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10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12 SOUTHERN DIVISION

13 TERESITA COSTELO, *et al.*,) No. SA CV08-00688-JVS (SHx)
14 Plaintiffs,)
15 v.) DEFENDANTS' ANSWER
16 JANET NAPOLITANO, Secretary,)
Department of Homeland)
17 Security, *et al.*,)
18 Defendants.)

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ANSWER
SACV 08-00688-JVS (SHx)

1 COME NOW Defendants, by and through their undersigned
2 counsel, and hereby answer Plaintiffs' *Complaint for Declaratory,*
3 *Mandamus and Injunctive Relief*, filed on June 20, 2008.

4 Defendants deny each and every allegation not hereinafter
5 specifically admitted, and demand strict proof thereof.

6 For their answer to Plaintiffs' Complaint, Defendants admit,
7 deny, and aver as follows:

8 **I. PRELIMINARY STATEMENT**

9 Paragraphs 1 through 7, comprising the introduction, contain
10 Plaintiffs' characterization of their case and interpretation of
11 the law, to which no response is necessary. To the extent a
12 response to the preliminary statement is necessary, Defendants
13 state:

14 1. Paragraph 1 sets forth Plaintiffs' legal theory of the case
15 and consists of statements and conclusions of law, to which
16 no response is required. To the extent a responsive
17 pleading is required, Defendants admit only that the Child
18 Status Protection Act (CSPA) was passed in 2002 and parts
19 thereof were codified at 203(h) of the Immigration and
20 Nationality Act (INA), 8 U.S.C. § 1153(h), and that
21 derivative beneficiaries of visa petitions who reach the age
22 of twenty-one (21) prior to the availability of a visa to
23 the primary beneficiary deemed to have "aged-out." In this
24 paragraph, Plaintiffs refer to various provisions of the
25 CSPA and offer their conclusions of law as to its
26 interpretation, meaning, and effect. Defendants deny
27 Plaintiffs' characterizations of the statute and assert that
28 the statute, without redactions, speaks for itself and

1 constitutes the best evidence of its contents. Defendants
2 further deny Plaintiffs' characterizations of congressional
3 intent in passing the statute. Defendants assert that the
4 statute itself and the complete legislative history provide
5 the best evidence of Congress' intent.

6 2. Paragraph 2 sets forth Plaintiffs' legal theory of the case
7 and consists of statements and conclusions of law, to which
8 no response is required. To the extent a responsive
9 pleading is required, Defendants assert that 8 U.S.C.
10 § 1153(h)(3), without redaction, speaks for itself and
11 constitutes the best evidence of its contents and effect.
12 Defendants also specifically deny Plaintiffs' conclusions of
13 law as being contrary to the plain meaning of the statute.

14 3. Paragraph 3 sets forth Plaintiffs' legal theory of the case
15 and consists of statements and conclusions of law, to which
16 no response is required. To the extent a responsive
17 pleading is required, Defendants admit that a derivative
18 beneficiary who reaches the age of twenty-one (21) years old
19 prior to the availability of a visa to the primary
20 beneficiary is considered to have "aged-out." Defendants
21 further admit that an alien who is twenty-one (21) years old
22 or older is not eligible to immigrate as a derivative
23 beneficiary of a visa petition filed on behalf of his or her
24 parent. Defendants admit that some aliens must wait twenty
25 or more years in order for a visa to become available and
26 that during this time the alien's offspring may age-out of
27 derivative status. Defendants admit that a lawful permanent
28 resident may file an immigrant visa petition to classify his

or her unmarried adult son or daughter under 8 U.S.C.

§ 1153(a) (2) (B). Defendants object to Plaintiffs' use of the words "child" and "children" to describe the adult (over twenty-one (21) years old) sons and daughters of lawful permanent residents. Defendants admit that family second preference visas are not immediately available. Defendants deny that a "child" would have to wait to be reunited with a parent but admit that an adult son or daughter may have to wait for a visa number to become available in the family second preference category. To the extent Plaintiffs refer to the CSPA, Defendants assert that the statute itself provides the best evidence of its meaning and application. Defendants object to every legal conclusion set forth by Plaintiffs.

4. Paragraph 4 sets forth Plaintiffs' legal theory of the case and consists of statements and conclusions of law, to which no response is required. To the extent a responsive pleading is required, Defendants object to Plaintiffs' characterization that Defendants have "no uniform policy" and "lack [] any regulation" and engage in "arbitrary and inconsistent decision-making" as misleading and erroneous. Defendants object to the characterizations of their actions and to every legal conclusion set forth by plaintiffs. Defendants deny that their actions violate the Administrative Procedures Act, the Due Process Clause and equal protection clause of the Fifth Amendment, and Article II, sections 1 and 3 of the U.S. Constitution. Defendants lack sufficient information or knowledge to form a belief as

1 to the truth of the allegations in Paragraph 4, which are
2 therefore denied.

- 3 5. Paragraph 5 sets forth Plaintiffs' legal theory of the case
4 and consists of statements and conclusions of law, to which
5 no response is required. To the extent a responsive
6 pleading is required, Defendants assert that the case is not
7 appropriate for class action treatment under Rule 23.
8 Defendants object to the characterizations of their actions
9 and to every legal conclusion set forth by Plaintiffs.
10 Defendants admit that Teresita Costelo is a named plaintiff
11 and filed petitions for two of her daughters. Defendants
12 object to the characterization of Plaintiff Costelo's
13 filings as "proper" and Defendants' actions as "unlawful"
14 and that Plaintiff "suffers" on account of these actions as
15 misleading and erroneous. Defendants admit that Plaintiff
16 Costelo and other aliens may have to wait several years
17 before their adult sons and daughters may legally immigrate
18 to the United States based upon the recently-filed
19 petitions. Defendants do not have sufficient information to
20 determine for Plaintiff Costelo and the unnamed potential
21 class members if there are any other mechanisms by which
22 their adult sons and daughters may be able to lawfully
23 immigrate or travel to the United States as nonimmigrants;
24 thus, Defendants deny the allegations in the last sentence.
- 25 6. This paragraph consists of characterizations of this lawsuit
26 and legal arguments and conclusions of law for which no
27 response is necessary. To extent a responsive pleading is
28 required, Defendants deny that the case is appropriate for

1 class action treatment under Rule 23. Defendants admit the
2 allegations in the second sentence. Defendants have
3 insufficient information to form a belief as to the truth of
4 the allegations in the third and fourth sentences and thus
5 deny them.

- 6 7. Paragraph 7 sets forth Plaintiffs' legal theory of the case
7 and consists of statements and conclusions of law, to which
8 no response is required. To the extent a responsive
9 pleading is required, Defendants deny that the case is
10 appropriate for class action treatment under Rule 23.
11 Defendants object to Plaintiffs' characterization of the
12 case as one seeking "proper" adjudication that "complies"
13 with the legal requirements as being misleading and
14 erroneous.

15 **II. JURISDICTION AND VENUE**

16 Paragraphs 8 through 11 contain Plaintiffs' characterization
17 of their case and interpretation of the law, to which no response
18 is necessary. To the extent a response to the jurisdiction and
19 venue statements are necessary, Defendants state:

- 20 8. Paragraph 8 consists of statements and conclusions of law
21 regarding jurisdiction, which require no response. To the
22 extent that a responsive pleading is required, Defendants
23 deny that 8 U.S.C. § 1361 confers jurisdiction over this
24 action. Defendants admit that this Court has jurisdiction
25 under 28 U.S.C. § 1331.
- 26 9. Paragraph 9 consists of statements and conclusions of law
27 regarding jurisdiction, which require no response. To the
28 extent that a responsive pleading is required, Defendants

1 admit that this Court may issue orders pursuant to the
2 Declaratory Judgment Act construing the Child Status
3 Protection Act. Defendants deny jurisdiction under the
4 Fifth Amendment and object to Plaintiffs' characterization
5 that Defendants are failing to "recognize" Plaintiffs' legal
6 arguments as misleading and erroneous.

7 10. Paragraph 10 consists of statements and conclusions of law
8 regarding jurisdiction, which require no response.
9 Plaintiffs cite to and paraphrase the Administrative
10 Procedure Act ("APA"), 5 U.S.C. §§ 701-706; Defendants
11 assert that the APA itself provides the best evidence of its
12 contents.

13 11. Paragraph 11 consists of statements and conclusions of law
14 regarding venue, which require no response. To the extent a
15 responsive pleading is required, Defendants admit that
16 Defendants are either officers of the United States acting
17 in their official capacities or an agency of the United
18 States. Defendants do not possess sufficient information
19 upon which to form a belief as to place of the named
20 Plaintiffs' residence; thus, Defendants deny these
21 allegations. Defendants do not possess sufficient
22 information in order to determine if the events or omissions
23 giving rise to the claim occurred in this judicial district;
24 thus, Defendants deny this allegation.

25 **III. CLASS ALLEGATIONS**

26 12. Paragraph 12 contains Plaintiffs' characterization of their
27 case and interpretation of the law with regards to their
28 class claims, to which no response is necessary. To the

1 extent a response is necessary, Defendants assert that the
2 case is not appropriate for class action treatment under
3 Rule 23.

4 13. Defendants are without sufficient information or knowledge
5 to form a belief as to the truth of the allegations
6 contained in Paragraph 13; thus, Defendants deny the
7 allegations. Defendants further assert that the case is not
8 appropriate for class action treatment under Rule 23.

9 14. Paragraph 14 contains Plaintiffs' characterization of their
10 case and interpretation of the law with regards to their
11 class claims, to which no response is necessary. To the
12 extent a response is necessary, Defendants object to
13 Plaintiffs' characterization of Defendants' actions as
14 "refusing to recognize a statute that preserves a parent's
15 original priority date" as misleading and erroneous.
16 Defendants further assert that the case is not appropriate
17 for class action treatment under Rule 23. Defendants deny
18 the allegations contained in Paragraph 14.

19 15. Paragraph 15 contains Plaintiffs' characterization of their
20 case and interpretation of the law with regards to their
21 class claims, to which no response is necessary. To the
22 extent a response is necessary, Defendants assert that the
23 case is not appropriate for class action treatment under
24 Rule 23. Defendants deny the allegations contained in
25 Paragraph 15.

26 16. Paragraph 16 contains Plaintiffs' characterization of their
27 case and interpretation of the law with regards to their
28 class claims, to which no response is necessary. To the

1 extent a response is necessary, Defendants assert that the
2 case is not appropriate for class action treatment under
3 Rule 23. Defendants admit the allegations in the third
4 sentence of Paragraph 16. Defendants deny all other
5 allegations.

6 17. Paragraph 17 contains Plaintiffs' characterization of their
7 case, to which no response is necessary. To the extent a
8 response is necessary, Defendants assert that the case is
9 not appropriate for class action treatment under Rule 23.
10 Defendants further lack sufficient information to form a
11 belief as to the truth of the allegations contained in
12 Paragraph 17 and thus deny them.

13 18. Paragraph 18 contains Plaintiffs' characterization of their
14 case and interpretation of the law with regards to their
15 class claims, to which no response is necessary. To the
16 extent a response is necessary, Defendants assert that the
17 case is not appropriate for class action treatment under
18 Rule 23. Defendants further deny that they have acted or
19 refused to act on grounds applicable to the class.
20 Defendants lack sufficient information to form a belief as
21 to Plaintiffs' ability to vigorously represent the interests
22 of unnamed class members, whether the proposed class would
23 benefit from this action, and the similarity of interests of
24 the named Plaintiffs and the proposed class members.
25 Accordingly, Defendants deny all of the allegations in
26 Paragraph 18.
27
28

IV. PARTIES**A. PLAINTIFFS**

FIRST CLASS: The proposed class definition contains Plaintiffs' characterization of their case and interpretation of the law with regards to their class claims, to which no response is necessary. To the extent a response is necessary, Defendants assert that the case is not appropriate for class action treatment under Rule 23.

19. Defendants admit the allegations in the first through fifth sentences. Defendants deny the allegations in the sixth sentence but admit that the priority date from the visa petition filed by Plaintiff Costelo's mother was erroneously applied to the visa petition filed by Plaintiff Costelo on behalf of Angelyn but was not applied to the petition filed by Plaintiff Costelo on behalf of Anne Theresa. Defendants lack sufficient information to form a belief as to the truth of the allegations in the seventh sentence, hence Defendants deny them.

SECOND CLASS: The proposed class definition contains Plaintiffs' characterization of their case and interpretation of the law with regards to their class claims, to which no response is necessary. To the extent a response is necessary, Defendants assert that the case is not appropriate for class action treatment under Rule 23.

20. Defendants admit the allegations contained in sentences one through five. Defendants lack sufficient information to form a belief as to the truth of the allegations in the sixth and seventh sentences; thus, Defendants deny them.

B. DEFENDANTS

- 1 21. Under Federal Rule of Civil Procedure 25(d), Janet
2 Napolitano, Secretary of Homeland Security, is substituted
3 for Michael Chertoff. Defendants admit the remaining
4 allegations contained in the paragraph.
5
6 22. Defendants admit the allegations contained in this
7 paragraph.
8
9 23. Under Federal Rule of Civil Procedure 25(d), Alejandro
10 Mayorka, Director, United States Citizenship and Immigration
11 Service (USCIS), is substituted for Emilio T. Gonzales.
12 Defendants admit the remaining allegations contained in the
13 paragraph.
14
15 24. Under Federal Rule of Civil Procedure 25(d), Hillary
16 Clinton, Secretary of State, is substituted for Condoleeza
17 Rice. Defendants admit the remaining allegations contained
18 in the paragraph.
19
20 25. Under Federal Rule of Civil Procedure 25(d), Lynne Skeirik,
21 Director of the National Visa Center, is substituted for
22 David Tyler. Defendants admit the remaining allegations
23 contained in the paragraph.
24
25 26. Defendants admit the allegations contained in this
26 paragraph.
27
28

IV. STATUTORY REFERENCES

- 27 27. Paragraph 27 sets forth Plaintiffs' legal theory of the case
28 and consists of statements and conclusions of law, to which
no response is required. In Paragraph 27, Plaintiffs quote
sections of 8 U.S.C. § 1154(a). To the extent that a
responsive pleading is necessary, Defendants assert that the

1 Immigration and Nationality Act ("INA"), without redactions,
2 speaks for itself and constitutes the best evidence of its
3 contents.

4 28. Paragraph 28 sets forth Plaintiffs' legal theory of the case
5 and consists of statements and conclusions of law, to which
6 no response is required. In Paragraph 28, Plaintiffs quote
7 sections of 8 U.S.C. § 1154(b). To the extent that a
8 responsive pleading is necessary, Defendants assert that the
9 INA, without redactions, speaks for itself and constitutes
10 the best evidence of its contents.

11 29. Paragraph 29 sets forth Plaintiffs' legal theory of the case
12 and consists of statements and conclusions of law, to which
13 no response is required. In Paragraph 29, Plaintiffs quote
14 various subsections of 8 U.S.C. § 1153. To the extent that
15 a responsive pleading is necessary, Defendants assert that
16 the INA, without redactions, speaks for itself and
17 constitutes the best evidence of its contents.

18 30. Paragraph 30 sets forth Plaintiffs' legal theory of the case
19 and consists of statements and conclusions of law, to which
20 no response is required. In Paragraph 30, Plaintiffs quote
21 8 U.S.C. § 1151. To the extent that a responsive pleading
22 is necessary, Defendants assert that the INA, without
23 redactions, speaks for itself and constitutes the best
24 evidence of its contents.

25 31. Paragraph 31 sets forth Plaintiffs' legal theory of the case
26 and consists of statements and conclusions of law, to which
27 no response is required. In Paragraph 31, Plaintiffs
28 reference 8 U.S.C. §§ 1153 and 1154, and 22 C.F.R.

1 §§ 42.53(a) and 42.54(a)(1). To the extent that a
2 responsive pleading is necessary, Defendants assert that the
3 INA and federal regulations, without redactions, speak for
4 themselves and constitutes the best evidence of their
5 contents.

6 32. Paragraph 32 sets forth Plaintiffs' legal theory of the case
7 and consists of statements and conclusions of law, to which
8 no response is required. In Paragraph 32, Plaintiffs
9 paraphrase and then quote parts of 8 U.S.C. § 1101(b)(1).
10 To the extent that a responsive pleading is necessary,
11 Defendants assert that the INA, without redactions, speaks
12 for itself and constitutes the best evidence of its
13 contents.

14 33. Paragraph 33 sets forth Plaintiffs' legal theory of the case
15 and consists of statements and conclusions of law, to which
16 no response is required. In Paragraph 33, Plaintiffs quote
17 8 U.S.C. §§ 1153(h)(1) and (3). To the extent that a
18 responsive pleading is necessary, Defendants assert that
19 these provisions, without redactions, speak for themselves
20 and constitute the best evidence of their contents.

21 **V. STATEMENT OF FACTS**

22 **FIRST CLASS**

23 34. Defendants admit the allegations contained in this
24 paragraph.

25 35. Defendants admit the allegations contained in this
26 paragraph.

27 36. Defendants admit the allegations contained in this
28 paragraph.

1 37. Defendants deny the allegations contained in the first
2 sentence of this paragraph. The second sentence contains
3 Plaintiffs characterization of the action, to which no
4 response is required. To the extent a responsive pleading
5 is necessary, Defendants deny the allegations contained in
6 the second sentence. Defendants admit the allegations
7 contained in the third sentence.

8 38. Defendants admit the allegations contained in this
9 paragraph.

10 39. With the substitution of May 1, 1998 for the date of
11 February 22, 1997, Defendants admit the allegations
12 contained in this paragraph.

13 40. Defendants lack sufficient information upon which to form a
14 belief as to the truth of the allegations contained in this
15 paragraph; thus, Defendants deny.

16 41. Defendants deny the allegations in this paragraph but admit
17 that Defendants approved the visa petition filed on behalf
18 of Angelyn on or about February 12, 2008 and erroneously
19 assigned the petition a priority date of January 5, 1990.

20 42. Defendants lack sufficient information to form a belief as
21 to the truth of the allegations contained in this paragraph;
22 thus, Defendants deny them. Defendants assert, however,
23 that this alleged action would be in accordance with statute
24 and regulation.

25 43. This paragraph contains Plaintiffs' characterization of the
26 case and legal arguments and conclusions of law to which no
27 response is required. To the extent a responsive pleading
28 is necessary, Defendants lack sufficient information to form

1 a belief as to the truth of the allegation; thus, Defendants
2 deny them. Defendants further object to Plaintiff's
3 characterization of Defendants' actions as "random denials"
4 and of Plaintiff's visa petition on behalf of her daughters
5 as "eligible" for the requested relief as misleading and
6 erroneous.

7 **SECOND CLASS**

8 44. Defendants admit the allegations contained in this
9 paragraph.

10 45. Defendants admit the allegations contained in this
11 paragraph.

12 46. Defendants admit the allegations contained in the first
13 sentence. The second sentence contains Plaintiffs'
14 characterization of this action, to which no response is
15 required. To the extent a responsive pleading is necessary,
16 Defendants deny the allegations contained in the second
17 sentence. Defendants admit the allegations contained in the
18 third sentence.

19 47. Defendants admit the allegations contained in this
20 paragraph.

21 48. Defendants lack sufficient information to form a belief as
22 to the truth of the allegations in this paragraph; thus
23 Defendants deny them.

24 49. With the substitution of May 1, 1998, for the date February
25 22, 1997, Defendants admit the allegations contained in this
26 paragraph.

1 50. Defendants lack sufficient information to form a belief as
2 to the truth of the allegations in this paragraph; thus
3 Defendants deny them.

4 51. Defendants admit the first sentence of this paragraph.
5 Defendants do not have sufficient information as to the
6 truth of the allegations in the second sentence; thus,
7 Defendants deny them.

8 52. This paragraph contains Plaintiffs' characterization of the
9 case and legal arguments and conclusions of law to which no
10 response is required. To the extent a responsive pleading
11 is necessary, Defendants lack sufficient information to form
12 a belief as to the truth of the allegations and thus deny
13 them.

14 **VI. LEGAL ARGUMENT**

15 **A. Claim for Declaratory and Injunctive Relief, Regarding**
16 **the Application of Section 3 of the CSPA**

17 53. This paragraph contains a statement of incorporation to
18 which no response is required.

19 54. This paragraph contains Plaintiffs' conclusions of law to
20 which no response is required. To the extent a responsive
21 pleading is necessary, Defendants assert that 8 U.S.C.
22 §§ 1153(h)(3), (a)(2)(A), and (d), without redactions, are
23 the best evidence of their contents.

24 55. This paragraph contains Plaintiffs' characterization of the
25 case and legal arguments and conclusions of law to which no
26 response is required. Defendants object to the phrases
27 "failed" and "refused to acknowledge" as misleading and an
28 erroneous characterization of Defendants' actions. However,

1 to the extent a response is deemed necessary, Defendants are
2 without sufficient information to form a belief as to the
3 truth of the assertion in the last sentence of Paragraph 55,
4 and thus deny the allegations contained in the entire
5 paragraph.

6 56. This paragraph contains Plaintiffs' characterization of the
7 case and legal arguments and conclusions of law to which no
8 response is required. Defendants object to the phrases
9 "refusal to issue" and "at odd with" as misleading and an
10 erroneous characterization of Defendants' actions. To the
11 extent a response is deemed necessary, Defendants deny the
12 allegations contained in the paragraph.

13 57. This paragraph contains Plaintiffs' characterization of the
14 case and legal arguments and conclusions of law to which no
15 response is required. Defendants object to Plaintiffs'
16 selective quoting of legislative history as misleading and
17 an erroneous characterization of Congress' intent. For this
18 reason, Defendants assert that the CSPA and the cited
19 legislative history and case provide the best evidence of
20 their contents. To the extent a response is deemed
21 necessary, Defendants deny the allegations.

22 58. This paragraph contains Plaintiffs' characterization of the
23 case and legal arguments and conclusions of law to which no
24 response is required. Defendants object to Plaintiffs'
25 selective quoting of legislative history and judicial
26 interpretations as misleading and an erroneous
27 characterization of Congress' intent. For this reason,
28 Defendants assert that the CSPA and the cited legislative

1 history and case provide the best evidence of their
2 contents. To the extent a response is deemed necessary,
3 Defendants deny the allegations.

4 59. This paragraph contains Plaintiffs' characterization of the
5 case and legal arguments and conclusions of law to which no
6 response is required. Defendants assert that cases provide
7 the best evidence of their contents. To the extent a
8 response is deemed necessary, Defendants deny the
9 allegations.

10 60. This paragraph contains Plaintiffs' characterization of the
11 case and legal arguments and conclusions of law to which no
12 response is required. Defendants object to the phrase
13 "Defendants' interpretation and application . . . is
14 anything but ameliorative" as misleading and an erroneous
15 characterization of Defendants' actions. Defendants also
16 object to the phrase "Defendants have ignored both the clear
17 language of the statute and Congressional intent" as
18 misleading and an erroneous characterization of Defendants'
19 actions. To the extent a response is deemed necessary,
20 Defendants deny the allegations.

21 61. This paragraph contains Plaintiffs' characterization of the
22 case and legal arguments and conclusions of law to which no
23 response is required. To the extent a response is deemed
24 necessary, Defendants deny the allegations.

25 62. This paragraph contains Plaintiffs' characterization of the
26 case and legal arguments and conclusions of law to which no
27 response is required. To the extent that a responsive
28 pleading is necessary, Defendants deny the allegations.

B. Petition for Writ of Mandamus Pursuant

63. This paragraph contains a statement of incorporation to which no response is required.

64. This paragraph contains Plaintiffs' characterization of the case and legal arguments and conclusions of law to which no response is required. To the extent a responsive pleading is necessary, Defendants assert that 28 U.S.C. § 1651(a) and the cited cases, without redactions, are the best evidence of their contents.

65. This paragraph contains Plaintiffs' characterization of the case and legal arguments and conclusions of law to which no response is required. To the extent a responsive pleading is necessary, Defendants assert that 28 U.S.C. § 1361, without redactions, is the best evidence of its contents.

66. This paragraph contains Plaintiffs' characterization of the case and legal arguments and conclusions of law to which no response is required. To the extent a responsive pleading is necessary, Defendants assert that 28 U.S.C. § 1361 and the cited case, without redactions, are the best evidence of their contents.

67. This paragraph contains Plaintiffs' characterization of the case and legal arguments and conclusions of law to which no response is required. To the extent a responsive pleading is necessary, Defendants assert that the cited case, without redactions, is the best evidence of its contents.

68. This paragraph contains Plaintiffs' characterization of the case and legal arguments and conclusions of law to which no response is required. To the extent a responsive pleading

1 is necessary, Defendants assert that 8 U.S.C. § 1255 and the
2 cited cases, without redactions, are the best evidence of
3 their contents.

4 69. This paragraph contains Plaintiffs' characterization of the
5 case and legal arguments and conclusions of law to which no
6 response is required. To the extent a responsive pleading
7 is necessary, Defendants assert that the cited case, without
8 redactions, is the best evidence of its contents.

9 70. This paragraph contains Plaintiffs' characterization of the
10 case and legal arguments and conclusions of law to which no
11 response is required. To the extent a responsive pleading
12 is necessary, Defendants deny Plaintiffs' assert that the
13 CSPA and its legislative history, without redactions, are
14 the best evidence of Congress' intent in passing the CSPA.

15 71. This paragraph contains Plaintiffs' characterization of the
16 case and legal arguments and conclusions of law to which no
17 response is required. To the extent a responsive pleading
18 is necessary, Defendants assert that the cited cases,
19 without redactions, are the best evidence of their contents.

20 72. This paragraph contains Plaintiffs' characterization of the
21 case and legal arguments and conclusions of law to which no
22 response is required. To the extent a responsive pleading
23 is necessary, Defendants admit that Defendants have a non-
24 discretionary duty to assign priority dates to approved visa
25 petitions in accordance with agency regulations and statute.

26 73. This paragraph contains Plaintiffs' characterization of the
27 case and legal arguments and conclusions of law to which no
28

1 response is required. To the extent a responsive pleading
2 is necessary, Defendants deny Plaintiffs' allegations.

3 74. This paragraph contains Plaintiffs' characterization of the
4 case and legal arguments and conclusions of law to which no
5 response is required. Defendants object to Plaintiffs' use
6 of the phrase "refusal to recognize the plaintiffs' right"
7 as misleading and erroneous. To the extent a responsive
8 pleading is necessary, Defendants are without sufficient
9 information to form a belief as to the truth of the
10 allegations in the first and second sentences and thus deny
11 them.

12 75. This paragraph contains Plaintiffs' characterization of the
13 case, legal arguments, conclusions of law, and prayer for
14 relief to which no response is required. To the extent a
15 responsive pleading is necessary, Defendants deny
16 Plaintiffs' allegations.

17 **C. Claim under the APA**

18 76. This paragraph contains Plaintiffs' legal arguments to which
19 no response is required. To the extent a responsive
20 pleading is necessary, Defendants deny Plaintiffs'
21 allegations and assert that 5 U.S.C. § 702, without
22 redactions, is the best evidence of its contents.

23 77. This paragraph contains Plaintiffs' legal arguments to which
24 no response is required. To the extent a responsive
25 pleading is necessary, Defendants assert that 5 U.S.C.
26 § 551(13), without redactions, is the best evidence of its
27 contents.
28

1 78. This paragraph contains Plaintiffs' legal arguments to which
2 no response is required. To the extent a responsive
3 pleading is necessary, Defendants assert that 5 U.S.C.
4 §§ 551(4) and (11), without redactions, are the best
5 evidence of their contents.

6 79. This paragraph contains Plaintiffs' legal arguments to which
7 no response is required. To the extent a responsive
8 pleading is necessary, Defendants deny assert that 5 U.S.C.
9 § 551(13) and the cited case, without redactions, are the
10 best evidence of their contents.

11 80. This paragraph contains Plaintiffs' legal arguments to which
12 no response is required. To the extent a responsive
13 pleading is necessary, Defendants assert that 5 U.S.C.
14 § 706(1), without redactions, is the best evidence of its
15 contents.

16 81. This paragraph contains Plaintiffs' legal arguments to which
17 no response is required. To the extent a responsive
18 pleading is necessary, Defendants assert that the cited
19 cases, without redactions, are the best evidence of their
20 contents.

21 82. This paragraph contains Plaintiffs' legal arguments to which
22 no response is required. To the extent a responsive
23 pleading is necessary, Defendants assert that the cited
24 case, without redactions, is the best evidence of its
25 contents.

26 83. The first sentence of this paragraph contains Plaintiffs'
27 characterization of the case and legal arguments and
28 conclusions of law to which no response is required. To the

1 extent a responsive pleading is required, Defendants deny
2 the allegations. The second sentence of this paragraph
3 contains Plaintiffs' characterization of the case and legal
4 arguments and conclusions of law to which no response is
5 required. To the extent a responsive pleading is required,
6 Defendants deny the allegations and assert that the plain
7 and clear language of 8 U.S.C. § 1253(h)(3), without
8 redactions, is the best evidence of its contents.

9 Defendants object to Plaintiffs' characterizations of
10 Defendants' action in the third sentence as a "failure . . .
11 to safeguard families" as misleading and erroneous.

12 Defendants lack sufficient information to form a belief as
13 to the allegations in the third sentence and therefore deny
14 the same. The fourth sentence contains Plaintiffs'
15 characterization of the case, legal arguments, conclusions
16 of law, and prayer for relief to which no response is
17 required. Defendants deny Plaintiffs' remaining
18 allegations.

19 84. Defendants admit the allegations in this paragraph.

20 85. Defendants are without sufficient information to form a
21 belief as to the truth of the allegations in this paragraph
22 and therefore deny the same.

23 86. This paragraph contains Plaintiffs' characterization of the
24 case and legal arguments, to which no response is required.
25 To the extent a response is necessary, Defendants are
26 without sufficient information to form a belief as to the
27 truth of the allegations in this paragraph and, therefore,
28 deny the same.

1 87. This paragraph contains Plaintiffs' characterization of the
2 case and legal arguments, to which no response is required.
3 To the extent a response is necessary, Defendants object to
4 the words "justify," "delay," and "correct" as being
5 misleading and an erroneous characterization of Defendants'
6 actions. As such, Defendants deny the allegations.

7 88. This paragraph contains Plaintiffs' characterization of the
8 case and legal arguments, to which no response is required.
9 To the extent a response is necessary, Defendants are
10 without sufficient information to form a belief as to the
11 truth of the allegations in the first sentence of this
12 paragraph and, therefore, deny the same. As to the
13 remaining sentences, Defendants deny Plaintiffs' legal
14 conclusions and assert that the cited cases are the best
15 evidence of their contents.

16 89. Defendants deny the allegations in this paragraph.

17 **VIII. IRREPARABLE INJURY**

18 90. Paragraph 90 contains Plaintiffs' characterization of the
19 case to which no response is required. To the extent a
20 responsive pleading is required, Defendants deny the
21 allegations contained in this paragraph.

22 91. This paragraph contains Plaintiffs' characterization of the
23 case to which no response is required. To the extent a
24 responsive pleading is required, Defendants deny the
25 allegations contained in this paragraph.

26 92. This paragraph contains Plaintiffs' characterization of the
27 case to which no response is required. To the extent a
28 responsive pleading is required, Defendants are without

1 sufficient information to ascertain the truth of the
2 allegations and thus deny the allegations contained in
3 therein.

4 **IX. CLAIM FOR RELIEF**

5 93. This paragraph contains Plaintiffs' characterization of the
6 case and legal arguments and conclusions of law in the form
7 of "claims for relief." No response is required. To the
8 extent a responsive pleading is required, Defendants deny
9 the allegations contained therein.

10 94. This paragraph contains Plaintiffs' conclusions of law in
11 the form of "claims for relief." No response is required.
12 To the extent a responsive pleading is required, Defendants
13 deny the allegations contained therein.

14 **X. PRAYER FOR RELIEF**

15 The remaining paragraphs contain Plaintiffs' prayers for
16 relief, to which no response is required. To the extent that a
17 response is required, Defendants deny that Plaintiffs are
18 entitled to the relief requested, or to any relief from
19 Defendants.

20 * * *

21 All allegations contained in Plaintiff's Complaint not
22 specifically admitted above are hereby denied.

23 **AFFIRMATIVE AND OTHER DEFENSES**

24 1. The Court lacks jurisdiction over the subject matter of
25 the Complaint.

26 2. The Complaint fails to state a claim upon which relief
27 can be granted.

1 3. Plaintiffs failed to exhaust their administrative
2 remedies and the Court therefore lacks jurisdiction.

3 4. Defendants do not owe a clear duty to Plaintiffs, and
4 Plaintiffs have no clear right to the relief sought in the
5 Complaint.

6 5. Defendants are properly processing the pending Form I-
7 130 petitions filed by Plaintiff Ong. Defendants have not yet
8 assigned a priority date to the Form I-130 filed by Plaintiff
9 Ong. As such, there is no agency action ripe for review.

10 9. Defendants reserve the right to amend this Answer to
11 state additional affirmative or other defenses as may become
12 known.

13 WHEREFORE, having fully answered the Complaint, Defendants
14 pray that Plaintiffs take nothing by way of their Complaint; that
15 the same be dismissed; and that judgment be awarded in favor of
16 Defendants, together with costs and such other and further relief
17 as the Court deems appropriate in this case.

18 DATED: September 4, 2009

19 TONY WEST
20 Assistant Attorney General
United States Department of Justice

21 ELIZABETH J. STEVENS
22 Assistant Director
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CERTIFICATE OF SERVICE

Case No. CV 08-00688 JVS (SHx)

I hereby certify that on September 4, 2009, a copy of the foregoing "ANSWER" was filed electronically using the Court's electronic filing system. I understand that notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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ANSWER
SACV 08-00688-JVS (SHx)