EXHIBIT 9

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

THE UNITED STATES OF AMERICA, Plaintiff, v. STATE OF ALABAMA & GOVERNOR ROBERT J. BENTLEY, Defendants.	Civil Action No.

DECLARATION OF LORI SCIALABBA

Pursuant to 28 U.S.C. § 1746, I, Lori Scialabba, declare and state as follows:

1. I am employed by U.S. Citizenship and Immigration Services (USCIS), a component of the Department of Homeland Security (DHS), as Deputy Director. I have been employed in this position since May 8, 2011. As Deputy Director, I am the second highest official in USCIS, reporting directly to the Director and responsible for overseeing and directing USCIS' daily operational management. Prior to my current position, I have held a number of executive level positions since 1994 involving immigration benefit management and immigration law at USCIS and its predecessor before March 2003, the Immigration and Naturalization Service (INS), and at the Board of Immigration Appeals (BIA) in the Executive Office for Immigration Review (EOIR) in the Department of Justice. These positions included serving as: Associate Director of Refugee, Asylum and International Operations at USCIS between 2006 and 2011; Member, Vice Chairman and Chairman (successively) of the BIA between March 1998 and September 2006; and Deputy General Counsel of the INS between 1994 and 1998. I

began my federal career with the INS as a trial attorney in 1985. I make this declaration based on personal knowledge of the subject matter acquired by me in the course of the performance of my official duties and upon information provided to me by personnel with relevant knowledge.

2. The federal government has a system in place for registering aliens in numerous situations. For example, aliens seeking to adjust their status to that of a lawful permanent resident register with the federal government by filing a Form I-485, Application to Register Permanent Residence or Adjust Status (commonly known as an "adjustment application"). There are also systems in place for aliens to seek evidence of registration through such immigration benefits as an Employment Authorization Document (EAD), or Form I-766.

3. As explained below, outside of these registration systems there are several situations in which aliens in the United States are pursuing a process for obtaining a lawful status under Federal immigration law, or have been granted temporary relief from removal, but will not have filed an application or other form that has been designated as complying with registration requirements, and will not have been issued a document designated as evidence of registration. Nonetheless, DHS is aware of their presence through the processes provided by federal immigration law and may, in certain cases, have affirmatively decided not to pursue either removal or criminal prosecution, including under 8 U.S.C. §§ 1304(e) and 1306(a).

4. DHS regulations at 8 C.F.R. § 264.1(a) list certain DHS applications and other forms that constitute "registration forms" for the purpose of demonstrating compliance with the alien registration requirements provided in 8 U.S.C. § 1302 and enforced under 8 U.S.C. §1306. DHS regulations at 8 C.F.R. § 264.1(b) designate certain DHS-issued cards and other documents (also referred to in the regulations as "forms") as forms constituting "evidence of registration" for the purpose of demonstrating compliance with 8 U.S.C. § 1304(e), which provides that aliens

who have been registered, and are eighteen or older, shall at all times carry the certificate of alien registration or alien registration receipt card issued to them by the federal government. In this Declaration, the DHS regulations at 8 C.F.R. § 264.1(a) and (b) are referred to as the "registration regulations."

5. In many cases, when aliens apply for a particular immigration benefit, the application that they file with USCIS constitutes a registration form as designated in the registration regulations, which means that they can use that application to demonstrate their compliance with the registration requirements in 8 U.S.C. § 1302. Additionally, the document that an alien receives after that application has been processed and/or approved constitutes evidence of registration as designated in the registration regulations, which means that an alien can use that document to demonstrate compliance with 8 U.S.C. § 1304. An alien who applies for adjustment of status provides a useful example of how these forms and documents work in practice. In that instance, the alien would file a Form I-485 adjustment application, which constitutes a registration form under the registration regulations and therefore demonstrates that an alien has applied for registration as required in 8 U.S.C. § 1302. If the application is approved, the government will issue a Form I-551 Permanent Resident Card (commonly known as a "green card") to the alien, which constitutes evidence of registration and therefore can be used to demonstrate compliance with 8 U.S.C. § 1304. Even before receiving a green card, adjustment applicants are also eligible to file a Form I-765, Application for Employment Authorization, which, if approved, results in the issuance of an Employment Authorization Document (EAD), or Form I-766. Like a green card, an EAD is also designated as evidence of registration in the registration regulations.

Aliens with Applications for Lawful Status

6. In contrast to the process outlined above, there are also a number of situations in which aliens within the United States who have a pending or approved application for a lawful immigration status, would lack a designated registration form, evidence of registration, or both. These situations include, but are not limited to: Certain aliens eligible for relief under the Violence Against Women Act; aliens applying for asylum; aliens applying for T or U nonimmigrant status; and aliens applying for Temporary Protected Status (TPS). The registration regulations do not designate any form as a general "catch-all" that aliens present in the United States who have not otherwise submitted a form described in the regulations may submit to register with DHS. Accordingly, under these circumstances, aliens seeking the various humanitarian immigration benefits described below will not be in possession of a registration document, despite the fact that they have an application for such benefit pending with the federal government and that the federal government is aware of their presence in the United States.

7. **Violence Against Women Act.** The Violence Against Women Act (VAWA) enables certain aliens who have been subjected to battery or extreme cruelty by their U.S. citizen or lawful permanent resident spouse, parent, or child to self-petition for immigration benefits (8 U.S.C. § 1101(a)(51) (defining VAWA self-petitioner)). The self-petitioning procedures do not require the participation of the U.S. citizen or lawful permanent resident abuser and are done without the abuser's knowledge. This allows abused individuals to seek both safety and independence from their abusers, and abusers are not notified that a self-petitioner has filed for immigration benefits under VAWA. The provisions of VAWA apply equally to women and men. USCIS granted 10,122 VAWA self-petitions in fiscal year 2010.

8. To file a VAWA self-petition, applicants submit a Form I-360 (Petition for Amerasian, Widow(er), or Special Immigrant) to USCIS. Self-petitioners must demonstrate, based on credible evidence, that they have the qualifying relationship with the U.S. citizen or lawful permanent resident abuser, that they were abused or subjected to extreme cruelty, that they resided with the abuser, and that they are a person of good moral character. USCIS issues written confirmation of receipt of the petition. Battered aliens who file a VAWA self-petition also receive a notice of action of a prima facie determination by USCIS, which, if positive, may be used to access certain public benefits available to victims of domestic violence. When a VAWA self-petition is approved, the battered alien receives an approval notice. When an immigrant visa number becomes available, the battered alien with an approval notice is eligible to file for adjustment of status, using a Form I-485. As described above, a Form I-485 constitutes a registration form under the registration regulations and therefore demonstrates that an alien has applied for registration as required in 8 U.S.C. § 1302. None of the other forms or documents used in the VAWA self-petition process, including USCIS confirmation of receipt of the petition, is designated as a registration form in the registration regulations.

9. Under current DHS policy, an approved VAWA self-petitioner is granted deferred action if necessary by USCIS. Deferred action is a form of prosecutorial discretion by which the agency elects not to assert the full scope of its authority. Generally, a grant of deferred action stays immigration enforcement based on convenience to the government, and provides a basis for the alien to apply for employment authorization. This policy provides battered aliens some protection against immigration enforcement such as removal, and allows for opportunities such as seeking protective orders against their abusers and cooperating with law enforcement in criminal cases brought against their abusers.

10. Once a battered alien receives notice of approval of the VAWA self-petition and is placed in deferred action, the battered alien may, but is not required to, file a Form I-765, which will result in issuance of an EAD, which is designated as evidence of registration in the registration regulations. Current processing times for VAWA self-petitions are 5 months, and current general processing times for EADs are 1.8 months. Therefore, on average, a battered alien would not receive a registration document until almost 7 months after the initial filing of the Form I-360. With the exception of the EAD, no form or document used in the deferred action process is designated as evidence of registration in the registration regulations.

11. Accordingly, a battered alien who is in the United States, regardless of immigration status, and who has filed such a VAWA self-petition and is awaiting an adjudication, generally will not—by virtue of this federal immigration process—have submitted or obtained a form satisfying the registration regulations.

12. **Asylum.** Subject to certain statutory limitations, an alien who is physically present in the United States, regardless of immigration status, may apply for asylum under section 208 of the Immigration and Nationality Act (8 U.S.C. § 1158). To apply for asylum, applicants submit a Form I-589 (Application for Asylum and Withholding of Removal). Applicants applying affirmatively for asylum with USCIS will submit a Form I-589 directly to USCIS's Asylum Division. Applicants applying defensively in removal proceedings before the U.S. Department of Justice's Executive Office for Immigration Review (EOIR) will file a Form I-589 during the course of removal proceedings.

13. An applicant who has applied affirmatively for asylum with USCIS will receive written confirmation of USCIS' receipt of the application as well as a notice to visit the nearest Application Support Center (ASC) for fingerprinting. Asylum applicants are subject to a

biometric check of all appropriate records and other information databases maintained by the U.S. Government. USCIS will schedule an interview with an asylum officer. In most cases, an applicant will receive an interview notice within 21 days after mailing a completed Form I-589, and the applicant will then be interviewed by an asylum officer at one of eight Asylum Offices in the United States or at a USCIS field office, depending on where he or she is located.

14. The asylum officer will determine whether the applicant is eligible to apply for asylum, meets the statutory definition of a refugee under section 101(a)(42)(A) of the INA (8 U.S.C. § 1101(a)(42)(A)), and is not barred from being granted asylum under section 208(b)(2) of the INA (8 U.S.C. § 1158(b)(2)). An applicant will generally receive a decision within 60 days after the initial asylum application is filed. None of the forms or documents used in this process, including the Form I-589, constitutes a registration form in the registration regulations that would demonstrate compliance with the requirements in 8 U.S.C. § 1302 to apply for registration.

15. When an alien's application for asylum has been granted by an asylum officer, the officer issues a Form I-94 indicating that the applicant was granted asylum in the United States. The registration regulations designate Form I-94 as evidence of registration.

16. An asylee may apply for adjustment of status to lawful permanent residence one year after being granted asylum by filing a Form I-485. Each qualifying family member who wants to become a permanent resident must also file a Form I-485. Asylees may be eligible to receive help from state and local organizations funded by the U. S. Department of Health and Human Services' (HHS) Office of Refugee Resettlement (ORR). Services may include financial assistance, medical assistance, employment preparation and job placement, and English language training.

17. Following an interview with an asylum applicant, an asylum officer may determine that an alien is not eligible for asylum. The alien is then referred, typically through a Form I-862 (Notice to Appear (NTA)), for further consideration of the asylum application in removal proceedings before EOIR. An Immigration Judge conducts a "de novo" hearing to adjudicate the pending asylum application.

18. Any alien whose application for asylum has been pending before USCIS or EOIR at least 150 days may file a Form I-765, Application for Employment Authorization. USCIS may approve the Form I-765 as a matter of discretion if the application for asylum has been pending at least 180 days, which will result in issuance of an EAD. Additionally, an alien whose application for asylum has been granted may also file a Form I-765, which will result in the issuance of an EAD. USCIS granted 11,244 individuals asylum in fiscal year 2010.

19. **Credible Fear.** Arriving aliens placed in expedited removal proceedings at a port of entry may be interviewed by an asylum officer to determine if they have a credible fear of persecution or torture prior to being ordered removed by the Department of Homeland Security. If an asylum officer finds that the alien has a credible fear of persecution or torture, the asylum officer will refer the case to an Immigration Judge for a hearing on the claim. An alien found not to have a credible fear may request review of the asylum officer's negative credible fear determination by an Immigration Judge. Under current DHS policy, arriving aliens who have established a credible fear of persecution and who are paroled from the custody of U.S. Immigration and Customs Enforcement (ICE) are provided with an approved Form I-94 (Arrival/Departure Record) reflecting parole status. Although the Form I-94 is designated as evidence of registration, not all asylum applicants are arriving aliens paroled from ICE custody.

20. **Reasonable Fear.** Certain aliens subject to reinstatement of removal or administrative removal by DHS may be entitled to a reasonable fear interview with an asylum officer. If an asylum officer finds that the alien has a reasonable fear of persecution or torture, the asylum officer will refer the case to an Immigration Judge for a hearing on the claim. An alien found not to have a reasonable fear may request review of the asylum officer's negative credible fear determination by an Immigration Judge.

21. Accordingly, an alien who is in the United States, regardless of immigration status, and who has filed a pending application for asylum with DHS, generally will not— by virtue of this federal immigration process—have submitted or obtained a federal form satisfying the registration regulations, except as stated above with respect to the EAD for certain applicants whose applications have been pending more than 180 days and certain arriving applicants issued a Form I-94.

22. **T and U nonimmigrant status.** Federal law provides for the grant of T nonimmigrant status to certain victims of trafficking and their family members in the United States (8 U.S.C. §§ 1101(a)(15)(T), 1184(o)). To establish eligibility for T nonimmigrant status, aliens must establish, in part, that they are or have been a victim of a severe form of trafficking in persons, which means sex trafficking in which a commercial sex act was induced by force, fraud, or coercion, or the obtaining of a person for labor or services through the use of force, fraud, or coercion. Aliens must also demonstrate that they are present in the United States (including the Commonwealth of the Northern Mariana Islands), American Samoa, or a port of entry thereto, on account of the trafficking and that they would suffer extreme hardship involving unusual and severe harm if removed from the United States. Lastly, aliens must comply with any reasonable request from a law enforcement agency for assistance in the investigation or

prosecution of the trafficking, or are under the age of 18, or are unable to cooperate due to physical or psychological trauma.

23. Aliens seeking T nonimmigrant status must submit Form I-914 (Application for T Nonimmigrant Status), which generates written confirmation of receipt of the application. Written confirmation of receipt of the application does not, however, constitute evidence of registration under the registration regulations. If an applicant for T nonimmigrant status is subject to any grounds of inadmissibility, the applicant must request a waiver on Form I-192 (Application for Advance Permission to Enter as a Non-Immigrant). The Form I-192 is not designated as a registration form. The applicant must comply with fingerprinting requirements and may be interviewed, and all applications are subject to detailed review to determine eligibility and whether DHS will exercise its discretionary authority to waive applicable grounds of inadmissibility. Approval of an application for T nonimmigrant status automatically generates an EAD and a Form I-94. Except for the EAD and Form I-94, no form or document used in the T nonimmigrant application process is included in the registration regulations. The current processing time for applications for T nonimmigrant status is 4 months. USCIS granted 796 individuals T nonimmigrant status in fiscal year 2010.

24. Federal law provides for the grant of U nonimmigrant status to certain crime victims and their family members in the United States (8 U.S.C. §§ 1101(a)(15)(U), 1184(p)). In order to establish eligibility for U nonimmigrant status, aliens must establish, in part, that they suffered substantial physical or mental abuse as a result of being a victim of certain delineated crimes. Those crimes include rape, torture, trafficking, incest, domestic violence, sexual exploitation, and other similarly serious crimes. Aliens must also demonstrate that they possess information about the qualifying criminal activity and that they were helpful to law enforcement

in the investigation or prosecution of the criminal activity. Applicants seeking U nonimmigrant status must submit a Form I-918 (Petition for U Nonimmigrant Status). Submission of the application does not, however, provide an alien with evidence of registration designated under the registration regulations. Although an interview is not required, applicants are subject to fingerprinting and capture of other biometric indices, and applications are subject to detailed review to determine eligibility. If an applicant for U nonimmigrant status is subject to any grounds of inadmissibility, the applicant must submit a waiver on Form I-192 (Application for Advance Permission to Enter as a Non-Immigrant). Approval of an application for U nonimmigrant status automatically generates an EAD and Form I-94, which, as noted above, satisfy the proof of registration requirement. Except for the EAD and Form I-94, no form or document used in the U nonimmigrant application process is included in the registration regulations. The current average processing time for petitions for U nonimmigrant status is 4 months. U nonimmigrant status was granted to 19,388 individuals in fiscal year 2010.

25. DHS may grant an administrative stay of a final order of removal to aliens with pending applications or petitions for T or U nonimmigrant status who have set forth a prima facie case for approval (8 U.S.C. § 1227(d)(1)). Approval of an application for a stay of removal does not automatically generate an EAD and no form or document used in the stay of removal application process is included in the registration regulations. So an alien who received a stay of removal might still not possess evidence of registration, notwithstanding an administrative order authorizing the alien's temporary presence.

26. Accordingly, an alien who is in the United States, regardless of immigration status, and who is in the process of seeking T or U nonimmigrant status, generally will not—by

virtue of this federal immigration process—have submitted or obtained a federal form satisfying the registration regulations.

27. **Temporary Protected Status.** Under 8 U.S.C. § 1254a, the Secretary of Homeland Security may grant Temporary Protected Status (TPS) to certain aliens in the United States who are eligible nationals of TPS-designated foreign states, or parts of such states, and to eligible persons without nationality who last habitually resided in the designated state, or part of the state. As of the end of calendar year 2010, approximately 400,000 individuals held TPS. There are currently six countries designated for TPS: Sudan, Somalia, Honduras, Nicaragua, El Salvador, and Haiti.

28. Nationals from the designated TPS countries, and persons having no nationality who last habitually resided in the country, may be eligible for TPS regardless of whether they have any lawful immigration status in the United States, provided that they meet all the other TPS eligibility requirements. 8 U.S.C. §§ 1254a(a)(5); 244(c).

29. The eligible alien must apply using DHS Form I-821 (Application for Temporary Protected Status). If an alien with a pending TPS application is found to be prima facie eligible for TPS before the final TPS determination, he or she is also eligible for "temporary treatment benefits," which include issuance of an EAD. 8 U.S.C. § 1254a(a)(2); 8 C.F.R. §§244.5, 244.12.

30. TPS applicants aged 14 and older must provide biometrics at a USCIS Application Support Center. Biometrics include fingerprints and photographs. The collected biometrics are sent to the Federal Bureau of Investigation (FBI), which conducts criminal history checks on the applicants and reports results to USCIS. Biometrics are also used for identity verification and to produce appropriate documentation for the individual if he or she is granted TPS.

31. If the applicant is approved for TPS, USCIS issues him a notice of the approval and an EAD, if one has been requested. The EAD is the only document routinely issued to TPS beneficiaries, if requested, that is recognized as a registration document under 8 C.F.R. § 264.1(a), although some TPS beneficiaries may receive a Form I-94, Arrival-Departure Record, from a DHS immigration inspector if they leave and re-enter the United States at a port of entry.

32. A TPS beneficiary who has not requested and received an EAD and who does not have an I-94 will not generally have any form of registration document, unless he or she also has some other immigration status that separately provides registration documentation. Similarly, an alien who has a pending TPS application will not generally possess a registration document unless he or she has requested and been issued an EAD following a prima facie determination by USCIS of TPS eligibility, or by virtue of the alien possessing some other immigration status that provides registration documentation.

33. In DHS' discretion, TPS beneficiaries may be issued authorization to travel abroad and return to the United States while they still have TPS. USCIS provides this travel authorization benefit in the form of an Advance Parole document, which the TPS beneficiary must present when he or she seeks to re-enter the United States at a port of entry. *See* 8 C.F.R. § 244.15.

34. TPS beneficiaries must apply to re-register with USCIS in accordance with procedures that DHS announces in a *Federal Register* notice each time that the Secretary determines to extend the TPS designation of the beneficiaries' country of nationality. Failure to re-register appropriately is grounds for withdrawal of the individual's TPS under 8 U.S.C. § 1254a(c)(3)(C).

35. Individuals with TPS cannot be removed from the United States. 8 U.S.C. § 1254a(a)(1). DHS may not detain a TPS beneficiary on the basis of his or her immigration status during the period in which he or she has TPS. 8 U.S.C. § 1254a(d)(4).

36. Having TPS, by itself, does not permit a beneficiary to adjust to permanent resident status in the United States. However, having TPS also does not prevent an otherwise eligible alien from obtaining permanent resident status or any other immigration status for which he or she may be eligible. For purposes of adjusting to permanent resident status or changing status, the period of time that an alien is in TPS is treated as if the alien is in, and maintaining, lawful status as a nonimmigrant. 8 U.S.C. § 1254a(f)(4).

37. Except for the EAD, no document used in the TPS application process is included in the registration regulations. Accordingly, an alien who is in the United States, regardless of immigration status, and who is in the process of seeking TPS or has applied for TPS, generally will not—by virtue of this federal immigration process—have submitted or obtained a federal form satisfying the registration regulations.

Aliens with Temporary Relief from Removal

38. In addition to situations in which aliens seeking lawful status may not have a registration form or evidence of registration itself, there are also situations in which an alien may have been granted temporary relief from removal such that the United States knows that the alien is present even though he or she is not in lawful status. In these instances, an alien may also lack a registration form or evidence of registration as designated in the registration regulations. These situations include, but are not limited to: deferred enforced departure and deferred action.

39. **Deferred Enforced Departure.** From time to time, Presidents have issued orders or memoranda directing that "deferred enforced departure" (DED) be granted for discrete classes

of aliens, and that the beneficiaries be authorized to work. Most recently, President Obama, citing foreign policy considerations, in March 2010 extended until September 30, 2011, DED for certain Liberians whose TPS eligibility had been terminated in 1997. DED beneficiaries are eligible for employment authorization. The EAD is the sole documentary evidence of the individual's DED status.

40. **Deferred Action.** Aliens who are without a lawful immigration status, including those who are subject to a final order of removal, may be granted deferred action, which is an exercise of DHS's discretion to assign the individual's case a lower enforcement priority for humanitarian reasons, administrative convenience, or in the interest of the Department's overall law enforcement mission. Deferred action does not confer any immigration status upon an alien or otherwise alter the status of any alien who is present in the United States without having been inspected and admitted or paroled. An alien granted deferred action will not be considered to be accruing unlawful presence in the United States during the period deferred action is in effect—which could bar future immigration benefits—but deferred action does not cure previous or subsequent periods of unlawful presence and may be terminated at any time at the Department's discretion. Aliens granted deferred action may be granted employment authorization, provided the alien can demonstrate "an economic necessity for employment." 8 C.F.R. § 274a.12(c)(14).

Other Information Provided to DHS

41. In addition to registration systems, the federal government also has several other means of obtaining updated information about aliens' presence while they are in the United States. For example, aliens may be required to notify DHS of a change in their address or may be required to receive prior authorization from DHS before embarking on any travel outside this country.

42. **Change of Address.** Under 8 U.S.C. § 1305(a) and 8 C.F.R. § 265.1, most aliens present in the United States for more than 29 days are required to notify DHS of each change of address by properly submitting a Form AR-11 (Change of Address Card), or by reporting the address change online at www.uscis.gov, within 10 days of the date of such change. If the alien has a pending or recently approved petition or application with USCIS, he or she also must update his or her address for each such matter, either online or telephonically. One consequence of a failure to report timely a change of address is that if USCIS mails a notice of appointment for biometrics capture, interview, or other in-person appearance requirement to the alien, and the alien fails to appear and has not timely submitted a change of address with respect to the petition or application, USCIS may deem it to be abandoned and deny it. 8 C.F.R. § 103.2(b)(13).

43. **Travel Authorization.** Aliens who are applying for immigration benefits before USCIS or who have been granted certain immigration benefits are subject to certain requirements governing travel outside the United States. Aliens who have pending applications or petitions for certain benefits before USCIS, such as asylum, TPS, or adjustment of status, generally must receive prior DHS travel authorization before departing from the United States in order to maintain their applications and to be permitted to reenter the United States. To request such authorization, also known as "advance parole," the alien must submit a Form I-131 (Application for Travel Document). Asylees and refugees may travel outside of the United States with prior approval in the form of a refugee travel document, which also is requested through submission of a Form I-131. USCIS also adjudicates Form I-131 requests from lawful permanent residents and conditional residents intending to depart the United States for a year or more for a reentry permit, which allows them to apply for readmission to the United States

during the permit's validity period without having to obtain and present a returning resident immigrant visa.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed the 29th day of July, 2011 in Washington, D.C.

Lori Scialabba