

7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

9 ROSHANAK ROSHANDEL, et al., individually  
and on behalf of all others similarly situated,

10 Plaintiffs,

11 v.

12 MICHAEL CHERTOFF, et al.,

13 Defendants.  
14

No. C07-1739 MJP

**Note for Motion: June 20, 2008  
Without Oral Argument**

**PLAINTIFFS' MOTION FOR  
PARTIAL SUMMARY  
JUDGMENT**

15 **I. INTRODUCTION**

16 Defendants have a mandatory duty to adjudicate naturalization applications within 120  
17 days of the applicant's interview. Yet defendants *admit* that hundreds of class members have  
18 waited more than 120 days after their interviews for a decision on their naturalization  
19 applications due to stalled name checks.

20 When, as here, CIS fails to timely render a decision on a naturalization application, the  
21 Court may either determine the matter itself or remand the application back to CIS with  
22 appropriate instructions. See 8 U.S.C. § 1447(b). Liability is clear, and plaintiffs now request  
23 class-wide relief.

24 Pursuant to Rule 56 of the Federal Rules of Civil Procedure, plaintiffs respectfully  
25 request that the Court grant their motion for partial summary judgment on Count I of the  
26 Amended Complaint.

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## II. BACKGROUND

Plaintiffs commenced this action on October 29, 2007 (Dkt. No. 1) and filed an Amended Complaint adding three new named plaintiffs on April 8, 2008 (Dkt. No. 21). Plaintiffs seek the following relief in Count I of the Amended Complaint:

Because Defendants have unlawfully failed to render a decision on proposed plaintiff class members' naturalization applications within 120 days after the date of their naturalization examinations . . . this Court should remand proposed plaintiff class members' naturalization applications to CIS pursuant to 8 U.S.C. § 1447(b) with instructions to render a decision on each proposed plaintiff class members' naturalization application within 90 days.

Dkt. No. 21 ¶¶ 74, 76.

In connection with defendants' motion to dismiss (Dkt. No. 9), defendants filed the Second Declaration of Susan Walk, in which Ms. Walk, Senior Adjudications Office at the Seattle Field Office of the United States Citizenship and Immigration Services ("CIS"), declared:

As of [April 10, 2008], USCIS systems indicate that 309 putative class members have been awaiting adjudication of their applications for naturalization for more than 120 days after an interview due to pending FBI name checks. Of the 309 individuals, 77 filed their applications more than three years ago, 143 filed their applications between two and three years ago, and 89 filed their applications less than two years ago.

Dkt. No. 23 ¶ 4.

This Court subsequently certified a class consisting of:

All lawful permanent residents of the United States residing in the Western District of Washington who have submitted naturalization applications to the USCIS but whose naturalization applications have not been determined within 120 days of the date of their initial examination due to the pendency of a name check.

Dkt. No. 28 at 13.

## III. ARGUMENT

### A. Defendants Have A Mandatory Duty To Adjudicate Naturalization Applications Within 120 Days Of The Applicant's Interview.

When an agency's regulations set forth a clear mandate, the Court should give effect to meaning "compelled by the regulation's plain language." Thomas Jefferson Univ. v. Shalala, 512

1 U.S. 504, 512 (1994) (citation omitted). Here, the regulations specify that CIS *must* render a  
2 decision on a naturalization application within 120 days of the date of the applicant's  
3 examination:

4 A decision to grant or deny the application *shall be made at the time of*  
5 *the initial examination or within 120-days after the date of the initial*  
6 *examination* of the applicant for naturalization under § 335.2.

7 8 C.F.R. § 335.3(a) (emphasis added). See also 8 C.F.R. § 316.14(b)(1) (“the employee of the  
8 Service who conducts the examination under paragraph (a) of this section *shall* determine  
9 whether to grant or deny the application” (emphasis added)).

10 In this case, the Court noted that "the regulations impose a nondiscretionary duty on  
11 USCIS to adjudicate naturalization applications within 120 days of the applicant’s interview."  
12 Dkt. No. 30 at 10. This Court, and numerous others, have reached the same conclusion in other  
13 cases. See Zagrebelny v. Frazier, Civil No. 07-1682 (PAM/JSM), 2008 WL 624072, at \*5 (D.  
14 Minn. March 4, 2008) (CIS has nondiscretionary duty to adjudicate naturalization application  
15 within 120 days of applicant's interview). See also Sze v. INS, 153 F.3d 1005, 1008 (9th Cir.  
16 1998) ("At the third stage, the applicant is interviewed by an INS officer who will . . . either  
17 grant or deny the naturalization application within 120 days of the interview.") (citing 8 C.F.R.  
18 § 335.3(a)); Al-Haider v. Mukasey, No. C07-592MJP, 2008 WL 539257, at \*4 (W.D. Wash.  
19 Feb. 25, 2008); Ali v. Mukasey, No. C07-595MJP, 2008 WL 538974, at \*4 (W.D. Wash. Feb.  
20 25, 2008); Arutyunov v. Mukasey, No. C07-593MJP, 2008 WL 539262, at \*4 (W.D. Wash. Feb.  
21 25, 2008); Dang v. Mukasey, No. C07-589MJP, 2008 WL 618637, at \*4 (W.D. Wash. Mar. 3,  
22 2008); Osman v. Mukasey, No. C07-588MJP, 2008 WL 618635, at \*4 (W.D. Wash. Mar. 3,  
23 2008); Phompanya v. Mukasey, No. C07-597MJP, 2008 WL 538981, at \*4 (W.D. Wash. Feb.  
24 25, 2008); Scego v. Mukasey, No. C07-598MJP, 2008 WL 538987, at \*4 (W.D. Wash. Feb. 25,  
25 2008); Shamdeen v. Mukasey, No. C07-164MJP, 2008 WL 539830, at \*4 (W.D. Wash. Feb. 25,  
26 2008); Somo v. Gonzales, No. 07cv0637-WQH (NLS), 2007 WL 2700948, at \*1 (S.D. Cal. Sept.  
10, 2007); Khdir v. Gonzales, No. 07-cv-00908-MSK-MEH, 2007 WL 3308001, at \*1 (D. Colo.

1 Nov. 6, 2007); Mohammad v. Keisler, No. 3:07-CV-594-S, 2008 WL 2026089, at \*2 (W.D. Ky.  
2 May 8, 2008); Lin v. Sec'y, U.S. Dep't of Homeland Sec., 485 F. Supp. 2d 263, 264 (W.D.N.Y.  
3 2007); Hussain v. Chertoff, 486 F. Supp. 2d 196, 198 (D. Mass. 2007); Osowa v. Gonzales, No.  
4 06-15602, 2007 WL 1101216, at \*2 (E.D. Mich. Apr. 5, 2007); Azouaz v. Chertoff, No.  
5 4:07CV247SNL, 2007 WL 1876474, at \*2 (E.D. Mo. 2007); Bengana v. Chertoff, No.  
6 4:07CV247SNL, 2007 WL 1385690, at \*2 (E.D. Mo. July 25, 2007); Obanigba v. Chertoff, No.  
7 4:07CV1192 RWS, 2008 WL 294332, at \*1 (E.D. Mo. Jan. 31, 2008); Hamzehzadeh v. Chertoff,  
8 No. 4:06CV1462 RWS, 2007 WL 1629895, at \*1 (E.D. Mo. June 4, 2007); Zhao v. Gonzales,  
9 No. 4:07-CV-659 (JCH), 2007 WL 2362134, at \*2 (E.D. Mo. Apr. 14, 2007); Shalabi v.  
10 Gonzales, No. 4:06CV866 RWS, 2006 WL 3032413, at \*1 (E. D.Mo. Oct. 23, 2006); Ibrahim v.  
11 Chertoff, 529 F. Supp. 2d 611, 613 (E.D.N.C. 2007); Shaah v. Klapakis, No. 06-5625, 2007 WL  
12 2768859, at \*3 n.4 (E.D. Pa. Sept. 21, 2007); Affaneh v. Hansen, No. C-3-06-267, 2007 WL  
13 295474, at \*2 (S.D. Ohio Jan. 29, 2007); Manzoor v. Chertoff, 472 F. Supp. 2d 801, 807(E.D.  
14 Va. 2007).

15 **B. There Is No Dispute That At Least 309 Class Members Have Waited More**  
16 **Than 120 Days For Adjudication Of Their Naturalization Applications.**

17 Defendants admit that, as of April 10, 2008, at least "309 putative class members have  
18 been awaiting adjudication of their applications for naturalization for more than 120 days after an  
19 interview due to pending FBI name checks."<sup>1</sup> Dkt. No. 23 ¶ 4. These class members  
20 experienced significant delays. Of the 309 individuals defendants identified, "77 filed their  
21 applications more than three years ago, 143 filed their applications between two and three years  
22 ago, and 89 filed their applications less than two years ago." Id.

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24 <sup>1</sup> There is no dispute that there were at least 309 class members as of April 10, 2008.  
25 However, by employing an unduly narrow interpretation of the Court's class definition,  
26 defendants' may have understated the number of class members. See Stipulated Motion for  
Clarification (Dkt. No. 36). Plaintiffs therefore reserve the right to seek an updated count.

1 It is undisputed that adjudication of hundreds of class members' naturalization  
2 applications has been delayed long past the 120 day deadline set forth in the regulations. The  
3 reason for the delay is immaterial. The regulations contain no exceptions.

4 Based on defendants' own representations to this Court, liability is clear. The sole  
5 remaining question is that of remedy.

6 **C. The Court Should Remand The Class Members' Applications With**  
7 **Instructions To Adjudicate Within 60 Days.**

8 When CIS fails to timely render a decision on a naturalization application, the applicant  
9 "may apply to the United States district court for the district in which the applicant resides for a  
10 hearing on the matter." 8 U.S.C. § 1447(b). The district court may then either determine the  
11 matter itself or remand the application back to CIS with appropriate instructions. 8 U.S.C.  
12 § 1447(b).

13 Plaintiffs respectfully request that the Court remedy the unlawful systemic delays at issue  
14 in this case by remanding the class members' naturalization applications to CIS with instructions  
15 to adjudicate them within 60 days. The Remand instructions should also make it clear that a  
16 pending name check alone *is not* a ground for defendants to deny a naturalization application.  
17 See Answer (Dkt. No. 33) ¶ 52 (admitting that "CIS will not grant naturalization applications  
18 until it receives a completed name check from the FBI"). Allowing defendants to deny the class  
19 members' applications because name checks remain pending would thwart the very purpose of  
20 this lawsuit and leave the class with no remedy for defendants' unlawful conduct.<sup>2</sup>

21 This is a fair and appropriate remedy for several reasons. First, remand with instructions  
22 is specifically authorized under 8 U.S.C. § 1447(b) and has been employed by other judges in

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23  
24 <sup>2</sup> Plaintiffs have no objection if, in the alternative, the Court deems it appropriate to retain  
25 jurisdiction and determine the class members' naturalization applications through a show cause  
26 procedure. See, e.g., Kumar v. Gonzalez, No. C07-1335-MJP, Order to Show Cause (Oct. 16,  
2007) ("The Court's standard practice in naturalization cases like this one is to require  
Defendants to show cause why Plaintiff should not be naturalized.").

1 this district.<sup>3</sup> See, e.g., Huynh v. Mukasey, No. C07-1344, 2008 WL 1338738 (W.D. Wash.  
2 April 7, 2008) (Lasnik, J.) (remanding application for adjudication within 10 days).

3 Second, given the modest size of the class and defendants' own alleged plan to eliminate  
4 the backlog in name checks by July 1, 2008 (see Dkt. 25-2 at 10), the proposed 60-day timeline  
5 should provide defendants ample time to complete these long-delayed applications.

6 Third, remand with instructions will allow defendants to use existing procedures to  
7 complete the class members' applications, albeit on an expedited basis. Similarly, defendants  
8 will be able to decide for themselves how to use the allotted time to complete the class members'  
9 name checks, if they so choose, and process their applications.

10 Finally, remand with instructions does not require the Court to take any further action  
11 with respect to the class members' naturalization applications, unless there is noncompliance  
12 with the Court's order. This remedy thus has the benefit of conserving scarce judicial resources.

#### 13 IV. CONCLUSION

14 For the foregoing reasons, plaintiffs respectfully request that the Court grant plaintiffs'  
15 motion for partial summary judgment on Count I of the Amended Complaint and remand the  
16 class members' naturalization applications to CIS with instructions that they be adjudicated  
17 within 60 days.

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25 <sup>3</sup> Plaintiffs note, also, that defendants did not move to dismiss Count I of the Amended  
26 Complaint but instead moved to remand the named plaintiffs' applications to CIS to be  
adjudicated within 30 days. See Dkt. No. 9 at 5-8, 19. Having asked the Court to remand the  
named plaintiffs' applications, defendants cannot now complain that remand is an inappropriate  
remedy for the class.

1 DATED: May 29, 2008.

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on May 29, 2008 I electronically filed the foregoing document with  
3 the Clerk of the Court using the CM/ECF system, which will send notification of such filing to  
4 the following:

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