

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MOHAMED ALSAMMAN,
MOHAMMED ALWATIK,
AHMAD ASSAF,
HASSAN BELGHALI,
HASSAN DAMRA,
MOHAMMED FARAH,
JAMAL HASAN,
AHMAD SHAKER KHADDASII,
BASEM SHARAF, and
TARIQ SAEED,
individually and on behalf of all individuals
similarly situated, and

ARAB AMERICAN ACTION NETWORK,

Plaintiffs / Petitioners

v.

ALBERTO R. GONZALES, in his official
capacity Attorney General of the United States;
MICHAEL CHERTOFF, in his official
capacity as Secretary of the Department of
Homeland Security;
GERRY HEINAUER, District Director of the
Bureau of Citizenship and Immigration
Services, Department of Homeland Security;
ROBERT S. MUELLER, III,
in his official capacity as Director of the
Federal Bureau of Investigation,

Defendants / Respondents

CASE NO.:

06CV2518
JUDGE PLUNKETT
MAGISTRATE NOLAN

Jury Demand

FILED

MAY - 4 2006

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**MICHAEL W. DOBBING
CLERK, U.S. DISTRICT COURT**

Complaint for Naturalization and Other Relief

This is a complaint for injunctive and other relief. The plaintiffs are lawful permanent residents of the United States who applied to be naturalized as United States citizens, passed all their interviews and related tests, and have been waiting for more than 120 days --- some as long as 2 years --- to be scheduled for their oath ceremonies. The plaintiffs are also all Muslim men who come from countries with significant Muslim populations. While they have been waiting for long periods to be sworn in, hundreds of thousands of others people seeking to be naturalized have had their ceremonies scheduled without the same delay. The men are joined by the Arab American Action Network, a non-profit organization that sought information concerning the delay Muslim men are facing, but has not had that information provided by the government. The individual plaintiffs seek immediate naturalization and an end to the practice of indefinite delay of the naturalization of Muslim men. The Arab American Action Network seeks compliance with the Freedom of Information Act.

Jurisdiction and Venue

1. This court has subject matter jurisdiction pursuant to at least the following statutory provisions: 28 U.S.C. § 1331 (because questions of federal law are presented); 8 U.S.C. § 1447(b) (granting district court jurisdiction to review naturalization applications); and 42 U.S.C. § 2000bb-1(c) (allowing assertion of a violation of a Religious Freedom Restoration Act to be asserted in a judicial proceeding); 5 U.S.C. § 552 (a) (4)(B) (FOIA requests); and 28 U.S.C. § 1361 (mandamus jurisdiction).

2. Pursuant to 29 U.S.C. § 1391, venue is proper in this district on either of the following grounds: (1) the plaintiffs reside in this judicial district, the defendants are officers of the United States or agencies of the United States, and no real property is involved (28 U.S.C. § 1391(e)(3)); or (2) acts or omissions giving rise to the action these applications for naturalization

were processed in part by the Chicago office of Immigration and Naturalization Services (now the Bureau of Citizenship and Immigration Services) (28 U.S.C. § 1391(c)(2)). The FOIA plaintiff resides in this district, making jurisdiction and venue proper pursuant to 5 U.S.C. § 552 (a) (4)(B).

The Parties

Plaintiffs:

3. Plaintiffs MOHAMED ALSAMMAN, MOHAMMED ALWATIK, AHMAD ASSAF, HASSAN BELGHALI, HASSAN DAMRA, MOHAMMED FARAH, JAMAL HASAN, AHMAD SHAKER KHADDASH, BASEM SHARAF, and TARIQ SAEED (the "Named Plaintiffs") are lawful permanent residents of the United States who have applied to be naturalized as U.S. citizens.

Class Allegations:

4. Named Plaintiffs MOHAMED ALSAMMAN, MOHAMMED ALWATIK, AHMAD ASSAF, HASSAN BELGHALI, HASSAN DAMRA, MOHAMMED FARAH, JAMAL HASAN, AHMAD SHAKER KHADDASH, BASEM SHARAF, and TARIQ SAEED bring this action on their own behalf and on behalf of a class of other similarly situated persons pursuant to Rules 23(a) and (b)(2) of the Federal Rules of Civil Procedure.

5. The Plaintiff Class consists of:

All Muslim males, or those males appearing Muslim on the basis of their ethnic heritage due to their national origin, who are or will be lawful permanent residents applying for naturalization to become U.S. citizens, and whose swearing-in

ceremony has been delayed more than 120 days since the applicant passed his naturalization interview.

6. The Plaintiff Class is so numerous that the joinder of all members is impractical. It is reasonably estimated, on information and belief, that out of the more than 700,000 applications for Naturalization processed annually by the USCIS, approximately 5% are Muslim males, and that each year several thousand of these individuals have their swearing in ceremonies delayed significantly longer than others similarly situated.

7. There are questions of law and fact common to the class, including: (1) a common factual background of inordinate delay in the scheduling of swearing-in ceremonies; (2) whether the Defendants have violated and are violating the Immigration and Naturalization Act and applicable regulations by discriminating against the Plaintiff Class on account of either their gender, their religion, or both; and (3) whether members of the Plaintiff Class are suffering discrimination due to their religion or perceived religious beliefs.

8. The claims of Named Plaintiffs are typical of the claims of their class. Named Plaintiffs, like all class members, have been refused timely naturalization by facing long delays in the naturalization process on account of their gender and religion or perceived religion.

9. Named Plaintiffs are adequate representatives of the class who will adequately and fairly protect the interests of the class because they seek relief on behalf of the class as a whole and have no interests antagonistic to other members of the class. They are represented by attorneys employed by the Midwest Immigrant & Human Rights Center (MIHRC), the Council on American-Islamic Relations – Chicago (CAIR-Chicago), as well as David Bertin of the Competition Law Group, who are attorneys experienced in federal litigation and/or immigration law and who have litigated complex class action civil rights cases.

10. In addition, Defendants have acted and /or refused to act on grounds generally applicable to the Plaintiff classes, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the class as a whole, making class certification appropriate under Rule 23(b)(2) of the Federal Rules of Civil Procedure.

Organizational Plaintiff:

11. Plaintiff Arab American Action Network (AAAN) is a nonprofit entity located in Chicago, Illinois that filed a request under the Freedom of Information Act seeking statistical information on all individuals who applied to become naturalized citizens between the period of January 1, 2000 and September 7, 2005.

Defendants:

12. Defendant ALBERTO R. GONZALES is being sued in his official capacity as the Attorney General of the United States. He is authorized by Congress to naturalize persons as citizens of the United States. 8 U.S.C. § 142(a).

13. Defendant MICHAEL CHERTOFF is being sued in his official capacity as the Secretary of the Department of Homeland Security (DHS). As of February 15, 2005, Mr. Chertoff has been responsible for the administration of the United States Citizenship and Immigration Service, which provides certain immigration related services including naturalization. 8 U.S.C. § 1103.

14. Defendant GERRY HEINAUER is the District Director of USCIS for the Chicago District. As such, he is charged with the duty of administration and enforcement of all the functions, powers, and duties of USCIS in the Chicago District.

15. Defendant ROBERT S. MUELLER, III, is the Director of the Federal Bureau of Investigation. As such he is charged with conducting background check of applicants for naturalization when requested to do so by the USCIS.

Facts Regarding Individual Named Plaintiffs

16. Plaintiff MOHAMED ALSAMMAN is a legal permanent resident of the United States, identified by Alien number 076 789 644. Mr. Alsamman passed the USCIS citizenship examination and interview on June 6, 2004. Currently a Syrian citizen, Mr. Alsamman is a Muslim male. He is a person of good moral character and otherwise meets all the requirements to be naturalized as set forth in 8 U.S.C. § 1427. More than 120 days have passed since he passed his citizenship interview.

17. Plaintiff MOHAMMED ALWATIK is a legal permanent resident of the United States, identified by Alien number 073 427 360. Mr. Alwatik passed the USCIS citizenship examination and interview March 1, 2004. Currently a Moroccan citizen, Mr. Alwatik is a Muslim male. He is a person of good moral character and otherwise meets all the requirements to be naturalized as set forth in 8 U.S.C. § 1427. More than 120 days have passed since he passed his citizenship interview.

18. Plaintiff AHMAD ASSAF is a legal permanent resident of the United States, identified by Alien number 070 920 090. Mr. Assaf passed the USCIS citizenship examination and interview October 7, 2004. Currently a Jordanian citizen, Mr. Assaf is a Muslim male. He is a person of good moral character and otherwise meets all the requirements to be naturalized as set forth in 8 U.S.C. § 1427. More than 120 days have passed since he passed his citizenship interview.

19. Plaintiff HASSAN BELGHALI is a legal permanent resident of the United States, identified by Alien number 047 025 280. Mr. Belghali passed the USCIS citizenship examination and interview September 14, 2004. Currently a Moroccan citizen, Mr. Belghali is a Muslim male. He is a person of good moral character and otherwise meets all the requirements to be naturalized as set forth in 8 U.S.C. § 1427. More than 120 days have passed since he passed his citizenship interview.

20. Plaintiff HASSAN DAMRA is a legal permanent resident of the United States, identified by Alien number 073 411 711. Mr. Damra passed the USCIS citizenship examination and interview May 10, 2004. Currently a Jordanian citizen, Mr. Damra is a Muslim male. He is a person of good moral character and otherwise meets all the requirements to be naturalized as set forth in 8 U.S.C. § 1427. More than 120 days have passed since he passed his citizenship interview. On his own initiative, Mr. Damra requested an FBI fingerprint search on January 31, 2006. On April 11, 2006, the FBI reported "no arrest record" in response to that request.

21. Plaintiff MOHAMMED FARAH is a legal permanent resident of the United States, identified by Alien number 042 166 773. Mr. Farah passed the USCIS citizenship examination and interview April 19, 2004. Currently a Jordanian citizen, Mr. Farah is a Muslim male. He is a person of good moral character and otherwise meets all the requirements to be naturalized as set forth in 8 U.S.C. § 1427. More than 120 days have passed since he passed his citizenship interview.

22. Plaintiff AHMAD SHAKER KHADDASH is a legal permanent resident of the United States, identified by Alien number 045-820-993. Mr. Khaddash passed the USCIS citizenship examination and interview April 15, 2004. Currently a Jordanian citizen, Mr. Khaddash is a Muslim male. He is a person of good moral character and otherwise meets all the

requirements to be naturalized as set forth in 8 U.S.C. § 1427. More than 120 days have passed since he passed his citizenship interview. On his own initiative, Mr. Khaddash requested an FBI fingerprint search on January 20, 2006. On March 23, 2006, the FBI reported "no arrest record" in response to that request.

23. Plaintiff TARIQ SAEED is a legal permanent resident of the United States, identified by Alien number 076-841-023. Mr. Saeed passed the USCIS citizenship examination and interview August 23, 2004. Currently a Pakistani citizen, Mr. Saeed is a Muslim male. He is a person of good moral character and otherwise meets all the requirements to be naturalized as set forth in 8 U.S.C. § 1427. More than 120 days have passed since he passed his citizenship interview.

24. Plaintiff BASEM SHARAF is a legal permanent resident of the United States, identified by Alien number 078-288-772. Mr. Sharaf passed the USCIS citizenship examination and interview September 27, 2005. Currently an Egyptian citizen, Mr. Sharaf is a Muslim male. He is a person of good moral character and otherwise meets all the requirements to be naturalized as set forth in 8 U.S.C. § 1427. More than 120 days have passed since he passed his citizenship interview.

Facts Relating to Organization Plaintiff

25. The Arab American Action Network (AAAN) filed a request under the Freedom of Information Act on September 7, 2005. The request asked the United States Citizenship and Immigration Services to supply statistical information on all individuals who applied to become naturalized citizens between the period of January 1, 2000 and the date of the request. Specifically, the request asked for the disclosure of the following information, in electronic format: the state of residence of the applicant when the application was filed; the country of

origin or asserted citizenship of each applicant; age, gender and stated religious belief of the applicant; the number of times the USCIS Interview and USCIS English and Civics Tests were taken; the date(s) such tests and interviews were conducted; the dates on which the interview and related tests were passed; the USCIS Officer who administered them; the USCIS office charged with reviewing the application; the number, if any, of subsidiary applicants; the status of those citizenship applications – including those who have had citizenship granted; and the date the applicant was informed to take the oath of citizenship, if such a date has been provided. It was also requested that if it were known or could be calculated, to also provide the calculation of the number of days between the date the applicant passed the USCIS Interview and related tests and the date the applicant took the oath of citizenship or, if no oath had yet been taken, the date the information provided in response to this request.

26. On September 29, 2005, the USCIS sent a letter to the AAAN, stating that it “had completed” its search for records responsive to the request “but did not find any.”

27. AAAN filed a timely administrative appeal on November 7, 2005.

28. As of April 28, 2006, the USCIS has not responded to the administrative appeal.

29. Pursuant to 5 U.S.C. § 552(a)(6)(A)(ii), the USCIS had an obligation to render a decision within 20 days of the administrative appeal.

30. Pursuant to 5 U.S.C. § 552(a)(6)(C)(i), a requestor under the FOIA is deemed to have exhausted his administrative remedies where the Government has not abided by the time limits set by the statute.

Facts Common to Counts I-III

31. The United States Citizenship and Immigration Services (USCIS) is the portion of the Department of Homeland responsible for adjudicating all applications for Naturalization pursuant to 8 U.S.C. § 1421 et seq.

32. On information and belief, that naturalization for Muslim males (or males from countries with a significant Muslim population) takes significantly longer to complete than for other applicants for Naturalization.

33. On information and belief, the purported reason for the delay is that background checks requested by USCIS and performed by the FBI are not yet completed for the applicants, despite the passage, in many cases, of years of waiting for the background checks to be completed.

Causes of Action

Count I: Naturalization Order Pursuant to 8 U.S.C. § 1447(b)

34. Named Plaintiffs, in their individual capacity, reassert and reallege paragraphs 1 to 33 as if set forth fully here.

35. Pursuant to 8 U.S.C. § 1447(b), each of the Named Plaintiffs seeks a determination by this Court that he meets the requirements for naturalization and is to be naturalized as a U.S. citizen without further delay.

Count II: Illegal Naturalization Discrimination
On the Basis of Gender in Violation of 8 U.S.C. § 1422

36. Plaintiffs reassert and reallege paragraphs 1 to 33 as if set forth fully here

37. It is illegal to deny or abridge the "right of a person to become a naturalized citizen of the United States" "because of sex." 8 U.S.C § 1422 ("The right of a person to become a naturalized citizen of the United States shall not be denied or abridged because of race or sex or because such person is married."); see also U.S. Const. Art. 1, section 8 (granting Congress the right "To establish a uniform rule of naturalization").

38. Named Plaintiffs and others similarly situated have suffered discrimination on the basis of gender in that their applications for naturalization have been delayed to a degree not experienced by other similarly situated individuals who are female as opposed to male.

Count III: Violation of Religious Freedom

39. Plaintiffs reassert and reallege paragraphs 1 to 33 as if set forth fully here.

40. Through improper implementation of the law regarding naturalization on the basis of the plaintiffs' religious beliefs, defendants have substantially burdened the Named Plaintiffs and other similarly situated from the exercise of their religious beliefs, in violation of the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb-1(a), by placing the additional burden of an unreasonable delay in the approval of naturalization applications of members of the Islamic faith as opposed to other religions.

41. There is no compelling governmental interest in the substantial burden placed on the plaintiffs. In the alternative, to the extent there is a compelling governmental interest, the

burden placed on the plaintiffs is not the least restrictive means for furthering any purported compelling governmental interest.

Count IV: Mandamus/Request for Scheduling Swearing-In Ceremonies

42. Plaintiffs reassert and reallege paragraphs 1 to 33 as if set forth fully here.

43. Defendants owe Plaintiffs the duty to act upon their applications in a timely manner. Plaintiffs have a right to have their applications adjudicated in a timely manner.

44. Defendants are violating their duty by failing to adjudicate the application in a timely manner, by (a) refusing to make any decision on cases relating to the Plaintiff Class until background checks are completed, (b) failing to obtain a timely response from the FBI and other federal agencies regarding the background check; (c) failing to communicate with the FBI and/or other federal agencies regarding long-delayed background checks; (d) refusing to consider other alternatives, such as approving the case subject to rescission if the claims of members of the Plaintiff Class regarding the lack of criminal history are not borne out by the background checks, or offering approval conditioned on applicants' agreement to waive objections to denaturalization if the background checks cause the Government to wish to examine the applicants further.

45. Plaintiffs have already exhausted all available administrative remedies.

46. Plaintiffs MOHAMED ALSAMMAN, MOHAMMED ALWATIK, AHMAD ASSAF, HASSAN BELGHIALI, HASSAN DAMRA, MOHAMMED FARAH, JAMAL HASAN, AHMAD SHAKER KHADDASH, BASEM SHARAF, and TARIQ SAEED should have their swearing-in ceremonies performed as soon as practicable.

Count V: Freedom of Information Act Request of Plaintiff AAAN

47. Plaintiff Arab-American Action Network reasserts and realleges paragraphs 1 to 33 as if set forth fully here.

48. Plaintiff has sought records under the Freedom of Information Act as set forth above.

49. The Government has responded to Plaintiff's request for records by (a) denying that it possesses any records responsive to the request, and (b) failing to respond in a timely manner to the Plaintiff's administrative appeal.

50. Upon information and belief, USCIS has in its possession and control agency records responsive to plaintiff's FOIA request. Plaintiff has a statutory right to the records sought, and there is no legal basis for USCIS's refusal to release them. USCIS's failure to release the requested information violates the Freedom of Information Act, 5 U.S.C. § 552(a).

Prayer for Relief

Wherefore, plaintiffs seek the following relief:

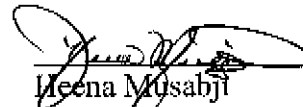
- A. An order setting an immediate date for naturalization of the plaintiffs;
- B. The actual naturalization of the plaintiffs by this Court;
- C. Entry of judgment in favor of the plaintiffs and against the defendants finding that the delay in their naturalization constituted improper denial of naturalization on the basis of gender, in violation of 8 U.S.C. § 1422;
- D. An order directing the defendants to abide by the dictates of 8 U.S.C. § 1422;
- E. An award of damages in an amount to be determined;

- F. Declare that defendants' refusal to disclose the records requested by plaintiff AAAN's FOIA request is unlawful;
- G. Order defendants to make the requested records available to plaintiff AAAN;
- H. Enjoin defendants from refusing to comply with subsequent requests for similar documents; and
- I. An award of costs, as provided by 28 U.S.C.S. § 2412(a)(1);
- J. An award of attorneys fees, as provided by 28 U.S.C.S. § 2412(d)(1), or 42 U.S.C. § 1988; or 5 U.S.C. § (a)(4)(F); and
- K. Such other relief as the Court deems just.


Jury Demand

Plaintiffs demand a jury as to all matters subject to resolution by a jury.

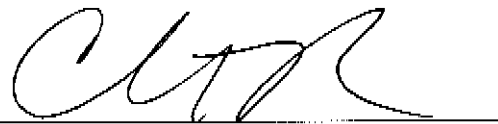
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