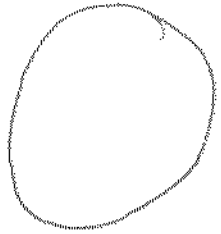


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA



MIKHAIL IGNATYEV, MYROSLAVA :
VASYLIVNA MELNYK; MOHAMED :
S. ABDELWAHAB; EUGENE KOIKOI; :
ABDI MOHAMED ALI; AHMED :
BELAGUID; MIRZA ARSHAD ALI BAIG; :
MIRZA MOHAMMED BAIG; MARIAM :
BAIG; ADEL KHALIL; CARLOTTA :
HOPE; AND VALENTINA CRUZ :
on behalf of themselves and all :
others similarly situated, :

Civ. Action No. 08-1547

FILED

OCT 08 2008

MICHAEL E. KUNZ, Clerk
By JK Dep. Clerk

v. :

**SECOND AMENDED CLASS
ACTION COMPLAINT**

MICHAEL CHERTOFF, in his official :
Capacity as Secretary of Homeland Security, :
MICHAEL MUKASEY, in his official :
capacity as Attorney General of the :
United States, ROBERT S. MUELLER, :
in his official capacity as Director of the :
Federal Bureau of Investigation, :
JONATHAN SCHARFEN, in his official :
capacity as Director of the U.S. :
Citizenship and Immigration Services¹, and :
KAREN FITZGERALD², in her official :
capacity as Acting District Director of the :
U.S. Citizenship and Immigration Services :
Philadelphia District Office. :

**ACTION FOR DECLARATORY
AND INJUNCTIVE RELIEF**

PRELIMINARY STATEMENT

1. Plaintiffs are lawful permanent residents of the United States who have lived in the United States for many years. Plaintiffs wish to become U.S. citizens and long ago submitted naturalization applications to United States Citizenship and Immigration Services ("USCIS"), the

¹ Emilio Gonzales left his post as Director of USCIS. Mr. Scharfen is now the Acting Director.
² Ms. Fitzgerald has recently replaced Evangeline Klappkis who had been serving as Acting District Director.

responsible federal agency.³ Their naturalization applications have not been adjudicated, however, despite the passage of over six months since the dates of submission, because each of their applications is awaiting completion of an “FBI name check,” a background check that the FBI conducts on behalf of USCIS.

2. Plaintiffs seek to pledge their allegiance to the United States and to participate fully in our society as United States citizens. Having qualified to do so after years of working in the United States and contributing to their communities, Plaintiffs seek only what the law provides, which is a final decision on their naturalization applications within the reasonable timelines required by law.

3. Defendant USCIS officials Scharfen and Fitzpatrick the Secretary of Homeland Security are responsible for the naturalization process. Defendants Mueller and Mukasey are responsible for the FBI name check and other background checks conducted in the course of the naturalization process.

4. In November 2002, USCIS drastically altered the naturalization procedure by requiring a vastly expanded FBI name check to be conducted on every application, even though it is not required by either statute or regulation. The FBI implemented the expanded FBI name check in a manner that has caused systemic, unnecessary and prolonged delays in the naturalization process. As a result of Defendants’ policies and practices, the unwarranted and cumbersome new FBI name check procedure has resulted in months-long and even years-long delays in naturalization adjudication for Plaintiffs and the proposed class.

5. USCIS’s own Ombudsman has stated that, as implemented by Defendants, the FBI name check used in naturalization applications is of questionable value in detecting persons

³In 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.

who may pose a threat to security. Nevertheless, USCIS uses the FBI name check without imposing any deadlines for completion. In requiring FBI name checks and tolerating systemic and prolonged delays during those name checks, both USCIS and the FBI have acted with complete disregard for Congress's plain directive that USCIS should complete the processing of naturalization applications within six months from the date of submission. Through their insistence on FBI name checks, USCIS and the FBI have unreasonably delayed the processing of the naturalization applications of Plaintiffs and the proposed class members, and USCIS has unlawfully withheld final adjudication of these applications.

6. Defendants' unlawful conduct has deprived Plaintiffs of the privileges of United States citizenship. Plaintiffs cannot vote, serve on juries, expeditiously sponsor their immediate relatives living abroad for permanent residence, receive business and education loans and other benefits reserved for citizens, participate in the Visa Waiver Program, or travel abroad and return to the United States without fear of exclusion from this country. Plaintiffs' experiences are typical of tens of thousands of other naturalization applicants around the country who have suffered unreasonable and unlawful delays in the naturalization process because of long-pending FBI name checks.

7. Plaintiffs respectfully request, on behalf of themselves and all others similarly situated, that the Court certify the proposed class, enter judgment in favor of the proposed class on all claims, and grant the relief requested herein. Specifically, Plaintiffs request that the Court require the Defendants to adjudicate their applications for naturalization within the time periods prescribed by law, and declare that the Defendants' actions violate the naturalization statute and regulations, laws governing administrative agency action, and the Due Process Clause of the Fifth Amendment.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this action under the Administrative Procedure Act, 5 U.S.C. § 701, *et. seq.*, the Mandamus Act, 28 U.S.C. § 1361, and 28 U.S.C. §1331, which vest the United States district courts with jurisdiction over civil actions arising under the Constitution, laws, or treaties of the United States.

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

THE PARTIES

10. The Named Plaintiffs and proposed class representatives are:

- (a) Mikhail Ignatyev, a resident of the City of Philadelphia, the State of Pennsylvania and the United States of America;
- (b) Mohamed S. Abdelwahab, a resident of West Chester, the State of Pennsylvania and the United States of America;
- (c) Myroslava Vasylyvna Melnyk, a resident of Norristown, the State of Pennsylvania and the United States of America;
- (d) Eugene Koikoi, a resident of the City of Philadelphia, the State of Pennsylvania and the United States of America;
- (e) Abdi Mohamed Ali, a resident of the City of Philadelphia, the State of Pennsylvania and the United States of America;

(f) Ahmed Belaguid, a resident of Levittown, the State of Pennsylvania and the United States of America;

(g) Mirza Mohamed Baig and Mariam Baig, husband and wife, residents of Allentown, the State of Pennsylvania and the United States of America;

(h) Mirza Arshad Ali Baig a resident of Audubon, the State of Pennsylvania and the United States of America.

(i) Adel Khalil, a resident of the City of Philadelphia, State of Pennsylvania and the United States of America;

(j) Carlotta Hope is a resident of the City of Philadelphia, State of Pennsylvania and the United States of America.

(k) Valentina Cruz, a resident of the City of Philadelphia, State of Pennsylvania and the United States of America

11. Defendant Michael Chertoff is the Secretary of Homeland Security, which encompasses USCIS. He is charged with “[a]ll authorities and functions of the Department of Homeland Security (DHS) to administer and enforce the immigration laws.” 8 C.F.R. § 2.1; 8 U.S.C. § 1103(a). He is sued in his official capacity.

12. Defendant Michael Mukasey is the Attorney General of the United States. He shares responsibility with Defendant Chertoff for administering and enforcing the nation’s immigration laws. The Attorney General is the head of the United States Department of Justice (“DOJ”), which encompasses the Federal Bureau of Investigation. He is sued in his official capacity.

13. Defendant Robert Mueller is the Director of the Federal Bureau of Investigation (FBI). He is charged with administering the FBI’s duties to conduct investigations in connection

with citizenship applications under review by USCIS, including conducting FBI name checks. He is sued in his official capacity.

14. Defendant Jonathan Scharfen is the Director of USCIS. He is charged with administering the immigration laws of the United States, including the processing and adjudication of citizenship applications. He is sued in his official capacity.

15. Defendant Karen Fitzpatrick is the Acting District Director of the USCIS District Five. She is sued in her official capacity.

STATUTORY AND REGULATORY SCHEME

16. The United States Constitution grants Congress the power to “establish a Uniform Rule of Naturalization.” Art. I, § 8, cl. 4. Congress delegated authority for naturalization to the Attorney General. *See* 8 U.S.C. § 1421(a); Pub. L. No. 101-649, Tit. IV, 104 Stat. 4978, 5038-48 (Nov. 29, 1990). The Attorney General, in turn, delegated responsibility for naturalization to the former Immigration and Naturalization Service (INS). 8 C.F.R. § 100.2(a); 28 C.F.R. Pt. 105. Since the abolition of the INS in 2002, USCIS has been the federal agency responsible for processing and adjudication of naturalization applications. *See* Homeland Security Act of 2002, Pub. L. No. 107-296, §471, 116 Stat. 2135, 2205 (codified at 6 U.S.C. § 291(a)) (transferring authority for immigration enforcement and services from former Immigration and Naturalization Service to new Department of Homeland Security).

17. 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.

18. USCIS has a policy of processing naturalization applications in chronological order, based upon date of receipt of the application and fee. In accordance with this policy, when USCIS receives a naturalization application and fee, USCIS grants the applicant a “priority date” that is based on the date of receipt. INS Operation Instruction 103.2(q), *available at* Operations Instructions of the Immigration and Naturalization Service (Matthew Bender, 2007) (Lexis Immigration Library, Operations Instructions of the INS File).

19. Before a person may be naturalized, USCIS may conduct or waive a “personal investigation” of the applicant. 8 U.S.C. § 1446(a). By regulation, USCIS must also complete a “criminal background check.” 8 C.F.R. §§ 335.1, 335.2.

20. Since 1997, Congress has also required that a “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). Congress did not specify what such an investigation should entail.

21. In March 1998, to implement the requirement of a criminal background check, the INS (USCIS’s predecessor agency) promulgated a proposed rule for notice and public comment. *See Requiring Completion of Criminal Background Checks Before Final Adjudication of Naturalization Applications*, 63 Fed. Reg. 12979 (Mar. 17, 1998). After receiving public comment, INS promulgated a final regulation found at 8 C.F.R. § 335.2(b) to implement the 1997 law.

22. Under 8 C.F.R. § 335.2(b), the FBI performs a criminal background check on each naturalization applicant. This criminal background check involves a check of the applicant’s fingerprints against FBI databases to confirm whether or not the applicant has an

administrative or criminal record. 8 C.F.R. § 335.2(b). These criminal background checks are usually completed within days if not hours.

23. Upon information and belief, although 8 C.F.R. § 335.2(b) defines the “criminal background check” to include only a fingerprint records check, USCIS requires two other security checks: a name check through the Interagency Border Inspection System (IBIS) database and the FBI name check.

24. After the “criminal background check” is completed pursuant to 8 C.F.R. § 335.2(b), USCIS schedules a naturalization examination, at which an applicant meets with a USCIS examiner who is authorized to ask questions and take testimony. 8 C.F.R. § 335.2(a). The examination typically includes questions testing the applicant’s English literacy and basic knowledge of the history and government of the United States. 8 C.F.R. § 335.2(c). Applicants with a medical disability that prevents them from learning English and /or civics may apply for a waiver of the citizenship examination. 8 C.F.R. § 312.1

25. The USCIS examiner must determine whether to grant or deny the naturalization application. 8 U.S.C. § 1446(d). Naturalization is not discretionary. USCIS must grant a naturalization application if the applicant has complied with all requirements for naturalization. 8 C.F.R. § 335.3. USCIS must make a final determination on every naturalization application, either at the time of the examination or, at the latest, within 120 days after the date of the examination. 8 C.F.R. § 335.3.

26. Once an application is granted, USCIS schedules the applicant for an oath ceremony at which he or she is sworn in as a United States citizen.

27. If USCIS does not issue a decision within 120 days of the examination, an applicant may file suit in district court under 8 U.S.C. § 1447(b). That statute confers

jurisdiction upon the district court in the district in which the applicant resides, and it allows the court either to determine the matter (*i.e.*, grant or deny citizenship) or to remand with appropriate instructions to USCIS to determine the matter. A primary purpose of that statute, enacted in 1990, was to decrease backlogs in the naturalization process and reduce waiting times for naturalization applicants. H.R. Rep. No. 101-187, at 8 (1989); 135 Cong. Rec. H4539-02, H4542 (1989) (statement of Rep. Morrison).

28. In addition, 8 U.S.C. § 1571(b) states, “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 date of filing of the application” Naturalization applications are among the “immigration benefit applications” included within this provision. This provision, along with 8 U.S.C. § 1571(a), § 1572, and § 1573, makes clear Congress’s intent to eliminate persistent backlogs in the processing of immigration benefit applications. Moreover, Congress has defined the term “backlog” in the statute as “the period of time in excess of 180 days that such application has been pending before the Immigration and Naturalizations Service.” 8 U.S.C. § 1572(1).

29. Section 1571(b) provides the statutory guideline and “rule of reason” for determining whether naturalization applications are being processed in a timely manner. Under the most straightforward reading of 8 U.S.C. § 1571(b), all naturalization applications that are not finally adjudicated within 180 days of the date of submission are presumptively unreasonably delayed.

USCIS EXPANSION OF “FBI NAME CHECKS”

30. Plaintiffs are informed and believe that USCIS may have requested “FBI name checks” for naturalization applicants prior to 2002. Plaintiffs are informed and believe that before 2002, these FBI name checks may have involved searches of the applicant’s name against

an FBI database containing the names of persons “of interest” to the FBI – *i.e.*, criminal suspects, targets of investigations, and others suspected of wrongdoing.

31. Plaintiffs are informed and believe that beginning in November 2002, USCIS dramatically altered the naturalization procedure by expanding the scope of the FBI name check, by requiring the FBI to search applicants’ names against additional databases.

32. The expanded FBI name check used by USCIS is not part of the “criminal background check” that is required by Public Law 105-119, tit. I, 111 Stat. 2448-49 (Nov. 26, 1997), and 8 § C.F.R. 335.2.

33. When it expanded the FBI name check requirement for naturalization in November 2002, USCIS did not promulgate a proposed rule or give notice and an opportunity for public comment on the rule, as it had done in 1998 when implementing the criminal background check requirement.

34. The expanded FBI name check was a substantive departure from prior USCIS policy because it imposed a new requirement in naturalization procedure not based on statute or regulations and because it has had a substantial adverse effect on applicants for naturalization by causing significant delays in adjudication. As such, the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.*, required USCIS to promulgate a proposed rule, provide a notice and comment period, and thereafter promulgate a final rule prior to enacting the November 2002 expanded FBI name check.

35. Plaintiffs are informed and believe that the expanded FBI name check consists of a search of a person’s name through the FBI’s criminal and non-criminal files in its Central Records System. The Central Records System contains administrative, applicant, criminal, personnel, and other FBI files. Plaintiffs are informed and believe that, since November 2002,

the expanded FBI name check on naturalization applications includes an FBI search of not only "main files" for persons "of interest," but also "references files" for any person or entity that is mentioned in the "main files," including innocent persons who are not suspected of any wrongdoing, but who have come into contact with the FBI, including witnesses, interviewees, crime victims, and persons who have applied for security clearances for professional reasons, or who may have a name similar to those who have come into contact with the FBI.

36. Plaintiffs are informed and believe that since the November 2002 expansion, USCIS does not adjudicate applications for naturalization until it receives the results of a completed name check from the FBI.

37. Plaintiffs are informed and believe that USCIS and the FBI have entered into written agreements regarding the conduct of FBI name checks on, among others, applicants for naturalization, and that in these agreements neither USCIS nor the FBI impose any time limits for the completion of name checks.

38. Plaintiffs are informed and believe that from time to time and under certain circumstances, USCIS requests the FBI to expedite the name checks of certain individuals, including certain applicants for naturalization.

39. Plaintiffs are informed and believe that beginning in April 2006, in response to a deluge of lawsuits around the country brought by frustrated naturalization applicants pursuant to 8 U.S.C. § 1447(b), USCIS implemented a new policy of refusing to schedule naturalization examinations for those applicants whose FBI name checks were not completed. USCIS has stated that an express purpose of this policy change was to preclude litigation under 8 U.S.C. § 1447(b) by those who have passed naturalization examinations and are awaiting final adjudication of their naturalization applications. As a result of this change in policy, which

appears to be an explicit effort to thwart Congress's intent to provide delayed naturalization applicants with recourse to the federal courts, the applications of substantial numbers of class members have been unreasonably delayed, and naturalization examinations have not been scheduled because of pending FBI name checks.

40. FBI name checks are now the cause of systemic, prolonged delays in the processing of applications for naturalization. In both 2006 and 2007, the USCIS Ombudsman – the individual charged by Congress with providing recommendations on improving USCIS services and operations – declared that name checks “significantly delay adjudication of immigration benefits for many customers, hinder backlog reduction efforts, and may not achieve their intended security objectives.” Citizenship and Immigration Services Ombudsman Annual Report 2006, at 23 (June 29, 2006) (hereinafter “2006 Report”), *available at* http://www.dhs.gov/xlibrary/assets/CISOmbudsman_AnnualReport_2006.pdf; Citizenship and Immigration Services Ombudsman Annual Report 2007, at 37 (June 11, 2007) (hereinafter “2007 Report”), *available at* http://www.dhs.gov/xlibrary/assets/CISOMB_Annual_Report_2007.pdf.

41. In the most recent report, the Ombudsman declared that “FBI name checks may be the single biggest obstacle to the timely and efficient delivery of immigration benefits” and that the delays are getting worse, not better. 2007 Report at 37. The report noted that as of May 2007, over 329,000 USCIS name checks were pending, with 64 percent of those cases (over 211,000) pending more than 90 days, and 32 percent (almost 107,000) pending more than one year. *Id.* at 37. The 2007 report also found that the problem of long-pending name checks had worsened in the preceding year. *Id.*

42. The Ombudsman also questioned the value of FBI name checks in accomplishing their stated purpose, which is to detect persons who should be denied immigration benefits

because they pose a danger or threat to security. In response to USCIS's claims of effectiveness, the Ombudsman declared that "most, if not all, of the problem cases that would result in an eventual denial of benefits also can be revealed by the other more efficient, automated criminal and security checks that USCIS initiates." 2007 Report at 41.

43. Moreover, the Ombudsman "agree[d] with the assessment of many case workers and supervisors at USCIS field offices and service centers that the FBI name check process has limited value to public safety or national security, especially because in almost every case the applicant is in the United States during the name check process, living or working without restriction." 2007 Report at 40. In further acknowledgment of the limited utility of name checks, the Ombudsman noted that "[n]ame checks are not conducted by the FBI as part of ongoing investigations or from a need to learn more about an individual because of any threat or risk perceived by the FBI." 2007 Report at 38.

44. In addition, "[t]o date, the Ombudsman has been unable to ascertain from USCIS the total number of actual problem cases that the agency discovered exclusively as a result of the FBI name check." 2007 Report at 41. Neither USCIS nor the FBI has ever shown that the FBI name check has led to the detection of a national security threat posed by a naturalization applicant that would not have been discovered independently through the fingerprint records check or IBIS database check, both of which are routinely completed within minutes or days and result in no delays in naturalization.

FACTS AS TO NAMED PLAINTIFFS

Mikhail Ignatyev

45. Plaintiff Mikhail Ignatyev, native of the Ukraine and citizen of the Russian Federation, is 60 years old. He arrived in the United States with his wife Alla Ignatyeva in April 1999 as public interest parolees under a law passed by Congress to assist certain nationals of former Soviet republics who faced long standing persecution because of their religion. Mr. Ignatyev and Ms. Ignatyeva qualified for this status because Ms. Ignatyeva had suffered persecution in the former Soviet Union because of her Jewish faith and ethnicity.

46. The couple lives in Philadelphia, Pennsylvania. Mr. Ignatyev was employed for many years as an assembler by Elmar Window Fashions. Due to ill health, he has ceased working.

47. Mr. Ignatyev became a lawful permanent resident ("LPR") on April 28, 2000, and filed a naturalization application with USCIS on March 29, 2006. This was also the priority date issued to him by USCIS. He was fingerprinted in connection with his application on May 6, 2006, at the Application Support Center.

48. Mr. Ignatyev's wife was naturalized as a citizen of the United States on March 16, 2005.

49. Shortly after his application to naturalize was filed, Mr. Ignatyev was diagnosed with prostate cancer. Following intense chemotherapy treatment, his condition is now in remission. However, the ordeal has left him severely depressed and afraid for his health.

50. At this time, Mr. Ignatyev remains in poor mental health stemming from his cancer and cancer treatments and is unable to work. As a result, he and his wife are in financial straits because her income alone is insufficient to support them.

Mr. Ignatyev has waited to be scheduled for an examination in connection with his naturalization application for almost two years. Upon information and belief, USCIS has delayed his examination because FBI has not completed Mr. Ignatyev's FBI name check.

51. Mr. Ignatyev has been prejudiced by the long delay in the adjudication of his naturalization application in several ways. First, in this election year, where interest in Presidential candidates has reached record levels, he wishes very much to participate in the voting process to the extent he is able. Second, if Mr. Ignatyev were a United States citizen, he would qualify for federal- and state-funded benefits that would provide critical supplemental income and health care benefits. However, because of the long delay in his naturalization, he is unable to apply for those benefits. Citizenship will allow him the peace of mind to know that he will be entitled to receive medical benefits that will cover the cost of his treatments and keep him in good health for years to come.

Myroslava Vasylivna Melnyk

52. Plaintiff, Myroslava Vasylivna Melnyk, a native of the Ukraine and a citizen of the Russian Federation. She became a lawful permanent resident on April 20, 2000. She filed an application for naturalization on February 1, 2006.

53. Ms. Melnyk, who is 36 years old, lives in Norristown Pennsylvania. She is employed as a teacher at a Ukrainian Catholic School.

54. Ms. Melnyk is currently engaged to a United States citizen and intends to marry and establish a life for herself here in the United States.

55. Following her application for naturalization, Ms. Melnyk was scheduled for a naturalization examination set for May 22, 2006. On May 12, 2006, she was notified by USCIS that her examination had been cancelled due to pending background checks. One year later, on

May 12, 2007, USCIS indicated that her name check was still pending. Ms. Melnyk has not received any new information concerning her application.

56. Ms. Melnyk has been prejudiced by the inordinate delay in the processing of her naturalization applications. She is eager to participate fully in United States society as a citizen. She is especially eager to participate in the electoral process in this Presidential election year.

57. Ms. Melnyk, who will be married soon, wishes to start a family and build her life in the United States as a citizen. The continued delay of her application leaves her in an unsettled state without the full rights and protections conferred by United States Citizenship.

Mohamed S. Abdelwahab

58. Plaintiff, Mohamed S. Abdelwahab, a native of Egypt came to the United States through the diversity visa lottery program. He became a lawful permanent resident on April 7, 1999. His application for naturalization was received by USCIS on November 10, 2005. Mr. Abdelwahab was scheduled for an naturalization examination on April 12, 2006. However, on April 4, 2006, he was informed that his examination was cancelled "due to unforeseen circumstances." He also received notice from USCIS that his case was awaiting the results from the background checks.

59. Mr. Abdelwahab has written numerous letters and made numerous phone calls to determine the status of his naturalization application. Despite these efforts, he has been unable to learn any reason for the continued delay of his application other than the pending background checks.

60. Mr. Abdelwahab lives in West Chester where he owns a small communications business.

61. Mr. Abdelwahab has been severely prejudiced by the inordinate delay in processing of his naturalization application. He wishes to establish his family in the United States and wishes to petition, as a citizen, for a wife from Egypt. Because of the pending status of his application, Mr. Abdelwahab has been reluctant to leave the United States to return to Egypt to visit his family. He also wishes to participate in the electoral process in this Presidential election year.

Eugene Koikoi

62. Eugene Koikoi is a native of Liberia. He has been a lawful permanent resident of the United States since September 2, 1993. He applied for naturalization in September 2005. He was scheduled for a naturalization examination on February 24, 2006. Prior to that date, he received notice that his examination had been canceled.

63. Mr. Koikoi has made numerous attempts to ascertain the status of his application. On July 18, 2006, April 16, 2007 and September 21, 2007, he was notified that his application was delayed because the results from his name check are still pending.

64. Mr. Koikoi, who is 34 years old, currently attends Drexel University part-time where he is studying administrative justice. He aspires eventually to become an attorney. Currently, he is in the process of obtaining employment as a social worker.

65. Mr. Koikoi has been severely prejudiced by the delay in his naturalization application. All three of his children are United States citizens. He seeks citizenship so that he can be assured that he will be able to remain with them in the United States to care for them. He is also eager to participate fully in United States society as a citizen and especially to participate in the electoral process in this Presidential election year.

Abdi Mohamed Ali

66. Abdi Mohamed Ali is a native of Somalia. He entered the United States as a refugee in September 1999. He filed an application for naturalization on March 7, 2006. He was scheduled for a naturalization interview in June 2006, but that interview was cancelled because his background checks were not completed.

67. Mr. Ali has on numerous occasions inquired into the status of his naturalization application. Each time he has been told that his application is delayed because his background checks are not yet completed.

68. Mr. Ali lives in Philadelphia and is a self-employed cab driver.

69. Mr. Ali is prejudiced by the delay in his naturalization application because he is reluctant to leave the United States to visit family including his grandmother who is over 100 years old and is in ill-health. He also wishes to participate fully in United States society and especially to participate in the electoral process in this Presidential election year.

Ahmed Belaguid

70. Ahmed Belaguid is a native of Morocco. Mr. Belaguid entered the United States on May 26, 2001 through the diversity visa program. He filed for naturalization on February 26, 2006. He has received no notification of the status of his application. He has contacted USCIS several times and has contacted congressional offices to help him to no avail.

71. Mr. Belaguid is currently working as an electronic technician. He received an associate's degree last year from York Technical Institute.

72. Mr. Belaguid is severely prejudiced by the delay in his naturalization application because his wife remains in Morocco. He is eager to bring her here and to begin to establish his family here. His re-unification with his wife is also a critical first step in his plan to return to school to pursue a bachelor's degree; all of that is on hold until his naturalization application is adjudicated. He also wishes to participate in the electoral process in this Presidential election year.

Mirza Arsad Ali Baig

73. Mirza Arsad Ali Baig is a native of Pakistan. He was granted asylum in the United States in 1997 and became a lawful permanent resident in 2001. He applied for naturalization on March 20, 2006. His application has been pending since that time due to the FBI name check.

74. Mr. Baig lives in Audubon Pennsylvania and works as a software analyst. His wife and children are already United States citizens and he wants very much to build a life for his family here in the United States on a permanent basis.

75. Mr. Baig is prejudiced by the delay in his naturalization application because his family cannot establish permanent roots in the United States and enjoy the rights and protections of citizenship until he is naturalized. Mr. Baig is also anxious to participate in the electoral process in this Presidential election year.

Mirza Mohammed Baig and Mariam Baig

76. Mirza Mohammed Baig and Mariam Baig are husband and wife. They are both natives of India. Mr. Baig came to the United States in 1992. Ms. Baig came in 1995. They

have both lived in the United States since that time. They filed for naturalization in July 2006 and their applications have been pending since that time.

77. Mr. and Mrs. Baig live in Allentown, Pennsylvania. Mr. Baig is a systems analyst and Ms. Baig is a pre-school teacher. They have two children who are both United States citizens.

Mr. and Ms. Baig have been prejudiced by the delay in the naturalization applications. It is their intent to establish their family in the United States permanently and with naturalization, their status in the United States remains uncertain as does the stability of their family. They would also like to participate in the electoral process in this Presidential election year.

Adel Khalil

78. Mr. Adel is a native and citizen of Egypt. He entered the United States in 1997 and became a lawful permanent resident in 2002.

79. Mr. Adel lives in Philadelphia with his wife and two children and owns his own restaurant, Aya's Café, in downtown Philadelphia.

80. Mr. Adel applied for naturalization and received a priority date of April 19, 2007.

81. In June 2008, Mr. Adel contacted USCIS to inquire about the delay in the processing of his naturalization application. He was told that the process would be delayed until the completion of the FBI background check. He has been waiting more than 180 days for the completion of his background check.

82. Mr. Adel very much wants to be a citizen of the United States. He owns a business here, pays taxes and wants to participate in the political process, especially the upcoming Presidential election in November 2008.

Carlotta Hope

83. Ms. Hope is a native of Guyana. She came to the United States as a minor with her parents in 1987 and has been a lawful permanent resident of the United States since that time.

84. Ms. Hope lives with her three minor children in Philadelphia. She is employed by a non-profit organization in Philadelphia and works as an educator for persons seeking to obtain their high school equivalency certificate.

85. Ms. Hope applied for naturalization in July 2006.

86. On four occasions, Ms. Hope has inquired about the status of her naturalization application. Each time, she has been informed that her application is delayed because of the FBI name check.

87. Ms. Hope very much wants to be a citizen because she wishes to travel abroad and in particular would like to do service work as an educator in a foreign country. She does not want to carry out these plans until she becomes a citizen because she wants to travel with the full protections of United States citizenship.

Valentina Cruz

88. Valentina Cruz is a native and citizen of the Dominican Republic. She became a lawful permanent resident in 1995.

89. Ms. Cruz, who is 47 years old and lives in Philadelphia. Ms. Cruz suffers from acute depression and is supported by her adult daughter.

90. Ms. Cruz filed an application for naturalization and was issued a priority date of December 21, 2006. In January 2008, Ms. Cruz was informed by USCIS that her application

was delayed pending the completion of the FBI background check. She has now been waiting for adjudication of her application for nearly one and one-half years.

91. Ms. Cruz desperately wishes to become a United States citizen. She has lived here for 13 years and wishes to stay here for the rest of her life. The unresolved nature of her status in the United States is emotionally stressful for her. She also wishes to take part in the upcoming Presidential election in November 2008.

DEFENDANTS' UNLAWFUL POLICIES AND PRACTICES

92. Plaintiffs are informed and believe that Defendants Chertoff, Scharfen, and Fitzpatrick have a policy, pattern, and practice of failing to process and adjudicate the applications for naturalization of the proposed plaintiff class in accordance with statutory deadlines, namely within 180 days of the date of submission of such applications.

93. Plaintiffs are informed and believe that Defendants Chertoff, Scharfen, and Fitzpatrick have a policy, pattern, and practice of unlawfully withholding and unreasonably delaying the processing and adjudication of applications for naturalization of the proposed plaintiff class, in disregard of statutory deadlines, because of pending FBI name checks.

94. Plaintiffs are informed and believe that Defendants Chertoff, Scharfen, and Fitzpatrick have a policy, pattern and practice of unlawfully failing to take all necessary steps to complete FBI name checks in a timely manner so as to allow USCIS to process and adjudicate the applications for naturalization of the proposed plaintiff class within 180 days of the date of submission of such applications.

95. Plaintiffs are informed and believe that Defendants Mukasey and Mueller have a policy, pattern, and practice of failing to complete FBI name checks in a timely manner, with the full knowledge that USCIS requires the completion of such name checks for processing and

adjudication of applications for naturalization of the proposed plaintiff class, and with the full knowledge that the statutory deadlines require USCIS to process and adjudicate such applications within 180 days of the date of submission. The actions and omissions of Defendants Mukasey and Mueller result in unreasonable delays in the completion of the FBI name checks in violation of the Administrative Procedure Act, which requires all federal agencies not to engage in unreasonable delays or to withhold required action.

96. Plaintiffs are informed and believe that Defendants have a policy, pattern, and practice of failing to set deadlines for completing FBI name checks and to take all the other reasonable steps necessary to complete the adjudication of applications for naturalization of the proposed plaintiff class, in utter disregard of statutory deadlines that require USCIS to process and adjudicate such applications within 180 days of the date of submission.

97. Plaintiffs are informed and believe that Defendants Chertoff, Scharfen, and Fitzpatrick have a policy, pattern, and practice of unlawfully requiring FBI name checks for adjudication of applications for naturalization of the proposed plaintiff class, despite the lack of any statutory or regulatory authorization for such name checks.

98. Plaintiffs are informed and believe that Defendants Mukasey, Chertoff, Scharfen, and Fitzpatrick unlawfully expanded the FBI name checks in November 2002, as set forth above, without giving notice to the public and allowing a period for public comment and without promulgating a regulation. Requiring FBI name checks as a prerequisite to naturalization effected a substantive change in existing law, resulting in substantial and undue hardship and burden to the proposed plaintiff class.

99. As a result of the Defendants' policies, practices, actions, and omissions described herein, members of the proposed plaintiff class have suffered injury, in that they have been

unlawfully denied the rights and benefits of United States citizenship. Among other things, members of the proposed plaintiff class have been unable to vote in local, state, and national elections that have occurred since the filing of their naturalization applications, including state and national elections in 2006. They have been unable to sponsor expeditiously their immediate relatives living abroad for permanent residence in the United States. They have been unable to travel freely outside of the United States because they do not have United States passports and the guarantee of re-admission into the country upon their return. Finally, they have been unable to apply for certain types of employment, educational grants and loans, and other benefits that are limited to United States citizens.

CLASS ALLEGATIONS

100. Plaintiffs bring this action on behalf of themselves and all other persons similarly situated pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2). The class, as proposed by Plaintiffs, consists of:

All lawful permanent residents who have submitted or will submit applications for naturalization that will be adjudicated in USCIS District Five located within Pennsylvania, and whose applications for naturalization remain adjudicated more than 180 days after the date of submission because of pending FBI name checks.

101. The requirements of Federal Rules of Civil Procedure 23(a) and 23(b)(2) are met.

102. The class is so numerous that joinder of all members is impracticable. Upon information and belief, the class consists of at least one hundred persons.

103. There are questions of law and fact common to the proposed class that predominate over any questions affecting only the individually Named Plaintiffs, including: (1) whether USCIS's actions and omissions, including its failure to adjudicate the naturalization

applications of the proposed plaintiff class within 180 days of the date of submission because of pending FBI name checks, and its failure to impose deadlines on the completion of FBI name checks in accordance with statutory deadlines, violate the Immigration and Nationality Act and implementing regulations and constitute unreasonable delay and unlawful withholding of agency action in violation of the Administrative Procedure Act; (2) whether the FBI's actions and omissions, including its failure to complete name checks in a timely fashion so as to allow USCIS to adjudicate the naturalization applications of the proposed plaintiff class within 180 days of the date of submission in accordance with statutory deadlines, constitute unreasonable delay and unlawful withholding of agency action in violation of the Administrative Procedure Act; (3) whether the actions and omissions of USCIS and FBI resulting in prolonged and systemic delays in naturalization violate the Fifth Amendment due process rights of the Named Plaintiffs and members of the proposed class; and (4) whether USCIS's failure to provide the opportunity for public notice and comment prior to implementing the expanded FBI name check requirement violates the Administrative Procedure Act.

104. The claims of the Named Plaintiffs are typical of the claims of the proposed class. The Named Plaintiffs, like all class members, are lawful permanent residents who have submitted applications for naturalization, and whose applications USCIS has not adjudicated despite the passage of over 180 days since the date of submission, because of pending FBI name checks. Like all members of the proposed class, the Named Plaintiffs bring claims under the Administrative Procedure Act against both USCIS and the FBI and a claim under the Fifth Amendment Due Process Clause against USCIS and the FBI.

105. All of the Named Plaintiffs will fairly and adequately represent the interests of all members of the proposed class because they seek relief on behalf of the class as a whole and

have no interests antagonistic to other members of the class. The named Plaintiffs are also represented by pro bono counsel, including the ACLU of Pennsylvania, the ACLU Immigrants' Rights Project, HIAS & Council Migration Service of Philadelphia, the Nationalities Service Center., and the law firm of Langer Grogan & Diver, P.C., who have extensive expertise in class action litigation, including litigation regarding the rights of immigrants.

106. Defendants have acted on grounds that apply generally to the class and final injunctive relief or declaratory relief is appropriate to the class as a whole.

FIRST CLAIM FOR RELIEF

VIOLATIONS OF THE ADMINISTRATIVE PROCEDURE ACT ALL PLAINTIFFS AGAINST DEFENDANTS CHERTOFF, SCHARFEN AND FITZPATRICK

107. Plaintiffs reallege and reassert the foregoing paragraphs as if set forth fully herein.

108. The Administrative Procedure Act requires administrative agencies to conclude matters presented to them "within a reasonable time." 5 U.S.C. § 555. A district court reviewing agency action may "compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1). The court also may hold unlawful and set aside agency action that, *inter alia*, is found to be: "arbitrary, capricious, and an abuse of discretion, or otherwise not in accordance with law," 5 U.S.C. § 706(2)(A); "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right," 5 U.S.C. § 706(2)(C); or "without observance of procedure required by law," 5 U.S.C. § 706(2)(D). "Agency action" includes, in relevant part, "an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act." 5 U.S.C. § 551 (13).

109. The actions and omissions of Defendants Chertoff, Scharfen, and Fitzpatrick in failing to adjudicate the applications for naturalization of the proposed plaintiff class within 180

days of the date of submission because of pending FBI name checks in violation of 8 U.S.C. § 1446(d), 8 U.S.C. § 1571(b), and 8 C.F.R. § 335, violate the Administrative Procedure Act, 5 U.S.C. § 555(b); 5 U.S.C. §§ 706(1), 706(2)(C), 706(2)(D).

110. The actions and omissions of Defendant Chertoff, Scharfen, and Fitzpatrick in failing to set deadlines for completing FBI name checks and to take all the other reasonable steps necessary to complete the adjudication of applications for naturalization of the proposed plaintiff class within 180 days of the date of submission because of pending FBI name checks, contrary to the requirements of 8 U.S.C. § 1446(d), 8 U.S.C. § 1571(b), and 8 C.F.R. § 335, violate the Administrative Procedure Act, 5 U.S.C. §§ 555(b), 706(1), 706(2)(A), 706(2)(C), 705(2)(D).

111. Defendants have a duty under 8 U.S.C. § 1446(d), 8 U.S.C. § 1571(b), and 8 C.F.R. § 335 to finally adjudicate Plaintiffs' naturalization applications within the deadlines imposed by statute and regulations. Defendants' unlawful conduct in failing to do so has resulted in, *inter alia*, unreasonable delays in and unlawful withholding of the adjudication of Plaintiffs' naturalization applications. As a result of Defendants' actions and utter indifference to statutory deadlines, Plaintiffs have suffered and continue to suffer injury. Declaratory and injunctive relief are therefore warranted.

SECOND CLAIM FOR RELIEF

VIOLATIONS OF THE ADMINISTRATIVE PROCEDURE ACT ALL PLAINTIFFS AGAINST DEFENDANTS MUKASEY AND MUELLER

112. Plaintiffs reallege and reassert the foregoing paragraphs as if set forth fully herein.

113. The Administrative Procedure Act requires administrative agencies to conclude matters presented to them "within a reasonable time." 5 U.S.C. § 555. A district court reviewing agency action may "compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1). The court also may hold unlawful and set aside agency action that, *inter alia*, is

found to be: “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” 5 U.S.C. § 706(2)(A); “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right,” 5 U.S.C. § 706(2)(C); or “without observance of procedure required by law,” 5 U.S.C. § 706(2)(D). “Agency action” includes, in relevant part, “an agency rule, order, license, sanction, relief or the equivalent or denial thereof, or failure to act.” 5 U.S.C. § 551(13).

114. The failure of Defendants Mukasey and Mueller to timely complete FBI name checks, or to set or adhere to any timelines for completion of FBI name checks, with the full knowledge that USCIS requires the completion of such name checks for adjudication of applications for naturalization of the proposed plaintiff class, and with full knowledge of the statutory deadlines and requirements for adjudication of naturalization applications pursuant to 8 U.S.C. § 1446, 8 U.S.C. § 1571 (b), and 8 C.F.R. § 335, violates the Administrative Procedure Act, 5 U.S.C. § 555(b); 5 U.S.C. §§ 706(1), 706(2)(A), 706(2)(C), 706(2)(D).

115. Defendants Mukasey and Mueller have a duty pursuant to the Administrative Procedure Act, agreements with USCIS, and Executive Order 10450, to timely complete USCIS-initiated name checks for naturalization applications, given Defendants’ full knowledge that FBI name checks are required to finally adjudicate Plaintiffs’ naturalization applications within the deadlines imposed by statute and regulations. Defendants’ unlawful conduct in failing to do so has resulted, *inter alia*, in unreasonable delays in and unlawful withholding of the adjudication of Plaintiffs’ naturalization applications. As a result of Defendants’ actions and utter indifference to statutory deadlines, Plaintiffs have suffered and continue to suffer injury. Declaratory and injunctive relief are therefore warranted.

THIRD CLAIM FOR RELIEF

VIOLATION OF DUE PROCESS CLAUSE
ALL PLAINTIFFS AGAINST ALL DEFENDANTS

116. Plaintiffs reallege and reassert the foregoing paragraphs as if set forth fully herein.

117. The Due Process Clause of the Fifth Amendment prohibits the government from depriving any person of life, liberty or property without due process of law. U.S. Const., Amend. V.

118. Defendants Chertoff, Scharfen, and Fitzpatrick have a pattern, practice, or policy of failing to adjudicate the applications for naturalization of the proposed plaintiff class within 180 days of the date of submission of such applications because of pending FBI name checks, in violation of 8 U.S.C. § 1446(d), 8 U.S.C. § 1571, and 8. C.F.R. § 335.

119. Defendants Mukasey and Mueller have a pattern, practice, or policy of tolerating systemic, prolonged, and unreasonable delays in the FBI name check process, with full knowledge that USCIS requires the completion of such “name checks” for adjudication of applications for naturalization of the proposed plaintiff class within the statutory deadlines.

120. Defendants have a pattern, practice, or policy of failing to set deadlines for completing “name checks” and to take all the other reasonable steps necessary to complete the adjudication of applications for naturalization of the proposed plaintiff class within 180 days of the date of submission of such applications because of pending FBI name checks, in violation of 8 U.S.C. § 1446(d), 8 U.S.C. § 1571, and 8 C.F.R. § 335.

121. The above-described actions and omissions by Defendants violate Plaintiffs’ rights to due process of law. As a result of Defendants’ actions, Plaintiffs have suffered and continue to suffer injury. Declaratory and injunctive relief are therefore warranted.

FOURTH CLAM FOR RELIEF

**VIOLATION OF NOTICE-AND-COMMENT REQUIREMENTS
OF THE ADMINISTRATIVE PROCEDURE ACT ALL PLAINTIFFS
AGAINST DEFENDANTS CHERTOFF, SCHARFEN AND FITZPATRICK**

122. Plaintiffs reallege and reassert the foregoing paragraphs as if set forth fully herein.

123. The actions of Defendants Chertoff, Scharfen, and Fitzpatrick in November 2002

to expand the FBI name check for naturalization applications constitute a rule within the meaning of 5 U.S.C. § 551(4).

124. The Administrative Procedure Act, 5 U.S.C. § 553, requires administrative agencies to provide a notice-and-comment period prior to implementing a substantive rule, including a rule that is a departure from prior policy and practice and that has a substantial adverse effect upon a large number of those affected.

125. The actions and omissions of Defendants Chertoff, Scharfen, and Fitzpatrick in failing to provide a notice-and-comment period prior to the November 2002 expansion of the FBI name check requirement violated 5 U.S.C. § 553 in that the expansion constituted a substantive rule that departed from prior policy and practice and has had a substantive adverse impact upon a large number of those affected, namely naturalization applicants.

126. As a result of Defendants' actions and omissions, Plaintiffs were injured, and declaratory and injunctive relief is appropriate.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

1. Assume jurisdiction over the matter.
2. Certify the class of Plaintiffs.

3. With respect to the certified class of Plaintiffs, order Defendants to: (a) take all necessary steps to complete all FBI name checks of class members within a reasonable time period not to exceed 45 days from the date of the Court's order; and (b) finally adjudicate all naturalization applications of class members within a reasonable time period not to exceed 90 days from the date of the Court's order.

4. Enjoin Defendants and order them to: (a) take all necessary steps to complete all FBI name checks of naturalization applicants within 90 days from the date of submission of the applications; (b) and finally adjudicate all naturalization applications within 180 days from the date of submission.

5. Order Defendants Chertoff, Scharfen, and Fitzpatrick to revoke and suspend the November 2002 expansion of the FBI name check with respect to naturalization applications, until such time as Defendants have completed promulgating a rule following the Administrative Procedure Act's process for notice and comment by the public.

6. Issue a declaratory judgment holding unlawful:

(a) the actions and omissions of Defendants Chertoff, Scharfen, and Fitzpatrick in failing to adjudicate applications for naturalization within 180 days of the date of submission, because of pending FBI name checks;

(b) the actions and omissions of Defendants Mukasey and Mueller in failing to timely complete FBI name checks to allow USCIS to adjudicate applications for naturalization within 180 days of the date of submission; and

(c) the actions and omissions of all Defendants in failing to set deadlines and to take all necessary steps to adjudicate applications for naturalization within 180 days of the date of submission.

7. Award reasonable attorney fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, 28 U.S.C. § 2412.

8. Grant any and all further relief this Court deems just and proper.

Respectfully submitted,

/s/ John J. Grogan

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