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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

**DZU CONG TRAN, DANIEL MAI
DINH, and AUSTIN PETER TRAN**, on
behalf of themselves and all others similarly
situated,

Civil No. **CV'10-724 ST**

PLAINTIFF,

v.

**FIRST AMENDED COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF AND
PETITION FOR WRIT OF
MANDAMUS**

JANET NAPOLITANO, Secretary,
Department of Homeland Security;
ALEJANDRO MAYORKAS, Director,
U.S. Citizenship and Immigration Services;
DONALD NEUFELD, Associate Director,
USCIS Service Center Operations
Directorate; **CHRISTINA POULOS**,
Director, USCIS California Service Center;
HILLARY RODHAM CLINTON,
Secretary of State, U.S. Department of State;
JANICE L. JACOBS, Assistant Secretary
for Consular Affairs, U.S. Department of
State; **CHARLES E. BENNETT**, Consular
Section Chief, U.S. Consulate General, Ho
Chi Minh City; **JOHN AND JANE DOE**
**U.S. CONSULAR OFFICERS 1 through
1000**,

CLASS ACTION

DEFENDANTS.

FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
AND PETITION FOR WRIT OF MANDAMUS

Nearly three years ago, the former United States Citizenship and Immigration Services (“USCIS”) Ombudsman Mr. Prakash Khatri issued recommendations to Department of Homeland Security (“DHS”) and USCIS regarding necessary changes to the standards and processes for re-adjudication of petitions returned by consular offices for revocation or revalidation, due to systemic nationwide failures of the system. Two years ago, Jonathan R. Scharfen, former Acting Director of USCIS under the Bush Administration responded to the USCIS Ombudsman’s recommendations, implementing only some of those recommendations and specifically rejecting others. This class action lawsuit involves some of the recommendations of the USCIS Ombudsman which were rejected by Defendants, in addition to due process of law challenges to United States Department of State (“State Department”) and DHS/USCIS practices.

Through the contradictory and unlawful practices of each Defendant agency, Plaintiffs and class members have been aggrieved by agency action and inaction, have suffered agency action unlawfully withheld and unreasonably delayed, have been subjected to arbitrary, capricious and unlawful denials and file transfers, have been deprived of due process of law and had visa issuance and petition approval denied or unreasonably withheld contrary to constitutional right, contrary to procedure required by law, and contrary to the limitations of statutory jurisdiction and authority. Thousands of families across the country and around the world have been separated due to a colossal sparring match between the Defendant agencies, and because of internal dissent within each agency.

Specifically, Plaintiffs Dzu Cong Tran, Daniel Mai Dinh, and Austin Peter Tran on behalf of themselves and all others similarly situated, challenge (a) Defendant U.S. State Department’s (State Department’s) and consular officers’ policies and procedures for processing

and returning approved petitions to Defendant U.S. Citizenship and Immigration Services (USCIS) with a recommendation that the petition be revoked; and (b) Defendant USCIS' policies and procedures for revoking, denying or terminating petitions returned to it by Defendant State Department. Plaintiffs respectfully petition this Court for injunctive, declaratory and mandamus relief to: (a) compel State Department to schedule a visa interview within a reasonable period from the date that State Department's National Visa Center receives an approved I-129F petition for fiancé(e) from USCIS; (b) compel State Department to issue a K-1 visa to the fiancé(e) of a U.S. citizen or notify the petitioner and beneficiary that the petition will be returned to DHS/USCIS within reasonable period following interview; (c) compel State Department to provide a reasonable period during which a petitioner and beneficiary may rebut consular findings before the petition is returned to DHS/USCIS; (d) compel State Department to return petitions to DHS/USCIS only where substantial evidence exists that fraud, misrepresentation, or ineligibility would lead to denial, and not where it is merely suspected; and to provide a written notice supported by the legal and factual basis for the visa denial and petition return that are not conclusive, speculative, equivocal or irrelevant; (e) compel State Department to render a final decision to approve the K-1 visa or return a petition to DHS/USCIS within a reasonable period not to exceed 30 days from the receipt of all necessary documents from the petitioner and beneficiary, and to accomplish delivery of the petition to State Department's National Visa Center within such period; (f) declare that 8 C.F.R. § 214.2(k)(5), which purports to limit the validity of a K-1 fiancé(e) petition (Form I-129F) to four months, is *ultra vires* and in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (g) following such declaration, enjoin DHS/USCIS from limiting the validity period of any approved fiancé(e) petition; (h) declare that the Foreign Affairs Manual, at 9 FAM 40.63 N10.1, which purports to establish the materiality of an alleged misrepresentation pursuant to 8 U.S.C. 1182(a)(6)(C)(i), INA 212(a)(6)(C)(i), merely based upon DHS/USCIS summary revocation of the petition is *ultra vires* and in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(i) issue a permanent injunction barring the State Department from placing a marker, called a “P6C1” marker, or “quasi-refusal” in a visa beneficiary’s record, and deeming the DHS/USCIS revocation of the petition as automatically establishing the permanent misrepresentation bar to any future immigration possibility; (j) compel DHS/USCIS to issue a notice to petitioner within a reasonable period of time not to exceed 30 days from receipt of the returned petition from the State Department, providing petitioner with the legal and factual basis for the consular recommendation that is not conclusive, speculative, equivocal or irrelevant; (k) compel DHS/USCIS to provide petitioner the opportunity to submit evidence to rebut the consular recommendation within a reasonable period of time; (l) compel DHS/USCIS, in the case of a reaffirmation of approval, to deliver the reaffirmed petition to the State Department within a reasonable period of time, and compel State Department to issue the K-1 visa within a reasonable period of time following reaffirmation; (m) compel DHS/USCIS, in the case of a denial, to issue a decision within a reasonable period of time, and to advise petitioner of the right to appeal the decision to the Administrative Appeals Office; (n) compel State Department and DHS/USCIS, in the case of Plaintiffs and class members who filed a new I-129F petition and/or paid a new visa application fee, to refund the unlawfully received additional filing fees to Plaintiffs and class members; and (o) declare that Defendants’ actions and inactions have been in bad faith, have evaded the spirit of due process, evidenced a lack of diligence, revealed a willful rendering of substandard performance, and represented a wanton abuse of power.

Plaintiffs allege as follows:

JURISDICTION

1. This action arises under the United States Constitution and the statutes of the United States including the Immigration and Nationality Act of 1952 ("INA"), 8 U.S.C. § 1184(d); 8 U.S.C. § 1101(a)(15)(K); 8 U.S.C. § 1201; and 8 U.S.C. § 1201 note 6, Act Sept. 30, 2002, P.L. 107-228, Div. A, Title II, Subtitle C, § 233, 116 Stat. 1373. This Court has jurisdiction over this action under 28 U.S.C. § 1331 (federal question). Based on federal

question jurisdiction, the Court may review Defendants' actions or omissions that violate the Constitution and the statutes under the Administrative Procedure Act, 5 U.S.C. § 701 et seq., the Mandamus Act, 28 U.S.C. § 1361, and the Declaratory Judgment Act, 28 U.S.C. § 2201 et. seq. (declaratory relief).

VENUE

2. Venue in this district is proper under 28 U.S.C. § 1391(e)(3) because no real property is involved in the action and Plaintiff Dzu Cong Tran resided in Portland, Oregon at the time he filed the I-129F petition for alien fiancée and continues to reside in Portland, Oregon.

FINAL AGENCY ACTION AND EXHAUSTION

3. Defendants State Department, Charles E. Bennett, and Jane and John Doe Consular Officers (collectively, "State Department") have rendered final agency action by returning the petitions to USCIS with a recommendation to revoke, and by their action in administratively closing the case.

4. Defendant USCIS has rendered final agency action. It is the policy of USCIS, upon receipt of the previously approved petition from State Department, to terminate the petition without further action due to the expiration of the four-month validity period found at 8 C.F.R. § 214.2(k)(5). These regulations are being challenged in this action as unlawful and *ultra vires*.

5. There is no other adequate remedy in a court, because Plaintiffs are not offered the opportunity to rebut consular findings concerning the case, and because Plaintiffs are not permitted to appeal the termination due to the expiration of the four month validity period of the challenged regulations.

6. DHS/USCIS' policy to not review K-1 petitions returned from consulates that are received by DHS/USCIS after the challenged four month validity period renders any recourse to administrative review futile. There is no mandatory administrative appeal and Plaintiffs are not required to exhaust non-existent administrative remedies. *See Darby v. Cisneros*, 509 U.S. 137 (1993).

PARTIES

7. Plaintiff Dzu Cong Tran is a naturalized United States citizen, born in Vietnam in 1978, and a resident of Portland, Oregon. He filed a Form I-129F petition for fiancé(e) with USCIS on August 24, 2009, which was approved by USCIS on October 27, 2009. Defendant State Department communicated to Plaintiff that it had returned the approved petition to defendant USCIS for revocation on or about May 12, 2010. Defendants subsequently communicated to Plaintiff's counsel that the petition was returned on July 31, 2010, much later than he was originally informed in writing.

8. Plaintiff Daniel Mai Dinh is a U.S. born citizen of the United States, and a resident of Bonney Lake, Washington. He filed a Form I-129F petition for fiancé(e) with USCIS on May 19, 2009, which was approved by USCIS on August 25, 2009. Defendant State Department communicated to Plaintiff that it had returned the approved petition to Defendant USCIS for revocation on or before January 7, 2010. Defendant USCIS refused to take action on the petition, and in a letter dated June 24, 2010, communicated that all USCIS action was concluded due to the expiration of the petition validity of the I-129F petition.

9. Plaintiff Austin Peter Tran is a U.S. born citizen of the United States, and a resident of Baldwin Park, California. He filed a Form I-129F petition for fiancé(e) with USCIS on October 13, 2009, which was approved by USCIS on March 19, 2010. Defendant State Department communicated to Plaintiff that it had returned the approved petition to Defendant USCIS for revocation in a letter dated August 11, 2010.

10. Defendant Janet Napolitano is sued in her official capacity as Secretary of Department of Homeland Security ("DHS"). As Secretary of DHS, Ms. Napolitano is responsible for the administration and enforcement of the immigration laws of the United States.

11. Defendant Alejandro Mayorkas is sued in his official capacity as Director of the United States Department of Homeland Security, United States Citizenship and Immigration Services ("USCIS"). As Director of USCIS, Mr. Mayorkas is responsible for the overall

administration of USCIS and the implementation of the immigration laws of the United States.

12. Defendant Donald Neufeld is sued in his official capacity as Associate Director, USCIS Service Center Operations Directorate. As Associate Director, Mr. Neufeld is responsible for overall administration of Service Center Operations, including those at the California Service Center.

13. Defendant Christina Poulos is sued in her official capacity as Director of the USCIS California Service Center ("CSC"). As Director of the California Service Center, Ms. Poulos is responsible for administration of the CSC, the USCIS Service Center which currently processes all of the consular return cases. Since the filing of the original complaint, it has been reported that Christina Poulos was being reassigned to Washington, D.C., and Barbara Velarde was assuming the role of Acting Director, with plans to appoint Rosemary Langley Melville, currently the Director in the Southeast Region, as the new CSC Director. Because Ms. Poulos is sued in her official capacity, her successor is automatically substituted upon appointment.

14. Defendant Hillary Rodham Clinton is sued in her official capacity as Secretary of State of the United States Department of State ("State Department"). As Secretary of State, Ms. Clinton is responsible for the overall administration the Department of State, including the Bureau of Consular Affairs which is responsible for issuance of non-immigrant visas under the immigration laws of the United States.

15. Defendant Janice L. Jacobs is sued in her official capacity as Assistant Secretary for the Bureau of Consular Affairs within the United States Department of State. As Assistant Secretary, Ms. Jacobs is responsible for the overall administration of the non-immigrant visa issuance process under the immigration laws of the United States.

16. Defendant Charles E. Bennett is sued in his official capacity as a U.S. consular officer. As the Consular Section Chief of the U.S. Consulate General in Ho Chi Minh City, Vietnam, Mr. Bennett is responsible for overseeing visa issuance and denial of K-1 visas in Vietnam.

17. Defendants John and Jane Doe U.S. Consular Officers 1 through 1000 are sued in their official capacity as U.S. consular officers of the State Department, responsible for the granting or refusal of K-1 visas through U.S. Embassies and Consulates abroad. Defendants identified in paragraphs 14 through 17 are collectively referred to as the “State Department”.

STATUTORY BACKGROUND

18. In order to become a permanent resident, the fiancé(e) of a U.S. citizen first obtains a K-1 visa at a U.S. Embassy or Consulate abroad through a visa petition (the I-129F petition) filed by the U.S. citizen fiancé(e) with DHS/USCIS. 8 U.S.C. §1184(d); 8 C.F.R. § 214.2(k)(1). K-1 petition approval requires that the couple have met in person within two years of the filing of the petition and must have a bona fide intention to marry within 90 days of the non-citizen’s arrival. 8 U.S.C. §1184(d)(1).

19. If the K-1 petition is denied, DHS/USCIS shall explain in writing the specific reasons for denial and notify the petitioner of the right to appeal. Denials of K-1 petitions may be appealed to the Administrative Appeals Office (“AAO”), by submitting within 30 days of the decision a Notice of Appeal form (Form I-290B) with the Service Center that denied the petition. 8 C.F.R. § 103.3(a)(2)(i). The AAO is currently deciding K-1 petition appeals in two months.

20. The K-1 petition, when approved by DHS/USCIS, bears a four-month validity period. 8 C.F.R. § 214.2(k)(5). No statute authorizes the four-month validity period. The regulation grants consular officers of the State Department the discretion to extend the four-month validity period.

21. In recognition of the special place that spouses and fiancé(e)s of U.S. citizens hold in immigration law, Congress has mandated that it shall be the policy of the State Department to process each application for a spouse or K-1 fiancé(e) of a U.S. citizen within 30 days of receipt of all necessary documents from the applicant and the USCIS. 8 U.S.C. § 1201 note 6, Act Sept. 30, 2002, P.L. 107-228, Div. A, Title II, Subtitle C, § 233, 116 Stat. 1373.

22. Non-immigrant visas that require a USCIS petition approval prior to issuance are

typically issued by the State Department utilizing procedures that are less formal and less document-intensive than immigrant visas, which are subject to more formal and more document-intensive procedures.

23. Despite the K-1 category being classified in the INA as a non-immigrant visa, State Department has chosen to subject the category to immigrant visa processing procedures. State Department has chosen to only issue K-1 visas through designated posts which also process immigrant visas, thereby funneling these cases to a select number of State Department Embassies and Consulates.

24. If it appears to the State Department consular officer, from statements in the application or in documents submitted, that the K-1 fiancé(e) is not eligible to receive a visa, the consular officer shall refuse to issue the visa. 8 U.S.C. § 1201(g).

25. Following a visa refusal, the State Department's policy is to return the K-1 petition with a recommendation for revocation to the State Department's National Visa Center ("NVC"). See Volume 9, Foreign Affairs Manual, 9 FAM 41.81 N.6.5 (available at <http://www.state.gov/documents/organization/87391.pdf>).

26. State Department routinely advises petitioners and beneficiaries that they will have the opportunity to rebut consular findings, knowing that such advice is false and misleading.

27. Following receipt of the returned K-1 petition, the NVC forwards all K-1 consular returns directly to USCIS' California Service Center ("CSC").

28. It is the policy of DHS/USCIS/CSC to delay action on returned K-1 petitions for six months, and in some cases for periods in excess of one year or more.

29. It is the policy of DHS/USCIS/CSC to not act on returned K-1 petitions, reasoning that K-1 petitions are temporally limited to four months under 8 C.F.R. § 214.2(k)(5), and due to defendants' own processing delays have all expired by the time they reach DHS/USCIS/CSC. DHS/USCIS/CSC will not review such returned petitions, nor will

defendants provide the petitioner the opportunity to rebut consular findings, nor will defendants provide the petitioner the opportunity to appeal such non action.

30. In the case of a K-1 visa that is approved, a period of six (6) months of visa validity is provided to allow the fiancé(e) enough time to plan to relocate to the United States, given the uncertainty of exact timing of visa issuance. Following visa issuance, the fiancé(e) can legally enter the United States during the six month window of visa validity to be married. If the couple does not marry within 90 days of the non-citizen's entry, the non-citizen is required to depart from the United States. To ensure compliance with this requirement, DHS issues an entry document (Form I-94) to the K-1 fiancé(e) valid for 90 days. If the couple is married within 90 days, the non-citizen spouse can apply to adjust her status to that of a lawful permanent resident through the filing of a Form I-485, accompanied by the \$1,010 filing fee. 8 U.S.C. § 1255(d); 8 C.F.R. § 245.2(c).

31. Following the filing of an application to adjust status, USCIS will personally interview the couple and conduct any necessary investigation into the bona fide nature of the marriage.

32. If the adjustment of status application is approved following interview and investigation, and the parties have not been married at least two years at the time of approval, the fiancé(e) will be granted Conditional Permanent Resident ("CPR") status valid for a two year period from the date of grant. 8 U.S.C. §1186a(a); 8 U.S.C. §1186a(g)(1)(B).

33. During the 90 day period prior to expiration of CPR status, the Conditional Permanent Resident spouse must file another form, Form I-751, requesting removal of the conditional status, with filing fee of \$545. 8 U.S.C. §1186a(c)(1). The CPR must establish that the qualifying marriage was entered into in accordance with the laws of the place where the marriage took place, has not been judicially annulled or terminated (unless a hardship waiver is granted) other than through the death of a spouse, and that the marriage was not entered into for the purpose of procuring an alien's admission as an immigrant. 8 U.S.C. §1186a(d)(1). The

CPR is again interviewed regarding the bona fides of the marriage, unless the interview is waived by USCIS. 8 U.S.C. §1186a(d)(3).

34. If USCIS is satisfied that all requirements have been met and the marriage is bona fide, the condition is lifted and the CPR obtains lawful permanent resident (“LPR”) status. 8 U.S.C. §1186a(c)(3)(B). If USCIS is not satisfied that all requirements have been met and the marriage is bona fide, the CPR status is terminated and the spouse is placed in removal proceedings where the application may be renewed before an Immigration Judge. 8 U.S.C. §1186a(c)(3)(C), (D).

STATEMENT OF FACTS

Plaintiff Dzu Cong Tran

Background

35. Petitioner Dzu Cong Tran was born in Vietnam in 1978 and immigrated to the United States in October 2002. He was naturalized as a United States citizen on May 21, 2008 in Portland, Oregon.

36. Mr. Tran has lived in Oregon since 2002, and is currently employed by Leupold & Stevens, a precision optics company headquartered in Beaverton, Oregon.

37. In September 1998, Mr. Tran first met his fiancée Trinh Thi Tuyet Pham in Da Nang, Vietnam. Mr. Tran was 19 years of age, and Ms. Pham was 16 years of age. After first meeting, Mr. Tran and Ms. Pham began corresponding with each other through the address of a friend. At the time, Mr. Tran lived in Nha Trang city, and Ms. Pham lived in Da Nang city. Mr. Tran went to Da Nang city to visit his aunt and met Ms. Pham. Three weeks later, they saw each other again in Da Nang city at the Mid-Autumn Moon Festival. Mr. Tran and Ms. Pham started to see each other once a month and spend three or four days together per visit. They went to eat at sidewalk restaurants and markets, strolled along the Han River bank, sang karaoke, went to coffee houses and went camping with friends. They continued to see each other once a month, meeting in Da Nang.

38. The night of the Mid-Autumn Moon Festival in September 1999, Mr. Tran and Ms. Pham first discussed marriage in a coffee house in Da Nang city. Mr. Tran proposed to Ms. Pham and she accepted immediately, but they felt that they were too young to start their own family. For the next several years, they continued to see each other a few times every month despite living in different cities until Mr. Tran immigrated to the U.S. on October 16, 2002.

39. After Mr. Tran moved to the U.S., he stayed in touch with Ms. Pham once a week or more by email, yahoo messenger and phone. He traveled to Vietnam to see Ms. Pham in June 2005 for seven weeks. Mr. Tran made another trip to visit Ms. Pham in September 2008, staying for three weeks. During that visit, Mr. Tran and Ms. Pham decided to take the necessary steps to start their own family once Mr. Tran had saved sufficient funds to move out of his parents' house.

The Petition

40. On August 24, 2009, Mr. Tran filed a Form I-129F, petition for fiancé(e), paying a filing fee of \$455 to USCIS. A receipt notice was issued to him, bearing the receipt number "WAC-09-230-50932", issued from the California Service Center of USCIS. Mr. Tran and Ms. Pham met in person within two years of the filing of the petition and had and continue to have a bona fide intention to marry within 90 days of Ms. Pham's arrival.

41. On October 27, 2009, USCIS approved the Form I-129F petition for fiancé(e), and advised him that the original visa petition was sent to the Department of State's National Visa Center ("NVC") in Portsmouth, New Hampshire. The notice of approval, Form I-797, stated that NVC processing should be complete within two to four weeks, and that NVC would then send the petition to the U.S. Embassy or consulate for interview. The Form I-797 notice also stated that the petition was valid from October 27, 2009 to February 26, 2010.

42. On November 4, 2009, the State Department's NVC issued a letter stating that, "within a week, the petition will be forwarded to the appropriate visa-issuing post where your visa interview will take place." The letter identified that the visa-issuing post would be the

Consulate General in Ho Chi Minh City, Vietnam.

The Consular Interview

43. Over four months later, on March 9, 2010, the State Department's Consulate General in Ho Chi Minh City, Vietnam, sent Ms. Pham a letter indicating that the State Department was ready to begin final processing of the visa, and scheduled Ms. Pham for an interview on April 14, 2010 at 9:30 a.m., well after the stated petition validity. The consulate referenced the case number HCM2009806204. Ms. Pham paid a \$131 visa fee.

44. On April 14, 2010, Ms. Pham appeared for her interview as scheduled. The U.S. Consular Officer, a duly authorized employee of defendant State Department, interviewed Ms. Pham. The Officer refused to issue a K-1 fiancé(e) visa to Ms. Pham, and instead issued a letter dated April 14, 2010, requesting from petitioner (Mr. Tran) a sworn, notarized statement containing a detailed chronology of the relationship and certain other biographical information. The letter set an appointment date for resubmission of the requested documents as May 12, 2010 between the hours of 13:00 and 14:00 hours (1 p.m. and 2 p.m. local time).

The Denial and Petition Return

45. On May 12, 2010, Ms. Pham appeared at the Consulate at 12:30 p.m. and waited in line for half an hour until she was led inside. She took a number and waited an hour and one half until approximately 2:30 p.m., at which time a Vietnamese national employee of the Consulate called her to submit her documents. She was told to wait. Sometime around 3:40 p.m. she was called up by the Vietnamese national employee and handed a denial letter. She was not interviewed on this date, and she never spoke to an American consular officer. She was told that her case had been closed, and if there were any questions to read the letter.

46. The letter that she was handed by the State Department employee on May 12, 2010 was a visa denial, premised upon 8 U.S.C. § 1201(g), INA § 221(g), advising Ms. Pham that the petition was being returned to USCIS with the recommendation that it be revoked. The visa denial letter stated that when USCIS receives the returned petition, USCIS will contact the

plaintiff who will have an opportunity to rebut consular findings concerning this case.

47. Based on current DHS/USCIS policy and interpretation as expressed in the Scharfen memorandum to the USCIS Ombudsman, however, plaintiff will not have an opportunity to rebut consular findings concerning the case.

48. The denial stated that, “[p]hotographs submitted as evidence of the relationship indicate that Petitioner and Beneficiary have spent only four or five days together.”

49. The evidence in the record directly contradicts the conclusory statement contained in paragraph 48, and it is thus conclusive, speculative, equivocal or irrelevant. Plaintiff arrived in Ho Chi Minh city on August 30, 2008, and Ms. Pham picked him up at the airport. They left Ho Chi Minh city on September 4, 2008 to go to Ha Noi city. As they could not fly to North Vietnam, the couple took a bus to Ha Long bay, to Sapa, and returned to Ha Noi city. This trip took one week. The couple spent three weeks together on that 2008 trip alone. The denial disregarded the evidence of other trips and time the couple spent together. The statement in paragraph 48 is conclusive, speculative, equivocal or irrelevant

50. Neither plaintiff nor his fiancé(e) were provided an opportunity to rebut the conclusion by defendant State Department contained in paragraph 48, and they will not be provided an opportunity to rebut this conclusion by defendants DHS/USCIS due to the Scharfen policy.

51. The denial stated that, “Beneficiary and-or Petitioner submitted no evidence of any engagement celebration. This contradicts local social and cultural norms in which many family members and friends, including those in the U.S. are invited to engagement celebrations numbering in the hundreds of guests for families of even modest means. Together with other factors, this has been established as one of the key elements of a sham relationship to evade U.S. immigration laws.”

52. Plaintiff and his fiancée have had a long relationship. Plaintiff and Ms. Pham submitted no evidence of any engagement celebration because they had not yet had one. First,

this Ms. Pham was not asked about this during her interview, and had no opportunity to provide evidence on this point. Second, when the couple first decided to become engaged, they were young and without resources. When Plaintiff later immigrated to the United States, he struggled with his new life, his new home, new culture, new language, new weather, and new traffic. Despite these challenges, he graduated from Portland Community College on September 6, 2009 with an Associate's Degree in Applied Science, majoring in Computer Information Systems, and began a job with Leupold & Stevens on February 18, 2010. Plaintiff reserved his funds for the wedding party. The statement in paragraph 51 is conclusive, speculative, equivocal or irrelevant.

53. Neither plaintiff nor his fiancé(e) were provided an opportunity to rebut the conclusion by defendant State Department contained in paragraph 51, and they will not be provided an opportunity to rebut this conclusion by defendants DHS/USCIS due to the Scharfen policy.

54. The denial stated that, "[i]t does not appear that the claimed relationship is continuous and on-going. For example, Petitioner has not returned to visit Beneficiary since September 2008."

55. Plaintiff and his fiancée have maintained a long relationship over many years. First, the statute requires only that the parties have met in person within the past two (2) years prior to the filing of the fiancé(e) petition. The statement in paragraph 54 is irrelevant.

56. Second, plaintiff has struggled with his new life, his new home, new culture, new language, new weather, and new traffic. Despite these challenges, he graduated from Portland Community College on September 6, 2009 with an Associate's Degree in Applied Science, majoring in Computer Information Systems, and began a new job with Leupold & Stevens on February 18, 2010. Plaintiff decided to save money on travel, reserving his funds for the wedding party and the couple's shared life together, including a new residence outside of his parents' home. Ms. Pham cannot speak English, and when she arrives in the United States will not be readily employable. She will need to take English classes, which require resources.

Plaintiff, given the long courtship, made a wise decision to reserve funds for the wedding and for the practical aspects of married life. The couple has also maintained an on-going relationship through phone, email and yahoo messenger. The statement contained in paragraph 54 is conclusive, speculative, equivocal or irrelevant.

57. Neither plaintiff nor his fiancé(e) were provided an opportunity to rebut the conclusion by defendant State Department contained in paragraph 54, and they will not be provided an opportunity to rebut this conclusion by defendants DHS/USCIS due to the Scharfen policy.

58. The denial stated that, “Beneficiary is unaware of basic facts regarding Petitioner’s occupation, livelihood and-or worklife. For example, Beneficiary did not know the name of Petitioner’s company.”

59. During the consular interview April 14, 2010, the consular officer asked Ms. Pham what plaintiff’s occupation was. Ms. Pham replied that he was in computer information systems. The consular officer asked Ms. Pham plaintiff’s parents’ and sister’s name. Ms. Pham provided the information. The consular officer asked what plaintiff’s job was. Ms. Pham replied that he was an assembler. The consular officer asked if Ms. Pham knew the name of plaintiff’s company. Ms. Pham replied that plaintiff works for a company which makes binoculars, and because it was an English name, she did not remember it. The name “Leupold & Stevens” is an English name of an American company, and it was not reasonable for the consular officer to expect Ms. Pham to know the name, since she does not speak English, only speaks Vietnamese, and has never been to the United States. The statement contained in paragraph 58 is conclusive, speculative, equivocal or irrelevant.

60. Neither plaintiff nor his fiancé(e) were provided an opportunity to rebut the conclusion by defendant State Department contained in paragraph 58, and they will not be provided an opportunity to rebut this conclusion by defendants DHS/USCIS due to the Scharfen policy.

61. The denial stated that, “Beneficiary is unaware of basic facts regarding Petitioner’s educational level, background, and history. For example, Beneficiary did not know the name of the college Petitioner attended.”

62. Ms. Pham is aware of plaintiff’s educational level, background and history. The statement contained in paragraph 61 is conclusive, speculative, equivocal or irrelevant. Ms. Pham is aware of what plaintiff’s major was, and intimate details of plaintiff’s life. The couple speaks on the phone almost every night at 9:00 p.m. and on the weekends. Ms. Pham is aware of when plaintiff began school, and when he finished school. The statement, contained in paragraph 61, that Ms. Pham is unaware of plaintiff’s living situation because she could not name the English language title of plaintiff’s college where she and plaintiff speak only in Vietnamese to each other is conclusive, speculative, equivocal or irrelevant.

63. Neither plaintiff nor his fiancé(e) were provided an opportunity to rebut the conclusion by defendant State Department contained in paragraph 61, and they will not be provided an opportunity to rebut this conclusion by defendants DHS/USCIS due to the Scharfen policy.

64. The denial stated that, “Beneficiary is unable to provide basic facts (such as ceremony, manner of celebration, venue, guests or approximate costs) regarding the claimed planned marriage in the U.S. It appears that the relationship is a sham or that Beneficiary has no actual intent to marry within 90 days of admission to the U.S. (or both).”

65. The State Department’s website for the Consulate General in Ho Chi Minh City (http://hochiminh.usconsulate.gov/immigrant_visas.html) states “[n]o assurance regarding the issuance of visas can be given in advance. **Please do not make any binding travel plans until you have received your visa.**” (emphasis in original). Visa processing is subject to delay and the State Department has specifically advised not to make concrete plans prior to visa issuance. While the statute requires legal marriage within 90 days of admission, it does not require that the actual wedding party or ceremony take place within the 90 days. The 90 day period is also

triggered only upon entry, and the K-1 visa is valid for entry up to six (6) months after issuance. It is for these reasons that many petitioners and fiancé(e)s plan more elaborate ceremonies after the bureaucratic and undependable visa issuance is accomplished. Additionally, Ms. Pham indicated in the interview that she intended to marry within 90 days of admission, and that after the wedding, both she and plaintiff would return to Vietnam to see her parents and her family. Plaintiff and Ms. Pham intend to marry within 90 days of Ms. Pham's admission to the United States, and to apply for an adjustment of status. The relationship is not a sham, and the statements contained in paragraph 64 are conclusive, speculative, equivocal or irrelevant.

66. Neither plaintiff nor his fiancé(e) were provided an opportunity to rebut the conclusion by defendant State Department contained in paragraph 64, and they will not be provided an opportunity to rebut this conclusion by defendants DHS/USCIS due to the Scharfen policy.

67. The denial stated that, "Beneficiary is unaware of the requirement to marry within 90 days of admission to the U.S. Therefore, it appears that Beneficiary does not have the intent to comply with the requirements of the visa category applied for or that the claimed relationship is a sham (or both)."

68. Ms. Pham was aware of the requirement to marry within 90 days of admission to the U.S., and intends to marry within 90 days of admission. Ms. Pham was advised of this requirement by the consular officer. This is a legal condition of the visa that is routinely communicated by consular officers to visa applicants, and the statement contained in paragraph 67 is conclusive, speculative, equivocal or irrelevant. The denial bases alleged in paragraphs 48 through 67 evaded the spirit of due process, evidenced a lack of diligence, revealed a willful rendering of substandard performance, and revealed a wanton abuse of power unbefitting our civilized nation whose Declaration of Independence shunned the autocratic concept of absolute power vested in any one pair of hands. As such, the denial was issued in bad faith.

69. Neither plaintiff nor his fiancé(e) were provided an opportunity to rebut the

conclusion by defendant State Department contained in paragraph 67, and they will not be provided an opportunity to rebut this conclusion by defendants DHS/USCIS due to the Scharfen policy.

70. State Department issued the denial based on mere suspicion and failed to provide a written notice supported by the legal and factual basis for the visa denial and petition return that was not conclusive, speculative, equivocal or irrelevant.

71. State Department, in its denial, stated that, “[i]f USCIS revokes the petition, beneficiary will become ineligible for a visa under section 212(a)(6)(C)(i) of the Act.” INA 212(a)(6)(C)(i), 8 U.S.C. 1182(a)(6)(C)(i), is a permanent bar to admissibility for misrepresentation. Pursuant to the Foreign Affairs Manual, 9 FAM 40.63 N10.1, State Department placed a marker, called a “P6C1” marker, or “quasi-refusal” in Ms. Pham’s records, and will deem USCIS revocation of the petition as automatically establishing the permanent misrepresentation bar to any future immigration possibility.

72. On May 17, 2010, the office of Senator Ron Wyden (D-OR) contacted the Consulate General in Ho Chi Minh City, Vietnam on behalf of Mr. Tran. On May 19, 2010, Defendant Charles E. Bennett, Consular Section Chief of the Consulate General issued a letter to Senator Wyden stating that, “the petition has been returned to the U.S. Citizenship and Immigration Service (USCIS) where the petition was filed for further examination and possible revocation.” The letter stated that it could take several months for the petition to be received by USCIS, and that the case was now closed in their office. Counsel for Defendants recently advised counsel for Plaintiffs that the file was not, in fact, returned to USCIS until July 31, 2010. Defendant Charles E. Bennett, in bad faith, made false and misleading statements to a U.S. Senator who sought accurate information about the whereabouts of the petition on behalf of Plaintiff.

73. U.S. citizen petitioners of K-1 fiancé(e) petitions nationwide have reported to the USCIS Ombudsman extensive delays of six months or more than one year before petitions are

returned by State Department to USCIS. State Department has unreasonably delayed action on consular returns.

74. Action on consular returns has taken DHS/USCIS an average of 18 months from the date of denial and return at the Consulate.

75. DHS/USCIS do not publish processing times for consular returns. State Department does not publish processing times for delivery of petitions to DHS/USCIS for recommended revocation. DHS/USCIS consider consular returns as low priority work.

76. DHS/USCIS supervisors and managers are not accountable for allowing consular returns to remain unadjudicated. DHS/USCIS has unreasonably delayed action on consular returns.

Plaintiff Daniel Mai Dinh

Background

77. Plaintiff Daniel Mai Dinh was born in Seattle, Washington in 1985, and is a U.S. citizen by birth.

78. Mr. Dinh has lived in Bonney Lake, Washington since July 2009, and is employed by Boeing as a Software Engineer.

79. Mr. Dinh was introduced to his fiancée Vinh Ngoc Vu, who was born in 1984 in Vietnam, by his cousin Khanh Phuong Vu Mai. Khanh and Ms. Vu worked together at SMM Vina and have been the best of friends throughout their career there. After Mr. Dinh's cousin Khanh told him about Ms. Vu in March 2008, he began an online relationship with her in April 2008. In December, 2008 Mr. Dinh and Ms. Vu met in Vietnam for the first time.

80. During the period from December 11, 2008 until December 31, 2008, Mr. Dinh and Ms. Vu spent time together in Vietnam. They went out to dinner, visited with mutual friends, flew to Ha Noi to visit Ngan, Ms. Vu's younger sister, and participated together in tourist activities in Vietnam. During this period Mr. Dinh and Ms. Vu, along with Mr. Dinh's cousin Khanh Phuong Vu Mai and his friend from the U.S. Patrick Daniel Quinn traveled by bus

to Hai Phong to visit Daniel's family, celebrated Daniel's twenty-third birthday in Ha Long, and took a flight back to Ho Chi Minh city where they visited Ms. Vu's older brother, aunt, and cousins.

81. In January 2009 Mr. Dinh called Ms. Vu's father, mother and siblings in Bac Giang, Vietnam. In March 2009, Mr. Dinh proposed to Ms. Vu.

The Petition

82. On May 8, 2009, Mr. Dinh filed a Form I-129F, petition for fiancé(e), paying a filing fee of \$455 to USCIS. A receipt notice was issued to him, bearing the receipt number "WAC-09-163-50411", issued from the California Service Center of USCIS. Mr. Dinh and Ms. Vu met in person within two years of the filing of the petition and had and continue to have a bona fide intention to marry within 90 days of Ms. Vu's arrival

83. On August 25, 2009, USCIS approved the Form I-129F petition for fiancé(e), and advised him that the original visa petition was sent to the Department of State's National Visa Center ("NVC") in Portsmouth, New Hampshire. The notice of approval, Form I-797, stated that NVC processing should be complete within two to four weeks, and that NVC would then send the petition to the U.S. Embassy or consulate for interview. The Form I-797 notice also stated that the petition was valid from August 25, 2009 to December 24, 2009.

84. On August 31, 2009, the State Department's NVC issued a letter stating that, "within a week the petition will be forwarded to the appropriate visa-issuing post where your visa interview will take place." The letter identified that the visa issuing post would be the Consulate General in Ho Chi Minh City, Vietnam.

The Consular Interview

85. Nearly three months later, the State Department's Consulate General in Ho Chi Minh City, Vietnam, scheduled Ms. Vu for an interview on November 25, 2009. The consulate referenced the case number HCM2009740148. Ms. Vu paid the visa fee of \$131.

86. Mr. Dinh made another trip to visit Ms. Vu in Vietnam from November 22, 2009

until December 9, 2009.

87. On November 25, 2009, Ms. Vu appeared for her interview as scheduled. The U.S. Consular Officer, a duly authorized employee of defendant State Department, interviewed Ms. Vu. The Officer refused to issue a K-1 fiancé(e) visa to Ms. Vu, and instead issued a letter dated November 25, 2009, requesting from petitioner (Mr. Dinh) a sworn, notarized statement containing a detailed chronology of the relationship. The letter set an appointment date for resubmission of the requested documents as December 23, 2009.

The Denial and Petition Return

88. On December 23, 2009, Ms. Vu appeared at the Consulate and submitted the requested timeline. She was told to wait. She was called up by the Vietnamese national employee and handed a denial letter. She was not interviewed on this date, and she never spoke to an American consular officer.

89. The letter that she was handed by the State Department employee on December 23, 2009 was a visa denial, premised upon 8 U.S.C. § 1201(g), INA § 221(g), advising Ms. Vu that the petition was being returned to USCIS with the recommendation that it be revoked. The visa denial letter stated that when USCIS receives the returned petition, USCIS will contact the plaintiff who will have an opportunity to rebut consular findings concerning this case.

90. Based on current DHS/USCIS policy and interpretation as expressed in the Scharfen memorandum to the USCIS Ombudsman, however, Plaintiff did not have an opportunity to rebut consular findings concerning the case.

91. Plaintiff received a letter from USCIS CSC dated June 24, 2010, which stated, “The approved petition was forwarded abroad to a United States Embassy/Consulate with a validity period of four months. Subsequently, the petition has been returned to USCIS with a finding that the beneficiary was not issued the requested K-1 visa. Since the period of validity has now expired, the petition will not be revalidated. Therefore, in accordance with 8 C.F.R. 214.2(k)(5), all USCIS action on this petition is concluded as of the date of this notice.”

92. The consular denial dated December 23, 2009 stated that, “Photographs submitted as evidence of the relationship indicate that Petitioner and Beneficiary have spent only three or four days together.”

93. The evidence in the record directly contradicts the conclusory statement contained in paragraph 92 and it is thus conclusive, speculative, equivocal or irrelevant. The photos submitted by Plaintiff and Ms. Vu showed pictures of Plaintiff and Ms. Vu celebrating his twenty-third birthday together, along with tourist trips together with Plaintiff’s friend who traveled to Vietnam with Plaintiff. In the petition, Plaintiff submitted copies of the airline itinerary to show that Plaintiff and Ms. Vu took the same flight back several days after the birthday. At the interview on November 25, 2009, Ms. Vu submitted approximately 30 more photos of Plaintiff and Ms. Vu during the recent visit to Vietnam, to evidence that Plaintiff was in Vietnam and was in fact across the street from the Consulate during the interview. At the second interview on December 23, 2009, approximately 60 photos were submitted showing trips to Ha Noi, Ho Chi Minh, and Bac Giang.

94. The consular denial dated December 23, 2009 stated that, “Beneficiary and-or Petitioner submitted no evidence of any engagement celebration. This contradicts local social and cultural norms in which many family members and friends, including those in the U.S., are invited to engagement celebrations numbering in the hundreds of guests for families of even modest means. Together with other factors, this has been established as one of the key elements of a sham relationship to evade U.S. immigration laws.”

95. During the first interview on November 25, 2009, Ms. Vu was asked if she had had the Dam Hoi/Dinh Hon (engagement party) and she answered “no”. Not realizing that a Dam Hoi/Dinh Hon was an explicit but unwritten requirement for a K-1 visa, Plaintiff had not planned for this while he was in Vietnam from November 22, 2009 to December 9, 2009. Because Plaintiff is of Vietnamese descent, but born and raised in the United States, and further because Plaintiff’s parents do not adhere to the same traditions as Vietnamese do when in

Vietnam, the parents advised Plaintiff that they would not spend thousands of dollars to go to a celebration they do not deem meaningful. Plaintiff chose to respect his parents' wishes and not have an engagement party, but instead visited Ms. Vu's family with his relatives from Ho Chi Minh and Hai Phong. The statement in paragraph 94 is conclusive, speculative, equivocal or irrelevant.

96. Neither Plaintiff nor his fiancé(e) were provided an opportunity to rebut the conclusion by Defendant State Department contained in paragraph 94, and they were not provided an opportunity to rebut this conclusion by defendants DHS/USCIS due to the Scharfen policy. The USCIS letter dated June 24, 2010 clearly stated that all USCIS action on the petition was concluded without an opportunity to rebut.

97. The denial stated that, "Petitioner's and Beneficiary's chronologies of the claimed relationship contradict each other on a fundamental point. In a sworn and notarized statement, Petitioner claims that beneficiary was introduced to him by a mutual friend in March 2008. During the initial interview, Beneficiary told the interviewing officer that she was certain that the introduction of Beneficiary and Petitioner occurred in April 2008."

98. The notarized statement stated that Plaintiff and Ms. Vu were introduced by Plaintiff's cousin, not a mutual friend. Additionally, Plaintiff's statement that he was "introduced" to Ms. Vu by his cousin was a reference to being told about her by his cousin. In the notarized statement, it clearly states that their relationship began in April 2008. The statement in paragraph 97 is conclusive, speculative, equivocal or irrelevant.

99. Neither Plaintiff nor his fiancé(e) were provided an opportunity to rebut the conclusion by Defendant State Department contained in paragraph 97, and they were not provided an opportunity to rebut this conclusion by defendants DHS/USCIS due to the Scharfen policy. The USCIS letter dated June 24, 2010 clearly stated that all USCIS action on the petition was concluded without an opportunity to rebut.

100. The denial stated that, "Beneficiary is unable to provide basic facts regarding the

claimed planned marriage in the U.S. For example, Beneficiary does not know the names of the guests who will presumably attend or the approximate costs of the ceremony. Based on such facts, it appears that the relationship is a sham or that Beneficiary has no actual intent to marry within the 90 days of admission to the U.S.”

101. Plaintiff and Ms. Vu discussed how they would like to get married, but had not talked explicitly about the names on invitation lists. Plaintiff and Ms. Vu are unsure when the visa to allow them to become married would be issued, and until this is known it does not make sense to Plaintiff and Ms. Vu to discuss these details. The statement in paragraph 100 is conclusive, speculative, equivocal or irrelevant.

102. Neither Plaintiff nor his fiancé(e) were provided an opportunity to rebut the conclusion by Defendant State Department contained in paragraph 100, and they were not provided an opportunity to rebut this conclusion by defendants DHS/USCIS due to the Scharfen policy. The USCIS letter dated June 24, 2010 clearly stated that all USCIS action on the petition was concluded without an opportunity to rebut.

103. The denial stated that, “Beneficiary’s account of basic facts regarding the claimed relationship is not credible. For example, Beneficiary has stated that Petitioner and Beneficiary have planned a honeymoon, but Beneficiary is unable to provide basic facts (such as destination, hotel, duration, or approximate costs) regarding the claimed planned honeymoon following marriage in the U.S.”

104. Plaintiff and Ms. Vu talked about what they would like to do for the honeymoon. Plaintiff and Ms. Vu are unsure when the visa to allow them to become married would be issued, and until this is known it does not make sense to Plaintiff and Ms. Vu to discuss these details. The statement in paragraph 103 is conclusive, speculative, equivocal or irrelevant.

105. Neither Plaintiff nor his fiancé(e) were provided an opportunity to rebut the conclusion by Defendant State Department contained in paragraph 103, and they were not provided an opportunity to rebut this conclusion by defendants DHS/USCIS due to the Scharfen

policy. The USCIS letter dated June 24, 2010 clearly stated that all USCIS action on the petition was concluded without an opportunity to rebut.

106. The denial stated that, “Moreover, Beneficiary is also unaware of the requirement to marry within 90 days of admission to the U.S. It therefore appears that Beneficiary does not have the intent to comply with requirements of the visa category applied for or that the claimed relationship is a sham (or both).”

107. Ms. Vu was aware of the requirement to marry within 90 days of admission to the U.S., and intends to marry within 90 days of admission. Ms. Vu was advised of this requirement by the consular officer. This is a legal condition of the visa that is routinely communicated by consular officers to visa applicants, and the statement contained in paragraph 106 is conclusive, speculative, equivocal or irrelevant.

108. Neither Plaintiff nor his fiancé(e) were provided an opportunity to rebut the conclusion by Defendant State Department contained in paragraph 106, and they were not provided an opportunity to rebut this conclusion by defendants DHS/USCIS due to the Scharfen policy. The USCIS letter dated June 24, 2010 clearly stated that all USCIS action on the petition was concluded without an opportunity to rebut.

109. The denial stated that, “Based on information from Petitioner (via interview and, or documentation), Beneficiary is not aware of basic facts about Petitioner. For example, while Beneficiary is aware of Petitioner’s current job title, Beneficiary is unaware of Petitioner’s current boss, or for whom Petitioner worked prior to current job.”

110. Both Plaintiff and Ms. Vu are in their twenties, and each work or go to school all day. The name of one another’s supervisor is the last thing they would think to talk about, let alone work in general. Not one of Plaintiff’s friends or even family members knows Plaintiff’s boss by name. Ms. Vu is unaware of Plaintiff’s prior employer because they never discussed it. The statement contained in paragraph 109 is conclusive, speculative, equivocal or irrelevant. The denial bases alleged in paragraphs 92 through 109 evaded the spirit of due process, evidenced a

lack of diligence, revealed a willful rendering of substandard performance, and revealed a wanton abuse of power unbecoming our civilized nation whose Declaration of Independence shunned the autocratic concept of absolute power vested in any one pair of hands. As such, the denial was issued in bad faith

111. Neither Plaintiff nor his fiancé(e) were provided an opportunity to rebut the conclusion by Defendant State Department contained in paragraph 109, and they were not provided an opportunity to rebut this conclusion by defendants DHS/USCIS due to the Scharfen policy. The USCIS letter dated June 24, 2010 clearly stated that all USCIS action on the petition was concluded without an opportunity to rebut.

112. State Department issued the denial based on mere suspicion and failed to provide a written notice supported by the legal and factual basis for the visa denial and petition return that was not conclusive, speculative, equivocal or irrelevant.

113. State Department, in its denial, stated that, “[i]f USCIS revokes the petition, beneficiary will become ineligible for a visa under section 212(a)(6)(C)(i) of the Act.” INA 212(a)(6)(C)(i), 8 U.S.C. 1182(a)(6)(C)(i), is a permanent bar to admissibility for misrepresentation. Pursuant to the Foreign Affairs Manual, 9 FAM 40.63 N10.1, State Department placed a marker, called a “P6C1” marker, or “quasi-refusal” in Ms. Vu’s records, and will deem USCIS revocation of the petition as automatically establishing the permanent misrepresentation bar to any future immigration possibility.

114. On January 5, 2010, the office of Senator Maria Cantwell (D-WA) contacted the Consulate General in Ho Chi Minh City, Vietnam on behalf of Mr. Dinh. On January 7, 2010, Defendant Charles E. Bennett, Consular Section Chief of the Consulate General issued a letter to Senator Cantwell stating that the petition had been returned to USCIS for revocation. The letter stated that it could take several months for the petition to be received by USCIS, and that the case was now closed in their office.

115. Over six months later, on June 24, 2010, Defendants DHS/USCIS/CSC issued a

“NOTICE OF DECISION” to Plaintiff, stating that “all USCIS action on this petition is concluded as of the date of this notice.” The reason was due to the expiration of the four month validity period of the I-129F, and no opportunity to rebut consular findings was provided to Plaintiff.

116. Defendants State Department/DHS/USCIS/CSC unreasonably delayed action on Plaintiff’s consular return.

117. In its notice of decision, dated June 24, 2010, DHS/USCIS/CSC stated that, “The petitioner may choose to file a new Form I-129F, Petition for Alien Fiancé(e), with fee in behalf of the beneficiary.” In the absence of any administrative right to appeal the absolute termination of action contained in the notice of decision, and in the absence of any right to rebut the consular findings, Plaintiff Dinh was compelled by the lack of due process to file a new Form I-129F, Petition for Alien Fiancé(e), with \$455 fee.

118. On July 13, 2010, the State Department increased its non refundable K-1 visa application processing fee from \$131 to \$350.

Plaintiff Austin Peter Tran

Background

119. Plaintiff Austin Peter Tran was born in Fullerton, California in 1976, and is a U.S. citizen by birth.

120. Mr. Tran is a resident of Baldwin Park, California, and is currently employed at NASA Jet Propulsion Laboratory as a Support Analyst for the Remote Operations Center, under Lockheed Martin as a Cardinal Technologies employee. He previously served with the U.S. Navy from 1994 to 1998 stationed on the USS Normandy, part of USS America Battle Group during the Bosnian War, and later on part of the USS George Washington Battle Group during the Iraq Crisis at the rank of Second Class Petty Officer, Electronics Warfare Technician.

121. Plaintiff and his fiancée Ms. Mai Thanh Nguyen were introduced through Ms. Nguyen’s aunt and uncle-in-law, Mr. Tom Tu and Mrs. Hanh Tu. Mr. and Mrs. Tu are close

friends of Plaintiff's family from Plaintiff's childhood days. Plaintiff visited Ms. Nguyen in Vietnam from November 21, 2008 to November 30, 2008; from May 17, 2009 to May 31, 2009; from December 27, 2009 to January 9, 2010; and from May 29, 2010 to June 6, 2010.

The Petition

122. On October 13, 2009, Mr. Tran filed a Form I-129F, Petition for Fiancé(e), paying a filing fee of \$455 to USCIS. A receipt notice was issued to him, bearing the receipt number "WAC-10-008-50366", issued from the California Service Center of USCIS. Mr. Tran and Ms. Nguyen met in person within two years of the filing of the petition and had and continue to have a bona fide intention to marry within 90 days of Ms. Nguyen's arrival.

123. On March 19, 2010, USCIS approved the Form I-129F Petition for Fiancé(e), and advised him that the original visa petition was sent to the Department of State's National Visa Center ("NVC") in Portsmouth, New Hampshire. The notice of approval, Form I-797, stated that NVC processing should be complete within two to four weeks, and that NVC would then send the petition to the U.S. Embassy or consulate for interview. The Form I-797 notice also stated that the petition was valid from March 19, 2010 to July 18, 2010.

124. The State Department's NVC issued a letter stating that, "within a week, the petition will be forwarded to the appropriate visa-issuing post where your visa interview will take place." The letter identified that the visa issuing post would be the Consulate General in Ho Chi Minh City, Vietnam.

The Consular Interview

125. Nearly four months later, the State Department's Consulate General in Ho Chi Minh City, Vietnam, scheduled Ms. Nguyen for an interview on July 14, 2010. The consulate referenced the case number HCM2010584047. Ms. Nguyen paid the visa fee of \$131.

126. On July 14, 2010, Ms. Nguyen appeared for her interview as scheduled. The U.S. Consular Officer, a duly authorized employee of defendant State Department, interviewed Ms. Nguyen. The Officer refused to issue a K-1 fiancé(e) visa to Ms. Nguyen, and instead issued a

letter dated July 14, 2010, requesting from petitioner (Mr. Tran) a sworn, notarized statement containing a detailed chronology of the relationship. The letter set an appointment date for resubmission of the requested documents as August 11, 2010.

The Denial and Petition Return

127. On August 11, 2010, Ms. Nguyen appeared at the Consulate and submitted the requested timeline. She was told to wait. She was called up by the Vietnamese national employee and handed a denial letter. She was not interviewed on this date, and she never spoke to an American consular officer.

128. The letter that she was handed by the State Department employee on August 11, 2010 was a visa denial, premised upon 8 U.S.C. § 1201(g), INA § 221(g), advising Ms. Nguyen that the petition was being returned to USCIS with the recommendation that it be revoked. The visa denial letter stated that when USCIS receives the returned petition, USCIS will contact the plaintiff who will have an opportunity to rebut consular findings concerning this case.

129. Based on current DHS/USCIS policy and interpretation as expressed in the Scharfen memorandum to the USCIS Ombudsman, however, Plaintiff will not have an opportunity to rebut consular findings concerning the case.

130. The denial stated that, “Photographs submitted as evidence of the relationship indicate that Petitioner and Beneficiary have spent only four or five days together.”

131. The evidence in the record directly contradicts the conclusory statement contained in paragraph 130, and it is thus conclusive, speculative, equivocal or irrelevant. Plaintiff has spent more than 40 days over four separate trips to Vietnam and including a separate trip the couple took to Thailand.

132. Neither Plaintiff nor his fiancé(e) were provided an opportunity to rebut the conclusion by Defendant State Department contained in paragraph 130, and they will not be provided an opportunity to rebut this conclusion by defendants DHS/USCIS due to the Scharfen policy.

133. The denial stated that, “Beneficiary’s chronology of the claimed relationship is not credible. For example, Beneficiary could not recall the day when Petitioner proposed to her.”

134. In response to the question regarding the day Petitioner proposed to her, Ms. Nguyen answered, “the second day of our trip to Thailand.” The consular officer required an exact date. When the exact date could not be produced, the consular officer dismissed the recollection as “could not recall.” The statement in paragraph 133 is conclusive, speculative, equivocal or irrelevant.

135. Neither Plaintiff nor his fiancé(e) were provided an opportunity to rebut the conclusion by Defendant State Department contained in paragraph 133, and they will not be provided an opportunity to rebut this conclusion by defendants DHS/USCIS due to the Scharfen policy.

136. The denial stated that, “Beneficiary is unaware of basic facts regarding Petitioner’s occupation, livelihood and-or worklife. For example, Beneficiary stated that she does not know with whom Petitioner resides.”

137. In response to the question about Petitioner’s roommate, Beneficiary responded with the person’s first name. The consular officer would only accept a full name and so discredited Ms. Nguyen’s testimony. The statement in paragraph 136 is conclusive, speculative, equivocal or irrelevant.

138. Neither Plaintiff nor his fiancé(e) were provided an opportunity to rebut the conclusion by Defendant State Department contained in paragraph 136, and they will not be provided an opportunity to rebut this conclusion by defendants DHS/USCIS due to the Scharfen policy.

139. The denial stated that, “Beneficiary’s account of basic facts regarding the claimed relationship is not credible. For example, Beneficiary has stated that Petitioner and Beneficiary have planned a honeymoon, but Beneficiary is unable to provide basic facts (such as destination,

hotel, duration, transportation or approximate costs) regarding the claimed planned honeymoon following marriage in the U.S.”

140. Beneficiary was aware of the planned destination, Walt Disney World, but the consular officer would not accept less than the full details which have not been set. Given the fact that the timing of visa issuance in the K-1 context remains elusive at best, the question relates to an unknown future date and is not known by the parties. The statement in paragraph 139 is conclusive, speculative, equivocal or irrelevant.

141. Neither Plaintiff nor his fiancé(e) were provided an opportunity to rebut the conclusion by Defendant State Department contained in paragraph 139, and they will not be provided an opportunity to rebut this conclusion by defendants DHS/USCIS due to the Scharfen policy.

142. The denial stated that, “Beneficiary’s statements are not credible and indicate an attempt to cut off a line of inquiry. For example, Beneficiary was repeatedly asked if she had ever been the derivative in a different spousal or familial visa petition and Beneficiary signed a notarized affidavit in front of a Consular officer to this effect. However, Beneficiary was the derivative of an I-130 (F4) visa petition filed by Hanh Thi Thu, Beneficiary’s paternal aunt.”

143. Upon learning that Beneficiary was unaware of the I-130 (a family based form) petition filed on January 3, 1991 (when Ms. Nguyen was an eleven (11) year old minor child), the consular officer requested Ms. Nguyen to sign a notarized document. Ms. Nguyen was simply listed as the minor child on the petition filed by her aunt on her father’s behalf, and Ms. Nguyen was unaware of this fact. Her parents are divorced, and she was not told that she was listed on this old petition. The statement in paragraph 142 is conclusive, speculative, equivocal or irrelevant. The denial bases alleged in paragraphs 130 through 142 evaded the spirit of due process, evidenced a lack of diligence, revealed a willful rendering of substandard performance, and revealed a wanton abuse of power unbecoming our civilized nation whose Declaration of Independence shunned the autocratic concept of absolute power vested in any one pair of hands.

As such, the denial was issued in bad faith.

144. Neither Plaintiff nor his fiancé(e) were provided an opportunity to rebut the conclusion by Defendant State Department contained in paragraph 142, and they will not be provided an opportunity to rebut this conclusion by defendants DHS/USCIS due to the Scharfen policy.

145. State Department issued the denial based on mere suspicion and failed to provide a written notice supported by the legal and factual basis for the visa denial and petition return that was not conclusive, speculative, equivocal or irrelevant.

146. State Department, in its denial, stated that, “[i]f USCIS revokes the petition, beneficiary will become ineligible for a visa under section 212(a)(6)(C)(i) of the Act.” INA 212(a)(6)(C)(i), 8 U.S.C. 1182(a)(6)(C)(i), is a permanent bar to admissibility for misrepresentation. Pursuant to the Foreign Affairs Manual, 9 FAM 40.63 N10.1, State Department placed a marker, called a “P6C1” marker, or “quasi-refusal” in Ms. Nguyen’s records, and will deem USCIS revocation of the petition as automatically establishing the permanent misrepresentation bar to any future immigration possibility.

CLASS ACTION ALLEGATIONS

147. 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. The named plaintiffs seek to represent: All United States citizens who filed an I-129F Petition for Fiancé(e) that was approved by DHS/USCIS, but whose alien fiancé(e) was not issued a K-1 visa due to the State Department’s issuance of a visa denial for the purpose of returning the approved petition to DHS/USCIS for review and revocation, termination, or denial.

148. The members of plaintiffs’ class warrant class action treatment because they fulfill the requirements under Rule 23(a) of the Federal Rules of Civil Procedure.

149. The proposed class is so numerous that joinder of all members is impracticable. Thousands of United States citizens qualify for the proposed class. Fed. R. Civ. P. 23(a)(1).

150. There are questions of law common to the class. The action seeks to compel defendants to comply with the Due Process clause of the Fifth Amendment to the United States Constitution, and comply with the federal statutes passed by Congress. Whether the process and treatment afforded the class comports with the Constitution and statutes of the United States is at issue. These questions of law are common to each member of the affected class. Fed. R. Civ. P. 23(a)(2).

151. The claims and defenses of the representative plaintiffs are typical of the claims or defenses of the class. Plaintiffs filed an I-129F Petition for Fiancé(e) that was approved by DHS/USCIS, but the alien fiancée of each Plaintiff was not issued a K-1 visa due to the State Department's issuance of a visa denial for the purpose of returning the approved petition to DHS/USCIS for review and revocation. Each of the Plaintiffs complain about the denial of due process of law, just as do members of the class. Fed. R. Civ. P. 23(a)(3).

152. The representative plaintiffs will fairly and adequately protect the interests of the class. Plaintiffs have been wronged by defendants' actions and inactions, and harmed by the denial of due process of law that is common to all class members. Fed. R. Civ. P. 23(a)(4)

153. The defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final declaratory and injunctive relief with respect to the class as a whole. Defendants' systemic failures to act in a manner that comports with due process applies equally to all class members. This action is maintainable as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure.

154. Plaintiff's counsel, Brent W. Renison, is an appropriate class counsel for the proposed class. Renison has undertaken work identifying and investigating potential claims in the action, has experience handling a class action involving immigrant rights issues, and possesses other immigration-related litigation experience. Renison has knowledge of the applicable law, and will commit appropriate resources to representing the class. Fed. R. Civ. P. 23(g)

FIRST CLAIM FOR RELIEF

Action, Findings and Conclusions in Excess of Statutory Authority

155. Plaintiff realleges and incorporates by reference paragraphs 1 through 154 above, as if fully set forth herein.

156. The regulation at 8 C.F.R. § 214.2(k)(5), which purports to impose a four-month validity period for approved K-1 petitions, is in excess of statutory jurisdiction, authority and short of statutory right. The Administrative Procedure Act (“APA”), 5 U.S.C. § 706(2), allows Courts to hold unlawful and set aside agency action, findings, and conclusions found to be in excess of statutory authority or short of statutory right.

157. The statutes of the United States do not provide authority for the limited four-month validity period as applied to K-1 petitions. The regulation at 8 C.F.R. § 214.2(k)(5) is unlawful and *ultra vires*.

158. The Foreign Affairs Manual, at 9 FAM 40.63 N10.1, which purports to establish the materiality of an alleged misrepresentation pursuant to 8 U.S.C. 1182(a)(6)(C)(i), INA 212(a)(6)(C)(i), merely based upon DHS/USCIS summary revocation of the petition is in excess of statutory jurisdiction, authority and short of statutory right. The State Department engages in an unlawful practice by placing a marker, called a “P6C1” marker, or “quasi-refusal” in a visa beneficiary’s record, and through deeming the DHS/USCIS revocation of the petition as automatically establishing the permanent misrepresentation bar to any future immigration possibility. This practice is *mala fides*, and therefore a bad faith practice.

159. Plaintiff has suffered a legal wrong and has been adversely affected and aggrieved by agency actions alleged in paragraphs 156 through 158 above, because defendants, in relying upon the unlawful regulation limiting K-1 petitions to a four-month validity period to justify their policy of not acting on returned petitions, have violated plaintiff’s legal right to an adjudication in accordance with fundamental principles of fairness. As a result, the regulation at 8 C.F.R. § 214.2(k)(5) must be declared “not in accordance with law” under 5 U.S.C. §

706(2)(A), and in excess of the agency’s “statutory jurisdiction, authority” or “statutory right,” within the meaning of 5 U.S.C. § 706(2)(C). Likewise, the Foreign Affairs Manual, at 9 FAM 40.63 N10.1, which purports to establish the materiality of an alleged misrepresentation pursuant to 8 U.S.C. 1182(a)(6)(C)(i), INA 212(a)(6)(C)(i), merely based upon DHS/USCIS summary revocation of the petition must be declared “not in accordance with law” under 5 U.S.C. § 706(2)(A), and in excess of the agency’s “statutory jurisdiction, authority” or “statutory right,” within the meaning of 5 U.S.C. § 706(2)(C).

SECOND CLAIM FOR RELIEF

**Contrary to Constitutional Right and Without Observance of Procedure Required by Law
Arbitrary and Capricious and Not in Accordance with Law**

160. Plaintiff realleges and incorporates by reference paragraphs 1 through 159 above, as if fully set forth herein.

161. State Department, by failing to provide a reasonable period during which a petitioner and beneficiary may rebut consular findings before the petition is returned to DHS/USCIS, has acted in bad faith by failing to observe the procedure required by law and has violated plaintiff’s right to due process of law under the United States Constitution.

162. Defendant State Department, by systematically failing to return petitions to DHS/USCIS only where substantial evidence exists that fraud, misrepresentation, or ineligibility would lead to denial, has acted in bad faith by observing the procedure required by law and has violated plaintiff’s right to due process of law under the United States Constitution.

163. Defendant State Department, by systematically returning petitions to DHS/USCIS, where fraud, misrepresentation or ineligibility is merely suspected, has acted in bad faith by not observing the procedure required by law and has violated plaintiff’s right to due process of law under the United States Constitution. Defendant State Department has also acted on mere suspicion in an arbitrary and capricious manner that is *mala fide*.

164. Defendant State Department, by systematically failing to provide a sufficient

written notice supported by the legal and factual basis for the visa denial and petition return that is not conclusive, speculative, equivocal or irrelevant, has acted in bad faith by observing the procedure required by the law and has violated plaintiff's right to due process of law under the United States Constitution. Defendant State Department has also acted on conclusive, speculative, equivocal or irrelevant bases in an arbitrary and capricious manner that is *mala fide*.

165. Defendants State Department and DHS/USCIS/CSC, by failing to provide any mechanism for rebutting consular findings in violation of Plaintiffs' right to due process of law under the United States Constitution have forced Plaintiffs to file a new I-129F at the expense of \$455 and face a new visa fee of \$350 for each new application. The failure of Defendants to provide adequate opportunity for rebuttal of consular findings is contrary to Constitutional right, without observance of procedure required by law, arbitrary, capricious, and not in accordance with law and has resulted in unjust enrichment of Defendants through improper receipt of more filing fees.

166. The APA, 5 U.S.C. § 706(2), allows Courts to hold unlawful and set aside agency action, findings, and conclusions found to be contrary to constitutional right, power, privilege, or immunity or without observance of procedure required by law. Plaintiff has suffered a legal wrong and has been adversely affected and aggrieved by agency actions alleged in paragraphs 161 through 165 above. As a result, defendants' actions and inactions must be held unlawful and set aside.

167. The APA, 5 U.S.C. § 706(2), allows Courts to hold unlawful and set aside agency action, findings and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. Plaintiff has suffered a legal wrong and has been adversely affected and aggrieved by agency actions alleged in paragraphs 161 through 165 above. As a result, defendants' actions and inactions must be held unlawful and set aside.

168. The right to fundamental fairness in administrative adjudication is protected by the Due Process Clause of the Fifth Amendment to the United States Constitution. The right to

marry is a right protected under the United States Constitution. Plaintiff, on behalf of himself and all others similarly situated, may seek redress in this Court for the defendants' combined failures to provide a reasonable and just framework of adjudication in accordance with law and the United States Constitution.

THIRD CLAIM FOR RELIEF

Agency Action Unlawfully Withheld and Unreasonably Delayed

169. Plaintiff realleges and incorporates by reference paragraphs 1 through 168 above, as if fully set forth herein.

170. Defendant State Department regularly fails to schedule a visa interview within a reasonable period from the date that State Department's National Visa Center receives an approved I-129F petition for fiancé(e) from USCIS. Given Congress' intent that fiancé(e)s of United States citizens be given preferential treatment in terms of accelerated adjudication, the agency has unreasonably delayed the process system wide and acted in bad faith. See 8 U.S.C. § 1201 note 6, Act Sept. 30, 2002, P.L. 107-228, Div. A, Title II, Subtitle C, § 233, 116 Stat. 1373.

171. Defendant State Department has systematically failed to issue a K-1 visa to the fiancé(e) of a U.S. citizen or notify the petitioner and beneficiary that the petition will be returned to DHS/USCIS within reasonable period following interview. Given Congress' intent that fiancé(e)s of United States citizens be given preferential treatment in terms of accelerated adjudication, the agency has unreasonably delayed the process system wide and acted in bad faith. *Id.*

172. Defendant State Department has systematically failed to render a final decision to approve the K-1 visa or return a petition to DHS/USCIS within a reasonable period not to exceed 30 days from the receipt of all necessary documents from the petitioner and beneficiary, and to accomplish delivery of the petition to State Department's National Visa Center within such period. Given Congress' intent that fiancé(e)s of United States citizens be given preferential

treatment in terms of accelerated adjudication, the agency has unreasonably delayed the process system wide and acted in bad faith. *Id.*

173. Defendants DHS/USCIS have systematically failed to issue a notice to petitioner within a reasonable period of time not to exceed 30 days from receipt of the returned petition from the State Department, providing petitioner with the legal and factual basis for the consular recommendation that is not conclusive, speculative, equivocal or irrelevant. Defendants egregious delays have been the subject of multitudes of complaints from United States citizens and Congressional offices, and constitute agency action unlawfully withheld or unreasonably delayed.

174. DHS/USCIS, in the case of a reaffirmation of approval, have systematically failed to deliver the reaffirmed petition to the State Department within a reasonable period of time, and defendant State Department has systematically failed to issue the K-1 visa within a reasonable period of time following reaffirmation.

175. DHS/USCIS, in the case of a denial, has systematically failed to issue a decision within a reasonable period of time, and to advise petitioner of the right to appeal the decision to the Administrative Appeals Office.

176. The APA, 5 U.S.C. § 706(2), allows Courts to compel agency action unlawfully withheld or unreasonably delayed. Plaintiff has suffered a legal wrong and has been adversely affected and aggrieved by agency actions alleged in paragraphs 170 through 175 above. As a result, defendants' actions and inactions must be held unlawful and set aside, and defendants must be ordered to establish an orderly system of adjudication of the rights of United States citizens to have their fiancé(e)s join them in the United States so that they may marry.

FOURTH CLAIM FOR RELIEF

Mandamus and Declaratory Relief

177. Plaintiff realleges and incorporates by reference paragraphs 1 through 176 above, as if fully set forth herein.

178. The Mandamus Act, 28 U.S.C. § 1361, provides that district courts shall have jurisdiction over any action in the nature of mandamus, and may compel an officer or employee of the United States or any agency thereof to perform a duty owed to plaintiff. Plaintiff must demonstrate that “(1) [his or her] claim is clear and certain; (2) the official’s duty is nondiscretionary, ministerial, and so plainly prescribed as to be free from doubt; and (3) no other adequate remedy is available.” *Patel v. Reno*, 134 F.3d 929, 931 (9th Cir. 1997).

179. Plaintiff’s claims as set forth in paragraphs 156 through 176 also qualify for mandamus relief because the statutory and Constitutional claims are clear, the defendants’ duties are not in doubt, and in the case of any remedies not available under the APA, no other adequate remedy is available.

180. The Declaratory Judgement Act, 28 U.S.C. § 2201, et. seq., provides the Court with the authority to declare the rights and other legal relations of any party. Plaintiff’s claims as set forth in paragraphs 156 through 176 also qualify for declaratory relief, including “[f]urther necessary or proper relief based on a declaratory judgment...” 28 U.S.C. § 2202.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Assume jurisdiction over this action;
2. At the earliest practicable time certify this action as a class action;
3. Declare that Defendants’ actions and inactions have been in bad faith, have evaded the spirit of due process, evidenced a lack of diligence, revealed a willful rendering of substandard performance, and represented a wanton abuse of power;
4. Issue a writ of mandamus compelling State Department to schedule a visa interview within a reasonable period from the date that State Department’s National Visa Center receives an approved I-129F petition for fiancé(e) from USCIS;
5. Issue a writ of mandamus compelling State Department to issue a K-1 visa to the

- fiancé(e) of a U.S. citizen or notify the petitioner and beneficiary that the petition will be returned to DHS/USCIS within reasonable period following interview;
6. Issue a writ of mandamus compelling State Department to provide a reasonable period during which a petitioner and beneficiary may rebut consular findings before the petition is returned to DHS/USCIS;
 7. Issue a writ of mandamus compelling State Department to return petitions to DHS/USCIS only where substantial evidence exists that fraud, misrepresentation, or ineligibility would lead to denial, and not where it is merely suspected; and to provide a written notice supported by the legal and factual basis for the visa denial and petition return that are not conclusive, speculative, equivocal or irrelevant;
 8. Issue a writ of mandamus compelling State Department to render a final decision to approve the K-1 visa or return a petition to DHS/USCIS within a reasonable period not to exceed 30 days from the receipt of all necessary documents from the petitioner and beneficiary, and to accomplish delivery of the petition to State Department's National Visa Center within such period;
 9. Declare that 8 C.F.R. § 214.2(k)(5), which purports to limit the validity of a K-1 fiancé(e) petition (Form I-129F) to four months, is *ultra vires* and in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
 10. Issue a permanent injunction barring DHS/USCIS from limiting the validity period of any approved fiancé(e) petition;
 11. Declare that the Foreign Affairs Manual, at 9 FAM 40.63 N10.1, which purports to establish the materiality of an alleged misrepresentation pursuant to 8 U.S.C. 1182(a)(6)(C)(i), INA 212(a)(6)(C)(i), merely based upon DHS/USCIS summary revocation of the petition is *ultra vires* and in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
 12. Issue a permanent injunction barring the State Department from placing a marker,

called a “P6C1” marker, or “quasi-refusal” in a visa beneficiary’s record, and deeming the DHS/USCIS revocation of the petition as automatically establishing the permanent misrepresentation bar to any future immigration possibility;

13. Issue a writ of mandamus compelling DHS/USCIS to issue a notice to petitioner within a reasonable period of time not to exceed 30 days from receipt of the returned petition from the State Department, providing petitioner with the legal and factual basis for the consular recommendation that is not conclusive, speculative, equivocal or irrelevant;
14. Issue a writ of mandamus compelling DHS/USCIS to provide petitioner the opportunity to submit evidence to rebut the consular recommendation within a reasonable period of time;
15. Issue a writ of mandamus compelling DHS/USCIS, in the case of a reaffirmation of approval, to deliver the reaffirmed petition to the State Department within a reasonable period of time, and compel State Department to issue the K-1 visa within a reasonable period of time following reaffirmation;
16. Issue a writ of mandamus compelling DHS/USCIS, in the case of a denial, to issue a decision within a reasonable period of time, and to advise petitioner of the right to appeal the decision to the Administrative Appeals Office;
17. Issue a writ of mandamus compelling State Department and DHS/USCIS, in the case of plaintiffs and class members who filed a new I-129F petition and/or paid a new visa application fee, to refund the unlawfully received additional filing fees to plaintiffs and class members;
18. Award plaintiff reasonable costs and attorney’s fees under the Equal Access to Justice Act; and
19. Award such further relief as the Court deems necessary or appropriate.

DATED this 26th day of August, 2010.

PARRILLI RENISON LLC

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