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

12 AMIR SAYED, BIREN SHAH and MIEKE
13 VANDEWALLE-CALLINAN,

14 Plaintiffs-Petitioners,

15 v.

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

22 Defendants-Respondents.
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Case No. 07-CV-3455-WHA

THIRD AMENDED COMPLAINT

Judge: Hon. William A. Alsup

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INTRODUCTION

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2 1. This action was brought by long-time lawful permanent residents of the United
3 States who, like tens of thousands of others around the United States, have suffered from
4 extraordinary, systemic delays in the processing of naturalization applications. Defendant
5 officials of U.S. Citizenship and Immigration Services (“CIS”) and the Federal Bureau of
6 Investigation (“FBI”) have caused these system-wide delays – which have often left applicants
7 waiting for an answer for years – through their policies and practices concerning a background
8 check known as an “FBI name check.” As currently implemented, the FBI name check is run
9 against a wildly overinclusive database that contains not only the names of criminals, suspects
10 and targets of investigations, but also countless innocent persons who happen to come into
11 contact with the FBI, such as crime victims and witnesses.

12 2. CIS’s own ombudsman has criticized the rampant delays in the processing of
13 naturalization applications. In an annual report released in June 2007, the CIS Ombudsman
14 concluded: “FBI name checks, one of several security screening tools used by USCIS, continue
15 to significantly delay adjudication of immigration benefits for many customers, hinder backlog
16 reduction efforts, and may not achieve their intended national security benefits. FBI name
17 checks may be the single biggest obstacle to the timely and efficient delivery of immigration
18 benefits. The problem of long-pending FBI name checks cases worsened during the reporting
19 period [of June 2006 to June 2007].” CIS Ombudsman, Annual Report 2007, at 37 (emphasis in
20 original), available at http://www.dhs.gov/xabout/structure/gc_1183751418157.shtm.

21 3. Because of their FBI name check procedures, the Defendants are engaging in
22 rampant violations of 8 C.F.R. § 335.3, a federal regulation providing that naturalization
23 applications shall be adjudicated within 120 days of an initial examination (*i.e.*, a naturalization
24 interview).

25 4. The original Complaint in this matter, as well as the First and Second Amended
26 Complaints, included individual claims for *de novo* adjudication of the plaintiffs’ naturalization
27 applications by the Court pursuant to 8 U.S.C. § 1447(b), and also claims under the
28 Administrative Procedure Act (“APA”) and Due Process Clause of the Fifth Amendment for

1 declaratory and injunctive relief from the Defendants' policy, pattern and practice of systemic
2 delays in the naturalization process and for Defendants' failure to follow the APA's notice-and-
3 comment requirements. By an order dated October 15, 2007, the Court granted the Defendants'
4 motion to dismiss the APA and Due Process claims. By a separate order and judgment filed on
5 April 25, 2008, the Court granted Plaintiffs' request for a partial judgment under Federal Rule of
6 Civil Procedure 54(b) as to the dismissal of the APA and Due Process claims and also granted
7 leave to add new plaintiffs in order to maintain a live controversy for purposes of appealing the
8 partial judgment.

9 5. The new Plaintiffs, Amir Sayed, Biren Shah and Mieke Vandewalle-Callinan, are
10 long-time lawful permanent residents of the United States. Each of them has sought to become a
11 citizen of this country by applying for naturalization, having met all statutory requirements.
12 Each of the Plaintiffs has joined this lawsuit because of Defendants' policies and practices
13 causing unreasonable and prolonged delays in adjudicating Plaintiffs' naturalization applications.
14 Each Plaintiff successfully passed the naturalization examination and cleared criminal
15 background checks at least three years prior to joining this lawsuit. Each Plaintiff continues to
16 await adjudication of his or her application.

17 6. Plaintiffs Sayed, Shah and Vandewalle-Callinan seek to be naturalized by this
18 Court, as Congress has authorized through the Immigration and Nationality Act. *See* 8 U.S.C. §
19 1447(b) (district court may make a determination of a naturalization application if there has been
20 no adjudication within 120 days of the date of examination – i.e., the applicant's naturalization
21 interview). *See United States v. Hovsepien*, 359 F.3d 1144, 1151 (9th Cir. 2004) (en banc).

22 7. Anticipating the possibility that the Court may deem completion of the FBI name
23 check a necessary precondition for its *de novo* adjudication of Plaintiffs' petitions under 8 U.S.C.
24 1447, Plaintiffs also bring claims under the APA and, in the alternative, 28 U.S.C. § 1361 against
25 Defendant FBI officials specifically for the purpose of obtaining injunctive relief requiring
26 completion of the FBI name check. Plaintiffs' APA claim against the FBI is brought with the
27 understanding that the Court's order dated October 15, 2007, dismissing Plaintiffs' unreasonable
28 delay claim under the APA, was based on the Court's conclusion that 8 U.S.C. § 1447(b)

1 provided a legal remedy that precluded systemic APA relief against the CIS defendants.
2 Plaintiffs' instant claims against the FBI defendants are distinguishable in that Plaintiffs have no
3 remedy, other than the APA or mandamus, to seek injunctive relief requiring the FBI's
4 completion of the name check process in their individual cases.

5 8. Plaintiffs' naturalization has been delayed not because of any individual fault in
6 their applications, but as a result of the Defendants' policies and practices of unreasonable and
7 systemic delays in the naturalization and FBI name check processes nationwide. But for the
8 Court's April 25, 2008, order denying class certification, each of the Plaintiffs would seek to
9 serve as class representatives for purposes of pursuing systemic claims for relief from
10 Defendants' policies and practices under the APA and Due Process Clause.

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

18 10. As a result of the Defendants' failure to process naturalization applications within
19 a reasonable time, under timelines set by Congress, Plaintiffs have been unable to participate in
20 civic society by voting and jury service. Plaintiffs also have been unable expeditiously to
21 petition for lawful permanent residency on behalf of immediate relatives living abroad. Plaintiffs
22 also have been unable to participate freely as U.S. citizens in the Visa Waiver Program or to
23 travel abroad and to return to the United States without fear of exclusion.

24 **JURISDICTION AND VENUE**

25 11. This Court has subject matter jurisdiction over this matter pursuant to 8 U.S.C. §
26 1447(b) (district court jurisdiction to adjudicate delayed naturalization applications), 5 U.S.C. §
27 702 (Administrative Procedure Act), 28 U.S.C. § 1361 (writ of mandamus) and 28 U.S.C. § 1331
28 (federal question).

1 capacity.

2 18. Defendant Michael Mukasey is the Attorney General of the United States. He is
3 the head of the U.S. Department of Justice, which encompasses the FBI. Mr. Mukasey is also
4 jointly responsible with Mr. Chertoff for enforcement of immigration laws. Mr. Mukasey is sued
5 in his official capacity.

6 19. Respondent Emilio T. Gonzalez is the Director of CIS. Mr. Gonzalez is
7 responsible for the processing and determination of all applications for naturalization submitted
8 to CIS. He is sued in his official capacity.

9 20. Respondent David Still is the District Director for the San Francisco District of
10 CIS. Mr. Still is responsible for applications for naturalization pending in the San Francisco
11 District. Mr. Still is sued in his official capacity.

12 LEGAL FRAMEWORK

13 General Requirements for Naturalization

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

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

21 23. Persons seeking to naturalize must submit an application for naturalization to CIS.
22 8 U.S.C. § 1445. CIS is the agency that is responsible for adjudicating naturalization
23 applications.

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

26 25. After a criminal background investigation is completed, CIS schedules a
27 naturalization examination, at which an applicant meets with a CIS examiner who is authorized
28 to ask questions and take testimony. The CIS examiner must determine whether to grant or deny

1 the naturalization application. 8 U.S.C. § 1446(d).

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

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

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

13 29. 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 The President has also expressed that view. *See* Remarks by the President at INS Naturalization
16 Ceremony (July 10, 2001), available at <http://www.whitehouse.gov/news/releases/2001/07/print/20010710-1.html> (urging immigration agencies to adopt standard of six-month processing time
17 for applications for immigration benefits).
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19 **Pre-Naturalization Background Checks**

20 30. Under 8 U.S.C. § 335.2, CIS should not schedule the “initial examination” (i.e.,
21 the naturalization interview) until the agency has received “a definitive response from the [FBI]
22 that a full criminal background check” has been completed. The regulation defines a “definitive
23 response” as one of the following: (1) FBI confirmation that the applicant “does not have an
24 administrative or criminal record; (2) FBI confirmation that the applicant does have such a
25 record; or (3) FBI confirmation that the applicant’s fingerprint cards “have been determined
26 unclassifiable for the purpose of conducting a criminal background check and have been
27 rejected.” 8 U.S.C. § 335.2(b). Thus, 8 C.F.R. § 335.2(b) contemplates that the “criminal
28 background check” required by regulation is based upon fingerprint records, and is not a “name

1 check.” The FBI fingerprint check is run against criminal records showing arrests, criminal
2 charges not leading to convictions, and criminal convictions.

3 31. Nonetheless, CIS runs two name-based background checks on each naturalization
4 applicant. First, CIS runs each applicant’s name against the Interagency Border Inspection
5 System (“IBIS”), a centralized records system combining information on “national security risks,
6 public safety issues and other law enforcement concerns” from multiple law enforcement and
7 intelligence agencies. Second, in 1998, CIS instituted the FBI name check. As originally
8 implemented in 1998, the FBI name check ran a naturalization applicant’s name against a
9 database containing the names of persons who are or were the subjects of an FBI investigation.

10 32. In 2002, without giving public notice and an opportunity for public comment, CIS
11 drastically expanded the scope of the FBI name check, so that an applicant’s name would be
12 checked against not only the names of investigation subjects, but also names of innocent people
13 such as victims and witnesses who are merely mentioned in FBI files.

14 33. As expanded in 2002, the FBI name check requirement is implemented in such a
15 manner that it is highly likely that an applicant may be identified erroneously as a person “of
16 interest” to the FBI, thereby delaying adjudication of the naturalization application, even though
17 the applicant has committed no crimes, does not pose any kind of security risk, and has never
18 been a suspect in any investigation. For example, the name check may result in a “hit” when the
19 applicant’s name is mentioned in FBI records because he has been an innocent witness or victim
20 of a crime, has undergone an employment-related security clearance in the past, or has assisted
21 the FBI in an investigation. Thus, since 2002, the FBI name check has not been effectively
22 implemented to uncover national security risks, criminal conduct, or other wrongdoing.

23 34. The FBI name check procedure is also highly likely to result in false positive
24 results because the FBI runs not only a naturalization applicant’s actual name, but also various
25 alternate spellings and permutations of the applicant’s given and family names.

26 35. Plaintiffs are informed and believe that CIS does not adjudicate applications for
27 naturalization until it receives a completed FBI name check. Neither CIS nor the FBI imposes
28 any binding time limits for completion of FBI name checks. As a result of their policies,

1 practices and procedures, including their failure to require FBI name checks to be completed in a
2 reasonable time period, Defendants are responsible for systemic, years-long delays in
3 adjudicating tens of thousands of naturalization applications nationwide, including those
4 submitted by Plaintiffs.

5 36. Although Defendants have asserted that the FBI name checks are necessary for
6 national security, there is no justification for delays in the FBI name check process. Delays in
7 the FBI name check process do not serve the interest of national security. Indeed, as the CIS
8 Ombudsman has reported, “the current USCIS name check policy may *increase* the risk to
9 national security by prolonging the time a potential criminal or terrorist remains in the country.”
10 CIS Ombudsman, Annual Report 2006 at 25 (emphasis added), available at
11 http://www.dhs.gov/xlibrary/assets/CISOmbudsman_AnnualReport_2006.pdf. In his most
12 recent annual report, the CIS Ombudsman expressed his “agree[ment] with the assessment of
13 many case workers and supervisors at USCIS field offices and service centers that the FBI name
14 check process has limited value to public safety or national security, especially because in almost
15 every case the applicant is in the United States during the name check process, living or working
16 without restriction.” CIS Ombudsman, Annual Report 2007 at 40.

17 37. Upon information and belief, CIS has not reported any instance of a security
18 threat discovered through an FBI name check that was not also disclosed through criminal
19 background checks such as the fingerprint check and IBIS database check. The CIS
20 Ombudsman has questioned CIS’s claims that the FBI name check provides information that is
21 not otherwise available through other, existing background checks in the naturalization process.
22 In his 2007 annual report, the CIS Ombudsman states: “It is unclear how many of the FBI name
23 check ‘responses’ also were revealed by one or more of the other security checks conducted for
24 the [naturalization] applications. To date, the Ombudsman has been unable to ascertain from
25 USCIS the total number of actual problem cases that the agency discovered exclusively as a
26 result of the FBI name check. The Ombudsman understands that most, if not all, of the problem
27 cases which would result in an eventual denial of benefits also can be revealed by the other more
28 efficient, automated criminal and security checks that USCIS initiates.” CIS Ombudsman,

1 Annual Report 2007, at 41.

2 **FACTS**

3 **Plaintiffs**

4 38. Amir Sayed is a 47-year-old native and citizen of Pakistan. He became a lawful
5 permanent resident of the United States in 2000, based upon the petition of his wife, who is a
6 U.S. citizen.

7 39. Mr. Sayed lives in Oakland, California, with his wife of nine years. Mr. Sayed is
8 employed as the Chief Executive Officer of three small businesses, Pacific Fleet and Leasing, an
9 automobile leasing company; Pacific E-Port Trading, an import-export business; and Pacific
10 Fleece and Apparel, a clothing import business. Mr. Sayed also is a part-owner of the first two
11 companies.

12 40. In or about June 2004, Mr. Sayed applied for citizenship. He successfully
13 completed his naturalization interview and criminal background checks on or about February 7,
14 2005. He meets all other statutory requirements for naturalization.

15 41. At the end of his naturalization interview, a CIS officer told Mr. Sayed that he had
16 passed his examination and that he should expect a notice of oath ceremony within a few days.

17 42. To date, CIS has failed to adjudicate Mr. Sayed's naturalization application. In
18 the two years since passing his examination in February 2005, Mr. Sayed has visited the CIS
19 office in Oakland at least twice, and was told that his application is pending due to a name check.
20 Mr. Sayed also has emailed CIS on at least two occasions to inquire about the delay, but never
21 received any response. In or about February 2007, Mr. Sayed wrote to CIS to inquire formally
22 about the delay in his naturalization and received a form letter informing him that his application
23 was still pending due to a name check. Mr. Sayed's private attorney, who is a family friend,
24 wrote to CIS in or about February 2008 and received a similar form letter advising that Mr.
25 Sayed's application is being delayed due to a name check.

26 43. Mr. Sayed has suffered serious prejudice from the delay in adjudication of his
27 naturalization application. One of his employers, Pacific E-Port Trading, has recently opened a
28 satellite office in Vietnam and Mr. Sayed will be required to travel there on business frequently.

1 As a citizen of Pakistan, it has been difficult for him to arrange a visa to travel to Vietnam and
2 for other countries through which he must pass en route to Vietnam. Although Mr. Sayed has
3 obtained the necessary visas for one upcoming business trip with great difficulty, he will
4 continue to face difficulty in obtaining visas in the future. Mr. Sayed is informed and believes
5 that if he were a U.S. citizen, he would not face difficulties in obtaining a visa for travel to
6 Vietnam and other Asian countries.

7 44. Biren Shah is a 39-year-old native and citizen of India. He came to the United
8 States in or about June 1995 as an H1-B visa holder, sponsored by his then-employer HCL
9 America. He became a lawful permanent resident of the United States in or about March 1999
10 through the sponsorship of another employer, Tekedge Corporation.

11 45. Mr. Shah lives in San Jose, California with his wife, who is also a lawful
12 permanent resident seeking citizenship, and his two U.S. citizen children, ages six and eleven.
13 Mr. Shah is employed by Electronic Data Systems Corporation in Mountain View, where he has
14 worked as a lead database administrator for approximately six years. During his nearly 13 years
15 in the United States, Mr. Shah has worked at several Silicon Valley firms as a software engineer.

16 46. In or about January 2004, Mr. Shah applied for citizenship. He successfully
17 completed his criminal background checks and passed his naturalization application in or about
18 May 2005. He meets all other statutory requirements for naturalization. At the end of Mr.
19 Shah's naturalization examination, a CIS officer informed him that he had passed the
20 examination, including the English language and U.S. history and civics tests, but that his
21 application could not be adjudicated because of a pending FBI name check.

22 47. During the pendency of his naturalization application, Mr. Shah has made
23 repeated inquiries of CIS about the delay in his naturalization. CIS has responded by informing
24 Mr. Shah that his background or name checks are pending. In or about December 2005, Mr.
25 Shah filed a Freedom of Information/Privacy Act request with the Federal Bureau of Information
26 and received a response indicating that he has never been "of investigatory interest" to the FBI.
27 In addition, Mr. Shah has sought the assistance of Senators Dianne Feinstein and Barbara Boxer
28 and U.S. Representative Mike Honda. He has also written to President Bush, First Lady Laura

1 Bush, and Vice President Dick Cheney regarding the delay of his naturalization application.
2 Despite inquiries made by Mr. Shah's Congressional representatives and others on his behalf,
3 CIS has failed to adjudicate his application.

4 48. Mr. Shah desires to take his family for an extended visit to India to be with his
5 parents, but he has been unable to without jeopardizing his naturalization application by
6 interrupting his physical presence in the United States.

7 49. Mieke Vandewalle-Callinan is a 36-year old native and citizen of Belgium. She
8 came to the United States as a fiancée visa-holder in 1992. She married Sean Michael Callinan,
9 a U.S. citizen, on February 29, 1992, and they petitioned for her adjustment of status. On March
10 24, 1992, she became a lawful permanent resident. She and her husband divorced on May 3,
11 2000. Ms. Vandewalle-Callinan has been working at Grand Jean Capital Management, an
12 investment company in San Francisco, for six years as a data manager. She has been living in
13 the Bay Area for approximately eleven years.

14 50. In or about January 2004, Ms. Vandewalle-Callinan submitted her citizenship
15 application. She successfully completed criminal background checks and passed her
16 naturalization examination on August 12, 2004. She meets all other statutory requirements for
17 naturalization. At the end of her interview, the CIS officer informed her that she passed the tests
18 for English and U.S. history and government.

19 51. In 2004, following the interview date, Ms. Vandewalle-Callinan contacted CIS
20 about every two to three months to inquire about the status of her citizenship application. Since
21 the interview, she has made a total of ten to fifteen inquiries with Citizenship and Immigration
22 Services through phone calls, in-person visits to the CIS office, and letters. On each occasion,
23 she has been informed by CIS that her application was pending because of national security
24 checks.

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1 **CAUSES OF ACTION**

2 **COUNT ONE**

3 **RIGHT TO DE NOVO JUDICIAL DETERMINATION**

4 **OF APPLICATION FOR NATURALIZATION**

5 **8 U.S.C. § 1447(b)**

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

7 52. The allegations contained in paragraphs 1 through 51 above are repeated and
8 incorporated as though fully set forth herein.

9 53. Because Defendants Still, Gonzalez and Chertoff have failed to adjudicate the
10 naturalization applications of Plaintiffs within 120 days after the date of his or her naturalization
11 examination, each of them is entitled to de novo adjudication of his or her naturalization
12 application by this Court under 8 U.S.C. § 1447(b).

13 54. This Court should grant the naturalization applications of each of the Plaintiffs
14 pursuant to 8 U.S.C. § 1447(b), because each of them meets all of the requirements for
15 naturalization under chapter 2 of the Immigration and Nationality Act, 8 U.S.C. § 1421 *et seq.*,
16 and therefore has a right to become a naturalized citizen of the United States.

17 **COUNT TWO**

18 **UNREASONABLE DELAY**

19 **IN VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT**

20 **[By the Plaintiffs Against Defendants Mukasey and Mueller]**

21 55. The allegations contained in paragraphs 1 through 54 above are repeated and
22 incorporated as though fully set forth herein.

23 56. The Administrative Procedure Act requires administrative agencies to conclude
24 matters presented to them “within a reasonable time.” 5 U.S.C. § 555. A district court reviewing
25 agency action may “compel agency action unlawfully withheld or unreasonably delayed.” 5
26 U.S.C. § 706(1). The court also may hold unlawful and set aside agency action that, inter alia, is
27 found to be: “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with
28 law,” 5 U.S.C. § 706(2)(A); “in excess of statutory jurisdiction, authority, or limitations, or short

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

4 57. The failure of Defendants Mukasey and Mueller to complete FBI name checks for
5 Plaintiffs Sayed, Shah and Vandewalle-Callinan within a reasonable time period, with the full
6 knowledge that CIS requires the completion of such FBI name checks for adjudication of their
7 applications for naturalization, violates the Administrative Procedure Act, 5 U.S.C. § 555(b); 5
8 U.S.C. §§ 706(1), 706(2)(A), 706(2)(C), 706(2)(D).

9 58. Plaintiffs have suffered and continue to suffer injury from the actions and
10 omissions of Defendants Mukasey and Mueller and are entitled to injunctive relief requiring
11 Defendants Mukasey and Mueller to complete their FBI name checks and to submit the results to
12 CIS.

13 **COUNT THREE**

14 **WRIT OF MANDAMUS**

15 **28 U.S.C. § 1361**

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

17 59. The allegations contained in paragraphs 1 through 58 above are repeated and
18 incorporated as though fully set forth herein.

19 60. Defendants Mukasey and Mueller have a ministerial duty to the Plaintiffs to
20 timely complete the FBI name checks required by CIS for their naturalization. They have failed
21 in that duty.

22 61. Plaintiffs have no adequate remedy at law for the failure of Defendants Mukasey
23 and Mueller to timely complete the FBI name checks required for naturalization.

24 62. The Court should grant relief in the form of a writ of mandamus compelling
25 Defendants Mukasey and Mueller to complete the FBI name checks required by CIS for
26 Plaintiffs’ naturalization.

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PRAYER FOR RELIEF

WHEREFORE, in view of the arguments and authority noted herein, Plaintiffs pray for the following relief:

- (1) Assume jurisdiction over the matter;
- (2) Review de novo and grant the applications for naturalization of Plaintiffs Sayed, Shah and Vandewalle-Callinan, pursuant to 8 U.S.C. § 1447(b);
- (3) To the extent the Court deems necessary for the granting of relief under 8 U.S.C. § 1447(b), order injunctive relief requiring Defendants Mukasey and Mueller to complete immediately the FBI name checks for each of the Plaintiffs pursuant to the Administrative Procedure Act, 5 U.S.C. §§ 555(b), 706(1), 706(2)(A), 706(2)(C), and 706(2)(D).
- (4) In the alternative to granting injunctive relief under the Administrative Procedure Act, and to the extent the Court deems necessary for the granting of relief under 8 U.S.C. § 1447(b), compel Defendants Mukasey and Mueller to complete immediately the FBI name checks for each of the Plaintiffs pursuant to the Court’s mandamus authority under 28 U.S.C. § 1361;
- (5) 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
- (6) Grant any and all further relief this Court deems just and proper.

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Dated: May 15, 2008

Respectfully submitted,

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By: _____/s/
CECILLIA D. WANG

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I, Cecillia D. Wang, declare as follows:

I hereby certify that today I electronically filed the foregoing THIRD AMENDED COMPLAINT with the Clerk of the Court using the ECF system, which will send notification of such filing to the following email addresses:

Alan Lawrence Schlosser *Via ECF*
American Civil Liberties Union at aschlosser@aclunc.org
Foundation of Northern California

Joren Lyons *Via ECF*
Asian Law Caucus at joren@asianlawcaucus.org

Lucas Guttentag *Via ECF*
American Civil Liberties Union at lguttentag@aclu.org
Immigrants' Rights Project

Julia Harumi Mass *Via ECF*
American Civil Liberties Union at jmass@aclunc.org
Foundation of Northern California

Edward A. Olsen *Via ECF*
United States Attorney's Office at edward.olsen@usdoj.gov

Elizabeth J. Stevens *Via ECF*
United States Department of Justice at elizabeth.stevens@usdoj.gov

Jeffrey S. Robins *Via ECF*
United States Department of Justice at jeffrey.robins@usdoj.gov

In addition, I hereby certify that on this 15th day of May 2008, true and correct copies of the THIRD AMENDED COMPLAINT were served by U.S. Mail on the following non-ECF filers:

Sin Yen Ling	Todd Gallinger
Asian Law Caucus	Council on American-Islamic Relations
939 Market Street, Suite 201	3000 Scott Boulevard, Suite 212
San Francisco, CA 94103	Santa Clara, CA 95054

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Dated: May 15, 2008
San Francisco, California

CECILLIA

/s/
D. WANG