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13
14 UNITED STATES DISTRICT COURT
15 SOUTHERN DISTRICT OF CALIFORNIA
16 SAN DIEGO DIVISION

17 DANIEL TARTAKOVSKY, MOHAMMAD
18 HASHIM NASEEM, ZAHRA JAMSHIDI,
MEHDI HORMOZAN,

19 Plaintiffs-Petitioners,

20 v.

21 PAUL M. PIERRE, District Director, U.S.
22 Department of Homeland Security, Bureau of
Citizenship and Immigration Services, San Diego
23 District; EMILIO T. GONZALEZ, Director, U.S.
Department of Homeland Security, Bureau of
24 Citizenship and Immigration Services; MICHAEL
CHERTOFF, Secretary of Homeland Security;
25 ROBERT S. MUELLER III, Director of the
Federal Bureau of Investigation; ALBERTO
26 GONZALES, Attorney General of the United
States,

27 Defendants-Respondents.

FILED

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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DEPUTY

ORIGINAL

CASE NO. 07 CV 1667 BEN (CAB)

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND
PETITION FOR NATURALIZATION
PURSUANT TO 8 U.S.C. § 1447(B)

CLASS ACTION

INTRODUCTION

1
2 1. Plaintiffs-Petitioners, Daniel Tartakovsky, Mohammad Hashim Naseem, Zahra
3 Jamshidi, and Mehdi Hormozan (referred to collectively as Plaintiffs), respectfully submit this
4 Complaint for Declaratory and Injunctive Relief and Petition for Naturalization pursuant to
5 8 U.S.C. § 1447(b). A motion for class certification will be filed in due course.

6 2. Plaintiffs are all long-time lawful permanent residents of the United States.
7 Having met all statutory requirements each of them has sought to become a citizen of this country
8 by applying for naturalization, . However, despite successfully undergoing their naturalization
9 interviews and clearing criminal background checks more than two or three years ago, none of the
10 Plaintiffs has received an adjudication from the U.S. Bureau of Citizenship and Immigration
11 Services ("CIS") because a so-called "FBI name check" for each remains pending.

12 3. Defendants-Respondents (referred to collectively as Defendants) are officers of
13 CIS, the Federal Bureau of Investigation ("FBI") and the Attorney General of the United States
14 and are responsible for the naturalization process, including the FBI name check, which CIS
15 requires for naturalization despite the absence of any promulgated rule or regulation requiring it.

16 4. Each Plaintiff therefore seeks to be naturalized by this Court, as Congress has
17 authorized through the Immigration and Nationality Act. *See* 8 U.S.C. § 1447(b) (district court
18 may make a determination of a naturalization application if there has been no adjudication within
19 120 days of an initial examination – i.e., the applicant's naturalization interview.) *See United*
20 *States v. Hovsepien*, 359 F.3d 1144, 1151 (9th Cir. 2004) (*en banc*).

21 5. In failing to adjudicate the Plaintiffs' naturalization applications, Defendant
22 officers of CIS have violated CIS regulations requiring that such applications be adjudicated
23 within 120 days of the initial examination. 8 C.F.R. § 335.

24 6. In addition, Defendant officers of both CIS and the Federal Bureau of
25 Investigation ("FBI") have engaged in unreasonable and extraordinary delay in adjudicating
26 Plaintiffs' naturalization applications, in violation of the Administrative Procedures Act, 5 U.S.C.
27 §§ 555, 706, and the Due Process Clause.

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7. Defendants' rationale for the unreasonable delays – that the delays are required to complete "FBI name checks" – highlights an independent violation of the Administrative Procedures Act: Defendants' failure to follow the notice and comment requirements of 5 U.S.C. § 553. CIS has promulgated no regulations concerning a "name check," but nonetheless has imposed the FBI name check as a requirement for five years – without any deadlines for completion of the checks. In contrast, immigration regulations do provide for criminal records checks based on Plaintiffs' fingerprints and biographical data. 8 U.S.C. § 335.2(b). Each of the Plaintiffs has passed those specific background checks. Because Defendants' addition of the FBI name check constituted a substantive rule and causes undue burden and prejudice to Plaintiffs and other members of the proposed class, the public should have been provided notice and an opportunity to comment prior to its implementation.

8. The CIS Ombudsman has questioned the name check process. On June 11, 2007, the Ombudsman issued his 2007 Annual Report, which singled out name checks as a significant problem, stating, "FBI name checks, one of the security screening tools used by USCIS, continue to significantly delay adjudication of immigration benefits for many customers, hinder backlog reduction efforts, and may not achieve their intended national security objectives. FBI name checks may be the single biggest obstacle to the timely and efficient delivery of immigration benefits, and the problem of long-pending FBI name check cases worsened during the reporting period."

9. The Ombudsman further noted, "Unlike FBI name checks, other types of background and security checks – e.g., fingerprint checks, the Interagency Border Inspection Systems name checks (IBIS), and the Automated Biometric Identification System (IDENT) checks – return results within a few days, if not a few minutes. These law enforcement and watch list checks do not significantly prolong USCIS processing times or contribute to the USCIS backlog."

10. This CIS Ombudsman reports that FBI name checks cover not only a "principal subject of an investigation," but also any "person referenced in a file," such as a crime victim, witness, or other person innocent of any wrongdoing. "Name checks are not conducted by the

1 FBI as part of ongoing investigations or from a need to learn more about an individual because of
2 any threat or risk perceived by the FBI.”

3 11. According to the Ombudsman, “Completion of the name check process may take
4 considerable time because manual reviews of FBI files are sometimes required. This review may
5 include FBI reporting on fragments of names of people who are not necessarily central or directly
6 related to an investigation or law enforcement matter.... The delay caused by the FBI name check
7 has substantial consequences to applicants and their families, as well as to our country and the
8 economy.”

9 12. The 2007 Annual Report further states, “The Ombudsman agrees with the
10 assessment of many case workers and supervisors at USCIS field offices and service centers that
11 the FBI name check process has limited value to public safety or national security, especially
12 because in almost every case the applicant is in the United States during the name check process,
13 living or working without restriction.... USCIS maintains that the name check process is of value,
14 but it remains unclear whether the process has added any additional value over the security
15 processes already in place.”

16 13. The Ombudsman recommends, “Considering the protection the FBI name check
17 provides, the cost of government resources used, and mental and actual hardships to applicants
18 and their families, USCIS should reassess the continuation of its policy to require FBI name
19 checks in their current form.”

20 14. Plaintiffs all have spent many years in the United States and have made this Nation
21 their home. They seek to pledge their allegiance to their adopted country and to participate fully
22 in U.S. society as citizens. Each of the Plaintiffs has met the statutory requirements to become a
23 U.S. citizen, and have sought relief through requests to representatives in Congress and through
24 formal inquiries with the government. Nonetheless, each of the Plaintiffs has been stymied in his
25 or her efforts by the unreasonable and extraordinary delay of the Defendants.

26 15. Defendants’ failure to abide by the law is inconsistent with properly promulgated
27 regulations and with the statutes passed by Congress. As a result, Plaintiffs are unable to
28 participate in civic society by voting and jury service. Plaintiffs also are unable expeditiously to

1 sponsor for lawful permanent residency immediate relatives living abroad including, in some
 2 cases, their parents, spouses and children. Plaintiffs also are unable to participate freely as U.S.
 3 citizens in the Visa Waiver Program and to travel abroad and return to the United States without
 4 fear of exclusion.

5 16. Plaintiffs seek not only their own naturalization through 8 U.S.C. § 1447(b), but
 6 also seek declaratory and injunctive relief as representatives of a class of other individuals who
 7 have satisfied all statutory requirements for naturalization and are suffering similar unreasonable
 8 delays of over 120 days since their naturalization interviews. Plaintiffs ask the Court to declare
 9 that the Defendants are violating the due process rights of the Plaintiffs, as well as the
 10 Administrative Procedures Act and the immigration laws and regulations, in failing to complete
 11 all background checks necessary for adjudication of Plaintiffs' naturalization applications within
 12 120 days of their interviews.

13 JURISDICTION AND VENUE

14 17. The Court has subject matter jurisdiction over this case pursuant to 8 U.S.C.
 15 § 1447(b) (district court jurisdiction to adjudicate delayed naturalization applications) and
 16 28 U.S.C. § 1331 (federal question). The court may grant declaratory judgment under 28 U.S.C.
 17 §§ 2201, 2202 and Fed. R. Civ. P. 57. The Court may grant injunctive relief under Fed. R. Civ. P.
 18 65.

19 18. Venue is proper in the Southern District of California pursuant to 28 U.S.C.
 20 § 1391(e). Plaintiffs sue the Defendants in their official capacities as officers and employees of
 21 the United States. A substantial portion of the events giving rise to this Complaint occurred
 22 within this District, where the Plaintiffs' applications for naturalization are pending before the
 23 San Diego District of the CIS. In addition, venue is proper in this District pursuant to 8 U.S.C.
 24 § 1447(b), which provides that a petition for de novo review of a naturalization application shall
 25 be filed in the district in which the applicant resides. All of the Plaintiffs live within this District.

26 PARTIES

27 19. Plaintiff Daniel Tartakovsky is a native and citizen of Russia. He is a lawful
 28 permanent resident of the United States and lives in San Diego, California. He applied for

1 naturalization with CIS on November 4, 2002 and passed his naturalization examination on June
2 4, 2003. His naturalization application has not been adjudicated.

3 20. Plaintiff Mohammad Naseem is a native and citizen of Iraq. He is a lawful
4 permanent resident of the United States and lives in El Cajon, California. He applied for
5 naturalization with CIS on August 23, 2004 and passed his naturalization examination on March
6 15, 2005. His naturalization application has not been adjudicated.

7 21. Plaintiff Zahra Jamshidi is a native and citizen of Iran. She is a lawful permanent
8 resident of the United States and resides in San Diego, California. She applied for naturalization
9 with CIS on May 1, 2003 and passed her naturalization examination on February 2, 2004. Her
10 naturalization application has not been adjudicated.

11 22. Plaintiff Mehdi Hormozan is a native and citizen of Iran. He is a lawful permanent
12 resident of the United States, and resides in San Diego, California. He applied for naturalization
13 with CIS on October 2, 2002 and passed his naturalization examination on September 4, 2003.
14 His naturalization application has not been adjudicated.

15 23. Respondent Michael Chertoff is the Secretary of Homeland Security, which
16 encompasses CIS. Mr. Chertoff is ultimately responsible for the administration of all
17 immigration and naturalization laws, including the processing and determination of applications
18 for naturalization. He is sued in his official capacity.

19 24. Respondent Robert S. Mueller, III is the Director of the Federal Bureau of
20 Investigation. Mr. Mueller is ultimately responsible for the processing of "name checks"
21 submitted by CIS to the FBI during the naturalization process. Mr. Mueller is sued in his official
22 capacity.

23 25. Respondent Alberto Gonzales is the Attorney General of the United States. He is
24 the head of the U.S. Department of Justice, which encompasses the FBI. Mr. Gonzales is also
25 jointly responsible with Mr. Chertoff for enforcement of immigration laws. Mr. Gonzales is sued
26 in his official capacity.

27 26. Respondent Emilio T. Gonzalez is the Director of the Bureau of Citizenship and
28 Immigrations Services, and is responsible for the implementation of immigration and

1 naturalization laws, including the processing and determination of applications for naturalization.
2 He is sued in his official capacity.

3 27. Respondent Paul M. Pierre is the District Director of the Bureau of Citizenship and
4 Immigration Services, San Diego District, is also responsible for the implementation of
5 immigration and naturalization laws, including the processing and determination of applications
6 for naturalization. He is sued in his official capacity.

7 **LEGAL FRAMEWORK**

8 28. Federal immigration law allows persons who have been residing in the United
9 States as lawful permanent residents to become United States citizens through a process known as
10 naturalization.

11 29. A person seeking to naturalize must meet certain requirements, including an
12 understanding of the English language and history and civics of the United States; a sufficient
13 period of lawful permanent resident status and physical presence in the United States; and good
14 moral character. 8 U.S.C. §§ 1423, 1427(a).

15 30. Persons seeking to naturalize must submit an application for naturalization to CIS.
16 8 U.S.C. § 1445. CIS is the agency that is responsible for adjudicating naturalization
17 applications. 8 C.F.R. § 100.2.

18 31. Once an application is submitted, CIS conducts a background investigation of each
19 naturalization applicant. 8 U.S.C. § 1446(a); 8 C.F.R. § 335.1.

20 32. According to CIS regulations, the background investigation includes a full
21 criminal background check performed by the FBI. 8 C.F.R. § 335.2. After the background
22 investigation is completed, CIS schedules a naturalization examination, at which an applicant
23 meets with a CIS examiner who is authorized to ask questions and take testimony. The CIS
24 examiner must determine whether to grant or deny the naturalization application. 8 U.S.C.
25 § 1446(d).

26 33. CIS must grant a naturalization application if the applicant has complied with all
27 requirements for naturalization. 8 C.F.R. § 335.3. Naturalization is not a discretionary benefit,
28 but a right upon satisfaction of statutory requirements.

1 34. CIS must grant or deny a naturalization application at the time of the examination
2 or, at the latest, within 120 days after the date of the examination. 8 C.F.R. § 335.3. Once an
3 application is granted, the applicant is sworn in as a United States citizen.

4 35. In general, Congress has provided that applications for immigration benefits
5 should be adjudicated within 180 days of the initial filing of the application. 8 U.S.C. § 1571.
6 The President has also expressed that view. *See* Remarks by the President at INS Naturalization
7 Ceremony (July 10, 2001), available at [http://www.whitehouse.gov/news/releases](http://www.whitehouse.gov/news/releases/2001/07/print/20010710-1.html)
8 [/2001/07/print/20010710-1.html](http://www.whitehouse.gov/news/releases/2001/07/print/20010710-1.html) (urging immigration agencies to adopt standard of six-month
9 processing time for applications for immigration benefits).

10 36. Plaintiffs are informed and believe that in 2002, CIS drastically expanded the
11 scope of one type of background check known as an "FBI name check." A "name check" is a
12 check of FBI records based on the name of the applicant. The FBI conducts the "name check"
13 through manual and electronic searches of the FBI's centralized records. CIS requests the FBI to
14 conduct "name checks" on all applications for naturalization.

15 37. Plaintiffs are informed and believe that the FBI name check requirement is
16 implemented in such a manner that it is highly likely that an applicant may be identified
17 erroneously as a person "of interest" to the FBI, thereby delaying adjudication of the
18 naturalization application, even though the applicant has committed no crimes and has never been
19 a suspect in any investigation. For example, the name check may identify a different person with
20 a name similar to the applicant's, or result in a "hit" when the applicant's name is mentioned in
21 FBI records because he has been an innocent witness or victim of a crime, has undergone
22 employment-related security clearances in the past, or has assisted the FBI in its work.

23 38. Plaintiffs are informed and believe that CIS does not adjudicate applications for
24 naturalization until it receives a completed "name check" from the FBI. CIS has not promulgated
25 any regulations setting forth the "name check" as a prerequisite for naturalization. Neither CIS
26 nor the FBI imposes any time limits for completion of "name checks." The FBI claims that CIS
27 determines the order of resolution of the requested "name checks," and CIS claims that it cannot
28 ask or require the FBI to complete "name checks" within any particular timeframe.

39. Plaintiffs are informed and believe that in April 2006, CIS implemented a new policy or practice of delaying naturalization examinations until after the "name check" is completed. Thus, for certain applicants for naturalization, lengthy delays in adjudication now occur prior to the examination, rather than after the examination. The April 2006 policy change has resulted in delayed scheduling of the naturalization examination for tens of thousands of applicants. CIS's expressed purpose for the policy change was to discourage litigation under 8 U.S.C. § 1447(b).

40. When CIS fails to adjudicate a naturalization application within 120 days of the examination, the applicant may seek de novo review of the application by a district court. 8 U.S.C. § 1447(b). When the applicant requests district court review, the district court gains exclusive jurisdiction over the application, *United States v. Hovsepian*, 359 F.3d 1144 (9th Cir. 2004), and it may naturalize the applicant. 8 U.S.C. § 1447(b).

FACTS

Plaintiffs

41. Daniel Tartakovsky is a native and citizen of Russia. He entered the United States in August 1993 on an F-1 student visa to pursue doctoral studies in hydrology at the University of Arizona. Upon completing his Ph.D., Dr. Tartakovsky worked at Los Alamos National Laboratory (LANL) in New Mexico in a post-doctoral position, then as a technical staff member, and more recently as a Team Leader. Dr. Tartakovsky has been a lawful permanent resident of the United States since January 2000 and is married to a native-born citizen of the United States. Dr. Tartakovsky is currently on leave of absence from LANL. He presently works at the University of California, San Diego as a tenured professor in the mechanical and aerospace engineering department. Dr. Tartakovsky lives in San Diego, California with his wife and daughter.

42. Dr. Tartakovsky submitted his naturalization application on November 4, 2002. On June 4, 2003, Dr. Tartakovsky was interviewed by CIS and informed that he had successfully completed his naturalization interview.

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1 43. Dr. Tartakovsky meets all statutory requirements for naturalization. He has been
2 waiting over four years since his interview, and has yet to receive an adjudication of his
3 application. In October 2005 and October 2006, Dr. Tartakovsky contacted the CIS Ombudsman,
4 Mr. Prakash Kharti. He received two separate letters indicating the FBI name check remains
5 pending.

6 44. Because he is not a United States citizen, Dr. Tartakovsky's job opportunities and
7 ability to apply for certain grants and conduct research in certain areas are limited. He also has
8 been unable to petition for his aging parents, who live in Russia, to become lawful permanent
9 residents of the United States. *See* 8 U.S.C. § 1151(b)(2)(A)(i) (providing that children, spouses,
10 and parents of U.S. citizens are not subject to worldwide limitations on numbers of visas issued);
11 8 U.S.C. § 1153(a) (setting forth preferences for issuance of visas to unmarried sons or daughters
12 of U.S. citizens, spouses and unmarried sons or daughters of lawful permanent residents, married
13 sons and daughters of U.S. citizens, and brothers or sisters of U.S. citizens, in that order).

14 45. Dr. Tartakovsky's work requires him to travel abroad for professional conferences
15 and research exchanges. Without a United States passport, it is significantly more difficult for
16 him to travel to various countries, due to visa requirements.

17 46. Mohammad Hashim Naseem is a native and citizen of Iraq. He is of Kurdish
18 descent. Mr. Naseem, along with his wife and four daughters, were sponsored by the World
19 Relief Organization. They entered the United States in 1996 after being granted asylum by the
20 U.S. government. Mr. Naseem and his family currently live in El Cajon, California.

21 47. After participating as a security guard at a military airport as part of the U.S.-
22 sponsored Operation Provide Comfort to establish a safe zone in the Kurdish region of Iraq in
23 1990, Mr. Naseem was given the opportunity to relocate. He and his wife and four daughters
24 came to the United States after spending three months at Camp Haven in Guam, where they
25 passed interviews and physical examinations conducted by U.S. Immigration Officers.

26 48. On August 23, 2004, Mr. Naseem applied for citizenship. He successfully
27 completed his naturalization interview on March 15, 2005. At the end of the interview, the CIS
28 officer told Mr. Naseem that he had passed his examination, but that his FBI name check

1 remained pending. A further inquiry by Mr. Naseem in October 2006 reflected no change in
2 status. Mr. Naseem's wife has also applied for naturalization, successfully completed her
3 interview, and has been waiting for her FBI name check to clear. Mr. Naseem meets all statutory
4 requirements for naturalization. Nonetheless, his application has not been adjudicated.

5 49. Mr. Naseem and his family have suffered harm from the delay of his
6 naturalization. All four daughters are lawful permanent residents. His oldest daughter will turn
7 18 next year. If Mr. Naseem is not naturalized before his daughter's eighteenth birthday, she will
8 lose the opportunity to obtain automatic derivative citizenship along with her father. 8 U.S.C. §
9 1431.

10 50. Zahra Jamshidi is a native and citizen of Iran. She has been a lawful permanent
11 resident of the United States since July 23, 1998, after arriving in the United States as a refugee
12 with her husband and children, who were also born in Iran.

13 51. She filed her naturalization application on May 1, 2003. She was interviewed by
14 CIS on February 2, 2004 and informed that she successfully passed her naturalization
15 examination. She meets all statutory requirements for naturalization.

16 52. Ms. Jamshidi's husband applied for naturalization and was interviewed by CIS on
17 or about the same date as Ms. Jamshidi. Her husband's application was approved, and he became
18 a naturalized citizen of the United States shortly after his interview. Her children are also
19 naturalized citizens of the United States.

20 53. Without a United States passport, Ms. Jamshidi has been unable to travel to visit
21 her parents, who remained in Iran. Her parents were unable to travel far from Iran but could have
22 traveled to a nearby third country, such as Turkey or Dubai, to visit Ms. Jamshidi. But without a
23 United States passport, Ms. Jamshidi is unable to travel to those countries.

24 54. While her naturalization application has been pending, Ms. Jamshidi's father died
25 on July 23, 2005 without having seen her in over 15 years. Ms. Jamshidi's mother is currently 78
26 years old. However, until her naturalization application is approved, Ms. Jamshidi is unable to
27 travel to a third country to visit her mother.

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57. All Plaintiffs have been informed that their naturalization applications remain pending and cannot be decided due to uncompleted "security checks" or "name checks."

58. All Plaintiffs have suffered and continue to suffer prejudice from the delay of their naturalizations. They have been and continue to be deprived of the substantial and unique rights and duties of U.S. citizenship, including the right to vote, the right to obtain a U.S. passport, the right to travel freely, and the right to receive certain governmental and non-governmental benefits.

59. Plaintiffs are informed and believe that Defendants Pierre, Emilio Gonzalez and Chertoff have a policy, pattern, and practice of failing to adjudicate the applications for naturalization of the proposed plaintiff class within 120 days of the date of naturalization examinations, because of years-long delays in the processing of “FBI name checks.”

60. Plaintiffs are informed and believe that Defendants Pierre, Emilio Gonzalez and Chertoff have a policy, pattern, and practice of unlawfully withholding and unreasonably delaying the adjudication of applications for naturalization of the proposed plaintiff class, because of years-long delays in the processing of "FBI name checks."

61. Plaintiffs are informed and believe that Defendants Mueller and Alberto Gonzales have a policy, pattern, and practice of unlawfully withholding and unreasonably delaying the

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1 completion of "name checks," with the full knowledge that CIS requires the completion of such
2 "name checks" for adjudication of applications for naturalization of the proposed plaintiff class.

3 62. Plaintiffs are informed and believe that Defendants have a policy, pattern and
4 practice of failing to set deadlines for completing "name checks" and taking all the other
5 reasonable steps necessary to complete the adjudication of applications for naturalization of the
6 proposed plaintiff class.

7 63. Plaintiffs are informed and believe that Defendants Pierre, Chertoff, Emilio
8 Gonzalez and Chertoff have a policy, pattern and practice of requiring "name checks" for
9 adjudication of applications for naturalization of the proposed plaintiff class, despite the absence
10 of any statutory or regulatory authorization for such "name checks."

11 64. Plaintiffs are informed and believe that Defendants do not have or use any
12 mechanisms to identify the number and status of naturalization cases in which applicants satisfy
13 all eligibility criteria, have passed naturalization interviews, and are awaiting adjudication solely
14 on the basis of FBI name checks. In addition, USCIS and FBI do not have any policies or
15 practices in place to ensure timely final adjudication of those naturalization applications.

16 65. Plaintiffs are informed and believe that Defendants do not have or use any
17 mechanisms to track the number and status of naturalization cases in which applicants satisfy all
18 eligibility criteria, have passed naturalization examinations, and are awaiting adjudication for
19 more than 120 days after their naturalization examinations. In addition, USCIS and FBI do not
20 have any policies or practices in place to ensure final adjudication of those naturalization
21 applications.

22 66. Plaintiffs are informed and believe that Defendants Pierre, Gonzalez and Chertoff
23 implemented the requirement of FBI name checks for naturalization without giving notice to the
24 public and allowing a period for public comment. The Administrative Procedures Act requires
25 such notice and comment because the FBI name check requirement is a substantive change in
26 prior CIS policy and because the requirement has an adverse effect on individuals by causing a
27 delay in adjudication of their naturalization applications.

28 /////

1 67. As a result of the Defendants' policies, practices, actions and omissions, members
2 of the proposed plaintiff class have suffered injury, in that they have been unlawfully denied the
3 rights and benefits of U.S. citizenship for at least two years or more.

4 **CLASS ALLEGATIONS**

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

8 All persons residing within the Southern District of California who have
9 submitted or will submit applications for naturalization to CIS, and who have met all
10 statutory requirements for naturalization, and whose applications for naturalization are
11 not adjudicated within 120 days of the date of their initial examination.

12 69. The requirements of Federal Rules of Civil Procedure 23(a) and 23(b)(2) are met
13 in that the class is so numerous that joinder of all members is impracticable. Counsel for
14 Plaintiffs are aware of numerous other proposed class members who are similarly situated to the
15 named Plaintiffs in this District alone. Counsel are aware of many others similarly situated
16 elsewhere in California. Plaintiffs are not aware of the exact numbers of putative class members
17 because Defendants are in the best position to make that determination.

18 70. There are questions of law and fact common to the proposed class that
19 predominate over any questions affecting only the individually named Plaintiffs, including:
20 (1) whether CIS's failure to adjudicate the applications for naturalization of the proposed plaintiff
21 class within 120 days of the date of naturalization examinations, due to delays in "name checks,"
22 violates the Due Process Clause, the Immigration and Nationality Act and implementing
23 regulations and the Administrative Procedures Act; (2) whether CIS's imposition of a name check
24 requirement violates the notice and comment provision of the Administrative Procedures Act;
25 (3) whether the FBI's actions in unlawfully withholding and unreasonably delaying the
26 completion of "name checks," with the full knowledge that CIS requires the completion of such
27 "name checks" for adjudication of applications for naturalization of the proposed plaintiff class,
28 violates the Constitution and laws of the United States, including the Administrative Procedures

1 Act; and (4) whether CIS and the FBI's failure to set deadlines for completing "name checks" and
2 failure to take all the other reasonable steps necessary to complete the adjudication of applications
3 for naturalization of the proposed plaintiff class, violates the Constitution and laws of the United
4 States, including the Administrative Procedures Act.

5 71. The claims of the named Plaintiffs are typical of the claims of the proposed class.
6 The named Plaintiffs, like all class members, have not had their applications for naturalization
7 adjudicated despite the passage of over 120 days since their naturalization examinations, and they
8 have been denied timely completion of "name checks" which CIS requires for adjudication of
9 their applications; and their applications for naturalization have been unlawfully withheld or
10 unreasonably delayed on the basis of "name checks."

11 72. Like the named Plaintiffs, members of the proposed class are suffering prejudice
12 from the delay of their naturalization applications, including the inability to participate in civic
13 society by voting and jury service, the effective inability to sponsor immediate relatives for lawful
14 permanent resident status, the inability to travel freely as U.S. citizens, and the harm of having an
15 uncertain status in the country they have made their home and where they have established
16 themselves as part of a community.

17 73. The named Plaintiffs will fairly and adequately represent the interests of all
18 members of the proposed class because they seek relief on behalf of the class as a whole and have
19 no interests antagonistic to other members of the class. The named Plaintiffs are represented by
20 pro bono counsel from the ACLU Immigrants' Rights Project, the ACLU Foundation of San
21 Diego & Imperial Counties, and DLA Piper US LLP, who have extensive expertise in class action
22 litigation and/or immigrants' rights cases. Finally, the Defendants have acted on grounds
23 generally applicable to the class, thereby making appropriate final injunctive relief with respect to
24 the class as a whole.

25 **DECLARATORY AND INJUNCTIVE RELIEF ALLEGATIONS**

26 74. An actual and substantial controversy exists between Plaintiffs and Defendants as
27 to their respective legal rights and duties. Plaintiffs contend that Defendants' actions violate
28 Plaintiffs' rights and the rights of proposed class members. Defendants contend the opposite.

75. Defendants' failure to timely process Plaintiffs' naturalization applications, including any name check, has caused and will continue to cause irreparable injury to Plaintiffs and other class members. Plaintiffs have no plain, speedy, and adequate remedy at law.

CAUSES OF ACTION

COUNT ONE

RIGHT TO DE NOVO JUDICIAL DETERMINATION OF APPLICATION

FOR NATURALIZATION

8 U.S.C. § 1447(b)

[By the Named Plaintiffs Against Defendants Pierre, Gonzalez and Chertoff]

76. The allegations contained in paragraphs 1 through 75 above are repeated and incorporated as though fully set forth herein.

77. Because Respondents have failed to adjudicate each named Plaintiff's naturalization application within 120 days after the date of his naturalization examination, each named Plaintiff is entitled to de novo adjudication of his naturalization application by this Court under 8 U.S.C. § 1447(b).

78. This Court should grant each named Plaintiff's naturalization application pursuant to 8 U.S.C. § 1447(b), because each named Plaintiff meets all of the requirements for naturalization under chapter 2 of the Immigration and Nationality Act, 8 U.S.C. § 1421 et seq., and therefore has a right to become a naturalized citizen of the United States.

COUNT TWO

UNREASONABLE DELAY

IN VIOLATION OF THE ADMINISTRATIVE PROCEDURES ACT

[By the Named Plaintiffs on Behalf of the Proposed Class Against All Defendants]

79. The allegations contained in paragraphs 1 through 78 above are repeated and incorporated as though fully set forth herein.

80. The Administrative Procedures 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."

1 5 U.S.C. § 706(1). The court also may hold unlawful and set aside agency action that, inter alia,
2 is found to be: "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with
3 law," 5 U.S.C. § 706(2)(A); "in excess of statutory jurisdiction, authority, or limitations, or short
4 of statutory right," 5 U.S.C. § 706(2)(C); or "without observance of procedure required by law,"
5 5 U.S.C. § 706(2)(D). "Agency action" includes, in relevant part, "an agency rule, order, license,
6 sanction, relief, or the equivalent or denial thereof, or failure to act." 5 U.S.C. § 551(13).

7 81. The failure of Defendants Pierre, Emilio Gonzalez and Chertoff to adjudicate the
8 applications for naturalization of the proposed plaintiff class within 120 days of the date of
9 naturalization examinations on the basis of uncompleted "name checks," in violation of 8 U.S.C.
10 § 1446(d) and 8 C.F.R. § 335, violates the Administrative Procedure Act, 5 U.S.C. § 555(b);
11 5 U.S.C. §§ 706(1), 706(2)(A), 706(2)(C), 706(2)(D).

12 82. The failure of Defendants Alberto Gonzales and Mueller to timely complete "name
13 checks," with the full knowledge that CIS requires the completion of such "name checks" for
14 adjudication of applications for naturalization of the proposed plaintiff class, violates the
15 Administrative Procedure Act, 5 U.S.C. § 555(b); 5 U.S.C. §§ 706(1), 706(2)(A), 706(2)(C),
16 706(2)(D).

17 83. Defendants' failure to set deadlines for completing "name checks," to track the
18 number and status of naturalization cases awaiting final adjudication solely on the basis of FBI
19 name checks, to track the number and status of naturalization cases awaiting final adjudication for
20 more than 120 days after the naturalization examinations, and to take all the other reasonable
21 steps necessary to complete the adjudication of applications for naturalization of the proposed
22 plaintiff class, in violation of 8 U.S.C. § 1446(d) and 8 C.F.R. § 335, violates the Administrative
23 Procedures Act, 5 U.S.C. § 555(b); 5 U.S.C. §§ 706(1), 706(2)(A), 706(2)(C), 706(2)(D).

24 84. As a result of Defendants' actions, Plaintiffs and members of the proposed class
25 have suffered and continue to suffer injury. Declaratory and injunctive relief are therefore
26 warranted.

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28 ////

COUNT THREE

**FAILURE TO FOLLOW NOTICE-AND-COMMENT REQUIREMENTS OF THE
ADMINISTRATIVE PROCEDURES ACT**

[By the Named Plaintiffs on Behalf of the Proposed Class Against All Defendants]

85. The allegations contained in paragraphs 1 through 84 above are repeated and incorporated as though fully set forth herein.

86. By regulation, CIS is required to conduct a criminal background check before a naturalization application can be granted. 8 C.F.R. § 335.2(b). Prior to about November 2002, CIS used criminal databases such as NCIC to complete this process.

87. In or about November 2002, CIS implemented an expanded version of another background check known as an FBI name check, which goes beyond the criminal background check required by statute and regulation. Unlike the databases searched during the criminal background checks, the expanded FBI name check runs applicants names against a database containing names of persons who have never been convicted of, arrested for, or even suspected of a crime – including innocent witnesses and even crime victims. This added requirement of a name check constitutes a substantive rule that departed from prior policy and practice.

88. Defendants implemented the expanded FBI name check requirement for naturalization without giving notice and providing a period for public comment, even though the name check requirement constitutes a substantive rule that departed from prior policy and practice.

89. Defendants' failure to provide a notice-and-comment period prior to implementing the FBI name check requirement violates the Administrative Procedures Act, 5 U.S.C. § 553.

COUNT FOUR

VIOLATION OF FIFTH AMENDMENT DUE PROCESS CLAUSE

[By the Named Plaintiffs on Behalf of the Proposed Class Against All Defendants]

90. The allegations contained in paragraphs 1 through 89 above are repeated and incorporated as though fully set forth herein.

////

1 91. The Due Process Clause of the Fifth Amendment prohibits the government from
 2 depriving any person of life, liberty or property without due process of law. Plaintiffs have a
 3 liberty or property interest in adjudication of their naturalization applications within 120 days of
 4 their naturalization interviews.

5 92. Defendants Pierre, Emilio Gonzalez and Chertoff have a pattern, practice or policy
 6 of failing to adjudicate the applications for naturalization of the proposed plaintiff class within
 7 120 days of the date of naturalization examinations because of delays in "name checks," in
 8 violation of 8 U.S.C. § 1446(d) and 8 C.F.R. § 335. Defendants Alberto Gonzales and Mueller
 9 have a pattern, practice or policy of failing to timely complete "name checks," with the full
 10 knowledge that CIS requires the completion of such "name checks" for adjudication of
 11 applications for naturalization of the proposed plaintiff class. Defendants have a pattern, practice
 12 or policy of failing to set deadlines for completing "name checks" and to take all the other
 13 reasonable steps necessary to complete the adjudication of applications for naturalization of the
 14 proposed plaintiff class, in violation of 8 U.S.C. § 1446(d) and 8 C.F.R. § 335. These actions by
 15 Defendants violate Plaintiffs' rights to due process of law.

16 93. As a result of Defendants' actions, Plaintiffs and members of the proposed class
 17 have suffered and continue to suffer injury. Declaratory and injunctive relief are therefore
 18 warranted.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, in view of the arguments and authority noted herein, Petitioner prays for
 21 the following relief:

- 22 a. Assume jurisdiction over the matter;
- 23 b. Certify this case as a class action lawsuit, as proposed herein;
- 24 c. Review de novo and grant the named Plaintiffs' applications for naturalization,
 25 pursuant to 8 U.S.C. § 1447(b);
- 26 d. Order Defendants to promptly adjudicate, in a time period not to exceed 90 days,
 27 the currently pending applications for naturalization of all members of the proposed class;

28 ////

1 e. Order Defendants to adjudicate, within 180 days of the application date, all
2 applications for naturalization that shall be submitted in the future by members of the proposed
3 class, as required by governing law;

4 f. Order that any name checks Defendants choose to conduct shall be completed in a
5 manner that does not delay adjudication of naturalization applications by members of the
6 proposed class beyond 120 days of the applicant's naturalization examination;

7 g. Order Defendants to adopt a procedure for identifying naturalization cases
8 awaiting final adjudication based solely on FBI name checks, and for identifying naturalization
9 cases awaiting final adjudication for more than 120 days after successful completion of
10 naturalization examinations;

11 h. Issue a declaratory judgment holding unlawful: (a) the failure of Defendants
12 Pierre, Emilio Gonzalez and Chertoff to adjudicate applications for naturalization within 120 days
13 of the date of the naturalization examination; (b) the failure of Defendants Alberto Gonzales and
14 Mueller to complete "name checks" within a reasonable time; and (c) Defendants' failures to take
15 all necessary steps to adjudicate applications for naturalization within 120 days of the date of the
16 naturalization examinations.

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

3 j. Grant any and all further relief this Court deems just and proper.
4

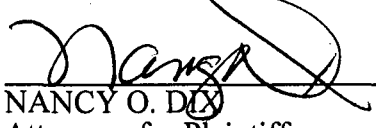
5 Dated: Aug 22, 2007

Respectfully submitted,

6 DAVID BLAIR-LOY
7 ACLU Foundation of San Diego &
8 Imperial Counties
9 P.O. BOX 87131
10 San Diego, CA 92138-7131

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20 San Diego, CA 92101-4297

21 By: 
22 NANCY O. DIX
23 Attorneys for Plaintiffs
24
25
26
27
28

The JS 44 civil cover sheet and the information contained hereon neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

DANIEL TARTAKOVSKY, MOHAMMAD HASHIM NASEEM,
ZAHRA JAMSHIDI, MEHDI HORMOZAN,

DEFENDANTS

SEE ATTACHED LIST FOR ALL DEFENDANTS NAMES.

(b) County of Residence of First Listed Plaintiff SAN DIEGO
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed 07 AUG 22 PM 3:55
(IN U.S. PLAINTIFF CASES ONLY)

(c) Attorney's (Firm Name, Address, and Telephone Number)

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Attorneys (If Known)

DEPUTY

'07 CV 1667

BEN (CAD)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☒ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | ☐ 1 | ☐ 1 | Incorporated or Principal Place of Business In This State | ☐ 4 | ☐ 4 |
| Citizen of Another State | ☐ 2 | ☐ 2 | Incorporated and Principal Place of Business In Another State | ☐ 5 | ☐ 5 |
| Citizen or Subject of a Foreign Country | ☐ 3 | ☐ 3 | Foreign Nation | ☐ 6 | ☐ 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability	☐ 610 Agriculture ☐ 620 Other Food & Drug ☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 630 Liquor Laws ☐ 640 R.R. & Truck ☐ 650 Airline Regs. ☐ 660 Occupational Safety/Health ☐ 690 Other LABOR ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Mgmt. Relations ☐ 730 Labor/Mgmt. Reporting & Disclosure Act ☐ 740 Railway Labor Act ☐ 790 Other Labor Litigation ☐ 791 Empl. Ret. Inc. Security Act	☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☐ 840 Trademark SOCIAL SECURITY ☐ 861 HIA (1395ff) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g)) FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS—Third Party 26 USC 7609	☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 480 Consumer Credit ☐ 490 Cable/Sat TV ☐ 810 Selective Service ☐ 850 Securities/Commodities/Exchange ☐ 875 Customer Challenge 12 USC 3410 ☐ 890 Other Statutory Actions ☐ 891 Agricultural Acts ☐ 892 Economic Stabilization Act ☐ 893 Environmental Matters ☐ 894 Energy Allocation Act ☐ 895 Freedom of Information Act ☐ 900 Appeal of Fee Determination Under Equal Access to Justice ☐ 950 Constitutionality of State Statutes
REAL PROPERTY ☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property	CIVIL RIGHTS ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/Accommodations ☐ 444 Welfare ☐ 445 Amer. w/Disabilities - Employment ☐ 446 Amer. w/Disabilities - Other ☒ 440 Other Civil Rights	PRISONER PETITIONS ☐ 510 Motions to Vacate Sentence Habeas Corpus: ☐ 530 General ☐ 535 Death Penalty ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Condition		

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

8 U.S.C. Section 1447 (B)

Brief description of cause:

Complaint for Declaratory and Injunctive Relief and Petition for Naturalization

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

8/22/2007

SIGNATURE OF ATTORNEY OF RECORD

Nancy O. Dix

FOR OFFICE USE ONLY

RECEIPT # 191775 AMOUNT \$300

APPLYING IFP K6 8/22/07

MAG. JUDGE

ATTACHMENT TO CIVIL COVER SHEET

LIST OF ALL DEFENDANTS' NAMES

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ALL NAMED DEFENDANTS:

PAUL M. PIERRE, District Director, U.S. Department of Homeland Security, Bureau of Citizenship and Immigration Services, San Diego District; EMILIO T. GONZALEZ, Director, U.S. Deptment of Homeland Security, Bureau of Citizenship and Immigration Services; MICHAEL CHERTOFF, Secretary of Homeland Security; ROBERT S. MUELLER III, Director of the Federal Bureau of Investigation; ALBERTO GONZALES, Attorney General of the United States.

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

**# 141795 - KD
* * C O P Y * *
August 22, 2007
15:57:57**

Civ Fil Non-Pris

USAO #: CIVIL FILING; 07CV1667
Judge.: ROGER T BENITEZ
Amount.: \$350.00 CK
Check#.: BC 716152

Total-> \$350.00

**FROM: TARTAKOVSKY, ET AL V. PIERRE,
CIVIL FILING**