

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

MIKHAIL IGNATYEV, NATALIYA	:	
PETROVNA DEMIDCHIK on behalf of	:	
themselves and all other similarly	:	Civ. Action No. _____
situated,	:	
	:	
v.	:	
	:	
MICHAEL CHERTOFF, in his official	:	CLASS ACTION COMPLAINT
Capacity as Secretary of Homeland Security,	:	
MICHAEL MUKASEY, in his official	:	
capacity as Attorney General of the	:	ACTION FOR DECLARATORY
United States, ROBERT S. MUELLER,	:	AND INJUNCTIVE RELIEF
in his official capacity as Director of the	:	
Federal Bureau of Investigation,	:	
EMILIO T. GONZALEZ, in his official	:	
capacity as Director of the U.S.	:	
Citizenship and Immigration Services, and	:	
EVANGELIA KLAPAKIS, in her official	:	
capacity as Acting District Director of the	:	
U.S. Citizenship and Immigration Services	:	
Philadelphia District Office.	:	

PRELIMINARY STATEMENT

1. Plaintiffs are lawful permanent residents of the United States who have lived in the United States for many years. Plaintiffs wish to become U.S. citizens and long ago submitted naturalization applications to United States Citizenship and Immigration Services (“USCIS”), the responsible federal agency.¹ Their naturalization applications have not been adjudicated, however, despite the passage of over six months since the dates of submission, because each of their applications is awaiting completion of an “FBI name check,” a background check that the FBI conducts on behalf of USCIS.

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

2. Plaintiffs seek to pledge their allegiance to the United States and to participate fully in our society as United States citizens. Having qualified to do so after years of working in the United States and contributing to their communities, Plaintiffs seek only what the law provides, which is a final decision on their naturalization applications within the reasonable timelines required by law.

3. Defendant USCIS officials Gonzalez and Klapakis and the Secretary of Homeland Security are responsible for the naturalization process. Defendants Mueller and Mukasey are responsible for the FBI name check and other background checks conducted in the course of the naturalization process.

4. In November 2002, USCIS drastically altered the naturalization procedure by requiring a vastly expanded FBI name check to be conducted on every application, even though it is not required by either statute or regulation. The FBI implemented the expanded FBI name check in a manner that has caused systemic, unnecessary and prolonged delays in the naturalization process. As a result of Defendants' policies and practices, the unwarranted and cumbersome new FBI name check procedure has resulted in months-long and even years-long delays in naturalization adjudication for Plaintiffs and the proposed class.

5. USCIS's own Ombudsman has stated that, as implemented by Defendants, the FBI name check used in naturalization applications is of questionable value in detecting persons who may pose a threat to security. Nevertheless, USCIS uses the FBI name check without imposing any deadlines for completion. In requiring FBI name checks and tolerating systemic and prolonged delays during those name checks, both USCIS and the FBI have acted with complete disregard for Congress's plain directive

that USCIS should complete the processing of naturalization applications within six months from the date of submission. Through their insistence on FBI name checks, USCIS and the FBI have unreasonably delayed the processing of the naturalization applications of Plaintiffs and the proposed class members, and USCIS has unlawfully withheld final adjudication of these applications.

6. Defendants' unlawful conduct has deprived Plaintiffs of the privileges of United States citizenship. Plaintiffs cannot vote, serve on juries, expeditiously sponsor their immediate relatives living abroad for permanent residence, receive business and education loans and other benefits reserved for citizens, participate in the Visa Waiver Program, or travel abroad and return to the United States without fear of exclusion from this country. Plaintiffs' experiences are typical of tens of thousands of other naturalization applicants around the country who have suffered unreasonable and unlawful delays in the naturalization process because of long-pending FBI name checks.

7. Plaintiffs respectfully request, on behalf of themselves and all others similarly situated, that the Court certify the proposed class, enter judgment in favor of the proposed class on all claims, and grant the relief requested herein. Specifically, Plaintiffs request that the Court require the Defendants to adjudicate their applications for naturalization within the time periods prescribed by law, and declare that the Defendants' actions violate the naturalization statute and regulations, laws governing administrative agency action, and the Due Process Clause of the Fifth Amendment.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this action under the Administrative Procedure Act, 5 U.S.C. § 701, *et. seq.*, the Mandamus Act, 28 U.S.C. § 1361, and 28

U.S.C. §1331, which vest the United States district courts with jurisdiction over civil actions arising under the Constitution, laws, or treaties of the United States.

9. Venue properly lies with this district pursuant to 28 U.S.C. § 1391(b), as the named plaintiffs reside within this judicial district and a substantial part of the activities complained of occurred within this judicial district.

THE PARTIES

10. The Named Plaintiffs and proposed class representatives are Mikhail Ignatyev and Nataliya Petrovna Demidchik, both of whom reside within the City of Philadelphia, in the State of Pennsylvania and the United States of America.

11. Defendant Michael Chertoff is the Secretary of Homeland Security, which encompasses USCIS. He is charged with “[a]ll authorities and functions of the Department of Homeland Security (DHS) to administer and enforce the immigration laws.” 8 C.F.R. § 2.1; 8 U.S.C. § 1103(a). He is sued in his official capacity.

12. Defendant Michael Mukasey is the Attorney General of the United States. He shares responsibility with Defendant Chertoff for administering and enforcing the nation’s immigration laws. The Attorney General is the head of the United States Department of Justice (“DOJ”), which encompasses the Federal Bureau of Investigation. He is sued in his official capacity.

13. Defendant Robert Mueller is the Director of the Federal Bureau of Investigation (FBI). He is charged with administering the FBI’s duties to conduct investigations in connection with citizenship applications under review by USCIS, including conducting FBI name checks. He is sued in his official capacity.

14. Defendant Emilio Gonzalez is the Director of USCIS. He is charged with administering the immigration laws of the United States, including the processing and adjudication of citizenship applications. He is sued in his official capacity.

15. Defendant Evangelia Klapakis is the Acting District Director of the USCIS Philadelphia District Office. She is sued in her official capacity.

STATUTORY AND REGULATORY SCHEME

16. The United States Constitution grants Congress the power to “establish a Uniform Rule of Naturalization.” Art. I. § 8, cl. 4. Congress delegated authority for naturalization to the Attorney General. *See* 8 U.S.C. § 1421(a); Pub. L. No. 101-649, Tit. IV, 104 Stat. 4978, 5038-48 (Nov. 29, 1990). The Attorney General, in turn, delegated responsibility for naturalization to the former Immigration and Naturalization Service (INS). 8 C.F.R. § 100.2(a); 28 C.F.R. Pt. 105. Since the abolition of the INS in 2002, USCIS has been the federal agency responsible for processing and adjudication of naturalization applications. *See* Homeland Security Act of 2002, Pub. L. No. 107-296, §471, 116 Stat. 2135, 2205 (codified at 6 U.S.C. § 291(a)) (transferring authority for immigration enforcement and services from former Immigration and Naturalization Service to new Department of Homeland Security).

17. In order to apply for naturalization, a lawful permanent resident must file an application for naturalization with USCIS. 8 U.S.C. § 1445(a), (b); 8 C.F.R. §§ 316.4, 334.1, 334.2.

18. USCIS has a policy of processing naturalization applications in chronological order, based upon date of receipt of the application and fee. In accordance with this policy, when USCIS receives a naturalization application and fee, USCIS grants

the applicant a “priority date” that is based on the date of receipt. INS Operation Instruction 103.2(q), *available at* Operations Instructions of the Immigration and Naturalization Service (Matthew Bender, 2007) (Lexis Immigration Library, Operations Instructions of the INS File).

19. Before a person may be naturalized, USCIS may conduct or waive a “personal investigation” of the applicant. 8 U.S.C. § 1446(a). By regulation, USCIS must also complete a “criminal background check.” 8 C.F.R. §§ 335.1, 335.2.

20. Since 1997, Congress has also required that a “criminal background investigation” be conducted on each applicant for citizenship. Pub. L. 105-119, Title I, 111 Stat. 2440, 2448-49 (1997); 8 C.F.R. § 335.2(b). Congress did not specify what such an investigation should entail.

21. In March 1998, to implement the requirement of a criminal background check, the INS (USCIS’s predecessor agency) promulgated a proposed rule for notice and public comment. *See* Requiring Completion of Criminal Background Checks Before Final Adjudication of Naturalization Applications, 63 Fed. Reg. 12979 (Mar. 17, 1998). After receiving public comment, INS promulgated a final regulation found at 8 C.F.R. § 335.2(b) to implement the 1997 law.

22. Under 8 C.F.R. § 335.2(b), the FBI performs a criminal background check on each naturalization applicant. This criminal background check involves a check of the applicant’s fingerprints against FBI databases to confirm whether or not the applicant has an administrative or criminal record. 8 C.F.R. § 335.2(b). These criminal background checks are usually completed within days if not hours.

23. Upon information and belief, although 8 C.F.R. § 335.2(b) defines the “criminal background check” to include only a fingerprint records check, USCIS requires two other security checks: a name check through the Interagency Border Inspection System (IBIS) database and the FBI name check.

24. After the “criminal background check” is completed pursuant to 8 C.F.R. § 335.2(b), USCIS schedules a naturalization examination, at which an applicant meets with a USCIS examiner who is authorized to ask questions and take testimony. 8 C.F.R. § 335.2(a). The examination typically includes questions testing the applicant’s English literacy and basic knowledge of the history and government of the United States. 8 C.F.R. § 335.2(c). Applicants with a medical disability that prevents them from learning English and /or civics may apply for a waiver of the citizenship examination. 8 C.F.R. § 312.1

25. The USCIS examiner must determine whether to grant or deny the naturalization application. 8 U.S.C. § 1446(d). Naturalization is not discretionary. USCIS must grant a naturalization application if the applicant has complied with all requirements for naturalization. 8 C.F.R. § 335.3. USCIS must make a final determination on every naturalization application, either at the time of the examination or, at the latest, within 120 days after the date of the examination. 8 C.F.R. § 335.3.

26. Once an application is granted, USCIS schedules the applicant for an oath ceremony at which he or she is sworn in as a United States citizen.

27. If USCIS does not issue a decision within 120 days of the examination, an applicant may file suit in district court under 8 U.S.C. § 1447(b). That statute confers jurisdiction upon the district court in the district in which the applicant resides, and it

allows the court either to determine the matter (*i.e.*, grant or deny citizenship) or to remand with appropriate instructions to USCIS to determine the matter. A primary purpose of that statute, enacted in 1990, was to decrease backlogs in the naturalization process and reduce waiting times for naturalization applicants. H.R. Rep. No. 101-187, at 8 (1989); 135 Cong. Rec. H4539-02, H4542 (1989) (statement of Rep. Morrison).

28. In addition, 8 U.S.C. § 1571(b) states, “It is the sense of Congress that the processing of an immigration benefit application should be completed not later than 180 days after the initial date of filing of the application” Naturalization applications are among the “immigration benefit applications” included within this provision. This provision, along with 8 U.S.C. § 1571(a), § 1572, and § 1573, makes clear Congress’s intent to eliminate persistent backlogs in the processing of immigration benefit applications. Moreover, Congress has defined the term “backlog” in the statute as “the period of time in excess of 180 days that such application has been pending before the Immigration and Naturalizations Service.” 8 U.S.C. § 1572(1).

29. Section 1571(b) provides the statutory guideline and “rule of reason” for determining whether naturalization applications are being processed in a timely manner. Under the most straightforward reading of 8 U.S.C. § 1571(b), all naturalization applications that are not finally adjudicated within 180 days of the date of submission are presumptively unreasonably delayed.

USCIS EXPANSION OF “FBI NAME CHECKS”

30. Plaintiffs are informed and believe that USCIS may have requested “FBI name checks” for naturalization applicants prior to 2002. Plaintiffs are informed and believe that before 2002, these FBI name checks may have involved searches of the

applicant's name against an FBI database containing the names of persons "of interest" to the FBI – *i.e.*, criminal suspects, targets of investigations, and others suspected of wrongdoing.

31. Plaintiffs are informed and believe that beginning in November 2002, USCIS dramatically altered the naturalization procedure by expanding the scope of the FBI name check, by requiring the FBI to search applicants' names against additional databases.

32. The expanded FBI name check used by USCIS is not part of the "criminal background check" that is required by Public Law 105-119, tit. I, 111 Stat. 2448-49 (Nov. 26, 1997), and 8 § C.F.R. 335.2.

33. When it expanded the FBI name check requirement for naturalization in November 2002, USCIS did not promulgate a proposed rule or give notice and an opportunity for public comment on the rule, as it had done in 1998 when implementing the criminal background check requirement.

34. The expanded FBI name check was a substantive departure from prior USCIS policy because it imposed a new requirement in naturalization procedure not based on statute or regulations and because it has had a substantial adverse effect on applicants for naturalization by causing significant delays in adjudication. As such, the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.*, required USCIS to promulgate a proposed rule, provide a notice and comment period, and thereafter promulgate a final rule prior to enacting the November 2002 expanded FBI name check.

35. Plaintiffs are informed and believe that the expanded FBI name check consists of a search of a person's name through the FBI's criminal and non-criminal files

in its Central Records System. The Central Records System contains administrative, applicant, criminal, personnel, and other FBI files. Plaintiffs are informed and believe that, since November 2002, the expanded FBI name check on naturalization applications includes an FBI search of not only “main files” for persons “of interest,” but also “references files” for any person or entity that is mentioned in the “main files,” including innocent persons who are not suspected of any wrongdoing, but who have come into contact with the FBI, including witnesses, interviewees, crime victims, and persons who have applied for security clearances for professional reasons.

36. Plaintiffs are informed and believe that since the November 2002 expansion, USCIS does not adjudicate applications for naturalization until it receives the results of a completed name check from the FBI.

37. Plaintiffs are informed and believe that USCIS and the FBI have entered into written agreements regarding the conduct of FBI name checks on, among others, applicants for naturalization, and that in these agreements neither USCIS nor the FBI impose any time limits for the completion of name checks.

38. Plaintiffs are informed and believe that from time to time and under certain circumstances, USCIS requests the FBI to expedite the name checks of certain individuals, including certain applicants for naturalization.

39. Plaintiffs are informed and believe that beginning in April 2006, in response to a deluge of lawsuits around the country brought by frustrated naturalization applicants pursuant to 8 U.S.C. § 1447(b), USCIS implemented a new policy of refusing to schedule naturalization examinations for those applicants whose FBI name checks were not completed. USCIS has stated that an express purpose of this policy change was

to preclude litigation under 8 U.S.C. § 1447(b) by those who have passed naturalization examinations and are awaiting final adjudication of their naturalization applications. As a result of this change in policy, which appears to be an explicit effort to thwart Congress's intent to provide delayed naturalization applicants with recourse to the federal courts, the applications of substantial numbers of class members have been unreasonably delayed, and naturalization examinations have not been scheduled because of pending FBI name checks.

40. FBI name checks are now the cause of systemic, prolonged delays in the processing of applications for naturalization. In both 2006 and 2007, the USCIS Ombudsman – the individual charged by Congress with providing recommendations on improving USCIS services and operations – declared that name checks “significantly delay adjudication of immigration benefits for many customers, hinder backlog reduction efforts, and may not achieve their intended security objectives.” Citizenship and Immigration Services Ombudsman Annual Report 2006, at 23 (June 29, 2006) (hereinafter “2006 Report”), *available at* http://www.dhs.gov/xlibrary/assets/CISOmbudsman_AnnualReport_2006.pdf; Citizenship and Immigration Services Ombudsman Annual Report 2007, at 37 (June 11, 2007) (hereinafter “2007 Report”), *available at* http://www.dhs.gov/xlibrary/assets/CISOMB_Annual_Report_2007.pdf.

41. In the most recent report, the Ombudsman declared that “FBI name checks may be the single biggest obstacle to the timely and efficient delivery of immigration benefits” and that the delays are getting worse, not better. 2007 Report at 37. The report noted that as of May 2007, over 329,000 USCIS name checks were pending, with 64 percent of those cases (over 211,000) pending more than 90 days, and 32 percent (almost

107,000) pending more than one year. *Id.* at 37. The 2007 report also found that the problem of long-pending name checks had worsened in the preceding year. *Id.*

42. The Ombudsman also questioned the value of FBI name checks in accomplishing their stated purpose, which is to detect persons who should be denied immigration benefits because they pose a danger or threat to security. In response to USCIS's claims of effectiveness, the Ombudsman declared that "most, if not all, of the problem cases that would result in an eventual denial of benefits also can be revealed by the other more efficient, automated criminal and security checks that USCIS initiates." 2007 Report at 41.

43. Moreover, the Ombudsman "agree[d] with the assessment of many case workers and supervisors at USCIS field offices and service centers that the FBI name check process has limited value to public safety or national security, especially because in almost every case the applicant is in the United States during the name check process, living or working without restriction." 2007 Report at 40. In further acknowledgment of the limited utility of name checks, the Ombudsman noted that "[n]ame checks are not conducted by the FBI as part of ongoing investigations or from a need to learn more about an individual because of any threat or risk perceived by the FBI." 2007 Report at 38.

44. In addition, "[t]o date, the Ombudsman has been unable to ascertain from USCIS the total number of actual problem cases that the agency discovered exclusively as a result of the FBI name check." 2007 Report at 41. Neither USCIS nor the FBI has ever shown that the FBI name check has led to the detection of a national security threat posed by a naturalization applicant that would not have been discovered independently

through the fingerprint records check or IBIS database check, both of which are routinely completed within minutes or days and result in no delays in naturalization.

FACTS AS TO NAMED PLAINTIFFS

Mikhail Ignatyev

45. Plaintiff Mikhail Ignatyev, native of the Ukraine and citizen of the Russian Federation, is 60 years old. He arrived in the United States with his wife Alla Ignatyeva in April 1999 as public interest parolees under a law passed by Congress to assist certain nationals of former Soviet republics who faced long standing persecution because of their religion. Mr. Ignatyev and Ms. Ignatyeva qualified for this status because Ms. Ignatyeva had suffered persecution in the former Soviet Union because of her Jewish faith and ethnicity.

46. The couple lives in Philadelphia, Pennsylvania. Mr. Ignatyev was employed for many years as an assembler by Elmar Window Fashions. Due to ill health, he has ceased working.

47. Mr. Ignatyev became a lawful permanent resident (“LPR”) on April 28, 2000, and filed a naturalization application with USCIS on March 29, 2006. This was also the priority date issued to him by USCIS. He was fingerprinted in connection with his application on May 6, 2006, at the Application Support Center.

48. Mr. Ignatyev’s wife was naturalized as a citizen of the United States on March 16, 2005.

49. Shortly after his application to naturalize was filed, Mr. Ignatyev was diagnosed with prostate cancer. Following intense chemotherapy treatment, his condition

is now in remission. However, the ordeal has left him severely depressed and afraid for his health.

50. At this time, Mr. Ignatyev remains in poor mental health stemming from his cancer and cancer treatments and is unable to work. As a result, he and his wife are in financial straits because her income alone is insufficient to support them.

Mr. Ignatyev has waited to be scheduled for an examination in connection with his naturalization application for almost two years. Upon information and belief, USCIS has delayed his examination because FBI has not completed Mr. Ignatyev's FBI name check.

51. Mr. Ignatyev has been prejudiced by the long delay in the adjudication of his naturalization application in several ways. First, in this election year, where interest in Presidential candidates has reached record levels, he wishes very much to participate in the voting process to the extent he is able. Second, if Mr. Ignatyev were a United States citizen, he would qualify for federal- and state-funded benefits that would provide critical supplemental income and health care benefits. However, because of the long delay in his naturalization, he is unable to apply for those benefits. Citizenship will allow him the peace of mind to know that he will be entitled to receive medical benefits that will cover the cost of his treatments and keep him in good health for years to come.

Petrovna Demidchik

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

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

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

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

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

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

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

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

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

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

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

DEFENDANTS' UNLAWFUL POLICIES AND PRACTICES

61. Plaintiffs are informed and believe that Defendants Chertoff, Gonzalez, and Klapakis have a policy, pattern, and practice of failing to process and adjudicate the applications for naturalization of the proposed plaintiff class in accordance with statutory deadlines, namely within 180 days of the date of submission of such applications.

62. Plaintiffs are informed and believe that Defendants Chertoff, Gonzalez, and Klapakis have a policy, pattern, and practice of unlawfully withholding and unreasonably delaying the processing and adjudication of applications for naturalization of the proposed plaintiff class, in disregard of statutory deadlines, because of pending FBI name checks.

63. Plaintiffs are informed and believe that Defendants Chertoff, Gonzalez, and Klapakis have a policy, pattern and practice of unlawfully failing to take all

necessary steps to complete FBI name checks in a timely manner so as to allow USCIS to process and adjudicate the applications for naturalization of the proposed plaintiff class within 180 days of the date of submission of such applications.

64. Plaintiffs are informed and believe that Defendants Mukasey and Mueller have a policy, pattern, and practice of failing to complete FBI name checks in a timely manner, with the full knowledge that USCIS requires the completion of such name checks for processing and adjudication of applications for naturalization of the proposed plaintiff class, and with the full knowledge that the statutory deadlines require USCIS to process and adjudicate such applications within 180 days of the date of submission. The actions and omissions of Defendants Mukasey and Mueller result in unreasonable delays in the completion of the FBI name checks in violation of the Administrative Procedure Act, which requires all federal agencies not to engage in unreasonable delays or to withhold required action.

65. Plaintiffs are informed and believe that Defendants have a policy, pattern, and practice of failing to set deadlines for completing FBI name checks and to take all the other reasonable steps necessary to complete the adjudication of applications for naturalization of the proposed plaintiff class, in utter disregard of statutory deadlines that require USCIS to process and adjudicate such applications within 180 days of the date of submission.

66. Plaintiffs are informed and believe that Defendants Chertoff, Gonzalez, and Klapakis have a policy, pattern, and practice of unlawfully requiring FBI name checks for adjudication of applications for naturalization of the proposed plaintiff class, despite the lack of any statutory or regulatory authorization for such name checks.

67. Plaintiffs are informed and believe that Defendants Mukasey, Chertoff, Gonzalez, and Klapakis unlawfully expanded the FBI name checks in November 2002, as set forth above, without giving notice to the public and allowing a period for public comment and without promulgating a regulation. Requiring FBI name checks as a prerequisite to naturalization effected a substantive change in existing law, resulting in substantial and undue hardship and burden to the proposed plaintiff class.

68. As a result of the Defendants' policies, practices, actions, and omissions described herein, members of the proposed plaintiff class have suffered injury, in that they have been unlawfully denied the rights and benefits of United States citizenship. Among other things, members of the proposed plaintiff class have been unable to vote in local, state, and national elections that have occurred since the filing of their naturalization applications, including state and national elections in 2006. They have been unable to sponsor expeditiously their immediate relatives living abroad for permanent residence in the United States. They have been unable to travel freely outside of the United States because they do not have United States passports and the guarantee of re-admission into the country upon their return. Finally, they have been unable to apply for certain types of employment, educational grants and loans, and other benefits that are limited to United States citizens.

CLASS ALLEGATIONS

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

All lawful permanent residents who have submitted or will submit applications for naturalization to the USCIS District Office located within

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

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

71. The class is so numerous that joinder of all members is impracticable. Upon information and belief, the class consists of at least one hundred persons.

72. There are questions of law and fact common to the proposed class that predominate over any questions affecting only the individually Named Plaintiffs, including: (1) whether USCIS's actions and omissions, including its failure to adjudicate the naturalization applications of the proposed plaintiff class within 180 days of the date of submission because of pending FBI name checks, and its failure to impose deadlines on the completion of FBI name checks in accordance with statutory deadlines, violate the Immigration and Nationality Act and implementing regulations and constitute unreasonable delay and unlawful withholding of agency action in violation of the Administrative Procedure Act; (2) whether the FBI's actions and omissions, including its failure to complete name checks in a timely fashion so as to allow USCIS to adjudicate the naturalization applications of the proposed plaintiff class within 180 days of the date of submission, in accordance with statutory deadlines, constitute unreasonable delay and unlawful withholding of agency action in violation of the Administrative Procedure Act; (3) whether the actions and omissions of USCIS and FBI resulting in prolonged and systemic delays in naturalization violate the Fifth Amendment due process rights of the Named Plaintiffs and members of the proposed class; and (4) whether USCIS's failure to

provide the opportunity for public notice and comment prior to implementing the expanded FBI name check requirement violates the Administrative Procedure Act.

73. The claims of the Named Plaintiffs are typical of the claims of the proposed class. The Named Plaintiffs, like all class members, are lawful permanent residents who have submitted applications for naturalization, and whose applications USCIS has not processed or adjudicated despite the passage of over 180 days since the date of submission, because of pending FBI name checks. Like all members of the proposed class, the Named Plaintiffs bring claims under the Administrative Procedure Act against both USCIS and the FBI and a claim under the Fifth Amendment Due Process Clause against USCIS and the FBI.

74. All of the Named Plaintiffs will fairly and adequately represent the interests of all members of the proposed class because they seek relief on behalf of the class as a whole and have no interests antagonistic to other members of the class. The named Plaintiffs are also represented by pro bono counsel, including the ACLU of Pennsylvania, the ACLU Immigrants' Rights Project, HIAS & Council Migration Services of Philadelphia, the Nationalities Service Center, Inc., and the law firm of Langer Grogan & Diver, P.C., who have extensive expertise in class action litigation, including litigation regarding the rights of immigrants.

75. Defendants have acted and have acted on grounds that apply generally to the class and final injunctive relief or declaratory relief is appropriate to the class as a whole.

FIRST CLAIM FOR RELIEF

**VIOLATIONS OF THE ADMINISTRATIVE
PROCEDURE ACT ALL PLAINTIFFS AGAINST
DEFENDANTS CHERTOFF, GONZALEZ, AND KLAPAKIS**

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

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

78. The actions and omissions of Defendants Chertoff, Gonzalez, and Klapakis in failing to adjudicate the applications for naturalization of the proposed plaintiff class with 180 days of the date of submission because of pending FBI name checks, in violation of 8 U.S.C. § 1446(d), 8 U.S.C. § 1571(b), and 8 C.F.R. § 335, violate the Administrative Procedure Act, 5 U.S.C. § 555(b); 5 U.S.C. §§ 706(1), 706(2)(C), 706(2)(D).

79. The actions and omissions of Defendant Chertoff, Gonzalez, and Klapakis in failing to set deadlines for completing FBI name checks and to take all the other

reasonable steps necessary to complete the adjudication of applications for naturalization of the proposed plaintiff class within 180 days of the date of submission because of pending FBI name checks, contrary to the requirements of 8 U.S.C. § 1446(d), 8 U.S.C. § 1571(b), and 8 C.F.R. § 335, violate the Administrative Procedure Act, 5 U.S.C. §§ 555(b), 706(1), 706(2)(A), 706(2)(C), 705(2)(D).

80. Defendants have a duty under 8 U.S.C. § 1446(d), 8 U.S.C. § 1571(b), and 8 C.F.R. § 335 to finally adjudicate Plaintiffs' naturalization applications within the deadlines imposed by statute and regulations. Defendants' unlawful conduct in failing to do so has resulted in, *inter alia*, unreasonable delays in and unlawful withholding of the adjudication of Plaintiffs' naturalization applications. As a result of Defendants' actions and utter indifference to statutory deadlines, Plaintiffs have suffered and continue to suffer injury. Declaratory and injunctive relief are therefore warranted.

SECOND CLAIM FOR RELIEF

VIOLATIONS OF THE ADMINISTRATIVE PROCEDURE ACT ALL PLAINTIFFS AGAINST DEFENDANTS MUKASEY AND MUELLER

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

82. The Administrative Procedure Act requires administrative agencies to conclude matters presented to them "within a reasonable time." 5 U.S.C. § 555. A district court reviewing agency action may "compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1). The court also may hold unlawful and set aside agency action that, *inter alia*, is found to be: "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," 5 U.S.C. § 706(2)(A); "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right," 5 U.S.C. §

706(2)(C); or “without observance of procedure required by law,” 5 U.S.C. § 706(2)(D).

“Agency action” includes, in relevant part, “an agency rule, order, license, sanction, relief or the equivalent or denial thereof, or failure to act.” 5 U.S.C. § 551(13).

83. The failure of Defendants Mukasey and Mueller to timely complete FBI name checks, or to set or adhere to any timelines for completion of FBI name checks, with the full knowledge that USCIS requires the completion of such name checks for adjudication of applications for naturalization of the proposed plaintiff class, and with full knowledge of the statutory deadlines and requirements for adjudication of naturalization applications pursuant to 8 U.S.C. § 1446, 8 U.S.C. § 1571 (b), and 8 C.F.R. § 335, violates the Administrative Procedure Act, 5 U.S.C. § 555(b); 5 U.S.C. §§ 706(1), 706(2)(A), 706(2)(C), 706(2)(D).

84. Defendants Mukasey and Mueller have a duty pursuant to the Administrative Procedure Act, agreements with USCIS, and Executive Order 10450, to timely complete USCIS-initiated name checks for naturalization applications, given Defendants’ full knowledge that FBI name checks are required to finally adjudicate Plaintiffs’ naturalization applications within the deadlines imposed by statute and regulations. Defendants’ unlawful conduct in failing to do so has resulted, *inter alia*, in unreasonable delays in and unlawful withholding of the adjudication of Plaintiffs’ naturalization applications. As a result of Defendants’ actions and utter indifference to statutory deadlines, Plaintiffs have suffered and continue to suffer injury. Declaratory and injunctive relief are therefore warranted.

THIRD CLAIM FOR RELIEF

VIOLATION OF DUE PROCESS CLAUSE ALL PLAINTIFFS AGAINST ALL DEFENDANTS

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

86. The Due Process Clause of the Fifth Amendment prohibits the government from depriving any person of life, liberty or property without due process of law. U.S. Const., Amend. V.

87. Defendants Chertoff, Gonzalez, and Klapakis have a pattern, practice, or policy of failing to adjudicate the applications for naturalization of the proposed plaintiff class within 180 days of the date of submission of such applications because of pending FBI name checks, in violation of 8 U.S.C. § 1446(d), 8 U.S.C. § 1571, and 8. C.F.R. § 335.

88. Defendants Mukasey and Mueller have a pattern, practice, or policy of tolerating systemic, prolonged, and unreasonable delays in the FBI name check process, with full knowledge that USCIS requires the completion of such “name checks” for adjudication of applications for naturalization of the proposed plaintiff class within the statutory deadlines.

89. Defendants have a pattern, practice, or policy of failing to set deadlines for completing “name checks” and to take all the other reasonable steps necessary to complete the adjudication of applications for naturalization of the proposed plaintiff class with 180 days of the date of submission of such applications because of pending FBI name checks, in violation of 8 U.S.C. § 1446(d), 8 U.S.C. § 1571, and 8 C.F.R. § 335.

90. The above-described actions and omissions by Defendants violate Plaintiffs' rights to due process of law. As a result of Defendants' actions, Plaintiffs have suffered and continue to suffer injury. Declaratory and injunctive relief are therefore warranted.

FOURTH CLAM FOR RELIEF

VIOLATION OF NOTICE-AND-COMMENT REQUIREMENTS OF THE ADMINISTRATIVE PROCEDURE ACT ALL PLAINTIFFS AGAINST DEFENDANTS CHERTOFF, GONZALEZ, AND KLAPAKIS

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

92. The actions of Defendants Chertoff, Gonzalez, and Klapakis in November 2002 to expand the FBI name check for naturalization applications constitute a rule within the meaning of 5 U.S.C. § 551(4).

93. The Administrative Procedure Act, 5 U.S.C. § 553, requires administrative agencies to provide a notice-and-comment period prior to implementing a substantive rule, including a rule that is a departure from prior policy and practice and that has a substantial adverse effect upon a large number of those affected.

94. The actions and omissions of Defendants Chertoff, Gonzalez, and Klapakis in failing to provide a notice-and-comment period prior to the November 2002 expansion of the FBI name check requirement violated 5 U.S.C. § 553 in that the expansion constituted a substantive rule that departed from prior policy and practice and has had a substantive adverse impact upon a large number of those affected, namely naturalization applicants.

95. As a result of Defendants' actions and omissions, Plaintiffs were injured, and declaratory and injunctive relief is appropriate.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

1. Assume jurisdiction over the matter.
2. Certify the class of Plaintiffs.
3. With respect to the certified class of Plaintiffs, order Defendants to: (a) take all necessary steps to complete all FBI name checks of class members within a reasonable time period not to exceed 45 days from the date of the Court's order; and (b) finally adjudicate all naturalization applications of class members with a reasonable time period not to exceed 90 days from the date of the Court's order.
4. Enjoin Defendants and order them to: (a) take all necessary steps to complete all FBI name checks of naturalization applicants within 90 days from the date of submission of the applications; (b) and finally adjudicate all naturalization applications with 180 days from the date of submission.
5. Order Defendants Chertoff, Gonzalez, and Klapakis to revoke and suspend the November 2002 expansion of the FBI name check with respect to naturalization applications, until such time as Defendants have completed promulgating a rule following the Administrative Procedure Act's process for notice and comment by the public.
6. Issue a declaratory judgment holding unlawful:
 - (a) the actions and omissions of Defendants Chertoff, Gonzalez, and Klapakis in failing to adjudicate applications for naturalization within 180 days of the date of submission, because of pending FBI name checks;

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

(c) the actions and omissions of all Defendants in failing to set deadlines and to take all necessary steps to adjudicate applications for naturalization within 180 days of the date of submission.

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

8. Grant any and all further relief this Court deems just and proper.

Respectfully submitted,



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Edward Diver
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Ayodele Gansallo
Judith Bernstein-Baker
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Philadelphia, Pa. 19103
(215) 832-0900

Mary Catherine Roper
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(215) 592-1513

Kristine C. Mehok
Steven Larin
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Philadelphia, Pa. 19107
(215) 893-8400

Of Counsel:

Cecillia D. Wang
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
IMMIGRANTS' RIGHTS PROJECT
39 Drumm Street
San Francisco, Ca. 94111
(415) 343-0775
(Application for admission *pro hac vice* forthcoming)

Dated: April 1, 2008

CIVIL COVER SHEET

APPENDIX H

The JS 44 civil cover sheet and the information contained herein 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

Mikhail Ignatyev and Nataliya Petrovna Demidchik, on behalf of themselves and all others similarly situated.

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

(c) Attorney's (Firm Name, Address, and Telephone Number)
John J. Grogan, Langer Grogan & Diver, P.C.
1717 Arch Street, Suite 4130
Philadelphia, Pa. 19103 (215) 320-5662

DEFENDANTS

Michael Chertoff, Michael Mukasey, Robert S. Mueller, Emilio T. Gonzales and Evangelina Klapakis.

County of Residence of First Listed Defendant Washington D.C.
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

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

- ☐ 1 U.S. Government Plaintiff
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 2 U.S. Government Defendant
☐ 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 | <input type="checkbox"/> 1 <input type="checkbox"/> 1 Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 <input type="checkbox"/> 4 | |
| Citizen of Another State | <input type="checkbox"/> 2 <input type="checkbox"/> 2 Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 | |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 | |

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input checked="" type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 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):

5 U.S.C. § 555; 5 U.S.C. § 706; 8 U.S.C. § 1446; 8 U.S.C. § 1571; 5 U.S.C. § 553; U.S. Const. Amend. V.

Brief description of cause:

Class action seeking declaratory and injunctive relief to address unlawful delays in the processing of naturalization applications.

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 Hon. Michael Baylson

DOCKET NUMBER 07-0445; 07-0971; 073223; 07-2718; 07-2859; 08-195

DATE SIGNATURE OF ATTORNEY OF RECORD

APRIL 1, 2008

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

UNITED STATES DISTRICT COURT

APPENDIX F

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: Mikhail Ignatjev, 10866 Parlin Terr. # 2, Phila. Pa. 19116, Nataliya Petrovna Demidchik, 10669 Halstead St., Phila. Pa. 19116

Address of Defendant: Michael Chertoff, Department of Homeland Security, Washington D.C.

Place of Accident, Incident or Transaction: Philadelphia County
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?
(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities? Yes ☒ No ☐
RELATED CASE, IF ANY:

Case Number: 07-0445; 07-0971; 07-3223; 07-2718; 07-2859; 08-195 Judge Hon. Michael Baylson Date Terminated: Open or terminated since 1/01/08

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes ☒ No ☐
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☒ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases
(Please specify)

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases
(Please specify)

ARBITRATION CERTIFICATION

(Check appropriate Category)

I, John J. Grogan, counsel of record do hereby certify:

- ☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- ☒ Relief other than monetary damages is sought.

DATE: April 1, 2008


Attorney-at-Law

PA-72443

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: _____

Attorney-at-Law

Attorney I.D.#

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

CASE MANAGEMENT TRACK DESIGNATION FORM

Mikhail Ignatyev and Nataliya Petrovna	:	
Demidchik, on behalf of themselves and all	:	
other similarly situated	:	
	:	CIVIL ACTION NO:
	:	
v.	:	
Michael Chertoff; Michael Mukasey;	:	
Robert S. Mueller; Emilio To. Gonzalez	:	
Evalngelina Klapakis	:	
	:	

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. §2241 through §2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) (X)
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ()

APRIL 1, 2008
Date

JOHN J. GROGAN
Attorney-at-law

Plaintiffs
Attorney for

(215) 320-5662
Telephone

(215) 320-5703
FAX Number

jjgrogan@langergrogan.com
E-Mail Address