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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

**REFUGEE DISABILITY BENEFITS  
OREGON and JOHN DOE I, on behalf  
of himself and all others similarly  
situated,**

**Plaintiffs,**

**v.**

**TOM PRICE, in his official capacity as  
United States Secretary of Health and  
Human Services, NANCY BERRYHILL,  
in her official capacity as Acting  
Commissioner of the United States  
Social Security Administration, and  
KEN TOTA, in his official capacity as  
Deputy Director of the United States  
Office of Refugee Resettlement,  
Defendants.**

Case No.: \_\_\_\_\_

**COMPLAINT FEDERAL BENEFITS  
ENTITLEMENT (28 USC 1331)**

**CLASS ACTION ALLEGATION**

**I. NATURE OF THE ACTION**

1.

The plaintiff class are Afghani and Iraqi immigrants and refugees who served the United States as translators, interpreters, employees and contractors during the military conflicts in their countries following September 11, 2001, and immediate family

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members of such immigrants and refugees. Plaintiff Refugee Disability Benefits Oregon ("RDBO") represents such immigrants and refugees and family members. Plaintiffs bring this action on behalf of themselves and those similarly situated to enforce their rights under the Department of Defense Appropriations Act of 2010, Public Law 111-118, section 8120, which increased the period during which they could receive resettlement assistance, Supplemental Security Income ("SSI"), and other federal benefits from eight months to seven years.

## II. JURISDICTION AND VENUE

2.

Plaintiffs bring this action to enforce their rights under the Department of Defense Appropriations Act of 2010, Public Law 111-118, section 8120, the Refugee Crisis in Iraq Act of 2007, section 1244(g), and the Afghan Allies Protection Act of 2009, section 602(b)(8). This court has jurisdiction over the claims alleged herein under its federal question jurisdiction, 28 USC 1331, because this civil action arises under the laws of the United States.

3.

Venue is proper in this district because John Doe lives in the district, and his claims for SSI benefits were denied or limited here by defendants' local offices in this district. Plaintiff RDBO has its principal place of business and represents SSI claimants like Doe and his son in this district at defendant's hearings offices and field offices in this district.

### III. PARTIES

4.

John Doe and his family are "special immigrants" within the meaning of the statutes described in paragraph 2. They are entitled to Supplemental Security Income ("SSI") benefits, resettlement assistance and other federal benefits but have been denied more than eight months of eligibility for such benefits.

5.

Plaintiff Refugee Disability Benefits Oregon ("RDBO") is an Oregon nonprofit organization that provides legal services to disabled refugees and immigrants in their efforts to obtain SSI benefits. RDBO has had to divert its resources to help special immigrants obtain benefits they have been wrongly denied as described in this complaint. RDBO is funded partly by attorney fees earned when its clients are awarded SSI benefits, and the amount of those fees is a function of the amount of benefits recovered. Defendant's wrongful limitation of SSI benefits for special immigrants to eight months rather than the statutorily required seven years therefore reduces fees available to RDBO.

6.

Defendant Price is Secretary of the United States Department of Health and Human Services, which includes the Social Security Administration and the Office of Refugee Resettlement. Defendant Berryhill is the Acting Commissioner of the Social Security Administration and is responsible for administering the social security disability program, including SSI benefits, under the Social Security Act. Defendant Tota is Deputy Director of the Office of Refugee Resettlement and is responsible for

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administering resettlement rights of refugees. There is no current director of the Office of Refugee Resettlement, and plaintiffs will move to amend this complaint when a director is appointed.

#### **IV. CLASS ACTION ALLEGATIONS**

7.

Class Description. Plaintiffs bring this action as a national class action under FRCP 23(a), (b)(2) and (b)(3). The class plaintiff Doe represents is described as follows:

All Afghani and Iraqi "special immigrants" to the United States, including their families, who are entitled by statute to up to seven years of resettlement assistance, SSI benefits and other federal benefits, whose claims for SSI benefits, resettlement assistance and other federal benefits have, on or after October 1, 2009, been denied on the ground that eight months of eligibility have expired or been limited by any defendant or his or her predecessors to eight months.

8.

Prerequisites (FRCP 23(a)).

(1) On information and belief, the plaintiff class described in paragraph 9 is so numerous that joinder of all members is impracticable. Thousands of Afghani and Iraqi special immigrants have been admitted to the United States; all are entitled to resettlement assistance, and disproportionately high numbers of them qualify medically for SSI benefits because of

trauma inflicted during and because of their service to U.S. military forces;

(2) There is a single question of law common to all class members – the length of benefits entitlement under P.L. 111-118, section 8120;

(3) The claims of the representative parties are typical of the claims of the classes because all claim entitlement and wrongful denial under P.L. 111-118, section 8120 as special immigrants; and

(4) The representative parties will fairly and adequately protect the interests of the class because their interests are the same as those of each class member, and plaintiff RDBO's work as a non-profit organization consists of representing disabled refugees and immigrants.

9.

Defendants' acts apply generally to the class. FRCP 23(b)(2). Defendants' failure to implement the special immigrant provisions of P.L. 111-118, section 8120 has been, on information and belief, on grounds or for reasons generally applicable to all members of the plaintiff class so that final injunctive or declaratory relief will be appropriate and is requested herein.

10.

Common questions predominate. FRCP 23(b)(3). Questions of law common to all class members predominate over individual questions because the substantive question of entitlement to federal benefits for seven years rather than eight months is common to all class members. There is no other substantive question. There are not

likely to be any questions of fact. A class action is therefore superior to other available methods for fairly and efficiently adjudicating this controversy.

(A) Class members have little interest in individually controlling the prosecution of separate actions.

(B) Plaintiffs are unaware of any litigation concerning this controversy begun by others.

(C) It is desirable to concentrate the resolution of this controversy in this court to insure uniformity of result.

(D) Unusual difficulties in managing this class action are unlikely.

Common questions of law predominate and are controlling. Defendant's files should include all relevant data.

#### **V. CLAIMS FOR RELIEF**

11.

Plaintiffs reallege paragraphs 1 - 10.

12.

On December 19, 2009, the President of the United States signed P.L. 111-118, The Department of Defense Appropriations Act of 2010, with an effective date of October 1, 2009. That statute, in section 8120(a) and (b), provided that Iraqi and Afghani "special immigrants," who had previously been eligible for only eight months of federal benefits, including resettlement assistance and SSI benefits if disabled, would be eligible for such benefits to "the same extent, and for the same periods of time" as refugees," which is for up to seven years.

13.

On or about March 23, 2010, the Social Security Administration's Office of Retirement and Disability Policy issued Emergency Message("EM") 10023 to adjudicating field offices, hearing offices and other Social Security Administration facilities, describing it as "One-Time-Only Instructions." EM 10023 explained that SSI benefits for Afghan and Iraqi special immigrants, formerly limited to eight months, should be extended to seven years under the Defense Appropriations Act. EM 10023 stated that SI 00502.109, one of the internal agency directives that constitute the agency's Program Operations Manual System (POMS), would be "updated in the coming weeks to reflect the new policy." Neither SI 00502.109 nor any other part of the POMS was ever updated to reflect the extended seven year eligibility for benefits.

14.

EM 10023 instructed that any affected special immigrant whose SSI benefits had been terminated at eight months after the October 1, 2009 effective date of the statute and before the issuance of EM 10023 should be reinstated.

15.

Defendants have failed to implement the provisions of P.L. 111-118 that provide for extending seven years of SSI, refugee resettlement and other federal benefits eligibility to Afghani and Iraqi special immigrants.

16.

Defendants Price and Berryhill's failure to implement the provisions of P.L. 111-118 that extended SSI eligibility for disability benefits from eight months to seven years has caused plaintiffs, their families and members of the class monetary damages in the amount of the difference between each class member's actual entitlement under the statute and the amount each received. Plaintiffs and class members are entitled to monetary relief sufficient to make them whole.

17.

Defendants Price and Tota's failure to implement the provisions of P.L. 111-118 that extended entitlement to resettlement assistance from eight months to seven years caused damage to those class members who were not resettled within the eight month period and required, but did not receive, further assistance. Those who still require assistance are entitled to injunctive relief providing such assistance.

#### **VI. ATTORNEY FEES**

18.

Defendants' failure to implement the special immigrant entitlement provisions of P.L. 111-118 was and is not substantially justified, and Plaintiffs are entitled to attorney fees under the Equal Access to Justice Act, 28 USC 2412(d)(1).

19.

Plaintiffs' counsel are entitled to reasonable attorney fees for creating a "common fund" if such a fund is created in this case.



**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for relief as follows:

- A. That this court certify this action as a class action under FRCP 23(b)(2) and (3);
- B. That the court declare that defendants have violated plaintiffs' rights and the rights of the class concerning entitlement to federal benefits for special immigrants under P.L. 111-118;
- C. That the court require defendants to pay to each class member all amounts not paid because defendants erroneously limited that class member's SSI benefits to eight months;
- D. That the court require defendants to reinstate payment of SSI benefits for each class member whose payments were cut off based on the eight month limitation and pay up to the seven year eligibility period provided by PL 111-118, subject to other qualifications for entitlement;
- E. That the court require defendants to notify all class members whose SSI claims were initially denied on the ground that they were presented outside an eight month period and reopen and reconsider those claims, applying the seven year eligibility limit;
- F. That the court require defendants to notify and make available resettlement assistance to any class member who requires it and to whom such assistance was not provided for seven years as required under PL 111-118;

- G. That the court award Plaintiffs their reasonable attorney fees under the Equal Access to Justice Act or a common fund theory; and
- H. For such other and further relief as the court finds appropriate.

Dated this 17<sup>th</sup> day of February, 2017.

**THOMAS, COON, NEWTON & FROST**  
Of Attorneys for Plaintiffs

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