

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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RAISA YAKUBOVA, EMMA UNGURYAN,
BELLA VESNOVSKAYA, DAVID VESNOVSKIY,
VYACHESLAV VOLOSIKOV, ALEKSANDER
GOLDBERG, MUHAMMAD SHEBBIR SAJID,
and EFIM KATS on behalf of themselves and all other
similarly situated individuals,

Plaintiffs,

06 CV 3203 (ERK)(RLM)
(ECF CASE)

-against-

AMENDED
COMPLAINT

MICHAEL CHERTOFF, in his official capacity as
Secretary of the Department of Homeland Security,
EMILIO GONZALEZ, in his official capacity as
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
Director of the Federal Bureau of Investigation,

Defendants.

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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 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.

7. 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

8. 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.

9. 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 Service to determine the matter.”¹ 8 U.S.C. § 1447(b).

10. 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.

PARTIES

Plaintiffs

11. 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. At the time of the filing of the original Complaint in the within action (hereinafter “the Complaint”), her application had not yet been adjudicated, although it had been over 427 days since her examination.

12. Plaintiff EMMA UNGURYAN resides in Staten Island, New York and had her naturalization examination by USCIS on October 13, 2004. At the time of the

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.

filing of the Complaint, her application had not yet been adjudicated, although it had been over 617 days since her examination.

13. Plaintiff BELLA VESNOVSKAYA resides in Brooklyn, New York and had her naturalization examination by USCIS on November 17, 2005. At the time of the filing of the Complaint, her application had not yet been adjudicated, although it had been over 217 days since her examination.

14. Plaintiff DAVID VESNOVSKIY resides in Brooklyn, New York and had his naturalization examination by USCIS on November 18, 2005. At the time of the filing of the Complaint, his application had not yet been adjudicated, although it had been over 216 days since his examination.

15. Plaintiff VYACHESLAV VOLOSIKOV resides in Brooklyn, New York and had his naturalization examination by USCIS on November 10, 2005. At the time of the filing of the Complaint, his application had not yet been adjudicated, although it had been over 224 days since his examination.

16. Plaintiff ALEKSANDER GOLDBERG resides in Brooklyn, New York and had his naturalization examination by USCIS on March 7, 2006. His application has not yet been adjudicated, although it has been over 603 days since his examination.

17. Plaintiff MUHAMMAD SHEBBIR SAJID resides in Brooklyn, New York and had his naturalization examination by USCIS on September 9, 2005. His application has not yet been adjudicated, although it has been over 782 days since his examination.

18. Plaintiff EFIM KATS resides in Brooklyn, New York and had his naturalization examination by USCIS on February 11, 2003. His application has not yet been adjudicated, although it has been over 1,723 days since his examination.

Defendants

19. 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.

20. 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.

21. 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.

22. 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.

23. 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

24. 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.

25. This proposed class is so numerous that joinder of all members is impracticable. Already identified in paragraph 105 of this Amended Complaint are more than 100 members of the proposed class seeking the same relief as the Named Plaintiffs.

26. 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).

27. 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 did not receive any determinations granting or denying their naturalization applications within 120 days of the dates of their initial examinations.

28. 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.

29. 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

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

31. 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).

32. 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.

33. 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).

34. 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.

35. 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).

36. 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.

37. 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).

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

39. 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).

40. 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.

41. 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.

42. 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.

43. 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.”

44. 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.

45. “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.

46. 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

47. 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.

48. 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.

49. 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.

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

51. 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

52. 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.

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

54. 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.

55. It appears that Ms. YAKUBOVA had 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. At the time of the filing of the Complaint, her application for naturalization had not yet been adjudicated.

56. Ms. YAKUBOVA became a citizen of the United States on July 18, 2006.

57. 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.

58. On October 13, 2004, Ms. UNGURYAN was interviewed by a Service Officer at USCIS in connection with her naturalization application. At the time of the filing of the Complaint, USCIS had not contacted Ms. UNGURYAN since the date of her initial examination, over a year and a half before. At the time of the filing of the Complaint, her application for naturalization had not yet been adjudicated.

59. Ms. UNGURYAN became a citizen of the United States on July 27, 2006.

60. 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.

61. On November 17, 2005, Ms. VESNOVSKAYA was interviewed by a Service Officer at USCIS in connection with her naturalization application. At the time of the filing of the Complaint, USCIS had not contacted Ms. VESNOVSKAYA since the date of her initial examination, over seven months before. At the time of the filing of the Complaint, her application for naturalization had not yet been adjudicated.

62. Ms. VESNOVSKAYA became a citizen of the United States on October 4, 2006.

63. 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.

64. On November 18, 2005, Mr. VESNOVSKIY was interviewed by a Service Officer at USCIS in connection with his naturalization application. At the time of the filing of the Complaint, USCIS had not contacted Mr. VESNOVSKIY since the date of his initial examination, over seven months before. At the time of the filing of the Complaint, his application for naturalization had not yet been adjudicated.

65. Mr. VESNOVSKIY became a citizen of the United States on August 16, 2006.

66. 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.

67. On November 10, 2005, Mr. VOLOSIKOV was interviewed by a Service Officer at USCIS in connection with his naturalization application. At the time of the filing of the Complaint, USCIS had not contacted Mr. VOLOSIKOV since the date of his initial examination, over seven months before. At the time of the filing of the Complaint, his application for naturalization had not yet been adjudicated.

68. Mr. VOLOSIKOV became a citizen of the United States on August 16, 2006.

69. Plaintiff ALEKSANDER GOLDBERG became a legal permanent resident of the United States on June 30, 2000.

70. Mr. GOLDBERG submitted an application for naturalization to USCIS on September 30, 2005, after five years of lawful permanent residency.

71. On March 7, 2006, Mr. GOLDBERG was interviewed by a Service Officer at USCIS in connection with his naturalization application. At that interview, Mr. Goldberg was told that he had passed the United States history and government and English tests, but that a decision about his application could not be made at that time. He was then told that he would be sent a letter informing him of USCIS' decision on his application.

72. During the summer of 2006, having heard nothing from USCIS about his naturalization application, a social services organization contacted Congressman Jerrold

Nadler on Mr. GOLDBERG's behalf and asked Congressman Nadler for his help in finding out the status of Mr. GOLDBERG's naturalization application. On July 10, 2006, Congressman Nadler wrote to USCIS requesting information about Mr. GOLDBERG's application.

73. Congressman Nadler received a response from the Department of Homeland Security dated July 18, 2006 indicating that Mr. GOLDBERG's case was "PENDING SECURITY CHECKS." (Emphasis in original)

74. When Mr. GOLDBERG had received no word from USCIS by September of that year, he himself contacted Congressman Nadler. On September 11, 2006, Congressman Nadler again wrote to USCIS requesting information about Mr. GOLDBERG's application. Congressman Nadler again received a response from the Department of Homeland Security, dated September 14, 2006, indicating that Mr. GOLDBERG's case was "PENDING SECURITY CHECKS." (Emphasis in original)

75. When Mr. GOLDBERG had received no further communication from USCIS by November of that year, he again contacted Congressman Nadler. On November 22, 2006, Congressman Nadler again wrote to USCIS requesting information about Mr. GOLDBERG's application. That time, Congressman Nadler received a response from the Department of Homeland Security indicating that Mr. GOLDBERG's case was "PENDING MANDATORY SECURITY CHECKS." (Emphasis in original)

76. When Mr. GOLDBERG had received no further communication from USCIS by February of 2007, he again contacted Congressman Nadler. On February 13, 2007, Congressman Nadler again wrote to USCIS requesting information about Mr. GOLDBERG's application. Congressman Nadler received a response from the

Department of Homeland Security, dated February 20, 2007, stating that Mr. GOLDBERG was “SCHEDULED FOR A FINGERPRINT APPOINTMENT ON MARCH 9, 2007. HOWEVER, HER [sic] MANDATORY CLEARANCE BY THE FBI HAS NOT YET BEEN COMPLETED. AS SOON AS HER [sic] FINGERPRINTS AND BACKGROUND CHECKS ARE COMPLETED THE SERVICE WILL CONTACT HER [sic] REGARDING AN OATH CEREMONY.” (Emphasis in original)

77. In early March of 2006, Mr. GOLDBERG received a letter from USCIS stating that “[t]o continue processing your N-400 application, INS must send your fingerprints to the Federal Bureau of Investigation.” Mr. GOLDBERG had already submitted his fingerprints to USCIS as required prior to his initial examination.

78. Since that day, Mr. GOLDBERG has not heard from USCIS again. He attempted to call USCIS twice to get status updates on his application but was unable to get through to a representative. His application for naturalization has not yet been adjudicated.

79. Mr. GOLDBERG suffers greatly from the delay in the adjudication of his naturalization application. Mr. GOLDBERG works as a security guard, and there are many higher paying security positions for which he would like to apply but which are available only to United States citizens. Additionally, Mr. GOLDBERG is very interested in politics and longs for the day when he will be able to vote and fully participate in the democratic process of this country.

80. Plaintiff MUHAMMAD SHEBBIR SAJID immigrated to the United States with his wife and children via the Diversity Immigrant Visa Program on October

29, 1999. Mr. SAJID submitted an application for naturalization to USCIS during 2004, after five years of lawful permanent residency.

81. On September 9, 2005, Mr. SAJID was interviewed by a Service Officer at USCIS in connection with his naturalization application. At Mr. SAJID's interview, he was told that he had passed the United States history and government and English tests, but that a decision about his application could not be made at that time because his case was pending with the FBI.

82. Thereafter, Mr. SAJID received no word about his application from USCIS. He tried to telephone USCIS on several occasions, but was never able to obtain any information.

83. During 2006, Mr. SAJID emailed Congressman Vito Fossella, asking Congressman Fossella to find information about Mr. SAJID's application. In an email response, Congressman Fossella stated that he had made an inquiry to USCIS about Mr. SAJID's case, and that USCIS said that Mr. SAJID's case was pending.

84. During that same period, Mr. SAJID emailed and wrote a letter to Senator Charles Schumer requesting help obtaining information about his naturalization application. Senator Schumer replied to Mr. SAJID that he had contacted USCIS and that USCIS had said that Mr. SAJID's case was pending. The letter further stated that Senator Schumer requested that Mr. SAJID's application be expedited, and that USCIS would inform Mr. SAJID when his case had cleared.

85. During the spring of 2007, Mr. SAJID wrote a letter to USCIS's Vermont Service Center, requesting an update about the status of his naturalization application. By letter dated March 27, 2007, the Director of the Vermont Service Center informed

him that the processing of his case had been delayed because “the required security checks remain pending.”

86. Since that letter, Mr. SAJID has not heard from USCIS. His application for naturalization has not yet been adjudicated.

87. Mr. SAJID suffers greatly from the delay in the adjudication of his naturalization application. Mr. SAJID’s wife and five children are all citizens of the United States, making Mr. SAJID the only member of his immediate family not to attain citizenship. Mr. SAJID greatly wants to be a citizen of the same country as his family. Additionally, Mr. SAJID wants to be able to vote and participate in the democratic process of the United States. He feels stuck in limbo, and wonders if his application will ever be adjudicated.

88. Plaintiff EFIM KATS immigrated to the United States with his wife and son via the Diversity Immigrant Visa Program in October of 1995. Mr. KATS submitted an application for naturalization to USCIS during the summer of 2002.

89. On February 11, 2003, Mr. KATS was interviewed by a Service Officer at USCIS in connection with his naturalization application. At Mr. KATS’s interview, he was told that he had passed the United States history and government and English tests, and that he would have to submit additional documentation to the Service Officer. The Service Officer also told Mr. KATS that USCIS would reach a decision on his application within two to three months.

90. Shortly thereafter, Mr. KATS mailed the requested documentation to USCIS via certified mail.

91. Mr. KATS heard nothing from USCIS about his naturalization application for approximately one year. He attempted to telephone USCIS on numerous occasions, but was never able to reach a representative.

92. In January of 2004, Mr. KATS received a letter from USCIS requesting that he be fingerprinted again. Mr. KATS had already been fingerprinted by USCIS as required prior to his initial examination.

93. In April of 2004, Mr. KATS received another letter from USCIS, requesting that he appear for a second naturalization interview. Mr. KATS attended this interview on April 19, 2004. At that interview, the Service Officer told Mr. KATS that he should expect to receive an invitation to an OATH ceremony in the mail within three weeks.

94. After the second interview, Mr. KATS waited without word from USCIS and without receiving an invitation to the OATH ceremony. In June of 2005, Mr. KATS's wife and son contacted Congressman Jerrold Nadler and asked Congressman Nadler for his help to find out the status of Mr. KATS's naturalization application. On June 2, 2005, Congressman Nadler wrote to USCIS requesting information about Mr. KATS's application.

95. Congressman Nadler received a response from the Department of Homeland Security dated June 7, 2005 indicating that Mr. KATS's case was "PENDING MANDATED AGENCY CHECKS." (Emphasis in original)

96. In August of 2005, Mr. KATS again contacted Congressman Nadler requesting help finding out the status of his naturalization application. On August 16,

2005, Congressman Nadler again wrote to USCIS requesting information about Mr. KATS's application.

97. In response to Congressman Nadler's inquiries to USCIS, DHS again indicated that Mr. KATS's application was "PENDING MANDATED AGENCY CHECKS." (Emphasis in original)

98. In October of 2005, Mr. KATS again contacted Congressman Nadler requesting help finding out the status of his naturalization application. On October 26, 2005, Congressman Nadler again wrote to USCIS requesting information about Mr. KATS's application. In response to Congressman Nadler's inquiry, DHS indicated that Mr. KATS's "FILE WAS REVIEWED ON 11/8/05. APPLICANT'S RELATED FILE IS LOCATED AT ANOTHER SERVICE CENTER. THE SERVICE CENTER WAS CONTACTED TO REQUEST THE FILE." (Emphasis in original)

99. In January of 2006, Mr. KATS again contacted Congressman Nadler requesting help finding out the status of his naturalization application. On January 3, 2006, Congressman Nadler again wrote to USCIS requesting information about Mr. KATS's application. In response to Congressman Nadler's inquiry, DHS indicated that Mr. KATS' "FILE WAS REVIEWED ON 1/13/06. APPLICANT'S RELATED FILE IS LOCATED AT ANOTHER SERVICE CENTER. THE SERVICE CENTER WAS CONTACTED TO REQUEST THE FILE." (Emphasis in original)

100. In April of 2006, Mr. KATS again contacted Congressman Nadler requesting help finding out the status of his naturalization application. On April 6, 2006, Congressman Nadler again wrote to USCIS requesting information about Mr. KATS's application. In response to Congressman Nadler's inquiry, DHS once again indicated

that Mr. KATS's application was "PENDING MANDATED AGENCY CHECKS."
(Emphasis in original)

101. In June of 2006, Mr. KATS again contacted Congressman Nadler requesting help finding out the status of his naturalization application. Congressman Nadler again wrote to USCIS requesting information about Mr. KATS's application. In response to Congressman Nadler's inquiry to USCIS, DHS indicated that Mr. KATS's "FILE WAS REVIEWED ON 7/19/06. THE APPLICANT'S RELATED FILE IS LOCATED AT ANOTHER SERVICE CENTER. THE SERVICE CENTER WAS CONTACTED TO REQUEST THE FILE." (Emphasis in original)

102. In November of 2006, Mr. KATS again contacted Congressman Nadler requesting help finding out the status of his naturalization application. On November 7, 2006, Congressman Nadler wrote to USCIS that "[y]our letter indicates that CIS/NY requested Mr. Kats's related file from another Service Center. *Insamuch as your request for this file was originally made in November of 2005, a second request for the file appears to be warranted.*" (Emphasis in original) In response to Congressman Nadler's letter, DHS once again indicated that Mr. KATS's application was "PENDING MANDATED AGENCY CHECKS." (Emphasis in original)

103. Mr. KATS has also contacted other government officials and has attempted to contact USCIS himself, to no avail. His application for naturalization has not yet been adjudicated.

104. Mr. KATS suffers greatly from the delay in the adjudication of his naturalization application. Mr. KATS's wife and two children, his mother, father, brother and sister and other extended family members are all citizens of the United States,

making Mr. KATS the only member of his family not to attain citizenship. Mr. KATS greatly wants to be a citizen of the same country as his family, and wants to be able to vote and participate in the democratic process of the United States. Additionally, Mr. KATS must travel frequently in Europe and worldwide for his work and, because he is not a United States citizen, must often obtain costly visas before entering a country.

105. Also known to Plaintiffs' Counsel are the following members of the proposed class whose naturalization applications had not been adjudicated within 120 days of the date of their initial examinations as of the date Plaintiffs filed the Complaint:

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

106. 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

107. 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

108. 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

109. 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:

110. 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.

111. 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).

112. Issue a permanent injunction ordering:

(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 81(a) above are granted or denied within ninety (90) days of this Court granting permanent relief;

(c) 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;

(d) 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;

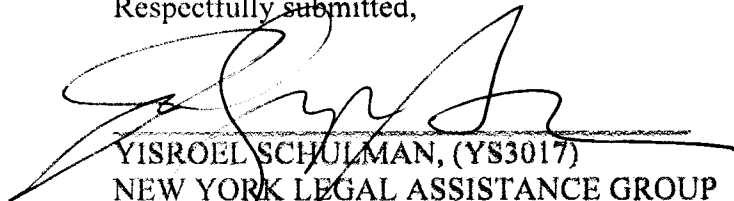
(e) all Defendants collectively to complete all steps necessary to adjudicate the naturalization applications of all applicants residing in Kings, Nassau, Queens, Richmond, and Suffolk counties in New York State within a reasonable time;

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

114. Grant such other relief as the Court may deem proper and just.

Dated: New York, New York
November 13, 2007

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Yisroel Schulman', is written over a horizontal line. The signature is fluid and cursive.

YISROEL SCHULMAN, (YS3017)
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