

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MIKHAIL IGNATYEV, et al.,
Plaintiffs,

Civil Action No. 08-1547

v.

MICHAEL CHERTOFF, et al.,
Defendants.

ANSWER TO PLAINTIFFS' SECOND AMENDED COMPLAINT

Defendants respectfully submit this answer to plaintiffs' Second Amended Class Action Complaint as follows:

1. The allegations in paragraph 1¹ are plaintiffs' characterizations of their claims, including the relief sought, to which no response is required.
2. The allegations in paragraph 2 are plaintiffs' characterizations of their claims, including the relief sought, to which no response is required.
3. Defendants admit that Jonathan Scharfen is the Acting Director of U.S. Citizenship and Immigration Services (USCIS), that Karen Fitzgerald is the District Director of the USCIS Philadelphia District Office, that Robert S. Mueller is the Director of the Federal Bureau of Investigation (FBI), and that Michael Mukasey is the Attorney General of the United States. Defendants further admit that USCIS is the agency charged with adjudicating applications for naturalization, and that the FBI is the agency charged with conducting the

¹ This answer, when referencing a paragraph number, such as "paragraph 1," refers to a section of plaintiffs' Second Amended Class Action Complaint that begins with a numbered paragraph.

FBI name check and other background checks. Defendants object to the characterization of their actions. Defendants otherwise deny the allegations in paragraph 3.

4. Defendants admit that in 2002 USCIS altered the process by which name checks are conducted on applications for naturalization. Defendants deny that this “drastically altered the naturalization procedure.” Defendants admit that the name check procedures have contributed to back logs of naturalization applications in the past. Plaintiff’s assertion that the FBI name check is “not required by either statute or regulation” is a conclusion of law to which no response is required. Defendants object to the characterization of their actions and Defendants otherwise deny the allegations in paragraph 4.
5. Defendants object to the characterization of their actions and Defendants otherwise deny the allegations in paragraph 5.
6. Defendants admit the allegation in the second sentence of paragraph 6 that plaintiffs “cannot vote, serve on juries, expeditiously sponsor their immediate relatives living abroad for permanent residence, receive business and education loans and other benefits reserved for citizens, participate in the Visa Waiver Program[.]” Defendants deny that plaintiffs cannot travel abroad “without fear of exclusion from this country.” Defendants object to the characterization of their actions and Defendants otherwise deny the allegations in paragraph 6.
7. The allegations in paragraph 7 contain plaintiffs’ characterization of the nature of this action as to which no response is required.

8. The allegations in paragraph 8 contain plaintiff's legal conclusions and jurisdiction allegations as to which no response is required. To the extent a response may be deemed to be required, defendants deny.
9. The allegations in paragraph 9 contain plaintiff's legal conclusions and venue allegations as to which no response is required. To the extent a response may be deemed to be required, defendants deny for lack of knowledge or information sufficient to form a belief as to the truth of the matter asserted.
10. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 10 and thus deny.
11. Admit.
12. Admit.
13. Admit.
14. Defendants admit that Jonathan Scharfen is the Acting Director of USCIS.
15. Defendants admit that Karen Fitzgerald is the District Director of the USCIS
16. Paragraph 16 contains statements of law to which no response is required.
17. Paragraph 17 contains statements of law to which no response is required.
18. Defendants admit that USCIS generally performs initial processing of applications in chronological order as they are received. The remaining assertions in paragraph 18 are denied.
19. Paragraph 19 contains statements and conclusions of law to which no response is required.
20. Paragraph 20 contains statements and conclusions of law to which no response is required.
21. Paragraph 21 contains statements and conclusions of law to which no response is required.

22. Defendants admit the allegation in the last sentence of paragraph 22 that “criminal background checks are usually completed within days if not hours.” Otherwise, paragraph 22 contains statements and conclusions of law to which no response is required, and to the extent that a response is deemed required, Defendants deny.
23. Defendants admit the allegation in the second sentence of paragraph 23 that at this time USCIS requires a check against IBIS and an FBI name check. Plaintiffs’ assertion that “8 C.F.R. Sec. 335.2(b) defines the ‘criminal background check’ to include only a fingerprint records check” is a conclusion of law to which no response is required. Defendants otherwise deny the allegations in paragraph 23.
24. Paragraph 24 contains statements and conclusions of law to which no response is required.
25. Paragraph 25 contains statements and conclusions of law to which no response is required. To the extent a response may be deemed to be required, Defendants deny.
26. Admit.
27. Paragraph 27 contains statements and conclusions of law to which no response is required.
28. Paragraph 28 contains statements and conclusions of law to which no response is required.
29. Paragraph 29 contains statements and conclusions of law to which no response is required. To the extent a response may be deemed to be required, Defendants deny.
30. Admit.
31. Defendants admit that in 2002, the INS and FBI expanded the scope of the FBI name check.
32. Paragraph 32 contains statements and conclusions of law to which no response is required. To the extent a response may be deemed to be required, Defendants deny.

33. Admit.
34. The last sentence of paragraph 34 contains statements and conclusions of law to which no response is required. Otherwise, Defendants deny.
35. Admit.
36. Defendants admit that FBI name checks are required to adjudicate favorably an application for naturalization. Otherwise, Defendants deny.
37. Defendants admit that USCIS and the FBI have entered into written agreements regarding aspects of FBI name checks. Otherwise, Defendants deny.
38. Admit.
39. Defendants deny the allegation in the last sentence of paragraph 39 that USCIS's policy "thwarts" Congressional intent and that applications have been "unreasonably delayed." Defendants further deny that a purpose of the policy change was to preclude litigation. Defendants object to the characterization of their actions. Otherwise, Defendants admit.
40. Defendants deny the allegation in the first sentence of paragraph 40 that "FBI name checks are now the cause of systemic, prolonged delays in the processing of applications[.]" The remaining allegations in paragraph 40 are Plaintiff's characterizations of the Ombudsman Annual Report 2006, which speaks for itself. Defendants object to the characterization of their actions.
41. The allegations in paragraph 41 are Plaintiff's characterizations of the Ombudsman Annual Report 2007, which speaks for itself.
42. The allegations in paragraph 42 are Plaintiff's characterizations of the Ombudsman Annual Report 2007, which speaks for itself.

43. The allegations in paragraph 43 are Plaintiff's characterizations of the Ombudsman Annual Report 2007, which speaks for itself.
44. The allegations in the first sentence of paragraph 44 are Plaintiff's characterizations of the Ombudsman Annual Report 2007, which speaks for itself. Defendants object to the characterization of their actions. Defendants deny the remaining allegations.
45. Defendants admit that Mr. Ignatyev arrived in the United States in April of 1999. Otherwise, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 45 and thus deny.
46. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 46 and thus deny.
47. Defendants deny that Mr. Ignatyev was issued a "priority date." Defendants otherwise admit.
48. Admit.
49. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 49 and thus deny.
50. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in the first and second sentences of paragraph 50 and thus deny. Defendants admit the allegation in the third sentence of paragraph 50 that Mr. Ignatyev waited to be scheduled for an interview in connection with his naturalization application for almost two years. Otherwise, Defendants deny.

51. Plaintiffs' assertion that Mr. Ignatyev has been "prejudiced" is a conclusion of law to which no response is required. Otherwise, Defendants lack sufficient information and knowledge to form a belief as to the truth of the matter asserted and thus deny.
52. Admit.
53. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 53 and thus deny.
54. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 54 and thus deny.
55. Defendants admit that Ms. Melnick's interview was scheduled for May 22, 2006. Otherwise, Defendants deny.
56. Plaintiffs' assertion that Ms. Melnick has been "prejudiced" is a conclusion of law to which no response is required. Otherwise, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 56 and thus deny.
57. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 57 and thus deny.
58. Defendants admit that Mr. Abdelwahab's interview was scheduled for April 12, 2006. Otherwise, Defendants admit.
59. Deny.
60. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 60 and thus deny.
61. Plaintiffs' assertion that Mr. Abdelwahab has been "prejudiced" is a conclusion of law to which no response is required. Otherwise, Defendants are without knowledge or

information sufficient to form a belief as to the truth of the allegations in paragraph 61 and thus deny.

62. Defendants admit that Mr. Koikoi's interview was scheduled for February 24, 2006.

Otherwise, Defendants admit.

63. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 63 and thus deny.

64. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 64 and thus deny.

65. Plaintiffs' assertion that Mr. Koikoi has been "prejudiced" is a conclusion of law to which no response is required. Otherwise, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 65 and thus deny.

66. Admit.

67. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 67 and thus deny.

68. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 68 and thus deny.

69. Plaintiffs' assertion that Mr. Ali has been "prejudiced" is a conclusion of law to which no response is required. Otherwise, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 69 and thus deny.

70. Defendants admit that Mr. Belaguid filed for naturalization on February 26, 2006.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 70 and thus deny.

71. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 71 and thus deny.
72. Plaintiffs' assertion that Mr. Belaguid has been "prejudiced" is a conclusion of law to which no response is required. Otherwise, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 72 and thus deny.
73. Defendants deny that Mr. Baig's application remains pending. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 73 and thus deny.
74. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 74 and thus deny.
75. Plaintiffs' assertion that Mr. Baig has been "prejudiced" is a conclusion of law to which no response is required. Otherwise, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 75 and thus deny.
76. Defendants deny that Mr. and Mrs. Baig's applications remain pending. Defendants admit the remaining allegations in paragraph 76.
77. Plaintiffs' assertion that Mr. and Mrs. Baig have been "prejudiced" is a conclusion of law to which no response is required. Otherwise, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations and thus deny.
78. Admit.
79. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 79 and thus deny.

80. Defendants admit that Mr. Adel applied for naturalization, but deny that Mr. Adel was assigned a "priority date" of April 19, 2007.
81. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 81 and thus deny.
82. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 82 and thus deny.
83. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegation that Ms. Hope maintained lawful permanent resident status and thus deny. Otherwise, Defendants admit.
84. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 84 and thus deny.
85. Admit.
86. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 86 and thus deny.
87. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 87 and thus deny.
88. Admit.
89. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 89 and thus deny.
90. Defendants admit that Ms. Cruz filed an application for naturalization, but deny she was issued a "priority date" of December 21, 2006. Defendants are without sufficient

information to form a belief as to the truth of the remaining allegations in paragraph 90 and thus deny.

91. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 91 and thus deny.
92. The allegations in paragraph 92 are Plaintiff's conclusions of law and therefore require no response. To the extent a response may be deemed to be required, defendants deny.
93. Deny.
94. Deny.
95. The allegations in paragraph 95 are conclusions of law to which no response is required. To the extent a response may be deemed to be required, defendants deny.
96. The allegations in paragraph 96 are conclusions of law to which no response is required. To the extent a response may be deemed to be required, defendants deny.
97. The allegations in paragraph 97 are conclusions of law to which no response is required. To the extent a response may be deemed to be required, defendants deny.
98. The allegations in paragraph 98 are conclusions of law to which no response is required. To the extent a response may be deemed to be required, defendants deny.
99. The allegations in paragraph 99 are conclusions of law to which no response is required. To the extent a response may be deemed to be required, defendants deny.
100. The allegations in paragraph 100 are plaintiffs' characterizations of their claims, including their proposed class, to which no response is required. To the extent a response may be deemed to be required, defendants deny.

101. The allegations in paragraph 101 are legal conclusions, to which no response is required.

To the extent a response may be deemed to be required, defendants deny.

102. The allegations in paragraph 102 are legal conclusions, to which no response is required.

To the extent a response may be deemed to be required, defendants deny.

103. The allegations in paragraph 103 are legal conclusions, to which no response is required.

To the extent a response may be deemed to be required, defendants deny.

104. The allegations in paragraph 104 are legal conclusions, to which no response is required.

To the extent a response may be deemed to be required, defendants deny.

105. The allegations in paragraph 105 are legal conclusions, to which no response is required.

To the extent a response may be deemed to be required, defendants deny.

106. The allegations in paragraph 106 are legal conclusions, to which no response is required.

To the extent a response may be deemed to be required, defendants deny.

107. Defendants reassert the foregoing responses.

108. The allegations in paragraph 108 are statements of law and legal conclusions, to which no response is required.

109. The allegations in paragraph 109 are statements of law and legal conclusions, to which no response is required. To the extent a response may be deemed to be required, defendants deny.

110. The allegations in paragraph 110 are statements of law and legal conclusions, to which no response is required. To the extent a response may be deemed to be required, defendants deny.

111. The allegations in paragraph 111 are statements of law and legal conclusions, to which no response is required. To the extent a response may be deemed to be required, defendants deny.
112. Defendants reassert the foregoing responses.
113. The allegations in paragraph 113 are statements of law and legal conclusions to which no response is required.
114. Deny.
115. Defendants admit that FBI name checks are required to adjudicate favorably an application for naturalization. Defendants otherwise deny the allegations in paragraph 115.
116. Defendants reassert the foregoing responses.
117. The allegations in paragraph 117 are statements of law and legal conclusions to which no response is required.
118. The allegations in paragraph 118 are statements of law and legal conclusions, to which no response is required. To the extent a response may be deemed to be required, defendants deny.
119. Deny.
120. The allegations in paragraph 120 are statements of law and legal conclusions, to which no response is required. To the extent a response may be deemed to be required, defendants deny.
121. The allegations in paragraph 121 are statements of law and legal conclusions, to which no response is required. To the extent a response may be deemed to be required, defendants deny.

122. Defendants reassert the foregoing responses.
123. The allegations in paragraph 123 are statements of law and legal conclusions, to which no response is required. To the extent a response may be deemed to be required, defendants deny.
124. The allegations in paragraph 124 are statements of law and legal conclusions, to which no response is required.
125. The allegations in paragraph 125 are statements of law and legal conclusions, to which no response is required. To the extent a response may be deemed to be required, defendants deny.
126. The allegations in paragraph 126 are statements of law and legal conclusions, to which no response is required. To the extent a response may be deemed to be required, defendants deny.

Defendants deny that plaintiffs are entitled to a judgment for any of the relief requested in their "PRAYER FOR RELIEF."

In addition, defendants assert the following affirmative defenses:

FIRST AFFIRMATIVE DEFENSE

1. The Complaint fails to state a claim upon which relief can be granted pursuant to the APA.
2. Relief should be denied plaintiffs as an exercise of judicial discretion to withhold relief.
3. The Court lacks subject matter jurisdiction.

4. Defendants reserve the right to amend this answer to state additional affirmative or other defenses as may become known.

WHEREFORE, defendants respectfully request that the plaintiffs' complaint be dismissed and further relief as the Court may deem just and proper.

Respectfully submitted,

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Dated: November 14, 2008

s/ Kathryn L. Moore
KATHRYN L. MOORE

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that on November 14, 2008, this MOTION TO DISMISS was served pursuant to the district court's ECF system in accordance with Local Civil Rule 5.1.2 as to the following ECF filers:

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