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13 **UNITED STATES DISTRICT COURT**
14 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

15 MANSOUR BAVI; ABBAS
16 AMIRICHIMEH; KWANG HO LEE;
17 and JAMES MOORHEAD,
18 individually and on behalf of all those
19 similarly situated,

20 Plaintiffs,

21 vs.

22 MICHAEL B. MUKASEY, in his
23 official capacity as Attorney General
24 of the United States; MICHAEL
25 CHERTOFF, in his official capacity
26 as Secretary of the U.S. Department
27 of Homeland Security; EMILIO T.
28 GONZALEZ, in his official capacity
as Director of U.S. Citizenship and
Immigration Services; JANE
ARELLANO, in her official capacity
as Field Director of the Los Angeles
District of U.S. Citizenship and
Immigration Services; and ROBERT
S. MUELLER, III, in his official
capacity as Director of the Federal
Bureau of Investigation,

Defendants.

Case No.
SACV07-1394

DOC (RNBx)

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF – CLASS
ACTION; PETITIONS FOR
NATURALIZATION**

2007 DEC -4 AM 10:36
CENTRAL DISTRICT COURT
LOS ANGELES

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JURISDICTION AND VENUE

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2 1. Petitioners/Plaintiffs (“Plaintiffs”) are lawful permanent residents of
3 the United States whose applications for naturalization have not been adjudicated
4 in accordance with statutory deadlines because of government agencies’ use of
5 certain security checks that lack timelines for completion and are of questionable
6 value. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331
7 (federal question), 5 U.S.C. § 701 *et seq.* (Administrative Procedure Act), and 28
8 U.S.C. § 2201 (Declaratory Judgment Act). This Court also has jurisdiction
9 pursuant to 8 U.S.C. § 1447(b) (adjudication of applications for naturalization
10 pending more than 120 days from the date of the naturalization examination).
11 This Court may grant declaratory and injunctive relief pursuant to 28 U.S.C. §§
12 1361, 2202, and 5 U.S.C. § 702.

13 2. Venue is proper in the Central District of California pursuant to 28
14 U.S.C. § 1391(b) and § 1391(e). Respondents/Defendants (“Defendants”) are
15 officers or employees of agencies of the United States government who are sued in
16 their official capacity for their acts under color of legal authority. Venue is also
17 proper pursuant to 8 U.S.C. § 1447(b), which provides that petitions for review of
18 naturalization applications shall be filed in the district in which the applicants
19 reside.
20

INTRODUCTION

21
22 3. Plaintiffs are lawful permanent residents of the United States who
23 have lived in the United States for many years. Plaintiffs have submitted
24 applications to naturalize as United States citizens to the United States Citizenship
25 and Immigration Services (“CIS”). However, their naturalization applications
26 have not been processed and adjudicated for over 300 days since the dates of
27 submission because each of their applications is awaiting completion of an “FBI
28 name check,” which is a background check performed by the FBI using a person’s

1 name.

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

7 5. Defendants, who are officers of CIS and the Federal Bureau of
8 Investigation ("FBI"), the Secretary of the Department of Homeland Security, and
9 the Attorney General of the United States, are responsible for the naturalization
10 process. In November 2002, Defendants drastically altered the naturalization
11 procedure by requiring a vastly expanded FBI name check to be conducted on
12 every application even though it is not required by either statute or regulation.
13 Implementation of this unwarranted and cumbersome new name check procedure
14 has resulted in months-long and even years-long delays in naturalization
15 adjudication for Plaintiffs and the proposed class.

16 6. CIS's own Ombudsman has stated that the FBI name check used in
17 naturalization applications is of questionable value in detecting persons who may
18 pose a threat to security. Nevertheless, CIS uses the FBI name check without
19 imposing any deadlines for completion. In requiring and conducting name checks,
20 both CIS and the FBI have acted with complete disregard for Congress' plain
21 directive that CIS should complete the processing of naturalization applications
22 within six months from the date of submission. Through their use of FBI name
23 checks, CIS and the FBI have unreasonably delayed the processing of the
24 naturalization applications of Plaintiffs and the proposed class members, and CIS
25 has unlawfully withheld final adjudication of these applications.

26 7. Defendants' unlawful conduct has deprived Plaintiffs of the
27 privileges of United States citizenship. Plaintiffs cannot vote, serve on juries,
28 expeditiously sponsor their immediate relatives living abroad for permanent

1 residence, receive business and education loans and benefits reserved for citizens,
2 participate in the Visa Waiver Program, or travel abroad and return to the U.S.
3 without fear of exclusion from this country. Plaintiffs' experiences are typical of
4 tens of thousands of other naturalization applicants around the country who have
5 suffered unreasonable and unlawful delays in the naturalization process because of
6 pending name checks.

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

15 16 **PARTIES**

17 **Plaintiffs**

18 9. Plaintiff Mansour Bavi is a citizen of Iran. He is a lawful permanent
19 resident of the United States, and he resides in Alhambra, California. He
20 submitted his application for naturalization with CIS in April 2005. CIS granted
21 him a priority date of April 29, 2005 on his application and held his naturalization
22 examination in September 2005. His naturalization application has not been
23 adjudicated.

24 10. Plaintiff Abbas Amirichimeh is a citizen of Iran. He is a lawful
25 permanent resident of the United States, and he resides in Irvine, California. He
26 submitted an application for naturalization with CIS in May 2003. CIS granted
27 him a priority date of June 3, 2003 on his application and held his naturalization
28 examination in August 2004. His naturalization application has not been

1 adjudicated.

2 11. Plaintiff James Moorhead is a citizen of the United Kingdom. He is a
3 lawful permanent resident of the United States, and he resides in North
4 Hollywood, California. He submitted his application for naturalization to CIS in
5 September 2005 and re-submitted the application in December 2005. CIS granted
6 him a priority date on his application of January 17, 2006. CIS has not held his
7 naturalization examination. His naturalization application has not been
8 adjudicated.

9 12. Plaintiff Kwang Ho Lee is a citizen of South Korea. He is a lawful
10 permanent resident of the United States, and he resides in Buena Park, California.
11 He submitted his application for naturalization to CIS in December 2006. CIS
12 granted him a priority date on his application of January 3, 2007. CIS has not held
13 his naturalization examination. His naturalization application has not been
14 adjudicated.

15 **Defendants**

16 13. Defendant Michael Mukasey is the Attorney General of the United
17 States and as such is the head of the United States Department of Justice (“DOJ”)
18 and the chief law enforcement officer of the federal government. The Attorney
19 General has the authority to naturalize persons as citizens of the United States. 8
20 U.S.C. § 1421(a). The Attorney General is also ultimately responsible for the FBI,
21 a subdivision of the DOJ. Mr. Mukasey is sued here in his official capacity.

22 14. Defendant Michael Chertoff is the Secretary of the Department of
23 Homeland Security (“DHS”). As of March 1, 2003, DHS is the agency
24 responsible for implementing the Immigration and Nationality Act (“INA”).
25 Within DHS, CIS (formerly part of the Immigration and Naturalization Service
26 (“INS”)), is responsible for implementing the provisions of the INA under which
27 lawful permanent residents are naturalized as United States citizens. Mr. Chertoff
28 is sued here in his official capacity.

1 applications. 8 C.F.R. § 100.2.

2 22. CIS has a policy of processing naturalization applications in
3 chronological order, based upon date of receipt of the application and fee. In
4 accordance with this policy, when CIS receives a naturalization application and
5 fee, CIS grants the applicant a “priority date” that is based on the date of receipt.
6 INS Operation Instruction 103.2(q), *available at* Operations Instructions of the
7 Immigration and Naturalization Service (Matthew Bender, 2007) (Lexis
8 Immigration Library, Operations Instructions of the INS File).

9 23. Once CIS receives a naturalization application, it conducts a
10 background investigation of the naturalization applicant. 8 U.S.C. § 1446(a); 8
11 C.F.R. § 335.1.

12 24. In 1997, Congress enacted a law requiring the INS (the predecessor
13 agency to CIS) to receive confirmation from the FBI that a “full criminal
14 background check” has been completed on each naturalization applicant prior to
15 the completion of adjudication of that application. Public Law 105-119, Title I,
16 111 Stat. 2448-49 (Nov. 26, 1997).

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

23 26. Under 8 C.F.R. § 335.2(b), the FBI performs a criminal background
24 check on each naturalization applicant. This criminal background check involves
25 a fingerprint check and database check that confirm whether or not the applicant
26 has an administrative or criminal record. 8 C.F.R. § 335.2(b). Both of these
27 criminal background checks are usually completed within days if not hours.

28 27. After CIS completes the background investigation and the FBI

1 completes the criminal background checks, CIS schedules a naturalization
2 examination, at which an applicant meets with a CIS examiner who is authorized
3 to ask questions and take testimony. 8 C.F.R. § 335.2(a). The examination
4 typically includes questions testing the applicant's English literacy and basic
5 knowledge of the history and government of the United States. 8 C.F.R. §
6 335.2(c).

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

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

16 30. If CIS does not issue a decision within 120 days of the examination,
17 an applicant may file suit in district court under 8 U.S.C. § 1447(b). That statute
18 confers jurisdiction upon the district court in the district in which the applicant
19 resides, and it allows the court either to determine the matter (and grant or deny
20 citizenship) or to remand with appropriate instructions to CIS to determine the
21 matter. *United States v. Hovsepian*, 359 F.3d 1144 (9th Cir. 2004). A primary
22 purpose of that statute, enacted in 1990, was to decrease backlogs in the
23 naturalization process and reduce waiting times for naturalization applicants. H.R.
24 Rep. No. 101-187, at 8 (1989); 135 Cong. Rec. H4539-02, H4542 (1989)
25 (statement of Rep. Morrison).

26 31. In addition, 8 U.S.C. § 1571(b) states, "It is the sense of Congress that
27 the processing of an immigration benefit application should be completed not later
28 than 180 days after the initial date of filing of the application[.]" Naturalization

1 applications are among the “immigration benefit applications” included within this
2 provision. This provision, along with 8 U.S.C. § 1571(a), § 1572, and § 1573,
3 make clear Congress’ intent to eliminate persistent backlogs in the processing of
4 immigration benefit applications. Moreover, Congress has defined the term
5 “backlog” in the statute as “the period of time in excess of 180 days that such
6 application has been pending before the Immigration and Naturalization Service.”
7 8 U.S.C. § 1572(1).

8 32. 8 U.S.C. § 1571(b) provides the statutory guideline and “rule of
9 reason” for determining whether naturalization applications are being processed in
10 a timely manner. Under the most straightforward reading of 8 U.S.C. § 1571(b),
11 all naturalization applications that are not finally adjudicated within 180 days of
12 the date of submission are unreasonably delayed.

13 33. In the alternative, under the most generous possible reading of the
14 interaction between 8 U.S.C. § 1571(b), which sets forth the 180-day limit, and 8
15 U.S.C. § 1447(b), which grants CIS a 120-day “grace period” after the completion
16 of the naturalization examination before frustrated applicants may seek relief in
17 federal court, naturalization applications in which applicants have passed their
18 examinations but that have not been finally adjudicated within 300 days of
19 submission are unreasonably delayed.

20 **CIS Expansion of “FBI Name Checks”**

21 34. Plaintiffs are informed and believe that CIS may have requested “FBI
22 name checks” for some subset of naturalization applicants in past years. Plaintiffs
23 are informed and believe that these FBI name checks may have involved FBI
24 searches of an applicant’s name through only its criminal files and databases.

25 35. Plaintiffs are informed and believe that beginning in November 2002,
26 CIS dramatically altered the naturalization procedure by expanding the scope of
27 the FBI name check, both by requiring the FBI to make electronic and manual
28 searches of additional non-criminal FBI files and databases, and by requiring

1 completion of FBI name checks as a prerequisite to the final adjudication of every
2 naturalization application.

3 36. The expanded FBI name check used by CIS for naturalization
4 applications is not part of the FBI criminal background checks that are required by
5 Public Law 105-119, Title I, 111 Stat. 2448-49 (Nov. 26, 1997) and implemented
6 pursuant to 8 § C.F.R. 335.2.

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

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

19 39. Plaintiffs are informed and believe that the expanded FBI name check
20 consists of a search of a person's name through the FBI's criminal and non-
21 criminal files in its Central Records System. The Central Records System contains
22 administrative, applicant, criminal, personnel, and other FBI files. Plaintiffs are
23 informed and believe that, since November 2002, the expanded FBI name check
24 on naturalization applications includes an FBI search of not only criminal "main
25 files" but also non-criminal "reference files" in the FBI's Central Records System.

26 40. By way of background, the FBI does not conduct name checks solely
27 for the CIS. Rather, it conducts name checks on a fee-for-service basis in response
28 to requests by other federal agencies, congressional committees, the federal

1 judiciary, and state and local criminal justice agencies. Name checks may be
2 sought for persons seeking government employment, a security clearance,
3 attendance at a White House function, admission to the bar, or a visa for visiting
4 the United States.

5 41. Name checks are conducted by personnel in the FBI's National Name
6 Check Program.

7 42. CIS requests the FBI to conduct name checks on all applications for
8 naturalization and applications for lawful permanent resident status.

9 43. Plaintiffs are informed and believe that the scope of FBI name checks
10 may vary based on the requesting agency. Plaintiffs are informed and believe that
11 each FBI name check based upon a CIS request can involve up to four stages –
12 batch processing, name searching, file review, and dissemination. Batch
13 processing involves the transfer of applicant information from CIS to the FBI,
14 uploading of that information into an FBI system, and electronic checking of those
15 names against the FBI's Universal Index. Name searching involves conducting
16 manual electronic searches by entering the applicant's name into FBI databases.
17 File review involves retrieving and reviewing FBI electronic and paper files that
18 are identified as possibly containing information on a particular individual whose
19 name is being checked. Files are reviewed for possible derogatory information on
20 the applicant in question. Dissemination involves providing a summary of the
21 relevant information to CIS.

22 44. Plaintiffs are informed and believe that if the initial stages of a name
23 check yield a "No Record" result, indicating no identifiable FBI information
24 regarding a particular individual, the FBI does not search further, and it provides
25 the "No Record" result to CIS. At that point, the FBI considers the name check to
26 be complete. However, if the initial stages of a name check yield any indication
27 that the FBI has information on a particular individual, the FBI employs the later
28 stages of the name check to retrieve and review its files and search for derogatory

1 information, and report the results.

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

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

9 47. Plaintiffs are informed and believe that from time to time and under
10 certain circumstances, CIS requests the FBI to expedite the name checks of certain
11 individuals, including certain applicants for naturalization.

12 48. Plaintiffs are informed and believe that beginning in April 2006, in
13 response to a deluge of lawsuits around the country brought by frustrated post-
14 examination naturalization applicants pursuant to 8 U.S.C. § 1447(b), CIS
15 implemented a new policy of refusing to schedule naturalization examinations for
16 those applicants whose FBI name checks were not completed. CIS has stated that
17 an express purpose of this policy change was to preclude litigation under 8 U.S.C.
18 § 1447(b) by those who have passed naturalization examinations and are awaiting
19 final adjudication of their naturalization applications. As a result of this change in
20 policy, which appears to be an explicit effort to thwart Congress's intent to
21 provide delayed naturalization applicants with recourse to the federal courts, the
22 applications of substantial numbers of class members have been unreasonably
23 delayed, and naturalization examinations have not been scheduled because of
24 pending FBI name checks.

25 **Questionable Value and Adverse Effects of FBI Name Checks**

26 49. Name checks are now a key cause of delays in the processing of
27 applications for naturalization, as well as applications for other immigration
28 benefits such as green cards. In both 2006 and 2007, the CIS Ombudsman—the

1 individual tasked by Congress to provide recommendations on improving CIS
2 services and operations—declared that name checks “significantly delay
3 adjudication of immigration benefits for many customers, hinder backlog
4 reduction efforts, and may not achieve their intended security objectives.”
5 Citizenship and Immigration Services Ombudsman Annual Report 2006
6 (hereinafter “2006 Report”), at 23 (June 29, 2006) *available at*
7 www.dhs.gov/cisombudsman; Citizenship and Immigration Services Ombudsman
8 Annual Report 2007 (hereinafter “2007 Report”), at 37 (June 11, 2007) *available*
9 *at* www.dhs.gov/cisombudsman (last visited December 4, 2007).

10 50. In the most recent report, the Ombudsman declared that “FBI name
11 checks may be the single biggest obstacle to the timely and efficient delivery of
12 immigration benefits” and that the delays are getting worse, not better. 2007
13 Report at 37. The report noted that as of May 2007, over 329,000 CIS name
14 checks were pending, with 64 percent of those cases (over 211,000) pending more
15 than 90 days, and 32 percent (almost 107,000) pending more than one year. *Id.* at
16 37. The report also found that the problem of long-pending name checks has
17 worsened in the last year. *Id.*

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

25 52. Moreover, the Ombudsman “agree[d] with the assessment of many
26 case workers and supervisors at USCIS field offices and service centers that the
27 FBI name check process has limited value to public safety or national security,
28 especially because in almost every case the applicant is in the United States during

1 the name check process, living or working without restriction.” 2007 Report at
2 40. In further acknowledgment of the limited use of name checks, the
3 Ombudsman noted that “[n]ame checks are not conducted by the FBI as part of
4 ongoing investigations or from a need to learn more about an individual because
5 of any threat or risk perceived by the FBI.” 2007 Report at 38.

6 53. In addition, “[t]o date, the Ombudsman has been unable to ascertain
7 from USCIS the total number of actual problem cases that the agency discovered
8 exclusively as a result of the FBI name check.” 2007 Report at 41. Indeed,
9 neither CIS nor the FBI has ever shown that naturalization applicants, as a class,
10 pose a special danger or threat to security. In addition, neither CIS nor the FBI has
11 ever shown that the FBI name check alone has led to the detection of even *one*
12 naturalization applicant who posed a danger or threat to security.

13 54. Finally, according to the Ombudsman, the FBI has admitted “that it
14 lacks the resources to perform the [CIS name check] function in a timely manner.”
15 2007 Report at 39.

17 STATEMENT OF FACTS

18 Plaintiffs

19 55. Plaintiff Mansour Bavi is a native and citizen of Iran who came to the
20 United States on a student visa in 1995. He resides with his wife of seven years, a
21 United States citizen, in Alhambra, California. Mr. Bavi has been a lawful
22 permanent resident since 2002.

23 56. Mr. Bavi owns his own business, selling refurbished collector cars.

24 57. Mr. Bavi submitted his application for naturalization in April 2005.
25 CIS granted him a priority date on his application of April 29, 2005. CIS held his
26 naturalization examination in September 2005. He passed his examination. Mr.
27 Bavi meets all statutory requirements for citizenship. After the examination, CIS
28

1 informed Bavi that his background check was not complete, and requested
2 additional information, which Mr. Bavi provided.

3 58. CIS has failed to adjudicate Mr. Bavi's application for naturalization.
4 CIS officials have informed him that the sole reason is that his FBI name check is
5 still pending.

6 59. Mr. Bavi would like to become a U.S. citizen so that he can vote in
7 U.S. elections, serve on juries, and enjoy the privileges of U.S. citizenship. In
8 addition, Mr. Bavi has not seen his father, who resides in Iran, for more than 25
9 years, but he is unable to visit him because he does not wish to travel there without
10 a U.S. passport as a U.S. citizen.

11 60. Plaintiff Abbas Amirichimeh is a native and citizen of Iran who came
12 to the United States in 1993 on a student visa. Mr. Amirichimeh has been a lawful
13 permanent resident since 1998. He is single and resides in Irvine, California.

14 61. Mr. Amirichimeh works as a computer chip design engineer for a
15 large technology company based in Irvine, California.

16 62. Mr. Amirichimeh submitted his application for naturalization to CIS
17 in May 2003. He provided all necessary information in support of his application,
18 including his fingerprints. CIS granted a priority date on his naturalization
19 application of June 3, 2003.

20 63. CIS scheduled and cancelled his naturalization interview three times,
21 without explanation. Mr. Amirichimeh sought the help of his United States
22 Senator, Dianne Feinstein, and after her office made inquiries, CIS finally held his
23 naturalization examination in August 2004. He passed his examination. He meets
24 all statutory requirements for citizenship.

25 64. CIS has not adjudicated Mr. Amirichimeh's application for
26 naturalization because of a pending FBI name check. Despite his numerous
27 inquires with CIS, the FBI, and the Department of Justice, including Freedom of
28 Information Act requests, and the intervention of his Representative in Congress,

1 John Campbell, and of his United States Senators, Barbara Boxer and Dianne
2 Feinstein, CIS has failed to adjudicate his application. CIS officials have
3 informed Mr. Amirichimeh that the delay in adjudication is due solely to a
4 pending FBI name check.

5 65. Mr. Amirichimeh would like to become a U.S. citizen so that he can
6 vote in U.S. elections, serve on juries, and enjoy the privileges of U.S. citizenship.
7 In addition, he has not been able to travel to Iran to visit his family, whom he has
8 not seen in thirteen years, because he does not wish to travel there without a U.S.
9 passport as a U.S. citizen.

10 66. Plaintiff James Moorhead is a native and citizen of the United
11 Kingdom. He has resided in the United States since 1976 as a lawful permanent
12 resident. He currently resides in North Hollywood, California.

13 67. Mr. Moorhead works in the recycling business, based in the Los
14 Angeles area.

15 68. Mr. Moorhead submitted an application for naturalization to CIS in
16 September 2005 and re-submitted the application in December 2005. He provided
17 all necessary information in support of his application, including his fingerprints.
18 CIS granted a priority date on his naturalization application of January 17, 2006.

19 69. CIS has not scheduled Mr. Moorhead for a naturalization
20 examination. Mr. Moorhead has inquired with his Congressional representatives
21 and CIS and FBI officials about his case. CIS notified him that the sole reason
22 that his naturalization application has not been processed or an examination
23 scheduled is because of a pending FBI name check.

24 70. Mr. Moorhead would like to become a U.S. citizen so that he can vote
25 in U.S. elections, serve on juries, and enjoy the privileges of U.S. citizenship. In
26 addition, Mr. Moorhead's wife is a Mexican citizen. He would like to
27 expeditiously sponsor her for lawful permanent residence, which he can do only
28 after he becomes a U.S. citizen.

1 71. Plaintiff Kwang Ho (Alex) Lee is a native and citizen of South Korea
2 who came to the United States with his parents and brother in 1998, at the age of
3 seventeen. He resides in Buena Park, California with his parents and brother. He
4 has been a lawful permanent resident of the United States since January 2002.

5 72. Mr. Lee is a college student who attends classes at Cypress/ Fullerton
6 College and at Cerritos College. His major is International Business Management,
7 and he plans to transfer to a four-year university after completing his associate's
8 degree.

9 73. Mr. Lee submitted an application for naturalization to CIS in
10 December 2006. He provided all necessary information in support of his
11 application, including his fingerprints. CIS granted a priority date on his
12 naturalization application of January 3, 2007.

13 74. CIS has not scheduled Mr. Lee for a naturalization examination. In
14 September 2007, CIS notified him in writing that the sole reason that his
15 naturalization application has not been processed or an examination scheduled is
16 because of a pending FBI name check.

17 75. Mr. Lee's parents and brother, who applied for U.S. citizenship
18 months after he did, have all been naturalized and sworn in as U.S. citizens.

19 76. Mr. Lee would like to become a U.S. citizen so that he can vote in
20 U.S. elections, serve on juries, and enjoy the privileges of U.S. citizenship. In
21 addition, Mr. Lee wishes to apply for certain federal student loans or grants which
22 are restricted to U.S. citizens. He also wishes to work as a law enforcement officer
23 with a federal, state, or local law enforcement agency, and he believes it would be
24 easier to obtain such employment as a U.S. citizen.

25 **Defendants' Policies And Practices**

26 77. Plaintiffs are informed and believe that Defendants Chertoff,
27 Gonzalez, and Arellano have a policy, pattern, and practice of failing to process
28 and adjudicate the applications for naturalization of the proposed plaintiff class in

1 accordance with statutory deadlines, namely within 180 days of the date of
2 submission of such applications, and within 120 days of the date of naturalization
3 examinations, because of pending FBI name checks.

4 78. Plaintiffs are informed and believe that Defendants Chertoff,
5 Gonzalez, and Arellano have a policy, pattern, and practice of unlawfully
6 withholding and unreasonably delaying the processing and adjudication of
7 applications for naturalization of the proposed plaintiff class, in utter disregard of
8 statutory deadlines, because of pending FBI name checks.

9 79. Plaintiffs are informed and believe that Defendants Chertoff,
10 Gonzalez, and Arellano have a policy, pattern, and practice of unlawfully failing
11 to take all necessary steps to complete FBI name checks in a timely manner so as
12 to allow CIS to process and adjudicate the applications for naturalization of the
13 proposed plaintiff class within 180 days of the date of submission of such
14 applications, and within 120 days of the date of naturalization examinations, in
15 accordance with statutory deadlines.

16 80. Plaintiffs are informed and believe that Defendants Mukasey and
17 Mueller have a policy, pattern, and practice of failing to complete FBI name
18 checks in a timely manner, with the full knowledge that CIS requires the
19 completion of such name checks for processing and adjudication of applications
20 for naturalization of the proposed plaintiff class, and with the full knowledge that
21 the statutory deadlines require CIS to process and adjudicate such applications
22 within 180 days of the date of submission, and within 120 days of the date of
23 naturalization examinations. Defendants Mukasey and Mueller's actions and
24 omissions result in the unlawful withholding of and unreasonable delays in the
25 completion of FBI name checks.

26 81. Plaintiffs are informed and believe that Defendants have a policy,
27 pattern, and practice of failing to set deadlines for completing FBI name checks
28 and taking all the other reasonable steps necessary to complete the adjudication of

1 applications for naturalization of the proposed plaintiff class, in utter disregard of
2 statutory deadlines that require CIS to process and adjudicate such applications
3 within 180 days of the date of submission, and within 120 days of the date of
4 naturalization examinations.

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

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

17 84. As a result of the Defendants' policies, practices, actions, and
18 omissions described herein, members of the proposed plaintiff class have suffered
19 injury, in that they have been unlawfully denied the rights and benefits of U.S.
20 citizenship. Among other things, members of the proposed plaintiff class have
21 been unable to vote in local, state, and national elections that have occurred since
22 the adjudication of their naturalization applications, including state and national
23 elections in 2006. They have been unable to sponsor expeditiously their
24 immediate relatives living abroad for permanent residence in the United States.
25 They have been unable to travel freely outside of the United States because they
26 do not have U.S. passports and the guarantee of re-admission into the country
27 upon their return. Finally, they have been unable to apply for certain types of
28

1 employment, educational grants and loans, and other benefits that are limited to
2 U.S. citizens.

3
4 **CLASS ALLEGATIONS**

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

8 All lawful permanent residents who have submitted or will submit
9 applications for naturalization to the CIS Los Angeles District Office
10 and its sub-offices, and whose applications for naturalization have not
11 been or will not be adjudicated by CIS for over 300 days from the
12 date of submission, because of pending FBI name checks.

13 86. The proposed Plaintiff class includes a sub-class of Plaintiffs
14 (hereinafter referred to as the "Post-Examination Plaintiffs") that consists of:

15 All lawful permanent residents who have submitted or will submit
16 applications for naturalization to the CIS Los Angeles District Office
17 and its sub-offices, who have passed or will pass their naturalization
18 examinations, whose applications for naturalization have not been or
19 will not be adjudicated by CIS for over 300 days from the date of
20 submission, and whose applications for naturalization have not been
21 or will not be adjudicated by CIS for over 120 days from the date of
22 the naturalization examination, because of pending FBI name checks.

23 87. The requirements of Federal Rules of Civil Procedure 23(a) and
24 23(b)(2) are met in that the class is so numerous that joinder of all members is
25 impracticable. Counsel for Plaintiffs are aware of at least two dozen proposed
26 class members who are similarly situated to the named Plaintiffs.

27 88. There are questions of law and fact common to the proposed class
28 that predominate over any questions affecting only the individually named

1 Plaintiffs, including: (1) whether CIS's actions and omissions, including its failure
2 to adjudicate the naturalization applications of the proposed plaintiff class within
3 180 days of the date of submission because of pending FBI name checks, and its
4 failure to impose deadlines on the completion of FBI name checks in accordance
5 with statutory deadlines, violate the Immigration and Nationality Act and
6 implementing regulations and constitute unreasonable delay and unlawful
7 withholding of agency action in violation of the Administrative Procedure Act; (2)
8 whether the FBI's actions and omissions, including its failure to complete name
9 checks in a timely fashion so as to allow CIS to adjudicate the naturalization
10 applications of the proposed plaintiff class within 180 days of the date of
11 submission, in accordance with statutory deadlines, constitute unreasonable delay
12 and unlawful withholding of agency action in violation of the Administrative
13 Procedure Act; (3) whether CIS and the FBI's failure to set deadlines for
14 completing name checks and failure to take all the other reasonable steps
15 necessary to complete the adjudication of applications for naturalization of the
16 proposed plaintiff class within 180 days of the date of submission, in accordance
17 with statutory deadlines, violate the Administrative Procedure Act; and (4)
18 whether CIS's failure to provide the opportunity for public notice and comment of
19 the expanded FBI name check requirement violates the Administrative Procedure
20 Act.

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

1 or short of statutory right,” 5 U.S.C. § 706(2)(C); or “without observance of
2 procedure required by law,” 5 U.S.C. § 706(2)(D). “Agency action” includes, in
3 relevant part, “an agency rule, order, license, sanction, relief, or the equivalent or
4 denial thereof, or failure to act.” 5 U.S.C. §551(13).

5 93. The actions and omissions of Defendants Chertoff, Gonzalez, and
6 Arellano in failing to adjudicate the applications for naturalization of the proposed
7 plaintiff class within 180 days of the date of submission because of pending FBI
8 name checks, in violation of 8 U.S.C. § 1446(d), 8 U.S.C. § 1447(b) 8 U.S.C. §
9 1571(b), and 8 C.F.R. § 335, violate the Administrative Procedure Act, 5 U.S.C. §
10 555(b); 5 U.S.C. §§ 706(1), 706(2)(A), 706(2)(C), 706(2)(D).

11 94. The actions and omissions of Defendants Chertoff, Gonzalez, and
12 Arellano in failing to set deadlines for completing FBI name checks and to take all
13 the other reasonable steps necessary to complete the adjudication of applications
14 for naturalization of the proposed plaintiff class within 180 days of the date of
15 submission because of pending FBI name checks, in violation of 8 U.S.C. §
16 1446(d), 8 U.S.C. § 1447(b), 8 U.S.C. § 1571(b), and 8 C.F.R. § 335, violate the
17 Administrative Procedure Act, 5 U.S.C. § 555(b); 5 U.S.C. §§ 706(1), 706(2)(A),
18 706(2)(C), 706(2)(D).

19 95. Defendants have a duty under 8 U.S.C. § 1446(d), 8 U.S.C. § 1447(b)
20 8 U.S.C. § 1571(b), and 8 C.F.R. § 335 to finally adjudicate Plaintiffs’
21 naturalization applications within the deadlines imposed by statute and
22 regulations. Defendants’ unlawful conduct in failing to do so has resulted in, inter
23 alia, unreasonable delays in and unlawful withholding of the adjudication of
24 Plaintiffs’ naturalization applications. As a result of Defendants’ actions in utter
25 indifference to statutory deadlines, Plaintiffs have suffered and continue to suffer
26 injury. Declaratory and injunctive relief are therefore warranted.

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1 given Defendants' full knowledge that FBI name checks are required to finally
2 adjudicate Plaintiffs' naturalization applications within the deadlines imposed by
3 statute and regulations. Defendants' unlawful conduct in failing to do so has
4 resulted, inter alia, in unreasonable delays in and unlawful withholding of the
5 adjudication of Plaintiffs' naturalization applications. As a result of Defendants'
6 actions in utter indifference to statutory deadlines, Plaintiffs have suffered and
7 continue to suffer injury. Declaratory and injunctive relief are therefore
8 warranted.

9
10 **THIRD CLAIM FOR RELIEF**
11 **PETITIONS FOR NATURALIZATION**
12 **POST-EXAMINATION PLAINTIFFS AGAINST DEFENDANTS**
13 **CHERTOFF, GONZALES, AND ARELLANO**

14 100. Plaintiffs reallege and reassert the foregoing paragraphs as if set forth
15 fully herein.

16 101. Defendants have failed to finally adjudicate the Post-Examination
17 Plaintiffs' applications for naturalization within 120 days of the date of their
18 naturalization examinations, in violation of 8 U.S.C. § 1447(b). Pursuant to 8
19 U.S.C. § 1447(b), this Court should exercise its authority to grant the Post-
20 Examination Plaintiffs' naturalization applications, or to remand to CIS with
21 appropriate instructions to complete the FBI name checks and to finally adjudicate
22 these Plaintiffs' applications thereafter within a reasonable time period, as set
23 forth in the prayer for relief below.

24 102. Named Plaintiffs Bavi and Amirichimeh seek a determination by the
25 Court that they meet the requirements for naturalization and are to be naturalized
26 as U.S. citizens without further delay, pursuant to 8 U.S.C. § 1447(b).

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1 **FOURTH CLAIM FOR RELIEF**
2 **VIOLATION OF DUE PROCESS CLAUSE**

3 **ALL PLAINTIFFS AGAINST ALL DEFENDANTS**

4 103. Plaintiffs reallege and reassert the foregoing paragraphs as if set forth
5 fully herein.

6 104. The Due Process Clause of the Fifth Amendment prohibits the
7 government from depriving any person of life, liberty or property without due
8 process of law. U.S. CONST., AMEND. V.

9 105. Defendants Chertoff, Gonzalez, and Arellano have a pattern, practice,
10 or policy of failing to adjudicate the applications for naturalization of the proposed
11 plaintiff class within 180 days of the date of submission of such applications and
12 within 120 days of the date of naturalization examinations because of pending FBI
13 name checks, in violation of 8 U.S.C. § 1446(d), 8 U.S.C. § 1447(b), 8 U.S.C. §
14 1571, and 8 C.F.R. § 335.

15 106. Defendants Mukasey and Mueller have a pattern, practice, or policy
16 of failing to timely complete FBI name checks, with the full knowledge that CIS
17 requires the completion of such “name checks” for adjudication of applications for
18 naturalization of the proposed plaintiff class within the statutory deadlines.

19 107. Defendants have a pattern, practice, or policy of failing to set
20 deadlines for completing “name checks” and to take all the other reasonable steps
21 necessary to complete the adjudication of applications for naturalization of the
22 proposed plaintiff class within 180 days of the date of submission of such
23 applications and within 120 days of the date of naturalization examinations
24 because of pending FBI name checks, in violation of 8 U.S.C. § 1446(d), 8 U.S.C.
25 § 1447(b), 8 U.S.C. § 1571, and 8 C.F.R. § 335.

26 108. The above-described actions and omissions by Defendants violate
27 Plaintiffs’ rights to due process of law. As a result of Defendants’ actions,
28

1 Plaintiffs have suffered and continue to suffer injury. Declaratory and injunctive
2 relief are therefore warranted.

3
4 **FIFTH CLAIM FOR RELIEF**
5 **VIOLATION OF NOTICE-AND-COMMENT REQUIREMENTS OF THE**
6 **ADMINISTRATIVE PROCEDURE ACT**
7 **ALL PLAINTIFFS AGAINST DEFENDANTS CHERTOFF, GONZALES,**
8 **AND ARELLANO**

9 109. Plaintiffs reallege and reassert the foregoing paragraphs as if set forth
10 fully herein.

11 110. Defendants Chertoff, Gonzales and Arellano's actions in November
12 2002 to expand the FBI name check for naturalization applications constitute a
13 rule within the meaning of 5 U.S.C. § 551(4).

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

19 112. Defendants Chertoff, Gonzales, and Arellano's actions and omissions
20 in failing to provide a notice-and-comment period prior to the November 2002
21 expansion of the FBI name check requirement violated 5 U.S.C. § 553 in that the
22 expansion constituted a substantive rule that departed from prior policy and
23 practice and has had a substantial adverse effect upon a large number of those
24 affected, namely naturalization applicants.

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

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs respectfully request that the Court:

3 1. Assume jurisdiction over the matter;

4 2. Certify the class of Plaintiffs and the sub-class of Post-Examination
5 Plaintiffs, as proposed herein;

6 3. Review de novo and grant the naturalization of Plaintiffs
7 Amirichimeh and Bavi, pursuant to 8 U.S.C. § 1447(b);

8 4. With respect to the certified class of Plaintiffs, and the sub-class of
9 Post-Examination Plaintiffs, order Defendants to: (a) take all necessary steps to
10 complete all FBI name checks of class members within a reasonable time period
11 not to exceed 45 days from the date of the Court's order; and (b) finally adjudicate
12 all naturalization applications of class members within a reasonable time period
13 not to exceed 90 days from the date of the Court's order.

14 5. Enjoin Defendants and order them to: (a) take all necessary steps to
15 complete all FBI name checks of naturalization applicants within 90 days from the
16 date of submission of the applications; (b) finally adjudicate all naturalization
17 applications within 180 days from the date of submission; and (c) finally
18 adjudicate all naturalization applications within 120 days from the date of the
19 naturalization examination.

20 6. Order Defendants Chertoff, Gonzales, and Arellano to revoke and
21 suspend the November 2002 expansion of the FBI name check with respect to
22 naturalization applications, until such time as Defendants have completed
23 promulgating a rule following the process for notice and comment by the public;

24 7. Issue a declaratory judgment holding unlawful:
25 (a) the actions and omissions of Defendants Chertoff, Gonzalez, and Arellano
26 in failing to adjudicate applications for naturalization within 180 days of the date
27 of submission, because of pending FBI name checks;

28

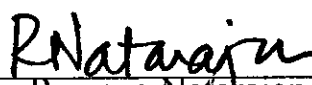
- 1 (b) the actions and omissions of Defendants Mukasey and Mueller in failing to
- 2 timely complete FBI name checks to allow CIS to adjudicate applications for
- 3 naturalization within 180 days of the date of submission;
- 4 (c) the actions and omissions of Defendants Chertoff, Gonzalez, and Arellano
- 5 in failing to adjudicate applications for naturalization within 120 days of the date
- 6 of the naturalization examination, because of the pending FBI name checks; and
- 7 (d) the actions and omissions of all Defendants in failing to set deadlines and to
- 8 take all necessary steps to adjudicate applications for naturalization within 180
- 9 days of the date of submission and within 120 days of the date of the
- 10 naturalization examinations.

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

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

14 Dated: December 4, 2007

ACLU FOUNDATION OF SOUTHERN
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17 
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