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8  
9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN FRANCISCO DIVISION

12 YINAN ZHANG, ALIA AHMEDI, ZHONG  
13 FU, ABDUL GHAFOOR, MIAO LING  
HUANG, SANA JALILI, YAN WANG, YAN  
14 YIN,

15 Plaintiffs-Petitioners,

16 v.

17 DAVID STILL, District Director, U.S.  
Department of Homeland Security, Bureau of  
18 Citizenship and Immigration Services, San  
Francisco District; EMILIO T. GONZALEZ,  
19 Director, U.S. Department of Homeland  
Security, Bureau of Citizenship and  
20 Immigration Services; MICHAEL  
CHERTOFF, U.S. Secretary of Homeland  
21 Security; ROBERT S. MUELLER III, Director  
of the Federal Bureau of Investigation;  
22 ALBERTO GONZALES, Attorney General of  
the United States,

23 Defendants-Respondents.  
24  
25

Case No. 07-CV-0503-JL

**FIRST AMENDED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF AND PETITION FOR  
NATURALIZATION PURSUANT TO 8  
U.S.C. § 1447(B)**

**CLASS ACTION**

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**INTRODUCTION**

1  
2 1. Plaintiffs-Petitioners, Yinan ZHANG, Alia AHMEDI, Zhong FU, Abdul  
3 GHAFOOR, Miao Ling HUANG, Sana JALILI, Yan WANG, and Yan YIN, respectfully submit  
4 this First Amended Complaint for Declaratory and Injunctive Relief and Petition for  
5 Naturalization Pursuant to 8 U.S.C. § 1447(b). Plaintiff Yinan ZHANG originally filed this  
6 action as an individual petition for naturalization under 8 U.S.C. § 1447(b). The Plaintiffs  
7 amend Mr. Zhang’s original petition as of right pursuant to Federal Rule of Civil Procedure 15(a)  
8 (permitting amendment of pleading “once as a matter of course at any time before a responsive  
9 pleading is served”). This First Amended Complaint pleads additional causes of action and  
10 allegations supporting a motion for class certification to be filed in due course.

11 2. Plaintiffs are all long-time lawful permanent residents of the United States. Each  
12 of them has sought to become a citizen of this country by applying for naturalization, having met  
13 all statutory requirements. However, despite successfully undergoing their naturalization  
14 interviews and clearing criminal background checks more than approximately two years ago,  
15 none of the Plaintiffs has received an adjudication from the U.S. Bureau of Citizenship and  
16 Immigration Services (“CIS”) on the ground that a so-called “FBI name check” is still pending.

17 3. Defendants are officers of CIS and the Federal Bureau of Investigation (“FBI”)  
18 and are responsible for the naturalization process, including the FBI name check, which CIS  
19 requires for naturalization despite the absence of any promulgated rule or regulation.

20 4. Each named Plaintiff therefore seeks to be naturalized by this Court, as Congress  
21 has authorized through the Immigration and Nationality Act. See 8 U.S.C. § 1447(b) (district  
22 court may make a determination of a naturalization application if there has been no adjudication  
23 within 120 days of an initial examination – i.e., the applicant’s naturalization interview. See  
24 U.S. v. Hovsepian, 359 F.3d 1144, 1151 (9th Cir. 2004) (en banc). The named Plaintiffs also  
25 seek declaratory and injunctive relief on behalf of themselves and the proposed class members,  
26 to eliminate the systemic delays that Defendants have caused through the policies, practices and  
27 procedures.

28 5. In failing to adjudicate the Plaintiffs’ naturalization applications, Defendant

1 officers of CIS have violated CIS regulations requiring that such applications be adjudicated  
2 within 120 days of the initial examination. 8 C.F.R. § 335.

3 6. In addition, Defendant officers of both CIS and the Federal Bureau of  
4 Investigation (“FBI”) have engaged in unreasonable and extraordinary delay in adjudicating  
5 Plaintiffs’ naturalization applications, in violation of the Administrative Procedures Act, 5  
6 U.S.C. §§ 555, 706, and the Due Process Clause.

7 7. Defendants’ rationale for its unreasonable delays – that the delays are required to  
8 complete “FBI name checks” – highlights an independent violation of the Administrative  
9 Procedures Act: Defendants’ failure to follow the notice and comment requirements of 5 U.S.C.  
10 § 553. CIS has promulgated no regulations concerning a “name check,” but nonetheless has  
11 imposed the FBI name check as a requirement for over four years – without any deadlines for  
12 completion of the checks. In contrast, immigration regulations do provide for criminal records  
13 checks based on Plaintiffs’ fingerprints and biographical data. Each of the Plaintiffs has passed  
14 those specific background checks. Because Defendants’ addition of the FBI name check  
15 constitutes a substantive rule and causes undue burden and prejudice to Plaintiffs and other  
16 members of the proposed class, the public should have been provided notice and an opportunity  
17 to comment prior to its implementation.

18 8. Plaintiffs all have spent many years in the United States and have made this  
19 Nation their home. They seek to pledge their allegiance to their adopted country and to  
20 participate fully in U.S. society as citizens. Each of the Plaintiffs has met the statutory  
21 requirements to become a U.S. citizen, and in many cases they have sought relief through  
22 requests to representatives in Congress and through formal inquiries with the government.  
23 Nonetheless, each of the Plaintiffs has been stymied in his or her efforts by the unreasonable and  
24 extraordinary delay of the Respondents.

25 9. As a result of the Defendants’ failure to abide by the law, which is inconsistent  
26 with properly promulgated regulations and with the statutes passed by Congress, Plaintiffs are  
27 unable to participate in civic society by voting and jury service. Plaintiffs also are unable  
28 expeditiously to sponsor for lawful permanent residency immediate relatives living abroad

1 including, in some cases, their spouses and children. Plaintiffs also are unable to participate  
2 freely as U.S. citizens in the Visa Waiver Program and to travel abroad and return to the United  
3 States without fear of exclusion.

4 10. Plaintiffs seek not only their own naturalization through 8 U.S.C. § 1447(b), but  
5 also seek declaratory and injunctive relief as representatives of a class of other individuals who  
6 have satisfied all statutory requirements for naturalization and are suffering similar unreasonable  
7 delays of over 120 days since their naturalization interviews. Plaintiffs ask the Court to declare  
8 that the Defendants are violating the due process rights of Plaintiffs and the proposed class, as  
9 well as the Administrative Procedures Act and the immigration laws and regulations, in failing to  
10 complete all background checks necessary for adjudication of naturalization applications within  
11 120 days of applicants' interviews.

#### 12 **JURISDICTION AND VENUE**

13 11. This Court has subject matter jurisdiction over this matter pursuant to 8 U.S.C. §  
14 1447(b) (district court jurisdiction to adjudicate delayed naturalization applications), 28 U.S.C.  
15 §§ 1331 (federal question), and 28 U.S.C. §§ 2201 and 2202 (declaratory relief).

16 12. Venue is proper in the Northern District of California pursuant to 28 U.S.C. §§  
17 1391(e). Plaintiffs sue the Defendants in their official capacities as officers and employees of the  
18 United States. A substantial portion of the events giving rise to this Complaint occurred within  
19 this District, where the Plaintiffs' applications for naturalization are pending before the San  
20 Francisco District of the CIS. In addition, venue is proper in this District pursuant to 8 U.S.C. §  
21 1447(b), which provides that a petition for de novo review of a naturalization application shall be  
22 filed in the district in which the applicant resides. All of the Plaintiffs live within this District.

#### 23 **PARTIES**

24 13. Plaintiff Yinan Zhang is a citizen of China. He is a lawful permanent resident of  
25 the United States and lives in San Francisco, California. He applied for naturalization with CIS  
26 and passed his naturalization examination in 2002. His naturalization application has not been  
27 adjudicated.

28 14. Plaintiff Alia Ahmedi is a citizen of Afghanistan. She is a lawful permanent

1 resident of the United States and lives in Fremont, California. She applied for naturalization  
2 with CIS and passed her naturalization examination in May 2003. Her naturalization application  
3 has not been adjudicated.

4 15. Plaintiff Zhong Fu is a citizen of China. He is a lawful permanent resident of the  
5 United States, and he resides in San Francisco, California. He applied for naturalization with  
6 CIS and passed his naturalization examination in July 2004. His naturalization application has  
7 not been adjudicated.

8 16. Plaintiff Abdul Ghafoor is a citizen of Pakistan. He is a lawful permanent  
9 resident of the United States, and he resides in Richmond, California. He applied for  
10 naturalization with CIS and passed his naturalization examination in October 2004. His  
11 naturalization application has not been adjudicated.

12 17. Plaintiff Sana Jalili is a citizen of Pakistan. She is a lawful permanent resident of  
13 the United States, and she resides in Fremont, California. She applied for naturalization with  
14 CIS and passed her naturalization examination in September 2004. Her naturalization  
15 application has not been adjudicated.

16 18. Plaintiff Miao Ling Huang is a citizen of China. She is a lawful permanent  
17 resident of the United States, and she resides in San Francisco, California. She applied for  
18 naturalization with CIS and passed her naturalization examination in June 2004. Her  
19 naturalization application has not been adjudicated.

20 19. Plaintiff Yan Wang is a citizen of China. She is a lawful permanent resident of  
21 the United States, and she resides in San Francisco, California. She applied for naturalization  
22 with CIS and passed her naturalization examination in January 2004. Her naturalization  
23 application has not been adjudicated.

24 20. Plaintiff Yan Yin is a citizen of Canada. She is a lawful permanent resident of the  
25 United States, and she resides in Fremont, California. She applied for naturalization with CIS  
26 and passed her naturalization examination in March 2004. Her naturalization application has not  
27 been adjudicated.

28 21. Respondent David Still is the District Director for the San Francisco District of

1 the Bureau of Citizenship and Immigration Services (“CIS”), U.S. Department of Homeland  
2 Security. Mr. Still is responsible for applications for naturalization pending in the San Francisco  
3 District. Mr. Still is sued in his official capacity.

4 22. Respondent Emilio T. Gonzalez is the Director of CIS. Mr. Gonzalez is  
5 responsible for the processing and determination of all applications for naturalization submitted  
6 to CIS. He is sued in his official capacity.

7 23. Respondent Michael Chertoff is the U.S. Secretary of Homeland Security, which  
8 encompasses CIS. Mr. Chertoff is ultimately responsible for the administration of all  
9 immigration and naturalization laws, including the processing and determination of applications  
10 for naturalization. He is sued in his official capacity.

11 24. Respondent Robert S. Mueller III is the Director of the Federal Bureau of  
12 Investigation. Mr. Mueller is ultimately responsible for the processing of “name checks”  
13 submitted by CIS to the FBI during the naturalization process. Mr. Mueller is sued in his official  
14 capacity.

15 25. Respondent Alberto Gonzales is the Attorney General of the United States. He is  
16 the head of the U.S. Department of Justice, which encompasses the FBI. Mr. Gonzales also  
17 jointly responsible with Mr. Chertoff for enforcement of immigration laws. Mr. Gonzales is  
18 sued in his official capacity.

19 **LEGAL FRAMEWORK**

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

23 27. A person seeking to naturalize must meet certain requirements, including an  
24 understanding of the English language and history and civics of the United States; a sufficient  
25 period of physical presence in the United States; and good moral character. 8 U.S.C. § 1423,  
26 1427(a).

27 28. Persons seeking to naturalize must submit an application for naturalization to CIS.  
28 8 U.S.C. § 1445. CIS is the agency that is responsible for adjudicating naturalization

1 applications. 8 C.F.R. § 100.2.

2 29. Once an application is submitted, CIS conducts a background investigation of  
3 each naturalization applicant. 8 U.S.C. § 1446(a); 8 C.F.R. § 335.1.

4 30. According to CIS regulations, the background investigation includes a full  
5 criminal background check performed by the FBI. 8 C.F.R. § 335.2. After the background  
6 investigation is completed, CIS schedules a naturalization examination, at which an applicant  
7 meets with a CIS examiner who is authorized to ask questions and take testimony. The CIS  
8 examiner must determine whether to grant or deny the naturalization application. 8 U.S.C. §  
9 1446(d).

10 31. CIS must grant a naturalization application if the applicant has complied with all  
11 requirements for naturalization. 8 C.F.R. § 335.3. Naturalization is not a discretionary benefit,  
12 but a right upon satisfaction of statutory requirements.

13 32. CIS must grant or deny a naturalization application at the time of the examination  
14 or, at the latest, within 120 days after the date of the examination. 8 C.F.R. § 335.3. Once an  
15 application is granted, the applicant is sworn in as a United States citizen.

16 33. In general, Congress has provided that applications for immigration benefits  
17 should be adjudicated within 180 days of the initial filing of the application. 8 U.S.C. § 1571.

18 34. Plaintiffs are informed and believe that in 2002, CIS added – without  
19 promulgating any regulation – a new type of background check to the naturalization process,  
20 known as a “name check.” A “name check” is a check of FBI records based on the full name of  
21 the applicant. Upon information and belief, the FBI conducts the “name check” through manual  
22 and electronic searches of the FBI’s centralized records. CIS requests the FBI to conduct “name  
23 checks” on all applications for naturalization.

24 35. Plaintiffs are informed and believe that the FBI name check requirement is  
25 implemented in such a manner that it is highly likely that an applicant may be identified  
26 erroneously as a person “of interest” to the FBI, thereby delaying adjudication of the  
27 naturalization application, even though the applicant has committed no crimes and is not a  
28 suspect. For example, the name check may identify a different person with a name similar to the

1 applicant's, or result in a "hit" when the applicant has been an innocent witness or victim of a  
2 crime.

3 36. Plaintiffs are informed and believe that CIS does not adjudicate applications for  
4 naturalization until it receives a completed "name check" from the FBI. CIS has not  
5 promulgated any regulations setting forth the "name check" as a prerequisite for naturalization.  
6 Neither CIS nor the FBI imposes any time limits for completion of "name checks." The FBI  
7 claims that CIS determines the order of resolution of the requested "name checks," and CIS  
8 claims that it cannot ask or require the FBI to complete "name checks" within any particular  
9 timeframe.

10 37. Plaintiffs are informed and believe that in April 2006, CIS implemented a new  
11 policy or practice of delaying naturalization examinations until after the "name check" is  
12 completed. Thus, for certain applicants for naturalization, lengthy delays in adjudication occur  
13 prior to the examination, rather than after the examination.

14 38. When CIS fails to adjudicate a naturalization application within 120 days of the  
15 examination, the applicant may seek de novo review of the application by a district court. 8  
16 U.S.C. § 1447(b). When the applicant requests district court review, the district court gains  
17 exclusive jurisdiction over the application, United States v. Hovsepian, 359 F.3d 1144 (9th Cir.  
18 2004), and it may naturalize the applicant. 8 U.S.C. § 1447(b).

19 **FACTS**

20 **Plaintiffs**

21 39. Yinan Zhang is a 33-year old native and citizen of China. He has been a lawful  
22 permanent resident of the United States since September 1995, when he adjusted his status  
23 through his U.S.-citizen father's petition. Mr. Zhang currently works as a family caregiver for  
24 his ailing father, Zu Ying Zhang. Mr. Zhang and his father live in San Francisco, California.

25 40. Mr. Zhang submitted his naturalization application in July 2001 and successfully  
26 completed his naturalization interview and criminal background checks in September 2002. The  
27 day after passing his naturalization interview, a CIS officer telephoned Mr. Zhang and asked him  
28 to provide proof of selective service registration. Soon thereafter in September 2002, Mr. Zhang

1 submitted the requested “status information letter,” thereby satisfying the requirements for  
2 naturalization. He meets all other statutory requirements for naturalization.

3 41. Mr. Zhang has been waiting more than four years since his interview, and has yet  
4 to receive an adjudication of his application. Mr. Zhang attempted to check on the status of his  
5 application through an automated CIS customer service line, but the system stated that a final  
6 decision cannot be made on any application until national security checks are complete. During  
7 the past four years, Mr. Zhang has followed up with further contacts with CIS by telephone and  
8 in person. Each time, immigration officers have informed him that his application is pending  
9 due to the FBI name check.

10 42. Mr. Zhang has suffered and continues to suffer prejudice from the delay of his  
11 naturalization. He has been deprived of the substantial and unique rights and duties of U.S.  
12 citizenship, including the right to vote, the right to obtain a U.S. passport, the right to travel  
13 freely, and the right to receive certain governmental and non-governmental benefits, such as  
14 tuition assistance and scholarships.

15 43. Alia Ahmedi is a 73-year-old native and citizen of Afghanistan. She came to the  
16 United States as a lawful permanent resident in November 1986, sponsored by her son Basheer  
17 Ahmedi, a U.S. citizen. Ms. Ahmedi and her husband, a U.S. citizen, currently live in Fremont,  
18 California, with Basheer. She also has five other children living in the United States. Of her six  
19 children, five are U.S. citizens. Ms. Ahmedi also has over 20 grandchildren, all U.S. citizens,  
20 living in the United States.

21 44. In October 2002, Ms. Ahmedi applied for citizenship and successfully completed  
22 her naturalization interview and criminal background checks in May 2003. She meets all other  
23 statutory requirements for naturalization. At the end of the interview, the CIS officer told Ms.  
24 Ahmedi that she had passed her examination and would receive her oath notice shortly.

25 45. Approximately three to four months after successfully passing her naturalization  
26 examination, Ms. Ahmedi contacted CIS because she had not received her oath notice. A CIS  
27 employee told Ms. Ahmedi that her application was still pending. Ms. Ahmedi has followed up  
28 with further contacts with CIS by telephone and in person. Each time, CIS officers have

1 informed her that her naturalization application is still pending due to an FBI name check. She  
2 also has had to re-submit her fingerprints as her application has been pending so long that CIS  
3 informed her that her original fingerprint card “expired.” Ms. Ahmedi’s children also contacted  
4 their representatives in Congress for assistance. Representative Pete Stark made an inquiry to  
5 CIS, which responded that a name check was pending.

6 46. Ms. Ahmedi has suffered harm from the delay of her naturalization. One of her  
7 daughters lives outside of the U.S. part-time. Because it is extremely difficult for citizens of  
8 Afghanistan to obtain visas, she is unable to visit her daughter and grandchildren while they are  
9 abroad. In addition, Ms. Ahmedi is elderly and the anxiety surrounding the delay in the granting  
10 of her citizenship has put extreme pressure on her already frail health. Indeed, Ms. Ahmedi  
11 previously received disability assistance from the Social Security Administration, but those  
12 benefits were cut off because non-citizens are permitted such benefits for a limited period of  
13 time.

14 47. Zhong Fu is a 69-year old native and citizen of China. He came to the United  
15 States as a lawful permanent resident in March 1999, through the petition of his U.S.-citizen  
16 mother. Mr. Fu is retired and currently caring for his elderly sick mother, who is 90 years old  
17 and suffers from Alzheimer’s disease. Mr. Fu and his mother currently live in San Francisco,  
18 California. Mr. Fu has a U.S.-citizen sister, and she resides in the Sunset District of San  
19 Francisco, California. Mr. Fu’s deceased father was a U.S. citizen.

20 48. In or about February 2004, Mr. Fu submitted his citizenship application. He  
21 successfully completed his naturalization interview and criminal background checks on July  
22 2004. He meets all other statutory requirements for naturalization. At the end of his interview,  
23 the CIS officer informed him that he passed the tests for English and U.S. history and  
24 government. Mr. Fu has been patiently waiting for his oath notice since that time.

25 49. Starting approximately three to four months after successfully passing his  
26 naturalization examination, Mr. Fu contacted CIS on three separate occasions through the  
27 “Infopass” online appointment scheduler. On each occasion, an immigration officer informed  
28 Mr. Fu that his application was pending until national security checks are completed and the

1 local CIS office receives a response.

2 50. Mr. Fu has suffered prejudice from the delay of his naturalization. Since his  
3 arrival in March 1999, Mr. Fu has never left the United States to visit family in China. He is  
4 currently living on his retirement income and therefore cannot afford to visit China on a frequent  
5 basis. Due to the expense of travel, Mr. Fu would like to visit family members for an extended  
6 period when he is able to afford the trip. However, as a lawful permanent resident, he is not  
7 permitted to stay abroad more than six months at a time. By naturalizing, Mr. Fu will be able to  
8 spend more time with family on the infrequent occasions that he can afford the airfare to China.

9 51. Abdul Ghafoor is a native and citizen of Pakistan. He has a bachelor's degree in  
10 Humanities from Bahauddin Zakariya University in Pakistan. He immigrated to the United  
11 States as a lawful permanent resident in April 1999. He currently works for the U.S. Postal  
12 Service as a mail carrier.

13 52. Mr. Ghafoor applied for naturalization in March 2004. He successfully  
14 completed his naturalization examination and criminal background checks in October 2004 and  
15 was told at that time that he should receive his notice within 120 days. Mr. Ghafoor meets all  
16 other statutory requirements for naturalization. Nonetheless, his application has not been  
17 adjudicated.

18 53. Despite numerous in-person and written inquiries to CIS, including inquiries  
19 made by an attorney Mr. Ghafoor retained at his own expense to represent him with respect to  
20 his pending naturalization application, CIS has failed to adjudicate his naturalization application.  
21 Mr. Ghafoor has received notices from CIS saying that his background check is pending.

22 54. Mr. Ghafoor is suffering extreme prejudice from the delay in adjudication of his  
23 naturalization application. His wife and four children live in Pakistan and he can afford to visit  
24 them only once a year. Although he applied for them to join him in the United States in 2002,  
25 the government has not yet granted them visas to reunite with him in the United States. They are  
26 subject to long waiting periods due to Mr. Ghafoor's status as a noncitizen. He seeks to  
27 naturalize both to speed his family's ability to join him in the United States and also because he  
28 has been subjected repeatedly to secondary immigration inspections – including strip searches,

1 hours-long detentions that have caused him to miss connecting flights, and rude treatment –  
2 when he has reentered the United States after visiting his wife and children in Pakistan.

3 55. Miao Ling Huang is a 46-year old native and citizen of China. She came to the  
4 United States as a lawful permanent resident in December 1998, through the petition of her  
5 husband's sister, a U.S. citizen. Ms. Huang and her husband, who is also a lawful permanent  
6 resident, live in San Francisco, California with their two children, Tian H. Rong and Zijun Rong,  
7 also lawful permanent residents. If Ms. Huang naturalizes, her youngest daughter, currently 13  
8 years old, stands to derive automatic United States citizenship, pursuant to the Child Citizenship  
9 Act of 2000. Ms. Huang currently works at the San Francisco Juvenile Hall as a food service  
10 operator.

11 56. Ms. Huang applied for citizenship in November 2003 and successfully completed  
12 her naturalization interview and criminal background checks in June 2004. She meets all of the  
13 statutory requirements for naturalization. At the end of her interview, she was informed that she  
14 passed the tests on English and U.S. history and government, but that a decision could not be  
15 made on her application because background checks have not been completed.

16 57. Starting approximately three to four months after successfully passing her  
17 naturalization examination, Ms. Huang contacted CIS to inquire about her oath notice. She was  
18 told on several occasions that her application was pending for the completion of all necessary  
19 background checks. In December 2005, Ms. Huang contacted U.S. Senator Barbara Boxer's  
20 office for assistance on her naturalization application. On January 2006, U.S. Senator Boxer's  
21 officer informed her application was pending due to a security check submitted to the FBI and  
22 ultimately, that she must wait due to the sensitive nature of these clearances.

23 58. Ms. Huang has suffered harm from the delay of her naturalization. Her 68-year  
24 old ailing mother lives in China. Ms. Huang would like to serve as her mother's primary  
25 caretaker, but has been unable to obtain the proper visa to petition for her mother to immigrate to  
26 the United States. Upon naturalization, Ms. Huang will be able to petition for her mother to  
27 immigrate more expeditiously. The delay in Ms. Huang's naturalization has caused her great  
28 anguish by making it impossible to care for her mother during these critical years.

1           59.     Sana Jalili is a native and citizen of Pakistan. She came to the United States in  
2 1995, at the age of 15, as a dependent of her parents, who had H-1 employment visas. Ms. Jalili  
3 has been a lawful permanent resident of the United States in 2001. She attended high school on  
4 Long Island in New York, and graduated with honors. She then attended the State University of  
5 New York at Stony Brook and graduated after only three years with a Bachelor of Science in  
6 information systems. Following graduation, she worked as an IT specialist in the Information  
7 Technology Leadership Program at Travelers Insurance Company. She later also served as a  
8 Connecticut state court interpreter and offered multi-cultural classes in her town. She and her  
9 husband, a U.S. citizen, married during Ms. Jalili's second year of college. They now have two  
10 U.S.-citizen children under the age of five. Mr. Jalili is currently home-schooling her daughters  
11 full-time. Ms. Jalili's husband supports the family financially as a project manager at IBM.

12           60.     Ms. Jalili applied for naturalization in December 2003 and successfully passed her  
13 interview and criminal background checks in September 2004. At the end of the interview, a  
14 CIS officer informed her that she would receive a notice of oath ceremony within three weeks to  
15 three months.

16           61.     Ms. Jalili meets all statutory requirements for naturalization, but her application  
17 has not been adjudicated. She has contacted CIS repeatedly, both in the Hartford, Connecticut,  
18 office where she originally filed her application, and then in the San Jose and San Francisco  
19 offices, after she and her husband moved to California. Ms. Jalili also sought assistance from  
20 U.S. Representative Nancy Johnson and the CIS Ombudsman office, to no avail. CIS has  
21 informed Ms. Jalili that her application is pending because of a name check.

22           62.     Ms. Jalili is suffering prejudice from the delay in her naturalization application.  
23 America is her home and she serves her local community in many ways. By delaying her  
24 naturalization, the government has prevented her from enjoying the liberties and duties of  
25 citizenship, including participation in the democratic process through voting. Ms. Jalili does not  
26 have the same legal status as her husband and children, which is especially difficult when the  
27 family travels together abroad. Upon gaining citizenship, Ms. Jalili also would like to apply for  
28 interpreter positions with government agencies, which may require U.S. citizenship, and would

1 like to sponsor her parents for lawful permanent resident status so that her daughters can enjoy a  
2 quality relationship with their grandparents.

3 63. Yan Wang is a 36-year old native and citizen of China. She came to the United  
4 States on a K-1 fiancée visa in February 1999 and became a lawful permanent resident on July  
5 2000. Ms. Wang and her husband, a U.S. citizen, live in San Francisco, California. Ms. Wang is  
6 currently attending City College in San Francisco and learning the English language while she  
7 assists her husband, Patrick Mao, with his business.

8 64. In May 2003, Ms. Wang applied for citizenship and successfully completed her  
9 naturalization interview and criminal background checks in January 2004. She meets all other  
10 statutory requirements for naturalization. At the end of the interview, a CIS officer told Ms.  
11 Wang that she passed her examination and would receive her oath shortly.

12 65. Approximately four months later after successfully passing her naturalization  
13 examination, Ms. Wang contacted CIS because she had not received her oath notice. The  
14 immigration office in San Francisco, California informed her that the application is pending  
15 because of a name check. Ms. Wang has made approximately eight to nine inquiries with CIS in  
16 the course of the last few years, and each time, she was informed that the FBI name check was  
17 not complete.

18 66. Ms. Wang has suffered harm from the delay of her naturalization. Her ailing  
19 father lives in China and she wishes to spend time with him. As a citizen, she would be able to  
20 petition for lawful permanent resident status for her father so that she can care for him.

21 67. Yan Yin is a native of China and citizen of Canada who came to the United States  
22 in 1996 on a TN visa, which is issued to professionals from Canada and Mexico. Ms. Yin, who  
23 was a professor of physics in China, came to the United States to work on a project funded by the  
24 U.S. Department of Energy. She now lives in Fremont and owns her own business there. Ms.  
25 Yin has a sister in the Washington, D.C., area who is a U.S. citizen.

26 68. In August 2003, Ms. Yin applied for naturalization. In March 2004, she  
27 successfully passed her naturalization examination and criminal background checks. She meets  
28 all other statutory requirements for naturalization.

1           69.     Despite Ms. Yin’s numerous inquiries with CIS, inquiries to Senator Barbara  
2 Boxer and Representative Pete Stark, her repeated submission of fingerprints, and her receipt of  
3 documents in response to a Freedom of Information Act/Privacy Act request that showed no  
4 basis for denying naturalization, CIS has failed to adjudicate her application for naturalization.  
5 CIS informed Ms. Yin that her background check had not been completed and in March 2006,  
6 CIS informed Ms. Yin that it needed six additional months to process her application. In July  
7 2006, CIS informed Ms. Yin that she should receive her citizenship in September 2006, but her  
8 application has still not been adjudicated.

9           70.     Ms. Yin has suffered prejudice from the delay in adjudication of her  
10 naturalization. She contracts with the U.S. government as part of her business and is unable to  
11 apply for certain grants because of her immigration status as a non-citizen. Because of her  
12 immigrant status, Ms. Yin is unable to communicate with certain laboratories that are important  
13 to her business. She is anxious to become a citizen so that she can travel and market her product  
14 with more ease and flexibility.

15     **Defendants’ Policies and Practices**

16           71.     Plaintiffs are informed and believe that Defendants Still, Emilio Gonzalez and  
17 Chertoff have a policy, pattern, and practice of failing to adjudicate the applications for  
18 naturalization of the proposed plaintiff class within 120 days of the date of naturalization  
19 examinations, because of years-long delays in the processing of “name checks.”

20           72.     Plaintiffs are informed and believe that Defendants Still, Emilio Gonzalez and  
21 Chertoff have a policy, pattern, and practice of unlawfully withholding and unreasonably  
22 delaying the adjudication of applications for naturalization of the proposed plaintiff class,  
23 because of years-long delays in the processing of “name checks.”

24           73.     Plaintiffs are informed and believe that Defendants Mueller and Alberto Gonzales  
25 have a policy, pattern, and practice of unlawfully withholding and unreasonably delaying the  
26 completion of “name checks,” with the full knowledge that CIS requires the completion of such  
27 “name checks” for adjudication of applications for naturalization of the proposed plaintiff class.

28           74.     Plaintiffs are informed and believe that Defendants have a policy, pattern and

1 practice of failing to set deadlines for completing “name checks” and taking all the other  
2 reasonable steps necessary to complete the adjudication of applications for naturalization of the  
3 proposed plaintiff class.

4 75. Plaintiffs are informed and believe that Defendants Still, Emilio Gonzalez and  
5 Chertoff have a policy, pattern and practice of requiring “name checks” for adjudication of  
6 applications for naturalization of the proposed plaintiff class, despite no statutory or regulatory  
7 authorization for such “name checks.”

8 76. Plaintiffs are informed and believe that Defendants do not have or use any  
9 mechanisms to identify the number and status of naturalization cases in which applicants satisfy  
10 all eligibility criteria, have passed naturalization interviews, and are awaiting adjudication solely  
11 on the basis of FBI name checks. In addition, USCIS and FBI do not have any policies or  
12 practices in place to ensure final adjudication of those naturalization applications.

13 77. Plaintiffs are informed and believe that Defendants do not have or use any  
14 mechanisms to track the number and status of naturalization cases in which applicants satisfy all  
15 eligibility criteria, have passed naturalization examinations, and are awaiting adjudication for  
16 more than 120 days after their naturalization examinations. In addition, USCIS and FBI do not  
17 have any policies or practices in place to ensure final adjudication of those naturalization  
18 applications.

19 78. Plaintiffs are informed and believe that Defendants Still, Gonzalez and Chertoff  
20 implemented the requirement of FBI name checks for naturalization without giving notice to the  
21 public and allowing a period for public comment. The Administrative Procedures Act requires  
22 such notice and comment because the FBI name check requirement is a substantive change in  
23 prior CIS policy and because the requirement has an adverse effect on individuals by causing a  
24 delay in adjudication of their naturalization applications.

25 79. As a result of the Defendants’ policies, practices, actions and omissions, members  
26 of the proposed plaintiff class have suffered injury, in that they have been unlawfully denied the  
27 rights and benefits of U.S. citizenship for approximately two years or more.

28

**CLASS ALLEGATIONS**

1  
2 80. Plaintiffs bring this action on behalf of themselves and all other persons similarly  
3 situated pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2). The class, as proposed  
4 by Plaintiffs, consists of:

5 All persons who have submitted or will submit applications for naturalization to CIS, and  
6 who have met all statutory requirements for naturalization, and whose applications for  
7 naturalization are not adjudicated within 120 days of the date of their initial examination.

8 81. The requirements of Federal Rules of Civil Procedure 23(a) and 23(b)(2) are met  
9 in that the class is so numerous that joinder of all members is impracticable. Counsel for  
10 Plaintiffs are aware of at least another 99 proposed class members who are similarly situated to  
11 the named Plaintiffs in this District alone. Counsel are aware of dozens of others similarly  
12 situated elsewhere in California.

13 82. There are questions of law and fact common to the proposed class that  
14 predominate over any questions affecting only the individually named Plaintiffs, including: (1)  
15 whether CIS’s failure to adjudicate the applications for naturalization of the proposed plaintiff  
16 class within 120 days of the date of naturalization examinations, due to delays in “name checks,”  
17 violates the Due Process Clause, the Immigration and Nationality Act and implementing  
18 regulations and the Administrative Procedures Act; (2) whether CIS’s imposition of a name  
19 check requirement violates the notice and comment provision of the Administrative Procedures  
20 Act; (3) whether the FBI’s actions in unlawfully withholding and unreasonably delaying the  
21 completion of “name checks,” with the full knowledge that CIS requires the completion of such  
22 “name checks” for adjudication of applications for naturalization of the proposed plaintiff class,  
23 violates the Constitution and laws of the United States, including the Administrative Procedures  
24 Act; and (4) whether CIS and the FBI’s failure to set deadlines for completing “name checks”  
25 and failure to take all the other reasonable steps necessary to complete the adjudication of  
26 applications for naturalization of the proposed plaintiff class, violates the Constitution and laws  
27 of the United States, including the Administrative Procedures Act.

28 83. The claims of the named Plaintiffs are typical of the claims of the proposed class.

1 The named Plaintiffs, like all class members, have not had their applications for naturalization  
2 adjudicated despite the passage of over 120 days since their naturalization examinations, and  
3 they have been denied timely completion of “name checks” which CIS requires for adjudication  
4 of their applications; and their applications for naturalization have been unlawfully withheld or  
5 unreasonably delayed on the basis of “name checks.”

6 84. Like the named Plaintiffs, members of the proposed class are suffering prejudice  
7 from the delay of their naturalization applications, including the inability to participate in civic  
8 society by voting and jury service, the effective inability to sponsor immediate relatives for  
9 lawful permanent resident status, the inability to travel freely as U.S. citizens, and the harm of  
10 having an uncertain status in the country they have made their home and where they have  
11 established themselves as part of a community.

12 85. The named Plaintiffs will fairly and adequately represent the interests of all  
13 members of the proposed class because they seek relief on behalf of the class as a whole and  
14 have no interests antagonistic to other members of the class. The named Plaintiffs are  
15 represented by pro bono counsel, including the ACLU Immigrants’ Rights Project, the ACLU of  
16 Northern California and the Asian Law Caucus, who have extensive expertise in class action  
17 litigation regarding the rights of immigrants. Finally, the Defendants have acted on grounds  
18 generally applicable to the class, thereby making appropriate final injunctive relief with respect  
19 to the class as a whole.

20 **DECLARATORY AND INJUNCTIVE RELIEF ALLEGATIONS**

21 86. An actual and substantial controversy exists between Plaintiffs and Defendants as  
22 to their respective legal rights and duties. Plaintiffs contend that Defendants’ actions violate  
23 Plaintiffs’ rights and the rights of proposed class members. Defendants contend the opposite.

24 87. Defendants’ failure to timely process Plaintiffs’ naturalization applications,  
25 including any name check, has caused and will continue to cause irreparable injury to Plaintiffs  
26 and other class members. Plaintiffs have no plain, speedy, and adequate remedy at law.

27 //

28

1 **CAUSES OF ACTION**

2 **COUNT ONE**

3 **RIGHT TO DE NOVO JUDICIAL DETERMINATION**

4 **OF APPLICATION FOR NATURALIZATION**

5 **8 U.S.C. § 1447(B)**

6 **[By the Named Plaintiffs Against Defendants Still, Gonzalez and Chertoff]**

7 88. The allegations contained in paragraphs 1 through 87 above are repeated and  
8 incorporated as though fully set forth herein.

9 89. Because Respondents have failed to adjudicate each named Plaintiff's  
10 naturalization application within 120 days after the date of his naturalization examination, each  
11 named Plaintiff is entitled to de novo adjudication of his naturalization application by this Court  
12 under 8 U.S.C. § 1447(b).

13 90. This Court should grant each named Plaintiff's naturalization application pursuant  
14 to 8 U.S.C. § 1447(b), because each named Plaintiff meets all of the requirements for  
15 naturalization under chapter 2 of the Immigration and Nationality Act, 8 U.S.C. § 1421 *et seq.*,  
16 and therefore has a right to become a naturalized citizen of the United States.

17 **COUNT TWO**

18 **UNREASONABLE DELAY**

19 **IN VIOLATION OF THE ADMINISTRATIVE PROCEDURES ACT**

20 **[By the Named Plaintiffs on Behalf of the Proposed Class Against All Defendants]**

21 91. The allegations contained in paragraphs 1 through 90 above are repeated and  
22 incorporated as though fully set forth herein.

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

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

4 93. The failure of Defendants Still, Emilio Gonzalez and Chertoff to adjudicate the  
5 applications for naturalization of the proposed plaintiff class within 120 days of the date of  
6 naturalization examinations on the basis of “name checks,” in violation of 8 U.S.C. § 1446(d)  
7 and 8 C.F.R. § 335, violates the Administrative Procedure Act, 5 U.S.C. § 555(b); 5 U.S.C. §§  
8 706(1), 706(2)(A), 706(2)(C), 706(2)(D).

9 94. The failure of Defendants Alberto Gonzales and Mueller to timely complete  
10 “name checks,” with the full knowledge that CIS requires the completion of such “name checks”  
11 for adjudication of applications for naturalization of the proposed plaintiff class, violates the  
12 Administrative Procedure Act, 5 U.S.C. § 555(b); 5 U.S.C. §§ 706(1), 706(2)(A), 706(2)(C),  
13 706(2)(D).

14 95. Defendants’ failure to set deadlines for completing “name checks,” to track the  
15 number and status of naturalization cases awaiting final adjudication solely on the basis of FBI  
16 name checks, to track the number and status of naturalization cases awaiting final adjudication  
17 for more than 120 days after the naturalization examinations, and to take all the other reasonable  
18 steps necessary to complete the adjudication of applications for naturalization of the proposed  
19 plaintiff class, in violation of 8 U.S.C. § 1446(d) and 8 C.F.R. § 335, violates the Administrative  
20 Procedure Act, 5 U.S.C. § 555(b); 5 U.S.C. §§ 706(1), 706(2)(A), 706(2)(C), 706(2)(D).

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

24 **COUNT THREE**

25 **FAILURE TO FOLLOW NOTICE-AND-COMMENT REQUIREMENTS OF THE**  
26 **ADMINISTRATIVE PROCEDURES ACT**

27 **[By the Named Plaintiffs on Behalf of the Proposed Class Against All Defendants]**

28 97. The allegations contained in paragraphs 1 through 96 above are repeated and

1 incorporated as though fully set forth herein.

2 98. By regulation, CIS is required to conduct a criminal background check before a  
3 naturalization application can be granted. 8 C.F.R. § 335.2(b). Prior to about November 2002,  
4 CIS used criminal databases such as NCIC to complete this process.

5 99. In or about November 2002, CIS added a new requirement, the FBI name check,  
6 that goes beyond the criminal background check required by statute and regulation. Unlike the  
7 databases searched during the criminal background checks, the FBI name check database  
8 contains names of persons who have never been convicted of, arrested for, or even suspected of a  
9 crime – including innocent witnesses and even crime victims. This added requirement of a  
10 name check constitutes a substantive rule that departed from prior policy and practice.

11 100. Defendants implemented the FBI name check requirement for naturalization  
12 without giving notice and providing a period for public comment, even though the name check  
13 requirement has an adverse impact on individuals whose naturalization applications are delayed  
14 due to the name check.

15 101. Defendants’ failure to provide a notice-and-comment period prior to  
16 implementing the FBI name check requirement violates the Administrative Procedures Act, 5  
17 U.S.C. § 553.

18 **COUNT FOUR**

19 **VIOLATION OF FIFTH AMENDMENT DUE PROCESS CLAUSE**

20 **[By the Named Plaintiffs on Behalf of the Proposed Class Against All Defendants]**

21 102. The allegations contained in paragraphs 1 through 101 above are repeated and  
22 incorporated as though fully set forth herein.

23 103. The Due Process Clause of the Fifth Amendment prohibits the government from  
24 depriving any person of life, liberty or property without due process of law.

25 104. Defendants Still, Emilio Gonzalez and Chertoff have a pattern, practice or policy  
26 of failing to adjudicate the applications for naturalization of the proposed plaintiff class within  
27 120 days of the date of naturalization examinations because of delays in “name checks,” in  
28 violation of 8 U.S.C. § 1446(d) and 8 C.F.R. § 335. Defendants Alberto Gonzales and Mueller

1 have a pattern, practice or policy of failing to timely complete “name checks,” with the full  
2 knowledge that CIS requires the completion of such “name checks” for adjudication of  
3 applications for naturalization of the proposed plaintiff class. Defendants have a pattern, practice  
4 or policy of failing to set deadlines for completing “name checks” and to take all the other  
5 reasonable steps necessary to complete the adjudication of applications for naturalization of the  
6 proposed plaintiff class, in violation of 8 U.S.C. § 1446(d) and 8 C.F.R. § 335. These actions by  
7 Defendants violate Plaintiffs’ rights to due process of law.

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

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**PRAYER FOR RELIEF**

1  
2 WHEREFORE, in view of the arguments and authority noted herein, Petitioner prays for  
3 the following relief:

- 4 a. Assume jurisdiction over the matter;
- 5 b. Certify this case as a class action lawsuit, as proposed herein;
- 6 c. Review de novo and grant the named Plaintiffs' applications for  
7 naturalization, pursuant to 8 U.S.C. § 1447(b);
- 8 d. Order Defendants to promptly adjudicate, in a time period not to exceed  
9 90 days, the currently pending applications for naturalization of all  
10 members of the proposed class;
- 11 e. Order Defendants to adjudicate, within 120 days of the date of the  
12 naturalization examination, all applications for naturalization that shall be  
13 submitted in the future by members of the proposed class, as required by  
14 governing law;
- 15 f. Order that any name checks Defendants choose to conduct shall be  
16 completed in a manner that does not delay adjudication of naturalization  
17 applications by members of the proposed class beyond 120 days of the  
18 applicant's naturalization examination;
- 19 g. Order Defendants to adopt a procedure for identifying naturalization cases  
20 awaiting final adjudication based solely on FBI name checks, and for  
21 identifying naturalization cases awaiting final adjudication for more than  
22 120 days after successful completion of naturalization examinations;
- 23 h. Issue a declaratory judgment holding unlawful: (a) the failure of  
24 Defendants Still, Emilio Gonzalez and Chertoff to adjudicate applications  
25 for naturalization within 120 days of the date of the naturalization  
26 examination; (b) The failure of Defendants Alberto Gonzales and Mueller  
27 to complete "name checks" within a reasonable time; and (c) Defendants'  
28 failures to take all necessary steps to adjudicate applications for

1 naturalization within 120 days of the date of the naturalization  
2 examinations.

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

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

6 Dated: February 8, 2007

Respectfully submitted,

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10 FOUNDATION  
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By: \_\_\_\_\_/s/\_\_\_\_\_  
CECILLIA D. WANG

Attorneys for Plaintiffs

**PROOF OF SERVICE**

I, Cecillia D. Wang, declare as follows:

I hereby certify that today I electronically filed the foregoing FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION FOR NATURALIZATION PURSUANT TO 8 U.S.C. § 1447(B) with the Clerk of the Court using the ECF system which will send notification of such filing to the following email addresses:

Julia Harumi Mass  
American Civil Liberties Union  
Foundation of Northern California

*Via ECF  
at [jmass@aclunc.org](mailto:jmass@aclunc.org)*

Alan L. Schlosser  
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Joren Lyons  
Asian Law Caucus

*Via ECF  
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I also certify that today I served the foregoing FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION FOR NATURALIZATION PURSUANT TO 8 U.S.C. § 1447(B) upon the Defendants by U.S. Mail as follows, pursuant to Fed. R. Civ. P. 4(i)(1):

Civil Process Clerk  
United States Attorney  
for the Northern District of California  
450 Golden Gate Avenue, 11th Floor  
San Francisco, CA 94102

Alberto Gonzales  
Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Michael Chertoff  
Secretary of Homeland Security  
U.S. Department of Homeland Security  
Washington, DC 20528

Robert S. Mueller III, Director  
Federal Bureau of Investigation  
J. Edgar Hoover Building  
935 Pennsylvania Avenue, NW  
Washington, D.C. 20535-0001

I declare under penalty of perjury under the laws of the State of California that the  
above is true and correct.

Dated: February 8, 2007  
San Francisco, California

\_\_\_\_\_/s/\_\_\_\_\_  
Cecillia D. Wang