

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ROSHANAK ROSHANDEL; VAFA
GHIAZI-MOGHADDAM; HAWO
AHMED; and LIN HUANG, individually
and on behalf of all others similarly situated,

Plaintiffs,

v.

MICHAEL CHERTOFF, Secretary, United
States Department of Homeland Security;
EMILIO GONZALEZ, Director, United
States Citizenship and Immigration
Services; ANN CORSANO, Director,
District 20, United States Citizenship and
Immigration Services; JULIA HARRISON,
Director, Seattle Field Office, United States
Citizenship and Immigration Services;
PETER KEISLER, Acting Attorney
General, United States Department of
Justice; ROBERT MUELLER III, Director,
Federal Bureau of Investigation; and the
UNITED STATES OF AMERICA.

Defendants.

Case No.

C 07 - 1739

COMPLAINT - CLASS ACTION



07-CV-01739-CMP

For their complaint against Defendants, Plaintiffs Roshanak Roshandel, Vafa Ghazi-Moghaddam, Hawo Ahmed, and Lin Huang, individually and on behalf of all others similarly situated, hereby allege as follows by and through their undersigned attorneys of record:

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ORIGINAL

I. PRELIMINARY STATEMENT

1. Plaintiffs are lawful permanent residents of the United States, each of whom has applied to be naturalized as a United States citizen. Each seeks to pledge allegiance to the United States and to participate fully in civic society.

2. By law, the United States Citizenship and Immigration Services ("CIS") must render a decision on a naturalization application within 120 days of the applicant's naturalization examination and must grant the application when, as here, the applicant has met all legal requirements for naturalization. 8 C.F.R. § 335.3(a); *see* 8 U.S.C. § 1447(b). Defendants have nevertheless unlawfully and unreasonably delayed rendering a decision on Plaintiffs' naturalization applications on the ground that a so-called "name check"—a requirement found nowhere in the statutes or regulations governing naturalization—remains pending:

- Plaintiff Roshanak Roshandel has been a lawful permanent resident of the United States since May 12, 2001. Dr. Roshandel applied for naturalization on March 16, 2004. Defendants scheduled Dr. Roshandel for her naturalization examination on July 22, 2004. She passed the naturalization examination and has fulfilled all legal requirements for naturalization. Yet, due to Defendants' unlawful conduct, her application has been pending for more than three years since she passed her naturalization examination.
- Plaintiff Vafa Ghazi-Moghaddam has been a lawful permanent resident of the United States since June 10, 1999. Dr. Ghazi-Moghaddam applied for naturalization on March 15, 2004. Defendants scheduled Dr. Ghazi-Moghaddam for his naturalization examination on October 25, 2004. He passed the naturalization examination and has fulfilled all legal requirements for naturalization. Yet, due to Defendants' unlawful conduct, his application has been pending for nearly three years since he passed his naturalization examination.

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1 • Plaintiff Hawo Ahmed has been a lawful permanent resident of the United States
2 since March 15, 2000. Ms. Ahmed applied for naturalization on July 25, 2005.
3 Defendants scheduled Ms. Ahmed for her naturalization examination on
4 November 17, 2005. She passed the naturalization examination and has fulfilled
5 all legal requirements for naturalization. Yet, due to Defendants' unlawful
6 conduct, her application has been pending for nearly two years since she passed
7 her naturalization examination.

8 • Plaintiff Lin Huang has been a lawful permanent resident of the United States
9 since December 29, 1996. Ms. Huang applied for naturalization on March 22,
10 2005. Defendants scheduled Ms. Huang for her naturalization examination on
11 September 20, 2005. She passed the naturalization examination and has fulfilled
12 all legal requirements for naturalization. Yet, due to Defendants' unlawful
13 conduct, her application has been pending for more than two years since she
14 passed her naturalization examination.

15 3. Defendants' unlawful conduct has deprived Plaintiffs of the privileges of United
16 States citizenship and has prevented them from fully participating in civic society. Though they
17 wish to, Plaintiffs cannot vote or serve on juries. Nor can they travel abroad without fear of
18 being excluded from the United States. Plaintiffs' experiences are typical of tens of thousands of
19 other naturalization applicants throughout the country who have suffered unreasonable and
20 unlawful delays in the naturalization process due to pending name checks.

21 4. In addition, Defendants failed to inform Plaintiffs Roshandel and Ghazi-
22 Moghaddam at their naturalization examinations of their right to request a hearing in district
23 court in the event Defendants failed to timely render a decision on their applications, as required
24 by statute. *See* 8 U.S.C. § 1446(b).

25 5. Plaintiffs respectfully request, individually and on behalf of all others similarly
26 situated, that this Court certify the proposed plaintiff classes, enter judgment in favor of the

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1 proposed plaintiff class and against Defendants on all claims, and grant the relief requested
 2 herein, including without limitation directing Defendants to complete the class members' name
 3 checks and adjudicate their naturalization applications within 90 days.

4 II. JURISDICTION AND VENUE

5 6. This Court has subject matter jurisdiction pursuant to 8 U.S.C. § 1447(b) (district
 6 court has exclusive jurisdiction over naturalization applications that have not been granted within
 7 statutory 120-day period), 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 2201 (Declaratory
 8 Judgment Act), 28 U.S.C. § 1361 (mandamus), 5 U.S.C. § 702 (Administrative Procedure Act),
 9 and 28 U.S.C. § 1651 (All Writs Act).

10 7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) (action against
 11 officers of United States may be brought in any district where "plaintiff resides") and 8 U.S.C.
 12 § 1447(b) (action shall be brought in judicial district where naturalization applicant resides)
 13 because all Plaintiffs and proposed class members reside in the Western District of Washington.

14 III. PARTIES

15 A. Named Plaintiffs

16 *Roshanak Roshandel*

17 8. Plaintiff Roshanak Roshandel is a citizen of Iran. Dr. Roshandel came to the
 18 United States on a student visa in 1999 and earned her undergraduate, masters, and doctoral
 19 degrees in this country. She is an assistant professor in the Department of Computer Science and
 20 Software Engineering at Seattle University.

21 9. Dr. Roshandel has been a lawful permanent resident of the United States since
 22 May 12, 2001. She lives in Bellevue, Washington. Her spouse is a naturalized United States
 23 citizen and their daughter, who was born in the United States, is also a United States citizen. Her
 24 parents, brother, and in-laws are naturalized United States citizens or lawful residents of the
 25 United States.

1 10. Dr. Roshandel applied for naturalization on March 16, 2004, has fulfilled all legal
2 requirements for naturalization, and passed her naturalization examination on July 22, 2004.
3 Though more than 120 days have elapsed since her naturalization examination, Dr. Roshandel's
4 naturalization application remains pending. She was not informed of the remedies available
5 under 8 U.S.C. § 1447(b) at the time of her naturalization examination.

6 11. Dr. Roshandel has inquired as to the status of her naturalization application on
7 numerous occasions. She has written to, called, and emailed CIS and appeared in person at local
8 CIS offices; she has written to the Federal Bureau of Investigation ("FBI"); and she has written
9 to members of Congress; she has written to First Lady Laura Bush. Each time she has inquired
10 into the status of her naturalization application, she has been told that a name check remains
11 pending.

12 12. Dr. Roshandel wants to become a United States citizen so that she will no longer
13 fear being excluded from the country she has made her home, so that she will have the same
14 citizenship status as her spouse and daughter, and so that she can participate fully in civic life,
15 including voting and serving on juries. Dr. Roshandel applied for naturalization well before the
16 2004 presidential election in the hope that she could begin participating in national elections, and
17 hopes her voice will be heard in the 2008 presidential election.

18 ***Vafa Ghazi-Moghaddam***

19 13. Plaintiff Vafa Ghazi-Moghaddam is a citizen of Iran. Dr. Ghazi-Moghaddam
20 came to the United States on a student visa in 1991 to pursue a doctoral degree at the University
21 of Minnesota. He works as an electrical engineer for a California software company developing
22 wireless technologies.

23 14. Dr. Ghazi-Moghaddam has been a lawful permanent resident of the United States
24 since June 10, 1999. He lives in Seattle, Washington.

25 15. Dr. Ghazi-Moghaddam applied for naturalization on March 15, 2004, has met all
26 legal requirements to be naturalized as a United States citizen, and passed his naturalization

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1 examination on October 25, 2004. Though more than 120 days have elapsed since his
2 naturalization examination, Dr. Ghazi's naturalization application remains pending. He was not
3 informed of the remedies available under 8 U.S.C. § 1447(b) at the time of his naturalization
4 examination.

5 16. Dr. Ghazi-Moghaddam has inquired into the status of his naturalization
6 application on numerous occasions by calling CIS and appearing in person at local CIS offices
7 and by writing to members of Congress. Each time he has inquired into the status of his
8 naturalization application, he has been told that a name check remains pending.

9 17. Dr. Ghazi-Moghaddam travels for work and pleasure, and has experienced
10 increased scrutiny and delay while traveling on an Iranian passport. He is interested in American
11 politics and is frustrated by his ineligibility to vote. He wants to become a United States citizen
12 so that he will no longer fear exclusion from the country he has made his home and so that he
13 can participate fully in civic society.

14 ***Hawo Ahmed***

15 18. Plaintiff Hawo Ahmed is a citizen of Somalia. Ms. Ahmed came to the United
16 States as a refugee in 2000 at age 14, along with her mother and sisters. Her status was later
17 adjusted to lawful permanent resident retroactive to March 15, 2000.

18 19. Ms. Ahmed resides in Seatac, Washington, and is studying education at Highline
19 Community College. Her mother and sisters are all naturalized citizens of the United States.

20 20. Ms. Ahmed applied for naturalization on July 25, 2005, has met all legal
21 requirements to be naturalized as a United States citizen, and passed her naturalization
22 examination on November 17, 2005. Though more than 120 days have elapsed since her
23 naturalization examination, Ms. Ahmed's naturalization application remains pending. Many of
24 Ms. Ahmed's family members passed their naturalization examinations at approximately the
25 same time as Ms. Ahmed and were promptly naturalized, but Ms. Ahmed still awaits a decision
26 on her application.

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21. Ms. Ahmed has inquired as to the status of her naturalization application by calling CIS and appearing in person at local CIS offices approximately every other month, and contacting the United States Department of Homeland Security. Each time she has inquired into the status of her naturalization application, she has been told that a name check remains pending.

22. Ms. Ahmed wants to become a United States citizen so that she can fully participate in civic society; so that she can vote, especially with respect to matters affecting education; and so that she can enjoy all benefits of United States citizenship along with the rest of her naturalized family.

Lin Huang

23. Plaintiff Lin Huang is a citizen of China. Ms. Huang came to the United States as a conditional lawful permanent resident based on the visa petition her husband—a naturalized United States Citizen—filed on her behalf. Thereafter, she and her husband successfully petitioned to remove the conditions of her lawful residency. Ms. Huang has been a lawful permanent resident of the United States since December 29, 1996.

24. Ms. Huang resides in Renton, Washington with her husband and their two children. Her spouse is a naturalized United States citizen, and her two children, who were born in the United States, are also United States citizens.

25. Ms. Huang applied for naturalization on March 22, 2005, has fulfilled all legal requirements for naturalization, and passed her naturalization examination on September 20, 2005. Though more than 120 days have elapsed since her naturalization examination, Ms. Huang's naturalization application remains pending.

26. Ms. Huang has inquired as to the status of her naturalization application by writing to CIS and appearing in person at local CIS offices. Each time she has inquired into the status of her naturalization application, she has been told that a name check remains pending.

1 27. Ms. Huang wants to become a United States citizen so that she can fully
2 participate in civic society, so that she can vote, and so that she can enjoy all benefits of United
3 States citizenship along with the rest of her immediate family.

4 **B. Defendants**

5 28. Defendant Michael Chertoff is the Secretary of the United States Department of
6 Homeland Security. Mr. Chertoff is ultimately responsible for administering immigration and
7 naturalization laws and regulations, including the laws and regulations governing the
8 naturalization process. He is sued in his official capacity.

9 29. Defendant Emilio Gonzalez is the Director of CIS. Mr. Gonzalez is responsible
10 for processing and determining applications for naturalization in accordance with the laws and
11 lawfully promulgated regulations of the United States. He is sued in his official capacity.

12 30. Defendant Ann Corsano is the Director of District 20 of CIS. Ms. Corsano is
13 responsible for processing and determining naturalization applications in accordance with the
14 laws and lawfully promulgated regulations of the United States for all applicants residing in
15 District 20, which includes all applicants residing in the Western District of Washington. She is
16 sued in her official capacity.

17 31. Defendant Julia Harrison is the Director of the Seattle Field Office of CIS. Ms.
18 Harrison is responsible for processing and determining naturalization applications in accordance
19 with the laws and lawfully promulgated regulations of the United States for all applicants
20 residing within the Seattle Field Office's jurisdiction. She is sued in her official capacity.

21 32. Defendant Peter Keisler is the Acting Attorney General of the United States
22 Department of Justice. Mr. Keisler is ultimately responsible for the operations of the FBI,
23 including the processing of "name checks" conducted by the FBI at the behest of CIS as part of
24 the naturalization process. He is sued in his official capacity.

33. Defendant Robert Mueller III is the Director of the FBI. Mr. Mueller is responsible for the processing of "name checks" conducted by the FBI at the behest of CIS as part of the naturalization process. He is sued in his official capacity.

34. Defendant the United States of America includes all government agencies and departments responsible for implementing the Immigration and Nationality Act and conducting "name checks" at the behest of CIS as part of the naturalization process.

IV. FACTS

A. The Naturalization Process

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

36. A person seeking naturalization must meet certain requirements, including an understanding of the English language and the history of the United States, a sufficient period of physical presence in the United States, and good moral character. *See* 8 U.S.C. §§ 1423, 1427(a). Persons seeking naturalization must submit an application to CIS, the agency responsible for adjudicating naturalization applications. *See* 8 U.S.C. § 1445; 8 C.F.R. § 100.2.

37. Once an application is submitted, CIS conducts an investigation of each naturalization applicant. *See* 8 U.S.C. § 1446(a); 8 C.F.R. § 335.1. Under CIS regulations, the investigation includes a criminal background check performed by the FBI. *See* 8 C.F.R. § 335.2(b). After the criminal background check is completed, CIS schedules a naturalization examination, at which an applicant meets with a CIS officer who is authorized to ask questions and take testimony. The CIS officer determines whether to grant or deny the naturalization application, *see* 8 U.S.C. § 1446(d), and may do so at the time of the naturalization examination, or within 120 days after the date of the examination. *See* 8 C.F.R. § 335.3; *see also* 8 U.S.C. § 1571(b) (applications for immigration benefits should generally be adjudicated within 180 days

1 of initial filing of application). If a naturalization application is granted, the applicant is sworn in
2 as a United States citizen.

3 38. CIS *must* render a decision to grant or deny the application within 120 days of the
4 date of the initial examination. *See* 8 C.F.R. § 335.3(a). In addition, the CIS officer *must* grant a
5 naturalization application if the applicant has complied with all legal requirements for
6 naturalization. *Id.*; *see also Tutun v. United States*, 270 U.S. 568, 578 (1926) (statutorily eligible
7 petitioner has right to naturalization certificate on conclusion of hearing). Naturalization is not
8 discretionary in this circumstance; an applicant is entitled to be naturalized if all statutory
9 requirements are met.

10 39. When CIS fails to render a decision on a naturalization application within 120
11 days of the naturalization examination, the applicant “may apply to the United States district
12 court for the district in which the applicant resides for a hearing on the matter.” 8 U.S.C.
13 § 1447(b). If a naturalization application is not granted at the time of the naturalization
14 examination, CIS is required to inform the applicant of the remedies available under 8 U.S.C.
15 § 1447(b). *See* 8 U.S.C. § 1446(b) (CIS officer “shall, *at the examination*, inform the applicant
16 of the remedies available to the applicant under section 1447 of this title” (emphasis added)).

17 40. If a naturalization applicant applies to a district court, the district court gains
18 exclusive jurisdiction over the application, *see United States v. Hovsepian*, 359 F.3d 1144 (9th
19 Cir. 2004), and the district court may determine the matter or remand to CIS with appropriate
20 instructions, *see* 8 U.S.C. § 1447(b).

21 **B. The Name Check Requirement**

22 41. In 2002, without promulgating any regulations and without statutory
23 authorization, CIS dramatically altered the naturalization process by requiring that all applicants
24 pass a “name check” conducted by the FBI before final approval. A name check is a search of
25 FBI records and other records the FBI has access to based on the full name of the applicant. On
26 information and belief, the FBI conducts the name check through manual and electronic searches

1 of these records. At CIS's request, the FBI conducts name checks on all naturalization
2 applicants

3 42. On information and belief, the name check is implemented in such a manner that
4 an applicant may be erroneously identified as a "person of interest" to the FBI, thereby delaying
5 adjudication of the naturalization application, even though the applicant has committed no
6 crimes and is not a suspect, and even though the name check revealed no other information
7 bearing on eligibility for naturalization. For example, the name check may confuse the applicant
8 with a person with a similar name or result in a "hit" when the applicant is an innocent witness to
9 or victim of a crime.

10 43. A name check is not authorized or required by statute or regulation. On
11 information and belief, the name check is performed even when an applicant has already cleared
12 an FBI criminal background check in advance of the naturalization examination.

13 44. On information and belief, CIS will not grant naturalization applications until it
14 receives a completed name check from the FBI. Neither CIS nor the FBI has imposed any
15 timeline for completion of name checks.

16 45. Nor has CIS promulgated any regulations setting forth the name check as a
17 prerequisite for naturalization. In contrast, in March 1998, the Immigration and Naturalization
18 Service ("INS"), CIS's predecessor agency, promulgated a rule implementing the FBI criminal
19 background check requirement for notice and public comment. *See* Requiring Completion of
20 Criminal Background Checks Before Final Adjudication of Naturalization Applications, 63 Fed.
21 Reg. 12979 (Mar. 17, 1998).

22 46. In April 2006, CIS implemented a new policy and practice of delaying
23 naturalization examinations until after the name check is completed. Thus, for certain
24 naturalization applicants, unreasonable and extraordinary delays now occur before the
25 naturalization examination.

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1 **C. Defendants' Unlawful Conduct**

2 47. On information and belief, Defendants Chertoff, Gonzalez, Corsano, Harrison,
3 and United States have a policy, pattern, and practice of unlawfully failing to render a decision
4 on the naturalization applications of the proposed plaintiff class within 120 days of the date of
5 naturalization examinations due to a pending name check.

6 48. On information and belief, Defendants Chertoff, Gonzalez, Corsano, Harrison,
7 and United States have a policy, pattern, and practice of unlawfully withholding and
8 unreasonably delaying rendering a decision on the naturalization applications of the proposed
9 plaintiff class due to a pending name check.

10 49. On information and belief, Defendants Chertoff, Gonzalez, Corsano, Harrison,
11 and United States have a policy, pattern, and practice of unlawfully failing to notify
12 naturalization applicants of their right to seek a hearing in district court on their applications
13 when Defendants fail to render a decision on an application within 120 days of a naturalization
14 examination.

15 50. On information and belief, Defendants Chertoff, Gonzalez, Corsano, Harrison,
16 and United States have a policy, pattern, and practice of unlawfully requiring completed name
17 checks before adjudicating the naturalization applications of the proposed plaintiff class, despite
18 having no statutory or regulatory authorization for such name checks. Defendants Gonzalez and
19 Chertoff unlawfully implemented name checks as a prerequisite to naturalization without public
20 notice and without providing a period for public comment. Requiring name checks as a
21 prerequisite to naturalization effected a substantive change in existing law resulting in undue
22 hardship and burden to the proposed plaintiff class.

23 51. On information and belief, Defendants Keisler and Mueller have a policy, pattern,
24 and practice of unlawfully withholding and unreasonably delaying the completion of name
25 checks, with the full knowledge that CIS will not adjudicate the naturalization applications of the
26 proposed plaintiff class until name checks are completed.

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52. As a result of Defendants' unlawful acts and omissions, members of the proposed plaintiff class have suffered injury-in-fact, in that they have been unlawfully denied the rights and benefits of United States citizenship.

V. CLASS ACTION ALLEGATIONS

53. Pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2), Plaintiffs bring this action individually and on behalf of all other persons similarly situated. The proposed plaintiff class consists of:

All lawful permanent residents of the United States residing in the Western District of Washington who have submitted naturalization applications to CIS but whose naturalization applications have not been determined within 120 days of the date of their initial examination due to the pendency of a "name check."

The proposed plaintiff class includes applicants who were not informed, at the time of their initial examination, of their right under 8 U.S.C. § 1447(b) "to apply to the United States district court for the district in which the applicant resides for a hearing on the matter" if CIS failed to determine the applicant's naturalization application within 120 days of the initial examination (the "notice subclass").

54. The requirements of Rule 23(a) are met in that the members of the proposed plaintiff class are so numerous that joinder is impracticable, there are questions of law and fact common to all members of the proposed plaintiff class, the claims of the named Plaintiffs are typical of those of the proposed plaintiff class members, the claims of Plaintiffs Roshandel and Ghazi-Moghaddam are typical of those of the notice subclass, and the named Plaintiffs will fairly and adequately protect the interests of the proposed plaintiff class.

55. On information and belief, approximately 58,000 naturalization applications nationwide are pending while awaiting completed name checks. Undersigned counsel is aware of at least 31 individual lawsuits brought in the Western District of Washington since June 1, 2007 by persons similarly situated to Plaintiffs. Undersigned counsel is unaware of the exact number of proposed class members, but believes that there are several hundred individuals

1 similarly situated to Plaintiffs residing in this judicial district. Because Defendants are best able
2 to determine the exact number of proposed class members, undersigned counsel will request
3 leave to serve Defendants with discovery requests targeted to this issue.

4 56. There are questions of law and fact common to the proposed class that
5 predominate over any questions affecting only the individually named Plaintiffs, including (1)
6 whether Defendants' failure to render a decision on the naturalization applications of the
7 proposed plaintiff class within 120 days of the date of naturalization examinations, due to delays
8 in name checks, violates the Immigration and Nationality Act and implementing regulations and
9 the Administrative Procedure Act; (2) whether Defendants' requiring a name check as a
10 prerequisite to naturalization violates the notice and comment requirement of the Administrative
11 Procedure Act; (3) whether Defendants' actions in unlawfully withholding and unreasonably
12 delaying the completion of name checks, with the full knowledge that CIS requires the
13 completion of such name checks before rendering a decision on naturalization applications of the
14 proposed plaintiff class, violates the Administrative Procedure Act; and (4) whether Defendants'
15 failure to provide notice of remedies available under 8 U.S.C. § 1447(b) violates 8 U.S.C.
16 § 1446.

17 57. The claims of the named Plaintiffs are typical of the claims of the proposed class
18 members. The named Plaintiffs, like all class members, have not had their naturalization
19 applications determined within the statutorily mandated 120-day period following their
20 naturalization examinations, have been deprived of notice and an opportunity to comment on the
21 name check requirement, and have a decision on their applications for naturalization unlawfully
22 withheld or unreasonably delayed due to pending name checks.

23 58. The claims of Plaintiffs Roshandel and Ghazi-Moghaddam are typical of the
24 claims of the notice subclass. Plaintiffs Roshandel and Ghazi-Moghaddam were not informed at
25 their naturalization examinations of their statutory right to seek judicial review of Defendants'
26 unlawful conduct.

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1 59. Like the named Plaintiffs, members of the proposed plaintiff class are suffering
 2 injuries from the delay of their naturalization applications, including the inability to participate in
 3 civic society by voting and jury service, the inability to sponsor immediate relatives for lawful
 4 permanent resident status, the inability to travel freely as United States citizens, and the stigma
 5 of an uncertain status in the country they have made their home and where they have established
 6 themselves as part of a community.

7 60. Like Plaintiffs Roshandel and Ghazi-Moghaddam, the members of the notice
 8 subclass are suffering injury because they were not informed of their statutory right to seek
 9 judicial review of Defendants' unlawful conduct.

10 61. The named Plaintiffs will fairly and adequately represent the interests of all
 11 members of the proposed class because they seek relief on behalf of the class as a whole and
 12 have no interests antagonistic to other members of the class. The named Plaintiffs are
 13 represented by pro bono counsel including the American Civil Liberties Union of Washington
 14 Foundation, the Northwest Immigrant Rights Project, and Stoel Rives LLP, who collectively
 15 have extensive expertise in immigration law and class action litigation.

16 62. The requirements of Rule 23(b)(2) are also met because Defendants acted (or
 17 failed to act) in an unlawful manner generally applicable to all proposed plaintiff class members
 18 in failing to render a decision on the proposed plaintiff class members' naturalization
 19 applications within the statutorily mandated 120-day period and otherwise unlawfully
 20 withholding and unreasonably delaying agency actions, thereby making appropriate final relief
 21 with respect to the class as a whole.

22 **VI. DECLARATORY AND INJUNCTIVE RELIEF ALLEGATIONS**

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

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

VII. CAUSES OF ACTION

COUNT ONE

RIGHT TO JUDICIAL DETERMINATION OF APPLICATION

FOR NATURALIZATION PURSUANT TO 8 U.S.C. § 1447(b)

[Against Defendants Chertoff, Gonzalez, Corsano, Harrison, and United States]

65. The allegations contained in paragraphs 1 through 64 above are repeated and incorporated as though fully set forth herein.

66. Because Defendants have unlawfully failed to render a decision on proposed plaintiff class members' naturalization applications within 120 days after the date of their naturalization examinations, each proposed plaintiff class member is entitled to a hearing on his or her naturalization application by this Court under 8 U.S.C. § 1447(b).

67. This Court should grant proposed plaintiff class members' naturalization applications pursuant to 8 U.S.C. § 1447(b), because each proposed plaintiff class member meets all requirements for naturalization and is therefore entitled to be naturalized as a United States citizen.

68. In the alternative, this Court should remand proposed plaintiff class members' naturalization applications to CIS pursuant to 8 U.S.C. § 1447(b) with instructions to render a decision on each proposed plaintiff class members' naturalization application within 90 days.

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COUNT TWO

UNREASONABLE DELAY IN VIOLATION OF THE

ADMINISTRATIVE PROCEDURE ACT

[Against All Defendants]

69. The allegations contained in paragraphs 1 through 68 above are repeated and incorporated as though fully set forth herein.

70. The Administrative Procedure Act requires administrative agencies to conclude matters presented to them “within a reasonable time.” 5 U.S.C. § 555(b). A district court reviewing agency action may “compel agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. § 706(1). The district court also may hold unlawful and set aside agency action that is found to be “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” 5 U.S.C. § 706(2)(A); “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right,” 5 U.S.C. § 706(2)(C); or “without observance of procedure required by law,” 5 U.S.C. § 706(2)(D). “Agency action” includes, in relevant part, “an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act.” 5 U.S.C. § 551(13).

71. The failure of Defendants Chertoff, Gonzalez, Corsano, Harrison and United States to render a decision on the proposed plaintiff class members’ naturalization applications within 120 days of the date of their naturalization examinations on the basis of pending name checks, in violation of 8 U.S.C. § 1446(d) and 8 C.F.R. § 335, violates the Administrative Procedure Act, 5 U.S.C. § 555(b), 706(1), 706(2)(A), 706(2)(C), 706(2)(D).

72. The failure of Defendants Keisler, Mueller, and United States to timely complete proposed plaintiff class members’ name checks, with the full knowledge that CIS requires the completion of such name checks before determining proposed plaintiff class members’ naturalization applications, violates the Administrative Procedure Act, 5 U.S.C. §§ 555(b); 706(1), 706(2)(A), 706(2)(C), 706(2)(D).

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1 73. As a result of Defendants' actions, proposed plaintiff class members have suffered
2 and continue to suffer injury. Declaratory and injunctive relief are therefore warranted.

3 **COUNT THREE**

4 **FAILURE TO FOLLOW NOTICE-AND-COMMENT REQUIREMENTS**
5 **OF THE ADMINISTRATIVE PROCEDURE ACT**

6 [Against Defendants Chertoff, Gonzalez, Corsano, Harrison, and United States]

7 74. The allegations contained in paragraphs 1 through 73 above are repeated and
8 incorporated as though fully set forth herein.

9 75. By regulation, CIS is required to receive the result of an FBI criminal background
10 check before a naturalization application can be granted. 8 C.F.R. § 335.2(b). In November
11 2002, CIS added a new substantive requirement to the naturalization process, known as a name
12 check, that goes beyond the criminal background check authorized by statute and regulation.
13 The name check constitutes a substantive rule that departs from prior policy and practice.

14 76. Defendants Chertoff, Gonzalez, Corsano, Harrison, and United States
15 implemented the "name check" requirement without public notice or providing a period for
16 public comment, even though the name check requirement has an adverse impact on individuals
17 whose naturalization applications are delayed due to the name check.

18 77. The failure to provide a notice-and-comment period before implementing the
19 "name check" requirement violates the Administrative Procedure Act, 5 U.S.C. § 553.

20 78. As a result of Defendants' actions, proposed plaintiff class members have suffered
21 and continue to suffer injury. Declaratory and injunctive relief are therefore warranted.

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COUNT FOUR

FAILURE TO PROVIDE NOTICE OF REMEDIES

[Against Defendants Chertoff, Gonzalez, Corsano, Harrison, and United States]

79. The allegations contained in paragraphs 1 through 78 above are repeated and incorporated as though fully set forth herein.

80. If a naturalization application is not granted at the time of the naturalization interview, CIS is required to inform the applicant of the remedies available under 8 U.S.C. 1447(b). *See* 8 U.S.C. § 1446(b) (CIS officer “shall, *at the examination*, inform the applicant of the remedies available to the applicant under section 1447 of this title” (emphasis added)).

81. Defendants Chertoff, Gonzalez, Corsano, Harrison, and United States failed to provide the requisite notice to members of the proposed notice subclass.

82. As a result of Defendants’ actions, proposed plaintiff class members have suffered and continue to suffer injury. Declaratory and injunctive relief are therefore warranted.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for entry of a judgment in favor of the proposed plaintiff class and against Defendants as follows:

1. Assuming jurisdiction over the matter;
2. Certifying this case as a class action lawsuit, as proposed herein;
3. Granting proposed plaintiff class members’ applications for naturalization pursuant to 8 U.S.C. § 1447(b);
4. In the alternative, ordering Defendants Keisler, Mueller, and United States to complete proposed plaintiff class members’ “name checks” within 60 days and ordering Defendants Gonzalez, Chertoff, Corsano, Harrison, and United States to promptly render a decision, in a time period not to exceed 90 days, on proposed plaintiff class members’ naturalization applications;

1 5. Declaring unlawful (a) the failure of Defendants Gonzalez, Chertoff, Corsano,
 2 Harrison, and United States to grant applications for naturalization within 120 days of the date of
 3 the naturalization examination; (b) the failure of Defendants Gonzalez, Chertoff, Corsano,
 4 Harrison, and United States to notify naturalization applicants of their statutory remedies under 8
 5 U.S.C. § 1447(b); (c) the failure of Defendants Kcislser, Mueller, and United States to complete
 6 name checks within a reasonable time; and (d) Defendants' failures to take all necessary steps to
 7 adjudicate applications for naturalization within 120 days of the date of the naturalization
 8 examinations;

9 6. Declaring void and enjoining the name check process for failure to comply with
 10 the Administrative Procedure Act's notice-and-comment requirement;

11 7. Enjoining Defendants' unlawful conduct;

12 8. Awarding reasonable attorney fees and costs pursuant to the Equal Access to
 13 Justice Act, 5 U.S.C. § 504, 28 U.S.C. § 2412; and

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9. Granting any and all further relief that this Court deems just and proper.

DATED: October 29, 2007.

STOEL RIVES LLP


Alfred Arthur Day, WSBA No. 34926
Rita V. Latsinova, WSBA No. 24447
600 University Street, Suite 3600
Seattle, WA 98101
206-624-0900 (main)
206-386-7500 (fax)
aaday@stoel.com
rvlatsinova@stoel.com

AMERICAN CIVIL LIBERTIES UNION OF
WASHINGTON FOUNDATION
Sarah A. Dunne, WSBA No. 34869
Aaron H. Caplan, WSBA No. 22525
705 Second Avenue, Third Floor
Seattle, WA 98104
206-624-2184 (main)
dunne@aclu-wa.org
caplan@aclu-wa.org

NORTHWEST IMMIGRANT RIGHTS
PROJECT
Matthew Adams, WSBA No. 28287
Christopher Strawn, WSBA No. 32243
615 Second Avenue, Suite 400
Seattle, WA 98104
206-549-4009 (main)
matt@nwirp.org
chris@nwirp.org

Attorneys for Plaintiffs