UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 08-21588-CV-MORENO-TORRES

RAHEEL RANGOONWALA; JOSE CANAL; JESUS CONSTANTINI; LACHEZAR VANCHEV; TEODORA KARAGUEORGUIEVA; ANA GONZALEZ; KULWANT KAUR; OUSSAMA KARAKI ; and PEDRO LARA, Plaintiffs-Petitioners, individually and on behalf of all others similarly situated,

v.

LINDA M. SWACINA, District Director, Miami District, U.S. Citizenship and Immigration Services ("USCIS"); KATHY REDMAN, District Director, Tampa District, USCIS; JONATHAN SCHARFEN, Acting Director, USCIS; MICHAEL CHERTOFF, Secretary, U.S. Department of Homeland Security ("DHS"); ROBERT S. MUELLER, III, Director, Federal Bureau of Investigation ("FBI"); and MICHAEL B. MUKASEY, U.S. Attorney General,

Defendants.

FIRST AMENDED COMPLAINT
CLASS ACTION

PRELIMINARY STATEMENT

1. Plaintiffs-Petitioners ("Plaintiffs") are lawful permanent residents of the United States whose applications for naturalization (citizenship) have been delayed for nearly 2-6 years since they completed the citizenship interview. Each is a longtime resident of the United States, meets all statutory eligibility requirements for citizenship, and seeks to pledge allegiance to the United States and participate fully in civic society as a U.S. citizen, including by voting in the upcoming presidential election.

2. Federal law requires that U.S. Citizenship and Immigration Services ("USCIS") render a decision on naturalization applications within 120 days of the naturalization interview (or "examination"), see 8 U.S.C.§ 1447(b). The law was enacted in 1990 primarily for the purpose of decreasing backlogs in the naturalization process, and reducing waiting times for naturalization applicants. See H.R. Rep. No. 101-187, at 8 (1989); 135 Cong. Rec. H4539-02, H4542 (1989) (statement of Rep. Morrison).
In addition, Congress has stated that immigration applications (such as a citizenship application) should be processed within 180 days from the date of filing, see 8 U.S.C. § 1571(b), and defines "backlog" as occurring where applications have been pending for more than 180 days, see 8 U.S.C. § 1572(1).

3. The named Plaintiffs' applications, however, have been pending for 2-6 years since the naturalization interview, and there has still been no decision on their applications.

4. Federal law also provides that where applicants meet all legal requirements for naturalization, USCIS "shall grant" the application, see 8 C.F.R. § 335.3(a).

5. Defendants, however, have unlawfully and unreasonably delayed rendering a decision on Plaintiffs' applications—long past the time periods prescribed by law—based on an FBI "name check" that is neither authorized nor required by law.

6. As a result of Defendants' unlawful actions, Plaintiffs suffer the hardships of unreasonably and unlawfully delayed naturalization, including anxiety over their immigration status, prolonged family separations, ineligibility for certain employment opportunities or public benefits reserved for U.S. citizens, and exclusion from the political

process due to the inability to vote. Plaintiffs' experiences are typical of more than 50,000 naturalization applicants nationally whose applications have been unlawfully and unreasonably delayed due to FBI name checks.

7. Plaintiffs, on behalf of themselves and all others similarly situated within the Southern District of Florida, therefore respectfully request that the Court certify the proposed class, declare that Defendants' actions violate federal law, and require Defendants to complete the class members' name checks and adjudicate their applications for citizenship within 90 days.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction over this matter pursuant to 8 U.S.C. § 1447(b) (jurisdiction to adjudicate naturalization applications delayed more than 120 days since the interview); 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 2201 (Declaratory Judgment Act); 28 U.S.C. § 1361 (mandamus); and 28 U.S.C. § 1651 (All Writs Act).

9. Venue is proper in the Southern District of Florida pursuant to 28 U.S.C. § 1391(e). Plaintiffs sue Defendants in their official capacities as officers and employees of the United States, and Plaintiffs reside in the Southern District of Florida. A substantial part of the events giving rise to this Complaint occurred within this District, in that Plaintiffs' applications for naturalization are pending in USCIS Field Offices within the Southern District of Florida. Venue is also proper in this District pursuant to 8 U.S.C. § 1447(b), which provides that a petition for review of a naturalization application shall be filed in the district where the applicant resides.

PARTIES

Named Plaintiffs

10. Named Plaintiffs and proposed class representatives RAHEEL RANGOONWALA, JOSE CANAL, JESUS CONSTANTINI, LACHEZAR VANCHEV, TEODORA KARAGUEORGUIEVA, ANA GONZALEZ, KULWANT KAUR, OUSSAMA KARAKI , and PEDRO LARA, are lawful permanent residents of the United States who meet all statutory requirements for naturalization, including having undergone the naturalization interview more than 120 days ago. The named Plaintiffs reside in the Southern District of Florida, and their citizenship applications are pending in the Southern District of Florida. All have been told or have reason to believe that their applications have been delayed due to the name check process.

Defendants

11. Defendant LINDA M. SWACINA is District Director of the Miami District of U.S. Citizenship and Immigration Services ("USCIS"). Ms. Swacina is responsible for applications for naturalization pending in the Miami District. She is sued in her official capacity.

12. Defendant KATHY REDMAN is Tampa Field Office Director for USCIS, and believed to be Director of the Tampa District Office for USCIS. Ms. Redman is responsible for applications for naturalization pending in the Tampa District, which includes the West Palm Beach Field Office. Ms. Redman is sued in her official capacity.

13. Defendant JONATHAN SCHARFEN is Acting Director of USCIS. Mr. Scharfen is responsible for processing and adjudicating all applications for naturalization

submitted to USCIS. As Acting Director of USCIS, Mr. Scharfen is also responsible for the scope and nature of the background checks conducted for naturalization applications, which are defined by USCIS by regulation or otherwise. Mr. Scharfen is sued in his official capacity.

14. Defendant MICHAEL CHERTOFF is Director of the U.S. Department of Homeland Security ("DHS"), which encompasses USCIS. Mr. Chertoff is ultimately responsible for the administration of all immigration and naturalization laws, including the processing and adjudication of applications for naturalization. He is sued in his official capacity.

15. Defendant ROBERT S. MUELLER, III, is Director of the Federal Bureau of Investigation ("FBI"). Mr. Mueller is ultimately responsible for the processing of criminal background checks and the "name checks" which are required by USCIS during the naturalization process. He is sued in his official capacity.

16. Defendant MICHAEL B. MUKASEY is Attorney General of the United States. He is the head of the U.S. Department of Justice, which encompasses the FBI. Mr. Mukasey is also jointly responsible with Mr. Chertoff for enforcing immigration laws. Mr. Mukasey is sued in his official capacity.

THE NATURALIZATION PROCESS

17. An individual is eligible to become a naturalized citizen of the United States if he or she has been a lawful permanent resident of the United States for the past five (5) years (or three (3) years if the applicant has been married to a U.S. citizen throughout that time), and is "a person of good moral character, attached to the principles of the Constitution

of the United States, and well disposed to the good order and happiness of the United States." 8 U.S.C. § 1427(a).

18. A lawful permanent resident may apply for citizenship by filing a detailed N–400 application with U.S. Citizenship and Immigration Services ("USCIS"), formerly the Immigration and Naturalization Service (INS). (In 2002, the INS was abolished with passage of the Homeland Security Act, Pub. L. No. 107-296, 116 Stat. 2135 (2002), and its responsibilities were transferred to departments within the U.S. Department of Homeland Security ("DHS"). Within DHS, USCIS assumed responsibility for adjudicating applications for naturalization, including background checks associated with those applications.)

19. In 1997, Congress passed an appropriations measure that prohibited the then-INS from adjudicating any application for naturalization until the INS "received confirmation from the Federal Bureau of Investigation that a full criminal background check has been completed." Pub.L. 105-119, Tit. I, Nov. 26, 2007, 111 Stat. 2448. In 1998, the then-INS promulgated regulations to implement the criminal background check requirement. See 8 C.F.R. § 335.2(b). Thus, after the application has been filed, USCIS requires each applicant to submit fingerprints to the FBI for the purpose of conducting a criminal background check. The criminal background check is usually completed within days, if not hours.

20. After USCIS has received the completed results of the criminal background check, USCIS schedules the applicant for a naturalization interview (or "examination"). In 1998, the INS promulgated regulations stating that "[t]he Service will notify applicants for naturalization to appear before a Service officer for initial examination

on the naturalization application only after the Service has received a definitive response from the Federal Bureau of Investigation that a full criminal background check of an applicant has been completed." 8 C.F.R. § 335.2(b).

21. A "definitive response" from the FBI is defined as: "(1) Confirmation from the Federal Bureau of Investigation that an applicant does not have an administrative or a criminal record; (2) Confirmation from the Federal Bureau of Investigation that an applicant has an administrative or a criminal record; or (3) Confirmation from the Federal Bureau of Investigation that two properly prepared fingerprint cards (Form FD-258) have been determined unclassifiable for the purpose of conducting a criminal background check and have been rejected." 8 C.F.R. § 335.2(b).

22. At the naturalization interview (or "examination"), the applicant meets with a USCIS officer, is tested in Civics and English language requirements, unless those are waived, and must be advised in writing of any deficiencies in the application. 8 C.F.R. § 335.3(b).

23. Federal law requires a decision on the application within 120 days of the naturalization interview (or "examination"). Pursuant to federal regulations, "A decision to grant or deny the application shall be made at the time of the initial examination or within 120-days after the date of the initial examination of the applicant for naturalization under § 335.2. The applicant shall be notified that the application has been granted or denied and, if the application has been granted, of the procedures to be followed for the administration of the oath of allegiance pursuant to part 337 of this chapter." 8 C.F.R. § 335.3(a) (emphasis added).

24. Federal law also requires that naturalization be granted to any applicant who complies with all legal requirements. Federal regulations expressly provide: "The Service officer shall grant the application if the applicant has complied with all requirements for naturalization under this chapter." 8 C.F.R. § 335.3(a) (emphasis added). In other words, where the requirements are met, naturalization is mandatory not discretionary.

25. Once the application is granted, the applicant must take an oath of allegiance before a USCIS officer or a judge to be sworn in as a U.S. citizen.

THE FBI NAME CHECK

26. Federal law defines the required "criminal background check" to include only a fingerprint records check. 8 C.F.R. § 335.2(b).

27. Starting in 2002, however, USCIS dramatically altered the naturalization process by requiring expansive FBI "name checks" for all naturalization applicants, even though no FBI name check is required or authorized by law. FBI name checks have caused extraordinary, unlawful and unreasonable delays in the adjudication of applications for naturalization. USCIS implemented the FBI name checks without providing notice to the public, and without promulgating any regulations.

28. On information and belief, before 2002 USCIS may have also requested limited FBI name checks only to determine whether a citizenship applicant was the subject of an FBI investigation.

29. In 2002, however, USCIS dramatically expanded the FBI "name checks" it requires for naturalization applicants, even though there was no change in the law requiring or authorizing the name check or its expansion. Rather than simply search to

determine whether an applicant is the subject of an FBI investigation, USCIS implemented an expanded FBI name to include a search for any reference to the applicant's name (or to a similar name, or even to a common "fragment" of a name) in any type of file to which the FBI has access, in every case, and for an indefinite period of time.

30. On information and belief, name checks that include a search for all "references" can turn up a "hit" if the applicant (or anyone with a similar name, or a common "fragment" of a name) appears in any type of record (including, for example, personnel files that list the name of a job applicant or reference) and for any reason (including, for example, as someone who has applied for security clearances for professional reasons, or has been the witness to—or victim of—a crime) at any time in the past. Any such "hit" may then prompt further research by the FBI, which FBI has said can cause the agency to manually search paper records that pre-date 1995 and have to be retrieved from any one of about 265 physical locations around the country.

31. As a result, innocent citizenship applicants who have cleared criminal background checks and are not the subject of any FBI investigation can have their applications significantly delayed simply on the basis of a "hit" that has absolutely no bearing on their eligibility for citizenship, and may not even relate to the citizenship applicant him- or herself, but rather to someone with a similar name.

32. Name checks are not required or authorized by law. Yet, USCIS refuses to adjudicate applications for naturalization until it completes this name check process, even when doing so results in years of delay for applicants who meet every statutory requirement for citizenship.

33. In addition to delays caused by the FBI name check itself, USCIS causes additional delays by failing to timely complete its review of name check results after receiving them from the FBI.

34. In 2006 and 2007, USCIS' Ombudsman (a Congressionally-mandated independent office of the Department of Homeland Security) provided annual reports to Congress describing the systemic delays caused by FBI name checks, and questioning their value. See USCIS Ombudsman Annual Report 2006, available at http://www.dhs.gov/xlibrary/assets/CISOmbudsman_AnnualReport_2006.pdf; and http://www.dhs.gov/xlibrary/assets/CISOMB_Annual_Report_2007.pdf .

35. As early as 2006, the USCIS Ombudsman reported that:

> FBI name checks, one of the security screening tools used by USCIS, significantly delay adjudication of immigration benefits for many customers, hinder backlog reductions efforts, and may not achieve their intended national security objectives.

36. The USCIS Ombudsman further stated that:

> The name checks are not sought by the FBI as part of ongoing investigations or from a need to learn more about an individual because of any threat or risk perceived by the FBI. Instead, the name checks are a fee-for-service that the FBI provides to USCIS at its request. Moreover, the FBI does not record any additional information about the names USCIS submits and does not routinely take any further action. Instead, the FBI reviews its files much like a credit reporting entity would verify and report on information to commercial entities requesting credit validations.

(emphasis in original).

37. In 2007, the USCIS Ombudsman again reported to Congress that:

> FBI name checks, one of several security screening tools used by USCIS, continue to significantly delay adjudication of immigration benefits for many customers, hinder backlog reductions efforts, and may not achieve their

intended national security objectives.

38. In 2007, the USCIS Ombudsman added that:

> FBI name checks may be the single biggest obstacle to the timely and efficient delivery of immigration benefits. The problem of long-pending FBI name check cases worsened during the reporting period.

(emphasis in original).

39. The USCIS Ombudsman further reported that:

> The Ombudsman agrees with the assessment of many case workers and supervisors at USCIS field offices and service centers that the FBI name check process has limited value to public safety or national security, especially because in almost every case the applicant is in the United States during the name check process, living or working without restriction.

(emphasis added).

40. After years of studying the FBI name check problem, the USCIS Ombudsman even reported that:

> To date, the Ombudsman has been unable to ascertain from USCIS the total number of actual problem cases that the agency discovered exclusively as a result of the FBI name check. The Ombudsman understands that most, if not all, of the problem cases which would result in an eventual denial of benefits also can be revealed by the other more efficient, automated criminal and security checks that USCIS initiates.

(emphasis added).

41. The USCIS Ombudsman concluded that:

> FBI name checks may be the single biggest obstacle to the timely and efficient delivery of immigration benefits.

(emphasis added).

42. The USCIS-imposed FBI "name checks" that include a search for all "references" thus cause extraordinary and unreasonable delays in the processing of

naturalization applications, with no tangible benefit offered in return.

43. USCIS' "name check" policy for all naturalization applications was implemented rashly by USCIS without providing notice to, or soliciting comment from, the public.

44. The "name check" is not required or authorized by law.

45. USCIS has been, and is, aware of the unreasonableness of its name check pattern and practice.

46. In addition, USCIS has been, and is, aware of the unreasonable delays its name check pattern and practice causes applicants for naturalization.

47. USCIS and FBI cause additional delay by operating under the belief that there is absolutely no "deadline" for completing name checks, and the review thereof.

48. USCIS also causes additional delay by failing to complete its review of FBI name check results within a reasonable amount of time after receiving them.

49. In conducting, prioritizing, and completing name checks in conjunction with applications for naturalization, FBI acts at the direction of USCIS.

50. Part of the fees that naturalization applicants are required to pay for their applications to be processed is paid to FBI (through USCIS) for the purpose of completing name checks.

NAMED PLAINTIFFS

Plaintiff RAHEEL RANGOONWALA

51. Plaintiff RAHEEL RANGOONWALA, a Pakistani national, has been a lawful permanent resident of the United States for nearly ten (10) years. Mr. Rangoonwala resides

in Coconut Creek, and works at a convenience store. Mr. Rangoonwala is married, but his wife remains in Pakistan until they can be reunited in the United States.

52. Mr. Rangoonwala applied for naturalization on October 31, 2003, and underwent his naturalization interview on or about January 3, 2005, passing the civics and language requirements. For more than three (3) years since the interview, however, Mr. Rangoonwala has not received any decision on his application.

53. Mr. Rangoonwala has suffered and continues to suffer prejudice from the unreasonable delay of his naturalization. While he awaits an adjudication on his application, Mr. Rangoonwala is deprived of the substantial and unique rights and duties of U.S. citizenship, including the ability to petition for prompt reunification with his wife as a U.S. citizen, and the right to vote in the upcoming presidential election.

Plaintiff JOSE CANAL

54. Plaintiff JOSE CANAL, a Cuban national, has been a lawful permanent resident of the United States for more than twenty (20) years. He is retired, and lives with his U.S. citizen wife in Hialeah.

55. Mr. Canal applied for citizenship on May 15, 2002, and passed the citizenship interview on February 26, 2003. Yet for more than five (5) years since the date of his interview, he has not received any decision on his application.

56. Mr. Canal has suffered and continues to suffer prejudice from the unreasonable delay of his naturalization. While he awaits an adjudication on his application, Mr. Canal is deprived of the substantial and unique rights and duties of U.S. citizenship, including the right to vote in the upcoming presidential election.

Plaintiff JESUS CONSTANTINI

57. Plaintiff JESUS CONSTANTINI, a Peruvian national, has been a lawful permanent resident of the United States for more than twelve (12) years. He resides in North Miami Beach with his wife.

58. Mr. Constantini applied for citizenship on October 23, 2001, and passed the citizenship test on June 6, 2002. Yet for more than six (6) years since his naturalization interview, he has not received any decision on his application.

59. Mr. Constantini has suffered and continues to suffer prejudice from the unreasonable delay of his naturalization. While he awaits an adjudication on his application, Mr. Constantini is deprived of the substantial and unique rights and duties of U.S. citizenship, including the right to vote in the upcoming presidential election.

Plaintiff LACHEZAR VANCHEV

60. Plaintiff LACHEZAR VANCHEV, a Bulgarian national, has been a lawful permanent resident of the United States for more than eight (8) years. He is an attorney, and resides in Tamarac with his wife.

61. Mr. Vanchev applied for citizenship on April 11, 2005, and passed the citizenship interview on December 12, 2005. Yet for more than two (2) years since the interview, he has not received any decision on his application.

62. Mr. Vanchev has suffered and continues to suffer prejudice from the unreasonable delay of his naturalization. While he awaits an adjudication on his application, Mr. Vanchev is deprived of the substantial and unique rights and duties of U.S. citizenship, including the right to vote in the upcoming presidential election.

Plaintiff TEODORA KARAGUEORGUIEVA

63. Plaintiff TEODORA KARAGUEORGUIEVA, a Bulgarian national, has been a lawful permanent resident of the United States for more than eight (8) years. She works for a local company, and resides in Tamarac with her husband.

64. Ms. Karagueorguieva applied for citizenship on April 11, 2005, and passed the citizenship interview on December 12, 2005. Yet for more than two (2) years since the interview, she has not received any decision on her application.

65. Ms. Karagueorguieva has suffered and continues to suffer prejudice from the unreasonable delay of her naturalization. While she awaits an adjudication on her application, Ms. Karagueorguieva is deprived of the substantial and unique rights and duties of U.S. citizenship, including the right to vote in the upcoming presidential election.

Plaintiff ANA GONZALEZ

66. Plaintiff ANA GONZALEZ, a Cuban national, has been a lawful permanent resident of the United States for twelve (12) years. She is a teacher, and resides in Hollywood with her son.

67. Ms. Gonzalez applied for citizenship on March 25, 2004, and passed the citizenship interview on January 25, 2005. Yet for more than three (3) years since the interview, she has not received any decision on her application.

68. Ms. Gonzalez has suffered and continues to suffer prejudice from the unreasonable delay of her naturalization. While she awaits an adjudication on her application, Ms. Gonzalez is deprived of the substantial and unique rights and duties of U.S. citizenship, including professional opportunities and the right to vote in the upcoming

presidential election.

Plaintiff KULWANT KAUR

69. Plaintiff KULWANT KAUR, an Indian national, has been a lawful permanent resident of the United States for more than nine (9) years. She resides in Hialeah.

70. Ms. Kaur applied for citizenship on January 12, 2004, and passed the citizenship interview on July 21, 2004. Yet for more than four (4) years since the interview, she has not received any decision on her application.

71. Ms. Kaur has suffered and continues to suffer prejudice from the unreasonable delay of her naturalization. While she awaits an adjudication on her application, Ms. Kaur is deprived of the substantial and unique rights and duties of U.S. citizenship, including the right to vote in the upcoming presidential election.

Plaintiff OUSSAMA KARAKI

72. Plaintiff OUSSAMA KARAKI, a Lebanese national, has been a lawful permanent resident of the United States for several years.

73. Mr. Karaki passed the citizenship interview on January 12, 2006. Yet for more than two (2) years since his citizenship interview, he has not received any decision on his application.

74. Mr. Karaki has suffered and continues to suffer prejudice from the unreasonable delay of his naturalization. While he awaits an adjudication on his application, Mr. Karaki is deprived of the substantial and unique rights and duties of U.S. citizenship, including the right to vote in the upcoming presidential election.

Plaintiff PEDRO LARA

75. Plaintiff PEDRO LARA, a Nicaraguan national, has been a lawful permanent resident of the United States for more than sixteen (16) years. He resides in Miami, with his U.S. citizen wife and their son.

76. Mr. Lara applied for citizenship on August 26, 2002, and passed the citizenship interview on June 13, 2003. Yet for more than five (5) years since his interview, he has not received any decision in his case.

77. Mr. Lara has suffered and continues to suffer prejudice from the unreasonable delay of his naturalization. While he awaits an adjudication on his application, Mr. Lara is deprived of the substantial and unique rights and duties of U.S. citizenship, including the right to vote in the upcoming presidential election.

DEFENDANTS' UNLAWFUL POLICIES AND PRACTICES

78. On information and belief, Defendants SWACINA, REDMAN, SCHARFEN and CHERTOFF have a policy, pattern and practice of failing to adjudicate the naturalization applications of the proposed plaintiff class within 120 days of the naturalization examination, in disregard of statutory deadlines, because of the FBI name check process.

79. On information and belief, Defendants SWACINA, REDMAN, SCHARFEN and CHERTOFF have a policy, pattern and practice of unlawfully withholding and unreasonably delaying adjudication of the naturalization applications of the proposed plaintiff class, in disregard of statutory deadlines, because of the FBI name check process.

80. On information and belief, Defendants SWACINA, REDMAN, SCHARFEN and CHERTOFF have a policy, pattern and practice of unlawfully requiring completed name checks before adjudicating the naturalization applications of the proposed plaintiff class, despite having no statutory or regulatory authorization for such name checks.

81. On information and belief, Defendants SCHARFEN and CHERTOFF unlawfully implemented name checks as a prerequisite to naturalization without public notice and without providing a period for public comment. Requiring name checks as a prerequisite to naturalization effected a substantive change in existing law resulting in undue hardship and burden to the proposed plaintiff class.

82. On information and belief, Defendants SWACINA, REDMAN, SCHARFEN and CHERTOFF have a policy, pattern and practice of unlawfully withholding and unreasonably delaying adjudication of the proposed plaintiffs class's applications for naturalization by failing to promptly act on applications after they receive name check results from the FBI.

83. On information and belief, Defendants SWACINA, REDMAN, SCHARFEN and CHERTOFF have a policy, pattern and practice of failing to take all reasonable steps necessary to ensure that name checks are completed within a reasonable time, and to complete the adjudication of applications for naturalization in a lawful and timely fashion after receiving name check results, despite being on notice of the problem for years.

84. On information and belief, Defendants MUELLER and MUKASEY have a policy, pattern and practice of unreasonably and unlawfully delaying completion of FBI name

checks with the full knowledge that USCIS will not adjudicate the naturalization applications of the proposed plaintiff class until the name checks are completed.

85. On information and belief, Defendants MUELLER and MUKASEY have a policy, pattern and practice of failing to timely complete the name checks of the proposed plaintiff class, operating on the belief that they is absolutely no "deadline" or other temporal limitation to complete them.

86. As a result of Defendants' policies, practices, actions and omissions, the proposed plaintiff class has suffered injury, in that they have been unlawfully denied the rights and benefits of U.S. citizenship

CLASS ACTION ALLEGATIONS

87. Pursuant to Rule 23, Federal Rules of Civil Procedure, 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 Southern District of Florida who have submitted naturalization applications to USCIS but whose naturalization applications have not been determined within 120 days of the date of their initial examination due to the pendency of the "name check" process.

88. 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, and the named Plaintiffs will fairly and adequately protect the interests of the proposed plaintiff class.

89. A class action is appropriate under Rule 23(b)(1)(A) because inconsistent adjudications about the lawfulness or reasonableness of delays caused by the name check process, or about the lawfulness of the name check process, would establish incompatible standards of conduct for Defendants.

90. A class action is appropriate under Rule 23(b)(2) because Defendants have acted or refused to act on grounds generally applicable to the class, by unlawfully and unreasonably delaying the adjudication of the proposed class members' naturalization applications based on the pendency of the name check process; by unlawfully and unreasonably delaying completion of proposed class members' name checks; and by unlawfully requiring a completed name check before adjudicating the proposed class members' applications for naturalization.

91. On information and belief, approximately 58,000 naturalization applications are delayed nationally pending completion of the name checks. Undersigned counsel are aware of dozens of lawsuits recently brought in the Southern District of Florida by persons similarly situated to plaintiffs seeking adjudication of their delayed applications. Undersigned counsel are unaware of the exact number of proposed class members, but believe that there are at least several hundred individuals similarly situated to Plaintiffs residing in this judicial district. The class should be manageable, however, due to USCIS' announced practice since 2006 not to schedule citizenship interviews until after the FBI name checks are completed. Because Defendants are best able to determine the exact number of proposed class members, undersigned counsel will request leave to serve Defendants with discovery requests targeted to this issue.

92. There are questions of law and fact common to the proposed class that predominate over any questions affecting only the individually named Plaintiffs, including (1) whether Defendants' failure to render a decision on the naturalization applications of the proposed class within 120 days of the date of the naturalization examination, due to name check delays, violates federal law; (2) whether Defendants' requiring a name check as a prerequisite to naturalization violates the notice and comment requirements of the Administrative Procedure Act; and (3) whether Defendants' unlawful withholding and unreasonable delay in completing name checks, and in processing name check results, with the full knowledge that USCIS requires the completion of such name checks before rending a decision on the proposed plaintiff class's naturalization applications, violates the Administrative Procedure Act.

93. The named Plaintiffs' claims are typical of the claims of the proposed class members. Like the named Plaintiffs, all proposed class members have not had their naturalization applications determined within the statutorily-mandated 120-day period following their naturalization examinations, have been deprived of notice and an opportunity to comment on the name check requirement, and have had a decision on their naturalization applications unlawfully withheld or unreasonably delayed due to the name check process.

94. Like the named Plaintiffs, all proposed class members are suffering injuries from the unlawful delay of their naturalization applications, including the inability to participate in civic society by voting or serving on juries, prolonged family separations due to the inability to sponsor immediate relatives for lawful permanent resident status as U.S. citizens, the inability to apply for employment opportunities or public benefits that require

U.S. citizenship, and the stigma of an uncertain status in the country they have made their home.

95. The named Plaintiffs will fairly and adequately represent the interests of all members of the proposed class because they seek relief on behalf of the class as a whole and have no interest antagonistic to other members of the class. The named Plaintiffs are represented by pro bono counsel, the Florida Immigrant Advocacy Center, who have expertise in immigration law and class action litigation.

96. The requirements of Rule 23(b)(2) are also met because Defendants acted (or failed to act) in an unlawful manner applicable to all proposed plaintiff class members in failing to render a decision on the proposed plaintiff class members' naturalization applications within the statutorily-mandated 120-day period, unlawfully imposing a name check requirement without notice or comment, in violation of the Administrative Procedure Act; and otherwise unlawfully withholding and unreasonably delaying agency actions, thereby making appropriate final relief with respect to the class as a whole.

DECLARATORY AND INJUNCTIVE RELIEF ALLEGATIONS

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

98. Defendants' failure to timely adjudicate Plaintiffs' naturalization applications, and the applications of proposed class members, has caused and will continue to cause irreparable injury to Plaintiffs and the proposed class members. Plaintiffs have no

plain, speedy and adequate remedy at law.

CAUSES OF ACTION

FIRST CLAIM FOR RELIEF

RIGHT TO JUDICIAL DETERMINATION OF APPLICATION FOR NATURALIZATION PURSUANT TO 8 U.S.C. §1447(b)
[By Plaintiffs Against USCIS Defendants Swacina, Redman, Scharfen and Chertoff]

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

100. Because Defendants have unlawfully failed to adjudicate the naturalization applications of the named Plaintiffs and proposed class members within 120 days of the naturalization examination, each named Plaintiff and proposed class member is entitled to a hearing on his or her naturalization application by the Court under 8 U.S.C. § 1447(b).

101. This Court should grant the named Plaintiffs' and proposed class members' naturalization applications pursuant to 8 U.S.C. § 1447(b), because each meets all requirements for naturalization and federal law therefore requires that the application be granted.

102. In the alternative, this Court should remand the applications to USCIS with specific instructions to complete name checks and adjudicate the applications within 90 days, under 8 U.S.C. § 1447(b).

SECOND CLAIM FOR RELIEF

UNREASONABLE DELAY IN VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT
[By Plaintiffs Against USCIS Defendants and FBI Defendants]

103. The allegations contained in paragraphs 1 though 98 above are repeated and incorporated as though fully set forth herein.

104. The Administrative Procedure Act (APA) requires all 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). "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).

105. The failure of Defendants SWACINA, REDMAN, SCHARFEN and CHERTOFF to adjudicate Plaintiffs' applications for naturalization within 120 days of their naturalization examinations violates the APA, 5 U.S.C. §§ 555(b) and 706.

106. The failure of Defendants MUKASEY and MUELLER to complete name checks within a reasonable time, particularly with the full knowledge that USCIS requires completion of such name checks for adjudicating the named Plaintiffs' and proposed class members's applications for naturalization, violates the APA, 5 U.S.C. §§ 555(b), 706.

107. The failure of Defendants SWACINA, REDMAN, SCHARFEN and CHERTOFF to ensure that the name checks of the named Plaintiffs and the proposed class members are promptly completed, and failure to process name check results received from the FBI within a reasonable time, violates the APA, 5 U.S.C. §§ 555(b) and 706.

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

THIRD CLAIM FOR RELIEF

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

[By Plaintiffs Against USCIS Defendants Swacina, Redman, Scharfen and Chertoff]

109. The allegations contained in paragraphs 1 though 98 above are repeated and incorporated as though fully set forth herein.

110. By regulation, USCIS is required to receive the result of an FBI criminal background check before it may grant a naturalization application. 8 C.F.R. § 335.2(b). USCIS, however, has added a new substantive requirement to the naturalization process, known as a name check, that is neither authorized nor required by law. The name check constitutes a substantive rule that departs from prior policy and practice.

111. Defendants Swacina, Redman, Scharfen and Chertoff implemented the "name check" requirement without public notice or providing a period for public comment, even though the name check requirement has an adverse impact on individuals whose naturalization applications are delayed as a result.

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

113. As a result of Defendants' actions, the named Plaintiffs and proposed plaintiff class members have suffered and continue to suffer injury. Declaratory and injunctive relief are therefore warranted.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court:

A. Assume jurisdiction over the matter;

B. Certify this case as a class action lawsuit, as proposed herein;

C. Grant the named Plaintiffs and proposed class members' applications for naturalization pursuant to 8 U.S.C. § 1447(b);

D. In the alternative, order Defendants to complete the named Plaintiffs' and proposed class members' name checks within 60 days, and order Defendants to promptly render a decision on the naturalization applications within 30 days thereafter;

E. Issue a declaratory judgment holding unlawful (1) the failure of Defendants SWACINA, REDMAN, SCHARFEN and CHERTOFF to adjudicate applications for naturalization within 120 days of the date of the naturalization interview; (2) the failure of Defendants MUKASEY and MUELLER to complete name checks within a reasonable time; (3) the failure of Defendants to take all necessary steps to ensure that name checks are completed within a reasonable time; (4) the failure of Defendants SWACINA, REDMAN, SCHARFEN and CHERTOFF to process name check results received from the FBI within a reasonable time; and (5) the failure of Defendants to take all necessary steps to assure that applications for naturalization are adjudicated within 120 days of the date of the naturalization interview as required by law;

F. Declare void, set aside and enjoin the name check process for failure to comply with the Administrative Procedure Act's notice-and-comment requirement;

G. Enjoin Defendants' unlawful conduct;

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

I. Grant any and all further relief this Court deems just and proper.

Respectfully submitted,

s/Tania Galloni
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Attorneys for Plaintiffs-Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 1, 2008 I electronically filed the foregoing document and attachment with the Clerk of the Court using CM/ECF. I also certify that the foregoing document and attachment is being served this day on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

s/Tania Galloni
Tania Galloni (Fla. Bar No: 619221)