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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ROSHANAK ROSHANDEL; VAFA
GHAZI-MOGHADDAM; HAWO
AHMED; LIN HUANG; AHMAD
ALKABRA; MOHAMMAD REZA
AIDINEJAD; and ZAHRA ABEDIN,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

MICHAEL CHERTOFF, Secretary, United
States Department of Homeland Security;
EMILIO GONZALEZ, Director, United
States Citizenship and Immigration
Services; ANN CORSANO, Director,
District 20, United States Citizenship and
Immigration Services; JULIA HARRISON,
Director, Seattle Field Office, United States
Citizenship and Immigration Services;
MICHAEL MUKASEY, Attorney General,
United States Department of Justice;
ROBERT MUELLER III, Director, Federal
Bureau of Investigation; and the UNITED
STATES OF AMERICA.

Defendants.

Case No. C07-1739 MJP

FIRST AMENDED COMPLAINT –
CLASS ACTION

For their complaint against Defendants, Plaintiffs Roshanak Roshandel, Vafa Ghazi-
Moghaddam, Hawo Ahmed, Lin Huang, Ahmad Alkabra, Mohammad Reza Aidinejad and Zahra

FIRST AMENDED COMPLAINT – CLASS ACTION
Case No. C07- 1739 MJP - 1

1 Abedin, individually and on behalf of all others similarly situated, hereby allege as follows by
2 and through their undersigned attorneys of record:

3 **I. PRELIMINARY STATEMENT**

4 1. Plaintiffs are lawful permanent residents of the United States, each of whom has
5 applied to be naturalized as a United States citizen. Each seeks to pledge allegiance to the
6 United States and to participate fully in civic society.

7 2. By law, the United States Citizenship and Immigration Services (“CIS”) must
8 render a decision on a naturalization application within 120 days of the applicant’s naturalization
9 examination and must grant the application when, as here, the applicant has met all legal
10 requirements for naturalization. 8 C.F.R. § 335.3(a); *see* 8 U.S.C. § 1447(b). Defendants have
11 nevertheless unlawfully and unreasonably delayed rendering a decision on Plaintiffs’
12 naturalization applications on the ground that a so-called “name check”—a requirement found
13 nowhere in the statutes or regulations governing naturalization—remains pending:

- 14 • Plaintiff Roshanak Roshandel has been a lawful permanent resident of the United
15 States since May 12, 2001. Dr. Roshandel applied for naturalization on March
16 16, 2004. Defendants scheduled Dr. Roshandel for her naturalization examination
17 on July 22, 2004. She passed the naturalization examination and has fulfilled all
18 legal requirements for naturalization. Yet, due to Defendants’ unlawful conduct,
19 her application has been pending for more than three years since she passed her
20 naturalization examination.
- 21 • Plaintiff Vafa Ghazi-Moghaddam has been a lawful permanent resident of the
22 United States since June 10, 1999. Dr. Ghazi-Moghaddam applied for
23 naturalization on March 15, 2004. Defendants scheduled Dr. Ghazi-Moghaddam
24 for his naturalization examination on October 25, 2004. He passed the
25 naturalization examination and has fulfilled all legal requirements for
26 naturalization. Yet, due to Defendants’ unlawful conduct, his application has

1 been pending for more than three years since he passed his naturalization
2 examination.

- 3 • Plaintiff Hawo Ahmed has been a lawful permanent resident of the United States
4 since March 15, 2000. Ms. Ahmed applied for naturalization on July 25, 2005.

5 Defendants scheduled Ms. Ahmed for her naturalization examination on
6 November 17, 2005. She passed the naturalization examination and has fulfilled
7 all legal requirements for naturalization. Yet, due to Defendants' unlawful
8 conduct, her application has been pending for more than two years since she
9 passed her naturalization examination.

- 10 • Plaintiff Lin Huang has been a lawful permanent resident of the United States
11 since December 29, 1996. Ms. Huang applied for naturalization on March 22,

12 2005. Defendants scheduled Ms. Huang for her naturalization examination on
13 September 20, 2005. She passed the naturalization examination and has fulfilled
14 all legal requirements for naturalization. Yet, due to Defendants' unlawful
15 conduct, her application has been pending for more than two years since she
16 passed her naturalization examination.

- 17 • Plaintiff Ahmad Alkabra has been lawful permanent resident of the United States
18 since January 13, 2003. Mr. Alkabra applied for naturalization on October 24,

19 2005. Defendants scheduled Mr. Alkabra for his naturalization interview on
20 February 2, 2006. He passed his naturalization examination and has fulfilled all
21 legal requirements for naturalization. Yet, due to Defendants' unlawful conduct,
22 his application has been pending for more than two years since he passed his
23 naturalization examination.

- 24 • Plaintiff Mohammad Reza Aidinejad has been lawful permanent resident of the
25 United States since April 5, 2001. Mr. Aidinejad applied for naturalization on

26 January 9, 2006. Defendants scheduled Mr. Aidinejad for his naturalization

1 interview on August 12, 2006. He passed his naturalization examination and has
2 fulfilled all legal requirements for naturalization. Yet, due to Defendants'
3 unlawful conduct, his application has been pending for nearly two years since he
4 passed his naturalization examination.

- 5 • Plaintiff Zahra Abedin has been lawful permanent resident of the United States
6 since February 23, 2000. Ms. Abedin applied for naturalization on January 28,
7 2005. Defendants scheduled Ms. Abedin for her naturalization interview on May
8 31, 2005. She passed her naturalization examination and has fulfilled all legal
9 requirements for naturalization. Yet, due to Defendants' unlawful conduct, her
10 application has been pending for nearly three years since she passed her
11 naturalization examination.

12 3. Defendants' unlawful conduct has deprived Plaintiffs of the privileges of United
13 States citizenship and has prevented them from fully participating in civic society. Though they
14 wish to, Plaintiffs cannot vote or serve on juries. Nor can they travel abroad without fear of
15 being excluded from the United States. Some are ineligible for jobs for which they are qualified.
16 Plaintiffs' experiences are typical of tens of thousands of other naturalization applicants
17 throughout the country who have suffered unreasonable and unlawful delays in the naturalization
18 process due to pending name checks.

19 4. In addition, Defendants failed to inform Plaintiffs Roshandel and Ghazi-
20 Moghaddam at their naturalization examinations of their right to request a hearing in district
21 court in the event Defendants failed to timely render a decision on their applications, as required
22 by statute. *See* 8 U.S.C. § 1446(b).

23 5. Plaintiffs respectfully request, individually and on behalf of all others similarly
24 situated, that this Court certify the proposed plaintiff classes, enter judgment in favor of the
25 proposed plaintiff class and against Defendants on all claims, and grant the relief requested
26

1 herein, including without limitation directing Defendants to complete the class members' name
2 checks and adjudicate their naturalization applications within 90 days.

3 II. JURISDICTION AND VENUE

4 6. This Court has subject matter jurisdiction pursuant to 8 U.S.C. § 1447(b) (district
5 court has exclusive jurisdiction over naturalization applications that have not been granted within
6 statutory 120-day period), 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 2201 (Declaratory
7 Judgment Act), 28 U.S.C. § 1361 (mandamus), 5 U.S.C. § 702 (Administrative Procedure Act),
8 and 28 U.S.C. § 1651 (All Writs Act).

9 7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) (action against
10 officers of United States may be brought in any district where "plaintiff resides") and 8 U.S.C. §
11 1447(b) (action shall be brought in judicial district where naturalization applicant resides)
12 because all Plaintiffs and proposed class members reside in the Western District of Washington.

13 III. PARTIES

14 A. Named Plaintiffs

15 *Roshanak Roshandel*

16 8. Plaintiff Roshanak Roshandel is a citizen of Iran. Dr. Roshandel came to the
17 United States on a student visa in 1996 and earned her undergraduate, masters, and doctoral
18 degrees in this country. She is an assistant professor in the Department of Computer Science and
19 Software Engineering at Seattle University.

20 9. Dr. Roshandel has been a lawful permanent resident of the United States since
21 May 12, 2001. She lives in Bellevue, Washington. Her spouse is a naturalized United States
22 citizen and their daughter, who was born in the United States, is also a United States citizen. Her
23 parents, brother, and in-laws are naturalized United States citizens or lawful residents of the
24 United States.

25 10. Dr. Roshandel applied for naturalization on March 16, 2004, has fulfilled all legal
26 requirements for naturalization, and passed her naturalization examination on July 22, 2004.

1 Though more than 120 days have elapsed since her naturalization examination, Dr. Roshandel's
2 naturalization application remains pending. She was not informed of the remedies available
3 under 8 U.S.C. § 1447(b) at the time of her naturalization examination.

4 11. Dr. Roshandel has inquired as to the status of her naturalization application on
5 numerous occasions. She has written to, called, and emailed CIS and appeared in person at local
6 CIS offices; she has written to the Federal Bureau of Investigation ("FBI"); and she has written
7 to members of Congress; she has written to First Lady Laura Bush. Each time she has inquired
8 into the status of her naturalization application, she has been told that a name check remains
9 pending.

10 12. Dr. Roshandel wants to become a United States citizen so that she will no longer
11 fear being excluded from the country she has made her home, so that she will have the same
12 citizenship status as her spouse and daughter, and so that she can participate fully in civic life,
13 including voting and serving on juries. Dr. Roshandel applied for naturalization well before the
14 2004 presidential election in the hope that she could begin participating in national elections, and
15 hopes her voice will be heard in the 2008 presidential election.

16 ***Vafa Ghazi-Moghaddam***

17 13. Plaintiff Vafa Ghazi-Moghaddam is a citizen of Iran. Dr. Ghazi-Moghaddam
18 came to the United States on a student visa in 1991 to pursue a doctoral degree at the University
19 of Minnesota. He works as an electrical engineer for a California software company developing
20 wireless technologies.

21 14. Dr. Ghazi-Moghaddam has been a lawful permanent resident of the United States
22 since June 10, 1999. He lives in Seattle, Washington.

23 15. Dr. Ghazi-Moghaddam applied for naturalization on March 15, 2004, has met all
24 legal requirements to be naturalized as a United States citizen, and passed his naturalization
25 examination on October 25, 2004. Though more than 120 days have elapsed since his
26 naturalization examination, Dr. Ghazi's naturalization application remains pending. He was not

1 informed of the remedies available under 8 U.S.C. § 1447(b) at the time of his naturalization
2 examination.

3 16. Dr. Ghazi-Moghaddam has inquired into the status of his naturalization
4 application on numerous occasions by calling CIS and appearing in person at local CIS offices
5 and by writing to members of Congress. Each time he has inquired into the status of his
6 naturalization application, he has been told that a name check remains pending.

7 17. Dr. Ghazi-Moghaddam travels for work and pleasure, and has experienced
8 increased scrutiny and delay while traveling on an Iranian passport. He is interested in American
9 politics and is frustrated by his ineligibility to vote. He wants to become a United States citizen
10 so that he will no longer fear exclusion from the country he has made his home and so that he
11 can participate fully in civic society.

12 *Hawo Ahmed*

13 18. Plaintiff Hawo Ahmed is a citizen of Somalia. Ms. Ahmed came to the United
14 States as a refugee in 2000 at age 14, along with her mother and sisters. Her status was later
15 adjusted to lawful permanent resident retroactive to March 15, 2000.

16 19. Ms. Ahmed resides in Seatac, Washington, and is studying education at Highline
17 Community College. Her mother and sisters are all naturalized citizens of the United States.

18 20. Ms. Ahmed applied for naturalization on July 25, 2005, has met all legal
19 requirements to be naturalized as a United States citizen, and passed her naturalization
20 examination on November 17, 2005. Though more than 120 days have elapsed since her
21 naturalization examination, Ms. Ahmed's naturalization application remains pending. Many of
22 Ms. Ahmed's family members passed their naturalization examinations at approximately the
23 same time as Ms. Ahmed and were promptly naturalized, but Ms. Ahmed still awaits a decision
24 on her application.

25 21. Ms. Ahmed has inquired as to the status of her naturalization application by
26 calling CIS and appearing in person at local CIS offices approximately every other month, and

1 contacting the United States Department of Homeland Security. Each time she has inquired into
2 the status of her naturalization application, she has been told that a name check remains pending.

3 22. Ms. Ahmed wants to become a United States citizen so that she can fully
4 participate in civic society; so that she can vote, especially with respect to matters affecting
5 education; and so that she can enjoy all benefits of United States citizenship along with the rest
6 of her naturalized family.

7 *Lin Huang*

8 23. Plaintiff Lin Huang is a citizen of China. Ms. Huang came to the United States as
9 a conditional lawful permanent resident based on the visa petition her husband—a naturalized
10 United States Citizen—filed on her behalf. Thereafter, she and her husband successfully
11 petitioned to remove the conditions of her lawful residency. Ms. Huang has been a lawful
12 permanent resident of the United States since December 29, 1996.

13 24. Ms. Huang resides in Renton, Washington with her husband and their two
14 children. Her spouse is a naturalized United States citizen, and her two children, who were born
15 in the United States, are also United States citizens.

16 25. Ms. Huang applied for naturalization on March 22, 2005, has fulfilled all legal
17 requirements for naturalization, and passed her naturalization examination on September 20,
18 2005. Though more than 120 days have elapsed since her naturalization examination, Ms.
19 Huang's naturalization application remains pending.

20 26. Ms. Huang has inquired as to the status of her naturalization application by
21 writing to CIS and appearing in person at local CIS offices. Each time she has inquired into the
22 status of her naturalization application, she has been told that a name check remains pending.

23 27. Ms. Huang wants to become a United States citizen so that she can fully
24 participate in civic society, so that she can vote, and so that she can enjoy all benefits of United
25 States citizenship along with the rest of her immediate family.

1 *Ahmad Alkabra*

2 28. Plaintiff Ahmad Alkabra holds a Palestinian passport. He came to the United
3 State as a student, and became a lawful permanent resident on January 13, 2003, on the basis of
4 his marriage to a U.S. citizen. He lives in Issaquah, Washington, and works as a project manager
5 in the IT industry.

6 29. Mr. Alkabra applied for naturalization on October 24, 2005, has fulfilled all legal
7 requirements for naturalization, and passed his naturalization interview on February 2, 2006. At
8 his naturalization interview, Mr. Alkabra was informed that a decision could not be made on his
9 application because a name check remained pending. Though more than 120 days have elapsed
10 since his naturalization examination, Mr. Alkabra's naturalization application remains pending.

11 *Mohammad Reza Aidinejad*

12 30. Plaintiff Mohammad Reza Aidinejad is a citizen of Iran. He first came to the
13 United States in 1986 and became a lawful permanent resident on April 5, 2001. He is an
14 engineer for the Boeing Company and resides in Issaquah, Washington.

15 31. Mr. Aidinejad applied for naturalization on January 9, 2006, has fulfilled all legal
16 requirements for naturalization, and passed his naturalization interview on August 12, 2006.
17 Though more than 120 days have elapsed since his naturalization examination, Mr. Aidinejad's
18 naturalization application remains pending.

19 32. Mr. Aidinejad has inquired as to the status of his naturalization application since
20 his interview, but still has received no decision. Because he is not a citizen, he is unable to
21 obtain security clearances which would allow him to work on Boeing projects from which he is
22 currently excluded.

Zahra Abedin

1
2 33. Plaintiff Zahra Abedin is a citizen of Iran. She was admitted to the United States
3 on February 23, 2000 as a refugee. Subsequently her status was adjusted to lawful permanent
4 resident retroactive to February 23, 2000. She lives in Bellevue, Washington.

5 34. Ms. Abedin applied for naturalization on January 28, 2005. She has fulfilled all
6 legal requirements for naturalization, and passed her naturalization interview on May 31, 2005.
7 At her naturalization interview, Ms. Abedin was informed that a decision could not be made on
8 her application because a name check was pending. Though more than 120 days have elapsed
9 since her naturalization examination, Ms. Abedin's naturalization application remains pending.

10 35. Ms. Abedin applied to work for the United States Customs and Border Patrol.
11 Her application for employment is still pending as a result of the fact that she has not yet been
12 naturalized. Ms. Abedin has inquired as to the status of her naturalization numerous times, with
13 the Immigration Service as well as with her Congressional and Senate representatives, but still
14 has received no decision.

15 **B. Defendants**

16 36. Defendant Michael Chertoff is the Secretary of the United States Department of
17 Homeland Security. Mr. Chertoff is ultimately responsible for administering immigration and
18 naturalization laws and regulations, including the laws and regulations governing the
19 naturalization process. He is sued in his official capacity.

20 37. Defendant Emilio Gonzalez is the Director of CIS. Mr. Gonzalez is responsible
21 for processing and determining applications for naturalization in accordance with the laws and
22 lawfully promulgated regulations of the United States. He is sued in his official capacity.

23 38. Defendant Ann Corsano is the Director of District 20 of CIS. Ms. Corsano is
24 responsible for processing and determining naturalization applications in accordance with the
25 laws and lawfully promulgated regulations of the United States for all applicants residing in
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1 District 20, which includes all applicants residing in the Western District of Washington. She is
2 sued in her official capacity.

3 39. Defendant Julia Harrison is the Director of the Seattle Field Office of CIS. Ms.
4 Harrison is responsible for processing and determining naturalization applications in
5 accordance with the laws and lawfully promulgated regulations of the United States for all
6 applicants residing within the Seattle Field Office's jurisdiction. She is sued in her official
7 capacity.

8 40. Defendant Michael Mukasey is the Attorney General of the United States
9 Department of Justice. Mr. Keisler is ultimately responsible for the operations of the FBI,
10 including the processing of "name checks" conducted by the FBI at the behest of CIS as part of
11 the naturalization process. He is sued in his official capacity.

12 41. Defendant Robert Mueller III is the Director of the FBI. Mr. Mueller is
13 responsible for the processing of "name checks" conducted by the FBI at the behest of CIS as
14 part of the naturalization process. He is sued in his official capacity.

15 42. Defendant the United States of America includes all government agencies and
16 departments responsible for implementing the Immigration and Nationality Act and conducting
17 "name checks" at the behest of CIS as part of the naturalization process.

18 IV. FACTS

19 A. The Naturalization Process

20 43. Federal immigration law allows persons who have been residing in the United
21 States as lawful permanent residents to become United States citizens through a process known
22 as naturalization.

23 44. A person seeking naturalization must meet certain requirements, including an
24 understanding of the English language and the history of the United States, a sufficient period
25 of physical presence in the United States, and good moral character. *See* 8 U.S.C. §§ 1423,
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1 1427(a). Persons seeking naturalization must submit an application to CIS, the agency
2 responsible for adjudicating naturalization applications. *See* 8 U.S.C. § 1445; 8 C.F.R. § 100.2.

3 45. Once an application is submitted, CIS conducts an investigation of each
4 naturalization applicant. *See* 8 U.S.C. § 1446(a); 8 C.F.R. § 335.1. Under CIS regulations, the
5 investigation includes a criminal background check performed by the FBI. *See* 8 C.F.R. §
6 335.2(b). After the criminal background check is completed, CIS schedules a naturalization
7 examination, at which an applicant meets with a CIS officer who is authorized to ask questions
8 and take testimony. The CIS officer determines whether to grant or deny the naturalization
9 application, *see* 8 U.S.C. § 1446(d), and may do so at the time of the naturalization
10 examination, or within 120 days after the date of the examination. *See* 8 C.F.R. § 335.3; *see*
11 *also* 8 U.S.C. § 1571(b) (applications for immigration benefits should generally be adjudicated
12 within 180 days of initial filing of application). If a naturalization application is granted, the
13 applicant is sworn in as a United States citizen.

14 46. CIS *must* render a decision to grant or deny the application within 120 days of the
15 date of the initial examination. *See* 8 C.F.R. § 335.3(a). In addition, the CIS officer *must* grant
16 a naturalization application if the applicant has complied with all legal requirements for
17 naturalization. *Id.*; *see also* *Tutun v. United States*, 270 U.S. 568, 578 (1926) (statutorily
18 eligible petitioner has right to naturalization certificate on conclusion of hearing).
19 Naturalization is not discretionary in this circumstance; an applicant is entitled to be naturalized
20 if all statutory requirements are met.

21 47. When CIS fails to render a decision on a naturalization application within 120
22 days of the naturalization examination, the applicant “may apply to the United States district
23 court for the district in which the applicant resides for a hearing on the matter.” 8 U.S.C. §
24 1447(b). If a naturalization application is not granted at the time of the naturalization
25 examination, CIS is required to inform the applicant of the remedies available under 8 U.S.C. §
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1 1447(b). *See* 8 U.S.C. § 1446(b) (CIS officer “shall, *at the examination*, inform the applicant of
2 the remedies available to the applicant under section 1447 of this title” (emphasis added)).

3 48. If a naturalization applicant applies to a district court, the district court gains
4 exclusive jurisdiction over the application, *see United States v. Hovsepian*, 359 F.3d 1144 (9th
5 Cir. 2004), and the district court may determine the matter or remand to CIS with appropriate
6 instructions, *see* 8 U.S.C. § 1447(b).

7 8 **B. The Name Check Requirement**

9 49. In 2002, without promulgating any regulations and without statutory
10 authorization, CIS dramatically altered the naturalization process by requiring that all applicants
11 pass a “name check” conducted by the FBI before final approval. A name check is a search of
12 FBI records and other records the FBI has access to based on the full name of the applicant. On
13 information and belief, the FBI conducts the name check through manual and electronic
14 searches of these records. At CIS’s request, the FBI conducts name checks on all naturalization
15 applicants

16 50. On information and belief, the name check is implemented in such a manner that
17 an applicant may be erroneously identified as a “person of interest” to the FBI, thereby delaying
18 adjudication of the naturalization application, even though the applicant has committed no
19 crimes and is not a suspect, and even though the name check revealed no other information
20 bearing on eligibility for naturalization. For example, the name check may confuse the
21 applicant with a person with a similar name or result in a “hit” when the applicant is an
22 innocent witness to or victim of a crime.

23 51. A name check is not authorized or required by statute or regulation. On
24 information and belief, the name check is performed even when an applicant has already
25 cleared an FBI criminal background check in advance of the naturalization examination.

1 52. On information and belief, CIS will not grant naturalization applications until it
2 receives a completed name check from the FBI. Neither CIS nor the FBI has imposed any
3 timeline for completion of name checks.

4 53. Nor has CIS promulgated any regulations setting forth the name check as a
5 prerequisite for naturalization. In contrast, in March 1998, the Immigration and Naturalization
6 Service (“INS”), CIS’s predecessor agency, promulgated a rule implementing the FBI criminal
7 background check requirement for notice and public comment. *See* Requiring Completion of
8 Criminal Background Checks Before Final Adjudication of Naturalization Applications, 63
9 Fed. Reg. 12979 (Mar. 17, 1998).

10 54. In April 2006, CIS implemented a new policy and practice of delaying
11 naturalization examinations until after the name check is completed. Thus, for certain
12 naturalization applicants, unreasonable and extraordinary delays now occur before the
13 naturalization examination.

14 **C. Defendants’ Unlawful Conduct**

15 55. On information and belief, Defendants Chertoff, Gonzalez, Corsano, Harrison,
16 and United States have a policy, pattern, and practice of unlawfully failing to render a decision
17 on the naturalization applications of the proposed plaintiff class within 120 days of the date of
18 naturalization examinations due to a pending name check.

19 56. On information and belief, Defendants Chertoff, Gonzalez, Corsano, Harrison,
20 and United States have a policy, pattern, and practice of unlawfully withholding and
21 unreasonably delaying rendering a decision on the naturalization applications of the proposed
22 plaintiff class due to a pending name check.

23 57. On information and belief, Defendants Chertoff, Gonzalez, Corsano, Harrison,
24 and United States have a policy, pattern, and practice of unlawfully failing to notify
25 naturalization applicants of their right to seek a hearing in district court on their applications
26

1 when Defendants fail to render a decision on an application within 120 days of a naturalization
2 examination.

3 58. On information and belief, Defendants Chertoff, Gonzalez, Corsano, Harrison,
4 and United States have a policy, pattern, and practice of unlawfully requiring completed name
5 checks before adjudicating the naturalization applications of the proposed plaintiff class, despite
6 having no statutory or regulatory authorization for such name checks. Defendants Gonzalez
7 and Chertoff unlawfully implemented name checks as a prerequisite to naturalization without
8 public notice and without providing a period for public comment. Requiring name checks as a
9 prerequisite to naturalization effected a substantive change in existing law resulting in undue
10 hardship and burden to the proposed plaintiff class.

11 59. On information and belief, Defendants Mukasey and Mueller have a policy,
12 pattern, and practice of unlawfully withholding and unreasonably delaying the completion of
13 name checks, with the full knowledge that CIS will not adjudicate the naturalization
14 applications of the proposed plaintiff class until name checks are completed.

15 60. As a result of Defendants' unlawful acts and omissions, members of the proposed
16 plaintiff class have suffered injury-in-fact, in that they have been unlawfully denied the rights
17 and benefits of United States citizenship.

18 V. CLASS ACTION ALLEGATIONS

19 61. Pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2), Plaintiffs bring
20 this action individually and on behalf of all other persons similarly situated. The proposed
21 plaintiff class consists of:

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

25 The proposed plaintiff class includes applicants who were not informed, at the time of their
26 initial examination, of their right under 8 U.S.C. § 1447(b) "to apply to the United States district

1 court for the district in which the applicant resides for a hearing on the matter” if CIS failed to
2 determine the applicant’s naturalization application within 120 days of the initial examination
3 (the “notice subclass”).

4 62. The requirements of Rule 23(a) are met in that the members of the proposed
5 plaintiff class are so numerous that joinder is impracticable, there are questions of law and fact
6 common to all members of the proposed plaintiff class, the claims of the named Plaintiffs are
7 typical of those of the proposed plaintiff class members, the claims of Plaintiffs Roshandel and
8 Ghazi-Moghaddam are typical of those of the notice subclass, and the named Plaintiffs will
9 fairly and adequately protect the interests of the proposed plaintiff class.

10 63. On information and belief, approximately 58,000 naturalization applications
11 nationwide are pending while awaiting completed name checks. Undersigned counsel is aware
12 of at least 31 individual lawsuits brought in the Western District of Washington since June 1,
13 2007 by persons similarly situated to Plaintiffs. Undersigned counsel is unaware of the exact
14 number of proposed class members, but believes that there are several hundred individuals
15 similarly situated to Plaintiffs residing in this judicial district. Because Defendants are best able
16 to determine the exact number of proposed class members, undersigned counsel will request
17 leave to serve Defendants with discovery requests targeted to this issue.

18 64. 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 (1)
20 whether Defendants’ failure to render a decision on the naturalization applications of the
21 proposed plaintiff class within 120 days of the date of naturalization examinations, due to
22 delays in name checks, violates the Immigration and Nationality Act and implementing
23 regulations and the Administrative Procedure Act; (2) whether Defendants’ requiring a name
24 check as a prerequisite to naturalization violates the notice and comment requirement of the
25 Administrative Procedure Act; (3) whether Defendants’ actions in unlawfully withholding and
26 unreasonably delaying the completion of name checks, with the full knowledge that CIS

1 requires the completion of such name checks before rendering a decision on naturalization
2 applications of the proposed plaintiff class, violates the Administrative Procedure Act; and (4)
3 whether Defendants' failure to provide notice of remedies available under 8 U.S.C. § 1447(b)
4 violates 8 U.S.C. § 1446.

5 65. The claims of the named Plaintiffs are typical of the claims of the proposed class
6 members. The named Plaintiffs, like all class members, have not had their naturalization
7 applications determined within the statutorily mandated 120-day period following their
8 naturalization examinations, have been deprived of notice and an opportunity to comment on
9 the name check requirement, and have a decision on their applications for naturalization
10 unlawfully withheld or unreasonably delayed due to pending name checks.

11 66. The claims of Plaintiffs Roshandel and Ghazi-Moghaddam are typical of the
12 claims of the notice subclass. Plaintiffs Roshandel and Ghazi-Moghaddam were not informed
13 at their naturalization examinations of their statutory right to seek judicial review of
14 Defendants' unlawful conduct.

15 67. Like the named Plaintiffs, members of the proposed plaintiff class are suffering
16 injuries from the delay of their naturalization applications, including the inability to participate
17 in civic society by voting and jury service, the inability to sponsor immediate relatives for
18 lawful permanent resident status, the inability to travel freely as United States citizens,
19 ineligibility for jobs for which they are otherwise qualified, and the stigma of an uncertain
20 status in the country they have made their home and where they have established themselves as
21 part of a community.

22 68. Like Plaintiffs Roshandel and Ghazi-Moghaddam, the members of the notice
23 subclass are suffering injury because they were not informed of their statutory right to seek
24 judicial review of Defendants' unlawful conduct.

25 69. The named Plaintiffs will fairly and adequately represent the interests of all
26 members of the proposed class because they seek relief on behalf of the class as a whole and

1 have no interests antagonistic to other members of the class. The named Plaintiffs are
2 represented by pro bono counsel including the American Civil Liberties Union of Washington
3 Foundation, the Northwest Immigrant Rights Project, and Stoel Rives LLP, who collectively
4 have extensive expertise in immigration law and class action litigation.

5 70. The requirements of Rule 23(b)(2) are also met because Defendants acted (or
6 failed to act) in an unlawful manner generally applicable to all proposed plaintiff class members
7 in failing to render a decision on the proposed plaintiff class members' naturalization
8 applications within the statutorily mandated 120-day period and otherwise unlawfully
9 withholding and unreasonably delaying agency actions, thereby making appropriate final relief
10 with respect to the class as a whole.

11 VI. DECLARATORY AND INJUNCTIVE RELIEF ALLEGATIONS

12 71. An actual and substantial controversy exists between Plaintiffs and Defendants as
13 to their respective legal rights and duties. Plaintiffs contend that Defendants' actions violate
14 Plaintiffs' rights and the rights of proposed class members. Defendants contend the opposite.

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

18 VII. CAUSES OF ACTION

19 COUNT ONE

20 RIGHT TO JUDICIAL DETERMINATION OF APPLICATION

21 FOR NATURALIZATION PURSUANT TO 8 U.S.C. § 1447(b)

22 **[Against Defendants Chertoff, Gonzalez, Corsano, Harrison, and United States]**

23 73. The allegations contained in paragraphs 1 through 64 above are repeated and
24 incorporated as though fully set forth herein.

25 74. Because Defendants have unlawfully failed to render a decision on proposed
26 plaintiff class members' naturalization applications within 120 days after the date of their

1 naturalization examinations, each proposed plaintiff class member is entitled to a hearing on his
2 or her naturalization application by this Court under 8 U.S.C. § 1447(b).

3 75. This Court should grant proposed plaintiff class members' naturalization
4 applications pursuant to 8 U.S.C. § 1447(b), because each proposed plaintiff class member
5 meets all requirements for naturalization and is therefore entitled to be naturalized as a United
6 States citizen.

7 76. In the alternative, this Court should remand proposed plaintiff class members'
8 naturalization applications to CIS pursuant to 8 U.S.C. § 1447(b) with instructions to render a
9 decision on each proposed plaintiff class members' naturalization application within 90 days.

10 **COUNT TWO**

11 **UNREASONABLE DELAY IN VIOLATION OF THE**
12 **ADMINISTRATIVE PROCEDURE ACT**

13 **[Against All Defendants]**

14 77. The allegations contained in paragraphs 1 through 68 above are repeated and
15 incorporated as though fully set forth herein.

16 78. The Administrative Procedure Act requires administrative agencies to conclude
17 matters presented to them "within a reasonable time." 5 U.S.C. § 555(b). A district court
18 reviewing agency action may "compel agency action unlawfully withheld or unreasonably
19 delayed." 5 U.S.C. § 706(1). The district court also may hold unlawful and set aside agency
20 action that is found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in
21 accordance with law," 5 U.S.C. § 706(2)(A); "in excess of statutory jurisdiction, authority, or
22 limitations, or short of statutory right," 5 U.S.C. § 706(2)(C); or "without observance of
23 procedure required by law," 5 U.S.C. § 706(2)(D). "Agency action" includes, in relevant part,
24 "an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to
25 act." 5 U.S.C. § 551(13).

1 79. The failure of Defendants Chertoff, Gonzalez, Corsano, Harrison and United
 2 States to render a decision on the proposed plaintiff class members' naturalization applications
 3 within 120 days of the date of their naturalization examinations on the basis of pending name
 4 checks, in violation of 8 U.S.C. § 1446(d) and 8 C.F.R. § 335, violates the Administrative
 5 Procedure Act, 5 U.S.C. § 555(b), 706(1), 706(2)(A), 706(2)(C), 706(2)(D).

6 80. The failure of Defendants Mukasey, Mueller, and United States to timely
 7 complete proposed plaintiff class members' name checks, with the full knowledge that CIS
 8 requires the completion of such name checks before determining proposed plaintiff class
 9 members' naturalization applications, violates the Administrative Procedure Act, 5 U.S.C. §§
 10 555(b); 706(1), 706(2)(A), 706(2)(C), 706(2)(D).

11 81. As a result of Defendants' actions, proposed plaintiff class members have suffered
 12 and continue to suffer injury. Declaratory and injunctive relief are therefore warranted.

13 **COUNT THREE**

14 **FAILURE TO FOLLOW NOTICE-AND-COMMENT REQUIREMENTS**
 15 **OF THE ADMINISTRATIVE PROCEDURE ACT**

16 **[Against Defendants Chertoff, Gonzalez, Corsano, Harrison, and United States]**

17 82. The allegations contained in paragraphs 1 through 73 above are repeated and
 18 incorporated as though fully set forth herein.

19 83. By regulation, CIS is required to receive the result of an FBI criminal background
 20 check before a naturalization application can be granted. 8 C.F.R. § 335.2(b). In November
 21 2002, CIS added a new substantive requirement to the naturalization process, known as a name
 22 check, that goes beyond the criminal background check authorized by statute and regulation.
 23 The name check constitutes a substantive rule that departs from prior policy and practice.

24 84. Defendants Chertoff, Gonzalez, Corsano, Harrison, and United States
 25 implemented the “name check” requirement without public notice or providing a period for
 26

1 public comment, even though the name check requirement has an adverse impact on individuals
2 whose naturalization applications are delayed due to the name check.

3 85. The failure to provide a notice-and-comment period before implementing the
4 “name check” requirement violates the Administrative Procedure Act, 5 U.S.C. § 553.

5 86. As a result of Defendants’ actions, proposed plaintiff class members have suffered
6 and continue to suffer injury. Declaratory and injunctive relief are therefore warranted.

7 **COUNT FOUR**

8 **FAILURE TO PROVIDE NOTICE OF REMEDIES**

9 **[Against Defendants Chertoff, Gonzalez, Corsano, Harrison, and United States]**

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

12 88. If a naturalization application is not granted at the time of the naturalization
13 interview, CIS is required to inform the applicant of the remedies available under 8 U.S.C.
14 1447(b). *See* 8 U.S.C. § 1446(b) (CIS officer “shall, *at the examination*, inform the applicant of
15 the remedies available to the applicant under section 1447 of this title” (emphasis added)).

16 89. Defendants Chertoff, Gonzalez, Corsano, Harrison, and United States failed to
17 provide the requisite notice to members of the proposed notice subclass.

18 90. As a result of Defendants’ actions, proposed plaintiff class members have suffered
19 and continue to suffer injury. Declaratory and injunctive relief are therefore warranted.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiffs pray for entry of a judgment in favor of the proposed plaintiff
22 class and against Defendants as follows:

- 23 1. Assuming jurisdiction over the matter;
24 2. Certifying this case as a class action lawsuit, as proposed herein;
25 3. Granting proposed plaintiff class members’ applications for naturalization
26 pursuant to 8 U.S.C. § 1447(b);

1 4. In the alternative, ordering Defendants Mukasey, Mueller, and United States to
2 complete proposed plaintiff class members' "name checks" within 60 days and ordering
3 Defendants Gonzalez, Chertoff, Corsano, Harrison, and United States to promptly render a
4 decision, in a time period not to exceed 90 days, on proposed plaintiff class members'
5 naturalization applications;

6 5. Declaring unlawful (a) the failure of Defendants Gonzalez, Chertoff, Corsano,
7 Harrison, and United States to grant applications for naturalization within 120 days of the date of
8 the naturalization examination; (b) the failure of Defendants Gonzalez, Chertoff, Corsano,
9 Harrison, and United States to notify naturalization applicants of their statutory remedies under 8
10 U.S.C. § 1447(b); (c) the failure of Defendants Mukasey, Mueller, and United States to complete
11 name checks within a reasonable time; and (d) Defendants' failures to take all necessary steps to
12 adjudicate applications for naturalization within 120 days of the date of the naturalization
13 examinations;

14 6. Declaring void and enjoining the name check process for failure to comply with
15 the Administrative Procedure Act's notice-and-comment requirement;

16 7. Enjoining Defendants' unlawful conduct;

17 8. Awarding reasonable attorney fees and costs pursuant to the Equal Access to
18 Justice Act, 5 U.S.C. § 504, 28 U.S.C. § 2412; and

19 9. Granting any and all further relief that this Court deems just and proper.

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3 DATED: April 8, 2008.

4 STOEL RIVES LLP

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CERTIFICATE OF SERVICE

I hereby certify that on April 8, 2008 I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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DATED: April 8, 2008.

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