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UNITED STATES DISTRICT COURT

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FOR THE EASTERN DISTRICT OF CALIFORNIA

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10 CATHOLIC SOCIAL SERVICES,  
INC., - IMMIGRATION PROGRAM,  
11 et al.,

NO. CIV.S-86-1343 LKK/JFM

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Plaintiffs,

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v.

O R D E R

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14 JANET NAPOLITANO, SECRETARY  
U.S. DEPARTMENT OF HOMELAND  
15 SECURITY, et al.,

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Defendants.

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On August 24, 2009, Julio Cesar Benitez ("Benitez") filed objections to the special master's decision that he was not entitled to class membership under the court approved settlement agreement in this case. On November 17, 2009, the court granted Benitez sixty (60) days to present information to the court that his criminal convictions do not bar class membership. On January 15, 2010, Benitez filed a request for a continuance. For the reasons below, the court denies Benitez's request for a continuance and orders that his objections, Doc. 668, are overruled.

1 Benitez argued that he was intimidated and confused by an  
2 officer during his interview concerning his application for class  
3 membership with the Defendant United States Citizenship and  
4 Immigration Services ("USCIS"). Specifically, Benitez asserts that  
5 the officer forced him to alter his responses to questions  
6 concerning travel from the United States between 1987-1988.  
7 Applicants are only entitled to be class members if they left the  
8 country during this time period. The Special Master denied  
9 Benitez's appeal on the grounds that his response to this question  
10 barred class membership and that his criminal convictions barred  
11 class membership. Because the court could not confirm, based on the  
12 record before it, whether the criminal convictions were an actual  
13 bar, it ordered Benitez to submit supplemental briefing as to this  
14 issue.

15 The terms of the settlement agreement indicate that "neither  
16 the Defendants nor the applicant shall be permitted to submit new  
17 evidence to the Special Master." Joint Motion to Approve Settlement  
18 of Class Action, Dec. 1, 2003, Ex. 1 ("Settlement") ¶ 8.  
19 Accordingly, the Special Master must make its decision as to  
20 whether class membership is proper based upon the record before the  
21 USCIS officer. This court is similarly bound to decide whether  
22 class membership is proper based upon this record.

23 In Benitez's request for a continuance, he states that  
24 currently his criminal convictions bar class membership, but that  
25 he is actively seeking reductions or expungement in these  
26 convictions, which potentially could in the future not bar class

1 membership. Through this request, Benitez admits that the evidence  
2 presented to the USCIS barred him from class membership because of  
3 his criminal convictions. The court cannot consider new evidence  
4 in an appeal of the decision of the Special Master, and the  
5 evidence Benitez seeks to obtain is clearly new. Thus, Benitez's  
6 objections are overruled.

7       The bar to the submission of new evidence to the Special  
8 Master and the court, however, does not extend to evidence of  
9 misconduct or illegality in the USCIS's initial review of  
10 applications for class membership. For example, if an applicant  
11 appeals the decision of the USCIS denying class membership because  
12 of unlawful coercion or threatening behavior of a USCIS officer,  
13 the special master shall consider evidence of such misconduct in  
14 the appeal, even though such evidence was not presented to the  
15 USCIS. This issue is not reached in this case, however, because  
16 Benitez's application as presented to USCIS was barred due to his  
17 criminal convictions.<sup>1</sup>

18       For the foregoing reasons, the court orders that Benitez's  
19 Objections to the Special Master's Decision, Doc. 668, are  
20 OVERRULED.

21       The court further orders that the clerk of court shall mail  
22 a copy of this order to Benitez at the following address: 15445  
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24       <sup>1</sup> The court only decides the question of class membership.  
25 Benitez may be entitled to adjustment of status through other  
26 provisions of the Immigration and Nationality Act. These avenues,  
if any such exist, may also be aided by the reduction or  
expungement of Benitez's criminal convictions.

1 Cobalt St., #134, Sylmar, CA 91342.

2 IT IS SO ORDERED.

3 DATED: February 11, 2010.

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LAWRENCE K. KARLTON  
SENIOR JUDGE  
UNITED STATES DISTRICT COURT