

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
RAISA YAKUBOVA, EMMA UNGURYAN,
BELLA VESNOVSKAYA, DAVID VESNOVSKIY,
VYACHESLAV VOLOSIKOV, and
SHEHATA AWAD IBRAHIM, on behalf of themselves
and all other similarly situated individuals,

Plaintiffs,

-against-

MICHAEL CHERTOFF, in his official capacity as
Secretary of the Department of Homeland Security,
EMILIO GONZALEZ, in his official capacity as
the Director of the United States Citizenship and
Immigration Services, MARY ANN GANTNER,
in her official capacity as District Director of the
New York City District of the United States
Citizenship and Immigration Services,
ALBERTO GONZALES, in his official capacity as
Attorney General of the United States, and
ROBERT S. MUELLER, in his official capacity as
the Director of the Federal Bureau of Investigation,

Defendants.
-----X

CV 06 3203

BLOCK, J.

06. Civ. **MAAMI 111**
(ECF CASE)

COMPLAINT

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ JUN 28 2006 ★

BROOKLYN OFFICE

PRELIMINARY STATEMENT

1. Plaintiffs bring this class action under the Immigration and Nationality Act § 336(b), codified at 8 U.S.C. § 1447(b), and the Administrative Procedure Act, 5 U.S.C. § 706(1) on behalf of themselves and a proposed class of similarly situated individuals residing in Kings, Nassau, Queens, Richmond, and Suffolk counties in New York State, who have properly submitted or will properly submit applications to be naturalized as U.S. citizens, whose

applications for naturalization are not adjudicated within 120 days after the date of their initial examinations.

2. Plaintiffs challenge the custom and practice of Defendants CHERTOFF, GONZALEZ, and GANTNER (hereinafter "USCIS Defendants") and Defendant GONZALES of failing to grant or deny proposed class members' naturalization applications (1) within 120 days after the date of their initial examinations in violation of 8 C.F.R. § 335.3 and 8 U.S.C. § 1447(b) and (2) within a reasonable time in violation of 5 U.S.C. § 555(b).

3. Plaintiffs challenge the custom and practice of Defendants GONZALES and MUELLER of failing to complete within a reasonable time the criminal background checks for which the Federal Bureau of Investigation ("FBI") is responsible and that are necessary for the adjudication of proposed class members' naturalization applications in violation of 5 U.S.C. § 555(b).

4. Plaintiffs challenge the custom and practice of Defendants CHERTOFF, GONZALEZ, GANTNER, GONZALES and MUELLER (hereinafter "all Defendants") of collectively failing to take all steps necessary to adjudicate proposed class members' naturalization applications within a reasonable time in violation of 5 U.S.C. § 555(b).

5. As a result of all Defendants' failure to take all steps necessary to adjudicate Plaintiffs' naturalization applications and to grant or deny their naturalization applications within 120 days and a reasonable time as required by federal law, Plaintiffs have been prevented from receiving the many substantial and unique benefits of citizenship, including the right to vote, the right to obtain United States passports, the right to file visa petitions for immediate relatives as

United States citizens, the protection of the United States government when outside the United States and the right to life sustaining federal benefits.

6. Plaintiffs seek a preliminary injunction (1) immediately remanding the naturalization applications of the Named Plaintiffs and other members of the proposed class identified in Paragraph 65 of this complaint (collectively hereinafter "identified class members") to USCIS Defendants and Defendant GONZALES; (2) ordering Defendants GONZALES and MUELLER to complete all criminal background checks of identified class members for which the FBI is responsible within twenty-five (25) days of the remand; (3) ordering all Defendants collectively to complete all steps necessary to adjudicate the naturalization applications of identified class members within thirty-five (35) days of the remand and; (4) ordering USCIS Defendants and Defendant GONZALES to grant or deny the naturalization applications of identified class members within forty-five (45) days of the remand.

7. Plaintiffs seek a permanent injunction ordering: (1) USCIS Defendants and Defendant GONZALES, within thirty (30) days of this Court granting permanent relief, to identify all proposed class members as of that date, whose pending naturalization applications have not been adjudicated within 120 days of the date of their initial examinations; and (2) all Defendants collectively to establish and implement a plan of correction whereby the naturalization applications of all proposed class members identified pursuant to (1) above are granted or denied within ninety (90) days of this Court granting permanent relief.

8. Plaintiffs further seek a permanent injunction ordering: (1) USCIS Defendants and Defendant GONZALES to grant or deny the naturalization applications of all applicants residing in Kings, Nassau, Queens, Richmond, and Suffolk counties in New York State within

120 days of the date of the applicants' initial examinations; (2) Defendants GONZALES and MUELLER to complete within a reasonable time all background checks for which the FBI is responsible and that are necessary to adjudicate the naturalization applications of all applicants residing in Kings, Nassau, Queens, Richmond, and Suffolk counties in New York State; (3) all Defendants collectively to complete all steps necessary to adjudicate the naturalization applications of all applicants residing in Kings, Nassau, Queens, Richmond, and Suffolk counties in New York State within a reasonable time.

JURISDICTION AND VENUE

9. This Court has jurisdiction over this action under the Administrative Procedure Act, 5 U.S.C. § 701 et seq., and 28 U.S.C. § 1331 which vests United States district courts with jurisdiction over civil actions arising under the Constitution, law, or treaties of the United States.

10. Jurisdiction is further conferred by 8 U.S.C. § 1447(b), which grants jurisdiction to the United States district court in the district in which an individual applying for naturalization resides if the individual's application for naturalization has not resulted in a determination within 120 days after the date on which an examination is conducted pursuant to 8 U.S.C. § 1446. Such district court has jurisdiction either to "determine the matter or remand the matter, with appropriate instructions, to the Service¹ to determine the matter." 8 U.S.C. § 1447(b).

11. Venue properly lies with this district pursuant to 28 U.S.C. § 1391(b) as Plaintiffs reside within this judicial district and a substantial part of the activities complained of occurred within this judicial district.

¹ In all statutory and regulatory provisions cited in this Complaint, the term "Service" refers to the USCIS. 8 U.S.C. § 1101(a)(34); 6 U.S.C. § 271.

PARTIES

Plaintiffs

12. Plaintiff RAISA YAKUBOVA resides in Queens, New York and had her naturalization examination by the United States Citizenship and Immigration Services (“USCIS”) on April 21, 2005. Her application has not yet been adjudicated, although it has been over 427 days since her examination.

13. Plaintiff EMMA UNGURYAN resides in Staten Island, New York and had her naturalization examination by USCIS on October 13, 2004. Her application has not yet been adjudicated, although it has been over 617 days since her examination.

14. Plaintiff BELLA VESNOVSKAYA resides in Brooklyn, New York and had her naturalization examination by USCIS on November 17, 2005. Her application has not yet been adjudicated, although it has been over 217 days since her examination.

15. Plaintiff DAVID VESNOVSKIY resides in Brooklyn, New York and had his naturalization examination by USCIS on November 18, 2005. His application has not yet been adjudicated, although it has been over 216 days since his examination.

16. Plaintiff VYACHESLAV VOLOSIKOV resides in Brooklyn, New York and had his naturalization examination by USCIS on November 10, 2005. His application has not yet been adjudicated, although it has been over 224 days since his examination.

17. Plaintiff SHEHATA AWAD IBRAHIM resides in Queens, New York and had his second naturalization examination by USCIS on October 27, 2005. His application has not yet been adjudicated, although it has been over 238 days since his examination.

Defendants

18. Defendant MICHAEL CHERTOFF is the Secretary of the Department of Homeland Security ("DHS"). As such, he is responsible for, *inter alia*, administering USCIS and assuring the implementation and enforcement of the Immigration and Nationality Act.

19. Defendant EMILIO GONZALEZ is the Director of the USCIS. As such, he is responsible for, *inter alia*, the administration of immigration benefits and services including the processing of naturalization applications of immigrants residing in the United States.

20. Defendant MARY ANN GANTNER is the District Director of the New York City District of the USCIS. As such, she is responsible for, *inter alia*, administering the immigration laws in the five New York Boroughs and nine surrounding Counties of the New York City District, including Nassau and Suffolk counties.

21. Defendant ALBERTO GONZALES is the Attorney General of the United States. As such, he is responsible for, *inter alia*, controlling determination of all issues of law pertaining to immigration pursuant to 8 U.S.C. § 1103 and has the sole authority to naturalize citizens of the United States pursuant to 8 U.S.C. § 1421(a). He has delegated authority and responsibility to administer all laws pertaining to immigration, naturalization and nationality to the Director of USCIS. 8 U.S.C. § 1103(a) (1); 8 C.F.R. § 100.2; 6 U.S.C. § 271(b). The Attorney General is the head of the Department of Justice, and as such, is responsible for administering the FBI, which is part of the Department of Justice. 28 U.S.C.A. § 503; 28 U.S.C. § 531.

22. Defendant ROBERT S. MUELLER is the Director of the FBI. As such he is responsible for, *inter alia*, ensuring that a full criminal background check is completed for each

individual applying to be naturalized as a U.S. citizen. Pub.L. 105-119, tit. I, 111 Stat. 2440, 2448- 49 (1997); 8 C.F.R. § 335.2(b).

CLASS ACTION ALLEGATIONS

23. Named Plaintiffs bring this action pursuant to Fed R. Civ. P. 23(a) and 23(b)(2), on behalf of themselves and a proposed class of:

All persons residing in Kings, Nassau, Queens, Richmond, and Suffolk counties in New York State, who have properly submitted or will properly submit applications to be naturalized as U.S. citizens whose naturalization applications are not adjudicated within 120 days after the date of their initial examinations..

24. This proposed class is so numerous that joinder of all members is impracticable. Already identified in paragraph 65 of this complaint are more than 100 members of the proposed class seeking the same relief as the Named Plaintiffs.

25. There are questions of fact and law common to the proposed class that predominate over any questions affecting only the individual named plaintiffs, including (1) whether USCIS Defendants' custom and practice of failing to grant or deny proposed class members' naturalization applications within 120 days of their initial examinations violates 8 C.F.R. § 335.3 and 8 U.S.C. § 1447(b) and within a reasonable time violates 5 U.S.C. § 555(b); (2) whether Defendants GONZALES and MUELLER's custom and practice of failing to complete within a reasonable time the criminal background checks of proposed class members for which the FBI is responsible violates 5 U.S.C. § 555(b); and (3) whether all Defendants' custom and practice of collectively failing to take all steps necessary to adjudicate proposed class members' applications for naturalization within a reasonable time violates 5 U.S.C. § 555(b).

26. The individual plaintiffs' claims are typical of the claims of the proposed class. All the named plaintiff class representatives have experienced unreasonable delay in the processing of their naturalization applications; they have properly submitted applications to be naturalized, but have not received any determinations granting or denying their naturalization applications within 120 days of the dates of their initial examinations.

27. The named plaintiffs will adequately and fairly protect the interests of all members of the proposed class, because they have the requisite personal interest in the outcome of this litigation, have no interest antagonistic to others in the proposed class, and they are represented by the New York Legal Assistance Group, whose attorneys are experienced in class action litigation generally and specifically including the rights of immigrants.

28. Declaratory and injunctive relief is appropriate with respect to the proposed class as a whole because Defendants have acted on grounds generally applicable to the proposed class as a whole.

STATUTORY AND REGULATORY SCHEME

29. The United States Constitution grants Congress the power to "establish a Uniform Rule of Naturalization." Art. I, § 8, cl. 4.

30. The Attorney General has the "sole authority to naturalize persons as citizens of the United States." 8 U.S.C. § 1421(a); Pub.L. No. 101-649, Title IV, 104 Stat. 4978, 5038-48 (Nov. 29, 1990).

31. The Attorney General has delegated the authority to administer and enforce the Immigration and Nationality Act and all other laws relating to immigration, naturalization and

nationality to the Director of Immigration and Naturalization Service ("INS"). 8 C.F.R. § 100.2(a); 28 C.F.R. 0.105.

32. On March 1, 2003, INS ceased to exist and its principal functions were transferred to the newly created USCIS within Department of Homeland Security. See Homeland Security Act of 2002, Pub. L. No. 107-296, §471, 116 Stat. 2135, 2205 (codified at 6 U.S.C. § 291(a)); 8 U.S.C. § 1103(a) (1). Authority and responsibility to administer and enforce all laws pertaining to immigration, including the adjudication of naturalization applications, was transferred from the Commissioner of the INS to the Director of the USCIS. See 6 U.S.C. § 271(b)(2) ; 8 U.S.C. § 1103(a) (1).

33. In order to apply for naturalization, a lawful permanent resident must file an application for naturalization with USCIS. 8 U.S.C. § 1445(a), (b); 8 C.F.R. §§ 316.4, 334.1, 334.2.

34. USCIS immigration officers must conduct examinations of applicants for naturalization. 8 U.S.C. § 1446(a); 8 C.F.R. §§ 335.2, 332.1. The immigration officer must determine whether the application should be granted or denied, with reasons therefore. 8 U.S.C. § 1446(d).

35. Subsequent to the filing of an application for naturalization and before a person may be naturalized, USCIS must conduct a background investigation of the applicant. 8 U.S.C. § 1446(a); 8 C.F.R. §§ 335.1, 335.2.

36. Since 1997, Congress has also required that a complete FBI criminal background investigation be conducted on each applicant for citizenship. Pub.L. 105-119, Title I, 111 Stat. 2440, 2448- 49 (1997); 8 C.F.R. § 335.2(b).

37. USCIS shall grant naturalization applications if applicants have complied with all requirements for naturalization. 8 C.F.R. § 335.3(a).

38. A decision to grant or deny the naturalization application must take place “at the time of the initial examination or within 120-days after the date of the initial examination.” 8 C.F.R. § 335.3(a).

39. USCIS may conduct a reexamination to afford the applicant an opportunity to overcome any deficiencies on the application that may arise during the initial examination. 8 C.F.R. § 335.3(b). The reexamination on the continued case must be scheduled within 120 days after the initial examination. Id.

40. 8 U.S.C. § 1447(b) and its implementing regulation, 8 C.F.R. § 310.5, grant the applicant the right, if his or her application for naturalization has not resulted in a determination within 120 days of the date of his or her examination, to apply to the United States district court for the district in which the applicant resides for a hearing on the matter.

41. Such district court has jurisdiction over the matter and may either determine the matter or remand the matter to USCIS, with appropriate instructions to determine the matter. 8 U.S.C. § 1447(b); 8 C.F.R. § 310.5.

42. 8 U.S.C. § 1571 directs that “it is the sense of Congress that the processing of an immigration benefit application should be completed not later than 180 days after the initial filing of the application, except that a petition for a nonimmigrant visa under section 1184(c) of this title should be processed not later than 30 days after the filing of the petition.”

43. The term "immigration benefit application" means any application or petition to confer, certify, change, adjust, or extend any status granted under the Immigration and Nationality Act [8 U.S.C.A. § 1101 et seq.], including naturalization. 8 U.S.C. § 1572.

44. "The Attorney General shall take such measures as may be necessary to-- (1) reduce the backlog in the processing of immigration benefit applications, with the objective of the total elimination of the backlog 1 year after November 25, 2002; (2) make such other improvements in the processing of immigration benefit applications as may be necessary to ensure that a backlog does not develop after such date; and (3) make such improvements in infrastructure as may be necessary to effectively provide immigration services." 8 U.S.C. § 1573.

45. Section Six of the Administrative Procedure Act ("APA") directs agencies to conclude matters presented to them "within a reasonable time." 5 U.S.C. § 555(b). When an agency fails to conclude a matter presented to it within a reasonable time, the APA grants judicial review to "compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1). "Agency action" is defined by the APA as "the whole or part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act." 5 U.S.C. § 551(13).

FACTUAL ALLEGATIONS COMMON TO THE CLASS

46. USCIS Defendants and Defendant GONZALES have a custom and practice of failing to grant or deny proposed class members' applications for naturalization within 120 days of their initial examinations, and of unlawfully withholding and unreasonably delaying the adjudication of proposed class members' applications for naturalization.

47. Defendants GONZALES and MUELLER have a custom and practice of failing to complete within a reasonable time the criminal background checks for which the FBI is responsible and that are necessary for adjudication of proposed class members' naturalization applications.

48. All Defendants have a custom and practice of failing collectively to take all steps necessary to adjudicate proposed class members' applications for naturalization within a reasonable time.

49. Proposed class members routinely wait six months or longer after the date of their initial examinations to receive a determination on their naturalization applications.

50. When inquiries are made regarding the status of proposed class members' naturalization applications, USCIS Defendants routinely respond that the naturalization application cannot be determined because of pending "security checks" and/or "name checks" and/or "agency checks" and/or "background checks."

FACTS PERTAINING TO THE NAMED PLAINTIFFS

51. Plaintiff RAISA YAKUBOVA immigrated to the United States as a refugee on November 27, 1998. Ms. YAKUBOVA submitted an application for naturalization to USCIS on February 13, 2004, after five years of lawful permanent residency.

52. On April 21, 2005, Ms. YAKUBOVA was interviewed by a Service Officer at USCIS in connection with her naturalization application.

53. After her initial examination, USCIS did not contact Ms. YAKUBOVA until June 21, 2006 when USCIS sent her a notice scheduling her for a fingerprinting appointment, stating "To continue processing your N-400 application, INS must send your fingerprints to the Federal

Bureau of Investigation.” Ms. YAKUBOVA had already submitted her fingerprints to USCIS as required prior to her initial examination on June 3, 2004.

54. It appears that Ms. YAKUBOVA has been scheduled for fingerprinting for a second time because her first set of fingerprints have expired due to Defendants’ delay in processing her naturalization application. Her application for naturalization has not yet been adjudicated.

55. Plaintiff EMMA UNGURYAN immigrated to the United States as a refugee on February 19, 1998. Ms. UNGURYAN submitted an application for naturalization to USCIS on January 12, 2004, after five years of lawful permanent residency.

56. On October 13, 2004, Ms. UNGURYAN was interviewed by a Service Officer at USCIS in connection with her naturalization application. USCIS has not contacted Ms. UNGURYAN since the date of her initial examination, over a year and a half ago. Her application for naturalization has not yet been adjudicated.

57. Plaintiff BELLA VESNOVSKAYA immigrated to the United States as a refugee on October 1, 1999. Ms. VESNOVSKAYA submitted an application for naturalization to USCIS on December 13, 2004, after five years of lawful permanent residency.

58. On November 17, 2005, Ms. VESNOVSKAYA was interviewed by a Service Officer at USCIS in connection with her naturalization application. USCIS has not contacted Ms. VESNOVSKAYA since the date of her initial examination, over seven months ago. Her application for naturalization has not yet been adjudicated.

59. Plaintiff DAVID VESNOVSKIY immigrated to the United States as a refugee on October 1, 1999. Mr. VESNOVSKIY is married to Ms. VESNOVSKAYA. Mr.

VESNOVSKIY submitted an application for naturalization to USCIS on December 13, 2004, after five years of lawful permanent residency.

60. On November 18, 2005, Mr. VESNOVSKIY was interviewed by a Service Officer at USCIS in connection with his naturalization application. USCIS has not contacted Mr. VESNOVSKIY since the date of his initial examination, over seven months ago. His application for naturalization has not yet been adjudicated.

61. Plaintiff VYACHESLAV VOLOSIKOV immigrated to the United States as a parolee in the public interest on November 19, 1999. Mr. VOLOSIKOV submitted an application for naturalization to USCIS on November 17, 2004, after five years of lawful permanent residency.

62. On November 10, 2005, Mr. VOLOSIKOV was interviewed by a Service Officer at USCIS in connection with his naturalization application. USCIS has not contacted Mr. VOLOSIKOV since the date of his initial examination, over seven months ago. His application for naturalization has not yet been adjudicated.

63. Plaintiff SHEHATA AWAD IBRAHIM immigrated to the United States on September 13, 1996. Mr. IBRAHIM submitted an application for naturalization to USCIS on April 28, 2004.

64. On October 27, 2005, Mr. IBRAHIM was interviewed by a Service Officer at USCIS in connection with his naturalization application. USCIS has not contacted Mr. IBRAHIM since the date of his examination, over seven months ago. His application for naturalization has not yet been adjudicated.

65. Also known to Plaintiffs' Counsel are the following members of the proposed class whose pending naturalization applications have not been adjudicated within 120 days of the date of their initial examinations:

1. Boris Iakovenko, Alien Registration No. 071-501-993, interviewed on 03/03/2005;
2. Rita Stires, Alien Registration No. 071-370-782, interviewed on 09/27/2005;
3. Elvira Raybshteyn, Alien Registration No. 071-314-016, interviewed on 02/09/2006;
4. Sergey Kurgan, Alien Registration No. 074-278-972, interviewed on 01/31/2006;
5. Leonid Iones, Alien Registration No. 071-353-013, interviewed on 09/28/2005;
6. Anatoliy Chernogor, Alien Registration No. 071-317-738, interviewed on 12/01/2005;
7. Ran Aldoubi, Alien Registration No. 074-884-413, interviewed on 02/01/2006;
8. Mikhail Khazan, Alien Registration No. 071-404-838, interviewed on 11/08/2005;
9. Galina Bukrinskaya, Alien Registration No. 071-384-962, interviewed on 01/20/2006;
10. Inna Alpina, Alien Registration No. 071-425-805, interviewed on 11/17/2005;
11. Yakov Alpin, Alien Registration No. 071-053-318, interviewed on 06/23/2004;
12. Santoryna Bobchynska, Alien Registration No. 046-459-687, interviewed on 06/23/2005;
13. Valeriy Goncharov, Alien Registration No. 047-138-045, interviewed on 07/22/2005;
14. Stanislava Igolnikova, Alien Registration No. 071-165-290, interviewed on 02/10/2006;

15. Vladimir Kovmir, Alien Registration No. 045-663-806, interviewed on 02/23/2005;
16. Elena Kuriss, Alien Registration No. 021-458-469, interviewed on 11/23/2005;
17. Lidiya Mindyuk, Alien Registration No. 071-403-857, interviewed on 09/02/2005;
18. David Mindyuk, Alien Registration No. 071-403-856, interviewed on 09/02/2005;
19. Leonid Nirenberg, Alien Registration No. 071-425-960, interviewed on 08/17/2004;
20. Matvey Shpitzel, Alien Registration No. 071-356-741, interviewed on 08/11/2005;
21. Anton Slautskiy, Alien Registration No. 046-796-159, interviewed on 11/04/2005;
22. Galina Vaynerman, Alien Registration No. 071-361-865, interviewed on 02/10/2006;
23. Bella Dolinov, Alien Registration No. 027-013-840, interviewed on 7/20/2004;
24. Boris Alayev, Alien Registration No. 071-343-296, interviewed on 01/25/2006;
25. Ella Aleshinskaya, Alien Registration No. 076-053-302, interviewed on 11/18/2005;
26. Lyudmila Arefyeva, Alien Registration No. 071-393-941, interviewed on 10/25/2005;
27. Boris Azizov, Alien Registration No. 076-041-525, interviewed on 12/07/2005;
28. Ilya Babayev, Alien Registration No. 071-303-231, interviewed on 03/30/2005;
29. Izyaslav Benimovich, Alien Registration No. 076-051-152, interviewed on 12/14/2005;

30. Leonid Berman, Alien Registration No. 071-296-124, interviewed on 09/14/2005;
31. Tatyana Bezdezhsky, Alien Registration No. 047- 521-786, interviewed on 01/20/2006;
32. Feliks Bolotin, Alien Registration No. 071-060-931, interviewed on 06/08/05;
33. Vladimir Fishman, Alien Registration No. 071-361-934, interviewed on 11/16/2005;
34. Sofia Flyuis, Alien Registration No. 045-662-979, interviewed on 08/17/2005;
35. Leonid Gindin, Alien Registration No. 071-403-272, interviewed on 11/02/2005;
36. Nina Gindina, Alien Registration No. 071-403-273, interviewed on 11/15/2005;
37. Nina Guttsayt, Alien Registration No. 071- 215-861, interviewed on 02/10/2005;
38. Yuri Intskirveli, Alien Registration No. 73-556-719, interviewed on 11/17/2005;
39. Roman Keselman, Alien Registration No. 071-362-994, interviewed on 02/08/2005;
40. Yelena Keselman, Alien Registration No. 071-362-995, interviewed on 02/08/2005;
41. Yuliy Khaykin, Alien Registration No. 071-289-513, interviewed on 05/12/2005;
42. Roza Kozlenko, Alien Registration No. 071-274-050, interviewed on 06/23/2005;
43. Vladimir Krymskiy, Alien Registration No. 071-366-382, interviewed on 12/17/2003;
44. Sergey Larin, Alien Registration No. 071-393-129, interviewed on 01/11/2006;

45. Nadezhda Lerner, Alien Registration No. 071-398-422, interviewed on 05/06/2005
46. Dora G. Levina, Alien Registration No. 071-263-830, interviewed on 11/29/2005;
47. Boris Lobov, Alien Registration No. 071-344-771, interviewed on 11/03/2005;
48. Aleksandr Marmulevskiy, Alien Registration No. 071-376-996, interviewed on 08/04/2004;
49. Marina Koulbitskaya, Alien Registration No. 072-556-468, interviewed on 03/10/2005;
50. Alexandre Koulbitskiy, Alien Registration No. 074-888-588, interviewed on 03/10/2005;
51. Dora Mostovaya, Alien Registration No. 071-360-921, interviewed on 05/10/2005;
52. Tamara Shusterman, Alien Registration No. 071-140-777, interviewed on 06/06/2005;
53. Raisa Okun, Alien Registration No. 029-814-682, interviewed on 10/04/2005;
54. Lyudmila Olomutskaya, Alien Registration No. 076-048-455, interviewed on 11/04/2005;
55. Aleksandra Ovsyannikova, Alien Registration No. 071-289-584, interviewed on 10/26/2005;
56. Yuliya Pavlov, Alien Registration No. 046-438-131, interviewed on 12/16/2005;
57. Marat Polunovskiy, Alien Registration No. 076-058-604, interviewed on 02/03/2006;
58. Rita Rakhunova, Alien Registration No. 076-051-153, interviewed on 12/14/2005;
59. Valentina Rudenko, Alien Registration No. 047-141-778, interviewed on 01/13/2006;

60. Peter Sapozhnikov, Alien Registration No. 047-197-475, interviewed on 01/04/2006;
61. Lyudmila Serebro, Alien Registration No. 071-379-119, interviewed on 11/30/2005;
62. Arkadiy Sheynin, Alien Registration No. 071-422-293, interviewed on 10/26/2005;
63. Yakov Shklyarov, Alien Registration No. 071-304-342, interviewed on 02/03/2005;
64. Aleksandra Shnyder, Alien Registration No. 076-042-742, interviewed on 11/08/2005;
65. Boris Shulgin, Alien Registration No. 076-051-343, interviewed on 12/02/2005;
66. Yevgeniya Shulman, Alien Registration No. 071-380-616, interviewed on 10/02/2005;
67. Aida Sofyan, Alien Registration No. 071-131-348, interviewed on 08/03/2005;
68. Mikhail Stoyanov, Alien Registration No. 071-356-975, interviewed on 12/07/2005;
69. Emil Vitebskiy, Alien Registration No. 071-407-779, interviewed on 08/19/2005;
70. Dariy Zabezhinskiy, Alien Registration No. 071-393-940, interviewed on 10/04/2005;
71. Anatoliy Zaychik, Alien Registration No. 073-165-206, interviewed on 09/13/2005;
72. Naum Budnitskiy, Alien Registration No. 071-363-425, interviewed on 11/18/2005;
73. Jawala Singh, Alien Registration No. 042-157-340, interviewed on 11/16/2005;
74. Yuriy Shlapakov, Alien Registration No. 071-384-677, interviewed on 02/15/2006;

75. Bazya Martsinkovskaya, Alien Registration No. 076-042-984, interviewed on 01/11/2006;
76. Khanuk Abramov, Alien Registration No. 076-050-381, interviewed on 12/13/2005;
77. Aleksandr Stoyanov, Alien Registration No. 071-356-974, interviewed on 05/11/2004;
78. Victoria Arkhipova, Alien Registration No. 076-559-242, interviewed on 03/30/2004;
79. Schmul Azimov, Alien Registration No. 070-647-778, interviewed on 11/16/2005;
80. Sima Berezanskaya, Alien Registration No. 073-159-229, interviewed on 05/01/2003;
81. Yevgeniy Blekherman, Alien Registration No. 071-182-213, interviewed on 11/04/2005;
82. Mei Ying Wang, Alien Registration No. 045-413-175, interviewed on 03/17/2005;
83. Samuil Bykov, Alien Registration No. 072-262-170, interviewed on 02/24/2006;
84. Mei Fen Chen, Alien Registration No. 073-099-049, interviewed on 12/07/2005;
85. Qi Chen, Alien Registration No. 073-776-367, interviewed on 8/25/05;
86. Xiu Chen, Alien Registration No. 055-436-247, interviewed on 01/506/2006;
87. Zhong Shu Chen, Alien Registration No. 072-483-204, interviewed on 11/18/2005;
88. Mei Woon Cheng, Alien Registration No. 029-791-956, interviewed on 09/08/2005;
89. Lyudmila Chudnovskaya, Alien Registration No. 071-426-178, interviewed on 03/11/2005;
90. Bella Furmanova, Alien Registration No. 071-115-108, interviewed on 11/04/2005;

91. Boris Guller, Alien Registration No. 071-378-878, interviewed on 6/15/2005;
92. Rakhil Gurevich, Alien Registration No. 076-053-968, interviewed on 12/09/2005;
93. Iosif Kominar, Alien Registration No. 071-282-792, interviewed on 02/16/2006;
94. Khai Musya Rukhamanova, Alien Registration No. 071-961-663, interviewed on 08/04/2005;
95. Robert Kharson, Alien Registration No. 076-057-089, interviewed on 12/28/2005;
96. Aleksandr Krapivin, Alien Registration No. 076-040-537, interviewed on 05/06/2005;
97. Aleksander Krayets, Alien Registration No. 071-337-223, interviewed on 01/19/2004;
98. Meri Kupershtokh, Alien Registration No. 076-040-488, interviewed on 12/15/2005;
99. Fong Chin Lau, Alien Registration No. 042-732-500, interviewed on 10/28/2005;
100. Yu Nong Li, Alien Registration No. 073-163-948, interviewed on 08/16/2005;
101. Qin Lin, Alien Registration No. 047-176-919, interviewed on 11/16/2005;
102. Li Ying Zheng, Alien Registration No. 047-555-491, interviewed on 01/11/2006;
103. Arkadiy Mekhov, Alien Registration No. 071-306-485, interviewed on 01/22/2005;
104. Cai Ping Mu, Alien Registration No. 046-874-140, interviewed on 05/10/2005;
105. Bahman Niknam, Alien Registration No. 071-754-447, interviewed on 12/20/2005;

106. Sevil Orudzheva, Alien Registration No. 071-303-239, interviewed on 08/03/2005;
107. Samuil Rubinchik, Alien Registration No. 076-048-606, interviewed on 12/06/2005;
108. Lev Shapiro, Alien Registration No. 071-390-713, interviewed on 04/14/2005;
109. Xe Juan Zhang, Alien Registration No. 046-473-974, interviewed on 03/16/2005;
110. Grgoriy Tauber, Alien Registration No. 074-844-652, interviewed on 06/08/2005;
111. Teymur Khaimov, Alien Registration No. 071-068-639, interviewed on 08/04/2005;
112. Nataliya Titova, Alien Registration No. 045-193-940, interviewed on 12/27/2005;
113. Galina Usherenko, Alien Registration No. 071-369-525, interviewed on 11/22/2005;
114. Galina Veksler, Alien Registration No. 071-376-597, interviewed on 08/02/2005;
115. Olga Vinokurova, Alien Registration No. 076-059-081, interviewed on 02/12/2006;
116. Hun Zhuang Xiao, Alien Registration No. 047-165-867, interviewed on 09/13/2005;
117. Yu Yun Xiao, Alien Registration No. 070-174-480, interviewed on 04/20/2005; and
118. Ye Qing Yang, Alien Registration No. 070-307-095, interviewed on 04/19/2005.

STATEMENT OF CLAIMS

FIRST CLAIM FOR RELIEF

66. USCIS Defendants' custom and practice of failing to grant or deny proposed class members' applications for naturalization within 120 days of the date of their initial examinations violates 8 C.F.R. § 335.3 and 8 U.S.C. § 1447(b).

SECOND CLAIM FOR RELIEF

67. USCIS Defendants' custom and practice of failing to grant or deny proposed class members' applications for naturalization within a reasonable time violates 5 U.S.C. § 555(b).

THIRD CLAIM FOR RELIEF

68. Defendants GONZALES and MUELLER's custom and practice of failing to complete within a reasonable time the background checks for which the FBI is responsible and that are necessary to adjudicate proposed class members' applications for naturalization violates 5 U.S.C. § 555(b).

FOURTH CLAIM FOR RELIEF

69. All Defendants' custom and practice of collectively failing to take all steps necessary to adjudicate proposed class members' applications for naturalization within a reasonable time violates 5 U.S.C. § 555(b).

REQUEST FOR RELIEF

WHEREFORE, plaintiffs respectfully request that this Court enter a judgment in their favor as follows:

70. Certify this action as a class action pursuant to Fed. R. Civ. P. 23(a) and 23(b)(2) with a Plaintiff class defined as:

All persons residing in Kings, Nassau, Queens, Richmond and Suffolk counties in New York State, who have properly submitted or will properly submit applications to be naturalized as U.S. citizens, whose naturalization applications are not adjudicated within 120 days after the date of their initial examinations.

71. Issue a declaratory judgment declaring that:
 - (a) USCIS Defendants and Defendant GONZALES' custom and practice of failing to grant or deny class members' applications for naturalization within 120 days of the date of their initial examination violates 8 C.F.R § 335.3(a) and 8 U.S.C. § 1447(b);
 - (b) USCIS Defendants and Defendant GONZALES' custom and practice of failing to grant or deny class members' naturalization applications within a reasonable time violates 5 U.S.C. § 555(b);
 - (c) Defendants GONZALES and MUELLER's custom and practice of failing to complete within a reasonable time the background checks for which the FBI is responsible and that are necessary to determine class members' naturalization applications violates 5 U.S.C. § 555(b);
 - (d) All Defendants' custom and practice of collectively failing to take all steps necessary to adjudicate class members' naturalization applications within a reasonable time violates 5 U.S.C. § 555(b).
72. Issue a preliminary injunction:
 - (a) immediately remanding the naturalization applications of identified class members to USCIS Defendants and Defendant GONZALES; and

(b) ordering Defendants GONZALES and MUELLER to complete all background checks for which the FBI is responsible of identified class members, within twenty-five (25) days of the remand; and

(c) ordering all Defendants collectively to complete all steps necessary to adjudicate the naturalization applications of identified class members within thirty-five (35) days of the remand; and

(d) ordering USCIS Defendants and Defendant GONZALES to grant or deny the naturalization applications of identified class members within forty-five (45) days of the remand.

73. Issue a permanent injunction ordering:

I. (a) USCIS Defendants and Defendant GONZALES, within thirty (30) days of this Court granting permanent relief, to identify all class members as of that date whose pending naturalization applications have not been adjudicated within 120 days of the date of their initial examinations;

(b) all Defendants collectively to establish and implement a plan of correction whereby the naturalization applications of all class members identified pursuant to paragraph I. (a) above are granted or denied within ninety (90) days of this Court granting permanent relief; and

II. (a) USCIS Defendants and Defendant GONZALES to grant or deny the naturalization applications of all applicants residing in Kings, Nassau, Queens, Richmond, and Suffolk counties in New York State within 120 days of the date of the applicants' initial examinations;

(b) Defendants GONZALES and MUELLER to complete within a reasonable time all background checks for which the FBI is responsible and that are necessary to adjudicate the naturalization applications of all applicants residing in Kings, Nassau, Queens, Richmond, and Suffolk counties in New York State;

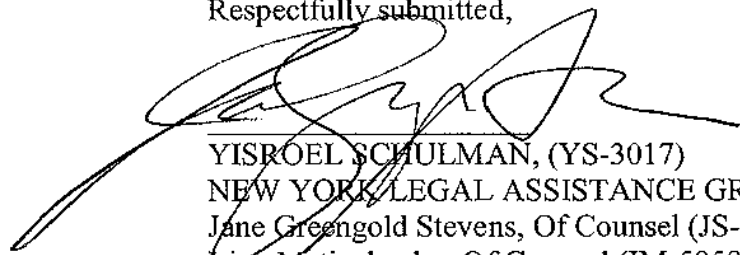
(c) all Defendants collectively to complete all steps necessary to adjudicate the naturalization applications of all applicants residing in Kings, Nassau, Queens, Richmond, and Suffolk counties in New York State within a reasonable time;

74. Award reasonable attorneys fees, costs and disbursements pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d)(1)(A); and

75. Granting such other relief as the Court may deem proper and just.

Dated: New York, New York
June 28, 2006

Respectfully submitted,



YISROEL SCHULMAN, (YS-3017)
NEW YORK LEGAL ASSISTANCE GROUP
Jane Greengold Stevens, Of Counsel (JS-4790)
Irina Matiychenko, Of Counsel (IM-5858)
Elvira Pinkhasova, Of Counsel (EP-5027)
Olga Avrasina, Of Counsel (OA- 1600)
Helen Drook, Of Counsel (HD-4694)
Caroline Hickey, Of Counsel (CH-1410)
Deborah Berkman, Of Counsel (DB-9491)
Alla Kazakina, On the Brief
450 West 33rd Street, 11th Floor
New York, New York 10001
Tel. (212) 613-5000