

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

ARNALDO GIAMMARCO,

Plaintiff,

v.

RAND BEERS, Acting Secretary,
Department of Homeland Security;
ALEJANDRO MAYORKAS, Director, U.S.
Department of Homeland Security, Bureau of
Citizenship and Immigration Services; and
JAMES COMEY, Director, Federal Bureau
of Investigation,

Defendants.

November 12, 2013

Plaintiff, through counsel, alleges the following on information and belief:

COMPLAINT

Arnold Giammarco is a U.S. Army veteran who resided lawfully in Connecticut with his family for half a century. In 1982, he applied for naturalization. While his application was pending, immigration agents arrested and deported him to Italy, based on minor, non-violent convictions from years before. It has been nearly one year since Mr. Giammarco's removal from his family and his expulsion from the country he honorably served. In this Court, he seeks an order compelling U.S. Citizenship and Immigration Services ("CIS") to adjudicate his application for naturalization.

Mr. Giammarco comes from a military family. His grandfather traveled from Italy to Ellis Island in 1913, served honorably in the U.S. Army during the First World War, and became a U.S. citizen. Mr. Giammarco's parents were stranded in Italy during

the Second World War but reunited with the rest of their family in the United States in 1960, bringing with them their four-year-old son, Plaintiff Arnold Giammarco.

Mr. Giammarco grew up in Hartford, Connecticut and followed in his grandfather's footsteps. As a young man, he joined the U.S. Army and then the Connecticut National Guard, receiving honorable discharges both times. In 1982, while serving in the National Guard, he applied for American citizenship with the help of his commanding officers.

At the time, Immigration and Naturalization Service ("INS") was responsible for processing Mr. Giammarco's naturalization application. Mr. Giammarco responded to INS's two requests for further information and presented himself to begin the INS interview process. INS records show that the agency continued to process his application until at least 1988, but failed to take any subsequent action. Neither INS nor its successor CIS ever notified Mr. Giammarco whether it had granted or denied his application.

The agency's prolonged failure to decide Mr. Giammarco's naturalization application has now led to the separation of a man from his elderly parents, his wife, and his four-year-old daughter. Immediate adjudication will remedy the unreasonable delay that has torn a young family apart and prevented a veteran from taking the same path to citizenship as his American grandfather.

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1361.
2. Venue lies in this district under 28 U.S.C. § 1391(e)(1), as a substantial part of the events or omissions giving rise to the claim occurred in the

district. Plaintiff resided in Connecticut prior to his deportation, and no real property is involved.

PARTIES

3. Plaintiff Arnaldo “Arnold” Giammarco is a U.S. Army veteran who submitted his naturalization application to INS in 1982.

4. Defendant Rand Beers is the Acting Secretary of the Department of Homeland Security (“DHS”), which currently has responsibility for processing naturalization applications. He is sued in his official capacity.

5. Defendant Alejandro Mayorkas is the Director of the United States Citizenship and Immigration Services (“CIS”), the DHS unit with responsibility for processing naturalization applications. He is sued in his official capacity.

6. Defendant James Comey is the Director of the Federal Bureau of Investigation (“FBI”), which is responsible for performing investigations in connection with naturalization applications. He is sued in his official capacity.

STATEMENT OF FACTS

Childhood in America: 1960-1975

7. On July 4, 1960, Arnold Giammarco’s father brought his wife and children to the United States from Italy as lawful permanent residents. The Giammarcos immigrated to reunite with their family in America, including Plaintiff’s grandparents, aunts, uncles, and cousins.

8. The Giammarcos settled in the South End neighborhood of Hartford, Connecticut, where Arnold and his sisters, Dora and Dionisia, attended elementary school. At age nine, Mr. Giammarco began working, first as a paperboy and then as a

dishwasher at a nursing home behind his parents' house. When Mr. Giammarco was twelve, his brother Pietro was born.

9. Mr. Giammarco attended Bulkeley High School in Hartford and participated in numerous activities, including football and wrestling.

10. During his sophomore year, Mr. Giammarco had a serious accident. He fell into a ravine and lay there overnight until he was found in the morning. Mr. Giammarco suffered a head injury, a punctured lung, and a broken jaw. As a result of his injuries, Mr. Giammarco was placed in an induced coma for several weeks, underwent a tracheotomy, and spent over a month in the hospital.

11. Mr. Giammarco enjoyed high school, but he struggled in the classroom after his accident. He found it difficult to concentrate after he took the strong painkillers that the doctor had prescribed. At the end of his junior year, high school officials informed Mr. Giammarco that he would have to repeat the eleventh grade. He left school instead to work full-time and support his family.

Military Service: 1976-1983

12. Around this time, Mr. Giammarco's grandfather Pietro Giammarco, a U.S. Army veteran, lived with the family in Hartford. Mr. Giammarco often heard stories of his grandfather's service in the First World War.

13. Pietro Giammarco had arrived in the United States through Ellis Island in 1913. He enlisted in the U.S. Army in 1917, served honorably for two years, and was wounded in combat on the Western Front. After the First World War ended, Pietro Giammarco applied for naturalization. He became a U.S. citizen in 1920.

14. Plaintiff's father, Lino Giammarco, had also served in the military as a

young man. Lino Giammarco was born a U.S. citizen in Italy in 1922 but was conscripted into the Italian military during the Second World War. After the war, Lino Giammarco and his young wife were stranded in Italy. When the couple sought to immigrate to the United States in 1949, the U.S. Embassy in Rome misinterpreted the law and wrongfully denied their request because of Lino Giammarco's involuntary military service.

15. Inspired by his grandfather's service, and aware of his father's military experience, Plaintiff Arnold Giammarco dreamed of joining the U.S. Army and becoming a soldier.

16. After high school, Mr. Giammarco decided to enlist in the U.S. Army. He joined in 1976 and attended initial training in Oklahoma, where he specialized in field artillery. He was then stationed overseas in Germany.

17. Mr. Giammarco earned numerous certificates of achievement during his military career. During his service overseas, Mr. Giammarco became a guard for the North Atlantic Treaty Organization (NATO) and received a security clearance from this organization. Only a handful of soldiers in each battery were selected to hold this duty.

18. Mr. Giammarco left the Army with renewed confidence and pride in his achievements. After receiving an honorable discharge, Mr. Giammarco joined the National Guard in Hartford. As a member of the Guard, Mr. Giammarco developed the skills that he had acquired in the Army. During training exercises, he operated self-propelled howitzer cannons and ammunition trucks.

19. Mr. Giammarco served honorably in the National Guard from January 1980 to January 1983, attaining the rank of sergeant (E-5). Mr. Giammarco's enlisted

evaluation report from this period states that his “judgment, integrity, and exemplary personal conduct have won the respect of all associated with him.”

Naturalization Process: 1981-1988

20. Having lived in the United States for almost his entire life and served honorably in the military, Mr. Giammarco wanted to become a U.S. citizen. During the early 1980s, he visited the Hartford INS office to inquire about the citizenship process.

21. As a member of the National Guard, Mr. Giammarco sought the help of Captain Joao D. Raphael and his first sergeant to ensure that he properly applied for citizenship and would receive the benefits accorded to veterans and service members.

22. In November 1981, Capt. Raphael certified the back side of Mr. Giammarco’s Form N-426, Request for Certification of Military Service, one of the forms INS required him to submit in connection with an application for naturalization. The instructions on this form stated that veterans or service members demonstrating honorable military service “are granted certain exemptions from the general requirements for naturalization.”

23. On or about February 3, 1982, Mr. Giammarco properly filed his naturalization application with INS. He fully completed and submitted the following forms: INS Form N-400, Application to File a Petition for Naturalization; INS Form N-426, Request for Certification of Military or Naval Service; and INS Form G-325B, Biographic Information. These three forms were the only paperwork INS required Mr. Giammarco to submit to begin the naturalization process.

24. INS stamped Mr. Giammarco’s naturalization application “received” on February 3, 1982.

25. INS then wrote Mr. Giammarco, requesting that he resubmit the military service form (N-426) and biographic information form (G-325B) with the back sides blank. In other words, INS objected that Mr. Giammarco had provided too much information.

26. Mr. Giammarco resubmitted a Form N-426 and a Form G-325B with blank back sides, as requested by INS.

27. On or about April 8, 1982, INS conducted a preliminary investigation of Mr. Giammarco.

28. The INS agent conducting the preliminary investigation reviewed his Form N-400, placing checkmarks next to some entries, inserting annotations, and correcting responses during the appointment.

29. After the conclusion of Mr. Giammarco's appointment, INS left the "reasons" section of the "non-filed" box on the Form N-400 blank, except for a reference to an internal memo dated April 8, 1982. CIS failed to include this 1982 memo in its disclosures in response to a 2011 Freedom of Information Act (FOIA) request.

30. During Mr. Giammarco's appointment, INS told Mr. Giammarco that he should inform the agency when the disposition of a then-pending January 1981 criminal charge became available.

31. On September 27, 1982, Mr. Giammarco wrote a letter to INS, explaining that the criminal charge had been nolle because the prosecutor had declined to pursue the case. In this letter, Mr. Giammarco also asked INS to schedule another appointment so that he could move forward with acquiring his U.S. citizenship.

32. In late 1982, INS contacted the Hartford Police Department and the FBI to

request a copy of the certified disposition of this same 1981 charge. INS did not request a copy of the certified disposition from Superior Court.

33. Shortly thereafter, the Hartford Police Department informed INS that it did not have a certified disposition. The FBI did not immediately respond.

34. INS records indicate that the agency may have prepared a draft letter to Mr. Giammarco dated October 27, 1982, requesting a copy of the certified disposition directly from him.

35. Neither Mr. Giammarco nor his family members ever received a copy of the draft INS letter dated October 27, 1982.

36. There is no evidence in INS records that the agency ever sent this draft request.

37. Moreover, INS records lack any evidence of a single attempt to contact Mr. Giammarco by other means. INS's failure to pursue alternative forms of communication is inconsistent with contemporary guidance requiring the agency to take additional steps to locate a naturalization applicant serving in the military, as Mr. Giammarco was when he filed his application in 1982.

38. The draft INS letter was addressed to Arnaldo Giammarco at 204 George Street in Hartford. Mr. Giammarco lived at that address at the time, and his parents resided continually at 204 George Street in Hartford, Connecticut from 1966 to 2007. Neither Mr. Giammarco nor his parents had trouble receiving mail at this address.

39. Mr. Giammarco's prior counsel submitted a FOIA request in 2011. The government's response contained a copy of INS's October 27, 1982 draft request. This was the first time that Mr. Giammarco learned of this draft.

40. Until receiving CIS's response to his FOIA request, Mr. Giammarco was unaware of any INS request for records, other than the requests described in paragraphs 25 and 30 to which he had promptly responded.

41. On September 21, 1988, nearly six years after Mr. Giammarco filed his application, the FBI told INS that it could find no record of the disposition of the 1981 charge.

42. Despite receiving the FBI's background check results in 1988, INS did not contact Mr. Giammarco by telephone, through his National Guard unit, in person, or in any other manner. Nor did it complete its duty to finish adjudicating his application or advise Mr. Giammarco of its determination.

43. Mr. Giammarco retained undersigned counsel in fall 2013. Through counsel, he provided CIS a copy of the certified disposition of the nolle 1981 criminal charge by letter dated November 5, 2013.

Career and Family: 1983-2010

44. After his return from the Army, Mr. Giammarco worked as a meat-cutter and owned a small mom-and-pop store on Maple Street in Hartford called Giammarco's Market.

45. While Mr. Giammarco was working in Hartford in the early 1980s, he met his first wife. The couple married in 1988 and divorced in 1993.

46. After his divorce, Mr. Giammarco suffered emotional difficulties. He self-medicated with illegal drugs and developed an addiction to cocaine. He lost his job, and shoplifted at times to support his addiction.

47. While Mr. Giammarco struggled with his addiction, he served a four-

month sentence in 1997 and a two-month sentence in 1999 for shoplifting. Mr. Giammarco was convicted of other minor, non-violent offenses related to his addiction. He moved between jobs and spent nights in homeless shelters.

48. In 2000, Mr. Giammarco met Sharon Blair. The couple found solace in each other during a difficult period in their lives. Over time, they fell in love.

49. Following his last arrest for drug possession in 2007, Mr. Giammarco pledged to turn his life around. He enrolled in a rehabilitation program and successfully ended his period of addiction.

50. Mr. Giammarco found a job at a McDonald's in Groton, Connecticut working third shift. He earned only \$8.00 an hour, but embraced the job as clean, honest work. He was eventually promoted to nighttime manager.

51. In November 2008, Sharon Blair gave birth to their daughter, who they named Blair.

52. After working the night shift, Mr. Giammarco often cared for his daughter during the day while his wife pursued her education. On Sunday afternoons, Mr. Giammarco set aside time to visit his elderly parents.

53. On July 4, 2010, Arnold Giammarco and Sharon Blair married. They chose this date because it was the fiftieth anniversary of the arrival of Mr. Giammarco and his parents in the United States. Ms. Blair's father, a local reverend, officiated.

54. After their wedding, the couple moved into a new apartment, bought their first car, a used Geo Metro, and watched their daughter take her first steps. This period was one of the happiest in their lives.

55. Throughout this time, CIS failed to adjudicate Mr. Giammarco's

naturalization application or to advise him it had been denied and that he had a right to appeal.

Detention and Deportation: 2011-2013

56. On May 14, 2011, Mr. Giammarco stood on his front porch talking to his sister on the phone. Armed men arrived, identified themselves as Immigration and Customs Enforcements (“ICE”) agents, and ordered Mr. Giammarco to drop the phone and lie down on the ground.

57. ICE officials arrested, detained, and placed Mr. Giammarco in deportation proceedings as part of Operation Endgame, an ICE initiative launched in 2003 that sought to “remove all removable aliens” by 2012 and which was carried out under the auspices of ICE’s Criminal Alien Program. ICE agents issued, served, and filed a Notice to Appear alleging that he was deportable based on two 1997 shoplifting convictions and a single possessory drug conviction from 2004.

58. The agents transferred Mr. Giammarco to Bristol County Jail in North Dartmouth, Massachusetts.

59. During his detention, Mr. Giammarco attended bible study and parenting classes, and served as a voluntary unit worker. The jail’s Chief of Immigration Services described Mr. Giammarco as a “model detainee.”

60. ICE declined to set bond for Mr. Giammarco. Through counsel, he requested a custody redetermination, but in February 2012, the Immigration Judge refused to set bond. Mr. Giammarco appealed the denial of bond to the Board of Immigration Affairs (“BIA”), but the BIA dismissed his appeal on April 26, 2012.

61. ICE detained Mr. Giammarco for eighteen months while he litigated his

removal case before the Immigration Court and the BIA.

62. Mr. Giammarco filed a habeas petition in U.S. District Court, *Giammarco v. Holder*, No. 1:12-cv-10526-MBB (D. Mass.), to secure his release from custody during his removal proceedings, but the Court did not reach the merits of his habeas petition before Mr. Giammarco was deported.

63. Throughout his eighteen-month detention, Mr. Giammarco's wife and daughter visited him regularly in jail, once and sometimes twice a week. During these visits, a glass partition separated Mr. Giammarco from his family. He was not allowed to hold his daughter or clasp her hands.

64. On May 15, 2012, the Immigration Judge denied Mr. Giammarco's request for cancellation of removal, held that he lacked jurisdiction to review or decide Mr. Giammarco's naturalization application, and ordered Mr. Giammarco deported. The BIA affirmed.

65. Mr. Giammarco could not afford to appeal further without depleting his daughter's college savings. His elderly mother had already withdrawn tens of thousands of dollars from her retirement and Social Security accounts to pay legal fees.

66. Two days after Thanksgiving in 2012, ICE deported Mr. Giammarco to Italy, a country where he had not lived since the age of four.

67. Mr. Giammarco's removal has inflicted financial and emotional hardships on his wife and young daughter, as well as on his siblings and his elderly parents. Mr. Giammarco's wife and daughter started receiving Supplemental Nutrition Assistance Program (formerly Food Stamps) benefits after his departure.

68. In Italy, Mr. Giammarco faces significant barriers to employment. He

speaks only rudimentary Italian. He resides in a small town with distant cousins. Other residents of the town and some of his own family members shun Mr. Giammarco and regard him as a violent criminal.

69. For decades, Congress has recognized that veterans who have served honorably merit special treatment in the naturalization process. U.S. naturalization statutes provide veterans such as Mr. Giammarco with exemptions from certain requirements and permit them to naturalize notwithstanding a final order of removal.

70. In accordance with congressional intent that veterans receive favorable treatment under the immigration and naturalization laws, ICE and INS have historically declined to deport veterans absent extraordinary circumstances. A series of internal agency memos and guidelines memorialize this practice.

71. In recent years, under pressure to meet annual arrest and deportation goals and quotas established by DHS officials, immigration agents have departed from this historic practice. The result has been the deportation of Mr. Giammarco and other veterans of the U.S. military.

CLAIMS FOR RELIEF

CLAIM I

Violation of Administrative Procedure Act (Defendants Beers and Mayorkas)

72. The Plaintiff realleges and incorporates by reference paragraphs 1-71.

73. Mr. Giammarco acquired the right to have INS, and its successor CIS, adjudicate his application to file a petition for naturalization when he properly filed his N-400, together with an N-426 and G-325B, in 1982.

74. INS had, and CIS has, a clear, nondiscretionary duty to timely adjudicate

naturalization applications. *See, e.g.*, 8 U.S.C. § 1446(d); 8 C.F.R. § 316.14(b)(1). INS and CIS violated this duty.

75. INS had, and CIS has, a clear, nondiscretionary duty to notify Mr. Giammarco of the disposition of his application and of his right to appeal any adverse disposition. *See, e.g.*, 8 C.F.R. § 103.3(a) (1982). INS and CIS violated this duty.

76. INS and CIS violated the requirement of 5 U.S.C. § 555(e) that “within a reasonable time, each agency shall proceed to conclude a matter presented to it” by refusing to adjudicate Mr. Giammarco’s application for over thirty years.

77. The failure to adjudicate Mr. Giammarco’s application for over thirty years violates any conceivable rule of reason and contravenes congressional intent that INS and CIS promptly adjudicate naturalization applications. *See, e.g.*, 8 U.S.C. §§ 1446(d). This delay is unreasonable in light of the human health and welfare interests that are at stake and the nature and extent of the interests that have been prejudiced by the agency’s delay.

78. Mr. Giammarco suffered a legal wrong because of the failure and refusal of INS and CIS to take action on his naturalization application. *See* 5 U.S.C. § 702.

79. The failure and refusal of INS and CIS to adjudicate Mr. Giammarco’s naturalization application is arbitrary and capricious and unauthorized by law.

80. This Court should “compel a agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. § 706(1).

**CLAIM II:
Relief under the Mandamus Act
(Defendants Beers and Mayorkas)**

81. The Plaintiff realleges and incorporates by reference paragraphs 1-80.

82. In the absence of an administrative remedy, Mr. Giammarco respectfully requests that this Court exercise its mandamus jurisdiction to remedy the harm that Defendants' delay has inflicted upon Mr. Giammarco and his family.

83. Mr. Giammarco is entitled to relief under 28 U.S.C. § 1361 because (1) he has a clear right to relief, (2) the agency has breached a clear, nondiscretionary duty to act, and (3) there is no other adequate remedy available.

84. Mr. Giammarco acquired the right to have INS, and its successor CIS, adjudicate his application to file a petition for naturalization when he properly filed his N-400, together with an N-426 and G-325B in 1982.

85. Mr. Giammarco has exhausted his administrative remedies by properly filing his naturalization application and complying with all INS and CIS requests for further filings and information of which he was aware.

**CLAIM III:
Violation of Administrative Procedure Act
(Defendant Comey)**

86. Plaintiff realleges and reincorporates by reference paragraphs 1-85.

87. In other recent cases in which plaintiffs have sought an order to compel CIS to adjudicate a pending naturalization application, CIS has sometimes defended the action on the ground that it has no mandatory duty to adjudicate naturalization applications until the FBI has completed mandatory background checks.

88. In the event CIS repeats such arguments in this case, and the Court agrees, then Mr. Giammarco respectfully requests that the Court order the FBI to complete such background checks.

89. The FBI produced a background check report to INS in 1988. If the Court

concludes that this does not constitute the mandatory background check in Mr. Giammarco's case, then Mr. Giammarco respectfully requests that this Court direct the FBI to perform its mandatory duty to complete a proper background check.

90. Mr. Giammarco acquired the right to have the FBI complete the background check when he properly filed his N-400, together with an N-426 and G-325B, in 1982.

91. The FBI has a clear, non-discretionary duty to perform background checks on naturalization applicants. *See, e.g.*, 8 U.S.C. §§ 1446(a)-(b); 8 C.F.R. § 335.1.

92. The FBI violated the requirement of 5 U.S.C. § 555 (e) that "within a reasonable time, each agency shall proceed to conclude a matter presented to it" by failing to complete a background check on a naturalization application filed in 1982.

93. The FBI's failure to complete a background check on a naturalization application filed in 1982 violates any conceivable rule of reason and contravenes congressional intent that the FBI promptly complete background checks for naturalization applications. *See, e.g.*, 8 U.S.C. §§ 1446(a)-(b), 8 C.F.R. § 335.1. This delay is unreasonable in light of the human health and welfare interests that are at stake and the nature and extent of the interests that have been prejudiced by its delay.

94. Mr. Giammarco suffered a legal wrong because of the failure and refusal of the FBI to perform the mandatory background checks on his naturalization application. *See* 5 U.S.C. § 702.

95. The failure and refusal of the FBI to perform the mandatory background checks on Mr. Giammarco's naturalization application is arbitrary and capricious and unauthorized by law.

96. This Court should “compel a agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. § 706(1).

**CLAIM IV:
Relief Under the Mandamus Act
(Defendant Comey)**

97. Plaintiff realleges and reincorporates by reference paragraphs 1-96.

98. In other recent cases in which plaintiffs have sought an order to compel CIS to adjudicate a pending naturalization case, CIS has sometimes defended the action on the ground that it has no mandatory duty to adjudicate naturalization applications until the FBI has completed mandatory background checks.

99. In the event CIS repeats such arguments in this case, and the Court agrees, then Mr. Giammarco also seeks mandamus against the FBI to complete the mandatory background check.

100. The FBI produced a background check report to INS in 1988. If the Court concludes that this does not constitute the mandatory background check in Mr. Giammarco’s case, then Mr. Giammarco respectfully requests that this Court compel the FBI to perform its mandatory duty to complete a proper background check.

101. Mr. Giammarco is entitled to relief under 28 U.S.C. § 1361 because (1) he has a clear right to relief, (2) the agency has breached a clear, nondiscretionary duty to act, and (3) there is no other adequate remedy available.

102. Mr. Giammarco acquired the right to have the FBI complete his background checks for naturalization when he properly filed his N-400, together with an N-426 and G-325B in 1982.

103. Mr. Giammarco has exhausted his administrative remedies by properly

filing his naturalization application and complying with all requests for further filings and information of which he was aware.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff respectfully requests that the Court:

- (1) Assume jurisdiction over this matter;
- (2) Order CIS to adjudicate Mr. Giammarco's naturalization application, and if necessary, direct the FBI to complete all required background checks;
- (3) Award attorney's fees and costs; and
- (4) Grant all other just, proper, and appropriate relief.

Dated November 12, 2013
New Haven, Connecticut

Respectfully submitted,

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