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11 **UNITED STATES DISTRICT COURT**  
12 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

13 MUSTAFA AZIZ; YOUSUF  
14 BHAGHANI; SAMINA KHWAJA;  
KOLOOD AL-KAJAJI; IBRAHIM  
15 BATLIWALA; IMRAN  
CHAUDHRY; LAMIA EL FEKY;  
16 MUHAMMAD MALIK; MUSTAFA  
OSMAN and SAMI TRAD,  
17 individually and on behalf of all those  
similarly situated,

18 Plaintiffs,

19 vs.

20 ALBERTO GONZALES, in his  
official capacity as Attorney General  
21 of the United States; MICHAEL  
CHERTOFF, in his official capacity  
22 as Secretary of the U.S. Department  
of Homeland Security; EMILIO T.  
23 GONZALEZ, in his official capacity  
as Director of U.S. Citizenship and  
24 Immigration Services; JANE  
ARELLANO, in her official capacity  
25 as Field Director of the Los Angeles  
District of U.S. Citizenship and  
26 Immigration Services; and ROBERT  
S. MUELLER, III, in his official  
27 capacity as Director of the Federal  
Bureau of Investigation,

28 Defendants.

Case No.

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF; PETITIONS  
FOR NATURALIZATION**

**CLASS ACTION**

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1 Yet CIS has failed to adjudicate Plaintiffs' applications within 120 days of the date  
2 of their naturalization examinations, as required by law.

3 4. Plaintiffs, many of whom have spent virtually their whole adult lives  
4 in this country, seek to pledge their allegiance to the United States and to  
5 participate fully in our society as United States citizens. Having qualified to do so  
6 after years of living in the United States and contributing to our country and their  
7 local communities, Plaintiffs have been robbed of their statutory right to naturalize  
8 solely because of the bureaucratic failings and callous inaction of two federal  
9 government agencies -- CIS and the Federal Bureau of Investigation ("FBI"). CIS  
10 has delayed the adjudication of Plaintiffs' naturalization applications because it  
11 has delegated a new form of security check called a "name check" to the FBI,  
12 which has willfully and unreasonably delayed Plaintiffs' "name checks" for years.

13 5. As a result of the agencies' failure to adjudicate their applications for  
14 citizenship, Plaintiffs are unable to sponsor for lawful permanent residency their  
15 immediate relatives living abroad, apply for and receive business-related benefits  
16 reserved for United States citizens (such as federal small business loans), or  
17 participate as United States citizens in the Visa Waiver Program and travel abroad  
18 and return to the United States without fear of exclusion. Moreover, Plaintiffs are  
19 unable to vote in elections, serve on juries, and enjoy the other rights and  
20 responsibilities of U.S. citizenship.

21 6. Defendants are officials of the two government agencies that have  
22 failed to adjudicate Plaintiffs' naturalization applications within the time periods  
23 prescribed by law. The exceedingly long delays in adjudication are caused by  
24 Defendants' unwillingness to complete in timely fashion a background check  
25 known as a "name check." Despite the fact that Plaintiffs have been waiting for  
26 over two years since passing their naturalization examinations, Defendants refuse  
27 to set any deadlines for completion of these "name checks"; instead, they have  
28 allowed Plaintiffs' applications to linger indefinitely. Through their callous and

1 unreasonable inaction, Defendants are depriving Plaintiffs of the rights and  
2 benefits of U.S. citizenship.

3 7. Plaintiffs seek declaratory and injunctive relief to require the  
4 Defendants to adjudicate their applications for naturalization within the time  
5 periods prescribed by law, and ask the Court to declare the agencies' delays to be  
6 in violation of immigration laws and regulations, laws governing administrative  
7 agency action, and the Due Process Clause of the Fifth Amendment. In addition,  
8 the named Plaintiffs request that the Court review their applications *de novo* and  
9 naturalize them as United States citizens, pursuant to 8 U.S.C. § 1447(b)..

10 **PARTIES**

11 Plaintiffs

12 8. Plaintiff Mustafa Aziz is a citizen of Afghanistan. He is a lawful  
13 permanent of the United States, and he resides in Irvine, California. He applied  
14 for naturalization with CIS and had his naturalization examination in April 2004.  
15 His naturalization application has not been adjudicated.

16 9. Plaintiff Yousuf Bhaghani is a citizen of Pakistan. He is a lawful  
17 permanent resident of the United States, and he lives in Corona, California. He  
18 applied for naturalization with CIS and had his naturalization examination in  
19 August 2002. His naturalization application has not been adjudicated.

20 10. Plaintiff Samina Khwaja is a citizen of the United Kingdom and  
21 Pakistan. She is a lawful permanent resident of the United States, and she lives in  
22 Orange County, California. She applied for naturalization with CIS and had her  
23 naturalization examination in January 2004. Her naturalization application has not  
24 been adjudicated.

25 11. Plaintiff Kolood Al-Kafaji is a citizen of Iraq. She is a lawful  
26 permanent resident of the United States, and she lives in Irvine, California. She  
27 applied for naturalization with CIS and had her naturalization examination in  
28 December 2003. Her naturalization application has not been adjudicated.

1           12. Plaintiff Ibrahim Batliwala is a citizen of India. He is a lawful  
2 permanent resident of the United States, and he lives in Anaheim, California. He  
3 applied for naturalization with CIS and had his naturalization examination in July  
4 2002. His naturalization application has not been adjudicated.

5           13. Plaintiff Imran Chaudhry is a citizen of Pakistan. He is a lawful  
6 permanent resident of the United States, and he lives in Costa Mesa, California.  
7 He applied for naturalization with CIS and had his naturalization examination in  
8 January 2004. His naturalization application has not been adjudicated.

9           14. Plaintiff Lamia El Feky is a citizen of Egypt. She is a lawful  
10 permanent resident of the United States, and she lives in Foothill Ranch,  
11 California. She applied for naturalization with CIS and had her naturalization  
12 examination in February 2004. Her naturalization application has not been  
13 adjudicated.

14           15. Plaintiff Muhammad Malik is a citizen of Pakistan. He is a lawful  
15 permanent resident of the United States, and he lives in Corona, California. He  
16 applied for naturalization with CIS and had his naturalization examination in May  
17 2004. His naturalization application has not been adjudicated.

18           16. Plaintiff Mustafa Osman is a citizen of Sudan. He is a lawful  
19 permanent resident of the United States, and he lives in Norwalk, California. He  
20 applied for naturalization with CIS and had his naturalization examination in  
21 August 2004. His naturalization application has not been adjudicated.

22           17. Plaintiff Sami Trad is a citizen of Lebanon. He is a lawful permanent  
23 resident of the United States, and he lives in San Gabriel, California. He applied  
24 for naturalization with CIS and had his naturalization examination in February  
25 2004. His naturalization application has not been adjudicated.

26 Defendants

27           18. Defendant Alberto Gonzales is the Attorney General of the United  
28 States, and such, is the head of the United States Department of Justice and the

1 chief law enforcement officer of the federal government. The Attorney General  
2 has the authority to naturalize persons as citizens of the United States. 8 U.S.C. §  
3 1421(a). The Attorney General is also ultimately responsible for the Federal  
4 Bureau of Investigation, a subdivision of the Justice Department. Mr. Gonzales is  
5 sued here in his official capacity.

6 19. Defendant Michael Chertoff is the Secretary of the Department of  
7 Homeland Security ("DHS"). As of March 1, 2003, DHS is the agency  
8 responsible for implementing the Immigration and Nationality Act ("INA").  
9 Within DHS, CIS(formerly part of the Immigration and Naturalization Service  
10 ("INS")), is responsible for implementing the provisions of the INA under which  
11 lawful permanent residents are naturalized as United States citizens. Mr Chertoff  
12 is sued here in his official capacity.

13 20. Defendant Emilio T. Gonzalez is the Director of CIS, and as such is  
14 responsible for implementing the provisions of the INA under which lawful  
15 permanent residents are naturalized as United States citizens. He is sued here in  
16 his official capacity.

17 21. Defendant Jane Arellano is the Field Office Director of the Los  
18 Angeles District of CIS. Pursuant to 8 C.F.R. § 310.2, Ms. Arellano has been  
19 delegated authority to control all CIS activities within the Los Angeles District,  
20 including the authority to adjudicate naturalization applications. She is sued here  
21 in her official capacity.

22 22. Defendant Robert S. Mueller III is the Director of the FBI. The FBI  
23 is an agency within the United States Department of Justice whose mission is to  
24 enforce criminal laws and defend the United States against terrorist and foreign  
25 intelligence threats. Upon the request of CIS, the FBI performs "name checks"  
26 and other background checks of all applicants for naturalization.

#### 27 **LEGAL FRAMEWORK**

28 23. Federal immigration law allows persons who have been residing in

1 the United States as lawful permanent residents to become United States citizens  
2 through a process known as naturalization.

3 24. A person seeking to naturalize must meet certain requirements,  
4 including an understanding of the English language and history and civics of the  
5 United States; a sufficient period of physical presence in the United States; and  
6 good moral character. 8 U.S.C. § 1423, 1427(a).

7 25. Persons seeking to naturalize must submit an application for  
8 naturalization to CIS. 8 U.S.C. § 1445. CIS is the agency that is responsible for  
9 adjudicating naturalization applications. 8 C.F.R. § 100.2.

10 26. Once an application is submitted, CIS conducts a background  
11 investigation of each naturalization applicant. 8 U.S.C. § 1446(a); 8 C.F.R. §  
12 335.1.

13 27. According to CIS regulations, the background investigation includes  
14 a full criminal background check performed by the FBI. 8 C.F.R. § 335.2. After  
15 the background investigation is completed, CIS schedules a naturalization  
16 examination, at which an applicant meets with a CIS examiner who is authorized  
17 to ask questions and take testimony. The CIS examiner must determine whether to  
18 grant or deny the naturalization application. 8 U.S.C. § 1446(d).

19 28. CIS must grant a naturalization application if the applicant has  
20 complied with all requirements for naturalization. 8 C.F.R. § 335.3.

21 29. CIS must grant or deny a naturalization application at the time of the  
22 examination or, at the latest, within 120 days after the date of the examination. 8  
23 C.F.R. § 335.3. Once an application is granted, the applicant is sworn in as a  
24 United States citizen.

25 30. Plaintiffs are informed and believe that since September 11, 2001,  
26 CIS has added – without promulgating any regulation – a new type of  
27 background check to the naturalization process, known as a “name check.” A  
28 “name check” is a check of FBI records based on the full name of the applicant.



1 The "name check" is conducted by FBI personnel through manual and electronic  
2 searches of the FBI's centralized records. CIS requests the FBI to conduct "name  
3 checks" on all applications for naturalization.

4 31. Plaintiffs are informed and believe that CIS does not adjudicate  
5 applications for naturalization until it receives a completed "name check" from the  
6 FBI. Neither CIS nor the FBI impose any time limits for completion of "name  
7 checks." The FBI claims that CIS determines the order of resolution of the  
8 requested "name checks," and CIS claims that it cannot ask or require the FBI to  
9 complete "name checks" within any particular timeframe.

10 32. Plaintiffs are informed and believe that CIS has implemented recently,  
11 or will soon implement, a new policy or practice of delaying naturalization  
12 examinations until after the "name check" is completed. Thus, for future  
13 applicants for naturalization, lengthy delays in adjudication will occur prior to the  
14 examination, rather than after the examination.

15 33. When CIS fails to adjudicate a naturalization application within 120  
16 days of the examination, the applicant may seek de novo review of the application  
17 by a district court. 8 U.S.C. § 1447(b). When the applicant requests district court  
18 review, the district court gains exclusive jurisdiction over the application, *United*  
19 *States v. Hovsepien*, 359 F.3d 1144 (9<sup>th</sup> Cir. 2004), and it may naturalize the  
20 applicant. 8 U.S.C. § 1447(b).

#### 21 STATEMENT OF FACTS

22 34. Mustafa Aziz is a native and citizen of Afghanistan who came to the  
23 United States with his family at the age of one. His family came to the U.S. as  
24 refugees fleeing war and persecution in their native country. He lives in Irvine,  
25 California with his parents and siblings, who are all United States citizens. He has  
26 been a lawful permanent resident for more than twenty years.

27 35. Mr. Aziz enlisted and served in active duty as a supply journeyman in  
28 the United States Air Force for four years, attaining the rank of Senior Airman.

1 He is presently in the inactive reserves of the Air Force, and he has obtained his  
2 undergraduate degree in aeronautics.

3 36. In September 2003, while serving in the military, Mr. Aziz applied  
4 for naturalization. In April 2004, he successfully passed his naturalization  
5 examination. He meets all other statutory requirements for naturalization.

6 37. Despite Mr. Aziz's numerous inquiries with CIS, his repeated  
7 submission of his fingerprints, and his service in the U.S. military after the  
8 completion of Department of Defense background checks, CIS has failed to  
9 adjudicate his application for naturalization. CIS personnel informed Mr. Aziz  
10 that his application is being delayed pending completion of a "name check."

11 38. Mr. Aziz intends to obtain a commercial pilot's license, for which he  
12 needs further education and training. Because of CIS's failure to adjudicate his  
13 naturalization application, he is not eligible for certain aeronautical employment  
14 opportunities, and he faces greater obstacles to becoming a commercial pilot.

15 39. Plaintiff Yousuf Bhaghani is a native and citizen of Pakistan who has  
16 resided in the United States since 1989. He became a legal permanent resident of  
17 the United States in 1998 and currently resides in Corona, California with his  
18 family. His wife of ten years and his three children are all United States citizens.  
19 He owns two small businesses, a computer store and a wholesale car company.

20 40. Mr. Bhaghani applied for naturalization in November 2001 and  
21 successfully passed his naturalization examination on August 23, 2002. CIS later  
22 re-opened his case to ask for additional documents, which he submitted by  
23 February 2003. He meets all other statutory requirements for naturalization.

24 41. Despite numerous written and in-person inquiries with CIS, and the  
25 intervention of his representative in Congress, the Honorable Ken Calvert, CIS has  
26 failed to adjudicate his application for naturalization. In a response to a written  
27 inquiry, the FBI stated that his "name check" was completed in December 2002.  
28 However, CIS has informed Mr. Bhaghani, through the Honorable Ken Calvert's

1 office, that his application is being delayed pending completion of a "name  
2 check."

3 42. Because of CIS's failure to adjudicate his naturalization application,  
4 Mr. Bhaghani is unable to sponsor for lawful permanent residency his elderly,  
5 ailing parents who live in Pakistan. He is also unable to travel abroad without  
6 inconvenience and fear of harassment because he does not have a U.S. passport.

7 43. Plaintiff Samina Khwaja, M.D., is a citizen of the United Kingdom  
8 and Pakistan. She lives with her family in Orange County, California. Dr. Khwaja  
9 was born in Pakistan and grew up in Britain and the Netherlands. She is a medical  
10 doctor and completed her medical residency and fellowship in the United States.  
11 She has been a lawful permanent resident of the United States since 1992.

12 44. In August 2003, Dr. Khwaja applied for naturalization. She  
13 successfully passed her naturalization examination on January 14, 2004, and meets  
14 all other statutory requirements for naturalization.

15 45. Despite Dr. Khwaja's numerous written and in-person inquiries and  
16 the intervention of her representative in Congress, the Honorable Christopher Cox,  
17 CIS has failed to adjudicate Dr. Khwaja's application for naturalization. Dr.  
18 Khwaja was informed that her application is being delayed pending completion of  
19 a "name check."

20 46. Plaintiff Kolood Al-Kafaji is a native and citizen of Iraq. Her  
21 husband came to the United States as a refugee from Iraq after the Persian Gulf  
22 War, after spending two years in a refugee camp, and she soon followed. She lives  
23 in Irvine, California with her husband and four children, who are all United States  
24 citizens. She and her husband own and operate a small grocery business and two  
25 grocery stores in Orange County, employing several local residents. Ms. Al-Kafaji  
26 is a homemaker who works part-time at the family's grocery stores.

27 47. Ms. Al-Kafaji has been a lawful permanent resident of the United  
28 States since 1997. She applied for naturalization in early 2003. She successfully

1 passed her naturalization examination in December 2003, and meets all other  
2 statutory requirements for naturalization.

3 48. Despite Ms. Al-Kafaji's in-person inquiry to CIS, two requests for  
4 assistance to her representative in Congress, and two submissions of her  
5 fingerprints, CIS has failed to adjudicate her naturalization application. Ms. Al-  
6 Kafaji was informed that her application is being delayed pending completion of a  
7 "name check."

8 49. Plaintiff Ibrahim Batliwala is a native and citizen of India. He has  
9 lived in the United States for eighteen years, and he became a lawful permanent  
10 resident in 1995. He lives with his wife and three U.S. citizen children in  
11 Anaheim, California. He is self-employed as a religious teacher.

12 50. Mr. Batliwala filed a naturalization application with CIS in August  
13 2001, and he successfully passed his naturalization examination on July 15, 2002.  
14 He meets all other statutory requirements for naturalization. Despite numerous  
15 written inquires, CIS has failed to adjudicate his application for naturalization.  
16 CIS personnel informed him that his application is being delayed pending  
17 completion of a "name check."

18 51. Because of CIS's failure to adjudicate his naturalization application,  
19 Mr. Batliwala is unable to sponsor for lawful permanent residency his elderly,  
20 ailing parents who live in India.

21 52. Plaintiff Imran Chaudhry is a native and citizen of Pakistan. He lives  
22 in Costa Mesa, California with his wife and two children, who are all United  
23 States citizens. Mr. Chaudhry owns a small computer business. He has been a  
24 lawful permanent resident of the United States since 1999.

25 53. Mr. Chaudhry applied for naturalization in December January 2003.  
26 He successfully passed his naturalization examination on January 5, 2004, and  
27 meets all other statutory requirements for naturalization.  
28

1           54. Despite Mr. Chaudhry's numerous written and in-person inquiries, his  
2 filing of a request under the Freedom of Information Act, his repeated submission  
3 of his fingerprints, and the intervention of his representative in Congress, the  
4 Honorable Dana Rohrbacher, CIS has failed to adjudicate his application for  
5 naturalization.

6           55. In an effort to expedite his naturalization application, Mr. Chaudhry  
7 filed a Freedom of Information Act request with the FBI, and the agency  
8 responded in writing that it has no records relating to him and that he has never  
9 been "of investigatory interest to the FBI." Despite this, Mr. Chaudhry was  
10 informed that his application is being delayed pending completion of a "name  
11 check."

12           56. Because of CIS's failure to adjudicate his naturalization application,  
13 Mr. Chaudhry has been unable to apply with the federal government for a small  
14 business loan. He is also unable to sponsor for lawful permanent residency his  
15 elderly father, who resides in Pakistan and suffers from a rare brain disorder that  
16 requires medical treatment in the United States.

17           57. Lamia El Feky is a native and citizen of Egypt. She lives in Foothill  
18 Ranch, California with her six six children, all of whom are United States citizens.  
19 She is currently studying for her real estate license. She has been a lawful  
20 permanent resident of the United States since 1996.

21           58. Ms. El Feky applied for naturalization in September 2003. She  
22 successfully passed her naturalization examination on February 9, 2004, and meets  
23 all other statutory requirements for naturalization. Despite the fact that Ms. El  
24 Feky has made numerous in-person inquiries and has re-submitted her fingerprints  
25 several times, CIS has failed to adjudicate her naturalization application. Ms. El  
26 Feky was informed that her application is pending a "name check."

1           59. Because of CIS's failure to adjudicate her naturalization application,  
2 Ms. El Feky is unable to sponsor for lawful permanent residency her elderly, ailing  
3 mother, who lives in Egypt.

4           60. Plaintiff Muhammad Malik is a native and citizen of Pakistan. He has  
5 lived in the United States over ten years, and has been a lawful permanent resident  
6 since 1999. He lives in Corona, California. He has two U.S. citizen children and  
7 a long-term partner who is their mother. He runs a small used car business and  
8 also works as a smog technician.

9           61. Mr. Malik filed his naturalization application in December 2003 and  
10 successfully passed his naturalization examination on May 18, 2004. At the  
11 examination, the CIS officer asked him for additional documents, which he sent  
12 the very next day.

13           62. Despite numerous written and in-person inquiries, and the  
14 intervention of Mr. Malik's representatives in Congress, Senator Dianne Feinstein  
15 and Representative Ken Calvert, CIS has failed to adjudicate Mr. Malik's  
16 application for naturalization. Mr. Malik was informed by CIS, through his  
17 congressional representatives, that his application is being delayed pending  
18 completion of a "name check."

19           63. Because of CIS's failure to adjudicate his naturalization application,  
20 Mr. Malik is unable to sponsor for lawful permanent residency his elderly, ailing  
21 mother who lives in Pakistan.

22           64. Mustafa Osman, M.D., is a native and citizen of Sudan. He has been  
23 a lawful permanent resident of the United States since 1997. He lives in Norwalk,  
24 California with his wife and two children, one of whom is a United States citizen.  
25 Dr. Osman was a practicing medical doctor in Sudan and now serves as a  
26 community advocate for persons with disabilities at a nonprofit organization. He  
27 is also training to be a diagnostic sonogram technologist.

1           65. Dr. Osman applied for naturalization in April 2004. He successfully  
2 passed his naturalization examination on August 13, 2004, and meets all other  
3 statutory requirements for naturalization. Despite Dr. Osman's numerous in-  
4 person, telephone and written inquiries, and inquiries by his representative in  
5 Congress, CIS has failed to adjudicate his application for naturalization. Dr.  
6 Osman has been informed that his application is being delayed pending  
7 completion of a "name check."

8           66. Plaintiff Sami Trad is a native of Kuwait and citizen of Lebanon. He  
9 lives in San Gabriel, California with his wife and two children, who are all United  
10 States citizens. Mr. Trad has been a lawful permanent resident of the United  
11 States since approximately 1991. He is a self-employed electrician and works in  
12 Los Angeles County.

13           67. M. Trad applied for naturalization in August 2003. He successfully  
14 passed his naturalization examination on or about February 6, 2004, and meets all  
15 other statutory requirements for naturalization. Despite Mr. Trad's numerous in-  
16 person inquiries, CIS has failed to adjudicate his naturalization application. Mr.  
17 Trad was informed that his application is pending completion of a "name check."

18           68. Because of CIS's failure to adjudicate his application, Mr. Trad is  
19 unable to sponsor for lawful permanent residency his elderly mother, who lives in  
20 Lebanon, has a heart condition, and would greatly benefit from medical treatment  
21 in the United States.

#### 22 Defendants' Policies And Practices

23           69. Plaintiffs are informed and believe that Defendants Chertoff, Emilio  
24 Gonzalez and Arellano have a policy, pattern, and practice of failing to adjudicate  
25 the applications for naturalization of the proposed plaintiff class within 120 days  
26 of the date of naturalization examinations, because of years-long delays in the  
27 processing of "name checks."

1 70. Plaintiffs are informed and believe that Defendants Chertoff, Emilio  
2 Gonzalez and Arellano have a policy, pattern, and practice of unlawfully  
3 withholding and unreasonably delaying the adjudication of applications for  
4 naturalization of the proposed plaintiff class, because of years-long delays in the  
5 processing of “name checks.”

6 71. Plaintiffs are informed and believe that Defendants Mueller and  
7 Alberto Gonzales have a policy, pattern, and practice of unlawfully withholding  
8 and unreasonably delaying the completion of “name checks,” with the full  
9 knowledge that CIS requires the completion of such “name checks” for  
10 adjudication of applications for naturalization of the proposed plaintiff class.

11 72. Plaintiffs are informed and believe that Defendants have a policy,  
12 pattern and practice of failing to set deadlines for completing “name checks” and  
13 taking all the other reasonable steps necessary to complete the adjudication of  
14 applications for naturalization of the proposed plaintiff class.

15 73. Plaintiffs are informed and believe that Defendants Chertoff, Emilio  
16 Gonzalez and Arellano have a policy, pattern and practice of requiring “name  
17 checks” for adjudication of applications for naturalization of the proposed plaintiff  
18 class, despite no statutory or regulatory authorization for such “name checks.”

19 74. As a result of the Defendants’ policies, practices, actions and  
20 omissions, members of the proposed plaintiff class have suffered injury, in that  
21 they have been unlawfully denied the rights and benefits of U.S. citizenship for  
22 two years or more.

### 23 CLASS ALLEGATIONS

24 75. Plaintiffs bring this action on behalf of themselves and all other  
25 persons similarly situated pursuant to Federal Rules of Civil Procedure 23(a) and  
26 23(b)(2). The class, as proposed by Plaintiffs, consists of:

27 All persons who have submitted or will submit applications for  
28 naturalization to the CIS Los Angeles District Office and its sub-  
offices, and who have met all statutory requirements for



1 naturalization, and whose applications for naturalization are not  
2 adjudicated within 120 days of the date of their initial examination.

3 76. The requirements of Federal Rules of Civil Procedure 23(a) and  
4 23(b)(2) are met in that the class is no numerous that joinder of all members is  
5 impracticable. Counsel for Plaintiffs are aware of at least another dozen proposed  
6 class members who seek the same relief as the named Plaintiffs.

7 77. There are questions of law and fact common to the proposed class  
8 that predominate over any questions affecting only the individually named  
9 Plaintiffs, including: (1) whether CIS's failure to adjudicate the applications for  
10 naturalization of the proposed plaintiff class within 120 days of the date of  
11 naturalization examinations, due to delays in "name checks," violates the  
12 Immigration and Nationality Act and implementing regulations and the  
13 Administrative Procedure Act; (2) whether the FBI's actions in unlawfully  
14 withholding and unreasonably delaying the completion of "name checks," with the  
15 full knowledge that CIS requires the completion of such "name checks" for  
16 adjudication of applications for naturalization of the proposed plaintiff class,  
17 violates the Administrative Procedure Act; and (3) whether CIS and the FBI's  
18 failure to set deadlines for completing "name checks" and failure to take all the  
19 other reasonable steps necessary to complete the adjudication of applications for  
20 naturalization of the proposed plaintiff class, violates the Administrative  
21 Procedure Act.

22 78. The claims of the named Plaintiffs are typical of the claims of the  
23 proposed class. The named Plaintiffs, like all class members, have not had their  
24 applications for naturalization adjudicated despite the passage of over 120 days  
25 since their naturalization examinations, and they have been denied timely  
26 completion of "name checks" which CIS requires for adjudication of their  
27 applications; and their applications for naturalization have been unlawfully  
28 withheld or unreasonably delayed on the basis of "name checks."



1 or short of statutory right,” 5 U.S.C. § 706(2)(C); or “without observance of  
2 procedure required by law,” 5 U.S.C. § 706(2)(D). “Agency action” includes, in  
3 relevant part, “an agency rule, order, license, sanction, relief, or the equivalent or  
4 denial thereof, or failure to act.” 5 U.S.C. §551(13).

5 84. The failure of Defendants Chertoff, Emilio Gonzalez and Arellano to  
6 adjudicate the applications for naturalization of the proposed plaintiff class within  
7 120 days of the date of naturalization examinations on the basis of “name checks,”  
8 in violation of 8 U.S.C. § 1446(d) and 8 C.F.R. § 335, violates the Administrative  
9 Procedure Act, 5 U.S.C. § 555(b); 5 U.S.C. §§ 706(1), 706(2)(A), 706(2)(C),  
10 706(2)(D).

11 85. The failure of Defendants Alberto Gonzales and Mueller to timely  
12 complete “name checks,” with the full knowledge that CIS requires the completion  
13 of such “name checks” for adjudication of applications for naturalization of the  
14 proposed plaintiff class, violates the Administrative Procedure Act, 5 U.S.C. §  
15 555(b); 5 U.S.C. §§ 706(1), 706(2)(A), 706(2)(C), 706(2)(D).

16 86. Defendants’ failure to set deadlines for completing “name checks”  
17 and to take all the other reasonable steps necessary to complete the adjudication of  
18 applications for naturalization of the proposed plaintiff class, in violation of 8  
19 U.S.C. § 1446(d) and 8 C.F.R. § 335, violates the Administrative Procedure Act, 5  
20 U.S.C. § 555(b); 5 U.S.C. §§ 706(1), 706(2)(A), 706(2)(C), 706(2)(D).

21 87. As a result of Defendants’ actions, Plaintiffs have suffered and  
22 continue to suffer injury. Declaratory and injunctive relief are therefore  
23 warranted.

### 24 **THIRD CLAIM FOR RELIEF**

#### 25 **VIOLATION OF DUE PROCESS CLAUSE**

26 88. Plaintiffs reallege and reassert the foregoing paragraphs as if set forth  
27 fully herein.



- 1           5.     Order Defendants to adjudicate, within 120 days of the date of the  
2           naturalization examination, all applications for naturalization that  
3           shall be submitted in the future by members of the proposed class , as  
4           required by governing law;
- 5           6.     Order Defendants to conduct all “name checks” within 90 days of the  
6           submission of naturalization applications by members of the proposed  
7           class, in the event that Defendants have implemented or shall  
8           implement a new practice or policy of conducting “name checks”  
9           prior to the naturalization examination;
- 10          7.     Issue a declaratory judgment holding unlawful: (a) the failure of  
11          Defendants Chertoff, Emilio Gonzalez and Arellano to adjudicate  
12          applications for naturalization within 120 days of the date of the  
13          naturalization examination; (b) The failure of Defendants Alberto  
14          Gonzales and Mueller to complete “name checks” within a reasonable  
15          time; and (c) Defendants’ failures to take all necessary steps to  
16          adjudicate applications for naturalization within 120 days of the date  
17          of the naturalization examinations.
- 18          8.     Award reasonable attorney fees and costs pursuant to the Equal  
19          Access to Justice Act, 5 U.S.C. § 504, 28 U.S.C. § 2412; and
- 20          9.     Grant any and all further relief this Court deems just and proper.

21  
22 Dated: August 1, 2006

ACLU FOUNDATION OF SOUTHERN  
CALIFORNIA

ACLU FOUNDATION IMMIGRANTS’  
RIGHTS PROJECT

COUNCIL ON AMERICAN-ISLAMIC  
RELATIONS (CAIR) - CALIFORNIA

27  
28 By: R. Nataraajan  
Ranjana Nataraajan