

District Judge Lasnik



04-CV-00449-CMP

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
SEATTLE, WASHINGTON

KICHUL LEE; NAGHAM ALMEMAR;
SAM TA; ASHWIN PRASAD;
MOHAMMED AL AMIRI; ABDUL AL-
TAMIMI; HALIMA AL-MAMAR; GUN
LIM; AHMED BERHANU; HANS
HANSPAL; ADMIR BURNAZOVIC;
RAAD AL MANSUR; YASSIN AL
QUREISHI; AL YIM; KAE PHOU
SAEPHARN; and ENDESHAW SABE,

Plaintiffs,

v.

JOHN ASHCROFT, Attorney General of
the United States; TOM RIDGE, Secretary
of the Department of Homeland Security;
and ROBERT J. OKIN, Interim District
Director of United States Citizenship and
Immigration Services, Department of
Homeland Security,

Defendants.

Case No. C04-0449L

SECOND AMENDED COMPLAINT -
CLASS ACTION

1. This is a class action lawsuit brought on behalf persons who are statutorily eligible to naturalize and become United States citizens, but who have been unlawfully denied naturalization by delay in adjudication and/or mischaracterization of minor

CLASS ACTION COMPLAINT - 1

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1 convictions as demonstrative of lack of good moral character. Plaintiffs seek declaratory and
2 injunctive relief, and the individual Plaintiffs request that the Court grant their naturalization
3 applications.
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5 PARTIES

6 2. Plaintiff Kichul Lee is a citizen of South Korea and a permanent resident since
7 October 31, 1998. He resides in Federal Way, Washington. He is married to, and resides
8 with, his United States citizen wife and U.S. citizen child.
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10 3. Plaintiff Nagham Almemar is a citizen of Iraq who entered the U.S. as the wife
11 of a United States citizen on January 27, 1999. She has resided in the United States since
12 that time, and is currently living in Olympia, WA.
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14 4. Plaintiff Sam Ta is a citizen of Vietnam who entered the United States as a
15 refugee when he was nine years old. He has been a permanent resident since June 21, 1980.
16 He has resided in the Seattle area since that date.
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18 5. Plaintiff Ashwin Prasad is a citizen of Fiji and a permanent resident since April
19 13, 1991. He resides in Seattle, Washington.
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21 6. Plaintiff Mohammed Al Amiri is a citizen of Iraq and a permanent resident
22 since April 21, 1995. He resides in Kent, Washington.
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24 7. Plaintiff Abdul Al-Tamimi is a citizen of Iraq and permanent resident since
25 1994. He resides in Everett, Washington

26 8. Plaintiff Halima Al-Mamar is a citizen of Iraq and a permanent resident since
27 1995. She resides in Everett, Washington.
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1 9. Plaintiff Gun Lim is a citizen of the Republic of Korea and a permanent
2 resident since 1998. He resides in Mill Creek, Washington.

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4 10. Plaintiff Ahmed Berhanu is a citizen of Eritrea and a permanent resident since
5 1997. He is a resident of Shoreline, Washington

6 11. Plaintiff Hans Hanspal is a citizen of Kenya and a permanent resident since
7 1998. He is a resident of Issaquah, Washington.

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9 12. Plaintiff Admir Burnazovic is a citizen of Bosnia and a permanent resident
10 since 1998. He is a resident of Seattle, Washington.

11 13. Plaintiff Raad Al Mansur is an Iraqi refugee and a permanent resident since
12 1995. He resides in Lynnwood, Washington.

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14 14. Plaintiff Yassin Al Qureishi is an Iraqi refugee and a permanent resident since
15 1997. He resides in Lynnwood, Washington.

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17 15. Plaintiff Al Yim is a citizen of Cambodia and a permanent resident since 1998.
18 He is a resident of Des Moines, Washington.

19 16. Plaintiff Koy Fou Saepharn is a Laotian refugee and a permanent resident since
20 1984. She is a resident of Seattle, Washington.

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22 17. Plaintiff Endeshaw Sabe is a citizen of Eritrea and a permanent resident since
23 1995. He is a resident of Lynnwood, Washington.

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25 18. Defendant John Ashcroft, Attorney General of the United States, has been
26 conferred the authority to naturalize persons as citizens of the United States by INA § 310(a),
27 8 U.S.C. § 1421(a), and is sued here in his official capacity.
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1 19. Defendant Tom Ridge is the Secretary of the Department of Homeland
2 Security ("DHS"). As of March 1, 2003, DHS is the agency responsible for implementing
3 the Immigration and Nationality Act. Within DHS, the United States Citizenship and
4 Immigration Services ("CIS"), formerly part of the Immigration and Naturalization Service,
5 is now responsible for implementing the provisions under which lawful permanent residents
6 can be naturalized and become United States citizens, in particular INA § 310, 8 U.S.C. §
7 1421, *et. seq.*¹ Respondent Ridge is sued in his official capacity.

10 20. Defendant Robert J. Okin is the Interim District Director of the Seattle District
11 of Citizenship and Immigration Services of the Department of Homeland Security, formerly
12 the Immigration and Naturalization Service, and is sued here in his official capacity. Mr.
13 Okin has been delegated authority, under 8 C.F.R. § 310.2, to control all activities within the
14 Seattle District, including the authority to grant or deny naturalization applications.

17 JURISDICTION

18 21. This Court has jurisdiction pursuant to INA § 310(c), 8 U.S.C. § 1421(c)
19 (jurisdiction to hear *de novo* denials of applications for naturalization); INA § 336(b), 8
20 U.S.C. § 1447(b) (jurisdiction for hearing on naturalization in certain cases of delay); 28
21 U.S.C. § 1331 (federal question jurisdiction); 28 U.S.C. § 2201, the Declaratory Judgment
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26 ¹ On March 1, 2003, the Immigration and Naturalization Service ("INS") ceased to exist and its
27 functions were transferred to the newly formed Department of Homeland Security. *See* Homeland
28 Security Act, 116 Stat. 2135, Pub. L. 107-296 (2002). The former INS was divided into three
separate agencies, Citizenship and Immigration Services, Immigration and Customs Enforcement,
and Customs and Border Protection. This complaint challenges decisions of Citizenship and
Immigration Services, the component responsible for adjudicating naturalization petitions.

1 Act; 5 U.S.C. § 701, the Administrative Procedures Act; and 5 U.S.C. § 504, the Equal
2 Access to Justice Act.

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4 **VENUE**

5 22. Venue in the Western District of Washington is appropriate pursuant to 8
6 U.S.C. § 1421(c) because Plaintiffs reside within the district and the administrative decision
7 denying or delaying Plaintiffs' applications for naturalization were issued by the Seattle
8 Office of CIS, located within this district.

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10 **STATEMENT OF THE FACTS**

11 23. Plaintiff Kichul Lee (A46-697-271) is a citizen of South Korea residing in
12 Federal Way, Washington. He has been a lawful permanent resident since October 31, 1998.
13 He is married to, and resides with, his United States citizen wife since December 27, 1997.
14 He has a United States citizen daughter, Jessie Lee, who was born in the United States on
15 October 27, 2000. He has a college degree and stable employment. He applied for
16 citizenship on April 2, 2002, and disclosed a minor conviction from 1999. He was
17 fingerprinted by CIS, and, prior to setting an interview, the FBI provided a complete criminal
18 background check to the CIS. He was interviewed at Seattle CIS on January 21, 2003, where
19 he passed the English, history and government tests and was found to meet the residence
20 requirements of the naturalization laws. He was not given notice at the interview of his
21 remedies under 8 U.S.C. § 1446 and § 1447 as required by law. He provided all requested
22 information concerning his single criminal conviction, a 1999 citation for Possession of
23 Oysters in Excess of the Personal Use Limit and Possession of Oysters in the Shell, Taken
24 from the Intertidal Zone, a misdemeanor violation under the Washington Administrative
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1 Code ("WAC") §§ 220.56.312 and 385. He was fined \$152 dollars, which he paid.
2 Defendants did not request any additional information concerning good moral character.
3 other than the criminal history information. His application was denied on June 4, 2003, on
4 the ground that he lacked good moral character solely because of the 1999 citation. Plaintiff
5 Lee filed a timely administrative appeal of his naturalization denial to CIS, but his appeal
6 was denied on October 8, 2003, again based solely on his 1999 conviction. The denial is in
7 error because Mr. Lee is of good moral character. Furthermore, the CIS officer adjudicating
8 the application for naturalization did not consider the record evidence of Mr. Lee's good
9 moral character, but only the conviction related to harvesting of shellfish. Respondents
10 failed to properly follow the law defining good moral character, causing Mr. Lee
11 unnecessary legal expenses and delay in his eligibility to vote. The denial of his
12 naturalization application has not been upheld in any other prior administrative proceeding.
13 Plaintiff Kichul Lee is eligible for naturalization, meets all of the requirements for
14 naturalization, and would have been approved for naturalization if CIS had properly
15 followed and implemented the statute.

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21 24. Plaintiff Nagham Almemar (A45-821-704) is a citizen of Iraq who entered the
22 United States on January 27, 1999 as the spouse of a U.S. citizen. She applied for
23 naturalization on May 2, 2002. She was fingerprinted and the FBI provided confirmation of
24 a complete criminal history check to the INS. She was interviewed at then Seattle INS on
25 February 10, 2003. She passed the history, government and English tests, and met the good
26 moral character and residence requirements of the law. She was not given notice at the
27 interview of her remedies under 8 U.S.C. § 1446 and § 1447 as required by law. Her
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1 application remains pending despite inquiries to the defendants about the status of her
2 application. In December 2003 she obtained a divorce, in part because of domestic violence
3 in 2002. She meets all the requirements for naturalization. She is entitled to a determination
4 by the court concerning her naturalization under the provisions of INA § 336(b), 8 U.S.C. §
5 1447(b). Plaintiff Nagham Almemar is eligible for naturalization, meets all of the
6 requirements for naturalization, and would have been approved for naturalization if CIS had
7 properly followed and implemented the statute.
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10 25. Plaintiff Sam Ta (A-25-040-497) is a citizen of Vietnam who entered the United
11 States as a refugee when he was nine years old. He has been a permanent resident since June
12 21, 1980. He has resided in the Seattle area since that date. He graduated from the
13 University of Washington in 1996 with a degree in Business and has been gainfully
14 employed to the present. He owns a condominium where he resides. He applied for
15 naturalization on February 24, 2003, and was fingerprinted. The FBI provided CIS with a
16 complete criminal background check prior to his CIS interview. Mr. Ta was interviewed at
17 Seattle CIS on October 15, 2003. He passed the English, history and government tests and
18 was found to meet all the residence requirements for naturalization. He was not given notice
19 at the interview of his remedies under 8 U.S.C. § 1446 and § 1447 as required by law. His
20 application was denied on October 31, 2003, solely because he was found to lack good moral
21 character. The only reason stated for the denial was an arrest on September 19, 1999, for a
22 violation of the Seattle Municipal Code § 12A.06.040 (Harassment) related to a non-violent
23 argument with his then-girlfriend, who was standing outside a locked door at the time of the
24 incident. The criminal case was dismissed with prejudice on October 15, 2001, after
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1 completion of probation terms pursuant to a stipulated order of continuance. The denial of
2 his naturalization application was in error because Mr. Ta is of good moral character.
3 Defendants failed to consider all the positive evidence of his good moral character and failed
4 to properly follow the law defining good moral character. Mr. Ta filed a timely
5 administrative appeal of the denial of his naturalization application, with a filing fee of \$195,
6 which remains pending after a hearing on March 2, 2004. Defendants' inaction represents a
7 denial of Mr. Ta's application. Mr. Ta is ineligible to vote because of the improper denial of
8 his application and has had to incur legal expenses unnecessarily because of the improper
9 practices of defendants. The denial of his naturalization application has not been upheld in
10 any other prior administrative proceeding. Plaintiff Sam Ta is eligible for naturalization,
11 meets all of the requirements for naturalization, and would have been approved for
12 naturalization if CIS had properly followed and implemented the statute.
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17 26. Plaintiff Ashwin Prasad (A42-687-387) is a citizen of Fiji who entered into the
18 United States when he was a teenager, and has been a lawful permanent resident since April
19 13, 1991. He works in the maintenance department of the Meadowbrook extended care
20 center in Seattle, Washington. He applied for naturalization on September 17, 2002. He was
21 fingerprinted by Defendants, and the FBI provided Defendants with a complete criminal
22 background check prior to his interview on May 20, 2003. At the interview he passed the
23 history, government and English tests, and met all the residence requirements. He was not
24 given notice at the interview of his remedies under 8 U.S.C. § 1446 and § 1447 as required
25 by law. His application was denied on May 20, 2003, solely on the grounds that he lacked
26 good moral character. Specifically, the officer determined that Mr. Prasad failed to
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1 demonstrate good moral character because he had been arrested and charged with driving
2 under the influence on June 16, 2002, and pled guilty to Negligent Driving, First Degree, on
3 August 19, 2002. Mr. Prasad has no other arrests. Mr. Prasad timely administratively
4 appealed his naturalization denial. His appeal was denied on January 5, 2004, also on good
5 moral character grounds based solely on his negligent driving conviction. The denial was in
6 error because Mr. Prasad is of good moral character and meets all the statutory requirements
7 for naturalization. Defendants failed to consider the evidence of good moral character
8 presented by Mr. Prasad. The denial of his naturalization application has not been upheld in
9 any other prior administrative proceeding. Plaintiff Ashwin Prasad is eligible for
10 naturalization, meets all of the requirements for naturalization, and would have been
11 approved for naturalization if CIS had properly followed and implemented the statute.
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15 27. Plaintiff Mohammed Al Amiri (A71-679-518) is a citizen of Iraq who was
16 admitted to the United States as a Gulf War refugee on April 21, 1995, and was later
17 adjusted to permanent resident status effective that same date. He resides in Kent,
18 Washington. He applied for citizenship on February 19, 2002. He was fingerprinted by
19 Defendants, and the FBI provided INS a complete criminal background check prior to his
20 interview. At his interview at Seattle INS on December 9, 2002, he presented an application
21 for a disability waiver on form N-648, pursuant to 8 C.F.R. § 312.2(b), in order to waive the
22 history, civics, and English language naturalization requirements. Mr. Al Amiri has sickle
23 cell anemia, which has caused brain damage, as well as post-traumatic stress disorder, major
24 depression disorder, and organic brain syndrome, which causes poor short term memory
25 recall and poor retention of information. The disability waiver was approved. He presented
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1 substantial evidence of his good moral character. He was told by the examiner at the
2 interview that his October 17, 1999, traffic infraction for Negligent Driving in Second
3 Degree would not preclude naturalization, but that final approval was deferred solely
4 because of the need by CIS to complete a "name check." He was informed that he met all
5 the requirements for naturalization. He was not given notice at the interview of his remedies
6 under 8 U.S.C. § 1446 and § 1447 as required by law. His application was denied on July
7 28, 2003, and his appeal was denied on January 21, 2004, both denials solely based on the
8 Negligent Driving traffic infraction. The denial is in error because Mr. Al Amiri is of good
9 moral character. Furthermore, the denial did not consider the record evidence of Mr. Al
10 Amiri's good moral character, but only the traffic infraction. The denial of his naturalization
11 application has not been upheld in any other prior administrative proceeding. Plaintiff
12 Mohammed Al Amiri is eligible for naturalization, meets all of the requirements for
13 naturalization, and would have been approved for naturalization if CIS had properly
14 followed and implemented the statute.

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19 28. Plaintiff Abdul Al-Tamimi (A71-679-060) entered the United States as a
20 refugee from Iraq in September 1994, and was later adjusted to permanent resident status
21 effective that same date. He is married with seven children ages 10 through 26. His wife
22 and all children have been naturalized. He applied for citizenship in about February 1999.
23 He was fingerprinted, and the CIS was provided a complete criminal background check prior
24 to his interview, on March 30, 2000. He passed the English and history test, and was found
25 to meet the residence and good moral character requirements of the Act. He was told that he
26 would be notified when his oath ceremony would occur, but one has never been scheduled.

1 He was not given notice at the interview of his remedies under 8 U.S.C. § 1446 and § 1447
2 as required by law. He has made numerous inquiries to the CIS, but has only been told that
3 his case remains pending with a supervisor. Plaintiff Abdul Al-Tamimi is eligible for
4 naturalization, meets all of the requirements for naturalization, and would have been
5 approved for naturalization if CIS had properly followed and implemented the statute.
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8 29. Plaintiff Halima Al-Mamar (A71-680-484) entered the United States as a
9 refugee from Iraq in September 1995, and later adjusted to permanent resident status
10 effective that same date. She is married with five children and lives in Everett, WA. She
11 filed for citizenship in approximately January 2001. She was initially fingerprinted by the
12 CIS in mid-2001, as well as on two other occasions, most recently April 2004. Prior to her
13 naturalization interview at CIS, the FBI provided the CIS a complete criminal history
14 background check. At her interview at CIS on December 6, 2001, she was informed that she
15 had passed the English and history tests, but that her case would remain pending while CIS
16 awaited a copy of her "A" file. She was not given notice at the interview of her remedies
17 under 8 U.S.C. § 1446 and § 1447 as required by law. She has made numerous inquiries
18 about the status of her application, but continues to be told that it is being reviewed or is
19 pending. Plaintiff Halima Al-Mamar is eligible for naturalization, meets all of the
20 requirements for naturalization, and would have been approved for naturalization if CIS had
21 properly followed and implemented the statute. Plaintiff Gun Lim (A76-850-961) is a
22 Korean citizen who adjusted to permanent resident status on April 21, 1998. He resides in
23 Mill Creek, Washington. He is a recent graduate of the University of Washington, where he
24 is employed in the Computer Science Department. He applied for citizenship on April 11,
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1 2003. He was initially fingerprinted by the CIS in the summer of 2003. Prior to his
2 naturalization interview at CIS, the FBI provided the CIS a complete criminal history
3 background check. At his interview at CIS on November 25, 2003, he was informed that he
4 had passed the English and history tests, but that a decision could not yet be made on his
5 application. His case was continued and he was told to provide evidence concerning a
6 December 2001 charge of negligent driving. He was not informed by CIS to also submit
7 evidence of extenuating circumstances, nor of good moral character. He provided the
8 requested criminal records shortly after interview. He was not given notice at the interview
9 of his remedies under 8 U.S.C. § 1446 and § 1447 as required by law. On March 10, 2004,
10 his citizenship application was denied based on the negligent driving conviction, as well as
11 tickets for speeding and following too closely. The denial fails to consider evidence of good
12 moral character. Plaintiff Lim did not appeal the decision as he considered it futile and
13 expensive. The refusal of CIS to act on his appeal is a constructive denial of his citizenship.
14 Plaintiff Gun Lim is eligible for naturalization, meets all of the requirements for
15 naturalization, and would have been approved for naturalization if CIS had properly
16 followed and implemented the statute.

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18 30. Plaintiff Ahmed Berhanu (A46-086-472) adjusted to permanent resident status
19 as of March 14, 1997. He resides in Shoreline, Washington. He applied for citizenship on
20 January 11, 2002. He was initially fingerprinted by the CIS in 2002. Prior to his
21 naturalization interview at CIS, the FBI provided the CIS a complete criminal history
22 background check. At his interview at CIS in March 2003, he was informed that he had
23 passed the English and history tests, but that a decision could not yet be made on his

1 application. His case was continued per a notice directing him to produce court/police
2 records of an arrest in Seattle on August 31, 2001 for Patronizing a Prostitute. He was not
3 informed by CIS to also submit evidence of extenuating circumstances, nor of good moral
4 character. He provided the requested criminal records within a few days of the interview.
5 The records showed that the criminal case was dismissed with prejudice on December 18,
6 2001 after pretrial diversion, and without a plea or finding of guilt, and is therefore not a
7 conviction under immigration law. He was not given notice at the interview of his remedies
8 under 8 U.S.C. § 1446 and § 1447 as required by law. On July 31, 2003, a denial of his
9 citizenship application was issued, but the denial relates not to Plaintiff Berhanu, but to
10 Ruben Rodriguez, A91-592-266, who was arrested on a different date for Patronizing a
11 Prostitute and granted pretrial diversion. In addition to relating solely to a different person,
12 the "denial" fails to consider evidence of good moral character of Berhanu. Berhanu
13 submitted a timely appeal of the denial of his citizenship. CIS has failed to schedule an
14 appeal hearing within 180 days as required by CIS regulations, 8 C.F.R. §336.2(b). The
15 refusal of CIS to act on his appeal is a constructive denial of his citizenship. Plaintiff Ahmed
16 Berhanu is eligible for naturalization, meets all of the requirements for naturalization, and
17 would have been approved for naturalization if CIS had properly followed and implemented
18 the statute.
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25 31. Plaintiff Hans Hanspal (A71-470-366) is a citizen of Kenya and has been a
26 permanent resident status since March 18, 1998. He resides in Issaquah, Washington. He
27 applied for citizenship on February 6, 2003. He was initially fingerprinted by the CIS on
28 March 25, 2003. Prior to his naturalization interview at CIS, the FBI provided the CIS a

1 complete criminal history background check. At his interview at CIS on September 25,
2 2003, he was informed that he had passed the English and history tests, but that a decision
3 could not yet be made on his application. He submitted evidence concerning a 2001 arrest
4 for Driving Under the Influence, for which prosecution was deferred for a period of
5 probation, which he successfully completed. He was not given notice at the interview of
6 his remedies under 8 U.S.C. § 1446 and § 1447 as required by law. On October 15, 2003, a
7 denial of his citizenship application was issued based on the single DUI conviction. The
8 denial fails to consider evidence of good moral character. Hanspal has retained counsel and
9 on November 12, 2003, submitted a timely appeal of the denial of his citizenship application.
10 On April 8, 2004, an interview was conducted by CIS concerning his appeal, but no decision
11 has issued. The refusal of CIS to act on his appeal is a constructive denial of his citizenship
12 application. Plaintiff Hanspal is eligible for naturalization, meets all of the requirements for
13 naturalization, and would have been approved for naturalization if CIS had properly
14 followed and implemented the statute.

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19 32. Plaintiff Admir Burnazovic (A71-734-747) entered the United States as a
20 refugee from Bosnia on February 24, 1998, and later adjusted to permanent resident status
21 effective that same date. He resides in Seattle, WA. He applied for citizenship on April 23,
22 2003. He was initially fingerprinted by the CIS on May 31, 2003. Prior to his naturalization
23 interview at CIS, the FBI provided the CIS a complete criminal history background check.
24 At his interview at CIS on October 14, 2003, he was informed in writing that he had passed
25 the English and history tests, but that a decision could not yet be made on his application.

26 His case was continued for 30 days per a notice directing him to produce court/police records
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1 of an arrest in 2002 for Assault, which matter was never filed with the court. Neither notices
2 inform him to also submit evidence of extenuating circumstances, nor of good moral
3 character. He provided the requested criminal records within a few days of the interview. He
4 inquired in January and in March of 2004 about the status of his application. On both
5 occasions CIS responded that the case was still pending on name checks. He was not given
6 notice at the interview of his remedies under 8 U.S.C. § 1446 and § 1447 as required by law.
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8 If he had known of his option to go to federal court in August 2003, he would have done so,
9 as he wishes to petition for permanent resident status for his mother, as the parent of a U.S.
10 citizen, a category without a backlog. Plaintiff Admir Burnazovic is eligible for
11 naturalization, meets all of the requirements for naturalization, and would have been
12 approved for naturalization if CIS had properly followed and implemented the statute.
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15 33. Plaintiff Raad Nassir Al Mansur (A71-674-188) is an Iraqi refugee from the
16 Gulf War who adjusted to permanent resident status on January 27, 1995. He resides in
17 Lynnwood, Washington. He is married with two children who are U.S. citizens by birth. He
18 applied for citizenship in 1999 but failed to pass the English examination. He has been
19 fingerprinted prior to his CIS interviews. Prior to his naturalization interviews at CIS, the
20 FBI provided the CIS a complete criminal history background check. He reapplied
21 subsequently to the denied application and was most recently interviewed on February 3,
22 2004. He applied for a disability waiver, which was granted. At that interview at CIS, he
23 was informed that he had passed any required tests, but that a decision could not yet be made
24 on his application. He was not given notice at the interview of his remedies under 8 U.S.C. §
25 1446 and § 1447 as required by law. Plaintiff Al Mansur is eligible for naturalization, meets
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1 all of the requirements for naturalization, and would have been approved for naturalization if
2 CIS had properly followed and implemented the statute.

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4 34. Plaintiff Yassin Al Qurcishi (A75-048-592) is an Iraqi refugee from the Gulf
5 War who adjusted to permanent resident status on September 12, 1997. He resides in
6 Lynnwood, Washington. He applied for citizenship in late 2002. Prior to his naturalization
7 interview at CIS, the FBI provided the CIS a complete criminal history background check
8 based on his fingerprints. He was interviewed on April 29, 2003. At that interview at CIS,
9 he was informed that he had passed any required tests, but that a decision could not yet be
10 made on his application. He was not given notice at the interview of his remedies under 8
11 U.S.C. § 1446 and § 1447 as required by law. On several occasions since his interview, he
12 has asked CIS for the status on his application, but was merely told the application was
13 pending and that he should wait patiently. Plaintiff Al Qureishi is eligible for naturalization,
14 meets all of the requirements for naturalization, and would have been approved for
15 naturalization if CIS had properly followed and implemented the statute.

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19 35. Plaintiff Al Yim (A46-257-066) entered the United States as a refugee from
20 Cambodia on April 11, 1998, and later adjusted to permanent resident status effective that
21 same date. He is married and resides in Des Moines, WA. He applied for citizenship in the
22 spring of 2002. He was initially fingerprinted by the CIS several months prior to his
23 interview. Prior to his naturalization interview at CIS, the FBI provided the CIS a complete
24 criminal history background check. At his interview at CIS on February 10, 2004, he was
25 informed that he had passed the English and history tests, and he was given a form letter
26 informing him that his case would remain pending the completion of background checks and

1 not to inquire for four months following interview. He was not given notice at the interview
2 of his remedies under 8 U.S.C. § 1446 and § 1447 as required by law. Plaintiff Al Yim is
3 eligible for naturalization, meets all of the requirements for naturalization, and would have
4 been approved for naturalization if CIS had properly followed and implemented the statute.
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6 36. Koy Fou Saepharn (A25-023-102), is a Laotian refugee who is a permanent
7 resident since 1984. She resides in Seattle, Washington. She is married to a United States
8 citizen and is the mother of five U.S. citizen children. On or about September 2002, she
9 applied for naturalization. She was fingerprinted and prior to her interview, the FBI
10 provided the CIS with a complete criminal background check. She was interviewed by CIS
11 on March 27, 2003. On information and belief, she passed the English language and history
12 and government test. At the interview she was given a request for additional documentation
13 concerning a 1993 perjury arrest, of which she was acquitted after a jury trial. She was not
14 notified at the interview of her remedies under 8 U.S.C. §1446 and §1447 as required by law.
15 She was given a "Blue Room" letter to use when returning the information; a Blue Room
16 letter is used when a piece of documentation is missing that is necessary to conclude an
17 otherwise approved file. Ms. Saepharn timely provided the information requested, and
18 brought in other documentation a few months later. No decision has been made on her
19 naturalization application, despite numerous in-person inquiries. When she inquired about
20 the status of her case, CIS told her to wait, but has never informed her that she could go to
21 federal court after a 120 day delay. Both Ms. Saepharn and her husband are active members
22 and leaders of the Yiu Michn American Baptist Church, and wish to do international
23 ministry. She has been unable to participate in international ministry due to her lack of
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1 citizenship and inability to obtain a passport to travel. Ms. Saepharn meets all of the
2 requirements for naturalization and would have been approved for naturalization if CIS
3 properly followed and implemented the statute.
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5 37. Endeshaw Sabc (A44-895-157) is a citizen of Eritrea who has been a
6 permanent resident since 1995. He resides in Lynnwood, Washington. He is married and
7 has a citizen daughter. On February 18, 2003, he applied for naturalization. He was
8 fingerprinted and, prior to his interview, the FBI provided the CIS with a complete criminal
9 background check. He was interviewed by CIS on October 8, 2003. He passed the English
10 language and history and government test. At the interview he was given a request for
11 additional documentation concerning the termination of his prior marriage. He sent the
12 information to CIS on that same day. He was not notified at the interview of his remedies
13 under 8 U.S.C. §1446 and §1447 as required by law. No decision has been made on his
14 naturalization application, despite numerous in-person inquiries. Mr. Sabe wishes to obtain
15 his citizenship so that his wife can adjust her status to permanent resident. Without his
16 citizenship, she will have to wait over ten years to obtain permanent resident status through
17 the asylee adjustment process under INA § 209, due to a backlog of 150,000 other
18 applicants. Mr. Sabe meets all of the requirements for naturalization and would have been
19 approved for naturalization if CIS properly followed and implemented the statute.
20
21
22
23
24

25 38. All named plaintiffs have exhausted all available administrative remedies.
26 Those plaintiffs whose applications have been denied have the right to obtain this Court's *de*
27 *novo* judicial review pursuant to INA § 310(c), 8 U.S.C. § 1421(c)
28

BACKGROUND

1
2 39. United States law allows persons who have been residing in the United State as
3
4 lawful permanent residents to become citizens through naturalization. A person seeking to
5
6 become a naturalized citizen must meet several statutory requirements: (1) an understanding
7
8 of the English language, history, and civics of the United States, INA § 312, 8 U.S.C. §
9
10 § 1423; (2) a sufficient period of physical presence in the United States, INA §316(a), 8 U.S.C.
11
12 § 1427(a); and (3) good moral character, INA §316(d), 8 U.S.C. § 1427(d). In addition, an
13
14 applicant for naturalization must not fall under any of the grounds of ineligibility, for
15
16 example, being an advocate or member of any organization that teaches opposition to all
17
18 organized government. INA § 313(a), 8 U.S.C. § 1424(a). The Service "shall grant the
19
20 application if the applicant has complied with all requirements for naturalization under this
21
22 chapter." 8 C.F.R. § 335.3

23 40. The Immigration and Nationality Act defines certain conduct and convictions
24
25 that will preclude a person from demonstrating good moral character. INA § 101(f), 8
26
27 U.S.C. § 1101(f). For instance, a conviction of an "aggravated felony," as well as certain
28
29 convictions for crimes of moral turpitude, may make a person statutorily ineligible to
30
31 demonstrate good moral character. INA § 101(f)(3), (8); 8 U.S.C. § 1101(f)(3), (8). None of
32
33 the plaintiffs have convictions for aggravated felonies per 8 U.S.C. §1101(a)(43), nor for
34
35 crimes involving moral turpitude, as that term has been defined in the case law.

36 41. The regulations promulgated by the former Immigration and Naturalization
37
38 Service specify the acts that will disable a person as a matter of law from showing good
39
40 moral character. 8 C.F.R. § 316.10(b)(1), (2). However, the regulations go beyond the

1 statutory preclusions and prevent certain other persons from demonstrating good moral
2 character even though they are eligible under the statute. The regulations provide that a
3 person who has, in the five years preceding the application, "[c]ommitted unlawful acts that
4 adversely reflect upon the applicant's moral character," even though such acts do not fall
5 under the mandatory ineligibility grounds, "shall be found to lack good moral character,"
6 "[u]nless the applicant establishes extenuating circumstances." 8 C.F.R. § 316.10(b)(3)(iii).
7
8 The regulations also prohibit the government from approving on good moral character
9 grounds a person who is on probation, parole, or who has a suspended sentence, regardless of
10 the underlying charge or conviction. *Id.* § 316.10(c)(1). This regulatory provision
11 disqualifies naturalization applicants who are eligible under the statute.
12

13
14 42. Defendants have failed to follow the provisions of the naturalization statute
15 and their own regulations requiring timely adjudication of the applications. Instead,
16 Defendants have delayed and denied the applications of persons with arrests or criminal
17 convictions, even when good moral character is not implicated by the arrest or conviction.
18

19 43. Defendants have a policy and practice of requiring *perfect* moral character for
20 naturalization, when Congress chose to require merely "good" moral character.
21

22 44. Defendants have a policy and practice of unlawfully denying naturalization on
23 the basis of minor arrests or criminal convictions for crimes, even though the applicant has
24 "good moral character" as that term is intended in the statute
25

26 45. Defendants have a policy and practice of unlawfully denying naturalization by
27 considering only evidence relating to the lack of good moral character, in particular any
28

1 record of arrest or conviction, without taking into account any counterbalancing positive
2 evidence of good moral character.

3
4 46. Defendants' notices of denial of naturalization applications, or appeals of such
5 denials, fail to provide notice to applicants sufficient to advise them of the basis of the
6 denial, and to create an adequate record for administrative and/or judicial review.
7 Defendants denial notices fail to comply with their own regulations. 8 C.F.R. § 336.1(b).

8
9 47. Defendants, when they request applicants to provide conviction or arrest
10 records, have a policy and practice of not requesting evidence of good moral character that
11 would allow Defendants to make an evaluation of all the circumstances relating to good
12 moral character.

13
14 48. Defendants have a policy and practice of unlawfully delaying naturalization
15 adjudications. CIS regulations require a denial or grant of the naturalization not more than
16 120 days after the interview. 8 C.F.R. §§ 335.3, 336.1

17
18 49. Even though an applicant has been determined after interview to have met all
19 the statutory requirements for naturalization, Defendants have a policy and practice of not
20 granting naturalization to certain applicants for an indefinite period. These periods
21 frequently exceed 120 days after interview while CIS awaits a "name check" of the
22 applicant. "Name checks" are an administrative procedure that occurs prior to final
23 approval, and are in addition to the fingerprint-based, FBI record checks that are done on all
24 applicants prior to the initial interview. 8 C.F.R. § 335.2(b). There is no statutory eligibility
25 requirement that applicants (who have completed an FBI background check) must also pass a
26
27
28

1 post-interview "name check." Defendants' requirement of a "name check" clearance is *ultra*
2 *vires*.

3
4 50. Defendants have a policy and practice of not complying with the statutory
5 requirement to, "at the examination, inform the petitioner of the remedies available to the
6 applicant under section 336," which includes the right to seek a district court determination
7 of applications delayed more than 120 days after interview. INA §§ 335(b), 336(b), 8 U.S.C.
8 §§ 1446(b), 1447(b).
9

10 CLASS ALLEGATIONS

11 51. Plaintiffs bring this action on behalf of themselves and all other persons
12 similarly situated pursuant to Federal Rules of Procedures 23(a) and 23(b). The class, as
13 proposed by Plaintiffs, consists of:
14

15 All persons who have applied or will apply for naturalization in the jurisdiction of the
16 Seattle District Office, and who have been or may be denied on or after May 4, 1998
17 on the basis of a lack of good moral character, or whose application remains pending
18 for more than 120 days after the initial examination.

19 52. The requirements of Rules 23(a) and 23(b)(2) are met in that: the class is so
20 numerous that joinder of all members is impracticable (Plaintiffs estimate that there are over
21 3,000 class members); there are questions of law and fact common to the class (including but
22 not limited to whether Defendants have a policy or practice of applying the good moral
23 character standard incorrectly, whether the Defendants provide proper notice to
24 naturalization applicants, and whether the Defendants unlawfully delay applications); the
25 claims of the representative parties are typical of the claims of the class; the representative
26 parties will fairly and adequately represent the interests of the class because they are
27
28

1 represented by *pro bono* counsel with extensive expertise in class action litigation regarding
2 the rights of immigrants; and the party opposing the class has acted on grounds generally
3 applicable to the class, thereby making appropriate final injunctive relief with respect to the
4 class as a whole.
5

6 CLAIMS FOR RELIEF

7 53. Plaintiffs reallege and by this reference incorporate the allegations contained in
8 paragraphs 1 through 52.
9

10 54. Defendants' regulations, policy and practice of denying naturalization on the
11 basis of minor arrests or criminal convictions for crimes that do not reflect on a person's
12 good moral character is unlawful and inconsistent with, *inter alia*, INA §§ 101(f), 335, 8
13 U.S.C. §§ 1446, 1101(f), 5 U.S.C. §§ 551, *et seq.* of the Administrative Procedures Act, and
14 Due Process.
15

16 55. Defendants' policy and practice of denying naturalization by considering only
17 evidence of lack of good moral character, without taking into account any counterbalancing
18 positive evidence of good moral character, is unlawful and inconsistent with, *inter alia*, INA
19 §§ 101(f), 335, 8 U.S.C. §§ 1101(f), 1446, 5 U.S.C. §§ 551, *et seq.* of the Administrative
20 Procedures Act, and Due Process.
21

22 56. Defendants' policy and practice of issuing denial notices which fail to
23 adequately explain the basis for the finding of lack of good moral character is unlawful and
24 inconsistent with, *inter alia*, INA §§ 101(f), 335, 8 U.S.C. §§ 1101(f), 1446, 5 U.S.C. §§
25 551, *et seq.* of the Administrative Procedures Act, and Due Process.
26
27
28

1 4. Order Defendants to adjudicate within 60 days all class members' (other than
2 named plaintiffs') applications that have been pending due to delay;

3
4 5. Review *de novo* and decide the applications of those individual named
5 plaintiffs whose applications are pending over 120 days after the initial examination;

6 6. Order Defendants to provide written notice to all class members that the class
7 members may provide good moral character evidence in support of their application,
8 particularly where there is any criminal record;

9
10 7. Order Defendants to provide written notice to all class members whose cases
11 remain pending over 120 days following their first examination, that they may petition the
12 Federal District Court for a hearing on their application, and that prevailing applicants may
13 seek an award of attorneys fees pursuant to the Equal Access to Justice Act, 28 U.S.C. §
14 2412;

15
16 8. Issue a declaratory judgment that Defendants' challenged regulations, policies
17 and practices are in violation of the Immigration and Nationality Act, the Administrative
18 Procedures Act, and the Due Process guarantees of the Constitution;

19
20 9. Issue a permanent injunction requiring that Defendants provide written notice
21 to all naturalization applicants that an applicant may provide good moral character evidence
22 in support of their application, and that the applicant may petition, in case of a denial or
23 delay, the Federal District Court for a hearing;

24
25 10. Review *de novo* and decide the applications of those individual plaintiffs who
26 have been denied on good moral character grounds and who have exhausted their
27 administrative remedies, and grant them naturalization;

28
CLASS ACTION COMPLAINT - 25

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1 11. If necessary, order that a hearing take place in this matter;

2 12. Award reasonable costs and attorney's fees pursuant to the Equal Access to
3 Justice Act; and
4

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

6 Dated this 17th day of June, 2004.
7

8
9 _____
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