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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

GUSTAVO ESCUTIA, GRACIELA REBECA GARCIA DE ESPINOZA, EDITH HERNANDEZ, WENDY HERNANDEZ, RITA LORENA VALENZUELA LOPEZ, GUILLERMO OCAMPO, JESUS ESPINOZA and JOSE ESPINOZA, on behalf of themselves and all others similarly situated, Plaintiffs, vs. JANET RENO, Attorney General, DORIS MEISSNER, Commissioner of the Immigration and Naturalization Service, and the IMMIGRATION AND NATURALIZATION SERVICE, Defendants.	))	No. __________ COMPLAINT FOR DECLARATORY, MANDAMUS, AND INJUNCTIVE RELIEF CLASS ACTION

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INTRODUCTION

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

1. Plaintiffs Gustavo Escutia, Graciela Rebeca Garcia de Espinoza, Edith Hernandez, Wendy Hernandez, Rita Lorena Valenzuela Lopez, Guillermo Ocampo, Jesus Espinoza, and Jose Espinoza seek declaratory, mandamus, and injunctive relief against the Defendants for the Defendants' failure to comply with their statutorily mandated duties under § 301 of the Immigration Act of 1990 (IMMACT 90), known as the Family Unity program. Plaintiffs sue as individuals and as representatives of two classes of similarly situated persons.

2. The Family Unity program was enacted in § 301 of the IMMACT 90, Pub.L. No. 101-649, § 301, 104 Stat. 5029, as amended Pub.L. 101-649, Title VI, § 603(a)(23), Nov. 29, 1990, 104 Stat. 5084; Pub. L. 103-416, Title II, § 206(a), Oct. 25, 1994, 108 Stat. 4311. Section 301 imposed a mandatory duty on Defendants to process Family Unity applications and grant eligible people employment authorization and protection against deportation.

3. Defendants are not complying with this mandatory duty. Defendants have failed to act and have unreasonably delayed processing Plaintiffs' applications for Family Unity status. As a direct consequence, Plaintiffs are facing the risk of being deported from the United States, may be accruing "unlawful presence" in the United States, do not have employment authorization, and are suffering other substantial harms and injuries.

4. Defendants have been unwilling or unable to remedy their failures or to ameliorate the harms done to Plaintiffs.

JURISDICTION

5. This court has subject matter jurisdiction of this action under 28 U.S.C. §1331 (federal question jurisdiction) because Plaintiffs' claims arise under the laws of the United

States, specifically §301 of IMMACT 90 and the Immigration and Nationality Act (INA), 8 U.S.C. 1101 et seq. This court may grant relief in this action under 28 U.S.C. §1361 (Mandamus Act); 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).

VENUE

6. Venue is proper in this court under 28 U.S.C. § 1391(e) because this is a civil action in which Defendants Janet Reno and Doris Meissner are officers of the United States acting in their official capacities and the Immigration and Naturalization Service (INS) is an agency of the United States; because some of the Plaintiffs and many class members reside in this judicial district; because Defendants' California Service Center is located in this district; and because a substantial part of the events or omissions giving rise to the claim occurred in this judicial district.

HISTORY AND DESCRIPTION OF THE FAMILY UNITY PROGRAM

7. The Family Unity program was an outgrowth of the Immigration Reform and Control Act of 1986 (IRCA). Among other things, IRCA permitted certain previously undocumented immigrants to obtain first temporary, and then permanent residence status (also known colloquially as a "green card"). This part of IRCA is known as "legalization" or "amnesty." See INA, § 245A, 8 U.S.C. § 1255a, and INA § 210, 8 U.S.C. § 1160.

8. However, IRCA did not address the situation of the immediate family members of the legalized temporary or permanent residents. Typically, these immediate family members came to the United States after the IRCA applicant did, arriving after the legalization qualification deadlines.

9. In 1989 and 1990, the INS instituted a discretionary, administrative "family fairness" policy. This policy permitted immediate family members to remain in the United

States with the legalized temporary or permanent resident until the family members could obtain permanent residence through the normal immigration process.

10. At the time, the "Family Fairness" program was estimated to benefit approximately 100,000 immediate family members of IRCA temporary or permanent residents. Under the program, the INS provided a lengthy period of "voluntary departure" (i.e., INS forbearance to deport) and employment authorization to eligible family members.

11. Subsequently, Congress enacted a similar but mandatory "Family Unity" program in § 301 of IMMACT 90. The purpose of the Family Unity program was and is to enable immediate family members to remain in the United States with the legalized temporary or permanent resident until the family member can obtain lawful permanent resident status.

12. Congress directed that Defendants not deport -- or otherwise require to depart from the United States – spouses and children of IRCA permanent and temporary residents, providing those spouses and children met the eligibility requirements. Congress also mandated that Defendants provide employment authorization to these spouses and children. Under Defendants' own implementing regulations, Defendants were and are obligated to grant voluntary departure and employment authorization to Family Unity beneficiaries. The Defendants are failing to fulfill this mandatory duty.

13. Congress also directed that the INS not consider Family Unity beneficiaries to be in "unlawful presence" in the United States. That is, in the terms of the INA, their "period of stay" in the United States is to be "authorized by the Attorney General." On information and belief, the Defendants are violating this congressional directive as well.

RELEVANT STATUTORY AND REGULATORY PROVISIONS

Statute and Regulations, Family Unity Status and Employment Authorization

14. Section 301 of IMMACT 90 mandates the Attorney General to ensure that an "eligible immigrant" is not deported or otherwise required to depart from the United States under designated provisions of the INA. IMMACT 90, § 301(a)(1). It also mandates the Attorney General to grant employment authorization to each "eligible immigrant," and also to provide each with an appropriate work permit. IMMACT 90, § 301(a)(2).

15. Specifically, the statute says, in relevant part (emphasis added):

> § 301 (a). The Attorney General **shall** provide that in the case of an alien who is an eligible immigrant .... who is not lawfully admitted for permanent residence, the alien –
>
> (1) **may not** be deported or otherwise required to depart from the United States .... and
>
> (2) **shall** be granted authorization to engage in employment .... and be provided an "employment authorized" endorsement or other appropriate work permit.

16. An "eligible immigrant" is defined as an immigrant who is the spouse or unmarried child of a person who received temporary or permanent residence status under §210 (SAW) or §245A of the INA (legalization), or permanent residence under §202 of IRCA (Cubans or Haitians). IMMACT 90, § 301(b).

17. Some people are ineligible for Family Unity status even if they have the qualifying family relationship. These include people who entered the United States after specified dates in 1988; who have been convicted of a felony or three or more misdemeanors in

the United States; who persecuted others; or who are a danger to national security. IMMACT 90, § 301(e).

18. Defendants revised the regulations implementing the Family Unity provisions of IMMACT 90 on April 1, 1997. These regulations are found at 8 CFR Parts 236.10-236.18. The regulations prescribe eligibility requirements, the application procedures, and the entitlements under the Family Unity program.

19. "Voluntary departure" under these regulations "implements the provisions of § 301 of IMMACT 90...." 8 C.F.R. §§ 236.15(a), 236.10. That is, voluntary departure (including extensions) is the mechanism the INS has chosen to implement the prohibition on deportation mandated by IMMACT 90. A Family Unity applicant whose application is approved "will" receive a grant of voluntary departure, beginning with the date of approval of the application. 8 C.F.R.§ 236.15(c). A grant of voluntary departure technically means that the applicant has the INS's permission to depart the United States voluntarily, avoiding formal deportation. In reality, it is permission for the applicant to remain in the United States until he or she becomes a lawful permanent resident.

20. Each applicant for Family Unity status must file Form I-817 with the proper fee (currently $120) at the INS Service Center having jurisdiction over the applicant's place of residence. The Form I-817 must be filed with documentation that evidences the applicant's eligibility for Family Unity. 8 C.F.R. § 236.14.

21. Although Congress did not prescribe any time limitations on Family Unity status, Defendants' implementing regulations authorize voluntary departure in two-year increments. Therefore, under the regulations, Family Unity beneficiaries must apply for an extension of their voluntary departure every two years. 8 C.F.R. § 236.15(c), (e). A separate application and fee (currently $120) are required for each extension. 8 C.F.R. §§ 236.15(e), 103.7(b)(1).

22. A Family Unity beneficiary also is entitled to employment authorization. IMMACT 90, § 301(a)(2); 8 C.F.R. § 236.15(d). The regulations provide that the employment authorization period "will" coincide with the voluntary departure period. 8 C.F.R. § 236.15(d). Therefore, under the regulations, employment authorization expires every two years, along with the period of voluntary departure.

23. Originally, Defendants obligated Family Unity applicants to separately file an application for employment authorization, INS Form I-765, to receive authorization to work pursuant to the Family Unity program. However, as a result of prior litigation and a settlement agreement in Hernandez v. Reno, C.A. No. 9:93 CV 63 (E.D. Tex., filed Dec. 30, 1997), the INS recently issued a revised Form I-817. Use of that form means that Family Unity applicants will not have to file a separate Form I-765 to obtain an employment authorization document. 65 Fed. Reg. 43677, July 14, 2000.

24. In addition, a separate regulation authorizes Family Unity applicants to be employed, and mandates that Defendants provide documentation of that employment authorization: 8 C.F.R. § 274a.12(a)(13). Another regulation requires Defendants to issue interim employment authorization if the agency fails to adjudicate an application for employment authorization within 90 days of the date the INS receives the application. 8 C.F.R. § 274a.13(d).

25. Although IMMACT and the regulations do not require this, Defendants have delegated their responsibilities under the Family Unity program to the INS's four "Service Centers:" California (CSC), Texas (TSC), Nebraska, and Vermont. These four Service Centers process all the Family Unity applications.

Statute and Regulations,
Inadmissibility and Accrual of "Unlawful Presence" Under the INA

26. In 1996, Congress amended the INA in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, 110 Stat. 3009. Among many

other things, this amendment added the concept of "unlawful presence" to the INA. People who are "unlawfully present" in the United States for a continuous period of more than 180 days and thereafter depart the country are inadmissible, that is, ineligible for readmission, for three years from their date of departure. INA § 212(a)(9)(B), 8 U.S.C. § 1182(a)(9)(B). People who are "unlawfully present" for one year or more are inadmissible for ten years from their date of departure. INA § 212(a)(9)(B), 8 U.S.C. § 1182(a)(9)(B). These provisions are known as the "three and ten-year bars."

27. A person is deemed to be "unlawfully present" if he or she is present in the United States "after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled." INA § 212(a)(9)(B)(ii); 8 U.S.C. § 1182(a)(9)(B)(ii).

28. Congress expressly provided that Family Unity beneficiaries would not accrue "unlawful presence" time, that is, they were authorized to remain in the United States:

> No period of time in which the alien is a beneficiary of family unity protection pursuant to § 301 of [IMMACT 90] shall be taken into account in determining the period of unlawful presence in the United States under clause (i).

INA § 212(a)(9)(B)(iii)(III), 8 U.S.C. § 1182(a)(9)(B)(iii)(III).

29. The Family Unity implementing regulations also provide that voluntary departure "shall be considered effective from the date on which the application was properly filed." 8 C.F.R. § 236.15(c).

Administrative Procedure Act

30. Section 702 of the APA, 5 U.S.C., states that "[a] person suffering legal wrong because of agency action, or adversely affected by agency action within the meaning of a relevant statute, is entitled to judicial review thereof." Section 551(13) of 5 U.S.C., defines

"agency action" to include "failure to act." Furthermore, §706 of the APA directs the reviewing court to "compel action unlawfully withheld or unreasonably delayed."

CLASS ACTION ALLEGATIONS

31. The named individual Plaintiffs bring this action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of themselves and all other persons similarly situated in the following classes:

1) All present and future applicants for Family Unity benefits under § 301 of IMMACT 90 whose properly-filed I-817 applications have been pending with the INS for more than 90 days from the date of filing.

2) All past, present and future applicants for Family Unity benefits under §301 of IMMACT 90 whose applications have been, or will be, approved, but not before they have accrued or will accrue time in "unlawful presence" and who may thereby become inadmissible to the United States under INA §212(a)(9)(B)(i), 8 U.S.C. §1182(a)(9)(B)(i).

32. The members of the Plaintiff classes warrant class action treatment because they fulfill the certifying requirements under Rule 23(a) of the Federal Rules of Civil Procedure.

33. The proposed classes meet the commonality requirement of Fed. R. Civ. P. 23(a)(2) because there are questions of law and fact common to the class. The same unlawful conduct by the Defendants, i.e. their failure to perform their statutory duty under §301 of IMMACT 90 to adjudicate Family Unity applications, have injured the named Plaintiffs and class members alike. The questions of law and fact that arise from the Defendants' actions, or the lack thereof, are common to all members of the class.

34. The proposed classes meet the numerosity requirement of Fed. R. Civ. P. 23(a)(1) because the classes are so numerous that joinder of all members is impracticable. The Plaintiffs

allege, on information and belief, that there are several thousand applicants whose Family Unity applications are currently pending with the INS. In its July 9, 1999 information collection request regarding Form I-817 Application for Voluntary Departure under the Family Unity program, INS estimated that 23,944 people would use the I-817 form. 64 Fed. Reg. 37167 (July 9, 1999). Further, a September 1998 General Accounting Office report related that the INS processed 26,806 Forms I-817 in 1995 (INS User Fee Revisions, GAO/GGD-98-197 at p. 22).

35. The proposed classes meet the typicality requirement of Fed. R. Civ. P. 23(a)(3) because the claims of the named Plaintiffs are typical of the claims of each of the class members. The named Plaintiffs complain of the Defendants' failure to perform their statutory duty of providing Family Unity benefits to those who are statutorily eligible under §301 of IMMACT 90 and INA § 212(a)(9)(B)(iii)(III), 8 U.S.C. § 1182(a)(9)(B)(iii)(III). Such claims are typical of, and common to, all members of the class.

36. The named Plaintiffs will fairly and adequately protect the interests of the classes as required by Fed. R. Civ. P. 23(a)(4) because their interests are identical to those of the other members of the classes . Both the named Plaintiffs and the class members will benefit by compelling the Defendants to adjudicate these applications. The named Plaintiffs will therefore zealously protect the interests of the class. In addition, the fair and adequate protection of the interests of the class will be further ensured because the named Plaintiffs are represented by competent legal counsel.

37. The instant action should be maintained as a class action under Fed. R. Civ. P. 23(b)(2) because the Defendants have acted on grounds generally applicable to each member of the classes by failing to carry out their mandated duty owed to each member of the classes to grant voluntary departure and employment authorization and to protect them from accruing time in unlawful presence.

38. Furthermore, as contemplated by Fed. R. Civ. P. 23(b)(1), if the individual members of the classes were to bring separate suits to address the Defendants' delay in adjudicating their individual Family Unity applications, the Defendants may adjudicate only those applications and ignore the applications of the remaining class members, thereby creating a risk of inconsistent or varying adjudications with respect to individual members of the classes and establishing incompatible standards of conduct for the Defendants in adjudicating Family Unity applications. Resolving this matter as a class action would also serve judicial economy as the courts would not be burdened with lawsuits by many individual Family Unity applicants.

PLAINTIFFS

39. Gustavo Escutia is a resident of Anaheim, California. Mr. Escutia's mother, Ms. Isabel Steiner-Magdaleno, is a legalized permanent resident. Mr. Escutia is eligible for the Family Unity program as an unmarried child of a legalized permanent resident. Mr. Escutia's initial application for Family Unity benefits was approved and was valid from May 9, 1997 to May 8, 1999.

40. On April 28, 1999, Mr. Escutia's attorney submitted to the CSC an I-817 application for an extension of Family Unity voluntary departure, and an I-765 application for employment authorization with necessary accompanying documents. Mr. Escutia's employment authorization document expired while he was waiting for the CSC to process his application. Mr. Escutia's initial I-817 application was filed on December 3, 1996 and was granted on May 9, 1997. It has now been more than a year since Mr. Escutia submitted his extension applications to the CSC. Mr. Escutia no longer has work authorization and is still waiting for his applications to be processed.

41. Graciela Rebeca Garcia de Espinoza is a resident of Phoenix, Arizona. Mrs. Espinoza has resided in the United States since 1988. She is eligible for Family Unity status

because she is the spouse of David Espinoza, a legalized permanent resident. The Espinozas have one son and one daughter, both United States citizens.

42. Mrs. Espinoza was initially granted Family Unity benefits from February 6, 1997 to February 5, 1999. On November 13, 1998, a certified immigration representative filed at the CSC the Forms I-817 and I-765 to extend voluntary departure and employment authorization under the Family Unity program for Mrs. Espinoza. Mrs. Espinoza's status and eligibility have not changed since her initial application was granted.

43. Defendants failed to extend Mrs. Espinoza's work authorization before it expired. Accordingly, her employer fired her in April 1999. She has not been able to work since then.

44. Mrs. Espinoza had made many inquiries about her extension application to the INS and members of Congress. Finally, she received the following response from the INS on June 10, 1999:

> THE ABOVE REFERENCED APPLICATION IS DEPENDENT UPON AN APPROVED I-817 PETITION. THE I-817 PETITION HAS BEEN FILED AND THE RECEIPT NUMBER IS WAC 99-033-51783. THE RECEIPTED [sic] DATE OF THAT PETITION IS 11/16/98. CURRENTLY THE SERVICE IS ADJUDICATING PETITONS [sic] THAT WERE RECEPTED [sic] ON 9/21/98. AS THESE ARE NOT A COMMISSIONERS [sic] PRIORITY, THEY ARE BEING PROCESSED AS RESOURCES ARE AVAILABLE.

45. Mrs. Espinoza also received a letter dated June 5, 2000, from William R. Yates, Deputy Executive Associate Commissioner of the INS. Mr. Yates said he was responding to Mrs. Espinoza's letter dated March 30, 1999 regarding her employment authorization and Family Unity extension applications. Mr. Yates' letter said, in pertinent part:

> Favorable adjudication of requests for employment authorization may not be considered unless the Family Unity application has been granted and the applicant has

been placed under voluntary departure. Therefore, when we have adjudicated the Family Unity application, we will consider the request for employment authorization.

46. Twenty-two months after Mrs. Espinoza filed for an extension of her Family Unity status, Defendants still have not processed the applications.

47. Edith Hernandez is a resident of Menlo Park, California. Ms. Hernandez is eligible for Family Unity status because she is the unmarried child of Elena Larios, a legalized permanent resident. Ms. Hernandez entered the U.S. in 1979. She has attended school in the U.S. and has a gift for working with children. Ms. Hernandez's initial I-817 and I-765 applications were approved and were valid from May 9, 1997 to February 5, 1999.

48. On December 12, 1998, a certified immigration representative submitted to the CSC an I-817 extension application and an I-765 application on Ms. Hernandez's behalf. Ms. Hernandez has taken classes at Canada College, and wants to complete an undergraduate degree focusing on education and child development. However, because the CSC has failed to process her Family Unity application, Ms. Hernandez has encountered difficulties every time she tries to enroll at Canada College.

49. Wendy Hernandez resides in Redwood City, California. Ms. Hernandez qualifies to receive benefits under the Family Unity Program because she is the unmarried daughter of Ms. Roselia Cisneros de Hernandez, a legalized permanent resident. Ms. Hernandez entered the United States in February 1985 and attended elementary, junior high, and high school here.

50. On May 27, 1998, a certified immigration representative submitted to the CSC an initial Form I-817 Family Unity application and a Form I-765, Employment Authorization application, with the proper fees and supporting documents on Ms. Hernandez's behalf. In a letter dated June 18, 1998, the INS notified Ms. Hernandez that she needed to submit a $25 fingerprinting fee. Accordingly, Ms. Hernandez paid the fingerprinting fee, had her fingerprints

taken, and submitted the results to the CSC. It has been more than two years since Ms. Hernandez submitted her I-817, but the CSC still has not processed it.

51. Rita Lorena Valenzuela Lopez is a resident of Phoenix, Arizona. She is qualified to receive benefits under the Family Unity program because she is an unmarried daughter of Loreto Valenzuela Romero, a legalized permanent resident. Ms. Valenzuela came to the United States in 1982 when she was seven years old and has lived here ever since. She has two United States citizen daughters who are nine and five years old, respectively.

52. On February 10, 1999, a certified immigration representative submitted to the CSC an initial I-817 application for voluntary departure and I-765 application for work authorization under the Family Unity program, with the proper fees, on Ms. Valenzuela's behalf. After one year and numerous inquiries to the INS and members of Congress, the office of the United States Representative Ed Pastor informed Ms. Valenzuela that she could receive interim work authorization at the local INS office. On April 11, 2000, Ms. Valenzuela went to the Phoenix District Office of the INS with Rep. Pastor's letter and proof that her I-765 had been pending for more than one year. Nevertheless, the Phoenix District Office refused to issue her interim work authorization. More than a year and a half later, the Defendants still have not processed her applications for Family Unity and employment authorization.

53. Guillermo Ocampo resides in Anaheim, California. Mr. Ocampo has been continuously present in the United States since March 1985. He attended high school for four years and college for two years in the United States. Mr. Ocampo is eligible for Family Unity as the unmarried son of Mr. Aurelio Ocampo-Rodriguez. Aurelio Ocampo-Rodriguez became a lawful permanent resident under IRCA and is now a naturalized United States Citizen. On August 20, 1998, Mr. Ocampo’s attorney submitted to the CSC an I-817 application for voluntary departure under the Family Unity program and an I-765 application for employment

authorization with the necessary accompanying documents and fees.

54. It has been two years since Mr. Ocampo submitted his Family Unity application, but the CSC still has not processed it. The CSC sent Mr. Ocampo's attorney a form "response to your inquiry," dated July 11, 2000. That response said that Mr. Ocampo's application was still pending, and then added:

> The application/petition is not outside current processing time. Cases are adjudicated in the order received. We are adjudicating cases with receipt date of: 12/11/97.

55. Jesus Espinoza lives in Sacramento, California. Mr. Espinoza is eligible for Family Unity status because he is the unmarried child of Margarita Espinoza, a legalized permanent resident. Jesus Espinoza entered the United States in September 1987 and attended grade and the high schools in Sacramento. An attorney submitted to the CSC a Form I-817 application for the Family Unity program for him in June 1999, with proper fee, and documentation of his eligibility for Family Unity status. In August 1999, the CSC sent the attorney a notice requesting a $25.00 fee for fingerprinting. The attorney submitted the fingerprinting fee in August 1999. Jesus Espinoza's I-817 application is still pending.

56. Jose Espinoza resides in Sacramento, California. Jose is Jesus Espinoza's brother. Jose entered the United States in 1987 and attended elementary, middle and high schools here. Jose is eligible for Family Unity status because he is the unmarried son of Margarita Espinoza, a legalized permanent resident. An attorney submitted to the CSC a Form I-817 application for the Family Unity Program for him in June 1999, with the proper fee and documentation of his eligibility for Family Unity status. In August 1999, the CSC sent the attorney a notice requesting a $25.00 fee for fingerprinting. The attorney submitted the fingerprinting fee in August 1999. Jose Espinoza's I-817 application is still pending.

DEFENDANTS

57. Janet Reno is the Attorney General of the United States. She is charged with the

administration and enforcement of the immigration laws. 8 U.S.C. § 1103(a). She is sued in her official capacity.

58. Doris Meissner is the Commissioner of the INS. She is charged with any and all responsibilities and authority in the administration of the INS as have been delegated or prescribed by the Attorney General. She is sued in her official capacity.

59. The INS is an agency of the United States government. It has primary responsibility for implementation of the immigration laws, and in particular the Family Unity program.

DEFENDANTS' FAILURES TO FULFILL THEIR MANDATORY DUTIES

60. The Defendants have delegated all responsibility for processing Family Unity initial and renewal applications to the four Service Centers. The CSC and the TSC have not been processing initial or renewal I-817 applications or have been processing them sporadically or extremely slowly. None of the Plaintiffs' I-817 applications has been adjudicated, and some of the Plaintiffs' I-817 applications have been languishing for more than two years.

61. The INS's "Just in Time Report" from the CSC, dated July 21, 2000, claimed that the CSC is processing initial I-817 applications that were filed on December 11, 1997. This is a two and a half-year delay. The July 21 report also says that the CSC is processing extension I-817 applications that were filed on May 13, 1998, more than a two-year delay. A CSC report issued two weeks prior, on July 7, 2000, and the report issued in June 2000 showed the same dates.

62. The May 12, 2000 report said that the CSC was processing initial I-817 applications filed on December 5, 1997 (six days earlier than the June and July Reports) and extensions filed on May 13, 1998 (the same date as the June and July Reports). However, a CSC report dated May 26, 2000, showed that initial I-817s that had been filed on December 11, 1997

and I-817 extensions that had been filed on May 13, 1998 were being processed.

63. The TSC backlogs are not quite as severe but also are very long. The March 31, 2000 Processing Time Report said that initial I-817 applications filed on September 30, 1998 and extension applications filed on September 22, 1999 were being processed. There was thus an 18-month delay for processing of initial applications and a six-month delay for extension applications. The April 30, 2000 TSC Processing Time Report said that the TSC was then processing initial I-817 applications filed on June 1, 1998 (almost a two-year delay) and extension I-817 applications filed on December 4, 1999 (a four-month delay).

64. The TSC report for the period ending on May 31, 2000, did not report initial and extension I-817 applications separately. The report said only that I-817 applications were "current." The TSC did not explain what that term meant or whether both initial and extension applications were "current." As the April 2000 report showed an almost two-year backlog of initial applications, the May "current" report may be inaccurate or overly optimistic.

65. By contrast, the Vermont Service Center Processing Time Report for the period ending July 31, 2000 shows that all I-817 applications are current. The Nebraska Service Center Processing Time Report dated July 31, 2000 shows that I-817 applications filed on March 10, 2000 were being processed.

66. Despite the statutorily mandated prohibition against them being deported, because of Defendants' failures to act, Plaintiffs live under fear of deportation from the United States. Deportation would mean long-term separation from home, family, and jobs. Other harms Plaintiffs are suffering include the inability to work, to change jobs, or to enroll in school.

67. Congress has mandated that Defendants provide protections for the Plaintiffs and the classes they represent, but Defendants are failing to comply. Some of the Plaintiffs and the class they represent have been without voluntary departure and employment authorization for

more than two years. This is in spite of the fact that Defendants' Family Unity regulations provide that Family Unity voluntary departure and employment authorization are granted in two-year increments. Congress created a mandatory, permanent program and did not intend that there be any gaps in the protection against deportation. Yet Defendants' refusals to act and failures to act are creating gaps of more than two years in Plaintiffs' lives.

68. As a result of the Defendants' failures, rather than being protected, the Plaintiffs and the class they represent are being subject to deportation (now known as removal), which would mean separation or possibly banishment from home, family, and work. Plaintiffs and the class they represent constantly live under the threat of deportation.

69. In addition, Plaintiffs and the class they represent have been fired from jobs and are unable to obtain new employment. They are unable to enroll in some schools, or are charged higher tuition.

70. Thus, the Plaintiffs and the class they represent -- the very people Congress intended to protect -- must suffer needless economic harm as a result of the inability to work, as well as emotional, mental, or physical harm that may arise from the constant threat of deportation.

71. Congress expressly provided in IIRIRA that Family Unity beneficiaries were in a "period of stay authorized by the Attorney General." That is, Congress specified that Family Unity beneficiaries are, by operation of law, authorized to remain in the United States, and thus, not accruing time in unlawful presence. INA 212(a)(9)(B)(iii)(III), 8 U.S.C. § 1182(a)(9)(B)(iii)(III).

72. Defendants' own regulations state that voluntary departure "shall be considered effective from the date on which the applications was properly filed." 8 C.F.R. § 236.15(c). On information and belief, however, Defendants improperly consider that the time during which an

application – initial or renewal -- for Family Unity benefits is pending is time accrued in "unlawful presence." At the same time, the Defendants have sole control over the length of time during which a Family Unity application is pending.

73. Therefore, rather than acknowledging that Family Unity Beneficiaries are authorized to remain in the United States and rather than assuring that Family Unity applicants do not accrue unlawful presence, on information and belief, Defendants are improperly causing Plaintiffs and the represented class to accrue unlawful presence. On information and belief, Defendants are disregarding the plain statutory language exempting Plaintiffs from accrual of "unlawful presence." Defendants also are refusing to process Plaintiffs applications and are unreasonably delaying the processing of their applications. In these ways, Defendants are causing Plaintiffs to become inadmissible to the United States. If Plaintiffs depart the United States, on information and belief Defendants will bar them from reentering for at least three years.

74. Defendants have unlawfully withheld and/or unreasonably delayed performing a mandatory, statutory duty to the Plaintiffs and the class they represent. Plaintiffs will continue to suffer economic, emotional, and other harm and injuries until the Defendants perform their mandated duty by processing Plaintiffs' Family Unity applications and processing class members' applications in a timely manner.

75. On May 31, 2000, Plaintiffs' counsel sent a letter to the INS Deputy Executive Associate Commissioner William R. Yates, with a copy to INS General Counsel Bo Cooper. The letter informed Mr. Yates and Mr. Cooper in detail of the CSC and TSC's long backlogs of Family Unity applications. The letter also told the INS officials' that counsel were prepared to litigate the issue of INS's failures to process these applications if the INS did not: 1) by July 1, 2000, substantially eliminate the backlog of I-817 initial and extension applications in California

and Texas, that is, process all applications filed on or before April 1, 2000; and 2) reduce the I-817 initial and extension application processing time to 90 days in all four Service Centers; and 3) put and keep measures in place to assure that all I-817 initial and renewal applications continue to be processed within 90 days of filing; and 4) notify us by June 19, 2000 of the specific and concrete measures the INS was taking to accomplish these goals. There was no response to the letter and the processing times and backlogs have not substantially changed.

CAUSES OF ACTION

I.

(Violation of § 301 of IMMACT 90
and 8 C.F.R. § 236.10 – 8 C.F.R. § 235.15)

76. Plaintiffs incorporate paragraphs 1 through 75 as if set forth in full herein.

77. Section 301(a) of IMMACT 90 and 8 C.F.R. § 236.10 et seq. charge the Defendants to provide voluntary departure and employment authorization to eligible Family Unity Applicants.

78. Defendants have failed to perform their mandatory duties under the law and regulations. They have violated § 301 of IMMACT 90 and 8 C.F.R. §§ 236.10 et seq.

79. Plaintiffs and the class they represent have properly submitted their Family Unity applications. All applications would have been processed but for Defendants' failures and refusals to act. Defendants' failures and refusals to process Plaintiffs' applications is a clear dereliction of their mandatory duties under §301 of IMMACT 90 and under their own regulations and has injured the Plaintiffs and the class they represent.

80. Plaintiffs will continue to suffer economic, emotional and physical harms and injuries until Defendants perform their mandated duties as described herein.

II.

Violation of INA § 212(a)(9)(B)(iii)(III), 8 U.S.C. § 1182(a)(9)(B)(iii)(III) (Unlawful presence)

81. Plaintiffs incorporate paragraphs 1 through 80 as if set forth in full herein.

82. Defendants are disregarding and disobeying INA § 212(a)(9)(B)(iii)(III), 8 U.S.C. § 1182(a)(9)(B)(iii)(III) and their own regulation, and have not acknowledged that Family Unity beneficiaries are maintaining lawful status upon applying for Family Unity. By adopting the position that Plaintiffs are accruing "unlawful presence," and by failing and refusing to process Family Unity applications, Defendants have caused the Plaintiffs and the class they represent to become inadmissible. Defendants have violated the INA, the intent of Congress, and their own regulation.

III.

Violation of the APA

83. Plaintiffs incorporate paragraphs 1 through 82 as if set forth in full herein.

84. By failing and refusing to process Plaintiffs' Family Unity applications, and/or failing to process their applications within a reasonable time, Defendants have unlawfully withheld and/or unreasonably delayed performing a statutory duty owed to the named Plaintiffs and the represented classes. The Plaintiffs are suffering and will continue to suffer economic, emotional and other harms and injuries as a direct result of Defendants' failures. Defendants' failures and refusals are a violation of the APA and cognizable under 5 U.S.C., §§ 551(13) and 706(1).

IV.

Due Process

85. Plaintiffs incorporate paragraphs 1 through 84 as if set forth in full herein.

86. Defendants' failures to process Plaintiffs' Family Unity Applications and those of the represented classes violate Plaintiffs' and class members' Fifth Amendment rights to Due Process. Because Plaintiffs and class members were required to and did file their Family Unity applications in the CSC and the TSC rather than in the Vermont Service Center or the Nebraska Service Center, they remain without Family Unity protections and benefits. Plaintiffs, the represented classes, and Family Unity applicants in the jurisdiction of other Service Centers all are equally eligible for Family Unity status, and the application process in the CSC and the TSC is the same as it is in the other two Service Centers. Defendants' conduct with respect to Plaintiffs and the represented classes violates due process.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request this Court to:

1. Declare that Defendants have violated §301 of the Immigration Act of 1990 and applicable regulations by failing to perform their mandatory duties of granting work authorization and voluntary departure to Plaintiffs;

2. Declare that Defendants have unreasonably delayed processing Family Unity and employment authorization applications;

3. Declare that Defendant's policies and practices violate Plaintiffs' rights to due process;

4. Order Defendants to reduce the processing time for I-817 initial and extension application, including employment authorization, to 90 days in all four Service Centers;

5. Order Defendants to immediately process all named Plaintiffs' Family Unity and employment authorization applications.

6. Order Defendants to put and keep measures in place to assure that all I-817 initial and renewal applications, including employment authorization, continue to be processed within 90 days of filing;

7. Order Defendants to file a report to the Court detailing the specific measures they are taking to accomplish these goals within 30 days from the date of the Court's order;

8. Declare that Family Unity applicants do not accrue unlawful presence under INA § 212(a)(9)(B)(iii)(III), 8 U.S.C. § 1182(a)(9)(B)(iii)(III) and that Defendants have unlawfully applied the INA and unlawfully caused Plaintiffs and the classes they represent to accrue unlawful presence.

9. Award the Plaintiffs their attorney's fees and costs under the Equal Access for Justice Act, and

10. Grant such other relief as the Court deems just, equitable and proper.

RESPECTFULLY SUBMITTED this 24th day of August, 2000.

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