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10
11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
13

14 ROSALINA CUELLAR DE)
15 OSORIO; ELIZABETH)
16 MAGPANTAY; EVELYN Y.)
17 SANTOS; MARIA ELOISA LIWAG;)
18 NORMA UY and RUTH UY)

19 Plaintiffs,)

20 v.)

21 JONATHAN SCHARFEN, Acting)
22 Director of the United States)
23 Citizenship and Immigration Services;)
24 MICHAEL CHERTOFF, Secretary)
25 U.S. Department of Homeland)
26 Security; CONDOLEEZA RICE,)
27 Secretary of State)

28 Defendants.

EDCV08-0840 SGL (RZx)

COMPLAINT FOR
DECLARATORY, MANDAMUS
AND INJUNCTIVE RELIEF

29 Plaintiffs, by and through their undersigned counsel, sue the Defendants and allege
30 as follows:

INTRODUCTION

1. This is an action for declaratory and injunctive relief, challenging the Defendants' arbitrary, capricious and wrongful refusal to accord the appropriate priority dates to the immigrant visa petitions Plaintiffs have filed on behalf of their adult children pursuant to 8 U.S.C. § 1154 (setting forth the procedure for granting immigrant status). Plaintiffs, who are all lawful immigrants or non-immigrants in the United States, have been harmed by Defendants' refusal to follow the plain meaning of the Child Status Protection Act, Pub. L. No. 107-20, 116 Stat. 927 (2002), codified at 8 U.S.C. § 1153(h).

JURISDICTION

2. This Court has jurisdiction pursuant to the provisions of 28 U.S.C. § 1331 (federal question jurisdiction) because Plaintiffs' claims arise under the laws of the United States, the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et seq. This Court may grant relief under 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. § 2201 (Declaratory Judgment Act), and under 5 U.S.C. § 701 et seq. (Administrative Procedure Act or APA).
3. This action involves pure questions of law. Therefore the jurisdictional limitations restricting review of discretionary decisions found at 8 U.S.C. § 1252 do not apply.

EXHAUSTION OF REMEDIES

4. Plaintiffs have exhausted their administrative remedies. Plaintiffs have made numerous written requests that their petitions be accorded the proper priority dates in accordance with 8 U.S.C. § 1153(h)(1). No further administrative remedies are available to address the Defendants' failure to properly adjudicate Plaintiffs' petitions.

VENUE

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) because plaintiff Rosalina Cuellar de Osorio resides in this judicial district; the immigrant visa petitions in question were adjudicated at, or are currently pending at, an office of the United States Citizenship and Immigration Services (USCIS) located within this district; because this is a civil action in which the Defendants are officers of the United States acting in their official capacities; and because many of the events or omissions giving rise to the claim occurred in this judicial district.

DEFENDANTS

6. Defendant Jonathan Scharfen is the Acting Director of the United States Citizenship and Immigration Service (USCIS), an agency of the United States government. As USCIS Acting Director, Mr. Scharfen has primary responsibility for the implementation of the immigration laws, particularly the

1 processing of immigrant visa petitions. Mr. Scharfen is sued in his official
2 capacity.
3

4 7. Defendant Michael Chertoff is the Secretary of the United States Department of
5 Homeland Security (DHS). In his capacity as Secretary, Mr. Chertoff is charged
6 with the administration and enforcement of the Immigration and Nationality Act.
7 Mr. Chertoff is sued in his official capacity.
8

9
10 8. Defendant Condoleeza Rice is the Secretary of the Department of State. In her
11 capacity as Secretary, she is charged with the administration and distribution of
12 immigrant visas at United States embassies and consulates around the world.
13 Ms. Rice is sued in her official capacity.
14

15 **PLAINTIFFS**

16 9. Plaintiff Rosalina Cuellar de Osorio is a native and citizen of El Salvador, and a
17 resident of Reseda, California. She immigrated to the United States based on the
18 petition of her U.S. Citizen mother, and has been a lawful permanent resident of
19 the United States since August of 2006.
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22 10. Plaintiff Elizabeth Magpantay is a native and citizen of the Philippines, and a
23 resident of Temecula, California. She immigrated to the United States based on
24 the petition of her U.S. Citizen father, and has been a lawful permanent resident
25 of the United States since May of 2006.
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1 11. Plaintiff Evelyn Santos is a native and citizen of the Philippines, and a resident
2 of Livermore, California. She immigrated to the United States based on the
3 petition of her U.S. Citizen father, and has been a lawful permanent resident of
4 the United States since February 2007.
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7 12. Plaintiff Maria Eloisa Liwag is a native and citizen of the Philippines, and a
8 resident of Suisun City, California. She immigrated to the United States based
9 on the petition of her U.S. Citizen father, and has been a lawful permanent
10 resident of the United States since June of 2006.
11

12 13. Plaintiff Norma Uy is a native and citizen of the Philippines, and a resident of
13 Marysville, Washington. She immigrated to the United States based on the
14 petition of her U.S. Citizen sister, and has been a lawful permanent resident of
15 the United States since April of 2005.
16

17
18 14. Plaintiff Ruth Lalaine Uy is a native and citizen of the Philippines currently
19 residing in Marysville, Washington. She is the daughter of Plaintiff Norma Uy.
20 Ruth Uy is currently in valid F-1 non-immigrant status as a student.
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STATUTORY FRAMEWORK

Family-Sponsored Immigration

15. Immigration on the basis of a family relationship with a citizen or lawful permanent resident of the United States is one of the primary ways for foreign nationals to immigrate to the United States.¹

16. Certain family members of U.S. citizens are considered “immediate relatives,” and are not subject to numerical limitations. Immediate relatives include the children of U.S. citizens, spouses of U.S. citizens, and parents of U.S. citizens who are at least twenty-one years of age. 8 U.S.C. § 1151(b)(2)(A)(i). There is no similar provision for the “immediate relatives” of lawful permanent residents.

17. For those individuals who are not “immediate relatives,” the Immigration and Nationality Act establishes four family-sponsored immigrant visa preference categories which are subject to numerical limitations. 8 U.S.C. § 1153(a).

These categories are:

a) *First family-sponsored preference category*: Unmarried adult sons and daughters of United States citizens. 8 U.S.C. § 1153(a)(1).

b) *Second family-sponsored preference category*: Spouses and children, and unmarried sons and daughters of lawful permanent residents. 8 U.S.C. § 1153(a)(2)(A) & (B).

¹ Other means include immigration through an employer’s petition, asylum, and the diversity visa lottery. 8 U.S.C. §§ 1153(b), 1159, and 1153(c).

1 c) *Third family-sponsored preference category*: Married sons and daughters
2 of U.S. citizens. 8 U.S.C. § 1153(a)(3).

3 d) *Fourth family-sponsored preference category*: Brothers and sisters of adult
4 U.S. citizens. 8 U.S.C. § 1153(a)(4).

5 18. A spouse or child of the alien beneficiary of a family-sponsored immigrant visa
6 petition is entitled to the same status and priority date as the principal alien
7 beneficiary. 8 U.S.C. § 1153(d). The spouse or child is considered a “derivative
8 beneficiary” of the visa petition.
9

10 19. In order to meet the definition of a “child” for immigration purposes, the
11 individual must be unmarried and under the age of twenty-one. 8 U.S.C. §
12 1101(b). Once an individual reaches the age of twenty-one or marries, he or she
13 can no longer be considered a “child” for immigration purposes.
14

15 20. The family-sponsored immigration categories are subject to a maximum
16 allotment of 480,000 visas each year, less the number of immigrant visas issued
17 to immediate relatives, and plus the number of unused employment-sponsored
18 immigrant visas, if any. See 8 U.S.C. § 1151(c). The Immigration and
19 Nationality Act establishes a minimum of 226,000 available immigrant visa
20 numbers for the family-sponsored preference categories.
21

22 21. Immigrant visas are made available in the order in which a visa petition is
23 received by the USCIS. Because the demand for immigrant visas in each
24 category far exceeds the statutory allotment each year, beneficiaries and their
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1 immediate family members often experience long waiting times before they are
2 eligible to receive an immigrant visa.
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4 22. Filing an immigrant visa petition (Form I-130, Petition for Alien Relative) with
5 the USCIS is the first step in the family-sponsored immigration process. The
6 receipt date of the I-130 petition is commonly referred to as the "priority date"
7 because it indicates the beneficiary's "place in the line" to receive an immigrant
8 visa. See 8 C.F.R. § 204.1(c).
9
10

11 23. Beneficiaries must monitor the progression of priority dates on the U.S. State
12 Department's Visa Bulletin. (Current and archived visa bulletins are available
13 on the State Department website).² The Visa Bulletin shows when a visa
14 number is available for beneficiaries of approved visa petitions. Only
15 beneficiaries who have a priority date earlier than the cut-off date on the current
16 Visa Bulletin may be allotted a visa number. This is commonly referred to as
17 having a "current priority date." Once a beneficiary has a "current priority
18 date," she may take the second step of applying for adjustment of status (aka
19 "green card") if she resides in the United States, or for an immigrant visa at the
20 appropriate U.S. Consulate if she resides abroad.
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27 ² http://travel.state.gov/visa/frvi/bulletin/bulletin_1360.html (accessed May 9,
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The Child Status Protection Act

24. The Child Status Protection Act (CSPA) was signed into law by President Bush on August 6, 2002. Pub. L. No. 107-208, 116 Stat. 927 (2002), codified at 8 U.S.C. § 1153 (h)(1)(A)-(B). The CSPA was enacted in order to address the problems of certain individuals who were classified as children under the INA when the immigrant visa petition was filed with the USCIS, but who turned twenty-one and subsequently lost their eligibility for immigration benefits as derivative beneficiaries.

25. The statute provides several formulas for determining whether an alien may still be considered a “child” for immigration law purposes. 8 U.S.C. § 1153(h)(1). For example, in the case of a derivative beneficiary of a family or employment-sponsored immigrant visa petition, the beneficiary’s age will be locked in on the date that the priority date become current, less the number of days that the petition was pending. The formula requires states the beneficiary to seek status as a lawful permanent resident within one year of the date the visa became available.

26. Those aliens who cannot qualify as “children” under the CSPA formula are benefited by 8 U.S.C. § 1153(h)(3), entitled “Retention of priority date.” This

2008).

1 section states that if the age of a beneficiary is determined to be twenty-one years or
2 older for purposes of 8 U.S.C. §§ 1153(a)(2) (petitions filed by lawful permanent
3 residents) or 1153(d) (derivative beneficiaries of family, employment and diversity
4 visa petitions), “the alien’s petition shall automatically be converted to the
5 appropriate category and the alien shall retain the original priority date issued upon
6 receipt of the original petition.”
7

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9 27. The provisions of the Child Status Protection Act apply to visa petitions and
10 applications for permanent residence pending on or after the date of enactment
11 (August 6, 2002). The CSPA additionally applies to beneficiaries of petitions
12 approved before August 6, 2002 “if a final determination has not been made on
13 the beneficiary’s application for an immigrant visa or adjustment of status to
14 lawful permanent residence pursuant to such approved petition.” CSPA § 8, 116
15 Stat. at 930.
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19 28. The USCIS and the Department of State have issued various memoranda
20 interpreting the CSPA. However, regulations governing the implementation of
21 this law have not been published. None of the memoranda address the provision
22 regarding automatic conversion and retention of priority dates codified at 8
23 U.S.C. § 1153(h)(3).
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FACTUAL ALLEGATIONS

Plaintiff Rosalina Cuellar de Osorio

29. Rosalina Cuellar de Osorio entered the United States in August 2006 as a lawful permanent resident. Ms. Cuellar de Osorio was the beneficiary of a family-sponsored immigrant visa petition filed by her U.S. Citizen mother on May 5, 1998. This was a third family-sponsored preference category petition for a married daughter of a United States citizen, as defined in 8 U.S.C. § 1153(a)(3).

At the time Ms. Cuellar de Osorio's son, Melvin Alexander Osorio Cuellar, was thirteen years old and classified as a derivative beneficiary of this petition.

30. The immigrant visa petition was approved on June 30, 1998. However, due to numerical restrictions and per-country limitations on immigrant visas available each year, visa numbers were not available to Ms. Cuellar de Osorio until over seven years later, on November 1, 2005. Melvin turned twenty-one in July of 2005. By the time Ms. Cuellar de Osorio and Melvin appeared for their immigrant visa interview at the U.S. Consulate in San Salvador, the Consulate determined that Melvin could no longer be classified as a "child" under 8 U.S.C. § 1001(b) and was thus ineligible for derivative status. The Consulate did not apply the automatic conversion provision found at 8 U.S.C. § 1153(h)(3).

1 31. Ms. Cuellar de Osorio's immigrant visa application was approved, and she
2 entered the United States as a lawful permanent resident on or about August of
3 2006.
4

5 32. On July 20, 2007, Ms. Cuellar de Osorio filed an immigrant visa petition (Form
6 I-130) on behalf of her adult son Melvin pursuant to the terms of 8 U.S.C. §
7 1153(a)(2)(B) (providing classification for unmarried sons and daughters of
8 lawful permanent residents). This petition was filed with the USCIS' California
9 Service Center. (Receipt number: WAC-07-222-50720). Included with the
10 immigrant petition was a request to retain the May 5, 1998 priority date pursuant
11 to Section 3 of the CSPA, codified at 8 U.S.C. 1153(h)(3). This would afford
12 Ms. Cuellar de Osorio's son immediate eligibility for an immigrant visa, and
13 avoid the lengthy waiting period associated with the second family-sponsored
14 preference category. Currently, this waiting period is approximately nine years
15 for the unmarried sons or daughters of permanent residents from El Salvador.
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17 33. To date, the USCIS California Service Center has not adjudicated Ms. Cuellar
18 de Osorio's petition or otherwise responded to her request for priority date
19 retention under the CSPA.
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21 34. Melvin Orosio Cuellar remains in El Salvador, separated from his mother and
22 other members of his immediate family who are in the United States. Given the
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1 current waiting periods for the second family-sponsored preference category,
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3 Melvin will not be able to join their parents in the United States until 2017 when he
4 is approximately thirty-three years old. If he marries, his mother's petition will be
5 cancelled as a matter of law.
6

7 **Plaintiffs Norma Uy and Ruth Uy**

8 35. Ms. Norma Uy entered the United States in April 2005 as a lawful permanent
9 resident. Norma Uy was the beneficiary of a family-sponsored immigrant visa
10 petition filed by her sister on February 4, 1981. This was a fourth family-
11 sponsored preference category petition for a sibling of a United States citizen, as
12 defined in 8 U.S.C. § 1153(a)(4). At the time, Norma Uy's daughter Ruth was
13 nearly two years old, and included as a derivative beneficiary.
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16 36. The immigrant visa petition was approved on February 4, 1981. However, due
17 to numerical restrictions and per-country limitations on immigrant visas
18 available each year, visa numbers were not available to the Uy family until over
19 twenty one years later, in July 2002. Ruth Uy turned twenty-one in April of
20 2000. Thus she could not be classified as a "child" under 8 U.S.C. § 1001(b),
21 and was no longer eligible for status as a derivative status of her mother's
22 petition.
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1 37. Norma Uy's immigrant visa application was approved, and she entered the
2 United States as a lawful permanent resident in April of 2005.

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4 38. Ruth Uy entered the United States in March of 2007 as a visitor, and was
5 subsequently granted a change to F-1 (student) non-immigrant status so that she
6 may attend University.
7

8 39. On July 12 2007 Norma Uy submitted an immigrant petition on behalf of Ruth
9 Uy pursuant to the terms of 8 U.S.C. § 1153(a)(2)(B) (providing classification
10 for unmarried sons and daughters of lawful permanent residents). At the same
11 time, Ruth Uy submitted an application for permanent residence (aka "green
12 card" application) pursuant to 8 U.S.C. § 1245(a). Included was a request to
13 retain the February 4, 1981, priority date pursuant to Section 3 of the CSPA,
14 codified at 8 U.S.C. 1153(h)(3). This would afford Ruth Uy immediate
15 eligibility for permanent residence, and would avoid the lengthy waiting periods
16 associated with the second family-sponsored preference category. Currently,
17 this waiting period is approximately eleven years for the unmarried sons or
18 daughters of permanent residents from the Philippines.
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23 40. On July 23, 2007, the USCIS rejected Ruth Uy's application for permanent
24 residence. The USCIS also rejected Norma Uy's immigrant visa petition on
25 behalf of her daughter. The rejection notice states that, "based on the
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1 information you provided, a visa number does not appear to be available for your
2 immigration category at this time.” The rejection notice made no mention of the
3 CSPA’s provision for priority date retention codified at 8 U.S.C. 1153(h)(3).
4

5 41. Norma Uy has re-submitted her immigrant visa petition to the USCIS, again
6 requesting the February 4, 1981, priority date pursuant to Section 3 of the
7 CSPA. This petition is currently pending. (Receipt Number WAC-08-255-
8 14650). Given the current waiting periods associated with the second family-
9 sponsored preference category, if the USCIS refuses to provide the 1981 priority
10 date, Ruth Uy will have to wait approximately eleven years (until she is forty
11 years old) before she may apply for permanent residence based on the petition.
12 If she marries, her mother’s petition will be cancelled as a matter of law.
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16 **Plaintiff Elizabeth Magpantay**
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18 42. Ms. Elizabeth Magpantay entered the United States in May 2006 as a lawful
19 permanent resident. Ms. Magpantay was the beneficiary of a family-sponsored
20 immigrant visa petition filed by her U.S. citizen father on January 29, 1991.
21 This was a third family-sponsored preference category petition for a married
22 daughter of a United States citizen, as defined in 8 U.S.C. § 1153(a)(3). At the
23 time, Ms. Magpantay had four minor children who were derivative beneficiaries
24 of this petition.
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1 43. The immigrant visa petition was approved on March 14, 1991. However, due to
2 numerical restrictions and per-country limitations on immigrant visas available
3 each year, visa numbers were not available to Ms. Magpantay and her family
4 until nearly fifteen years later, on December 1, 2005. By the time Ms.
5 Magpantay was interviewed at the U.S. Consulate in Manila, her daughter
6 Melizza Magpantay, her son Ricardo Magpantay, and her daughter Christine
7 Magpantay were all over the age of twenty-one. Melizza turned twenty-one in
8 July 1999, Ricardo turned twenty-one in December 2001, and Christine
9 Magpantay turned twenty-one in August 2005. Thus they could not be
10 classified as "children" under 8 U.S.C. § 1001(b), and were no longer eligible
11 for derivative status.
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16 44. Ms. Magpantay's immigrant visa application was approved and in May of 2006
17 she entered the United States as a lawful permanent resident.
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19 45. On May 22, 2007, she filed three separate immigrant visa petitions on behalf of
20 her adult children Melizza, Ricardo and Christine pursuant to the terms of 8
21 U.S.C. § 1153(a)(2)(B) (providing classification for unmarried sons and
22 daughters of lawful permanent residents). All three petitions were filed with the
23 USCIS' California Service Center. (Receipt Numbers WAC-07-184-52537,
24 WAC-07-182-55490, WAC-07-183-50358).
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1 46. On October 17, 2007, Ms. Magpantay's newly retained counsel submitted
2 requests to retain the January 29, 1991, priority date pursuant to Section 3 of the
3 CSPA, codified at 8 U.S.C. 1153(h)(3). This would afford Ms. Magpantay's
4 children immediate eligibility for immigrant visas, and avoid the lengthy waiting
5 periods associated with the second family-sponsored preference category.
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8 Currently, this waiting period is approximately eleven years for the unmarried
9 sons or daughters of permanent residents from the Philippines.
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11 47. On November 7, 2007, electronic mail inquiries were made to the California
12 Service Center regarding the status of Ms. Magpantay's three immigrant visa
13 petitions. Ms. Magpantay also reiterated her requests that the petitions be
14 approved with the January 29, 1991, priority dates in accordance with the
15 CSPA.
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18 48. The California Service Center responded with a request for additional evidence
19 relating to the priority date issue, and instructed Ms. Magpantay's counsel to
20 deliver the evidence to a specific post office box "with a bold label of
21 'PRIORITY DATE RETENTION REQUEST.'"
22

23 49. Ms. Magpantay submitted the evidence requested in connection with each of the
24 three pending petitions on February 5, 2008. To date, the USCIS has not
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1 adjudicated Ms. Magpantay's petitions or otherwise responded to her requests
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3 regarding the priority date retention under the CSPA.

4 50. Ms. Magpantay's three children remain in the Philippines, separated from the
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6 rest of their immediate family who are in the United States. Given the current
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8 waiting periods for the second family-sponsored preference category, Melizza,
9
10 Ricardo and Christine will not be able to join their parents in the United States
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12 until 2018. They will be forty years old, thirty-eight years old, and thirty-four
13
14 years old respectively. If they marry, their mother's petition will be cancelled as
15
16 a matter of law.

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18 **Plaintiff Evelyn Santos**

19 51. Ms. Evelyn Y. Santos entered the United States in February of 2007 as a lawful
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21 permanent resident. Ms. Santos was the beneficiary of a family-sponsored
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23 immigrant visa petition filed by her U.S. citizen father on January 29, 1991.

24 This was a third family-sponsored preference category petition for a married
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26 daughter of a United States citizen, as defined in 8 U.S.C. § 1153(a)(3). Ms.

27 Santos had four minor sons who were derivative beneficiaries of this petition.

28 52. The immigrant visa petition was approved on March 14, 1991. However, due to
numerical restrictions and per-country limitations on immigrant visas available
each year, visa numbers were not available to Ms. Santos and her family until

1 nearly fifteen years later, on December 1, 2005. By the time Ms. Santos was
2 interviewed at the U.S. Consulate in Manila, her son Dan Edward Santos was over
3 the age of twenty-one. Dan turned twenty-one in September of 2002. Thus he
4 could not be classified as a "child" under 8 U.S.C. § 1001(b), and was no longer
5 eligible for derivative status.
6

7
8 53. Ms. Santos' immigrant visa application was approved, and in February of 2007
9 she entered the United States as a lawful permanent resident with her husband
10 and two of her minor children.
11

12 54. On January 8, 2008, Ms. Santos filed an immigrant visa petition on behalf of her
13 son Dan, pursuant to the terms of 8 U.S.C. § 1153(a)(2)(B) (providing
14 classification for unmarried sons and daughters of lawful permanent residents).
15 The petition was filed with the USCIS' California Service Center. (Receipt
16 Number WAC-08-128-13618).
17
18

19 55. Included with the immigrant petition was a request to retain the January 29,
20 1991, priority date pursuant to Section 3 of the CSPA, codified at 8 U.S.C.
21 1153(h)(3). This would afford Ms. Santos' son immediate eligibility for an
22 immigrant visa, and avoid the lengthy waiting period associated with the 2B
23 preference category. Currently, this waiting period is approximately eleven
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1 years for the unmarried sons or daughters of permanent residents from the
2 Philippines.
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4 56. On February 19, 2008, Ms. Santos' attorney submitted a follow-up request to
5 retain the January 29, 1991 priority date pursuant to Section 3 of the CSPA,
6 codified at 8 U.S.C. 1153(h)(3). This request was sent via certified mail with a
7 bold label of "PRIORITY DATE RETENTION REQUEST." On February 28,
8 2008, the California Service Center returned the entire package to Ms. Santos'
9 counsel with a boilerplate letter. The letter stated that inquiries regarding case
10 status should be directed to the USCIS' National Customer Service Center (a 1-
11 800 number).
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14

15 57. To date, the USCIS has not adjudicated Ms. Santos' petition or otherwise
16 responded to her request regarding the priority date retention under the CSPA.
17 Her son Dan remains in the Philippines separated from the rest of his immediate
18 family in the United States. Given the current waiting periods for the second
19 family-sponsored preference category, Dan will not be able to join his parents in
20 the United States until the year 2019, when he is approximately thirty-eight
21 years old. If he marries, his mother's petition will be cancelled as a matter of
22 law.
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1 **Plaintiff Maria Eloisa Liwag**

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3 58. Ms. Maria Eloisa Liwag entered the United States in June 2006 as a lawful
4 permanent resident. Ms. Liwag was the beneficiary of a family-sponsored
5 immigrant visa petition filed by her U.S. citizen father on January 29, 1991.
6

7 This was an third family -sponsored preference category petition for a married
8 daughter of a United States citizen, as defined in 8 U.S.C. § 1153(a)(3). At the
9 time, Ms. Santos' daughter Conalu Liwag was eight years old and a derivative
10 beneficiary of this petition.
11

12 59. The immigrant visa petition was approved on March 14, 1991. However, due to
13 numerical restrictions and per-country limitations on immigrant visas available
14 each year, visa numbers were not available to Liwag and her family until nearly
15 fifteen years later, on December 1, 2005. By the time Ms. Santos was
16 interviewed at the U.S. Consulate in Manila, her daughter Conalu was over the
17 age of twenty-one. Conalu Liwag turned twenty-one in December of 2004.
18 Thus she could not be classified as a "child" under 8 U.S.C. § 1001(b) and was
19 no longer eligible for derivative status.
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23 60. Ms. Liwag's immigrant visa application was approved, and in June of 2006 she
24 entered the United States as a lawful permanent resident with her husband.
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1 61. On July 27, 2007, Ms. Liwag filed an immigrant visa petition on behalf of her
2 daughter pursuant to the terms of 8 U.S.C. § 1153(a)(2)(B) (providing
3 classification for unmarried sons and daughters of lawful permanent residents).
4 The petition was filed with the USCIS' California Service Center. (Receipt
5 Number WAC-07-237-50520).
6

7
8 62. On January 4, 2008, Ms. Liwag's newly-retained attorney submitted a request to
9 retain the January 29, 1991, priority date pursuant to Section 3 of the CSPA,
10 codified at 8 U.S.C. 1153(h)(3). This would afford Ms. Liwag's daughter
11 immediate eligibility for an immigrant visa, and avoid the lengthy waiting period
12 associated with the 2B preference category. Currently, this waiting period is
13 approximately eleven years for the unmarried sons or daughters of permanent
14 residents from the Philippines.
15

16
17 63. On February 19, 2008, Ms. Liwag's attorney submitted a follow-up request to
18 retain the January 29, 1991 priority date pursuant to Section 3 of the CSPA,
19 codified at 8 U.S.C. 1153(h)(3). This request was sent via certified mail with a
20 bold label of "PRIORITY DATE RETENTION REQUEST." On February 28,
21 2008, the California Service Center returned the entire package to Ms. Liwag
22 counsel with a boilerplate letter. The letter stated that inquiries regarding case
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1 status should be directed to the USCIS' National Customer Service Center (a 1-800
2 number).

3
4 64. To date, the USCIS has not adjudicated Ms. Liwag's petition or otherwise

5 responded to her request regarding the priority date retention under the CSPA.

6 Her daughter remains in the Philippines separated from the rest of her immediate
7 family who are in the United States. Given the current waiting periods for the
8 second family-sponsored preference category, Conalu will not be able to join her
9 parents in the United States until the year 2018, when she is approximately
10 thirty-five years old. If she marries, her mother's petition will be cancelled as a
11 matter of law.
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15 CAUSES OF ACTION

16 **Count One - Mandamus Action, 28 U.S.C. § 1361**

17
18 65. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 64 above.

19 66. Defendants' refusal to accord the proper priority dates to Plaintiffs' immigrant
20 visa petitions is arbitrary and capricious, an abuse of discretion, and contrary to
21 8 U.S.C. § 1153(h)(3).
22

23 67. Defendants are charged with the administration and implementation of the
24 Immigration and Nationality Act. Defendants are solely responsible for
25 adjudicating and approving the immigrant visa petitions of lawful permanent
26
27
28

1 residents and United States citizens, and for distributing immigrant visas
 2
 3 accordingly. Defendants' failure to perform their statutory obligations is injuring
 4 Plaintiffs by prolonging their separation from their adult children. Defendants
 5 should be compelled to perform the duties owed to Plaintiffs and properly
 6
 7 adjudicate the Plaintiffs' immigrant visa petitions.

8 **Count Two – Administrative Procedures Act, 5 U.S.C. §§ 555 (b), 701 et seq.**
 9

10 68. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 64 above.

11 69. By failing to give effect to the provisions of the Child Status Protection Act
 12
 13 codified at 8 U.S.C. §1103(h)(3), Defendants' procedures and practices violate
 14 the Administrative Procedures Act and constitute agency action that is arbitrary
 15 and capricious.
 16

17 **Count Three – Equal Access to Justice Act**

18 70. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 64 above.

19 If they prevail, Plaintiffs will seek attorney's fees and costs under the Equal
 20
 21 Access to Justice Act (EAJA), as amended, 5 U.S.C. § 504 and 28 U.S.C. §
 22 2412.
 23

24 //

25 //

26 //
 27
 28

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request the Court to grant the following relief:

(1) Accept and maintain continuing jurisdiction of this action.

(2) Declare that Defendants' policies, practices, and customs arbitrarily contradict the plain language of the Child Status Protection Act and the Immigration and Nationality Act, and thus violate the Administrative Procedures Act.

(3) Declare that Defendants' practices violate legal duties owed to Plaintiffs under the Immigration and Nationality Act.

(4) Order Defendants to properly adjudicate Plaintiffs' immigrant visa petitions and grant their original priority dates in accordance with the terms of the Child Status Protection Act.

(5) Award Plaintiffs the costs of this action, including fair and reasonable attorney's fees as provided in the Equal Access to Justice Act.

(6) Provide such relief as the Court may deem proper and appropriate.

Dated: June 23, 2008

Respectfully submitted,



Carl Shusterman
Amy Prokop
Attorneys for Plaintiffs
Law Offices of Carl Shusterman
600 Wilshire Blvd, Suite 1550
Los Angeles, CA 90017

CERTIFICATE OF SERVICE

On June 23, 2008, I, Amy Prokop, served the Complaint for Declaratory, Mandamus and Injunctive Relief in the matter of Rosalina Cuellar de Osorio et al. v. Jonathan Scharfen et al. on each person/entity listed below as follows:

By hand to:

United States Attorney, Central District of California
300 North Los Angeles Street
Los Angeles, CA 90012

By US mail, postage pre-paid, certified return receipt requested

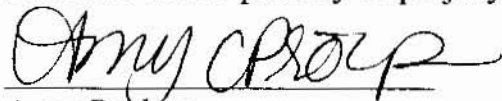
Michael Mukasey, Attorney General
US Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530-0001

Michael Chertoff, Secretary of DHS
US Department of Homeland Security
Washington, DC 20528

Mr. Jonathan Scharfen, USCIS Acting Director
Office of the Chief Counsel
20 Massachusetts Ave., NW, Room 4025
Washington, DC 20536

Condoleeza Rice, Secretary of State
U.S. Department of State
2201 C Street NW
Washington, DC 20520

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



Amy Prokop

Executed on June 23, 2008, at Los Angeles, California.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Stephen G. Larson and the assigned discovery Magistrate Judge is Ralph Zarefsky.

The case number on all documents filed with the Court should read as follows:

EDCV08- 840 SGL (RZx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☐ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☐ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☒ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

Carl Shusterman (CA Bar # 58298)
 Law Offices of Carl Shusterman
 600 Wilshire Blvd., Suite 1550
 Los Angeles, CA 90017
 Tel. (213) 623 - 4592
 Fax (213) 623 - 3720

**UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA**

ROSALINA CUELLAR DE OSORIO; ELIZABETH
 MAGPANTAY; EVELYN Y. SANTOS, MARIA
 ELOISA LIWAG; NORMA UY and PLAINTIFF(S)
 RUTH UY v.
 JONATHAN SCHARFEN, Acting Director of the
 United States Citizenship and Immigration Services;
 MICHAEL CHERTOFF, Secretary U.S.
 Department of Homeland Security;
 CONDOLEEZA RICE, Secretary DEFENDANT(S).
 of State.

CASE NUMBER

EDCV08-0840 SGL (RZx)

SUMMONS

TO: DEFENDANT(S): Jonathan Scharfen, Michael Chertoff, and Condoleeza Rice

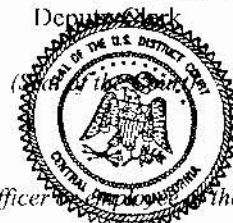
A lawsuit has been filed against you.

Within 60 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☒ complaint ☐ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Carl Shusterman, whose address is 600 Wilshire Blvd., Suite 1550 Los Angeles CA 90017. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: JUN 23 2008

By: NATALIE LONGORIA



[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

1198

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) ROSALINA CUELLAR DE OSORIO; ELIZABETH MAGPANTAY; EVELYN Y. SANTOS; MARIA ELOISA LIWAG; NORMA UY; RUTH UY		DEFENDANTS JONATHAN SCHARFEN, Acting Director of the United States Citizenship and Immigration Services; MICHAEL CHERTOFF, Secretary U.S. Department of Homeland Security; CONDOLEEZA RICE, Secretary of State	
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Amy Prokop, Law Offices of Carl Shusterman 600 Wilshire Blvd., Suite 1550, Los Angeles CA 90017 (213) 623-4592		Attorneys (If Known) United States Attorney, Central District of California 300 North Los Angeles Street Los Angeles, CA 90012	

II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input checked="" type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border: none;"> <tr> <td style="width:30%;">Citizen of This State</td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:30%;">Incorporated or Principal Place of Business in this State</td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td></td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td></td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF	DEF	Incorporated or Principal Place of Business in this State	PTF	DEF		<input type="checkbox"/> 1	<input type="checkbox"/> 1		<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
Citizen of This State	PTF	DEF	Incorporated or Principal Place of Business in this State	PTF	DEF																				
	<input type="checkbox"/> 1	<input type="checkbox"/> 1		<input type="checkbox"/> 4	<input type="checkbox"/> 4																				
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5																				
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. ORIGIN (Place an X in one box only.)
☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify): ☐ 6 Multi-District Litigation ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☐ Yes ☒ No (Check "Yes" only if demanded in complaint.)
CLASS ACTION under F.R.C.P. 23: ☐ Yes ☒ No **MONEY DEMANDED IN COMPLAINT: \$** _____

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
 Violation of the Immigration and Nationality Act 8 U.S.C. 1101 et. seq. - unlawful and unreasonable failure to properly adjudicate Plaintiffs' applications for benefits.

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 1196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input checked="" type="checkbox"/> 465 Other Immigration Actions	TORTS PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage-Product Liability BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE / PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety /Health <input type="checkbox"/> 690 Other	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
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FOR OFFICE USE ONLY: Case Number: _____

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes
If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☐ No ☒ Yes
If yes, list case number(s): SACV08-688 JVX (SHx)

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
☒ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

- (a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.
☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
LOS ANGELES COUNTY, RIVERSIDE COUNTY, ALAMEDA COUNTY, SOLANO COUNTY	WASHINGTON STATE

- (b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.
☒ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	WASHINGTON D.C.

- (c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
LOS ANGELES COUNTY, RIVERSIDE COUNTY, ALAMEDA COUNTY, SOLANO COUNTY	WASHINGTON D.C., EL SALVADOR, PHILIPPINES

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved.

X. SIGNATURE OF ATTORNEY (OR PRO PER):

Amey CPB

Date 6/23/2008

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))