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**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON**

**SERVICE EMPLOYEES INTERNATIONAL
UNION**, an organization; and,
**PINEROS Y CAMPESINOS UNIDOS DEL
NOROESTE**, an organization,

Plaintiffs,

v.

Michael Chertoff, Secretary of
Homeland Security of the United
States; **Emilio T. Gonzalez**,
Director, United States
Citizenship and Immigration
Services,

Defendants.

CV-07-01286-MO

A Civil Action

**FIRST AMENDED COMPLAINT
FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

Under 5 U.S.C. § 701

**REQUEST FOR ORAL
ARGUMENT**

FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

This is an action brought under the auspices of the Administrative Procedures Act, 5 U.S.C. § 701, for declaratory, injunctive and other appropriate relief. Plaintiffs challenge as unlawful Defendants' rule imposing excessive fees for adjudication and naturalization services because it violates section 286 of the Immigration and Nationality Act and the Constitution of the United States.

Subject Matter Jurisdiction

1. This Court has subject matter jurisdiction for declaratory and injunctive relief under 28 U.S.C. § 1331, the general federal question statute.

Venue

2. Venue lies in the District of Oregon because that is where the Plaintiffs reside, where the events giving rise to this action occurred, and where Defendants reside. 28 U.S.C. § 1391(e).

Parties

3. Plaintiff, Service Employees International Union (SEIU), is the nation's largest and fastest growing union. SEIU's mission is to improve the lives of workers and their families and creating a more just and humane society. They have some 1.9 million registered members many of whom are immigrants

of all nationalities. These individuals include 900,000 hospital, nursing home and home care workers and approximately 225,000 members who work in property services.

4. Plaintiff, Pineros y Campesinos Unidos del Noroeste (Northwest Treeplanters and Farmworkers United) (PCUN), is Oregon's union of farmworkers, nursery, and reforestation workers, and Oregon's largest Latino organization. PCUN's fundamental goal is to empower farmworkers to understand and take action against systematic exploitation and all of its effects. To achieve this end, PCUN is involved in community and workplace organizing on many different levels. Founded in 1985 by 80 farmworkers, PCUN has since grown to include more than 5,000 registered members, 98% of which are Mexican and Central American immigrants, and to encompass a wide variety of organizing projects.

5. Defendant, Michael Chertoff, is the Secretary of Homeland Security and is being sued in his official capacity. In his official capacity, Mr. Chertoff is in charge of administering the immigration laws of the United States.

6. Defendant, Emilio T. Gonzalez, is the Director of the United States Citizenship and Immigration Services, a component agency of the Department of Homeland Security and is being sued in his official capacity. In his official capacity, Mr.

Gonzalez is in charge of administering the immigration laws of the United States.

Statement of Claim

7. SEIU is a membership-based organization headquartered in Washington, D.C. with some 300 local union affiliations across the United States. It has 1.9 million members and several thousand of these members are immigrants. It is organized to represent its members in labor and community-based issues. Many of its immigrant members have and will file applications under the Immigration and Nationality Act and have and will be charged fees for making such applications.

8. SEIU provides immigration legal services to its members, assists its members with disputes related to immigration status and documentation, and seeks to eliminate obstacles to citizenship, promote legalization of undocumented workers, and enroll and protect immigrant members. Many of SEIU's members have children and small infants.

9. PCUN is a membership-based organization located in Woodburn, Oregon. It has several thousand members, many of whom are immigrants. It is organized to represent its members in labor and community-based issues including. Many of its immigrant members have and will file applications under the Immigration and Nationality Act and have and will be charged fees for making such applications.

10. PCUN operates a program to assist its members in filing applications before U.S. Citizenship and Immigration Services. PCUN assists its members with immigration applications and provides advice and legal representation regarding immigration matters. PCUN assists its members with disputes related to immigration status and documentation of immigration status and seeks to eliminate obstacles to citizenship, promote legalization of undocumented workers, and enroll and protect immigrant members. Many of PCUN's members have children and small infants.

11. On March 1, 2003, service and benefit functions of the U.S. Immigration and Naturalization Service (INS) transitioned into the Department of Homeland Security (DHS) and is now called United States Citizenship and Immigration Services (USCIS). USCIS's responsibilities include providing adjudication and naturalization services; creating and maintaining information record systems; disseminating information about administrative procedures, processing times, and how to complete immigration forms; processing and producing information under the Freedom of Information Act and Privacy Act; communicating with Congress about legislative matters; and maintaining its physical infrastructure, among other activities.

12. Of the responsibilities delegated to USCIS, some of the most important, in both an individual and national sense,

are providing citizenship and adjudication services. These services include adjudicating applications filed by non-citizens seeking employment authorization, permanent residence status, or citizenship status.

13. Permanent residence is the most favored immigrant status. Qualified individuals from every country in the world seek permanent residence status in the United States each year. These individuals include persons with close family ties, persons who are highly-skilled, and persons who suffered past political persecution. Permanent residence status authorizes an immigrant to work, incident to their status. Many members of PCUN and SEIU have and will seek permanent residence status.

14. United States citizenship is one of the greatest and most important individual achievements possible. Each year, many qualified individuals seek United States citizenship. For an individual who is an immigrant, United States citizenship bestows numerous benefits, the most central of which is the ability to fully participate in the political process. Many members of PCUN and SEIU have and will seek United States citizenship.

15. Each day, qualified individuals seek benefits, such as work authorization, permanent residence status, or United States citizenship, to which they are entitled by statute under our nation's immigration laws. To seek these benefits, these

individuals file application forms as prescribed and published by USCIS.

16. USCIS incurs expenses for adjudicating benefits applications, naturalizing individuals, and collecting the fees it receives.

17. USCIS incurs expenses for items that are unrelated to its adjudication and naturalization services, including but not limited to, processing requests under the Freedom of Information Act and Privacy Act, providing information to the public about USCIS, marketing and branding their services to Congress and to the public, investigating corruption within its employees and contractors, out-sourcing tasks to private contractors, completing address changes and registration changes under 8 U.S.C. § 1305, resettling Cuban and Haitian entrants, transferring and maintaining records for disposition with the National Archives and Records Administration, reimbursing prevailing parties their attorneys fees and costs under the Equal Access to Justice Act, maintaining and controlling records for use by non-USCIS enforcement divisions, engaging in fraud detection and prevention within the temporary worker programs, and other expenses.

18. USCIS incurs expenses for out-sourced contracting. USCIS out-sources adjudication, naturalization, customer-service, enforcement and other tasks delegated to it by Congress

to private companies. These private companies charge fees to USCIS to recover costs and earn profits.

19. In fiscal year 2006, USCIS incurred more than one billion dollars in expenses.

20. Congress has created different accounts to manage the monies of USCIS. In establishing these accounts Congress delineated specific rules governing the collection of certain monies for these accounts. Congress has directed particular uses for the income depending on its source. Under section 286(m) of the Immigration and Nationality Act, 8 U.S.C. § 1356(m), Congress authorized USCIS to assess an adjudication fee for providing adjudication and naturalization services. The power to assess the fee is limited by statute: the agency may not impose a fee which would exceed the costs for providing adjudication or naturalization services, similar services to other qualified individuals at no-cost or the costs of administering the collection of the fees.

21. Under section 286(u) of the Immigration and Nationality Act, 8 U.S.C. § 1356(u), Congress established a \$1,000 fee for premium-processing services. Congress authorized the monies to be spent only on improving both the infrastructure of the adjudications process and the customer-service process.

22. Congress does not permit USCIS to earn profits or raise revenue by charging fees. Under the United States

Constitution, Art. I, s. 8, cl. 1, only Congress may enact laws to raise revenue.

23. USCIS publishes in the Federal Register, from time to time, a fee schedule which delineates a particular adjudication fee for each of its published forms. Adjudication fees have been assessed by the agency for many years.

24. On May 30, 2007, USCIS published a final rule implementing a new fee schedule. See Dep't of Homeland Security, Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule, 72 Fed. Reg. 29851 (May 30, 2007) ("2007 Fee Rule"). The published fee schedule took effect on July 30, 2007 and the fees outlined in it will be assessed against any person filing an application under the nation's immigration laws on and after that date. This final rule is called the 2007 Fee Rule.

25. In promulgating the 2007 Fee Rule, USCIS improperly accounted for its revenue and costs by including expenses unrelated to adjudication and naturalization services and by misappropriating revenues controlled and imposed by Congress. USCIS's 2007 Fee Rule imposes adjudications fees on individuals that exceed the costs of providing adjudication and naturalization services and the costs of collecting the fees. For purposes of this complaint, any time the phrase "adjudication and naturalization services" is used it includes

the costs of providing similar services free of charge to others and the costs of administration of the collection of the fees, unless otherwise stated.

26. In calculating the 2007 Fee Rule, USCIS inflated its costs for adjudication and naturalization service by including items that are unrelated to its adjudication and naturalization services by more than several million dollars.

27. With the 2007 Fee Rule, USCIS has inflated its costs for adjudication and naturalization services by including other costs, such as processing requests under the Freedom of Information Act and Privacy Act, providing information to the public about USCIS, marketing and branding their services to Congress and to the public, investigating corruption within its employees and contractors, out-sourcing tasks to private contractors, completing address changes and registration changes under 8 U.S.C. § 1305, resettling Cuban and Haitian entrants, transferring and maintaining records for disposition with the National Archives and Records Administration, reimbursing prevailing parties their attorneys fees and costs under the Equal Access to Justice Act, maintaining and controlling records for use by non-USCIS enforcement divisions, engaging in fraud detection and prevention within the temporary worker programs, and other expenses. These expenses are related to customer-service processes and other programs operated by USCIS.

28. The private contractors hired by USCIS engage in work related to and unrelated to adjudication and naturalization services, which forms a basis of their costs.

29. With the 2007 Fee Rule, USCIS has inflated its costs of adjudication and naturalization services by hundreds of thousands of dollars by including the profit-margins and unrelated costs of the out-source contractors in its calculations

30. With the 2007 Fee Rule, USCIS has inflated its adjudication and naturalization costs by double-charging or misallocating its expenses.

31. An individual seeking to naturalize under section 316 of the Immigration and Nationality Act, 8 U.S.C. § 1427, must file form N-400 with Defendants. By statute and rule, the Defendants provide such an individual with an interview to determine eligibility. If Defendants deny the application, an individual may take an administrative hearing before a different officer under a separate statute.

32. With the 2007 Fee Rule, USCIS inflated the cost of the N-400 adjudication fee per person by several hundreds of dollars by erroneously including the costs of an administrative hearing. USCIS over-collects the costs of administrative hearings by charging those individuals who wish an administrative hearing a separate fee of \$605.

33. With the 2007 Fee Rule, USCIS inflated the costs per person of the I-485 permanent residence fee by several hundreds of dollars.

34. With the 2007 Fee Rule, USCIS exaggerated the costs per person of the I-485 permanent residence fee by requiring any individual granted asylum who wishes permanent residence status to pay a fee for an employment authorization document, even if the applicant does not need the document.

35. With the 2007 Fee Rule, USCIS exaggerated the costs per person of the I-485 permanent residence fee by requiring small children and infants seeking immigration status to pay an assessment for an employment authorization document even though such individuals are not eligible to work in most states.

36. With the 2007 Fee Rule, USCIS exaggerated the costs per person of the I-485 permanent residence fee by requiring spouses of United States citizens holding special visas and temporary workers who both are already authorized to travel to pay an assessment for permission to travel.

37. With the 2007 Fee Rule, USCIS exaggerated their costs to increase revenues.

38. With the 2007 Fee Rule, USCIS inflated their costs of adjudication and naturalization services by including other charges that are unrelated to adjudication and naturalization services.

39. Defendants have misappropriated at least several million dollars since the year 2000 envisioned by Congress to create significant infrastructure improvements to the adjudication and customer-services processes. Since enactment in 2000, USCIS has charged premium processing fees to thousands of applicants by authority of § 286(u). However, USCIS has not used the monies received to invest in major infrastructure improvements to the adjudication and customer-service processes.

Causes of Action

40. **First Claim.** Plaintiffs are entitled to access the adjudication and naturalization services function of USCIS by paying only those fees authorized by statute. It is arbitrary, capricious and not in accordance with the law to inflate adjudication fees with costs unrelated to adjudication or naturalization services. Defendants' actions violate section 286(m) of the Immigration and Nationality Act, the Administrative Procedure Act, and the United States Constitution, Art. I, s. 8, cl. 1.

41. **Second Claim.** Defendants may not exaggerate adjudication costs by arbitrarily and capriciously requiring individuals to pay adjudication fees for unnecessary benefits or benefits which would serve no useful or meaningful purpose. Defendants' actions violate section 286(m) of the Immigration

and Nationality Act, the Administrative Procedure Act, and the United States Constitution, Art. I, s. 8, cl. 1.

42. **Third Claim.** Defendants may not levy fees which raise revenue unrelated to the costs of adjudication and naturalization services. Defendants' actions violate section 286(m) of the Immigration and Nationality Act, the Administrative Procedure Act, and the United States Constitution, Art. I, s. 8, cl. 1.

Prayer For Relief

Plaintiffs respectfully pray that this Court grant the following relief:

- 1) Assume jurisdiction over this matter;
- 2) Declare that Defendants' 2007 Fee Rule is unlawful;
- 3) Vacate the 2007 Fee Rule and instruct Defendants regarding the statutory requirements for establishing adjudication fees;
- 4) Award Plaintiffs their costs and reasonable attorneys' fees in this action as provided by 28 U.S.C. § 2412 or other statute; and
- 5) Grant such further relief in equity as the Court deems just and proper to remedy the unlawful collection of fees.

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Respectfully submitted this 19th day of November, 2007,

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/s/ Stephen W Manning

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