

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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Case No. _____ -CIV -

STEVEN H. LARIMORE
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OKSANA WEAVER; LUCIANO HORNA;)
RAHEEL RANGOONWALA; DIN)
MOHAMMED; SAIFUDDIN SIDDIQUI;)
IMTIAZ ISAKH; MERCEDES GOMEZ;)
NEY ROBERTO BOUTET; IMRAN SHAFFI;)
and MOHAMMED KHEIRI, Plaintiffs-)
Petitioners, individually and on behalf of all)
others similarly situated,)

08-21588
CIV-MORENO
/ TORRES

v.)

COMPLAINT—CLASS ACTION

LINDA M. SWACINA, District Director,)
Miami District, U.S. Citizenship and Immigration)
Services ("USCIS"), KATHY REDMAN,)
District Director, Tampa District, USCIS;)
JONATHAN SCHARFEN, Acting Director,)
USCIS; MICHAEL CHERTOFF, Secretary,)
U.S. Department of Homeland Security ("DHS");)
ROBERT S. MUELLER, III, Director, Federal)
Bureau of Investigation ("FBI"), and MICHAEL)
B. MUKASEY, U.S. Attorney General,)

Defendants.)
/

PRELIMINARY STATEMENT

1. Plaintiffs-Petitioners ("Plaintiffs") are lawful permanent residents of the United States whose applications for naturalization (citizenship) have been delayed for nearly 2-4 years since they completed the citizenship interview. Each is a longtime resident of the United States, meets all statutory eligibility requirements for citizenship, and seeks to pledge allegiance to the United States and participate fully in civic society as a U.S. citizen, including by voting in the upcoming presidential election.

2. Federal law requires that U.S. Citizenship and Immigration Services (“USCIS”) render a decision on naturalization applications within 120 days of the naturalization interview (or “examination”), see 8 U.S.C. § 1447(b). The law was enacted in 1990 primarily for the purpose of decreasing backlogs in the naturalization process, and reducing waiting times for naturalization applicants. See H.R. Rep. No. 101-187, at 8 (1989); 135 Cong. Rec. H4539-02, H4542 (1989) (statement of Rep. Morrison). In addition, Congress has stated that immigration applications (such as a citizenship application) should be processed within 180 days from the date of filing, see 8 U.S.C. § 1571(b), and defines “backlog” as occurring where applications have been pending for more than 180 days, see 8 U.S.C. § 1572(1).

3. The named Plaintiffs’ applications, however, have been pending for nearly 2-4 years since the naturalization interview, and there has still been no decision in their case.

4. Federal law also provides that where applicants meet all legal requirements for naturalization, USCIS “shall grant” the application, see 8 C.F.R. § 335.3(a).

5. Defendants, however, have unlawfully and unreasonably delayed rendering a decision on Plaintiffs’ applications—long past the time periods prescribed by law—based on an FBI “name check” that is neither authorized nor required by law.

6. As a result of Defendants’ unlawful actions, Plaintiffs suffer the hardships of unreasonably and unlawfully delayed naturalization, including anxiety over their immigration status, prolonged family separations, ineligibility for certain employment opportunities or public benefits reserved for U.S. citizens, and exclusion from the political process due to the inability to vote. Plaintiffs’ experiences are typical of more than 50,000

naturalization applicants nationally whose applications have been unlawfully and unreasonably delayed due to FBI name checks.

7. Plaintiffs, on behalf of themselves and all others similarly situated within the Southern District of Florida, therefore respectfully request that the Court certify the proposed class, declare that Defendants' actions violate federal law, and require Defendants to complete the class members' name checks and adjudicate their applications for citizenship within 90 days.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction over this matter pursuant to 8 U.S.C. § 1447(b) (jurisdiction to adjudicate naturalization applications delayed more than 120 days since the interview); 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 2201 (Declaratory Judgment Act); 28 U.S.C. § 1361 (mandamus); and 28 U.S.C. § 1651 (All Writs Act).

9. Venue is proper in the Southern District of Florida pursuant to 28 U.S.C. § 1391(e). Plaintiffs sue Defendants in their official capacities as officers and employees of the United States, and Plaintiffs reside in the Southern District of Florida. A substantial part of the events giving rise to this Complaint occurred within this District, in that Plaintiffs' applications for naturalization are pending in USCIS Field Offices within the Southern District of Florida. Venue is also proper in this District pursuant to 8 U.S.C. § 1447(b), which provides that a petition for review of a naturalization application shall be filed in the district where the applicant resides.

PARTIES

Named Plaintiffs

10. Named Plaintiffs and proposed class representatives OKSANA WEAVER, LUCIANO HORNA, RAHEEL RANGOONWALA, DIN MOHAMMED, SAIFUDDIN SIDDIQUI, IMTIAZ ISAKH, MERCEDES GOMEZ, NEY ROBERTO BOUTET, IMRAN SHAFFI, and MOHAMMED KHEIRI, are lawful permanent residents of the United States who meet all statutory requirements for naturalization, including having undergone the naturalization interview more than 120 days ago. The named Plaintiffs reside in the Southern District of Florida, and their citizenship applications are pending in the Southern District of Florida. All have been told or have reason to believe that their applications have been delayed due to the pendency of the name check.

Defendants

11. Defendant LINDA M. SWACINA is District Director of the Miami District of U.S. Citizenship and Immigration Services ("USCIS"). Ms. Swacina is responsible for applications for naturalization pending in the Miami District. She is sued in her official capacity.

12. Defendant KATHY REDMAN is Tampa Field Office Director for USCIS, and believed to be Director of the Tampa District Office for USCIS. Ms. Redman is responsible for applications for naturalization pending in the Tampa District, which includes the West Palm Beach Field Office. Ms. Redman is sued in her official capacity.

13. Defendant JONATHAN SCHARFEN is Acting Director of USCIS. Mr. Scharfen is responsible for processing and adjudicating all applications for naturalization

submitted to USCIS. As Acting Director of USCIS, Mr. Scharfen is also responsible for the scope and nature of the background checks conducted for naturalization applications, which are defined by USCIS by regulation or otherwise. Mr. Scharfen is sued in his official capacity.

14. Defendant MICHAEL CHERTOFF is Director of the U.S. Department of Homeland Security ("DHS"), which encompasses USCIS. Mr. Chertoff is ultimately responsible for the administration of all immigration and naturalization laws, including the processing and adjudication of applications for naturalization. He is sued in his official capacity.

15. Defendant ROBERT S. MUELLER, III, is Director of the Federal Bureau of Investigation ("FBI"). Mr. Mueller is ultimately responsible for the processing of criminal background checks and the "name checks" which are required by USCIS during the naturalization process. He is sued in his official capacity.

16. Defendant MICHAEL B. MUKASEY is Attorney General of the United States. He is the head of the U.S. Department of Justice, which encompasses the FBI. Mr. Mukasey is also jointly responsible with Mr. Chertoff for enforcing immigration laws. Mr. Mukasey is sued in his official capacity.

THE NATURALIZATION PROCESS

17. An individual is eligible to become a naturalized citizen of the United States if he or she has been a lawful permanent resident of the United States for the past five (5) years (or three (3) years if the applicant has been married to a U.S. citizen throughout that time), and is "a person of good moral character, attached to the principles of the Constitution

of the United States, and well disposed to the good order and happiness of the United States.”

8 U.S.C. § 1427(a).

18. A lawful permanent resident may apply for citizenship by filing a detailed N-400 application with U.S. Citizenship and Immigration Services (“USCIS”), formerly the Immigration and Naturalization Service (INS). (In 2002, the INS was abolished with passage of the Homeland Security Act, Pub. L. No. 107-296, 116 Stat. 2135 (2002), and its responsibilities were transferred to departments within the U.S. Department of Homeland Security (“DHS”). Within DHS, USCIS assumed responsibility for adjudicating applications for naturalization, including background checks associated with those applications.)

19. In 1997, Congress passed an appropriations measure that prohibited the then-INS from adjudicating any application for naturalization until the INS “received confirmation from the Federal Bureau of Investigation that a full criminal background check has been completed.” Pub.L. 105-119, Tit. I, Nov. 26, 2007, 111 Stat. 2448. In 1998, the then-INS promulgated regulations to implement the criminal background check requirement. See 8 C.F.R. § 335.2(b). Thus, after the application has been filed, USCIS requires each applicant to submit fingerprints to the FBI for the purpose of conducting a criminal background check. The criminal background check is usually completed within days, if not hours.

20. After USCIS has received the completed results of the criminal background check, USCIS schedules the applicant for a naturalization interview (or “examination”). In 1998, the INS promulgated regulations stating that “[t]he Service will notify applicants for naturalization to appear before a Service officer for initial examination

on the naturalization application only after the Service has received a definitive response from the Federal Bureau of Investigation that a full criminal background check of an applicant has been completed.” 8 C.F.R. § 335.2(b).

21. A “definitive response” from the FBI is defined as: “(1) Confirmation from the Federal Bureau of Investigation that an applicant does not have an administrative or a criminal record; (2) Confirmation from the Federal Bureau of Investigation that an applicant has an administrative or a criminal record; or (3) Confirmation from the Federal Bureau of Investigation that two properly prepared fingerprint cards (Form FD-258) have been determined unclassifiable for the purpose of conducting a criminal background check and have been rejected.” 8 C.F.R. § 335.2(b).

22. At the naturalization interview (or “examination”), the applicant meets with a USCIS officer, is tested in Civics and English language requirements, unless those are waived, and must be advised in writing of any deficiencies in the application. 8 C.F.R. § 335.3(b).

23. Federal law requires a decision on the application within 120 days of the naturalization interview (or “examination”). Pursuant to federal regulations, “A decision to grant or deny the application shall be made at the time of the initial examination or within 120-days after the date of the initial examination of the applicant for naturalization under § 335.2. The applicant shall be notified that the application has been granted or denied and, if the application has been granted, of the procedures to be followed for the administration of the oath of allegiance pursuant to part 337 of this chapter.” 8 C.F.R. § 335.3(a) (emphasis added).

24. Federal law also requires that naturalization be granted to any applicant who complies with all legal requirements. Federal regulations expressly provide: “The Service officer shall grant the application if the applicant has complied with all requirements for naturalization under this chapter.” 8 C.F.R. § 335.3(a) (emphasis added). In other words, where the requirements are met, naturalization is mandatory not discretionary.

25. Once the application is granted, the applicant must take an oath of allegiance before a USCIS officer or a judge to be sworn in as a U.S. citizen.

THE FBI NAME CHECK

26. Federal law defines the required “criminal background check” to include only a fingerprint records check. 8 C.F.R. § 335.2(b).

27. Starting in 2002, however, USCIS dramatically altered the naturalization process by requiring expansive FBI “name checks” for all naturalization applicants, even though no FBI name check is required or authorized by law. FBI name checks have caused extraordinary, unlawful and unreasonable delays in the adjudication of applications for naturalization. USCIS implemented the FBI name checks without providing notice to the public, and without promulgating any regulations.

28. On information and belief, before 2002 USCIS may have also requested limited FBI name checks only to determine whether a citizenship applicant was the subject of an FBI investigation.

29. In 2002, however, USCIS dramatically expanded the FBI “name checks” it requires for naturalization applicants, even though there was no change in the law requiring or authorizing the name check or its expansion. Rather than simply search to

determine whether an applicant is the subject of an FBI investigation, USCIS implemented an expanded FBI name to include a search for any reference to the applicant's name (or to a similar name, or even to a common "fragment" of a name) in any type of file to which the FBI has access, in every case, and for an indefinite period of time.

30. On information and belief, name checks that include a search for all "references" can turn up a "hit" if the applicant (or anyone with a similar name, or a common "fragment" of a name) appears in any type of record (including, for example, personnel files that list the name of a job applicant or reference) and for any reason (including, for example, as someone who has applied for security clearances for professional reasons, or has been the witness to—or victim of—a crime) at any time in the past. Any such "hit" may then prompt further research by the FBI, which FBI has said can cause the agency to manually search paper records that pre-date 1995 and have to be retrieved from any one of about 265 physical locations around the country.

31. As a result, innocent citizenship applicants who have cleared criminal background checks and are not the subject of any FBI investigation can have their applications significantly delayed simply on the basis of a "hit" that has absolutely no bearing on their eligibility for citizenship, and may not even relate to the citizenship applicant him- or herself, but rather to someone with a similar name.

32. Name checks are not required or authorized by law. Yet, USCIS refuses to adjudicate applications for naturalization until it completes this name check process, even when doing so results in years of delay for applicants who meet every statutory requirement for citizenship.

33. In addition to delays caused by the FBI name check itself, USCIS causes additional delays by failing to timely complete its review of name check results after receiving them from the FBI.

34. In 2006 and 2007, USCIS' Ombudsman (a Congressionally-mandated independent office of the Department of Homeland Security) provided annual reports to Congress describing the systemic delays caused by FBI name checks, and questioning their value. See USCIS Ombudsman Annual Report 2006, available at http://www.dhs.gov/xlibrary/assets/CISOmbudsman_AnnualReport_2006.pdf; and http://www.dhs.gov/xlibrary/assets/CISOMB_Annual_Report_2007.pdf.

35. As early as 2006, the USCIS Ombudsman reported that:

FBI name checks, one of the security screening tools used by USCIS, significantly delay adjudication of immigration benefits for many customers, hinder backlog reductions efforts, and may not achieve their intended national security objectives.

36. The USCIS Ombudsman further stated that:

The name checks are not sought 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. Instead, the name checks are a fee-for-service that the FBI provides to USCIS at its request. Moreover, the FBI does not record any additional information about the names USCIS submits and does not routinely take any further action. Instead, the FBI reviews its files much like a credit reporting entity would verify and report on information to commercial entities requesting credit validations.

(emphasis in original).

37. In 2007, the USCIS Ombudsman again reported to Congress that:

FBI name checks, one of several security screening tools used by USCIS, continue to significantly delay adjudication of immigration benefits for many customers, hinder backlog reductions efforts, and may not achieve their

intended national security objectives.

38. In 2007, the USCIS Ombudsman added that:

FBI name checks may be the single biggest obstacle to the timely and efficient delivery of immigration benefits. The problem of long-pending FBI name check cases worsened during the reporting period.

(emphasis in original).

39. The USCIS Ombudsman further reported that:

The Ombudsman agrees 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.

(emphasis added).

40. After years of studying the FBI name check problem, the USCIS

Ombudsman even reported that:

To 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. The Ombudsman understands that most, if not all, of the problem cases which 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.

(emphasis added).

41. The USCIS Ombudsman concluded that:

FBI name checks may be the single biggest obstacle to the timely and efficient delivery of immigration benefits.

(emphasis added).

42. The USCIS-imposed FBI “name checks” that include a search for all

“references” thus cause extraordinary and unreasonable delays in the processing of

naturalization applications, with no tangible benefit offered in return.

43. USCIS' "name check" policy for all naturalization applications was implemented rashly by USCIS without providing notice to, or soliciting comment from, the public.

44. The "name check" is not required or authorized by law.

45. USCIS has been, and is, aware of the unreasonableness of its name check pattern and practice.

46. In addition, USCIS has been, and is, aware of the unreasonable delays its name check pattern and practice causes applicants for naturalization.

47. USCIS and FBI cause additional delay by operating under the belief that there is absolutely no "deadline" for completing name checks, and the review thereof.

48. USCIS also causes additional delay by failing to complete its review of FBI name check results within a reasonable amount of time after receiving them.

49. In conducting, prioritizing, and completing name checks in conjunction with applications for naturalization, FBI acts at the direction of USCIS.

50. Part of the fees that naturalization applicants are required to pay for their applications to be processed is paid to FBI (through USCIS) for the purpose of completing name checks.

NAMED PLAINTIFFS

Plaintiff OKSANA WEAVER

51. Plaintiff OKSANA WEAVER, a Russian national, has been a lawful permanent resident of the United States for more than eight (8) years. Ms. Weaver resides in

Deerfield Beach with her U.S. citizen husband, and their U.S. citizen child. Ms. Weaver's parents are naturalized U.S. citizens. She works as an academic advisor for a local university.

52. Ms. Weaver applied for naturalization on September 4, 2004, and underwent her naturalization interview on September 14, 2005, passing the civics and language requirements. For more than two-and-a-half (2 ½) years since the interview, Ms. Weaver has not received any decision on her application.

53. Ms. Weaver has made numerous inquiries about the status of her case, including by writing letters to the USCIS Ombudsman, the FBI, her U.S. Representative, her U.S. Senators, and the Governor of Florida, but these have been to no avail.

54. Ms. Weaver has suffered and continues to suffer prejudice from the unreasonable delay of her naturalization. While she awaits an adjudication on her application, Ms. Weaver is deprived of the substantial and unique rights and duties of U.S. citizenship, including eligibility for federal employment opportunities and the right to vote in the upcoming presidential election.

Plaintiff LUCIANO HORNA

55. Plaintiff LUCIANO HORNA, a Panamanian national, has been a lawful permanent resident of the United States for more than nine (9) years. Mr. Horna resides in Miami with his U.S. citizen wife, and two U.S. citizen children. Mr. Horna has been an airline pilot for more than thirty (30) years; as part of his profession, he regularly undergoes meticulous security checks which he always clears.

56. Mr. Horna applied for naturalization on November 15, 2005, and underwent his naturalization interview on or about April or May 2006, passing the civics and language requirements. For more than two (2) years since the interview, however, Mr. Horna has not received any decision on his application. Mr. Horna's wife, son and daughter all applied for U.S. citizenship around the same time that he did, yet they received their oath ceremony letters within a month or so, while Mr. Horna has been waiting for his for years.

57. Mr. Horna has made numerous inquiries about the status of his case, including by contacting USCIS and his U.S. Representative, but these have been to no avail.

58. Mr. Horna has suffered and continues to suffer prejudice from the unreasonable delay of his naturalization. While he awaits an adjudication on his application, Mr. Horna is deprived of the substantial and unique rights and duties of U.S. citizenship, including eligibility for federal employment, and the right to vote in the upcoming presidential election.

Plaintiff RAHEEL RANGOONWALA

59. Plaintiff RAHEEL RANGOONWALA, a Pakistani national, has been a lawful permanent resident of the United States for nearly ten (10) years. Mr. Rangoonwala resides in Coconut Creek, and works at a convenience store. Mr. Rangoonwala is married, but his wife remains in Pakistan until they can be reunited in the United States.

60. Mr. Rangoonwala applied for naturalization on October 31, 2003, and underwent his naturalization interview on or about January 3, 2005, passing the civics and language requirements. For more than three (3) years since the interview, however, Mr. Rangoonwala has not received any decision on his application.

61. Mr. Rangoonwala has made numerous inquiries about the status of his case, including by contacting USCIS and his U.S. Senator, but these have been to no avail.

62. Mr. Rangoonwala has suffered and continues to suffer prejudice from the unreasonable delay of his naturalization. While he awaits an adjudication on his application, Mr. Rangoonwala is deprived of the substantial and unique rights and duties of U.S. citizenship, including the ability to petition for prompt reunification with his wife as a U.S. citizen, and the right to vote in the upcoming presidential election.

Plaintiff DIN MOHAMMED

63. Plaintiff DIN MOHAMMED, a Bangladeshi national, has been a lawful permanent resident of the United States for more than eight (8) years. Mr. Mohammed resides in Miramar, and works at a convenience store. Mr. Mohammed is married, but his wife remains in Bangladesh awaiting the approval of a relative immigration petition so that they can be reunited in the United States.

64. Mr. Mohammed applied for naturalization on February 28, 2005, and underwent his naturalization interview on August 16, 2005, passing the civics and language requirements. For nearly three (3) years since the interview, however, Mr. Mohammed has not received any decision on his application.

65. Mr. Mohammed has made numerous inquiries about the status of his case, including by contacting USCIS and his U.S. Representative, but these have been to no avail.

66. Mr. Mohammed has suffered and continues to suffer prejudice from the unreasonable delay of his naturalization. While he awaits an adjudication on his application, Mr. Mohammed is deprived of the substantial and unique rights and duties of U.S.

citizenship, including prompt reunification with one's spouse, eligibility for federal employment, and the right to vote in the upcoming presidential election.

Plaintiff SAIFUDDIN SIDDIQUI

67. Plaintiff SAIFUDDIN SIDDIQUI, a Pakistani national, has been a lawful permanent resident of the United States for more than twelve (12) years. Mr. Siddiqui resides in Miami Shores with his U.S. citizen. He works as an engineer for Miami-Dade County.

68. Mr. Siddiqui applied for naturalization on April 20, 2005, and underwent his naturalization interview on January 5, 2006, passing the civics and language requirements. For more than two (2) years since the interview, however, Mr. Siddiqui has not received any decision on his application. By contrast, Mr. Siddiqui's wife, who was interviewed on her naturalization application the same day as her husband, received her citizenship certificate just months after the interview, on April 21, 2006.

69. Mr. Siddiqui has made numerous inquiries about the status of his case, including by contacting USCIS and his U.S. Senator, but these have been to no avail.

70. Mr. Siddiqui has suffered and continues to suffer prejudice from the unreasonable delay of his naturalization. While he awaits an adjudication on his application, Mr. Siddiqui is deprived of the substantial and unique rights and duties of U.S. citizenship, including employment opportunities and the right to vote in the upcoming presidential election.

Plaintiff IMTIAZ ISAKH

71. Plaintiff IMTIAZ ISAKH, a Guyanese national, has been a lawful permanent resident of the United States for more than ten (10) years. Mr. Isakh resides in Pembroke Pines, and works part-time as a school teacher.

72. Mr. Isakh applied for naturalization on January 18, 2005, and underwent his naturalization interview on January 27, 2006, passing the civics and language requirements. For more than two (2) years since the interview, however, Mr. Isakh has not received any decision on his application.

73. Mr. Isakh has made numerous inquiries about the status of his case, but these have been to no avail.

74. Mr. Isakh has suffered and continues to suffer prejudice from the unreasonable delay of his naturalization. While he awaits an adjudication on his application, Mr. Isakh is deprived of the substantial and unique rights and duties of U.S. citizenship, including eligibility for employment opportunities, and the right to vote in the upcoming presidential election.

Plaintiff MERCEDES GOMEZ

75. Plaintiff MERCEDES GOMEZ, a Cuban national, has been a lawful permanent resident of the United States for more than nine (9) years. Ms. Gomez resides in Miami with her children. Ms. Gomez is disabled.

76. Ms. Gomez applied for naturalization on January 18, 2006, and underwent her naturalization interview on May 23, 2006, satisfying all requirements. For more than two (2) years since the interview, however, Ms. Gomez has not received any decision on her

application.

77. Ms. Gomez has made numerous inquiries about the status of her case, but these have been to no avail.

78. Ms. Gomez has suffered and continues to suffer prejudice from the unreasonable delay of her naturalization. While she awaits an adjudication on her application, Ms. Gomez is deprived of the substantial and unique rights and duties of U.S. citizenship, including eligibility for some federal benefits based on her disability and the right to vote in the upcoming presidential election.

Plaintiff NEY ROBERTO BOUTET

79. Plaintiff NEY ROBERTO BOUTET, a Panamanian national, has been a lawful permanent resident of the United States for more than seven (7) years. Mr. Boutet resides in Coral Gables, and is a self-employed commercial real estate broker.

80. Mr. Boutet applied for naturalization on or about February 16, 2006, and underwent his naturalization interview on August 10, 2006, passing the civics and language requirements. For nearly two (2) years since the interview, however, Mr. Boutet has not received any decision on his application.

81. Mr. Boutet has inquired about the status of his case, but this has been to no avail.

82. Mr. Boutet has suffered and continues to suffer prejudice from the unreasonable delay of his naturalization. While he awaits an adjudication on his application, Mr. Boutet is deprived of the substantial and unique rights and duties of U.S. citizenship, including the right to vote in the upcoming presidential election.

Plaintiff IMRAN SHAFFI

83. Plaintiff IMRAN SHAFFI, a Pakistani national, has been a lawful permanent resident of the United States for more than nine (9) years. Mr. Shaffi resides in Boca Raton with his U.S. citizen wife, and two U.S. citizen children, and works as a security officer.

84. Mr. Shaffi applied for naturalization on October 14, 2003, and underwent his naturalization interview on February 6, 2006, passing the civics and language requirements. For more than two (2) years since the interview, however, Mr. Shaffi has not received any decision on his application. Mr. Shaffi's wife, son and daughter all applied for citizenship around the same time as he did, but their applications were soon granted, while his still has not been adjudicated after years of delay.

85. Mr. Shaffi has made numerous inquiries about the status of his case, including by contacting USCIS and his U.S. Representative, but these have been to no avail.

86. Mr. Shaffi has suffered and continues to suffer prejudice from the unreasonable delay of his naturalization. While he awaits an adjudication on his application, Mr. Shaffi is deprived of the substantial and unique rights and duties of U.S. citizenship, including the right to vote in the upcoming presidential election.

Plaintiff MOHAMED KHEIRI

87. Plaintiff MOHAMED KHEIRI, a Moroccan national, has been a lawful permanent resident of the United States for more than seven (7) years. Mr. Kheiri resides in Boca Raton, and works as a taxi driver.

88. Mr. Kheiri applied for naturalization on November 25, 2005, and underwent his naturalization interview on June 20, 2006, passing the civics and language requirements.

For nearly two (2) years since the interview, however, Mr. Kheiri has not received any decision on his application.

89. Mr. Kheiri has made numerous inquiries about the status of his case, including by contacting his U.S. Representative and U.S. Senators, but these have been to no avail.

90. Mr. Kheiri has suffered and continues to suffer prejudice from the unreasonable delay of his naturalization. While he awaits an adjudication on his application, Mr. Kheiri is deprived of the substantial and unique rights and duties of U.S. citizenship, including the right to vote in the upcoming presidential election.

DEFENDANTS' UNLAWFUL POLICIES AND PRACTICES

91. On information and belief, Defendants SWACINA, REDMAN, SCHARFEN and CHERTOFF have a policy, pattern and practice of failing to adjudicate the naturalization applications of the proposed plaintiff class within 120 days of the naturalization examination, in disregard of statutory deadlines, because of the FBI name check process.

92. On information and belief, Defendants SWACINA, REDMAN, SCHARFEN and CHERTOFF have a policy, pattern and practice of unlawfully withholding and unreasonably delaying adjudication of the naturalization applications of the proposed plaintiff class, in disregard of statutory deadlines, because of the FBI name check process.

93. On information and belief, Defendants SWACINA, REDMAN, SCHARFEN and CHERTOFF have a policy, pattern and practice of unlawfully requiring completed name checks before adjudicating the naturalization applications of the proposed plaintiff class, despite having no statutory or regulatory authorization for such name checks.

94. On information and belief, Defendants SCHARFEN and CHERTOFF unlawfully implemented name checks as a prerequisite to naturalization without public notice and without providing a period for public comment. Requiring name checks as a prerequisite to naturalization effected a substantive change in existing law resulting in undue hardship and burden to the proposed plaintiff class.

95. On information and belief, Defendants SWACINA, REDMAN, SCHARFEN and CHERTOFF have a policy, pattern and practice of unlawfully withholding and unreasonably delaying adjudication of the proposed plaintiffs class's applications for naturalization by failing to promptly act on applications after they receive name check results from the FBI.

96. On information and belief, Defendants SWACINA, REDMAN, SCHARFEN and CHERTOFF have a policy, pattern and practice of failing to take all reasonable steps necessary to ensure that name checks are completed within a reasonable time, and to complete the adjudication of applications for naturalization in a lawful and timely fashion after receiving name check results, despite being on notice of the problem for years.

97. On information and belief, Defendants MUELLER and MUKASEY have a policy, pattern and practice of unreasonably and unlawfully delaying completion of FBI name checks with the full knowledge that USCIS will not adjudicate the naturalization applications of the proposed plaintiff class until the name checks are completed.

98. On information and belief, Defendants MUELLER and MUKASEY have a policy, pattern and practice of failing to timely complete the name checks of the proposed

plaintiff class, operating on the belief that they is absolutely no “deadline” or other temporal limitation to complete them.

99. As a result of Defendants’ policies, practices, actions and omissions, the proposed plaintiff class has suffered injury, in that they have been unlawfully denied the rights and benefits of U.S. citizenship

CLASS ACTION ALLEGATIONS

100. Pursuant to Rule 23, Federal Rules of Civil Procedure, Plaintiffs bring this action individually and on behalf of all other persons similarly situated. The proposed plaintiff class consists of:

All lawful permanent residents of the United States residing in the Southern District of Florida who have submitted naturalization applications to USCIS but whose naturalization applications have not been determined within 120 days of the date of their initial examination due to the pendency of the “name check” process.

101. The requirements of Rule 23(a) are met in that the members of the proposed plaintiff class are so numerous that joinder is impracticable, there are questions of law and fact common to all members of the proposed plaintiff class, the claims of the named Plaintiffs are typical of those of the proposed plaintiff class members, and the named Plaintiffs will fairly and adequately protect the interests of the proposed plaintiff class.

102. A class action is appropriate under Rule 23(b)(1)(A) because inconsistent adjudications about the lawfulness or reasonableness of delays caused by the name check process, or about the lawfulness of the name check process, would establish incompatible standards of conduct for Defendants.

103. A class action is appropriate under Rule 23(b)(2) because Defendants have acted or refused to act on grounds generally applicable to the class, by unlawfully and unreasonably delaying the adjudication of the proposed class members' naturalization applications based on the pendency of the name check process; by unlawfully and unreasonably delaying completion of proposed class members' name checks; and by unlawfully requiring a completed name check before adjudicating the proposed class members' applications for naturalization.

104. On information and belief, approximately 58,000 naturalization applications are delayed nationally pending completion of the name checks. Undersigned counsel are aware of dozens of lawsuits recently brought in the Southern District of Florida by persons similarly situated to plaintiffs seeking adjudication of their delayed applications. Undersigned counsel are unaware of the exact number of proposed class members, but believe that there are at least several hundred individuals similarly situated to Plaintiffs residing in this judicial district. The size of the class may be closed, however, due to USCIS' announced practice since 2006 not to schedule citizenship interviews until after the FBI name checks are completed. Because Defendants are best able to determine the exact number of proposed class members, undersigned counsel will request leave to serve Defendants with discovery requests targeted to this issue.

105. 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 Defendants' failure to render a decision on the naturalization applications of the proposed class within 120 days of the date of the naturalization examination, due to name

check delays, violates federal law; (2) whether Defendants' requiring a name check as a prerequisite to naturalization violates the notice and comment requirements of the Administrative Procedure Act; and (3) whether Defendants' unlawful withholding and unreasonable delay in completing name checks, and in processing name check results, with the full knowledge that USCIS requires the completion of such name checks before rendering a decision on the proposed plaintiff class's naturalization applications, violates the Administrative Procedure Act.

106. The named Plaintiffs' claims are typical of the claims of the proposed class members. Like the named Plaintiffs, all proposed class members have not had their naturalization applications determined within the statutorily-mandated 120-day period following their naturalization examinations, have been deprived of notice and an opportunity to comment on the name check requirement, and have had a decision on their naturalization applications unlawfully withheld or unreasonably delayed due to the name check process.

107. Like the named Plaintiffs, all proposed class members are suffering injuries from the unlawful delay of their naturalization applications, including the inability to participate in civic society by voting or serving on juries, prolonged family separations due to the inability to sponsor immediate relatives for lawful permanent resident status as U.S. citizens, the inability to apply for employment opportunities or public benefits that require U.S. citizenship, and the stigma of an uncertain status in the country they have made their home.

108. 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 interest antagonistic to other members of the class. The named Plaintiffs are represented by pro bono counsel, the Florida Immigrant Advocacy Center, who have expertise in immigration law and class action litigation.

109. The requirements of Rule 23(b)(2) are also met because Defendants acted (or failed to act) in an unlawful manner applicable to all proposed plaintiff class members in failing to render a decision on the proposed plaintiff class members' naturalization applications within the statutorily-mandated 120-day period, unlawfully imposing a name check requirement without notice or comment, in violation of the Administrative Procedure Act; and otherwise unlawfully withholding and unreasonably delaying agency actions, thereby making appropriate final relief with respect to the class as a whole.

DECLARATORY AND INJUNCTIVE RELIEF ALLEGATIONS

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

111. Defendants' failure to timely adjudicate Plaintiffs' naturalization applications, and the applications of proposed class members, has caused and will continue to cause irreparable injury to Plaintiffs and the proposed class members. Plaintiffs have no plain, speedy and adequate remedy at law.

CAUSES OF ACTION

FIRST CLAIM FOR RELIEF

**RIGHT TO JUDICIAL DETERMINATION OF APPLICATION FOR
NATURALIZATION PURSUANT TO 8 U.S.C. §1447(b)
[By Plaintiffs Against USCIS Defendants Swacina, Redman, Scharfen and Chertoff]**

112. The allegations contained in paragraphs 1 through 111 above are repeated and incorporated as though fully set forth herein.

113. Because Defendants have unlawfully failed to adjudicate the naturalization applications of the named Plaintiffs and proposed class members within 120 days of the naturalization examination, each named Plaintiff and proposed class member is entitled to a hearing on his or her naturalization application by the Court under 8 U.S.C. § 1447(b).

114. This Court should grant the named Plaintiffs' and proposed class members' naturalization applications pursuant to 8 U.S.C. § 1447(b), because each meets all requirements for naturalization and federal law therefore requires that the application be granted.

115. In the alternative, this Court should remand the applications to USCIS with specific instructions to complete name checks and adjudicate the applications within 90 days, under 8 U.S.C. § 1447(b).

SECOND CLAIM FOR RELIEF

**UNREASONABLE DELAY IN VIOLATION OF
THE ADMINISTRATIVE PROCEDURE ACT
[By Plaintiffs Against USCIS Defendants and FBI Defendants]**

116. The allegations contained in paragraphs 1 though 111 above are repeated and incorporated as though fully set forth herein.

117. The Administrative Procedure Act (APA) requires all administrative agencies to conclude matters presented to them “within a reasonable time.” 5 U.S.C. § 555(b). A district court reviewing agency action may “compel agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. § 706(1). “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).

118. The failure of Defendants SWACINA, REDMAN, SCHARFEN and CHERTOFF to adjudicate Plaintiffs’ applications for naturalization within 120 days of their naturalization examinations violates the APA, 5 U.S.C. §§ 555(b) and 706.

119. The failure of Defendants MUKASEY and MUELLER to complete name checks within a reasonable time, particularly with the full knowledge that USCIS requires completion of such name checks for adjudicating the named Plaintiffs’ and proposed class members’s applications for naturalization, violates the APA, 5 U.S.C. §§ 555(b) and 706.

120. The failure of Defendants SWACINA, REDMAN, SCHARFEN and CHERTOFF to ensure that the name checks of the named Plaintiffs and the proposed class members are promptly completed, and failure to process name check results received from the FBI within a reasonable time, violates the APA, 5 U.S.C. §§ 555(b) and 706.

121. As a result of Defendants’ actions, named Plaintiffs and the proposed class members have suffered and continue to suffer injury. Declaratory and injunctive relief are therefore warranted.

THIRD CLAIM FOR RELIEF

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

[By Plaintiffs Against USCIS Defendants Swacina, Redman, Scharfen and Chertoff]

122. The allegations contained in paragraphs 1 through 111 above are repeated and incorporated as though fully set forth herein.

123. By regulation, USCIS is required to receive the result of an FBI criminal background check before it may grant a naturalization application. 8 C.F.R. § 335.2(b). USCIS, however, has added a new substantive requirement to the naturalization process, known as a name check, that is neither authorized nor required by law. The name check constitutes a substantive rule that departs from prior policy and practice.

124. Defendants Swacina, Redman, Scharfen and Chertoff implemented the “name check” requirement without public notice or providing a period for public comment, even though the name check requirement has an adverse impact on individuals whose naturalization applications are delayed as a result.

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

126. As a result of Defendants’ actions, the named Plaintiffs and proposed plaintiff class members have suffered and continue to suffer injury. Declaratory and injunctive relief are therefore warranted.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court:

A. Assume jurisdiction over the matter;

B. Certify this case as a class action lawsuit, as proposed herein;

C. Grant the named Plaintiffs and proposed class members' applications for naturalization pursuant to 8 U.S.C. § 1447(b);

D. In the alternative, order Defendants to complete the named Plaintiffs' and proposed class members' name checks within 60 days, and order Defendants to promptly render a decision on the naturalization applications within 30 days thereafter;

E. Issue a declaratory judgment holding unlawful (1) the failure of Defendants SWACINA, REDMAN, SCHARFEN and CHERTOFF to adjudicate applications for naturalization within 120 days of the date of the naturalization interview; (2) the failure of Defendants MUKASEY and MUELLER to complete name checks within a reasonable time; (3) the failure of Defendants to take all necessary steps to ensure that name checks are completed within a reasonable time; (4) the failure of Defendants SWACINA, REDMAN, SCHARFEN and CHERTOFF to process name check results received from the FBI within a reasonable time; and (5) the failure of Defendants to take all necessary steps to assure that applications for naturalization are adjudicated within 120 days of the date of the naturalization interview as required by law;

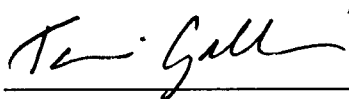
F. Declare void, set aside and enjoin the name check process for failure to comply with the Administrative Procedure Act's notice-and-comment requirement;

G. Enjoin Defendants' unlawful conduct;

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

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

Respectfully submitted,



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Attorneys for Plaintiffs-Petitioners

JS 44 (Rev. 2/08)

CIVIL COVER SHEET

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.)

NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS

OKSANA WEAVER, et al.

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

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

Tania Galloni, Florida Immigrant Advocacy Center
3000 Biscayne Blvd., Suite 400, Miami, FL 33137
(305) 573-1106, ext. 1080

DEFENDANTS

U.S.C.I.S., SWACINA, Linda M., Miami District Director, et al.

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

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

Attorneys (If Known)

U.S. Attorney, 99 NE 4th Street, Suite 300, Miami, FL 33132

(d) Check County Where Action Arose: ☒ MIAMI-DADE ☐ MONROE ☐ BROWARD ☐ PALM BEACH ☐ MARTIN ☐ ST. LUCIE ☐ INDIAN RIVER ☐ ST. JOHNS ☐ ST. PETERSBURG ☐ HIGHLANDS

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

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

III. CITIZENSHIP OF PRINCIPAL PARTIES (For Diversity Cases Only)

- Citizen of This State ☐ 1 ☐ 1 Incorporated in this State ☐ 4 ☐ 4
Citizen of Another State ☐ 2 ☐ 2 Incorporated in Another State ☐ 5 ☐ 5
Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<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	<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	<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 type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <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 Re-filed (see VI below) ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. RELATED/RE-FILED CASE(S).

(See instructions second page):

a) Re-filed Case ☐ YES ☒ NOb) Related Cases ☐ YES ☒ NO

JUDGE

DOCKET NUMBER

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):

Class Action for declaratory and injunctive relief related to applications for naturalization; 8 USC 1447(b); 5 USC 553; 5 USC 555; 28 USC 1361

LENGTH OF TRIAL via 5 days estimated (for both sides to try entire case)

VIII. 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

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

SIGNATURE OF ATTORNEY OF RECORD

DATE

Tania Galloni

6/4/08

FOR OFFICE USE ONLY

AMOUNT

350-

RECEIPT #

981548

IFP