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ATTORNEYS FOR PLAINTIFFS AND THE CLASS

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JOSE BAUTISTA-PEREZ, OSCAR  
GUARDADO-GONZALEZ, DENIS  
CABALLERO-ESPINOZA, JOSE  
ALVARADO-MENJIVAR, OSCAR RENE  
RAMOS, MARIA SALAZAR, JOSE  
BENJAMIN QUINTEROS, AND MARIA  
JOSEFA CRUZ, Individually and on behalf of all  
others similarly situated,

Plaintiffs,

vs.

ERIC H. HOLDER, JR., Attorney General and  
JANET NAPOLITANO, Secretary of Homeland  
Security,

Defendants.

Case No.: C 07-4192 TEH

**PLAINTIFFS' NOTICE OF MOTION AND  
MOTION FOR PARTIAL SUMMARY  
JUDGMENT AND DECLARATORY  
RELIEF, MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT THEREOF**

Date: October 26, 2009

Time: 10:00 a.m.

Dept: Courtroom 12

Judge: Hon. Thelton E. Henderson

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**NOTICE OF MOTION AND MOTION FOR PARTIAL SUMMARY  
JUDGMENT AND DECLARATORY RELIEF**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on October 26, 2009, at 10:00 a.m., or as soon thereafter as the matter may be heard by the above-titled court located at 450 Golden Gate Avenue, San Francisco, California 94102, Courtroom 12, Plaintiffs/Class Representatives Jose Bautista-Perez, Oscar Guardado-Gonzalez, Denis Caballero-Espinoza, Jose Alvarado-Menjivar, Oscar Rene Ramos, Maria Salazar, Jose Benjamin Quinteros, and Maria Josefa Cruz, ("Plaintiffs") will and hereby do move the Court for partial summary judgment and declaratory relief against Defendants Eric H. Holder, Jr., Attorney General of the United States, and Janet Napolitano, Secretary of Homeland Security ("Defendant United States"), as follows.

Pursuant to Federal Rules of Civil Procedure 56, Plaintiffs seek partial summary judgment that:

(1) Defendant United States' policy and practice of charging biometric services fees to individuals who apply to register for Temporary Protected Status ("TPS") violates the \$50 statutory cap on TPS registration fees set by 8 U.S.C. § 1254a(c)(1)(B); and (2) Defendant United States' policy and practice of re-charging biometric fees to individuals who apply to re-register for TPS when the TPS designation of their country of origin is extended violates the \$50 statutory cap on TPS registration fees set by 8 U.S.C. § 1254a(c)(1)(B).

Plaintiffs also seek a Judgment declaring that 8 U.S.C. § 1254a(c)(1)(B) prohibits Defendant United States from imposing, as a condition of registering for TPS, a separate, additional service fee for the collection of biometric information if the total fee charged any individual to register for TPS would then exceed \$50.00. Plaintiffs further seek a Judgment declaring invalid those parts of 8 C.F.R. § 244.6 that require an individual who applies to register or re-register for TPS to remit a separate, additional service fee for the collection of biometric information if the total fee charged to the individual to register for TPS would then exceed the \$50 limit set by 8 U.S.C. § 1254a(c)(1)(B).

This Motion is based upon this Notice of Motion and Motion, the supporting Memorandum of Points and Authorities and declaration filed herewith, and on such further written evidence and oral argument as may be presented at or before the time the Court takes this Motion under submission.

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

Plaintiffs seek partial summary judgment finding unlawful the United States' policy and practice of requiring first-time applicants and re-registrants for Temporary Protected Status ("TPS") to pay biometric fees as a condition of TPS registration, thereby violating the \$50 registration fee cap set forth in 8 U.S.C. § 1254a(c)(1)(B). Defendants are the United States,<sup>1</sup> Eric H. Holder, Jr., Attorney General of the United States, and Janet Napolitano, Secretary of Homeland Security, (collectively "Defendant"). Members of the plaintiff class ("Plaintiffs") are applicants for TPS from El Salvador, Nicaragua, and Honduras, countries that Defendant designated for TPS after those countries were devastated by natural disasters. As part of the humanitarian TPS program, Congress has statutorily capped at \$50 the amount of fees Defendant can charge individuals as a condition of registering for TPS. 8 U.S.C. § 1254a(c)(1)(B). Defendant, however, violates this statute, which was designed to alleviate the financial burden on individuals who apply for TPS registration or re-registration, by charging them more than \$50 in the form of biometric services fees that are imposed as a condition of registering for TPS. This suit seeks to enjoin Defendant from this unlawful policy and practice, and to obtain reimbursement of the biometric services fees that Defendant has unlawfully collected from Plaintiffs. Because the facts at issue are undisputed, Plaintiffs move for partial summary judgment on Defendant's liability for charging fees in excess of the \$50 statutory fee cap set forth in 8 U.S.C. § 1254a(c)(1)(B) as a condition of registering for TPS. Plaintiffs also move for declaratory relief declaring unlawful both this practice and the regulation under which Defendant claims authority for its unlawful practice.

### II. STATEMENT OF ISSUES PRESENTED

1. Whether Plaintiffs are entitled to partial summary judgment because Defendant's policy and practice of charging biometric services fees of up to \$80 to TPS applicants violates the \$50 statutory cap on registration fees set by 8 U.S.C. § 1254a(c)(1)(B).

---

<sup>1</sup> According to the Court's May 1, 2009 Order Denying Defendant's Motion to Dismiss (Dkt. 109), "the instant action against federal officials will be treated as an action against the United States because 'the judgment sought would expend itself on the public treasury [and] the effect of the judgment would be to restrain the Government from acting, or compel it to act.'" Order at 8:6-9 (quoting *Dugan v. Rank*, 372 U.S. 609, 620 (1963)).

2. Whether Plaintiffs are entitled to partial summary judgment because Defendant's policy and practice of re-charging biometric fees to individuals who apply to re-register for TPS when the TPS designation of their country of origin is extended violates the \$50 statutory cap on registration fees set by 8 U.S.C. § 1254a(c)(1)(B).

### III. PROCEDURAL HISTORY

On August 16, 2007, Plaintiffs filed the instant lawsuit as a class action seeking injunctive and declaratory relief on behalf of all nationals from El Salvador,<sup>2</sup> Nicaragua,<sup>3</sup> and Honduras<sup>4</sup> who applied, registered, or re-registered for TPS at any time since August 16, 2001. Class Action Compl. for Declaratory Judgment & Injunction (Dkt. 1). Plaintiffs filed an amended complaint on August 21, 2007. First Am. Compl. (Dkt. 5). On October 17, 2007, this Court denied Plaintiffs' Motion for Preliminary Injunction, Order Den. Mot. for Prelim. Inj., (Dkt. 40), and denied Defendant's first Motion to Dismiss, or in the Alternative, Motion to Transfer Venue on February 4, 2008. Order Den. Mot. to Dismiss or, in the Alternative, to Transfer Venue (Dkt. 68).

After this Court also denied Defendant's Motion to Dismiss for Lack of Jurisdiction (Order Deny. Mot. to Dismiss for Lack of Jurisdiction (Dkt. 109)), it granted Plaintiffs' Motion to Certify the Class with respect to the claims for injunctive and declaratory relief on July 7, 2009. Order Grant'g Pls.' Mot. for Class Certification and Bifurcation (Dkt. 113). The class certified by the Court includes

<sup>2</sup> El Salvador was initially designated for TPS in 2001, and its period of designation has been extended six times. 66 Fed. Reg. 14214 (Mar. 9, 2001); *see also* 67 Fed. Reg. 46000 (July 11, 2001); 68 Fed. Reg. 42071 (July 16, 2003); 70 Fed. Reg. 1460 (Jan. 7, 2005); 71 Fed. Reg. 34637 (June 15, 2006); 72 Fed. Reg. 46649 (Aug. 21, 2007); 73 Fed. Reg. 57128 (Oct. 1, 2008); Declaration of Barbara Velarde in Supp. of Defs.' Opp. to Pls.' Mot. For Prelim. Inj. (Dkt. 25) ("Velarde Decl.") at ¶ 12. El Salvador's most recent designation will remain in effect through September 9, 2010. 73 Fed. Reg. 57128 (Oct. 1, 2008).

<sup>3</sup> Nicaragua was initially designated for TPS in 1999, and its period of designation has been extended eight times. 64 Fed. Reg. 526 (Jan. 5, 1999); *see also* 65 Fed. Reg. 30440 (May 11, 2000); 66 Fed. Reg. 23271 (May 8, 2001); 67 Fed. Reg. 22454 (May 3, 2002); 68 Fed. Reg. 23748 (May 5, 2003); 69 Fed. Reg. 64088 (Nov. 3, 2004); 71 Fed. Reg. 16333 (Mar. 31, 2006); 72 Fed. Reg. 29534 (May 29, 2007); 73 Fed. Reg. 57138 (Oct. 1, 2008); Velarde Decl. at ¶ 11. Nicaragua's most recent designation will remain in effect through July 5, 2010. 73 Fed. Reg. 57138 (Oct. 1, 2008).

<sup>4</sup> Honduras was initially designated for TPS in 1999, and its period of designation has been extended eight times. 64 Fed. Reg. 524 (Jan. 5, 1999); *see also* 65 Fed. Reg. 30438 (May 11, 2000); 66 Fed. Reg. 23269 (May 8, 2001); 67 Fed. Reg. 22451 (May 3, 2002); 68 Fed. Reg. 23744 (May 5, 2003); 69 Fed. Reg. 64084 (Nov. 3, 2004); 71 Fed. Reg. 16328 (Mar. 31, 2006); 72 Fed. Reg. 29529 (May 29, 2007); 73 Fed. Reg. 57133 (Oct. 1, 2008); Velarde Decl. at ¶ 10. Honduras' most recent designation will remain in effect through July 5, 2010. 73 Fed. Reg. 57133 (Oct. 1, 2008).

1 “[a]ll nationals of El Salvador, Honduras, and Nicaragua who have applied to register or re-register for  
 2 Temporary Protected Status (“TPS”) at any time from August 16, 2001 to the present.” *Id.* at 19:22-24.  
 3 According to Defendant’s estimates, there are approximately 400,000 members of the certified class.  
 4 Defs.’ Opp. to Pls.’ Mot. for Class Certification (Dkt. 100) at 11:3; Decl. of Scott G. Grimes in Supp. of  
 5 Pls.’ Mtn. for Partial Sum. J. (“Grimes Decl.”) Ex. 1 at 5:7-13 (Def’s Response to Sept. 4, 2008  
 6 Stipulated Discovery Plan). Plaintiffs now move for partial summary judgment on the issue of liability  
 7 based on the uncontroverted facts set forth below. Plaintiffs also seek: (1) to obtain a judgment  
 8 declaring unlawful Defendant’s practice of requiring TPS applicants to submit fees for the collection of  
 9 biometric information if the total fee charged any individual to register for TPS would then exceed the  
 10 \$50 statutory fee cap set forth in 8 U.S.C. § 1254a(c)(1)(B); and (2) to obtain a judgment declaring  
 11 invalid those parts of Defendant’s regulations (namely, 8 C.F.R. § 244.6) that require TPS applicants to  
 12 remit biometric services fees where the total fee charged to register for TPS exceeds the \$50 statutory  
 13 cap set forth in 8 U.S.C. § 1254a(c)(1)(B).

#### 14 IV. STATEMENT OF FACTS

##### 15 A. Background Facts Regarding the TPS Program

16 In 1990, Congress established the TPS program to provide temporary protection to nationals  
 17 from “states [] experiencing ongoing armed conflict, environmental disaster, or other extraordinary and  
 18 temporary conditions.” 66 Fed. Reg. 14214 (Mar. 9, 2001); *see also* 8 U.S.C. § 1254a(b)(1); 64 Fed.  
 19 Reg. 526 (Jan. 5, 1999); 64 Fed. Reg. 524 (Jan. 5, 1999); Immigration Act of 1990, Pub. L. 101-649,  
 20 104 Stat. 4978 (1990) (“1990 Immigration Act”). The Attorney General of the United States [now the  
 21 Secretary of Homeland Security]<sup>5</sup> may designate certain states for TPS.<sup>6</sup> 8 U.S.C. § 1254a(b)(1).  
 22 Under the TPS program, aliens from TPS countries may remain in the United States and obtain work  
 23

24  
 25 <sup>5</sup> In 2003, pursuant to the Homeland Security Act of 2002, authority to designate a country (or part  
 26 thereof) for TPS, and to extend and terminate TPS designations, was transferred from the Attorney  
 27 General to the Secretary of Homeland Security. 6 U.S.C. § 271; Pub. L. 107-296 (Nov. 25, 2002); *see*  
 28 *also* Velarde Decl. at ¶ 1.

<sup>6</sup> The initial period of designation must be between six and eighteen months. 8 U.S.C. § 1254a(b)(2).  
 Under 8 U.S.C. § 1254a(b)(3)(A), at least sixty days before a state’s designation ends, the Attorney  
 General must conduct a review to determine whether “the conditions for such designation . . . continue  
 to be met.”

1 authorization documentation. 8 U.S.C. § 1254a(a)(1)(B). If the conditions for TPS designation in a  
 2 country continue, the Attorney General is to extend the period of designation for six, twelve, or eighteen  
 3 months. 8 U.S.C. § 1254a(b)(3)(C).

4 Nationals from a TPS state must register for the TPS program when their country is initially  
 5 designated for TPS, pursuant to 8 U.S.C. § 1254a(c)(1)(A)(iv). Velarde Decl. at ¶ 8. Additionally,  
 6 Defendant requires that nationals of a designated state re-register when a state's designation is  
 7 extended. *Id.* To ensure that aliens registering for TPS do not present security risks and are eligible for  
 8 TPS,<sup>7</sup> aliens who register for TPS are subject to criminal and national security background checks prior  
 9 to being granted TPS. Velarde Decl. at ¶ 16. TPS applicants are required to submit fingerprints as part  
 10 of this registration process. *See* 8 C.F.R. § 244.6 (1991); 63 Fed. Reg. 12979 (Mar. 17, 1998); Second  
 11 Decl. of Claudia Young (Dkt. 100-2) ("Second Young Decl.") at ¶ 12.

12 Since April 30, 2004, Defendant has expanded its TPS registration requirements to include the  
 13 submission of biometric information (i.e., fingerprints, photographs, and signatures).<sup>8</sup> Second Young  
 14 Decl. at ¶ 9; Grimes Decl. Ex. 2 at 4:6-10, 4:17-27 (Defs.' Resp. to Pls.' Req. for Admis. Nos. 21, 22);  
 15 Grimes Decl. Ex. 9 at BAUT000161-62, 175-76 (Press Releases). Biometric information may be used  
 16 for "[b]ackground checks [which] are an integral part of determining the applicant's eligibility for a  
 17 benefit."<sup>9</sup> Grimes Decl. Ex. 2 at 8:9-10 (Defs.' Resp. to Pls.' Req. for Admis. No. 29); 72 Fed. Reg.

18  
 19  
 20 <sup>7</sup> An alien is statutorily ineligible for TPS if s/he: (1) has been convicted of any felony or two or more  
 21 misdemeanors within the United States; (2) is found to be a persecutor, terrorist, danger to the  
 22 community or national security, or otherwise is barred from being granted asylum under 8 U.S.C.  
 23 § 1158(b)(2)(A); or (3) is found to be subject to an unwaivable bar to admissibility related to crime or  
 24 terrorism. *See* 8 U.S.C. § 1254a(c)(2)(B); Velarde Decl. at ¶ 17.

25 <sup>8</sup> What was previously termed "fingerprinting fee" was changed to "biometric fee" in 2004 to better  
 26 describe the services paid for by this fee, which includes "electronically captur[ing] applicants'  
 27 fingerprints, photographs, and signatures," as well as conducting FBI background checks. *See* 72 Fed.  
 28 Reg. 4888, 4906 (Feb. 1, 2007) (describing services included in the capture of biometrics); 69 Fed. Reg.  
 5088, 5090 (Feb. 3, 2004) (noting the change in terminology from fingerprinting fee to biometric fee).

<sup>9</sup> "Were it not for the underlying application or petition for immigration benefits, these specific security  
 checks would not have been conducted." 72 Fed. Reg. 29851, 29866 (May 30, 2007); *see also* Velarde  
 Decl. at ¶ 16 ("[A]ll required background security checks must be completed prior to adjudication of the  
 application. An applicant for TPS is required to undergo the background and security checks to ensure  
 that he or she is not a security risk and is eligible for TPS."); 71 Fed. Reg. 70413, 70415 (Dec. 4, 2006)  
 ("A background check . . . is required for any individual applying for USCIS benefits. The applicant/  
 petitioner could not seek the benefits provided by USCIS without the information collected from the  
 applications/petitions.").

1 17172, 17173 (Apr. 6, 2007) (“USCIS captures biometric data from applicants to facilitate three key  
 2 operational functions: (1) conducting fingerprint-based background checks; (2) verifying an applicant’s  
 3 identity; and (3) producing benefit cards/documents.”); 69 Fed. Reg. 5088, 5089 (Feb. 3, 2004)  
 4 (detailing the added security checks performed on immigration benefit applicants); Velarde Decl. at  
 5 ¶¶ 7, 16. “[T]he TPS application of an individual who fails to appear for biometrics capture will be  
 6 considered abandoned and denied.” Grimes Decl. Ex. 2 at 5:4-11 (Defs.’ Resp. to Pls.’ Req. for Admis.  
 7 No. 23).

8 As part of the TPS registration process, “[t]he Attorney General may require payment of a  
 9 reasonable fee as a condition of registering . . . . The amount of any such fee *shall not exceed \$50.*” 8  
 10 U.S.C. § 1254a(c)(1)(B) (emphasis added). Apart from the \$50 cap on fees required as a condition of  
 11 registering for TPS, the only additional fee that the TPS statute authorizes is for work authorization  
 12 documentation. *See* 8 U.S.C. § 1254a(c)(1)(B) (expressly authorizing the Attorney General “to impose  
 13 a separate, additional fee for providing an alien with documentation of work authorization.”).

14 All aliens registering for TPS who are age fourteen or older and who do not submit a fee waiver  
 15 application<sup>10</sup> must remit prescribed fees as part of their applications. First, the TPS application form  
 16 must be accompanied by a payment of \$50 for initial TPS registration. Velarde Decl. at ¶ 5; Grimes  
 17 Decl. Ex. 3 at BAUT000003 (I-821 application form and instructions). The \$50 fee is not imposed,  
 18 however, when the alien applies for TPS re-registration after his or her country’s TPS designation is  
 19 extended. 8 C.F.R. § 103.7; Grimes Decl. Ex. 2 at 10:10-12 (Defs.’ Resp. to Pls.’ Req. for Admis. No.  
 20 34); Second Young Decl. at ¶ 21. Second, all TPS registrants who request employment authorization  
 21 must also pay an additional fee. 8 C.F.R. § 244.6.

22  
 23  
 24 <sup>10</sup> Fee waiver requests must be satisfactorily documented with evidence of the applicant’s inability to  
 25 pay, in accordance with 8 C.F.R. §§ 244.20 and 103.7(c)(4). The evidentiary requirements include lists  
 26 and documentation of: the “applicant’s monthly gross income from each source for each of the three  
 27 months prior to the filing of the fee waiver request”; “[a]ll assets owned, possessed, or controlled by the  
 28 applicant or by his or her dependents”; “[t]he applicant’s essential monthly expenditures, itemized for  
 each of the three months prior to the filing of the fee waiver request, including essential extraordinary  
 expenditures”; “[t]he applicant’s dependents in the United States, his or her relationship to those  
 dependents, the dependents’ ages, any income earned or received by those dependents, and the street  
 address of each dependent’s place of residence”; and the applicant’s and the applicant’s dependent’s  
 employment records. 8 C.F.R. § 244.20.



1 Third, beginning in 1998, TPS applicants and re-registrants were required to pay fingerprinting  
 2 fees of \$25. *See* Second Young Decl. at ¶ 12; 63 Fed. Reg. 12979 (Mar. 17, 1998); Grimes Decl. Ex. 8  
 3 (News Releases). This fee was increased to \$50 in 2002 and remained in effect through April 2004.  
 4 Second Young Decl. at ¶ 12; 66 Fed. Reg. 65811, 65815 (Dec. 21, 2001) (changing fingerprint fee to  
 5 \$50, effective February 19, 2002); 66 Fed. Reg. 41456, 41460 (Aug. 8, 2001); 66 Fed. Reg. 14214 (Mar.  
 6 9, 2001); 63 Fed. Reg. 12979 (Mar. 17, 1998) (\$25 fee codified at 8 C.F.R. § 103.7(b) (1998)). From  
 7 April 30, 2004 to July 2007, Defendant began charging \$70 per TPS application for the collection and  
 8 use of biometric information. *See* Grimes Decl. Ex. 9 at BAUT000161-62, 175-76 (Press Releases); 72  
 9 Fed. Reg. 41888 (Aug. 1, 2007) (“As of July 30, 2007, the fee for biometric services is \$80 . . .”); 72  
 10 Fed. Reg. 29851, 29854 (May 30, 2007) (announcing increase of biometric fees from \$70 to \$80  
 11 effective July 30, 2007). The biometric services fee was raised to \$80 effective July 30, 2007. *Id.*; *see*  
 12 *also* Grimes Decl. Ex. 5 at BAUT000074, 75, 78 (USCIS Updates); Velarde Decl. at ¶¶ 6, 13-14; 8  
 13 C.F.R. § 103.7(b)(1).

14 Thus, currently, for each TPS application (including for those aliens applying to re-register for  
 15 TPS following the extension of their country of origin’s TPS designation) file by an individual age  
 16 fourteen or older and not accompanied by a fee waiver, “[a] service fee of \$80 [is] charged” for the  
 17 capture and use of biometric information.<sup>11</sup> Grimes Decl. Ex. 2 at 6:1-2 (Defs.’ Resp. to Pls.’ Req. for  
 18 Admis. No. 24); *id.* at 7:17-8:2 (Defs.’ Resp. to Pls.’ Req. for Admis. No. 28). The TPS application  
 19 form, which must be submitted with each registration and re-registration, likewise requires biometric  
 20 data and the accompanying \$80 fee. Grimes Decl. Ex. 3 (Instructions for Form I-821) at BAUT000003  
 21 (“An initial (i.e., first-time) applicant must submit: . . . A \$80 fee for biometric services . . . . An  
 22 applicant for TPS re-registration or renewal of temporary treatment benefits must submit: 1. A \$80 fee  
 23 for biometric services . . .”). However, TPS applicants who are under fourteen years of age and do not  
 24 apply for work authorization are not required to pay biometric services fees. 72 Fed. Reg. 46649,  
 25

26  
 27 <sup>11</sup> “Each application must be filed with the fee, as provided in § 103.7 of this chapter by each individual  
 28 seeking temporary protected status . . .” 8 C.F.R. § 244.6. In turn, section 103.7(b)(1) requires “[a]  
 service fee of \$80” “for any individual who is required to have biometric information captured in  
 connection with an application or petition for certain immigration . . . benefits.” 8 C.F.R. § 103.7(b)(1).

1 46651 (Aug. 21, 2007); Grimes Decl. Ex. 2 at 5:11-15 (Defs.' Resp. to Pls.' Req. for Admis. No. 23);  
 2 Second Young Decl. at ¶¶ 11, 13, 21; Defs.' Opp. to Pls.' Mot. for Class Certification (Dkt. 100) at  
 3 4:22-23. The registration application of any TPS registrant or re-registrant (over the age of fourteen  
 4 who does not request work authorization) who fails to pay the biometric fee or obtain a fee waiver will  
 5 be rejected as incomplete. Grimes Decl. Ex. 2 at 3:17-4:3 (Defs.' Resp. to Pls.' Req. for Admis. No.  
 6 20).

7 Although Defendant imposes a biometric services fee each time an alien registers for TPS,<sup>12</sup>  
 8 biometric information is often collected only once.<sup>13</sup> In practice, many aliens re-registering for TPS are  
 9 not required to resubmit their biometric information if that information has already been collected and is  
 10 reusable; however, whether or not reusable biometric information has been collected, aliens are subject  
 11 to remitting a biometric services fee each time they re-register for TPS. *See* Grimes Decl. Ex. 7 at p. 2  
 12 (U.S. Citizenship and Immigration Services, USCIS TODAY: May 2006) (requiring the payment of the  
 13 \$70 biometric services fee but not the submission of biometric information); Grimes Decl. Ex. 6 at  
 14 BAUT000062, 166 (USCIS Questions and Answers documents) (same); Grimes Decl. Ex. 9 (Press  
 15 Releases) (same); Grimes Decl. Ex. 5 (USCIS Updates) (same); 72 Fed. Reg. 29851, 29057 (May 30,  
 16 2008) (Fee Schedule Adjustment Notice); Velarde Decl. at ¶ 19.

17 **B. Undisputed Material Facts Supporting Partial Summary Judgment**

18 Defendant has admitted that it requires aliens to register for TPS when their home nations are  
 19 initially designated for TPS, and then re-register when the states' period of designation is extended.  
 20 Velarde Decl. at ¶ 8. Further, Defendant does not contest the fact that it has required all TPS applicants  
 21 to submit a \$50 fee for initial TPS registration where applicants do not seek and receive a fee waiver.  
 22 Def's Opp. To Class Cert. (Dkt. 100) at 5:3-4.

23 Defendant has also admitted that all aliens who register or re-register for TPS must undergo  
 24 mandatory criminal and national security background checks prior to being granted TPS. Velarde Decl.

26 <sup>12</sup> Grimes Decl. Ex. 2 at 7:17-8:2 (Defs.' Resp. to Pls.' Req. for Admis. No. 28).

27 <sup>13</sup> This motion does not seek to adjudicate the fact that Defendant imposes biometric fees when  
 28 previously collected data is reused, or to adjudicate other fees that Defendant may impose as a condition  
 of TPS registration, including fees to apply for a waiver of inadmissibility or to appeal the denial or  
 withdrawal of TPS. *See* n. 18, *infra*.



at ¶ 16. As part of these mandatory background checks, Defendant admits that it imposes an additional \$80 (formerly \$70) fee on TPS registrants and re-registrants (except for those who obtain fee waivers or are under the age of fourteen and do not seek work authorization documentation) for the collection and use of biometric data.<sup>14</sup> Grimes Decl. Ex. 2 at 3:22-28, 4:6-10, 5:8-18 (Defs.' Resp. to Pls.' Req. for Admis. Nos. 20-21, 23). Defendant also admits that prior to its requirement that aliens pay biometric services fees, it required TPS applicants aged fourteen and older who did not obtain fee waivers to remit fees from \$25 to \$50 for the collection and use of their fingerprints.<sup>15</sup> Second Young Decl. at ¶¶ 8, 12, 21; 67 Fed. Reg. 46000 (July 11, 2002); 66 Fed. Reg. 65811, 65815 (Dec. 21, 2001); 66 Fed. Reg. 41456, 41460 (Aug. 8, 2001); 64 Fed. Reg. 526 (Jan. 5, 1999); 63 Fed. Reg. 12979 (Mar. 17, 1998); 56 Fed. Reg. 618, 619 (Jan. 7, 1991); Grimes Decl. Ex. 4 (Fingerprint Instructions for All Immigration Benefits Applicants); Grimes Decl. Ex. 8 (News Releases). This fingerprint information was also part of the mandatory background checks that Defendant performed to determine applicants' TPS eligibility. Second Young Decl. at ¶ 8; 66 Fed. Reg. 41456, 41459 (Aug. 8, 2001); 63 Fed. Reg. 12979 (Mar. 17, 1998) (explaining that fingerprint cards were used "for the purpose of conducting criminal background checks on applicants and petitioners for immigration benefits.").

Because these facts are undisputed, the only remaining question is whether, as a matter of law, Defendant's policy and practice of requiring applicants for TPS registration or re-registration to pay biometric services fees violate the \$50 statutory cap on TPS registration fees set by 8 U.S.C. §1254a(c)(1)(B).

## V. ARGUMENT

### A. This Motion Meets the Legal Standard for Summary Judgment.

Summary judgment is appropriate where the court determines that "there is no genuine issue as to any material fact and that the movant is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56; *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The moving party bears the initial burden of

<sup>14</sup> No biometric fee is imposed on account of TPS for an alien under the age of fourteen who does not seek work authorization. 72 Fed. Reg. 46649 (Aug. 21, 2007); Second Young Decl. at ¶ 21.

<sup>15</sup> "[S]uch [fingerprinting] fees were \$25 from March 1998, 63 Fed. Reg. 12979 (Mar. 17, 1998) . . . until February 19, 2002, when the fee increased to \$50." Def's Opp. To Class Cert. (Dkt. 100) at 5:3-4 (citing 63 Fed. Reg. 12979 (Mar. 17, 1998) and 66 Fed. Reg. 65811 (Dec. 21, 2001)).

1 demonstrating the “absence of a genuine issue of material fact.” *Celotex*, 477 U.S. at 323; *Horphag*  
 2 *Research Ltd. v. Garcia*, 475 F.3d 1029, 1035 (9th Cir. 2007); *Novartis Corp. v. Ben Venue Labs., Inc.*,  
 3 271 F.3d 1043, 1046 (Fed. Cir. 2001).

4 Once this initial burden is met, the opposing party must provide specific facts and significant  
 5 probative evidence demonstrating a genuine factual issue for trial. *See Matsushita Elec. Indus. Co., Ltd.*  
 6 *v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *Horphag Research*, 475 F.3d at 1035; *Novartis*, 271  
 7 F.3d at 1046. There is no issue for trial unless there is sufficient evidence for a trier of fact to render a  
 8 verdict in favor of the opposing party. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986);  
 9 *Jespersion v. Harrah’s Operating Co.*, 444 F.3d 1104, 1110-11 (9th Cir. 2006); *Novartis*, 271 F.3d at  
 10 1046.

11 The interpretation of a statute, including the determination and resolution of ambiguities, is a  
 12 question of law for the court to decide and thus, a question appropriate for summary adjudication.  
 13 *Forest Conservation Council v. Rosboro Lumber Co.*, 50 F.3d 781, 783 (9th Cir. 1995); *Glaxo*  
 14 *Operations UK Ltd. v. Quigg*, 894 F.2d 392, 395 (Fed. Cir. 1990). Plaintiffs’ motion simply concerns  
 15 the interpretation of the plain language of 8 U.S.C. § 1254(a)(c)(1)(B), and is appropriate for partial  
 16 summary judgment.

17 **B. Plaintiffs are Entitled to Partial Summary Judgment Because Defendant’s Charging**  
 18 **Biometric Services Fees As a Condition of TPS Registration Violates the \$50 Fee Cap**  
 19 **Under 8 U.S.C. § 1254a(c)(1)(B).**

20 Here, the underlying material facts regarding the statute and Defendant’s policy and practice of  
 21 imposing biometric services fees are undisputed; the only issue remaining is whether the biometric  
 22 services fees charged to TPS registrants and re-registrants violate section 1254a(c)(1)(B)’s requirement  
 23 that any fee required for TPS registration “shall not exceed \$50.”

24 **1. The Plain Language of Section 1254a(c)(1)(B) Prohibits Defendant From Charging**  
 25 **Biometric Services Fees As a Condition of TPS Registration.**

26 “Statutory interpretation begins with the plain meaning of the statute’s language.” *In re*  
 27 *Jackson*, 184 F.3d 1046, 1051 (9th Cir. 1999); *McGee v. Peake*, 511 F.3d 1352, 1356 (Fed. Cir. 2008).  
 28 “Where statutory language is unambiguous the judicial inquiry is complete.” *In re Bonner Mall P’ship*,  
 2 F.3d 899, 908 (9th Cir. 1993); *McGee*, 511 F.3d at 1356.

Here, the plain language of 8 U.S.C. § 1254a(c)(1)(B) mandates that “the amount of any such fee” that “[t]he Attorney General [and now, Secretary of Homeland Security] may require” an alien to pay “as a condition of registering” for TPS “*shall not exceed \$50.*” (emphasis added). The statute defines “register[ing] for the temporary protected status” as doing those tasks that the Government requires applicants to do within the 180 day registration period. 8 U.S.C. § 1254a(c)(1)(A)(iv) (“Nationals of designated foreign states . . . meet[] the requirements . . . only if . . . (iv) to the extent and in a manner which the Attorney General establishes, the alien registers for the temporary protected status under this section during a registration period of not less than 180 days.”). Thus, based on the plain language of section 1254a(c)(1), whatever fees (apart from work authorization fees) the Attorney General requires as a condition of registering for TPS are capped at a maximum total of \$50.

Among the fees imposed as a condition of TPS registration is an initial \$50 application fee, which is required of all TPS applicants who do not obtain a fee waiver.<sup>16</sup> 8 C.F.R. § 103.7(b)(1); Second Young Decl. at ¶ 21; Velarde Decl. at ¶ 5; Grimes Decl. Ex. 2 at 3:4-16 (Defs.’ Resp. to Pls.’ Req. for Admis. No. 1).

In addition, Defendant’s regulations unmistakably require payment of biometric fees “as a condition of” TPS registration. For the purposes of TPS, U.S. Citizenship & Immigration Services (“USCIS”) defines “[r]egister [as] to properly file . . . a completed application, with proper fee, for Temporary Protected Status during the registration period.” 8 C.F.R. § 244.1. “Each [TPS] application must be filed with the fee, as provided in § 103.7 of this chapter by each individual seeking temporary protected status . . .” 8 C.F.R. § 244.6. In turn, section 103.7(b)(1) requires “[a] service fee of \$80” “for any individual who is required to have biometric information captured in connection with an application

<sup>16</sup> Although not cited in Plaintiffs’ complaint and not the subject of this motion, Defendant charges other fees that exceed the \$50 cap. For instance, 8 U.S.C. § 1254a(c)(1)(A)(iii) requires that an alien demonstrate admissibility to the United States to successfully register for TPS. 8 U.S.C. § 1254a(c)(2)(A)(ii) allows the Attorney General to waive specified grounds of inadmissibility for TPS applicants. 8 C.F.R. § 244.3(b) requires that an alien file a Form I-601 to apply for a waiver of inadmissibility. However, 8 C.F.R. § 103.7(b)(1) prescribes a \$545.00 filing fee for a Form I-601. Similarly, 8 U.S.C. § 1254a(b)(5) requires that the Attorney General establish a manner of registration which includes administrative review of an initial denial of a TPS application. To exercise appellate rights when TPS is denied or withdrawn, 8 C.F.R. § 244.10(c) requires that an alien file a Form I-290B, which entails a \$585.00 filing fee under 8 C.F.R. § 103.7(b)(1).

1 or petition for certain immigration . . . benefits.” 8 C.F.R. § 103.7(b)(1).<sup>17</sup> The TPS application form,  
 2 which must be submitted with each registration and re-registration, likewise requires biometric data and  
 3 the accompanying \$80 fee. Grimes Decl. Ex. 3 (Instructions for Form I-821) at BAUT000003 (“An  
 4 initial (i.e., first-time) applicant must submit: . . . A \$80 fee for biometric services . . . . An applicant  
 5 for TPS re-registration or renewal of temporary treatment benefits must submit: 1. A \$80 fee for  
 6 biometric services . . .”); Velarde Decl. at ¶ 4.<sup>18</sup>

7 Further, the standards for TPS eligibility highlight the importance of biometrics in the  
 8 registration process. The TPS statute requires each TPS applicant to establish that he or she is from a  
 9 designated country and that he or she has not been convicted of a disqualifying criminal offense. 8  
 10 U.S.C. § 1254a(c)(1)(A), (c)(2). To satisfy this condition of registration, TPS applicants must submit  
 11 biometric information so that the Government may perform background checks that investigate an  
 12 applicant’s criminal history. Velarde Decl. at ¶ 7; 72 Fed. Reg. 29851, 29857 (May 30, 2007). Thus,  
 13 USCIS regulations specify that the submission of biometric information, and the attendant fee for that  
 14 submission, is a condition of registering for TPS.<sup>19</sup>

15 Defendant acknowledges that background check requirements are part and parcel of the TPS  
 16 registration process. As the Department of Homeland Security (“DHS”) explained, “[b]ackground  
 17 checks are an integral part of determining the applicant’s eligibility for a benefit . . . . Were it not for  
 18 the underlying application or petition for immigration benefits, these specific security checks would not  
 19

20  
 21 <sup>17</sup> 8 C.F.R. § 103.2(a)(1) requires that a service fee be submitted with every form that requires a  
 fingerprint card as required by 8 C.F.R. § 103.7(b)(1).

22 <sup>18</sup> Defendant may argue that pursuant to *Chevron, U.S.A., Inc. v. Natural Resources Defense Council,*  
*Inc.*, 467 U.S. 837 (1984), the Court should defer to Defendant’s interpretation of section  
 23 1254a(c)(1)(B) as set forth in the in the USCIS regulations authorizing the imposition of biometric  
 services fees as a condition of TPS registration. To the contrary, *Chevron* deference is not warranted  
 24 here. Under *Chevron*, “first, always, is the question whether Congress has directly spoken to the  
 precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as  
 25 well as the agency, must give effect to the unambiguously expressed intent of Congress.” *Freeman v.*  
*Gonzales*, 444 F.3d 1031, 1038 (9th Cir. 2006) (quoting *Chevron*, 467 U.S. at 842-43); *see also Timex*  
 26 *V.I., Inc. v. United States*, 157 F.3d 879, 881-82 (Fed. Cir. 1998). Where, as here, the “agency’s  
 interpretation of a relevant statute directly conflicts with the statute’s plain meaning,” *Chevron* deference  
 27 is inappropriate. *Benio v. Shalala*, 30 F.3d 1057, 1071 (9th Cir. 1994) (citing *Sullivan v. Everhart*, 494 U.S.  
 83, 88-89 (1990)); *see also Hoechst Aktiengesellschaft v. Quigg*, 917 F.2d 522, 526 (Fed. Cir. 1990).

28 <sup>19</sup> Before USCIS regulations required biometric services fees for TPS registration, the payment of  
 fingerprint fees were required as a condition of TPS registration. *See supra*, at 7:1-13.

1 have been conducted.” 72 Fed. Reg. 29851, 29866 (May 30, 2007); *see also* Velarde Decl. at ¶ 16  
 2 (“[A]ll required background security checks must be completed prior to adjudication of the application.  
 3 An applicant for TPS is required to undergo the background and security checks to ensure that he or she  
 4 is not a security risk and is eligible for TPS.”); 71 Fed. Reg. 70413, 70415 (Dec. 4, 2006) (“A background  
 5 check . . . is required for any individual applying for USCIS benefits. The applicant/petitioner could not  
 6 seek the benefits provided by USCIS without the information collected from the applications/petitions.”).

7 These security checks are so important that “TPS applicants age 14 and older have been required  
 8 to provide fingerprints since the first TPS regulations were issued in 1991.” Second Young Decl. at ¶ 8  
 9 (citing 56 Fed. Reg. 618, 619 (Jan. 7, 1991)). Furthermore, “the TPS application of an individual who  
 10 fails to appear for biometrics capture will be considered abandoned and denied.” Grimes Decl. Ex. 2 at  
 11 5:4-11 (Defs.’ Resp. to Pls.’ Req. for Admis. No. 23).

12 Because paying a fingerprinting or biometric services fee is required by the Attorney General  
 13 for TPS registration, the fingerprinting and biometric services fee is “a condition of registering” for TPS  
 14 under section 1254a(c)(1)(A)(iv). The fingerprinting or biometric services fee is imposed in addition to  
 15 the \$50 TPS application fee. Thus, charging TPS applicants biometric or fingerprinting fees violates  
 16 the \$50 cap set forth in 8 U.S.C. § 1254a(c)(1)(B).

17 **2. Section 1254a(c)(1)(B)’s Allowance of an Additional Fee for Employment**  
 18 **Authorization Documentation But Not for Biometric Services Demonstrates that**  
 19 **Biometric Fees Are Subject to the \$50 Fee Cap.**

20 The fact that the TPS statute expressly excepts only employment authorization fees from the \$50  
 21 cap for TPS registration shows that all other fees imposed as a condition of TPS registration cannot  
 22 exceed \$50. The plain language of section 1254a(c)(1)(B) states:

23 The Attorney General may require payment of a reasonable fee as a condition of  
 24 registering an alien under subparagraph (A)(iv) . . . . The amount of any such fee *shall*  
 25 *not exceed \$50*. . . . [T]he Attorney General may impose a *separate, additional fee for*  
 26 *providing an alien with documentation of work authorization.*

27 (emphasis added). “By the principle of statutory construction ‘*expressio unius est exclusio alterius*,’  
 28 Congress’s listing of one permissible additional fee indicates it intended to exclude other fees,” such as  
 biometric services fees. Order Den. Mot. for Prelim. Inj., Oct. 17, 2007 (“Oct. 17, 2007 Order”) (Dkt.  
 40) at 7:19-22. *See Longview Fibre Co. v. Rasmussen*, 980 F.2d 1307, 1312-13 (9th Cir. 1992); *see*

1 *also I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421, 432 (1987) (when Congress includes certain language in  
 2 one part of a statute but omits it from another, Congress is presumed to act intentionally and purposely  
 3 in doing so); *Cook v. Principi*, 318 F.3d 1334, 1339 (Fed. Cir. 2002) (concluding that “Congress did not  
 4 intend to allow exceptions to the rule . . . in addition to the two that it expressly created”). Accordingly,  
 5 the presence of this exception shows that all other fees connected with TPS registration, including  
 6 biometric fees, are subject to the \$50 registration fee cap.

7 The legislative history of the provision authorizing the imposition of a fee for TPS registrants  
 8 who seek work authorization further supports the conclusion that any additional charge for biometric  
 9 services above the \$50 registration fee cap is prohibited. Oct. 17, 2007 Order (Dkt. 40) at 7:8-8:3.  
 10 Originally, the \$50 registration fee cap included any fees required to obtain work authorization. 1990  
 11 Immigration Act, Pub. L. No. 101-649, § 302(a), 104 Stat. 4978, 5033 (1990) (“The Attorney General  
 12 may require payment of a reasonable fee as a condition of registering . . . (including providing an alien  
 13 with an ‘employment authorized’ endorsement . . .). The amount of any such fee shall not exceed  
 14 \$50.”). Congress, however, expressly amended the statute in 1991 to allow an additional fee for work  
 15 authorization. Miscellaneous and Technical Immigration and Naturalization Amendments of 1991,  
 16 § 304(b)(2), Pub. L. No. 102-232, 105 Stat. 1773 (1991). In contrast to employment authorization,  
 17 Defendant has always required TPS applicants to submit fingerprints,<sup>20</sup> but Congress never amended  
 18 the statute to authorize a separate fee for collecting biometric information. Congress’ failure to except  
 19 biometric services fees from the \$50 fee cap demonstrates that Congress intended section  
 20 1254a(c)(1)(B) to cap all other fees required for TPS registration, including biometric fees.

21 **3. The History of the Fingerprinting or Biometric Services Fee Shows that Section**  
 22 **1254a(c)(1)(B) Caps Fees for Biometric Services.**

23 The history of the biometric services fee itself also bolsters the plain reading of the \$50 fee cap  
 24 as an all-inclusive cap on fees charged as a condition of TPS registration. Oct. 17, 2007 Order (Dkt. 40)  
 25 at 8:4-16. Defendant began collecting fingerprinting fees in 1998. Department of Commerce, Justice,  
 26

27 <sup>20</sup> See, e.g., 8 C.F.R. § 240.6 (1991) (“Each application must consist of a completed . . . Form I-821,  
 28 two completed fingerprint cards . . . for every applicant who is fourteen years of age or older . . .”); 56  
 Fed. Reg. 618, 620 (Jan. 7, 1991).



1 and State, The Judiciary, and Related Agencies Appropriations Act, 1998, Pub. L. 105-119, 111 Stat.  
 2 2440 (1997). Since then, the cost of fingerprinting or biometric services has increased. 69 Fed. Reg.  
 3 20528, 20534 (Apr. 15, 2004).

4 In spite of the rising cost of biometric services, Congress chose not to amend the \$50 fee cap to  
 5 allow the Government to charge biometric services fees. Congress could have expressly allowed  
 6 Defendant to charge a “reasonable” fee that could be adjusted for rising costs or other changed  
 7 circumstances as it did in the expired original and slightly different TPS program for nationals of El  
 8 Salvador in 1990. 1990 Immigration Act § 303(b)(2), Pub. L. No. 101-649, 104 Stat. 4978 (allowing  
 9 the Attorney General to charge a reasonable fee “for TPS registration”). Congress could also have  
 10 excepted biometric services fees from the \$50 cap, as it did for the fee for work authorization  
 11 documentation, but it has not done so.

12 Instead, the TPS statute’s plain language still mandates a \$50 cap on fees related to TPS  
 13 registration, except for work authorization documentation. 8 U.S.C. § 1254a(c)(1)(B). Congress’  
 14 failure to amend the \$50 fee cap in the face of rising biometric services costs bolsters the plain reading  
 15 of 8 U.S.C. § 1254a(c)(1)(B) as prohibiting additional fees beyond the \$50 application charge, such as  
 16 biometric fees, that are imposed as a condition of registering for TPS.

17 **4. Congress’ Humanitarian Purpose for the Fee Cap Further Confirms that**  
 18 **Section 1254a(c)(1)(B) Limits the Biometric Fees that May Be Charged As a**  
**Condition of TPS Registration.**

19 Congress intended the \$50 fee cap to relieve the financial burden on applicants seeking  
 20 humanitarian relief. Oct. 17, 2007 Order (Dkt. 40) at 9:21-24 (“Congress presumably wanted to reduce  
 21 the financial burden of applying for TPS on aliens who could not return to their home country because  
 22 of civil strife or natural disaster; otherwise it would not have expressly limited registration fees to  
 23 \$50.00.”). As members of Congress have explicitly stated, “Congress clearly intended the [TPS  
 24 registration] fee to be as low as possible so that all TPS registrants who are eligible and wish to apply  
 25 are able to do so.” 137 Cong. Rec. S5753-02, S5793 (May 14, 1991) (Debate of the Bill) (reprinting  
 26 Dec. 21, 1990 Letter written by Senator Dennis DeConcini to the INS Commissioner Gene McNary);<sup>21</sup>  
 27

28 <sup>21</sup> Although Senator DeConcini made these statements with reference to the Salvadoran TPS program,

1 *see also id.* (“As sponsors of this humanitarian legislation, we intended the registration process to be as  
 2 simple and *as inexpensive as possible* to encourage, rather than deter, all qualified Salvadorans to  
 3 register for TPS benefits.”) (reprinting Feb. 6, 1991 Letter written by Senator Dennis DeConcini and  
 4 Representative John Joseph Moakley to the INS Commissioner Gene McNary) (emphasis added).

5 Moreover, the subsidy of humanitarian immigration programs is written into the broader  
 6 statutory scheme which allows Defendant to recoup the administrative costs associated with “asylum  
 7 applicants or other immigrants” by imposing a surcharge on aliens partaking in other immigration  
 8 benefits. 8 U.S.C. § 1356(m). Oct. 17, 2007 Order (Dkt. 40) at 9:13-10:2 (“If USCIS can waive fees  
 9 for asylum applicants and other aliens for ‘humanitarian’ reasons, and assess a surcharge on others to  
 10 make up the difference, it could certainly do so for another category of aliens that Congress evinced an  
 11 intent to protect – particularly when it is required to limit fees by statute.”). 8 U.S.C. § 1356(m) allows  
 12 the government to set fees for immigration benefits such that it may “ensure recovery of the full costs of  
 13 providing all such services, including the costs of similar services provided without charge to asylum  
 14 applicants or other immigrants.” For instance, asylum applicants and crime victims who cooperate with  
 15 law enforcement do not have to pay a fee for biometric services. 8 C.F.R. 103.2(e)(4)(ii)(B); 72 Fed.  
 16 Reg. 53014, 53031 (Sept. 17, 2007).

17 TPS represents a similar humanitarian program. The need for legislation granting TPS status  
 18 was based on “the conditions of war, human rights abuses, destruction, and fear” present in certain  
 19 countries in 1989. 135 Cong. Rec. H7501-03, H7511 (Oct. 25, 1989). Therefore, TPS participants fit  
 20 within the category of “other immigrants” who, like asylum applicants, have been granted legal status in  
 21 this country for humanitarian reasons.

22 In sum, motivated by the humanitarian purpose of the TPS program, Congress capped all fees  
 23 (except those for work authorization documentation) imposed as a condition of TPS registration at \$50.  
 24 As a result, Congress has effectively forbidden Defendant from imposing a separate fee for recovering  
 25

26 \_\_\_\_\_  
 (continued ...)

27 his statements represent an unambiguous Congressional intent that the TPS program generally be  
 28 implemented to facilitate the registration of as many eligible individuals as possible. The Senator  
 explicitly connected the need for a low cost for registration with the humanitarian goals of TPS.



the costs of the collection and use of biometric information from TPS registrants pursuant to 8 U.S.C. § 1254a(c)(1)(B). Defendant therefore could have lawfully accounted for the cost of biometric services for TPS registrants. It cannot, however, charge those costs to TPS registrants where such a charge would violate the \$50 fee cap set forth by 8 U.S.C. § 1254a(c)(1)(B).

**5. Section 1356(m) Does Not Provide a Basis for Charging TPS Registration Fees in Excess of the \$50 Fee Cap.**

Plaintiffs expect Defendant to argue that 8 U.S.C. § 1356(m) authorizes Defendant to charge biometric services fees as part of the TPS registration process. Although section 1356(m) authorizes Defendant to recoup the full costs of immigration services by collecting fees, this provision is limited by the more specific provision, 8 U.S.C. § 1254a(c)(1)(B), capping TPS registration fees at \$50. “It is a well-settled canon of statutory construction that the specific provisions prevail over general provisions.” *N.L.R.B. v. A-Plus Roofing, Inc.*, 39 F.3d 1410, 1415 (9th Cir. 1994) (citing *Markair, Inc. v. C.A.B.*, 744 F.2d 1383, 1385 (9th Cir. 1984)); *see also Bulova Watch Co. v. United States*, 365 U.S. 753, 758 (1961). Because the TPS fee cap in section 1254a(c)(1)(B) is specific, while the fee authorization in section 1356(m) is general, section 1254a(c)(1)(B) controls the total amount of registration fees that Defendant may charge TPS applicants.

Additionally, the legislative history of sections 1356(m) and 1254a(c)(1)(B) negates the idea that section 1356(m) authorizes Defendant to charge biometric services fees in excess of the \$50 fee cap for TPS registration. Section 1254a(c)(1)(B)’s \$50 fee cap was enacted just twenty-four days after the general fee provision in section 1356(m). *See* Pub. L. No. 101-649, § 302(a), 104 Stat. 4978, 5030 (Nov. 29, 1990); Pub. L. 101-515, Title II, § 210(a), (d), 104 Stat. 2120, 2121 (Nov. 5, 1990). Based on the chronology of the two fee provisions, it is not possible that section 1356(m) authorized Defendant to charge more than \$50 for TPS registration when, three weeks later, Congress enacted a TPS statute that specifically capped the registration fee at \$50. *Aponte v. Gomez*, 993 F.2d 705, 707 (9th Cir. 1993) (“[I]t would have been absurd for the Legislature to have created a provision that could never be given effect . . .”) (quoting *People v. Pieters*, 52 Cal. 3d 894, 921 (1991)); *Am. Tel. & Tel. Co. v. United States*, 177 F.3d 1368, 1383 (Fed. Cir. 1999) (finding that interpretations are absurd “where it is quite impossible that Congress could have intended the result”); *Weddel v. Sec’y of Dep’t of Health & Human*

*Servs.*, 23 F.3d 388, 393 (Fed. Cir. 1994) (“To hold otherwise . . . effectively would read that provision out of the statute. This we cannot do . . .”). Instead, as demonstrated above, these two statutes operate in harmony to allow the Government to pass the costs of TPS biometrics onto other immigration programs.

Here, as this Court has already found, “the plain language of 8 U.S.C. § 1254a(c)(1)(B) unambiguously prohibits fees of over \$50.00,” and “[b]iometric services fees are plainly part of the fees charged ‘as a condition of registering’ ‘in the manner which the Attorney General’ has established.” Feb. 4, 2008 Order (Dkt. 68) at 11:24-25, 12:5-7; *see also* Oct. 17, 2007 Order (Dkt. 40) at 6:8-25. As such, and given the undisputed material facts set forth above, the Court should rule that Defendant has violated 8 U.S.C. § 1254a(c)(1)(B) by charging biometric services fees in addition to the \$50 application fee as a condition of TPS registration.

**C. Plaintiffs Are Entitled to Partial Summary Judgment Because Defendant’s Charging Biometric Services Fees to Applicants Who *Re-Register* for TPS After Their Country’s TPS Designation Is Extended Also Violates 8 U.S.C. § 1254a(c)(1)(B).**

Plaintiffs are also entitled to partial summary judgment that requiring TPS registrants to pay the biometric services fee each time they *re-register* (when the TPS designation of their country of origin is extended) violates the \$50 cap of section 1254a(c)(1)(B). Once a TPS registrant has paid the \$50 fee for TPS registration, 8 U.S.C. § 1254a(c)(1)(B) prohibits the Government from charging the registrant any additional fees to re-register for TPS when the TPS designation of their country of origin is extended.

**1. Section 1254a(c)(1)(B) Authorizes a One-Time \$50 Registration Fee, Which Precludes Charging for Biometric Services on Subsequent TPS Re-Registrations.**

8 U.S.C. § 1254a(c)(1)(B) unambiguously authorizes Defendant to charge a TPS registrant a maximum total fee of \$50 as a condition of TPS registration. Because Defendant charges a \$50 initial application fee, Defendant reached its maximum total charge upon the initial TPS registration of each individual who did not obtain an application fee waiver. It cannot also charge those individuals additional biometric services fees.

Nothing in the statute authorizes fees for “re-registration” when a country’s TPS designation is extended. *See* 8 U.S.C. § 1254a(b)(3)(C) (authorizing the Attorney General to extend TPS designations but not authorizing imposition of fees for TPS re-registration upon extension of designation). The

1 portion of the TPS statute that authorizes the Government to extend a country's TPS designation, 8  
 2 U.S.C. § 1254a(b)(3)(C), does not say anything about re-registering TPS registrants when the country of  
 3 origin's designation is extended.<sup>22</sup>

4 Section 1254a(c)(1)(A)(iv), which allows the Attorney General to determine the "extent" and  
 5 "manner" in which aliens are to *register* for TPS, could be broadly interpreted as authorizing the  
 6 Attorney General to also require aliens to *re-register* for TPS when their country of origin's designation  
 7 is extended. 8 U.S.C. § 1254a(c)(1)(A)(iv) (aliens eligible for TPS must register "to the extent and in a  
 8 manner which the Attorney General establishes"). This provision may afford the Attorney General  
 9 some discretion in determining the "extent" and "manner of" or process for registration. However, the  
 10 statute *expressly prohibits* the Government from charging more than \$50 "as a condition of registering"  
 11 an alien under subparagraph (A)(iv), which in this scenario also encompasses "re-registration." 8 U.S.C.  
 12 § 1254a(c)(1)(B).

13 Similarly, section 1254a(c)(3)(C), regarding annual registration conducted "in a form and  
 14 manner specified by the Attorney General,"<sup>23</sup> does not provide statutory authority for exacting  
 15 additional fees for re-registration.<sup>24</sup> This "registration" provision does not have an attendant fee  
 16 authorization provision. Congress only authorized registration fees "as a condition of registering an  
 17 alien under subparagraph (A)(iv)." Thus, insofar as re-registration is authorized as being within the  
 18

19  
 20 <sup>22</sup> Nothing in the TPS statute (8 U.S.C. § 1254a) requires TPS registrants to re-register when the  
 government extends a state's TPS designation.

21 <sup>23</sup> Pursuant to 8 C.F.R. § 244.17, governing annual registration, re-registrants are not required to pay a  
 22 fee for the I-821 registration form and do not have to pay a fee for filing the mandatory Form I-765  
 unless the registrant requests employment authorization. This provision providing that a fee for I-821 is  
 not required for annual registration conflicts with Defendant's anticipated argument that § 1254a(c)(3)(C)  
 allows a fee of up to \$50 for each re-registration.

23 <sup>24</sup> Annual re-registration only applies to persons who have already been granted TPS. 8 U.S.C.  
 24 § 1254a(c)(3)(C). However, the re-registration procedures required in the federal register notices apply  
 25 both to people who have already been granted TPS *and* to people whose TPS applications are pending.  
 26 *See, e.g.*, 73 Fed. Reg. 57128 (Oct. 1, 2008); 72 Fed. Reg. 46649 (Aug. 21, 2007); 67 Fed. Reg. 46000,  
 46001 (July 11, 2002) ("If your initial TPS application is still pending approval, you must re-register for  
 27 TPS during the re-registration period in order to be eligible for this extension."); 65 Fed. Reg. 30438,  
 30439 (May 11, 2000); 65 Fed. Reg. 30440, 30441 (May 11, 2000); 64 Fed. Reg. 524, 525 (Jan. 5,  
 1999). Accordingly, the portion of the statute that authorizes annual re-registration cannot possibly be  
 28 read to allow fees for re-registration. Furthermore, the annual registration provision cannot possibly be  
 the statutory authority for requiring re-registration because DHS typically extends designations for 18  
 months, not one year.

1 Attorney General's discretion to determine the extent and manner of TPS "registration" under  
 2 § 1254a(c)(1)(A)(iv), the total payment that can be required for such "registration" (including initial and  
 3 any subsequent re-registrations) is \$50. To the extent Defendant's re-registration process is authorized  
 4 as part of the "annual registration" process under § 1254(a)(c)(3)(C), the total payment that can be  
 5 required of that process is zero.

6 In short, the TPS statute expressly *includes* a \$50 fee cap on registration and expressly *excludes*  
 7 any authorization of a fee for re-registration. Drawing guidance, again, from the interpretive canon of  
 8 *expressio unius est exclusio alterius*, Congress' listing of one permissible additional fee indicates it  
 9 intended to exclude other fees. *See Longview Fibre Co.*, 980 F.2d at 1312-13; *see also Cardoza-*  
 10 *Fonseca*, 480 U.S. at 432. If Congress intended to allow the Attorney General to charge a fee for  
 11 annual TPS re-registration, it knew how to do so. The fact that it did not do so, while authorizing a fee  
 12 for initial TPS registration, demonstrates that it intended *not* to allow a fee for TPS re-registration.

13 Furthermore, the general provision allowing annual re-registration cannot override the specific  
 14 prohibition on charging more than \$50 for registration, as set forth in § 1254a(c)(1)(B). *A-Plus Roofing,*  
 15 *Inc.*, 39 F.3d at 1415 ("[S]pecific provisions prevail over general provisions."); *Neptune Mut. Ass'n, Ltd.*  
 16 *of Bermuda v. United States*, 862 F.2d 1546, 1552 (Fed. Cir. 1988).

17 This Court must also interpret statutory provisions in harmony with the entire statute. *Gustafson*  
 18 *v. Alloyd Co., Inc.*, 513 U.S. 561, 568 (1995); *King v. St. Vincent's Hosp.*, 502 U.S. 215, 221 (1991)  
 19 ("meaning of statutory language, plain or not, depends on context"); *Christensen v. Comm'r*, 523 F.3d  
 20 957, 960 (9th Cir. 2008); *Gen. Elec. Co., Aerospace Group v. United States*, 929 F.2d 679, 681 (Fed.  
 21 Cir. 1991). In doing so, the court must "giv[e] effect to each word and mak[e] every effort not to  
 22 interpret a provision in a manner that renders other provisions of the same statute inconsistent,  
 23 meaningless or superfluous." *Boise Cascade Corp. v. U.S. E.P.A.*, 942 F.2d 1427, 1432 (9th Cir. 1991);  
 24 *A-Plus Roofing*, 39 F.3d at 1415; *see also Splane v. West*, 216 F.3d 1058, 1068 (Fed. Cir. 2000).

25 Interpreting the section of the statute that provides for annual registration as authorizing  
 26 Defendant to exact additional fees from TPS participants "would render [the] statutory language [in 8  
 27 U.S.C. § 1254a(c)(1)(B)] surplusage." Feb. 4, 2008 Order (Dkt. 68) at 15:17-18. In effect, under such  
 28 an interpretation, Defendant would be limited to \$50 registration fee for first-time applications, but

Defendant would be totally untethered to any fee cap upon subsequent re-registrations. “Interpretations that nullify statutory provisions or render them superfluous are, and should be, disfavored.” *Patagonia Corp. v. Bd. of Governors of Fed. Reserve Sys.*, 517 F.2d 803, 813 (9th Cir. 1975); *Walther v. Sec’y of Health & Human Servs.*, 485 F.3d 1146, 1150 (Fed. Cir. 2007).

Thus, under 8 U.S.C. § 1254a(c)(1)(B), TPS applicants can only be charged a maximum of \$50. Because Defendant charges an initial \$50 TPS application fee, that is all it can exact from any TPS participant. Any registration fees charged to TPS participants in excess of that initial \$50, whether charged at initial registration or at subsequent re-registrations, violate section 1254a(c)(1)(B). Because the biometric services fee is a condition of registering for TPS (as discussed above), the \$50 statutory limit under 8 U.S.C. § 1254a(c)(1)(B) applies to the biometric fees that are charged to TPS re-registrants. The United States is therefore violating 8 U.S.C. § 1254a(c)(1)(B) by charging TPS re-registrants up to \$80 for fingerprint and biometric fees when these fees should not have been charged at all.

**2. The Legislative History and Agency Interpretation Further Demonstrates That the \$50 Fee Cap Is a Lifetime Limit on TPS Registration Fees.**

To the extent that there is any doubt about the import of section 1254a(c)(1)(B), “consideration of legislative history is appropriate where statutory language is ambiguous.” *Abrego Abrego v. Dow Chem. Co.*, 443 F.3d 676, 683 (9th Cir. 2006); *see also Star-Glo Assocs., LP v. United States*, 414 F.3d 1349, 1355 (Fed. Cir. 2005). The legislative history supports the plain reading of the fee cap under section 1254a(c)(1)(B) as a \$50 limit on the total amount of TPS registration fees that the Government can charge applicants for TPS registration and re-registration.

First, the House analysis of the bill reinforces the notion that Congress intended the \$50 registration fee cap as a lifetime limit for TPS registration. That analysis, reprinted in the Congressional Record, referred to a “one-time” registration fee, capped at \$50, *and* stated that TPS beneficiaries would be required to “reregister annually.” 135 CONG. REC. H7501-03, H7512 (Oct. 25, 1989) (“Once a country has been designated, aliens in the United States from that country, whether here legally or illegally, who wish to receive TPS will be required to register and pay a *one-time* registration fee of up to \$50 to defray adjudication costs. They will also be required to reregister annually.”) (emphasis added).

1 Second, Congress has had three opportunities to change the \$50 registration fee cap during its  
 2 three amendments to the TPS statute since it was enacted – in 1991, 1994, and 1996. The 1991  
 3 amendment added language, now codified at 8 U.S.C. § 1254a(c)(1)(B), permitting the Attorney  
 4 General to impose a separate, additional fee for documentation of work authorization cards. Pub. L.  
 5 No. 102-232, § 304(b)(2), 105 Stat. 1733, 1749 (1991). In contrast, Congress did not provide for the  
 6 imposition of an additional fee for fingerprinting or biometrics services. *See id.* The 1994 and 1996  
 7 amendments did not make any changes to the statute relevant to TPS registration requirements or fees.  
 8 *See* Pub. L. No. 103-416, Title II, § 219(j), (z)(2), 108 Stat. 4317, 4318 (1994); Pub. L. No. 104-208,  
 9 Div. C, Title III, § 308(b)(7), (e)(1)(G), (11), (g)(7)(E)(i), (g)(8)(A)(i), 110 Stat. 3009-615, 3009-619,  
 10 3009-620, 3009-624 (1996).

11 Insofar as there is any ambiguity in the plain language and expressed Congressional intent of the  
 12 \$50 fee cap, it is appropriate to look to agency interpretation of whether the Government is allowed to  
 13 charge TPS registrants a fee for subsequent re-registrations. *See Chevron*, 467 U.S. at 843 (“If the  
 14 statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the  
 15 agency’s answer is based on a permissible construction of the statute.”). Consistent with the plain  
 16 language in § 1254a(c)(1)(B) and the legislative history, Defendant itself interprets the \$50 fee cap to be  
 17 a limit on the total amount of registration fees charged to TPS applicants regardless of how many times  
 18 they re-register. For instance, TPS re-registrants do not need to submit a \$50 fee along with the I-821  
 19 TPS re-registration form, unlike first time applicants. 8 C.F.R. § 103.7(b)(1); 72 Fed. Reg. 46649,  
 20 46650 (Aug. 21, 2007); Velarde Decl. at ¶ 5 (“TPS applicants submit a one-time only registration fee of  
 21 \$50 with their initial Form I-821.”). When the former Immigration and Naturalization Service issued its  
 22 final rule implementing the TPS statute in 1991, it noted that it received responses to the proposed rule  
 23 requesting that no fee be charged for “re-registration.” 56 Fed. Reg. 23491, 23492 (May 22, 1991).  
 24 Agreeing with the commentators, INS stated that it would “not charge an additional fee for the re-  
 25 registration process.” *Id.* Similarly, when DHS proposed increasing the biometrics fee from \$70 to  
 26 \$80, it noted that “there is no fee charged for the Form I-821 for re-registrants.” 72 Fed. Reg. 4888,  
 27 4903 (Feb. 1, 2007).



1 The Immigration and Nationality Act (“INA”) provides the Secretary of DHS with the authority  
 2 to establish regulations “as he deems necessary” to enforce the INA. 8 U.S.C. § 1103(a)(3). Reasonable  
 3 agency interpretations of a statute pursuant to express congressional delegation of lawmaking authority  
 4 are binding on courts unless they are “arbitrary, capricious, or manifestly contrary to the statute.”  
 5 *Chevron*, 467 U.S. at 843-44. On this issue, Defendant’s interpretation of the \$50 cap as a one-time  
 6 limit on TPS registration fees accords with the plain meaning and legislative history of the statute as  
 7 discussed above and therefore should be given *Chevron* deference.

8 In sum, given the plain language of the statute, legislative history, and undisputed facts that  
 9 Defendant charges biometric services fees in excess of the one-time \$50 fee cap, Plaintiffs are entitled  
 10 to summary judgment as a matter of law that Defendant’s policy and practice of charging TPS  
 11 applicants first fingerprinting and now biometric services fees of up to \$80 under 8 C.F.R. §§ 103.7(b)(1)  
 12 and 244.6 violates the \$50 statutory cap on registration fees set by 8 U.S.C. § 1254a(c)(1)(B).

13 **D. If the Court Grants Summary Judgment on These Issues, It May Also Order Declaratory**  
 14 **Relief.**

15 If the Court finds that the Government has violated 8 U.S.C. § 1254a(c)(1)(B) by charging  
 16 applicants in excess of the \$50 statutory cap for TPS registration, the Court may order the declaratory  
 17 relief Plaintiffs seek in their First Amended Complaint: 1) Declaring that 8 U.S.C. § 1254a(c)(1)(B)  
 18 prohibits Defendant from imposing, as a condition to register for TPS, a separate, additional service fee  
 19 for the collection of biometric information if the total fee charged to register for TPS would then exceed  
 20 \$50.00; and 2) Declaring invalid those parts of 8 C.F.R. § 244.6 that require TPS applicants to remit a  
 21 separate, additional service fee for the collection of biometric information if the total fee charged to  
 22 register for TPS would then exceed the \$50.00 permitted under 8 U.S.C. § 1254a(c)(1)(B). First. Am.  
 23 Compl. (Dkt. 5) at 9.

24 “Declaratory relief is appropriate ‘(1) when the judgment will serve a useful purpose in  
 25 clarifying and settling the legal relations in issue, and (2) when it will terminate and afford relief from  
 26 the uncertainty, insecurity, and controversy giving rise to the proceeding.’” *Eureka Fed. Sav. & Loan*  
 27 *Ass’n v. Am. Casualty Co. of Reading, Pa.*, 873 F.2d 229, 231 (9th Cir. 1989) (quoting *Bilbrey by*  
 28

1 *Bilbrey v. Brown*, 738 F.2d 1462, 1470 (9th Cir. 1984)); *Mediostream, Inc. v. Priddis Music, Inc.*, No. C  
2 07-2127, 2007 WL 2790688, at \*2 (N.D. Cal. Sept. 24, 2007) (same).

3 This standard is met here if the Court finds that Defendant's policy of charging TPS applicants  
4 more than \$50 for registration violates 8 U.S.C. § 1254a(c)(1)(B). First, declaratory relief will clarify  
5 and settle the legal relations at issue. Here, Defendant's practice of charging more than \$50 as a  
6 condition of TPS registration follows written policies codified in its federal regulation, 8 C.F.R.  
7 § 244.6. There is, therefore, a reasonable expectation that Defendant will continue to violate 8  
8 § 1254a(c)(1)(B) as long as 8 C.F.R. § 244.6 remains on the books. Where "the defendant had, at the  
9 time of the injury, a written policy, and [] the injury 'stems from' that policy," that injury is likely to  
10 recur. *Armstrong v. Davis*, 275 F.3d 849, 861 (9th Cir. 2001). Declaratory relief will clarify and settle  
11 these issues and help prevent future recurrence of Plaintiffs' injuries.

12 Additionally, declaratory relief is especially appropriate "where the parties are involved in an  
13 ongoing relationship that may present the opportunity for future disagreement." *Hawkins v. Helms*, 690  
14 F.2d 977, 1007 (D.C. Cir. 1982). That ongoing relationship is present here. Specifically, if Defendant  
15 extends the TPS designation for El Salvador, Nicaragua, and Honduras again as it has repeatedly done  
16 in the past, Plaintiffs will likely re-register with Defendant for TPS. The Court's order will prevent  
17 Defendant from imposing unlawful fees as a condition of TPS registration. Thus, given a favorable  
18 determination on the merits, declaratory relief would also settle the legal issue and afford relief from  
19 future uncertainty.<sup>25</sup>

20 Furthermore, declaratory relief is particularly appropriate in a class action setting where "a  
21 declaratory judgment would settle the issue of the legality of Defendant's behavior with respect to the  
22

23  
24 <sup>25</sup> Without declaratory relief, where the United States is the defendant, there is no *res judicata* or  
25 collateral estoppel against the United States in subsequent cases by different plaintiffs. *United States v.*  
26 *Mendoza*, 464 U.S. 154, 162-63 (1984); *see also Idaho Potato Comm'n v. G & T Terminal Packaging,*  
27 *Inc.*, 425 F.3d 708, 713-14 (9th Cir. 2005); *Thomas v. Veal*, No. CIV S-07-0734, 2008 WL 110968, at  
28 \*2 n.2 (E.D. Cal. Jan. 9, 2008). For instance, TPS registrants from countries other than El Salvador,  
Nicaragua, and Honduras would not benefit from any judgment in this case without declaratory or  
injunctive relief. In that regard, Defendant recently announced the extension of the designation of  
Somalia for TPS. 74 Fed. Reg. 37043-02 (July 27, 2009). As shown in the announcement, Defendant  
continues to require TPS applicants and re-registrants to submit an \$80 fee for biometric services. *Id.* at  
37046.



entire class.” *Hunt v. Check Recovery Sys., Inc.*, 241 F.R.D. 505, 513 (N.D. Cal. 2007). Declaratory relief is warranted for class claims “[g]iven that the very purpose of class actions is to promote judicial efficiency and economy.” *Id.*

Thus, the Court should issue a declaratory judgment that 8 U.S.C. § 1254a(c)(1)(B) prohibits Defendant United States from imposing, as a condition of registering for TPS, a separate, additional service fee for the collection of biometric information if the total fee charged to register for TPS would then exceed \$50.00. The Court should also issue a judgment declaring invalid those parts of 8 C.F.R. § 244.6 that require an individual who applies to register or re-register for TPS to remit a separate, additional service fee for the collection of biometric information if the total fee charged to the individual to register for TPS would then exceed the \$50 limit set by 8 U.S.C. § 1254a(c)(1)(B).

## VI. CONCLUSION

The Government imposes biometric services fees as a condition of TPS registration. The plain language and legislative history of 8 U.S.C. § 1254a(c)(1)(B) unambiguously caps TPS registration fees for each TPS applicant at \$50. However, the uncontroverted evidence shows that Defendant has consistently charged TPS applicants and re-registrants well over \$50 for registering for the TPS program.

Plaintiffs are therefore entitled to partial summary judgment because Defendant’s policy and practice of charging TPS applicants first fingerprinting and now biometric services fees of up to \$80 under 8 C.F.R. §§ 103.7(b)(1) and 244.6 violates the \$50 statutory cap on registration fees set by 8 U.S.C. § 1254a(c)(1)(B). Plaintiffs are also entitled to partial summary judgment because once a TPS registrant has paid the \$50 fee for the initial TPS registration, 8 U.S.C. § 1254a(c)(1)(B) prohibits any additional fees to re-register for TPS when the TPS designation of an applicant’s country of origin is extended.

For the foregoing reasons, Plaintiffs respectfully request that the Court grant their motion for partial summary judgment, and grant declaratory relief declaring that Defendant’s policy and practice of charging biometric fees that exceed the \$50 limit under 8 U.S.C. § 1254a(c)(1)(B) is unlawful and that the portion of 8 C.F.R. § 244.6 that Defendant claims to support this practice is invalid.

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Respectfully submitted,

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