

The Honorable Richard A. Jones
United States District Judge

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

B.H., M.A., A.S.D., M.F., H.L., L.M.M.M., B.M.,
G.K., L.K.G., and D.W.,
Individually and on Behalf of All Others
Similarly Situated,

Plaintiffs,

v.

U.S. CITIZENSHIP AND IMMIGRATION
SERVICES; EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW; Janet
NAPOLITANO, Secretary, Department of
Homeland Security; Alejandro MAYORKAS,
Director, U.S. Citizenship and Immigration
Services; Eric H. HOLDER, Jr., Attorney General
of the United States; Juan OSUNA, Director,
Executive Office for Immigration Review,

Defendants.

Case No. 2:11-cv-02108 R.A.J.

PARTIES' JOINT MOTION FOR CLASS
CERTIFICATION

NOTE ON MOTION CALENDAR:

April 12, 2012

1 Plaintiffs initially filed a complaint with class action allegations for injunctive and
2 declaratory relief on December 15, 2011. Plaintiffs then filed motion for class certification under
3 Rule 23(b)(2) of the Federal Rules of Civil Procedure on December 20, 2011, on behalf of a class
4 and two subclasses. Plaintiffs alleged that Defendants' actions, as challenged in the lawsuit, were
5 generally applicable to the class, thus making injunctive relief appropriate for the class as a whole.
6 Plaintiffs also alleged that the prerequisites for a class action, as found in Rule 23(a), were also met:
7 that the class was so numerous that joinder of all members was impracticable; that there are
8 questions of law and fact common to the class; that the claims and defenses of the representatives
9 parties are typical of the claims and defenses of the class; and that the representative parties will
10 fairly and adequately protect the interests of the class. In support of their motion, the Plaintiffs
11 submitted an extensive memorandum of law and and 28 exhibits. On June 5, 2012, Plaintiffs filed a
12 first amended complaint for injunctive and declaratory relief on behalf of the same class, but with
13 four subclasses.

14 The parties then agreed to enter into mediation through this Court's alternative dispute
15 resolution program. Counsel for the parties met for two full days on June 26 and 27, 2012 and then
16 again for two full days on October 15 and 16, 2012. After these two rounds of formal mediation, the
17 parties continued settlement negotiations over the course of the next four months, meeting by phone
18 and in person more than a half dozen times. Based upon these settlement negotiations and the
19 evidence submitted by Plaintiffs in support of their motion for class certification and linked to in
20 their original complaint and first amended complaint, Counsel for all parties have reached agreement
21 and hereby jointly move this court, pursuant to Rules 23(a) and 23(b)(2) and 23(g) of the Federal
22 Rules of Civil Procedure, to certify the following class and subclasses, and to appoint the following
23 as class counsel (*see* Dkt. No. 13, Exh. 16-23, Decl. of Proposed Class Counsel):

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Joint Mot. for Class Certification - 2

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1 **Notice and Review Class:** All noncitizens in the United States who meet all of the following
2 criteria: (1) have filed or will file or lodge with Defendants a complete asylum application;
3 (2) whose asylum applications have neither been approved nor subjected to a denial for
4 which no rights of review or appeal remain; (3) whose applications for employment
5 authorization based on their status as asylum applicants have been or will be denied; (4)
6 whose eligibility for employment authorization based on a pending asylum application will
7 be determined in a manner that is alleged to provide insufficient notice and/or opportunity for
8 review; and (5) who fall in one or more of the following subclasses:

9 1) **Hearing Subclass:** Individuals who meet all of the following criteria: (1) who have
10 been or will be issued a Form I-862, Notice to Appear, in removal proceedings or
11 Form I-863, Notice of Referral, to an immigration judge; 2) who have filed or lodged,
12 or sought to lodge, or who will lodge or seek to lodge a complete defensive asylum
13 application with the immigration court prior to a hearing before an immigration
14 judge; and (3) whose eligibility for employment authorization has been or will be
15 calculated from the date the asylum application was or will be filed at a hearing
16 before an immigration judge.

17 2) **Prolonged Tolling Subclass:** Asylum applicants who meet all of the following
18 criteria: (1) non-detained asylum applicants whose time creditable toward
19 employment authorization is or will be stopped due to delay attributed to them by
20 Defendants; (2) who have allegedly resolved the issue causing the delay or will
21 allegedly resolve the issue causing the delay prior to the next scheduled hearing; (3)
22 but whose time creditable toward employment authorization remains or will remain
23 stopped until the next hearing date.

1 3) **Missed Asylum Interview Subclass**: Asylum applicants who meet all of the
2 following criteria: (1) who have failed or will fail to appear for an asylum interview
3 with USCIS; and (2) who have not or will not accrue time creditable toward
4 eligibility for employment authorization following the date of the missed asylum
5 interview on account of missing that asylum interview.

6 4) **Remand Subclass**: Asylum applicants who meet all of the following criteria: (1)
7 whose asylum applications were or will be denied by the immigration court before
8 they have been pending at least 180 days exclusive of applicant caused delays; and
9 (2) who subsequent to an appeal in which either the BIA or a federal court of appeals
10 remands their case for further adjudication of their asylum claim by an immigration
11 judge, have not or will not accrue additional time creditable toward eligibility for
12 employment authorization.

13 **Class counsel:**

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18 Mary Kenney
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5 DATED: April 12, 2013

Respectfully submitted,

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Joint Mot. for Class Certification - 5

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CERTIFICATE OF SERVICE

I hereby certify that on April 12, 2013, I electronically filed the foregoing motion and proposed order with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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Dated: April 12, 2013

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