Supp. 53 (D.Mass. 1989). I have also co-counseled or appeared as *amicus curiae* in other federal court cases addressing due process rights of aliens in removal proceedings and state court cases involving immigrants' procedural rights in other matters. Such cases include: *Saysana v. Gillen,* 590 F.3d 7 (1st Cir. 2009); *Aguilar v. U.S. ICE,* 510 F.3d 1 (1st Cir. 2007)(class action); *Davila-Bardales v. INS*, 27 F.3d 1 (1st Cir. 1994); *Chen v. Collins*, Mass. Super. Ct. Civ. Act. No. 2006-5197-B (2011) (class action); *Commonwealth v. Hilaire*, 437 Mass. 809 (2002); and *Doe v. McIntire*, 12 Mass.L.Rptr. 731 (Mass. Sup., 2001).

3. The nonprofit legal services organizations for which I supply legal support, technical assistance, and advocacy coordination include groups that provide direct representation to low-income asylum-seekers throughout Massachusetts. They include: the Political Asylum Immigration Representation Project (PAIR); Community Legal Services and Counseling Center (CLSACC); the Boston University School of Law Civil Litigation Program (BU Clinic), Boston College Immigration & Asylum Clinic (BC Clinic); Greater Boston Legal Services (GBLS); Lutheran Social Services of

New England (LSS); Catholic Charities (CC); Catholic Social Services (CSS); Community Legal Aid; MetroWest Legal Services; South Coastal Counties Legal Services/Justice Center of S.E. Massachusetts (SCCLS/Justice Center); and Neighborhood Legal Services.

4. Throughout the past three years, attorneys, law students, and other advocates from the above nonprofit organizations began contacting me on a frequent basis to report problems in their applying for and obtaining work authorization for their often-destitute asylum applicant clients. I convened numerous meetings and phone calls among these non-profit advocates, as well as pro bono law firm attorneys from the PAIR Project, to exchange information about the nature and frequency of the employment authorization problems and to gather information about the efficacy of their efforts to resolve the problems on a case by case basis with the Executive Office for Immigration Review (EOIR) and U.S. Citizenship and Immigration Services (USCIS). Throughout this investigation, I have reviewed numerous documents relating to asylum EAD clock problems from individual case files that attorneys provided me.

5. These meetings and related communications and documents have provided me with information about the common employment authorization problems experienced by asylum applicants in Massachusetts who have satisfied the statutorily-required 180-day waiting period for an employment authorization document ("EAD") but, because of the policies and practices of EOIR and USCIS, remained unable to obtain one. The information provided to me

includes the attached illustrative USCIS notices and EOIR letters from which confidential identifying information has been redacted. Almost all employment authorization problems I have learned about from these sources – and all of the attached documents – concern asylum applicants in removal proceedings before EOIR rather than affirmative applicants.

6. The following problems are representative of the legal barriers to employment encountered by low-income asylum applicants assisted by the nonprofit legal services providers in Massachusetts throughout the last three years:

a) *Insufficient Notice*

In general, in the cases I've reviewed, the asylum applicants did not receive notice from the immigration judge or the court administrator, in open court or otherwise, about decisions that affected the asylum clock. Often, only after receiving a denial of employment authorization, did the applicant discover that a decision made relating to the asylum clock prevented him or her from securing work authorization. In addition, USCIS does not provide adequate reasoning for stopping the clock. After personally reviewing approximately one dozen USCIS notices denying employment authorization to asylum applicants, I have learned that USCIS generally does not explain the factual and legal basis for the conclusion that an applicant has not yet passed the 180-day threshold for an EAD. (See, for example, Exhibits 1 through 6*.) Rather, the factual information supplied in these notices has typically been limited to the conclusion that a certain number of days have elapsed and a list of any postponed EOIR hearings (see Exhibits 2-6), or to facts from which it

is impossible to determine how the applicant could prove eligibility for an EAD to USCIS (see, for example, Exhibit 1, reciting that an applicant who filed for asylum in 2008 had earned "zero" days one year later.) The USCIS notices all state that there is no administrative appeal from an EAD denial and generally refer wronged applicants to EOIR.

b) *Inadequate Review Process*

I also have reviewed documents demonstrating that some applicants who cured a "delay" that EOIR attributed to them, such as by appearing in court with their attorney or having their new attorney file an appearance form with EOIR, yet whose "delay" classification persisted so as to prevent them from getting an EAD, attempted to alter or correct the EOIR classifications by submitting lengthy and detailed letters and legal memoranda, sometimes repeatedly, to an EOIR administrator. Such informal resolution efforts for these and other EAD clock problems were generally unsuccessful. Frequently, EOIR response letters relied upon new or subsequent events unrelated to the precipitating "delay" to maintain the classification. (See, e.g., Exhibit 7*, where EOIR simply advises the respondent to review the court's Record of Proceeding in order to identify certain pleadings, submissions, and rulings, and Exhibits 8 and 9, in which EOIR responds that the absence of evidence about biometrics in the record caused the clock to stop even though the absence of updated biometrics did not cause a delay in proceedings.)

The documents that I have reviewed also indicate that applicants who persisted by submitting informal appeal letters and memoranda to a higher

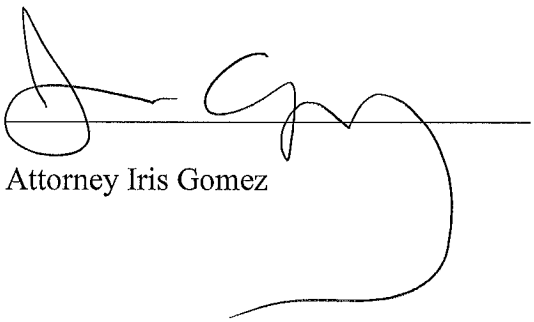
official within EOIR sometimes successfully resolved their clock problems, but ended up having to wait lengthy periods of time to resolve EAD eligibility problems. Also, they could not immediately obtain EADs, because they were required to file an EAD application with USCIS, even if they had done so previously and been denied. Attorneys reported – and my review of documents confirmed – that the number of steps and the length of time needed to alter an EOIR classification gave the above-described process limited utility.

The time and labor required of attorneys investigating the basis for determinations related to the 180-day waiting period, and who then attempt to change erroneous EOIR classifications that prevent their clients from obtaining EADs, has affected the overall capacity of free and low-cost legal services program resources. This drain on resources is particularly acute given significant staffing reductions in legal services programs precipitated by the financial crisis and its impact on interest rate programs that fund legal services for the poor. Staff from some non-profit asylum legal services providers reported that they do not have the capacity to handle employment authorization matters for asylum applicants at all. Staff from other programs that rely on pro bono attorneys also report that these employment authorization problems have constrained overall case-handling capacity.

*Note: Personal identifying information has been deleted from all Exhibits to protect confidentiality.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 12, 2011.



Attorney Iris Gomez

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Vermont Service Center
75 Lower Welden Street
St. Albans, VT 05479

U.S. Citizenship and Immigration Services

March 10, 2009

[redacted]

Ex 1

A Number:
File Receipt Number:
Applicant/Petitioner Name:
Beneficiary:

Dear Sir/Madam:

On February 17, 2009, you filed an Application for Employment Authorization (Form I-765) pursuant to Title 8, Code of Federal Regulations (8 CFR) Section 274a.12(c)(8). This application for employment authorization is based on your claim of a pending Application for Asylum and Withholding of Removal (Form I-589).

According to 8 CFR Section 208.7(a)(1):

> An applicant for asylum who has not been convicted of an aggravated felony shall be eligible pursuant to 8 CFR Sections 274a.12(c)(8) and 274a.13(a) of this chapter to submit an Application for Employment Authorization (Form I-765). The application shall be submitted no earlier than 150 days after the date on which a complete application for asylum submitted in accordance with 8 CFR Sections 208.3 and 208.4 of this part has been received.

According to 8 CFR Section 208.7(a)(2):

> For purposes of this paragraph (a), the time periods within which the alien may not apply for employment authorization and within which the Service must respond to any such application and within which the asylum application must be adjudicated pursuant to section 208(d)(5)(A)(iii) of the Act shall begin when the alien has filed a complete asylum application in accordance with 8 CFR Sections 208.3 and 208.4. Any delay requested or caused by the applicant shall not be counted as part of these time periods, including delays caused by failure without good cause to follow the requirements for fingerprint processing. Such time periods also shall be extended by the equivalent of the time between issuance of a request for evidence under 8 CFR Section 103.2(b)(8) of this chapter and the receipt of the applicant's response to such request.

Effective January 4, 1995, applications for employment authorization based on a new asylum claim shall not be submitted until 150 days have elapsed from the date the United States Citizenship and Immigration Services (USCIS) receives a properly filed asylum application, Form I-589. Please be aware, pursuant to 8 CFR Section 208.7, any delays caused during the processing of the asylum application will postpone the completion of the 150-day period before you may apply for employment authorization

USCIS records show that you filed a Form I-589 and it was accepted by an Immigration Judge on April 15, 2008. Processing has not yet started on your Form I-589. As of the date this Form I-765 was filed, ZERO active processing days had elapsed from the filing date of the asylum application Therefore, the 150-day period had not been completed. For that reason, your Application for Employment Authorization (Form I-765) is denied.

The Service Centers that process applications for employment authorization must rely on electronic records in determining the number of days elapsed in the 150-day period. These records are entered and/or changed by the Asylum Office and Immigration Court only If you feel these records/dates are incorrect you must contact the Immigration Court where your asylum application is in process.

There are no provisions in USCIS regulations that allow for an appeal from this decision. This decision is without prejudice to consideration of subsequent applications for employment authorization filed with the USCIS.

This decision may not be appealed. However, should you disagree with this decision, or have additional evidence you believe shows the decision to be in error, you may submit a Motion to Reopen or a Motion to Reconsider on Form I-290B, Notice of Appeal or Motion, to this office within 33 days from the date of this notice. A copy of Form I-290B is enclosed for your use. A Motion to Reopen must be submitted in writing, state the new facts to be considered, and be supported by affidavits or other new documentary evidence. A Motion to Reconsider must show that the decision was legally incorrect according to statute, regulation, and/or precedent decision. Failure to follow these instructions could result in an unfavorable decision. The motion must be sent to the Vermont Service Center with a filing fee of $585.00 to the following address:

Vermont Service Center
75 Lower Welden Street
St. Albans, VT 05479

For more information about the filing requirements for motions, please see 8 CFR §103.5, visit the USCIS website at www.uscis.gov, or contact the automated Form Request Line by calling 1-800-870-3676.

FINAL NOTE: Title 8, Code of Federal Regulations, Section 265.1 states in pertinent part, "Except for those exempted by section 263(b) of the Act, all aliens in the United States required to register under section 262 of the Act shall report each change of address and new address within 10 days on Form AR-11."

Sincerely,

Daniel M. Renaud
Center Director

CC:

Enclosures: I290B

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Vermont Service Center
75 Lower Welden Street
St. Albans, VT 05479

U.S. Citizenship and Immigration Services

March 23, 2009

[redacted]

E+2

A Number:
File Receipt Number:
Applicant/Petitioner Name:
Beneficiary:

Dear Sir/Madam:

On February 23, 2009, you filed an Application for Employment Authorization (Form I-765) pursuant to Title 8, Code of Federal Regulations (8 CFR) Section 274a.12(c)(8). This Application for Employment Authorization is based on your claim of a pending Application for Asylum and Withholding of Removal (Form I-589).

According to 8 CFR Section 208.7(a)(1):

> An applicant for asylum who has not been convicted of an aggravated felony shall be eligible pursuant to 8 CFR Sections 274a.12(c)(8) and 274a.13(a) of this chapter to submit an Application for Employment Authorization (Form I-765). The application shall be submitted no earlier than 150 days after the date on which a complete application for asylum submitted in accordance with 8 CFR Sections 208.3 and 208.4 of this part has been received.

According to 8 CFR Section 208.7(a)(2):

> For purposes of this paragraph (a), the time periods within which the alien may not apply for employment authorization and within which the Service must respond to any such application and within which the asylum application must be adjudicated pursuant to section 208(d)(5)(A)(iii) of the Act shall begin when the alien has filed a complete asylum application in accordance with 8 CFR Sections 208.3 and 208.4. Any delay requested or caused by the applicant shall not be counted as part of these time periods, including delays caused by failure without good cause to follow the requirements for fingerprint processing. Such time periods also shall be extended by the equivalent of the time between issuance of a request for evidence under 8 CFR Section 103.2(b)(8) of this chapter and the receipt of the applicant's response to such request.

Effective January 4, 1995, applications for employment authorization based on a new asylum claim shall not be submitted until 150 days have elapsed from the date the United States Citizenship and Immigration Services (USCIS) receives a properly filed asylum application, Form I-589. Please be aware, pursuant to 8 CFR Section 208.7, any delays caused during the processing of the asylum application will postpone the completion of the 150-day period before you may apply for employment authorization.

USCIS records show that you filed a Form I-589 on July 14, 2008. A review of the records indicates that you caused a delay in the processing of the asylum application on November 25, 2008, thereby postponing the completion of the 150-day period. Therefore, as of the date this Form I-765 was filed, 134 active processing days had elapsed. For that reason, your Application for Employment Authorization (Form I-765) is denied.

The Service Centers that process applications for employment authorization must rely on electronic records in determining the number of days elapsed in the 150-day period. These records are entered and/or changed by the Asylum Office and Immigration Court only. If you feel these records/dates are incorrect you must contact either the Asylum Office or the Immigration Court.

Please note: The following statements apply only to the current decision on your Employment Authorization Application. Any attempt to reopen or address the status of your asylum case must be handled directly with either the asylum office or the Immigration Court.

There are no provisions in USCIS regulations that allow for an appeal from this decision. This decision is without prejudice to consideration of subsequent applications for employment authorization filed with the USCIS.

This decision may not be appealed. However, should you disagree with this decision, or have additional evidence you believe shows the decision to be in error, you may submit a Motion to Reopen or a Motion to Reconsider on Form I-290B, Notice of Appeal or Motion, to this office within 33 days from the date of this notice. A copy of Form I-290B is enclosed for your use. A Motion to Reopen must be submitted in writing, state the new facts to be considered, and be supported by affidavits or other new documentary evidence. A Motion to Reconsider must show that the decision was legally incorrect according to statute, regulation, and/or precedent decision. Failure to follow these instructions could result in an unfavorable decision. The motion must be sent to the Vermont Service Center with a filing fee of $585.00 to the following address:

Vermont Service Center
75 Lower Welden Street
St. Albans, VT 05479

For more information about the filing requirements for motions, please see 8 CFR §103.5, visit the USCIS website at www.uscis.gov, or contact the automated Form Request Line by calling 1-800-870-3676.

FINAL NOTE: Title 8, Code of Federal Regulations, Section 265.1 states in pertinent part, "Except for those exempted by section 263(b) of the Act, all aliens in the United States required to register under section 262 of the Act shall report each change of address and new address within 10 days on Form AR-11."

Sincerely,

Daniel M. Renaud
Center Director

ENCLOSURES: I290B

U.S. Department of Homeland Security
P.O. Box 852841
Mesquite, TX 75185-2841

U.S. Citizenship and Immigration Services

Ex3

August 9, 2007

Applicant:
File:
I-765 Application for Employment Authorization

DECISION

Upon consideration, it is ordered that your Application for Employment Authorization (Form I-765) filed on July 13, 2007, pursuant to Title 8 Code of Federal Regulations 274a.12(c)(8) be denied for the following reason:

Title 8 Code of Federal Regulations 208.7(a)(1) states in pertinent part: "...an applicant for asylum...shall be eligible...to submit a Form I-765, Application for Employment Authorization...The application shall be submitted no earlier than 150 days after the date on which a complete asylum application...has been received..." Title 8 Code of Federal Regulations 208.7(a)(2) also states, "...any delay requested or caused by the applicant shall not be counted as part of these time periods..."

A review of the record shows that you filed an application for asylum on February 16, 2007. Your application was received by the Executive Office of Immigration Review on June 13, 2007. As of this date, the Immigration Judge stopped the clock and has not restarted the clock for processing of your asylum application. Therefore, you are not eligible for employment authorization because only (143)one hundred and forty three days of the required 150 days have elapsed. For information regarding the restarting of the asylum processing clock, **contact the Immigration Court that has jurisdiction over your proceedings.**

Accordingly, your application for employment authorization has been denied. There is no appeal to this decision. This decision is without prejudice to consideration of subsequent applications filed with the USCIS.

Sincerely,

David L. Roark, Director
Texas Service Center
Officer #XM0068

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Vermont Service Center
75 Lower Welden Street
St. Albans, VT 05479

U.S. Citizenship and Immigration Services

February 18, 2009

Ex 4

A Number:
File Receipt Number:
Applicant/Petitioner Name:
Beneficiary:

Dear Sir/Madam:

On January 28, 2009, you filed an Application for Employment Authorization (Form I-765) pursuant to Title 8, Code of Federal Regulations (8 CFR) Section 274a.12(c)(8). This Application for Employment Authorization is based on your claim of a pending Application for Asylum and Withholding of Removal (Form I-589).

According to 8 CFR Section 208.7(a)(1):

> An applicant for asylum who has not been convicted of an aggravated felony shall be eligible pursuant to 8 CFR Sections 274a.12(c)(8) and 274a.13(a) of this chapter to submit an Application for Employment Authorization (Form I-765). The application shall be submitted no earlier than 150 days after the date on which a complete application for asylum submitted in accordance with 8 CFR Sections 208.3 and 208.4 of this part has been received.

According to 8 CFR Section 208.7(a)(2):

> For purposes of this paragraph (a), the time periods within which the alien may not apply for employment authorization and within which the Service must respond to any such application and within which the asylum application must be adjudicated pursuant to section 208(d)(5)(A)(iii) of the Act shall begin when the alien has filed a complete asylum application in accordance with 8 CFR Sections 208.3 and 208.4. Any delay requested or caused by the applicant shall not be counted as part of these time periods, including delays caused by failure without good cause to follow the requirements for fingerprint processing. Such time periods also shall be extended by the equivalent of the time between issuance of a request for evidence under 8 CFR Section 103.2(b)(8) of this chapter and the receipt of the applicant's response to such request.

Effective January 4, 1995, applications for employment authorization based on a new asylum claim shall not be submitted until 150 days have elapsed from the date the United States Citizenship and Immigration Services (USCIS) receives a properly filed asylum application, Form I-589. Please be aware, pursuant to 8 CFR Section 208.7, any delays caused during the processing of the asylum application will postpone the completion of the 150-day period before you may apply for employment authorization.

USCIS records show that you filed a Form I-589 on February 20, 2008. A review of the records indicates that you caused a delay in the processing of the asylum application. You caused or requested the adjournment of a hearing before an Immigration Judge on May 14, 2008, thereby postponing the completion of the 150-day period. Therefore, as of the date this Form I-765 was filed, 84 active processing days had elapsed. For that reason, your Application for Employment Authorization (Form I-765) is denied.

The Service Centers that process applications for employment authorization must rely on electronic records in determining the number of days elapsed in the 150-day period. These records are entered and/or changed by the Asylum Office and Immigration Court only. If you feel these records/dates are incorrect you must contact the Immigration Court where your asylum application is in process.

There are no provisions in USCIS regulations that allow for an appeal from this decision. This decision is without prejudice to consideration of subsequent applications for employment authorization filed with the USCIS.

This decision may not be appealed. However, should you disagree with this decision, or have additional evidence you believe shows the decision to be in error, you may submit a Motion to Reopen or a Motion to Reconsider on Form I-290B, Notice of Appeal or Motion, to this office within 33 days from the date of this notice. A copy of Form I-290B is enclosed for your use. A Motion to Reopen must be submitted in writing, state the new facts to be considered, and be supported by affidavits or other new documentary evidence. A Motion to Reconsider must show that the decision was legally incorrect according to statute, regulation, and/or precedent decision. Failure to follow these instructions could result in an unfavorable decision. The motion must be sent to the Vermont Service Center with a filing fee of $585.00 to the following address:

Vermont Service Center
75 Lower Welden Street
St. Albans, VT 05479

For more information about the filing requirements for motions, please see 8 CFR §103.5, visit the USCIS website at www.uscis.gov, or contact the automated Form Request Line by calling 1-800-870-3676.

FINAL NOTE: Title 8, Code of Federal Regulations, Section 265.1 states in pertinent part, "Except for those exempted by section 263(b) of the Act, all aliens in the United States required to register under section 262 of the Act shall report each change of address and new address within 10 days on Form AR-11."

Sincerely,

Daniel M. Renaud
Center Director

Enclosures: I290B

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Vermont Service Center
75 Lower Welden Street
St. Albans, VT 05479

U.S. Citizenship and Immigration Services

August 24, 2009

[redacted]

Ex 5

A Number:
File Receipt Number:
Applicant/Petitioner Name:
Beneficiary:

Dear Sir/Madam:

On July 27, 2009, you filed an Application for Employment Authorization (Form I-765) pursuant to Title 8, Code of Federal Regulations (8 CFR) Section 274a.12(c)(8). This Application for Employment Authorization is based on your claim of a pending Application for Asylum and Withholding of Removal (Form I-589).

According to 8 CFR Section 208.7(a)(1):

> An applicant for asylum who has not been convicted of an aggravated felony shall be eligible pursuant to 8 CFR Sections 274a.12(c)(8) and 274a.13(a) of this chapter to submit an Application for Employment Authorization (Form I-765). The application shall be submitted no earlier than 150 days after the date on which a complete application for asylum submitted in accordance with 8 CFR Sections 208.3 and 208.4 of this part has been received.

According to 8 CFR Section 208.7(a)(2):

> For purposes of this paragraph (a), the time periods within which the alien may not apply for employment authorization and within which the Service must respond to any such application and within which the asylum application must be adjudicated pursuant to section 208(d)(5)(A)(iii) of the Act shall begin when the alien has filed a complete asylum application in accordance with 8 CFR Sections 208.3 and 208.4. Any delay requested or caused by the applicant shall not be counted as part of these time periods, including delays caused by failure without good cause to follow the requirements for fingerprint processing. Such time periods also shall be extended by the equivalent of the time between issuance of a request for evidence under 8 CFR Section 103.2(b)(8) of this chapter and the receipt of the applicant's response to such request.

Effective January 4, 1995, applications for employment authorization based on a new asylum claim shall not be submitted until 150 days have elapsed from the date the United States Citizenship and Immigration Services (USCIS) receives a properly filed asylum application, Form I-589. Please be aware, pursuant to 8 CFR Section 208.7, any delays caused during the processing of the asylum application will postpone the completion of the 150-day period before you may apply for employment authorization.

USCIS records show that you filed a Form I-589 on June 7, 2004. A review of the records indicates that you caused delays in the processing of the asylum application. You caused an adjournment of hearings before an Immigration Judge on September 1, 2004, September 15, 2004, December 16, 2004, May 19, 2005, October 20, 2005, March 9, 2006, and July 20, 2006, thereby postponing the completion of the 150-day period. Therefore, as of the date this Form I-765 was filed, 86 active processing days had elapsed. For that reason, your Application for Employment Authorization (Form I-765) is denied.

The Service Centers that process applications for employment authorization must rely on electronic records in determining the number of days elapsed in the 150-day period. These records are entered and/or changed by the Asylum Office and Immigration Court only. If you feel these records/dates are incorrect you must contact either the Asylum Office or the Immigration Court where your asylum application is in process.

There are no provisions in USCIS regulations that allow for an appeal from this decision. This decision is without prejudice to consideration of subsequent applications for employment authorization filed with the USCIS.

This decision may not be appealed. However, should you disagree with this decision, or have additional evidence you believe shows the decision to be in error, you may submit a Motion to Reopen or a Motion to Reconsider on Form I-290B, Notice of Appeal or Motion, to this office within 33 days from the date of this notice. A copy of Form I-290B is enclosed for your use. A Motion to Reopen must be submitted in writing, state the new facts to be considered, and be supported by affidavits or other new documentary evidence. A Motion to Reconsider must show that the decision was legally incorrect according to statute, regulation, and/or precedent decision. Failure to follow these instructions could result in an unfavorable decision. The motion must be sent to the Vermont Service Center with a filing fee of $585.00 to the following address:

Vermont Service Center
75 Lower Welden Street
St. Albans, VT 05479

For more information about the filing requirements for motions, please see 8 CFR §103.5, visit the USCIS website at www.uscis.gov, or contact the automated Form Request Line by calling 1-800-870-3676.

FINAL NOTE: Title 8, Code of Federal Regulations, Section 265.1 states in pertinent part, "Except for those exempted by section 263(b) of the Act, all aliens in the United States required to register under section 262 of the Act shall report each change of address and new address within 10 days on Form AR-11."

Sincerely,

Daniel M. Renaud
Center Director

Enclosures: I290B

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Vermont Service Center
75 Lower Welden Street
St. Albans, VT 05479

U.S. Citizenship and Immigration Services

January 08, 2009

E+6

A Number:
File Receipt Number:
Applicant/Petitioner Name.
Beneficiary:

Dear Sir/Madam:

On November 24, 2008, you filed an Application for Employment Authorization (Form I-765) pursuant to Title 8, Code of Federal Regulations (8 CFR) Section 274a.12(c)(8). This Application for Employment Authorization is based on your claim of a pending Application for Asylum and Withholding of Removal (Form I-589).

According to 8 CFR Section 208.7(a)(1):

> An applicant for asylum who has not been convicted of an aggravated felony shall be eligible pursuant to 8 CFR Sections 274a.12(c)(8) and 274a.13(a) of this chapter to submit an Application for Employment Authorization (Form I-765). The application shall be submitted no earlier than 150 days after the date on which a complete application for asylum submitted in accordance with 8 CFR Sections 208.3 and 208.4 of this part has been received.

According to 8 CFR Section 208.7(a)(2):

> For purposes of this paragraph (a), the time periods within which the alien may not apply for employment authorization and within which the Service must respond to any such application and within which the asylum application must be adjudicated pursuant to section 208(d)(5)(A)(iii) of the Act shall begin when the alien has filed a complete asylum application in accordance with 8 CFR Sections 208.3 and 208.4. Any delay requested or caused by the applicant shall not be counted as part of these time periods, including delays caused by failure without good cause to follow the requirements for fingerprint processing. Such time periods also shall be extended by the equivalent of the time between issuance of a request for evidence under 8 CFR Section 103.2(b)(8) of this chapter and the receipt of the applicant's response to such request.

Effective January 4, 1995, applications for employment authorization based on a new asylum claim shall not be submitted until 150 days have elapsed from the date the United States Citizenship and Immigration Services (USCIS) receives a properly filed asylum application, Form I-589. Please be aware, pursuant to 8 CFR Section 208.7, any delays caused during the processing of the asylum application will postpone the completion of the 150-day period before you may apply for employment authorization.

USCIS records show that you filed a Form I-589 on February 16, 2007. A review of the records indicates that you caused delays in the processing of the asylum application. You caused an adjournment of hearings before an Immigration Judge on July 9, 2007. In addition, you caused a change of venue on November 28, 2007, thereby postponing the completion of the 150-day period. Therefore, as of the date this Form I-765 was filed, 143 active processing days had elapsed. For that reason, your Application for Employment Authorization (Form I-765) is denied.

The Service Centers that process applications for employment authorization must rely on electronic records in determining the number of days elapsed in the 150-day period. These records are entered and/or changed by the Asylum Office and Immigration Court only. If you feel these records/dates are incorrect you must contact either the Asylum Office or the Immigration Court where your asylum application is in process.

There are no provisions in USCIS regulations that allow for an appeal from this decision. This decision is without prejudice to consideration of subsequent applications for employment authorization filed with the USCIS.

This decision may not be appealed. However, should you disagree with this decision, or have additional evidence you believe shows the decision to be in error, you may submit a Motion to Reopen or a Motion to Reconsider on Form I-290B, Notice of Appeal or Motion, to this office within 33 days from the date of this notice. A copy of Form I-290B is enclosed for your use. A Motion to Reopen must be submitted in writing, state the new facts to be considered, and be supported by affidavits or other new documentary evidence. A Motion to Reconsider must show that the decision was legally incorrect according to statute, regulation, and/or precedent decision. Failure to follow these instructions could result in an unfavorable decision. The motion must be sent to the Vermont Service Center with a filing fee of $585.00 to the following address:

Vermont Service Center
75 Lower Welden Street
St. Albans, VT 05479

For more information about the filing requirements for motions, please see 8 CFR §103.5, visit the USCIS website at www.uscis.gov, or contact the automated Form Request Line by calling 1-800-870-3676.

FINAL NOTE: Title 8, Code of Federal Regulations, Section 265.1 states in pertinent part, "Except for those exempted by section 263(b) of the Act, all aliens in the United States required to register under section 262 of the Act shall report each change of address and new address within 10 days on Form AR-11."

Sincerely,

Daniel M. Renaud
Center Director

Enclosures: I290B

UNITED STATES DEPARTMENT OF JUSTICE
Immigration Court- Boston

Office of the Administrator
JFK Federal Building, Room 320
15 New Sudbury Street
Boston, MA 02203

July 13, 2009

Ex 7

RE: A[redacted], [redacted]

Dear Attorney .

Responding to your inquiry on the matter of the 'clock' on the above captioned matter. The Court does not use a 'clock' for purposes of employment. The Court does maintain a clock to assist it with the statutory requirement of competing asylum cases within an one hundred and eighty day period.

As you are aware the record is quite voluminous and a cursory review of the record I was unable to find particular rulings and/or submissions. I'd ask you to review this record once again to identify the location (page number and/or tape counter number) the following:

- Evidence presented to the Court that biometrics were taken and up to date;
- Pleadings, where you or a predecessor filed a request for an interpreter with skills in a particular dialect unique to your client;
- A ruling by the Court that the I-589 was accepted as an application for asylum (rather that withholding and or CAT) in that the NTA does not reflect a date and place of entry into the United States.

Upon your report I will be better able to determine if the adjournment was coded improperly.

Accordingly, I do not see cause to alter the status of the clock at this time.

The merits hearing is scheduled for September 10, 2009; please be sure your clients biometrics are up to date at that time.

Very truly,
Robert Halpin
Court Administrator

enclosure:
DHS biometric instruction form
BH/ss

cc ROP

UNITED STATES DEPARTMENT OF JUSTICE
Immigration Court- Boston

Office of the Administrator
JFK Federal Building, Room 320
15 New Sudbury Street
Boston, MA 02203

March 9, 2009

Attorney

Ex 8

RE:

Dear Attorney

Responding to your recent inquiry on the matter of the 'clock' on the above captioned matter. The Court does not use a 'clock' for purposes of employment. The Court does maintain a clock to assist it with the statutory requirement of competing asylum cases within an one hundred and eighty day period.

A review of this record of proceeding indicates An initial master calendar hearing was scheduled for December 30, 2008 at which time you entered your appearance, a change of address form (E-33) and pleadings.

The court scheduled the matter for a merits hearing however it appears the Judge noted the lack of biometrics within the record and used an adjournment code that corresponds with the fact evidence of biometrics was not filed. This constitutes an alien caused delay.

The merits hearing is scheduled for March 4, 2010, please be sure your clients biometrics are up to date at that time.

I remain,

Very truly,

Robert Halpin
Court Administrator

enclosure:
DHS biometric instruction form
BH/ss

cc ROP

UNITED STATES DEPARTMENT OF JUSTICE
Immigration Court- Boston

Office of the Administrator
JFK Federal Building, Room 320
15 New Sudbury Street
Boston, MA 02203

March 9, 2009

Ex 9

RE:

Dear Attorney

Responding to your inquiry on the matter of the 'clock' on the above captioned matter. The Court does not use a 'clock' for purposes of employment. The Court does maintain a clock to assist it with the statutory requirement of competing asylum cases within an one hundred and eighty day period.

A review of this record of proceeding indicates on two occasions proceedings were continued in order for the respondents to secure counsel (6-3-08 & 9-2-08). These constitute an alien caused delay. The next hearing was another master calendar (11-18-08) at which the matter was set for a merits hearing for March 8, 2010. The judge, in reviewing the record to assign this date noticed the alien - alien's attorney - alien's had not submitted evidence of biometrics to the Court during any of the appearances at the Immigration Court. This also constitutes an alien caused delay. Consequently, the judge coded the file as such (code 36). Accordingly, I do not see cause to alter the status of the clock.

The merits hearing is scheduled for March 8, 2010; please be sure your clients biometrics are up to date at that time.

Very truly,
Robert Halpin
Court Administrator

enclosure:
DHS biometric instruction form
BH/ss

cc ROP

US Immigration Court-Boston
Office of the Administrator
JFK Federal Building, Room 320
15 New Sudbury Street
Boston, MA 02203
(617) 565-3080

March 20, 2009

EX C

RE:

Dear Attorney

Responding to your student's recent inquiry on the matter of the 'clock' on the above captioned matter. The Court does not use a 'clock' for purposes of employment. The Court does maintain a clock to assist it with the statutory requirement of competing asylum cases within an one hundred and eighty day period.

A review of this record of proceeding indicates:

6-7-07 - Notice to appear is served and a hearing date is set.
7-9-07 - This hearing date is continued at the request of the alien/alien attorney.
12-4-09 - This hearing date is continued after the request for a change of Venue.
1-3-08 - This hearing date is continued to allow the respondet to obtain counsel.
4-3-08 - This hearing date is continued and the Immigration Judge notes evidence of biometrics are not on file (I-797c).
4-22-09 - This hearing date is continued based upon an alien/alien attorney's request for a new hearing date.
6-30-08 - This hearing date is continued and the Immigration Judge notes evidence of biometrics are not on file (I-797c).
8-7-08 - This hearing date is continued on a motion to continue by the alien/alien attorney.
2-27-09 - This hearing date is continued and the Immigration Judge notes evidence of biometrics are not on file (I-797c).

I have reviewed the Immigration Judge's reasons for adjournment and do not see that she erred in her adjournment. All of these adjournment are considered to be alien caused delay.

Accordingly, I do not see cause to alter the status of the clock.

The merits hearing is scheduled for April 15, 2009; please be sure your clients biometrics are up to date at that time.

Very truly,

Robert Halpin
Court Administrator

enclosure:
DHS biometric instruction form
BH/ss

cc ROP

EXHIBIT 6

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WASHINGTON

A.B.T., K.M.-W., G.K., L.K.G., D.W., Individually and on Behalf of All Others Similarly Situated, Plaintiffs, v. U.S. CITIZENSHIP AND IMMIGRATION SERVICES; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Janet NAPOLITANO, Secretary, Department of Homeland Security; Alejandro MAYORKAS, Director, U.S. Citizenship and Immigration Services; Eric H. HOLDER, Jr., Attorney General of the United States; Juan OSUNA, Director, Executive Office for Immigration Review, Defendants.	Civil Action No. **COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF** **CLASS ACTION**

SWORN DECLARATION OF JONATHAN M. KAUFMAN IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

SWORN DECLARATION OF JONATHAN M. KAUFMAN IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

I, Jonathan M. Kaufman, declare under penalty of perjury and in accord with 28 U.S.C. § 1746 as follows:

1. I am an attorney admitted to practice law by the Supreme Court of California. I am also admitted to practice before the United States District Courts for the Northern and Eastern Districts of California, and the United States Courts of Appeals for the Second and Ninth Circuit. I graduated from the Golden Gate University School of Law in 1982. My current business address is 220 Montgomery Street, Suite 976, San Francisco, California 94014.
2. I have been practicing immigration law for 29 years. I am currently self employed and am a sole practitioner.
3. A large percentage of the individuals I represent are asylum applicants. At any given time I represent approximately 100 asylum applicants. In the past year, I represented 100 asylum applicants.
4. In my capacity as a sole practitioner, I represent asylum seekers in immigration proceedings and often assist asylum applicants in their efforts to secure work authorization while they pursue their asylum cases.
5. When I assist my clients with work authorization applications or renewals during the course of their asylum cases, I repeatedly experience problems with the "asylum EAD clock."
6. Problems with the asylum clock occur when the Board of Immigration Appeals (BIA) or a federal court has vacated the denial of an asylum application and

remanded it for further consideration. In such a case, the immigration judge or court administrator will not start or restart the clock. I have not been able to resolve this problem. As a result, my clients have been without work authorization for long periods. I have experienced this problem on more than one occasion. I currently have two cases of clients who are unable to submit employment authorization applications based on this issue.

7. In one case, the client appealed the denial of her asylum application to the BIA. On April 4, 2011, the BIA granted my client's appeal and remanded her asylum application to the Immigration Court for further proceedings and the entry of a new decision. On July 1, 2011 my client applied for work authorization pursuant to 8 C.F.R. § 274a.12(c)(8). On August 6, 2011, her application for work authorization was denied by the U.S. Citizenship and Immigration Services because she allegedly had not accrued the 180 days since filing her asylum application. However, had the clock been restarted after the BIA remanded the case, my client would have accrued the time and the application would have been approved.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 12/9, 2011.

JONATHAN M. KAUFMAN

EXHIBIT 7

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WASHINGTON

A.B.T., K.M.-W., G.K., L.K.G., D.W., Individually and on Behalf of All Others Similarly Situated, Plaintiffs, v. U.S. CITIZENSHIP AND IMMIGRATION SERVICES; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Janet NAPOLITANO, Secretary, Department of Homeland Security; Alejandro MAYORKAS, Director, U.S. Citizenship and Immigration Services; Eric H. HOLDER, Jr., Attorney General of the United States; Juan OSUNA, Director, Executive Office for Immigration Review, Defendants.	Civil Action No. **COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF** **CLASS ACTION**

SWORN DECLARATION OF JUDY LONDON IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

SWORN DECLARATION OF JUDY LONDON IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

I, JUDY LONDON, declare under penalty of perjury and in accord with 28 U.S.C. § 1746 as follows:

1. I am an attorney admitted to practice law before all of the courts of the State of California. I am also admitted to practice before the Ninth Circuit Court of Appeals and the United States District Court in the Central District of California. I graduated from UCLA Law School in 1990. My current business address is Public Counsel, 610 S. Ardmore Ave., Los Angeles, California 90005.
2. I have been practicing immigration law for 17 years. I am currently the Directing Attorney of Public Counsel's Immigrants' Rights Project ("IRP").
3. A large percentage of the IRP's clients are low income or indigent asylum applicants. At any given time IRP attorneys and volunteer attorneys recruited by the IRP represent approximately 75 asylum applicants. (This number varies over time, as we are constantly closing cases and opening new cases.)
4. In my capacity as IRP's Directing Attorney, I represent asylum seekers in removal proceedings before the Immigration Judge ("IJ"), the Board of Immigration Appeals ("BIA") and the Ninth Circuit Court of Appeals. I also provide ongoing technical assistance to dozens of volunteer attorneys representing asylum applicants referred by my agency. I often assist asylum applicants in their efforts to secure work authorization and provide technical

assistance to volunteer attorneys who are assisting their asylum clients in obtaining work authorization.

5. When I assist my clients with work authorization applications or renewals during the course of their asylum cases, I repeatedly experience problems with the asylum EAD clock. I also frequently am contacted by volunteer attorneys who experience problems with the asylum EAD clock.

6. A common problem relating to the clock occurs when asylum applicants cannot return to immigration court within a reasonable time to file an initial asylum application, and are therefore precluded from starting the asylum EAD clock running. For instance, approximately two years ago, I was retained to represent a mother and daughter seeking asylum days before their master calendar hearing at the Los Angeles Immigration Court. The clients were indigent and were seeking asylum based on severe past persecution in Guatemala. Both mother and daughter were in dire need of therapy to deal with severe post traumatic stress disorder. Without any income, the clients did not have money to pay for therapy. At the court hearing, I explained to the immigration judge ("IJ") that I had only just been retained, but would be ready within weeks to file completed asylum applications. The IJ set the next hearing nine months away, and, as a result, my clients could not even begin to accrue 180 days on the asylum EAD clock for another nine months. (The IJ became enraged at me for requesting an earlier hearing.)

7. When I have addressed the problem with lengthy continuances with IJs and specifically argued for an earlier date given my clients' need to work, I have

nearly always been given the same response, which is that the IJs have no control over the asylum EAD clock and that they are not at fault for their overcrowded schedules. Frequently, IJs have exhibited anger that I am bringing up the work permit issue. Of course, the IJs do control the asylum EAD clock, and asylum applicants are required to file their applications at a noticed court hearing.

8. On many occasions, I need only a brief continuance to be ready to present an asylum claim. I have often appeared at a master calendar hearing for an asylum client and informed the IJ that I need additional time to obtain corroborating evidence. (Since the enactment of Real ID ACT, the efforts one makes to corroborate asylum claims are absolutely critical to success on the merits of the case.) On many occasions, I have estimated the additional time I need to obtain a piece of evidence and made a request for several weeks or several months continuance. Instead of giving me a two month continuance, an IJ will continue my case for a year or more. The IJ will then stop the asylum EAD clock until the next hearing, even though I have only requested a brief continuance and am in no way responsible for causing a much lengthier delay.

9. In addition, problems with the asylum clock occur when the BIA or a federal court has remanded a case for further consideration of the asylum application. I have not been able to resolve this problem. As a result, clients have been without work authorization for long periods, even when they have prevailed on appeal. On one occasion, I consulted with a volunteer lawyer handling an

asylum case on appeal. When the case was appealed to the BIA, the asylum clock actually moved backward. The clock had reached 180 days but was reset to 140 days. The volunteer attorney was not provided any information whatsoever concerning the reason for the clock moving backward. The matter was never resolved. While ultimately, on remand, the client was granted asylum making the asylum clock issue moot, s/he was deprived of work authorization until then.

10. I am currently litigating a case that has been pending since 2003. The clock was permanently stopped before the IJ at 172 days in 2004. The case was appealed to the BIA and then to the Ninth Circuit Court of Appeals. After approximately six years of litigation, the Ninth Circuit ruled in favor of my client, finding that the IJ's adverse credibility finding was contrary to the law. The Ninth Circuit remanded the case back to the BIA for a new decision on July 16, 2010. It was not until December 7, 2010, that the BIA, in response to the Ninth Circuit Order, vacated its prior decisions in this case and remanded the case back to the IJ, ordering the IJ to assess my client's asylum eligibility on the existing record. It was not until January 31, 2011 that the Los Angeles immigration court scheduled a remanded hearing in this case, at which my client reasserted his entitlement to asylum based on the existing record and the rulings from the Ninth Circuit and the BIA. The IJ in this case is not the same IJ who heard the case back in 2003. She is now insisting that the case start over as she contends she cannot assess my client's eligibility for relief without holding a near hearing. Because of my contention that the BIA order requires

the IJ to issue a decision on the existing record, the IJ has certified her decision back to the BIA for clarification. However, the clock remains permanently stopped at eight days short of the necessary 180 days, even though my client has in no way taken action to delay a final order in this case since the remanded hearing on January 31, 2011. No explanation was provided as to why the clock remains stopped.

11. The IJs and court administrators do not routinely notify me or my clients, in open court or otherwise, of decisions regarding the asylum EAD clock or the impact of the asylum EAD clock on the client's applications for work authorization. An immigration court clerk has sometimes provided information about the asylum EAD clock when I have inquired about the status of the clock. I have never heard an IJ inform an attorney or a respondent about actions that can be taken to address the clock stoppage. I routinely respond to calls from volunteer attorneys asking how one determines the reasons that an asylum EAD clock was stopped and how one challenges the stopping of the clock. I now advise volunteer attorneys to contact the court administrator to ask who the appropriate court clerk is to address the issue and then to follow up with that court clerk. If the clerk cannot or will not address the issue, I advise the volunteer attorneys to file a motion with the IJ to request a correction in regard to the asylum EAD clock. Our volunteer

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attorneys have had mixed success in resolving problems with the asylum EAD clock through communication with the court clerks and IJs.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Los Angeles, California on December 9th, 2011.

By: _____
Judy London

EXHIBIT 8

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WASHINGTON

A.B.T., K.M.-W., G.K., L.K.G., D.W., Individually and on Behalf of All Others Similarly Situated, Plaintiffs, v. U.S. CITIZENSHIP AND IMMIGRATION SERVICES; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Janet NAPOLITANO, Secretary, Department of Homeland Security; Alejandro MAYORKAS, Director, U.S. Citizenship and Immigration Services; Eric H. HOLDER, Jr., Attorney General of the United States; Juan OSUNA, Director, Executive Office for Immigration Review, Defendants.	Civil Action No. **COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF** **CLASS ACTION**

SWORN DECLARATION OF MEGAN KLUDT IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

SWORN DECLARATION OF MEGAN KLUDT IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

I, Megan Kludt, declare under penalty of perjury and in accord with 28 U.S.C. § 1746 as follows:

1. I am an attorney admitted to practice law in the Massachusetts Supreme Judicial Court and all the courts of the Commonwealth of Massachusetts. I am also admitted to practice before United States District Court for the Massachusetts District. I am in inactive member of the State Bar of Michigan, in good standing. I graduated from Boston University School of Law in 2006. My current business address is 74 Masonic St., Northampton, MA 01060.
2. I have been practicing immigration law for five years. I am currently an associate attorney at Curran & Berger, LLC. From October of 2006 through October of 2010, I practiced at Joyce & Associates, PC in Boston, MA.
3. At Curran & Berger, I generally represent about five asylum applicants at any given time. Between 2006 and 2010, at Joyce & Associates, I represented approximately 30 asylum applicants at any given time.
4. In my capacity as an immigration attorney, I have often represented asylum seekers in immigration proceedings and often assisted asylum applicants in their efforts to secure work authorization while they pursue their asylum cases.
5. When I have assisted my clients with work authorization applications or renewals during the course of their asylum cases, I have repeatedly experienced problems with the "asylum clock."

6. I have recently experienced a major problem with the asylum clock in a case where the Board of Immigration Appeals or a federal court remanded a case for further consideration of the asylum application. In these cases, the immigration judge or court administrator will not start or restart the clock. I have not been able to resolve this problem. As a result, my clients have been without work authorization for long periods.

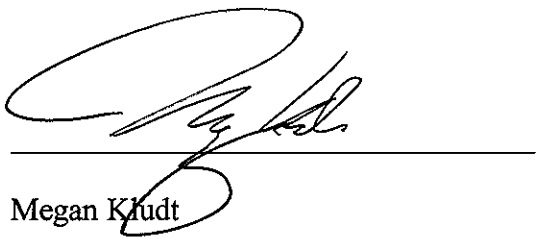
7. In my recent case, the applicant filed an affirmative asylum application on August 15, 2002 and the clock was started. The applicant attended interview and was referred to court. On November 18, 2002, the applicant's attorney requested rescheduling of the hearing. The clock was stopped at 95 days. On March 3, 2003, the applicant attended an individual hearing, but the immigration judge denied asylum and ordered removal, leaving the clock stopped at 95 days. The case was appealed to the Board of Immigration Appeals, and the Board remanded the case to the Immigration Judge. The applicant did not attend the remanded hearing because he was not informed of it and the Immigration Judge issued an in absentia removal order. The applicant filed a motion to reopen with the immigration court, which was granted on March 25, 2008. The clock was not restarted. The immigration court pretermitted the applicant's asylum application, and the applicant appealed this decision to the Board of Immigration Appeals. The Board again remanded the case, specifically for adjudication of the application for asylum. The applicant attended a second master hearing on the asylum application in remanded proceedings in early 2011 and he is scheduled to appear for an

individual hearing in 2012. The clock remains stopped at 95 days. The Applicant has been pursuing his asylum application for nine years, and has never received employment authorization.

8. The immigration judges and court administrators rarely if ever notify me or my clients, in open court or otherwise, of decisions regarding the asylum clock or the impact of the asylum clock on the client's applications for work authorization. Nor have I or my clients ever been provided with clear instructions about what actions can be taken to address the clock stoppage.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 7, 2011.



Megan Kludt

EXHIBIT 9

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WASHINGTON

A.B.T., K.M.-W., G.K., L.K.G., D.W., Individually and on Behalf of All Others Similarly Situated, Plaintiffs, v. U.S. CITIZENSHIP AND IMMIGRATION SERVICES; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Janet NAPOLITANO, Secretary, Department of Homeland Security; Alejandro MAYORKAS, Director, U.S. Citizenship and Immigration Services; Eric H. HOLDER, Jr., Attorney General of the United States; Juan OSUNA, Director, Executive Office for Immigration Review, Defendants.	Civil Action No. **COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF** **CLASS ACTION**

SWORN DECLARATION OF NATALIE HANSEN IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

SWORN DECLARATION OF NATALIE HANSEN IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

I, Natalie Hansen, declare under penalty of perjury and in accord with 28 U.S.C. § 1746 as follows:

1. I am an attorney admitted to practice law by the Supreme Court of Oregon. I graduated from Seattle University School of Law in 2009. My current business address is American Gateways, 314 E. Highland Mall Blvd., Ste. 501, Austin, Texas 78752.
2. I am currently the Director of Pro Bono Programs and Staff Attorney of American Gateways, formally the Political Asylum Project of Austin.
3. One of American Gateways' main pro bono projects is the Asylum Law Project. As the Director of Pro Bono Programs, I place and supervise a large number of asylum cases with pro bono attorneys. At any given time I supervise approximately 25 asylum cases. In the past year, I represented or supervised a total of thirty asylum applicants, including my current clients and pro bono cases. I provide pro se workshops and legal education to hundreds of detained asylum seekers each month at the T. Don Hutto women's immigration detention center in Taylor, Texas.
4. In my capacity as an attorney with American Gateways, I represent asylum seekers in immigration proceedings and often assist asylum applicants in their efforts to secure work authorization while they pursue their asylum cases. In my capacity as the Director of Pro Bono Programs with American Gateways, I assist pro bono attorneys to do the same.

5. When I assist my clients during the course of their asylum cases, I repeatedly experience problems with the "asylum clock."

6. One problem with the clock that I am aware of occurs when my clients are not permitted to "file" a complete asylum application with the court until a scheduled hearing. During the weeks and months before the scheduled hearing date, my clients' asylum clocks do not run, even though they have submitted, have attempted to submit, or could submit a complete application. I have not been able to resolve this problem, and as a result, my clients have been without work authorization for long periods. I currently have nine cases of clients who are unable to submit employment authorization applications based on this issue, and have had three additional cases with this issues in the past year. Of these twelve cases, six asylum applications have been or will soon be lodged for purposes of the one-year statutory deadline for asylum applications.

7. In one illustrative case, Ms. X, a Guatemalan citizen, entered the United States in April 2011. She fled Guatemala to escape extreme abuse and death threats from her husband. Ms. X was detained at the Hutto immigration detention center, where she passed a credible fear interview and was released from detention on bond. Ms. X's Master Calendar Hearing is September 6, 2012; approximately eighteen months after her entry into the United States. She will have to file her complete asylum application with the immigration court before April 2012 – and thus about four months before her Master Calendar hearing – in order to avoid the statutory bar on asylum for filing an asylum

application more than a year after entering the United States. However, even when she does file her complete asylum application with the immigration court, her asylum EAD clock will not begin to run until September 2012.

8. In one illustrative case, Mr. J, a Nepali citizen, entered the United States in March 2011. He fled Nepal to escape forced recruitment and torture by the Nepali Communist (Maoist) Party. Mr. J was kidnapped and tortured by the Moaists, and seeks asylum based on his political opinion. Mr. J was detained at the South Texas Detention Center in Pearsall, Texas, where he passed a credible fear interview and was released from detention on bond. Mr. J's first Master Calendar Hearing after release from detention is June 3, 2013; approximately twenty-seven months after his entry into the United States. He will have to file his complete asylum application with the immigration court before March 2012 in order to avoid the statutory bar on asylum for filing an asylum application more than a year after entering the United States. However, even when he does file his complete asylum application with the immigration court, his asylum EAD clock will not begin to run until June 2013.

9. An immigration judge or court administrator has never notified my clients, in open court or otherwise, of decisions regarding the asylum clock or the impact of the asylum clock on the client's applications for work authorization. The court administrator has only provided information about the asylum clock when my client or I have inquired about the status of the clock. Nor I or my

clients have ever been provided with adequate instructions about what actions can be taken to address the clock issues described above.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 12/9/2011

Natalie Hansen

EXHIBIT 10

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WASHINGTON

A.B.T., K.M.-W., G.K., L.K.G., D.W., Individually and on Behalf of All Others Similarly Situated, Plaintiffs, v. U.S. CITIZENSHIP AND IMMIGRATION SERVICES; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Janet NAPOLITANO, Secretary, Department of Homeland Security; Alejandro MAYORKAS, Director, U.S. Citizenship and Immigration Services; Eric H. HOLDER, Jr., Attorney General of the United States; Juan OSUNA, Director, Executive Office for Immigration Review, Defendants.	Civil Action No. **COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF** **CLASS ACTION**

SWORN DECLARATION OF PAULA ENGUIDANOS IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

SWORN DECLARATION OF PAULA ENGUIDANOS IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

I, Paula Enguidanos, declare under penalty of perjury and in accord with 28 U.S.C. § 1746 as follows:

1. I am an attorney admitted to practice law by the Washington State Supreme Court. I am also admitted to practice before Western District of Washington. I graduated from Seattle University in 2003. My current business address is 4444 Woodland Park Ave North, Ste. B101, Seattle, WA 98103.
2. I have been practicing immigration law for over five years. I am currently a partner in the law firm of Seattle Immigration and Family Law Group, PS.
3. A large percentage of the individuals I represent are asylum applicants. At any given time I represent approximately 25-30 asylum applicants. In the past year, I represented a total of 50 asylum applicants, including my current clients.
4. In my capacity as an attorney with Seattle Immigration and Family Law Group, PS, I represent asylum seekers in immigration proceedings and during this process I always assist my asylum applicant clients in their efforts to secure work authorization while they pursue their asylum cases.
5. When I assist my clients with work authorization applications or renewals during the course of their asylum cases, I repeatedly experience problems with the "asylum EAD clock."
6. One problem with the clock that I am aware of occurs when my client is not permitted to "file" a complete asylum application with the court until the first

scheduled hearing. During the weeks and months before the first scheduled hearing date, my client's asylum EAD clock does not run, even though he or she has submitted or has attempted to submit a complete application with the immigration court. Over the last year, I have had approximately 11 cases in which this was a problem, including 10 current cases of clients who are unable to submit employment authorization applications based on this issue. I have not been able to resolve this problem, and as a result, my clients have been without work authorization for long periods. .

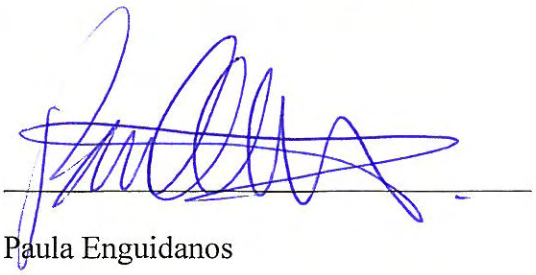
7. In one illustrative case, the complete application for asylum was submitted to the Seattle Immigration Court on December 1, 2010, prior to the Master Calendar hearing. The Court considered the application to be "lodged" rather than "filed" because it was not submitted at a Master Calendar hearing. This was true even though I filed the application with the immigration clerk in the same way that I file documents other than asylum applications with the clerk. These other documents always are considered "filed" when I do this. In this case, the clock failed to start at the time the application was "lodged" with the Immigration Court, and has yet to start.

8. The immigration judges and court administrators rarely if ever notify me or my clients, in open court or otherwise, of decisions regarding the asylum clock or the impact of the asylum clock on the client's applications for work authorization. The Court Administrator has occasionally provided information about the asylum clock when my client or I have inquired about the status of the clock. The issue of the clock stoppage is a critical one with

my clients, many of whom are here without much support, as they wait, sometimes for years, to have their cases heard.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 30, 2011.



Paula Enguidanos

EXHIBIT 11

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WASHINGTON

A.B.T., K.M.-W., G.K., L.K.G., D.W., Individually and on Behalf of All Others Similarly Situated, Plaintiffs, v. U.S. CITIZENSHIP AND IMMIGRATION SERVICES; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Janet NAPOLITANO, Secretary, Department of Homeland Security; Alejandro MAYORKAS, Director, U.S. Citizenship and Immigration Services; Eric H. HOLDER, Jr., Attorney General of the United States; Juan OSUNA, Director, Executive Office for Immigration Review, Defendants.	Civil Action No. **COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF** **CLASS ACTION**

SWORN DECLARATION OF TAHIRIH JUSTICE CENTER IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

SWORN DECLARATION OF THE TAHIRIH JUSTICE CENTER IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

I, SHERIZAAN MINWALLA, declare under penalty of perjury and in accord with 28 U.S.C. § 1746 as follows:

1. I am an attorney admitted to practice law by the Supreme Court of Illinois. I graduated from the Chicago-Kent College of Law in 2002. My current business address is 6402 Arlington Blvd, Falls Church, Virginia.
2. I have been practicing immigration law for nine years. I am currently the Director of Legal and Social Services of the Tahirih Justice Center.
3. Tahirih has offices in Falls Church, Virginia; Houston, Texas; and Baltimore, Maryland. The business address of the national headquarters is: Tahirih Justice Center, 6402 Arlington Blvd Suite 300, Falls Church, Virginia 22042.
4. The Tahirih Justice Center (Tahirih) is one of the nation's foremost legal defense organizations protecting women and girls fleeing human rights abuses. Through direct legal services, public policy advocacy, and public education and outreach, since 1997, Tahirih has assisted over 12,000 immigrant women and children from all over the world fleeing such abuses as domestic violence, sexual assault, human trafficking, torture, female genital mutilation, "honor" crimes, and forced marriage. Tahirih also leads national advocacy campaigns on a range of issues, building on our direct services experiences, to press for systemic changes in laws, policies, and practices to better protect women and girls from violence.

5. A large percentage of the individuals Tahirih represents are asylum applicants. At any given time Tahirih attorneys are representing approximately 60-100 asylum applicants. In the past year, Tahirih represented 110 asylum applicants.
6. Tahirih represents asylum seekers in immigration proceedings and often assists asylum applicants in their efforts to secure work authorization while they pursue their asylum cases.
7. Tahirih attorneys assisting clients with work authorization applications or renewals during the course of their asylum cases repeatedly experience problems with the "asylum EAD clock." Tahirih does not specifically track asylum EAD clock problems. However, I would estimate that of the 96 asylum clients that Tahirih is currently representing, approximately 19 are experiencing problems with the asylum EAD clock and difficulty obtaining work authorization.
8. One problem with the clock that Tahirih is aware of occurs when clients are not permitted to "file" a complete asylum application with the court until the first scheduled hearing. During the weeks and months before the first scheduled hearing date, Tahirih's clients' asylum EAD clocks do not run, even though the individual has filed or has attempted to file a complete application. Tahirih attorneys have been unable to resolve this problem, and as a result, Tahirih clients end up being without work authorization for long periods. While Tahirih does not specifically track these problems, our attorneys have had at least 1 case this year in which this was a problem.
9. In addition, problems with the asylum EAD clock occur when the Board of Immigration Appeals (BIA) or a federal court has vacated the denial of an asylum application and remanded it for further consideration. In these cases, the immigration judge or court administrator will not start or restart the clock. Tahirih attorneys have

not been able to resolve this problem. As a result, Tahirih clients have been without work authorization for long periods. Tahirih has experienced this problem on numerous occasions. While Tahirih does not specifically track these problems, Tahirih currently has one client who is unable to submit an employment authorization application based on this issue, as well as two additional such cases this past year in our area of services (Virginia, Maryland, Texas, and the District of Columbia).

10. Tahirih attorneys have also experienced situations where immigration judges or court administrators have failed to notify their clients, in open court or otherwise, of decisions regarding the asylum EAD clock or the impact of the asylum EAD clock on the client's applications for work authorization. The immigration court and/or court administrators have only occasionally provided information about the asylum EAD clock when Tahirih attorneys or clients have inquired about the status of the clock. Tahirih attorneys or clients are rarely provided with adequate instructions on what actions can be taken to address the clock stoppage. This lack of transparency is particularly problematic when delays in proceedings are incorrectly attributed to Tahirih clients and the immigration judge or court administrator improperly stops the clock. Tahirih has experienced this problem on numerous occasions. Over the last year, Tahirih has had approximately 3 cases in which this was a problem, including two current cases involving clients who are unable to submit employment authorization applications based on this issue. In these cases, it has been difficult, if not impossible, to get the clock restarted even when evidence is presented that the client was not responsible for the delay.
11. In one illustrative case, a Tahirih client from Liberia who faced persecution at the hands of Charles Taylor's regime, filed a pro se application for asylum in March of 2009 at the asylum office and was referred to immigration court. After requesting a

continuance in order to retain counsel, the client's clock was stopped at 126 days. The client appeared at the master calendar hearing in June 2009 with counsel and an individual hearing date was set for April 2010. In preparation for the hearing, the client's pro bono attorney filed a Freedom of Information Act (FOIA) request. A FOIA provides the only means of discovering the contents of the government file on a person who is in removal proceedings. As a result of this FOIA request, the client's file was pulled to send to the FOIA office, and contrary to the policy of the Immigration Court, a copy was not retained on site. Therefore, when the DHS trial attorney attempted to access the file to prepare for trial, the file was not available. As a result, a few weeks before the April 2010 hearing date, the DHS trial attorney filed a motion to continue, which client's counsel did not join. The motion was granted and a new master hearing date was set for September 2010. The client's counsel communicated with the judge's chambers, asking for the clock to be restarted but was told that "the immigration judge has no power to do anything about the clock." The client's counsel then filed a motion to restart the clock, which was denied, on the grounds that the delay was attributable to the client because she had filed a FOIA request that made the file unavailable to DHS. At the September 2010 master calendar hearing, a new individual hearing date was set for July 2011 – 15 months after the originally scheduled hearing. The July 2011 hearing was continued to September, and the September 2011 hearing has been continued to December 2011 due to the immigration judge's interest in having both parties agree on the formulation of "social group" in this client's case. During this entire time, the clock was not running, despite multiple requests from counsel for the clock to be restarted. Work authorization would have dramatically altered the life of this client while she waited for her hearing date. Forced to rely on others for her basic needs such as food

and shelter and requiring ongoing mental health treatment to recover from the years of torture she endured in her home country, the lack of employment authorization and the inability to become self-sufficient was and continues to be extremely detrimental to her well-being.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 30, 2011.

SHERIZAAN MINWALLA
Director of Legal and Social Services, Tahirih Justice Center

EXHIBIT 12

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WASHINGTON

A.B.T., K.M.-W., G.K., L.K.G., D.W., Individually and on Behalf of All Others Similarly Situated, Plaintiffs, v. U.S. CITIZENSHIP AND IMMIGRATION SERVICES; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Janet NAPOLITANO, Secretary, Department of Homeland Security; Alejandro MAYORKAS, Director, U.S. Citizenship and Immigration Services; Eric H. HOLDER, Jr., Attorney General of the United States; Juan OSUNA, Director, Executive Office for Immigration Review, Defendants.	Civil Action No. **COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF** **CLASS ACTION**

SWORN DECLARATION OF STACY TOLCHIN IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

SWORN DECLARATION OF STACY TOLCHIN IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

I, Stacy Tolchin, declare under penalty of perjury and in accord with 28 U.S.C. § 1746 as follows:

1. I am an attorney admitted to practice law by the California Supreme Court. I am also admitted to the United States Supreme Court and the United States Courts of Appeals for the Ninth, Tenth, and Second Circuits. I graduated from UCLA School of Law in 2001. My current business address is Law Offices of Stacy Tolchin, Suite 714, 634 S Spring Street, Los Angeles, CA 90014.
2. I have been practicing immigration law for ten years. Prior to establishing the Law Offices of Stacy Tolchin in December 2010, I was a staff attorney with Van Der Hout, Brigagliano & Nightingale, LLP, a San Francisco-based immigration law firm.
3. A large percentage of the individuals I represent are asylum applicants. At any given time I represent approximately six to ten asylum applicants. In the past year, I represented approximately ten asylum applicants, including my current clients.
4. In my capacity as an attorney at the Law Offices of Stacy Tolchin, I represent asylum seekers in immigration proceedings and often assist asylum applicants in their efforts to secure work authorization while they pursue their asylum cases.

5. When I assist my clients with work authorization applications or renewals during the course of their asylum cases, I repeatedly experience problems with the "asylum clock."

6. Problems with the asylum clock occur when the Board of Immigration Appeals or a federal court has remanded a case for further consideration of the asylum application. In these cases, the immigration judge or court administrator will not start or restart the clock. I have not been able to resolve this problem. As a result, my clients have been without work authorization for long periods. Over the last year, I have had approximately five clients, all family members, in which this was a problem.

7. The family applied for asylum on October 16, 1996. The asylum EAD clocks in their cases were stopped at 114 days, and their asylum applications were denied by the Immigration Judge on March 19, 1998. They appealed this decision to the Board of Immigration Appeals and the Ninth Circuit Court of Appeals. While their case was pending, they submitted a motion to reopen for asylum based on changed circumstances, which was granted by the Board on April 13, 2010 and remanded to the Immigration Court. Their individual hearing is scheduled for February 8, 2012. Despite sending requests to the court administrator to start the clock, the family's asylum EAD clocks remain stopped at 114 days and the Executive Office for Immigration Review has informed me that it is the policy of the agency to not restart the clock when there is an asylum remand from the Board of Immigration Appeals.

8. The immigration judges and court administrators rarely if ever notify me or my clients, in open court or otherwise, of decisions regarding the asylum clock or the impact of the asylum clock on the client's applications for work authorization. The Court Administrator has only provided information about the asylum clock when my client or I have inquired about the status of the clock, after repeated letters, telephone calls, and badgering of court staff. Nor have I or my clients ever been provided with clear instructions about what actions can be taken to address the clock stoppage. My efforts to remedy even simple errors in calculations of time on the asylum EAD clock have been successful in some cases, but only after at least five calls to court staff and repeated letters.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 12/12, 2011.

Stacy Tolchin

EXHIBIT 13

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WASHINGTON

A.B.T., K.M.-W., G.K., L.K.G., D.W., Individually and on Behalf of All Others Similarly Situated, Plaintiffs, v. U.S. CITIZENSHIP AND IMMIGRATION SERVICES; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Janet NAPOLITANO, Secretary, Department of Homeland Security; Alejandro MAYORKAS, Director, U.S. Citizenship and Immigration Services; Eric H. HOLDER, Jr., Attorney General of the United States; Juan OSUNA, Director, Executive Office for Immigration Review, Defendants.	Civil Action No. **COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF** **CLASS ACTION**

SWORN DECLARATION OF VANESSA ALLYN IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

SWORN DECLARATION OF VANESSA ALLYN IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

I, Vanessa Allyn, declare under penalty of perjury and in accord with 28 U.S.C. § 1746 as follows:

1. I am an attorney admitted to practice law by the Court of Appeals of Maryland. I am also admitted to practice before the United States District Court for the District of Maryland. I graduated from Willamette University College of Law in 2006. My current business address is 100 Maryland Avenue NE, Suite 500, Washington, D.C., 20002.
2. I have been practicing immigration law for five years. I am currently the Staff Attorney in the Washington DC office of Human Rights First (HRF) and I work in the Asylum Legal Representation Program.
3. The Asylum Legal Representation Program at HRF represents indigent asylum applicants both in the affirmative and defensive process. We strictly limit our practice to the representation of asylum seekers, and this is true in both our New York and Washington DC offices. At any given time, our organization represents or assists in the representation of approximately 750 asylum applicants.
4. In my capacity as an attorney with Human Rights First, I represent or assist in the representation of asylum seekers in immigration proceedings. As a result, I often assist asylum applicants in their efforts to secure work authorization while they pursue their asylum cases. My counterpart attorneys in our New York office do the same.

5. When I or our volunteer *pro bono* attorneys assist clients with work authorization applications or renewals during the course of their asylum cases, we repeatedly experience problems with the "asylum clock."
6. One problem with the clock that I am aware of occurs when our clients who are initiating their asylum claim with the immigration court are not permitted to "file" a complete asylum application with the court until the first scheduled hearing. During the weeks and months before the first scheduled hearing date, my client's asylum clock does not run, even though he or she has submitted or is prepared to submit a complete application. Over the last year, our offices have had approximately 20 cases in which this was a problem. We are not able to resolve this problem for these clients, and as a result, they must go without work authorization for long periods of time, or they are not able to accrue days on the clock even though they are not the cause of any kind of delay in proceedings.
7. In one recent and illustrative case, one of our asylum clients sought to enter the United States by presenting himself to a Customs and Border Protection agent at a border checkpoint. He identified himself as an asylum seeker, was immediately detained, and eventually given a credible fear interview and Notice to Appear, the charging document that places him in removal proceedings. He was then released from detention on humanitarian parole and his case was assigned to the non-detained docket. Once he relocated to the DC Metro area, he came to our organization where we admitted him into our *pro bono* representation program. He and his attorneys were prepared to file

the asylum application and proceed with his case at least three months before his immigration court hearing date. However, because the client was required to file the application in open court, and when contacted by telephone the court the court indicated that no other hearing dates were available, his asylum EAD clock remained stopped for the entire time before his first hearing date. This delayed his ability to work and care for himself for a significant period of time and created a great deal of undue hardship for the client.

8. As a matter of course, ICE trial attorneys, immigration judges and/or court administrators do not notify our clients, in open court or otherwise, of decisions regarding the asylum clock or the impact of the asylum clock on the client's applications for work authorization. Nor, from my own personal observations, do any court officials advise *pro se* clients regarding the possibility or reasons why a work authorization clock is stopped in their cases. In addition to lack of notice, I have never seen or received adequate instructions on what actions can be taken to address clock stoppages. I find that I must regularly educate clients and attorneys about strategies for incorrect application or use of the clock as there is no other source of information available to them regarding this serious and life-impacting matter. If I did not do this, I know that many more of our clients would suffer from incorrectly managed or permanently stopped clocks. I also know that but for these interventions, the level of hardship on our asylum seeking clients would be even greater than it already is.

9. In one illustrative case, a client's *pro se* case was referred to immigration court from the local asylum office in late 2010. At that time, 27 days had accrued on his work authorization clock. The client's case was set for a first master calendar hearing 66 days after the date of his referral. At his first master calendar hearing, he appeared *pro se* and requested a continuance in order to seek *pro bono* counsel, as he could not afford an attorney and was afraid to proceed on his own. At this time, the clock was correctly stopped at 93 days as the client in fact caused the delay. The client came to our organization, we admitted him into our *pro bono* program, and he appeared with counsel at his next master calendar hearing in April 2011. At that hearing, the client pled to the charges, filed his asylum application, confirmed that his fingerprints were current, and accepted the first available merits hearing date in September 2011. At this April 2011 hearing, with the appearance of counsel, all delay caused by the applicant was resolved. Assuming that the clock had restarted, we waited until he would have accrued sufficient time on the asylum EAD clock and had him apply for an EAD. However, when the applicant applied for work authorization, his application was rejected for a "lack of adequate days" elapsed on the work authorization clock, even though, by that date, he had clearly accrued more than the minimum 180 days. After investigation with the court administrator, we discovered that the clock had not been properly restarted. Despite numerous pleas, letters, and telephone calls, the correct number of days was never added to the clock and it remains stopped with the incorrect total. Further, because

the client exercised his right to appeal his case to the Board of Immigration Appeals, the immigration court claims that even if the court administrator decided to correct the error (though she has declined to do so), the court is divested of jurisdiction over the case. As a result, the clock remains frozen at the wrong number of days and there is no court or authority available to us for an appeal or reconsideration of the immigration court's error. Had the EAD clock calculations been corrected before his BIA appeal, he would have been eligible under the regulations for an EAD throughout his BIA appeal – which can take more than a year.

10. In another illustrative case, a client and his *pro bono* attorney appeared before the Baltimore Immigration Court at a master calendar hearing in early June 2011. The client plead to the charges, filed the asylum application in open court, kept his fingerprints current, and accepted the first available merits hearing date that the immigration judge offered, which was for late January 2012. During the hearing, the attorney volunteered that he would be supplementing the record with timely-filed additional evidence as allowed by the Immigration Court Practice Manual reasoning that the most up-to-date country conditions would be more relevant if given closer to the 2012 trial date. However, the *pro bono* attorney did not indicate at any point that he was unable to proceed with the case or seek a delay in the January 2012 hearing date. When it was time to file for the client's work authorization, the *pro bono* attorney was alarmed to discover that the client's clock had in fact been stopped. He immediately contacted the court administrator to correct this

error. The attorney was told that merely stating that he might supplement the record in any way was considered a respondent caused delay – even when the next hearing date was not delayed – and that the clock would remain stopped until the merits hearing in late January 2012. The client is currently unable to work or care for himself while he waits for his merits hearing. This error—as well as the court's refusal to correct it despite numerous calls, letters, and pleas—has obviously caused the client great and continuing hardship.

11. Lastly, I would like to note that I have personally been forced to change or alter representation strategies due to the mismanagement of the work authorization clock in immigration court. This can materially affect the substantive case of the client in serious ways. These consequences can range from the inability of the client to obtain counsel or to maintain representation, to the withdrawal of the claim because the client cannot withstand the hardship of living in the United States without the ability to work and pay for housing, clothing, food, or even the most basic human needs. Further, as the immigration court backlogs increase and waiting times for a hearing grow longer, this problem will only grow worse. This state of affairs is disheartening to say the least; however, it rises to the level of fundamental unfairness when it is clear that, but for gross mismanagement of the clock, these clients are eligible for and entitled to work authorization.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 8, 2011.

Vanessa Allyn

EXHIBIT 14

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WASHINGTON

A.B.T., K.M.-W., G.K., L.K.G., D.W., Individually and on Behalf of All Others Similarly Situated, Plaintiffs, v. U.S. CITIZENSHIP AND IMMIGRATION SERVICES; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Janet NAPOLITANO, Secretary, Department of Homeland Security; Alejandro MAYORKAS, Director, U.S. Citizenship and Immigration Services; Eric H. HOLDER, Jr., Attorney General of the United States; Juan OSUNA, Director, Executive Office for Immigration Review, Defendants.	Civil Action No. **COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF** **CLASS ACTION**

SWORN DECLARATION OF YEIMI G. MARTINEZ MICHAEL IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

SWORN DECLARATION OF YEIMI G. MARTINEZ MICHAEL IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

I, Yeimi G. Martinez Michael, declare under penalty of perjury and in accord with 28 U.S.C. § 1746 as follows:

1. I am an attorney admitted to practice law by the Supreme Court of the State of California. I am also admitted to practice before the United States Court of Appeals for the Ninth Circuit. I graduated from Loyola Law School in 2004. My current business address is 523 W. 6th Street, Suite 737, Los Angeles, CA 90014.
2. I have been practicing immigration law for the past five and a half years. I am currently the Senior Litigation Associate at Hill, Piibe & Villegas.
3. A large percentage of the individuals I represent are asylum applicants. At any given time I represent approximately 30-40 asylum applicants. In the past year, I represented a total of 32 asylum applicants, including my current clients.
4. In my capacity as an attorney with Hill, Piibe & Villegas, I represent asylum seekers in immigration proceedings and often assist asylum applicants in their efforts to secure work authorization while they pursue their asylum cases.
5. When I assist my clients with work authorization applications or renewals during the course of their asylum cases, I repeatedly experience problems with the "asylum clock."
6. Problems with the asylum clock occur when the Board of Immigration Appeals or a federal court has remanded a case for further consideration of the

asylum application. In these cases, the immigration judge or court administrator will not start or restart the clock. I have not been able to resolve this problem. As a result, my clients have been without work authorization for long periods.

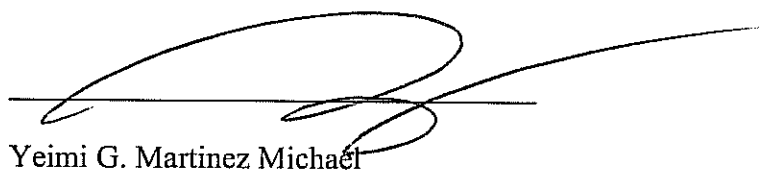
7. In one illustrative case, two young brothers from Guatemala were placed in removal proceedings after entering the United States in or around August 2004. Due to case processing delays, among other reasons, these two young men did not have a hearing on the merits of their application for Asylum until in or around March 2007. After the Immigration Judge denied their case, an appeal was filed with the Board of Immigration Appeals. The Board remanded their case back to the Immigration Judge in or around November 2007. At the time, there were zero number of days on their clock. Their first master calendar hearing before an immigration judge was held on February 20, 2008. If their clocks had have been started upon remand, they would have had over 180 days on their asylum EAD clock by August 18, 2008. However, due in part to case processing delays, these two young brothers were not afforded a hearing on the merits of their asylum application until about July 2010. Although we requested in writing that their asylum clocks be started following the remand, the Court Administrator – through a brief telephone conversation – advised that the clock could not be started following a remand from the Board. At no point did the Court Administrator provide us with a more detailed explanation. Also, and what I find even more disturbing, is that these two young brothers were left with no further recourse because of the

lack of procedures for review of the Court Administrator's decision to not start the clock.

8. The immigration judges and court administrators rarely if ever notify me or my clients, in open court or otherwise, of decisions regarding the asylum clock or the impact of the asylum clock on the client's applications for work authorization. The immigration judges and court administrator rarely provide information about the asylum clock when my client or I have inquired about the status of the clock. Nor have I or my clients ever been provided with clear instructions about what actions can be taken to address the clock stoppage. My efforts to remedy even simple errors in calculations of time on the asylum EAD clock are generally unsuccessful.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 1, 2011.



Yeimi G. Martinez Michael

EXHIBIT 16

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WASHINGTON

A.B.T., K.M.-W., G.K., L.K.G., D.W., Individually and on Behalf of All Others Similarly Situated, Plaintiffs, v. U.S. CITIZENSHIP AND IMMIGRATION SERVICES; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Janet NAPOLITANO, Secretary, Department of Homeland Security; Alejandro MAYORKAS, Director, U.S. Citizenship and Immigration Services; Eric H. HOLDER, Jr., Attorney General of the United States; Juan OSUNA, Director, Executive Office for Immigration Review, Defendants.	Civil Action No. **COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF** **CLASS ACTION**

SWORN DECLARATION OF MATT ADAMS IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 SECOND AVE., STE. 400
SEATTLE, WA 98104
TELEPHONE (206) 957- 8611
FAX (206) 587-4025

DECLARATION OF MATT ADAMS

I, Matt Adams, hereby declare:

1) I am an attorney at law, admitted in the State of Washington and currently employed by Northwest Immigrant Rights Project (NWIRP) in Seattle, Washington. I am one of the counsel for Plaintiffs in this matter.

2) I am employed as the Legal Director for Northwest Immigrant Rights Project's (NWIRP), at 615 Second Ave., Ste. 400, Seattle, Washington, 98104. I have been working as an immigration attorney at NWIRP for the last thirteen years. From June 1998 to July of 2005, I worked at NWIRP's Eastern Washington office, in Granger, Washington, first as a Staff Attorney and later as the Directing Attorney of that office. In June of 2005, I became the Litigation Director, working out of NWIRP's Seattle office. In July of 2006, I assumed my current position as Legal Director of NWIRP. In this role, I am responsible for supervising all attorneys and legal staff in the Seattle and Tacoma offices and directing all litigation by NWIRP on behalf of clients before the federal district courts and the Court of Appeals.

3) During the last thirteen years, I have litigated cases and personally argued on behalf of immigrants before Immigration Judges; the Board of Immigration Appeals; Federal District Courts, including the Eastern and Western Districts of Washington; and the Ninth Circuit Court of Appeals. I also have litigated three class actions on behalf of immigrants, one as lead counsel. *Roshandel v. Chertoff*, 554 F.Supp.2d 1194 (W.D.Wash. 2008) (successful class action on behalf of 450 naturalization applicants); *Gonzales v. U.S. Dept. of Homeland Sec.*, 239 F.R.D. 620 (W.D.Wash. 2006) (certification granted for circuit-wide class, preliminary injunction vacated on appeal); *Franco-Gonzales v. Holder*, No. CV 10-02211 DMG (C.D. Cal 2011) (class certification granted

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November 21, 2011, on behalf of detained persons in removal proceedings in California, Washington and Arizona).

4) I am the legal director for Northwest Immigrant Rights Project. NWIRP is a non-profit organization that provides direct representation to low-income immigrants who are applying for asylum, both with affirmative applications before the U.S. Citizenship and Immigration Services (USCIS), and as relief in removal proceedings before the Immigration Court, the Board of Immigration Appeals (BIA), and the Federal Court of Appeals. NWIRP also recruits and trains pro bono attorneys to represent asylum seekers before the USCIS, the Immigration Court, the BIA, and the Federal Court of Appeals.

5) Neither myself, NWIRP, or our co-counsel are receiving reimbursement from the individual plaintiffs or class members in this case. All counsel in this case are qualified and capable of adequately and fairly representing the interests of the class.

I declare under penalty of perjury that the foregoing is true and correct. Executed in Seattle, WA on December 12, 2011.

By: S/ Matt Adams
Matt Adams

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 SECOND AVE., STE. 400
SEATTLE, WA 98104
TELEPHONE (206) 957- 8611
FAX (206) 587-4025

EXHIBIT 17

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WASHINGTON

A.B.T., K.M.-W., G.K., L.K.G., D.W., Individually and on Behalf of All Others Similarly Situated, Plaintiffs, v. U.S. CITIZENSHIP AND IMMIGRATION SERVICES; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Janet NAPOLITANO, Secretary, Department of Homeland Security; Alejandro MAYORKAS, Director, U.S. Citizenship and Immigration Services; Eric H. HOLDER, Jr., Attorney General of the United States; Juan OSUNA, Director, Executive Office for Immigration Review, Defendants.	Civil Action No. **COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF** **CLASS ACTION**

SWORN DECLARATION OF CHRISTOPHER STRAWN IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

I, Christopher Strawn, hereby declare:

1) I am an attorney at law, admitted in the State of Washington and currently employed by the Northwest Immigrant Rights Project (NWIRP) in Seattle, Washington. I am one of the counsel for Plaintiffs in this matter.

2) I have litigated two class action complaints as co-counsel on behalf of immigrants. *Roshandel v. Chertoff*, Case No. C07-1739 (W.D. Wash.), and *Lee v. Ashcroft*, C04-449 (W.D. Wash.). Classes were certified in both cases. I have worked as a staff attorney and the asylum attorney at the Northwest Immigrant Rights Project since January 2006. Before that, from 2003 to 2005, I was an associate at the law firm Gibbs Houston Pauw, working solely on immigration issues. I was a Law Clerk to the Honorable Chief Judge Marsha J. Pechman, Western District of Washington, from 2001 to 2003. I graduated from Harvard Law School in 2001.

3) I am the asylum staff attorney at NWIRP. Founded in 1984, NWIRP's roots were in addressing the legal needs of Central American refugees and others who were able to legalize their status under Amnesty programs. NWIRP has grown significantly in scope and currently serves low-income immigrants and refugees from more than 100 countries across Latin America, Asia, the Middle East, Eastern and Western Europe and Africa.

4) Neither NWIRP nor I are receiving reimbursement from the individual plaintiffs or class members in this case.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 15, 2011.

s/ Christopher Strawn

Christopher Strawn
NW Immigrant Rights Project
615 Second Avenue, Suite 400
Seattle, WA 98104
206.957.8628

EXHIBIT 18

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WASHINGTON

A.B.T., K.M.-W., G.K., L.K.G., D.W., Individually and on Behalf of All Others Similarly Situated, Plaintiffs, v. U.S. CITIZENSHIP AND IMMIGRATION SERVICES; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Janet NAPOLITANO, Secretary, Department of Homeland Security; Alejandro MAYORKAS, Director, U.S. Citizenship and Immigration Services; Eric H. HOLDER, Jr., Attorney General of the United States; Juan OSUNA, Director, Executive Office for Immigration Review, Defendants.	Civil Action No. **COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF** **CLASS ACTION**

SWORN DECLARATION OF MELISSA CROW IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

DECLARATION OF MELISSA CROW
IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

I, Melissa Crow, hereby declare:

1. I am currently the Director of the Legal Action Center at the American Immigration Council in Washington, DC. I am one of the counsel for the Plaintiffs in this case.

2. I received a J.D. degree from New York University School of Law in 1994 and am admitted to practice law before the courts of the States of New York, Maryland and the District of Columbia, the U.S. District Court for the District of Columbia, the U.S. District Court for the District of Maryland, the U.S. Court of Appeals for the Ninth Circuit, and the U.S. Supreme Court.

3. I have practiced immigration law since 2000. During that time, I have personally litigated cases and/or supervised law students in litigating cases on behalf of noncitizens before immigration judges, the Board of Immigration Appeals, and federal district courts. I have litigated cases on behalf of *amici curiae* before the Ninth Circuit Court of Appeals, the Board of Immigration Appeals, and state courts. I have also litigated class and collective actions on behalf of noncitizens, including *Gonzalez Corrado et al. v. Tempo, Inc. et al.*, No. 1:2008cv02759, and *Lopez et al. v. NTI, LLC et al.*, No. 8:2008cv01579, both in the U.S. District Court for the District of Maryland, where I served as lead counsel, and *Castellanos-Contreras et al. v. Decatur Hotels, LLC et al.*, No. 06-4340, in the U.S. District Court for the Eastern District of Louisiana, where I was admitted *pro hac vice* and served as co-counsel.

4. From November 2007 to January 2010, I was a partner with Brown, Goldstein Levy LLP, a prominent public interest and civil rights law firm in Baltimore, Maryland. As a result of our work on *Lopez et al. v. NTI, LLC et al.*, the firm received the "Outstanding Achievement Award in the Field of Immigrant and Refugee Rights" from the Washington Lawyers' Committee for Civil Rights and Urban Affairs.

5. Previously, I taught in the Safe Harbor Project at Brooklyn Law School and the International Human Rights Clinic at American University's Washington College of Law. In both positions, I supervised second and third-year law students on immigration cases. I also spent a year as the Gulf Coast Policy Attorney at the National Immigration Law Center in Washington, DC, where I undertook a range of litigation and policy initiatives on behalf of immigrant workers in post-Katrina New Orleans. In addition, I worked as an associate in the Washington, DC office of Foley Hoag LLP, where I handled immigration matters for foreign governments.

6. The American Immigration Council, where I am currently employed, is a non-profit organization established in 1987 to increase public understanding of immigration law and policy, to promote the just and fair administration of our immigration laws, and to protect the constitutional and legal rights of noncitizens. To this end, the Council's Legal Action Center engages in impact litigation before administrative tribunals and federal courts in significant immigration cases on targeted legal issues.

7. Neither the American Immigration Council nor I are receiving reimbursement from any individual plaintiff or class member in this case. Together with co-counsel, I will fairly and adequately protect the interests of the individual plaintiffs

and the proposed class and possess the commitment and resources to prosecute the case as a class action.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Washington, DC on December 12, 2011.

Melissa Crow

Melissa Crow

EXHIBIT 19

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WASHINGTON

A.B.T., K.M.-W., G.K., L.K.G., D.W., Individually and on Behalf of All Others Similarly Situated, Plaintiffs, v. U.S. CITIZENSHIP AND IMMIGRATION SERVICES; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Janet NAPOLITANO, Secretary, Department of Homeland Security; Alejandro MAYORKAS, Director, U.S. Citizenship and Immigration Services; Eric H. HOLDER, Jr., Attorney General of the United States; Juan OSUNA, Director, Executive Office for Immigration Review, Defendants.	Civil Action No. **COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF** **CLASS ACTION**

SWORN DECLARATION OF MARY KENNEY IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

DECLARATION OF MARY A. KENNEY
IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

I, Mary A. Kenney, hereby declare:

1. I am currently Senior Attorney at the Legal Action Center at the American Immigration Council in Washington, DC. I am one of the counsel for the Plaintiffs in this case.

2. I received a J.D. degree from Antioch Law School in 1983 and am admitted to practice law before the courts of the State of West Virginia, the Courts of Appeals for the First, Second, Third, Fourth, Fifth, Seventh, Eighth, Ninth and Eleventh Circuits, the U.S. District Court for the Northern District of West Virginia and the U.S. District Court for the Northern District of Texas.

3. I have practiced immigration law since 1994, first at the Lawyers' Committee for Civil Rights Under Law of Texas and, since 2001, with the American Immigration Council. During that time, I have litigated cases on behalf of noncitizens before the Board of Immigration Appeals, federal district courts in the Northern, Southern and Western Districts of Texas, and the Fifth Circuit Court of Appeals. I have litigated cases on behalf of *amicus curiae* before the Board of Immigration Appeals, federal district courts in New York and California (appearing *pro hac vice*), and the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, and Eleventh Circuits.

4. I have also litigated class actions on behalf of noncitizens, including *Ngwanyia v. Ashcroft*, 302 F. Supp. 2d 1076 (D. Minn. 2004) (national class action on behalf of 30,000 asylees seeking lawful permanent residence); *Aparicio v. Blakeway*, 302 F.3d 437, 440 (5th Cir. 2002) (class action on behalf of former agricultural workers

applying for citizenship in the San Antonio INS district); *Domingez Perez v. Reno*, 1:96-0016 (S.D. Tex. 1996) (class action on behalf of U.S. citizens in south Texas seeking proof of citizenship from INS); *Berhea v. Reno*, 4:96 01093 (S.D. Tex. 1996) (national class action on behalf of refugees seeking to have their spouses and children join them in the U.S.); *Rodriguez v. Neeley*, 7:96-00085 (W.D. Tex. 1996) (class action on behalf of noncitizens subject to immigration enforcement by county probation office and INS); and *Cedillo-Perez v. INS*, 4:94-02461 (S.D. Tex. 1994) (class action on behalf of noncitizens subject to immigration enforcement by local police and INS).

4. From 1983 to 1994 I worked for a legal services program in West Virginia. While there, I litigated on behalf of low income individuals in the federal district court and the Fourth Circuit Court of Appeals, as well as in state courts. During this time, I served as co-counsel in two class actions on behalf of social security disability and SSI disability applicants and recipients. *Kennedy v. Shalala*, 995 F. 2d 28 (4th Cir. 1993); *Boring v. Sullivan*, No. 2:91-0429 (S.D. W.V. 1991)

5. Neither the American Immigration Council nor I are receiving reimbursement from any individual plaintiff or class member in this case. Together with co-counsel, I will fairly and adequately protect the interests of the individual plaintiffs and the proposed class and possess the commitment and resources to prosecute the case as a class action.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Washington, DC on December 16, 2011.

s/ Mary Kenney
Mary Kenney

EXHIBIT 20

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WASHINGTON

A.B.T., K.M.-W., G.K., L.K.G., D.W., Individually and on Behalf of All Others Similarly Situated, Plaintiffs, v. U.S. CITIZENSHIP AND IMMIGRATION SERVICES; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Janet NAPOLITANO, Secretary, Department of Homeland Security; Alejandro MAYORKAS, Director, U.S. Citizenship and Immigration Services; Eric H. HOLDER, Jr., Attorney General of the United States; Juan OSUNA, Director, Executive Office for Immigration Review, Defendants.	Civil Action No. **COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF** **CLASS ACTION**

SWORN DECLARATION OF EMILY CREIGHTON IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

DECLARATION OF EMILY CREIGHTON

I, Emily Creighton, hereby declare:

1) I am a Staff Attorney at the American Immigration Council in Washington, D.C. I am one of the counsel for Plaintiffs in this matter.

2) I received a J.D. from American University Washington College of Law in 2006 and am admitted to practice before the courts of the state of Maryland, the First Circuit Court of Appeals, and the Eleventh Circuit Court of Appeals.

3) I have practiced immigration law as a Staff Attorney at the LAC since October of 2006, shortly after I graduated from law school. During that time, I have represented amicus curiae numerous times before the Board of Immigration Appeals. *Matter of L-T-* (BIA amicus filed Sept. 14, 2010); *Matter of Alla Adel Alyazji* (amicus filed Jan. 21, 2010); *Matter of Ibrahim Sheasha,* (amicus filed Jan. 15, 2010); *In re Yue Song* (BIA amicus filed Jan. 7, 2010); *In Re Anchalee Satidkunakorn* (amicus filed Nov. 23, 2009); *In Re Qiyu Zhang* (amicus filed Nov. 17, 2009); and *In Re Ting Ting Chi* (amicus filed Oct. 28, 2009).

4) I have also represented amicus curiae in several federal courts of appeals around the country, including the Eleventh Circuit Court of Appeals, the First Circuit Court of Appeals, the Seventh Circuit Court of Appeals, and the Fifth Circuit Court of Appeals. *Safadi v. Atty. Gen. of the United States, et al.,* No. 09-12123-JJ (11th Cir. amicus filed June 23, 2009); *Fei Bian v. Hillary Clinton,* No. 09-10568 (5th Cir. amicus filed July 16, 2010); *Poliakova v. Gonzalez,* No. 08-13313 (11th Cir. amicus filed Aug. 18, 2008); *Vorontsova v. Chertoff,* No. 08-1052 (1st Cir. amicus filed July 16, 2008); and

Liu v. Mukasey, No. 07-3538 (7th Cir. amicus filed Jan. 18, 2008). I am currently "Of Counsel" in *AILA v. DHS*, No. 10-01224 (D.D.C. filed Dec. 10, 2010).

5) The American Immigration Council is a non-profit organization established in 1987 to increase public understanding of immigration law and policy, to promote the just and fair administration of our immigration laws, and to protect the constitutional and legal rights of noncitizens. To this end, the Council's Legal Action Center engages in impact litigation before administrative tribunals and federal courts in significant immigration cases on targeted legal issues.

6) I am not personally, nor is the American Immigration Council or our co-counsel, receiving reimbursement from the individual plaintiffs or class members in this case. Together with co-counsel, I will fairly and adequately protect the interests of the individual plaintiffs and the proposed class and possess the commitment and resources to prosecute the case as a class action.

I declare under penalty of perjury that the foregoing is true and correct. Executed in Washington, DC on December 13, 2011.

By: s/ Emily Creighton

Emily Creighton

EXHIBIT 21

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WASHINGTON

A.B.T., K.M.-W., G.K., L.K.G., D.W., Individually and on Behalf of All Others Similarly Situated, Plaintiffs, v. U.S. CITIZENSHIP AND IMMIGRATION SERVICES; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Janet NAPOLITANO, Secretary, Department of Homeland Security; Alejandro MAYORKAS, Director, U.S. Citizenship and Immigration Services; Eric H. HOLDER, Jr., Attorney General of the United States; Juan OSUNA, Director, Executive Office for Immigration Review, Defendants.	Civil Action No. **COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF** **CLASS ACTION**

SWORN DECLARATION OF ROBERT PAUW IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

DECLARATION

I, Robert Pauw, hereby make the following statements:

1. I am an attorney licensed to practice in the State of Washington. I submit this Declaration in support of the Plaintiffs' Motion for Class Certification, and to describe my experience in handling class action lawsuits involving immigration cases.

2. I have been practicing immigration law since 1987. From April 1987 to December 1993 I worked for the Northwest Immigrants Rights Project (NWIRP) and its predecessor organization, the Washington Immigration Project. From January 1994 to the present I have been a partner in the law firm of Gibbs Houston Pauw. In addition, I teach immigration law as an adjunct professor at Seattle University School of Law. I have handled many lawsuits in federal court involving immigration issues, including class action lawsuits. Attached is a copy of my resume, which includes a partial list of the immigration cases in which I acted as counsel.

3. I affirm, under penalty of perjury, that all of the foregoing statements are true and correct to the best of my knowledge.

Dated this 15th day of December, 2011.

s/ Robert Pauw

Robert Pauw

ROBERT PAUW
GIBBS HOUSTON PAUW
1000 Second Avenue, Suite 1600
Seattle, WA 98104
(206) 682-1080

I. EDUCATION

HARVARD LAW SCHOOL, J.D. 1983

Activities: International Law Journal, Editor-in-Chief

CORNELL UNIVERSITY, Ph.D. 1980 (Philosophy)

CALVIN COLLEGE, B.A. 1974 (Philosophy and Mathematics)

II. EMPLOYMENT AND TEACHING EXPERIENCE

1994-present	Gibbs Houston Pauw Partner in law firm specializing in immigration law and litigation
2003-present	AILF Litigation Training Institute Faculty Member
1986-present	Seattle University School of Law Adjunct Professor--Immigration Law
1987-1993	Northwest Immigrant Rights Project (formerly Washington Immigration Project) Attorney assisting low-income individuals in immigration matters, including administrative appeals and litigation
1983-1987	Davis Wright & Jones, Seattle, WA Areas of practice--Commercial Litigation and Immigration Law

III. LITIGATION

Counsel for plaintiffs in the following lawsuits:

Wayne Smith and Hugo Armendariz v. United States, Case No. 12.562 (IACHR 2010)(challenge to U.S. deportation policies adopted in IIRIRA as violating the American Declaration on the Rights and Duties of Man)

Ruiz-Diaz v. United States, 618 F.3d 1055 (9th Cir. 2010) (nationwide class action lawsuit challenging CIS policy of refusing to allow religious workers to file concurrent I-360/I-485 applications)

Morales-Izquierdo v. Gonzales, 477 F.3d 691 (9th Cir. 2007) (en banc), 388 F.3d 1299 (9th Cir. 2004) (challenge to DHS policy of reinstating prior orders of deportation)

Perez-Enriquez v. Gonzales, 463 F.3d 1007 (9th Cir. 2006) (en banc) (individuals who obtained permanent residence under the SAW legalization program are eligible for waivers of deportation)

Quezada-Bucio v. Ridge, 317 F.Supp.2d 1221 (W.D.Wash. 2004) (challenge to DHS policy of mandatory detention for certain non-citizens)

Immigrant Assistance Project v. INS, 306 F.3d 842 (9th Cir. 2002), 976 F.2d 1198 (9th Cir. 1992), 717 F.Supp. 1444, 709 F.Supp. 998 (W.D.Wash. 1989) (class action lawsuit challenging the INS's interpretation of "known to the Government" and "continuous unlawful residence" for purposes of the legalization program)

Proyecto San Pablo v. INS, 189 F.3d 1130 (9th Cir. 1999), 4 F.Supp. 2d 881 (D.Ariz.1997), 70 F.3d 1279 (9th Cir. 1995), 784 F.Supp. 738 (D.Az. 1991) (class action lawsuit on behalf of legalization applicants who were deported after January 1, 1982)

Walters v. Reno, 145 F.3d 1032 (9th Cir. 1998) (class action lawsuit challenging procedures used by the Immigration Service in assessing penalties for use of false documents)

Gete v. INS, 121 F.3d 1285 (9th Cir. 1997) (class action lawsuit challenging procedures used by the Immigration Service in seizure and forfeiture cases)

Reno v. Catholic Social Services, 509 U.S. 43 (1993) (class action lawsuit brought for the benefit of certain individuals attempting to apply for legalization)

INS v. Legalization Assistance Project, 510 U.S. 1301 (1993) (stay of injunctive relief for the benefit of legalization applicants)

UFW v. INS, Civ.No. S-87-1064-LKK (E.D.Cal. 1989), see Interpreter Releases, Vol. 66, No. 16 (April 24, 1989), pp. 452, 460-471 (class action lawsuit on behalf of SAW legalization applicants challenging the procedures used in adjudicating SAW applications and the burden of proof imposed by INS)

IV. PUBLICATIONS

Litigating Immigration Cases in Federal Court (2009)

Pauw and Boos, “Reasserting the Right to Representation in Immigration Matters Arising at Ports of Entry”, 9 Bender’s Immigration Bulletin 385 (April 2004)

“Plenary Power: An Outmoded Doctrine”, 51 Emory L.Jl. 1095 (2002)

"Judicial Review of Deportation and Removal Cases," Immigration and Nationality Law Handbook (2001-02 edition), published by American Immigration Lawyers Association

"Deportation as Punishment", 52 Admin. L. Rev. 305 (2000)

"Judicial Review of 'Pattern and Practice' Cases," 70 Washington L.Rev. 781 (1995)

Fitzpatrick and Pauw, "Foreign Policy, Asylum and Discretion," 28 Willamette L.Rev. 751 (1992)

"Seasonal Agricultural Workers," Immigration and Nationality Law (1989 annual), published by American Immigration Lawyers Association

Gibbs and Pauw, "Known to the Government," Interpreter Releases vol. 66, no. 11 (March 20, 1989)

"The Refugee Act of 1980," 21 Harv. Int'l L.J. 742 (1980)

V. PROFESSIONAL ACTIVITIES

West Coast Mennonite Central Committee
2008-present Board of Directors

American Immigration Council
2005-2010 Board of Trustees

American Immigration Lawyers Association
1999-2005 Board of Governors
2004-2005 Chair, Due Process Committee
2000-2003 Chair, Amicus Committee
1998-1999 INS General Counsel Liaison Committee
1992-1994 Chair, Amicus Committee
1991-1992 Executive Committee, Washington State Chapter
1988-1989 Chair, Committee on Legalization

VI. AWARDS

AILA Jack Wasserman Award for Excellence in Litigation (1999)
NWIRP Amicus Award (2006)
NLG Carol King Award (2009)

EXHIBIT 22

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WASHINGTON

A.B.T., K.M.-W., G.K., L.K.G., D.W., Individually and on Behalf of All Others Similarly Situated, Plaintiffs, v. U.S. CITIZENSHIP AND IMMIGRATION SERVICES; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Janet NAPOLITANO, Secretary, Department of Homeland Security; Alejandro MAYORKAS, Director, U.S. Citizenship and Immigration Services; Eric H. HOLDER, Jr., Attorney General of the United States; Juan OSUNA, Director, Executive Office for Immigration Review, Defendants.	Civil Action No. **COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF** **CLASS ACTION**

SWORN DECLARATION OF ROBERT H. GIBBS IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

I, Robert H. Gibbs, make the following declaration under penalty of perjury, in support of plaintiffs' class certification motion:

1. I am a founding partner in the law firm of GIBBS HOUSTON PAUW, solely practicing immigration law, with a concentration on litigation. This firm began in 1990. Previously I was for 13 years a partner in the law firm of Gibbs, Douglas, Theiler & Drachler. My practice has emphasized immigration law and litigation since 1977. I am a 1974 graduate of the University of Washington School of Law. I have received the highest rating from Martindale Hubbell. My partner Robert Pauw and I were awarded the Litigators of the Year Award by the national American Immigration Lawyers Association in 2002, as well as the 2009 litigation award (Carole King) of the National Immigration Project.

2. I am a past Chairman of the Washington State Chapter of the American Immigration Lawyers Association ("AILA"), and have served on various national AILA liaison committees such as Northern Service Center, Labor Department, Worksite Compliance, FOIA, and the Executive Office of Immigration Review. I am a founding Board member of the Northwest Immigrant Rights Project, a statewide program funded by the Legal Foundation of Washington.

3. I am a frequent lecturer on immigration litigation topics at CLE's sponsored by the Washington State Bar Association and the national and Washington State chapter of the American Immigration Lawyers Association.

4. I have substantial experience in immigration class actions, beginning in 1988, which have improved the legal protections for non-citizens in immigration procedures:

A. ***Walters v. Reno***, 145 F. 3d 1032 (9th Cir., 1998), ***cert denied*** 119 S. Ct. 1140 (1999) (successful national class action challenging INS procedures in document fraud cases).

B. ***Gete v. INS,*** 121 F.3d 1285 (9th Cir., 1997) (successful class action challenge to INS vehicle seizure practices).

C. ***Immigrant Assistance Project v. INS***, 709 F. Supp 998 (W.D. Wash., 1989), ***aff'd*** 976 F.2d 1198, ***rev'd on procedural grounds and remanded***, 114 S. Ct. 594, 306 F. 3d 842 (9th Cir., 2002), ***sub nom, NWIRP v. USCIS,*** order approving settlement, No. 88-379R (W.D. Wash, Sept . 9, 2008) (successful national class action challenge to certain INS amnesty procedures).

D. ***Proyecto San Pablo v. INS***, 784 F. Supp 738 (D. Ariz. 1991), 189 F.3d 1130 (9th Cir., 1999), enforcing trial judgment No. CV-89-456-TUC (D. Ariz., June 6, 2007)(successful class action challenge to certain amnesty regulations).

E. ***UFW v. INS***, Civ S 87-1064 JFM (E.D. Calif., Sept. 18. 1990), (successful class action challenge to INS's regulations concerning SAW amnesty applications).

F. ***Reno v. Catholic Social Services***, 113 S. Ct. 2485 (1993), ***CSS v. Ridge***, No. Civ. S-86-1343-LKK (E.D. Cal., Jan. 23, 2004) (order approving settlement; see http://www.uscis.gov/files/article/CSS_Settlement.pdf) (successful class action challenge to amnesty regulation).

G. ***Lopez v. INS***, No. 78-1912 WMB (C.D. Cal., Aug. 20, 1992), (class action challenge to INS questioning of detained aliens without warnings of rights, settlement discussed at 70 No. 5 ***Int. Releases*** 151, 160-68 (Feb. 1, 1993).

H. ***Alejandre-Corona v. Dole***, (August 2, 1991, 9th Cir. No. 90-35428), (class action challenge to the Department of Labor certification of an application for H-2A visas for apple pickers).

I. ***Gorbach v. Reno***, 181 FRD 642; 1998 US Dist Lexis 11734; ***vacated and remanded,*** 219 F.3d 1087 (9th Cir. 1999), ***en banc***; order issued for plaintiff class, 2001 WL 34145464 (Feb. 14, 2001, W.D. Wash.,)(successful challenge to administrative denaturalization procedures).

J. ***Lee v. Gonzales***, C04-449 RSL (Feb. 16, 2006. W.D. Wash.,), *settlement posted at* http://uscis.gov/graphics/lawsregs/SEA-subst.pdf. (successful statewide class action challenge to Seattle CIS denials of naturalization on character grounds, settlement requiring reopening of hundreds of cases).

K. ***Ruiz-Diaz v. USCIS***, No. 2:07-cv-01881-RSL, 2009 WL 799683 (W.D. Wash.,), *reversed and remanded,* 618 F.3d 1055 (9th Cir., 2010), (national class action challenge to discriminatory procedures for adjustment of status of ministers and other religious workers).

L. ***Li et al v. USCIS,*** Case No. C10-00798-RAJ (W.D. Wash.) (national class action challenge to CIS and State Department misallocation of employment based visas for applicants from China.)

DATE: December 15, 2011

/s/ Robert H. Gibbs

ROBERT H. GIBBS, WSBA 5932

EXHIBIT 23

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WASHINGTON

A.B.T., K.M.-W., G.K., L.K.G., D.W., Individually and on Behalf of All Others Similarly Situated, Plaintiffs, v. U.S. CITIZENSHIP AND IMMIGRATION SERVICES; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Janet NAPOLITANO, Secretary, Department of Homeland Security; Alejandro MAYORKAS, Director, U.S. Citizenship and Immigration Services; Eric H. HOLDER, Jr., Attorney General of the United States; Juan OSUNA, Director, Executive Office for Immigration Review, Defendants.	Civil Action No. **COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF** **CLASS ACTION**

SWORN DECLARATION OF IRIS GOMEZ IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

DECLARATION OF IRIS GOMEZ

1. I am an attorney admitted to practice law by the Massachusetts Supreme Judicial Court. I graduated from Boston University School of Law in 1980. I am also admitted to practice before the United States Supreme Court, the United States Court of Appeals for the First Circuit, and the United States District Court of Massachusetts, and I have appeared *pro hac vice* in federal courts in Rhode Island and Minnesota and in Washington courts. Since 1992, I have been employed as a staff attorney at the Massachusetts Law Reform Institute, the state's legal services support center, where I direct the Immigrants Protection Project (IPP). My current business address is 99 Chauncy St., Suite 500, Boston, MA 02111. Previously, I was employed as a Senior Staff Attorney at Greater Boston Legal Services, where I specialized in asylum law, and as a farm worker attorney and a public defender. I have also taught Immigration Law at Boston area law schools, including Boston University School of Law and Boston College Law School, for over 20 years.

2. During the above-described time periods, I have been involved in numerous class action, habeas corpus, and appellate cases as well as trial court litigation and administrative agency appeals, with a particular emphasis on asylum and refugee law and the rights of immigrants to procedural due process. Asylum-related litigation I have counseled, co-counseled or appeared in as *amicus curiae* includes the following federal court cases: *Ngwanyia v. Ashcroft,* 302 F.Supp. 2d 1076 (D. Minn. 2004); *Morales v. INS*, 208 F.3d 323 (1st Cir. 2002); *Jobe v. INS*, 238 F.3d 96 (1st Cir. 2001) (*en banc*); *INS v. Aguirre-Aguirre*, 526 U.S. 415 (1999); *Gabriel v. INS*, No. 96-11131-DPW (1st Cir. 1996); *Cordero-Trejo v. INS,* 40 F.3d 482 (1st Cir. 1994); and *Bajwa v. Cobb*, 727

F.Supp. 53 (D.Mass. 1989). I have also co-counseled or appeared as *amicus curiae* in the following federal court cases addressing due process rights of aliens in removal proceedings, state court cases involving immigrants' procedural rights in other matters, and other immigration rights cases: *Chen v. Collins*, Mass. Super. Ct. Civ. Act. No. 2006-5197-B (2011); *DeOliveira v. Bunker Hill Community College*, Mass. Super. Ct. Civ. Act. No. 06-5386 (2010); *Saysana v. Gillen,* 590 F.3d 7 (1st Cir. 2009); *Aguilar v. U.S. ICE,* 510 F.3d 1 (1st Cir. 2007); *Parinejad v. U.S. ICE*, 501 F.Supp.2d 280 (D.Mass. 2007); *Succar v. Ashcroft*, 394 F.3d 8 (1st Cir. 2005); *Cho v. Gonzales*, 404 F.3d 96 (1st Cir. 2005); *El Moraghy v. Ashcroft*, 331 F.3d 195 (1st Cir. 2003); *Commonwealth v. Hilaire*, 437 Mass. 809 (2002); *Doe v. McIntire*, 12 Mass.L.Rptr. 731 (Mass. Super., 2001); *Commonwealth v. Soto*, 431 Mass. 340 (2000); and *Davila-Bardales v. INS*, 27 F.3d 1 (1st Cir. 1994). I have also appeared as *amicus curiae* in several Board of Immigration Appeals (BIA) cases involving the procedural rights of aliens, including *In re Assaad*, 23 I&N Dec. 553 (BIA 2003) and *Matter of Villalba-Sinaloa*, 21 I&N Dec. 842 (BIA 1997).

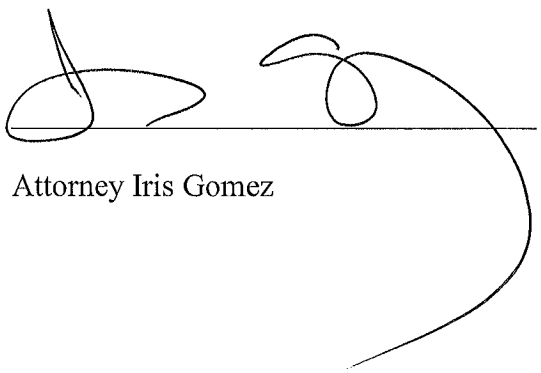
3. The class action immigration cases I have co-counseled in the federal courts include: *Aguilar v. Mukasey* 510 F.3d 1 (1st Cir. 2007) and *Ngwanyia v. Ashcroft,* 302 F.Supp. 2d 1076 (D. Minn. 2004) (a nationwide class). Other class action litigation I've co-counseled includes: *Chen v. Collins*, Mass. Super. Ct., Civ. Act. No. 2006-5197-B (2011), which involved immigrants driver license eligibility and procedures; a damages class action under the former Farm Labor Contractor Registration Act; and a class action for civil rights violations.

4. My immigration law publications include a law review article concerning the procedural rights of immigrants, *The Consequences of Nonappearance*, 30 San Diego Law Review 75 (1993), that has been cited in a number of federal circuit court opinions, including the following: *Saravia-Paquada v. Gonzalez*, 488 F.3d 1122 (9th Cir. 2007); *Flores-Chavez v. Ashcroft,* 362 F.3d 1150 (9th Cir. 2004); *Socop-Gonzalez v. INS*, 272 F.3d 1176(9th Cir. 2001); *Singh v. INS*, 213 F. 3d 1050 (9th Cir. 2000); *Shaar v. INS*, 141 F.3d 953 (9th Cir. 1998); *Magdaleno de Morales v. INS*, 116 F.3d 145 (5th Cir. 1997); and *Romero-Morales v. INS*, 25 F.3d 125 (2d Cir. 1994).

5. Neither my employer, Massachusetts Law Reform Institute, nor I are receiving reimbursement from any individual plaintiff or class member in this case. Together with co-counsel, I will fairly and adequately protect the interests of the individual plaintiffs and the proposed class and possess the commitment and resources to prosecute the case as a class action.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 12, 2011.



Attorney Iris Gomez

EXHIBIT 24

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WASHINGTON

A.B.T., K.M.-W., G.K., L.K.G., D.W., Individually and on Behalf of All Others Similarly Situated, Plaintiffs, v. U.S. CITIZENSHIP AND IMMIGRATION SERVICES; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Janet NAPOLITANO, Secretary, Department of Homeland Security; Alejandro MAYORKAS, Director, U.S. Citizenship and Immigration Services; Eric H. HOLDER, Jr., Attorney General of the United States; Juan OSUNA, Director, Executive Office for Immigration Review, Defendants.	Civil Action No. **COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF** **CLASS ACTION**

SWORN DECLARATION OF PAULA H. ENGUÍDANOS WITH RESPECT TO PLAINTIFF A.B.T. IN SUPPORT OF CLASS CERTIFICATION

SWORN DECLARATION OF PAULA H. ENGUÍDANOS IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

I, Paula H. Enguidanos, declare under penalty of perjury and in accord with 28 U.S.C. § 1746 as follows:

1. I am an attorney admitted to practice law in the state of Washington. I graduated from Seattle University School of Law in 2003. My current business address is Seattle Immigration and Family Law Group, 4444 Woodland Park Ave North, Suite B101, Seattle, WA 98103.
2. I currently represent A[redacted] B[redacted] T[redacted] in removal proceedings and have represented her since November 24, 2010. I have personal knowledge of all the information contained in this Declaration as a result of representation of Ms. T[redacted]. Prior to completing this Declaration, I reviewed relevant documents and notes in her case file to refresh my memory and verify dates and other specifics.
3. Ms. T[redacted] entered the United States on or about September 14, 2010. She was apprehended by the Department of Homeland Security, and placed in immigration detention. She was issued a Notice to Appear on November 5, 2010, placing her into removal proceedings.
4. An asylum officer interviewed her while she was in detention, and found she had established a credible fear of persecution in her home country of Eritrea. She was released from the detention center based upon this finding of credible fear.

5. On November 29, 2010, I filed a motion to change venue for Ms. T[redacted] from San Antonio, Texas to Seattle, Washington where she was residing with relatives. The motion was granted. At that time, she had a Master Calendar hearing scheduled for December 9, 2010. That Master Calendar Hearing was on the detained docket. Since she was released from detention well before the scheduled hearing date, she was not able to attend the Master Calendar Hearing. I am unsure as to when the new Master Calendar Hearing was rescheduled to on the non-detained docket, if at all.
6. Once the venue was changed to Seattle, Ms. T[redacted]'s next master calendar hearing was scheduled for March 13, 2012 in Seattle.
7. On June 14, 2011, I filed a complete Form I-589, Application for Asylum and for Withholding of Removal for Ms. T[redacted] at the immigration court's window. I filed this application for her at that time in order to avoid the one year bar on applying for asylum that would have applied had I waited to file it with the immigration judge at the next scheduled master calendar hearing.
8. On November 15, 2011, I filed a Form I-765, Application for Employment Authorization for Ms. T[redacted], at which point her asylum application had been pending 154 days from when I filed it on June 14, 2011.
9. Ms. T[redacted] is not an aggravated felon.
10. Ms. T[redacted]'s Application for Asylum has not been granted or denied and is still pending before an immigration judge.

11. Ms. T[redacted]'s asylum EAD clock still has not started running, despite the fact that it has been 177 days since I filed her complete asylum application at the immigration court window.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 7, 2011.

Paula H. Enguidanos

EXHIBIT 25

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WASHINGTON

A.B.T., K.M.-W., G.K., L.K.G., D.W., Individually and on Behalf of All Others Similarly Situated, Plaintiffs, v. U.S. CITIZENSHIP AND IMMIGRATION SERVICES; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Janet NAPOLITANO, Secretary, Department of Homeland Security; Alejandro MAYORKAS, Director, U.S. Citizenship and Immigration Services; Eric H. HOLDER, Jr., Attorney General of the United States; Juan OSUNA, Director, Executive Office for Immigration Review, Defendants.	Civil Action No. **COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF** **CLASS ACTION**

SWORN DECLARATION OF PAULA H. ENGUÍDANOS WITH RESPECT TO PLAINTIFF K.M.-W. IN SUPPORT OF CLASS CERTIFICATION

SWORN DECLARATION OF PAULA H. ENGUIDANOS IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

I, Paula H. Enguidanos, declare under penalty of perjury and in accord with 28 U.S.C. § 1746 as follows:

1. I am an attorney admitted to practice law in the state of Washington. I graduated from Seattle University School of Law in 2003. My current business address is Seattle Immigration and Family Law Group, 4444 Woodland Park Ave North, Suite B101, Seattle, WA 98103.
2. I currently represent K[redacted] M[redacted] W[redacted] in removal proceedings and have represented him since April 21, 2010. I have personal knowledge of all the information contained in this Declaration as a result of representation of Mr. W[redacted]. Prior to completing this Declaration, I reviewed relevant documents and notes in his case file to refresh my memory and verify dates and other specifics.
3. Mr. W[redacted] entered the United States on December 17, 2009. He was apprehended by the Department of Homeland Security, and placed in immigration detention. At the detention center, Mr. W[redacted] was found to have a credible fear of returning to his home country of Eritrea, and was released from the detention center on bond.
4. On April 26, 2010, I filed a Motion to Change Venue from San Antonio, Texas to Seattle, Washington, where Mr. W[redacted] was residing with relatives. At that time, he was scheduled for a Master Calendar Hearing on July 27, 2010. The motion was granted on May 10, 2010. On May 27, 2010, my office received a notice from the immigration court that Mr.

W[redacted]'s next master calendar hearing in Seattle, WA, would occur on December 7, 2010.

5. On October 4, 2010, my office received a notice from the immigration court changing Mr. W[redacted]'s master calendar hearing from December 7, 2010 to November 29, 2011. According to the notice, this change was "[d]ue to unforeseen circumstances."
6. On October 14, 2010, I filed a motion with the immigration court to request an earlier master calendar hearing date.
7. On October 28, 2010, the immigration court denied my motion to request an earlier master calendar hearing date, stating in its order that "[w]e are all aware of the state of our docket [and] … [w]e are doing the best we can to manage it." The decision also noted that we could "lodge" an asylum application with the court before the master calendar hearing, but that the asylum application is not formally received until the master calendar hearing.
8. On December 13, 2010, I filed a completed Form I-589, Application for Asylum and for Withholding of Removal for Mr. W[redacted] at the immigration court, but not before an immigration judge at an immigration hearing. I filed this application for him at that time in order to avoid the one year bar on applying for asylum that would have applied had I waited to file it with the immigration judge at the next scheduled master calendar hearing.
9. On October 26, 2011, I filed a Form I-765, Application for Employment Authorization for Mr. W[redacted], at which point his asylum application had

already been pending 317 days from the date on which I filed it with the immigration court.

10. Mr. W[redacted] had his master calendar hearing on November 29, 2011 at which time his asylum clock began to run at day one. His asylum clock does not reflect any of the time between December 13, 2010, when I filed his asylum application with the immigration court and the master calendar hearing on November 29, 2011.
11. Mr. W[redacted] is not an aggravated felon.
12. Mr. W[redacted]'s Application for Asylum has not been granted or denied and is still pending before an immigration judge

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 7, 2011.

Paula H. Enguidanos

EXHIBIT 26

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WASHINGTON

A.B.T., K.M.-W., G.K., L.K.G., D.W., Individually and on Behalf of All Others Similarly Situated, Plaintiffs, v. U.S. CITIZENSHIP AND IMMIGRATION SERVICES; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Janet NAPOLITANO, Secretary, Department of Homeland Security; Alejandro MAYORKAS, Director, U.S. Citizenship and Immigration Services; Eric H. HOLDER, Jr., Attorney General of the United States; Juan OSUNA, Director, Executive Office for Immigration Review, Defendants.	Civil Action No. **COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF** **CLASS ACTION**

SWORN DECLARATION OF AVANTIKA SHASTRI WITH RESPECT TO PLAINTIFF G. K. IN SUPPORT OF CLASS CERTIFICATION

I, Avantika Shastri, declare under penalty of perjury and in accord with 28 U.S.C. § 1746 as follows:

1. I am an attorney admitted to practice law in the state of California. I am also admitted to practice before the Central District of California, Eastern District of California, Northern District of California, and Southern District of California (Boalt Hall). I graduated from the University of California at Berkeley, School of Law in 2004. My current business address is Van Der Hout, Brigagliano & Nightingale, LLP, Suite 500, 180 Sutter Street, San Francisco, CA 94104.
2. Our office currently represents G[redacted] K[redacted] in removal proceedings and has represented her since July 18, 2005. Marc Van Der Hout and I have been and continue to be the primary attorneys working on her case. I have personal knowledge of all of the information contained in this Declaration as a result of my representation of Ms. K[redacted]. Prior to completing this Declaration, I reviewed relevant documents and notes in her case file to refresh my memory and verify dates and other specifics.
3. Ms. K[redacted] filed an affirmative completed Form I-589, Application for Asylum and for Withholding of Removal, with the San Francisco Asylum Office on April 18, 2002 through prior counsel. The Office referred her case to the San Francisco Immigration Court on May 29, 2002. On October 7, 2002, the immigration judge denied her application for asylum and her asylum clock was stopped at 172 days.

4. On October 31, 2002, Ms. K[redacted] filed an appeal with the Board of Immigration Appeals. On February 26, 2004, the BIA denied her appeal. Ms. K[redacted] filed a Petition for Review of the Board's decision with the Ninth Circuit, and the petition was denied on June 8, 2005.

5. Ms. K[redacted] retained my office, Van Der Hout, Brigagliano & Nightingale, LLP, on July 18, 2005. We initially filed a Petition for Rehearing of the Ninth Circuit's decision, which was denied on September 30, 2005. On November 8, 2005, we filed a Motion to Reopen for Ms. K[redacted] with the Board of Immigration Appeals based on ineffective assistance of her prior counsel. On April 25, 2006, the Board denied the motion to reopen as untimely.

6. On May 23, 2006, we filed a Petition for Review of the Board's decision to deny the motion to reopen with the Ninth Circuit Court of Appeals. The court granted the petition on August 31, 2009, and remanded the case to the Board.

7. On February 26, 2010, the Board remanded Ms. K[redacted]'s case to the Immigration Judge.

8. On May 11, 2010, Ms. K[redacted] had her first master calendar hearing following remand. At that hearing, we made an oral motion to restart the clock and were informed by the Immigration Judge that the court administrator had responsibility for restarting the clock.

9. On July 2, 2010, we filed a written motion to restart the asylum EAD clock with the Immigration Judge. On July 19, 2010, my office received a letter from the Court Administrator indicating that the asylum EAD clock permanently stops when the judge issues a decision granting or denying the

asylum application and that Ms. K[redacted]'s asylum EAD clock is permanently stopped.

10. Ms. K[redacted]'s individual hearing is scheduled for April 29, 2013 and her clock is still stopped at 172 days, despite the fact that it has been approximately 22 months since the BIA remanded here case to the immigration court for a new asylum decision.

11. I will be filing a Form I-765, Application for Employment Authorization for Ms. K[redacted]. At this time, her complete asylum application had been pending for months longer than the 180-day waiting period.

12. Ms. K[redacted] is not an aggravated felon.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 9, 2011.

Avantika Shastri

Avantika Shastri

EXHIBIT 27

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WASHINGTON

A.B.T., K.M.-W., G.K., L.K.G., D.W., Individually and on Behalf of All Others Similarly Situated, Plaintiffs, v. U.S. CITIZENSHIP AND IMMIGRATION SERVICES; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Janet NAPOLITANO, Secretary, Department of Homeland Security; Alejandro MAYORKAS, Director, U.S. Citizenship and Immigration Services; Eric H. HOLDER, Jr., Attorney General of the United States; Juan OSUNA, Director, Executive Office for Immigration Review, Defendants.	Civil Action No. **COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF** **CLASS ACTION**

SWORN DECLARATION OF PAUL ZOLTAN WITH RESPECT TO PLAINTIFF L.K.G. IN SUPPORT OF CLASS CERTIFICATION

SWORN DECLARATION OF PAUL ZOLTAN IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

I, Paul Zoltan, declare under penalty of perjury and in accord with 28 U.S.C. § 1746 as follows:

1. I am an attorney admitted to practice law in the state of Texas. I graduated from Minnesota University in 1992. My current business address is Law Office of Paul S. Zoltan, 10611 Garland Rd, Dallas, TX 75218.
2. I currently represent L[redacted] G[redacted] in removal proceedings and have represented her since September 30, 2008. I have personal knowledge of all of the information contained in this Declaration as a result of my representation of Ms. G[redacted]. Prior to completing this Declaration, I reviewed relevant documents and notes in her case file to refresh my memory and verify dates and other specifics.
3. Ms. G[redacted] filed a complete Form I-589, Application for Asylum and for Withholding of Removal at a master calendar hearing on September 10, 2007. On October 19, 2007, the Immigration Judge denied her asylum application at an individual hearing. Her clock was stopped 39 days at that hearing.
4. On October 26, 2007, Ms. G[redacted] filed an appeal with the Board of Immigration Appeals. The Board dismissed this appeal on August 19, 2008. She subsequently filed a petition for review with the Fifth Circuit Court of Appeals, which was withdrawn on July 2, 2009.
5. On November 19, 2008, Ms. G[redacted] filed a motion to reopen with the Board of Immigration Appeals. The Board reopened her case and remanded it

to the Immigration Court on May 29, 2009 for a new decision on her asylum application.

6. Also on November 19, 2008, Ms. G[redacted] filed a Form I-765, Application for Employment Authorization. The application was approved on December 4, 2008, and her Employment Authorization Document was valid from December 12, 2008 through December 11, 2009.

7. On October 26, 2009 Ms. G[redacted] filed her second Form I-765, Application for Employment Authorization. The United States Citizenship and Immigration Services denied this application on January 19, 2010, saying that only 39 days had elapsed on her asylum EAD clock. As a result, Ms. G[redacted] has been unable to work since her first Employment Authorization Document expired on December 11, 2009.

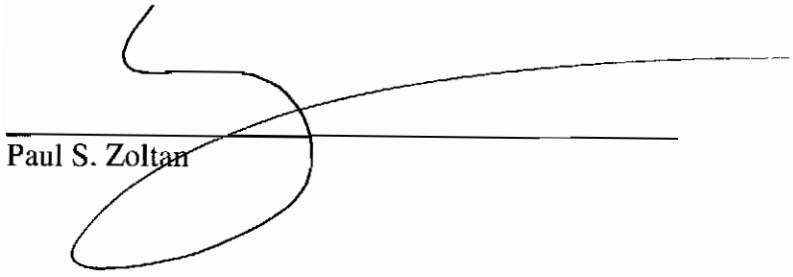
8. On September 16, 2010, I filed a Motion to Recalibrate the Asylum Clock with the Immigration Court. On October 12, 2010, the Immigration Court Administrator denied the motion, saying that the asylum EAD clock does not restart upon remand from the Board.

9. On August 29, 2011, I wrote a letter to the Assistant Chief Immigration Judge requesting that he correct the asylum clock, and noting the Court Administrator's October 12, 2010 denial. On October 3, 2011, the Assistant Chief Immigration Judge denied my request to recalibrate Ms. G[redacted]'s asylum EAD clock, and said that the asylum EAD clock does not run following a remand from the Board to the Immigration Court.

10. Meanwhile, the first master calendar hearing following the Board's order remanding the case to immigration court was held on August 16, 2010, 444 days after the May 29, 2009 remand. At this master calendar hearing, the court scheduled her individual hearing for April 20, 2011. Unfortunately, I had to request a continuance of the April 20, 2011 date because of a conflict I had. Initially the rescheduled hearing date was October 19, 2011. Because the Dallas immigration court is so backlogged, however, the Dallas Immigration Court continued the case on its own motion. On October 14, 2011 I received a call from an immigration court clerk announcing the postponement of Ms. G[redacted]'s hearing until August 28, 2013.
11. Ms. G[redacted] is not an aggravated felon.
12. Ms. G[redacted]'s remains stopped at 39 days.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 9, 2011.



Paul S. Zoltan

EXHIBIT 28

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WASHINGTON

A.B.T., K.M.-W., G.K., L.K.G., D.W., Individually and on Behalf of All Others Similarly Situated, Plaintiffs, v. U.S. CITIZENSHIP AND IMMIGRATION SERVICES; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Janet NAPOLITANO, Secretary, Department of Homeland Security; Alejandro MAYORKAS, Director, U.S. Citizenship and Immigration Services; Eric H. HOLDER, Jr., Attorney General of the United States; Juan OSUNA, Director, Executive Office for Immigration Review, Defendants.	Civil Action No. **COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF** **CLASS ACTION**

SWORN DECLARATION OF MELANIE YANG WITH RESPECT TO PLAINTIFF D.W. IN SUPPORT OF CLASS CERTIFICATION

SWORN DECLARATION OF MELANIE YANG IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

I, Melanie Yang, declare under penalty of perjury and in accord with 28 U.S.C. § 1746 as follows:

1. I am an attorney admitted to practice law in the state of California. I graduated from Southwestern University School of Law in 2000. My current business address is 404 E. Las Tunas Dr., Suite 203, San Gabriel, CA 91776.
2. I currently represent D[redacted] W[redacted] in removal proceedings and have represented him since May 20, 2006. I have personal knowledge of all of the information contained in this Declaration as a result of my representation of Mr. W[redacted]. Prior to completing this Declaration, I reviewed relevant documents and notes in his case file to refresh my memory and verify dates and other specifics.
3. On February 10, 2003, Mr. W[redacted] filed an affirmative Form I-589, Application for Asylum and for Withholding of Removal with the Los Angeles Asylum Office.
4. Because I did not represent Mr. W[redacted] throughout all of his proceedings I am relying on the information in his file – particularly a letter from the immigration court administrator – for some of this history. According to a letter from a Deputy Court Administrator of the Los Angeles Immigration Court dated September 8, 2011, Mr. W[redacted]'s asylum application was referred to the Los Angeles Immigration Court on June 6, 2003, at which point his asylum clock was at 122 days. Mr. W[redacted] attended his initial master calendar

hearing on July 8, 2003, at which point his clock had accumulated 148 days. On February 24, 2005, the Immigration Judge denied his asylum application. According to the same court administrator, each of the delays between July 8, 2003 (his first master calendar hearing) and February 24, 2005 (his individual hearing) was caused by Mr. W, so he accumulated zero additional days on his clock between the two dates.

5. Subsequently, Mr. W filed an appeal with the Board of Immigration Appeals. On May 4, 2006, the Board denied W's appeal, affirming the Immigration Judge's decision.
6. Mr. W filed a Petition for Review with the Ninth Circuit Court of Appeals. The Court granted the Petition for Review and remanded the case to the Board on August 17, 2007.
7. On March 7, 2008, the Board remanded Mr. W's case to the Immigration Judge, specifically stating that the immigration judge was to make a new decision on the asylum application. Following remand, his first master calendar hearing before an immigration judge was postponed by the immigration court three times. It was moved from June 26, 2008 to July 1, 2008 and then to July 22, 2008. The immigration court then postponed Mr. W's individual hearing date several times. On July 22, 2008, the Immigration Judge set a merits hearing date for September 1, 2009. On July 31, 2009, the Immigration Judge reset the merits hearing date for January 04, 2010. When Mr. W appeared for his January 04, 2010 hearing, the Immigration Judge decided not to hear the case since she had other priority

cases to hear. On January 26, 2011, the Immigration Judge reset the hearing for April 30, 2012 since the interpreter resigned after Respondent's lawyer made objections over mistranslations.

8. For most of the time Mr. W[redacted]'s asylum case has been pending, he has had work authorization. Records from his case file indicate that his Application for Employment Authorization (Form I-765) was initially granted in December 2003 and he received subsequent renewals of his Employment Authorization Document (EAD), making him eligible for employment for almost all of the time between December 2003 and June 2011. However, sometime prior to May 24, 2011, Mr. W[redacted]'s clock retrogressed without warning. On May 24, 2011, USCIS mailed a decision denying Mr. W[redacted]'s March 28, 2011 request to renew his Application for Employment Authorization.
9. I first became involved with the issue of Mr. W[redacted]'s employment authorization in June, July, and August 2011, when I repeatedly requested that the Immigration Court correct Mr. W[redacted]'s asylum clock, both by phone and by mail. Based on Mr. W[redacted]'s prior grant of employment authorization, I believed he was eligible for each subsequent renewal of his EAD. I received a letter from the Deputy Court Administrator of the Los Angeles Immigration Court dated September 8, 2011 stating that the asylum clock was accurate because "the asylum clocked [sic] never went beyond the 148 days" prior to the Immigration Judge's February 24, 2005 decision.

10. Even if the court administrator is right that Mr. W[redacted]'s clock was only at 148 days at the time his case was remanded, it should now be well over 180 days and he should be eligible for work authorization. None of the delays since his case was remanded by the court of appeals in 2007 have been Mr. W[redacted]'s fault. The first delay was by the BIA, which, following the federal court's remand of August 2007, did not remand his case to the immigration court until March 2008. Subsequently, all delays have been by the immigration judge.

11. Notwithstanding any delays prior to the remand to Immigration Court, Mr. W[redacted]'s asylum clock now has reached 180 days because of the time that has run since his case was remanded for a new asylum decision. If the clock had been restarted when the case was remanded to the Immigration Court, the clock would have already run for well over three years, exclusive of any applicant-caused delay - far more than the requisite 180 days.

12. Mr. W[redacted] is not an aggravated felon. His asylum application remains pending before the immigration judge.

13. Mr. W[redacted]'s clock remains stopped at 148 days.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on Dec 14, , 2011.

Melanie Yang

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WASHINGTON

A.B.T., K.M.-W., G.K., L.K.G., D.W., Individually and on Behalf of All Others Similarly Situated, Plaintiffs, v. U.S. CITIZENSHIP AND IMMIGRATION SERVICES; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Janet NAPOLITANO, Secretary, Department of Homeland Security; Alejandro MAYORKAS, Director, U.S. Citizenship and Immigration Services; Eric H. HOLDER, Jr., Attorney General of the United States; Juan OSUNA, Director, Executive Office for Immigration Review, Defendants.	Case No. 2:11-cv-02108 A.B.T. [PROPOSED] ORDER ON PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

[PROPOSED] ORDER

Upon consideration of Plaintiffs' Motion for Class Certification, this Court finds that Plaintiffs have satisfied the requirements for class certification under FRCP 23(a) and (b)(2). Specifically, Plaintiffs have demonstrated that members of the proposed class and subclasses are so numerous that joinder is impracticable; that there are common questions of law and fact, notably the common legal questions of whether the challenged policies and practices of

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Defendants violate the INA, federal regulations, the APA, and/or the U.S. Constitution; that the claims of Plaintiffs are typical of the claims of the class members; and that the Plaintiffs and their counsel, as representatives of the class and subclasses, will fairly and adequately protect the interests of the class.

Additionally, this Court finds that Defendants have acted on grounds generally applicable to the class as a whole, thereby making appropriate final injunctive and declaratory relief to the class as a whole.

In light of the above, this Court orders that Plaintiffs motion for class certification be granted and that a class be certified consisting of:

> All noncitizens in the United States who have filed or will file with Defendants a complete I-589 (Application for Asylum and Withholding of Removal); who have been or will be issued a Notice to Appear or Notice of Referral for removal proceedings; whose applications for employment authorization have been or will be denied; and whose asylum EAD clock determinations have been or will be made without legally sufficient notice or a meaningful opportunity to challenge such determinations ("Notice and Review Class").

All named Plaintiffs are appointed as representatives of this class.

Additionally, this Court orders the certification of the following two subclasses:

> Individuals who have been or will be issued a Notice to Appear or Notice of Referral for removal proceedings; who have filed or sought to file or who will file or seek to file a complete asylum application with the immigration court; but whose asylum EAD clocks did not start or will not start on the date that this application was or will be filed because of Defendants' policy requiring asylum applications to be filed at a hearing before an immigration judge. ("Hearing subclass").

Plaintiffs A.B.T. and K.M.-W. are appointed as class representatives of this subclass.

> Asylum applicants whose asylum EAD clocks were or will be stopped following the denial of their asylum applications by the immigration court, and whose asylum EAD clocks are not or will not be started or restarted subsequent to an appeal in which either the BIA or a federal court of appeals remands their case for further adjudication of their asylum claims ("Remand subclass").

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Plaintiffs G.K., L.K.G. and D.W. are appointed as class representatives of this subclass.

Date:

_____
United States District Court Judge

Presented by:

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