UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

AMALIA RAMIREZ CASTELANO, ARTURO GARCIA, SOFIA ELIZABETH LOPEZ, MIRIAM SUJEE GONALEZ, JUAN LUIS FLORES, ROCIO FLORES, J.S. a minor by and through his next friend Sonia Raquel Cantu-Sanchez, DAVID HERNANDEZ, and JUAN ARANDA, on their own behalf, and on behalf of all others similarly situated,	§	
Petitioners/Plaintiffs	§	
v.	§	CA M-08-057
CONDOLEEZZA RICE, Secretary of State, PATRICK F. KENNEDY, Under Secretary for Management MAURA HARTY, Assistant Secretary of State for Consular Affairs, ANN BARRETT, Managing Director, Passport Services Directorate, and UNITED STATES OF AMERICA,	§	
Respondents/Defendants	§	

DEFENDANTS' PARTIAL MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM PURSUANT TO FED.R.CIV.PRO. 12(b)6) AND MOTION TO SEVER

PRELIMINARY STATEMENT

The nine individual plaintiffs in this case claim to be U.S. citizens who have been wrongly denied a U.S. passport by the Passport Services Directorate of the Department of State (“Passport Office”). In their Second Amended Complaint, plaintiffs rely on the same exact set of alleged facts to support three very different causes of action, including relief under the

Administrative Procedures Act ("APA"), 5 U.S.C. § 701 *et seq*., 8 U.S.C. § 1503 ("section 1503), and a request for a writ of mandamus. As the Second Amended Complaint ("Complaint") stands, however, plaintiffs have not plead sufficient facts supporting their right to each type of relief; rather, because they incorporate by reference each and every preceding allegation, plaintiffs have incorporated facts which cannot and do not support the relief requested. Thus this Court should dismiss plaintiffs' claims under the APA and for a writ of mandamus.

Alternatively, as plaintiffs concede in their Complaint, there is an adequate remedy at law available to them under 8 U.S.C. § 1503, and thus the court must dismiss for failure to state a claim plaintiffs' request for a writ of mandamus and for relief under the APA.

Finally, as plaintiffs claims' under section 1503 are inherently individual claims requiring individual adjudication by this Court, the Court should sever the individual claims under section 1503.

BACKGROUND

The Secretary Of State Has Authority To Issue Passports And Broad Discretion Over The Manner And Process Of Issuance.

The Passport Act of 1926 provides that the "Secretary of State may grant and issue passports under such rules as the President shall designate and prescribe for and on behalf of the United States." 22 U.S.C. § 211a. Pursuant to this broad authority, the Secretary of State has promulgated various regulations concerning the application process. For example, "the applicant has the burden of proving that he or she is a U.S. citizen or non-citizen national." 8 C.F.R. § 51.40. In determining whether the applicant has met this burden, the Secretary has broad discretion to determine what evidence is sufficient. Thus, persons born in the U.S. applying for

a passport for the first time generally must produce a birth certificate that ". . . show[s] the full name of the applicant, the applicant's place and date of birth, the full name of the parent(s), and must be signed by the official custodian of birth records, bear the seal of the issuing office, and show a filing date within one year of the date of birth." 22 C.F.R. § 51.42(a).

A birth certificate, however, is not all the documentation that may be required. "If the applicant cannot submit a birth certificate that meets the requirement of paragraph (a) of this section, he or she must submit secondary evidence sufficient to establish to the satisfaction of the Department that he or she was born in the United States. Secondary evidence *includes but is not limited to* hospital birth certificates, baptismal certificates, medical and school records, certificates of circumcision, other documentary evidence created shortly after birth but generally not more than 5 years after birth, and/or affidavits of persons having personal knowledge of the facts of the birth." 22 C.F.R. § 51.42(b) (emphasis added.)

And this broad discretion permits the Secretary to seek additional documents as the Secretary deems necessary. Specifically, "The Department may require an applicant to provide any evidence that it deems necessary to establish that he or she is a U.S. citizen or non-citizen national, including evidence *in addition to the evidence* specified in 22 C.F.R. § 51.42 through 51.44." 22 C.F.R. § 51.45 (emphasis added.)

ANALYSIS

I. STANDARD OF REVIEW.

A motion to dismiss under Rule 12(b)(6) should be granted where it appears beyond doubt "that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Blackburn v. City of Marshall*, 42 F.3d 925, 931 (5th Cir. 1995). Although the district

court must accept the *well-pleaded* factual allegations of the complaint as true, "conclusory allegations or legal conclusions masquerading as factual conclusions will not suffice to prevent a motion to dismiss." *Fernandez-Montes v. Allied Pilots Ass'n*, 987 F.2d 278, 284 (5th Cir. 1993) (emphasis added). The ultimate question in a Rule 12(b)(6) motion is whether the complaint states a valid cause of action when it is viewed in the light most favorable to the plaintiff and with every doubt resolved in favor of the plaintiff. *Lowrey v. Texas A&M University System*, 117 F.3d 242, 247 (5th Cir. 1997). A court, however, is not to strain to find inferences favorable to the plaintiff and is not to accept conclusory allegations, unwarranted deductions or legal conclusions. *R2 Invs. LDC v. Phillips*, 401 F.3d 638, 642 (5th Cir. 2005) (citations omitted). The court does not evaluate the plaintiff's likelihood of success; instead, it only determines whether the plaintiff has a legally cognizable claim. *United States ex rel. Riley v. St. Luke's Episcopal Hosp.*, 355 F.3d 370, 376 (5th Cir. 2004).

II. THE COMPLAINT IS INHERENTLY SELF-CONTRADICTORY AND FAILS UNDER RULE 8.

Federal Rule of Civil Procedure 8(d)(2) permits a party to plead in the alternative and Rule 8(e) permits separate claims regardless of consistency. However, "a court need not feel constrained to accept as truth conflicting pleadings that make no sense, or that would render a claim incoherent, or that are contradicted either by statements in the complaint itself or by documents upon which its pleadings rely, or by facts of which the court may take judicial notice." *In re Livent, Inc. Noteholders Sec. Litig.*, 151 F. Supp. 2d 371, 405-06 (S.D.N.Y. 2001). The *Livent* court recognized that prior amendments to Rule 8 were meant to do away with some

amount of the formalism of the past and that Rule 8 permitted a complaint to incorporate alternative statements and plead separate claims "regardless of consistency." *See* Rule 8(e).[1]

The *Livent* court noted that this permissive standard "cannot be construed as an invitation to incoherent, self-contradictory pleadings." *Id*. at 406. Moreover, although separate claims may be permitted, "each unitary claim must be sufficient standing on its own." *Id.* at 407. But "[t]hat is not to say, however, that Rule 8(e) grants plaintiffs license to plead inconsistent assertions of facts within the allegations that serve as the factual predicates for an independent, unitary claim." *Id.* Rather, "[i]nternally conflicting factual assertions that constitute integral components of a claim must be distinguished from a permissible alternative statement embodying a theory of a whole sufficient claim." *Id*.

In this instance, plaintiffs' Complaint sets forth conflicting factual assertions that lead to an inconsistent set of facts which fail to support their particular claims. Plaintiffs admit in paragraph 79 that they have the option to ". . . petition a federal court to render a de novo determination of citizenship . . . ," and similarly assert in the last sentence of paragraph 4 that plaintiffs' available recourse includes the ability to "file a lawsuit." Plaintiffs then incorporate these allegations into their cause of action seeking a writ of mandamus. Such admissions and contentions actually serve to deny plaintiffs' claim for mandamus relief, by flatly contradicting their conclusion in paragraph 211 that they have been left without an adequate remedy at law. To establish mandamus jurisdiction, a petitioner must establish that there is no other adequate remedy available. *See Heckler v. Ringer*, 466 U.S. 602, 616-17 (1984). Thus, by asserting facts

---

[1] Defendants note that Rule 8 was amended in 2007, after the *Livent* decision, and section 8(e)(2) was deleted. However, current provisions 8(d)(2) and 8(e) are consistent with the provisions relied on in the *Livent* decision.

in their mandamus claim that they have an adequate remedy, plaintiffs' claim for mandamus must fail. Moreover, as set forth in detail below, leave to amend should be denied as to this claim as plaintiffs concede (and defendants do not dispute under the facts alleged in the Complaint) that plaintiffs may pursue an individual action for relief under Section 1503.

Paragraphs 4 and 79 are also incorporated into plaintiffs' cause of action under the APA. But such admissions defeat their claim for relief under the APA, as the APA must give way to statutes such as 8 U.S.C. § 1503, where Congress provided for specific jurisdiction. The APA, by its terms, provides a right to judicial review of all "final agency actions for which there is no other adequate remedy in a court." 5 U.S.C. § 704.

In addition to these allegations, plaintiffs' Complaint asserts specifically that they have the right to bring a section 1503 claim based on their factual allegations: In paragraph 213, plaintiffs allege that there has been a "denial of their passport applications" such that they have been denied a right and privilege sufficient to support a section 1503 declaratory judgment action. Defendants do not contest plaintiffs' ability to bring an individual section 1503 claim under the factual allegations brought in the Complaint.

As a result, both because plaintiffs plead facts in their APA claim which demonstrate that they have an adequate remedy under section 1503, and because they assert a separate right to relief under section 1503, plaintiffs' APA claims must also fail. Moreover, as set forth in detial below, since plaintiffs do have an adequate remedy under section 1503, leave to amend should be denied.

III. PLAINTIFFS' MANDAMUS CLAIMS ARE BARRED AS A MATTER OF LAW, AND THEREFORE SHOULD BE DISMISSED WITHOUT LEAVE TO AMEND.

To establish mandamus jurisdiction, a petitioner must show that: (1) he has a clear right to relief; (2) the defendant has a clear, non-discretionary duty to act; and (3) there is no other adequate remedy available. *Heckler*, 466 U.S. at 616-17; *In re Bankers Trust Co.*, 61 F.3d 465, 469 (6th Cir. 1995).

Section 1503 states in pertinent part:

> (a) Proceedings for declaration of United States nationality
> If any person who is within the United States claims a right or privilege as a national of the United States and is denied such right or privilege by any department or independent agency, or official thereof, upon the ground that he is not a national of the United States, such person may institute an action under the provisions of section 2201 of Title 28 against the head of such department or independent agency for a judgment declaring him to be a national of the United States....

8 U.S.C. § 1503(a). The statute specifically provides an adequate remedy for plaintiffs, and therefore plaintiffs cannot seek mandamus relief. Looking at the four corners of the complaint, and assuming the allegations as true, the court must conclude that they allege an adequate remedy available under this statute, and therefore mandamus relief is improper. For example, plaintiffs allege:

- in paragraph 2 that they are U.S. citizens;
- in paragraph 4 that a lawsuit is one available recourse;
- in paragraph 11 that they have been stripped of their rights and benefits of U.S. citizenship;
- in paragraph 79 that they have the right to petition this court under 1503;
- in paragraphs 103, 110, 122, 131, 140, 149, 172, and 185160, that defendants action in effect constituted a denial of their passport application;
- in paragraph 203 they conceded that defendants action constitutes final agency action, and incorporate this allegation into their 1503 claim; and
- in paragraph 213 plaintiffs allege that there has been a "denial of their passport applications" such that they have been denied a right and privilege sufficient to support a 8 U.S.C. § 1503 declaratory judgment action

Taking such allegations as true, and conceding as they do that plaintiffs in fact have an adequate remedy available to them, there is no basis in fact or in law for mandamus relief. Moreover, defendants do not challenge plaintiffs' ability to assert a section 1503 claim. Quite the contrary, in its concurrently-filed answer, defendants assert that circumstances plead permit plaintiffs, as individuals, to bring such an action. Thus, as a matter of law, this court should grant defendants motion to dismiss, and deny leave to amend.

IV. PLAINTIFFS CANNOT SEEK APA REVIEW BECAUSE SECTION 1503 IS THE ONLY STATUTE UNDER WHICH SUCH A CLAIM MAY BE ASSERTED, AND IT PROVIDES AND ADEQUATE REMEDY.

As Congress has provided an effective remedy under section 1503 for all individuals for whom the Department of State has denied a passport, and whom claim a right as a national, none of plaintiffs' claims are amenable to resolution under the APA, and plaintiffs fail to state a claim for which relief may be granted with respect to those APA claims. The APA, by its terms, provides a right to judicial review of all "final agency actions for which there is no other adequate remedy in a court." 5 U.S.C. § 704.

Plaintiffs cannot prevail on their APA claim alleging that defendants have denied issuance of a passport to them because 8 U.S.C. § 1503 specifically provides them with an adequate remedy at law, as plaintiffs themselves allege in paragraphs 79 and 213 of the Second Amended Complaint. In fact, assuming the allegations in the complaint to be true, as required when considering a motion to dismiss, plaintiffs are U.S. citizens who have been wrongly denied a passport. Thus, section 1503 provides for specific subject matter jurisdiction, as well as a cause of action. 8 U.S.C. § 1503(a) ("an action under this subsection . . . shall be filed in the district court of the United States for the district in which such person resides or claims a

residence, and jurisdiction over such officials in such cases is conferred upon those courts"). Moreover, because Congress specifically provided this statutory basis for such claims, the general causes of action under the APA do not apply. *See* 5 U.S.C. § 702 (providing that there is no APA jurisdiction where "any other statute that grants consent to suit expressly . . . ."); *United States v. Fausto*, 484 U.S. 439, 448-49 (1988) (general grants of jurisdiction cannot be relied upon in the face of a specific statute that confers and conditions jurisdiction). Where Congress specifically provides for district court jurisdiction over such a claim, assertion of any other basis of jurisdiction contradicts Congressional intent.

Where, as here, plaintiffs cannot overcome the legal obstacles and effectively amend to bring and APA claims, defendants respectfully request that the court grant its motion to dismiss without leave to amend.

V. PLAINTIFFS ARE IMPROPERLY JOINED AND THIS COURT SHOULD SEVER THE REMAINING INDIVIDUAL CLAIMS.

The individual plaintiffs do not assert a right to relief under section 1503 that "arises out of the same transaction, occurrence, or series of transactions or occurrences" as required under Fed. R. Civ. P. 20(a).[2] Because the factual allegations and legal interests for each plaintiff are unrelated and dissimilar to those of other plaintiffs, plaintiffs fail to satisfy the permissive joinder requirements of Rule 20(a). Additionally, allegations of general and unrelated delay in adjudication do not satisfy Rule 20(a). *See Coughlin v. Rogers*, 130 F.3d 1348 (9th Cir. 1997).

[2] Two requirements must be met for joinder to be allowed: "All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action." Fed. R. Civ. P. 20(a).

Consequently, defendants respectfully move to sever all the causes of action of all remaining plaintiffs from the claims of plaintiff Castelano on the grounds of misjoinder. Fed. R. Civ. P. 20(b), 21.[3]

In determining whether severance is appropriate, a court considers: (1) whether the claims arise out of the same transaction or occurrence; (2) whether the claims present common questions of law or fact; and (3) whether prejudice to a substantial right would be avoided if severance was granted. *Coughlin*, 130 F.3d at 1350 (finding joinder inappropriate due to unique nature of each naturalization application).

A. No Common Transaction or Occurrence Exists Amongst Plaintiffs.

First, each plaintiff's passport application was executed separately and independently from one another. Therefore, it cannot be said that plaintiffs' claims arise from the same transaction or occurrence. Moreover, plaintiffs' claims of citizenship rest on different grounds. For example, plaintiff Rocio Flores' claim is a claim of derivative citizenship, not her birth in the United States, and thus has different evidentiary requirements than many of the other plaintiffs, all of whom claim birth in the United States. *See* Complaint, ¶¶ 141, 143. Plaintiff Arturo Garcia claims birth in the United States, and no midwife was listed on the birth certificate provided with his passport application. *Id*. at ¶ 104. However, his birth was registered 47 (forty-seven) years after his birth. *See id.* at ¶ *105.* Each plaintiff filed their applications separately, separately

[3] Failure to satisfy either of the two requirements for joinder is a sufficient basis for the Court to sever the claims. Upon a finding of misjoinder, "[p]arties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately." Fed. R. Civ. P. 21.

signed their applications under oath, and each application was adjudicated separately. *See* Complaint, ¶¶ 87-185, inclusive.

The existence of a common allegation of delay of adjudication or failure to adjudicate, in and of itself, does not suffice to create a common transaction or occurrence. *Coughlin,* 130 F.3d at 1350. In *Coughlin*, 49 plaintiffs sought a writ of mandamus compelling the former INS to adjudicate their pending applications or petitions. "[T]he basic connection among all the claims [was] the alleged procedural problem of delay." *Id.* The court of appeals rejected that as a basis for finding a common transaction or occurrence, noting in relevant part:

> [e]ach Plaintiff has waited a different length of time, suffering a different duration of alleged delay. Furthermore, the delay [was] disputed in some instances and varies from case to case.

Id.

The same is true here. Although delay or "failure to deny" may be a common thread in all the claims, the reasons for the results in each case depend on the applicant's particular circumstances. In some cases applicants may have failed to submit requested information, others may have not submitted requested information in a timely fashion, other may have submitted copies of birth certificates with wildly differing results, such as plaintiff Sofia Lopez, who admits to being named in two birth certificates, one alleging birth in the United States, the other alleging birth in Mexico. Complaint, ¶¶ 112, 115.

Because each applicant's particular circumstances vary, the reasons for the delay in adjudicating applications vary. Therefore, the delay itself is not a common transaction or occurrence.

B. No Common Questions Of Law Or Fact Exist Amongst Plaintiffs.

1. Plaintiffs' combined legal claims alone are too numerous and different to support joinder.

Plaintiffs' allegations of due process rights violations similarly would require individualized adjudication and consideration. *See Nguyen Da Yen v. Kissinger*, 70 F.R.D. 656 (N.D. Cal. 1976). In *Nguyen*, plaintiffs alleged that Vietnamese children were brought to the United States in violation of due process without proper documentation showing that they were orphaned. *Id.* In response, the court held that the requirements of Rule 23(b)(2) were not satisfied because, even if a class were certified, the court would be faced with "[s]ome two thousand individual adjudications." *Id.* In so finding, the court based its holding on a determination that the requirement of a "close identity" between plaintiffs was lacking because of the individualized nature of each person's due process claim. *Id.*

2. Claims of citizenship for passport applications are individual and do not present common questions of law or fact.

No common question of fact arises with regards to applications for passports. Each application for a United States passport reflects the particular circumstances of the applicant and requires separate adjudication by the Passport Office. Similarly, a court taking jurisdiction to review a denial of a passport on grounds of a failure to establish nationality under 8 U.S.C. § 1503 would require an individual hearing. As another district court noted when granting severance under a different statute requiring individual hearings, each application would have to be addressed separately by the court. *Abdelkarim v. Gonzales*, 2007 WL 1284924 (E.D. Mich. 2007).

Here, each plaintiff presents a different factual situation. Thus, each plaintiff must receive personalized attention by the Passport Office and, ultimately, this Court. Consequently, there can be no common issues of fact or law. Also, the mere fact that all plaintiffs' claims arise under the same general law does not necessarily establish a common question of law or fact:

> Clearly, each plaintiffs' claim is discrete, and involves different legal issues, standards and procedures. Indeed, even if plaintiffs' cases were not severed, the Court would still have to give each claim individualized attention. Therefore, the claims do not involve common questions of law or fact.

Coughlin, 130 F.3d at 1351.

Moreover, an allegation of similarity of claims cannot serve as a basis for joinder where it is irrelevant to the plaintiffs' individual claims. *See Saval v. BL Ltd.*, 710 F.2d 1027, 1031-32 (4th Cir. 1983) (claims of similarity in automobile defects were irrelevant to the warranty relief sought and did not satisfy the transaction-or-occurrence test). Rule 20 of the Federal Rules of Civil Procedure is designed to promote trial convenience and to expedite the final determination of disputes. *Saval*, 710 F.2d at 1031; *League to Save Lake Tahoe v. Tahoe Regional Planning Agency*, 558 F.2d 914, 917 (9th Cir. 1977).

In a mandamus/APA action such as this one, the common allegation of delay does not alter plaintiffs' legal rights or remedies. Nor does the common allegation of delay aid in the Court's disposition of plaintiffs' claims.

Because plaintiffs can not demonstrate how each of their cases arises from the same transaction or occurrence, or show how each case involves common questions of law or fact, defendants respectfully request that the Court sever these claims so that each it can consider each the facts of each individual case separately.

CONCLUSION

Plaintiffs' Complaint fails to plead inherently contradictory claims in the alternative, asserting for each of the causes of action allegations of fact that defeat plaintiffs' claims under the APA and the Mandamus Act. Moreover, both APA and mandamus relief require the unavailability of specific adequate remedy, provided by Congress for claims such as plaintiffs under 8 U.S.C. § 1503. Accordingly the Court should dismiss Plaintiffs' claims under the APA and mandamus for failure to state a claim. Further, as individual plaintiff's are misjoined, the Court should sever the claims of all remaining plaintiffs from the claims of plaintiff Castelano.

Dated: October 15, 2008

DONALD J. DEGABRIELLE JR
United States Attorney

LISA LUIS
United States Attorney's Office
Southern District of Texas
PO Box 61129
Houston, TX 77208
713-567-9534
Fax: 713-718-3303
Email: lisa.luis@usdoj.gov

GREGORY G. KATSAS
Assistant Attorney General

S/ Elizabeth J. Stevens
ELIZABETH J. STEVENS (VA Bar No. 47445)*
Assistant Director
District Court Section
Office of Immigration Litigation
Civil Division
U.S. Department of Justice
P.O. Box 868, Ben Franklin Station
Washington, D.C. 20044
Tel: (202) 616-9752
Fax: (202) 305-7000
E-mail: Elizabeth.Stevens@USDOJ.gov

Counsel for Federal Defendants

* application for *pro hac vice* admission pending

CERTIFICATE OF SERVICE

I hereby certify that on October 15, 2008, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following attorneys of record:

Elisabeth Lisa S. BRODYAGA
Attorney at Law
17891 Landrum Park Road
San Benito, Texas 78586
Email: lisabrodyaga@aol.com

Lisa GRAYBILL
ACLU FOUNDATION OF TEXAS
P.O. Box 12905
Austin, TX 78711
Email: Lgraybill@aclutx.org

In addition, I certify that on October 15, 2008, I provided true and correct copies of the foregoing document via e-mail on the following non-ECF filers, who are not yet attorneys of record but are listed as new counsel on plaintiffs' latest filing:

Robin L. GOLDFADEN
ACLU FOUNDATION
Immigrant Rights Project
39 Drumm Street
San Francisco CA 94111
Email: rgoldfaden@aclu.org

Vanita GUPTA
ACLU FOUNDATION
Racial Justice Program
125 Broad Street
New York, NY 10004
Email: vgupta@aclu.org

Adam K. LEVIN
Email: AKLevin@HHLAW.com
Melissa N. HENKE
Email: MNHenke@HHLAW.com
David J. WEINER
Email: DJWeiner@HHLAW.com
Robert B. WOLINSKY
Email: RBWolinsky@HHLAW.com
HOGAN & HARTSON LLP
555 13th Street, NW
Washington, D.C. 20004

/s/ Elizabeth J. Stevens
Assistant Director
United States Department of Justice

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

AMALIA RAMIREZ CASTELANO, ARTURO GARCIA, SOFIA ELIZABETH LOPEZ, MIRIAM SUJEE GONALEZ, JUAN LUIS FLORES, ROCIO FLORES, J.S. a minor by and through his next friend Sonia Raquel Cantu-Sanchez, DAVID HERNANDEZ, and JUAN ARANDA, on their own behalf, and on behalf of all others similarly situated,	§	
Petitioners/Plaintiffs	§	
v.	§	CA M-08-057
CONDOLEEZZA RICE, Secretary of State, PATRICK F. KENNEDY, Under Secretary for Management MAURA HARTY, Assistant Secretary of State for Consular Affairs, ANN BARRETT, Managing Director, Passport Services Directorate, and UNITED STATES OF AMERICA,	§	
Respondents/Defendants	§	

PROPOSED ORDER

Now, this __ day of ______, 2008, Defendants' motion to dismiss Plaintiffs claims for relief under the Administrative Procedure Act and seeking a writ of mandamus under Rule 12(b)(6) of the Federal Rules of Civil Procedure is hereby GRANTED. Plaintiffs are denied leave to amend. Defendants motion to sever the individual claims of Plaintiffs is granted, with each plaintiff to re-file an individual action.

____
CRANE, RANDY
U.S. District Court Judge__