

1 JONATHAN M. KAUFMAN, CA Bar No. 104576  
 jonathan-kaufman@sbcglobal.net  
 2 The Law Offices of Jonathan M. Kaufman  
 220 Montgomery Street, Suite 976  
 3 San Francisco, CA 94104  
 (415) 956-4765  
 4 (415) 956-1664 (Fax)

5 LINDA M. DARDARIAN, CA Bar No. 131001  
 ldardarian@gdblegal.com

6 RACHEL E. BRILL, CA Bar No. 233294  
 rbrill@gdblegal.com

7 LIN YEE CHAN, CA Bar No. 255027  
 lchan@gdblegal.com

8 GOLDSTEIN, DEMCHAK, BALLER, BORGAN & DARDARIAN  
 300 Lakeside Drive, Suite 1000  
 9 Oakland, CA 94612  
 (510) 763-9800  
 10 (510) 835-1417 (Fax)

11 ATTORNEYS FOR PLAINTIFFS AND THE CLASS

12 UNITED STATES DISTRICT COURT  
 13 NORTHERN DISTRICT OF CALIFORNIA  
 14

15 JOSE BAUTISTA-PEREZ, OSCAR  
 GUARDADO-GONZALEZ, DENIS  
 16 CABALLERO-ESPINOZA, JOSE  
 ALVARADO-MENJIVAR, OSCAR RENE  
 17 RAMOS, MARIA SALAZAR, JOSE  
 BENJAMIN QUINTEROS, AND MARIA  
 18 JOSEFA CRUZ, Individually and on behalf of all  
 others similarly situated,

19 Plaintiffs,

20 vs.

21 ERIC H. HOLDER, JR., Attorney General and  
 22 JANET NAPOLITANO, Secretary of Homeland  
 Security,

23 Defendants.  
 24

Case No.: C 07-4192 TEH

**PLAINTIFFS' MOTION FOR  
 ADMINISTRATIVE LEAVE TO FILE  
 SURREPLY TO DEFENDANTS' REPLY TO  
 PLAINTIFFS' OPPOSITION TO  
 DEFENDANTS' CROSS-MOTION FOR  
 SUMMARY JUDGMENT AND  
 DECLARATION OF SCOTT G. GRIMES IN  
 SUPPORT THEREOF, AND ~~[PROPOSED]~~  
 ORDER**

Date: November 23, 2009  
 Time: 10:00 a.m.  
 Courtroom: 12  
 Judge: Hon. Thelton E. Henderson

1 Plaintiffs in the above-entitled action hereby move this Court for an order granting Plaintiffs  
2 leave to file a Surreply to Defendants' Reply to Plaintiffs' Opposition to Defendants' Cross-Motion for  
3 Summary Judgment (Dkt. 128) and Declaration of Scott G. Grimes in Support thereof. Both are  
4 submitted as attachments to this motion. This motion is made pursuant to Civil Local Rule 7-11. Prior  
5 to filing this Motion, Plaintiffs' attorney, Linda M. Dardarian, consulted by telephone with  
6 Defendant's attorney, Brian Mizoguchi, in order to obtain a stipulation to Plaintiffs' filing of a  
7 surreply. Because Defendant conditioned any such stipulation on postponing the long-scheduled  
8 hearing on the parties' Cross Motions for Summary Judgment, the parties were unable to reach an  
9 agreement. *See* Declaration of Linda M. Dardarian in Support of Plaintiff's Motion for Leave to File  
10 Surreply, filed herewith.

11 Plaintiffs request permission to file this surreply to provide the Court with Plaintiffs' analysis  
12 of Section 549 of the Department of Homeland Security Appropriations Act, 2010, H.R. 2892, Pub. L.  
13 111-83, \_\_Stat. \_\_ (Oct. 28, 2009) ("Section 549"), a new law that was enacted after Plaintiffs filed  
14 their Combined Opposition to Defendants' Cross-Motion for Summary Judgment and Reply brief, and  
15 which Defendant argues is dispositive on the two summary judgment motions currently pending before  
16 the Court. Plaintiffs filed their Motion for Partial Summary Judgment and Declaratory Relief on  
17 August 17, 2009. Defendant filed an Opposition to Plaintiffs' Motion for Partial Summary Judgment  
18 and Declaratory Relief as well as a Cross-Motion for Summary Judgment on October 2, 2009. On  
19 October 26, 2009, Plaintiffs filed a Combined Opposition to Defendant's Cross Motion for Summary  
20 Judgment and a Reply to Defendant's Opposition to Plaintiffs' Motion for Partial Summary Judgment  
21 and Declaratory Relief. Then, on October 28, 2009, Section 549 was enacted. On that same date,  
22 Defendant filed a Notice of New Law with the Court, alleging that Section 549 "explicitly clarified  
23 that the Government lawfully may collect the fees at issue in this case." *See* Defendants' Notice of  
24 New Law (Dkt. 127) at 2:1-2. On November 9, 2009, Defendant filed a Reply to Plaintiffs'  
25 Opposition to Defendant's Cross-Motion for Summary Judgment, further detailing its argument that  
26 Section 549 is dispositive as to both of the summary judgment motions pending before the Court.  
27 (Dkt. 128).

1 Because Section 549 was enacted after Plaintiffs filed their Combined Opposition to Defendant's  
2 Cross Motion for Summary Judgment and Reply to Defendant's Opposition to Plaintiffs' Motion for  
3 Partial Summary Judgment, Plaintiffs have not had an opportunity to provide the Court with their  
4 analysis of the impact of the new law on Plaintiffs' claims. Plaintiffs therefore respectfully move for  
5 leave to file a surreply in order to provide the Court with this analysis, and to respond to Defendant's  
6 two filings on this issue. Plaintiffs request leave to file a surreply in order to set forth their argument  
7 that Section 549 is not dispositive as to the motions pending before the Court is premised on the  
8 following three bases:

9 1. Section 549 does not amend 8 U.S.C. § 1254a(c)(1)(B), which provides for a \$50.00 cap  
10 on the fees charged as a condition of registering for Temporary Protected Status ("TPS").

11 2. To the extent that Section 549 can be construed to retroactively apply to the TPS  
12 registration process, it is unconstitutional.

13 3. Section 549 has no effect on the TPS registration process absent notice and rule making,  
14 as required by the Administrative Procedures Act.

15 For the above reasons, Plaintiffs move for leave to file the surreply submitted concurrently  
16 herewith.

17 Dated: November \_\_, 2009

Respectfully submitted,

18 GOLDSTEIN, DEMCHAK, BALLER, BORGAN &  
19 DARDARIAN

20 \_\_\_\_\_  
21 LINDA M. DARDARIAN, CA Bar No. 131001  
22 RACHEL E. BRILL, CA Bar No. 233294  
23 LIN YEE CHAN, CA Bar No. 255027  
300 Lakeside Drive, Suite 1000  
Oakland, CA 94612  
(510) 763-9800; (510) 835-1417 (Fax)

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27 ATTORNEYS FOR PLAINTIFFS

1 ~~PROPOSED~~ ORDER

2 Upon consideration of Plaintiffs' Motion for Leave to File a Surreply to Defendant's Reply to  
3 Plaintiffs' Opposition to Defendants' Cross-motion for Summary Judgment, and for good cause  
4 shown, the Plaintiffs' Motion for Leave to File a Surreply IS HEREBY GRANTED.

5 IT IS SO ORDERED.

6 DATED: 11/13/09

