

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA

Case No. 6:08-cv-246-ORL-KRS - 18

ADIL AMRANI, AKRAM JAWAD, IMAN KADOM, )  
ALI HUSSAIN, ASO HUSSAIN, FAYEZ AYOUB, )  
SAMIR OTHMAN, EL SHAFEY ASHOUR, MOHAMMED )  
YOUSUF, SAMEEH AYYOUBI, MOHAMED B. )  
MOHAMED LAMINE, KHALIL HAMDAN, NABIL )  
BOUGHENNA, and SABAH BABAMIR, )

Plaintiffs-Petitioners, )

v. )

SUSAN DUGAS, Orlando Field Office Director for U.S. )  
Citizenship and Immigration Services ("CIS"), KATHY )  
REDMAN, Tampa Field Office Director for CIS, EMILIO )  
T. GONZALEZ, Director of CIS, 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. )  
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**COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF**  
**AND PETITION FOR WRIT OF MANDAMUS**

1. Plaintiffs-Petitioners ("Plaintiffs") are lawful permanent residents of the United States who applied to become U.S. citizens more than two (2) to five (5) years ago. Although Plaintiffs successfully completed their naturalization interviews long ago, they have yet to receive any decision on their applications.

2. Federal law requires that administrative agencies conclude matters presented to them "within a reasonable time." 5 U.S.C. § 555. Federal law also requires

that the U.S. Bureau of Citizenship and Immigration Services (“CIS”) adjudicate applications for naturalization within 120 days of a naturalization interview, see 8 C.F.R. § 335.

3. Plaintiffs’ naturalization interviews, however, were completed long ago (from at least 660 days to as many as 1,468 days as of the filing of this suit), and there has still been no decision on their applications.

4. Plaintiffs have made multiple inquiries into the status of their cases over the years, but have been told or have reason to believe that their applications are delayed solely due to the pendency of an indefinite “background” or “security” check.

5. Notwithstanding, Plaintiffs – who have been law-abiding members of the community for years – have not been advised that there is any problem, issue or question about their background. Instead, Plaintiffs have simply been told that they must continue to wait, indefinitely, and with no end in sight.

6. As a result, Plaintiffs suffer the hardships of unreasonably and unlawfully delayed naturalization, including anxiety over their immigration status, prolonged family separations, and the inability to participate in the political process by voting.

7. Because this extraordinary delay is unreasonable and unlawful, Plaintiffs seek an order from the Court directing Defendants to complete all necessary steps and adjudicate their applications within thirty (30) days of the Court’s order.

### **JURISDICTION AND VENUE**

8. This Court has subject matter jurisdiction over this matter pursuant to 8 U.S.C. § 1447(b) (jurisdiction to adjudicate delayed naturalization applications or remand with specific instructions), 28 U.S.C. § 1331 (federal question), and 28 U.S.C. § 1361 (mandamus).

9. Venue is proper in the Middle 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 Middle 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**

#### **Plaintiffs**

10. Plaintiffs ASO HUSSAIN, ALI HUSSAIN, NABIL BOUGHENNA and SABAH BABAMIR are lawful permanent residents of the United States who meet all statutory requirements for naturalization, including having successfully completed their naturalization interviews nearly two (2) years ago.

11. Plaintiffs MOHAMMED YOUSUF, MOHAMED B. MOHAMED LAMINE, SAMEEH AYYOUBI, and KHALIL HAMDAN are lawful permanent residents of the United States who meet all statutory requirements for naturalization,

including having successfully completed their naturalization interviews more than two (2) years ago.

12. Plaintiffs AKRAM JAWAD, IMAN KADOM, SAMIR OTHMAN, and EL SHAFEY ASHOUR are lawful permanent residents of the United States who meet all statutory requirements for naturalization, including having successfully completed their naturalization interviews more than three (3) years ago.

13. Plaintiffs ADIL AMRANI and FAYEZ AYOUB are lawful permanent residents of the United States who meet all statutory requirements for naturalization, including having successfully completed their naturalization interviews more than four (4) years ago.

14. Defendant SUSAN DUGAS is Orlando Field Office Director for U.S. Citizenship and Immigration Services ("CIS"). Ms. Dugas is responsible for applications for naturalization pending in the Orlando Field Office. She is sued in her official capacity.

15. Defendant KATHY REDMAN is Tampa Field Office Director for CIS. Ms. Redman is responsible for applications for naturalization pending in the Tampa Field Office. The Tampa Field Office is also the seat of the "Tampa District" for CIS, which includes the Orlando Field Office and the Tampa Field Office. Ms. Redman is sued in her official capacity.

16. Defendant EMILIO T. GONZALEZ is Director of CIS. Mr. Gonzalez is

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

17. Defendant MICHAEL CHERTOFF is Director of the U.S. Department of Homeland Security (“DHS”), which encompasses CIS. 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.

18. 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 administrative “name checks” which are part of the background checks required by CIS during the naturalization process. He is sued in his official capacity.

19. 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**

20. An individual is statutorily eligible to become a naturalized citizen of the United States if he has been a lawful permanent resident of the United States for the past five (5) years, 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).

21. In order to become a naturalized citizen of the United States, a lawful permanent resident must submit a detailed application, clear a background check, undergo an in-person examination (or “interview”), and pass Civics and English language requirements, unless those are waived.

### **BACKGROUND CHECKS**

22. In 1997, Congress passed an appropriations measure that prohibited the then-Immigration and Naturalization Service (“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.

23. In 1998, 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) (emphasis added).

24. 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).

25. Thus, although Congress only requires that the FBI background check for naturalization consist of a criminal background check, by regulation the INS broadened the scope of the FBI background check to also include an administrative background check.

26. The “criminal” background check requires the FBI to search for arrests and convictions using the applicant’s fingerprints, while the “administrative” check requires the FBI to search its files to determine whether an applicant’s name appears as the subject of any FBI investigation. The “administrative” check has also been referred to as a “name check.”

27. 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,

U.S. Citizenship and Immigration Services (“CIS”) assumed responsibility for adjudicating applications for naturalization, including the background investigations relevant to those applications.

**CIS UNREASONABLY EXPANDS NAME CHECKS,  
CAUSING UNREASONABLE AND UNLAWFUL DELAYS**

28. Starting in 2002, CIS dramatically expanded the scope of the “name checks” it required for naturalization applicants, even though there was no change in the law requiring or authorizing such expansion. CIS expanded the FBI “name checks” to include an FBI 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 file in every case, and for an indefinite period of time.

29. 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) and for any reason (including, for example, as a 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 can cause the FBI 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.

30. Name checks that include a search for all “references” are thus extraordinarily time-consuming measures that at best may produce “hits” of negligible value, and only cause unnecessary and unreasonable delay in the adjudication of



applications for naturalization.

31. In 2006, the CIS Ombudsman reported to Congress 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).

32. FBI “name checks” that include a search for all “references” have caused extraordinary and unreasonable delays in the processing of naturalization applications, with no tangible benefit offered in return.

33. In 2007, the CIS Ombudsman 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.

34. The expanded “name check” requirement for all naturalization applications was implemented rashly by CIS without providing notice to, or soliciting comment from, the public.

35. CIS’ blanket requirement of expanded “name checks” that include a search for all “references” in all cases has been irrational, bearing little or no relation to its intended purpose.

36. The expanded “name check” is not required by law.

37. CIS’ blanket requirement of expanded “name checks” that include a search for all “references” in all cases has thus caused unreasonable and unlawful delays in the adjudication of applications for naturalization.

38. CIS has been, and is, aware of the unreasonableness of its current name check requirement.

39. In 2007, the CIS Ombudsman reported to Congress 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. In addition, CIS has been, and is, aware of the unreasonable delays the expanded name check process causes applicants for naturalization.

41. In 2007, the CIS Ombudsman reported to Congress 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).

#### **CIS AND FBI CAUSE ADDITIONAL DELAYS**

42. Upon information and belief, FBI causes additional delay by not timely completing some “name checks” or “background checks” for naturalization applicants not

because the checks are time-consuming or labor-intensive, but simply because the FBI operates under the belief, shared by CIS, that there is absolutely no “deadline” for completing them. These “name checks” are stalled because they are not being processed.

43. CIS creates additional unreasonable delays by failing to process and act on FBI background check results within a reasonable amount of time of receiving the results.

44. CIS considers a “background check” to be “pending” both when CIS is awaiting results from the FBI, and when CIS has received the results from the FBI but has failed to complete its own review of them.

#### **PLAINTIFFS’ APPLICATIONS FOR NATURALIZATION**

##### **Plaintiff ADIL AMRANI**

45. Plaintiff ADIL AMRANI, a Moroccan national, has been a lawful permanent resident of the United States for more than twelve (12) years. He resides in Orlando.

46. Mr. Amrani applied for naturalization on October 21, 2002, and underwent his naturalization interview on February 12, 2004, passing the civics and language requirements. For more than four (4) years since the interview, he has not received any decision on his application.

47. Mr. Amrani has made several inquiries about the status of his case to USCIS and the FBI, including with the assistance of U.S. Senator Bill Nelson, but these have been to no avail.

48. Mr. Amrani has not been advised that there is any problem, issue or question about his background. Rather, he has simply been told he must continue to wait.

49. Mr. Amrani has suffered and continues to suffer prejudice from the unreasonable delay of his naturalization. He has been deprived of the substantial and unique rights and duties of U.S. citizenship, including the right to vote, to petition for his wife as a U.S. citizen, and to pursue professional opportunities that require U.S. citizenship.

50. Mr. Amrani has a degree in computer networking but presently works as a taxi driver. He would like to move to an area with more high-tech markets to pursue a career in his field, but has not done so out of fear that CIS will lose his file.

**Plaintiffs AKRAM JAWAD and IMAN KADOM (Husband and Wife)**

51. Plaintiffs AKRAM JAWAD and IMAN KADOM, Iraqi nationals, have been in the United States for well over a decade. Dr. Jawad, a retired surgeon who came to the United States on a visa based on his extraordinary professional abilities, now works as a real estate agent. Mrs. Kadom is a homemaker.

52. Dr. Jawad and Mrs. Kadom have been lawful permanent residents of the United States for more than eleven (11) years. They reside in Tampa with their three children.

53. Dr. Jawad and Mrs. Kadom filed their applications for naturalization on March 9, 2004, and passed their naturalization interviews on September 13, 2004. As

early as the date of their interview, Dr. Jawad and Mrs. Jadom were advised that their applications were on a “name check” hold. For more than three (3) years since the interview, they have not received any decision on their applications.

54. Dr. Jawad and Mrs. Kadom have made a number of inquiries into the status of their applications over the past four years. They have regularly gone to the local CIS office, sought the assistance of U.S. Senator Mel Martinez, contacted the FBI, and even sent letters to Governor Jeb Bush and President George W. Bush to ascertain the status of their applications.

55. Dr. Jawad and Mrs. Kadom have never been advised of any derogatory finding in their background check by the FBI or CIS, or asked for more information about their background in conjunction with their applications for naturalization. Instead, without explanation and notwithstanding the time limitations imposed by law, Defendants have only indicated that Dr. Jawad and Mrs. Kadom must continue to wait, indefinitely.

56. Dr. Jawad and Mrs. Kadom have suffered and continue to suffer prejudice from the unreasonable delay of their naturalization. They have been deprived of the substantial and unique rights and duties of U.S. citizenship, including the right to vote and pursue professional opportunities that require U.S. citizenship.

**Plaintiffs ALI HUSSAIN and ASO HUSSAIN (Brothers)**

57. Plaintiffs ALI HUSSAIN and ASO HUSSAIN, Iraqi nationals, have been lawful permanent residents of the United States for more than seven (7) years. They are

brothers and reside with their parents and siblings in Orlando.

58. Ali and Aso Hussain are Kurds who fled the brutal regime of Saddam Hussein and were granted asylum in the United States.

59. Ali Hussain works as a machinist. His younger brother, Aso, is currently a college student.

60. Ali Hussain applied for naturalization on March 21, 2005, and underwent his naturalization interview on February 22, 2006, passing the civics and language requirements. For nearly two (2) years since the interview, he has not received any decision on his application.

61. Aso Hussain applied for naturalization on March 29, 2005, and underwent his naturalization interview on February 28, 2006, passing the civics and language requirements. For nearly two (2) years since the interview, he has not received any decision on his application.

62. Ali and Aso Hussain have made several inquiries about the status of their applications, but these have been to no avail.

63. Ali and Aso Hussain have not been advised that there is any problem, issue or question about their background. Rather, they have simply been told they must continue to wait.

64. Ali and Aso Hussain have suffered and continue to suffer prejudice from the unreasonable delay of their naturalization. They have been deprived of the substantial

and unique rights and duties of U.S. citizenship, including the right to vote. While Ali Hussain awaits an adjudication on his application, he is separated from his wife, who remains in Iraq.

**Plaintiff FAYEZ AYOUB**

65. Plaintiff FAYEZ AYOUB, a Jordanian national, has been a lawful permanent resident of the United States for nearly ten (10) years. He resides in Largo, Florida.

66. Mr. Ayoub applied for naturalization on May 12, 2003, and underwent his naturalization interview on February 13, 2004, passing the civics and language requirements. For more than four (4) years since the interview, he has not received any decision on his application.

67. Mr. Ayoub has made several inquiries about the status of his case to USCIS, but these have been to no avail.

68. Mr. Ayoub has not been advised that there is any problem, issue or question about his background. Rather, he has simply been told he must continue to wait.

69. Mr. Ayoub has suffered and continues to suffer prejudice from the unreasonable delay of his naturalization. He has been deprived of the substantial and unique rights and duties of U.S. citizenship, including the right to vote and to petition for his children as a U.S. citizen. While he awaits a decision on his case, Mr. Ayoub is separated from his children, who live with their grandparents in Palestine.

**Plaintiff SAMIR OTHMAN**

70. Plaintiff SAMIR OTHMAN, a Jordanian national, has been a lawful permanent resident of the United States for more than six (6) years.

71. Mr. Othman resides in Tampa with his U.S. citizen wife, and four U.S. citizen children. He is self-employed at an air conditioning service and repair firm.

72. Mr. Othman applied for naturalization on April 12, 2004, and underwent his naturalization interview on October 7, 2004, passing the civics and language requirements. For more than three (3) years since the interview, he has not received any decision on his application.

73. Mr. Othman has not been advised that there is any problem, issue or question about his background.

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

**Plaintiff EL SHAFEY ASHOUR**

75. Plaintiff EL SHAFEY ASHOUR, an Egyptian and Spanish national, has been a lawful permanent resident of the United States for more than six (6) years. He resides in St. Petersburg with his U.S. citizen wife.

76. Mr. Ashour applied for naturalization on June 24, 2004, and underwent his



naturalization interview on January 10, 2005, passing the civics and language requirements. For more than three (3) years since the interview, he has not received any decision on his application.

77. Mr. Ashour has made several inquiries about the status of his case to USCIS and the FBI, but these have been to no avail. On one occasion, USCIS told Mr. Ashour that he might have to wait up to four years.

78. Mr. Ashour has not been advised that there is any problem, issue or question about his background. Rather, he has simply been told he must continue to wait.

79. Mr. Ashour has suffered and continues to suffer prejudice from the unreasonable delay of his naturalization. He has been deprived of the substantial and unique rights and duties of U.S. citizenship, including the right to vote and to pursue employment opportunities that require U.S. citizenship. Mr. Ashour would love to vote in the upcoming election.

**Plaintiff MOHAMMED YOUSUF**

80. Plaintiff MOHAMMED YOUSUF, a Bangladeshi national, has been a lawful permanent resident of the United States for more than nine (9) years. Mr. Yousuf resides in Orlando with his U.S. citizen wife and children, and works in sales and customer service.

81. Mr. Yousuf applied for naturalization on March 22, 2004, and underwent his naturalization interview on June 22, 2005, passing the civics and language

requirements. Mr. Yousuf's wife applied for naturalization around the same time, and her application was promptly granted. For more than two-and-a-half (2½) years since Mr. Yousuf's interview, however, he has not received any decision on his application.

82. Mr. Yousuf has not been advised that there is any problem, issue or question about his background.

83. Mr. Yousuf has suffered and continues to suffer prejudice from the unreasonable delay of his naturalization. He has been deprived of the substantial and unique rights and duties of U.S. citizenship, including the right to vote

**Plaintiff SAMEEH AYYOUBI**

84. Plaintiff SAMEEH AYYOUBI, a Palestinian, has lived in the United States for more than thirty (30) years. He has been a lawful permanent resident of the United States for more than nine (9) years. Mr. Ayyoubi resides in Orlando with his U.S. citizen wife, and three U.S. citizen children. He is a public high school teacher.

85. Mr. Ayyoubi applied for naturalization on June 17, 2004, and underwent his naturalization interview on August 24, 2005, passing the civics and language requirements. For more than two-and-a-half (2½) years since the interview, he has not received any decision on his application.

86. Mr. Ayyoubi has made several inquiries about the status of his case, including with the assistance of U.S. Senator Bill Nelson, but these have been to no avail.

87. Mr. Ayyoubi has not been advised that there is any problem, issue or

question about his background. Rather, he has simply been told he must continue to wait.

88. Mr. Ayyoubi has suffered and continues to suffer prejudice from the unreasonable delay of his naturalization. He has been deprived of the substantial and unique rights and duties of U.S. citizenship, including the right to vote.

**Plaintiff MOHAMED B. MOHAMED LAMINE**

89. Plaintiff MOHAMED B. MOHAMED LAMINE, a national of Niger, has been a lawful permanent resident of the United States for several years. He resides in Tampa with his wife and children.

90. Mr. Mohamed Lamine applied for naturalization on May 13, 2005, and underwent his naturalization interview on November 21, 2005, passing the civics and language requirements. For more than two (2) years since his interview, however, Mr. Mohamed Lamine has not received any decision on his application.

91. Mr. Mohamed Lamine has not been advised that there is any problem, issue or question about his background.

92. Mr. Mohamed Lamine has suffered and continues to suffer prejudice from the unreasonable delay of his naturalization. He has been deprived of the substantial and unique rights and duties of U.S. citizenship, including the right to vote.

**Plaintiff KHALIL HAMDAN**

93. Plaintiff KHALIL HAMDAN, a Jordanian national, has been a lawful permanent resident of the United States for nearly six (6) years. He resides in Tampa

with his U.S. citizen wife and their two-year-old U.S. citizen child. Mr. Hamdan works as general manager for a wholesale distribution company.

94. Mr. Hamdan applied for naturalization on January 20, 2005, and underwent his naturalization interview on January 27, 2006, passing the civics and language requirements. For more than two (2) years since the interview, Mr. Hamdan has not received any decision on his application.

95. Mr. Hamdan has made inquiries about the status of his case, but these have been to no avail.

96. Mr. Hamdan has not been advised that there is any problem, issue or question about his background.

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

**Plaintiff NABIL BOUGHENNA**

98. Plaintiff NABIL BOUGHENNA, a Moroccan national, has been a lawful permanent resident of the United States for more than seven (7) years. Mr. Boughenna resides in Kissimmee with his U.S. citizen wife and their four-year-old son.

99. Mr. Boughenna applied for naturalization on August 10, 2005, and underwent his naturalization interview in April 2006, passing the civics and language

requirements. For nearly two (2) years since the interview, he has not received any decision on his application.

100. Mr. Boughenna has made several inquiries about the status of his case, including with the assistance of U.S. Senator Mel Martinez, but these have been to no avail.

101. In February 2007, Senator Martinez wrote a letter to Mr. Boughenna reporting that according to FBI, Mr. Boughenna's FBI check was completed in August 2005, with the results forward to CIS. Yet in February 2008, CIS continued to tell Mr. Boughenna that his case was delayed because background checks had not yet been completed.

102. Mr. Boughenna has not been advised that there is any problem, issue or question about his background. Rather, he has simply been told he must continue to wait.

103. Mr. Boughenna has suffered and continues to suffer prejudice from the unreasonable delay of his naturalization. He has been deprived of the substantial and unique rights and duties of U.S. citizenship, including the right to vote.

**Plaintiff SABAHA BABAMIR**

104. Plaintiff SABAHA BABAMIR, an Iraqi national, has been a lawful permanent resident of the United States for more than seven (7) years. She resides in Orlando with her mother and sister.

105. Ms. Babamir applied for naturalization on July 6, 2005, and underwent her

naturalization interview in April 2006, passing the civics and language requirements. For nearly two (2) years since the interview, she has not received any decision on her application.

106. Ms. Babamir has not been advised that there is any problem, issue or question about her background.

107. Ms. Babamir has suffered and continues to suffer prejudice from the unreasonable delay of her naturalization. She has been deprived of the substantial and unique rights and duties of U.S. citizenship, including the right to vote.

#### **DEFENDANTS' POLICIES AND PRACTICES**

108. Defendants DUGAS, REDMAN, GONZALEZ and CHERTOFF have a policy, pattern and practice of failing to adjudicate Plaintiffs' applications for naturalization within 120 days of the naturalization examination, in violation of federal law.

109. Defendants DUGAS, REDMAN, GONZALEZ and CHERTOFF have a policy, pattern and practice of unlawfully withholding and unreasonably delaying adjudication of Plaintiffs' applications for naturalization by arbitrarily and capriciously requiring irrational and indefinitely prolonged background checks, including "name checks" that include a search for all "references" and are not required by law.

110. Defendants DUGAS, REDMAN, GONZALEZ and CHERTOFF have a policy, pattern and practice of unreasonably requiring "name checks" that include a

search for all “references,” indiscriminately and for an indefinite duration, before adjudicating Plaintiffs’ applications for naturalization, despite no statutory or regulatory requirement for such name checks before an application can be adjudicated.

111. Defendants DUGAS, REDMAN, GONZALEZ and CHERTOFF have a policy, pattern and practice of unlawfully withholding and unreasonably delaying adjudication of Plaintiffs’ applications for naturalization by failing to promptly act on applications after they receive background check results from the FBI.

112. Defendants MUELLER and MUKASEY have a policy, pattern and practice of unreasonably delaying the completion of background checks with the full knowledge that CIS requires the completion of such checks for adjudicating all applications for naturalization.

113. Defendants MUELLER and MUKASEY have a policy, pattern and practice of failing to process background checks for some naturalization applicants, operating on the belief that there is absolutely no “deadline” to complete them.

114. Defendants have a policy, pattern and practice of failing to set parameters or deadlines for conducting and completing background checks within a reasonable time, and taking all other reasonable steps necessary to complete the adjudication of applications for naturalization in a lawful and timely fashion, despite being on notice of the problem for years.

115. Plaintiffs are informed and believe that Defendants do not have any policies

or practices in place to ensure timely adjudication of naturalization applications in compliance with the law.

116. As a result of Defendants' policies, practices, actions and omissions, Plaintiffs have suffered injury, in that they have been unlawfully denied the rights and benefits of U.S. citizenship for years since undergoing their naturalization interviews.

### **RELIEF SOUGHT**

117. Plaintiffs seek a declaration by the Court that Defendants have engaged in unreasonable and extraordinary delay in adjudicating their naturalization applications, in violation of 8 U.S.C. § 1447(b) and the Administrative Procedure Act, 5 U.S.C. §§ 555 and 706. In light of this extraordinary and unlawful delay, Plaintiffs seek an order compelling Defendants to complete any pending background check and adjudicate their applications for naturalization within 30 days of an order by the Court, pursuant to the Court's authority under the APA, 5 U.S.C. §§ 555 and 706; 8 U.S.C. § 1447(b) (court's authority to remand applications for naturalization with specific instructions); and 28 U.S.C. § 1361 (mandamus).

118. In an April 25, 2006 interoffice memorandum, CIS admitted that, in delayed naturalization cases where a court has given "USCIS and FBI a deadline within which to complete the [background] check . . . the government has been able to complete the process within the court ordered deadline."



**PERMISSIVE JOINDER**

119. Plaintiffs bring this action jointly pursuant to Federal Rule of Civil Procedure 20, which allows for permissive joinder. Rule 20 provides that “persons may join in one action as plaintiffs if (A) they assert any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and (B) any question of law or fact common to all plaintiffs will arise in the action.” Fed.R.Civ.P. 20(a).

120. This action arises out of the same transaction or occurrence, or series of transactions or occurrences, in that the unlawful delays challenged are the result of the same pattern or practice by Defendants of unreasonably and unlawfully delaying the adjudication of applications for naturalization based on “background” or “security” checks.

121. This action also raises common issues of law and fact. As a factual matter, Plaintiffs are similarly situated. All have submitted applications for naturalization, are eligible for naturalization, have successfully completed their naturalization interviews, and have been awaiting adjudication on their applications for more than a year beyond the statutory deadline of 120 days after their interviews. Plaintiffs have been told or have reason to believe that the sole reason for the delay is pendency of the “background” or “security” check.

122. As a factual and legal matter, Plaintiffs allege that they have been injured

by the same pattern or practice by Defendants of unlawfully and unreasonably delaying adjudication of their applications. Plaintiffs allege that Defendants' unlawful delay is based on the same pattern or practice by CIS of requiring an irrational "name check" that includes a search for all references as part of the FBI background check in all cases, and by then failing to act within a reasonable time after receiving results from the FBI, as well as FBI's pattern or practice of failing to process "name checks" for naturalization applicants on the belief that there is absolutely no "deadline" to complete them.

123. In addition, Plaintiffs allege similar harms from the delay of their naturalization applications, including, but not limited to, the inability to participate in civic society by voting, delays in family reunification, the inability to apply for jobs that require U.S. citizenship, and the anxiety of having an uncertain status in the country they have made their home and where they have established themselves as part of a community.

124. Lastly, Plaintiffs jointly seek the same legal remedy: a declaration that Defendants have engaged in unreasonable and extraordinary delay in adjudicating Plaintiffs' naturalization applications, and an order compelling Defendants to complete any pending background check, and adjudicate their applications for naturalization, within 30 days of the Court's order.

125. This action thus satisfies the requirements for permissive joinder. It involves the same transaction (Defendants' unlawful policies, patterns and practices); and

common questions of law and fact (regarding the lawfulness of Defendants' actions). Permissive joinder of these Plaintiffs, rather than multiple individual actions raising the same factual and legal allegations, would serve the purpose of Rule 20 by promoting judicial efficiency.

### **DECLARATORY AND INJUNCTIVE RELIEF ALLEGATIONS**

126. 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. Defendants have refused to adjudicate Plaintiffs' applications for naturalization in compliance with the law.

127. Defendants' failure to timely adjudicate Plaintiffs' naturalization applications has caused and will continue to cause irreparable injury to Plaintiffs. Plaintiffs have no plain, speedy and adequate remedy at law.

### **CAUSES OF ACTION**

#### **FIRST CLAIM FOR RELIEF**

#### **RIGHT TO REMAND WITH SPECIFIC INSTRUCTIONS; 8 U.S.C. §1447(b) [By Plaintiffs Against Defendants Dugas, Redman, Gonzalez and Chertoff]**

128. The allegations contained in paragraphs 1 through 127 above are repeated and incorporated as though fully set forth herein.

129. Because Defendants have failed to adjudicate Plaintiffs' naturalization applications within 120 days of the naturalization examination, Plaintiffs are entitled to remand of the applications to CIS with specific instructions, including a specific deadline

in which to complete background checks and adjudicate the applications, under 8 U.S.C. § 1447(b).

130. This Court should remand Plaintiffs' applications for naturalization with specific instructions to complete background checks and adjudicate the applications within 30 days of the Court's order because Plaintiffs are eligible for naturalization; Defendants have failed to comply with time limitations imposed by law; Defendants have failed to act within a reasonable time; Defendants have already been given ample open-ended opportunity to act even beyond the time permitted by law, but have still failed to do so; and Defendants admit they are able to comply with such orders.

**SECOND CLAIM FOR RELIEF**

**UNREASONABLE DELAY IN VIOLATION OF  
THE ADMINISTRATIVE PROCEDURE ACT  
[By Plaintiffs Against All Defendants]**

131. The allegations contained in paragraphs 1 through 127 above are repeated and incorporated as though fully set forth herein.

132. The Administrative Procedure Act ("APA") 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). "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).

133. The failure of Defendants MUKASEY and MUELLER to complete background checks within a reasonable time, particularly with the full knowledge that CIS requires completion of such background checks for adjudicating Plaintiffs' applications for naturalization, violates the APA, 5 U.S.C. §§ 555(b) and 706.

134. The failure of Defendants DUGAS, REDMAN, GONZALEZ and CHERTOFF to review and act upon background check results received from the FBI within a reasonable time violates the APA, 5 U.S.C. §§ 555(b) and 706.

135. The failure of Defendants DUGAS, REDMAN, GONZALEZ 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.

136. As a result of Defendants' actions, Plaintiffs 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. Remand Plaintiffs' applications for naturalization to CIS with the specific instructions that Defendants complete background checks and adjudicate their applications within 30 days of the Court's order, pursuant to 8 U.S.C. § 1447(b);
- C. Compel CIS and FBI to complete background checks and adjudicate their applications within 30 days of the Court's order, pursuant to 5 U.S.C. § 706(1) and/or 28

U.S.C. § 1361;

D. Issue a declaratory judgment holding unlawful (1) the failure of Defendants DUGAS, REDMAN, GONZALEZ and CHERTOFF to adjudicate Plaintiffs' applications for naturalization within 120 days of the date of the naturalization interview; (2) the failure of Defendants MUKASEY and MUELLER to complete background checks within a reasonable time; (3) the failure of Defendants DUGAS, REDMAN, GONZALEZ and CHERTOFF to review and act upon background checks received from the FBI within a reasonable time; and (4) 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;

E. Award Plaintiffs 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

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Khurram B. Wahid', written over a horizontal line.

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Attorneys for Plaintiffs-Petitioners

## CIVIL COVER SHEET

6080w 246

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

AMRANI, Adil, et al.

(b) County of Residence of First Listed Plaintiff Orange  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)  
See attachment.

## DEFENDANTS

USCIS, DUGAS, Susan, Orlando Field Office Director, et al.,

County of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED

Attorneys (If Known) U.S. Attorney  
501 W. Church St., Suite 300  
Orlando, FL 32805

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSDI Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities' Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

8 U.S.C. 1447(b); 5 U.S.C. 555; 28 U.S.C. 1361

Brief description of cause:

Action to compel adjudication of applications for naturalization.

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

## VIII. RELATED CASE(S)

IF ANY

(See instructions)

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG JUDGE \_\_\_\_\_