

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

VENANTIUS NKAFOR NGWANYIA, WESENE)
AYELE GIZAW, MERDEKIOS DURESSA,)
MOHAMAD FARAH, MARY W. KARIUKI, SALAH)
FARAH, ALOYSIUS TABUE, FAKMI HYSENAJ, MAT)
DUPUY, SOLANGE PIERRE, DIEUZEVE JOSEPH,)
AKBAR L. NG, VERA CATALINA CASTILLO)
RAMIREZ, ZOILA MARGARITA CASTILLO)
RAMIREZ, LUIS CARBALLO-MANZANARES,)
MARIA HERRERA, MARIE DIOGENE, GRACIELA)
MARTINEZ, PATRICK DAVIES, FAWZY A.)
ABDELSAMAD, STELLA EMUWAHEN ERHABOR,)
MURAD FAKHOURI, JACI CAETANO PEREIRA,)
ARSLAN DURRANI, FAISAL USMAN, SHERMAN)
BROWN, LAURA TABUE, OLEKSANDER)
ZINKOVSKY, UNSHEJU MBU IZAMPUYE,)
JOSEPH COLEMAN, ADRIENNE KAZARWA,)
AMONDIEU MILFORT, DRAGON CVETKOVIC,)
AMAN YAKOB, NINA IONESCU, SANTIAGO RUANO)
OLIVA, ABDIAZIZ HASSAN, PATRICIA MUENDO,)
ALI MURTAZA, PIERRE BOUMTJE, MARTINE)
ERNESTINE BOUMTJE, ROSEMARY EKEADA,)
ILTAM S. JEAN-CAIDOR, BASSEM EL-KHATIB,)
BEKANA HULUKA, and FUAD SUMO, on behalf)
of themselves and all others similarly situated,)

Plaintiffs,)

v.)

JOHN ASHCROFT, Attorney General, JAMES W.)
ZIGLAR, Commissioner of the Immigration)
and Naturalization Service, and)
THE IMMIGRATION AND)
NATURALIZATION SERVICE,)

Defendants.)

No.02-CV-502 RHK/JMM

COMPLAINT FOR
DECLARATORY,
MANDAMUS AND
INJUNCTIVE RELIEF

CLASS ACTION

INTRODUCTION

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

1. This is a class action on behalf of people from many countries who were eligible for, sought, and received asylum in the United States. As more specifically explained herein, plaintiffs and class members they seek to represent were harmed by defendants' violations of federal statutes and their own regulations. Defendants have misadministered the visa allocation system and waiting list that determines when asylees can become lawful permanent residents of the United States. Specifically, since Fiscal Year 1994, defendants have failed to distribute approximately 18,417 available asylee immigrant visas that should have been allocated to waiting plaintiffs and class members.

2. Plaintiffs and class members all fled to the United States as refugees from persecution in their home countries. All plaintiffs and class members were given asylum in this country by the United States government and are, therefore, "asylees." All plaintiffs and class members are in valid asylee status and as such are eligible to become lawful permanent residents and then citizens of the United States.

3. Defendants' failures have prevented plaintiffs and class members from adjusting their immigration status to lawful permanent resident status and thereby stabilizing their lives. These failures also delayed plaintiffs' and class members' becoming United States citizens. Defendants' other actions and misinterpretations of law have cost many plaintiffs and class members hundreds of dollars in unnecessary fees and untold lost opportunities for employment and advancement.

4. Plaintiffs, class members, and where they have been represented, their lawyers on their behalf have inquired and complained repeatedly to the defendants about the delays without any resolution.

5. Plaintiffs seek declaratory, mandamus, and injunctive relief against the defendants for the defendants' policies, practices, interpretations of law, and failures to properly administer the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et seq. and applicable regulations.

JURISDICTION

6. This Court has subject matter jurisdiction of this action under 28 U.S.C. §1331 (federal question jurisdiction) because plaintiffs' claims arise under the laws of the United States, specifically §209(b) of the INA, 8 U.S.C. §1159(b) and applicable regulations arising thereunder. This Court may grant relief in this action under 28 U.S.C. §1361 (Mandamus Act); 28 U.S.C. §1651 (All Writs Act); 28 U.S.C. §2201 (Declaratory Judgment Act); and under 5 U.S.C. §701 et seq. (Administrative Procedures Act).

7. There are no administrative remedies available to plaintiffs or class members to redress the grievances described herein. This action challenges only the defendants' procedural policies, practices, and interpretations of law, not the granting or denial of individual applications. Therefore, the jurisdictional limitations of INA §242, 8 U.S.C. §1252 are not applicable.

VENUE

8. Venue is proper in this Court under 28 U.S.C. §1391(e) because this is a civil action in which the defendants John Ashcroft and James W. Ziglar are officers of the United States acting in their official capacities and the Immigration and Naturalization Service (INS)

is an agency of the United States; because plaintiffs Venantius Nkafor Ngwanyia, Wesene Ayele Gizaw, Merdekios Duressa, Mohamed Farah, Mary W. Kariuki and many class members reside in this judicial district; and because many of the events or omissions giving rise to the claim occurred in this judicial district.

DEFENDANTS

9. John Ashcroft is the Attorney General of the United States. He is charged with the administration and enforcement of the immigration laws. 8 U.S.C. § 1103(a). He is sued in his official capacity.

10. James W. Ziglar is the Commissioner of the INS. He is charged with any and all responsibilities and authority in the administration of the INS as have been delegated or prescribed by the Attorney General. He is sued in his official capacity.

11. The INS is an agency of the United States government. It has primary responsibility for implementation of the immigration laws, including the INA and applicable regulations.

RELEVANT STATUTORY AND REGULATORY BACKGROUND

Asylum and Asylee Adjustment

12. Under INA §208, 8 U.S.C. §1158, noncitizens in the United States may apply for asylum. If they establish they are refugees as that term is defined in INA §101(a)(42)(A), 8 U.S.C. §1101(a)(42)(A), and meet the other conditions and requirements, they are granted asylum and become asylees. The government may not return asylees to their home country. Asylees are authorized to work within the United States and to travel outside the United States and be readmitted upon their return. INA §209(c)(1)(C), 8 U.S.C. §1159(c)(1)(C).

Asylee status is indefinite; that is, it does not automatically terminate but continues indefinitely. 8 C.F.R. §208.14(d).

13. However, asylee status can be revoked, and the asylee may be deported, if the conditions in the home or “sending” country change substantially. INA §208(c)(2)(A), 8 U.S.C. §1158(c)(2)(A). Asylees also are required to obtain a “refugee travel document” to reenter after travel outside the United States. INA §208(c)(1)(C), 8 U.S.C. §1158(c)(1)(C); 8 C.F.R. §223.2. Defendants charge a fee for a refugee travel document. Defendants have increased the fee over the years and increased it again on February 19, 2002 to \$110. 66 Fed. Reg. 65811.

14. After one year of physical presence in the United States as an asylee, asylees may apply to “adjust” their status to lawful permanent residence (LPR). INA §209(b)(2), 8 U.S.C. §1159(b)(2). LPRs are known colloquially as people who hold “green cards.” When asylees adjust their status, technically they are granted the visa status of LPR. INA §209(b), 8 U.S.C. §1159(b).

15. Lawful permanent resident status confers many advantages over asylee status. As the name implies, LPRs have the privilege of residing and working permanently in the United States. INA §101(a)(20), 8 U.S.C. §1101(a)(20). They may travel outside the United States freely and generally are readmitted to the United States automatically. INA §101(a)(13)(C), 8 U.S.C. §1101(a)(13)(C). They may petition to immigrate close family members. INA §201, 8 U.S.C. §1151; INA §203, 8 U.S.C. §1153.

16. LPRs may retain their LPR visa status (or their “green card”) for the rest of their lives or, after five years of LPR status, they may apply to “naturalize,” that is, to become a United States citizen. INA §316(a), 8 U.S.C. §1427(a). Citizenship conveys many

benefits over LPR status. Citizens may vote; they have a United States passport; they cannot be deported from the United States; and they may travel freely into and out of the United States. They may petition to immigrate family members, including elderly parents, as “immediate relatives,” thus eliminating many long waiting periods. INA §201(b)(2)(A)(i), 8 U.S.C. §1151(b)(2)(A)(i). They may hold many jobs that are restricted to United States citizens. They may run for public office.

17. LPR status is a prerequisite for naturalization. Thus, any delay in adjusting to LPR status also delays eventual naturalization.

18. There is no limit on the number of people who can be granted asylum. There is, however, a statutory annual cap on the number of asylees who can adjust their status, that is, who can be granted visas as LPRs. INA §209(b), 8 U.S.C. §1159(b) imposes a limit of 10,000 asylee adjustments to LPR status in a fiscal year.

19. The fiscal year for asylee adjustments begins in October. Each year on October 1, the defendants have a new allotment of 10,000 immigrant visas to allocate.

20. In recent years, there have been more asylees applying for adjustment than there have been visas. Compounding the backlog, the INS has not been distributing all 10,000 available visas to waiting asylees. Therefore, there is currently a backlog of more than 60,000 asylees awaiting adjustment of status. This translates into more than a six-year wait for adjustment, even though Congress anticipated asylees would become LPRs one year after being granted asylum.

21. Under the applicable regulation, the defendants must manage the backlog by implementing a priority waiting list based on the date that each asylee’s adjustment application was properly filed. 8 C.F.R. §209.2(a)(1). The regulation says that “the waiting

list will be established on a priority basis by the date the application was properly filed.” That is, asylees must be adjusted under a first-in, first-out system.

Exempt Asylees

22. Congress periodically has designated specific groups of asylees who may adjust to LPR status without being subject to the numerical cap of INA § 209(b), 8 U.S.C. §1159(b). These exempt groups do not have to wait in the queue for an immigrant visa.

23. One such exempt group is Kurdish Iraqi nationals who worked for the United States government during 1996 or 1997 and were evacuated as part of “Operation Pacific Safe Haven.” Pub. L. No. 105-277, Title I, § 128. Estimates of the number of people who fit this exemption range from 5,000 to 10,000. Another exempt group is Indochinese parolees from Cambodia, Vietnam or Laos who were paroled into the United States before October 1, 1997. Pub. L. No. 106-429, §586. A maximum of 5,000 asylees may qualify under this exemption. A third exempt group is certain nationals of Syria. Pub. L. No. 106-378. A maximum of 2,000 asylees can qualify for the Syrian exemption.

Employment Authorization

24. It is unlawful for an employer to hire a noncitizen who is not authorized to work in the United States. INA §274A, 8 U.S.C. §1324a. Asylees are authorized to work in the United States, incident to their status as asylees. INA §208(c)(1)(B), 8 U.S.C. §1158(c)(1)(B). The same statutory section also requires the Attorney General to “provide the [asylee] with appropriate endorsement of that authorization.”

25. A separate regulation recognizes that asylees are employment-authorized incident to status, but nevertheless goes on to require that the asylee apply for an employment

authorization document (EAD) evidencing employment authorization. 8 C.F.R. § 274.12(a) and 274a.12(a)(5). The regulations do not provide that EADs expire.

**DEFENDANTS' ACTIONS AND FAILURES TO ACT
THAT HAVE HARMED THE PLAINTIFFS AND CLASS MEMBERS**

Failure to Allocate All Available Visas

26. Defendants have failed to distribute all 10,000 LPR visas in several recent fiscal years. Specifically, according to defendants' Annual Reports, defendants allocated the following number of asylee visas in the specified fiscal years:

FY	#	% OF 10,000
FY 2000	6,858	69%
FY 1999	3,357	34%
FY 1998	7,548	75%
FY 1997	10,106	101%
FY 1996	10,037	100%
FY 1995	7,837	78%
FY 1994	5,983	60%

27. In sum, in five of the fiscal years since 1994, the defendants allocated only 31,583 rather than 50,000 asylee immigrant visas. That is, between FYs 1994 and 2000, 18,417 asylees have not received visas because of defendants' failures to allocate all available visas.

Misadministration of the Asylee Adjustment Queue

Misadministration of the Cut-Off Date

28. Defendants have failed to allocate the visas available and adjust plaintiffs' and class members' status under a first-in, first-out system as required by 8 C.F.R. §209.2(a)(1).

Defendants announced a national “cut-off date” for asylee adjustments for the fiscal year that concluded on September 30, 2001, Fiscal Year 2001. That date was January 16, 1998. That is, defendants claimed that there were sufficient visas for all asylees who filed for adjustment before January 16, 1998 to adjust their status. Asylees who filed for adjustment before January 16, 1998 had arrived at the top of the waiting list and should have had their status adjusted. However, defendants still have not adjusted the status of the plaintiffs and class members who filed for adjustment of status before January 16, 1998. Other asylees who filed their adjustment applications later than these plaintiffs and class members already have been adjusted.

29. Defendants have announced a national cut off date for asylee adjustment for the current fiscal year, Fiscal Year 2002, which began on October 1, 2001. That cut-off date is June 9, 1998. As of October 1, 2001, there were 10,000 new visas for asylees who filed for adjustment before June 9, 1998. However, defendants have not adjusted the status of the plaintiffs or class members who filed their adjustment applications before June 9, 1998.

30. Defendants have adjusted the status of some asylees out of chronological order. For example, within the last few weeks, defendants allocated immigrant visas to three asylees who were planning to be named plaintiffs in this lawsuit. Each asylee applied for adjustment before many other named plaintiffs. Specifically, Nancy Casajuana applied for adjustment on July 7, 1997. Wafaa Kariakos applied for adjustment in late 1997 or early January 1998. John Mbaku applied for adjustment on April 8, 1998.

INS District Office Inconsistencies

31. Prior to July 6, 1998, asylees filed their adjustment applications in one of the INS’s local district offices, sometimes known as adjudicating offices. From July 1998 until

the present, asylees in all parts of the United States have been directed to file their adjustment applications at the INS's Nebraska Service Center (NSC).

32. Many of the plaintiffs and class members filed for adjustment in the INS local district offices before July 6, 1998. Their place in the adjustment queue is determined by the local offices' practices, which were not and are not uniform.

33. For example, some local offices reported their "approvable" adjustment cases promptly after the asylee filed for adjustment. Others waited -- and still wait -- until after they have interviewed the asylee to report to NSC that the case is approvable. Because some asylees have been interviewed years after filing their adjustment applications, an asylee applying in one such district office is placed on the queue years later than someone who applied in another district office. An asylee who applied for adjustment in one city may still be waiting while an asylee who applied in another city at a later date may already have been adjusted.

34. The defendants have acknowledged that processing of asylee adjustment applications was inconsistent and that local offices' practices varied. On June 3, 1998, the INS published an interim rule, effective July 3, 1998, that sought to consolidate asylee adjustment filings in one national location, the NSC.

35. Notwithstanding the new rule, district office practices still vary. Some district offices do not distribute all the visas they are allocated on an annual basis, leaving some visas unused, further lengthening the waiting period for asylees.

36. Even though the filing of all asylee adjustment applications was "consolidated" at the NSC almost four years ago, the NSC still distributes asylee immigrant visas -- at least for pre-July 1998 cases -- based on individual requests from the local offices.

In turn, these requests are based on the local office determining that it has a pending approvable asylee adjustment case. Consequently, many of plaintiffs' and class members' adjustment dates still are dependent upon the varying practices and inefficiencies of local offices.

Failure to Keep Track of and Announce Adjustment Numbers

37. Defendants do not maintain accurate records of the queue. The NSC distributes visas based on unreliable reports from the INS district offices regarding which applications are ready to be approved or have been approved. Defendants do not have a system for correcting improper allocations of asylee adjustment numbers (i.e. adjustments granted out of filing date order).

38. Defendants are unable or unwilling to tell asylees where they are in the queue or how long they will have to wait to adjust status, except very generally and inaccurately. Plaintiffs and class members have no way to determine if they even are on a waiting list or if so, when they can expect to be adjusted.

39. Defendants have no process or procedure to notify asylees or the public when the annual cap of 10,000 is reached, or if it ever is, in fact, reached during any fiscal year. Plaintiffs have no way to verify whether defendants are adjusting asylees in the order in which their adjustment applications were filed.

40. In addition, defendants reportedly have improperly mixed refugee adjustments in with asylee adjustments, further lengthening the waiting period for asylees. Refugee admissions are governed by a separate section of the statute and are not subtracted from the 10,000 asylee adjustment cap. INA §§207, 209(a); 8 U.S.C. §§1157(a), 1159(a).

Failure to Exclude Exempt Asylees From the Waiting List

41. Defendants have failed to implement a system to identify and exclude from the asylee adjustment queue the exempt individuals, such as the designated Iraqi Kurds. These exempt asylees have been waiting years longer than they should have had to wait to adjust their status. Their presence in the queue also has harmed all other asylees because exempt asylees have been and still are occupying space on the waiting list. On information and belief, the INS gave exempt asylees visa numbers that should have gone to nonexempt asylees.

Requiring Application for and Renewal of Employment Authorization Documents

42. The INA says that asylees' employment authorization is incident to their status, that asylee status continues indefinitely, and that the defendants must provide the asylee with appropriate endorsement of that authorization. INA § 208(c)(1)(B), 8 U.S.C. §1158(c)(1)(B). Defendants nevertheless require that asylees file a separate application for an EAD, INS Form I-765, and to wait for its approval as evidence of their eligibility to work.

43. Specifically, applicable regulations require that asylees apply for an EAD evidencing their employment authorization. 8 C.F.R. §§ 274.12(a) and 274a.12(a)(5). Further, the letter defendants routinely send to asylum applicants notifying them that asylum has been granted says, in pertinent part: "[Y]ou must apply for and obtain an Employment Authorization Document (EAD) as evidence of your eligibility to work in the United States."

44. Defendants also limit the duration of asylees' EAD to one year and require asylees to renew their EADs every year.

45. Before October 1998, the renewal filing fee for the I-765 was \$70 per renewal. From October 1998 until February 18, 2002, the fee had been \$100 per renewal per year. On February 19, 2002, the renewal fee increased to \$120 per year.

46. Because of defendants' delays in processing EAD applications, asylees must apply to renew their EADs months before they expire and then must hope that the defendants process the renewal application before their current EAD expires. Some plaintiffs and class members have lost jobs or employment opportunities because of the defendants' delays in approving the EAD renewals.

47. As asylees now wait three, four, or five years to adjust their status, the cost and inconvenience of filing for initial and renewal EADs is considerable. In addition, the durational limit of the EAD prevents some asylees from obtaining jobs or promotions for which long-term or permanent employment authorization is required.

Requiring Repeated Fingerprinting

48. The defendants require asylees to be fingerprinted before their adjustment applications are granted. Asylee adjustment applicants who are 14 years old or older must pay a \$25 fingerprint processing fee and must appear at an INS "Application Support Center" (ASC) to be fingerprinted.

49. After 15 months, the defendants consider the fingerprints to have "expired" and destroy the fingerprint records supplied by asylees. The defendants have obligated the plaintiffs and class members to be re-fingerprinted before their adjustment applications have been approved, at additional expense and inconvenience, even though of course their fingerprints have not changed.

50. Defendants do not coordinate the fingerprinting to ensure that all approvable cases have valid fingerprints at the time the visa numbers are assigned.

Requiring Repeated Medical Examinations

51. Defendants require asylees to have a medical examination and submit the results with their applications. The fee for such an examination typically is approximately \$200- \$250. The defendants have obligated many of the plaintiffs and class members to have duplicate medical examinations: once at the time they submit their applications and again, because their applications have been pending for so long, before their adjustment applications are approved, at considerable expense and inconvenience.

PLAINTIFFS

Minnesota Residents

52. Plaintiff Venantius Nkafor Ngwanya is a resident of St. Paul, Minnesota. He was granted asylum on October 8, 1996 from Cameroon. He applied for adjustment of status in October 1997 at the INS's Bloomington, Minnesota District Office. He was interviewed in conjunction with his adjustment application in 1998 at the Bloomington Office.

53. Mr. Ngwanya has applied for an EAD every year since 1996. In 1996 through 1998, he paid \$70 each year for the EAD. Since 1999, he has he paid \$100 each year. It often has taken the INS two months to process the EAD after Mr. Ngwanya has applied for it. Mr. Ngwanya has been refused two jobs and believes it may be because he is not a permanent resident.

54. Mr. Ngwanya was eligible and remains eligible for adjustment of status. He is still waiting to adjust his status even though he filed his adjustment application before

January 16, 1998, the cut-off date for the fiscal year that ended on September 30, 2001.

Mr. Ngwanyia is not accruing time toward naturalization.

55. If the defendants had distributed all 10,000 asylee immigrant visas every fiscal year and distributed the visas in the mandated order, they already would have adjusted Mr. Ngwanyia's status. The defendants have not adjusted his status in the mandated order, that is, by date of filing. Mr. Ngwanyia has no remedy to compel the defendants to adjust his status in the proper order, other than through this lawsuit.

56 Plaintiff Wesene Ayele Gizaw is a resident of Minneapolis, Minnesota. She was granted asylum on April 4, 1996 from Ethiopia. She applied for adjustment of status at the Bloomington, Minnesota District Office on May 28, 1997. She received a written receipt notice from the INS acknowledging that her adjustment application had been received on May 28, 1997.

57. Ms. Gizaw was first interviewed regarding her adjustment application in May 1997. In approximately July 1997 she was interviewed again and was told her adjustment application had been approved but was pending because the INS was waiting for a visa.

58. Ms. Gizaw applied for an EAD in 1996 at the INS's Bloomington District Office. She renewed her EAD in 1997 and 1998 paying \$70 each time and again in 1999, 2000 and 2001 paying the increased renewal fee of \$100.

59. Ms. Gizaw was eligible and remains eligible for adjustment of status. She is still waiting to adjust her status even though she filed her adjustment application before January 16, 1998, the cut-off date for the fiscal year that ended on September 30, 2001. She is not accruing time towards naturalization.

60. If the defendants had distributed all 10,000 asylee immigrant visas every fiscal year and distributed the visas in the mandated order, they already would have adjusted Ms. Gizaw's status. The defendants have not adjusted her status in the mandated order, that is, by date of filing. Ms. Gizaw has no remedy to compel the defendants to adjust her status in the proper order, other than through this lawsuit.

61. Plaintiff Merdekios Duressa is a resident of Minneapolis, Minnesota. He is Wesene Ayele Gizaw's husband. He was granted asylum on April 4, 1996, from Ethiopia. He applied for adjustment of status at the INS's Bloomington, Minnesota District Office on or around May 28, 1997. He received a written receipt notice from the INS acknowledging that his adjustment application had been received on May 28, 1997.

62. In approximately May 1997, Mr. Duressa's fingerprints were taken. He was interviewed for adjustment by the Bloomington, Minnesota District Office in approximately July 1997.

63. Mr. Duressa applied for an EAD in 1996 at the Bloomington INS office. He renewed his EAD in 1997, 1998, 1999, and 2000. In 1996 through 1998, he paid \$70 each year for the EAD. In 1999 and 2000, he paid \$100 each year.

64. Mr. Duressa was eligible and remains eligible for adjustment of status. He is still waiting to adjust his status even though he filed his adjustment application before January 16, 1998, the cut-off date for the fiscal year that ended on September 30, 2001. He is not accruing time towards naturalization.

65. If the defendants had distributed all 10,000 asylee immigrant visas every fiscal year and distributed the visas in the mandated order, they already would have adjusted Mr. Duressa's status. The defendants have not adjusted his status in the mandated order, that

is, by date of filing. Mr. Duressa has no remedy to compel the defendants to adjust his status in the proper order, other than through this lawsuit.

66. Plaintiff Mohamed Farah is a resident of St. Paul, Minnesota. He was granted asylum from Somalia on August 25, 1997. He applied for adjustment of status on or about July 2, 1998 and received an acknowledgment from the INS that his application had been received on that date.

67. Mr. Farah was fingerprinted at the INS District Office in Bloomington, Minnesota on July 7, 1998. He was interviewed for his adjustment application in August 1998 at the same office.

68. Mr. Farah applied for an EAD. He has applied for renewal EADs in 1999, 2000 and 2001, at a cost of \$100 each. He has been denied jobs because his EAD is limited to a one-year period. Mr. Farah also applied for a refugee travel document for a fee of \$70. He was unable to travel out of the country for a family emergency because of the delay in receiving the travel document.

69. Mr. Farah was eligible and remains eligible for adjustment of status. He is not accruing time towards naturalization.

70. If the defendants had distributed all 10,000 asylee immigrant visas every fiscal year, distributed the visas in the mandated order, and excluded exempt asylees from the list, on information and belief they already would have adjusted Mr. Farah's status or he would be eligible to adjust his status in the current fiscal year. Mr. Farah has no remedy to compel the defendants to adjust his status in the proper order, other than through this lawsuit.

71. Plaintiff Mary W. Kariuki is a resident of St. Paul, Minnesota. She was granted asylum on December 7, 1998 from Kenya. She applied for adjustment of status at

the NSC on January 3, 2000. She received a written receipt notice from the INS acknowledging that her adjustment application had been received on January 3, 2000.

72. Ms. Kariuki applied for an EAD at the NSC in 1998. She renewed her EAD three times, paying a total of \$300 in renewal fees.

73. Ms. Kariuki was eligible and remains eligible for adjustment of status. She is not accruing time towards naturalization.

74. If the defendants had distributed all 10,000 asylee immigrant visas every fiscal year, distributed the visas in the mandated order, and excluded exempt asylees from the list, on information and belief they already would have adjusted Ms. Kariuki's status or she would be eligible to adjust her status in the current fiscal year. Ms. Kariuki has no remedy to compel the defendants to adjust her status in the proper order, other than through this lawsuit.

**Plaintiffs Who Applied For Adjustment Before January 16, 1998
(The Cut-Off Date for FY 2001)**

75. Plaintiff Salah Farah was granted asylum on December 27, 1994 from Sudan. One year later, on or around December 27, 1995, he applied for adjustment of status at the New York City District Office. His fingerprints were taken on December 27, 1995, also in New York. Mr. Farah received a refugee travel document in March 1996, after paying the then-applicable fee of \$70. Mr. Farah was interviewed for his adjustment of status at the New York City Office on March 17, 1997.

76. The INS apparently lost Mr. Farah's file, so he submitted a second adjustment of status application in December 1999 to the NSC. He received a receipt notice from the NSC, dated January 10, 2000, acknowledging receipt of the adjustment application. Mr. Farah received a second refugee travel document in 2000, paying the \$95 fee.

77. Mr. Farah applied for an EAD in 1996, and has renewed it every year since then, paying the applicable fee each time.

78. Mr. Farah was eligible and remains eligible for adjustment of status. He is still waiting to adjust his status even though he filed his adjustment application before January 16, 1998, the cut-off date for the fiscal year that ended on September 30, 2001. He is not accruing time towards naturalization.

79. If the defendants had distributed all 10,000 asylee immigrant visas every fiscal year and distributed the visas in the mandated order, they already would have adjusted Mr. Farah's status. The defendants have not adjusted his status in the mandated order, that is, by date of filing. Mr. Farah has no remedy to compel the defendants to adjust his status in the proper order, other than through this lawsuit.

80. Plaintiff Aloysius Tabue was granted asylum on December 13, 1994 from Liberia. He applied for adjustment of status at the INS's Chicago District Office on July 29, 1996. He received a written receipt notice from the Chicago office, dated July 29, 1996, acknowledging that his adjustment application had been received.

81. On September 23, 1996 Mr. Tabue was interviewed at the INS's Chicago District Office. Mr. Tabue's fingerprints were taken most recently at the Chicago District Office in May 2001.

82. Mr. Tabue applied for an EAD in 1997. He has renewed his EAD each year since 1998, paying the \$100 renewal fee each time. Because he is not yet a permanent resident, Mr. Tabue has been unable to file petitions to immigrate his adult children and has had to apply and pay for refugee travel documents to leave the United States.

83. Mr. Tabue was eligible and remains eligible for adjustment of status. He is still waiting to adjust his status even though he filed his adjustment application before January 16, 1998, the cut-off date for the fiscal year that ended on September 30, 2001. He is not accruing time towards naturalization.

84. If the defendants had distributed all 10,000 asylee immigrant visas every fiscal year and distributed the visas in the mandated order, they already would have adjusted Mr. Tabue's status. The defendants have not adjusted his status in the mandated order, that is, by date of filing. Mr. Tabue has no remedy to compel the defendants to adjust his status in the proper order, other than through this lawsuit.

85. Fakmi Hysenaj was granted asylum on January 29, 1996 from Yugoslavia. He applied to adjust his status on or around March 13, 1997 at the INS's District Office in Dallas, Texas. He received a written acknowledgment on or around March 19, 1997 from the INS that his adjustment application had been received. His fingerprints were taken in 1997, also in Dallas. He was interviewed in conjunction with his adjustment application in late 1997 or early 1998 in the Dallas District Office.

86. Mr. Hysenaj applied for his EAD in 1996 and renewed it in 2001. Although he is self-employed and therefore does not require the EAD for work, Mr. Hysenaj paid the renewal fee of \$100 to have some means of proof that the INS authorizes his presence in this country.

87. Mr. Hysenaj was eligible for adjustment of status and remains eligible for adjustment of status. He is still waiting for the defendants to adjust his status even though he filed for adjustment before January 16, 1998, the cut-off date for the fiscal year that ended on September 30, 2001. He is not accruing time towards naturalization.

88. If the defendants had distributed all 10,000 asylee immigrant visas every fiscal year and distributed the visas in the mandated order, they already would have adjusted Mr. Hysenaj's status. The defendants have not adjusted his status in the mandated order, that is, by date of filing. Mr. Hysenaj has no remedy to compel the defendants to adjust his status in the proper order, other than through this lawsuit.

89. Plaintiff Mat Dupuy was granted asylum on March 21, 1996 from Haiti. She applied for adjustment of status at the INS's West Palm Beach, Florida District Office on March 26, 1997. She received a written receipt notice from the INS acknowledging that her adjustment application had been received.

90. Ms. Dupuy's fingerprints were taken at the Florida Immigrant Advocacy Center on March 26, 1997. In 1998, she was interviewed at the INS's West Palm Beach Office. Ms. Dupuy applied for an EAD at the INS's West Palm Beach District Office and has renewed it twice, paying the \$100 fee each time.

91. Ms. Dupuy was eligible and remains eligible for adjustment of status. She is still waiting to adjust her status even though she filed her application before January 16, 1998, the cut-off date for the fiscal year that ended on September 30, 2001. She is not accruing time toward naturalization.

92. If the defendants had distributed all 10,000 asylee immigrant visas every fiscal year and distributed the visas in the mandated order, they already would have adjusted Ms. Dupuy's status. The defendants have not adjusted her status in the mandated order, that is, by date of filing. Ms. Dupuy has no remedy to compel the defendants to adjust her status in the proper order, other than through this lawsuit.

93. Plaintiff Solange Pierre was granted asylum on January 16, 1996 from Haiti. She applied for adjustment of status at the INS's West Palm Beach District Office on or around May 1, 1997. Ms. Pierre's fingerprints were taken on May 1, 1997. In 1998, she was interviewed at the INS's West Palm Beach Office.

94. Ms. Pierre applied for an EAD in 1997. She renewed her EAD in 1998 and 1999, paying the \$100 renewal fee each time. Ms. Pierre was unable to work for an extended period of time because the INS would not renew her EAD in 2000 due to an INS error that said Ms. Pierre's adjustment application had been denied. Her EAD was finally renewed in 2001; however, she lost significant income because of the INS error and the requirement that she obtain an EAD.

95. Ms. Pierre was eligible and remains eligible for adjustment of status. She is still waiting to adjust her status even though she filed her adjustment application before January 16, 1998, the cut-off date for the fiscal year that ended on September 30, 2001. She is not accruing time towards naturalization.

96. If the defendants had distributed all 10,000 asylee immigrant visas every fiscal year and distributed the visas in the mandated order, they already would have adjusted Ms. Pierre's status. The defendants have not adjusted her status in the mandated order, that is, by date of filing. Ms. Pierre has no remedy to compel the defendants to adjust her status in the proper order, other than through this lawsuit.

97. Plaintiff Dieuzeve Joseph was granted asylum on May 14, 1996 from Haiti. He applied for adjustment at the INS's West Palm Beach, Florida District Office on or about June 30, 1997.

98. Mr. Joseph's fingerprints were taken on two occasions: July 1, 1997 and May 10, 2000. The INS cancelled an appointment for an interview that was scheduled for March 4, 1998. On April 17, 2001, Mr. Joseph went to the INS to check the status of his application. At that time an INS officer informed him that his application had been denied. Mr. Joseph and his attorney have not received any further information about his adjustment application.

99. Mr. Joseph applied for his EAD in 1997 at the West Palm Beach Office. He renewed his EAD, paying the \$70 renewal fee in 1997 and 1998 and the \$100 renewal fee each year after 1998.

100. Mr. Joseph was eligible and remains eligible for adjustment of status. He is still waiting to adjust his status even though he filed his application before January 16, 1998, the cut-off date for the fiscal year that ended on September 30, 2001. He is not accruing time towards naturalization.

101. If the defendants had distributed all 10,000 asylee immigrant visas every fiscal year and distributed the visas in the mandated order, they already would have adjusted Mr. Joseph's status. The defendants have not adjusted his status in the mandated order, that is, by date of filing. Mr. Joseph has no remedy to compel the defendants to adjust his status in the proper order, other than through this lawsuit.

102. Plaintiff Akbar L. Ng was granted asylum from Cuba on August 2, 1995. He applied for adjustment of status at the INS's Houston District Office on July 7, 1997.

103. Mr. Ng's fingerprints have been taken three times: several months prior to the filing of his adjustment application, again in October 1999, and finally on January 12, 2001. He was called in for an interview on March 6, 2001. At that time, the INS informed him that

he had to reapply for asylum because he turned 21 while the adjustment application was pending. He filed the requested asylum application on April 27, 2001. He has also applied for renewed EADs on several occasions, at a cost of \$100 each.

104. Because Mr. Ng's adjustment has been delayed, he has been unable to obtain any financial aid to attend college.

105. Mr. Ng was eligible and remains eligible for adjustment of status. He is still waiting to adjust his status even though he filed his adjustment application before the January 16, 1998, the cut-off date for the fiscal year that ended on September 30, 2001. He is not accruing time towards naturalization.

106. If the defendants had distributed all 10,000 asylee immigrant visas every fiscal year and distributed the visas in the mandated order, they already would have adjusted Mr. Ng's status. Mr. Ng has no remedy to compel the defendants to adjust his status in the proper order, other than through this lawsuit.

107. Plaintiff Vera Catalina Castillo Ramirez was granted asylum on April 22, 1996, from Guatemala. She applied for adjustment of status at the INS's Los Angeles District Office on July 28, 1997. She received a written receipt notice from the INS, showing a date of October 6, 1997.

108. Vera Castillo's fingerprints were taken for the first time at an ASC in Santa Monica, California and at a second time at an ASC in Long Beach, California in May 1998. She was interviewed for adjustment by the Los Angeles District Office on April 2, 1998.

109. Vera Castillo received a letter from the Los Angeles District Office, dated November 25, 1998, requesting her to reapply for asylum because she turned 21 while the adjustment was pending. Although Ms. Castillo disputed the legality of the INS requiring a

re-application, after hearing no response from the INS, she submitted the requested asylum application (INS Form I-589) on April 5, 1999.

110. Although Vera Castillo has lived in California for many years, because she is not yet a lawful permanent resident, she is not considered a California resident and therefore has to pay expensive out-of-state tuition for her education.

111. Vera Castillo applied for an EAD in 1996 at the LA District Office and renewed her EAD in 1997, 1998, 1999, 2000, and 2001, paying \$70 in 1997 and 1998 and \$100 since 1999 for each renewal. She missed some days of school and work to travel to the INS office to renew her EAD.

112. Vera Castillo was eligible and remains eligible for adjustment of status. She is still waiting to adjust her status even though she filed her application before January 16, 1998, the cut-off date for the fiscal year that ended on September 30, 2001. She is not accruing time towards naturalization.

113. If the defendants had distributed all 10,000 asylee immigrant visas every fiscal year and distributed the visas in the mandated order, they already would have adjusted Vera Castillo's status. The defendants have not adjusted her status in the mandated order, that is, by date of filing. Ms. Castillo has no remedy to compel the defendants to adjust her status in the proper order, other than through this lawsuit.

114 Plaintiff Zoila Margarita Castillo Ramirez was granted asylum on April 22, 1996 from Guatemala. She applied for adjustment of status at the INS's Los Angeles District Office on July 28, 1997. She received a written receipt notice from the INS, showing a date of October 6, 1997.

115. Zoila Castillo's fingerprints were taken on three separate occasions. The first time was at an ASC in Santa Monica, California and the second and third times were in Los Angeles. On February 16, 2000, Ms. Castillo was interviewed at the Los Angeles District Office.

116. Zoila Castillo received a letter from the INS office in May of 2001 requesting her to reapply for asylum because she turned 21 while the adjustment was pending. Ms. Castillo submitted the asylum application, INS Form I-589, on June 19, 2001.

117. Although Zoila Castillo has lived in California for many years, because she is not yet a lawful permanent resident, she is not considered a California resident and therefore has to pay expensive out-of-state tuition for her education.

118. Zoila Castillo applied for an EAD in 1996 at the LA District Office and renewed her EAD in 1997, 1998, 1999, 2000, and 2001, paying the applicable fee for each renewal. She missed some days of school and work to travel to the INS office to renew her EAD.

119. Zoila Castillo was eligible and remains eligible for adjustment of status. She is still waiting to adjust her status even though she filed her adjustment application before January 16, 1998, the cut-off date for the fiscal year that ended on September 30, 2001. She is not accruing time towards naturalization.

120. If the defendants had distributed all 10,000 asylee immigrant visas every fiscal year and distributed the visas in the mandated order, they already would have adjusted Zoila Castillo's status. The defendants have not adjusted her status in the mandated order, that is, by date of filing. Zoila Castillo has no remedy to compel the defendants to adjust her status in the proper order, other than through this lawsuit.

121. Luis Carballo-Manzanares was granted asylum in August 1996 from El Salvador. He applied for adjustment of status on or around September 8, 1997, at the INS District Office in New York (Federal Plaza). He was interviewed in conjunction with his adjustment application on or around July 21, 1998, also at Federal Plaza.

122. Mr. Carballo-Manzanares applied for an EAD and applied for renewal EADs in 1999 and 2000. He paid \$100 to the INS each time he applied for a renewal application, and the INS took about two months to process the renewal application.

123. Mr. Carballo-Manzanares was eligible and remains eligible for adjustment of status. He is still waiting to adjust his status even though he filed his adjustment application before January 16, 1998, the cut-off date for the fiscal year that ended on September 30, 2001. He is not accruing time towards naturalization.

124. If the defendants had distributed all 10,000 asylee immigrant visas every fiscal year and distributed the visas in the mandated order, they already would have adjusted Mr. Carballo-Manzanares' status. The defendants have not adjusted his status in the mandated order, that is, by date of filing. Mr. Carballo-Manzanares has no remedy to compel the defendants to adjust his status in the proper order, other than through this lawsuit.

125. Plaintiff Maria Herrera was granted asylum on July 3, 1996 from Nicaragua. She applied for adjustment of status on or about October 8, 1997 in Texas. Ms. Herrera was interviewed on September 22, 1998 at the Miami District Office. Her fingerprints were taken in 1998.

126. Ms. Herrera applied for an EAD and has been renewing her EAD every year, paying \$70 in 1997 and 1998 and \$100 every year after 1998.

127. Ms. Herrera has not pursued many employment opportunities to advance her career because they involved travel abroad. She hesitates to travel outside the United States even with a refugee travel document for fear that her EAD will expire when she is outside the United States or she will have difficulty reentering the United States.

128. Maria Herrera was eligible and remains eligible for adjustment of status. She is still waiting to adjust her status even though she filed her adjustment application before January 16, 1998, the cut-off date for the fiscal year that ended on September 30, 2001. She is not accruing time towards naturalization.

129. If the defendants had distributed all 10,000 asylee immigrant visas every fiscal year and distributed the visas in the mandated order, they already would have adjusted Ms. Herrera's status. The defendants have not adjusted her status in the mandated order, that is, by date of filing. Ms. Herrera has no remedy to compel the defendants to adjust her status in the proper order, other than through this lawsuit.

130. Marie Diogene was granted asylum in October 1996 from Haiti. She applied for adjustment of status on or around October 20, 1997 in the INS's District Office in West Palm Beach, Florida. Ms. Diogene has never been interviewed in conjunction with her adjustment application.

131. Ms. Diogene applied for an EAD in October 1998 and for a renewal in October 1999, paying \$100 with the renewal application. She did not apply to renew her EAD after 1999 because of the filing fee.

132. Because defendants have not adjusted Ms. Diogene's status, she has had difficulty finding employment. She has had difficulty registering for school and cannot

qualify for student loans. She is afraid to leave the United States until defendants adjust her status.

133. Ms. Diogene was eligible and remains eligible for adjustment of status. She is still waiting to adjust her status even though she filed her adjustment application before January 16, 1998, the cut-off date for the fiscal year that ended on September 30, 2001. She is not accruing time towards naturalization.

134. If the defendants had distributed all 10,000 asylee immigrant visas every fiscal year and distributed the visas in the mandated order, they already would have adjusted Ms. Diogene's status. The defendants have not adjusted her status in the mandated order, that is, by date of filing. Ms. Diogene has no remedy to compel the defendants to adjust her status in the proper order, other than through this lawsuit.

135. Plaintiff Graciela Martinez was granted asylum on September 24, 1996 from El Salvador. She applied for adjustment of status on or about October 23, 1997 at the INS's Boston District Office. Ms. Martinez received a written receipt notice from the INS acknowledging that her adjustment application had been received.

136. Ms. Martinez applied for an EAD on September 25, 2000. She applied to renew her EAD on September 24, 2001 and paid a \$100 renewal fee.

137. Ms. Martinez was eligible and remains eligible for adjustment of status. She is still waiting to adjust her status even though she filed her application before January 16, 1998, the cut-off date for the fiscal year that ended on September 30, 2001. She is not accruing time towards naturalization.

138. If the defendants had distributed all 10,000 asylee immigrant visas every fiscal year and distributed them in the mandated order, they already would have adjusted

Ms. Martinez's status. The defendants have not adjusted her status in the mandated order, that is, by date of filing. Ms. Martinez has no remedy to compel the defendants to adjust her status in the proper order, other than through this lawsuit.

139. Plaintiff Patrick Davies was granted asylum on November 29, 1996, from Liberia. He applied for adjustment of status at the INS's New York City District Office on December 16, 1997. He received a written receipt notice from the INS, dated December 17, 1997, acknowledging that his adjustment application had been received.

140. Mr. Davies' fingerprints were taken in conjunction with his adjustment application, but he is not sure of the date. On June 17, 1998, Mr. Davies was interviewed at the New York City District Office.

141. Mr. Davies applied for his EAD in 1997 at the NSC. He renewed his EAD, paying the \$70 renewal fee in 1998 and \$100 renewal fee each year after 1998.

142. Mr. Davies was eligible and remains eligible for adjustment of status. He is still waiting to adjust his status even though he filed his adjustment application before January 16, 1998, the cut-off date for the fiscal year that ended on September 30, 2001. He is not accruing time towards naturalization.

143. If the defendants had distributed all 10,000 asylee immigrant visas every fiscal year and distributed the visas in the mandated order, they already would have adjusted Mr. Davies' status. The defendants have not adjusted his status in the mandated order, that is, by date of filing. Mr. Davies has no remedy to compel the defendants to adjust his status in the proper order, other than through this lawsuit.

144. Plaintiff Fawzy A. Abdelsamad was granted asylum in 1996 from Egypt. He applied for adjustment of status in the INS's Kansas City, Missouri District Office on

January 14, 1998. He received a written receipt notice from the INS acknowledging that his adjustment application had been received on January 14, 1998.

145. Mr. Abdelsamad was interviewed on February 24, 1999 at the Kansas City District Office. He has also been fingerprinted.

146. Mr. Abdelsamad applied for an EAD in 1998 at the Kansas City District Office. He renewed his EAD in 1999, 2000, and 2001, paying the \$100 renewal fee each time.

147. Mr. Abdelsamad was eligible and remains eligible for adjustment of status. He is still waiting to adjust his status even though he filed his adjustment application before January 16, 1998, the cut-off date for the fiscal year that ended on September 30, 2001. He is not accruing time towards naturalization.

148. If the defendants had distributed all 10,000 asylee immigrant visas every fiscal year and distributed the visas in the mandated order, they already would have adjusted Mr. Abdelsamad's status. Mr. Abdelsamad has no remedy to compel the defendants to adjust his status in the proper order, other than through this lawsuit.

**Plaintiffs Who Filed for Adjustment After January 16, 1998
(The FY 2001 Cut-Off Date)
But Before June 9, 1998 (The Current FY Cut-Off Date)**

149 Plaintiff Stella Emuwahen Erhabor was granted asylum on December 6, 1996 from Nigeria. She applied for adjustment of status at the INS's New Orleans District Office on March 1, 1998. She received a written receipt notice from the INS, acknowledging that her adjustment application had been received on March 1, 1998.

150. Ms. Erhabor's fingerprints were taken once in New Orleans in May 1998 and again at the INS's Jackson, Mississippi District Office on June 27, 2000. On October 15, 1998, Ms. Erhabor was interviewed at the New Orleans District Office.

151. Ms. Erhabor was eligible and remains eligible for adjustment of status. She is still waiting to adjust her status even though she filed her adjustment application before June 9, 1998, the cut-off date for the current fiscal year. She is not accruing time toward naturalization.

152. If the defendants had distributed all 10,000 asylee immigrant visas every fiscal year, distributed the visas in the mandated order, and excluded exempt asylees from the list, on information and belief they already would have adjusted Ms. Erhabor's status. Ms. Erhabor has no remedy to compel the defendants to adjust her status in the proper order, other than through this lawsuit.

153. Plaintiff Murad Fakhouri was granted asylum on January 6, 1997 from Kuwait. He applied for adjustment of status at the INS's Richmond, Virginia District Office on March 5, 1998. He received a written receipt notice from the INS in May or June 1998 acknowledging that his adjustment application had been received.

154. In May or June of 1998, Mr. Fakhouri was interviewed and fingerprinted at the INS's Charlotte, North Carolina District Office.

155. Mr. Fakhouri applied for and received an EAD in 1997. He renewed his EAD in 1999 and 2000, paying the \$100 renewal fee each time. Each time there was several months of delay before the INS renewed the EAD. Mr. Fakhouri was denied employment at one point, while his EAD was pending.

156. Mr. Fakhouri has applied for a refugee travel document three times, paying \$95 each time. On one occasion, his application was denied and he lost the filing fee. When he reapplied, the application was approved, but his trip had to be cancelled because of the delay.

157. Mr. Fakhouri was eligible and remains eligible for adjustment of status. He is still waiting to adjust his status even though he filed his adjustment application before June 9, 1998, the cut-off date for the current fiscal year. He is not accruing time towards naturalization.

158. If the defendants had distributed all 10,000 asylee immigrant visas every fiscal year, distributed the visas in the mandated order, and excluded exempt asylees from the list, on information and belief they already would have adjusted Mr. Fakhouri's status. Mr. Fakhouri has no remedy to compel the defendants to adjust his status in the proper order, other than through this lawsuit.

159 Plaintiff Jaci Caetano Pereira was granted asylum on October 7, 1996 from Brazil. He applied for adjustment of status at the INS's San Antonio, Texas District Office on March 19, 1998.

160. Mr. Pereira was interviewed for his adjustment of status at the San Antonio District Office on January 18, 2000. Mr. Pereira's fingerprints were taken twice within a five-month period: the first time was on September 17, 1999 and the second time was following his January 18, 2000 interview in San Antonio, Texas.

161. Mr. Pereira applied for an EAD at the San Antonio District Office on October 21, 1997. The INS lost this application and did not find it until February 1998. The

INS did not issue the EAD until September 1998. Mr. Pereira subsequently renewed his EAD three times, paying the \$100 renewal fee each time.

162. Mr. Pererira was eligible and remains eligible for adjustment of status. He is still waiting to adjust his status even though he filed his adjustment application before June 9, 1998, the cut-off date for the current fiscal year. He is not accruing time towards naturalization.

163. If the defendants had distributed all 10,000 asylee immigrant visas every fiscal year, distributed the visas in the mandated order, and excluded exempt asylees from the list, on information and belief they already would have adjusted Mr. Pererira status. Mr. Pererira has no remedy to compel the defendants to adjust his status in the proper order, other than through this lawsuit.

164. Plaintiff Arslan Durrani was granted asylum on April 8, 1996 from Pakistan. He applied for adjustment of status at the INS's San Francisco District Office on April 2, 1998. He received a written receipt notice from the INS, acknowledging that his adjustment application had been received.

165. Mr. Durrani's fingerprints were taken on June 22, 1998 and again on September 30, 1999. On September 30, 1999, Mr. Durrani was interviewed at the INS's San Francisco Office.

166. Mr. Durrani applied for an EAD on April 11, 1996 at the San Francisco District Office. He renewed his EAD five times, paying \$70 in 1997 and \$100 each subsequent year.

167. Mr. Durrani has had to apply for, pay for, and wait for a refugee travel document to travel outside the United States. The application fee was \$95 each time.

168. Mr. Durrani was eligible and remains eligible for adjustment of status. He is still waiting to adjust his status even though he filed his adjustment application before June 9, 1998, the cut-off date for the current fiscal year. He is not accruing time towards naturalization.

169. If the defendants had distributed all 10,000 asylee immigrant visas every fiscal year, distributed the visas in the mandated order, and excluded exempt asylees from the list, on information and belief they already would have adjusted Mr. Durrani's status. Mr. Durrani has no remedy to compel the defendants to adjust his status in the proper order, other than through this lawsuit.

170. Plaintiff Faisal Usman was granted asylum on January 28, 1997 from India. He applied for adjustment of status in Seattle, Washington, on or about April 16, 1998.

171. Mr. Usman applied for an EAD in or around 1998. He has renewed the EAD and paid the \$100 renewal fee each year since 1998.

172. Mr. Usman was eligible and remains eligible for adjustment of status. He is still waiting to adjust his status even though he filed his adjustment application before June 9, 1998, the cut-off date for the current fiscal year. He is not accruing time towards naturalization.

173. If the defendants had distributed all 10,000 asylee immigrant visas every fiscal year, distributed the visas in the mandated order, and excluded exempt asylees from the list, on information and belief they already would have adjusted Mr. Usman's status. Mr. Usman has no remedy to compel the defendants to adjust his status in the proper order, other than through this lawsuit.

174 Plaintiff Sherman Brown was granted asylum on January 29, 1997 from Liberia. He applied for adjustment of status at the INS's Arlington, Virginia District Office in or around April 1998. He received a written receipt notice from the INS acknowledging that his adjustment application had been received. He was interviewed in the Arlington District Office on August 27, 1998.

175. Mr. Brown was eligible and remains eligible for adjustment of status. He is still waiting to adjust his status even though he filed his adjustment application before June 9, 1998, the cut-off date for the current fiscal year. He is not accruing time towards naturalization.

176. If the defendants had distributed all 10,000 asylee immigrant visas every fiscal year, distributed the visas in the mandated order, and excluded exempt asylees from the list, on information and belief they already would have adjusted Mr. Brown's status. Mr. Brown has no remedy to compel the defendants to adjust his status in the proper order, other than through this lawsuit.

177. Plaintiff Laura Tabue was granted asylum on March 23, 1997 from Liberia. She applied for adjustment of status at the Chicago District office on May 1, 1998. She received a written receipt notice from the INS acknowledging that her adjustment application had been received on May 1, 1998.

178. Ms. Tabue's fingerprints were taken at the Chicago District office. On January 31, 2000, Ms. Tabue was interviewed at the Chicago Office.

179. Ms. Tabue applied for an EAD on May 6, 1997 and renewed her EAD in 1998, 1999, and 2000, paying \$100 each time. The INS took eight months to approve her

2000 EAD renewal application, from August 2000 to April 2001. Before it was approved, Ms. Tabue was laid off her job because she did not have a current EAD.

180. Ms. Tabue was eligible and remains eligible for adjustment of status. She is still waiting to adjust her status even though she filed her adjustment application before June 9, 1998, the cut-off date for the current fiscal year. She is not accruing time towards naturalization.

181. If the defendants had distributed all 10,000 asylee immigrant visas every fiscal year, distributed the visas in the mandated order, and excluded exempt asylees from the list, on information and belief, they already would have adjusted Ms. Tabue's status. Ms. Tabue has no remedy to compel the defendants to adjust her status in the proper order, other than through this lawsuit.

Plaintiffs Who Filed For Adjustment After June 9, 1998

182. Plaintiff Oleksander Zinkovsky was granted asylum on October 10, 1996 from the Ukraine. His wife Galina and son Igor were granted asylum as derivative asylees. The Zinkovskys filed for adjustment of status at the INS's Philadelphia, Pennsylvania District Office on June 12, 1998. Mr. Zinkovsky received a filing receipt issued by the Philadelphia District Office on June 12, 1998, acknowledging that his adjustment application had been received.

183. Mr. Zinkovsky's fingerprints were taken on or about June 16, 1998 at the Philadelphia District Office. He was interviewed on October 23, 1998 also at the Philadelphia District Office.

184. Mr. Zinkovsky, his wife, and son all applied for EADs. Each renewed their EAD four times. The Zinkovskys paid the \$70 renewal fee for each EAD the first year, and

\$100 for the other three years. The total of their EAD renewal fees, through 2001, comes to \$1,110.

185. Mr. Zinkovsky has had difficulty securing a job because most companies prefer employees who are LPRs or citizens. Their son was chosen for a study abroad opportunity in Europe last summer but had to relinquish his seat because the INS did not process his refugee travel document in time.

186. The Zinkovskys were eligible and remain eligible for adjustment of status. They are still waiting to adjust status and are not accruing time towards naturalization.

187. If the defendants had distributed all 10,000 asylee immigrant visas every fiscal year, distributed the visas in the mandated order, and excluded exempt asylees from the list, on information and belief they already would have adjusted the Zinkovskys' status or they would be eligible to adjust status in the current fiscal year. The Zinkovskys have no remedy to compel the defendants to adjust their status in the proper order, other than through this lawsuit.

188. Plaintiff Unsheju Mbu Izampuye was granted asylum in April 1997 from the Congo. He applied for adjustment of status at the NSC in July 1998. He received a written receipt notice from the INS, dated July 13, 1998, acknowledging that his adjustment application had been received.

189. Mr. Mbu Izampuye's fingerprints were taken and sent to the INS with his application for residency. Mr. Mbu Izampuye applied twice for a refugee travel document, paying \$95 each time. He applied for a renewal EAD at the NSC and paid the \$100 renewal fee.

190. Mr. Mbu Izampuye was eligible and remains eligible for adjustment of status. He is still waiting to adjust his status and is not accruing time toward naturalization.

191. If the defendants had distributed all 10,000 asylee immigrant visas every fiscal year, distributed the visas in the mandated order, and excluded exempt asylees from the list, on information and belief they already would have adjusted Mr. Izampuye's status or he would be eligible to adjust his status in the current fiscal year. Mr. Mbu Izampuye has no remedy to compel the defendants to adjust his status in the proper order, other than through this lawsuit.

192. Plaintiff Joseph Coleman was granted asylum on November 21, 1996 from Liberia. He applied for adjustment of status at the NSC on August 24, 1998. He received a written receipt notice from the INS, dated September 29, 1998, acknowledging that his adjustment application had been received.

193. Mr. Coleman applied for an EAD in 1996 at the NSC. He renewed his EAD three time, incurring \$270 in filing fees.

194. Mr. Coleman has had difficulty establishing residency for state college tuition and in obtaining student loans.

195. Mr. Coleman was eligible and remains eligible for adjustment of status. He is still waiting to adjust his status and is not accruing time toward naturalization.

196. If the defendants had distributed all 10,000 asylee immigrant visas every fiscal year, distributed the visas in the mandated order, and excluded exempt asylees from the list, on information and belief they already would have adjusted Mr. Coleman's status or he would be eligible to have his status adjusted in the current fiscal year. Mr. Coleman has no

remedy to compel the defendants to adjust his status in the proper order, other than through this lawsuit.

197. Plaintiff Adrienne Kazarwa was granted asylum on November 15, 1996 from Rwanda. She applied for adjustment of status at the NSC in August 1998. She received a written receipt notice from the INS, in September 1998, acknowledging that her adjustment application had been received.

198. Ms. Kazarwa applied for an EAD at the NSC. She renewed her EAD in 1997, 1998, and 1999, paying \$70 in both 1997 and 1998 and \$100 in 1999.

199. Ms. Kazarwa applied for a refugee travel document in April 2001, paying the \$95 fee. She was unable to take a planned trip because of INS's delay in processing the travel document.

200. Adrienne Kazarwa was eligible and remains eligible for adjustment of status. She is still waiting to adjust her status and is not accruing time toward naturalization.

201. If the defendants had distributed all 10,000 asylee immigrant visas every fiscal year, distributed the visas in the mandated order, and excluded exempt asylees from the list, on information and belief they already would have adjusted Ms. Kazarwa's status or she would be eligible to adjust her status in the current fiscal year. Ms. Kazarwa has no remedy to compel the defendants to adjust her status in the proper order, other than through this lawsuit.

202. Plaintiff Amondieu Milfort was granted asylum from Haiti on August 28, 1997. He applied for adjustment of status on or about September 9, 1998, and received an acknowledgement from the INS that it had received his application.

203. Mr. Milfort applied for an EAD and has renewed his application each year for three times at a cost of \$300. He also paid a \$50 fee each year for his attorney's office to prepare the renewal applications.

204. Mr. Milfort was eligible and remains eligible for adjustment of status. He is not accruing time towards naturalization.

205. If the defendants had distributed all 10,000 asylee immigrant visas every fiscal year, distributed the visas in the mandated order, and excluded exempt asylees from the list, on information and belief they already would have adjusted Mr. Milfort's status or he would be eligible to adjust his status in the current fiscal year. Mr. Milfort has no remedy to compel the defendants to adjust his status in the proper order, other than through this lawsuit.

206. Plaintiff Dragon Cvetkovic was granted asylum from Yugoslavia on August 29, 1997. Mr. Cvetkovic's wife, Lilana Cvetkovic, and his two children, Danijel Cvetkovic and Marijan Cvetkovic, also received asylum as derivatives of Mr. Cvetkovic. Mr. Cvetkovic applied for adjustment of status on October 8, 1998 and received a notice from the INS indicating that it had received their applications on that date. His wife and two children applied for adjustment on October 9, 1998. Mr. Cvetkovic was fingerprinted in October 1998.

207. Mr. Cvetkovic was eligible and remains eligible for adjustment of status. He is not accruing time towards naturalization.

208. If the defendants had distributed all 10,000 asylee immigrant visas every fiscal year, distributed the visas in the mandated order, and excluded exempt asylees from the list, on information and belief they already would have adjusted the Cvetkovics' status or they would be eligible to adjust their status in the current fiscal year. The Cvetkovics have no

remedy to compel the defendants to adjust their status in the proper order, other than through this lawsuit.

209. Plaintiff Aman Yakob was granted asylum on September 16, 1997 from Afghanistan. His wife, Yasamin Yakob, and his daughter, Farangeees Yakob, were granted asylum as derivative asylees. They applied for adjustment of status in October 1998 at the NSC. Mr. Yakob received an acknowledgement that the NSC had received his adjustment application.

210. The Yakobs have applied for EADs and have renewed the EADs every year, paying \$70 for each of them for a total of \$210 each year until 1998, and then \$100 for each, for a total of \$300 per year every year since then. Each time, the EAD renewal takes approximately 60 to 90 days to process.

211. The Yakobs have not left the United States since they came here. They are afraid to leave until their status is adjusted because they fear they would not be permitted to reenter.

212. Mr. Yakob tried to go to school to get a better job and better support his family, but he was not eligible for financial aid as he is not yet a permanent resident. The Yakob family worries a lot about not having their green cards and do not believe they will be truly free until they are adjusted to permanent residents.

213. The Yakobs were eligible and remain eligible for adjustment of status. They are still waiting to adjust their status and are not accruing time towards naturalization.

214. If the defendants had distributed all 10,000 asylee immigrant visas every fiscal year, distributed the visas in the mandated order, and excluded exempt asylees from the list, on information and belief they already would have adjusted all three of the Yakobs' status or

they would be eligible to adjust their status in the current fiscal year. The Yakobs have no remedy to compel the defendants to adjust their status in the proper order, other than through this lawsuit.

215. Plaintiff Nina Ionescu was granted asylum on July 10, 1997 from Romania. She applied for adjustment of status at the NSC on November 16, 1998. She received a written receipt notice from the INS, dated November 19, 1998, acknowledging that her adjustment application had been received.

216. Ms. Ionescu applied for an EAD at the INS's New York District Office in 1998. She never received her EAD and the INS never made a determination on her EAD application. She paid a filing fee, even though filing fees on asylee's initial EAD is not required, and attorney fees.

217. Ms. Ionescu was eligible and remains eligible for adjustment of status. She is still waiting to adjust her status and is not accruing time toward naturalization.

218. If the defendants had distributed all 10,000 asylee immigrant visas every fiscal year, distributed the visas in the mandated order, and excluded exempt asylees from the list, on information and belief they already would have adjusted Ms. Ionescu's status or she would be eligible to have her status adjusted in the current fiscal year. Ms. Ionescu has no remedy to compel the defendants to adjust her status in the proper order, other than through this lawsuit.

219. Plaintiff Santiago Ruano Oliva was granted asylum in December 1996 from Guatemala. He applied for adjustment of status at the NSC on December 14, 1998. He received a written receipt notice from the INS, acknowledging that his adjustment application had been received on December 14, 1998.

220. Mr. Ruano Oliva applied for an EAD at the NSC. He has renewed his EAD three times, paying \$100 each time.

221. Mr. Ruano Oliva was eligible and remains eligible for adjustment of status. He is still waiting to adjust his status and is not accruing time towards naturalization

222. If the defendants had distributed all 10,000 asylee immigrant visas every fiscal year, distributed the visas in the mandated order, and excluded exempt asylees from the list, on information and belief they already would have adjusted Mr. Ruano Oliva's status or he would be eligible to adjust his status in the current fiscal year. Mr. Ruano Oliva has no remedy to compel the defendants to adjust his status in the proper order, other than through this lawsuit.

223. Plaintiff Abdiaziz Hassan was granted asylum on January 22, 1997 from Somalia. He applied for adjustment of status at the NSC on December 18, 1998. Mr. Hassan received a written receipt notice from the INS acknowledging that his adjustment application had been received on December 18, 1998.

224. Mr. Hassan applied for an EAD at the NSC. He paid the \$100 renewal fee at least twice, in 1999 and 2000.

225. Mr. Hassan applied for a refugee travel document at a cost of \$70. The INS spelled his name incorrectly on the document and did not issue a corrected document despite two requests that it do so. Consequently, he was unable to travel outside the United States.

226. Mr. Hassan was eligible and remains eligible for adjustment of status. He is still waiting to adjust his status and is not accruing time towards naturalization.

227. If the defendants had distributed all 10,000 asylee immigrant visas every fiscal year, distributed the visas in the mandated order, and excluded exempt asylees from the list,

on information and belief they already would have adjusted Mr. Hassan's status or he would be eligible to adjust his status in the current fiscal year. Mr. Hassan has no remedy to compel the defendants to adjust his status in the proper order, other than through this lawsuit.

228. Plaintiff Patricia Muendo was granted asylum on December 11, 1997 from the Democratic Republic of Congo. She applied for adjustment of status at the NSC on February 8, 1999. She received a written receipt notice from the INS acknowledging that her adjustment application had been received.

229.. Ms. Muendo applied for an EAD in 1997 at the INS's Dallas District Office. She renewed her EAD in 1998, 1999 and 2000, paying a \$100 renewal fee each time. Ms. Muendo also has applied for and paid \$95 in fees for a refugee travel document, but she never received the document.

230. Ms. Muendo is was eligible and remains eligible for adjustment of status. She is not accruing time towards naturalization.

231. If the defendants had distributed all 10,000 asylee immigrant visas every fiscal year, distributed the visas in the mandated order, and excluded exempt asylees from the list, on information and belief they already would have adjusted Ms. Muendo's status or she would be eligible to adjust her status in the current fiscal year. Ms. Muendo has no remedy to compel the defendants to adjust his status in the proper order, other than through this lawsuit.

232. Plaintiff Ali Murtaza was granted asylum on February 28, 1998 from Pakistan. He applied for adjustment of status at the NSC on March 8, 1999. He received a written receipt notice from the INS, dated September 15, 2000, acknowledging that his adjustment application had been received and was filed on March 8, 1999.

233. Mr. Murtaza's fingerprints were taken in Oklahoma when he first applied for his EAD on August 16, 1997. Mr. Murtaza renewed his EAD at the NSC in 1998, 1999, 2000 and is currently waiting for his 2001 EAD. He has spent more than \$300 on renewal fees in addition to attorney's fees for his EAD renewal. Mr. Murtaza has had to wait many months for the EAD renewal to be processed. He has had to obtain legal assistance and pay legal fees when his employer threatened to fire him due to the delay in the arrival of his EAD.

234. Mr. Murtaza was eligible and remains eligible for adjustment of status. He is still waiting to adjust his status and is not accruing time towards naturalization.

235. If the defendants had distributed all 10,000 asylee immigrant visas every fiscal year, distributed the visas in the mandated order, and excluded exempt asylees from the list, on information and belief they already would have adjusted Mr. Murtaza's status or he would be eligible to adjust his status in the current fiscal year. Mr. Murtaza has no remedy to compel the defendants to adjust his status in the proper order, other than through this lawsuit.

236. Plaintiff Pierre Boumtje was granted asylum on December 19, 1996 from Cameroon. He applied for adjustment of status at the NSC in April 1999. He received a written receipt notice from the INS, in June 1999, acknowledging that his adjustment application had been received.

237. Mr. Boumtje applied for an EAD at the NSC. He has renewed his EAD four times, paying \$100 each time. Mr. Boumtje was eligible and remains eligible for adjustment of status. He is still waiting to adjust his status and is not accruing time towards naturalization.

238. If the defendants had distributed all 10,000 asylee immigrant visas every fiscal year, distributed the visas in the mandated order, and excluded exempt asylees from the list, on information and belief they already would have adjusted Mr. Boumtje's status or he would be eligible to adjust his status in the current fiscal year. Mr. Boumtje has no remedy to compel the defendants to adjust his status in the proper order, other than through this lawsuit.

239. Plaintiff Martine Ernestine Boumtje was granted asylum on December 19, 1996 from Cameroon. She applied for adjustment of status at the NSC in April 1999. She received a written receipt notice from the INS, in June 1999, acknowledging that her adjustment application had been received.

240. Ms. Boumtje applied for an EAD at the NSC. She has renewed her EAD four times, paying \$100 each time. Ms. Boumtje was eligible and remains eligible for adjustment of status. She is still waiting to adjust her status and is not accruing time towards naturalization.

241. If the defendants had distributed all 10,000 asylee immigrant visas every fiscal year, distributed the visas in the mandated order, and excluded exempt asylees from the list, on information and belief they already would have adjusted Ms. Boumtje's status or she would be eligible to adjust her status in the current fiscal year. Ms. Boumtje has no remedy to compel the defendants to adjust her status in the proper order, other than through this lawsuit.

242. Plaintiff Rosemary Ekeada was granted asylum in February 1998 from Nigeria. She applied for adjustment of status at the Vermont Service Center in April 1999.

She received a written receipt notice from the INS, dated May 19, 1999, acknowledging that her adjustment application had been received.

243. Ms. Ekeada applied for an EAD in 1998 at the Vermont Service Center. She has renewed her EAD four times, paying \$100 each time. Ms. Ekeada was eligible and remains eligible for adjustment of status. She is still waiting to adjust her status and is not accruing time towards naturalization.

244. If the defendants had distributed all 10,000 asylee immigrant visas every fiscal year, distributed the visas in the mandated order, and excluded exempt asylees from the list, on information and belief they already would have adjusted Ms. Ekeada's status or she would be eligible to adjust her status in the current fiscal year. Ms. Ekeada has no remedy to compel the defendants to adjust her status in the proper order, other than through this lawsuit.

245. Plaintiff Iltam S. Jean-Caidor was granted asylum on July 10, 1998 from Haiti. He applied for adjustment of status at the NSC on July 23, 1999. He received a written receipt notice from the INS acknowledging that his adjustment application had been received on July 23, 1999.

246. Between 1997 and 1998, Mr. Jean-Caidor's fingerprints were taken four times. Mr. Jean-Caidor applied for an EAD in 1998 and renewed his EAD three times, paying the \$100 renewal fee each time. He suffered many lapses in his EAD because of defendants' delays in processing them.

247. Mr. Jean-Caidor was separated from his wife and two young children, who were outside the United States, from April 1992 to December 2000 due to defendants' mishandling of his file.

248. Mr. Jean-Caidor was eligible and remains eligible for adjustment of status. He is not accruing time towards naturalization.

249. If the defendants had distributed all 10,000 asylee immigrant visas every fiscal year, distributed the visas in the mandated order, and excluded exempt asylees from the list, on information and belief they already would have adjusted Mr. Jean-Caidor's status or he would be eligible to adjust his status in the current fiscal year. Mr. Jean-Caidor has no remedy to compel the defendants to adjust his status in the proper order, other than through this lawsuit.

250. Plaintiff Bassem El-Khatib was granted asylum from Kuwait. He applied for adjustment of status at the NSC on January 10, 2000. Mr. El-Khatib received a written receipt notice from the INS acknowledging that his adjustment application had been received on January 10, 2000. Mr. El-Khatib applied for an EAD at the NSC, paying a \$100 renewal fee in 2001.

251. Mr. El-Khatib was eligible and remains eligible for adjustment of status. He is not accruing time towards naturalization.

252. If the defendants had distributed all 10,000 asylee immigrant visas every fiscal year, distributed the visas in the mandated order, and excluded exempt asylees from the list, on information and belief they already would have adjusted Mr. El-Khatib's status or he would be eligible to adjust his status in the current fiscal year. Mr. El-Khatib has no remedy to compel the defendants to adjust his status in the proper order, other than through this lawsuit.

253. Plaintiff Bekana Huluka was granted asylum on January 11, 1999 from Ethiopia. He applied for adjustment of status at the NSC on May 16, 2000. He received a

written receipt notice from the INS acknowledging that his adjustment application had been received on May 16, 2000.

254. Mr. Huluka applied for an EAD in 1998 at the Vermont Service Center. He renewed his EAD in 1999 and 2000, paying a \$100 renewal fee each time.

255. Mr. Huluka was eligible and remains eligible for adjustment of status. He is still waiting to adjust his status and is not accruing time towards naturalization.

256. If the defendants had distributed all 10,000 asylee immigrant visas every fiscal year, distributed the visas in the mandated order, and excluded exempt asylees from the list, on information and belief they already would have adjusted Mr. Huluka's status or he would be eligible to adjust his status in the current fiscal year. Mr. Huluka has no remedy to compel the defendants to adjust his status in the proper order, other than through this lawsuit.

Exempt Plaintiff

257. Fuad Sumo was paroled with his family from Northern Iraq to Anderson Military Base in Guam in September 1996 and was granted asylum. He applied to adjust his status on June 25, 1998 at the NSC. His application forms indicated that he was an Iraqi Kurdish asylee and that his place of last entry into the U.S. was Guam. He received a written acknowledgement from the NSC, dated July 31, 1998 that his adjustment application had been received.

258. On September 28, 1999, Fuad Sumo made an official status inquiry to the NSC. The NSC replied on October 6, 1999. The NSC letter said that the processing time for this type of application had been extended due to the pending case load at the NSC and that he should allow an additional 500 days for an officer to review his case and notify him of a decision. Fuad Sumo sent another inquiry on August 28, 2000.

259. Fuad Sumo received a letter from the INS's Houston Asylum Office dated June 5, 2001, informing him that he had been granted asylum as of November 18, 1996. The letter also informed him that he was eligible for employment authorization but must apply for and obtain an EAD as evidence of his eligibility to work in the United States.

260. Fuad Sumo has had difficulty finding employment without permanent resident status. He applied for a refugee travel document with other family members in spring 2001 and paid the \$95.00 fee. However, he never received the document.

261. Fuad Sumo was and is eligible for adjustment of status. Defendants already should have adjusted his status without regard to the 10,000 annual cap of INA 209(b), 8 U.S.C. 1159(b). He is not accruing time toward naturalization.

262. Several of Fuad Sumo's family members were paroled with him from Northern Iraq to Anderson Military Base in Guam. As Fuad, they were granted asylum and later applied to adjust their status. As Fuad, they were exempt from the 10,000 annual cap on asylee adjustments. As Fuad, they had been waiting since early 1998 to adjust their status. Specifically, Rahema Sumo, Faris Sumo, and Hataf Sumo applied to adjust their status on April 9, 1998 at the INS's Houston District Office. Hushiar Sumo and Khadeja Sumo applied to adjust their status on June 25, 1998 at the NSC. All five had planned to be named plaintiffs in this lawsuit. These five Sumo family members all were exempt from the 10,000 cap, but the defendants granted their adjustments in the last few weeks. These five Sumo family members had to apply for refugee travel documents, encountered other difficulties, and did not accrue time towards naturalization during the years they waited to adjust their status.

HARMS THE PLAINTIFFS AND CLASS MEMBERS ARE SUFFERING

263. Plaintiffs and class members have suffered, are suffering, and will continue to suffer significant and irreparable harm because of defendants' policies, procedures, acts and failures to act as described herein. This harm includes the harms alleged throughout this complaint, and the following:

264. Because defendants have, in many fiscal years, distributed far fewer than the 10,000 available visas, and because defendants have not complied with the requirement to allocate visas in the order in which plaintiffs filed for them, all plaintiffs and class members are farther back on the waiting list than they otherwise would be. As a direct result of their placement on the waiting list, all plaintiffs and class members have had to and/or will have to wait a significantly longer period to adjust their status. As long as defendants continue to improperly fail to allocate visas, to distribute visas out of order, and to include exempt asylees in the queue, all plaintiffs and class members will continue to suffer delays.

265. Because plaintiffs and class members have waited and will continue to wait significantly longer to become LPRs, they have been and are unable to stabilize their lives. Their status here has been and will continue to be indefinite. Some plaintiffs and class members have been and will continue to be afraid to accumulate assets in the United States because they fear they may ultimately be denied permanent residence status and may be deported. They have not been able to and cannot plan because they have not known and do not know when they will become permanent residents.

266. Some plaintiffs and class members have been and will continue to be unable to petition for family members to join them in the United States. For example, if an asylee marries a noncitizen who is a resident of some other country, the asylee cannot petition for

his or her spouse nor bring them to this country. Single asylees cannot marry and sponsor his or her spouse until the asylee's status is adjusted.

267. Some plaintiffs and class members have been and will be refused jobs or passed over for promotions because they are not LPRs or not United States citizens. Many plaintiffs have lost significant work time and will lose significant work time while pursuing their adjustment applications, making inquiries at INS offices, meeting with lawyers, applying for renewals and refugee travel documents, and otherwise pursuing their delayed permanent residency.

268. Some colleges and universities have considered and will continue to consider plaintiffs and class members to be out-of-state residents and hence charged them out-of-state tuition. The plaintiffs and class members have had and will continue to have other hardships when applying for financial aid for higher education.

269. Because they have not become LPRs, plaintiffs and class members have been and are unable to travel freely outside the United States. Many plaintiffs and class members have been and will be afraid to travel outside the United States for fear there will be a bar to their reentry or they will not be permitted to reenter, even if they obtain a refugee travel document before they depart. Some plaintiffs and class members have declined and will decline employment opportunities that involved travel abroad. Those plaintiffs and class members who have been willing to travel outside the United States have had to apply for, wait for, and pay for refugee travel documents to assure their reentry. Many have paid attorneys' fees for their attorneys' assistance in obtaining refugee travel documents and advice.

270. Because they have had to wait and will continue to have to wait many years to adjust their status, and because of defendants' policies and practices as described herein, plaintiffs and class members have had to and will continue to have to submit to repeated fingerprinting and medical exams, at considerable cost and inconvenience.

271. Plaintiffs and class members who are exempt from the 10,000 visa cap have had to and will continue to have to wait years longer than required by law to adjust their status. They also have had to and will continue to have to obtain EADs and refugee travel documents and renew those documents repeatedly, at considerable expense and inconvenience, when they should not have had to obtain or renew EADs or refugee travel documents at all.

272. Nonexempt plaintiffs and class members have not adjusted as quickly as they should have, and have had to wait longer than they should have, because defendants did not exclude exempt asylees from the queue. Nonexempt plaintiffs and class members will continue to have to wait years longer than they should have if defendants do not exclude exempt asylees from the queue.

273. Because plaintiffs and class members have not and will continue to not become LPRs when or as quickly as they should have, their naturalization has been delayed. They have been and will continue to be unable to vote and participate fully in our democracy. They have lost job opportunities that are open only to United States citizens and will continue to lose such opportunities. They have been and will continue to be unable to petition for their family members to immigrate to the United States as immediate relatives.

274. Because defendants have misinterpreted the INA and applicable regulations, many plaintiffs and class members have had to and will continue to have to obtain EADs and

pay for repeated renewals of those EADs, resulting in significant out-of-pocket expense, including attorneys' fees, inconvenience, loss of wages, and loss of employment opportunities. Some plaintiffs and class members have suffered and will continue to suffer lapses between receiving EADs because of INS delays in processing their renewals. These lapses have resulted in and will continue to result in loss of income and risk of lost of jobs.

275. Plaintiffs and class members do not know when they will be adjusted and believe that defendants will not adjust them in the proper, chronological order. Plaintiffs and class members have no way, other than through this lawsuit, to compel the defendants to adjust them in the proper order.

276. Plaintiffs' and class members' rights to due process of law and equal protection under the Fifth Amendment to the United States Constitution have been and are being violated and will continue to be violated by defendants' failures and policies and practices as described herein.

CLASS ACTION ALLEGATIONS

277. The named plaintiffs bring this action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of themselves and all other persons similarly situated in the following classes. The named plaintiffs seek to represent all asylees whose applications for adjustment are still pending and who:

- Class I. Filed their adjustment of status applications with the INS on or before January 16, 1998.
- Class II. Filed their adjustment of status applications after January 16, 1998 and on or before June 9, 1998.
- Class III. Filed their adjustment of status applications after June 9, 1998.

Class IV. Applied for or applied to renew an EAD.

Class V. Are exempt from the statutory cap of 10,000 set by INA §209(b).

278. Class members may, and often will, belong to more than one class.

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

280. The proposed classes meet the commonality requirement of Fed. R. Civ. P. 23(a)(2) because there are questions of law and fact common to the class. Common questions of law include whether the INS and defendants' regulations require defendants to maintain a single, national asylee adjustment queue and whether the statute and regulations permit asylees to work indefinitely incident to status. Common questions of fact include whether defendants have failed to allocate all 10,000 visas per fiscal year and whether exempt asylees have been excluded from the waiting list.

281. The individual differences in the class members' and plaintiffs' life stories and asylum applications are irrelevant to their complaints against defendants for their misadministration of the adjustment process.

282. The proposed classes meet the numerosity requirement of Fed. R. Civ. P. 23(a)(1) because the members of each of the five classes are so numerous that joinder of all members is impracticable. According to defendants, there currently are approximately 60,000 asylees whose adjustment applications are pending either at district offices or at the NSC. Most of these asylees have had to apply for an EAD and most of those have applied to renew the EAD at least once.

283. The proposed classes meet the typicality requirement of Fed. R. Civ. P. 23(a)(3) because the claims of the named plaintiffs are typical of the claims of each of the class members. The named plaintiffs complain of the defendants' systemic failures to properly administer the asylee waiting list and of agency-wide misinterpretation of law. The claims of each class representative are typical of the claims of each member of that class.

284. The named plaintiffs will fairly and adequately protect the interests of the classes as required by Fed. R. Civ. P. 23(a)(4) because their interests are identical to those of the other members of the classes. Both the named plaintiffs and the class members will benefit from the relief requested in this complaint. The named plaintiffs will therefore zealously protect the interests of the classes. Plaintiffs know of no conflicts between their interests and those of the class they seek to represent.

285. In addition, the fair and adequate protection of the interests of the classes will be further ensured because the named plaintiffs are represented by competent legal counsel. Plaintiffs' counsel are experienced in class action litigation and federal litigation and have adequate resources and commitment to represent the class as a whole.

286. The instant action should be maintained as a class action under Fed. R. Civ. P. 23(b)(2) because the defendants have acted on grounds generally applicable to each member of the classes by failing to carry out the duties owed to each member of the classes.

287. Furthermore, as contemplated by Fed. R. Civ. P. 23(b)(1), if the individual members of the classes were to bring separate suits to address the defendants' policies, practices, actions and inactions, the defendants may address the cases of the named plaintiffs but ignore the applications and concerns of the remaining class members, thereby exacerbating the defendants' violations of the law. Resolving this matter as a class action

would also serve judicial economy since the courts would not be burdened with lawsuits by many individual adjustment applicants.

CAUSES OF ACTION

I.

Violation of INA §209(b), 8 U.S.C. §1159(b) (Adjustment of Status, Number of Visas Available)

288. Plaintiffs incorporate paragraphs 1 through 287 as if fully set forth herein.

289. Defendants' practices, policies, conduct, and failures to act as alleged herein deprive plaintiffs and class members of their rights to adjust status pursuant to INA §209(b), 8 U.S.C. §1159(b) and unlawfully delay their adjustment of status pursuant to that statute.

290. As a result, plaintiffs and class members have suffered irreparable harm and damages entitling them to injunctive and other relief.

II.

Violation of 8 C.F.R. §209.2(a)(1) (Waiting List)

291. Plaintiffs incorporate paragraphs 1 through 290 as if set forth in full herein.

292. Defendants' practices, policies, conduct, and failures to act as alleged herein violate 8 C.F.R. §209.2(a)(1) because defendants have not maintained a priority waiting list based on the date each plaintiff's and class member's adjustment application was filed, and do not adjust plaintiffs or class members in the order in which they filed their applications.

293. As a result, plaintiffs and class members have suffered irreparable harm and damages entitling them to injunctive and other relief.

III.

Violation of Pub.L. No. 105-277, Title I, §128 (Iraqi Kurds); Pub. L.No. 106-429, §586 (Indochinese parolees); Pub.L.No. 106-378 (Syrian Jews) (Exempt Plaintiffs)

294. Plaintiffs incorporate paragraphs 1 through 293 as if set forth in full herein.

295. Defendants' practices, policies, conduct, and failures to act as alleged herein violate Pub. L. No. 105-277, Title I, §128; Pub.L. No. 106-429, §586; Pub.L.No. 106-378 in that defendants are not exempting those asylees, including the named exempt plaintiff and Class V members, who are exempt from the 10,000 cap and should be adjusted notwithstanding the asylee adjustment backlog.

296. As a result, plaintiffs and class members have suffered irreparable harm and damages entitling them to injunctive and other relief.

IV.

Violation of INA §208(c)(1)(B), 8 U.S.C. 1158(c)(1)(B) (Employment Authorization Documents)

297. Plaintiffs incorporate paragraphs 1 through 296 as if set forth in full herein.

298. Defendants' practices, policies, conduct, and failures to act as alleged herein violate INA §208(c)(1)(B), 8 U.S.C. §1158(c)(1)(B) in that defendants require many plaintiffs and Class IV members to apply for and renew EADs in order to be employed when their right to employment is incident to their status as asylees.

299. As a result, plaintiffs and class members have suffered irreparable harm and money damages entitling them to injunctive and other relief.

V.

Violation of Administrative Procedures Act, 5 U.S.C. §§702 and 706

300. Plaintiffs incorporate paragraphs 1 through 299 as if set forth in full herein.

301. Defendants' practices, policies, conduct, and failures to act as alleged herein violate, inter alia, the Administrative Procedures Act, 5 U.S.C. §§ 702 and 706, because agency action is unlawfully withheld or unreasonable delayed under §706(1).

302. As a result, plaintiffs and class members have suffered irreparable harm and money damages entitling them to injunctive and other relief.

VI.

Violation of the Fifth Amendment, Due Process and Equal Protection Clauses

303. Plaintiffs incorporate paragraphs 1 through 302 as if set forth in full herein.

304. Defendants' practices, policies, conduct, and failures to act as alleged herein violate plaintiffs' and class members' rights to due process and equal protection of law protected by the Fifth Amendment to the United States Constitution.

305. As a result, plaintiffs and class members have suffered irreparable harm and damages entitling them to injunctive and other relief.

RELIEF REQUESTED

Wherefore, plaintiffs respectfully ask that the Court:

- a) Permit this case to proceed as a class action and certify the classes as and when requested by plaintiffs;
- b) Declare that defendants' acts and omissions complained of herein violate the INA, defendants' regulations, the Administrative Procedures Act, and the Due Process and Equal Protection Clauses of the Fifth Amendment;
- c) Preliminarily and permanently enjoin defendants as and when requested by plaintiffs;

d) Order defendants to make an accounting of the precise number of asylee adjustment visas not allocated or used in each of the preceding 10 fiscal years and to publish the accounting in the Federal Register, and elsewhere;

e) Order defendants to arrange all pending adjustment applications filed by plaintiffs and class members in the chronological order in which the applications were properly filed;

f) Order defendants to determine the number of visas currently available for plaintiffs and class members, including all those the defendants did not allocate or that were unused in prior fiscal years, and then to immediately distribute all of those visas and adjust the status of waiting plaintiffs and class members, in the proper first in-first out order;

g) Order defendants to put and keep in place measures to assure that all available visas are allocated in the current and each future fiscal year and that those visas are allocated in chronological order based on date of filing;

h) Order defendants to segregate out from the asylee adjustment waiting list any and all exempt plaintiffs and class members, adjust their status immediately, and deduct those numbers from the waiting list;

i) Order defendants to put and keep measures in place to identify and exclude from the asylee adjustment waiting list any and all exempt asylees;

j) Order defendants to publish quarterly, in the Federal Register and elsewhere, particulars regarding the asylee adjustment waiting list, including, but not limited to, the number of visas remaining to be distributed in this fiscal year, an accurate cut-off date, and the expected wait for adjustment for asylees who filed by particular dates;

k) Order defendants to refrain from requiring plaintiffs and class members to apply for and/or renew an EAD;

l) Order defendants to refrain from requiring multiple sets of fingerprints and multiple medical examinations of plaintiffs and class members who are waiting to adjust, by, for example, requiring the submission of a set of fingerprints and a medical examination report only when there is a visa available and the asylee is almost ready to adjust status;

m) Order the defendants to properly record plaintiffs' and class members' adjustment dates to credit plaintiffs and class members for time they improperly spent waiting to adjust status, toward the five-year waiting period for naturalization.

n) Award the plaintiffs their attorneys' fees and costs under the Equal Access to Justice Act, and;

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

Dated: March 4, 2002

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