For Opinion See 2006 WL 3230162, 445 F.Supp.2d 400, 2006 WL 453215, 414 F.Supp.2d 469

United States District Court, S.D. New York.
M.K.B. O.P., L.W., M.A. Marieme Diongue, M.E. P.E., Anna Fedosenko, A.I., L.A.M., L.M., Denise Thomas, and J.Z., on their own behalf, and on behalf of their minor children and all others similarly situated, Plaintiffs,
v.
Verna EGGLESTON, as Commissioner of the New York City Human Resources Administration; Robert Doar, as Commissioner of the New York State Office of Temporary and Disability Assistance; and Antonia C. Novello, as Commissioner of the New York State Department of Health, Defendants.
No. 05 Civ 10446 (JSR).
2005.

City Defendant's Memorandum of Law in Opposition to Plaintiffs' Motion for A Preliminary Injunction and Class Certification

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Food Stamp Act ... 36

Public Law 88-525 ... 36

DEFENDANT EGGLESTON'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION AND CLASS CERTIFICATION

PRELIMINARY STATEMENT

Defendant Eggleston, the Commissioner of the New York City Human Resources Administration ("HRA"), submits this Memorandum of Law in opposition to the plaintiffs' motion for a preliminary injunction and class certification. We submit that for the following reasons, this action is wholly improper and unnecessary and the motion for a preliminary injunction should be denied.

1. All of the issues and claims raised herein have been resolved by the final judgment, (the "*Reynolds* Judgment") entered on December 14, 2005 in the case of *Reynolds v. Giuliani,* 98 Civ 8877 (WMP).

2. The *Reynolds* Judgment contains an ongoing mechanism for addressing all of plaintiffs' allegations in this case. All of the complaints about the alleged failure of HRA to address the needs of the putative class representatives here could have been addressed within that framework, and specific issues have in fact been raised therein by plaintiffs' counsel.

3. Plaintiffs' advocates chose not to avail themselves of other avenues within HRA and the *Reynolds* mechanism available to them with respect to allegedly systemic failures in delivery of benefits, stopped communicating with the HRA office established specifically to address the needs of the putative class representatives, and did not communicate any of their concerns allegedly giving rise to this action to the HRA Legal Advisory Council on which plaintiffs' advocates sit..

4. Plaintiffs cannot show deliberate indifference to their rights under the *Monell* standard. The putative class should not be certified.

5. Plaintiffs do not have the right under 42 U.S.C. §1983 to enforce the statutes and regulations invoked by them.

6. A majority of the named plaintiffs were properly denied public assistance until the defects in their applications were cured.

Plaintiffs are not entitled to a preliminary injunction as a matter of law. First, plaintiffs cannot demonstrate that they can meet the standard of proof required to obtain a preliminary injunction in the form of a mandatory injunction compelling government action, because they cannot prove any systemic deprivation of plaintiffs' right to public assistance. Second, all of the claims herein are barred by the doctrine of *res judicata.* Third, the preliminary injunction sought would effectively grant the ultimate relief sought and impose a new regime on the entire system of benefits distribution by HRA. Fourth, plaintiffs are not suffering, nor do they face the prospect of suffering, irreparable injury.

STATEMENT OF FACTS

Plaintiffs in this action allege a systemic indifference and antipathy to the needs of the putative plaintiff class. In fact, HRA has gone out of its way, on its own, and formerly in cooperation with plaintiff's advocates, to provide benefits to all immigrants and refugees entitled to those benefits. See accompanying Declaration of Elaine H. Witty, dated January 24, 2006 (“Witty Dec.”).

The putative class of plaintiffs is defined as
All Affected Immigrants who are, have been, or will be eligible for state or federally funded public assistance, Medicaid, or food stamps, and who either (a) have been or will be denied public benefits in whole or in part; (b) had or will have benefits discontinued or reduced; (c) have been or will be discouraged or preventing from applying; (d) have been or will be encouraged to withdraw an application by a New York City job center because of a misapplication of immigrant eligibility rules.

Office of Refugee and Immigrant Affairs

In 2000 HRA established the Office of Refugee and Immigrant Affairs (ORIA) to serve the City's immigrant communities. The mission of the office is to improve access for refugees, immigrants and limited English-speaking (LESA) applicants and participants to HRA programs and services. The office is responsible for oversight and implementation of all immigrant, refugee and LESA policies in HRA. (The immigrant, refugee and asylee population is collectively referred to herein as “Immigrants”).

There are two HRA Job Centers specifically established for the benefit of that client community, at 2 Washington Street in Manhattan, and in Brooklyn. Those Centers are staffed by workers specifically trained to deal with those special needs, with fluency in many languages. Witty Dec. ¶6.

Moreover, Elaine Witty, the Executive Director of ORIA has constantly been available to counsel for plaintiffs in their role as advocates for Immigrants, and responded to previous complaints of individual and systemic deficient handling of Immigrants' applications for public benefits. That is, until plaintiffs' counsel unilaterally discontinued communicating with Ms. Witty, and accumulated a list of grievances to form the basis of this class action[FN1] (Witty Dec. ¶¶46-48.).

> FN1. We note that plaintiffs' counsel have made themselves important fact witnesses in regard to both the merits of the action and the existence of a certifiable class. Inasmuch as their factual contentions will be the subject of both deposition and trial testimony, defendant is considering asking counsel to withdraw from representation of plaintiffs, or with the Court's permission, moving to disqualify counsel.

In fact, ORIA dealt with 35 individual complaints referred by client advocate groups between June 2002 and July 29, 2004. Those advocates were the Center for Battered Women's Services, The Legal Aid Society, New York Asian Women's Services, and New York Legal Assistance Group. ORIA attempted to institutionalize the interaction between advocacy groups and HRA, not just accept ad hoc communications. In 2004, it

created a pilot program for advocacy groups. The task of the person running the program was to: “Investigate complaints by advocacy groups, seek resolution of the issue, log responses, coordinate response with other program areas, review Agency policy directives to ensure compliance with immigration and government benefits law; participate in policy initiatives and legislative analysis...”.

Basically, except for an isolated email from Elizabeth Saylor to Ms. Witty in April, 2005, the advocate groups chose not to avail themselves of this program, or the informal contacts with ORIA, after September 2004. (Witty Dec. ¶49). Previously, plaintiffs counsel Saylor, Baum and Ganju had communicated directly with Ms. Witty, or her subordinates, with respect to specific clients (Witty Dec. ¶¶29-48).

Ms. Witty's office acted, in fact, as an advocate for immigrants generally, and especially for battered immigrants. On March 10, 2004, at the invitation of Julie Dinnerstein, with whom Ms. Witty had previously worked, Ms. Witty attended the Association of the Bar of the City of New York, City Bar center Training on Public benefits for Battered Immigrants (see Exhibit A to the Witty Dec.). The speakers at this training were: Julie Dinnerstein, Elizabeth Saylor of the Legal Aid Society, Jennifer Baum of the Legal Aid Society, Reena Ganju of Sanctuary for Families, and Barbara Weiner of the Greater Upstate Law Project.

This training was primarily attended by immigrant advocates and attorneys involved in pro bono work on behalf of battered immigrants. Julie Dinnerstein gave an introduction and overview of “the confusing world of immigration and public benefits. (See Exhibit B to Witty Dec. p. 2). On Slide# 1 of the PowerPoint presentation, the first Question states, “Is there an easy way to figure out the immigration status of a client who comes to your office?” Answer: “No.”[FN2]

> FN2. Slide 3 of the PowerPoint entitled, “Variety in Immigration Land Variety in Public benefits Land = Confusion,” states, “in reality there are over 60 different kinds of visas that a non-US citizens/non-green card holders might have; there are 45 different categories of non-US citizens authorized to work in the United States.”. Slide 6 of the PowerPoint entitled, “Slicing and dicing immigration statutes, “states, “there are too many different immigration situations to review in any single training.” Slide 18 of the Power Point entitled, “PRUCOL The immigration situation that is NOT an immigration status,” states, “In many ways, PRUCOL, like beauty, is in the eye of the beholder.” At Slides 74 and 78 of the PowerPoint, instructions were given on using “*Reynolds* Informal Relief forms, and at Slides 81 and 83, instructions were given as to the use of “*Reynolds* Complaints.” At Slides 77 and 85, instructions were given on the use of “Brown Relief.”

At a virtually identical training at Fordham University” Interdisciplinary Center for Family and Child Advocacy on September 30, 2004, the PowerPoint there again contained references to “*Reynolds* Relief” and “Brown Relief.” See Witty Dec. Ex. C. Three of plaintiffs' counsel, Dinnerstein, Saylor and Ganju were presenters.

As will be addressed in more detail below, one of the items discussed by Ms. Ganju was “*Reynolds* Relief.” In the Power Point presentation, Ms. Ganju referred to “*Reyn-*

olds Informal Relief Form," and gave the following examples of illegal deterrence covered by *Reynolds:*
client is orally told she is ineligible based on status;
client is told she needs a SSN to get benefits;
client is told the case will only be opened for citizen children;
client is told she came to wrong welfare center;
client is told to come back tomorrow.

Ms. Ganju further instructed that in a sample case the client's advocate could file a "*Reynolds* Complaint Form," As will be discussed in more detail below, the Declaration of David Lock, Esq., dated January 24, 2006 ("Lock Dec.") sets forth the evolution of the *Reynolds* case and requests for relief. *In fact, client advocates sought Reynolds intervention on behalf of one of the declarants in this case, N.E. The Legal Aid Society specifically referred to Ms. E. as a "Reynolds class member".* (Lock Dec. ¶12g).

ORIA continues to actively pursue adaptations to changing legal standards and procedures mandated by the state and federal governments, and to propose program and training modifications to respond to those mandates and field conditions. (Witty Dec. ¶64).

In addition to helping HRA create policy directives concerning immigrant and refugee affairs, Ms. Witty conducted training for HRA personnel. Ms. Witty conducted training in how to process applications for public benefits for the FIA Office of Training in November, and December of 2004, June, 2005 and November, 2005. Additionally, she conducted training at a Refugee Center (Job Center 47) on four dates in October, 2005. (Witty Dec. ¶53).

In the 2004 and June, 2005 trainings, Ms. Witty was accompanied by Shyconia Burden-Noten of the New York District United States Custom and Immigration Service (USCIS). Ms. Noten is the USCIS community affairs officer. She came to HRA and launched the USCIS Guide for Immigrants which was then color xeroxed and distributed. She brought with her the USCIS codes utilized for I-94 cards and LPR codes. She also explained the various immigrant and non-immigrant codes and what it means to be an immigrant or a non-immigrant. Ms. Witty took the information Ms. Noten presented and translated that into the government benefits context, utilizing the W-205V desk guide and advocacy cases as illustrations to review proper procedures. (Witty Dec. ¶52).

Ms. Witty consistently made herself available to counsel for plaintiffs in their role as advocates for Immigrants, and responded to previous complaints of individual and systemic deficient handling of Immigrants applications for public benefits. That is, until plaintiffs' counsel unilaterally discontinued communicating with Ms. Witty, and accumulated a list of grievances to form the basis of this class action. (Witty Dec. ¶49).

Basically, except for an isolated email from Elizabeth Saylor to Ms. Witty in April, 2005, the advocate groups chose not to avail themselves of this program, or the informal contacts with ORIA, after September 2004. Previously, plaintiffs counsel Saylor, Baum and Ganju had communicated directly with Ms. Witty, or her subordin-

ates, with respect to specific clients.

Policy Directives

James Whelan is the Deputy Commissioner of the Office of Policy procedures and Training in the Family Independence Administration (“FIA”). His Declaration outlines his responsibilities, including the development and issuance of written procedures and policies for FIA's Job Centers. FIA also conducts appropriate training in these procedures to facilitate their implementation. (Declaration of James Whelan, dated January 25, 2006 (“Whelan Dec.”) ¶1, submitted herewith.).

Applicants may apply for public benefits such as cash assistance, food stamps, and Medicaid at Job Centers. It is the practice and policy of HRA that each applicant seeking assistance, whether it be for food stamps, cash assistance or Medicaid benefits (in conjunction with other benefits, or alone) be allowed to apply for such benefits on the date when the applicant first seeks to apply, and be provided with a written determination in regard to such application for benefits. (Whelan Dec. ¶3). Additionally, it has been and continues to be the policy and practice of HRA to train job center staff on eligibility requirements of aliens for public benefits, and the steps necessary to implement determinations in regard to public benefits for aliens, including implementation of fair hearing decisions. (Whelan Dec.¶3.)

The policies and procedures in effect for FIA's Job Centers necessarily have evolved over the years in order to account for changes in applicable law, directives and other guidance provided by State regulatory agencies with jurisdiction over HRA, that relate to the provision of benefits to aliens, and the development of the HRA electronic Paperless Office System (“POS”).

Policies/Procedures regarding the Benefits to Which Immigrant Aliens May be Entitled

The FIA has developed numerous policies and procedures which apply generally to all applicants for cash assistance, food stamps and Medicaid. These policies and procedures are applicable to aliens who apply for public benefits, all of whom are included within the class of all individuals who are eligible for public benefits. The Whelan Declaration concentrates on procedures that specifically pertain to aliens. Because of the volume of the material, only certain of these documents are presented for discussion.

Policy Directive (“PD”) #00-62R reiterates that “Any person has the right to file an application for public assistance. This includes the individual applying, any adult member of his family or any person acting on his/her behalf such as a relative, friend, other agency or institution. Under no circumstances is a person to be denied the right to file an application for Public Assistance. This includes situations where it is clear that the person is ineligible (such as an undocumented alien) or when it appears that the person has already applied and is pending a decision.” PD#0062-R is annexed to the Whelan Dec. as Exh A.

Alien eligibility for food stamps was addressed in Policy Bulletin (“PB”) #03-88 which was issued after changes in Food Stamp legislation. P.B. #03-88 is annexed to

the Whelan Declaration as Exhibit B. In that extensive Policy Bulletin formatted as questions and answers, there is an entire section dealing with victims of domestic abuse including the rules regarding battered aliens, and the conditions that must be met to obtain qualified alien status in that category. The Policy Bulletin specifically included in a list of documentation which would show that an alien has an approved or pending petition which makes a prima facie case for alien status such as “a Form I-130,” a “self-petition under the Violence Against Women Act” or “an application for cancellation of removal or suspension of deportation filed as a victim of domestic violence.” See Exh. B to the Whelan Dec. at p. 20.

The policy that “an alien's eligibility for social service benefits is based on the immigration status s/he is granted by the Department of Homeland Security's Bureau of Citizenship and Immigration Services (BCIS)” and that “the immigrations status must be verified as a condition of eligibility” is contained in P.D. #03-36-ELI. which also sets forth the steps for the worker to take in regard to the documentation of that status. P.D. #03-36-ELI is annexed to the Whelan Dec. as Ex. C.

Policy and procedures have been issued for the verification and documentation of alien eligibility. In Policy Bulletin #05-38-)PE, dated February 24, 2005, the revised Alien Eligibility Desk Aid (W-205V0, which replaced prior versions of the desk aid, was issued. A copy of P.B. #05-38-OPE is annexed to the Whelan Declaration as Exhibit D.

Policy Bulletin #04-171-ELI was issued after tighter controls were imposed by the Social Security Administration on the issuance of social security numbers to aliens following September 11, 2001. That Policy Bulletin contained specific instructions for processing applications by individuals with pending or approved I-130 or 1-360 petitions who were not able to obtain a Social Security Number. Policy Bulletin #04-171 ELE is annexed as Exhibit E to the Whelan Dec.. Policy Directives have been issued in regard to the Paperless Office System (POS) utilized in the Job Centers. Policy Directive #05-42-SYS, dated November 29, 2005, a copy of which is annexed as Exhibit F to the Whelan Dec., sets forth recent revisions to POS. Significantly, this update enables POS to capture the date a non-citizen applicant entered the United States, and the date the non-citizen applicant obtained legal status.

Training

In addition to the training conducted by ORIA set out in the Witty Declaration, FIA routinely conducts training with regard to Policy Directives and other policies and procedures. Center-based trainers employed by the Office of Training Operations attend a “train the trainer” session at the beginning of every month. These sessions are at least one full day a month, and sometimes two full days. Center-based trainers are instructed in new Policy Directives and Policy Bulletins that were drafted and approved during the preceding month. Senior trainers use curricula that are to be used to train Job Center staff during the coming month. The Center-based trainers then return to their Job Centers and train the Center staff over the course of the month in the new Policy Directives and Policy Bulletins. (Whelan Dec. ¶ 12, 13).

Policy Directives and policy bulletins are routinely posted on FIA's web site and

are widely distributed to all FIA workers who interview applicants.

There are also numerous resources not only for staff but clients and their representatives if there are questions at any time that concern alien eligibility for public benefits, including the assistance provided by ORIA. Technical assistance is also available from MIS in regard to applications including assistance with POS and the New York State WMS system related to applicant eligibility and determination of benefits. (Whelan Dec. ¶15).

Related Case-*Reynolds v. Giuliani*

As discussed in the Argument below, the plaintiffs in this case are clearly members of the class certified in another case in this Court, *Reynolds v. Giuliani,* 98 CV 8877 (WMP), in which a final judgment was entered on December 14, 2005. A brief summary of the relationship of that case to the instant matter, is set forth in the accompanying Lock Dec. David Lock is Deputy General Counsel in the Office of Legal Affairs of HRA. He supervises a unit of attorneys and support staff called the Litigation and Program Counseling Unit that provides litigation support for class action litigation including *Reynolds.* The *Reynolds* litigation addressed most of the issues raised in the instant case. Indeed, the plaintiffs attorneys in the instant case have freely invoked *Reynolds* to obtain relief for individual clients, whom they characterized as *Reynolds* class members. (Lock Dec. ¶ 2).

The complaint in *Reynolds,* (Exhibit A to the Lock Dec.), filed in December, 1998, initially focused on the conversion of New York City welfare centers from the Income Support Center model to the Job Center model, which is currently in effect. The complaint alleged that in converting centers from Income Support Centers to Job Centers, HRA maintained a policy and practice of: i) providing false and misleading information about the availability of food stamps, Medicaid and cash assistance; ii) prohibiting individuals from applying for food stamps, Medicaid and cash assistance on the first day they visit the Job Center; iii) discouraging and deterring individuals from filing applications for food stamps, Medicaid and cash assistance, including applications for expedited food stamps and temporary pre-investigative grants; iv) pressuring individuals to withdraw applications for food stamps, Medicaid and cash assistance, including applications for expedited food stamps and temporary pre-investigative grants; v) failing to process all applications for food stamps, Medicaid and cash assistance, including applications for expedited food stamps and temporary pre-investigative grants, within the time frames required by law; vi) failing to make eligibility determinations for food stamps and Medicaid separate from eligibility determinations for cash assistance; and vii) failing to send individuals timely and adequate written notices of determinations for any and all benefits applied for. See *Reynolds* Complaint, Request for Relief. (Lock Dec. ¶ 3).

In an order dated December 23, 1998, a copy of which is annexed as Exhibit B to the Lock Dec., the court in *Reynolds* established an “informal intervention” process whereby HRA would review any individual cases brought to their attention by the *Reynolds* plaintiffs' counsel.

In an order dated January 25, 1999, the court in *Reynolds* issued a preliminary injunction against HRA. In addition to halting the conversion of Income Support Centers to Job Centers, the preliminary injunction directed HRA to 1) continue the "informal intervention" process established in the December 23, 1998 order; 2) allow individuals to apply for food stamps, Medicaid, and cash assistance, including expedited food stamps and temporary pre-investigative grants, on the first day they visit a Job Center; 3) process all applications for expedited food stamps and temporary pre-investigative grants at Job Centers within the time frames required by law; 4) make eligibility determinations regarding food stamps and Medicaid applications at Job Centers separate from the eligibility determinations for cash assistance; and 5) send individuals applying for food stamps, Medicaid and cash assistance, including expedited food stamps and temporary pre-investigative grants at Job Centers timely and adequate written notices of determinations of eligibility for all the benefits they seek.

In an order dated July 21, 2000, the court in *Reynolds* certified a class consisting of "all New York City residents who have sought, are seeking, or will seek to apply for food stamps, Medicaid, and/or cash assistance at a Job Center." *Reynolds v. Giuliani,* 118 F. Supp. 2d 352, 393 (S.D.N.Y. 2000). No provision was made to exempt non-citizen applicants from the *Reynolds* class.

The parties went to trial on the merits in April 2001. The trial focused on an audit of applications submitted in September 2000. The audit was conducted under protocols agreed to by the parties. Non-citizen applicants were not excluded from the audit (Lock Dec. ¶8).

In a decision dated February 14, 2005, the court issued a permanent injunction against the HRA and the State Office of Temporary and Disability Assistance. *Reynolds v. Giuliani,* 2005 U.S. Dist. Lexis 2743. The court directed the parties to submit judgment consistent with the court's decision. On December 14, 2005, one day after the filing of the instant case, the court in *Reynolds* issued its final judgment. A copy of the judgment is annexed as Exhibit C to the Lock Dec.

The judgment requires HRA to: 1) provide expedited food stamps to eligible class members within the time frames established by federal and state law; 2) process applications for food stamps and Medicaid separately when an application for cash assistance is denied or withdrawn; 3) provide class members with adequate and timely notice confirming voluntary withdrawals for Medicaid and/or document withdrawals of food stamp applications; 4) provide class members with adequate and timely notice of decisions on eligibility for cash assistance (including immediate needs cash grants); food stamps (including expedited food stamps) and Medicaid by correctly completing the applicable forms; 5) provide class members with accurate information concerning eligibility for cash assistance, food stamps and Medicaid in relation to a withdrawal from the cash assistance, food stamp or Medicaid programs; and 6) provide immediate needs cash grants on the day of application to eligible class members. *Reynolds* Judgment ¶3.

The Judgment does not differentiate between citizen and non-citizen applicants. In

addition, the Judgment requires HRA to provide the plaintiffs' counsel with several sets of monitoring reports, including a semi-annual sample of 200 applications that are to be reviewed to determine whether HRA incorrectly denied expedited food stamps and/or immediate needs cash grants for lack of food. Non-citizen applicants are included in the sample. The Judgment also requires HRA to provide certain notices of eligibility determination. Judgment ¶9. Finally, the Judgment continues to provide a mechanism for plaintiffs' counsel to obtain individual relief for alleged violations of the Judgment. Judgment ¶6.

Plaintiffs counsel in the instant case have long viewed immigrant eligibility determinations as falling within the scope of the *Reynolds* preliminary injunction, and have utilized the *Reynolds* "informal intervention" process to obtain relief for clients they claim were wrongly denied benefits. The following are some examples of *Reynolds* informal intervenors brought by the plaintiffs' counsel that present issues identical to those in the instant case:

1. In a fax dated December 5, 2002 (Ex. D to the Lock Dec.) the Legal Aid Society invoked the *Reynolds* informal relief process on behalf of A. F. Legal Aid's fax alleged that Mr. F was incorrectly denied benefits to which he was entitled as a PRUCOL.

2. In a fax dated December 10, 2003 (Ex. E to the Lock Dec.) the Legal Aid Society invoked the *Reynolds* informal relief process on behalf of C. V.. Legal Aid's fax alleged that Ms. V. was incorrectly denied benefits to which she was entitled as a PRUCOL.

3. In a fax dated May 27, 2002 (Ex. F to the Lock Dec.) the Legal Aid Society invoked the *Reynolds* informal relief process on behalf of R.A. Legal Aid's fax, which included a copy of a letter from Legal Aid attorney Elizabeth Saylor, alleged that Ms. A. was incorrectly denied benefits to which she was entitled based on her status as a lawful permanent resident.

4. On December 12, 2005, one day before filing the instant lawsuit, the New York Legal Assistance Group submitted a letter (Ex. G to the Lock Dec.) in which it invoked the *Reynolds* informal relief process on behalf of R.F. NYLAG's letter alleged that Ms. F was incorrectly denied benefits to which she was entitled as a VAWA self-petitioner.

5. In a fax dated January 30, 2004 (Ex. H. to the Lock Dec.) the Legal Aid Society invoked the *Reynolds* informal relief process on behalf of F. H. Legal Aid's fax alleged that she was incorrectly denied benefits to which she was entitled to as a VAWA self-petitioner.

6. In a letter dated February 14, 2005 (Ex. I to the Lock Dec.) NYLAG invoked the *Reynolds* informal relief process on behalf of W.S. NYLAG's letter, which included an accompanying letter from Reena Ganju of Sanctuary for Families, alleged that Ms. S. was incorrectly denied benefits to which she was entitled based on her immigration status and the fact that she is a domestic violence victim. Plaintiffs in the instant case included HRA's response to the February 14, 2005 letter in their papers

in support of the motion for a preliminary injunction. See Declaration of Reena Ganju, Exhibit 34.

7. In a letter dated November 3, 2004 (Ex. J to the Lock Dec.) NYLAG invoked the *Reynolds* informal relief process on behalf of N.E. Ms. E has submitted a declaration in this case. NYLAG's letter alleges that she was incorrectly denied benefits to which she was entitled as a VAWA self-petitioner.

The Named Plaintiffs

A majority of the named plaintiffs who seek to represent the putative class, were in fact, properly denied benefits. (See further discussion below. and the deposition testimony of plaintiffs annexed to the accompanying Declaration of Jane Tobey Momo, dated January 25, 2005 (“Momo Dec.”).)

M.K.B.: In the case of M.K.B., an initial eligibility determination would be dependent on the existence of a pending or approved I-130 petition for Family Reunification plus proof of domestic violence. MKB did not have a pending or approved I-130 application at the time she applied for benefits in September 2005 as set forth in the excerpts from her deposition testimony taken in this action.

O. P.: OP remained unlawfully in the country after her tourist visa expired. She is a holder of a U Visa application/interim relief request which has expired as of January 24, 2006.

J.Z.: The deposition of J.Z. raised serious questions concerning her identity as she has three different benefit cards issued in 3 different names, two passports in different names, a marriage certificate and a birth certificate in different names and immigration documents where her name has been incorrectly indicated. J.Z.. was employed while her children received public assistance benefits, and she has incredibly claimed not to know that the husband had applied for public benefits for himself and the children while J.Z. and her husband were living together. There is also a serious question about whether benefits for J.Z.'s children were utilized for their benefit or were accessed by J.Z. at a time when she has testified that she did not access those benefits. When J.Z. applied for benefits in July 2004 she did not submit sufficient documentation for herself in order to qualify for benefits. J.Z. should have submitted an I-130 family reunification petition together with proof of domestic violence but did not do so. After a period of time, J.Z. obtained a prima-facie notice in regard to an 1-360 petition and then presented the prima facie notice at a job center and was determined eligible for benefits for the period of time until the I-360 prima facie notice expired. Subsequently J.Z. obtained and presented an approved I-360 and received benefits for herself.

L.W.: L.W. admittedly does not have an I-130 notice or approval or an I-360 prima facie notice or approval under VAWA. While L.W. has a Visa, that Visa expired on September 29, 2005. Although L.W.'s assessment of her own condition is that she is disabled, she admittedly worked in 2005. Like many of the other individual plaintiffs L.W. did not fully understand what had been written in her declaration that she signed in connection with the plaintiffs application for a preliminary in-

junction in this case.

Marieme. Diongue: This plaintiff does not even live in New York City according to her N.Y.S. Identification card issued on April 13, 2005, she lives in ?? which is in ?? She is not entitled to benefits from the City of New York.

M.E.: M.E. did not provide sufficient documentation to the job center at the times she applied for benefits. She should have presented an I-130 with proof of domestic violence, in order to obtain benefits for herself and her immigrant daughter. She didn't do so. M.E. did receive benefits for her two citizen children. In addition, M.E. failed to cooperate in obtaining documentation in regard to social security.

ARGUMENT

POINT I

BECAUSE PLAINTIFFS CANNOT MEET THE BURDEN OF PROOF NECESSARY TO ENJOIN GOVERNMENTAL ACTION TAKEN IN THE PUBLIC INTEREST PURSUANT TO A STATUTORY OR REGULATORY SCHEME, THEIR MOTION FOR A PRELIMINARY INJUNCTION SHOULD BE *DENIED.*

A preliminary injunction is considered to be “an extraordinary remedy” that should not be routinely granted. *D.D. v. New York City Bd. of Educ.,* 03 CV 2489, 2004 U.S. Dist. LEXIS 5189 *73 (E.D.N.Y. March 30, 2004) (citing *JSG Trading Corp. v. Tray-Wrap, Inc., 917 F.2d 75, 80 (2d Cir. 1990)*). When a preliminary injunction “seeks to stay governmental action taken in the public interest pursuant to a statutory or regulatory scheme,” it is necessary to establish (a) that the injunctive relief is necessary to prevent irreparable harm, and (b) that the moving party is likely to succeed on the merits of the underlying claim. *Bery v. City of New York, 97 F.3d 689, 694 (2d. Cir. 1996)*, cert den. 520 U.S. 1251 (1997) (citing *Plaza Health Laboratories, Inc. v. Perales, 878 F.2d 577, 580 (2d Cir. 1989)*).

This “likelihood of success” standard is more rigorous than the alternate, “sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly toward the party requesting the preliminary relief,” which is ordinarily available to a movant seeking injunctive relief. *Id.* (citing *Sperry Int'l Trade, Inc., 670 F.2d 8, 11 (2d Cir. 1982)* (citing *Jackson Dairy, Inc. v. H.P. Hood & Sons, Inc., 596 F.2d 70, 72 (2d Cir. 1979)*)). It is well established in this Circuit that this extraordinarily high “likelihood of success” standard of proof is necessary to enjoin government action taken in the public interest pursuant to a statutory or regulatory scheme. *See Fifth Ave. Presbyterian Church v. City of New York, 293 F. 3d 570, 573-74 (2d Cir. 2002)*; *Wright v. Giuliani, 230 F.3d 543, 547 (2d Cir. 2000)*; *Beal v. Stern, 184 F.3d 117, 122 (2d Cir. 1999)*; *Latino Officers Assoc. v. City of New York, 196 F. 3d 458, 462 (2d Cir. 1999)*; *Woodfield Equities, L.L.C. v. The Incorporated Village of Patchogue, 357 F. Supp. 2d 622, 635 (E.D.N.Y.)*, aff'd 2005 U.S. App LEXIS 26960 (2d Cir. 2005).

Moreover, when an injunction is mandatory, in that it will alter the status quo, rather than prohibitory, which would maintain the status quo, the standard for show-

ing both irreparable harm and likelihood of success is even higher. *Cerpac v. Health and Hospitals Corp.*, 920 F. Supp. 488, 494 (S.D.N.Y. 1996) (citing *Doe v. New York University*, 666 F.2d 761, 773 (2d Cir. 1981).

Furthermore, injunctive relief is not warranted if the defendant has initiated efforts to substantially comply with statutory mandates, and the Court may consider extrinsic factors and the defendants' activities and efforts in determining that plaintiffs have not demonstrated a clear or substantial likelihood of success. *D.D.*, 2004 U.S. Dist. LEXIS 5189 at *80-82. *See also* *Richardson v. Wright*, 405 U.S. 208, 209 (1972) ("In the context of a comprehensive complex administrative program, the administrative process must have a reasonable opportunity to evolve procedures to meet needs as they arise").

As set forth in the Statement of Facts, HRA has, since the creation of ORIA, a standing policy and practice of not only accepting suggestions from immigrant client advocates with respect to improving the system, it actively encourages and solicits demonstration of flaws and suggestions for improvement. Not only was ORIA open to communication at all time, but it created a pilot program to investigate complaints from advocacy groups and resolve the issues. While plaintiffs' advocates purportedly made case specific complaints to the agency's middle management, they were avoiding bringing the alleged systemic violations to the attention of the office created to handle those problems.

Where plaintiffs seek preliminary relief that will provide them with "substantially all the relief sought" in the underlying action, the standard for plaintiffs seeking a preliminary injunction is even higher. *Jolly v. Coughlin*, 76 F.3d 468, 473 (2d Cir. 1996). Not only must plaintiffs meet the burden of showing a likelihood of success on the merits, but the showing they make must be "clear" or "substantial." *Tom Doherty Assoc. Inc. v. Saban Entertainment, Inc.*, 60 F3d 27, 34 (2d Cir. 1995). As, with the exception of case specific action for the named plaintiffs, the plaintiffs seek all their final relief in this motion for a preliminary injunction; they cannot meet the appropriate burden of proof for such relief.

A. Plaintiffs Cannot Demonstrate Irreparable Injury.

On a motion for a preliminary injunction, the Court will first consider whether the movant has established that he suffered irreparable injury; "the moving party must first demonstrate that such injury is likely before the other requirements for the issuance of an injunction will be considered." *Reuters Ltd. v. United Press Int'l, Inc.*, 903 F. 2d 904, 907 (2d Cir. 1990). In fact, the showing of irreparable harm is "the single most important prerequisite" for a preliminary injunction. *D.D. v. New York City Bd. of Educ.*, 03 CV 2489, 2004 U.S. Dist LEXIS 5189 *73 (E.D.N.Y. March 30, 2004) (citing *Brown v. Giuliani*, 158 F.R.D. 251, 264 (E.D.N.Y. 1994)). Furthermore, the irreparable harm must be "imminent," not "remote or speculative." *Id.* (citing *Brown* 158 F.R.D. at 264 (quoting *Tucker Anthony Realty Corp v Schlesinger*, 888 F.2d 969, 975 (2d Cir. 1989))).

Plaintiffs cannot demonstrate on this record that they will suffer irreparable harm because HRA has constructed a program and methodology to accommodate the needs of

the putative class, and is open to suggestions for improvement to the processes designed to aid these applicants for public benefits. Moreover, plaintiffs' advocates have in the past successfully used "*Reynolds* relief" and "Brown relief" on issues of immigrant eligibility for benefits. Indeed, as demonstrated above, plaintiffs' counsel and HRA worked for a period of time to devise a cooperative plan for advocacy for immigrants and refugees. Thus, even if plaintiffs do not use the ORIA process, they simply cannot show irreparable injury if the preliminary injunction is not granted, because as is the case with the named plaintiffs, individual grievances have been addressed, and will continue to be addressed, through the *Reynolds* and *Brown* enforcement mechanisms.

With respect to plaintiffs' allegations regarding the inadequacies of the computer generated instructions and processing programs designed to address the needs of the putative class, HRA will accept notification in the same manner as currently being employed, and plan for and correct deficiencies that are discovered. HRA acknowledges that in fact one category of eligible aliens, those with an approved or pending immigrant visa petition (Form I-130) with evidence of domestic violence, are not accommodated within the agency's computer program. HRA is in the process of remedying the situation now.

The Declaration of Seth Diamond, Executive Deputy Commissioner of FIA, identifies not only the computer issue that HRA is willing to address, but states that in addition to the ORIA resources, HRA will appoint specialists to work with Job Center employees before Immigrants are declared ineligible for benefits. Additionally, HRA will seek from the State expanded flexibility in making food stamp and disability Medicaid eligibility determinations. This will help Job Center case workers provide for immediate needs where appropriate. Further, HRA will issue a revised procedure covering issues relating to battered aliens and PRUCOL. HRA will then provide training on the new procedure to all appropriate personnel.

Thus, apart from the case by case relief presently available to plaintiffs and other putative class members, HRA is moving forward to address those systemic problems that can be identified and dealt with. If plaintiffs have both individual remedies and responsiveness to systemic concerns, they cannot be said to be suffering irreparable injury.

As noted above, HRA has been proactive in developing programs to assist immigrants and refugees in obtaining public benefits, not, as plaintiff alleges, resistant to complying. Accordingly, plaintiffs cannot demonstrate that they will suffer irreparable injury if the Court denies the motion for a preliminary injunction.

B. Plaintiffs cannot demonstrate any likelihood of success on the merits.

1. Plaintiffs are barred from asserting their claims by the doctrine of *res judicata*

Plaintiffs assert that they are representing a class consisting of:
All Affected Immigrants who are, have been, or will be eligible for state or federally funded public assistance, Medicaid, or food stamps, and who either (a) have been or will be denied public benefits in whole or in part; (b) had or will have be-

nefits discontinued or reduced, (c) have been or will be discouraged or preventing from applying; (d) have been or will be encouraged to withdraw an application by a New York City job center because of a misapplication of immigrant eligibility rules.

In *Reynolds v. Giuliani,* 98CV 8877 (WMP), the court certified a class consisting of "all New York City residents who have sought, are seeking, or will seek to apply for food stamps, Medicaid, and/or cash assistance at a Job Center".

Clearly, the class for which certification is sought here is subsumed in the class certified in *Reynolds.* Although the plaintiffs in *Reynolds* originally sought to enjoin the conversion of Income Support Centers to Job Centers, before the trial on the merits of the permanent injunction, plaintiffs agreed to vacate the prohibition against conversion, and attacked HRA's determination of eligibility for, and distribution of, public benefits across the board. The evolution of the *Reynolds* litigation is set out in the Lock Dec., which, along with the Witty Dec., also demonstrates: that one of the declarants here claimed to be a member of the *Reynolds* class, that plaintiffs' counsel instructed client advocates to apply for "*Reynolds* relief", and that the primary issues raised here were litigated and adjudicated in *Reynolds.*

We are at a loss to understand how plaintiffs can assert class status here without reference to *Reynolds.* Where one of the declarants on the motion for a preliminary injunction (N.E.) has been asserted by counsel here to be a member of the *Reynolds* class, it would seem that even if this case need not have been filed as a related case, it is incumbent on plaintiffs to explain why this putative class is not subsumed within the *Reynolds* class.

In certifying the class action in *Reynolds* in 2000, Judge Pauley found that "Like the Marisol A. court, this Court believes 'the myriad [of] constitutional, regulatory and statutory provisions invoked by the plaintiffs are properly understood as creating a single scheme for the delivery of... welfare and as setting standards of conduct for those charged with providing such services- standards that the defendants are alleged to have violated in a manner common to the plaintiff class". (118 F. 2d 352 at 390)

Plaintiffs here allege a sweeping indictment of the delivery of public benefits to those for whom their advocates have sought relief within *Reynolds.* In his decision of February 14, 2005, containing finding of facts and conclusions of law, Judge Pauley decided issues raised concerning the following areas of the delivery of benefits:

1. Expedited Food Stamps
2. Immediate Needs Grants
3. Separate Determinations for Food Stamps and Medicaid
4. Application Withdrawals
5. Provision of Notices

(2005 U.S. Dist. Lexis 2743)

Here, as in *Reynolds,* plaintiffs claim that they were denied the benefits to which

they were entitled under the Federal Food Stamp program, 7 U.S.C § 2011, et seq., Medicaid, 42 U.S.C 1396, et seq., the New York State Food Assistance Program, (Laws of 1997, ch. 436, Part B) and Federal and State Public Assistance.

The Judgment entered in *Reynolds* on December 14, 2005 was sweeping with respect to both declaratory and injunctive relief. See Exhibit "C" to the Lock Declaration.

Clearly, whatever issues raised in the complaint herein that were not actually resolved in that case could have been raised there. Indeed, advocates for battered aliens sought and received "*Reynolds* relief" for members of the putative class here. Moreover, there is a continuing enforcement provision in the *Reynolds* Judgment that requires the City to "provide Plaintiffs' counsel with a mechanism to notify them of written complaints regarding the individual cases, to investigate the complaints and address the complaints promptly, reporting to Plaintiffs; counsel."

Moreover, plaintiffs could have easily sought certification as a sub-class under Federal Rule of Civil Procedure 23 (c)(4) which would have been completely appropriate under the circumstances. *Marisol A. v. Giuliani,* 126 F.3d 372, 378-379 (2d Cir. 1997).

Under these circumstances, application of the doctrine of *res judicata* is appropriate. The doctrine applies in a §1983 case. *Alien v. McCurry,* 449 U.S. 90, 95 (1980). The doctrine takes effect when (1) there exists an adjudication on the merits in a prior lawsuit, (2) the prior lawsuit involved the party to be precluded or a party in privity with that party, and (3) the claim sought to be precluded was raised, or might reasonably have been raised in the prior lawsuit. *Monahan v. City of N.Y. Dep't of Correction,* 10 F. Supp. 2d 420 (S.D.N.Y. 1998), *aff'd,* 214 F.3d 275 (2d Cir. 2000); *Chase Manhattan Bank, N.A. v. Celotex Corp.,* 56 F. 3d 343, 345 (2d Cir. 1995); *Monahan, supra,* 10 F.Supp. 2d at 423. *Gherardi v. New York,* 2005 U.S. App. Lexis 28548 (2d Cir. Dec. 22, 2005).

The doctrine applies where the party to be precluded is a member of a group that has brought an action on behalf of its members. *Nash v. Bowen,* 869 F. 2d 675, 679 (2d Cir. 1989). The parties are at least partly self defined as members of the *Reynolds* class, represented at least in part by the same counsel; that counsel has sought "*Reynolds* relief" for some putative class members, all issues relating to the application for benefits and eligibility determinations were raised, or could have been raised in *Reynolds,* and the judgment entered there provides a continuing methodology for relief for the putative class members.

The use of "*Reynolds* Intervention" Forms in behalf of putative class members, clearly establishes that Immigrant eligibility issues were part of the *Reynolds* case, which resulted in a final judgment. And, as noted above, to the extent that the putative class here requires special resources, those resources are available, and have been utilized, in the *Reynolds* intervention procedure.

2. Plaintiffs cannot demonstrate that even the named plaintiffs have a clear legal right to the relief sought.

Each of the named plaintiffs here had difficulty in obtaining benefits, and the complaint alleges that HRA was at fault in every instance. However, at the depositions of these plaintiffs a different story emerged. In almost every case the required documentation to demonstrate eligibility for benefits was not provided.

M.K.B.

In the case of M.K.B., an initial eligibility determination would be dependent on the existence of a pending or approved I-130 petition for Family Reunification plus proof of domestic violence. MKB did not have a pending or approved I-130 application at the time she applied for benefits in September 2005 as set forth in the excerpts from her deposition testimony taken in this action which are summarized below.[FN3]

> FN3. Excerpts of Deposition Transcripts of the named plaintiffs are annexed to the accompanying Declaration of Jane Tobey Momo, dated January 25, 2006. (“Momo Dec.”). All references to the Transcript (Tr.) are to the portions of deposition testimony of the relevant plaintiff

M.K.B.'s husband applied for an I-130 on her behalf. Tr. p. 70, lines 3-7; Tr. p. 86 lines 20-22.). The I-130 petition was denied. (Tr. p. 89, lines 11 - 21), in a decision dated August 24, 2005 which was provided to Rena [Ganju], her attorney at the time. (Tr. pp. 91 lines. 13 - 17 and 21 - 22.; p. 93 lines 1 6.) The decision was appealed. (Tr. p. 94, lines 8 - 13).

After the 1-130 petition was denied, M.K.B. applied for benefits in September 2005 when she applied for Food Stamps, Medicaid and Cash Assistance for herself and her children. (Tr. pp. 95 -96 lines 14-21).

O.P.

OP remained unlawfully in the country after her tourist visa expired. She is a holder of a U Visa application/interim relief request which has expired as of January 24, 2006. Excerpts of her testimony (see Momo Dec. Ex. B.) are summarized below:

She came to New York from Peru May 22, 2001 as a visitor on a 6 month tourist visa and decided to stay in the United States. Tr. p. 30, line 19 - p. 32, line 7; p. An extension of her tourist visa was denied at the end of 6 months. Tr. p. 32, lines 2 - 21.

As of November 23, 2001 she did not have a visa or any immigration papers which allowed her to be in the US after the expiration of her tourist visa. Tr. p.35 lines 3 -12. She doesn't remember when she applied for a U Visa but more or less she applied for a U Visa in October of 2004. Tr. pp. 36 lines 4 - 10.

In April 2005 O.P. received the Notice of Deferred Action, Notice Date January 25, 2005 “Early U Visa application/Interim Relief Request.” Tr. p. 64 lines 4 - p. 65 line 22. and Exhibit OP7. The Deferred Action Validity Period, according to the Notice of Deferred Action (Exh. OP7) is January 25, 2005 to January 24, 2006. Tr. p. 64, Exh. OP 7. O.P. has not made any application for any other kind of Visa or for a green card. Tr. p 67 lines 9 - 11. O.P. did not sign or receive any papers with re-

gard to an extension of the Early U Visa application/Interim Relief Request. Tr. p. 70 lines 4 20.

O.P. applied for benefits for the first time on May 15th or May 16th of 2005 and a second time on August 9, 2005. Tr. p. 80 lines 14 - p. 81 line 4. In May 2005 and August 9, 2005 she applied for public assistance, Medicaid and Food Stamps for herself and her two children L

A M. and daughter J P. Tr. pp. 82 lines 14 - 21; 25 - p. 83 lines 1 - 3; p. 88 11 23 - 25; p. 89, line 19 p. 90 line.7; pp. 91 line 24 - p. 92 line 2.

O.P. applied for public assistance, Medicaid and Food Stamps for herself and two children in October 2005. Tr. p93 line 6 - p. 94 - line 6; p. 98 line 25 - p. 99 line 5.

O.P. received a fair hearing in regard to the application for benefits in May 2005. p. 110 lines 12 - p. 111 line 3. In a Fair Hearing Compliance Statement (Exhibit K to Exh. OP 13) dated 8/25/05 received by O.P. she was informed that HRA cannot complete any compliance action until she supplied the information requested in the letter. Tr. p. 116 lines 1 23.

O.P. failed to exhaust her administrative remedies in regard to the applications for benefits of August 9, 2005 and October 2005. O.P. did not request a Fair Hearing in regard to her applications for benefits on August 9, 2005 and October 2005 although she was receiving assistance from and represented by Kevin Kanealy an attorney at NYLAG. Tr. 116 lines 24 - p. 118 line 15; p. 114 lines 1- 16.

J.Z.

The deposition of J.Z. raised serious questions concerning her identity as she has three different benefit cards issued in 3 different names, two passports in different names, a marriage certificate and a birth certificate in different names and immigration documents where her name has been incorrectly indicated. Excerpts of the testimony (see Momo Dec. Ex. C) are summarized below.

J.Z. has 3 benefit cards (used to access public benefits - public assistance and Food Stamps) in three different names, J Z J A and J A Tr. p. 7 line 1 - p11 line 9; JZ Exhibit 1; p. 15 line 9 - p. 16 line 3; JZ Exhibit 2; p. 17 line 10 - p. 18 line 1; p. 18 line 24 - p. 19 line 22; Tr. p. 23 line 14 - p. 24 line 21; JZ Exhibit 3.

J.Z.'s marriage certificate had her first name indicated incorrectly. Tr. p. 10 lines 1 - 12; JZ Exhibit 4.

J.Z. has two passports which have been issued to her in two different names: G J A and G Y A De Z Tr. p. 32 line 2 - p. 35 line 19; JZ Exhibit 5; Tr. p. 72 line 21 - p. 74 line 11; JZ Exhibit 9. Although JZ testified that since she came to New York in 1985 she never left the United States, page two of what J.Z. identified as her passport (Exhibit J.Z. 9) contains a stamp indicating Santo Domingo and what J.Z. has identified as the alien number for her husband. Tr. p. 45 lines 13 - 24; p. 75 line 13 - p. 77 line 22;

J.Z. presented a foreign passport to HRA on or about February 25, 2002 in connection with an application for food stamp and presented the passport she has identified as JZ Exhibit 9 to HRA. Tr. p. 77 lines 9 -22; JZ Exhibit 9.

J.Z.'s birth certificate is in the name of G Y A P which she has testified is not her correct name.p.39 line 2 - p. 40 line 23.

Immigration status of J.Z. and access to benefits:

J.Z. has provided a copy of an I-130 Receipt notice wherein she testified her name is incorrectly indicated as Z, J G. p. 51 line 17 - p. 52 line 2; p. 53 lines 7 - 18; JZ Exhibit 7.

J.Z. was born in Mexico and entered the United States when she was 7 or eight years old traveling from Puebla Mexico to Tijuana Mexico crossing the United States border into California and then going directly to New York. Tr. p. 44 line 20 - p. 45 line 17. She has not returned to Mexico since 1985, does not have any documents that would allow her to travel outside of the United States and has no green card or Social Security card and a Mexican passport issued only for identification purposes.. Tr. p. 46 line 25 - p. 47 line 6.

J.Z.'s husband, a holder of a green card, filed an I-130 petition on her behalf receipt of which was acknowledged in a notice dated May 16, 2001 (JZ Exhibit 7) and which was approved in a notice dated September 30, 2004 (JZ Exhibit 8) Tr. p.51 line 17 - p. 52 line 15; p. 56 lines 6-8; JZ Exhibit 8.

J.Z. has given conflicting testimony about when she no longer continued to live with her husband, testifying that she no longer lived together with her husband as of September 13, 2004 and as of July 5, 2004. Tr. p. 57 line 16 p. 58 line 2.

J.Z.. was employed while her children received public assistance benefits, and she has incredibly claimed not to know that the husband had applied for public benefits for himself and the children while J.Z. and her husband were living together. There is also a serious question about whether benefits for J.Z.'s children were utilized for their benefit or were accessed by J.Z. at a time when she has testified that she did not access those benefits. When J.Z. applied for benefits in July 2004 she did not submit sufficient documentation for herself in order to qualify for benefits. J.Z. should have submitted an I-130 family reunification petition together with proof of domestic violence but did not do so. After a period of time, J.Z. obtained a prima-facie notice in regard to an I-360 petition and then presented the prima facie notice at a job center and was determined eligible for benefits for the period of time until the I-360 prima facie notice expired. Subsequently J.Z. obtained and presented an approved I-360 and received benefits for herself.

J.Z. has two children, Ju Z and Ja Z who were born in the United States on 1997 and 2001 who are both United States citizens. Tr. p. 58 line 6 - p. 59 line18.

J.Z.'s husband was a barber and she testified that he stopped working in or around November 2003. Tr. p. 62, lines 21 - 24; p. 64 line 20 - p. 65 line 2 J.Z. worked in

a supermarket beginning in the summer of 2003 until the beginning of 2004, earning $5.15 hour for an average of 20 - 25 hours a week, for which she was paid in case, and did not report her income to anyone. Tr. p. 59 line 19 - p. 60 line 17; p. 61 line 7 - 16; p. 62 line 12 - 14. Her husband stopped working but he used to get money from somewhere, and she testified she did not know where. Tr. p. 65 lines 8 - 16; p. 66 lines 5 - 7..

J.Z. testified that even though she knew that her husband could go and apply for public assistance benefits for himself and the children and that he stopped working in 2003 and that he was bringing in money she wasn't aware that he had applied for public benefits. Tr. p. 67 lines 5 - 21. J.Z. told her husband he could apply for public benefits and encouraged him to do so in 2003. Tr. p. 67 line 22 -p. 68 line 2. J.Z. had seen a card that looked like a Medicaid/Public Assistance card in December 2003 with her husband's name on it. Tr. p. Tr. p.90 line 10 - p. 91 line 1. Her husband told J.Z. that he applied for Medicaid in 2003. Tr. p. 91 lines 12 - 16.

J.Z. applied for Medicaid in February 2004 and May of 2004 and the applications were granted. Tr. p. 126 line 19 Tr. p. 127 line 25.

Exhibit JZ 10 is a notice of decision on public assistance, food stamps and medical assistance directed to Z Christian in which the “public assistance case has been RE-CERTIFIED for the period September 1, 2004 to August 31, 2005. Tr. p. 84 line 9 - p. 85 line 4. J.Z. testified that after she learned about this notice in September 2004 she went to public assistance and spoke to the worker to ask why she hasn't started receiving benefits and her husband was. Tr. p. p. 85 line 5 9.

J.Z. testified that she went to apply for public assistance and was told, only when she arrived at the center that her children had benefits and that it was time for her husband to recertify for public assistance and that the children's benefits were due for recertification. Tr. p. 86 line 25 - p. 87 line 7; p. 98 line 11 - p. 99 line 3.. However, J.Z. stated in her declaration that “in July 2004 after my husband left our apartment I went to Colgate Job Center No. 32 for recertification of my children's public benefits case. Tr. p. 99 lines 4 - 9; Exhibit JZ 11, Par. 16.

On the day J.Z. applied for benefits in July 2004 at the Colgate Job Center, she did not bring with her sufficient documentation for her to receive benefits for herself. She brought her passport, a police report, and although she testified that she brought a temporary order of protection she admitted that she did not provide the order of protection annexed as Exhibit I to her declaration, as it was dated July 2005 She could not identify what (if any) order of protection she provided. Tr. p. 109 line 24 - p. 110 line 8; JZ Exhibit 5; Exhibits F and I to J.Z. Exhibit 11. She also admitted that she did not submit an I-130 document but testified that she submitted it the following day. Tr. p. 110, lines 11 - 15.

J.Z. testified that she did not use any public benefits to support herself and children in July 2004 and supported herself through contributions from her family and her mother and had not other means of support. Tr. p. 93 - line 22 - p. 94 line 2. However, in her declaration (Exhibit JZ 11) she stated “in July 2004 I was unemployed. At that time my husband was receiving food stamps, public assistance and

Medicaid for himself and our children. We supported ourselves with those benefits. Tr. p. 94 - lines 6 - p. 97 line 21; Exhibit JZ 11 at Par. 11.

J.Z. testified at first that she did not have her husbands EBT card but that she found it and learned the pin number - still insisting that she has never used it. Tr. p. 120, line 23 - p. 121 line 9. Upon information and belief the card was used to access benefits during the period July - September 2004. Tr. p. 146 lines 10 - 14; Tr. p. 125, lines 9 12.. She knew that if she had the PIN number and the card she could use the card to get benefits. Tr. p. 122 lines 9-15. She received a card in October 2004 which she used to pick up benefits from the card. Tr. p. 128 lines 3 - 6.

J.Z. received assistance from a lawyer in October 2004 to “fix her immigration status without the help of her husband.” The lawyer assisted her in filing for a VAWA self-petition in December or November 2004. Tr. p. 129 lines 8 - p. 131 line 3. She admittedly did not give the VAWA notice document to anyone in July 2004 when she went to the Colgate Job Center, and obtained it only months later. JZ Exh. 12; Tr. p. 134 lines 2 - 6. As of December 2004 J.Z. had not been informed that the prima facie notice had been issued. Tr. p. 140 lines 22 - 25.

J.Z. met with Mr. Martinez at HRA and showed him her prima facie notice in January 2005 which he gave to another HRA worker at the job center. Tr. p. 142 lines 10- 21. As of March 2005 JZ had been receiving cash assistance, and Medicaid, and she received a notice informing her of the determination in March 2005. Tr. p. 143 line 8 - p. 144 line 6. She requested a fair hearing in April 2005, after receiving a notice, because her benefits had decreased. Tr. p. 144 line 13 - p. 145 line 11. J.Z. admitted that her public assistance and food stamp amounts would change depending upon the type of facility where she lived, and that each time it changed she was aware that she was entitled to a hearing. Tr. p. 150 lines 18 - p. 151 line 19.

J.Z. showed her VAWA prima facie in connection with a recertification for public benefits in June 2005. Tr. p. 136 line 20 - p. 137 line 10. At the time she went to recertify she testified first that she had not received an approval notice of her VAWA self-petition and was told that her prima facie notice would expire in a few days after her certification. Tr. p. 154 line 8 - p. 155 line 2. J.Z. knew that her lawyer wrote to the U.S. Citizenship and Customs Service in a letter dated June 14, 2005 to “request an extension of her [J.Z.'s] I-130 prima facie determination which expires on June 18, 2005.” Tr. p. 155 lines 7-21; JZ Exhibit 14. J.Z. received benefits for June 2005 for that portion of the month before her prima facie notice expired and received a notice of the benefits she was going to get and understood that she could have a fair hearing. Tr. p. 158 lines 8 - 17; p. 159 1. 6 24. JZ received benefits retroactive to the summer of 2005. Tr. p. 159 line 25 - 14.

J.Z. is currently receiving public assistance, and food stamps for all of the people in her household, including herself. She is living in a four room NYCHA apartment for which she pays $137.00 dollars per month. Tr. p. 160 line 15 p. 161 line 20. J.Z. receives ongoing assistance and has received payment of retroactive money. She testified that she received payments in December 24 of more than $800 dollars in

food stamps and $555 in cash assistance which represented retroactive benefits. Tr. p. 168 - line 15 - p. 169 line 1.

In October 2005 J.Z. went to a recertification interview at Center 28. She brought with her documents including the approval notice of her I-360 VAWA self-petition, Exhibit JZ 13.Tr. p. 166 lines 10 25. After the interview she understood that she was going to receive cash assistance, Medicaid and food stamps for herself and for her children. Tr. p. 147 lines 1 - 21.

L.W.

L.W. admittedly does not have an I-130 notice or approval or an I-360 prima facie notice or approval under VAWA. While L.W. has a Visa, that Visa expired on September 29, 2005. Although L.W.'s assessment of her own condition is that she is disabled, she admittedly worked in 2005. Like many of the other individual plaintiffs, L.W. did not fully understand what had been written in her declaration that she signed in connection with the plaintiffs application for a preliminary injunction in this case. Excerpts follow from L.W.'s deposition testimony in this action are summarized below and set out as Ex. D to the Momo Dec.:

L.W. is a citizen of Jamaica. Tr. p 10 line 25 - p. 11 line 1. Her husband, whom she married in Jamaica and who is a naturalized citizen of the U.S., sent for her in October 2003. Tr p. 14 lines 2 - 3; p. 15 lines10 - 16; 23-24.; L.W. Exh 1.

L.W. came to the United States from Jamaica on October 15, 2003 and intended to live in the United States with her husband. Tr. p. 14, lines 22 - 24; p. 16 lines 13 - 19. On October 15, 2003 L.W. presented a Visa to immigration which has since expired on September 29, 2005. Tr. p. 19 lines 14 - 16; LW Exh. 2. L.W. is being helped by an attorney with the Safe Horizon Immigration Law Project to obtain a new visa. Tr. p. 20 lines 11 - 16, p. 21 lines 3 - 11.

L.W. testified that she does not have an I-130. p. 21 line 24 - p. 22 line 1.

L.W. does not have a VAWA self-petition prima facie or approval and has not applied under VAWA. Tr. p. 22, lines 7 - 17. L.W. testified that she has applied for a green card.

L.W. applied for food stamps, public assistance and Medicaid on or about March 17, 2005. Tr. p. 27 lines 16 - 22. She could not remember the name of the worker she met with at the center or the borough where the center was located. Tr. p. 18 lines 10 - 22.

L.W. testified that she thinks she brought a letter from the shelter, her birth certificate, her passport and her marriage license and her social [security] card, and nothing else when she applied for benefits in March 2005. Tr. p. 19 lines 10 - 22. She identified the birth certificate she brought as LW Exhibit 2, the Social Security card as LW Exh. 5, but could not produce a copy of the letter from the shelter to which she referred in connection with her March 17, 2005 application for benefits. Tr. p. 31 lines 22 - 25; p. 32 lines 1-15.

In connection with L.W.'s application for benefits in March 2005 she was asked to provide documentation of her alien status, specifically USCIS documentation or evidence of continuous U.S. residence since prior to 1/1/72, which she acknowledge on April 13, 2005 in her signed acknowledgment.. Tr. p. 37 lines 3 - 21; p. 38 lines 18 22; Exhibit L.W. 10; Exhibit L.W. 9.

After L.W. applied for benefits in March 17, 2005 she received Food Stamps, Medicaid and cash assistance, but the food stamps stopped. p. 32 line 21 - p. 33 line 7. L.W. received a notice that she was approved for Food Stamps for the period Mach 17, 2005 to August 31, 2005. Tr. p. 33 line 8 -p. 34 line 7; L.W. Exh. 6.

L.W. applied for public assistance, medical assistance and food stamps on May 31, 2005, but does not remember what documents she brought into the job center in connection with that application, although in subsequent questions, when prompted, stated she submitted a social security card, her passport, a statement from a shelter, and an alien registration card, but doesn't remember submitting any documents concerning her health on that date. Tr. p. 44 line 17 p. 45 line 24.

L.W. received a notice that she was accepted for public assistance for the period June 30, 2005 - November 30, 2005 and for Medicaid effective June 1, 2005. Tr. p40 line 22 -p. 41 line 23; Exhibit L.W. 11.

L.W. was asked to recertify her benefits and went to a recertification appointment at a job center on September 8, 2005 to recertify for cash assistance, medical assistance and food stamps as reflected in her signed application. Tr. p. 52 lines 17 - 22; Exhibit L.W. 15.

L.W. worked in 2005 as a babysitter caring for an infant three days per week for 8 hours/day. Tr. p. 56 line 12 - 13; p. 57 lines 4 - 5. L.W. went to an appointment on October 24, 2005 with FIA employment office at which she was asked about her health but does not remember the questions that she was asked as it was “so long, you know, I just can't remember everything.”. Tr. p. 59 line 19 -

L.W. admitted that every time she went to an appointment she always turned up but she doesn't really remember the majority of what they asked her and what she said to them “and so on.” Tr. p. 61 line 16 - 20. L.W. testified that she doesn't really have a memory of what happened on March 17, 2005 when she applied for public benefits. Tr. p. 67 lines 2 - 5.

L.W. does not understand the meaning of the words Medicaid disability determination. Tr. p. 69 lines 6 12. In December 2005 L.W. received cash assistance of $110 dollars and food stamps of $1000 dollars. Tr. p. 72 lines 11 - 21.

L.W. had a Fair Hearing at which she was represented by an attorney. Tr. p. 72 lines 7 10.

Marieme Diongue

This plaintiff does not even live in New York City according to her N.Y.S. Identification card issued on April 13, 2005, she lives in ?? which is in ?? She is not

entitled to benefits from the City of New York as reflected in this excerpt summarized below. See Momo Dec. Ex. E.

As of April 13 2005 Marieme Diongues address was listed on her N.Y.S. Identification Card (Diongue Exhibit 10) as a ?? address: ?? Tr. p. 99 lines 16 -25; Diongue Exhibit 10. She is not a New York City resident according to her identification

M.E.

M.E. did not provide sufficient documentation to the job center at the time she applied for benefits. She should have presented an I-130 with proof of domestic violence, in order to obtain benefits for herself and her immigrant daughter. She didn't do so. M.E. did receive benefits for her two citizen children. In addition, M.E. failed to cooperate with obtaining documentation in regard to social security. Following are excerpts summarized from M.E.'s testimony in this case: See Momo Dec. Ex. F.

M.E. came to the United States from Mexico in 1994. She did not have a passport from any country when she came to the United States in 1994. M.E. did not have a visa of any kind when she came to the United States in 1994. Tr. p. 67 lines 17 - 22. M.E. did not show any documents of any kind to anybody at immigration in order to gain entry into the United States in October 1994. Tr. p. 68 lines 18 - 20. M.E. walked across the border from Mexico to the United States with her daughter E Tr. p. 68 line 21 -p. 69 line 3. A person helped get her across. Tr. p. 75 lines 13 - p. 76 line 7; Tr. p. 11 lines 22 - 25.

After M.E. crossed over the border into the United States she had not been granted permission by anyone to remain lawfully in the United States. p. 73 lines 1 - 6. In response to the questions “Did there come a time when you were granted permission to remain in the United States?” M.E. responded “No.” Tr. p. 73 lines 12 - 14.

In July 2002 M.E. applied for public benefits for her two children who were born in the United States.(D and J,) and are U.S. citizens. Tr. p. 11 lines 1 - 19; p. 12 lines 12 - 15. M.E. did not apply for benefits for herself or for her daughter E in July 2002. p. 12 line 23 - p. 13 line 1. When M.E. applied for benefits in July 2002 she presented the birth certificate and social security cards of both citizen children and proof of address. M.E. also presented her birth certificate. Tr. p. 32 lines 23 - 6.

M.E. testified that she had an 1-130 listing her as a beneficiary in 2002 but she does not remember whether she brought that or any other immigration documents with her when she applied for benefits in 2002. M.E. did not possess any immigration documents apart from an I-130 in 2002. Tr. p. 34 line 14 - p. 35 line 9; p. 38 line s 7 - 11. M.E.'s two citizen children received benefits after M.E. applied on their behalf in July 2002. Tr. p. 49 lines 17 - 19.

M.E. obtained a lawyer (Reina Gangu) to represent her in 2004 and M.E. gave Reina M.E.'s I-130; Exh. M.E. 5. Tr. p. 47 line 18 - p. 49 line 5. M.E. obtained a temporary order of protection on May 11, 2004 in Family Court and a final order of protec-

tion on July 20, 2004. p. 84 line 24 - p. 86 line 9; Exhibit M.E. 7; Exhibit M.E. 8.

M.E. applied for benefits for herself in 2004. Tr. p. 49 lines 20 - 24. She did not go down to a job center to make application for herself to be added to her citizen childrens' case in June 2004 and relied on Reena Ganju, her lawyer, to make such application on M.E.'s behalf. Tr. p. 89 lines 15 - 23. M.E. gave the I-130 naming M.E. as a beneficiary and the order of protection to her lawyer, Ms. Ganju and other documents. She did not give the 1-130 naming her daughter Evelyn as a beneficiary to her lawyer. Tr. p. 91 lines 20 -25. M.E. does not remember whether she gave Ms. Ganju the temporary order of protection or the final order of protection (Exhibit M.E. 7; Exhibit ME 8) or any other documents in regard to domestic violence. Tr. p. 92 lines 4 - 12.

M.E. and her daughter were added to he citizen childrens' case. Tr. p. 86 lines 11 - 19; p. 87 lines 2-3. M.E. began receiving assistance in June 2004 after M.E.'s lawyer Ms.. Ganju asked for M.E. to be added to her citizen childrens' case. M.E.'s daughter was also added to the case after M.E. provided Ganju with an I-130 for this daughter.

Between 9/23/04 and 10/27/05 HRA sent four different notices and a letter requesting that M.E. provide social security cards or letters from social security for M.E. and her children. Exhibits M.E. 11 - 1; Tr. p. 5 line 11. Although M.E. was in possession of a letter dated July 1, 2004 denying her application for a social security card, M.E. Exhibit 16, she did not submit the letter in response to any of the requests. She was also asked to submit documentation regarding her social security in connection with a recertification of benefits on June 9, 2005. Tr. p. 14 line lines 6 - 9; p. 19 lines 8 - 20.. She was also told by a worker at the job center, Ms. Sosa to go to Social Security to obtain a letter from them and Ms. Sosa gave her the application. Tr. p. 19 line20 - p. 20 line 20; M.E. Exhibit 19.

M.E. finally went to the social security administration and took the letter Ms. Sosa had given her and received a letter from Social Security for herself, dated November 10, 2005 and one for her daughter E dated November 20, 2005. and submitted them to H.R.A. Tr. p. 20 line 14 - p. p. 23 line 21; Exhibit M.E. 20; Exhibit M.E. 21.

After the recertification M.E. received benefits for herself and E for food stamps, public assistance and Medicaid. Tr. p. 30 lines 13 - 15. Although benefits briefly stopped according to the testimony they were paid retroactively and restored.

M.K.B. O.P., L.W., M.A. Marieme Diongue, M.E. P.E., Anna Fedosenko, A.I., L.A.M., L.M., Denise Thomas, and J.Z., on their own behalf, and on behalf of their minor children and all others similarly situated, Plaintiffs, v. Verna EGGLESTON, as Commissioner of the New York City Human Resources Administration; Robert Doar, as Commissioner of the New York State Office of Temporary and Disability Assistance; and Antonia C. Novello, as Commissioner of the New York State
2005 WL 3881693 (S.D.N.Y.)

END OF DOCUMENT