

United States District Court
Southern District of Texas
FILED

AUG 19 2004

Michael N. Milby, Clerk of Court

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

TERESA D. PADILLA, IQBAL SHEIKH,
FADI EL HADDAD, REYNA GUTIERREZ, §
BARTOLO GUIJARRO-HERNANDEZ, §
LAURA FIERRO DE MARROQUIN, ROSA §
AURORA VIVEROS HUESCA, PEDRO §
MAURICIO NOLASCO-CENTENO, §
individually and on behalf of all others §
similarly situated persons, §

Case No.: M-03-126

Plaintiffs, §

vs. §

TOM RIDGE, Secretary for Homeland §
Security, JOHN ASHCROFT, Attorney §
General, EDUARDO AGUIRRE, JR., Director §
for the United States Citizenship and §
Immigration Services, DAVID ROARK, §
Acting Regional Director for the USCIS §
Central Region, ALFONSO DE LEON, §
District Director for the Harlingen USCIS §
District, KENNETH PASQUARELL, District §
Director for the San Antonio USCIS District, §
and HIPOLITO ACOSTA, District Director §
for the Houston USCIS District, §

Defendants. §

**PLAINTIFFS' FIFTH AMENDED COMPLAINT FOR MANDAMUS,
DECLARATORY AND INJUNCTIVE RELIEF**

1. Plaintiffs Teresa D. Padilla, Iqbal Sheik, Fadi El Haddad, Reyna Gutierrez, Bartolo Guijarro-Hernandez, Laura Fierro de Marroquin, Rosa Aurora Viveros Huesca, Pedro Mauricio Nolasco-Centeno, and a class of similarly situated persons (collectively, “Plaintiffs”) file this class action complaint to protect their constitutional and statutory rights as persons who were or will be granted lawful permanent resident (“LPR”) status in removal proceedings conducted by the immigration courts in Harlingen, Houston and the San Antonio within the Department of Justice’s Executive Office for Immigration Review (“DOJ”/“EOIR”), or who were or will be granted LPR status by the DOJ Board of Immigration Appeals (“BIA”) in cases on appeal from said immigration courts and to whom the Department of Homeland Security’s United States Citizenship and Immigration Services (“DHS”/“USCIS”) has not issued documentation evidencing LPR status.
2. Plaintiffs seek mandamus, declaratory and injunctive relief requiring Defendants to issue them documentation of their LPR status within three days of the date that the Immigration Court’s Order by which each Plaintiff acquired their LPR status becomes final or within such other legally reasonable time period as determined by this Court.

I. JURISDICTION

3. This action arises under the Constitution of the United States, the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101 et seq., as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), Pub. L. No. 104-208, 110 Stat. 1570, the Immigration Reform and Control Act of 1986

(“IRCA”), 8 U.S.C. § 1324(a), and the Administrative Procedure Act (“APA”), 5 U.S.C. § 701 et seq. This Court has jurisdiction under 28 U.S.C. §§ 1331, 1361, and 2201. This Court may grant relief pursuant to 28 U.S.C. §§ 1361, 2202, and 5 U.S.C. § 702 et seq.

II. VENUE

4. Venue lies in the United States District Court for the Southern District of Texas because at least one defendant in this action resides in such district. 28 U.S.C. § 1391(e).

III. PARTIES

5. Plaintiffs are persons who were granted lawful permanent resident (“LPR”) status in removal proceedings conducted by the immigration courts in Harlingen, Houston and the San Antonio within the EOIR, or who were be granted LPR status by the BIA in cases on appeal from said immigration courts and to whom the USCIS has not issued documentation evidencing LPR status.
6. Alfonso De Leon is the District Director of USCIS for the Harlingen District. In this capacity, Mr. De Leon administers the immigration laws on behalf of DHS in the seven southernmost counties in Texas that are served by the Harlingen District. He has decision-making authority with respect to the matters alleged in this complaint by Plaintiffs whose immigration cases are in the control of the Harlingen District Office.
7. Hipolito Acosta is District Director of USCIS for the Houston District. In this capacity, Mr. Acosta administers the immigration laws on behalf of DHS in the thirty counties in southeastern Texas that are served by the Houston District. He

has decision-making authority with respect to the matters alleged in this complaint by Plaintiffs whose immigration cases are in the control of the Houston District Office.

8. Kenneth Pasquarell is the District Director of USCIS for the San Antonio District. In this capacity, Mr. Pasquarell administers the immigration laws on behalf of the Secretary for DHS in the seventy eight counties in central and south Texas that are served by the San Antonio District. He has decision-making authority with respect to the matters alleged in this complaint by Plaintiffs whose immigration cases are in the control of the San Antonio District Office.
9. David Roark is the Acting Regional Director of the USCIS central region. In this capacity, Mr. Roark administers the immigration laws on behalf of the Secretary for DHS in several states, including Texas. He has decision-making authority with respect to the matters alleged in this complaint by Plaintiffs whose immigration cases are in the control of the Harlingen, Houston and San Antonio district offices.
10. Eduardo Aguirre, Jr., is the Director of USCIS. In this capacity, Mr. Aguirre is responsible for the administration of immigration benefits and services including the processing of citizenship applications, family and employment-based petitions, alien registration, asylum and refugee processing, and issuance of documentation evidencing immigration status of aliens residing in the United States. As such, he has decision-making authority over the matters alleged in this complaint and, specifically, over the failure to provide documentation of LPR status to Plaintiffs.

11. Tom Ridge is the Secretary of Homeland Security. Secretary Ridge is charged with, amongst other things, administering the USCIS and implementing and enforcing the Immigration and Nationality Act. As such, he has ultimate decision-making authority over the matters alleged in this complaint and, specifically, over the failure to provide documentation to Plaintiffs of LPR status.
12. John Ashcroft is the Attorney General of the United States. In his official capacity, Mr. Ashcroft is charged with administering the Executive Office of Immigration Review which, among other things, conducts removal proceedings in immigration cases and decides administrative appeals of such cases. As such, he has ultimate decision-making authority to grant or deny lawful permanent resident status to persons in removal proceedings.

III. CLASS ALLEGATIONS

13. Pursuant to Fed. R. Civ. P. 23(a) and 23(b)(2), Plaintiffs bring this action on behalf of themselves and all other similarly situated individuals. The plaintiff-class consists of:

All persons who were or will be granted LPR status in removal proceedings conducted by the immigration courts in Harlingen, Houston and the San Antonio within the Department of Justice's Executive Office for Immigration Review ("DOJ/EOIR"), or who were or will be granted LPR status by the DOJ Board of Immigration Appeals ("BIA") in cases on appeal from said immigration courts and to whom the Department of Homeland Security's United States Citizenship and Immigration Services ("DHS"/"USCIS") has not issued documentation evidencing LPR status.

14. The class is so numerous that joinder of all members is impracticable.
15. The precise number of class members within the Harlingen, Houston and San Antonio USCIS Districts is not known with precision and fluctuates. In addition,

the actual number of class members will increase because the class includes future members.

16. Class members reside anywhere in the one hundred and fifteen counties served by the Harlingen, Houston and San Antonio USCIS Districts. The Harlingen District serves the seven counties in the southernmost tip of Texas; the Houston District serves thirty counties in south-eastern Texas; and, the San Antonio District serves seventy eight counties in central and south Texas. The difficulties in contacting and communicating with members of the class resulting from Plaintiffs' varied locations of residence make joinder of all class members impractical.
17. There are questions of law and fact that are common to the named plaintiffs and class members.
18. Questions of law common to the named plaintiffs and class members include whether USCIS may deny proof evidencing LPR status to persons granted such status in removal proceedings and whether Defendants' delays in granting proof of LPR status to class members are unreasonable and unlawful.
19. Questions of fact common to the named plaintiffs and class members include whether USCIS is failing to provide class members with documentation evidencing their LPR status and whether USCIS is delaying granting documentation of LPR status to class members.
20. The claims of the named plaintiffs are typical of the claims of the class. Plaintiffs know of no conflict between their interests and those of the class they seek to represent. In defending their own rights, the individual plaintiffs will defend the rights of all class members.

21. The named plaintiffs and counsel representatives are adequate representatives of the class.
22. Defendants have acted on grounds generally applicable to each member of the class insofar as they have failed to provide to class members documentation of their LPR status.

V. LEGAL FRAMEWORK

23. Plaintiffs (as described in Paragraph 13 supra) are aliens who were placed in removal proceedings as provided under the INA.¹
24. Removal proceedings are conducted by the EOIR. 8 C.F.R. §§ 1003.0 (describing the organizational structure of EOIR), 1003.9-1003.46 (describing the Immigration Court and the rules of procedure for removal proceedings).
25. Generally, removal proceedings are initiated with the service of a “Notice to Appear” to the alien where he or she is advised of, among other things, the nature of the proceedings, the charges of deportability against him or her, the time and place at which the proceedings will be held, and the consequences for failing to appear. 8 U.S.C. § 1229(a).
26. The “Notice to Appear” is then filed with the Immigration Court by representatives of DHS. 8 C.F.R. § 1003.14. The filing of the “Notice to Appear” vests jurisdiction on the Immigration Court. Id.
27. The alien, and his or her counsel if represented, makes an appearance at a master calendar hearing and the case is set for a merits hearing at a later date. 8 C.F.R. §§ 1003.17-1003.21.

¹ As used herein, the term “removal” and “deportation” are used interchangeably to refer to the expulsion of aliens who previously entered the United States.

28. If the alien is determined to be deportable, he or she may seek several forms of relief from deportation.
29. Adjustment of status and cancellation of removal under 8 U.S.C. § 1229b(b) are the primary forms of relief from deportation relevant to this litigation. However, other forms of relief from removal also result in the grant of LPR status, such as relief under the Cuban Adjustment Act or under the former 8 U.S.C. § 1254(c), and the recipients of such relief are members of Plaintiffs' class.
30. An alien in removal proceedings can obtain relief from deportation by adjusting status to that of a lawful permanent resident. 8 U.S.C. § 1255, 8 C.F.R. § 1240.11(a)(1). Section 1255 of 8 U.S.C. sets forth the different types of persons who, in the discretion of the Attorney General, may adjust their status to that of lawful permanent resident.
31. Generally, an alien in removal proceedings can adjust if he or she was inspected and admitted or paroled into the U.S. or is eligible under § 1255(i), has a visa immediately available, has maintained lawful status (except for § 1255(i) applicants) and is otherwise not statutorily ineligible. Thus, parents, spouses, and children of United States citizen adults are eligible to adjust so long as they are not statutorily ineligible. If they meet the requirements of 8 U.S.C. § 1255, lawful permanent residents can also adjust their status in removal proceedings to defeat deportation.
32. Second, an alien can seek cancellation of removal and adjustment of status to that of lawful permanent resident. 8 U.S.C. §1229b(b).

33. Generally, cancellation of removal under 8 U.S.C. § 1229b(b)(1) is available to nonpermanent residents who have resided for a long period of time in the U.S. and whose deportation would cause exceptional and unusual hardship to the alien's spouse, parent or child who is a U.S. citizen or lawful permanent resident.
34. Victims of domestic abuse can obtain cancellation of removal if they meet certain criteria. 8 U.S.C. § 1229b(b)(2).
35. For both adjustment and cancellation, the alien must affirmatively request the relief by filing the proper forms, relevant evidence, and filing fees. 8 C.F.R. §§ 1240.11(a), 1240.20, 1240.21 (describing procedures for adjustment of status and cancellation of removal). The alien must also submit to fingerprinting at a facility designated by the local USCIS district office.
36. After the required forms have been submitted, the fees paid, and the fingerprints have cleared through the Federal Bureau of Investigation ("FBI"), the alien appears before the Immigration Judge who approves or denies the request for adjustment of status or cancellation of removal.
37. If granted relief from removal, an alien is accorded LPR status by issuance of an Order from an Immigration Judge who has reviewed the alien's eligibility for such status. The Order indicates the section of the law under which relief was provided.
38. No other documentation or picture identification is given to the alien that shows that he or she is an LPR.
39. If an alien is in removal proceedings, applies for adjustment of status and the application is granted, the alien acquires lawful permanent residence status as of

the date the Immigration Judge's order becomes administratively final. 8 U.S.C. § 1255(b).

40. If an alien is in removal proceedings, applies for cancellation of removal under 8 U.S.C. § 1229b(b) and the application is granted, the alien acquires lawful permanent residence status as of the date the order of cancellation becomes final. 8 U.S.C. § 1229b(b)(3).
41. Except when certified to the Board of Immigration Appeals, the decision of the Immigration Judge becomes final upon waiver of appeal or upon expiration of the time to appeal if no appeal is taken. 8 C.F.R. § 1003.39.
42. The USCIS is bound to give full effect to final decisions of the Immigration Courts.
43. There are no regulations that specifically address the manner in which persons who are granted LPR status in removal proceedings are to be provided with proof of their status in the United States.
44. The Immigration Courts do not have the capacity to issue documentation evidencing LPR status to aliens granted cancellation or adjustment.
45. Only the local USCIS district offices have the capacity to issue documentation of LPR status.
46. Indeed, USCIS issues such documentation on a daily basis to aliens who are not in proceedings and who adjust their status to that of lawful permanent residents at the district level.
47. For aliens who are granted LPR status in removal proceedings, the usual practice in the USCIS Districts of Harlingen, Houston, and San Antonio for obtaining

proof of LPR status and permanent resident cards is to visit the local USCIS district office and request ADIT (“Alien Documentation, Identification and Telecommunication”) processing.

48. In ADIT processing, USCIS collects fingerprints and photographs from the alien. The local USCIS office sends the photographs and fingerprints to an off-site facility to produce the permanent resident cards.
49. It may take several months or even more than a year for the alien to receive the permanent resident card, which is known as the Form I-551.
50. While waiting for their Form I-551 permanent resident card, aliens must be issued alternative proof of their LPR status sufficient for all lawful purposes.
51. The alternative proof of LPR status usually takes the form of an I-94 card (commonly referred to as the temporary I-551) or an I-551 stamp on the alien’s passport.
52. When USCIS issues this alternative proof of LPR status to aliens who are granted LPR status in removal proceedings, USCIS does so pursuant to statutory or regulatory duties.
53. USCIS must issue proof of LPR status to aliens who are granted LPR status in removal proceedings within a reasonable time period.
54. However, it may take several months or even more than a year for USCIS to issue proof of LPR status to aliens who are granted LPR status in removal proceedings.
55. Between the time that an alien is granted LPR status in removal proceedings and the time that such alien receives proof of LPR status from USCIS, he or she is without documentation of his or her LPR status.

56. An Immigration Judge's order granting LPR status is not proper documentation evidencing employment eligibility or identity. 8 U.S.C. § 1324a(b)(1)(B),(C) and (D); 8 C.F.R. § 1274a.2(b)(v).
57. Indeed, the Immigration Judge's order granting LPR status lacks important qualities required by federal law such as a photograph of the alien and security features making it resistant to tampering, counterfeiting, or fraudulent use.
58. An Immigration Judge's order granting LPR status is insufficient evidence of identity and alien status for the purpose of obtaining a Social Security card. 8 C.F.R. § 422.107.
59. An Immigration Judge's order is not valid documentation to obtain admission into the United States. 8 C.F.R. § 211.1(a).
60. Therefore, aliens granted LPR status by an Immigration Judge cannot travel abroad until USCIS issue them proof of status without taking the risk that they will not be readmitted into the country based upon their inability to prove their LPR status.
61. Aliens granted LPR status by an Immigration Judge cannot enroll in community colleges because most schools request a Social Security number and proof of lawful status in the United States.
62. Finally, federal law requires lawful permanent residents to carry at all times a "certificate of alien registration or alien registration receipt card" or else be guilty of a misdemeanor and be subject to a fine, imprisonment or both. 8 U.S.C. § 1304(e).

63. Pursuant to 8 U.S.C. § 1304(e) or other federal law, Border Patrol or other federal agents may arrest persons who are in the United States and claim to be lawful permanent residents but cannot prove such status.
64. Therefore, aliens who have been granted LPR status by an Immigration Judge and who have not received documentation of their LPR status from USCIS are subject to arrest.
65. As a result of their lack of documentation evidencing lawful status in the United States, these aliens live in fear of being detained by law enforcement officials for failing to prove their status in the United States.

VI. STATEMENT OF FACTS

66. Plaintiffs have been placed in removal proceedings by Defendants as described in preceding paragraphs.
67. Plaintiffs applied for relief from deportation, and pursuant to federal regulations, they submitted the proper forms, evidence, and fees.
68. An Immigration Court conducted a hearing on each class member's request for relief from deportation. Defendants had the opportunity to challenge or oppose the request.
69. Plaintiffs' applications for relief from removal through either cancellation of removal, Immigration and Nationality Act ("INA") § 240A(b), 8 U.S.C. §§ 1229b(b), or adjustment of status to that of LPR, INA § 245, 8 U.S.C. § 1255, were granted. Plaintiffs acquired LPR status thereby.
70. Defendants had the right to appeal the decision of the Immigration Court but waived appeal, and the order of the Immigration Court became final.

71. Prior to the final hearing on their applications for relief, either the former Immigration and Naturalization Service or USCIS fingerprinted class members; FBI checks were conducted on the basis of these fingerprints; and the FBI checks revealed no arrests and no other derogatory information that prevented Plaintiff's from obtaining the requested relief from deportation.
72. After obtaining relief from deportation, class members, or their attorneys, requested that Defendants issue to class members proof of their LPR status in the United States.
73. The local USCIS District Offices of Harlingen, Houston, and San Antonio rejected class members' requests for ADIT processing.
74. Weeks and months have passed, and class members have not been called for ADIT processing and are without proof of their LPR status in the United States.
75. Defendants have not issued to Plaintiffs proof of their LPR status thereby depriving Plaintiffs of the constitutional rights and privileges that flow from their lawful permanent resident status.
76. The lack of documentation evidencing class members' LPR status in the United States has caused great personal hardship to class members.
77. The lack of documentation evidencing their LPR status has caused class members employment problems because they cannot demonstrate their eligibility for employment in the United States.
78. The lack of documentation evidencing their LPR status has inhibited class members' right to travel abroad because they cannot demonstrate their eligibility for readmission into the United States.

79. Class members have been subject to other problems caused by the lack of documentation evidencing their LPR status such as problems relating to applying for public benefits, obtaining medical care, enrolling in school and financing their education.
80. Plaintiffs also live in fear of being stopped by state or federal officials and having to demonstrate lawful status in the United States, as required by law. Plaintiffs fear that some officials will not credit their claim to lawful status and that they will be detained for an indeterminate amount of time.

Named Plaintiffs

Iqbal Sheikh

81. Mr. Sheikh is a native and citizen of India. He currently lives in San Antonio, Texas, in Bexar County with his family.
82. Immigration authorities initiated deportation proceedings against Mr. Sheikh.
83. Mr. Sheikh filed his application for cancellation of removal.
84. By Order, December 19, 2003, an Immigration Judge in San Antonio, Texas, granted his application, thereby according him LPR status.
85. Defendants did not appeal the Immigration Judge's order, and thus, the order became final.
86. Mr. Sheikh has requested that Defendants provide him with proof of his LPR status. Although it has been almost six months since his hearing before the Immigration Judge, Defendants have yet to give him any proof of status.
87. Mr. Sheikh has been harmed by Defendants' failure to provide him with proof of his LPR status.

Fadi El Haddad

88. Mr. El Haddad was born in Beirut, Lebanon but has lived in the United States for three years. He currently lives in Converse, Texas, in the County of Bexar with his United States citizen wife and child.
89. In April of 2003, immigration authorities initiated deportation proceedings against Mr. El Haddad.
90. Mr. El Haddad filed an application for adjustment of status based upon his marriage.
91. On February 5, 2004, a San Antonio Immigration Judge granted his application for cancellation of removal and made him a lawful permanent resident.
92. Defendants did not appeal the Immigration Judge's order, and thus, the order became final.
93. Mr. El Haddad has requested that Defendants provide him with proof of his LPR status. It has been over four months since his hearing before the Immigration Judge and Defendants have yet to give him any proof of status.
94. Mr. El Haddad has been harmed by Defendants' failure to provide him with proof of his LPR status.

Reyna Gutierrez

95. Ms. Gutierrez is a native and citizen of Mexico. She currently lives in Laredo in Webb County, Texas with her permanent resident mother and United States citizen husband.
96. The former INS initiated removal proceedings against Ms. Gutierrez in May of 2001.

97. While in removal proceedings, she applied for adjustment of status.
98. On August 29, 2003, an Immigration Judge in San Antonio, Texas, granted her application, thereby giving her lawful permanent resident status.
99. She has requested that Defendants provide her with proof of her lawful permanent resident status, but they have not done so. It has been over nine months since her hearing before the Immigration Judge and Defendants have yet to give her any proof of status.
100. Ms. Gutierrez has been harmed by Defendants' failure to provide her with proof of her LPR status.

Bartolo Guijarro-Hernandez

101. Mr. Guijarro-Hernandez is a native and citizen of Mexico. He currently lives in Elsa, Texas, in the County of Hidalgo, with his family. He is married to a lawful permanent resident and has four children, three of whom are United States citizens and one of whom is a lawful permanent resident.
102. On April 26, 2002, the former INS initiated removal proceedings against him.
103. Mr. Guijarro-Hernandez filed his application for cancellation of removal on May 6, 2003.
104. On August 22, 2003, an Immigration Judge in Harlingen, Texas, granted his application, thereby according him lawful permanent resident status.
105. The government did not appeal the Immigration Judge's order, and thus, the order became final.
106. Mr. Guijarro-Hernandez has requested that Defendants provide him with proof of his lawful permanent resident status, but they have not done so. It has been over

nine months since his hearing before the Immigration Judge and the government has yet to give him proof of his status.

107. Mr. Guijarro-Hernandez has been harmed by Defendants' failure to provide him with proof of his LPR status.

Laura Fierro de Marroquin

108. Ms. Fierro de Marroquin is a native and citizen of Mexico. She currently lives in Sullivan City, Texas, in the county of Hidalgo with her six children.

109. On December 24, 2002, the former INS initiated removal proceedings against her.

110. She applied for cancellation of removal and adjustment of status.

111. On September 18, 2003, an Immigration Judge in Harlingen, Texas, granted her application, thereby giving her lawful permanent resident status.

112. She has requested that the government provide her with proof of her lawful permanent resident status, but they have not done so. It has been almost nine months since her hearing before the Immigration Judge and Defendants have yet to give her any proof of her status.

113. Ms. Fierro de Marroquin has been harmed by Defendants' failure to provide her with proof of her LPR status.

Rosa Aurora Viveros Huesca

114. Ms. Aurora Viveros Huesca is a native and citizen of Mexico. She currently lives in Mission, Texas in Hidalgo county with her two children.

115. In 2001, the former INS initiated removal proceedings against her.

116. She applied for adjustment of status.

117. On January 23, 2004, an Immigration Judge in Harlingen, Texas, granted her application, thereby giving her lawful permanent resident status. The government waived appeal of this order and it became final.
118. She has requested that the government provide her with proof of her lawful permanent resident status, but they have not done so. It has been over four months since her hearing before the Immigration Judge and Defendants have yet to give her any proof of her status.
119. Ms. Aurora Viveros Huesca has been harmed by Defendants' failure to provide her with proof of her LPR status.

Pedro Mauricio Nolasco-Centeno

120. Mr. Nolasco-Centeno is a native and citizen of El Salvador. He currently lives in Houston, Texas, in the County of Harris.
121. The former INS initiated deportation proceedings against Mr. Nolasco-Centeno.
122. Mr. Nolasco-Centeno filed his application for cancellation of removal on August 15, 2002.
123. On October 21, 2002, an Immigration Judge in Houston, Texas, granted his application, thereby according him LPR status.
124. Defendants did not appeal the Immigration Judge's order, and thus, the order became final.
125. Mr. Nolasco-Centeno has requested that Defendants provide him with proof of his lawful permanent resident status, but they have not done so. It has been almost a year and eight months since his hearing before the Immigration Judge and the government has yet to give him proof of his status.

126. Mr. Nolasco-Centeno has been harmed by Defendants' failure to provide him with proof of his LPR status.

VII. CLAIMS FOR RELIEF

Count One Fifth Amendment

127. Plaintiffs re-allege and incorporate by reference all preceding paragraphs.
128. Defendants' policies, practices or customs violate Plaintiffs' Fifth Amendment substantive and procedural due process rights.

Count Two Violation of INA

129. Petitioners re-allege and incorporate by reference all preceding paragraphs.
130. Defendants' policies, practices or customs violate 8 U.S.C. § 1101 et seq. by denying Plaintiffs documentary evidence of their LPR status.

Count Three Mandamus Action 28 U.S.C. § 1361

131. Petitioners re-allege and incorporate by reference all preceding paragraphs.
132. Defendants are charged with the responsibility of administering and implementing the Immigration and Nationality Act.
133. Defendants bear sole responsibility for providing noncitizens with proof of lawful status in the United States.
134. Defendants' failure to discharge their statutory obligations is injuring Plaintiffs.
135. Defendants should be compelled to perform a duty owed to Plaintiffs, namely, to provide documentary evidence of LPR status.

Count Four
Immigration Reform and Control Act of 1986
8 U.S.C. § 1324a

136. Petitioners re-allege and incorporate by reference all preceding paragraphs.
137. Defendants' practices and procedures violate the IRCA provisions relating to the unlawful employment of aliens by failing to provide Plaintiffs with evidence of LPR status and/or their right to work in the United States.

Count Five
Administrative Procedures Act
5 U.S.C. §§ 702 et seq.

138. Petitioners re-allege and incorporate by reference all preceding paragraphs.
139. By failing to give effect to final EOIR decisions and by failing to provide ADIT processing and interim documentation of status, Defendants' practices and procedures violate the Administrative Procedures Act and constitute agency action that is arbitrary, capricious, and not in accordance with law. 5 U.S.C. §§ 701 et seq.

Count Five
Declaratory Judgment Act

140. Plaintiffs re-allege and incorporate by reference all preceding paragraphs.
141. Plaintiffs contend that Defendants' actions and decisions are unconstitutional, violate the INA, and are arbitrary and capricious. Plaintiffs seek a declaration to that effect. 28 U.S.C. § 2201.

Count Six
Equal Access to Justice Act

142. Plaintiffs re-allege and incorporate by reference all preceding paragraphs.

143. Petitioners seek attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully ask the Court to:

1. Assume jurisdiction over this matter;
2. Certify a class of all persons who were or will be granted LPR status in removal proceedings conducted by the immigration courts in Harlingen, Houston and the San Antonio within the Department of Justice's Executive Office for Immigration Review ("DOJ/EOIR"), or who were or will be granted LPR status by the DOJ Board of Immigration Appeals ("BIA") in cases on appeal from said immigration courts and to whom the Department of Homeland Security's United States Citizenship and Immigration Services ("DHS"/"USCIS") has not issued documentation evidencing LPR status;
3. Declare that Defendants' policies, practices and customs deprive Plaintiffs of documentary evidence of their LPR status in the United States thereby violating the United States Constitution, the Immigration and Nationality Act, the Immigration Reform and Control Act of 1986, and the Administrative Procedures Act;
4. Declare that Defendants' practices violate legal duties owed to Plaintiffs under the Immigration and Nationality Act;
5. Enjoin Defendants from denying Plaintiffs documentary evidence of

their LPR status in the United States;

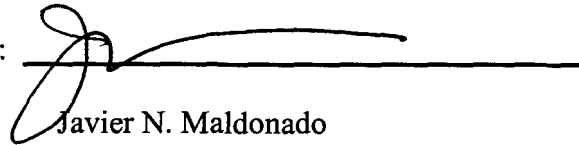
6. Order Defendants to issue Plaintiffs documentation of their LPR status;
7. Award Plaintiffs' counsel reasonable attorney's fees and costs; and
8. Grant such other and further relief as may be just and proper.

June 9, 2004

Respectfully Submitted,

LAWYERS' COMMITTEE FOR CIVIL RIGHTS
UNDER LAW OF TEXAS

By: _____



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MEXICAN AMERICAN LEGAL DEFENSE AND
EDUCATIONAL FUND

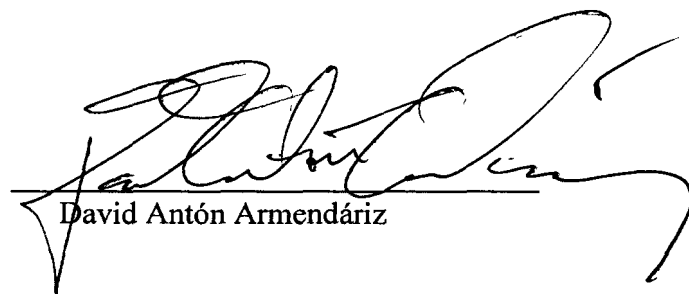
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ATTORNEYS FOR THE PLAINTIFFS

CERTIFICATE OF SERVICE

I certify that, on June 10, 2004, a true copy of the Plaintiffs' Fourth Amended
Complaint For Mandamus, Declaratory And Injunctive Relief was served by U.S. mail on
Defendants' Counsel:

Lisa M. Putnam
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David Antón Armendáriz