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**

Plaintiffs A.B.T., K.M.-W., G.K. and L.K.G. and D.W. bring this action on behalf of themselves and all similarly situated asylum applicants and allege as follows:

INTRODUCTION

1. Plaintiffs and the class members that they seek to represent ("the class") are asylum applicants in removal proceedings who challenge Defendants' policies and practices that unlawfully prevent them from working even though their pending asylum claims have not been adjudicated within the six-month time period prescribed by statute. Plaintiffs and class members have applied for asylum because they have been persecuted or fear persecution in their home countries and seek safe haven in the United States. Most are in dire financial straits. Due to Defendants' unlawful policies and practices preventing them from obtaining employment authorization, they have been forced to rely on the goodwill of others to support themselves and their families while they await decisions on their asylum applications. This process can take many months and sometimes years.

2. By statute, Congress directed Defendants to make a decision on asylum applications within six months. During this 180-day period, an asylum applicant is not eligible to work. Very often, however, asylum applications are not – and at times, cannot be – decided within six months. In recognition of the economic hardship asylum seekers generally face, asylum applicants have a right to obtain an Employment Authorization Document (EAD) if their asylum applications have been pending for more than 180 days and they have met all eligibility requirements. By regulation, the running of the 180-day waiting period for an EAD – referred to herein as "the asylum EAD clock" – may be suspended, but only for applicant-requested or caused delay of the adjudication of their asylum application.

3. Defendants have adopted uniform nationwide policies and practices to administer the asylum EAD clock. However, these policies and practices are inadequate to ensure that the majority of asylum applicants are issued work authorization in a meaningful time and manner so as to support themselves and their families while their asylum applications are adjudicated. Numerous systemic problems have plagued the administration of the asylum EAD clock since its inception over a decade ago. While Defendant Executive Office for Immigration Review (EOIR) recently issued policy guidance that may resolve a limited number of asylum EAD clock problems, the systemic issues challenged in this lawsuit have not been resolved.

4. Plaintiffs and the class challenge several of Defendants' policies and practices as violating the U.S. Constitution, the Immigration and Nationality Act (INA), the governing regulations, and the Administrative Procedure Act (APA). First, Plaintiffs and the class challenge the lack of meaningful notice about the status of their asylum EAD clocks. Defendants' decisions to stop or not start or restart the asylum EAD clock are made without adequate notice, whether written or otherwise, to Plaintiffs and the class. There is no mandatory procedure in place to ensure that Plaintiffs and the class are informed that the asylum EAD clock is being stopped or not started or restarted or to inform asylum applicants in all instances of the reasons for taking these actions related to the asylum EAD clock. Often, asylum applicants do not learn of Defendants' decisions to stop or not start or restart the asylum EAD clock until their applications for work authorization have been denied. Moreover, Plaintiffs and the class do not have a meaningful opportunity to contest or remedy Defendants' improper asylum EAD clock determinations.

5. Plaintiffs A.B.T., K.M.-W. and a subclass of similarly situated individuals challenge Defendants' policy of not starting the asylum EAD clock upon the filing of a complete asylum application with the immigration court but instead starting it only at the first hearing before an immigration judge, whenever that might be scheduled.

6. Plaintiffs G.K., L.K.G., D.W. and a subclass of similarly situated individuals challenge Defendants' policy and practice of not restarting the asylum EAD clock after an asylum case has been remanded by a federal court or the Board of Immigration Appeals (BIA) for further consideration of the asylum application.

7. As a direct result of these challenged policies and practices, Plaintiffs and the class have been or will be unlawfully deprived of timely, adequate notice of clock determinations and a meaningful opportunity to remedy these determinations. Plaintiffs and the subclasses have been or will be unlawfully denied work authorization due solely to an improper determination regarding the asylum EAD clock. In all cases, Plaintiffs and the class and subclasses have actively pursued their asylum applications beyond the 180-day waiting period excluding any periods of applicant-caused delay. In some cases, their asylum EAD clocks have been erroneously "permanently stopped."

8. In August 2011, the U.S. Citizenship and Immigration Services' (USCIS) Ombudsman issued recommendations acknowledging the existence of systemic asylum EAD clock problems, including the lack of a mechanism for an applicant to acquire accurate information about his or her asylum EAD clock and the lack of a standard procedure for correcting errors in the asylum EAD clock. *See* U.S. Citizenship and Immigration Services Ombudsman, *Employment Authorization for Asylum Applicants: Recommendations to Improve Coordination and Communication* (Aug. 26, 2011),

available at http://www.dhs.gov/xlibrary/assets/cisomb-employment-authorization-for-asylum-08262011.pdf [hereinafter USCIS Ombudsman Report]. Undersigned counsel and other organizations throughout the country have repeatedly requested that Defendants remedy their unlawful policies and practices. To date, however, Defendants have failed to do so.

JURISDICTION AND VENUE

9. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. § 1331, as a civil action arising under the Constitution and laws of the United States, and 5 U.S.C. § 701, *et seq.*, as an action to set aside unlawful agency action or compel agency action unlawfully withheld or unreasonably delayed. Declaratory judgment is sought pursuant to 28 U.S.C. §§ 2201-02.

10. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(e)(1), (2) and (3) because Defendants are U.S. agencies and officers of the United States or agencies thereof acting in their official capacities. A substantial part of the events or omissions giving rise to the claims occurred in this district, Plaintiffs A.B.T. and K.M.-W. reside in this district, and no real property is involved in this action.

PARTIES

11. Plaintiffs are all noncitizens in the United States who have been placed in removal proceedings, have filed complete Applications for Asylum and Withholding of Removal (Form I-589 or "asylum application"), have filed or will file an application for employment authorization (Form I-765) pursuant to 8 C.F.R. § 274a.12(c)(8), and would be eligible for employment authorization but for Defendants' unlawful policies and practices.

12. Plaintiff A.B.T. is a citizen of Eritrea who resides in Shoreline, Washington.

13. Plaintiff K.M.-W. is a citizen of Eritrea who resides in Seattle, Washington.

14. Plaintiff G.K. is a citizen of India who resides in Muttontown, New York.

15. Plaintiff L.K.G. is a citizen of Eritrea who resides in Dallas, Texas.

16. Plaintiff D.W. is a citizen of China who resides in Alhambra, California.

17. Defendant U.S. Citizenship and Immigration Services (USCIS), an agency of the Department of Homeland Security (DHS), is responsible for the timely and accurate processing and adjudication of applications for employment authorization. In making determinations to grant or deny applications for employment authorization, USCIS is responsible for the accurate calculation of the asylum EAD clock and for determining whether there has been delay requested or caused by the applicant for purposes of the asylum EAD clock.

18. Defendant Alejandro Mayorkas is the Director of USCIS and has ultimate responsibility for the timely and accurate processing and adjudication of applications for employment authorization and for the accurate calculation of the asylum EAD clock. He is sued in his official capacity.

19. Defendant Janet Napolitano is the Secretary of DHS and has ultimate responsibility for the administration and enforcement of the INA and all other laws relating to the immigration of noncitizens. She is sued in her official capacity.

20. Defendant Executive Office for Immigration Review (EOIR) is a component agency of the Department of Justice responsible for conducting removal

hearings of noncitizens, i.e., proceedings to remove or deport them from the United States. Asylum applications are filed with EOIR, in the immigration court having jurisdiction over the case, when an applicant has been placed in removal proceedings. With respect to asylum cases over which it has jurisdiction, EOIR has responsibility for the accurate calculation of the asylum EAD clock and for determining whether there has been delay requested or caused by the applicant for purposes of the asylum EAD clock.

21. Defendant Eric Holder, Jr. is the Attorney General of the United States and is responsible for the Department of Justice and its component agencies, including EOIR. Under delegated authority from the Attorney General, EOIR administers the U.S. immigration court system. Attorney General Holder is sued in his official capacity.

22. Defendant Juan Osuna is the Director of EOIR and has ultimate responsibility for overseeing immigration court proceedings, appellate reviews, and administrative hearings. He is sued in his official capacity.

LEGAL AND FACTUAL BACKGROUND

Asylum Application Process

23. Any noncitizen who is in the United States or seeking admission at a port of entry may apply for asylum. 8 U.S.C. § 1158(a)(1). An asylum applicant must demonstrate either past persecution or a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. 8 U.S.C. §§ 1101(a)(42)(A), 1158(b)(1)(B)(i). With limited exceptions, an asylum application must be filed within one year of an applicant's arrival in the United States. 8 U.S.C. § 1158(a)(2)(B).

24. Generally, an asylum application must be adjudicated within 180 days after it is filed. USCIS and EOIR are jointly responsible for calculating this 180-day period. 8 C.F.R. §§ 208.7(a)(2), 1208.7(a)(2). Delay requested or caused by the applicant will toll this period. *Id.* For asylum applications heard during removal proceedings, EOIR has adopted an asylum adjudications clock to track the 180-day waiting period.

25. Noncitizens who are not in removal proceedings may file "affirmative" asylum applications with USCIS. They must attend an interview with a USCIS asylum officer, who may grant, deny, refer, or dismiss the application. 8 C.F.R. §§ 208.9(b), 208.14(c), 1208.9(b), and 1208.14(c).

26. In some cases, after a noncitizen files an "affirmative" asylum application, an asylum officer may "refer" the case to EOIR, thus initiating removal proceedings. 8 C.F.R. §§ 208.14(c), 1208.14(c). The asylum application is then considered a "defensive" asylum application. A referral to an immigration judge is not a final decision in the case and does not constitute a denial of the asylum application. *Id.* Instead, an immigration judge reviews the previously filed asylum application *de novo* without the applicant having to file a new asylum application.

27. In other defensive cases, the noncitizen will file the application directly with EOIR. In these cases, the regulations require that the asylum application be filed with the "immigration court." 8 C.F.R. § 1208.4(b)(3). Unlike other pleadings which may be filed with the immigration court at any time, EOIR's sub-regulatory policy and practice permits asylum applications to be filed only at a hearing before an immigration judge. 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]. This precludes the asylum EAD clock from starting until the date of such a hearing even though a complete asylum application has been filed with the immigration court. This policy and practice is inconsistent with the statutory and regulatory framework, under which the waiting period should begin when a complete asylum application is filed with the immigration court.

28. All defensive asylum applications are adjudicated by immigration judges following a staggered series of hearings, which — due to congested court calendars — may span months or even years after the initial hearing. 8 C.F.R. §§ 208.14(a), 1208.14(a). If the immigration judge denies an asylum application, the applicant may appeal to the BIA. 8 U.S.C. § 1158(d)(5)(A)(iv). If the BIA affirms the denial, the applicant may appeal to the relevant federal court of appeals. 8 U.S.C. § 1252(a).

EAD Application Process for Applicants in Removal Proceedings

29. The INA authorizes DHS to adopt regulations authorizing employment for asylum applicants. 8 U.S.C. § 1158(d)(2). While regulations prescribe that USCIS has discretion to grant or deny EAD applications to well over a dozen categories of immigrants and nonimmigrants, the regulations afford USCIS no such discretion with respect to EAD applications filed by asylum applicants. *See* 8 C.F.R. § 274a.13(a)(1) and (2). Thus, an asylum applicant who has met the regulatory requirements has a right to work authorization. *Id.*

30. The only regulatory eligibility requirements for an EAD are that the asylum applicant is not an aggravated felon; that the applicant has filed a complete

asylum application; that the asylum application has not been denied at the time the EAD application is decided; and that, absent exceptional circumstances, the asylum applicant has not failed to appear for an interview or hearing. 8 C.F.R. §§ 208.7(a), 1208.7(a). An asylum application is complete for purposes of the 180-day asylum EAD clock when it contains answers to all of the questions on the application form, is signed, and is accompanied by the materials specified in the regulations and the instructions to the application form. 8 C.F.R. §§ 208.3(c)(3), 1208.3(c)(3). If a defensive asylum application is not adjudicated by an immigration judge within 180 days of its filing (not including periods of applicant-caused delay), an applicant who has satisfied these eligibility requirements has a right to an EAD.

31. USCIS is responsible for deciding all EAD applications for asylum applicants, including those in removal proceedings. An application for employment authorization, Form I-765, may be filed with USCIS at any time after the first 150 days of the waiting period for an EAD. 8 C.F.R. § 208.7.

32. Defendants have adopted regulatory requirements governing USCIS adjudication of EAD applications filed by asylum applicants. 8 C.F.R. §§ 208.7, 274a.12(c)(8), 274a.13(a), and 1208.7. When an asylum applicant is in removal proceedings, EOIR's policies and practices, adopted for its calculation of the asylum adjudications clock, are applied by both Defendant agencies to the asylum EAD clock.

33. Once an EAD has been granted, the applicant remains eligible for it throughout the adjudication of the asylum application, including administrative and judicial appeals. 8 C.F.R. §§ 208.7(b)(1), 1208.7(b)(1).

The Asylum EAD Clock

34. For both affirmative and defensive asylum applicants, the 180-day asylum EAD clock begins to run on the date the applicant files a complete asylum application. 8 C.F.R. §§ 208.7(a)(1), 1208.7(a)(1), 208.3-4, 1208.3-4.

35. The asylum EAD clock continues to run unless there is a "delay requested or caused by the applicant," 8 C.F.R. § 208.7(a)(2), 8 C.F.R. § 1208.7(a)(2), or unless the asylum application is denied before the EAD application is adjudicated. 8 C.F.R. §§ 208.7(a)(1); 1208.7(a)(1). Applicant-caused delays include an applicant's "failure without good cause to follow the requirements for fingerprint processing," and any period during which an asylum applicant fails to appear to receive and acknowledge receipt of a USCIS asylum officer's decision. 8 C.F.R. §§ 208.7(a)(2), 208.9(d), 1208.7(a)(2), 1208.9(d).

36. Defendants USCIS and EOIR are jointly responsible for calculating the 180-day waiting period for EAD eligibility for asylum applicants. 8 C.F.R. §§ 208.7(a)(2), 1208.7(a)(2). For EAD applications filed in connection with affirmative asylum cases, USCIS tracks the 180-day period and relies upon its own calculations to decide if this waiting period is satisfied when it decides an EAD application. In contrast, for EAD applications filed in connection with defensive asylum applications – whether referred from USCIS or filed directly with the immigration court – USCIS relies upon EOIR's calculation of the 180-day waiting period.

37. Defendant EOIR purports to only administer an asylum clock to track the statutory 180-day adjudication period and not to track the 180-day period for EAD eligibility for asylum applicants. Because the same applicant-requested or caused delay regulation applies to both 180-day periods, EOIR's asylum adjudication clock is, de

facto, an asylum EAD clock and is relied upon by Defendant USCIS for this purpose. Moreover, USCIS has stated as much, confirming that it relies on EOIR's 180-day asylum clock to make determinations about employment authorization and that it has no authority or ability to alter EOIR's asylum clock. Moreover, USCIS relies upon the 180-day clock maintained by EOIR to make determinations about employment eligibility and states that it has no authority or ability to alter EOIR's 180-day asylum clock.

38. Immigration courts across the country are overwhelmed with their caseloads and are under intense pressure to meet their own statutory 180-day adjudication deadline. EOIR evaluates immigration judges based on their ability to meet this case completion requirement and holds them accountable for the length of time asylum applications are pending on their dockets. By creating the applicant-caused delay regulatory and sub-regulatory exemptions to the 180-day statutory adjudication period, EOIR limits its own accountability for adjudication delays. However, since Defendants use EOIR's 180-day clock to make determinations about employment authorization, these exemptions, related solely to EOIR's caseload management, are applied to systemically disqualify applicants from work authorization. *See*, *e.g.*, paragraphs 46-48 below regarding the challenged Hearing Policy and Practice.

39. When an immigration judge adjourns a case, the reason must be entered into EOIR's database using a specific adjournment code. OPPM 11-02, at 7. Certain adjournment codes are intended to reflect "applicant-caused delay." An immigration judge's entry of an adjournment code that is intended to reflect applicant-caused delay will toll the 180-day EAD waiting period. The asylum EAD clock will remain tolled

until Defendant EOIR makes another entry in the EOIR database that indicates that the clock has resumed.

40. EOIR's Operating Policies and Procedures Memoranda (OPPMs) reiterate that only applicant-caused delays prevent the asylum clock from running and that, in such circumstances, the clock is stopped only for the number of days during which the delay continues. OPPM 11-02, at 7-10; Memorandum from Office of the Chief Immigration Judge, Operating Policies and Procedures Memorandum (OPPM) 05-07: Definitions and Use of Adjournment, Call-up and Case Identification Codes, *available at* http://www.justice.gov/eoir/efoia/ocij/oppm05/05-07.pdf.

Defendants' Unlawful Policies and Practices

41. Plaintiffs and class members challenge three specific policies and practices that Defendants have adopted with respect to the asylum EAD clock. For convenience, these are identified as "Notice and Review Policy and Practice," "Hearing Policy and Practice," and "Remand Policy and Practice." These policies and practices conflict with the U.S. Constitution, the INA, governing regulations, and the Administrative Procedure Act (APA).

42. *Notice and Review Policy and Practice*. Defendants' decisions to stop or not start or restart the asylum EAD clock are made without written notice or explanation and often off the record. While EOIR's most recent operating guidance indicates that an immigration judge should state on the record the reason why a case is being adjourned, OPPM 11-02, the judge is not required to inform the asylum applicant if the adjournment will stop or not start or restart the asylum EAD clock. Applicants often do not learn of asylum EAD clock determinations unless and until they inquire about the status of their

asylum EAD clocks or after their applications for work authorization have been denied. They also are not informed of the reasons that the asylum EAD clock was stopped or not started or restarted unless they make a specific inquiry. The written decisions from USCIS denying EAD applications do not include this information on any routine or systematic basis. Moreover, Plaintiffs do not have a meaningful opportunity to contest or remedy improper asylum EAD clock determinations nor is there any administrative mechanism to compel Defendants to issue work authorization after the 180-day waiting period has expired.

43. The USCIS Ombudsman recognized that the lack of a mechanism for asylum seekers to acquire accurate information about the amount of time accrued on their asylum EAD clocks creates confusion about employment eligibility. *See* USCIS Ombudsman Report, at 1, 5-6.

44. To contest a miscalculation of the asylum EAD clock, applicants must resort to an informal review process that is inadequate to timely remedy legal and factual errors. The USCIS Ombudsman has recognized the problems created by the lack of any standard procedure for correcting errors relating to asylum EAD clock determinations, which prevent Plaintiffs from establishing their eligibility for work authorization: "Ensuring that a delay is correctly identified as attributable either to the applicant or to the Federal Government is critical. Problems occur when delays are incorrectly attributed to the asylum applicant in circumstances that are actually caused by EOIR or USCIS. Additionally, when a delay that was caused by or requested by the applicant comes to an end, there is no easy way for the applicant to work with the Federal Government to restart the clock." *Id.* at 2. The recent OPPM from Defendant EOIR

merely reiterates the existing procedure and does not resolve these problems. OPPM 11-02.

45. By failing to provide applicants with legally sufficient notice of decisions on their asylum EAD clocks and an adequate opportunity to challenge improper asylum EAD clock determinations, Defendants violate their rights under the Due Process Clause of the Fifth Amendment and the APA.

46. *Hearing Policy and Practice.* Defendants have a nationwide policy and practice of starting the asylum EAD clock only at a hearing before an immigration judge. Consequently, even when an asylum applicant has filed a complete asylum application with the "immigration court," as the regulations require, the asylum EAD clock will not start until the applicant's next court appearance, which – due to court backlogs and other reasons not attributable to the applicant – may be many months and often more than a year after the applicant filed the asylum application. OPPM 11-02. This illustrates a conflict in the system by which Defendants have chosen to implement the EOIR adjudication mandate at the expense of applicants' asylum EAD clocks. In many cases, individuals who would otherwise file a complete asylum application prior to a hearing before an immigration judge are deterred by Defendants' Hearing Policy and Practice.

47. Defendants' Hearing Policy and Practice, articulated in OPPM 11-02 and EOIR's Immigration Court Practice Manual Chapter 3 (2009), at 3.1(b)(iii)(A), is binding on all EOIR personnel, including immigration judges, who must enter an adjournment code in the EOIR database in accord with this policy and practice. Defendant USCIS relies upon these entries by immigration judges in the database when it determines

whether the 180-day waiting period for EAD eligibility has been met for purposes of deciding an EAD application.

48. By refusing to start the asylum EAD clocks of applicants who have filed complete asylum applications until the next court hearing, Defendants unlawfully prevent applicants from accruing time towards the 180-day waiting period for purposes of employment eligibility.

49. *Remand Policy and Practice*. Defendants have a nationwide policy and practice of not starting or restarting the asylum EAD clock after a previously denied asylum case has been remanded for adjudication. OPPM 11-2 at 16. The asylum EAD clock stops running when an asylum application is denied before an EAD has been issued. 8 C.F.R. §§ 208.7(a)(1), 1208.7(a)(1). However, when, upon appeal to either the BIA or a federal appeals court, the asylum case is remanded for further adjudication of the asylum application, the denial necessarily is vacated. Because there no longer is a denial of the asylum application when a remand order is entered, there also no longer is a basis under the statute and regulations for the asylum EAD clock to remain stopped. Instead, the asylum EAD clock should start or restart as of the point at which it had previously stopped. In violation of the statute and regulations, however, Defendants policy and practice is to permanently stop the asylum EAD clock upon the denial of an EAD application and to refuse to start or restart it upon a remand.

50. Defendants' Remand Policy and Practice, articulated in OPPM 11-02, is binding on all EOIR personnel, including immigration judges and thus adversely impacts asylum EAD clock determinations. Defendant USCIS relies upon EOIR's determinations of the asylum EAD clock, as reflected in the EOIR database, when it determines whether

the 180-day waiting period for EAD eligibility has been met for purposes of deciding an EAD application.

51. By refusing to start or restart the asylum EAD clocks of applicants whose asylum cases have been remanded for further adjudication, Defendants' Remand Policy and Practice unlawfully prevents applicants from accruing time for purposes of employment eligibility.

Application of Defendants' Policies and Practices to Plaintiffs

52. *A.B.T.*. Plaintiff A.B.T. first arrived in the United States on September 14, 2010, after fleeing Eritrea to escape past persecution and threats of future persecution due to her political opinion and membership in the social group of Eritrean women who have been subjected to gender-based violence. Following her entry into the United States she was apprehended by DHS agents, placed in removal proceedings and detained. Based on an interview with a DHS officer, she was released from detention after being found to have a credible fear of persecution if she returned to Eritrea. Her initial hearing was scheduled for March 13, 2012.

53. Because she would face a statutory bar on asylum for filing the application more than a year after her arrival in the United States if she waited to file her asylum application at her 2012 hearing, Ms. A.B.T. filed a complete asylum application with the Seattle immigration court on June 14, 2011. Her application was stamped as "lodged but not filed."

54. Ms. A.B.T. applied for work authorization on or around November 15, 2011, by which date her complete asylum application had been pending for more than 150 days, exclusive of any period of applicant-caused delay. Due to Defendants' policy

of filing defensive asylum applications only in open court at a hearing, and due to the absence of legally sufficient procedures through which Ms. A.B.T. can address this issue, her asylum EAD clock never started and her EAD application will be improperly denied.

55. Ms. A.B.T. did not receive notice from the immigration court or USCIS that her asylum EAD clock did not start when she filed her asylum application with the immigration court.

56. Without the ability to work, Ms. A.B.T. relies on her cousin to provide her with housing and basic needs such as food and clothing. Ms. A.B.T. also relies entirely on her cousin to pay for her medical expenses and thus, is unable to visit the doctor as often as she feels is necessary.

57. Ms. A.B.T. is expected to reimburse her cousin for all of her living expenses. Because Ms. A.B.T. is not authorized to work, she has no ability to pay off this debt and each day grows more indebted.

58. Due to Defendants' polices and practices, Ms. A.B.T. will not be granted employment authorization for at least 180 days after her initial hearing on March 13, 2012. But for Defendants' Hearing Policy and Practice, Ms. A.B.T. would be eligible for an EAD at this time.

59. *K.M.-W.*. Plaintiff K.M.-W. arrived in the United States on December 17, 2009, after fleeing Eritrea to escape past persecution and threats of future persecution due to his political opinion. Following his entry into the United States, he was placed in removal proceedings and detained. Based on an interview with a DHS officer, he was found to have a credible fear of persecution if he returned to Eritrea. As a result, he was released on bond and, following a change of venue to the immigration court in Seattle,

Washington, given notice that a hearing was scheduled for December 7, 2010 at the Seattle immigration court.

60. Two months before the scheduled hearing, the immigration court notified him that the hearing had been postponed to November 29, 2011 due to unforeseen circumstances.

61. Because he would face a statutory bar on asylum for filing the application more than a year after his arrival in the United States if he waited to file his asylum application at the postponed hearing, Mr. K.M.-W. moved to request an earlier hearing date. The immigration judge denied the motion but instead directed him to tender an asylum application to the immigration court, where it would be stamped with the date and marked as "lodged" but not filed. The immigration judge stated that this would satisfy the statutory one-year filing deadline and thus protect Mr. K.M.-W.' right to proceed with his asylum application. However, the immigration judge also stated that the application would not be "formally received" by the immigration court until the next hearing.

62. Mr. K.M.-W. filed a complete asylum application with the Seattle immigration court on December 13, 2010 that was stamped as "lodged but not filed."

63. Mr. K.M.-W. applied for work authorization on or around October 26, 2011, by which date his complete asylum application had been pending for more than 180 days based upon his filing date of December 13, 2010 and exclusive of any period of applicant-caused delay. Due to Defendants' policy of filing defensive asylum applications only in open court at a hearing, and due to the absence of legally sufficient procedures through which Mr. K.M.-W. can address this issue, his asylum EAD clock never started and as a result, his EAD application was denied on December 8, 2011.

64. Mr. K.M.-W. has never received notice from the immigration court or USCIS that his asylum EAD clock did not start when he filed the application with the immigration court.

65. At the November 29, 2011, Mr. K.M.-W.'s asylum EAD clock started at day one. His asylum EAD clock does not reflect the 11 month period between the filing of the asylum application with the immigration court on December 13, 2010 and the hearing on November 29, 2011.

66. Without the ability to work, Mr. K.M.-W. relies entirely upon the generosity of his cousin to meet his basic needs. He lives with his cousin and his cousin pays for his clothing and food. Mr. K.M.-W. also is dependent on his cousin to pay for medical care and thus, does not have regular access to a doctor.

67. Mr. K.M.-W. is 23 years old and worked as a farmer in Eritrea. He hoped to attend classes to pursue a nursing profession in the United States as a means of supporting himself, but because he is not lawfully able to work, he cannot begin to save money to attend classes.

68. Mr. K.M.-W. considers himself to be a burden on his family as he is unable to contribute to the household income and to support himself.

69. Due to Defendants' polices and practices, Mr. K.M.-W. will not be granted employment authorization before his individual hearing on February 7, 2012. But for Defendants' Hearing Policy and Practice, Mr. K.M.-W. would be eligible for an EAD at this time.

70. *G.K.*. Plaintiff G.K. arrived in the United States on April 17, 2001, after fleeing India to escape past persecution and threats of future persecution due to her religion and political opinion.

71. She filed a complete asylum application with USCIS on April 18, 2002. USCIS referred her case to the San Francisco immigration court on May 29, 2002. At an October 7, 2002 hearing, the immigration judge denied her application for asylum. At that time, her asylum EAD clock was at 172 days. On appeal, the BIA and the Ninth Circuit both affirmed the denial of her asylum application.

72. New counsel filed a motion to reopen the case at the BIA, arguing that prior counsel was ineffective and had prejudiced her case. The BIA denied the motion to reopen, but on appeal the Ninth Circuit granted her petition for review. The court found that former counsel's failure to effectively document and present the asylum claim rendered the removal proceedings so fundamentally unfair that Ms. G.K. was prevented from reasonably presenting her case. The court remanded the case to the BIA on August 31, 2009.

73. Pursuant to this Ninth Circuit decision, on February 26, 2010, the BIA vacated its denial of Ms. G.K.'s motion to reopen, reopened the removal proceedings, and remanded the case to the immigration judge for further consideration of the asylum application. The immigration judge then scheduled a hearing in her case for April 29, 2013.

74. Ms. G.K. intends to apply for work authorization on or around December 16, 2011, by which date her complete asylum application will have been pending for more than 180 days, exclusive of any period of applicant-caused delay or period of

denial. Due to Defendants' policy of failing to restart an asylum EAD clock following a remand, Ms. G.K.'s asylum EAD clock has remained permanently stopped at 172 days and her EAD application will be improperly denied.

75. Ms. G.K. never received notice from the immigration court or USCIS that her asylum EAD clock was not restarted following the BIA's decision to reopen her case and remand it to the immigration court. To date, she has been unable to correct the problems with her asylum EAD clock.

76. Without the ability to work, Ms. G.K. has never been able to use the skills she developed as a fashion merchandiser working for an Indian company with international clients, nor her advanced culinary degree. She has long hoped to use her college degree in home science as a chef in the United States. Though she has been offered opportunities to work, she has been unable to pursue these opportunities without work authorization.

77. Ms. G.K. lives with her husband and their 12 year old daughter and nine year old son. Because she is unable to work, the family relies entirely on her husband to provide for them.

78. Due to Defendants' Remand Policy and Practice, Ms. G.K.'s asylum EAD clock is permanently stopped. But for Defendants' Remand Policy and Practice, Ms. G.K. would be eligible for an EAD at this time.

79. *L.K.G.*. Plaintiff L.K.G. first arrived in the United States on January 11, 2007, after fleeing Eritrea to escape past persecution and threats of future persecution due to her political opinion. On January 23, 2007, after determining that Ms. L.K.G. credibly feared persecution in her native Eritrea, USCIS issued her a Notice to Appear.

80. Ms. L.K.G. filed a complete asylum application with the Dallas immigration court at her hearing on September 10, 2007, and was denied asylum on October 19, 2007. At the time of this denial, Ms. L.K.G.'s asylum EAD clock was at 39 days. Ms. L.K.G. appealed this decision to the BIA, which dismissed her appeal on August 19, 2008.

81. On November 19, 2008, after retaining new counsel, Ms. L.K.G. moved to reopen her case before the BIA based on ineffective assistance of former counsel and the existence of previously unavailable material evidence. On May 29, 2009, the BIA granted her motion, reopened her removal proceedings, and remanded the case to the immigration judge for further consideration of the asylum application. She attended her first hearing after remand on August 16, 2010. Her next hearing was then scheduled for April 20, 2011. On March 15, 2011, her attorney sought a continuance of the April 20, 2011 hearing due to a simultaneously scheduled court hearing. The court rescheduled the hearing for October 19, 2011, but later, on its own motion, postponed it until August 20, 2013.

82. Ms. L.K.G. previously applied for and was granted an EAD on December 4, 2008, but this EAD expired on December 11, 2009. Ms. L.K.G. applied to renew her work authorization on or about October 26, 2009. But for Defendants' Remand Policy and Practice, Ms. L.K.G. would have had more than 180 days on her asylum EAD clock at the time of this October 2009 EAD application and thus would have been eligible for an EAD.

83. Ms. L.K.G.'s EAD application was denied on January 19, 2010. Following this denial, she discovered for the first time that her asylum EAD clock was

stopped at 39 days and that none of the period since the BIA remand had been applied to her asylum EAD clock.

84. Without the ability to work, Ms. L.K.G. has relied entirely on the generosity of her cousin, her church and friends to meet her basic needs, including a place to stay, food and clothing. In addition, she has had to rely on the generosity of others to pay for over $1,000 of medical expenses.

85. The emotional strain of her situation has caused her to seek counseling at her church, where she receives emotional support.

86. Ms. L.K.G.'s prior work experience involved taking and developing photographs. She is 33 years old and would like to be able to support herself. Because she does not have work authorization, she cannot apply for jobs where she could use her skills.

87. Due to Defendants' Remand Policy and Practice, Ms. L.K.G.'s asylum EAD clock is permanently stopped at 39 days. But for Defendants' Remand Policy and Practice, Ms. L.K.G. would be eligible for an EAD at this time.

88. *D.W.*. Plaintiff D.W. first arrived in the United States on September 21, 2002, after fleeing China to escape past persecution and threats of future persecution due to his religion. On February 10, 2003, Mr. D.W. filed a complete asylum application with the Los Angeles Asylum Office. On June 6, 2003, Mr. D.W.'s case was referred by USCIS to the Los Angeles Immigration Court. At the time Mr. D.W.'s asylum application was referred to the immigration court, his asylum clock was at 122 days.

89. Mr. D.W. attended his initial hearing on July 8, 2003. His asylum EAD clock was set at 148 days on this date. Mr. D.W.'s asylum application was denied by an

immigration judge on February 24, 2005. Because scheduling delays between July 8, 2003 and February 24, 2005 were at the request of Mr. D.W.'s attorneys, Mr. D.W.'s asylum EAD clock remained at 148 days at the time of the immigration judge's decision.

90. Mr. D.W. appealed the immigration judge decision to the BIA and the BIA affirmed the denial on May 4, 2006. On August 17, 2007, following a subsequent appeal, the Ninth Circuit granted a joint motion to remand the case to the BIA to consider whether the immigration judge may have misconstrued some of the record evidence in reaching her adverse credibility determination.

91. On March 7, 2008, the BIA remanded Mr. D.W.'s case to the immigration judge for reconsideration of his eligibility for asylum and entry of a new decision. Following this remand, hearings in Mr. D.W.'s case were postponed by the immigration court numerous times, during the period June 26, 2008 to January 26, 2011. None of these postponements were at the request of Mr. D.W.. Consequently, but for Defendants' Remand Policy and Practice, Mr. D.W.'s asylum EAD clock should have exceeded 180 days during this time. His next hearing is scheduled for April 30, 2012.

92. Mr. D.W. previously applied for and was granted an EAD in 2003. His most recent request to renew his employment authorization, filed on March 28, 2011, was denied on May 24, 2011. Defendants applied their Remand Policy and Practice to Mr. D.W. in reaching this decision and failed to apply any of the time since the remand in his case to his asylum EAD clock.

93. Mr. D.W. had to leave his job after his EAD expired. He initially relied on his savings to pay for food, rent and other expenses. His savings have run out and he now is borrowing money from a friend to pay for all of his living expenses.

94. Mr. D.W. is not sure that he will be able to borrow money to continue to pay for an attorney to represent him in his asylum proceedings.

95. Due to Defendants' Remand Policy and Practice, Mr. D.W.'s asylum EAD clock is permanently stopped at 148 days. But for Defendants' Remand Policy and Practice, Mr. D.W. would be eligible for an EAD at this time.

CLASS ALLEGATIONS

96. Plaintiffs bring this action on behalf of themselves and all other persons who are similarly situated, pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2). A class action is proper because this action involves questions of law and fact common to the class, the class is so numerous that joinder of all members is impractical, the claims of the Plaintiffs are typical of the claims of the class, the Plaintiffs will fairly and adequately protect the interests of the class, and Defendants have acted on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate with respect to the class as a whole.

97. All Plaintiffs seek to represent a "Notice and Review class" 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.

98. The Notice and Review class is so numerous that joinder of all members is impracticable. Plaintiffs are not aware of the exact number of potential class members. Upon information and belief, there are thousands of asylum applicants to whom Defendants have failed or will fail to provide legally sufficient notice of the status of their

asylum EAD clocks and a meaningful opportunity to challenge improper asylum EAD clock determinations.

99. A question of law common to the Notice and Review class is whether Defendants' Notice and Review Policies and Practices violate the U.S. Constitution, the INA, the governing regulations, and the APA.

Hearing Subclass

100. Plaintiffs A.B.T. and K.M.-W. seek to represent a subclass, entitled "Hearing Subclass," consisting of:

> 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.

101. Plaintiffs filed their complete asylum applications with the immigration court more than 180 days ago, exclusive of any period of applicant-caused delay. Defendants have denied or will deny their applications for work authorization based on their Hearing Policy and Practice, which dictates that an EAD asylum clock can start or restart only at a hearing before an immigration judge. Consequently, Plaintiffs' asylum EAD clocks do not reflect periods following the filing or attempted filing of a complete asylum application with the immigration court but prior to their next hearing.

102. The Hearing subclass is so numerous that joinder of all members is impracticable. Upon information and belief, there are hundreds of asylum applicants who are unable to obtain employment authorization because Defendants have refused or will refuse to start their asylum EAD clocks until a hearing before an immigration judge even

though they already have filed or will file a complete asylum application with the immigration court prior to that hearing.

103. A question of law common to Hearing subclass is whether Defendants' Hearing Policy and Practice violates the INA, the regulations, and/or the APA.

Remand Subclass

104. Plaintiffs G.K., L.K.G. and D.W. seek to represent a subclass, entitled "Remand subclass," consisting of:

> 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

105. Plaintiffs filed complete asylum applications with the immigration court and their applications have been pending for more than 180 days, exclusive of any period of applicant-caused delay. Defendants have denied or will deny their applications for work authorization based on their Remand Policy and Practice, which dictates that an asylum EAD clock cannot be started or restarted following remand.

106. The Remand subclass is so numerous that joinder of all members is impracticable. Plaintiffs are not aware of the exact number of potential class members because Defendants are in the best position to identify such persons. However, upon information and belief, there are hundreds of asylum applicants who have been or will be denied employment authorization because Defendants unlawfully failed to start or restart their asylum EAD clocks following remand.

107. A question of law common to the Remand subclass is whether the Defendants' Remand Policy and Practice violates the INA, the immigration regulations, and/or the APA.

108. The claims of all the named Plaintiffs are typical of the Notice and Review class. The claims of Plaintiffs seeking to represent each proposed subclass are typical of the members of each respective proposed subclass.

109. The Plaintiffs will fairly and adequately represent and protect the interests of the members of the proposed Notice and Review class. The Plaintiffs seeking to represent each proposed subclass will fairly and adequately represent the interests of each respective proposed subclass.

110. Plaintiffs are represented by competent counsel with extensive experience in complex class actions and immigration law.

DECLARATORY AND INJUNCTIVE RELIEF ALLEGATIONS

111. Defendants have acted on grounds generally applicable to the proposed class and subclasses, thereby making appropriate final declaratory and injunctive relief with respect to the class and each subclass.

112. An actual and substantial controversy exists between the class and each subclass and the Defendants as to their respective legal rights and duties. Plaintiffs contend that Defendants' actions violate Plaintiffs' rights and the rights of proposed class and subclass members.

113. Defendants' miscalculations of Plaintiffs and proposed class and subclass members' asylum EAD clocks based upon their policies and practices has caused and

will continue to cause irreparable injury to Plaintiffs and proposed class and subclass members. Plaintiffs have no plain, speedy, and adequate remedy at law.

114. The EAD applications of Plaintiffs and the class and subclasses have been or will be denied due to Defendants' policies and practices challenged herein. Defendants' actions constitute final agency action for the purpose of the APA, 5 U.S.C. § 701, *et seq.*

115. The INA and applicable regulations provide for no administrative appeal from a denial of an EAD application. Accordingly, Plaintiffs have exhausted their administrative remedies.

116. Under 5 U.S.C. §§ 702 and 704, Plaintiffs and proposed class and subclass members have suffered a "legal wrong" and have been "adversely affected or aggrieved" by agency action for which there is no other adequate remedy in a court of law.

117. Based on the foregoing, the Court should grant declaratory and injunctive relief under 28 U.S.C. §§ 2201, 2202 and 5 U.S.C. § 702.

First Cause of Action
Violation of the Immigration and Nationality Act and Regulations and the Due Process Clause of Fifth Amendment: Lack of Notice and Meaningful Opportunity to Contest (on Behalf of All Plaintiffs and the Notice and Review Class)

118. Plaintiffs incorporate by reference the allegations of fact set forth in the previous paragraphs.

119. Defendants have a nationwide Notice and Review Policy and Practice of not providing legally sufficient notice to asylum applicants when their asylum EAD clocks are stopped or not started or restarted during removal proceedings and when their EAD applications are denied, and of failing to provide a meaningful opportunity to

contest asylum EAD clock determinations and EAD application denials. This policy and practice deprives Plaintiffs and the class of the opportunity to make informed decisions concerning whether to request a rescheduled hearing, continuance or delay in the adjudication of their asylum applications; the opportunity to address or cure any applicant-caused delay; and the opportunity to respond to and contest an incorrect decision concerning their asylum EAD clocks and EAD applications, including whether a rescheduled hearing, continuance, or delay was caused by the applicant.

120. Through this policy and practice, Defendants violate regulations governing the issuance of employment authorization documents, including *inter alia*, 8 C.F.R. §§ 274a.12(c)(8), 274a.13(a), 208.7, and 1208.7, and deprive Plaintiffs and the Notice and Review class of an opportunity to apply for a benefit provided under law without due process, in violation of the Fifth Amendment of the Constitution.

Second Cause of Action
Violation of Administrative Procedure Act: Lack of Notice and Meaningful Opportunity to Contest (on Behalf of All Plaintiffs and the Notice and Review Class)

121. Plaintiffs incorporate by reference the allegations of fact set forth in the previous paragraphs.

122. Defendants' failure to provide asylum applicants with legally sufficient notice of or an opportunity to contest asylum EAD clock determinations and EAD denials is arbitrary and capricious, an abuse of discretion, and otherwise not in accordance with the law. As such, it violates the Administrative Procedure Act, 5 U.S.C. § 701, *et seq*.

Third Cause of Action
Violation of the Immigration and Nationality Act, Regulations and Due Process Clause of Fifth Amendment: Refusal to Start Asylum EAD Clock except at Hearing (on Behalf of Plaintiffs A.B.T. and K.M.-W. and the Hearing Subclass)

123. Plaintiffs incorporate by reference the allegations of fact set forth in the previous paragraphs.

124. Defendants have a nationwide Hearing Policy and Practice dictating that asylum EAD clocks can start only at a hearing. This policy and practice prevents some asylum applicants from filing an application with the immigration court at a time other than a scheduled hearing before an immigration judge. For those applicants who are able to file an asylum application with the immigration court prior to a hearing, this policy and practice prevents Defendants from immediately starting the asylum EAD clock upon the filing of the application. The clock does not start before the next scheduled hearing.

125. Through this policy and practice, which has prevented or will prevent Plaintiffs A.B.T. and K.M.-W. and the Hearing subclass from receiving work authorization during the legally permitted timeframe, Defendants violate the INA, including, *inter alia*, 8 U.S.C. §1158(d)(2), and its implementing regulations, including, *inter alia*, 8 C.F.R. §§ 208.3(c), 208.4(b), 208.7(a), 274a.12(c)(8), 274a.13(a), 1208.3(c), 1208.4(b), and 1208.7(a), and deprive the Plaintiffs and Hearing subclass of an opportunity to apply for a benefit provided under law without due process, in violation of the Fifth Amendment of the Constitution.

Fourth Cause of Action
Violation of Administrative Procedure Act: Refusal to Start Asylum EAD Clock except at Hearing (on Behalf of Plaintiffs A.B.T. and K.M.-W. Hearing Subclass)

126. Plaintiffs incorporate by reference the allegations of fact set forth in the previous paragraphs.

127. Defendants' refusal to start the asylum EAD clocks of Plaintiffs A.B.T. and K.M.-W. and the Hearing subclass members prior to their next scheduled hearings despite the filing of a complete asylum application with the immigration court is arbitrary and capricious, an abuse of discretion, and otherwise not in accordance with the law. As such, it violates the Administrative Procedure Act, 5 U.S.C. § 701, *et seq.*

Seventh Cause of Action
Violation of the Immigration and Nationality Act and Regulations: Failure to Restart the Asylum EAD Clock after Remand (on Behalf of Plaintiffs G.K., L.K.G. and D.W. and the Remand Subclass)

128. Plaintiffs incorporate by reference the allegations of fact set forth in the previous paragraphs.

129. Defendants have a nationwide Remand Policy and Practice dictating that an asylum EAD clock cannot be started or restarted after the BIA or a federal appeals court has remanded an asylum case for adjudication.

130. Through this policy and practice, which has prevented or will prevent Plaintiffs G.K., L.K.G. and D.W. and the Remand subclass from receiving work authorization during a legally permitted timeframe, Defendants violate the INA, including, *inter alia,* 8 U.S.C. §1158(d)(2), and its implementing regulations governing the issuance of employment authorization documents, including *inter alia,* 8 C.F.R. §§ 274a.12(c)(8), 274a.13(a), 208.7(a)(2), and 1208.7(a)(2).

Eighth Cause of Action
Violation of Administrative Procedure Act: Failure to Restart Asylum EAD Clock on Remand (on Behalf of Plaintiffs G.K., L.K.G. and D.W. and the Remand Subclass)

131. Plaintiffs incorporate by reference the allegations of fact set forth in the previous paragraphs.

132. Defendants' refusal to start the asylum EAD clocks of the Plaintiffs G.K., L.K.G. and D.W. and the Remand subclass following remand by the BIA or a federal appeals court is arbitrary and capricious, an abuse of discretion, and otherwise not in accordance with law. As such, it violates the Administrative Procedure Act, 5 U.S.C. § 701, *et seq.*

Prayer for Relief

Wherefore:

A. Plaintiffs respectfully request that this Court:

1. Assume jurisdiction over this matter;

2. Certify this case as a class action, and certify a Notice and Review class, Hearing subclass, and Remand subclass;

3. Appoint all Plaintiffs as representatives of the Notice and Review class;

4. Appoint Plaintiffs A.B.T. and K.M.-W. as representatives of the Hearing subclass, and Plaintiffs L.K.G., G.K., and D.W. as representatives of the Remand subclass;

5. Appoint Matt Adams, Chris Strawn, Melissa Crow, Mary Kenney, Emily Creighton, Robert Pauw, Robert Gibbs and Iris Gomez as class counsel pursuant to Federal Rule of Civil Procedure 23(g).

B. As remedies for each of the causes of action asserted above, Plaintiffs and class members request judgment as follows:

1. A declaratory judgment finding Defendants' failure to provide legally sufficient notice to applicants whose asylum EAD clocks are

stopped or not started or restarted during removal proceedings and a meaningful opportunity to correct errors to be arbitrary and capricious, an abuse of discretion, and in violation of the statute and regulations and a violation of due process;

2. A declaratory judgment finding Defendants' Hearing Policy and Practice and Remand Policy and Practice to be arbitrary and capricious, an abuse of discretion, in violation of the statute and regulations, and a violation of due process;

3. A permanent injunction ordering that if an asylum applicant is in removal proceedings before an immigration judge, then any decision to stop or not start or restart the asylum EAD clock must be made on the record, and only after the applicant has been notified of the consequences of requesting or causing a delay and given an opportunity to respond;

4. A permanent injunction ordering Defendants to establish an adequate process for an asylum applicant to contest an asylum EAD clock or EAD decision that is considered erroneous;

5. A permanent injunction ordering Defendants to start the asylum EAD clock when an asylum applicant files a complete asylum application with EOIR;

6. A permanent injunction ordering Defendants to start or restart the asylum EAD clock following a remand of an asylum case by either the Board of Immigration Appeals or a federal court of appeals;

7. A permanent injunction ordering Defendant USCIS to readjudicate Plaintiffs' EAD applications in accordance with the above-referenced guidelines;

8. Reasonable attorneys' fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d), 5 U.S.C. § 504, or any other applicable law; and

9. Such other and further relief as this Court deems just and appropriate.

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Dated: December 15, 2011 By: s/ Matt Adams

s/ Christopher P. Strawn
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