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8
9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 ALIA AHMADI, ANGEL GENTCHEV,
13 JIWEI HUANG, IGOR OVCHINNIKOV,
14 SERGEI SAPOZHNIKOV, and HELGA
SCOVAJSA,

15 Plaintiffs-Petitioners,

16 v.

17 MICHAEL CHERTOFF, U.S. Secretary of
Homeland Security; ROBERT S. MUELLER
18 III, Director of the Federal Bureau of
Investigation; MICHAEL MUKASEY,
19 Attorney General of the United States;
EMILIO T. GONZALEZ, Director, U.S.
20 Department of Homeland Security, Bureau of
Citizenship and Immigration Services; DAVID
21 STILL, District Director, U.S. Department of
Homeland Security, Bureau of Citizenship and
22 Immigration Services, San Francisco District,

23 Defendants-Respondents.
24
25
26
27
28

Case No. 07-CV-3455-WHA

**SECOND AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF AND PETITION FOR
NATURALIZATION PURSUANT TO 8
U.S.C. § 1447(B)**

CLASS ACTION

Judge: Hon. William A. Alsup

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INTRODUCTION

1. Plaintiffs-Petitioners, Alia AHMADI, Angel GENTCHEV, Jiwei HUANG, Igor OVCHINNIKOV, Sergei SAPOZHNIKOV, and Helga SCOVAJSA, are all long-time lawful permanent residents of the United States. Each of them has sought to become a citizen of this country by applying for naturalization, having met all statutory requirements. However, despite successfully undergoing their naturalization interviews and clearing criminal background checks more than two years ago, none of the Plaintiffs has received an adjudication from the U.S. Bureau of Citizenship and Immigration Services (“CIS”) on the ground that a background check known as an “FBI name check” is still pending.

2. Plaintiffs are among tens of thousands of naturalization applicants throughout the United States who are suffering from systemic delays in the naturalization process caused by the policies, practices and procedures of the Defendants.

3. Defendants are officers of CIS and the Federal Bureau of Investigation (“FBI”) and are responsible for the naturalization process, including the FBI name check, which CIS requires for naturalization despite the absence of any promulgated rule or regulation.

4. Each named Plaintiff seeks to be naturalized by this Court, as Congress has authorized through the Immigration and Nationality Act. See 8 U.S.C. § 1447(b) (district court may make a determination of a naturalization application if there has been no adjudication within 120 days of the date of examination – i.e., the applicant’s naturalization interview); United States v. Hovsepian, 359 F.3d 1144, 1151 (9th Cir. 2004) (en banc). The named Plaintiffs also seek declaratory and injunctive relief on behalf of themselves and the proposed class members, to eliminate the systemic delays that Defendants have caused through their policies, practices and procedures.

5. In failing to adjudicate the Plaintiffs’ naturalization applications, Defendant officers of CIS have violated CIS regulations requiring that such applications be adjudicated within 120 days of the initial examination. 8 C.F.R. § 335.3.

6. In addition, Defendant officers of both CIS and the FBI have engaged in unreasonable and extraordinary delay in adjudicating Plaintiffs’ naturalization applications, in

1 violation of the Administrative Procedures Act, 5 U.S.C. §§ 555, 706, and the Due Process
2 Clause of the Fifth Amendment.

3 7. Defendants' rationale for CIS's unreasonable naturalization delays – that the
4 delays are required to complete FBI name checks – highlights an independent violation of the
5 Administrative Procedures Act: Defendants' failure to follow the notice and comment
6 requirements of 5 U.S.C. § 553. CIS has promulgated no regulations concerning an FBI name
7 check, but nonetheless has imposed the current version of the FBI name check as a requirement
8 for over four years – without any deadlines for completion of the checks. In contrast,
9 immigration regulations do provide for criminal records checks based on Plaintiffs' fingerprints
10 and biographical data. Each of the Plaintiffs has passed those criminal background checks.
11 Because Defendants' addition of the FBI name check constitutes a substantive rule and causes
12 undue burden and prejudice to Plaintiffs and other members of the proposed class, the public
13 should have been provided notice and an opportunity to comment prior to its implementation.

14 8. CIS's own ombudsman has criticized the rampant delays in the processing of
15 naturalization applications. In an annual report released in June 2007, the CIS Ombudsman
16 concluded: "FBI name checks, one of several security screening tools used by USCIS, continue
17 to significantly delay adjudication of immigration benefits for many customers, hinder backlog
18 reduction efforts, and may not achieve their intended national security benefits. FBI name
19 checks may be the single biggest obstacle to the timely and efficient delivery of immigration
20 benefits. The problem of long-pending FBI name checks cases worsened during the reporting
21 period [of June 2006 to June 2007]." CIS Ombudsman, Annual Report 2007, at 37 (emphasis in
22 original), available at http://www.dhs.gov/xabout/structure/gc_1183751418157.shtm.

23 9. Plaintiffs all have spent many years in the United States and have made this
24 Nation their home. They seek to pledge their allegiance to their adopted country and to
25 participate fully in U.S. society as citizens. Each of the Plaintiffs has met the statutory
26 requirements to become a U.S. citizen, and in some cases they have sought relief through
27 requests to members of Congress and through formal and informal inquiries with the
28 government. Nonetheless, each of the Plaintiffs has been stymied in his or her efforts by the

1 unreasonable and extraordinary delay of the Defendants.

2 10. As a result of the Defendants' failure to process naturalization applications within
3 a reasonable time, under timelines set by Congress, Plaintiffs are unable to participate in civic
4 society by voting and jury service. Plaintiffs also are unable expeditiously to petition for lawful
5 permanent residency immediate relatives living abroad including, in some cases, their spouses
6 and children. Plaintiffs also are unable to participate freely as U.S. citizens in the Visa Waiver
7 Program or to travel abroad and to return to the United States without fear of exclusion. One of
8 the named Plaintiffs is blocked in his professional advancement because of the delay in
9 naturalization.

10 11. Plaintiffs seek not only their own naturalization through 8 U.S.C. § 1447(b), but
11 also declaratory and injunctive relief as representatives of a class of other individuals who have
12 satisfied all statutory requirements for naturalization and are suffering similar unreasonable
13 delays. Plaintiffs ask the Court to declare that the Defendants are violating the due process rights
14 of Plaintiffs and the proposed class, as well as the Administrative Procedures Act and the
15 immigration laws and regulations, in failing to complete all background checks necessary for
16 adjudication of naturalization applications within a reasonable time as established by Congress
17 and by CIS's own regulations.

18 **JURISDICTION AND VENUE**

19 12. This Court has subject matter jurisdiction over this matter pursuant to 8 U.S.C. §
20 1447(b) (district court jurisdiction to adjudicate delayed naturalization applications), 5 U.S.C. §
21 702 (Administrative Procedures Act), 28 U.S.C. § 1361 (writ of mandamus), and 28 U.S.C. §
22 1331 (federal question).

23 13. Venue is proper in the Northern District of California pursuant to 28 U.S.C. §§
24 1391(e). Plaintiffs sue the Defendants in their official capacities as officers and employees of the
25 United States. A substantial portion of the events giving rise to this Complaint occurred within
26 this District, where the Plaintiffs' applications for naturalization are pending before the San
27 Francisco District of the CIS. In addition, venue is proper in this District pursuant to 8 U.S.C. §
28 1447(b), which provides that a petition for de novo review of a naturalization application shall be

1 filed in the district in which the applicant resides. All of the Plaintiffs live within this District.

2
3 **PARTIES**

4 14. Plaintiff Alia Ahmadi is a citizen of Afghanistan. She is a lawful permanent
5 resident of the United States and lives in Union City, California. She applied for naturalization
6 with CIS and passed her naturalization examination in May 2003. Her naturalization application
7 has not been adjudicated.

8 15. Plaintiff Angel Gentchev is a citizen of Bulgaria. He is a lawful permanent
9 resident of the United States and lives in Fremont, California. He applied for naturalization with
10 CIS and passed his naturalization examination in May 2003. His naturalization application has
11 not been adjudicated.

12 16. Plaintiff Jiwei Huang is a citizen of China. He is a lawful permanent resident of
13 the United States and lives in Fremont, California. He applied for naturalization with CIS and
14 passed his naturalization examination in January 2004. His naturalization application has not
15 been adjudicated.

16 17. Plaintiff Igor Ovchinnikov is a citizen of Ukraine. He is a lawful permanent
17 resident of the United States and lives in San Francisco, California. He applied for naturalization
18 with CIS and passed his naturalization examination in February 2004. His naturalization
19 application has not been adjudicated.

20 18. Plaintiff Sergei Sapozhnikov is a native of the former Soviet Union and a citizen
21 of Russia. He is a lawful permanent resident of the United States and lives in Walnut Creek,
22 California. He applied for naturalization with CIS and passed his naturalization examination in
23 July 2004. His naturalization application has not been adjudicated.

24 19. Plaintiff Helga Scovajsa is a citizen of the Czech Republic. She is a lawful
25 permanent resident of the United States and lives in San Francisco, California. She applied for
26 naturalization with CIS and passed her naturalization examination in November 2004. Her
27 naturalization application has not been adjudicated.

28 20. Defendant Michael Chertoff is the U.S. Secretary of Homeland Security and has

1 ultimate responsibility for CIS, a subunit of the Department of Homeland Security. Mr. Chertoff
2 is ultimately responsible for the administration of all immigration and naturalization laws,
3 including the processing and determination of applications for naturalization. He is sued in his
4 official capacity.

5 21. Defendant Robert S. Mueller III is the Director of the Federal Bureau of
6 Investigation. Mr. Mueller is ultimately responsible for the processing of FBI name checks
7 submitted by CIS to the FBI during the naturalization process. Mr. Mueller is sued in his official
8 capacity.

9 22. Defendant Michael Mukasey is the Attorney General of the United States. He is
10 the head of the U.S. Department of Justice, which encompasses the FBI. Mr. Mukasey is also
11 jointly responsible with Mr. Chertoff for enforcement of immigration laws. Mr. Mukasey is sued
12 in his official capacity.

13 23. Respondent Emilio T. Gonzalez is the Director of CIS. Mr. Gonzalez is
14 responsible for the processing and determination of all applications for naturalization submitted
15 to CIS. He is sued in his official capacity.

16 24. Respondent David Still is the District Director for the San Francisco District of
17 the Bureau of Citizenship and Immigration Services ("CIS"), U.S. Department of Homeland
18 Security. Mr. Still is responsible for applications for naturalization pending in the San Francisco
19 District. Mr. Still is sued in his official capacity.

20 **LEGAL FRAMEWORK**

21 **General Requirements for Naturalization**

22 25. Federal immigration law allows persons who have been residing in the United
23 States as lawful permanent residents to become United States citizens through a process known
24 as naturalization.

25 26. A person seeking to naturalize must meet certain requirements, including an
26 understanding of the English language and history and civics of the United States; a sufficient
27 period of physical presence in the United States; and good moral character. 8 U.S.C. § 1423,
28 1427(a).

1 27. Persons seeking to naturalize must submit an application for naturalization to CIS.
2 8 U.S.C. § 1445. CIS is the agency that is responsible for adjudicating naturalization
3 applications.

4 28. Once an application is submitted, CIS conducts a criminal background
5 investigation of each naturalization applicant. 8 U.S.C. § 1446(a); 8 C.F.R. § 335.1.

6 29. After a criminal background investigation is completed, CIS schedules a
7 naturalization examination, at which an applicant meets with a CIS examiner who is authorized
8 to ask questions and take testimony. The CIS examiner must determine whether to grant or deny
9 the naturalization application. 8 U.S.C. § 1446(d).

10 30. CIS must grant a naturalization application if the applicant has complied with all
11 requirements for naturalization. 8 C.F.R. § 335.3. Naturalization is not a discretionary benefit,
12 but a right upon satisfaction of statutory requirements.

13 31. CIS must grant or deny a naturalization application at the time of the examination
14 or, at the latest, within 120 days after the date of the examination. 8 C.F.R. § 335.3. Once an
15 application is granted, the applicant is sworn in as a United States citizen.

16 32. When CIS fails to adjudicate a naturalization application within 120 days of the
17 examination, the applicant may seek de novo review of the application by a district court. 8
18 U.S.C. § 1447(b). When the applicant requests district court review, the district court gains
19 exclusive jurisdiction over the application, United States v. Hovsepian, 359 F.3d 1144 (9th Cir.
20 2004), and it may naturalize the applicant. 8 U.S.C. § 1447(b).

21 33. In general, Congress has provided that applications for immigration benefits
22 should be adjudicated within 180 days of the initial filing of the application. 8 U.S.C. § 1571.
23 The President has also expressed that view. *See* Remarks by the President at INS Naturalization
24 Ceremony (July 10, 2001), available at [http://www.whitehouse.gov/news/releases/2001/07/print/](http://www.whitehouse.gov/news/releases/2001/07/print/20010710-1.html)
25 20010710-1.html (urging immigration agencies to adopt standard of six-month processing time
26 for applications for immigration benefits).

27 **Pre-Naturalization Background Checks**

28 34. Under 8 U.S.C. § 335.2, CIS should not schedule the “initial examination” (i.e.,

1 the naturalization interview) until the agency has received “a definitive response from the [FBI]
2 that a full criminal background check” has been completed. The regulation defines a “definitive
3 response” as one of the following: (1) FBI confirmation that the applicant “does not have an
4 administrative or criminal record; (2) FBI confirmation that the applicant does have such a
5 record; or (3) FBI confirmation that the applicant’s fingerprint cards “have been determined
6 unclassifiable for the purpose of conducting a criminal background check and have been
7 rejected.” 8 U.S.C. § 335.2(b). Thus, 8 C.F.R. § 335.2(b) contemplates that the “criminal
8 background check” required by regulation is based upon fingerprint records, and is not a “name
9 check.” The FBI fingerprint check is run against criminal records showing arrests, criminal
10 charges not leading to convictions, and criminal convictions.

11 35. Nonetheless, CIS runs two name-based background checks on each naturalization
12 applicant. First, CIS runs each applicant’s name against the Interagency Border Inspection
13 System (“IBIS”), a centralized records system combining information on “national security risks,
14 public safety issues and other law enforcement concerns” from multiple law enforcement and
15 intelligence agencies. Second, in 1998, CIS instituted the FBI name check. As originally
16 implemented in 1998, the FBI name check ran a naturalization applicant’s name against a
17 database containing the names of persons who are or were the subjects of an FBI investigation.

18 36. In 2002, without giving public notice and an opportunity for public comment, CIS
19 drastically expanded the scope of the FBI name check, so that an applicant’s name would be
20 checked against not only the names of investigation subjects, but also other names that are
21 merely mentioned in FBI files.

22 37. As expanded in 2002, the FBI name check requirement is implemented in such a
23 manner that it is highly likely that an applicant may be identified erroneously as a person “of
24 interest” to the FBI, thereby delaying adjudication of the naturalization application, even though
25 the applicant has committed no crimes, does not pose any kind of security risk, and has never
26 been a suspect in any investigation. For example, the name check may result in a “hit” when the
27 applicant’s name is mentioned in FBI records because he has been an innocent witness or victim
28 of a crime, has undergone an employment-related security clearance in the past, or has assisted

1 the FBI in an investigation. Thus, since 2002, the FBI name check has not been implemented in
2 a manner that is calculated effectively to uncover national security risks, criminal conduct, or
3 other wrongdoing.

4 38. The FBI name check procedure is also highly likely to result in false positive
5 results because the FBI runs not only a naturalization applicant's actual name, but also various
6 alternate spellings and permutations of the applicant's given and family names.

7 39. Plaintiffs are informed and believe that CIS does not adjudicate applications for
8 naturalization until it receives a completed FBI name check. Neither CIS nor the FBI imposes
9 any time limits for completion of FBI name checks. As a result of their policies, practices and
10 procedures, including their failure to require FBI name checks to be completed in a reasonable
11 time period, Defendants are responsible for systemic, years-long delays in adjudicating tens of
12 thousands of naturalization applications nationwide, including those submitted by Plaintiffs.

13 40. Although Defendants have asserted that the FBI name checks are necessary for
14 national security, there is no justification for delays in the FBI name check process. Delays in
15 the FBI name check process do not serve the interest of national security. Indeed, as the CIS
16 Ombudsman has reported, "the current USCIS name check policy may *increase* the risk to
17 national security by prolonging the time a potential criminal or terrorist remains in the country."
18 CIS Ombudsman, Annual Report 2006 at 25 (emphasis added), available at
19 http://www.dhs.gov/xlibrary/assets/CISOmbudsman_AnnualReport_2006.pdf. In his most
20 recent annual report, the CIS Ombudsman expressed his "agree[ment] with the assessment of
21 many case workers and supervisors at USCIS field offices and service centers that the FBI name
22 check process has limited value to public safety or national security, especially because in almost
23 every case the applicant is in the United States during the name check process, living or working
24 without restriction." CIS Ombudsman, Annual Report 2007 at 40.

25 41. Upon information and belief, CIS has not reported any instance of a security
26 threat discovered through an FBI name check that was not also disclosed through criminal
27 background checks such as the fingerprint check and IBIS database check. The CIS
28 Ombudsman has questioned CIS's claims that the FBI name check provides information that is

1 not otherwise available through other, existing background checks in the naturalization process.
2 In his 2007 annual report, the CIS Ombudsman states: "It is unclear how many of the FBI name
3 check 'responses' also were revealed by one or more of the other security checks conducted for
4 the [naturalization] applications. To date, the Ombudsman has been unable to ascertain from
5 USCIS the total number of actual problem cases that the agency discovered exclusively as a
6 result of the FBI name check. The Ombudsman understands that most, if not all, of the problem
7 cases which would result in an eventual denial of benefits also can be revealed by the other more
8 efficient, automated criminal and security checks that USCIS initiates." CIS Ombudsman,
9 Annual Report 2007, at 41.

10 42. Plaintiffs are informed and believe that in April 2006, CIS implemented a new
11 policy or practice of delaying naturalization examinations until after the FBI name check is
12 completed. Thus, for certain applicants for naturalization, lengthy delays in adjudication now
13 occur prior to the examination, rather than after the examination. Upon information and belief,
14 the April 2006 policy change has resulted in delayed scheduling of the naturalization
15 examination for thousands of applicants. CIS has stated that a purpose of the policy change was
16 to discourage litigation under 8 U.S.C. § 1447(b), which gives district courts jurisdiction to
17 adjudicate applications when CIS has failed to act within 120 days of the examination.

18 FACTS

19 Plaintiffs

20 43. Alia Ahmadi is a 73-year-old native and citizen of Afghanistan. She came to the
21 United States as a lawful permanent resident in November 1986, through a petition by her son
22 Basheer Ahmadi, a U.S. citizen. Ms. Ahmadi lives in Union City, California, with one of her
23 daughters. Ms. Ahmadi has six adult children. Five of her children are U.S. citizens and one is a
24 lawful permanent resident of the United States. Ms. Ahmadi also has 13 grandchildren, all U.S.
25 citizens.

26 44. In October 2002, Ms. Ahmadi applied for citizenship and successfully completed
27 her naturalization interview and criminal background checks in May 2003. She meets all other
28 statutory requirements for naturalization. At the end of the interview, the CIS officer told Ms.

1 Ahmadi that she had passed her examination and would receive her oath notice shortly.

2 45. Approximately three to four months after successfully passing her naturalization
3 examination, Ms. Ahmadi contacted CIS because she had not received her oath notice. A CIS
4 employee told Ms. Ahmadi that her application was still pending. Ms. Ahmadi has followed up
5 with further contacts with CIS by telephone and in person. Each time, CIS officers have
6 informed her that her naturalization application is still pending due to an FBI name check. She
7 also has had to re-submit her fingerprints as her application has been pending so long that CIS
8 informed her that her original fingerprint card "expired." Ms. Ahmadi's children also contacted
9 their representatives in Congress for assistance. Representative Pete Stark made an inquiry to
10 CIS, which responded that a name check was pending.

11 46. Although CIS informed Ms. Ahmadi that her naturalization application has not
12 been adjudicated because her FBI name check is pending, Plaintiffs are informed and believe
13 that in fact the FBI did complete Ms. Ahmadi's name check on or about October 13, 2005.
14 Nonetheless, CIS has failed to adjudicate the application to date.

15 47. Ms. Ahmadi has suffered harm from the delay of her naturalization. One of her
16 daughters lives outside of the U.S. part-time. Because it is difficult for citizens of Afghanistan to
17 obtain visas for foreign travel, she has sometimes been deterred from visiting her daughter and
18 grandchildren while they are abroad. Ms. Ahmadi is 73 years old and the anxiety surrounding
19 the delay in the granting of her citizenship has put extreme pressure on her already frail health.

20 48. Angel Gentchev is a 53-year-old native and citizen of Bulgaria. He came to the
21 United States in or about August 1996 as an H1-B visa holder, sponsored by his then-employer,
22 Computer Products, Inc. He became a lawful permanent resident of the United States in or about
23 October 1997 through the sponsorship of Computer Products, Inc.

24 49. Mr. Gentchev lives in Fremont, California, with his wife, a U.S. citizen, and two
25 daughters, one of whom is a U.S. citizen and the other a lawful permanent resident. Mr.
26 Gentchev is employed as Director of Research and Development at Integration Associates, one
27 of Silicon Valley's fastest growing semiconductor companies. During his 11 years as a resident
28 of the United States, Mr. Gentchev has worked at many Silicon Valley firms, including Intel and

1 Volterra, Inc.

2 50. In or about October 2002, Mr. Gentchev applied for citizenship. He successfully
3 completed his criminal background checks and passed his naturalization examination in or about
4 May 2003. He meets all other statutory requirements for naturalization. At the end of Mr.
5 Gentchev's naturalization examination, a CIS officer informed him that he had passed the
6 examination, including the English language and U.S. history and civics tests, but that his
7 application could not be adjudicated because of a pending background check.

8 51. During the pendency of his naturalization application, Mr. Gentchev has made
9 numerous inquiries of CIS about the delay in his naturalization. CIS has responded by informing
10 Mr. Gentchev that background or national security checks are pending. Mr. Gentchev retained a
11 private attorney to assist him in inquiring with CIS, to no avail. Mr. Gentchev also has sought
12 the assistance of U.S. Representatives Pete Stark and Nancy Pelosi and Senator Barbara Boxer.
13 Despite inquiries made by those members of Congress on Mr. Gentchev's behalf, CIS has failed
14 to adjudicate his application.

15 52. Jiwei Huang is a 44-year-old native and citizen of China. He first came to the
16 United States on an H-4 visa as the spouse of an employment visa holder. He became a lawful
17 permanent resident of the United States on or about October 10, 1994, based upon the petition of
18 his wife.

19 53. Mr. Huang lives in Fremont, California, with his wife and two young children,
20 who are all U.S. citizens. Mr. Huang is employed as a Senior Network Engineer at a major U.S.
21 financial institution and is responsible for information technology systems throughout the firm's
22 offices around the world.

23 54. In or about June 2003, Mr. Huang applied for citizenship. He successfully
24 completed his criminal background checks and passed his naturalization interview on or about
25 January 30, 2004. Mr. Huang meets all statutory requirements for naturalization. At the time of
26 his interview, a CIS officer told Mr. Huang that his application was complete but could not be
27 adjudicated because a background check was still pending.

28 55. During the pendency of his naturalization application, Mr. Huang has made

1 numerous inquiries about the delay in person and by telephone. In response, CIS has informed
2 him that this application is still pending because of a background check and that there is nothing
3 that CIS can do to resolve the delay.

4 56. Mr. Huang is suffering serious prejudice from the delay of his naturalization
5 application. His employer, a major U.S. financial institution, has requested on several occasions
6 that Mr. Huang travel to foreign countries in order to establish information technology systems
7 in the firm's international offices. Mr. Huang has been forced to decline those requests because
8 he has been unable to secure visas for such business travel in a timely manner as a Chinese
9 citizen. If Mr. Huang were a U.S. citizen, he would not require a visa to travel to those
10 countries. Thus, as a result of the delay in his naturalization, Mr. Huang's professional
11 advancement has been hindered and his employer's projects have been adversely affected.

12 57. Igor Ovchinnikov is a 43-year-old native of the former Soviet Union and citizen
13 of Ukraine. He first came to the United States in 1989 on a student visa as part of an exchange
14 program at Willamette University in Salem, Oregon, and again from 1992-94 as an Edmund
15 Muskie Fellow at the business school at Ohio State University. Mr. Ovchinnikov immigrated to
16 the United States as a lawful permanent resident through the diversity visa program in January
17 1998.

18 58. Mr. Ovchinnikov lives with his wife and teenaged daughter, who are both
19 naturalized U.S. citizens. Mr. Ovchinnikov holds an M.B.A. degree from Ohio State University
20 and has previously worked as a management consultant for IBM and Price Waterhouse. He is
21 currently working at a nonprofit organization in the Mission District of San Francisco, teaching
22 computer skills as part of a job training program. He also works part-time as a licensed real
23 estate broker.

24 59. In or about May 2003, Mr. Ovchinnikov applied for citizenship. He successfully
25 completed his criminal background checks and passed his naturalization interview on or about
26 February 9, 2004. Mr. Ovchinnikov meets all statutory requirements for naturalization. At the
27 time of his interview, a CIS officer told him that his application was complete but that his case
28 required "further supervisory review."

1 60. During the course of the long delay in adjudication of Mr. Ovchinnikov's
2 naturalization application, CIS directed him to reappear for fingerprinting twice, in or about June
3 2003 and in July 2005. On information and belief, CIS commonly makes such requests of
4 delayed applicants because it regularly purges its records of fingerprint cards once they have
5 been in CIS's system for a certain period of time.

6 61. During the pendency of his naturalization application, Mr. Ovchinnikov has made
7 numerous inquiries of CIS about the delay. In response, CIS has informed him that his
8 application is still pending because of "background" or "security" checks. Mr. Ovchinnikov also
9 has submitted a written request to CIS for expediting of his application, to no avail. Mr.
10 Ovchinnikov also has made requests for assistance to the CIS Ombudsman and to U.S.
11 Representative Nancy Pelosi.

12 62. Mr. Ovchinnikov is suffering serious prejudice from the delay of his application.
13 He would like to petition for his mother, who lives alone in Ukraine, to join him in the United
14 States. Because Mr. Ovchinnikov is not yet a U.S. citizen, he has been unable to do so. *See* 8
15 U.S.C. § 1151(b)(2)(A)(i) (providing that children, spouses, and parents of U.S. citizens are not
16 subject to worldwide limitations on numbers of visas issued); 8 U.S.C. § 1153(a) (setting forth
17 preferences for issuance of visas to unmarried sons or daughters of U.S. citizens, spouses and
18 unmarried sons or daughters of lawful permanent residents, married sons and daughters of U.S.
19 citizens, and brothers or sisters of U.S. citizens, in that order). Mr. Ovchinnikov has not seen his
20 mother since he immigrated to the United States in 1998.

21 63. Sergei Yuri Sapozhnikov is a 46-year old native of the former Soviet Union and
22 citizen of Russia. He came to the United States in August 1991 on an H1-B employment visa
23 and became a lawful permanent resident through the sponsorship of his former employer, Tech
24 Met Traders. He has been working in Silicon Valley for Sun Microsystems as a computer
25 engineer for approximately seven years. Mr. Sapozhnikov's wife, a professor at California State
26 University at Hayward, is a lawful permanent resident. The Sapozhnikovs have three children –
27 two of whom are U.S. citizens and one of whom is a lawful permanent resident. Mr.
28 Sapozhnikov's wife and younger son are also facing delays of their citizenship applications.

1 64. In or about February 2004, Mr. Sapozhnikov submitted his citizenship
2 application. He successfully passed his criminal background checks and successfully passed his
3 naturalization examination on or about July 22, 2004. Mr. Sapozhnikov meets all statutory
4 requirements for naturalization. At the end of his examination, the CIS officer informed Mr.
5 Sapozhnikov that he passed the tests for English and U.S. history and government. However, the
6 CIS officer gave him written notice stating that a decision cannot be made on his application
7 because background checks have not been completed. Mr. Sapozhnikov has been waiting for his
8 oath notice for approximately three years.

9 65. Mr. Sapozhnikov has suffered serious prejudice from the delay of his
10 naturalization. Mr. Sapozhnikov would like to petition for his 70-year-old father and his sister to
11 live with him in the United States. Since the death of Mr. Sapozhnikov's mother in January
12 2005, his father has been living alone in Russia. The burden of providing care to his father has
13 shifted to his sister even though she also has responsibility for her own family. Mr. Sapozhnikov
14 seeks to naturalize so that he can reunite with his family, and fulfill his responsibilities as a son
15 in the event that his father should become ill.

16 66. Helga Scovajsa is a 68-year-old native of former Czechoslovakia and a citizen of
17 the Czech Republic. She came to the United States as a lawful permanent resident in April 1978,
18 through the petition of her husband of 38 years, Frank Joseph Scovajsa, a U.S. citizen. Ms.
19 Skovajsa lives in San Francisco with her husband. The Scovajsas have an adult daughter who is
20 a U.S. citizen.

21 67. In or about April 2004, Ms. Scovajsa submitted her naturalization application.
22 She successfully passed her criminal background checks and successfully passed her
23 naturalization examination in or about November 2004. Ms. Scovajsa meets all other statutory
24 requirements for naturalization. At the end of her examination, a CIS officer informed Ms.
25 Skovajsa that she had passed the tests for English and U.S. history and government but that
26 background checks were still pending.

27 68. During the pendency of her naturalization application, Ms. Scovajsa has made
28 numerous inquiries of CIS by letter, telephone, and in person. CIS's only response has been to

1 tell her that the application is pending because of the FBI name check and that CIS can do
2 nothing to resolve the delay.

3 69. Ms. Scovajsa has suffered harm from the delay of her naturalization. She is 68
4 years old and has lived in the United States for almost 30 years. She has suffered extreme
5 anxiety and emotional distress, with a negative impact on her frail health, as a result of the delay.

6 **Defendants' Policies and Practices**

7 70. Plaintiffs are informed and believe that Defendants Still, Gonzalez and Chertoff
8 have a policy, pattern, and practice of failing to adjudicate the applications for naturalization of
9 the proposed plaintiff class within 120 days of the date of naturalization examinations, because
10 of unreasonable delays in the processing of FBI name checks.

11 71. Plaintiffs are informed and believe that Defendants Still, Gonzalez and Chertoff
12 have a policy, pattern, and practice of unlawfully withholding and unreasonably delaying the
13 adjudication of applications for naturalization of the proposed plaintiff class, because of
14 unreasonable delays in the processing of FBI name checks.

15 72. Plaintiffs are informed and believe that Defendants Mueller and Mukasey have a
16 policy, pattern, and practice of unlawfully withholding and unreasonably delaying the
17 completion of FBI name checks, with the full knowledge that CIS requires the completion of
18 such FBI name checks for adjudication of applications for naturalization of the proposed plaintiff
19 class.

20 73. Plaintiffs are informed and believe that Defendants have a policy, pattern and
21 practice of failing to set reasonable deadlines for completing FBI name checks and taking all the
22 other reasonable steps necessary to complete the adjudication of applications for naturalization of
23 the proposed plaintiff class.

24 74. Plaintiffs are informed and believe that Defendants Still, Gonzalez and Chertoff
25 have a policy, pattern and practice of requiring FBI name checks for adjudication of applications
26 for naturalization of the proposed plaintiff class, despite having no statutory or regulatory
27 authorization for such FBI name checks.

28 75. Plaintiffs are informed and believe that Defendants do not have or use any

1 mechanisms to identify or to track the number and status of naturalization cases in which
2 applicants satisfy all eligibility criteria, have passed naturalization interviews, and are awaiting
3 adjudication solely on the basis of FBI name checks. In addition, CIS and FBI do not have any
4 policies or practices in place to ensure final adjudication of those naturalization applications.

5 76. Plaintiffs are informed and believe that Defendants do not have or use any
6 mechanisms to track the number and status of naturalization cases in which applicants satisfy all
7 eligibility criteria, have passed naturalization examinations, and are awaiting adjudication for
8 more than 120 days after their naturalization examinations. In addition, CIS and FBI do not have
9 any policies or practices in place to ensure final adjudication of those naturalization applications.

10 77. Plaintiffs are informed and believe that Defendants Still, Gonzalez and Chertoff
11 implemented the requirement of FBI name checks for naturalization without giving notice to the
12 public and allowing a period for public comment. The Administrative Procedures Act requires
13 such notice and comment because the FBI name check requirement is a substantive change in
14 prior CIS policy and because the requirement has an adverse effect on individuals by causing a
15 delay in adjudication of their naturalization applications.

16 78. As a result of the Defendants' policies, practices, actions and omissions, members
17 of the proposed plaintiff class have suffered injury, in that they have been unlawfully denied the
18 rights and benefits of U.S. citizenship for more than 120 days since they passed their
19 naturalization examinations.

20 **Prejudice Suffered By Applicants With Delayed Cases**

21 79. The named Plaintiffs and other members of the proposed class suffer concrete
22 harms from the unreasonable delays caused by Defendants' policies and practices.

23 80. Delays in naturalization can prevent applicants from conferring citizenship or
24 lawful permanent status on their immediate family members. For example, delays can cause a
25 citizenship applicant to lose the opportunity to transmit her new nationality to a minor child. If a
26 parent naturalizes before her child turns 18, the child may automatically gain derivative
27 citizenship if the child is living in the United States in the parent's custody and is also a
28 permanent resident. 8 U.S.C. § 1431. Thus, if a naturalization application is delayed for so long

1 that a minor child reaches the age of 18, the applicant's child will lose the opportunity for
2 automatic derivative citizenship. In addition, as compared to a lawful permanent resident, a U.S.
3 citizen has a far greater ability to petition for the immigration of immediate relatives to the
4 United States. See 8 U.S.C. § 1151(b)(2) (spouses, children and parents of U.S. citizen are
5 "immediate relatives" generally not subject to worldwide limitations on number of immigrant
6 visas); 8 U.S.C. § 1153 (setting forth priority list for issuance of visas to family-sponsored
7 immigrants).

8 81. Delays in naturalization can cause applicants to be separated from their children
9 living in the United States if the child does not otherwise have permanent status and reaches the
10 age of majority during the pendency of the naturalization application. *See, e.g., Alhamedi v.*
11 *Gonzales*, No. 07 Civ. 2541, 2007 WL 1573935 at *2 (S.D.N.Y. May 30, 2007) (noting that
12 applicant's 20-year-old daughter might be forced to leave her studies in the United States and
13 return to home country if delay were not resolved before her birthday). In other cases, the
14 applicant's spouse and children may still be living in the home country, and thus delays in
15 naturalization mean delays in family reunification because relatives of lawful permanent
16 residents are subject to visa limitations. 8 U.S.C. § 1153. Many permanent residents report that
17 the years-long separation from a spouse and children is the most agonizing aspect of the delay.
18 See New York University School of Law, Center for Human Rights and Global Justice,
19 *Americans on Hold: Profiling, Citizenship and the "War on Terror"* ("NYU Report") at 2, 5, 22,
20 40, available at www.chrgj.org/docs/AOH/AmericansonHoldReport.pdf.

21 82. Naturalization delays result in restrictions on the ability of immigrants to travel
22 freely. Many permanent residents are from countries that do not participate in the Visa Waiver
23 Program, which affords U.S. citizens the ability to make short trips to 26 countries without the
24 need for a visa. See http://travel.state.gov/visa/temp/without/without_1990.html#countries.
25 Many permanent residents who are Muslim, or are perceived to be such, report that they are
26 routinely subjected as non-citizens to intrusive questioning and searches by U.S. government
27 officials while traveling. See NYU Report at 33-34. Thus, naturalization delays have caused
28 many applicants – as well as their immediate family members who may be U.S. citizens – to

1 refrain from travel altogether, even for urgent matters such as illness or death in the family. See
 2 NYU Report at 5, 23.

3 83. For many permanent residents, naturalization delays have had a negative impact
 4 on their employment. This is particularly true for highly skilled scientists, engineers, and other
 5 professional workers, who often have existing FBI records – which trigger “hits” in the FBI
 6 name check, although there is no derogatory information – as a result of previous employment-
 7 related security checks. U.S. Gov’t Accountability Office, Report to Congressional Requesters,
 8 Immigration Benefits: Improvements Needed to Address Backlogs and Ensure Quality of
 9 Adjudications (Nov. 2005) at 44-45. These permanent residents often are hampered in their
 10 professional advancement because many jobs in their fields are available only to U.S. citizens.
 11 This is most often an impediment for white-collar professionals, but other immigrants who aspire
 12 to work in law enforcement or the U.S. military are similarly impeded. NYU Report at 24.

13 84. Naturalization delays have blocked the enfranchisement of tens of thousands of
 14 longtime permanent residents who wish to join American civic society formally, after years of
 15 contributing their work, community involvement, and tax revenues. See NYU Report at 33-23.
 16 FBI name check delays have delayed tens of thousands of immigrants from obtaining the right to
 17 vote. Nina Bernstein, Backlog Blocks Immigrants Hoping To Vote, N.Y. Times, Oct. 15, 2004,
 18 at B1.

19 **CLASS ALLEGATIONS**

20 85. Plaintiffs bring this action on behalf of themselves and all other persons similarly
 21 situated pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2). The class, as proposed
 22 by Plaintiffs, consists of:

23 All persons who have submitted or will submit applications for naturalization to CIS, and
 24 who have met all statutory requirements for naturalization, and whose applications for
 25 naturalization are not adjudicated within 120 days of the date of their naturalization
 26 examinations.

27 86. The requirements of Federal Rules of Civil Procedure 23(a) and 23(b)(2) are met
 28 in that the class is so numerous that joinder of all members is impracticable. Counsel for

1 Plaintiffs are aware of dozens of putative class members who are similarly situated to the named
2 Plaintiffs in this District. Plaintiffs are not aware of the exact numbers of putative class members
3 because Defendants are in the best position to identify such persons. The CIS Ombudsman has
4 noted the enormous extent of the naturalization problem, reporting that “[a]s of May 2007,
5 USCIS reported a staggering 329,160 FBI name check cases pending, with approximately 64
6 percent (211,341) of those cases pending more than 90 days and approximately 32 percent
7 (106,738) pending more than one year.” CIS Ombudsman, Annual Report 2007, at 37.
8 According to the CIS Ombudsman, as of June 2007, there were 31,144 FBI name check cases
9 pending more than 33 months. The CIS Ombudsman further reports that from 2006 to 2007, the
10 number of delayed naturalization cases has increased by 93,358. *Id.*

11 87. The numerosity of the proposed class is further demonstrated by a November
12 2005 report of the CIS Office of Chief Counsel indicating that in the preceding one-year period,
13 there were 1,000 federal lawsuits filed challenging FBI name check delays.

14 88. There are questions of law and fact common to the proposed class that
15 predominate over any questions affecting only the individually named Plaintiffs, including: (1)
16 whether CIS’s failure to adjudicate the applications for naturalization of the proposed plaintiff
17 class within 120 days of the date of naturalization examinations due to delays in FBI name
18 checks violates the Due Process Clause, the Immigration and Nationality Act and implementing
19 regulations, and the Administrative Procedures Act; (2) whether CIS’s imposition of a name
20 check requirement violates the notice and comment provision of the Administrative Procedures
21 Act; (3) whether the FBI’s actions in unlawfully withholding and unreasonably delaying the
22 completion of FBI name checks, with the full knowledge that CIS requires the completion of
23 such FBI name checks for adjudication of applications for naturalization of the proposed plaintiff
24 class, violates the Constitution and laws of the United States, including the Administrative
25 Procedures Act; and (4) whether CIS and the FBI’s failure to set deadlines for completing FBI
26 name checks and failure to take all the other reasonable steps necessary to complete the
27 adjudication of applications for naturalization of the proposed plaintiff class, violates the
28 Constitution and laws of the United States, including the Administrative Procedures Act.

1 89. The claims of the named Plaintiffs are typical of the claims of the proposed class.
2 The named Plaintiffs, like all class members, have not had their applications for naturalization
3 adjudicated despite the passage of over 120 days since their naturalization examinations; they
4 have been denied timely completion of FBI name checks which CIS requires for adjudication of
5 their applications; and their applications for naturalization have been unlawfully withheld or
6 unreasonably delayed on the basis of FBI name checks.

7 90. Like the named Plaintiffs, members of the proposed class are suffering prejudice
8 from the delay of their naturalization applications, including the inability to participate in civic
9 society by voting and jury service, the effective inability to sponsor immediate relatives for
10 lawful permanent resident status, the inability to travel freely as U.S. citizens, and the harm of
11 having an uncertain status in the country they have made their home and where they have
12 established themselves as part of a community.

13 91. The named Plaintiffs will fairly and adequately represent the interests of all
14 members of the proposed class because they seek relief on behalf of the class as a whole and
15 have no interests antagonistic to other members of the class. The named Plaintiffs are
16 represented by pro bono counsel, including the ACLU Immigrants' Rights Project, the ACLU of
17 Northern California and the Asian Law Caucus, who have extensive expertise in class action
18 litigation and/or immigrants' rights cases. Finally, the Defendants have acted on grounds
19 generally applicable to the class, thereby making appropriate final injunctive relief with respect
20 to the class as a whole.

21 **DECLARATORY AND INJUNCTIVE RELIEF ALLEGATIONS**

22 92. An actual and substantial controversy exists between Plaintiffs and Defendants as
23 to their respective legal rights and duties. Plaintiffs contend that Defendants' actions violate
24 Plaintiffs' rights and the rights of proposed class members. Defendants contend the opposite.

25 93. Defendants' failure to timely process Plaintiffs' naturalization applications,
26 including any name check, has caused and will continue to cause irreparable injury to Plaintiffs
27 and other class members. Plaintiffs have no plain, speedy, and adequate remedy at law.

28 94. Based on the foregoing, the Court should grant declaratory and injunctive relief

1 under 28 U.S.C. §§ 1361, 2201, 2202 and 5 U.S.C. § 702.

2 **CAUSES OF ACTION**

3 **COUNT ONE**

4 **RIGHT TO DE NOVO JUDICIAL DETERMINATION**

5 **OF APPLICATION FOR NATURALIZATION**

6 **8 U.S.C. § 1447(B)**

7 **[By the Named Plaintiffs Against Defendants Still, Gonzalez and Chertoff]**

8 95. The allegations contained in paragraphs 1 through 101 above are repeated and
9 incorporated as though fully set forth herein.

10 96. Because Respondents have failed to adjudicate each named Plaintiff's
11 naturalization application within 120 days after the date of his or her naturalization examination,
12 each named Plaintiff is entitled to de novo adjudication of his or her naturalization application by
13 this Court under 8 U.S.C. § 1447(b).

14 97. This Court should grant each named Plaintiff's naturalization application pursuant
15 to 8 U.S.C. § 1447(b), because each named Plaintiff meets all of the requirements for
16 naturalization under chapter 2 of the Immigration and Nationality Act, 8 U.S.C. § 1421 *et seq.*,
17 and therefore has a right to become a naturalized citizen of the United States.

18 **COUNT TWO**

19 **UNREASONABLE DELAY**

20 **IN VIOLATION OF THE ADMINISTRATIVE PROCEDURES ACT**

21 **[By the Named Plaintiffs on Behalf of the Proposed Class Against All Defendants]**

22 98. The allegations contained in paragraphs 1 through 104 above are repeated and
23 incorporated as though fully set forth herein.

24 99. The Administrative Procedure Act requires administrative agencies to conclude
25 matters presented to them "within a reasonable time." 5 U.S.C. § 555. A district court reviewing
26 agency action may "compel agency action unlawfully withheld or unreasonably delayed." 5
27 U.S.C. § 706(1). The court also may hold unlawful and set aside agency action that, *inter alia*, is
28 found to be: "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with

1 law,” 5 U.S.C. § 706(2)(A); “in excess of statutory jurisdiction, authority, or limitations, or short
2 of statutory right,” 5 U.S.C. § 706(2)(C); or “without observance of procedure required by law,”
3 5 U.S.C. § 706(2)(D). “Agency action” includes, in relevant part, “an agency rule, order, license,
4 sanction, relief, or the equivalent or denial thereof, or failure to act.” 5 U.S.C. §551(13).

5 100. The failure of Defendants Still, Gonzalez and Chertoff to adjudicate the
6 applications for naturalization of the proposed plaintiff class within a reasonable time on the
7 basis of delays in the processing of FBI name checks, in violation of 8 U.S.C. § 1446(d) and 8
8 C.F.R. § 335.3, violates the Administrative Procedures Act, 5 U.S.C. § 555(b); 5 U.S.C. §§
9 706(1), 706(2)(A), 706(2)(C), 706(2)(D).

10 101. The failure of Defendants Mukasey and Mueller to complete FBI name checks
11 within a reasonable time period, with the full knowledge that CIS requires the completion of
12 such FBI name checks for adjudication of applications for naturalization of the proposed plaintiff
13 class, violates the Administrative Procedures Act, 5 U.S.C. § 555(b); 5 U.S.C. §§ 706(1),
14 706(2)(A), 706(2)(C), 706(2)(D).

15 102. Defendants’ failure to set reasonable deadlines for completing FBI name checks,
16 to track the number and status of naturalization cases awaiting final adjudication solely on the
17 basis of FBI name checks, to track the number and status of naturalization cases awaiting final
18 adjudication for more than 120 days after the naturalization examinations, and to take all the
19 other reasonable steps necessary to complete the adjudication of applications for naturalization of
20 the proposed plaintiff class, in violation of 8 U.S.C. § 1446(d) and 8 C.F.R. § 335, violates the
21 Administrative Procedures Act, 5 U.S.C. § 555(b); 5 U.S.C. §§ 706(1), 706(2)(A), 706(2)(C),
22 706(2)(D).

23 103. As a result of Defendants’ actions, Plaintiffs and members of the proposed class
24 have suffered and continue to suffer injury. Declaratory and injunctive relief are therefore
25 warranted.
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27
28

COUNT THREE

**FAILURE TO FOLLOW NOTICE-AND-COMMENT REQUIREMENTS OF THE
ADMINISTRATIVE PROCEDURES ACT**

[By the Named Plaintiffs Against Defendants Still, Gonzalez and Chertoff]

104. The allegations contained in paragraphs 1 through 110 above are repeated and incorporated as though fully set forth herein.

105. By regulation, CIS is required to conduct a criminal background check before a naturalization application can be granted. 8 C.F.R. § 335.2(b). CIS does conduct or cause to be conducted criminal background checks, including a check of a naturalization applicant's fingerprints against the FBI's criminal records, and a check of an applicant's name against a multi-agency law enforcement database known as the Interagency Border Inspection System ("IBIS").

106. In or about November 2002, CIS implemented an expanded version of a third background check known as an FBI name check, which goes beyond the criminal background check required by statute and regulation. Unlike the databases searched during the criminal background checks, the expanded FBI name check runs applicants' names against a database containing names of persons who have never been convicted of, arrested for, or even suspected of a crime – including innocent witnesses and even crime victims. This added requirement of an FBI name check constitutes a substantive rule that departed from prior policy and practice.

107. Defendants implemented the expanded FBI name check requirement for naturalization without giving notice and providing a period for public comment, even though the name check requirement has an adverse impact on individuals whose naturalization applications are delayed due to the name check.

108. The Administrative Procedures Act requires that administrative agencies provide the public with notice and an opportunity to comment prior to promulgating substantive rules, such as implementation of new requirements for naturalization. 5 U.S.C. § 553.

109. Defendants' failure to provide a notice-and-comment period prior to implementing the FBI name check requirement violates the Administrative Procedures Act, 5

1 U.S.C. § 553.

2 **COUNT FOUR**

3 **VIOLATION OF FIFTH AMENDMENT DUE PROCESS CLAUSE**

4 **[By the Named Plaintiffs on Behalf of the Proposed Class Against All Defendants]**

5 110. The allegations contained in paragraphs 1 through 116 above are repeated and
6 incorporated as though fully set forth herein.

7 111. The Due Process Clause of the Fifth Amendment prohibits the government from
8 depriving any person of life, liberty or property without due process of law.

9 112. Plaintiffs have a liberty or property interest in having their naturalization
10 applications decided within a reasonable time period.

11 113. Defendants Still, Gonzalez and Chertoff have a pattern, practice or policy of
12 failing to adjudicate the applications for naturalization of the proposed plaintiff class within a
13 reasonable time period because of delays in FBI name checks, in violation of 8 U.S.C. § 1446(d)
14 and 8 C.F.R. § 335. Defendants Mukasey and Mueller have a pattern, practice or policy of
15 failing to complete FBI name checks in a reasonably timely manner, with the full knowledge that
16 CIS requires the completion of FBI name checks for adjudication of applications for
17 naturalization of the proposed plaintiff class. Defendants have a pattern, practice or policy of
18 failing to set deadlines for completing FBI name checks and to take all the other reasonable steps
19 necessary to complete the adjudication of applications for naturalization of the proposed plaintiff
20 class, in violation of 8 U.S.C. § 1446(d) and 8 C.F.R. § 335.3. These actions by Defendants
21 violate Plaintiffs' rights to due process of law.

22 114. As a result of Defendants' actions, Plaintiffs and members of the proposed class
23 have suffered and continue to suffer injury. Declaratory and injunctive relief are therefore
24 warranted.

PRAYER FOR RELIEF

WHEREFORE, in view of the arguments and authority noted herein, Petitioner prays for the following relief:

- (1) Assume jurisdiction over the matter;
- (2) Certify this case as a class action lawsuit, as proposed herein;
- (3) Review de novo and grant the named Plaintiffs' applications for naturalization, pursuant to 8 U.S.C. § 1447(b);
- (4) Order Defendants to promptly adjudicate, in a time period not to exceed 90 days, the currently pending applications for naturalization of all members of the proposed class;
- (5) Order Defendants to adjudicate, within a reasonable time period not to exceed 180 days from the date of the application date, all applications for naturalization that shall be submitted in the future;
- (6) Order that any name checks Defendants choose to conduct shall be completed in a manner that does not delay adjudication of naturalization applications beyond 180 days from the date the application is received by CIS;
- (7) Order Defendants to adopt a procedure for identifying naturalization cases awaiting final adjudication based solely on FBI name checks, and for identifying naturalization cases awaiting final adjudication for more than 120 days after successful completion of the naturalization examination, or 180 days from the date CIS receives the naturalization application;
- (8) Issue a declaratory judgment holding unlawful: (a) the failure of Defendants Still, Gonzalez and Chertoff to adjudicate applications for naturalization within 180 days of the date of the naturalization application is received by CIS; (b) The failure of Defendants Mukasey and Mueller to complete FBI name checks within a reasonable time; and (c) Defendants' failures to take all necessary steps to adjudicate applications for

1 naturalization within 180 days of receipt by CIS.

2 (9) Award reasonable attorney fees and costs pursuant to the Equal Access to
3 Justice Act, 5 U.S.C. § 504, 28 U.S.C. § 2412; and

4 (10) Grant any and all further relief this Court deems just and proper.

5 Dated: November 15, 2007

Respectfully submitted,

6 CECILLIA D. WANG
7 LUCAS GUTTENTAG
8 AMERICAN CIVIL LIBERTIES UNION
9 FOUNDATION
IMMIGRANTS' RIGHTS PROJECT
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23
24 By: _____/s/_____
CECILLIA D. WANG

25 Attorneys for Plaintiffs
26
27
28

CERTIFICATE OF SERVICE

I, Cecillia D. Wang, declare as follows:

I hereby certify that today I electronically filed the foregoing SECOND AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION FOR NATURALIZATION PURSUANT TO 8 U.S.C. § 1447 with the Clerk of the Court using the ECF system, which will send notification of such filing to the following email addresses:

Alan Lawrence Schlosser
American Civil Liberties Union
Foundation of Northern California

Via ECF
at aschlosser@aclunc.org

Joren Lyons
Asian Law Caucus

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In addition, I hereby certify that on this 15th day of November 2007, true and correct copies of the SECOND AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION FOR NATURALIZATION PURSUANT TO 8 U.S.C. § 1447 were served by U.S. Mail on the following non-ECF filers:

Sin Yen Ling
Asian Law Caucus
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Todd Gallinger
Council on American-Islamic Relations
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1 I declare under penalty of perjury under the laws of the State of California that the above
2 is true and correct.

3
4 Dated: November 15, 2007
San Francisco, California

5 _____/s/_____
6 CECILLIA D. WANG
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