

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

YAN BASHKIN, GAFAAR DAFALLA,
NADEEM FAZAL, BORIS GOLDFARB,
MOHAMMED KHAN, SOBIA KHAN, LARISA
KHANINAYEVA, VLADIMIR KHLYSTOV,
DORA REZNIK, ILYA SEREBRENNIKOV,
YELENA SEREBRENNIKOVA, and ISMAIL
SULEIMAN, individually and on behalf of all
individuals similarly situated,

Plaintiffs / Petitioners

v.

MICHAEL MUKASEY, in his official capacity as
Attorney General of the United States;
MICHAEL CHERTOFF, in his official capacity as
Secretary of the Department of Homeland Security;
RUTH DOROCHOFF, in her official capacity as
Acting District Director of the Bureau of
Citizenship and Immigration Services, Department
of Homeland Security;
ROBERT S. MUELLER, III,
in his official capacity as Director of the Federal
Bureau of Investigation,
The DEPARTMENT OF HOMELAND
SECURITY,
The UNITED STATES CITIZENSHIP AND
IMMIGRATION SERVICES, and
The FEDERAL BUREAU OF INVESTIGATION,

Defendants / Respondents

CASE NO. 06 CV 2518

Judge John F. Grady

Jury Demand

Fourth Amended Complaint for Naturalization and Other Relief

This is a complaint for injunctive and other relief. The plaintiffs are lawful permanent residents of the United States who applied to be naturalized as United States citizens, passed all their interviews and related tests, and have been waiting for more than 120 days—some more than 2 years—to have their applications adjudicated. While they have been waiting for long

periods to be sworn in, millions of others seeking to be naturalized have had their ceremonies scheduled without the same delay. The individual plaintiffs seek (1) immediate naturalization, (2) an end to the practice of indefinite delay of the adjudication of naturalization applications, or in the alternative, the implementation of a procedure to allow expedition of their naturalization applicaiton.

Jurisdiction and Venue

1. This court has subject matter jurisdiction pursuant to at least the following statutory provisions: 28 U.S.C. § 1331 (because questions of federal law are presented); 8 U.S.C. § 1447(b) (granting district court jurisdiction to review naturalization applications); and 28 U.S.C. § 1361 (mandamus jurisdiction).

2. Pursuant to 29 U.S.C. § 1391, venue is proper in this district on either of the following grounds: (1) the plaintiffs reside in this judicial district, the defendants are officers of the United States or agencies of the United States, and no real property is involved (28 U.S.C. § 1391(e)(3)); or (2) acts or omissions giving rise to the action these applications for naturalization were processed in part by the Chicago office of Immigration and Naturalization Services (now the Bureau of Citizenship and Immigration Services) (28 U.S.C. § 1391(e)(2)).

Procedural History

3. This case was filed on May 4, 2006, originally listing 9 named plaintiffs and including a claim seeking production of certain information relating to naturalization delays that had not been produced pursuant to a Freedom of Information Act request. The complaint was amended slightly on

4. The Government moved to dismiss the Complaint. While that motion was pending, the Government produced approximately 3.4 million records from which information about naturalization delays could be determined. After analyzing that information, plaintiffs filed a Second Amended Complaint on January 26, 2007. In connection with this amendment, plaintiffs substituted several new plaintiffs for those whose naturalization applications had been adjudicated while the case was pending. The Government renewed its motion to dismiss.

5. While the Government's motion was pending, all but one of the then active plaintiffs had their naturalization applications adjudicated. Plaintiffs sought leave to file a Third Amended Complaint adding new plaintiffs in September 2007. The Court granted the plaintiffs' motion and the Third Amended Complaint was filed on September 19, 2007.

6. On September 20, 2007, the Court ruled on the Government's motion to dismiss. With regard to the individual claims for naturalization pursuant to 8 U.S.C. § 1447(b), the Court rejected the Government's argument that the Court lacked jurisdiction over the 8 U.S.C. § 1447(b) and remanded the matter back to the USCIS, without instructions. The Court denied the plaintiffs' subsequent Rule 59(e) motion to modify or amend the portion of the order declining to provide instructions to the Government. With regard to the putative class allegations, the Court granted the plaintiffs until November 12, 2007 to file an amended complaint. The changes to the complaint include this section on procedural background, factual allegations regarding the policy of "expediting" review of naturalization applications, modifications to Counts I and III, and an alternative prayer for relief allowing delayed applicants to request expedition.¹

¹ Plaintiffs have reasserted the previously dismissed and unmodified counts here to prevent an argument of waiver in the event of an appeal. The additional material regarding the Government's expedition policy and the alternative relief requested may also affect the logic of the Court's analysis dismissing other claims.

The Parties

Plaintiffs:

7. Plaintiffs YAN BASHKIN, GAFAAR DAFALLA, NADEEM FAZAL, BORIS GOLDFARB, MOHAMMED KHAN, SOBIA KHAN, LARISA KHANINAYEVA, VLADIMIR KHLYSTOV, DORA REZNIK, ILYA SEREBRENNIKOV, YELENA SEREBRENNIKOVA, and ISMAIL SULEIMAN (the “Named Plaintiffs”) are lawful permanent residents of the United States who have applied to be naturalized as U.S. citizens. For background on each of the Named Plaintiffs is set forth below.²

Class Allegations:

8. Named Plaintiffs YAN BASHKIN, GAFAAR DAFALLA, NADEEM FAZAL, BORIS GOLDFARB, MOHAMMED KHAN, SOBIA KHAN, LARISA KHANINAYEVA, VLADIMIR KHLYSTOV, DORA REZNIK, ILYA SEREBRENNIKOV, YELENA SEREBRENNIKOVA, and ISMAIL SULEIMAN bring this action on their own behalf and on behalf of a class of other similarly situated persons pursuant to Rules 23(a) and (b)(2) of the Federal Rules of Civil Procedure.

9. The Plaintiff Class consists of:

All persons who are or will be lawful permanent residents applying for naturalization to become U.S. citizens, whose applications are pending in Illinois,

² Since the amended complaint was filed on September 19, 2007, six Named Plaintiffs who had been waiting to have their applications adjudicated (Sergey Antonishin, Eltayeb Elbolok, Inna Karazsik, Abdi Mohammed, Ashan Raza, and Abram Rozental) have been sworn in as citizens or will be by November 14, 2007. They are not included in this Amended Complaint. It appears that at least the following additional Named Plaintiffs have had their name checks completed by the FBI, in that they have received either a notification to be re-fingerprinted or have had an interview scheduled with USCIS: Yan Bashkin, Boris Goldfarb, Nadeem Fazal, Dora Reznik, Ilya Serebrennikov, and Yelena Serebrennikova and Ismail Suleiman.

Indiana or Wisconsin, and whose naturalization applications are not adjudicated within 120 days after the date of their initial examination.

10. The Plaintiff Class is so numerous that the joinder of all members is impractical. For example, based on data supplied by the Department of Homeland Security, since April 2001, more than 348,000 naturalization applicants have not had their naturalization application adjudicated within 120 days of the date of their initial examination. A substantial number of these delayed adjudications are or were pending in the Seventh Circuit (Illinois, Indiana, or Wisconsin).

11. As further demonstration of the number of unadjudicated naturalization cases, the data provided by the Department of Homeland Security demonstrates that more than 33,000 naturalization applicants have not had their naturalization application adjudicated within 720 days (i.e, approximately 2 years) of the date of their initial examination.

12. As further demonstration of the number of unadjudicated naturalization cases, an analysis of the U.S. Court's PACER system suggests that more than 1,000 cases seeking adjudication of naturalization applications have been filed since January 1, 2005. A substantial number of these cases are or were pending in the Seventh Circuit (Illinois, Indiana, or Wisconsin).

13. There are questions of law and fact common to the class, including: a common factual background of inordinate delay in the adjudication of naturalization applications and delay in completing background checks for certain naturalization applicants.

14. The claims of Named Plaintiffs are typical of the claims of their class. Named Plaintiffs, like all class members, have been refused timely adjudication of their naturalization applications.

15. Named Plaintiffs are adequate representatives of the class who will adequately and fairly protect the interests of the class because they seek relief on behalf of the class as a whole and have no interests antagonistic to other members of the class. They are represented by attorneys employed by the National Immigrant Justice Center (NIJC), the Council on American-Islamic Relations – Chicago (CAIR-Chicago), as well as David Berten of the Competition Law Group, who are attorneys experienced in federal litigation and/or immigration law, and who have litigated complex class action civil rights cases.

16. In addition, Defendants have acted or refused to act on grounds generally applicable to the Plaintiff classes, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the class as a whole, making class certification appropriate under Rule 23(b)(2) of the Federal Rules of Civil Procedure.

Defendants:

17. Defendant MICHAEL MUKASEY is being sued in his official capacity as the Attorney General of the United States. He is authorized by Congress to naturalize persons as citizens of the United States. 8 U.S.C. § 142(a).

18. Defendant MICHAEL CHERTOFF is being sued in his official capacity as the Secretary of the Department of Homeland Security (DHS). As of February 15, 2005, Mr. Chertoff has been responsible for the administration of the United States Citizenship and Immigration Service, which provides certain immigration related services including naturalization. 8 U.S.C. § 1103.

19. Defendant RUTH DOROCHOFF is being sued in her official capacity as the District Director of USCIS for the Chicago District. As such, she is charged with the duty of

administration and enforcement of all the functions, powers, and duties of USCIS in the Chicago District.

20. Defendant ROBERT S. MUELLER, III, is being sued in his official capacity as the Director of the Federal Bureau of Investigation. As such, he is charged with conducting background checks of applicants for naturalization when requested to do so by the USCIS.

21. Defendant DEPARTMENT OF HOMELAND SECURITY is the Agency with overall responsibility for applications for Naturalization, including coordinating the timely completion of background checks with the Federal Bureau of Investigation.

22. Defendant UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES is a bureau within the Department of Homeland Security, and is the Agency with direct responsibility for adjudicating naturalization applications.

23. Defendant FEDERAL BUREAU OF INVESTIGATION is the Agency responsible for conducting background checks on applicants for Naturalization.

Facts Regarding Individual Named Plaintiffs

24. Plaintiff YAN BASHKIN is a legal permanent resident of the United States, identified by Alien number 713 61 849. Ms. Bashkin passed the USCIS citizenship examination and interview June 22, 2004. Currently a citizen of Russia, Ms. Bashkin is a person of good moral character and otherwise meets all the requirements to be naturalized as set forth in 8 U.S.C. § 1427. More than 120 days have passed since she passed her citizenship interview.

25. Plaintiff GAFAAR DAFALLA a legal permanent resident of the United States, identified by Alien number 026 705 715. Mr. Dafalla passed the USCIS citizenship examination and interview October 11, 2005. Currently a citizen of Sudan, Mr. Dafalla is a person of good

moral character and otherwise meets all the requirements to be naturalized as set forth in 8 U.S.C. § 1427. More than 120 days have passed since he passed his citizenship interview.

26. Plaintiff NADEEM FAZAL is a legal permanent resident of the United States, identified by Alien number 076 843 839. Mr. Fazal passed the USCIS citizenship examination and interview on April 26, 2004. Currently a citizen of Pakistan, Mr. Fazal is a person of good moral character and otherwise meets all the requirements to be naturalized as set forth in 8 U.S.C. § 1427. More than 120 days have passed since he passed his citizenship interview.

27. Plaintiff BORIS GOLDFARB is a legal permanent resident of the United States, identified by Alien number 713 21 781. Mr. Goldfarb passed the USCIS citizenship examination and interview August 25, 2004. Currently a citizen of Russia, Mr. Goldfarb is a person of good moral character and otherwise meets all the requirements to be naturalized as set forth in 8 U.S.C. § 1427. More than 120 days have passed since he passed his citizenship interview.

28. Plaintiff MOHAMMED KHAN is a legal permanent resident of the United States, identified by Alien number 075 262 465. Mr. Khan passed the USCIS citizenship examination and interview on May 14, 2003. Currently a citizen of Pakistan, Mr. Khan is a person of good moral character and otherwise meets all the requirements to be naturalized as set forth in 8 U.S.C. § 1427. More than 120 days have passed since he passed his citizenship interview.

29. Plaintiff SOBIA KHAN is a legal permanent resident of the United States, identified by Alien number 055 524 497. Ms. Khan passed the USCIS citizenship examination and interview on November 10, 2005. Currently a Pakistani citizen, Ms. Khan is a person of good moral character and otherwise meets all the requirements to be naturalized as set forth in 8 U.S.C. § 1427. More than 120 days have passed since she passed her citizenship interview.

30. Plaintiff LARISA KHANINAYEVA is a legal permanent resident of the United States, identified by Alien number 713 92 069 . Ms. Karasik passed the USCIS citizenship examination and interview on July 28, 2005. Currently a citizen of Russia, Ms. Karasik is a person of good moral character and otherwise meets all the requirements to be naturalized as set forth in 8 U.S.C. § 1427. More than 120 days have passed since she passed her citizenship interview.

31. Plaintiff VLADIMIR KHLYSTOV is a legal permanent resident of the United States, identified by Alien number 750 20 318. Mr. Khlystov passed the USCIS citizenship examination and interview on May 24, 2005. Currently a citizen of Russia, Mr. Khlystov is a person of good moral character and otherwise meets all the requirements to be naturalized as set forth in 8 U.S.C. § 1427. More than 120 days have passed since he passed his citizenship interview.

32. Plaintiff DORA REZNIK is a legal permanent resident of the United States, identified by Alien number 712 86 764 . Ms. Reznik passed the USCIS citizenship examination and interview on November 30, 2004. Currently a citizen of Russia, Ms. Reznik is a person of good moral character and otherwise meets all the requirements to be naturalized as set forth in 8 U.S.C. § 1427. More than 120 days have passed since she passed her citizenship interview.

33. Plaintiff ILYA SEREBRENNIKOV is a legal permanent resident of the United States, identified by Alien number 713 44 912. Ms. Serebrennikov passed the USCIS citizenship examination and interview on December 16, 2005. Currently a citizen of Russia, Ms. Sererennikov is a person of good moral character and otherwise meets all the requirements to be naturalized as set forth in 8 U.S.C. § 1427. More than 120 days have passed since she passed her citizenship interview.

34. Plaintiff YELENA SEREBRENNIKOVA is a legal permanent resident of the United States, identified by Alien number 713 44 911. Ms. Serebrennikov passed the USCIS citizenship examination and interview on December 16, 2005. Currently a citizen of Russia, Ms. Serebrennikova is a person of good moral character and otherwise meets all the requirements to be naturalized as set forth in 8 U.S.C. § 1427. More than 120 days have passed since she passed her citizenship interview.

35. Plaintiff ISMAIL SULEIMAN is a legal permanent resident of the United States, identified by Alien number 077 640 746. Mr. Suleiman passed the USCIS citizenship examination and interview on January 05, 2006. Currently a Jordanian citizen, Mr. Suleiman is a person of good moral character and otherwise meets all the requirements to be naturalized as set forth in 8 U.S.C. § 1427. More than 120 days have passed since he passed his citizenship interview.

36. Through the course of this litigation, Plaintiff's counsel became aware of at least 250 other individuals, not named plaintiffs, who fell within the proposed Class.

Facts Common to Counts I to VI

37. The United States Citizenship and Immigration Services (USCIS) is the portion of the Department of Homeland Security responsible for adjudicating all applications for Naturalization pursuant to 8 U.S.C. § 1421 et seq.

38. Section Six of the Administrative Procedure Act ("APA") directs agencies to conclude matters presented to them "within a reasonable time." 5 U.S.C. § 555(b). When an agency fails to conclude a matter presented to it with a reasonable time, the APA grants judicial

review to “compel agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. § 706(1).

39. A person seeking to be naturalized starts the process by filing an application (called an N-400). When the application is received (the filing date), it starts a review process by the USCIS.

40. As part of the review, USCIS conducts an initial in-person examination of each applicant seeking to be naturalized. Among other things, the examiner assesses the applicant’s command of English and addresses issues of concern to USCIS.

41. The initial examination date also starts a 120-day time period running. By rule, a decision to grant or deny the naturalization application must take place “at the time of the initial examination or within 120 days after the date of the initial examination.” 8 C.F.R. § 335.3(a). If USCIS fails to adjudicate the application within the 120-day period, the applicant can file an action in District Court to have his or her application adjudicated. 8 U.S.C. § 1447(b).

42. The 120-day period between the initial examination and adjudication is a reasonable period of time for the Defendants to adjudicate naturalization applications. Data produced by DHS confirms that the Defendants adjudicate more than 50% of all cases on the *same day* as the initial examination and that approximately 90% are adjudicated within 120 days of the initial examination.

43. Section 1571 of Title 8 of the United States Codes states that “it is the sense of Congress that the processing of an immigration benefit application [including naturalization] should be completed not later than 180 days after the initial filing of the application.”

44. DHS has recognized that completing the review process within 6 months is a reasonable amount of time: “By the end of 2004, the Service expects to reach a national processing time of 6 months or less for all applications or petitions.”

The Existence and Extent of Delays in Adjudicating Naturalization Applications

45. The Department of Homeland Security uses a nationwide computer “work flow” system to track the processing of naturalization applications. The Computer Linked Application Information Management Systems (“CLAIMS”) stores information about various immigration benefit applications. One part of the system, CLAIMS 4, stores information about every naturalization application filed after April 2001.

46. In December 2006, after this suit was filed, the Department of Homeland Security responded to a Freedom of Information Act request submitted by the Arab American Action Network by producing a CD-ROM with data extracted from the CLAIMS 4 system. The data includes information relating to approximately 3.4 million naturalization applications, including every naturalization application that was filed after April 1, 2001, through the date the data was extracted, approximately November 17, 2006.

47. The DHS data further confirms that more than two-thirds of the naturalization applicants who applied since April 1, 2001 (over 2.2 million applicants) have not had a decision made on their applications for more than 180 days from the date their applications were filed, in violation of the “sense of Congress” that a decision should be made within that time frame. 8 U.S.C. §1571.

48. The DHS data further confirms that delays on decisions on naturalization cases are extreme in a significant number of cases. For example, approximately 776,000 applicants

have not had a decision made in their case for more than a year since they applied.

Approximately 158,000 applicants have not had a decision made in their case for more than 2 years after they applied. More than 41,000 applicants wait 3 years (or longer) for a decision.

49. While part of this delay appears to take place before the initial examination, the DHS data also confirms that approximately 348,000 naturalization applicants who applied since April 1, 2001 have not had a decision made on their applications within the 120 day time period after the applicant's initial examination mandated by the Code of Federal Regulation. 8 C.F.R. § 335.3(a).

50. Delays between the initial examination and a decision are also extreme. Delays exceed more than double the 120-day period mandated by regulation (i.e., more than 240 days) in 5% of all cases, or approximately 175,000 cases. In the most extreme cases—the 1% of applications with the longest delays—the time between the initial examination and a decision exceeds 720 days. There are more than 33,000 cases that fall into this category.

One Source of the Delay: The FBI's "Name Check" Program

51. As part of the review process for naturalization applications, USCIS conducts background investigations of the naturalization applicants. 8 U.S.C. § 1446(a); 8 C.F.R. §§ 335.1, 335.2.

52. Since 1997, Congress has also required the Federal Bureau of Investigation to conduct a criminal background investigation for naturalization applicants. Pub. L. 105-119, Title I, 111 Stat. 2440, 2448-49 (1997); 8 C.F.R. § 335.2(b).

53. Starting on December 3, 1997, naturalization applicants have been required to submit their fingerprints and have been subject to full criminal background checks. 8 C.F.R. § 335.2(b).

54. Naturalization applicants pay substantial fees relating to the background checks, and those fees are set specifically to insure that DHS recovers “the full cost” of providing the service. These fees are in addition to the fees charged for the naturalization application itself. The fingerprint fee was \$25 until February 19, 2002, when it was raised to \$50 per applicant. 8 C.F.R. § 103.7. The increase was instituted after review as “both necessary and justified in an effort to recover the full cost of providing the service in accordance with applicable fee setting laws, regulations, and guidance.” 66 Fed. Reg. 65811 (Dec. 21, 2001). The fee was raised again, to \$70 per applicant, effective April 30, 2004, “to ensure sufficient funding to process incoming applications.” 69 Fed. Reg. 20528 (Apr. 15, 2004). The fee cannot be waived. *Id.*

55. Before, either USCIS or the FBI or both expanded the name check to include “references.” This was done without notice and comment.

56. The background checks include: (a) an FBI fingerprint check; and (b) a check against the DHS-managed Interagency Border Inspection System (IBIS) that contains records and “watch list” information from more than 20 federal law enforcement agencies, which reveals information relating to arrests, convictions, and those suspected of committing serious crimes. Dorochoff Dec. ¶ 9.

57. In addition to the two background checks outlined above, the background check includes “an FBI name check, which is run against FBI investigative databases containing information that is not necessarily revealed by the FBI’s fingerprint check or IBIS.” Dorochoff Dec. ¶ 9.

58. In November 2002, without prior notice and without public comment, the FBI altered the “name check” program to include not only its “main files” but also “references.” Canon Dec. ¶ 17.

59. On information and belief, the FBI name check (not the fingerprint or IBIS review) is the primary cause for delaying the adjudication of applications beyond the 120-day time period mandated by regulation.

60. On information and belief, the FBI name check has rarely, if ever, revealed significant information that was not revealed in the FBI fingerprint or IBIS checks concerning an applicant’s eligibility for naturalization. *See generally* Dorochoff Dec. ¶ 15 (listing only two examples of “derogatory information” revealed through the background check process in the context of naturalization applications, but not indicating which particular background check – fingerprints, IBIS, or name check – revealed the information).

Additional Information Concerning the Scope of the Problem, and “Expedited” Requests for Name Check Review

61. Additional analysis of the data supplied in response to the FOIA confirms that a total of at least 2,301 naturalization applications took more than 720 days to adjudicate after the interview date in the Seventh Circuit. There were 1,706 such cases in Illinois, 191 in Indiana, and 404 in Wisconsin.

62. While no discovery was permitted in this case, the court in the *Yakubova* putative class action has allowed discovery to proceed. Some of the documents produced by the Government in the *Yakubova* class action have been made available to counsel in other putative

class actions. The Government has asserted that certain other documents are confidential and those documents have not been made available for review by counsel in this case.

63. Among the documents produced by the Government is an unsigned “Interagency Agreement for Services Submission of Federal Non-Criminal Justice Applicant Fingerprint Requests/Name Checks/Background Investigation” (YAKUB007305-7317, attached as Exhibit 1). Among other things, the Interagency Agreement indicates that the FBI “will process the applicant fingerprint request/name checks and advise [USCIS] of the results of the fingerprint requests/name checks.”

64. Also according to the Interagency Agreement there is a provision for requesting expedited review, the FBI charges USCIS \$22.35 to expedite a name check request. This means, for example, that the 2,301 naturalization applicants who have been waiting more than 2 years to have their application adjudicated could be processed on an expedited basis at a total cost of approximately \$51,427.

65. The non-confidential documents produced by the Government in the *Yakubova* case demonstrate that the FBI has the capacity to process tens of thousands of requests to expedite name check reviews each year. In recent years, the FBI has processed at least 85,000 and as many as 185,000 requests to expedite name check reviews.

66. Currently, only a small percentage of the expedite requests come from USCIS (See YAKUB009931-32, attached as Exhibit 2). In Fiscal Year 2003, the NNCP received 185,344 expedite requests, 2,605 of which were from USCIS. In Fiscal Year 2004, the NNCP received 135,295 expedite requests, 3,507 of which were from USCIS. In Fiscal Year 2005, the NNCP received 118,679 expedite requests, 2,693 of which were from USCIS. In Fiscal Year 2006, the NNCP received 87,655 expedite requests, 722 of which were from USCIS.

67. Documents produced by the Government in the *Yakubova* case also confirm that the FBI has the capability of dramatically reducing the number of pending Name Check requests. In Fiscal Year 2006, the FBI reduced the number of pending name check requests for “All Other” customers by over 400,000 names. That category started the year with 445,165 pending requests, which the FBI had reduced to 28,311 by the end of the year. (See YAKUB009932).

Causes of Action

Count I (Class Wide Allegation)

Violation of the Administrative Procedure Act Against All Defendants

68. Plaintiffs reassert and reallege the allegations of paragraphs 1-67 as if set forth fully here.

69. The Defendants are legally required to adjudicate all naturalization applications within “a reasonable time” as set forth in section 555(b) of the Administrative Procedure Act (“APA”). 5 U.S.C. § 555(b).

70. Based on Public Law No. 105-119, the Interagency Agreement between the FBI and USCIS, and law cited therein, the FBI has a duty to process fingerprint checks and name checks when requested by USCIS, which process must be completed in “a reasonable time.”

71. Delays in the processing of fingerprint and name checks such as those experienced by the plaintiffs are not reasonable.

72. When an agency fails to conclude a matter presented to it with a reasonable time, the APA grants judicial review to “compel agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. § 706(1).

73. Defendants have a pattern and practice of failing to adjudicate naturalizations within a reasonable period of time, which practice should be corrected.

74. As alternative relief to correcting delays, Defendants should be ordered to make the expedition policy open to applicants whose naturalization applications have not been adjudicated in a reasonable period of time, either at no cost to the applicant or, in the alternative, by allowing the applicant to pay the same fee charged by the FBI pursuant to the Interagency Agreement.

Count II: (Class-wide Allegation)

Mandamus / Request for Adjudication by Immigration Defendants

75. Plaintiffs reassert and reallege paragraphs 1 to 67 as if set forth fully here.

76. The Immigration Agency Defendants – DHS, USCIS, Dorochoff, and Chertoff – owe Plaintiffs the duty to act upon their applications in a timely manner. Plaintiffs have a right to have their applications adjudicated in a timely manner.

77. The Immigration Agency Defendants are violating their duty by failing to adjudicate the application in a timely manner, by (a) refusing to make any decision on cases relating to the Plaintiff Class until background checks are completed, (b) failing to obtain a timely response from the FBI and other federal agencies regarding the background check; (c) failing to communicate with the FBI and/or other federal agencies regarding long-delayed background checks; (d) refusing to consider other alternatives, such as approving the case subject to rescission if the claims of the Plaintiff Class regarding the lack of criminal history are not borne out by the background checks, or offering approval conditioned on applicants' agreement

to waive objections to denaturalization if the background checks cause the Government to wish to examine the applicants further.

78. Plaintiffs have already exhausted all available administrative remedies.

Count III: (Class-wide Allegation)

Mandamus / Request for Completion of Background Checks

79. Plaintiffs reassert and reallege paragraphs 1 to 67 as if set forth fully here.

80. The FBI Defendants – Mueller and the FBI – owe Plaintiffs the duty to complete their background checks in a timely manner. Plaintiffs’ right to have their applications adjudicated in a timely manner encompasses the right to have their background checks completed in a timely manner as well.

81. Based on Public Law No. 105-119, the Interagency Agreement between the FBI and USCIS (and law cited therein), the FBI has a duty to process fingerprint checks and name checks when requested by USCIS.

82. The FBI Defendants are violating their duty by failing to complete their background checks in a timely manner, by (a) refusing to effectively permit expedited handling of background checks which are long-delayed, (b) failing to institute a system which would permit timely completion of these background checks; (c) engaging in unnecessary extra checks by examining files unrelated to the plaintiff class; (d) refusing to give any partial response to the Immigration Agency requestors.

83. Plaintiffs have already exhausted all available administrative remedies.

84. As alternative relief to correcting delays, Defendants should be ordered to make the expedition policy open to applicants whose naturalization applications have not been

adjudicated in a reasonable period of time, either at no cost to the applicant or, in the alternative, by allowing the applicant to pay the same fee charged by the FBI pursuant to the Interagency Agreement.

Count IV: (Class-wide Allegation)

Administrative Procedures Act (Notice and Comment)

85. Plaintiffs reassert and reallege paragraphs 1 to 67 as if set forth fully here.

86. The Immigration Agency Defendants – DHS, USCIS, Dorochoff, and Chertoff – were legally required to follow specified procedures before enacting new rules, pursuant to the Administrative Procedure Act (“APA”).

87. The USCIS (then the Immigration and Naturalization Service (“INS”) enacted an internal rule which required “FBI name checks” to be made, in addition to the other background checks performed on Naturalization applicants.

88. USCIS has never given the public the opportunity to comment upon this rule.

89. In light of the fact that the FBI name check is primarily responsible for a substantial backlog in the processing of naturalization applications, it is reasonably possible that there would be substantial public comment regarding the adoption of the additional check. Such comments might well suggest reasonable alternatives to the check, or limitations to be placed upon its use in this context.

90. Because the internal agency rule requiring completion of an FBI name check was enacted without public notice and without the opportunity for the public to comment on the rule, it violates the APA.

91. It is therefore the Court's obligation to enjoin the enforcement of the internal rule requiring completion of FBI background checks prior to adjudication of naturalization applications.

Count V: (Class-wide Allegation)

Equal Protection Violation

92. Plaintiffs reassert and reallege paragraphs 1 to 67 as if set forth fully here.

93. Failing to adjudicate the naturalization applications of Plaintiffs in a timely manner as compared to other similarly situated applicants is a violation of the Equal Protection Clause of the Fourteenth Amendment. See U.S. Const. Amends. V and XIV.

94. To the extent the failure to adjudicate the naturalization applications of Plaintiffs in a timely manner is attributable to the "name check" program, the "name check" program is not reasonably related to a legitimate government interest.

Count VI (Individual Claims): Naturalization Order Pursuant to 8 U.S.C. § 1447(b)

95. Named Plaintiffs, in their individual capacities, reassert and reallege paragraphs 1 to 67 as if set forth fully here.

96. Pursuant to 8 U.S.C. § 1447(b), each of the Named Plaintiffs seeks a determination by this Court that he meets the requirements for naturalization and is to be naturalized as a U.S. citizen without further delay.

97. Plaintiffs YAN BASHKIN, GAFAAR DAFALLA, NADEEM FAZAL, BORIS GOLDFARB, MOHAMMED KHAN, SOBIA KHAN, LARISA KHANINAYEVA, VLADIMIR KHLYSTOV, DORA REZNIK, ILYA SEREBRENNIKOV, YELENA

SEREBRENNIKOVA, and ISMAIL SULEIMAN should have their applications adjudicated as soon as practicable.

Prayer for Relief

Wherefore, plaintiffs seek the following relief:

- A. An order setting an immediate date for naturalization of the individual plaintiffs;
- B. The actual naturalization of the plaintiffs by this Court;
- C. Entry of judgment in favor of the plaintiffs and against the defendants, finding that the defendants procedures for conducting background checks are unreasonable, in violation of 5 U.S.C. § 555(b);
- D. An order directing the defendants to abide by the dictates of 8 U.S.C. § 1422;
- E. An award of damages in an amount to be determined;
- F. An order enjoining the enforcement of the Agency's internal rule requiring completion of FBI name checks prior to adjudication of naturalization applications;
- G. An order requiring adjudication of all naturalization applications within 120 days of the initial examination;
- H. In the alternative, an order permitting naturalization applicants to request that the FBI expedite his or her name check (at no cost to the applicant or, in the alternative, at the same cost to the applicant that the FBI charges USCIS to expedite a name check review);

- I. An order directing that the name check for all naturalization applicants in the Seventh Circuit whose applications have not been adjudicated within two years of the applicant's interview be expedited.
- J. An award of costs, as provided by 28 U.S.C.S. § 2412(a)(1);
- K. An award of attorneys fees, as provided by 28 U.S.C.S. § 2412(d)(1), or 42 U.S.C. § 1988; or 5 U.S.C. § (a)(4)(E); and
- L. Such other relief as the Court deems just.

Jury Demand

Plaintiffs demand a jury as to all matters subject to resolution by a jury.

November 13, 2007

Respectfully submitted,

By: s/David Berten

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Certificate of Service

I certify that in accordance with Rule 5 of the Federal Rules of Civil Procedure and Local Rule 5.5 and the General Order on Electronic Case Filing (ECF), the following document:

Fourth Amended Complaint

was served using the district court's ECF system on November 13, 2007 to the following ECF filers:

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s/ David Berten

David Berten