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15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA  
17 SAN FRANCISCO DIVISION

18 ALIA AHMADI, et al.,  
19 Plaintiffs,  
20 v.

21 MICHAEL CHERTOFF, et al.,  
22 Defendants.  
23

) No. C-07-3455-WHA  
)  
) **DEFENDANTS' ANSWER TO**  
) **PLAINTIFFS' SECOND AMENDED**  
) **COMPLAINT**

1 COME NOW the Defendants, by and through the undersigned counsel, and submit this  
2 Answer to the Plaintiffs' Second Amended Complaint.

### 3 INTRODUCTION

4 1. This paragraph sets forth Plaintiffs' portrayal of the action, including their legal  
5 conclusions. Defendants object to the characterizations of their actions and to every legal  
6 conclusion set forth by Plaintiffs. To the extent that a responsive pleading is required, Defendants  
7 admit that plaintiffs Ahmadi, Genthcev, Huang, Ovchinnikov, Sapozhnikov, and Scovajsa are long  
8 term Lawful Permanent Residents ("LPR") of the United States. Defendants deny that plaintiffs  
9 Ahmadi, Genthcev, Huang, Ovchinnikov, Sapozhnikov, and Scovajsa have met all statutory  
10 requirements for naturalization. Defendants admit that plaintiffs plaintiffs Ahmadi, Genthcev,  
11 Huang, Ovchinnikov, Sapozhnikov, and Scovajsa have not had their applications for naturalization  
12 adjudicated. Defendants deny the remaining allegations in Paragraph 1.

13 2. This paragraph sets forth Plaintiffs' portrayal of the action, including their legal  
14 conclusions. Defendants object to the phrase "suffering from systemic delays in the naturalization  
15 process" as misleading and an erroneous characterization of Defendants' actions, and further object  
16 to every legal conclusion set forth by Plaintiffs. To the extent a responsive pleading is required,  
17 Defendants deny the allegations in paragraph 2. Defendants lack sufficient information or  
18 knowledge to form a belief as to the truth of the remaining allegations in Paragraph 2, which  
19 allegations are therefore denied.

20 3. This paragraph sets forth Plaintiffs' portrayal of the action, including their legal  
21 conclusions. Defendants object to the characterizations of their actions and to every legal  
22 conclusion set forth by Plaintiffs. To the extent a response is deemed necessary, Defendants admit  
23 only that Defendants Gonzalez and Still are officers of the United States Citizenship and  
24 Immigration Services ("CIS") and that Defendant Mueller is an officer of the Federal Bureau of  
25 Investigation ("FBI"), and that CIS is responsible for the naturalization process. Defendants deny  
26 the remaining allegations in paragraph 3.

27 4. This paragraph sets forth Plaintiffs' portrayal of the action, including their legal  
28 conclusions. Defendants object to the characterizations of their actions and to every legal

1 conclusion set forth by Plaintiffs. To the extent a response is deemed necessary, Defendants deny  
2 that the case is appropriate for class action treatment under Rule 23, and admit only that 8 U.S.C. §  
3 1447(b) provides that a district court may make a determination on an application for  
4 naturalization if no adjudication occurs within 120 days of the examination.

5 5. This paragraph sets forth Plaintiffs' portrayal of the action, including their legal  
6 conclusions. Defendants object to the phrase "Defendant officers of CIS have violated CIS  
7 regulations" as misleading and an erroneous characterization of Defendants' actions, and further  
8 object to every legal conclusion set forth by Plaintiffs. To the extent a response is deemed  
9 necessary, Defendants deny the allegation in paragraph 5.

10 6. Denied. This paragraph sets forth Plaintiffs' claims under the Administrative Procedure  
11 Act ("APA"), and the Due Process Clause, which the Court dismissed in its Order dated October  
12 15, 2007.

13 7. Denied. This paragraph sets forth Plaintiffs' portrayal of their claims under the APA in  
14 which the Court dismissed in its Order dated October 15, 2007.

15 8. Admitted.

16 9. This paragraph sets forth Plaintiffs' portrayal of the action, including their legal  
17 conclusions. No response is needed, although Defendants object to the characterizations of their  
18 actions and to every legal conclusion set forth by Plaintiffs. To the extent a response is deemed  
19 necessary, Defendants deny that plaintiffs have met all statutory requirements for naturalization.  
20 Defendants deny that the case is appropriate for class action treatment under Rule 23. Defendants  
21 lack sufficient information or knowledge to form a belief as to the truth of the remaining  
22 allegations in Paragraph 9.

23 10. This paragraph sets forth Plaintiffs' portrayal of the action, including their legal  
24 conclusions. No response is needed, although Defendants object to the characterizations of their  
25 actions and to every legal conclusion set forth by Plaintiffs. To the extent a response is deemed  
26 necessary, Defendants deny that the case is appropriate for class action treatment under Rule 23.  
27 Defendants deny the first and second sentence of Paragraph 10. Defendants lack sufficient  
28

1 information or knowledge to form a belief as to the truth of the remaining allegations in Paragraph  
2 10, which allegations are therefore denied.

3 11. This paragraph sets forth Plaintiffs' portrayal of the action, including their legal conclusions  
4 and requests for relief. Defendants object to the characterizations of their actions and to every  
5 legal conclusion set forth by Plaintiffs. To the extent a response is deemed necessary, Defendants  
6 deny that the case is appropriate for class action treatment under Rule 23. Plaintiffs' requests for  
7 relief under the due process clause and the APA have been dismissed by the Court in its Order  
8 dated October 15, 2007. Defendants deny the remaining allegations in Paragraph 11.

### 9 JURISDICTION AND VENUE

10 12. This paragraph sets forth conclusions of law to which no response is required. To the  
11 extent that a responsive pleading is required, Defendants admit only that 8 U.S.C. § 1447(b)  
12 confers jurisdiction over certain naturalization applications.

13 13. This paragraph sets forth Plaintiffs' portrayal of the action, including their legal  
14 conclusions. Defendants object to the characterizations of their actions and to every legal  
15 conclusion set forth by Plaintiffs. To the extent a response is deemed necessary, Defendants admit  
16 that venue lies within the Northern District of California.

### 17 THE PARTIES

#### 18 Plaintiffs:

19 14. Admitted.

20 15. Admitted.

21 16. Admitted.

22 17. Admitted

23 18. Admitted.

24 19. Admitted.

#### 25 Defendants:

26 20. Admitted.

27 21. Admitted.

28 22. Admitted.

1 23. Admitted.

2 24. Admitted.

3 **LEGAL FRAMEWORK**

4 25. Admitted.

5 26. Admitted.

6 27. Admitted.

7 28. Admitted.

8 29. Admitted.

9 30. This paragraph sets forth Plaintiffs' portrayal of the action, including their legal  
10 conclusions. Defendants object to the characterizations of their actions and to every legal  
11 conclusion set forth by Plaintiffs. To the extent a response is deemed necessary, Defendants admit  
12 the first sentence of Paragraph 30, and deny the second sentence of paragraph 30.

13 31. This paragraph sets forth Plaintiffs' portrayal of the action, including their legal  
14 conclusions. Defendants object to the characterizations of their actions and to every legal  
15 conclusion set forth by Plaintiffs. To the extent a response is deemed necessary, Defendants deny  
16 the first sentence of Paragraph 31, and admit the second sentence of paragraph 31.

17 32. This paragraph sets forth Plaintiffs' portrayal of the action, including their legal  
18 conclusions. Defendants object to the characterizations of their actions and to every legal  
19 conclusion set forth by Plaintiffs. To the extent a response is deemed necessary, Defendants deny  
20 the first sentence of Paragraph 32, and admit the second sentence of paragraph 32.

21 33. Admitted.

22 **PRE-NATURALIZATION BACKGROUND CHECKS**

23 34. The allegations in Paragraph 34 set forth conclusions of law to which no responsive  
24 pleading is required. Defendants object to the characterizations of their actions and to every legal  
25 conclusion set forth by Plaintiffs. To the extent a response is deemed necessary, Defendants  
26 respectfully refer the Court to 8 C.F.R. § 335.2. Defendants admit the first two sentences of  
27 paragraph 34, and admit the final sentence of paragraph 34. Defendants deny the third sentence of  
28 paragraph 34.

1 35. The allegations in Paragraph 35 set forth Plaintiffs' portrayal of the action, including their  
2 legal conclusions. Defendants object to the characterizations of their actions and to every legal  
3 conclusion set forth by Plaintiffs. To the extent a response is deemed necessary, Defendants admit  
4 only that the Interagency Border Inspection System ("IBIS") and the FBI name check are among  
5 the name-based background checks performed upon each applicant for naturalization, and deny the  
6 remaining allegations in Paragraph 35.

7 36. The allegations in Paragraph 36 set forth Plaintiffs' portrayal of the action, including their  
8 legal conclusions. Defendants object to the characterizations of their actions. To the extent a  
9 response is deemed necessary, Defendants admit the allegations in Paragraph 36.

10 37. The allegations in Paragraph 37 set forth Plaintiffs' portrayal of the action, including their  
11 legal conclusions. Defendants object to the characterizations of their actions and to every legal  
12 conclusion set forth by Plaintiffs. To the extent a response is deemed necessary, Defendants deny  
13 the allegations in Paragraph 37.

14 38. The allegations in Paragraph 38 set forth Plaintiffs' portrayal of the action, including their  
15 legal conclusions. Defendants object to the characterizations of their actions and to every legal  
16 conclusion set forth by Plaintiffs. To the extent a response is deemed necessary, Defendants deny  
17 the allegations in Paragraph 38.

18 39. The allegations in Paragraph 39 set forth Plaintiffs' portrayal of the action, including their  
19 legal conclusions. Defendants object to the characterizations of their actions and to every legal  
20 conclusion set forth by Plaintiffs. To the extent a response is deemed necessary, Defendants are  
21 without knowledge sufficient to admit or deny the allegations in the first sentence of Paragraph 39,  
22 which allegations are therefore denied. Defendants deny the remaining allegations in  
23 Paragraph 39.

24 40. The allegations in Paragraph 40 set forth Plaintiffs' portrayal of the action, including their  
25 legal conclusions. Defendants object to the characterizations of their actions and to every legal  
26 conclusion set forth by Plaintiffs. To the extent a response is deemed necessary, Defendants deny  
27 the allegations in the first two sentences of Paragraph 40. Defendants admit that the CIS  
28 Ombudsman's Report contains the quotations in the remainder of Paragraph 40.

1 41. The allegations in Paragraph 41 set forth Plaintiffs' portrayal of the action, including their  
2 legal conclusions. Defendants object to the characterizations of their actions and to every legal  
3 conclusion set forth by Plaintiffs. To the extent a response is deemed necessary, Defendants are  
4 without knowledge sufficient to admit or deny the allegations in the first sentence of Paragraph 41,  
5 which allegations are therefore denied. Defendants admit that the CIS Ombudsman's Report  
6 contains the quotations in the remainder of Paragraph 41.

7 42. The allegations in Paragraph 42 set forth Plaintiffs' portrayal of the action, including their  
8 legal conclusions. Defendants object to the characterizations of their actions and to every legal  
9 conclusion set forth by Plaintiffs. To the extent a response is deemed necessary, Defendants admit  
10 only that in April 2006, CIS stopped the practice of scheduling examinations until all portions of  
11 the full criminal background check, including the FBI name check, are completed. Defendants  
12 respectfully refer the court to review 8 C.F.R. § 335.2. Defendants deny the remaining allegations  
13 in paragraph 42.

14 **FACTS PERTAINING TO THE NAMED PLAINTIFFS**

15 43. Defendants admit only that, based on information supplied by Alia Ahmedi and in  
16 Defendants' records, Ms. Ahmedi resides in Union City, California, and is a 73-year-old native  
17 and citizen of Afghanistan. Defendants are without knowledge sufficient to admit or deny the  
18 remaining allegations in this paragraph, which allegations are therefore denied.

19 44. Defendants admit that, based on information supplied by Ms. Ahmedi and in Defendants'  
20 records, she applied for citizenship in 2002. Defendants deny that plaintiff Ahmedi meets all the  
21 statutory requirements for naturalization. Defendants are without knowledge sufficient to admit or  
22 deny the remaining allegations in this paragraph, which allegations are therefore denied.

23 45. The allegations in Paragraph 45 set forth Plaintiffs' portrayal of the action, including their  
24 legal conclusions. Defendants object to the characterizations of their actions and to every legal  
25 conclusion set forth by Plaintiffs. To the extent a response is deemed necessary, Defendants admit  
26 that USCIS did not have a current set of fingerprints on file. Defendants are without knowledge  
27 sufficient to admit or deny the remaining allegations in Paragraph 45, which allegations are  
28 therefore denied.

1 46. The allegations in Paragraph 46 set forth Plaintiffs' portrayal of the action, including their  
2 legal conclusions. Defendants object to the characterizations of their actions and to every legal  
3 conclusion set forth by Plaintiffs. To the extent a response is deemed necessary, Defendants admit  
4 only that the results of the FBI name check portion of the full criminal background check were  
5 transmitted to CIS on or about October 13, 2005.

6 47. The allegations in Paragraph 47 sets forth Plaintiffs' portrayal of the action, including their  
7 legal conclusions. Defendants object to the characterizations of their actions and to every legal  
8 conclusion set forth by Plaintiffs. To the extent a response is deemed necessary, Defendants are  
9 without knowledge sufficient to admit or deny the allegations in this paragraph, which allegations  
10 are therefore denied.

11 48. Defendants admit that Mr. Gentchev is a 53-year-old native and citizen of Bulgaria, who  
12 was admitted to the United States in October 1997 as a lawful permanent resident based on  
13 sponsorship by an employer. Defendants are without knowledge sufficient to admit or deny the  
14 remaining allegations in Paragraph 48, which allegations are therefore denied.

15 49. Defendants are without knowledge sufficient to admit or deny the allegations in Paragraph  
16 49, which allegations are therefore denied.

17 50. Defendants admit only that, based on information in Defendants' records, he applied for  
18 citizenship in 2002, and successfully completed the civics and English portions of the interview in  
19 2003. Defendants deny that plaintiff Gentchev meets all the statutory requirements for  
20 naturalization. Defendants are without knowledge sufficient to admit or deny the remaining  
21 allegations in this paragraph, which allegations are therefore denied.

22 51. Defendants admit only that CIS received several inquiries from Mr. Gentchev, and that he  
23 was informed that his application was awaiting completion of security checks. Defendants are  
24 without knowledge sufficient to admit or deny the remaining allegations in Paragraph 51, which  
25 allegations are therefore denied.

26 52. Defendants admit that Mr. Huang is a 44-year-old native and citizen of China, who was  
27 admitted to the United States in October 1994 as a lawful permanent resident based on the petition  
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1 of his wife. Defendants are without knowledge sufficient to admit or deny the remaining  
2 allegations in Paragraph 52, which allegations are therefore denied.

3 53. Defendants are without knowledge sufficient to admit or deny the allegations in Paragraph  
4 53, which allegations are therefore denied.

5 54. Defendants admit only that, based on information in Defendants' records, he applied for  
6 citizenship in 2003, and successfully completed the civics and English portions of the interview in  
7 2004. Defendants deny that Mr. Huang meets all the statutory requirements for naturalization.  
8 Defendants are without knowledge sufficient to admit or deny the remaining allegations in this  
9 paragraph, which allegations are therefore denied.

10 55. Defendants are without knowledge sufficient to admit or deny the allegations in Paragraph  
11 55, which allegations are therefore denied.

12 56. Defendants are without knowledge sufficient to admit or deny the allegations in Paragraph  
13 56, which allegations are therefore denied.

14 57. Defendants admit only that, based on information supplied by Igor Ovchinnikov and in  
15 Defendants' records, Mr. Ovchinnikov is a 43-year-old native of the former Soviet Union and  
16 citizen of Ukraine, who was admitted to the United States in January 1998 as a lawful permanent  
17 resident through the diversity visa program. Defendants are without knowledge sufficient to admit  
18 or deny the remaining allegations in Paragraph 57, which allegations are therefore denied.

19 58. Defendants are without knowledge sufficient to admit or deny the allegations in Paragraph 58,  
20 which allegations are therefore denied.

21 59. Defendants admit only that, based on information supplied by Mr. Ovchinnikov and in  
22 Defendants' records, he applied for citizenship in 2003, and successfully completed the civics and  
23 English portions of the interview in 2004. Defendants deny that plaintiff Ovchinnikov meets all  
24 the statutory requirements for naturalization. Defendants are without knowledge sufficient to  
25 admit or deny the remaining allegations in this paragraph, which allegations are therefore denied.

26 60. Defendants object to the characterizations of their actions and to every legal conclusion set  
27 forth by Plaintiffs. Defendants admit only that USCIS requested updated fingerprints in June of  
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1 2005. Defendants are without knowledge sufficient to admit or deny the remaining allegations in  
2 Paragraph 60, which allegations are therefore denied.

3 61. Defendants admit only that CIS received several inquiries from Mr. Ovchinnikov, and that  
4 he was informed that his application was awaiting completion of security checks. Defendants also  
5 admit that Mr. Ovchinnikov requested that his application be expedited in February of 2007.

6 Defendants are without knowledge sufficient to admit or deny the remaining allegations in  
7 Paragraph 61, which allegations are therefore denied.

8 62. Defendants are without knowledge sufficient to admit or deny the allegations in this  
9 paragraph, which allegations are therefore denied.

10 63. Defendants admit only that, based on information supplied by Sergei Yuri Sapozhnikov and  
11 in Defendants' records, Mr. Sapozhnikov is a 46-year-old native of the former Soviet Union and  
12 citizen of Russia, who became a lawful permanent resident in 1998. Defendants lack sufficient  
13 information or knowledge to form a belief as to the truth of the remaining allegations in Paragraph  
14 63, which allegations are therefore denied.

15 64. Defendants admit only that, based on information supplied by Mr. Sapozhnikov and in  
16 Defendants' records, he applied for citizenship in 2004, and successfully completed the civics and  
17 English portions of the interview in 2004. Defendants are without knowledge sufficient to admit  
18 or deny the remaining allegations in this paragraph, which allegations are therefore denied.

19 65. Defendants lack sufficient information or knowledge to form a belief as to the truth of the  
20 allegations in Paragraph 65, which allegations are therefore denied.

21 66. Defendants admit only that Helga Scovajsa is a 68-year-old native of former Czechoslovakia  
22 and a citizen of the Czech Republic, who became a lawful permanent resident in 1978 based on the  
23 petition of her husband. Defendants lack sufficient information or knowledge to form a belief as  
24 to the truth of the remaining allegations in Paragraph 66, which allegations are therefore denied.

25 67. Defendants admit only that, Ms. Scovajsa applied for citizenship in 2004, and successfully  
26 completed the civics and English portions of the interview also in 2004. Defendants are without  
27 knowledge sufficient to admit or deny the remaining allegations in this paragraph, which  
28 allegations are therefore denied. Defendants deny that Ms. Scovajsa meets all the statutory

1 requirements for naturalization. Defendants are without knowledge sufficient to admit or deny the  
2 remaining allegations in this paragraph, which allegations are therefore denied.

3 68. Defendants admit only that CIS received at least one inquiry from Ms. Scovajsa, and that  
4 she was informed that her application was awaiting completion of security checks. Defendants are  
5 without knowledge sufficient to admit or deny the remaining allegations in Paragraph 68, which  
6 allegations are therefore denied.

7 69. Defendants lack sufficient information or knowledge to form a belief as to the truth of the  
8 allegations in Paragraph 69, which allegations are therefore denied.

9 **Defendants' Policies and Practices**

10 70. Denied. Defendants object to the characterizations of Defendants' actions and to every  
11 legal conclusion set forth by Plaintiffs. Defendants assert that the case is not appropriate for class  
12 action treatment under Rule 23.

13 71. Denied. Defendants object to the characterizations of Defendants' actions and to every  
14 legal conclusion set forth by Plaintiffs. Defendants assert that the case is not appropriate for class  
15 action treatment under Rule 23.

16 72. Denied. Defendants object to the characterizations of Defendants' actions and to every  
17 legal conclusion set forth by Plaintiffs. Defendants assert that the case is not appropriate for class  
18 action treatment under Rule 23.

19 73. Denied. Defendants object to the characterizations of Defendants' actions and to every  
20 legal conclusion set forth by Plaintiffs. Defendants assert that the case is not appropriate for class  
21 action treatment under Rule 23.

22 74. Denied. Defendants object to the characterizations of Defendants' actions and to every  
23 legal conclusion set forth by Plaintiffs. Defendants assert that the case is not appropriate for class  
24 action treatment under Rule 23.

25 75. Denied. Defendants object to the characterizations of Defendants' actions and to every  
26 legal conclusion set forth by Plaintiffs.

27 76. Denied. Defendants object to the characterizations of Defendants' actions and to every  
28 legal conclusion set forth by Plaintiffs.

1 77. The court dismissed all of Plaintiffs' claims under the APA, including Plaintiffs'  
2 allegations regarding notice and comment, in its Order dated October 15, 2007. To the extent that  
3 a responsive pleading is required, Defendants are without knowledge sufficient to admit or deny  
4 the allegations in the first sentence, which allegations are thus denied, and deny the allegations in  
5 the second sentence.

6 78. Denied. Defendants object to the characterizations of Defendants' actions and to every  
7 legal conclusion set forth by Plaintiffs. Defendants assert that the case is not appropriate for class  
8 action treatment under Rule 23.

9 **PREJUDICE SUFFERED BY APPLICANTS WITH DELAYED CASES**

10 79. Denied. Defendants object to the characterizations of Defendants' actions and to every  
11 legal conclusion set forth by Plaintiffs. Defendants assert that the case is not appropriate for class  
12 action treatment under Rule 23.

13 80. Defendants deny that Plaintiffs assert cognizable injuries. Defendants admit that a minor  
14 child may obtain derivative citizenship from a naturalizing parent, and that immediate relatives of  
15 United States citizens are not generally subject to worldwide limitations on the number of  
16 immigrant visas.

17 81. Defendants are without knowledge sufficient to admit or deny the allegations in this  
18 paragraph, which allegations are therefore denied, and note that none of the plaintiffs named in  
19 this action have alleged separations from their spouses or children.

20 82. Defendants are without knowledge sufficient to admit or deny the allegations in this  
21 paragraph, which allegations are therefore denied.

22 83. Defendants are without knowledge sufficient to admit or deny the allegations in this  
23 paragraph, which allegations are therefore denied.

24 84. Defendants deny the allegations in paragraph 84. Defendants object to the  
25 characterizations of Defendants' actions set forth by Plaintiffs.

26 **CLASS ALLEGATIONS**

27 85. Defendants deny that the case is appropriate for class action treatment under Rule 23.  
28

1 86. Defendants deny that the case is appropriate for class action treatment under Rule 23.

2 Defendants admit that the CIS Ombudsman's 2007 report contained the quotations and figures  
3 used in Paragraph 86.

4 87. Defendants deny that the case is appropriate for class action treatment under Rule 23.

5 Defendants admit only that the CIS 2005 report contained the numbers used in Paragraph 87.

6 88. Defendants deny that the case is appropriate for class action treatment under Rule 23, and  
7 deny that plaintiffs have demonstrated commonality. Defendants assert that Plaintiffs' claims  
8 under the due process clause and the APA, have been dismissed by the Court in its Order dated  
9 October 15, 2007.

10 89. Defendants deny that the case is appropriate for class action treatment under Rule 23, and  
11 deny that plaintiffs have demonstrated typicality. Defendants object to the characterizations of  
12 Defendants' actions and to every legal conclusion set forth by Plaintiffs.

13 90. Defendants deny that the case is appropriate for class action treatment under Rule 23, and  
14 deny that the allegations in Paragraph 90. Defendants object to the characterizations of  
15 Defendants' actions and to every legal conclusion set forth by Plaintiffs.

16 91. Defendants deny that the case is appropriate for class action treatment under Rule 23, and  
17 deny that Plaintiffs have demonstrated that they will adequately represent the Class. Defendants  
18 Defendants admit that counsel for Plaintiffs have extensive expertise in class action litigation  
19 and/or immigrants rights cases. Defendants object to the characterizations of Defendants' actions  
20 and to every legal conclusion set forth by Plaintiffs, and deny the final sentence of paragraph 91.

21 **Declaratory And Injunctive Relief Allegations**

22 92. The allegations in Paragraph 92 set forth conclusions of law to which no responsive  
23 pleading is required. However, to the extent a response is deemed necessary, Defendants deny the  
24 first and second sentence of Paragraph 92, and admit that Defendants disagree with Plaintiffs. 92.  
25 Denied.

26 94. The allegations in Paragraph 94 set forth Plaintiffs' request for relief, to which no  
27 responsive pleading is required. However, to the extent a response is deemed necessary,  
28 Defendants deny the allegations in Paragraph 94.

**CAUSES OF ACTION**

**Count One**

95. Defendants reassert their preceding responses to Plaintiffs' allegations in Paragraphs 1 through 94 as though fully set forth herein.

96. Denied. Defendants object to the characterizations of Defendants' actions and to every legal conclusion set forth by Plaintiffs.

97. Defendants deny any named Plaintiff has met all statutory requirements for naturalization. Defendants admit that all named plaintiffs have not had their applications adjudicated.

**Count Two**

98. Defendants reassert their preceding responses to Plaintiffs' allegations in Paragraphs 1 through 97 as though fully set forth herein.

99. Denied. This paragraph sets forth Plaintiffs' portrayal of their claims under the APA in which the Court dismissed in its Order dated October 15, 2007.

100. Denied. This paragraph sets forth Plaintiffs' portrayal of their claims under the APA in which the Court dismissed in its Order dated October 15, 2007. Defendants object to the characterizations of Defendants' actions and to every legal conclusion set forth by Plaintiffs.

101. Denied. This paragraph sets forth Plaintiffs' portrayal of their claims under the APA in which the Court dismissed in its Order dated October 15, 2007. Defendants object to the characterizations of Defendants' actions and to every legal conclusion set forth by Plaintiffs.

102. Denied. This paragraph sets forth Plaintiffs' portrayal of their claims under the APA in which the Court dismissed in its Order dated October 15, 2007. Defendants object to the characterizations of Defendants' actions and to every legal conclusion set forth by Plaintiffs.

103. Denied. This paragraph sets forth Plaintiffs' portrayal of their claims under the APA in which the Court dismissed in its Order dated October 15, 2007. Defendants object to the characterizations of Defendants' actions and to every legal conclusion set forth by Plaintiffs.

**Count Three**

104. Defendants reassert their preceding responses to Plaintiffs' allegations in Paragraphs 1 through 103 as though fully set forth herein.

1 105. Admitted.

2 106. Denied. This paragraph sets forth Plaintiffs' portrayal of their claims under the APA in  
3 which the Court dismissed in its Order dated October 15, 2007. Defendants object to the  
4 characterizations of Defendants' actions and to every legal conclusion set forth by Plaintiffs.

5 107. Denied. This paragraph sets forth Plaintiffs' portrayal of their claims under the APA in  
6 which the Court dismissed in its Order dated October 15, 2007. Defendants object to the  
7 characterizations of Defendants' actions and to every legal conclusion set forth by Plaintiffs.

8 108. Denied. This paragraph sets forth Plaintiffs' portrayal of their claims under the APA in  
9 which the Court dismissed in its Order dated October 15, 2007. Defendants object to the  
10 characterizations of Defendants' actions and to every legal conclusion set forth by Plaintiffs.

11 109. Denied. This paragraph sets forth Plaintiffs' portrayal of their claims under the APA in  
12 which the Court dismissed in its Order dated October 15, 2007. Defendants object to the  
13 characterizations of Defendants' actions and to every legal conclusion set forth by Plaintiffs.

14 **Count Four**

15 110. Defendants reassert their preceding responses to Plaintiffs' allegations in Paragraphs 1  
16 through 109 as though fully set forth herein.

17 111. The allegation in Paragraph 111 sets forth a conclusion of law to which no responsive  
18 pleading is required. To the extent that an answer by Defendants is required, Defendants admit the  
19 legal conclusions in Paragraph 111.

20 112. Denied. This paragraph sets forth Plaintiffs' portrayal of their claims under the Due  
21 Process Clause which the Court dismissed in its Order dated October 15, 2007. Defendants object  
22 to the characterizations of Defendants' actions and to every legal conclusion set forth by Plaintiffs.

23 113. Denied. This paragraph sets forth Plaintiffs' portrayal of their claims under the Due  
24 Process Clause which the Court dismissed in its Order dated October 15, 2007. Defendants object  
25 to the characterizations of Defendants' actions and to every legal conclusion set forth by Plaintiffs.

26 114. Denied. This paragraph sets forth Plaintiffs' portrayal of their claims under the Due  
27 Process Clause which the Court dismissed in its Order dated October 15, 2007. Defendants object  
28 to the characterizations of Defendants' actions and to every legal conclusion set forth by Plaintiffs.

**PRAYER FOR RELIEF**

The remainder of the complaint constitutes Plaintiffs’ request for relief to which no responsive pleading is necessary. To the extent that a responsive pleading is required, Defendants deny the prayer for relief.

Defendants deny that Plaintiffs are entitled to the relief sought in the complaint or to any relief whatsoever.

\* \* \* \* \*

In addition, Defendants assert the following affirmative defenses:

**FIRST AFFIRMATIVE DEFENSE**

The complaint fails to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

The complaint should be dismissed on the ground of mootness.

**THIRD AFFIRMATIVE DEFENSE**

The complaint is so general as to be insufficient to give Defendants fair notice of whether Plaintiffs have standing to assert their claims.

**FOURTH AFFIRMATIVE DEFENSE**

The complaint should be summarily dismissed, as the remaining named Plaintiffs have failed to demonstrate that they meet all the statutory requirements for naturalization.

**FIFTH AFFIRMATIVE DEFENSE**

The complaint is so general as to be insufficient to give Defendants fair notice of the bases upon which Plaintiffs bring their claims.

**SIXTH AFFIRMATIVE DEFENSE**

This Court lacks jurisdiction over Plaintiffs' Cause of Action under the Administrative Procedure Act.

**SEVENTH AFFIRMATIVE DEFENSE**

This Court lacks jurisdiction over Plaintiffs' Cause of Action under the Declaratory Judgment Act.

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**EIGHTH AFFIRMATIVE DEFENSE**

Relief should be denied plaintiffs as an exercise of judicial discretion to withhold relief. The Court should not, even if empowered to do so, engage in the business of reordering agency priorities, or jeopardize national security or the public safety by ordering Defendants to provide documentation to Plaintiffs and alleged class members before the satisfactory completion of all requisite background and security checks.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiffs have failed to state a cause of action under the Due Process Clause.

\* \* \* \* \*

WHEREFORE Defendants ask that this action be dismissed with prejudice, that judgment be entered for Defendants, that the request of an award of costs and expenses of the suit be denied to Plaintiffs, and that the Court grant such other and further relief to Defendants as it deems proper.

Respectfully submitted,

SCOTT N. SCHOOLS  
United States Attorney  
JOANN M. SWANSON  
Assistant United States Attorney  
Chief, Civil Division  
EDWARD A. OLSEN  
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ELIZABETH J. STEVENS  
Senior Litigation Counsel

Dated: November 30, 2007

By: /s/  
JEFFREY S. ROBINS  
Trial Attorney

**CERTIFICATE OF SERVICE**

Case No. C-07-3455-WHA

I hereby certify that on this 30th day of November 2007, one copy of the foregoing **DEFENDANTS' ANSWER TO PLAINTIFFS' SECOND AMENDED COMPLAINT** was served on counsel for Plaintiffs via the district court ECF system which will send notification of such filing to the following ECF filers:

- Julia Harumi Mass  
jmass@aclu.org
- Alan L. Schlosser  
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- Cecillia D. Wang  
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- ACLU Foundation of Northern California
- Lucas Guttentag  
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- ACLU Immigrants' Rights Project
- Christopher Joren Lyons  
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- Asian Law Caucus
- Edward A. Olsen  
edward.olsen@usdoj.gov
- United States Attorney's Office
- Elizabeth J. Stevens  
Elizabeth.Stevens@usdoj.gov
- Department of Justice, Office of Immigration Litigation

In addition, I hereby certify that on this 30th day of November 2007, true and correct copies of **DEFENDANTS' ANSWER TO PLAINTIFFS' SECOND AMENDED COMPLAINT** were served by Federal Express next-day delivery on the following non-ECF filers:

- |                              |  |
|------------------------------|--|
| Sin Yen Ling                 | Todd Gallinger                               |
| Asian Law Caucus             | Council on American-Islamic Relations (CAIR) |
| 939 Market Street, Suite 201 | 3000 Scott Boulevard, Suite 212              |
| San Francisco, CA 94103      | Santa Clara, CA 95054                        |

/S/  
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