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8
9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 YINAN ZHANG, ALIA AHMEDI, ZHONG
13 FU, ABDUL GHAFOOR, MIAO LING
HUANG, SANA JALILI, YAN WANG, YAN
14 YIN,

15 Plaintiffs-Petitioners,

16 v.

17 DAVID STILL, District Director, U.S.
Department of Homeland Security, Bureau of
18 Citizenship and Immigration Services, San
Francisco District; EMILIO T. GONZALEZ,
19 Director, U.S. Department of Homeland
Security, Bureau of Citizenship and
20 Immigration Services; MICHAEL
CHERTOFF, U.S. Secretary of Homeland
21 Security; ROBERT S. MUELLER III, Director
of the Federal Bureau of Investigation;
22 ALBERTO GONZALES, Attorney General of
the United States,

23 Defendants-Respondents.
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Case No. 07-CV-0503-JL

**FIRST AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF AND PETITION FOR
NATURALIZATION PURSUANT TO 8
U.S.C. § 1447(B)**

CLASS ACTION

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INTRODUCTION

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2 1. Plaintiffs-Petitioners, Yinan ZHANG, Alia AHMEDI, Zhong FU, Abdul
3 GHAFOOR, Miao Ling HUANG, Sana JALILI, Yan WANG, and Yan YIN, respectfully submit
4 this First Amended Complaint for Declaratory and Injunctive Relief and Petition for
5 Naturalization Pursuant to 8 U.S.C. § 1447(b). Plaintiff Yinan ZHANG originally filed this
6 action as an individual petition for naturalization under 8 U.S.C. § 1447(b). The Plaintiffs
7 amend Mr. Zhang’s original petition as of right pursuant to Federal Rule of Civil Procedure 15(a)
8 (permitting amendment of pleading “once as a matter of course at any time before a responsive
9 pleading is served”). This First Amended Complaint pleads additional causes of action and
10 allegations supporting a motion for class certification to be filed in due course.

11 2. Plaintiffs are all long-time lawful permanent residents of the United States. Each
12 of them has sought to become a citizen of this country by applying for naturalization, having met
13 all statutory requirements. However, despite successfully undergoing their naturalization
14 interviews and clearing criminal background checks more than approximately two years ago,
15 none of the Plaintiffs has received an adjudication from the U.S. Bureau of Citizenship and
16 Immigration Services (“CIS”) on the ground that a so-called “FBI name check” is still pending.

17 3. Defendants are officers of CIS and the Federal Bureau of Investigation (“FBI”)
18 and are responsible for the naturalization process, including the FBI name check, which CIS
19 requires for naturalization despite the absence of any promulgated rule or regulation.

20 4. Each Plaintiff therefore seeks to be naturalized by this Court, as Congress has
21 authorized through the Immigration and Nationality Act. See 8 U.S.C. § 1447(b) (district court
22 may make a determination of a naturalization application if there has been no adjudication within
23 120 days of an initial examination – i.e., the applicant’s naturalization interview. See U.S. v.
24 Hovsepian, 359 F.3d 1144, 1151 (9th Cir. 2004) (en banc).

25 5. In failing to adjudicate the Plaintiffs’ naturalization applications, Defendant
26 officers of CIS have violated CIS regulations requiring that such applications be adjudicated
27 within 120 days of the initial examination. 8 C.F.R. § 335.

28 6. In addition, Defendant officers of both CIS and the Federal Bureau of

1 Investigation (“FBI”) have engaged in unreasonable and extraordinary delay in adjudicating
2 Plaintiffs’ naturalization applications, in violation of the Administrative Procedures Act, 5
3 U.S.C. §§ 555, 706, and the Due Process Clause.

4 7. Defendants’ rationale for its unreasonable delays – that the delays are required to
5 complete “FBI name checks” – highlights an independent violation of the Administrative
6 Procedures Act: Defendants’ failure to follow the notice and comment requirements of 5 U.S.C.
7 § 553. CIS has promulgated no regulations concerning a “name check,” but nonetheless has
8 imposed the FBI name check as a requirement for five years – without any deadlines for
9 completion of the checks. In contrast, immigration regulations do provide for criminal records
10 checks based on Plaintiffs’ fingerprints and biographical data. Each of the Plaintiffs has passed
11 those specific background checks. Because Defendants’ addition of the FBI name check
12 constituted a substantive rule and causes undue burden and prejudice to Plaintiffs and other
13 members of the proposed class, the public should have been provided notice and an opportunity
14 to comment prior to its implementation.

15 8. Plaintiffs all have spent many years in the United States and have made this
16 Nation their home. They seek to pledge their allegiance to their adopted country and to
17 participate fully in U.S. society as citizens. Each of the Plaintiffs has met the statutory
18 requirements to become a U.S. citizen, and in many cases have sought relief through requests to
19 representatives in Congress and through formal inquiries with the government. Nonetheless,
20 each of the Plaintiffs has been stymied in his or her efforts by the unreasonable and extraordinary
21 delay of the Respondents.

22 9. As a result of the Defendants’ failure to abide by the law, which is inconsistent
23 with properly promulgated regulations and with the statutes passed by Congress, Plaintiffs are
24 unable to participate in civic society by voting and jury service. Plaintiffs also are unable
25 expeditiously to sponsor for lawful permanent residency for immediate relatives living abroad
26 including, in some cases, their spouses and children. Plaintiffs also are unable to participate
27 freely as U.S. citizens in the Visa Waiver Program and to travel abroad and return to the United
28 States without fear of exclusion.

1 15. Plaintiff Zhong Fu is a citizen of China. He is a lawful permanent resident of the
2 United States, and he resides in San Francisco, California. He applied for naturalization with
3 CIS and passed his naturalization examination in July 2004. His naturalization application has
4 not been adjudicated.

5 16. Plaintiff Abdul Ghafoor is a citizen of Pakistan. He is a lawful permanent
6 resident of the United States, and he resides in Richmond, California. He applied for
7 naturalization with CIS and passed his naturalization examination in October 2004. His
8 naturalization application has not been adjudicated.

9 17. Plaintiff Sana Jalili is a citizen of Pakistan. She is a lawful permanent resident of
10 the United States, and she resides in Fremont, California. She applied for naturalization with
11 CIS and passed her naturalization examination in September 2004. Her naturalization
12 application has not been adjudicated.

13 18. Plaintiff Miao Ling Huang is a citizen of China. She is a lawful permanent
14 resident of the United States, and she resides in San Francisco, California. She applied for
15 naturalization with CIS and passed her naturalization examination in June 2004. Her
16 naturalization application has not been adjudicated.

17 19. Plaintiff Yan Wang is a citizen of China. She is a lawful permanent resident of
18 the United States, and she resides in San Francisco, California. She applied for naturalization
19 with CIS and passed her naturalization examination in January 2004. Her naturalization
20 application has not been adjudicated.

21 20. Plaintiff Yan Yin is a citizen of Canada. She is a lawful permanent resident of the
22 United States, and she resides in Fremont, California. She applied for naturalization with CIS
23 and passed her naturalization examination in March 2004. Her naturalization application has not
24 been adjudicated.

25 21. Respondent David Still is the District Director for the San Francisco District of
26 the Bureau of Citizenship and Immigration Services (“CIS”), U.S. Department of Homeland
27 Security. Mr. Still is responsible for applications for naturalization pending in the San Francisco
28 District. Mr. Still is sued in his official capacity.

1 22. Respondent Emilio T. Gonzalez is the Director of CIS. Mr. Gonzalez is
2 responsible for the processing and determination of all applications for naturalization submitted
3 to CIS. He is sued in his official capacity.

4 23. Respondent Michael Chertoff is the U.S. Secretary of Homeland Security, which
5 encompasses CIS. Mr. Chertoff is ultimately responsible for the administration of all
6 immigration and naturalization laws, including the processing and determination of applications
7 for naturalization. He is sued in his official capacity.

8 24. Respondent Robert S. Mueller III is the Director of the Federal Bureau of
9 Investigation. Mr. Mueller is ultimately responsible for the processing of “name checks”
10 submitted by CIS to the FBI during the naturalization process. Mr. Mueller is sued in his official
11 capacity.

12 25. Respondent Alberto Gonzales is the Attorney General of the United States. He is
13 the head of the U.S. Department of Justice, which encompasses the FBI. Mr. Gonzales also
14 jointly responsible with Mr. Chertoff for enforcement of immigration laws. Mr. Gonzales is
15 sued in his official capacity.

LEGAL FRAMEWORK

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

20 27. A person seeking to naturalize must meet certain requirements, including an
21 understanding of the English language and history and civics of the United States; a sufficient
22 period of physical presence in the United States; and good moral character. 8 U.S.C. § 1423,
23 1427(a).

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

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

1 30. According to CIS regulations, the background investigation includes a full
2 criminal background check performed by the FBI. 8 C.F.R. § 335.2. After the background
3 investigation is completed, CIS schedules a naturalization examination, at which an applicant
4 meets with a CIS examiner who is authorized to ask questions and take testimony. The CIS
5 examiner must determine whether to grant or deny the naturalization application. 8 U.S.C. §
6 1446(d).

7 31. CIS must grant a naturalization application if the applicant has complied with all
8 requirements for naturalization. 8 C.F.R. § 335.3. Naturalization is not a discretionary benefit,
9 but a right upon satisfaction of statutory requirements.

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

13 33. In general, Congress has provided that applications for immigration benefits
14 should be adjudicated within 180 days of the initial filing of the application. 8 U.S.C. § 1571.

15 34. Plaintiffs are informed and believe that in 2002, CIS added – without
16 promulgating any regulation – a new type of background check to the naturalization process,
17 known as a “name check.” A “name check” is a check of FBI records based on the full name of
18 the applicant. The FBI conducts the “name check” through manual and electronic searches of
19 the FBI’s centralized records. CIS requests the FBI to conduct “name checks” on all applications
20 for naturalization.

21 35. Plaintiffs are informed and believe that the FBI name check requirement is
22 implemented in such a manner that it is highly likely that an applicant may be identified
23 erroneously as a person “of interest” to the FBI, thereby delaying adjudication of the
24 naturalization application, even though the applicant has committed no crimes and is not a
25 suspect. For example, the name check may identify a different person with a name similar to the
26 applicant’s, or result in a “hit” when the applicant has been an innocent witness or victim of a
27 crime.

28 36. Plaintiffs are informed and believe that CIS does not adjudicate applications for

1 naturalization until it receives a completed “name check” from the FBI. CIS has not
2 promulgated any regulations setting forth the “name check” as a prerequisite for naturalization.
3 Neither CIS nor the FBI imposes any time limits for completion of “name checks.” The FBI
4 claims that CIS determines the order of resolution of the requested “name checks,” and CIS
5 claims that it cannot ask or require the FBI to complete “name checks” within any particular
6 timeframe.

7 37. Plaintiffs are informed and believe that in April 2006, CIS implemented a new
8 policy or practice of delaying naturalization examinations until after the “name check” is
9 completed. Thus, for certain applicants for naturalization, lengthy delays in adjudication occur
10 prior to the examination, rather than after the examination.

11 38. When CIS fails to adjudicate a naturalization application within 120 days of the
12 examination, the applicant may seek de novo review of the application by a district court. 8
13 U.S.C. § 1447(b). When the applicant requests district court review, the district court gains
14 exclusive jurisdiction over the application, United States v. Hovsepian, 359 F.3d 1144 (9th Cir.
15 2004), and it may naturalize the applicant. 8 U.S.C. § 1447(b).

16 **FACTS**

17 **Plaintiffs**

18 39. Yinan Zhang is a 33-year old native and citizen of China. He has been a lawful
19 permanent resident of the United States since September 1995, when he adjusted his status
20 through his U.S.-citizen father’s petition. Mr. Zhang currently works as a family caregiver for
21 his ailing father, Zu Ying Zhang. Mr. Zhang and his father live in San Francisco, California.

22 40. Mr. Zhang submitted his naturalization application on July 2001 and successfully
23 completed his naturalization interview and criminal background checks in September 2002. The
24 day after passing his naturalization interview, a CIS officer telephoned Mr. Zhang and asked him
25 to provide proof of selective service registration. Soon thereafter in September 2002, Mr. Zhang
26 submitted the requested “status information letter,” thereby satisfying the requirements for
27 naturalization. He meets all other statutory requirements for naturalization.

28 41. Mr. Zhang has been waiting more than four years since his interview, and has yet

1 to receive an adjudication of his application. Mr. Zhang attempted to check on the status of his
2 application through an automated CIS customer service line, but the system stated that a final
3 decision cannot be made on any application until national security checks are complete. During
4 the past four years, Mr. Zhang has followed up with further contacts with CIS by telephone and
5 in person. Each time, immigration officers have informed him that his application is pending
6 due to the FBI name check.

7 42. Mr. Zhang has suffered and continues to suffer prejudice from the delay of his
8 naturalization. He has been deprived of the substantial and unique rights and duties of U.S.
9 citizenship, including the right to vote, the right to obtain a U.S. passport, the right to travel
10 freely, and the right to receive certain governmental and non-governmental benefits, such as
11 tuition assistance and scholarships.

12 43. Alia Ahmedi is a 73-year-old native and citizen of Afghanistan. She came to the
13 United States as a lawful permanent resident in November 1986, sponsored by her son Basheer
14 Ahmedi, a U.S. citizen. Ms. Ahmedi and her husband, a U.S. citizen, currently live in Fremont,
15 California, with Basheer. She also has five other children living in the United States. Of her six
16 children, five are U.S. citizens. Ms. Ahmedi also has over 20 grandchildren, all U.S. citizens,
17 living in the United States.

18 44. In October 2002, Ms. Ahmedi applied for citizenship and successfully completed
19 her naturalization interview and criminal background checks in May 2003. She meets all other
20 statutory requirements for naturalization. At the end of the interview, the CIS officer told Ms.
21 Ahmedi that she had passed her examination and would receive her oath notice shortly.

22 45. Approximately three to four months after successfully passing her naturalization
23 examination, Ms. Ahmedi contacted CIS because she had not received her oath notice. A CIS
24 employee told Ms. Ahmedi that her application was still pending. Ms. Ahmedi has followed up
25 with further contacts with CIS by telephone and in person. Each time, CIS officers have
26 informed her that her naturalization application is still pending due to an FBI name check. She
27 also has had to re-submit her fingerprints as her application has been pending so long that CIS
28 informed her that her original fingerprint card “expired.” Ms. Ahmedi’s children also contacted

1 their representatives in Congress for assistance. Representative Pete Stark made an inquiry to
2 CIS, which responded that a name check was pending.

3 46. Ms. Ahmedi has suffered harm from the delay of her naturalization. One of her
4 daughters lives outside of the U.S. part-time. Because it is extremely difficult for citizens of
5 Afghanistan to obtain visas, she is unable to visit her daughter and grandchildren while they are
6 abroad. In addition, Ms. Ahmedi is elderly and the anxiety surrounding the delay in the granting
7 of her citizenship has put extreme pressure on her already frail health. Indeed, Ms. Ahmedi
8 previously received disability assistance from the Social Security Administration, but those
9 benefits were cut off because lawful permanent residents are permitted such benefits for a limited
10 period of time.

11 47. Zhong Fu is a 69-year old native and citizen of China. He came to the United
12 States as a lawful permanent resident in March 1999, through the petition of his U.S.-citizen
13 mother. Mr. Fu is retired and currently caring for his elderly sick mother, who is 90 years old
14 and suffers from Alzheimer's disease. Mr. Fu and his mother currently live in San Francisco,
15 California. Mr. Fu has a U.S.-citizen sister, and she resides in the Sunset District of San
16 Francisco, California. Mr. Fu's deceased father was a U.S. citizen.

17 48. In or about February 2004, Mr. Fu submitted his citizenship application and
18 successfully completed his naturalization interview and criminal background checks on July
19 2004. He meets all other statutory requirements for naturalization. At the end of his interview,
20 the CIS officer informed him that he passed the tests for English and U.S. history and
21 government. Mr. Fu has been patiently waiting for his oath notice since that time.

22 49. Starting approximately three to four months after successfully passing his
23 naturalization examination, Mr. Fu contacted CIS on three separate occasions through the
24 "Infopass" online appointment scheduler. On each occasion, an immigration officer informed
25 Mr. Fu that his application was pending until national security checks are completed and the
26 local CIS office receives a response.

27 50. Mr. Fu has suffered prejudice from the delay of his naturalization. Since his
28 arrival in March 1999, Mr. Fu has never left the United States to visit family in China. He is

1 currently living on his retirement income and therefore cannot afford to visit China on a frequent
2 basis. Due to the expense of travel, Mr. Fu would like to visit family members for an extended
3 period when he is able to afford the trip. However, as a lawful permanent resident, he is not
4 permitted to stay abroad more than six months at a time. By naturalizing, Mr. Fu will be able to
5 spend more time with family on the infrequent occasions that he can afford the airfare to China.

6 51. Abdul Ghafoor is a native and citizen of Pakistan. He has a bachelor's degree in
7 Humanities from Bahauddin Zakariya University in Pakistan. He immigrated to the United
8 States as a lawful permanent resident in April 1999. He currently works for the U.S. Postal
9 Service as a mail carrier.

10 52. Mr. Ghafoor applied for naturalization in March 2004. He successfully
11 completed his naturalization examination and criminal background checks in October 2004 and
12 was told at that time that he should receive his notice within 120 days. Mr. Ghafoor meets all
13 other statutory requirements for naturalization. Nonetheless, his application has not been
14 adjudicated.

15 53. Despite numerous in-person and written inquiries to CIS, including inquiries
16 made by an attorney Mr. Ghafoor retained at his own expense to represent him with respect to
17 his pending naturalization application, CIS has failed to adjudicate his naturalization application.
18 Mr. Ghafoor has received notices from CIS saying that his background check is pending.

19 54. Mr. Ghafoor is suffering extreme prejudice from the delay in adjudication of his
20 naturalization application. His wife and four children live in Pakistan and he can afford to visit
21 them only once a year. Although he applied for them to join him in the United States in 2002,
22 the government has not yet granted them visas to reunite with him in the United States. They are
23 subject to long waiting periods due to Mr. Ghafoor's status as a noncitizen. He seeks to
24 naturalize both to speed his family's ability to join him in the United States and also because he
25 has been subjected repeatedly to secondary immigration inspections – including strip searches,
26 hours-long detentions that have caused him to miss connecting flights, and rude treatment –
27 when he has reentered the United States after visiting his wife and children in Pakistan.

28 55. Miao Ling Huang is a 46-year old native and citizen of China. She came to the

1 United States as a lawful permanent resident in December 1998, through the petition of her
2 husband's sister, a U.S. citizen. Ms. Huang and her husband, who is also a lawful permanent
3 resident, live in San Francisco, California with their two children, Tian H. Rong and Zijun Rong,
4 also lawful permanent residents. If Ms. Huang naturalizes, her youngest daughter, currently 13
5 years old, stands to derive automatic United States citizenship, pursuant to the Child Citizenship
6 Act of 2000. Ms. Huang currently works at the San Francisco Juvenile Hall as a food service
7 operator.

8 56. Ms. Huang applied for citizenship in November 2003 and successfully completed
9 her naturalization interview and criminal background checks in June 2004. She meets all of the
10 statutory requirements for naturalization. At the end of her interview, she was informed that she
11 passed the tests on English and U.S. history and government, but that a decision could not be
12 made on her application because background checks have not been completed.

13 57. Starting approximately three to four months after successfully passing her
14 naturalization examination, Ms. Huang contacted CIS to inquire about her oath notice. She was
15 told on several occasions that her application was pending for the completion of all necessary
16 background checks. In December 2005, Ms. Huang contacted U.S. Senator Barbara Boxer's
17 office for assistance on her naturalization application. On January 2006, U.S. Senator Boxer's
18 officer informed her application was pending due to a security check submitted to the FBI and
19 ultimately, that she must wait due to the sensitive nature of these clearances.

20 58. Ms. Huang has suffered harm from the delay of her naturalization. Her 68-year
21 old ailing mother lives in China. Ms. Huang would like to serve as her mother's primary
22 caretaker, but has been unable to obtain the proper visa to petition for her mother to immigrate to
23 the United States. Upon naturalization, Ms. Huang will be able to petition for her mother to
24 immigrate more expeditiously. The delay in Ms. Huang's naturalization has caused her great
25 anguish by making it impossible to care for her mother during these critical years.

26 59. Sana Jalili is a native and citizen of Pakistan. She came to the United States in
27 1995, at the age of 15, as a dependent of her parents, who had H-1 employment visas. Ms. Jalili
28 has been a lawful permanent resident of the United States in 2001. She attended high school on

1 Long Island in New York, and graduated with honors. She then attended the State University of
2 New York at Stony Brook and graduated after only three years with a Bachelor of Science in
3 information systems. Following graduation, she worked as an IT specialist in the Information
4 Technology Leadership Program at Travelers Insurance Company. She later also served as a
5 Connecticut state court interpreter and offered multi-cultural classes in her town. She and her
6 husband, a U.S. citizen, married during Ms. Jalili's second year of college. They now have two
7 U.S.-citizen children under the age of five. Mr. Jalili is currently home-schooling her daughters
8 full-time. Ms. Jalili's husband supports the family financially as a project manager at IBM.

9 60. Ms. Jalili applied for naturalization in December 2003 and successfully passed her
10 interview and criminal background checks in September 2004. At the end of the interview, a
11 CIS officer informed her that she would receive a notice of oath ceremony within three weeks to
12 three months.

13 61. Ms. Jalili meets all statutory requirements for naturalization, but her application
14 has not been adjudicated. She has contacted CIS repeatedly, both in the Hartford, Connecticut,
15 office where she originally filed her application, and then in the San Jose and San Francisco
16 offices, after she and her husband moved to California. Ms. Jalili also sought assistance from
17 U.S. Representative Nancy Johnson and the CIS Ombudsman office, to no avail. CIS has
18 informed Ms. Jalili that her application is pending because of a name check.

19 62. Ms. Jalili is suffering prejudice from the delay in her naturalization application.
20 America is her home and she serves her local community in many ways. By delaying her
21 naturalization, the government has prevented her from enjoying the liberties and duties of
22 citizenship, including participation in the democratic process through voting. Ms. Jalili does not
23 have the same legal status as her husband and children, which is especially difficult when the
24 family travels together abroad. Upon gaining citizenship, Ms. Jalili also would like to apply for
25 interpreter positions with government agencies, which may require U.S. citizenship, and would
26 like to sponsor her parents for lawful permanent resident status so that her daughters can enjoy a
27 quality relationship with their grandparents.

28 63. Yan Wang is a 36-year old native and citizen of China. She came to the United

1 States on a K-1 fiancée visa in February 1999 and became a lawful permanent resident on July
2 2000. Ms. Wang and her husband, a U.S. citizen, live in San Francisco, California. Ms. Wang is
3 currently attending City College in San Francisco and learning the English language while she
4 assists her husband, Patrick Mao, with his business.

5 64. In May 2003, Ms. Wang applied for citizenship and successfully completed her
6 naturalization interview and criminal background checks in January 2004. She meets all other
7 statutory requirements for naturalization. At the end of the interview, a CIS officer told Ms.
8 Wang that she passed her examination and would receive her oath shortly.

9 65. Approximately four months later after successfully passing her naturalization
10 examination, Ms. Wang contacted CIS because she had not received her oath notice. The
11 immigration office in San Francisco, California informed her that the application is pending
12 because of a name check. Ms. Wang has made approximately eight to nine inquiries with CIS in
13 the course of the last few years, and each time, she was informed that the FBI name check is not
14 complete.

15 66. Ms. Wang has suffered harm from the delay of her naturalization. Her ailing
16 father lives in China and she wishes to spend time with him. As a citizen, she would be able to
17 petition for lawful permanent resident status for her father so that she can care for him.

18 67. Yan Yin is a native of China and citizen of Canada who came to the United States
19 in 1996 on a TN visa, which is issued to professionals from Canada and Mexico. Ms. Yin, who
20 was a professor of physics in China, came to the United States to work on a project funded by the
21 U.S. Department of Energy. She now lives in Fremont and owns her own business there. Ms.
22 Yin has a sister in the Washington, D.C., area who is a U.S. citizen.

23 68. In August 2003, Ms. Yin applied for naturalization. In March 2004, she
24 successfully passed her naturalization examination and criminal background checks. She meets
25 all other statutory requirements for naturalization.

26 69. Despite Ms. Yin's numerous inquiries with CIS, inquiries to Senator Barbara
27 Boxer and Representative Pete Stark, her repeated submission of fingerprints, and her receipt of
28 documents in response to a Freedom of Information Act/Privacy Act request that showed no

1 basis for denying naturalization, CIS has failed to adjudicate her application for naturalization.
2 CIS informed Ms. Yin that her background check had not been completed and in March 2006,
3 CIS informed Ms. Yin that it needed six additional months to process her application. In July
4 2006, CIS informed Ms. Yin that she should receive her citizenship in September 2006, but her
5 application has still not been adjudicated.

6 70. Ms. Yin has suffered prejudice from the delay in adjudication of her
7 naturalization. She contracts with the U.S. government as part of her business and is unable to
8 apply for certain grants because of her immigration status as a non-citizen. Because of her
9 immigrant status, Ms. Yin is unable to communicate with certain laboratories that are important
10 to her business. She is anxious to become a citizen so that she can travel and market her product
11 with more ease and flexibility.

12 **Defendants' Policies and Practices**

13 71. Plaintiffs are informed and believe that Defendants Still, Emilio Gonzalez and
14 Chertoff have a policy, pattern, and practice of failing to adjudicate the applications for
15 naturalization of the proposed plaintiff class within 120 days of the date of naturalization
16 examinations, because of years-long delays in the processing of "name checks."

17 72. Plaintiffs are informed and believe that Defendants Still, Emilio Gonzalez and
18 Chertoff have a policy, pattern, and practice of unlawfully withholding and unreasonably
19 delaying the adjudication of applications for naturalization of the proposed plaintiff class,
20 because of years-long delays in the processing of "name checks."

21 73. Plaintiffs are informed and believe that Defendants Mueller and Alberto Gonzales
22 have a policy, pattern, and practice of unlawfully withholding and unreasonably delaying the
23 completion of "name checks," with the full knowledge that CIS requires the completion of such
24 "name checks" for adjudication of applications for naturalization of the proposed plaintiff class.

25 74. Plaintiffs are informed and believe that Defendants have a policy, pattern and
26 practice of failing to set deadlines for completing "name checks" and taking all the other
27 reasonable steps necessary to complete the adjudication of applications for naturalization of the
28 proposed plaintiff class.

1 75. Plaintiffs are informed and believe that Defendants Still, Chertoff, Emilio
2 Gonzalez and Chertoff have a policy, pattern and practice of requiring “name checks” for
3 adjudication of applications for naturalization of the proposed plaintiff class, despite no statutory
4 or regulatory authorization for such “name checks.”

5 76. Plaintiffs are informed and believe that Defendants do not have or use any
6 mechanisms to identify the number and status of naturalization cases in which applicants satisfy
7 all eligibility criteria, have passed naturalization interviews, and are awaiting adjudication solely
8 on the basis of FBI name checks. In addition, USCIS and FBI do not have any policies or
9 practices in place to ensure final adjudication of those naturalization applications.

10 77. Plaintiffs are informed and believe that Defendants do not have or use any
11 mechanisms to track the number and status of naturalization cases in which applicants satisfy all
12 eligibility criteria, have passed naturalization examinations, and are awaiting adjudication for
13 more than 120 days after their naturalization examinations. In addition, USCIS and FBI do not
14 have any policies or practices in place to ensure final adjudication of those naturalization
15 applications.

16 78. Plaintiffs are informed and believe that Defendants Still, Gonzalez and Chertoff
17 implemented the requirement of FBI name checks for naturalization without giving notice to the
18 public and allowing a period for public comment. The Administrative Procedures Act requires
19 such notice and comment because the FBI name check requirement is a substantive change in
20 prior CIS policy and because the requirement has an adverse effect on individuals by causing a
21 delay in adjudication of their naturalization applications.

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

CLASS ALLEGATIONS

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

1 All persons who have submitted or will submit applications for naturalization to CIS, and
2 who have met all statutory requirements for naturalization, and whose applications for
3 naturalization are not adjudicated within 120 days of the date of their initial examination.

4 81. The requirements of Federal Rules of Civil Procedure 23(a) and 23(b)(2) are met
5 in that the class is so numerous that joinder of all members is impracticable. Counsel for
6 Plaintiffs are aware of at least another 99 proposed class members who are similarly situated to
7 the named Plaintiffs in this District alone. Counsel are aware of dozens of others similarly
8 situated elsewhere in California.

9 82. There are questions of law and fact common to the proposed class that
10 predominate over any questions affecting only the individually named Plaintiffs, including: (1)
11 whether CIS's failure to adjudicate the applications for naturalization of the proposed plaintiff
12 class within 120 days of the date of naturalization examinations, due to delays in "name checks,"
13 violates the Due Process Clause, the Immigration and Nationality Act and implementing
14 regulations and the Administrative Procedures Act; (2) whether CIS's imposition of a name
15 check requirement violates the notice and comment provision of the Administrative Procedures
16 Act; (3) whether the FBI's actions in unlawfully withholding and unreasonably delaying the
17 completion of "name checks," with the full knowledge that CIS requires the completion of such
18 "name checks" for adjudication of applications for naturalization of the proposed plaintiff class,
19 violates the Constitution and laws of the United States, including the Administrative Procedures
20 Act; and (4) whether CIS and the FBI's failure to set deadlines for completing "name checks"
21 and failure to take all the other reasonable steps necessary to complete the adjudication of
22 applications for naturalization of the proposed plaintiff class, violates the Constitutiona nd laws
23 of the United States, including the Administrative Procedures Act.

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

1 unreasonably delayed on the basis of “name checks.”

2 84. Like the named Plaintiffs, members of the proposed class are suffering prejudice
3 from the delay of their naturalization applications, including the inability to participate in civic
4 society by voting and jury service, the effective inability to sponsor immediate relatives for
5 lawful permanent resident status, the inability to travel freely as U.S. citizens, and the harm of
6 having an uncertain status in the country they have made their home and where they have
7 established themselves as part of a community.

8 85. The named Plaintiffs will fairly and adequately represent the interests of all
9 members of the proposed class because they seek relief on behalf of the class as a whole and
10 have no interests antagonistic to other members of the class. The named Plaintiffs are
11 represented by pro bono counsel, including the ACLU Immigrants’ Rights Project, the ACLU of
12 Northern California and the Asian Law Caucus, who have extensive expertise in class action
13 litigation regarding the rights of immigrants. Finally, the Defendants have acted on grounds
14 generally applicable to the class, thereby making appropriate final injunctive relief with respect
15 to the class as a whole.

16 **DECLARATORY AND INJUNCTIVE RELIEF ALLEGATIONS**

17 86. An actual and substantial controversy exists between Plaintiffs and Defendants as
18 to their respective legal rights and duties. Plaintiffs contend that Defendants’ actions violate
19 Plaintiffs’ rights and the rights of proposed class members. Defendants contend the opposite.

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

23 **CAUSES OF ACTION**

24 **COUNT ONE**

25 **RIGHT TO DE NOVO JUDICIAL DETERMINATION**

26 **OF APPLICATION FOR NATURALIZATION**

27 **8 U.S.C. § 1447(B)**

28 **[By the Named Plaintiffs Against Defendants Still, Gonzalez and Chertoff]**

1 88. The allegations contained in paragraphs 1 through 87 above are repeated and
2 incorporated as though fully set forth herein.

3 89. Because Respondents have failed to adjudicate each named Plaintiff's
4 naturalization application within 120 days after the date of his naturalization examination, each
5 named Plaintiff is entitled to novo adjudication of his naturalization application by this Court
6 under 8 U.S.C. § 1447(b).

7 90. This Court should grant each named Plaintiff's naturalization application pursuant
8 to 8 U.S.C. § 1447(b), because each named Plaintiff meets all of the requirements for
9 naturalization under chapter 2 of the Immigration and Nationality Act, 8 U.S.C. § 1421 *et seq.*,
10 and therefore has a right to become a naturalized citizen of the United States.

11 **COUNT TWO**

12 **UNREASONABLE DELAY**

13 **IN VIOLATION OF THE ADMINISTRATIVE PROCEDURES ACT**

14 **[By the Named Plaintiffs on Behalf of the Proposed Class Against All Defendants]**

15 91. The allegations contained in paragraphs 1 through 90 above are repeated and
16 incorporated as though fully set forth herein.

17 92. The Administrative Procedure Act requires administrative agencies to conclude
18 matters presented to them "within a reasonable time." 5 U.S.C. § 555. A district court reviewing
19 agency action may "compel agency action unlawfully withheld or unreasonably delayed." 5
20 U.S.C. § 706(1). The court also may hold unlawful and set aside agency action that, *inter alia*, is
21 found to be: "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with
22 law," 5 U.S.C. § 706(2)(A); "in excess of statutory jurisdiction, authority, or limitations, or short
23 of statutory right," 5 U.S.C. § 706(2)(C); or "without observance of procedure required by law,"
24 5 U.S.C. § 706(2)(D). "Agency action" includes, in relevant part, "an agency rule, order, license,
25 sanction, relief, or the equivalent or denial thereof, or failure to act." 5 U.S.C. §551(13).

26 93. The failure of Defendants Still, Emilio Gonzalez and Chertoff to adjudicate the
27 applications for naturalization of the proposed plaintiff class within 120 days of the date of
28 naturalization examinations on the basis of "name checks," in violation of 8 U.S.C. § 1446(d)

1 and 8 C.F.R. § 335, violates the Administrative Procedure Act, 5 U.S.C. § 555(b); 5 U.S.C. §§
2 706(1), 706(2)(A), 706(2)(C), 706(2)(D).

3 94. The failure of Defendants Alberto Gonzales and Mueller to timely complete
4 “name checks,” with the full knowledge that CIS requires the completion of such “name checks”
5 for adjudication of applications for naturalization of the proposed plaintiff class, violates the
6 Administrative Procedure Act, 5 U.S.C. § 555(b); 5 U.S.C. §§ 706(1), 706(2)(A), 706(2)(C),
7 706(2)(D).

8 95. Defendants’ failure to set deadlines for completing “name checks,” to track the
9 number and status of naturalization cases awaiting final adjudication solely on the basis of FBI
10 name checks, to track the number and status of naturalization cases awaiting final adjudication
11 for more than 120 days after the naturalization examinations, and to take all the other reasonable
12 steps necessary to complete the adjudication of applications for naturalization of the proposed
13 plaintiff class, in violation of 8 U.S.C. § 1446(d) and 8 C.F.R. § 335, violates the Administrative
14 Procedure Act, 5 U.S.C. § 555(b); 5 U.S.C. §§ 706(1), 706(2)(A), 706(2)(C), 706(2)(D).

15 96. As a result of Defendants’ actions, Plaintiffs and members of the proposed class
16 have suffered and continue to suffer injury. Declaratory and injunctive relief are therefore
17 warranted.

18 COUNT THREE

19 FAILURE TO FOLLOW NOTICE-AND-COMMENT REQUIREMENTS OF THE 20 ADMINISTRATIVE PROCEDURES ACT

21 [By the Named Plaintiffs on Behalf of the Proposed Class Against All Defendants]

22 97. The allegations contained in paragraphs 1 through 96 above are repeated and
23 incorporated as though fully set forth herein.

24 98. By regulation, CIS is required to conduct a criminal background check before a
25 naturalization application can be granted. 8 C.F.R. § 335.2(b). Prior to about November 2002,
26 CIS used criminal databases such as NCIC to complete this process.

27 99. In or about November 2002, CIS added a new requirement, the FBI name check,
28 that goes beyond the criminal background check required by statute and regulation. Unlike the

1 databases searched during the criminal background checks, the FBI name check database
2 contains names of persons who have never been convicted of, arrested for, or even suspected of a
3 crime – including innocent witnesses and even crime victims. This added requirement of a
4 name check constitutes a substantive rule that departed from prior policy and practice.

5 100. Defendants implemented the FBI name check requirement for naturalization
6 without giving notice and providing a period for public comment, even though the name check
7 requirement constitutes a substantive rule that departed from prior policy and practice.

8 101. Defendants’ failure to provide a notice-and-comment period prior to
9 implementing the FBI name check requirement violates the Administrative Procedures Act, 5
10 U.S.C. § 553.

11 **COUNT FOUR**

12 **VIOLATION OF FIFTH AMENDMENT DUE PROCESS CLAUSE**

13 **[By the Named Plaintiffs on Behalf of the Proposed Class Against All Defendants]**

14 102. The allegations contained in paragraphs 1 through 101 above are repeated and
15 incorporated as though fully set forth herein.

16 103. The Due Process Clause of the Fifth Amendment prohibits the government from
17 depriving any person of life, liberty or property without due process of law.

18 104. Defendants Still, Emilio Gonzalez and Chertoff have a pattern, practice or policy
19 of failing to adjudicate the applications for naturalization of the proposed plaintiff class within
20 120 days of the date of naturalization examinations because of delays in “name checks,” in
21 violation of 8 U.S.C. § 1446(d) and 8 C.F.R. § 335. Defendants Alberto Gonzales and Mueller
22 have a pattern, practice or policy of failing to timely complete “name checks,” with the full
23 knowledge that CIS requires the completion of such “name checks” for adjudication of
24 applications for naturalization of the proposed plaintiff class. Defendants have a pattern, practice
25 or policy of failing to set deadlines for completing “name checks” and to take all the other
26 reasonable steps necessary to complete the adjudication of applications for naturalization of the
27 proposed plaintiff class, in violation of 8 U.S.C. § 1446(d) and 8 C.F.R. § 335. These actions by
28 Defendants violate Plaintiffs’ rights to due process of law.

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

4 **PRAYER FOR RELIEF**

5 WHEREFORE, in view of the arguments and authority noted herein, Petitioner prays for
6 the following relief:

- 7 a. Assume jurisdiction over the matter;
- 8 b. Certify this case as a class action lawsuit, as proposed herein;
- 9 c. Review de novo and grant the named Plaintiffs' applications for
10 naturalization, pursuant to 8 U.S.C. § 1447(b);
- 11 d. Order Defendants to promptly adjudicate, in a time period not to exceed
12 90 days, the currently pending applications for naturalization of all
13 members of the proposed class;
- 14 e. Order Defendants to adjudicate, within 120 days of the date of the
15 naturalization examination, all applications for naturalization that shall be
16 submitted in the future by members of the proposed class , as required by
17 governing law;
- 18 f. Order that any name checks Defendants choose to conduct shall be
19 completed in a manner that does not delay adjudication of naturalization
20 applications by members of the proposed class beyond 120 days of the
21 applicant's naturalization examination;
- 22 g. Order Defendants to adopt a procedure for identifying naturalization cases
23 awaiting final adjudication based solely on FBI name checks, and for
24 identifying naturalization cases awaiting final adjudication for more than
25 120 days after successful completion of naturalization examinations;
- 26 h. Issue a declaratory judgment holding unlawful: (a) the failure of
27 Defendants Still, Emilio Gonzalez and Chertoff to adjudicate applications
28 for naturalization within 120 days of the date of the naturalization

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examination; (b) The failure of Defendants Alberto Gonzales and Mueller to complete “name checks” within a reasonable time; and (c) Defendants’ failures to take all necessary steps to adjudicate applications for naturalization within 120 days of the date of the naturalization examinations.

- i. Award reasonable attorney fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, 28 U.S.C. § 2412; and
- j. Grant any and all further relief this Court deems just and proper.

1 Dated: February 8, 2007

Respectfully submitted,

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