

For Opinion See [1997 WL 55472](#)

United States District Court, E.D. New York.

Neil JEAN-BAPTISTE, Gustavo Enrique Cepeda-Torres, and Victor Israel Santana, on behalf of themselves and all others similarly situated, Plaintiffs,

v.

Janet RENO, Attorney General of the United States of America, and Immigration and Naturalization Service, Defendants.

No. CV 96 4077.

August 19, 1996.

Complaint

[Go](#), M.

[Johnson](#), J.

INTRODUCTION

1. This class action lawsuit challenges the procedures employed by the defendant Immigration and Naturalization Service (hereinafter INS) with respect to the deportation of federally licensed lawful permanent resident aliens who have, in the past, been convicted of certain criminal acts after entry and lawful admission into the United States and during their continuous residence in the United States. The procedures of the INS deprive the plaintiffs herein of liberty and property without due process of law.
2. Under the provisions of the Administrative Procedure Act " 'license' includes the whole or a part of an agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission." The Alien Registration Card, which is issued to resident aliens by the INS, is physical evidence of a federally issued license permitting resident aliens to reenter, reside, work, travel, become United States citizen, and live permanently with their families in the United States. As licensees, permanent resident aliens have a constitutionally protected property interest and therefore cannot be deprived of their license absent due process of the law.
3. Prior to being admitted into the United States, prospective resident aliens pay a fee for their license to reside and work in the United States and thereby, acquire lawful permanent residence status. Prior to, at the time of, and after admission to the United States, under current policies and procedure of the defendants, resident aliens are not given: (1) actual notice of the future conditions under which they will be permitted to continue to reside permanently in the United States; (2) any prior notice of the grounds or conditions which could subject them to revocation of their permanent residence license and possible deportation from the United States; and (3) actual prior notice that engaging in certain types of criminal behavior is ground for the revocation of their license as well as deportation. At the time the

INS issues and mails the Alien Registration Card (Form I-551, which is physical evidence of the alien's federally issued license), to lawfully admitted resident aliens, the INS again fails to give the resident aliens notice of the grounds under which the aliens will lose their license to reside permanently in the United States. Further, resident aliens are not given notice of the existence of any statutory provisions which provide for the revocation of the license to reside permanently in the United States and the subsequent penalty of deportation.

4. Legal permanent residence in the United States is a federally licensed status for which a fee is paid and thus, under the Due Process Clause, permanent resident aliens are entitled to prior notice of the grounds under which their license to reside permanently in the United States will be revoked.

5. Despite their obligations under the Due Process Clause of the Fifth Amendment, the defendants have adopted policies, practices or procedures that deprive the plaintiffs herein, and the member of the plaintiff class, of the right to due process of law. The defendants consistently fail to provide resident aliens, prior to the commission and conviction of a criminal act, with prior notice of the grounds under which their license to reside permanently in the United States may be revoked.

6. The policies, practices or procedures of defendants have caused, are causing and will cause irreparable harm to the plaintiffs and the proposed plaintiff class defined below. The plaintiffs are being and will be deprived of the freedom to reenter, reside, work, travel, live permanently with their families, and attend to their property within the United States, rights which the plaintiffs were formerly granted when they became permanent resident. Defendants' conduct also has had the effect of depriving the plaintiffs of their right to reside and remain "united" with their immediate families which is a declared congressional intent in enacting the Immigration and Nationality Act (hereinafter INA).

II.

JURISDICTION AND VENUE

7. Jurisdiction is conferred on this Court pursuant to [28 U.S.C. §§ 1331](#) (federal question jurisdiction), 2201 and 2202 (declaratory judgment and injunction), [8 U.S.C. § 1329](#) (disputes arising under the Immigration and Nationality Act), and [5 U.S.C. § 702](#) *et seq.* (Administrative Procedure Act).

8. An actual controversy has arisen and now exists between the parties relating to their rights and duties. No administrative remedy exists to cure the conduct alleged herein. Administrative action is futile.

9. Venue in this judicial district is proper pursuant to [28 U.S.C. § 1391\(e\)](#) because the representative plaintiffs reside within the Eastern District of New York and defendants are the Attorney General of the United States charged with the enforcement of the United States immigration laws.

III.

PARTIES

A. Plaintiffs

10. Plaintiff NEIL JEAN-BAPTISTE is a legal permanent resident of the United States with permanent residence license number A30-675-077, which entitles him to reenter, reside, work, travel, and live permanently with his family in the United States.

11. The plaintiff GUSTAVO ENRIQUE CEPEDA-TORRES is a legal permanent resident of the United States with permanent residence license number A37-760-324, which entitles him to reenter, reside, work, travel, and live permanently with his family in the United States.

12. The plaintiff VICTOR ISRAEL SANTANA is a legal permanent resident of the United States with permanent residence license number A42-094-364, which entitles him to reenter, reside, work, travel, and live permanently with his family in the United States.

C. Defendants

13. Defendant JANET RENO is the Attorney General of the United States. Pursuant to INA § 103(a), [8 U.S.C. § 1103\(a\)](#), defendant Reno is charged with administering and enforcing all laws relating to immigration and naturalization and with controlling, directing and supervising the INS. Defendant Janet Reno is sued in her official capacity only.

14. Defendant IMMIGRATION AND NATURALIZATION SERVICE is an agency of the United States Department of Justice charged with implementing the Immigration and Nationality Act, [8 U.S.C. § 1101](#), *et seq.*

IV.

CLASS ACTION ALLEGATIONS

15. This action is brought by plaintiffs as a class action, on their own behalf and on behalf of all similarly situated individuals, pursuant to the provisions of [Rules 23\(a\)](#) and [23\(b\)\(1\) and \(b\)\(2\)](#), and [23\(c\)\(4\) of the Federal Rules of Civil Procedure](#), for injunctive and declaratory relief, and relief incident and subordinate thereto.

V.

16. The class so represented by plaintiffs in this action, and of which plaintiffs are themselves members, consists of:
All licensed permanent resident aliens, arrested and convicted for the commission of criminal acts, who: (1) at the time of obtaining a permanent residence visa abroad; or (2) at the time of entry to the United States; or (3) at the time of adjustment of status to that of a lawful permanent resident; or (4) at any time prior to committing a criminal act, were not given notice by INS officials and examiners, that engaging in certain type of criminal behavior is a ground for revocation of their

license to reenter, reside, work, travel, and live permanently with their families in the United States and would subject them to the penalty of deportation; and who will undergo deportation proceedings or are under deportation proceedings on account of a criminal conviction and have not yet been deported.

VI.

17. The exact number of members of the class, as hereinabove identified and described, is not known, but it is estimated that there are not less than 10,000 members throughout the United States. The class is so numerous that joinder of individual members herein is impracticable.

VII.

18. There are common questions of law and fact in the action that relate to, and affect, the rights of each member of the class and the relief sought is common to the entire class. Common questions of law include whether the INS' procedures, policies or practices regarding deportation of resident aliens convicted of certain criminal acts violate the Due Process Clause of the Fifth Amendment to the Constitution of the United States.

VIII.

19. The claims of plaintiffs, who are representatives of the class herein are typical of the claims of the class, in that the claims of all members of the class, including plaintiffs, depend on a showing of the acts and omissions of defendants giving rise to the right of plaintiffs to the relief sought herein. There is no conflict as between any individual named plaintiff and other members of the class with respect to this action, or with respect to the claims for relief herein set forth.

IX.

20. The named plaintiffs are the representative parties for the class, and are able to, and will fairly and adequately protect the interests of the class. The attorneys for plaintiffs are experienced and capable in litigation in the field of Immigration and Nationality Law and have successfully represented claimants in other litigation of this nature. Antonio C. Martinez will actively conduct and be responsible for plaintiffs' case herein.

X.

21. This action is properly maintained as a class action in that the prosecution of separate actions by individual members of the class would create a risk of adjudication with respect to individual members of the class which would as a practical matter be dispositive of the interest of the other members not parties to the adjudications, or would substantially impair or impede their ability to protect their interest.

22. This action is properly maintained as a class action inasmuch as the defendants herein have acted or refused to act, as hereinafter more specifically alleged, on

grounds which are applicable to the class, and have by reason of such conduct, made appropriate final injunctive relief or corresponding declaratory relief with respect to the entire class, as sought in this action.

23. This action is properly maintained as a class action inasmuch as the question of law and fact common to the members of the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy. In support of the foregoing allegations, plaintiffs show as follows:

XI.

FACTUAL ALLEGATIONS

24. Defendant IMMIGRATION AND NATURALIZATION SERVICE is an agency of the United States Department of Justice charged with implementing the Immigration and Nationality Act, [8 U.S.C. § 1101](#), *et seq.* Defendant INS is subject to the provisions of the Administrative Procedure Act, [5 U.S.C. § 101](#) *et seq.*

25. The Alien Registration Card that is issued by defendant INS falls within the purview of the Administrative Procedure Act, § 551(8), (9) and (10) relating to the definition of license, licensing procedures, and sanctions, respectively.

26. All the members of the class paid the required fee and received a license from the INS which gives class members the right to reenter, reside, work, travel, and live permanently with their families in the United States.

Named Plaintiffs

27. Plaintiff NEIL JEAN-BAPTISTE is a national of the Republic of Haiti. He resides permanently at 135 Eastern Parkway, Apt. 8J, Brooklyn, New York, within the jurisdiction of this Court. He was born on November 27, 1969, and legally entered the United States on January 25, 1972, when he was only two years old.

28. On January 24, 1972, plaintiff NEIL JEAN-BAPTISTE, after paying a fee therefor, was granted a visa for permanent residence by the Vice Consul of the United States, American Embassy at Portau-Prince, Haiti. On January 25, 1972, the plaintiff was admitted to the United States as a lawful permanent resident. The INS issued the plaintiff license number A30-675-077, which entitles the plaintiff to reenter, reside, work, travel, and live permanently with his family in the United States. The Vice Consul Officer in Haiti, who issued the plaintiff the immigrant visa, and the INS officers and examiners at the time the plaintiff was admitted to the United States, failed to give the plaintiff or plaintiff's parents: (1) actual notice of the conditions under which the plaintiff will be permitted to reside permanently in the United States; (2) actual notice of the grounds which could subject the plaintiff to deportation from the United States; and (3) actual notice that engaging in certain type of criminal behavior constitutes ground for revocation of the plaintiff's license to reside permanently in the United States as well as ground for deportation.

29. At the time the INS issued and mailed to the plaintiff the license for permanent residence, the INS did not give the plaintiff actual notice respecting revocation of the license to reside in the United States and the grounds for deportation. Further, the INS failed to give the plaintiff such notice when the plaintiff attained majority.

30. The plaintiff NEIL JEAN-BAPTISTE has lived almost his entire life in the United States. The plaintiff knew that he could be incarcerated for committing a crime, but did not know that he could be deported from the United States on the basis of a criminal conviction. The plaintiff's parents and siblings are all citizens of the United States and reside in this country.

31. On the basis of a guilty plea, on October 23, 1989, the plaintiff NEIL JEAN-BAPTISTE was convicted in the Supreme Court, Kings County, State of New York, of the offense of criminal possession of a controlled substance, in violation of [section 220.18 of the New York State Penal Law](#).

32. On the basis of the plaintiff's conviction as aforesaid, the INS charged the plaintiff with deportation pursuant to sections 241(a)(2)(B)(i) and 241(a)(2)(A)(iii) of the (INA). The plaintiff pleaded guilty, to violating [section 220.18 of the New York State Penal Law](#), without actual notice from the INS that his license to reside permanently in the United States would thereby be revoked on the basis of his conviction.

33. On August 9, 1996, Hon. Joe Miller, Immigration Judge, after finding that the plaintiff is not eligible for any type of administrative relief from deportation, ordered that the plaintiff be deported to the Republic of Haiti.

34. The plaintiff GUSTAVO ENRIQUE CEPEDA-TORRES is a national of the Republic of Colombia. He resides permanently at 90-56 176th Street, Jamaica, New York, within the jurisdiction of this Court. He was born on October 30, 1974, and legally entered the United States when he was eight years old.

35. On October 6, 1982, plaintiff, GUSTAVO ENRIQUE CEPEDATORRES, after paying the required fee therefor, was issued an immigrant visa to enter the United States for permanent residence by the Vice Consul of the United States, American Embassy, Consular Section, Bogota, Colombia. On November 8, 1982, the plaintiff was admitted to the United States as a lawful permanent resident. The INS issued the plaintiff alien registration number A37-760-324, which constitutes a license that entitles the plaintiff to enter, reside, work, travel, and live permanently with his family in the United States.

36. The United States Vice Consul in Colombia, who issued the plaintiff the immigrant visa, and the INS officers and examiners at the time the plaintiff was admitted to the United States, failed to give the plaintiff or plaintiff's parents: (1) actual notice of the conditions under which the plaintiff will be permitted to reside permanently in the United States; (2) actual notice of the grounds which could subject the plaintiff to the penalty of deportation from the United States; and (3) actual notice that engaging in certain type of criminal behavior constitutes ground

for revocation of the plaintiff's license to reside permanently in the United States as well as ground for deportation.

37. At the time the INS issued and mailed to the plaintiff the license for permanent residence, the INS did not give the plaintiff actual notice respecting revocation of the license to reside in the United States and the grounds for deportation. Further, the INS failed to give the plaintiff such notice when the plaintiff attained majority.

38. On the basis of a guilty plea, the plaintiff, on or about March 9, 1995, was convicted in the Supreme Court, Queens County, State of New York, of the offense of criminal sale of a controlled substance, in violation of [section 220.31 of the New York State Penal Law](#).

39. On the basis of the plaintiff's conviction, the INS charged the plaintiff with deportation pursuant to sections 241(a)(2)(B)(i) and section 241(a)(2)(A)(iii) of the (INA).

40. On July 3, 1996, Hon. Joe Miller, Immigration Judge, after finding that the plaintiff is not eligible for any type of administrative relief from deportation, ordered the plaintiff deported to the Republic of Colombia. The plaintiff appealed the decision of the Immigration Judge to the Board of Immigration Appeals (BIA). Said appeal is still pending before the BIA. However, there are no administrative remedies available to the plaintiff to redress the injuries which the plaintiff has, and will continue to suffer as a result of the defendants' conduct. The Immigration Court and the Board of Immigration Appeals do not have jurisdiction to rule on issues of constitutional law.

41. The plaintiff VICTOR ISRAEL SANTANA is a national of the Dominican Republic. He was born on July 5, 1961. He resides permanently at 54 East Chestnut Street, Central Islip, New York, within the jurisdiction of this Court. He entered the United States, as a conditional permanent resident, when he was 28 years old on July 30, 1989.

42. Upon satisfaction of all conditions, including the payment of the required fee, the plaintiff was issued a visa for conditional permanent residence by the Vice Consul of the United States, American Embassy, Santo Domingo, Dominican Republic. The Vice Consul, who issued the plaintiff the immigrant visa, and the INS officers and examiners at the time the plaintiff was admitted to the United States, failed to give the plaintiff: (1) actual notice of the conditions under which the plaintiff will be permitted to reside permanently in the United States; (2) actual notice of the grounds which could subject the plaintiff to the penalty of deportation from the United States; and (3) actual notice that engaging in certain criminal behavior constitutes ground for revocation of the plaintiff's license to reside permanently in the United States as well as ground for deportation.

43. At the time the INS issued and mailed to the plaintiff the license for permanent residence, the INS did not give the plaintiff actual notice respecting the revocation, for the commission of crimes, of the license to reside in the United States

and the grounds for deportation. Further, the INS failed to give the plaintiff such notice at the time the INS removed the conditions of the plaintiff's permanent residence.

44. The plaintiff, VICTOR ISRAEL SANTANA, on or about November 9, 1995, was convicted in the Supreme Court, Suffolk County, State of New York, of the offense of criminal sale of controlled substance, in violation of [section 220.39 of the New York State Penal Law](#). On the basis of the plaintiff's conviction, the INS charged the plaintiff with deportation pursuant to Sections 241(a)(2)(B)(i) and 241(a)((2)(A)(iii) of the INA.

45. The plaintiff has completed his criminal sentence and paid his debt to society. However, the INS is holding the plaintiff at the Federal Detention Center, Oakdale, Louisiana, for purposes of deporting the plaintiff on the basis of the plaintiff's criminal conviction. On August 13, 1996, the plaintiff was ordered deported to the Dominican Republic by Hon. Duck, Immigration Judge, Federal Detention Center, Oakdale, Louisiana, after finding that the plaintiff is not eligible for any type of administrative relief from deportation, nor release from detention.

Non-Plaintiff class members

46. Non-plaintiff class member RAFAEL GREGORIO MOREL is a citizen of the Dominican Republic. He resides permanently at 218 Willow Avenue, Hackensack, New Jersey. He is currently serving sentence for a criminal conviction, related to a controlled substance, at Fishkill Correctional Facility, Beacon, New York. Mr. Morel was born on May 28, 1945. He legally entered the United States in 1958, when he was 12 years old. The INS issued Mr. Morel a license, which entitles Mr. Morel to reenter, reside, work, travel, and live permanently with his family in the United States. Mr. Morel is an honorably discharged veteran of the United States Army with 13 months active duty services in Vietnam during a period of hostilities. Mr. Morel's wife, six children, sister, brother and parents are citizens of the United States. In 1993, Mr. Morel was sentenced to a minimum of six years imprisonment for the commission of a crime related to a controlled substance. Based on information and belief, Mr. Morel is under investigation by the INS and, it is expected that the INS will charge Mr. Morel with deportation, and will stop his work release program benefits, on the basis of his criminal conviction and non-eligibility for any type of waiver of deportation.

47. Non-plaintiff class member JOSE ANTONIO ESPINAL is a citizen of the Dominican Republic. He resides permanently at 1103 Jerry Way, Summerville, South Carolina. Mr. Espinal was admitted to the United States as a lawful permanent resident on May 12, 1982, when he was fifteen years old. The INS issued Mr. Espinal license number A37-632-841, which entitles Mr. Espinal to reenter, reside, work, travel, and live permanently with his family in the United States. Mr. Espinal is married to Angelica Rodriguez, a citizen of the United States, and there are two children born of the marriage, to wit: Jonathan Antonio Espinal, born July 12, 1990, in New York City, and Jose Anthony Espinal, born on October 13, 1993, in North Charleston, South Carolina.

48. On or about June 17, 1996, Mr. Espinal and his family went on vacation to the Dominican Republic. On July 8, 1996, when the family was returning to the United States, the INS detained and arrested Mr. Espinal at JFK International Airport, at Jaimaca, New York, and denied Mr. Espinal entry to the United States on the basis that Mr. Espinal has been convicted of a violation of law relating to a controlled substance. The defendant INS has commenced exclusion/deportation proceedings against Mr. Espinal and refuses to release Mr. Espinal on bail.

49. Non-plaintiff class member GERMAN GARCIA-HANDAL, also known as Herman Garcia-Handal, is a citizen of the Republic of Honduras. He resides permanently at 1264 Croes Avenue, Bronx, New York. He was born on July 3, 1961. He entered the United States in May 1979 as a visitor for pleasure. On July 1, 1982, at New York, New York, the INS adjusted Mr. Garcia's status to that of a lawful permanent resident of the United States. The INS issued Mr. Garcia a permanent residence license number A24-027-802, which entitles Mr. Garcia to reside permanently in the United States. Mr. Garcia's family, immediate and non-immediate, live in the United States. He has a ten year old United States citizen son, David Garcia, and a United States citizen wife, Ana Garcia Parra. On or about April 29, 1994, Mr. Garcia was convicted in the Supreme Court of the State of New York, County of Bronx, of the offense of criminal sale of a controlled substance in violation of [Section 220.39 of the New York State Penal Law](#). In December 1994, the INS charged Mr. Garcia with deportation pursuant to sections 241(a)(2)(B)(i) and 241(a)(2)(A)(iii) of the INA. An Immigration has ordered that Mr. Garcia be deported from the United States.

50. Non-plaintiff class member MARTIN DE JESUS THEN is a citizen of the Dominican Republic. He resides permanently at 116 Evergreen Street, Harrisburg, Pennsylvania. Mr. Then entered the United States on or about February 25, 1981, without inspection. On May 15, 1990, at Boston, Massachusetts the INS adjusted his status to that of a lawful permanent resident. The INS issued Mr. Then a license for permanent residence number A090-566-776, which entitles him to reside permanently in the United States. On or about February 13, 1991, on a plea of *nolo contendere*, Mr. Then was convicted in the Superior Court, County of Providence, State of Rhode Island, of one count of simple possession of heroin and conspiracy to possess a controlled substance. On the basis of his conviction, the INS has charged Mr. Then with deportation pursuant to Sections 241(a)(A)(iii) and 241(a)(2)(B)(i) of the INA.

51. Non-plaintiff class member BOYDY DELANO BECKFORD is a citizen of the Republic of Jamaica. He was born on March 4, 1969. He resides permanently at 679 Magenta Street, Apt. 4A, Bronx, New York. He was admitted to the United States as a legal permanent resident on March 10, 1993. The INS issued Mr. Beckford a permanent residence license number A43-730-153, which entitles Mr. Beckford to reside permanently in the United States. On or about November 21, 1995, Mr. Beckford was convicted in the Supreme Court of the State of New York, County of the Bronx, for the offense of criminal sale of a controlled substance in violation of [section 220.39 of the New York State Penal Law](#). Mr. Beckford is currently serving his sentence of one to three years of incarceration at Lakeview SICF, Brocton, New York, 14716. On the basis of his conviction, the INS, on April 26, 1996, charged Mr. Beckford with deportation under Sections 241(a)(A)(iii) and 241(a)(2)(B) (i) of the INA. An Immigration judge

has ordered that Mr. Beckford be deported from the United States.

52. Non-plaintiff class member MANUEL JOVINO DURAN is a citizen of the Dominican Republic. He was born on August 18, 1967. He resides permanently at 2532 University Avenue, Apt. 4J, Bronx, New York. On July 23, 1982, Mr. Duran entered the United States as a nonimmigrant visitor for pleasure. On February 24, 1986, the INS adjusted Mr. Duran's status to that of a lawful permanent resident of the United States. The INS issued Mr. Duran a permanent residence license number A27-050-893, which entitles Mr. Duran to enter, reside, work, travel, and live permanently with his family in the United States. On October 31, 1988, in New York, New York, Mr. Duran was convicted of certain crimes including criminal possession of a weapon. On the basis of Mr. Duran's conviction the INS, on June 25, 1992, charged Mr. Duran with deportation under Sections 241(a)(2)(C) and 241(a)(2)(A)(iii) of the INA.

Policies and Practices.

53. On information and belief, the injuries suffered by the plaintiffs and set forth above are due to the procedures, practices or policies of the defendants, which cause plaintiffs and the class they represent to be deprived of their liberty and property without due process of law when they become eligible for work release or after completion of their sentences.

54. At each and every step of the plaintiffs' application process to secure their license as lawful permanent residents of the United States, the Defendants failed to give the plaintiffs any actual notice that engaging in certain types criminal behavior constitutes ground for revocation of the license to reside permanently in the United States as well as ground for deportation.

55. The defendants have failed to establish reasonable procedures to ensure that licensed permanent resident aliens receive, at a meaningful time, adequate and meaningful notice that engaging in certain types of criminal behavior constitutes ground for revocation of the license to reside permanently in the United States as well as a ground for their deportation. As a result, the plaintiff and the class they represent have suffered, are suffering, and will continue to suffer from the deprivation of their right to liberty and property without due process of law.

56. The defendants knew or reasonably should have known that the plaintiffs, and members of the class, did not have actual notice that their license to reside permanently in the United States could be revoked on the basis of a criminal conviction.

57. As a result of defendants' acts or failure to act, plaintiffs and the class they represent have suffered and are suffering direct and continuing injury.

XII.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

58. Plaintiffs have no administrative remedy for challenging the unlawful deprivation of their liberty and property as alleged herein.

XIII.

IRREPARABLE INJURY

59. Plaintiffs have suffered, are suffering and will suffer irreparable harm because of defendants' challenged procedures, practices or policies as described above. Plaintiffs and the class they represent have experienced and will continue to experience improper detention, deportation, ousters under "voluntary" and "involuntary" departure, exclusions, and denials of the right to reenter, reside, work, travel, become United States citizens, and live permanently with their families in the United States.

XIV.

FIRST CLAIM FOR RELIEF

60. Plaintiffs hereby incorporate by reference paragraphs 1 through 59 of the complaint as if fully set forth herein.

61. Under the Due Process Clause of the Fifth Amendment to the Constitution of the United States, the plaintiffs are entitled to actual notice of the grounds for deportation and revocation of their license to reside permanently in the United States: (1) before lawful entry to the United States; (2) or at the time of entry or adjustment of status to that of a lawful permanent resident; (3) or at any time prior to the commission or conviction of a crime which constitutes ground for deportation and revocation of the license to reside permanently in the United States.

62. The revocation of the plaintiffs' license to reside permanently in the United States and subsequent deportation, without: (1) actual prior notice of the conditions under which the plaintiffs will be permitted to reside permanently in the United States; (2) actual prior notice of the grounds which could subject the plaintiffs to deportation from the United States; and (3) actual prior notice that engaging in certain type of criminal behavior constitutes ground for revocation of the plaintiffs' license to reside permanently in the United States as well as ground for deportation, is in violation of the due process guarantee of the Fifth Amendment to the Constitution of the United States.

XV.

SECOND CLAIM FOR RELIEF

63. Plaintiffs hereby incorporate by reference paragraphs 1 through 62 of the complaint as if fully set forth herein.

64. The plaintiffs have been adversely affected and aggrieved by the unlawful acts and omissions of the defendants and are entitled to judicial relief pursuant to [§ 702](#) of the Administrative Procedure Act.

XVI.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs and the members of the plaintiff class pray that this court grant the following relief:

- A. Assume and maintain continuing jurisdiction of this action;
- B. Certify this action as a class action;
- C. Issue a judgment declaring that the acts and omissions of the defendants described herein violate the Due Process Clause of the Fifth Amendment to the Constitution of the United States and the Administrative Procedure Act;
- D. Issue a preliminary and permanent injunction enjoining defendants, their agents, servants, employees, and all persons acting under, in concert with or for them:
 - (1) from depriving any and all members of the plaintiff class described herein of their right to enter, reside, work, travel, and live permanently with their families in the United States;
 - (2) from issuing any orders of deportation against the plaintiffs and members of the plaintiff class on the basis of a criminal conviction;
 - (3) from detaining, arresting, or incarcerating the plaintiffs on the basis of crimes for which the plaintiffs have completed their criminal sentence or have been released from prison on parole or pursuant to an early work release program;
 - (4) from requesting state or federal parole boards to deny plaintiffs, and members of the plaintiff class, release from prison on parole or pursuant to an early work release program.
- E. Issue a judgment declaring null and void any orders of deportation which hereto have been issued, or in the future may be issued, against the plaintiffs and the members of the plaintiff class;
- F. Awarding plaintiffs the cost of this action, including reasonable attorneys' fees;
- G. Grant such other and further relief as the court shall deem just and equitable.

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