

**UNITED STATES DISTRICT COURT  
DISTRICT OF RHODE ISLAND**

-----X  
HELEN GEMMELL, and MEA MARTINEZ,  
individually and on behalf of all others  
similarly situated,

NO.: 16 CV \_\_\_\_

*Plaintiffs,*

**CLASS ACTION  
COMPLAINT**

MELBA DEPENA AFFIGNE, in her official capacity  
as Director of the Rhode Island Department of  
Human Services,

*Defendant.*

-----X

**CLASS ACTION COMPLAINT**

**Preliminary Statement**

1. Plaintiffs are low-income individuals who have applied for Supplemental Nutrition Assistance Program (“SNAP”) benefits, also known as “food stamps.” Defendant is failing to process Food Stamp applications and issue benefits to eligible households within the time frames mandated by federal Food Stamp law and implementing federal regulations. These failures to timely process applications stem, in part, from Defendant’s systematically inadequate and faulty statewide implementation of a new integrated computer system designed to determine public benefits eligibility.

2. Defendant’s failure to process applications of SNAP benefits in a timely manner continues to cause thousands of households to suffer the imminent risk of ongoing hunger as a result of being denied desperately needed assistance to help them feed their families.

3. Accordingly, Plaintiffs bring this action on behalf of themselves and a proposed class of similarly situated low-income Rhode Island families and individuals challenging Defendant's policies and practices of failing to adequately process applications for SNAP benefits and provide these benefits to applicants on a timely basis, in violation of federal SNAP statutes and implementing regulations.

4. Plaintiffs seek preliminary and permanent injunctive relief enjoining Defendant from: (1) failing to adequately and timely process SNAP applications and issue SNAP benefits to eligible households on a timely basis; and (2) failing to provide applicants with a written notice regarding the delay in processing their application and their right to request an administrative fair hearing.

#### **JURISDICTION**

5. Jurisdiction over this action is conferred upon this Court by 28 U.S.C. § 1331, which provides for jurisdiction in the United States district courts over civil actions arising under the Constitution, laws, or treaties of the United States.

6. This action is brought under 42 U.S.C. § 1983 to redress the deprivation of federal statutory and constitutional rights.

#### **CLASS ALLEGATIONS**

7. Plaintiffs bring this action under Federal Rule of Civil Procedure Rule 23(a) and (b)(2) on behalf of a class defined as follows:

All Rhode Island residents who since January 1, 2016 have applied, are applying, or will apply for SNAP benefits through an initial application.

8. The class is so numerous that joinder of all members is impracticable. Thousands of people in Rhode Island apply for SNAP each month. In addition, the class

includes individuals whose identity is not available and, as to future class members, is not readily available, making joinder of all members of the class a practical impossibility.

9. According to data maintained by the Food and Nutrition Service ("FNS") of the United States Department of Agriculture, 169,373 persons in Rhode Island participated in SNAP, as of July 2016. FNS, "Supplemental Nutrition Assistance Program: July 2016 – State Level Participation and Benefits," *available at* <http://www.fns.usda.gov/sites/default/files/pd/29SNAPcurrPP.pdf>. For the same period, 99, 838 households in Rhode Island participated in SNAP. FNS, "Supplemental Nutrition Assistance Program: July 2016 – State Level Participation and Benefits," *available at* <http://www.fns.usda.gov/sites/default/files/pd/30SNAPcurrHH.pdf>.

10. There are numerous questions of fact and law common to the class concerning whether Defendant fails to timely process applications in a manner so as to provide eligible individuals and households with SNAP benefits.

11. The individual Plaintiffs seeking to represent the class present claims that are typical of the claims of the class. Both the named Plaintiffs and absent members of the class did not have their applications processed in a manner so as to ensure the timely receipt of SNAP.

12. Declaratory and injunctive relief are appropriate with respect to the class as a whole, because Defendant has acted on grounds applicable to the class.

13. The named Plaintiffs and the proposed class are represented by and Roney and Labinger LLP and the National Center for Law and Economic Justice, whose attorneys are experienced in class action litigation and will adequately represent the class. Roney & Labinger LLP has litigated numerous cases in this District. Both offices have

litigated SNAP application delay claims in this Court. *See Spruill v. Alexander*, No. 09-CV-292-S, Stipulation and Order of Settlement, Docs. 18 and 19 (approved Oct. 16, 2009). The National Center for Law and Economic Justice has litigated numerous public benefits class action cases in federal district courts throughout the country, including in Rhode Island, New York, Nebraska, Georgia, Connecticut, Indiana, Hawaii, and Arizona.

### **PARTIES**

14. Plaintiffs Helen Gemmell and Mea Martinez reside in Woonsocket, Rhode Island.

15. Defendant Melba Depena Affigne is the Director of the Rhode Island Department of Human Services (“DHS”), the state agency responsible for administering the SNAP program in Rhode Island and ensuring compliance with federal law relating to SNAP. She is sued in her official capacity.

### **STATUTORY AND REGULATORY SCHEME**

16. The following sets forth the federal statutes and implementing regulations, which require Defendant to accept applications, process those applications, determine eligibility, and provide SNAP benefits to eligible households on a timely basis.

17. Congress established the federally funded, state-administered Food Stamp Program in 1964, to “safeguard the health and well-being of the Nation’s population by raising levels of nutrition among low-income households.” Pub. L. No. 88-525, § 2, 78 Stat. 703 (codified at 7 U.S.C. § 2011). In order to “alleviate . . . hunger and malnutrition,” Congress enacted the Food Stamp Program to “permit low-income households to obtain a more nutritious diet through normal channels of trade by

increasing food purchasing power for all eligible households who apply for participation.” *Id.*

18. Effective October 1, 2008, the federal Food Stamp Program was renamed the Supplemental Nutrition Assistance Program (“SNAP”) and the federal Food Stamp Act was renamed the Food and Nutrition Act of 2008. Pub. L. No. 110-246, §§ 4001-02, 122 Stat. 1651, 1853-1860.

19. In Rhode Island, SNAP benefits are also known as “Food Stamps.”

20. The federal government provides complete funding to the states for all SNAP benefits, and at least 50% of the states’ administrative costs involved in their operation of the program. 7 U.S.C. §§ 2013(a), 2019, 2025(a); 7 C.F.R. §§ 277.1(b), 277.4.

21. Each state must designate a single state agency responsible for administering SNAP and complying with federal statutory and regulatory requirements. 7 U.S.C. § 2020(a), (d), and (e); 7 C.F.R. §§ 271.4(a), 277.4. The state agency’s responsibilities include the certification of eligible applicant households and the issuance of SNAP benefits to those households. 7 U.S.C. § 2020(a)(1), (e).

22. Rhode Island participates in SNAP. The Department of Human Services is the single state agency responsible for administering SNAP in Rhode Island, in compliance with federal statutes and implementing FNS regulations. R.I. Gen. Laws § 40-6-8.

23. SNAP “shall be furnished to all eligible households who make application for such participation.” 7 U.S.C. § 2014(a).

24. DHS must “provide timely, accurate, and fair service to applicants for, and participants in” SNAP. 7 U.S.C. § 2020(e)(2)(B)(i).

25. To be eligible for SNAP, households’ net income, after specified allowable exclusions and deductions, must be below the federal poverty line. In the case of certain households that do not include an elderly or disabled member, the net income, after specified allowable exclusions but before specified allowable deductions, must not exceed the poverty line by more than 30 percent. 7 U.S.C. § 2014(c).

26. The Food and Nutrition Act of 2008 and implementing FNS regulations require DHS to process SNAP applications on a timely basis. DHS must provide SNAP benefits to eligible applicants no later than 30 calendar days after the date of application. 7 U.S.C. § 2020(e)(3); 7 C.F.R. §§ 273.2(a), (g)(1).

27. Expedited issuance of SNAP benefits is available to the following households in immediate need: (a) those with very low gross income and liquid resources (less than \$150 per month and no more than \$100, respectively); (b) those with combined gross income and liquid resources that are less than the monthly household rent or mortgage, and utilities; and (c) those constituting destitute migrant or seasonal farmworker households. 7 U.S.C. § 2020(e)(9); 7 C.F.R. § 273.2(a)(2), (i)(1). Expedited SNAP benefits must be provided to eligible households no later than the seventh calendar day following the date of application. 7 U.S.C. § 2020(e)(9)A); 7 C.F.R. § 273.2(i)(3)(i).

28. DHS must directly facilitate the SNAP application process through a series of detailed statutory and regulatory mandates, including the following:

- a. DHS must allow households to file an application for benefits on the same day that they first contact the local social services office in person, during office hours. 7 U.S.C. § 2020(e)(2)(B)(iii); 7 C.F.R. § 273.2(c)(1);
- b. DHS is required to “encourage” households to file SNAP applications the same day they or their representatives contact the office in person or by telephone, and express “interest in obtaining food stamp assistance or express[] concerns which indicate food insecurity.” 7 C.F.R. § 273.2(c)(2)(i).
- c. Applications filed on the first day of contact by households seeking to apply for SNAP need only include the applicant name, address, and signature. Households need not be interviewed prior to filing their applications. 7 C.F.R. § 273.2(c)(1).
- d. DHS must document the dates that applications are filed, by recording the dates of receipt at the local social services offices. The length of time the agency has to deliver SNAP benefits is calculated from the dates the applications are filed in the local social services offices designated to accept the household applications (except for certain individuals being released from public institutions). 7 C.F.R. § 273.2(c)(1).
- e. DHS must give applicants, at the time of application, a “clear written statement” about necessary verification cooperation to complete the application. 7 U.S.C. § 2020(e)(3).
- f. Defendant must give households at least 10 days to provide the required verification. 7 C.F.R. § 273.2 (t).

- g. If households seek to apply jointly for cash assistance and SNAP, any delays by DHS in processing applications for cash assistance may not result in any delays in the processing of SNAP benefits. 7 U.S.C. §§ 2014(b), 2020(e)(3), (i)(2); 7 C.F.R. §§ 273.2(g)(1), (j)(1)(iii). If cash applications are denied or withdrawn, applicant households cannot be required to submit new applications for SNAP. 7 U.S.C. §§ 2014(b), 2020(e)(3), (i)(2); 7 C.F.R. § 273.2(j)(1)(v).
  - h. DHS must affirmatively identify households eligible for SNAP expedited service at the time they request assistance. For example, a receptionist, volunteer, or other employee of DHS must be responsible for screening applications as they are filed or as individuals come in to apply. 7 C.F.R. § 273.2(i)(2).
  - i. Required verification of eligibility is minimal for SNAP expedited processing cases. The applicant's identity must be verified, but the issuance of food stamps within the required seven days cannot be delayed solely due to lack of verification of other eligibility factors, *e.g.*, household residency, income, or liquid resources. 7 C.F.R. § 273.2(i)(4)(i).
29. DHS must certify the eligibility of households in accordance with the eligibility rules and procedures set forth in the federal Food and Nutrition Act of 2008 and implementing FNS regulations. *See generally*, 7 U.S.C. § 2014(a); 2020(e)(3), (4), (9); 7 C.F.R. Part 273. DHS must certify SNAP households for a specified period of time. 7 C.F.R. § 273.10{f).

## FACTUAL ALLEGATIONS

### **A. Facts Common to the Class**

30. Rhode Island is failing to process SNAP applications and issue SNAP benefits to eligible households in a timely manner. Recent data reported through November 6, 2016 furnished by DHS to FNS by letter dated November 18, 2016, demonstrates that only 80.8% of regular, 30-day applications that were approved were timely processed by Defendant, and 50.3% of applications entitled to expedited processing were timely processed.

31. According to Defendant's report of November 18, 2016, of the 3,303 households eligible for expedited processing of their applications within 7 days, Defendant failed to timely process 1643 of such applications. Additionally, Defendant reports 589 applications eligible for expedited processing remain pending more than 7 days as of November 6, 2016. Defendant's failure to timely process SNAP applications and issue benefits to eligible households has worsened as a result of recent actions taken by Defendant.

32. Prior to September 2016, DHS used a decades-old computer system called "InRhodes" to determine eligibility for SNAP and other public assistance programs.

33. In October 2013, DHS began operating "HealthSourceRI," a computer system designed to implement the state-run health care exchange under the federal Affordable Care Act, which is also used to determine Medicaid eligibility.

34. Subsequently, Rhode Island decided to replace InRhodes with a single integrated electronic eligibility system for all public assistance programs, and to merge

the DHS system with HealthSource RI. This project was called the Unified Health Infrastructure Project (“UHIP”), also referred to as the “RIBridges” release.

35. In a May 31, 2016 letter to Defendant, FNS stated that the pilot testing of RIBridges by DHS was insufficient. FNS stated: “Therefore it is our decision not to allow the State to implement as planned. FNS is requiring a full three month Pilot in a live production environment followed by a phased statewide implementation of Bridges.”

36. On June 27, 2016, DHS forwarded to FNS a draft document entitled “DHS Transition Document: Operational Protocol for DHS Field Offices During System Transition from InRhodes to RIBridges.” This document contained an alternate proposal of a “hybrid pilot” of cases in the DHS Pawtucket office.

37. In a letter to Defendant dated August 15, 2016, FNS stated that it had not yet received, despite having requested, a final plan of transition to RIBridges. FNS informed Defendant that during the transition period, DHS remained responsible for complying with federal SNAP statutes and regulations, and that “it must take action to minimize the potential negative impacts on program administration in the State while adhering to all requirements pertaining to program access and integrity.”

38. In the August 15, 2016 letter to Defendant, FNS requested information and planning steps from DHS regarding several issues raised by the transition to RIBridges, including: (1) specification of the nature of the existing backlog of SNAP cases, which FNS had previously requested; (2) a plan for processing “higher than normal volume of data entry and document processing tasks” due to the anticipated backlog of SNAP cases arising from the transition period and the proposed inclusion by Defendant of a “black-out” period during the transition; (3) in light of the DHS proposal to refer

expedited-eligible SNAP cases to food pantries during the black-out period, details of how expedited SNAP cases will be timely processed; (4) how online SNAP applications will remain accessible to DHS eligibility workers during the black-out period, with filing dates preserved; (5) the plan for issuing client notices for actions occurring during the black-out period; (6) how DHS will provide for submission of needed verification of eligibility during the black-out period; and (7) how the agency will prepare for increased client walk-ins and calls during the black-out period.

39. On August 26, 2016, FNS again wrote Defendant, since it had not received a response to its August 15<sup>th</sup> letter. FNS stated that it “remains deeply concerned about the State’s plan for providing services to SNAP applicants and clients during and immediately following the “black-out” period associated with the transition from InRhodes to RIBridges” and that “FNS believes that the current transition plan could adversely impact eligible households’ timely access to SNAP benefits. . . .” FNS cited Defendant’s failure to provide the previously requested “Contingency and Rollback” and “Benefit Mismatch” plans and stated that DHS must have plans to provide expedited service to households during the black-out period, as well as the mitigation of application processing backlogs.

40. On September 2, 2016, FNS wrote Defendant again, stating that it had not received the State’s pilot test results that purportedly demonstrated “its complete readiness to proceed.” Expressing concern with the DHS proposal to neither conduct a live pilot test or a phased rollout, which FNS stated was in violation of its regulations, FNS stated that it was “unable to concur if the State decides to proceed with implementation.” FNS stated that it “wishes DHS to know that it proceeds with the

deployment of RIBridges at its own risk. Risks include reduced program access, worker backlogs, delayed application processing and untimely benefits, over-issuances and increased payment error rates.”

41. In a September 8, 2016 letter to FNS, Defendant discounted these concerns, stating that DHS was confident that the hybrid pilot testing showed its readiness to transition to RHBridges, that it was utilizing adequate contingency planning, that it had sufficiently trained staff on the new eligibility system, and that it would be using temporary staff to assist with clerical work and call center operations.

42. Despite the non-concurrence of FNS, Defendant decided to proceed with statewide implementation of RHBridges on September 13, 2016.

43. When the RIBridges integrated eligibility system went live on September 13, 2016, there was a backlog of SNAP applications and associated paperwork which had not been processed and needed to be entered into the new electronic integrated system.

44. In a September 22, 2016 letter to Defendant, FNS noted that FNS regional staff had been present on site at DHS offices from September 8<sup>th</sup> to the 20<sup>th</sup>, and that “staff noted serious issues with the new system and the new business processes . . . FNS is concerned that implementation issues may already be having a significant adverse impact on program access and application processing timeliness.”

45. Defendant’ implementation of RIBridges has been plagued with programming problems and systems errors. On information and belief, there were systemic problems experienced by DHS workers that have restricted and continue to restrict adequate and timely scanning and indexing of SNAP applications that would

allow the timely retrieval of those applications and related eligibility documents which had been scanned into the computer system.

46. Since September 13, 2016, large numbers of individuals have been going and continue to go to DHS field offices trying to apply for SNAP benefits, file papers associated with their applications, or otherwise resolve problems with their eligibility.

47. Significant numbers of SNAP applicants and recipients have been required to wait at DHS offices, sometimes for four hours or more. DHS office staff have repeatedly told these individuals that they cannot be seen that day and must return another day and/or should fill out a yellow card identifying the nature of their problem and await a return telephone call from the agency.

48. By letter dated November 8, 2016, FNS notified Defendant of its “issues of serious concern including, but not limited to: excessive lines and wait times that present a barrier to program access; clients being turned away and asked to return on another day without an appointment, and SNAP benefits unavailable or incorrect.” The November 8<sup>th</sup> letter served as “advance notification” that DHS could be subject to suspension or disallowance of federal administrative funding, unless it submitted a corrective action plan detailing progress in meeting the stated concerns of FNS, including timely processing of SNAP applications and elimination of any backlog resulting from documents that were not scanned or indexed.

49. On November 22, 2016, Defendant submitted a corrective action plan to FNS. Therein, Defendant reported, *inter alia*, the elimination of the backlog of applications will not be completed until June 2017.

**B. Facts of Individual Named Plaintiffs**

**Gemmell**

50. Helen Gemmell resides in Woonsocket, RI.

51. She previously worked in Medical administrative billing for approximately 6 years but has been unemployed since July 2016 and has no income.

52. Ms. Gemmell was previously eligible for SNAP benefits and last received them in May 2016.

53. In August 2016, she completed a SNAP application and submitted it in person, but DHS has not responded.

54. Also in August 2016, she tried to apply online but DHS's online system did not recognize her date of birth or Social Security number even though she had received SNAP benefits as recently as May 2016.

55. In October 2016, Ms. Gemmell spoke to a Health Insurance Community Outreach Worker who sent her a blank paper SNAP application.

56. Ms. Gemmell submitted the application in person to the Woonsocket DHS office on or around October 15, 2016. She gave her application a woman working in the office, who looked over it to ensure it was complete, and stamped it.

57. Since Ms. Gemmell submitted her application, she has not received any mail or calls from DHS. Further, she visited the Woonsocket office approximately four times to check on the status of her application. During at least one of her visits, she was only able to speak to a security guard since there was no one working at the front desk.

58. Without SNAP benefits, it is difficult for Ms. Gemmell to buy food. She has no income and very limited savings. When she applied for SNAP benefits in October, she had only between \$100 and \$200 in savings.

59. Ms. Gemmell is hypo-glycemic, and without SNAP benefits she cannot buy the healthy food that she needs in order to control her blood sugar. She has been eating one meal a day of pasta. She bought pasta in bulk in July 2016 before she became unemployed. She does not have a car and relies on the bus to get to the grocery store, but she cannot afford to take the bus anymore.

60. In October and November, she was attending RI Works New Horizons training programs in hopes of finding a new job. However, she needed to stop attending classes because she could not afford to take the bus and needed to spend her remaining savings on food.

**Martinez**

61. Mea Martinez lives in Woonsocket, RI with her husband and three children, ages 8, 12, and 14.

62. She submitted an online application for SNAP benefits on August 29, 2016.

63. On August 30, 2016, Ms. Martinez received a telephone call from a DHS representative who told her to bring her paperwork to the office, ask for the “Purple Team,” and her application would be approved. She was told to bring her husband’s paystubs, proof of the social security benefits she and her children receive, and her lease.

64. On August 31, 2016, she went to the Woonsocket DHS office and dropped off the requested paperwork.

65. Since August 31, 2016, Ms. Martinez has not received any written notice from DHS about her application status.

66. Ms. Martinez went to the Woonsocket DHS office on October 3, 2016 to check on the status of her application. She waited for approximately four hours but was not seen by anyone. Due to the fact Ms. Martinez has a disability, going to the DHS office and waiting in line is very difficult.

67. On December 6, 2016, a DHS worker called Ms. Martinez and told her that the agency's system had been updated and that the agency had noticed that her application had not been updated. The worker told her that if she brought in four of her husband's paystubs and documentation of their housing costs, including utilities bills, DHS would approve her SNAP benefits that day. The worker also told her that if she did not bring in the documents that day, the SNAP application would be denied and she would need to start over with a new application.

68. Ms. Martinez went again to the Woonsocket DHS office on December 6, 2016 and turned in the requested paperwork. The worker at the office told Ms. Martinez she was unable to issue her benefits because of a computer issue. The worker told her that her she would call Ms. Martinez as soon as the computer issue was resolved.

69. As of December 7, 2016, Ms. Martinez still had not received SNAP benefits. She called DHS again on that date and spoke to the worker who tried to process her application on December 6, 2016. She told Ms. Martinez that the computer issue had not been resolved, and that she would call Ms. Martinez when a determination had been made about her eligibility.

70. Although Ms. Martinez's husband works, a majority of his income is automatically taken from his paychecks to pay for child support and medical expenses for his non-custodial children. Without SNAP benefits, Ms. Martinez has difficulty obtaining enough food to feed her family of five. For the last three months, she have been going to the food pantries on a weekly basis to get critically needed food.

### **STATEMENT OF CLAIMS**

#### **FIRST CLAIM (SNAP)**

71. Defendant's policies, practices, and procedures of failing to process initial SNAP applications and provide benefits to eligible households within seven or thirty days of the date of application, as appropriate, violate 7 U.S.C. § 2020(e)(3) and (9), and implementing regulations, at 7 C.F.R. §§ 273.2(a)(2), (i)(2), (i)(3)(i) and (g)(I) and 7 U.S.C. § 2014 (a).

#### **SECOND CLAIM (DUE PROCESS)**

72. Defendant's policies, practices, and procedures of failing to provide written notice and opportunity to request a fair hearing to SNAP applicants whose applications Defendant has not processed within the mandated time frames violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

### **REQUEST FOR RELIEF**

WHEREFORE, Plaintiffs respectfully ask that this Court enter judgment in favor of Plaintiffs and the class they represent, as follows:

- A. Assume jurisdiction of this matter;

B. Certify this action as a class action under Rule 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure with respect to the proposed class identified herein.

C. Declare that Defendant's policies and practices of failing:

(1) to process all initial applications for SNAP benefits, including applications entitled to expedited processing and provide benefits to those eligible within the time frames required by law violate Plaintiffs' and Plaintiff class members' rights under 7 U.S.C. § 2020(e)(3) and (9), and implementing regulations, 7 C.F.R. §§ 273.2(a)(2), (i)(2), (i)(3)(i) and (g)(I) and 7 U.S.C. § 2014(a); and

(2) to provide a written notice and opportunity to request a fair hearing to SNAP applicants whose applications have not been processed within the mandated time frames violates the Due Clause of the Fourteenth Amendment to the United States Constitution.

D. Preliminarily and permanently enjoin Defendant to: (1) process SNAP applications, determine such applicant households' eligibility and issue SNAP benefits to eligible households within the mandated time frames; and (2) provide written notice and opportunity to request a fair hearing to SNAP applicants whose applications are not processed within the mandated time frames.

E. Award Plaintiffs litigation costs and reasonable attorney's fees, pursuant to 42 U.S.C. § 1988 and

F. Grant such other, further, or different relief as the Court may deem just and proper.

Plaintiffs, by their Attorneys,

/s/ Lynette Labinger

Lynette Labinger #1645  
RONEY & LABINGER LLP  
344 Wickenden St.  
Providence, RI 02903  
(401) 421-9794  
(401) 421-0132 (fax)  
office@roney-labinger.com  
Cooperating counsel  
AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION OF RHODE ISLAND

NATIONAL CENTER FOR LAW  
AND ECONOMIC JUSTICE

Greg Bass <sup>1</sup>  
Petra T. Tasheff  
Francisca D. Fajana  
275 7<sup>th</sup> Avenue  
Suite 1506  
New York, NY 10001  
(212) 633-6967  
(212) 633-6371 (fax)  
[bass@nclej.org](mailto:bass@nclej.org)

*Attorneys for Plaintiffs*

December 8, 2016

---

<sup>1</sup> Attorneys from the National Center for Law and Economic Justice appearing provisionally subject to approval of motion for leave to appear *pro hac vice* filed herewith.