

NMB

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

MIKHAIL IGNATYEV, NATALIYA
PETROVNA DEMIDCHIK on behalf of
themselves and all other similarly
situated,

v.

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,
EMILIO T. GONZALEZ, in his official
capacity as Director of the U.S.
Citizenship and Immigration Services, and
EVANGELIA KLAPAKIS, in her official
capacity as Acting District Director of the
U.S. Citizenship and Immigration Services
Philadelphia District Office.

Civ. Action No.

08-1547

CLASS ACTION COMPLAINT

**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 responsible federal agency.¹ 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.

¹ In all statutory and regulatory provisions cited in this Complaint, the term "Service" refers to the USCIS. 8 U.S.C. § 1101(a)(34); 6 U.S.C. § 271.

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 Gonzalez and Klapakis and 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 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 Mikhail Ignatyev and Nataliya Petrovna Demidchik, both of whom reside within the City of Philadelphia, in the 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 Emilio Gonzalez 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 Evangelia Klapakis is the Acting District Director of the USCIS Philadelphia District Office. 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.

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/CISOMB_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.

Petrovna Demidchik

52. Plaintiff Nataliya Petrovna Demidchik, a native of the Ukraine and citizen of the Russian Federation, arrived in the United States on August 17, 2000, as a lawful permanent resident on a petition filed by her daughter Olga Demidchik under § 204(a)(1)(A)(i), which allows United States citizens to sponsor immediate relatives,

including parents, to join them here. Ms. Demidchik was 76 years old at the time of her arrival and a widow.

53. Ms. Demidchik lives in Philadelphia. She is 83 years old and disabled, suffering from heart disease, impaired memory, poor concentration, depression, chronic pain, hypertension, vertigo, and headaches. She is financially supported by her daughter and currently receives Medicaid.

54. Ms. Demidchik regularly attends an adult daycare center where she participates in various daily activities in an attempt to remain physically and mentally active.

55. Ms. Demidchik submitted a naturalization application on August 12, 2005.

56. On or about December 16, 2005, Ms. Demidchik received a letter from CIS advising her that she would be examined in connection with her application to naturalize on January 30, 2006. However, she later received a letter from the Service dated January 11, 2006, informing her that the appointment had been cancelled "due to unforeseen circumstances." No further correspondence has been received from the Service regarding her application.

57. Ms. Demidchik has waited to be scheduled for an examination in connection with her naturalization application for over two years. Upon information and belief, USCIS has delayed Ms. Demidchik's naturalization examination because her FBI name check has not yet been completed.

58. Ms. Demidchik has been prejudiced by the long delay in the adjudication of her naturalization. First, the delay in her naturalization has caused her great mental distress. She believed that when she came to America, she was coming here for the rest

of her life. She also believes it is the duty of every decent person to apply for citizenship and to participate in the fabric of the country in which they live. She desperately wants to achieve United States citizenship before she dies

59. Second, Ms. Demidchik is also very keen to participate in the election process in this country but has been prevented from participating fully because of Defendants' policies and practices of delay. In the past, she has volunteered to work on campaigns during the race for governor of Pennsylvania. She is interested in and would like to participate in the election process to the extent she is able.

60. Finally, if Ms. Demidchik were a citizen, she would be able to access certain federal- and state-funded benefits, which would provide her with critical assistance as an elderly and disabled person.

DEFENDANTS' UNLAWFUL POLICIES AND PRACTICES

61. Plaintiffs are informed and believe that Defendants Chertoff, Gonzalez, and Klapakis 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.

62. Plaintiffs are informed and believe that Defendants Chertoff, Gonzalez, and Klapakis 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.

63. Plaintiffs are informed and believe that Defendants Chertoff, Gonzalez, and Klapakis 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.

64. 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.

65. 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.

66. Plaintiffs are informed and believe that Defendants Chertoff, Gonzalez, and Klapakis 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.

67. Plaintiffs are informed and believe that Defendants Mukasey, Chertoff, Gonzalez, and Klapakis 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.

68. 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

69. 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 to the USCIS District Office located within

Pennsylvania, and whose applications for naturalization remain unadjudicated more than 180 days after the date of submission, because of pending FBI name checks.

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

71. 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.

72. 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.

73. 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 processed or 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.

74. 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 Services of Philadelphia, the Nationalities Service Center, Inc., 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.

75. Defendants have acted and 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, GONZALEZ, AND KLAPAKIS

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

77. 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).

78. The actions and omissions of Defendants Chertoff, Gonzalez, and Klapakis in failing to adjudicate the applications for naturalization of the proposed plaintiff class with 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).

79. The actions and omissions of Defendant Chertoff, Gonzalez, and Klapakis 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).

80. 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

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

82. 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).

83. 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).

84. 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

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

86. 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.

87. Defendants Chertoff, Gonzalez, and Klapakis 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.

88. 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.

89. 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.

90. 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, GONZALEZ, AND KLAPAKIS

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

92. The actions of Defendants Chertoff, Gonzalez, and Klapakis 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).

93. 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.

94. The actions and omissions of Defendants Chertoff, Gonzalez, and Klapakis 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.

95. 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 with 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 with 180 days from the date of submission.
5. Order Defendants Chertoff, Gonzalez, and Klapakis 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, Gonzalez, and Klapakis in failing to adjudicate applications for naturalization within 180 days of the date of submission, because of pending FBI name checks;

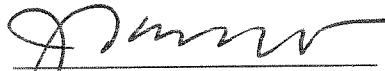
(b) the actions and omissions of Defendants Mukasey and Mueller in failing to timely complete FBI name checks to allow USCIS to adjudicate applications for naturalization within 180 days of the date of submission; and

(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,



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Dated: April 1, 2008