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Attorneys for Defendants

16 UNITED STATES DISTRICT COURT  
17 NORTHERN DISTRICT OF CALIFORNIA  
18 SAN FRANCISCO DIVISION

19 AMIR SAYED, et al., ) No. C-07-3455-WHA  
20 Plaintiffs, )  
21 v. ) DEFENDANTS' ANSWER TO  
22 MICHAEL CHERTOFF, et al., ) PLAINTIFFS' THIRD AMENDED  
23 Defendants. ) COMPLAINT  
24 )

1 COME NOW the Defendants, by and through the undersigned counsel, and submit this  
2 Answer to the Plaintiffs' Third Amended Complaint.

3 **INTRODUCTION**

4 1. This paragraph sets forth Plaintiffs' portrayal of the action, including their legal  
5 conclusions. Defendants object to the characterizations of their actions and to every legal  
6 conclusion set forth by Plaintiffs. To the extent that a responsive pleading is required, Defendants  
7 admit that Plaintiffs Sayed, Shah, and Vandewalle-Callinan, have been long-time lawful  
8 permanent residents of the United States. Defendants deny the remaining allegations in  
9 paragraph 1.

10 2. Admitted.

11 3. This paragraph sets forth Plaintiffs' portrayal of the action, including their legal  
12 conclusions. Defendants object to the phrase "Defendant are engaging in rampant violations" of  
13 USCIS regulations, as misleading and an erroneous characterization of Defendants' actions, and  
14 further object to every legal conclusion set forth by Plaintiffs. To the extent a response is deemed  
15 necessary, Defendants deny the allegations in paragraph 3.

16 4. This paragraph sets forth Plaintiffs' portrayal of the procedural history of this action. To  
17 the extent that a responsive pleading is required, Defendants admit the portrayal contained in  
18 paragraph 4.

19 5. This paragraph sets forth Plaintiffs' portrayal of the action, including their legal  
20 conclusions. Defendants object to the characterizations of their actions and to every legal  
21 conclusion set forth by Plaintiffs. To the extent that a responsive pleading is required, Defendants  
22 admit that Plaintiffs Sayed, Shah, and Vandewalle-Callinan, have been long-time lawful  
23 permanent residents of the United States, have applied for naturalization, completed their  
24 naturalization interviews, and successfully passed the English and civics portions of their  
25 naturalization exams. Defendants specifically deny that each Plaintiff continues to await  
26 adjudication of his or her application, that each Plaintiff has cleared criminal background checks,  
27 and deny the remaining allegations in paragraph 5.

1 6. This paragraph sets forth Plaintiffs' portrayal of the action, including their legal  
2 conclusions. Defendants object to the characterizations of their actions and to every legal  
3 conclusion set forth by Plaintiffs. To the extent a response is deemed necessary, Defendants admit  
4 only that 8 U.S.C. § 1447(b) provides that a district court may make a determination on an  
5 application for naturalization if no adjudication occurs within 120 days of the examination.

6 7. This paragraph sets forth Plaintiffs' portrayal of the action, including their legal  
7 conclusions. Defendants maintain that the allegations contained in this paragraph should be  
8 stricken pursuant to Defendants' Motion to Dismiss in Part, Remand in Part, and Strike in Part,  
9 filed on May 30, 2008. To the extent a response is deemed necessary, Defendants deny the  
10 allegations in paragraph 7.

11 8. This paragraph sets forth Plaintiffs' portrayal of the action, including their legal  
12 conclusions. Defendants maintain that the allegations contained in this paragraph should be  
13 stricken pursuant to Defendants' Motion to Dismiss in Part, Remand in Part, and Strike in Part,  
14 filed on May 30, 2008. To the extent a response is deemed necessary, Defendants deny the  
15 allegations in paragraph 8.

16 9. This paragraph sets forth Plaintiffs' portrayal of the action, including their legal  
17 conclusions. No response is needed, although Defendants object to the characterizations of their  
18 actions and to every legal conclusion set forth by Plaintiffs. To the extent a response is deemed  
19 necessary, Defendants deny that Plaintiffs Sayed and Vandewalle-Callinan have met all statutory  
20 requirements for naturalization. Defendants lack sufficient information or knowledge to form a  
21 belief as to the truth of the remaining allegations in paragraph 9.

22 10. This paragraph sets forth Plaintiffs' portrayal of the action, including their legal  
23 conclusions. No response is needed, although Defendants object to the characterizations of their  
24 actions and to every legal conclusion set forth by Plaintiffs. Defendants deny the first and second  
25 sentence of paragraph 10. Defendants lack sufficient information or knowledge to form a belief as  
26 to the truth of the remaining allegations in paragraph 10, which allegations are therefore denied.

**JURISDICTION AND VENUE**

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11. This paragraph sets forth conclusions of law to which no response is required. To the extent that a responsive pleading is required, Defendants admit only that 8 U.S.C. § 1447(b) confers jurisdiction over certain naturalization applications.

12. This paragraph sets forth Plaintiffs' portrayal of the action, including their legal conclusions. Defendants object to the characterizations of their actions and to every legal conclusion set forth by Plaintiffs. To the extent a response is deemed necessary, Defendants admit that venue lies within the Northern District of California.

**THE PARTIES**

- 13. Admitted.
- 14. Defendants admit the first two sentences of paragraph 14, but deny that Plaintiff Shah's naturalization application has not be adjudicated.
- 15. Admitted.
- 16. Admitted
- 17. Admitted.
- 18. Admitted.
- 19. Admitted.
- 20. Admitted.

**LEGAL FRAMEWORK**

- 21. Admitted.
- 22. Admitted.
- 23. Admitted.
- 24. Admitted.
- 25. Admitted.
- 26. This paragraph sets forth Plaintiffs' portrayal of the action, including their legal conclusions. Defendants object to the characterizations of their actions and to every legal conclusion set forth by Plaintiffs. To the extent a response is deemed necessary, Defendants admit the first sentence of paragraph 26, and deny the second sentence of paragraph 26.

1 27. This paragraph sets forth Plaintiffs' portrayal of the action, including their legal  
2 conclusions. Defendants object to the characterizations of their actions and to every legal  
3 conclusion set forth by Plaintiffs. To the extent a response is deemed necessary, Defendants deny  
4 the first sentence of paragraph 27, and admit the second sentence of paragraph 27.

5 28. This paragraph sets forth Plaintiffs' portrayal of the action, including their legal  
6 conclusions. Defendants object to the characterizations of their actions and to every legal  
7 conclusion set forth by Plaintiffs. To the extent a response is deemed necessary, Defendants deny  
8 the first sentence of paragraph 28, and admit the second sentence of paragraph 28.

9 29. Admitted.

10 **PRE-NATURALIZATION BACKGROUND CHECKS**

11 30. The allegations in paragraph 30 set forth conclusions of law to which no responsive  
12 pleading is required. Defendants object to the characterizations of their actions and to every legal  
13 conclusion set forth by Plaintiffs. To the extent a response is deemed necessary, Defendants  
14 respectfully refer the Court to 8 C.F.R. § 335.2. Defendants admit the first two sentences of  
15 paragraph 30, and admit the final sentence of paragraph 30. Defendants deny the third sentence of  
16 paragraph 30.

17 31. The allegations in paragraph 31 set forth Plaintiffs' portrayal of the action, including their  
18 legal conclusions. Defendants object to the characterizations of their actions and to every legal  
19 conclusion set forth by Plaintiffs. To the extent a response is deemed necessary, Defendants admit  
20 only that the Interagency Border Inspection System ("IBIS") and the FBI name check are among  
21 the name-based background checks performed upon each applicant for naturalization, and deny the  
22 remaining allegations in paragraph 31.

23 32. The allegations in paragraph 32 set forth Plaintiffs' portrayal of the action, including their  
24 legal conclusions. Defendants object to the characterizations of their actions. To the extent a  
25 response is deemed necessary, Defendants admit the allegations in Paragraph 32.

26 33. The allegations in paragraph 33 set forth Plaintiffs' portrayal of the action, including their  
27 legal conclusions. Defendants object to the characterizations of their actions and to every legal  
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1 conclusion set forth by Plaintiffs. To the extent a response is deemed necessary, Defendants deny  
2 the allegations in paragraph 33.

3 34. The allegations in paragraph 34 set forth Plaintiffs' portrayal of the action, including their  
4 legal conclusions. Defendants object to the characterizations of their actions and to every legal  
5 conclusion set forth by Plaintiffs. To the extent a response is deemed necessary, Defendants deny  
6 the allegations in paragraph 34.

7 35. The allegations in paragraph 35 set forth Plaintiffs' portrayal of the action, including their  
8 legal conclusions. Defendants object to the characterizations of their actions and to every legal  
9 conclusion set forth by Plaintiffs. To the extent a response is deemed necessary, Defendants are  
10 admit the allegations in the first sentence of paragraph 35. Defendants are without knowledge  
11 sufficient to admit or deny the allegations in the second sentence of paragraph 35, which  
12 allegations are therefore denied. Defendants deny the remaining allegations in paragraph 35.

13 36. The allegations in paragraph 36 set forth Plaintiffs' portrayal of the action, including their  
14 legal conclusions. Defendants object to the characterizations of their actions and to every legal  
15 conclusion set forth by Plaintiffs. To the extent a response is deemed necessary, Defendants deny  
16 the allegations in the first two sentences of paragraph 36. Defendants admit that the CIS  
17 Ombudsman's Report contains the quotations in the remainder of paragraph 36.

18 37. The allegations in paragraph 37 set forth Plaintiffs' portrayal of the action, including their  
19 legal conclusions. Defendants object to the characterizations of their actions and to every legal  
20 conclusion set forth by Plaintiffs. To the extent a response is deemed necessary, Defendants are  
21 without knowledge sufficient to admit or deny the allegations in the first sentence of paragraph 37,  
22 which allegations are therefore denied. Defendants admit that the CIS Ombudsman's Report  
23 contains the quotations in the remainder of paragraph 37.

## 24 FACTS

### 25 Plaintiffs

26 38. Admitted.

27 39. Defendants are without knowledge sufficient to admit or deny the allegations in this  
28 paragraph, which allegations are therefore denied.

1 40. The allegations in paragraph 40 set forth Plaintiffs' portrayal of the action, including their  
2 legal conclusions. Defendants object to the characterizations of their actions and to every legal  
3 conclusion set forth by Plaintiffs. To the extent a response is deemed necessary, Defendants admit  
4 that Plaintiff Sayed applied for citizenship in June 2004 and completed his naturalization  
5 interview on or about February 7, 2005. Defendants are without knowledge sufficient to admit or  
6 deny the remaining allegations in paragraph 40, which allegations are therefore denied.

7 41. Denied.

8 42. The allegations in paragraph 42 set forth Plaintiffs' portrayal of the action, including their  
9 legal conclusions. Defendants object to the characterizations of their actions and to every legal  
10 conclusion set forth by Plaintiffs. To the extent a response is deemed necessary, Defendants admit  
11 that USCIS had not yet adjudicated Plaintiff Sayed's naturalization application. Defendants are  
12 without knowledge sufficient to admit or deny the remaining allegations in paragraph 42, which  
13 allegations are therefore denied.

14 43. The allegations in paragraph 43 set forth Plaintiffs' portrayal of the action, including their  
15 legal conclusions. Defendants object to the characterizations of their actions and to every legal  
16 conclusion set forth by Plaintiffs. To the extent a response is deemed necessary, Defendants are  
17 without knowledge sufficient to admit or deny the remaining allegations in paragraph 43, which  
18 allegations are therefore denied.

19 44. Defendants admit the allegations contained in the first sentence of paragraph 44.  
20 Defendants further admit that Plaintiff Shah came to the United States in or about June 1995 as an  
21 H1-B visa holder, and that he become a lawful permanent resident in or about March 1999 through  
22 the sponsorship of another employer. Defendants are without knowledge sufficient to admit or  
23 deny the remaining allegations in paragraph 44, which allegations are therefore denied.

24 45. Defendants are without knowledge sufficient to admit or deny the allegations in this  
25 paragraph, which allegations are therefore denied.

26 46. The allegations in paragraph 40 set forth Plaintiffs' portrayal of the action, including their  
27 legal conclusions. Defendants object to the characterizations of their actions and to every legal  
28 conclusion set forth by Plaintiffs. To the extent a response is deemed necessary, Defendants admit

1 that USCIS received Mr. Shah's application for citizenship in February 2004, not January 2004;  
2 that he was interviewed regarding his application in May 2005; and, as of the approval of his  
3 naturalization application on May 15, 2008, that he met the statutory requirements for  
4 naturalization. Defendants are without knowledge sufficient to admit or deny the remaining  
5 allegations in this paragraph, which allegations are therefore denied.

6 47. Defendants are without knowledge sufficient to admit or deny the allegations in this  
7 paragraph, which allegations are therefore denied.

8 48. Defendants are without knowledge sufficient to admit or deny the allegations in this  
9 paragraph, which allegations are therefore denied.

10 49. Defendants admit that the first four sentences of paragraph 49. Defendants also  
11 acknowledge that Ms. Vandewalle-Callinan produced to USCIS a copy of a Judgment and Notice  
12 of Entry of Judgment that reflected the termination of her marriage as of May 3, 2000. Defendants  
13 are without knowledge sufficient to admit or deny the remaining allegations in this paragraph,  
14 which allegations are therefore denied.

15 50. The allegations in paragraph 50 set forth Plaintiffs' portrayal of the action, including their  
16 legal conclusions. Defendants object to the characterizations of their actions and to every legal  
17 conclusion set forth by Plaintiffs. To the extent a response is deemed necessary, Defendants admit  
18 that Plaintiff Vandewalle-Callinan applied for citizenship in January 2004 and completed her  
19 naturalization interview on August 12, 2004. Defendants are without knowledge sufficient to  
20 admit or deny the remaining allegations in paragraph 50, which allegations are therefore denied.

21 51. Defendants are without knowledge sufficient to admit or deny the allegations in this  
22 paragraph, which allegations are therefore denied.

### 23 CAUSES OF ACTION

#### 24 Count One

25 52. Defendants reassert their preceding responses to Plaintiffs' allegations in paragraphs 1  
26 through 51 as though fully set forth herein.

27 53. Denied. Defendants object to the characterizations of Defendants' actions and to every  
28 legal conclusion set forth by Plaintiffs.



1 54. Defendants object to every legal conclusion set forth by Plaintiffs, and deny that each  
2 named Plaintiff has met all statutory requirements for naturalization.

3 **Count Two**

4 55. Defendants reassert their preceding responses to Plaintiffs' allegations in paragraphs 1  
5 through 54 as though fully set forth herein.

6 56. Defendants maintain that the allegations contained in this paragraph should be stricken  
7 pursuant to Defendants' Motion to Dismiss in Part, Remand in Part, and Strike in Part, filed on  
8 May 30, 2008. To the extent a response is deemed necessary, object to the characterizations of  
9 Defendants' actions and to every legal conclusion set forth by Plaintiffs, and Defendants deny the  
10 allegations in paragraph 56.

11 57. Defendants maintain that the allegations contained in this paragraph should be stricken  
12 pursuant to Defendants' Motion to Dismiss in Part, Remand in Part, and Strike in Part, filed on  
13 May 30, 2008. To the extent a response is deemed necessary, object to the characterizations of  
14 Defendants' actions and to every legal conclusion set forth by Plaintiffs, and Defendants deny the  
15 allegations in paragraph 57.

16 58. Defendants maintain that the allegations contained in this paragraph should be stricken  
17 pursuant to Defendants' Motion to Dismiss in Part, Remand in Part, and Strike in Part, filed on  
18 May 30, 2008. To the extent a response is deemed necessary, object to the characterizations of  
19 Defendants' actions and to every legal conclusion set forth by Plaintiffs, and Defendants deny the  
20 allegations in paragraph 58.

21 **Count Three**

22 59. Defendants reassert their preceding responses to Plaintiffs' allegations in paragraphs 1  
23 through 58 as though fully set forth herein.

24 60. Defendants maintain that the allegations contained in this paragraph should be stricken  
25 pursuant to Defendants' Motion to Dismiss in Part, Remand in Part, and Strike in Part, filed on  
26 May 30, 2008. To the extent a response is deemed necessary, object to the characterizations of  
27 Defendants' actions and to every legal conclusion set forth by Plaintiffs, and Defendants deny the  
28 allegations in paragraph 60.

1 61. Defendants maintain that the allegations contained in this paragraph should be stricken  
2 pursuant to Defendants' Motion to Dismiss in Part, Remand in Part, and Strike in Part, filed on  
3 May 30, 2008. To the extent a response is deemed necessary, object to the characterizations of  
4 Defendants' actions and to every legal conclusion set forth by Plaintiffs, and Defendants deny the  
5 allegations in paragraph 61.

6 62. Defendants maintain that the allegations contained in this paragraph should be stricken  
7 pursuant to Defendants' Motion to Dismiss in Part, Remand in Part, and Strike in Part, filed on  
8 May 30, 2008. To the extent a response is deemed necessary, object to the characterizations of  
9 Defendants' actions and to every legal conclusion set forth by Plaintiffs, and Defendants deny the  
10 allegations in paragraph 62.

11 **PRAYER FOR RELIEF**

12 The remainder of the complaint constitutes Plaintiffs' request for relief to which no  
13 responsive pleading is necessary. To the extent that a responsive pleading is required, Defendants  
14 deny the prayer for relief. Defendants deny that Plaintiffs are entitled to the relief sought in the  
15 complaint or to any relief whatsoever.

16 \* \* \* \* \*

17 In addition, Defendants assert the following affirmative defenses:

18 **FIRST AFFIRMATIVE DEFENSE**

19 The Third Amended Complaint fails to state claims upon which relief can be granted.

20 **SECOND AFFIRMATIVE DEFENSE**

21 The Third Amended Complaint should be dismissed on the ground of mootness.

22 **THIRD AFFIRMATIVE DEFENSE**

23 The Third Amended Complaint is so general as to be insufficient to give Defendants fair  
24 notice of whether Plaintiffs have standing to assert their claims.

25 **FOURTH AFFIRMATIVE DEFENSE**

26 The Third Amended Complaint should be summarily dismissed, as the named Plaintiffs  
27 have failed to demonstrate that they meet all the statutory requirements for naturalization.  
28

**FIFTH AFFIRMATIVE DEFENSE**

The Third Amended Complaint is so general as to be insufficient to give Defendants fair notice of the bases upon which Plaintiffs bring their claims.

**SIXTH AFFIRMATIVE DEFENSE**

This Court lacks jurisdiction over Plaintiffs' Second Cause of Action under the Administrative Procedure Act.

**SEVENTH AFFIRMATIVE DEFENSE**

This Court lacks jurisdiction over Plaintiffs' Third Cause of Action under the Writ of Mandamus.

**EIGHTH AFFIRMATIVE DEFENSE**

Relief should be denied to Plaintiffs as an exercise of judicial discretion to withhold relief. The Court should not, even if empowered to do so, engage in the business of reordering agency priorities, or jeopardize national security or the public safety by ordering Defendants to provide documentation to Plaintiffs and alleged class members before the satisfactory completion of all requisite background and security checks.

\* \* \* \* \*

WHEREFORE Defendants ask that this action be dismissed with prejudice, that judgment be entered for Defendants, that the request of an award of costs and expenses of the suit be denied to Plaintiffs, and that the Court grant such other and further relief to Defendants as it deems proper.

Respectfully submitted,

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Dated: May 30, 2008

By: /s/ Jeffrey S. Robins  
JEFFREY S. ROBINS  
Trial Attorney, District Court Section  
Office of Immigration Litigation

**CERTIFICATE OF SERVICE**

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Case No. C-07-3455-WHA

I hereby certify that on this 30th day of May 2008, one copy of the foregoing **DEFENDANTS' ANSWER TO PLAINTIFFS' THIRD AMENDED COMPLAINT** was served on counsel for Plaintiffs via the district court ECF system which will send notification of such filing to the following ECF filers:

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In addition, I hereby certify that on this 30th day of May 2008, true and correct copies of **DEFENDANTS' ANSWER TO PLAINTIFFS' THIRD AMENDED COMPLAINT** were served by Federal Express next-day delivery on the following non-ECF filers:

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