UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ImmigrationPortal.Com, et al., Plaintiffs, v. Tom Ridge, et al., Defendants.	Civil Action: 03-2606 Judge James Robertson

PLAINTIFFS' REPLY TO DEFENDANTS' SUPPLEMENTAL BRIEF AND REPLY

Plaintiffs, by and through undersigned counsel, respectfully submit this short reply to Defendants' supplemental brief and reply.

Plaintiffs respectfully submit that there are a number of factual and legal errors in the supplemental brief and reply submitted by the Defendants.

1. **Defendants' Record-Keeping is So Unreliable that They Misrepresent Facts to the Court**

The Defendants in the supplemental brief filed by them on October 9, 2004, have stated that Plaintiff Samrajya L. Kompella failed to appear for her scheduled appointment on September 22, 2004 for taking her fingerprints, and had to be rescheduled for another appointment, thereby, further delaying adjudication of her pending applications. (Def. Supp. Brief at 12). Plaintiffs' submit that this is incorrect.

In compliance with the Fingerprint Notification dated August 25, 2004, Ms. Kompella, visited the Application Support Center of the Defendants located at 8850 Richmond Highway, Alexandria, VA 22309, at the scheduled time on September 22, 2004. Since Ms. Kompella had a minor cut on her right index finger, the Defendants

could not take her fingerprints on that date and advised Ms. Kompella to come back at another time. Attached here is **Reply Exhibit A**, copy of the Fingerprint Notification with a notation, "cut on finger come back 9/22/04" by the Defendants. Attached here is also **Reply Exhibit B**, an affidavit by Ms. Kompella in this regard.

This untrue fact stated by the Defendants in their supplemental brief filed with the Court on October 9, 2004, demonstrates the irregularities in the functioning of the Defendants and is a reflection of Defendants' illegal, arbitrary and capricious management of the EBAOS program.

In any case, all these individual delays still would amount to a matter of days, not years. There can be no legal excuse or explanation for the delays inflicted upon the Plaintiffs.

2. <u>This Action Has Been Pending Preliminary Fact-Finding for 11 Months</u>

As directed by the Court, Plaintiffs have been engaged in preliminary discovery. Amendment of the Complaint is necessitated by discovered facts and by changes in Defendants' regulations, practice, policy and procedures. Plaintiffs respectfully submit that a motion for leave to amend is not yet before the Court. Defendants can raise their allegations of bad faith and prejudice at the appropriate time. If Defendants find the Complaint to be legally unfounded, they can and should move the Court through appropriate motions, not through vague references and innuendos.

3. <u>Defendants' "No Commonality in the Class" Arguments Have Been Rejected and Class Action Has Been Granted Under Similar Circumstances</u>

. In a recent matter, Plaintiff's sought class certification of persons who have been or will be granted lawful permanent resident status by the Justice Department's Executive Office of Immigration Review and to whom the United States Citizenship and

Immigration Services has failed to issue evidence of status as a lawful permanent resident. *Santillan v. Ashcroft*, No. C 04-2686 MHP (N.D. Cal. Oct. 12, 2004). Attached hereto as **Reply Exhibit C**, a copy of the decision).

On the question of commonality, the Court held "individual variations among plaintiff's questions of law and fact does not defeat underlying legal commonlity." *Id.* at 16 (*citing Hanlon v. Chrysler Corp.*, 150 F. 3d 1011, 1019 (9th Cir. 1998) ("[T]he existence of shared legal issues with divergent factual predicates is sufficient… to satisfy the minimal requirements of Rule 23(a)(2).") The Court also held "it is clear that all plaintiffs, whether present or future members of the class, are challenging the legality of the same government program and thus inherently share common issues." *Santillan*, No. C 04-2686 MHP at 16 (*citing LaDuke v. Nelson*, 762 F. 2d 1318, 1332 (9th Cir. 1985) (holding that the constitutionality of an INS procedure "plainly" created common questions of law and fact)). A copy of defendants' opposition in this case is attached hereto as **Reply Exhibit D.**

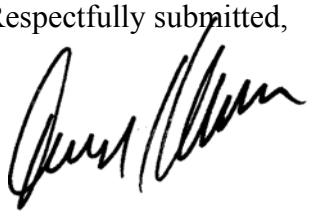
Accordingly, as evidenced on the record and through authorities cited it is clearly established in the present case that there exists sufficient commonality among the putative class members.

4. <u>Defendants' Attempts to Controvert Testimony Should Not be Permitted</u>

Defendants' attempts to explain away or controvert testimony should not be permitted. Plaintiffs would request that if deemed appropriate, permission be granted to submit the two depositions in their entirety for the Court's perusal.

Dated: October 19, 2004

Respectfully submitted,



RAJIV S. KHANNA,
Attorney for Plaintiffs
D.C. Bar No. 419023

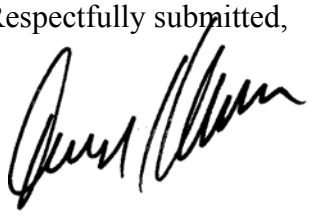
Law Offices of Rajiv S. Khanna, P.C.
5225 N. Wilson Boulevard
Arlington, Virginia 22205
Phone: 703-908-4800, Extension 110
Facsimile: 703-908-4890
e-mail: rskhanna@immigration.com

STATEMENT IN LIEU OF CERTIFICATE OF SERVICE

Pursuant to LCivR 5.4(d), a certificate of service is not required in this matter because the attached filing was made electronically and to the best of my knowledge, information and belief, all Defendants are notified through the Electronic Case Filing System.

Dated: 19 October 2004

Respectfully submitted,



RAJIV S. KHANNA,
Attorney for Plaintiffs
D.C. Bar No. 419023

Law Offices of Rajiv S. Khanna, P.C.
5225 N. Wilson Boulevard
Arlington, Virginia 22205
Phone: 703-908-4800, Extension 110
Facsimile: 703-908-4890
e-mail: rskhanna@immigration.com