

FILED

AUG 27 2001

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DEPUTY CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CATHOLIC SOCIAL SERVICES, INC.,
(CENTRO DE GUADALUPE IMMIGRATION
CENTER), et al.,

NO. CIV. S-86-1343 LKK

Plaintiffs,

v.

O R D E R

JOHN ASHCROFT, Attorney General of the
United States of America, et al.,

Defendants.

This matter is before the court on plaintiffs' motion to
reinstate Catholic Social Services, Inc. v. Ashcroft, Case No. CIV
S-86-1343 LKK ("CSS I"), and to consolidate it with Catholic Social
Services, Inc. v. Ashcroft, Case No. CIV S-98-629 LKK ("CSS II").
I decide their motions based on the papers and pleadings filed
herein and after oral argument.

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1 I.

2 PROCEDURAL HISTORY

3 The Immigration Reform and Control Act of 1986 ("IRCA") Pub.
4 L. 99-603, 100 Stat. 3359, codified at 8 U.S.C. §§ 1255, et seq.
5 (1986), created an amnesty program for aliens who were in the
6 United States unlawfully. Under the statute, aliens who were
7 continuously, but unlawfully, present in the United States prior
8 to January 1, 1982, could apply for adjustment of status. See
9 8 U.S.C. § 1255a(a)(2)(A). The application period ran from May 5,
10 1987 to May 4, 1988. 8 C.F.R. § 245a.2(a)(1). The statute
11 directed the Attorney General to grant a stay of deportation and
12 to issue interim work authorization to any immigrant who presented
13 a prima facie application for adjustment of status under IRCA. See
14 8 U.S.C. § 1255a(e)(2).

15 IRCA provided that "[a]n alien shall not be considered to have
16 failed to maintain continuous physical presence in the United
17 States . . . by virtue of brief, casual and innocent absences."
18 8 U.S.C. § 1255a(3)(B). The Attorney General issued regulations
19 defining "brief, casual and innocent" to mean "a departure
20 authorized by the Service (advance parole) subsequent to May 1,
21 1987 of not more than thirty (30) days for legitimate emergency or
22 humanitarian purposes." 8 C.F.R. § 245a.1(g). In other words, the
23 regulation made any individuals who left the United States for an
24 otherwise "brief, casual and innocent purpose" during the period
25 of eligibility without INS "advance parole" ineligible for amnesty
26 under IRCA. Pursuant to the regulation, the INS directed its

1 employees to reject amnesty applications from aliens who violated
2 the advance parole rule.

3 In CSS I, the plaintiff class challenged the regulation.
4 Their primary claim was that the regulation requiring pre-approval
5 by the INS before any brief, casual, or innocent departure from the
6 country was unlawful, and that any application of that regulation
7 resulting in the denial of an opportunity to apply for or receive
8 legalization, was contrary to Congressional intent. They alleged
9 that the INS denied applications submitted by some undocumented
10 immigrants based on policies implementing the advance parole rule,
11 and that others, who were potentially eligible for legalization
12 under IRCA, were deterred from completing applications or
13 attempting to obtain applications as a result of INS publicity
14 regarding eligibility under the rule.

15 The court originally certified the class to include persons
16 who were prima facie eligible for amnesty under the statute,
17 8 U.S.C. § 1255a, but who departed and reentered the country after
18 a "brief, casual and innocent" absence without pre-approval by the
19 INS. On May 3, 1988, this court modified the class certification
20 to include:

21 (1) All person prima facie eligible for legalization under INA §
22 245A who departed and reentered the United States without INS
23 authorization (i.e., "advance parole") after the enactment of IRCA
following what they assert to have been a brief, casual and
innocent absence from the United States; or

24 (2) All persons having a nonfrivolous claim to legalization under
25 INA § 210 who reentered or attempted to reenter the United States
26 without INS authorization (i.e., "advance parole") on or after
November 6, 1986

1 Order filed May 3, 1988 at 2-3.

2 In a separate order filed that month, this court held that the
3 INS regulation requiring advance parole prior to brief absences was
4 inconsistent with the plain language and intent of IRCA, and
5 accordingly, declared the regulation invalid. See Catholic Social
6 Services v. Meese, 685 F. Supp. 1149 (E.D. Cal. 1988). The
7 defendants did not appeal that order. The government, however, did
8 appeal this court's orders granting plaintiffs in that action
9 interim relief. The Ninth Circuit affirmed. See Catholic Social
10 Services, Inc. v. Thornburgh, 956 F.2d 914 (9th Cir. 1992).¹

11 After granting certiorari, the Supreme Court determined that
12 although ripeness had not been raised, "a class member's claim
13 would ripen only once he took the affirmative steps that he could
14 take before the INS blocked his path by applying the regulation to
15 him." Reno v. Catholic Social Services, Inc., 509 U.S. 43, 59
16 (1993). In other words, in order to establish a ripe claim,
17 plaintiffs had to demonstrate that they had filed otherwise
18 adequate applications for amnesty that were not processed or
19 accepted for processing because of an unauthorized absence. Id.
20 In a footnote, the majority acknowledged that a ripe claim might
21 be demonstrated by proof of something short of a completed

22
23 ¹ While the appeal was pending, this court's order was
24 subject to a stay. Under the terms of the stay, the INS was
25 obligated to grant a stay of deportation and temporary work
26 authorization to any class member whose application made a prima
facie showing of eligibility for legalization but the service was
not obligated to process the applications. See Reno, 509 U.S. at
53 n.13.

1 application. Id. at 67 n.28. The alternative basis of ripeness
2 suggested by the Supreme Court was subsequently determined to
3 encompass those individuals who were "constructively front-desked."
4 Villarina v. INS, 18 F.3d 765, 767 (9th Cir. 1994) (recognizing that
5 the Supreme Court left open the possibility that informal front-
6 desking could be a substantial cause of injury for the purpose of
7 standing).

8 After remand, plaintiffs filed a Seventh Amended Complaint,
9 containing a modified class definition.² This court denied
10 defendants' motion to dismiss the Seventh Amendment Complaint after
11 finding that plaintiffs' five claims for relief were within the
12 jurisdiction of the court and were ripe for adjudication under the
13 Supreme Court mandate in this case as well as under the analyses
14 discussed in McNary v. Haitian Refugee Center, 498 U.S. 479 (1991)
15 and Villarina, 18 F.3d 765. See Order filed March 17, 1995. The
16 court also approved the new class which included:

17 All persons, otherwise eligible for legalization under IRCA, who,
18 after November 6, 1986, depart or departed the United States for
19 brief, innocent and casual absences without advance parole, and who
20 (i) are therefore deemed ineligible for legalization, or (ii) were
21 informed that they were ineligible to apply for, or were ineligible
22 for legalization, or were refused by the INS or its QDES
23 legalization forms, and for whom such information, or inability to
24 obtain the required application forms, was a substantial cause of
25 their failure to timely file or complete a written application.

26 ² The Seventh Amended Complaint did not include any named
27 plaintiffs who alleged that they tendered completed applications
28 to an INS officer during the relevant period and had the
29 application rejected based on the advance parole regulation. The
30 Seventh Amended Complaint did, however, include allegations from
31 three named plaintiffs who alleged that they went to an INS office
32 and were refused an application form by a legalization officer.
33 Seventh Am. Compl. at ¶¶ 18-20.

1 Order filed November 3, 1995. The court re-entered interim relief
2 for the class and defendants appealed.

3 While the defendants' appeal was pending, Congress enacted the
4 Illegal Immigration Reform and Immigrant Responsibility Act of
5 1996, Pub. L. No. 104-208, 110 Stat. 3009 (1996) ("IIRIRA").
6 Section 377 of IIRIRA, codified at 8 U.S.C. § 1255a(f)(4), divested
7 the federal court of jurisdiction over legalization-related claims
8 unless the "person asserting an interest . . . attempted to file
9 a complete application and application fee with an authorized
10 legalization officer of the [Immigration and Naturalization]
11 Service but had the application and fee refused by that officer."
12 A divided panel of the Ninth Circuit held that enactment of § 377
13 of the IIRIRA stripped the court of jurisdiction over the named
14 plaintiffs' claims and directed this court to dismiss the case.
15 Catholic Social Services, Inc. v. Reno, 134 F.3d 921 (9th Cir.
16 1998). Following the Ninth Circuit remand, this court dismissed
17 the plaintiff class without prejudice for lack of subject matter
18 jurisdiction.³

19 The Ninth Circuit's order directing the court to dismiss CSS
20 I specifically provided that nothing in the opinion "should be
21 construed as deciding the question whether a new complaint can be
22 filed in the district court on behalf of persons who allege that

23
24 ³ Thereafter, on June 18, 1998, the Circuit issued an order
25 recalling the mandate. This court concluded that the existence of
26 an ongoing case was implicit in the Circuit's assertion of power
to recall the mandate, and accordingly vacated its March 10, 1998
order dismissing the case. The Circuit then again issued its
mandate and this court again dismissed the case.

1 they physically tendered a complete application and fee or
2 attempted to do so." Id. at 928 n.4. On April 7, 1998, plaintiffs
3 filed a new action, Catholic Social Services, Inc. v. Reno, No. CIV
4 S-98-629 LKK ("CSS II").

5 In contrast to CSS I, the CSS II complaint named six
6 plaintiffs who alleged that they physically tendered a
7 completed application and fee to an INS official during the
8 statutory period but that the official rejected the completed
9 application based on the advance parole regulation. Compl. at
10 ¶¶ 17 - 20, 23, 25. In addition, plaintiffs submitted declarations
11 from seventeen other individuals who averred that they too tendered
12 completed applications during the relevant period only to have the
13 application rejected based on the advance parole regulation. See
14 Pls.' Exhs. 9, 13-14, 21, 23-26, 28, 30, 34-36, 39, 47, 49-50.
15 From all that appeared in the record, each of these individuals was
16 also determined by the INS to be a class member in CSS I.

17 In CSS II, the court provisionally certified the following
18 class:

19 All persons who timely filed for class membership under
20 Catholic Social Services, Inc. v. Reno, CIV No. S-86-1343 LKK (E.D.
21 Cal.) and were otherwise prima facie eligible for legalization
22 under section 245A of the INA and were thus granted class
23 membership, and who tendered completed applications for
24 legalization under section 245A of the INA and fees to an INS
officer or agent acting on behalf of the INS, including a QDE,
during the period from May 5, 1987 to May 4, 1988, and whose
applications were rejected for filing because they had traveled
outside the United States after November 6, 1986 without advance
parole.

25 Order filed July 2, 1998 at 44.

26 ////

1 On appeal, the Ninth Circuit affirmed the district court's
2 determination that the plaintiffs had a right to maintain a second
3 successive class action. See Catholic Social Services, Inc. v.
4 Reno, 232 F.3d 1139 (9th Cir. 2000) (en banc). Among other things,
5 the Ninth Circuit held that the statute of limitations had been
6 tolled during the pendency of CSS I, and that the plaintiffs were
7 therefore not barred from bringing a second class action. 232 F.3d
8 at 1146-49.

9 On December 18, 2000, the Ninth Circuit granted the
10 Government's motion to stay its mandate pending Supreme Court
11 consideration of any petition for certiorari that may be filed.
12 Shortly thereafter, Congress passed, and on December 21, 2000, the
13 President signed into law, the Legal Immigration Family Equity Act
14 ("LIFE") as part of the Department of Commerce, Justice, and State,
15 the Judiciary, and Related Agencies Appropriations Act, 2001, Pub.
16 L. No. 106-553, 1114 Stat. 2762 (Dec. 21, 2000). On the basis of
17 the enactment of LIFE, on January 6, 2001, the Government filed a
18 motion to vacate as moot the Ninth Circuit's en banc judgment, as
19 well as the class-wide preliminary injunctive relief issued by this
20 Court. Plaintiffs opposed the Government's motion contending,
21 among other things, that eliminating the jurisdictional bar to suit
22 by persons who were allegedly discouraged from filing an
23 application for legalization, see LIFE § 1104(c)(8) and (f) (making
24 IIRIRA § 377 inapplicable to individuals covered by the LIFE Act),
25 Congress intended for CSS I class members to proceed with their
26 claims before the federal courts in CSS II. On February 13, 2001,

1 the Ninth Circuit en banc denied the Government's motion to vacate,
2 and ordered the immediate spread of the mandate.

3 **II.**

4 **ANALYSIS**

5 **A. The LIFE Act**

6 The LIFE Act repeals § 377's limitation on subject matter
7 jurisdiction nunc pro tunc. LIFE Act § 1104(c)(8) provides:

8 (8) Jurisdiction of Courts. - Effective as of November 6, 1986,
9 subsection (f)(4)(C) of such section 245A⁴ shall not apply to an
eligible alien described in subsection (b) of this section.

10 The LIFE Act defines "eligible aliens" as those persons who
11 "before October 1, 2000 . . . filed with the Attorney General a
12 written claim for class membership, with or without a filing
13 fee, pursuant to a court order issued in the case[] of [inter
14 alia] . . . Catholic Social Services, Inc. v. Meese, vacated sub
15 nom. Reno v. Catholic Social Services, Inc., 509 U.S. 43
16 (1993)." LIFE Act § 1104(b).

17 ////

18 ////

19 _____
20 ⁴ The section provides:

21 Notwithstanding any other provision of law, no court
22 shall have jurisdiction of any cause of action or claim
23 by or on behalf of any person asserting an interest
24 under this section unless such person in fact filed an
25 application under this section within the period
specified by subsection (a)(1) of this section, or
attempted to file a complete application and application
fee with an authorized legalization officer of the
Service but had the application and fee refused by that
officer.

26 8 U.S.C. § 1255a(f)(4)(C).

1 **B. Motion for Reconsideration**

2 Initially, I note that the Ninth Circuit's order to dismiss
3 this case does not bar consideration of the plaintiffs' Rule
4 60(b) motion. See Standard Oil Co. of California v. United
5 States, 429 U.S. 17 (1976) (party could move the district court
6 under Fed. R. Civ. P. 60(b) to reopen case that had been
7 reviewed on appeal without first obtaining leave of the
8 appellate court) (per curium); Gould v. Mutual Life Ins. Co., 790
9 F.2d 769, 772 (9th Cir.), cert. denied, 479 U.S. 978
10 (1986) ("[O]nce the appellate mandate has issued, leave of this
11 court is not required for district court consideration of a Rule
12 60(b) motion"); Deweerth v. Baldinger, 38 F.3d 1266 (2d Cir.),
13 cert. denied, 513 U.S. 1001 (1994) ("Rule 60(b) motion to reopen
14 a case that had been reviewed on appeal was not required to
15 obtain leave of the appellate court or a withdrawal of the
16 appellate court's mandate before proceeding in the district
17 court.") (citations omitted); LSLJ Partnership v. Frito-Lay,
18 Inc., 920 F.2d 476, 479 (7th Cir. 1990) (district court has
19 jurisdiction to hear Rule 60(b) motion based upon alleged change
20 in law arising after appellate court mandate). I now turn to
21 the merits of plaintiffs' motion.

22 "On motion and upon such terms as are just, the court may
23 relieve a party . . . from a final judgment . . . for
24 any reason justifying relief from the operation of the judgment
25" Fed. R. Civ. P. 60(b)(6). This catch-all provision of
26 Rule 60(b) "vests power in courts adequate to enable them to

1 vacate judgments whenever such action is appropriate to
2 accomplish justice." Klapprott v. United States, 335 U.S. 601,
3 615 (1949). Nonetheless, in order to seek relief under Rule
4 60(b)(6), the movant must demonstrate "extraordinary
5 circumstances." Liljeberg v. Health Services Acquisition Corp.,
6 486 U.S. 847 (1988) (quoting Ackermann v. United States, 340 U.S.
7 193, 199 (1950)).

8 In the case at bar, plaintiffs have demonstrated
9 extraordinary circumstances requiring reconsideration of the
10 court's 1998 dismissal. The nunc pro tunc repeal of § 377
11 specifically for certain class members in this action, see
12 discussion infra, makes reconsideration particularly
13 appropriate. See Mohammed v. Sullivan, 866 F.2d 258, 260 (8th
14 Cir. 1989) ("A post-judgment change in the law having retroactive
15 application may, in special circumstances, constitute an
16 extraordinary circumstance warranting vacation of a
17 judgment.") (quoting Matarese v. LeFevre, 801 F.2d 98, 106 (2d
18 Cir. 1986), cert. denied, 480 U.S. 908 (1987)); accord In re
19 Pacific Far East Lines 889 F.2d 242, 249-250 (9th Cir. 1989);
20 Calderon v. United States District Court (Kelley), 163 F.3d 530
21 541 n.10 (9th Cir. 1988). First, § 377 of IIRIRA was the but
22 for cause of this court's dismissal of CSS I.⁵ Second, as I

23
24 ⁵ Defendants maintain that this court had to dismiss CSS I
25 notwithstanding § 377 of IIRIRA because the Ninth Circuit panel
26 held that plaintiffs failed to assert any ripe claims in their
complaint. See Catholic Social Services, Inc. v. Reno (CSS I), 134
F.3d at 928 ("Section 377 did not change the requirement that class
members must have been front-desked; instead, § 377 eliminated

1 explain below, plaintiffs will suffer injury if this court does
2 not reinstate CSS I. In this regard, I turn to the plaintiffs'
3 most persuasive arguments concerning the difference between IRCA
4 and the LIFE Act.

5 Plaintiffs first argue that the continuous unlawful
6 residence requirement differ between IRCA and LIFE.
7 Specifically, under IRCA applicants must establish that they
8 resided continuously in the United States in an unlawful status
9 from before January 1, 1982 to the date they applied for

11 federal court jurisdiction for aliens who were not actually front-
12 desked but were discouraged by the policy.") It is arguable that
13 this position is contrary to that adopted by the High Court. See
14 Reno v. Catholic Social Services, Inc., 509 U.S. 43, 67 n.28
15 (1993) (" . . . [W]e cannot rule out the possibility that further
16 facts would allow class members who were not front-desked to
17 demonstrate that the front-desking policy was nevertheless a
18 substantial cause of their failure to apply, so that they can be
19 said to have had the 'advanced parole' or 'facially valid document'
20 regulation applied to them in a sufficiently concrete manner to
21 satisfy ripeness concerns."). This court, however, cannot, and
22 need not, decide whether the panel's reading of the Supreme Court
23 holding was proper, as the panel's decision was overruled by
24 Catholic Social Services, Inc. v. Reno (CSS II), 232 F.3d 1139.
25 In that case, the court noted that

19 There are two groups of plaintiffs with potentially
20 viable claims in this case. . . . The second group is
21 plaintiffs who satisfy the constitutional ripeness
22 criteria of [Reno v. Catholic Social Services, Inc., 509
23 U.S. 43] . . . but not the statutory criteria of § 377.
24 In the words of the Court[,]. . . these are plaintiffs
25 who have "[taken] the affirmative steps that [they]
26 could before the INS blocked [their] path by applying
the regulation to [them]." 509 U.S. at 59. These
plaintiffs include, at a minimum, those who went to an
INS office and told their story to an INS officer at the
front desk, were told that they were ineligible to
apply, and were turned away without an application.

26 Id. at 1145-6.

1 legalization. 8 U.S.C. § 1255a(a)(2)(A).⁶ The Supreme Court
2 held in CSS I that class members "applied" for legalization at
3 the time they were front-desked. See Reno v. Catholic Social
4 Services, 509 U.S. 43, 67 n. 29 (1993). Under the LIFE Act,
5 however, individuals must establish that they resided
6 continuously in the United States in an unlawful status from
7 before January 1, 1982 to May 4, 1988. LIFE Act §
8 1104(c)(2)(B).⁷

9 Second, plaintiffs argue that there are substantial
10 differences between the period of continuous physical presence
11 required under the LIFE Act and that required under IRCA.
12 IRCA required applicants to prove continuous physical presence
13 in the United States since November 6, 1986. 8 U.S.C. §
14 1255a(a)(3)(A). INS regulations clarified that the applicant's
15

16 ⁶ The section provides:

17 The alien must establish that he entered the United
18 States before January 1, 1982, and that he has resided
19 continuously in the United States in an unlawful status
since such date and through the date the application is
filed under this subsection.

20 ⁷ The section provides:

21 The alien must establish that the alien entered the
22 United States before January 1, 1982, and that he or she
23 has resided continuously in the United States in an
unlawful status since such date and through May 4, 1988.
24 In determining whether an alien maintained continuous
unlawful residence in the United States for purposes of
25 this subparagraph, the regulations prescribed by the
Attorney General under section 245A(g) of the
26 Immigration and Nationality Act that were most recently
in effect before the date of the enactment of this Act
shall apply.

1 obligation to prove continuous physical presence from November
2 6, 1986 ran only to the date of application. 8 C.F.R. §
3 245a(f). The LIFE Act, in contrast, requires all applicants to
4 prove continuous physical presence from November 6, 1986 to May
5 4, 1988. Thus, class members who interrupted their continuous
6 physical presence after being front-desked or constructively
7 front-desked are not aided by the LIFE Act's legalization
8 provisions.

9 Third, plaintiffs cite to the differences between the
10 exception for continuous physical presence in the United States
11 for "brief, casual and innocent" absences. Under IRCA, as
12 interpreted by this court, a "brief, casual and innocent"
13 absence is to be determined in accordance with the historical
14 interpretation that phrase had been given in immigration law and
15 was not subject to categorical definition by regulation.
16 Catholic Social Services, Inc. v. Meese, 685 F. Supp. at 1159-
17 60. Regulations implementing the LIFE Act legalization
18 provisions, on the other hand, set out a "categorical definition
19 by regulation" of continuous physical presence that uniquely
20 applies to the continuous physical presence requirement of the
21 LIFE Act legalization provisions. See 8 C.F.R. § 245a.16(b).
22 Specifically, the regulation provides that "[a] single absence
23 from the United States of more than thirty (30) days or an
24 aggregate of all absences exceeding ninety (90) days shall not
25 be deemed to be a brief, casual, and innocent absence unless the
26 alien had advance parole or the alien can establish that due to

1 emergent reasons, his or her return to the United States could
2 not be accomplished within the time period(s) allowed." Id.

3 Fourth, plaintiffs cite to the different "admissibility"
4 standards of IRCA and LIFE. INS regulations implementing the
5 LIFE Act's legalization provisions specify that to establish
6 admissibility an applicant must prove "financial
7 responsibility." 66 Fed.Reg. 29661, 29678 (June 1, 2001), to be
8 codified at 8 C.F.R. § 248a.18(d). The regulation provides that
9 "financial responsibility of the alien is to be established by
10 examining the totality of the alien's circumstances at the time
11 of his or her application for adjustment." Id. (emphasis
12 added). The regulations further provide that, "[a]n alien with
13 a consistent employment history which shows the ability to
14 support himself or herself even though his or her income may be
15 below the poverty level is not excludable. . . ." Id. (emphasis
16 added). Similar provisions regulated the public charge
17 determination during the 1987-88 application year. See 8 C.F.R.
18 § 245a.2(k)(4). As plaintiffs maintain, had the INS accepted
19 and adjudicated class members' legalization applications during
20 the original 1987-88 application year, the determination of
21 whether a given class member was likely to become a public
22 charge would have taken place then, some 12-13 years ago, when
23 there was no legal bar to class members' working in the United
24 States. See 8 U.S.C. § 1324a. Thus, it appears that class
25 members would have had a greater ability of proving a consistent
26 record of employment in 1987-88 than today.

1 Defendants only response to these distinctions is that
2 plaintiffs can adjudicate their claims in CSS II. Clearly, this
3 is not true. Immigrants who were front-desked cannot adjudicate
4 these differences in CSS II because they are not part of the CSS
5 II class as a result of § 377. The repealing of § 377, however,
6 reverses that and allows plaintiffs to adjudicate these issues
7 in CSS I.

8 For all the above reasons, the court concludes that
9 reinstatement is appropriate.

10 **C. Motion to Consolidate**

11 It is clear that CSS I should be consolidated for all
12 purposes with CSS II. Rule 42 of the Federal Rule of Civil
13 Procedure provides:

14 When actions involving common questions of law or fact are
15 pending before the court, it may order a joint hearing or trial
16 of any or all the matters in issue in the actions; it may order
17 all the actions consolidated; and it may make such orders
concerning proceedings therein as may tend to avoid unnecessary
costs or delay.

18 There are common questions of law and fact presented by CSS
19 I and CSS II. Furthermore, there is some overlap in the classes
20 certified in both cases and in the identity of defendants.
Moreover, consolidation serves judicial economy.

21 **III.**

22 **ORDERS**

23 Accordingly, the court hereby makes the following ORDERS:

24 1. Catholic Social Services, Inc. et al. v. Ashcroft et
25 al., Case No. CIV S-86-1343 LKK ("CSS I"), is REINSTATED as to
26 those class members aliens who "before October 1, 2000 . . .

1 filed with the Attorney General a written claim for class
2 membership, with or without a filing fee pursuant to a court
3 order;"

4 2. Plaintiffs' motion to consolidate CSS I with CSS II is
5 GRANTED;

6 3. The Clerk is directed to COPY the complaint and answer
7 in Case No. CIV. S-98-629 LKK and place those documents in Case
8 No. CIV. S-86-1343 LKK;

9 4. The Clerk is further directed to CLOSE Case No. CIV. S-
10 98-629. The parties shall reference ONLY Case No. CIV. S-86-
11 1343 LKK on all future pleadings;

12 5. Plaintiffs motion to amend is DENIED WITHOUT
13 PREJUDICE⁸; and

14 6. A Status (Pretrial Scheduling) Conference is now SET
15 for September 17, 2001 at 3:00 p.m. in Courtroom No. 4. The
16 parties are reminded of their obligation to file and serve
17 status reports not later than ten (10) days preceding the
18 conference.

19 IT IS SO ORDERED.

20 DATED: August 24, 2001.

21 
22 LAWRENCE K. KARLTON
23 SENIOR JUDGE
24 UNITED STATES DISTRICT COURT
25
26

24 ⁸ It is not clear to the court whether or not plaintiffs
25 continue to maintain that individuals not covered by the LIFE Act
26 are, nonetheless, able to pursue their claims in CSS I. In light
of this, the court will deny their motion for leave to amend
without prejudice in order to allow them to file a second motion
to amend.

United States District Court
for the
Eastern District of California
August 27, 2001

* * CERTIFICATE OF SERVICE * *

2:86-cv-01343

Catholic Social Svc

v.

Orantes

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on August 27, 2001, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office, or, pursuant to prior authorization by counsel, via facsimile.

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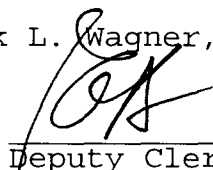
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