JUDGE ROTHSTEIN

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

IMMIGRANT ASSISTANCE PROJECT OF LOS ANGELES COUNTY FEDERATION OF LABOR (AFL-CIO); TRAVELERS & IMMIGRANTS AID OF CHICAGO; HERMANDAD MEXICANA NACIONAL; WASHINGTON ASSOCIATION OF CHURCHES; ONE STOP IMMIGRATION; INTERNATIONAL INSTITUTE (San Francisco); INTERNATIONAL INSTITUTE (East Bay); JOHN DOES Nos. 1 through 8; JANE DOES Nos. 1 through 4,

Plaintiffs

vs.

IMMIGRATION AND NATURALIZATION SERVICE; DORIS MEISSNER; DEPARTMENT OF JUSTICE; ATTORNEY GENERAL JANET RENO; DEPARTMENT OF STATE; SECRETARY OF STATE WARREN CHRISTOPHER,

Defendants.

No. C-88-379R

SECOND AMENDED COMPLAINT

I. INTRODUCTION

1. This is a class action lawsuit brought on behalf of persons who are statutorily eligible for legalization pursuant to the Immigration Reform and Control Act of 1986 (IRCA), but who

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have been unlawfully denied access to legalization benefits by INS. In addition to individual plaintiffs, seven labor, religious and community organizations bring this action on behalf of themselves and their members and clients.

2. IRCA comprehensively amended the Immigration and Nationality Act (INA), providing, *inter alia*, for a mechanism by which certain deportable aliens can legalize their status in the United States to permanent residents.

3. To qualify for legalization, a deportable alien must establish, *inter alia*, that s/he entered the United States "before January 1, 1982, and that he has resided continuously in the United States in an unlawful status since such date and through the date the applications filed..." INS §245A(a)(2), 8 U.S.C. §1255a(a)(2).

4. If the applicant entered the United States with a non-immigrant visa before January 1, 1982, the applicant must establish that (1) his or her period of authorized stay as a nonimmigrant expired before January 1, 1982 through the passage of time, or (2) his or her unlawful status (i.e. violation of non-immigrant status) was "known to the Government" as of such date. INA §245A(a)(2)(B), 8 U.S.C. §1255a(a)(2)(B).

5. The legalization provisions of IRCA created a right to apply for and have adjudicated applications for legalization during a twelve month period designated by the Attorney General.

6. Throughout the legalization application period, the Immigration and Naturalization Service ("INS") implemented regulations, policies and practices deterring plaintiffs and class members who entered the United States on non-immigrant visas from applying for legalization and preventing such individuals from applying. INS also refused to accept applications from such individuals. Pursuant to its regulations, policies and practices, the INS also often refused to give

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application forms to plaintiffs and class members. INS broadly disseminated information that plaintiffs and class members were not eligible to participate in the legalization program. INS instructed and/or trained Qualified Designated Entities (QDE's), established by Congress for the purpose of accepting legalization applications pursuant to INA §245A(c), 8 U.S.C. §1255a(c), not to prepare or accept applications from plaintiffs and class members. In addition, INS's regulations, policies and practices prevented plaintiffs and class members form accessing the administrative and judicial review procedure established by IRCA.

7. The INS has unlawfully denied and has refused to grant the benefits of interim stays of deportation and work authorization to plaintiffs and class members who qualify for legalization as required by INA §245(c), 8 U.S.C. §1255a(e)(2).

8. The INS failed to properly and accurately publicize the benefits of the legalization program, as required INA §245A(i), 8 U.S.C. §1255a(i), and because of this failure plaintiffs and class members who would otherwise have completed the application process and been granted legalization did not complete the application process. Plaintiffs and class members were informed by INS and by its agents, including QDE's, that they did not qualify for legalization and were ineligible to apply. As a result, plaintiffs and class members were not legalized as Congress intended.

9. The INS has unlawfully withheld benefits of legalization from plaintiffs and class members who filed timely applications for legalization. INS has unlawfully refused to approve their applications, holding their applications in abeyance for the past six years. During this time class members have been unable to travel outside the United States; they have been unable to obtain the permanent resident status to which they are entitled; they have been unable to rejoin

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and live with family members, as is permitted under the immigration laws of the United States; and they have been denied administrative and judicial review.

10. The plaintiffs also complain that the INS has adjudicated legalization applications in an unlawful manner. The procedures arbitrarily and without a rational basis used by INS as applied to the plaintiffs and class members are substantially more burdensome than the procedures applied to other similarly situated applicants for legalization. The INS has not provided plaintiffs and class members a full and fair opportunity to establish that they are eligible for legalization. The INS has not permitted plaintiffs and class members access to relevant information included in INS Files, information that would establish their eligibility for legalization. In adjudicating legalization applications, the INS has arbitrarily and without a rational basis imposed a burden of proof on plaintiffs and class members higher than the "preponderance of the evidence" standard which is required under IRCA and the Administrative Procedures Act, and which is used for other similarly situated applicants.

II. JURISDICTION

11. This court has jurisdiction pursuant to 28 U.S.C. §1331 (federal question jurisdiction); 28 U.S.C. §1361 (mandamus jurisdiction); and 8 U.S.C. §1329 (jurisdiction over disputes arising under the INA).

12. Declaratory judgment is sought pursuant to 28 U.S.C. §2202.

III. PARTIES

13. Plaintiff IMMIGRANT ASSISTANCE PROJECT OF THE LOS ANGELES

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COUNTY FEDERATION OF LABOR (AFL-CIO) ("IMMIGRANT ASSISTANCE PROJECT") is an organization which provides, and throughout the legalization application period and at all relevant times, has provided legal and other assistance to its members and potential members seeking legalization under IRCA. The policies and practices of defendants challenged herein have made such assistance considerably more difficult and have rendered such assistance much less effective. In addition, these policies and practices have diverted said plaintiff's very limited resources away from providing legal assistance to numerous other members with complicated, urgent problems. Members and clients of plaintiff IMMIGRANT ASSISTANCE PROJECT have been and will continue to be injured by the practices challenged herein. Plaintiff IMMIGRANT ASSISTANCE PROJECT sues on its own behalf and on behalf of its members and clients.

14. Plaintiff TRAVELERS & IMMIGRANTS AID OF CHICAGO is an organization which provides, and at all relevant times has provided, legal and other assistance to individuals seeking immigration assistance. At all relevant times it was a Qualified Designated Entity ("QDE") authorized by the INS to accept legalization applications and assist in the preparation of such applications. It has, since 1968, assisted immigrants and refugees in, inter alia, legal matters regarding their status under the Immigration and Nationality Act. The TRAVELERS & IMMIGRANTS AID OF CHICAGO has been directly affected by the INS policies at issue in this litigation, as it has been denied the opportunity effectively to represent its clients. Plaintiff TRAVELERS & IMMIGRANTS AID OF CHICAGO is further injured by INS regulations and policies challenged herein because, during the legalization application period and at all subsequent times, it has been prohibited from accepting and forwarding to INS legalization applications from Plaintiffs and class members. This inability to accept and froward such applications has caused

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plaintiff TRAVELERS & IMMIGRANTS AID OF CHICAGO loss of revenue and good will. Plaintiff TRAVELERS & IMMIGRANTS AID OF CHICAGO has statutory right, pursuant to INA §245A(c), to accept and forward to INS late applications from plaintiffs and class members. The policies and practices challenged herein also have directly and adversely affected its ability to assist its members who qualify for legalization. Otherwise eligible clients of the TRAVELERS & IMMIGRANTS AID OF CHICAGO are deemed ineligible for legalization under defendants' challenged policies. Plaintiff TRAVELERS & IMMIGRANTS AID OF CHICAGO sues on its own behalf and on behalf of its members and clients.

15. Plaintiff HERMANDAD MEXICANA NACIONAL is, and throughout the legalization application and at all relevant times has been, an unincorporated membership, mutual aid association primarily composed of Latino families and their U.S. citizen family members. It is devoted to promoting and protecting the legal and social interests of its members. During the legalization application period it set up clinics in Los Angeles and Orange Counties to help its members and prospective members complete their applications for legalization. The policies and practices of defendants challenged herein have made such assistance considerably more difficult and have rendered such assistance much less effective. In addition, these policies and practices have diverted said plaintiff's very limited resources away from providing legal assistance to numerous other clients with more complicated, urgent problems. In addition, members and clients of plaintiff HERMANDAD MEXICANA NACIONAL have been and will continue to be injured by the practices challenged herein. Otherwise eligible members and clients of HERMANDAD MEXICANA NACIONAL have been deemed ineligible for legalization under defendants' challenged practices and policies. Plaintiff HERMANDAD MEXICANA NACIONAL sues on its

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own behalf and on behalf of its members and clients.

16. Plaintiff WASHINGTON ASSOCIATION OF CHURCHES is a non-profit organization in the State of Washington. It is an association of churches, and one of its purposes has been to provide assistance to persons applying for legalization. Plaintiff WASHINGTON ASSOCIATION OF CHURCHES was at all relevant times a QDE, an organization authorized by the INS to accept legalization applications and to assist applicants. The policies and practices of defendants challenged herein have made such assistance considerably more difficult and rendered such assistance much less effective. In addition, these policies and practices have diverted said plaintiff's very limited resources away from providing legal assistance to numerous other clients with more complicated, urgent problems. Plaintiff WASHINGTON ASSOCIATION OF CHURCHES is further injured by INS regulations and policies challenged herein because, during the legalization application period and at all subsequent times, it has been prohibited form accepting and forwarding to INS legalization applications from plaintiffs and class members. This inability to accept and froward such applications has caused plaintiff WASHINGTON ASSOCIATION OF CHURCHES loss of revenue and good will. Plaintiff WASHINGTON ASSOCIATION OF CHURCHES has statutory right, pursuant to INA §245A(c), to accept and forward to INS late applications from plaintiffs and class members. Plaintiff WASHINGTON ASSOCIATION OF CHURCHES sues on its own behalf and on behalf of its members and clients.

17. Plaintiff ONE STOP IMMIGRATION is a Los Angeles-based legal aid organization which, throughout the legalization application period and at all relevant times, has provided free or low cost immigration services to qualified members and clients. The policies and practices of

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defendants challenged herein have made such assistance considerably more difficult and have rendered such assistance much less effective. In addition, these policies and practices have diverted said plaintiff's very limited resources away from providing legal assistance to numerous other clients with complicated, urgent problems. Clients of plaintiff ONE STOP IMMIGRATION have been and will continue to be injured by the practices challenged herein. Otherwise eligible clients of ONE STOP IMMIGRATION are deemed ineligible for legalization under defendants' challenged policies. Plaintiff ONE STOP IMMIGRATION sues on its own behalf and on behalf of its clients.

18. Plaintiff INTERNATIONAL INSTITUTE (SAN FRANCISCO) is a non-profit corporation dedicated, inter alia, to protecting the social and legal rights of immigrants, including immigrants seeking legalization under IRCA. At all relevant times, plaintiff INTERNATIONAL INSTITUTE (SAN FRANCISCO) has provided legal assistance to immigrants seeking legalization under IRCA. The policies and practices of defendants challenged herein have made such assistance considerably more difficult and rendered such assistance much less effective. In addition, these policies and practices have diverted said plaintiff's very limited resources away from providing legal assistance to numerous other clients with more complicated, urgent problems. Clients of Plaintiff INTERNATIONAL INSTITUTE (SAN FRANCISCO) have been and will continue to be injured by the practices challenged herein. Otherwise eligible clients of INTERNATIONAL INSTITUTE (SAN FRANCISCO) have been deemed ineligible for legalization under defendants' challenged regulations and interpretations. Plaintiff INTERNATIONAL INSTITUTE (SAN FRANCISCO) sues on its own behalf and on behalf of its clients

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19. Plaintiff INTERNATIONAL INSTITUTE (EAST BAY) is a non-profit California corporation dedicated, inter alia, to protecting the social and legal rights of immigrants, including immigrants seeking legalization under IRCA. Throughout the legalization application period and at all relevant times, plaintiff INTERNATIONAL INSTITUTE (EAST BAY) has provided legal assistance to immigrants seeking legalization under IRCA. The policies and practices of defendants challenged herein have made such assistance considerably more difficult and rendered such assistance much less effective. In addition, these policies and practices have diverted said plaintiff's very limited resources away from providing legal assistance to numerous other clients with more complicated, urgent problems. Clients of Plaintiff INTERNATIONAL INSTITUTE (EAST BAY) have been and will continue to be injured by the practices challenged herein. Otherwise eligible clients of INTERNATIONAL INSTITUTE (EAST BAY) have been deemed ineligible for legalization under defendants' challenged regulations and interpretations. Plaintiff INTERNATIONAL INSTITUTE (EAST BAY) sues on its own behalf and on behalf of its clients.

20. Plaintiff JOHN DOE NUMBER 1 (A- S-), a resident of the State of Missouri, entered the United States from Iran on an F-1 student visa on January 11, 1978. Prior to January 1, 1982 he violated the terms of his nonimmigrant visa by working without authorization, and he has social security records to establish this fact. In addition, he violated his status before January 1, 1982 by failing to take a full course of studies and by failing to submit required address reports. JOHN DOE NUMBER 1 has since then maintained a continuous unlawful residence in the United States. He is a member of categories 1 and 2, as defined below. JOHN DOE NUMBER 1 attempted to file an application for legalization during the application period but was prevented from applying because of the INS's policies and practices challenged in this lawsuit. JOHN DOE

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NUMBER 1 presented an application to the Immigration Service at a legalization office in Kansas City, Missouri in approximately October 1987. The legalization office refused to accept this application. JOHN DOE NUMBER 1 is eligible for legalization but for the fact that the Immigration Service prevented him from applying during the application period.

21. Plaintiff JOHN DOE NUMBER 2 (K- U-), a resident of the State of Ohio, entered the United States from Nigeria on an F-1 student visa on January 20, 1980. Prior to January 1, 1982 he violated the terms of his nonimmigrant visa by working without authorization, and he has federal tax records to establish this fact. In addition, he violated his status prior to January 1, 1982 by failing to take a full course of studies and by failing to file address reports as required under INA §265. He has since then maintained a continuous unlawful residence in the United States. He is a member of category 1 and category 2, as defined below. JOHN DOE NUMBER 2 attempted to file an application for legalization during the application period but was prevented from applying because of the INS's policies and practices challenged in this lawsuit. In April 1988, several days before the end of the application period, JOHN DOE NUMBER 2 went to a Qualified Designated Entity ("QDE") to file his application. The QDE told JOHN DOE NUMBER 2 that he was not eligible for the legalization program and that they would not accept his application for filing. JOHN DOE NUMBER 2 is eligible for legalization, but for the fact that he was prevented from applying during the application period because of INS's unlawful policies and practices challenged herein.

23. Plaintiff JANE DOE NUMBER 1 (S- L-), a resident of the State of California, entered the United States from Malaysia on an F-1 student visa in 1977. Prior to January 1, 1982 she violated the terms of her nonimmigrant visa by working without authorization. In addition, she

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failed to comply with the address reporting requirements of INA §265. She has since then maintained a continuous unlawful residence in the United States. She is a member of category 1, as defined below. JANE DOE NUMBER 1 took the steps that she could to file an application for legalization during the application period but was prevented from completing the application process because of the INS's policies and practices challenged in this lawsuit. During the legalization application period JANE DOE NUMBER 1 went to an INS Office in Los Angeles, California to apply for legalization. The Immigration Officer at the front counter refused to give JANE DOE NUMBER 1 the necessary application forms for the legalization program. JANE DOE NUMBER 1 was not made aware of any appeal from the decision to block her from completing the legalization process. She is informed and believes that no administrative appeal exists. INS's failure to publicize correct information regarding eligibility criteria was also a cause of her failure to complete the application process. JANE DOE NUMBER 1 is eligible for legalization, but for the fact that she was prevented from applying because of INS's unlawful policies and practices challenged herein.

24. Plaintiff JOHN DOE NUMBER 3 (P- K-), a resident of the State of Illinois, entered the United States from Cameroon on an F-1 student visa on January 14, 1981. Prior to January 1, 1982 he violated the terms of his nonimmigrant visa by working without authorization, and he has records from the Social Security Administration establishing this fact. He also failed to comply with the address reporting requirements of INA section 265. He has since then maintained a continuous unlawful residence in the United States. He is a member of category 1, as defined below. JOHN DOE NUMBER 3 sought to file an application for legalization during the application period but was prevented from applying because of the INS's policies and practices

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challenged in this lawsuit. He received incorrect information concerning eligibility requirements through the INS outreach program. JOHN DOE NUMBER 3 attended a community meeting concerning legalization arranged by the Immigration Service at Washington State University in April 1988. The INS officers leading this meeting stated that the legalization program was not for students whose visas were facially valid after January 1, 1982, and that such students were not eligible to participate in the legalization program. In addition, a similarly-situated friend of JOHN DOE NUMBER 3 attempted to apply for legalization at a local INS office, and the Immigration Officer at the front counter refused to accept his application. Based on these events, JOHN DOE NUMBER 3 understood that he was not eligible to participate in the legalization program, that the Immigration Service would not accept his application, and that he would not be issued work authorization if he attempted to apply. JOHN DOE NUMBER 3 is informed and believes that no administrative appeal exists. INS's failure to publicize correct information regarding eligibility criteria was also a cause of his failure to complete the application process. JOHN DOE NUMBER 3 is eligible for legalization but for the fact that he was prevented from applying because of INS's unlawful policies and practices challenged herein.

25. Plaintiff JOHN DOE NUMBER 4 (G- B-), a resident of the State of Florida, entered the United States from Great Britain on a nonimmigrant B-2 visitor's visa in 1979. He subsequently reentered the United States on his B-2 visa with an authorized stay after January 1, 1982. Prior to January 1, 1982 JOHN DOE NUMBER 4 violated the terms of his nonimmigrant visa by working without authorization, and he has social security records to establish this fact. In addition, he failed to comply with the address reporting requirements of INA §265. JOHN DOE NUMBER 4 has maintained a continuous unlawful residence in the United States since that time.

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He is a member of categories 1 and 3, as defined below. JOHN DOE NUMBER 4 attempted to file an application for legalization during the application period but was prevented from applying because of the INS's policies and practices challenged in this lawsuit. In September or October 1987, during the legalization application period, he went to an INS office to obtain the necessary application forms, and file an application for legalization. He was told that he was not eligible to apply because he had entered the United States on a nonimmigrant visa that was facially valid after January 1, 1982. The INS officer at the counter refused to give him the necessary application forms. JOHN DOE NUMBER 4 was not made aware of any appeal from the decision to block him from completing the legalization process. He is informed and believes that no administrative appeal exists. INS;s failure to publicize correct information regarding eligibility criteria was also a cause of his failure to complete the application process. JOHN DOE NUMBER 4 is eligible for legalization but for the fact that he was prevented from applying because of INS's unlawful policies and practices challenged herein.

26. Plaintiff JOHN DOE NUMBER 5 (R- O-), a resident of the State of California, entered the United States from Nigeria as a student on December 26, 1980. Prior to January 1, 1982 JOHN DOE NUMBER 5 violated the terms of his nonimmigrant visa by working without authorization, and he has income tax returns and social security records to establish this fact. In addition, he failed to comply with the terms of his visa by dropping out of school prior to January 1, 1982. He is a member of categories 1 and 2, as defined below. JOHN DOE NUMBER 5 has maintained a continuous unlawful residence in the United States since that time. JOHN DOE NUMBER 5 filed an application for legalization during the application period, and his application should have been approved and he should be a permanent resident by this time. His application

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has not yet been approved because of the INS's policies and practices challenged in this lawsuit. JOHN DOE NUMBER 5 is married, and his wife lives in Nigeria. But for INS's unlawful policies and practices, JOHN DOE NUMBER 5 would have been approved for permanent residence many years ago and he would have been able to be reunited with his wife.

27. Plaintiff JOHN DOE NO. 6 (C- F- L) is a resident of Los Angeles, California. He is a citizen and national of Singapore who has resided continuously in an unlawful status in the United States since 1981 and qualifies for legalization under 8 U.S.C. §1255a. He entered the United States on an F-1 student visa in August 1981 and violated his status in a manner known to the government by intentionally failing to file a quarterly address report with INS within 90 days. He filed a timely application for legalization. Defendants have refused and continue to refuse to adjudicate or approve his application.

28. Plaintiff JANE DOE NO. 2 (A- B-) is a resident of Carmichael California. She is a citizen and national of Venezuela who has resided continuously in an unlawful status in the United States since 1981 and qualifies for legalization under 8 U.S.C. §1255a. She took the steps that she could to apply for legalization by going to an INS office in Los Angeles before May 4, 1988, in order to make an application. INS' policy and practice of turning away applicants deemed ineligible to apply for legalization under INS' regulations and policies was a substantial cause of her failure to complete and application. INS failure to publicize correct information regarding eligibility criteria was also a cause of her failure to complete the application process. JANE DOE NUMBER 2 is eligible for legalization, but for the fact that she was prevented from applying because of INS's unlawful policies and practices challenged herein.

29. Plaintiff JOHN DOE NUMBER 7 (K-S-T-), a resident of the State of New York,

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entered the United States in 1981 as a student. JOHN DOE NUMBER 7 violated the terms of his nonimmigrant visa by failing to attend classes in the fall of 1981. He is a member of category 2, as defined below. JOHN DOE NUMBER 7 has maintained a continuous unlawful residence in the United States since that time. JOHN DOE NUMBER 7 filed an application for legalization during the application period, and his application was denied because he was unable to meet the impossibly high burden of proof imposed on Category 2 applicants. But for INS's unlawful policies and practices, JOHN DOE NUMBER 7 would have been approved for permanent residence many years ago.

30. Plaintiff JANE DOE NUMBER 3 (A-S-) is a citizen and national of Iran residing in Fresno, California. She has continuously resided in the United States in unlawful status since 1978. She entered the United States on an F-1 student visa and shortly thereafter violated her status by working without INS authorization and intentionally failing to file required address reports with the INS. Her violations of status were known to the government before January 1, 1982. Federal taxes were withheld from a salary she received for her unauthorized employment in 1978. she is a member of Category 1 and is eligible for legalization under INA §245A. In September 1987, believing she was eligible for legalization, plaintiff JANE DOE NUMBER 3 visited the office of an attorney in Fresno, California, in order to complete an application for legalization. Based on defendants regulations and policies challenged herein, the attorney advised plaintiff JANE DOE NUMBER 3 that she did not qualify to participate in the legalization program because her pre-1982 violations of status were not, under defendants' regulations, "known to the government" before January 1, 1982. Plaintiff JANE DOE NUMBER 3 verified this information with two non-profit organizations located in Fresno, California, one of which was a

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QDE under contract with the INS. The information plaintiff JANE DOE NUMBER 3 received from the attorney and two non-profit organizations was a substantial cause of her failure to complete the legalization application process on or before May 4, 1988. JANE DOE NUMBER 3 is informed and believes that no administrative appeal exists. INS's failure to publicize correct information regarding eligibility criteria was also a cause of her failure to complete the application process. JANE DOE NUMBER 3 is eligible for legalization, but for the fact that she was prevented form applying because of INS's unlawful policies and practices challenged herein.

30A. JOHN DOE NUMBER 8 (L- G-), a resident of the State of Washington, residing at Seattle, entered the United States from Canada in 1981 without inspection. After a three week trip back to his homeland, the Cameroon, he re-entered the United States in 1984 on an F-1 student visa that was invalid. He is a member of category 3 as defined below. He has maintained continuous unlawful residence in the United States since his entry in 1981. JOHN DOE NUMBER 8 sought to file a completed amnesty application at the Seattle INS in December 1987. The INS employee at the front counter reviewed his application and told him that he was not eligible to apply because of his student visa. JOHN DOE NUMBER 8 is eligible for legalization but for the fact that he was prevented from applying because of INS's unlawful policies and practices challenged herein.

30B. Plaintiff JANE DOE NUMBER 4 (V-A-) is a resident of Vancouver, Washington, within the Western District of Washington state. She is a citizen and national of Iran who entered the United States on an E-2 visa in September 1977. In August 1979 JANE DOE NUMBER 4 changed status to that of a student on an F-1 student visa. JANE DOE NUMBER 4 has resided in the United States since her entry in 1977. She violated

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her status prior to January 1, 1982 by taking less than a full load of courses, working without authorization, and failing to file address reports as required under §265. JANE DOE NUMBER 4 took the steps she could to file a legalization application during the legalization application period, but was prevented from completing the application process because of INS's policies and practices challenged in this lawsuit. Because JANE DOE NUMBER 4 was too frightened to go to the Immigration Service herself, she asked a friend with legal status to go to the Immigration Service on her behalf, obtain the necessary application forms and inquire about her case. The friend went to the INS office in Portland, Oregon in July or August 1987, and he was informed by INS that the Immigration Service would not accept the application because JANE DOE NUMBER 4 appeared to be in valid student status after January 1, 1982. In February 1988 JANE DOE NUMBER 4 moved to Los Angeles and she went to two attorneys' offices to see if it would be possible to file an application for legalization with the Los Angeles INS office. Both informed her that the INS was not accepting applications from people who held student visas that appeared to be valid after January 1, 1982. JANE DOE NUMBER 4 is eligible for legalization, but for the fact that she was prevented from applying because of INS's unlawful policies and practices challenged herein.

31. Defendant IMMIGRATION AND NATURALIZATION SERVICE (INS) is the federal agency within the Department of Justice responsible for the lawful administration and implementation of the Immigration and Nationality Act, as amended by IRCA.

32. Defendant DORIS MEISSNER is the Commissioner of the INS and is being sued in

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her official capacity only. Defendant MEISSNER is the official responsible for the administration of the INS and the implementation and enforcement of the Immigration and Nationality Act. INA §103(b), 8 U.S.C. §1103(b).

33. Defendant JANET RENO is the Attorney General of the United States and is sued in her official capacity only Defendant RENO is charged with the enforcement of the Immigration and Nationality Act. INA §103(b), 8 U.S.C. §1103(b).

34. Defendant DEPARTMENT OF JUSTICE is the agency responsible for implementing and enforcing the INA.

35. Defendant DEPARTMENT OF STATE is the federal agency responsible for the lawful administration and implementation of the Immigration and Nationality Act, as amended by IRCA, at U.S. consular offices located outside the United States.

36. Defendant WARREN CHRISTOPHER is the Secretary of State. He is sued in his official capacity only. He is charged with the implementation of the INA at U.S. consulates abroad.

IV. BACKGROUND

37. The Immigration Reform and Control Act (IRCA) comprehensively amended the Immigration and Nationality Act (INA), 8 U.S.C. §1101 et seq., providing, inter alia, for a mechanism by which certain deportable aliens were able to legalize their status in the United States, by first adjusting to lawful temporary resident status, and then to lawful permanent resident status.

38. To qualify for legalization, a deportable alien must establish, inter alia, that he entered the United States before January 1, 1982, and that he has resided continuously in the United States

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in an unlawful status since such date and through the date the application is filed . INA §245A(a)(2), 8 U.S.C. §1255a(a)(2).

39. If the applicant entered the United States with a non-immigrant visa before January 1, 1982, the applicant must establish that (a) his or her period of authorized stay as a nonimmigrant expired before January 1, 1982, through the passage of time, or (b) his or her unlawful status (i.e. violation of non-immigrant status) was "known to the Government" as of such date. INA §245A(a)(2)(B), 8 U.S.C. §1255a(a)(2)(B).

40. The Immigration Service adopted policies and practices designed to disqualify from the legalization program plaintiffs and class members who entered the United States on ;nonimmigrant visas prior to January 1, 1982 and whose visas were facially valid until after January 1, 1982. The Immigration Service had a policy and practice, on a nationwide basis, of deterring plaintiffs and class members from applying and making it significantly more difficult for them to file applications. Through its Congressionally mandated publicity program, INS disseminated information that such individuals were not eligible for legalization and should not file applications

41. Plaintiffs challenge the INS's regulations and INS practices defining and interpreting the term "known to the Government", as that term is used in INA §245A. Based on such regulations and practices, INS has deemed the plaintiffs and class members to have frivolous applications for legalization, and INS has refused to accept applications submitted by plaintiffs and class members. Plaintiffs and class members were turned away by the Immigration Service during the one year legalization application period. The Immigration Service refused to accept applications from such individuals; INS refused to provide application forms to such individuals;

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INS informed such individuals that they were not eligible to apply for legalization and told such individuals that they should not apply for the legalization program; and INS widely publicized their policy of deeming such individuals statutorily ineligible for the legalization program and refusing to accept such applications. This program of disinformation was specifically targeted at plaintiffs and class members who had entered the United States on nonimmigrant visas.

42. As a result of INS's policies and practices, the community of individuals and agencies assisting legalization applicants became aware that the Immigration Service deemed plaintiffs and class members statutorily ineligible for legalization and would not accept their legalization applicants. Qualified Designated Entities ("QDE's") were contractually obligated to INS to follow INS regulations and policies, and pursuant to such contractual obligation QDE's turned away plaintiffs and class members. QDE's, other voluntary agencies and community organizations, and attorneys advised potential applicants, specifically the plaintiffs and class members of this lawsuit, that they were not eligible to participate in the legalization program, that the Immigration Service would not accept their applications, that such individuals would not be granted work authorization if they applied for legalization, and that they might be deported if they attempted to apply.

43. Under the regulations as originally promulgated, the statutory term "known to the Government" "means [known to] the Immigration and Naturalization Service." 8 C.F.R. §245a.1(d); 52 Federal Register at 16208 (May 1, 1987). The regulations further provided that:

> An alien's unlawful status was "known to the Government" only if:
>
> (1) The Service received factual information constituting a violation of the alien's nonimmigrant status from any agency, bureau or department, or subdivision thereof, of the Federal government, and such information was stored or otherwise recorded in the official Service alien file, whether or not the Service took follow-up

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action on the information received. In order to meet the standard of "information constituting a violation of the alien's nonimmigrant status," the alien must have made a clear statement or declaration to the other federal agency, bureau or department that he or she was in violation of nonimmigrant status; or

(2) An affirmative determination was made by the Service prior to January 1, 1982 that the alien was subject to deportation proceedings ...

8 C.F.R. §245a.1(d)(1) and (2).

44. On November 17, 1987, defendants caused publication in the Federal Register of an "interim rule" which amended their "known to the Government" policy. Defendants added the following categories of applicants to those whose violation of status prior to January 1, 1982 was deemed "known to the Government":

[4] [Applicants who produce] documentation from a school approved to enroll foreign students under §214.3 which establishes that the said school forwarded to the Service a report that clearly indicated the applicant had violated his or her nonimmigrant student status prior to January 1, 1982. In order to be eligible under this part, the applicant must not have been reinstated to nonimmigrant status ...

[11] A nonimmigrant who entered the United States for the duration of status ("D/S") in one of the following classes, A, A-1, A-2, G, G-1, G-2, G-3 or G-4, whose qualifying employment terminated ... prior to January 1, 1982 ...

[12] A nonimmigrant who entered the United States for duration of status ("D/S") in one of the following classes, F, F-1 or F-2 who completed a full course of study ... and whose time period to depart if any ... after completion of study expired prior to January 1, 1982 ...

[13] [A]n alien from an independent country of the Western hemisphere who was present in the United States prior to March 11, 1977 and was known by the INS to have a priority date for the issuance of an immigrant visa between July 1, 196 and December 31, 1976 ... [and]

[14] An alien who filed an asylum application prior to January 1, 1982 ...

8 C.F.R. §245a.1(d)(4) and §245a.2(b)(11) - (14), 52 Federal Register 43845 (November 17, 1987).

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45. On March 30, 1988, the District Court for the District of Columbia entered an order enjoining INS's application of the portion of 8 C.F.R. §245a.1(d) which required that an applicant's violation of status be known to the Immigration Service. Ayuda v. Meese, 687 F.Supp. 650 (D.D.C. 1988). The INS has acquiesced in this order and has not appealed it.

46. After March 30, 1988, and after the eligibility standards for the legalization program changed, defendant INS failed to adequately and properly notify potential applicants of the changes in the legalization program. As a result, plaintiffs and class members continued to be misinformed by INS concerning the eligibility requirements for legalization. Many individuals, including plaintiffs and class members, were prevented from filing a timely application for legalization because they did not receive proper notice of the changes in the legalization program.

47. On June 22, 1988, after the legalization application period was over, defendant INS promulgated regulations in the Federal Register and again modified 8 C.F.R. §245a.1(d)(4), the rule governing students who violated their student status prior to January 1, 1982. 53 Federal Register 23880. Said regulation now reads as follows:

> §245a.1 Definitions
>
> (d) ...
>
> (4) The applicant produces documentation from a school approved to enroll foreign students under §214.3 which establishes that the said school forwarded to the Service a report that clearly indicated the applicant had violated his or her nonimmigrant student status prior to January 1, 1982. A school may submit an affirmation that the school did forward to the Service the aforementioned report and that the school no longer has available copies of the actual documentation sent. In order to be eligible under this part, the applicant must not have been reinstated to nonimmigrant student status. [Emphasis supplied to indicate new language.]

48. Plaintiffs and their proposed class members in the following categories are eligible for legalization under the statute but have been deemed ineligible under defendants' unlawful

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regulations and policies, and have been discouraged or prevented from applying for legalization:

> [1] Those who violated the terms of their nonimmigrant status prior to January 1, 1982 in a manner known to the government because documentation (including the absence of records) existed in one or more government agencies which, taken as a whole, would warrant a finding that the applicant was in an unlawful status prior to January 1, 1982; or
>
> [2] Those who violated the terms of their nonimmigrant visas and whose violations were required to be made known to the INS pursuant to then existing regulations, but who are unable pursuant to 8 C.F.R. §245a.1(d) and §245a.2(d) to establish to the satisfaction of INS for purposes of legalization eligibility, that such violation was made known to INS because INS either destroyed such records or failed to store, input or otherwise record such information in the official Service alien file; or
>
> [3] Those who after January 1, 1982 continuously maintained an unlawful residence in the United States, and who applied for and unlawfully received reinstatement to nonimmigrant status or change of nonimmigrant status pursuant to INS §248, or adjustment or status pursuant to INA §245, or some other immigration benefit from INS, or the Department of State.

49. Section 245A(e)(2) of the INA, provides that an alien who presents a prima facie application for legalization may not be deported and must be granted work authorization until a final determination on the application has been made. Under INS's policies and practices, plaintiffs and class members of have been deemed not to have prima facie applications. Because of defendants' practice and policy of deterring plaintiffs and class members from applying for legalization and preventing such individuals from applying, plaintiffs and class members have been denied their statutory rights to stays of deportation and temporary work authorization or extension of same pursuant to §245A(e)(2), and have not been able to obtain access to administrative and judicial review of their claims to their statutory benefits.

50. Because of INS's unlawful policies and practices, plaintiffs and class members were turned away when they attempted to file applications for legalization. These individuals were not

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granted work authorization and stays of deportation; their applications were not accepted; they were denied the benefits Congress intended to bestow upon them; and they were prevented from obtaining administrative and judicial review as provided in IRCA.

51. Throughout the legalization application period, the Immigration Service refused to accept applications from plaintiffs and class members of this lawsuit; INS deemed such applicants to be statutorily ineligible for legalization, and deemed their applications to be frivolous. INS informed such individuals that they could be put in deportation proceedings if they attempted to file applications for legalization. INS told plaintiffs and class members not to apply for legalization and denied them their right to apply.

52. Throughout the legalization application period, the Immigration Service failed to provide correct and accurate information to plaintiffs and class members concerning their rights to apply for legalization and concerning their rights to legalization under IRCA; widely disseminated erroneous information that caused individuals to fail to apply; and caused a wide array of attorneys, immigration consultants, organizations and the media to aid INS in misinforming plaintiffs and class members. Although the standards of eligibility changed during the legalization application period, the Immigration Service failed to adequately notify QDE's, attorneys, and plaintiffs and class members of these changes, and plaintiffs and class members harmed by this failure.

53. Plaintiffs and members of the proposed class who filed applications in a timely manner have been subjected to unfair and discriminatory adjudication procedures. Such plaintiffs and class members have been required to meet an impossibly difficult burden of proof, one which contravenes the Administrative Procedures Act and governing case law.

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54. When INS adjudicates legalization applications, it has a policy of reviewing only information contained in an applicant's INS "A" file, but not other information in INS records maintained elsewhere, such as "alpha files", I-94 files, and address report lists. When INS adjudicates an application to determine whether a violation of status was "known to the Government," INS does not review all relevant INS records, INS does not provide the applicant with access to all relevant INS records; and INS does not disclose that it does not review all INS records. As a result, a determination as to whether the "known to the Government" standard has been met is made without a review of all relevant information; and a record adequate for administrative and judicial review is not compiled.

55. The INS has a policy and practice of not adjudicating legalization applications timely filed by individuals who fall in one or more of the proposed classes in this lawsuit. As a result, these plaintiffs and class members have not been able to adjust their status and have been unlawfully denied benefits to which they are statutorily entitled. Because they have not been approved for legalization, their family members have been unable to obtain legal status. The applicants have been unable to obtain administrative and judicial review of INS's unlawful practices and policies.

V. CLASS ACTION ALLEGATIONS

56. Plaintiffs bring this action on behalf of themselves and all other persons similarly situated pursuant to F.R.C.P. Rules 23(a) and 23(b). The subclasses, as proposed by plaintiffs, consist of:

> All persons who entered the United States in a non-immigrant status prior to January 1, 1982, who are otherwise eligible for legalization under INA §245A, 8

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U.S.C. §1255a, who were deterred from filing an application for legalization because of INS's regulations and policies, INS's dissemination of incorrect information on eligibility, or who filed a legalization application which has been rejected or not adjudicated, and who:

[1] Violated the terms of their nonimmigrant status prior to January 1, 1982 in a manner known to the government because documentation (including the absence of certain records) existed in one or more government agencies which, taken as a whole, would warrant a finding that the applicant was in an unlawful status prior to January 1, 1982; and/or

[2] Violated the terms of their nonimmigrant visas before January 1, 1982, but INS records for the relevant period, including required school and employer reports of status violations, were not maintained in the official Service alien file or were destroyed by INS and the person is unable to meet the requirements of 8 C.F.R. §245a.1(d) and §245a.2(d) without such records; and/or

[3] After January 1, 1982 continuously maintained an unlawful residence in the United States and who, after January 1, 1982 applied for and unlawfully received a reinstatement to nonimmigrant status, change of nonimmigrant status pursuant to INA §248, adjustment of status pursuant to INA §245, or some other immigration benefit from INS, or the Department of State.

57. The requirements of Rules 23(a) and 23(b)(2) are met in that the class is so numerous that joinder of all members is impracticable (plaintiffs estimate that there are thousands of class members), there are questions of law and fact common to the class (including whether defendants' interpretation of §245A(a)(2)(B) and §245A(a)(2)(A) is in compliance with the statute, and the equal protection and due process guarantees of the Fifth Amendment, whether class members' violation of their nonimmigrant visas was "known to the Government" as required by statute, and whether class members continue to maintain an unlawful residence), the claims of the representative parties are typical of the claims of the class, the representative parties will fairly and adequately represent the interests of the class because they are represented by pro bono counsel with extensive expertise in class action litigation regarding the rights of immigrants, and the party opposing the class has acted on grounds generally applicable to the class, thereby

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making appropriate final injunctive relief with respect to the class as a whole.

VI. IRREPARABLE INJURY

58. Plaintiffs, the members and clients of the plaintiff organizations, and members of the plaintiff class, have suffered and will suffer irreparable harm because of defendants' challenged policies and practices as described throughout this complaint. Plaintiffs, members and clients of the plaintiff organizations, and members of the plaintiff class have experienced and will continue to experience improper denial of the right to apply for legalization, issuance of employment authorization, loss of employment, loss of family unity benefits, and possible deportation.

VII. CLAIMS FOR RELIEF

A. First Claim for Relief

Defendants' Policy of Deterring Applicants From Filing Applications

59. Plaintiffs reallege and by this reference incorporate the allegations contained in paragraphs 1 through 58.

60. The defendants' regulations adopted at 8 C.F.R. §245a.1(d)(2), 245.2(b) and .2(c), and the policies and practices adopted pursuant thereto, including refusing to provide application forms, deterred students and other individuals who entered the United States before January 1, 1982 on nonimmigrant visas that were facially valid after January 1, 1982 and who were otherwise qualified for legalization, from applying for legalization, making it more difficult for such individuals to submit applications for legalization, and such regulations, practices and

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policies constitute a violation of and are inconsistent with §245A(a) (application rules and procedures), §245A(e) (work authorization and stays of deportation), §245A(f) (administrative and judicial review) and §245A(i) (dissemination of information) of the Immigration and Nationality Act, §§701-706 of the Administrative Procedures Act, and also constitute a violation of and are inconsistent with the Due Process Clause and the Equal Protection Guarantee of the United States Constitution.

B. Second Claim for Relief

Defendants' Dissemination and Publication of Incorrect Information Concerning the Legalization Program

61. Plaintiffs reallege and by this reference incorporate the allegations contained in paragraphs 1 through 58.

62. Defendants' policy and practice of failing to provide correct and accurate information to individuals eligible for legalization concerning both their rights to apply for legalization and concerning their rights to legalization under IRCA; widely disseminating erroneous and unlawful regulations policies, practices that (1) caused individuals to fail to apply, (2) caused a wide array of attorneys, immigration consultants, organizations and the media, relying on such illegal and incorrect regulations, policies and practices, to misinform otherwise eligible individuals, and refuse to assist them in filing legalization applications, resulting in the failure of plaintiffs and class members to timely complete the application process, and (3) resulted in improper expulsions of and denials of temporary stays of deportation and work authorization to individuals eligible for legalization, violates the rights of plaintiffs and class members under §245A(a), (e), (f) and (i),

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and under the Due Process Clause and the Equal Protection Guarantee of the Fifth Amendment to the U.S. Constitution.

C. Third Claim for Relief

Defendants' Denial of Temporary Stays of Deportation and Employment Authorization

63. Plaintiffs reallege and by this reference reincorporate the allegations contained in paragraphs 1 through 58.

64. Defendants' regulations, policies and practices as challenged above have denied and continue to deny temporary stays of deportation and employment authorization to plaintiffs and class members in violation of INA §245a(e)(2), 8 U.S.C. §1255a(e)(2), and the due process and equal protection guarantees of the Fifth Amendment to the United States Constitution.

D. Fourth Claim for Relief

Defendants' Regulations and Policies of Refusing to Accept Evidence of Government Knowledge of a Violation of Status

65. Plaintiffs reallege and by this reference incorporate the allegations contained in paragraphs 1 through 58.

66. The defendants' regulations and policies defining acceptable proof of government knowledge to meet the "known to the government" element, including regulations promulgated at 8 C.F.R. §245a.1(d) and procedures for adjudicating legalization applications, impose a much higher burden of proof and impose greater procedural burdens on plaintiffs and class members, including (1) individuals whose violation of status was not recorded in an "official Service alien

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file" ("A-file"), but can be shown by documentation (or the absence of records, such as the lack of a required address report) that exists in one or more federal agency (including INS); (2) students and temporary workers who can establish that their violation of status was reported to INS, but who are unable to obtain records in INS files showing that such a report was made (while not requiring such proof from students with duration of status visas who graduated before January 1, 1982, or from diplomats, consular officers and other officials and employees of accredited foreign governments or international organizations and their immediate families); and (3) nonimmigrants who were improperly reinstated to status after January 1, 1982, all of whom are unable, under INS practices and procedures, including destruction of records after a specified time period or failure to retain them in the "official Service alien files", to obtain reasonable access to relevant records and documents maintained by INS in order to support their claims to legalization. These regulations, policies and procedures are in violation of and inconsistent with §245A(a)(2)(B) of the Immigration and Nationality Act, the Administrative Procedures Act, 5 U.S.C. §§551, et seq., the Due Process Clause of the Fifth Amendment and the Equal Protection Guarantee of the United States Constitution.

E. Fifth Claim for Relief

Defendants' Failure to Adopt Its Policies and Procedures in Compliance with the APA

67. Plaintiffs reallege and by this reference incorporate the allegations contained in paragraphs 1 through 58.

68. The defendants' policies and practices challenged in the prior claims *inter alia* its Legalization Wires, were not published in the Federal Register although such instructions

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constitute substantive rules of general applicability, statements of general policy, and interpretations of general applicability within the meaning of the Freedom of Information Act, 5 U.S.C. §552(a)(1)(D), and are thereby required to be published in the Federal Register. The failure to solicit and consider public comment regarding such instructions violates the APA, 5 U.S.C. §553(b)-(c). The failure to comply with such Acts renders the instructions void and inapplicable to plaintiffs and the class. The legalization regulations issued by defendants on May 1, 1977, were similarly issued without publication of proposed regulations, the opportunity for public comment, and consideration of public comment, in violation of the Administrative Procedure Act, 5 U.S.C. §553(b)-(c).

F. Sixth Claim for Relief

Defendants' Failure to Grant Advance Parole

69. Plaintiffs reallege and by this reference incorporate the allegations contained in paragraphs 1 through 58.

70. Defendants' policy and practice of refusing to grant advance parole to plaintiffs and class members to permit brief, innocent and casual absences from the United States other than for family emergencies involving the illness or death of immediate family members, and defendants' policy and practice of subjecting plaintiffs and class members who travel abroad for brief, casual and innocent reasons without INS advance parole to detention, exclusion and deportation, violates INA §245A(a)(3)(B), and the due process and equal protection guarantees of the Fifth Amendment to the U.S. Constitution.

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G. Seventh Claim for Relief

Defendants' Policy of Holding Applications In Abeyance

71. Plaintiffs reallege and by this reference incorporate the allegations contained in paragraphs 1 through 58.

72. INS's policy of indefinitely holding legalization applications in abeyance and refusing to adjudicate such applications prevents qualified applicants from access to administrative and judicial review and violates §245A(a),(b) and (f) of the Immigration and Nationality Act, the Administrative Procedures Act, 5 U.S.C. §§551, et. seq, and the Due Process Clause and the Equal Protection Guarantee of the United States Constitution.

H. Eighth Claim for Relief

Refusal to Accept Applications From QDE's

73. Plaintiffs reallege and buy this reference incorporate the allegations contained in paragraphs 1 though 58.

74. INS' refusal to permit QDE's to accept legalization applications filed by plaintiffs and class members, and INS' refusal to allow such applications when forwarded by QDE's to the Immigration Service, constitute a violation of INA §245A(c), 8 U.S.C. §1255a(c).

PRAYER FOR RELIEF

WHEREFORE, plaintiffs request that this Court:

1. Assume jurisdiction over this case;

2. Certify this case as a class action lawsuit, as proposed herein;

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3. Issue declaratory judgment that defendants' challenged policies, practices and regulations are in violation of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986, and the due process and equal protection guarantees of the Fifth Amendment;

4. Issue preliminary and permanent injunction enjoining defendants from expelling plaintiffs and class members from the country, preventing their return to the United States following improper expulsions from the country, refusing to accept and process applications filed by plaintiffs and class members after the termination of the legalization application period, refusing to grant temporary employment authorization and stays of deportation based on the challenged regulations, policies, and practices, refusing to grant advance parole, and further enjoining implementation and of defendants' challenged policies, practices and regulations as described throughout this complaint, and preventing INS from relying on these unlawful regulations and the adverse determinations made based on them.

5. Issue an order in the nature of mandamus requiring the defendants to accept legalization applications from individuals who were deterred from applying during the legalization application period, and that such applications be deemed to have been filed not later than May 4, 1988, and further that individuals who submit such applications be granted work authorizations and stays of deportation pursuant to INA §245A(e)(2).

6. Issue an order in the nature of mandamus requiring the defendants to comply with the terms of IRCA as applicable to plaintiffs' claims raised herein, and to adopt proper and lawful procedures for adjudicating legalization applications;

7. Award plaintiffs their costs, reasonable attorneys' fees, and such other relief as the

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Court deems just and proper to remedy the injuries suffered by the plaintiffs and their class members.

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Dated this 25 day of September, 1995.

Respectfully submitted,

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