

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

Action No. \_\_\_\_\_

BELLA IVKOVA, for herself and others,  
similarly situated,

Plaintiff/ Petitioner

vs.

JOANNE B. BARNHART, COMMISSIONER,  
SOCIAL SECURITY ADMINISTRATION;  
ALBERT R. GONZALES, ATTORNEY  
GENERAL; ROBERT S. MUELLER,  
DIRECTOR, FEDERAL BUREAU OF  
INVESTIGATION; MICHAEL CHERTOFF,  
SECRETARY OF THE DEPARTMENT OF  
HOMELAND SECURITY; EDUARDO  
AGUIRRE, DIRECTOR, CITIZENSHIP &  
IMMIGRATION SERVICE; DENIS RIORDAN,  
DIRECTOR, BOSTON DISTRICT,  
CITIZENSHIP AND  
IMMIGRATION SERVICE,

Defendants/Respondents.

**CLASS ACTION COMPLAINT FOR INJUNCTIVE RELIEF; MANDAMUS  
RELIEF; DECLARATORY RELIEF;  
AND PETITION FOR HEARING ON NATURALIZATION**

**INTRODUCTION**

This is a class action brought by a septuagenarian permanent legal resident, who has lost her sole source of income and support, to wit, benefits under the Social Security system, as a result of the defendants' actions in delaying her naturalization process. The delay and its dire consequences are a result of the failure to perform the non-discretionary, ministerial duty of pressing several computer buttons to complete a so-

called FBI “name check” by the defendant FBI and the resulting inexcusable failure by the defendant CIS to process her naturalization application within the time frame established by the law. There is no justifiable reason for the delay. Ivkova asks that this Court issue appropriate orders to compel the defendants to perform their ministerial, non-discretionary duties and then to adjudicate her petition for naturalization. She also asks that the Court issue a *status quo* injunction directing the Social Security Administration or other defendants to continue paying to the plaintiff the Social Security Income she has hitherto received.

## **PARTIES**

### **A. Plaintiff**

1. Plaintiff Bella Ivkova (“Ivkova”) is a resident Newton, Massachusetts, within this judicial district and a lawful permanent resident of the United States. She is an applicant for naturalization. She is a lawful permanent resident qualified to receive Supplemental Social Security Income (“SSI”) and other related benefits. Ivkova is 74 years old. At all relevant times, Ivkova has been dependent on her modest SSI payments and on Medicaid/ Medicare.

### **B. Defendants**

2. Defendant JOANNE B. BARNHART is the Commissioner of the Social Security Administration and is sued in her official capacity.

3. Defendant ALBERTO R. GONZALES is the Attorney General of the United States and is sued in his official capacity only. Defendant GONZALES is charged with the administration of the Department of Justice, including the Federal Bureau of

Investigation. The Immigration and Nationality Act confers on the Attorney General the “sole authority to naturalize persons as citizens of the United States.” 8 U.S.C. § 1421.

4. Defendant ROBERT S. MUELLER is the Director of the Federal Bureau of Investigation and is sued in his official capacity only. Defendant MUELLER is charged with the administration of the Federal Bureau of Investigation.

5. Defendant MICHAEL CHERTOFF is the Secretary of the United States Department of Homeland Security and is sued in his official capacity only. Defendant CHERTOFF is charged with the administration of the UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICE and implementation of the Immigration and Nationality Act, 8 U.S.C. §§ 1001, et seq.

6. Defendant EDUARDO AGUIRRE is the Director of the UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICE and is sued in his official capacity only. Defendant AGUIRRE is charged with the direction of the UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICE, a bureau within the Department of Homeland Security, and implementation of the Immigration and Nationality Act, 8 U.S.C. §§ 1001, et seq.

7. Defendant DENIS RIORDAN is the Director of the Boston District Office of the UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICE, and is sued in her official capacity only. Defendant RIORDAN is charged with the direction of the Boston District Office of the UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICE and implementation of the Immigration and Nationality Act, 8 U.S.C. §§ 1001, et seq.

8. Defendant the UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICE is a bureau of the Department of Homeland Security and its officers and employees are charged with the implementation of the Immigration and Naturalization Act (“INA”).

### **JURISDICTION AND DECLARATORY JUDGMENT**

9. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question jurisdiction); 28 U.S.C. § 1361 (mandamus jurisdiction); INA Section 336(b), codified as 8 U.S.C. § 1447(b)(jurisdiction over petitions for naturalization).

10. Plaintiff's prayer for declaratory relief is brought pursuant to 28 U.S.C. §§ 2201 and 2202.

11. Venue is properly in this court pursuant to 28 U.S.C. § 1391(b) and (e)(1), (2), and (4), because the acts complained of occurred in this district, the Plaintiff resides in this district, the Defendants have offices in this district, and no real property is involved in this action.

### **CLASS ACTION ALLEGATIONS**

12. Plaintiff brings this action as a class action pursuant to Rules 23(a), (b)(1), (b)(2) and/or (b)(3) of the Federal Rules of Civil Procedure on behalf of herself and the following class of persons similarly situated (the “Class”):

- (a) lawful permanent resident aliens who are eligible for naturalization; and
- (b) who have timely applied for naturalization to become citizens of the United States, having been interviewed by Defendant the UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICE (“CIS”); and
- (c) who have passed all of the relevant tests; and
- (d) who have lost or are about to lose their Social Security Income or other related benefits because of the seven-year

limitation on naturalization imposed by 8 U.S.C. §1612;  
and

(e) who have not been sworn in as citizens of the United States due to the unreasonable and inexcusable delay caused by the defendants in performance of their non-discretionary ministerial duties, including, specifically, the performance of ministerial “name check” operations, and  
(f) who have no criminal or otherwise derogatory record, which makes them ineligible for naturalization, within the computer database used by the defendants to perform the “name check”.

13. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiff at this time, and can only be ascertained through appropriate discovery, Plaintiff believes there are, at a minimum, thousands of members of the Class who are lawful residents of this country, qualified to apply for citizenship, who have already been interviewed by the CIS, and whose applications have been delayed, in many cases for several years, because of the unlawful delays in completing the “name check” function.

14. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class.

15. The Plaintiff’s claims are typical of the claims of the members of the Class in that Plaintiff, and the other members of the Class, have each sustained similar damages arising out of the Defendants’ wrongful conduct in violation of federal law as complained of herein.

16. The Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class action and complex litigation. Plaintiff has no interests antagonistic to or in conflict with those of the Class.

17. Class action status in this action is warranted under Rule 23(b)(1)(B) because prosecution of separate actions by the members of the Class would create a risk of adjudications with respect to individual members of the Class which may, as a practical matter, be dispositive of the interests of the other members not parties to the actions, or substantially impair or impede their ability to protect their interests.

18. Class action status is also warranted under the other subsections of Rule 23(b) because: (i) prosecution of separate actions by the members of the Class would create a risk of establishing incompatible standards of conduct for Defendants; (ii) Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive, declaratory, or other appropriate equitable relief with respect to the Class as a whole; and (iii) questions of law or fact common to members of the Class predominate over any questions affecting only individual members and a class action is superior to the other available methods for the fair and efficient adjudication of this controversy.

#### **ALLEGATIONS COMMON TO ALL COUNTS**

19. On information and belief, as a result of a post “9/11” mandate from the Defendant Attorney General, the CIS initiated enhanced security checks for all naturalization applications in or about December 2002. As more fully alleged below, as a result of the Attorney General's actions, as well as the actions of the other named Defendants, tens of thousands of applications for naturalization have become hopelessly and inexplicably backlogged and mired in unproductive and wasteful "name checks" that bear no rational relationship to legitimate national security measures. There is no rational

or excusable reason for the delay; a typical “name check” is a simple computer operation, which can be done in a matter of minutes, if not seconds.

20. This task has been delegated to the Federal Bureau of Investigation. Under this new mandate, the FBI re-submitted several million names of applicants for citizenship through a number of computer databases, which contain a wealth of information concerning millions of individuals, including criminal records, border patrol records, FBI investigative files, visa status information, and other such data, kept by dozens of state and federal agencies.

21. As part of the “name check” the FBI employees enter a person's information, such as name and date of birth, social security number and alien registration number, into the computer, which checks it against the database for any criminal history or wanted notifications. Because of the computer-based nature of the database, an answer comes within minutes, if not seconds, of the query.

22. On information and belief, however, the computer system returns "hits" not just on matching names and birth dates, but also, for example, on phonetically similar names (e.g. Marko, Marco), and derivatives of names (e.g. William, Willie, Bill, etc.). As a result, on information and belief, names submitted for checks sometimes return "hits" concerning criminal convictions, warrants, etc., that are entirely unrelated to the person whose background is being checked.

23. On information and belief, these databases (or portions thereof) are used by the FBI and other governmental agencies to conduct background checks in a wide variety of circumstances, including checks for such matters as attendance at White House

events, admission to the bar of various states, government employment, the purchase of firearms and many other uses.

24. On information and belief, when a name check is received by the FBI, the name is electronically checked against the computer databases as described above. Names are first checked against an FBI Indices database. The search seeks all instances of the name and a close date of birth. Names are checked whether they involve the subject of an FBI investigation (called a "file name"), or simply a name that appears in any investigative file (called a "reference name"). According to the FBI, a reference name may be a witness, an associate of the subject of the investigation, or may appear for "a myriad of other reasons" in an FBI file. *See The Visa Approval Backlog and Its Impact on American Small Business*, June 4, 2004, Prepared remarks by Robert J. Garrity, Assistant Director (Acting), FBI, before the House Committee on Small Business ("Garrity Testimony").<sup>1</sup>

25. Names are searched using a multitude of combinations, such as switching the order of first, last and middle names, as well as combining of just the first and last names, the first and middle names, the middle and last names, and so on. The search also seeks out phonetic spelling variations of the names. As a result of the search mechanisms employed, it is again routine and inevitable that some number of names submitted for name checks result in multiple "hits." The system for name checks is so over broad as to render it almost useless as a tool for determining eligibility for naturalization, while unreasonably causing inordinate delays in the approval of naturalization applications for long-time lawful permanent residents.

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<sup>1</sup> Available at [www.ilw.com/lawyers/immigdaily/congress\\_news/2003-garrity.shtm](http://www.ilw.com/lawyers/immigdaily/congress_news/2003-garrity.shtm)



26. On information and belief, if a "hit" is received, an FBI employee conducts a further manual search. The FBI records relating to all "hits" are retrieved and reviewed. If the records are available electronically, the file can be retrieved rapidly. If not, the paper files must be retrieved manually from one or more of the hundreds of physical locations around the country that the FBI maintains. In many instances, the search only proves that the phonetically matched name in reality belongs to a different person.

27. On information and belief, the vast majority of FBI name checks can be completed, at most, within several days. Yet, FBI name checks for applicants for naturalization within the United States often take several years to complete.

28. The FBI has publicly stated that name checks for foreign visitors coming to the United States can be completed in a matter of "days." Washington Post, November 11, 2003, Post-9/11 Visa Rules Keep Thousands From Coming to the U.S. Nevertheless, name checks for long-term lawful residents seeking naturalization take several months or even years.

29. The FBI now conducts almost a million of name checks for a variety of reasons each year, including over 250,000 name checks for visa applicants. About 90% of name checks are completed within 30 days. However, name checks for naturalization applicants appear to take several months or years.

30. An equivalent "name check" for firearms transactions took effect on November 30, 1998. According to the FBI, which operates the firearms "name check" database, it is a national database containing records of persons who are disqualified from receiving firearms. When a "hit" occurs on the firearms "name check" system, the FBI

manages to respond within a matter of hours or days so that the firearm transaction can be completed. This is because the FBI has assigned an appropriate number of agents to address such requests and "hits." In contrast, requests for security checks for naturalization applicants may take several months or years because the FBI has failed to assign an adequate number of agents or establish adequate procedures to process such requests and "hits" within a reasonable time.

31. Despite the long delays experienced by applicants for citizenship in obtaining the results of FBI name checks, *less than 1%* of all name checks result in the matching of a name submitted with any derogatory information so as to require further review.

32. The FBI is fully aware of the dire situation with the background "name checks" performed for the applicants for naturalization. It has ignored such data and has failed to assign sufficient staff to process name check requests for naturalization applicants within a reasonable time. On information and belief, the FBI has assigned approximately 125 employees to handle over 500,000 name check requests received each month, a vastly inadequate number to process such requests in a relatively timely manner.

33. On information and belief, the name check for naturalization applicants now involves the following: (1) The CIS initially runs an applicant's name through the Interagency Border Inspection System ("IBIS"), a central database which includes information compiled from several federal agencies; (2) the FBI completes its enhanced security check on the applicant's name as discussed above; (3) the CIS *again* runs the applicant's name through IBIS before final approval of the application and scheduling the

applicant to be sworn in as a citizen. All of these operations can be performed electronically.

34. A name check for a person without a record, such as the Plaintiff, is a matter of pressing several computer buttons and reading information on the screen.

35. It is the policy and practice of the defendant CIS to conduct interviews of applicants, who are otherwise eligible and qualified to be naturalized, wherein their history and English language proficiency are tested, prior to receiving the “name check” confirmation from the FBI, which is more fully described above. As a rule, once an applicant has demonstrated adequate knowledge of American history and English language proficiency, the person is scheduled to take the oath of allegiance.

36. However, despite having made a favorable determination, if the final FBI “name check” is still pending, the CIS will not schedule the person to take the pledge of allegiance until the results of such “name check” are received. For persons, who have no derogatory record, this is merely a time-consuming and wasteful exercise. In many instances, it takes years to complete this formality.

37. Notwithstanding the general rule that aliens are ineligible to receive federal aid, certain categories of aliens, including refugees and persons granted asylum are eligible to receive Social Security Income and other assistance. *See* 8 U.S.C. §1612. The statute provides a powerful incentive to naturalize for persons eligible to receive such aid; an eligible alien is only allowed to receive Social Security Income for seven years from the moment of entry. *Id.* Thus, unless an alien is naturalized within seven years, he loses the Supplemental Security Income (the “SSI”).

38. As a condition to naturalization, an eligible alien must lawfully reside within the United States for five years. *See* 8 U.S.C. § 1427(a). An alien cannot apply for naturalization until four years and nine months from the date of obtaining the lawful residency. For refugees and persons granted asylum, the date of lawful residency is the date of entry into the country.

39. This means that an alien, who receives the SSI, must be naturalized within two years of the fifth anniversary of his or her lawful entry into the country or face the loss of the SSI benefits.

40. Because of the delays in processing the FBI name checks described above, and the CIS' policy of delaying naturalization until it has the second FBI name check on file, a large number of elderly and otherwise qualified non-citizen recipients of SSI, who timely initiated and prosecuted their naturalization applications, have no criminal or otherwise derogatory history, have been interviewed and demonstrated sufficient knowledge of American history and of the English language to be naturalized, have already lost or are about to lose their eligibility for benefits because the naturalization process is taking more than seven years to complete. This is solely because of the defendants' inexcusable actions in failing to perform the "name checks", a non-discretionary, ministerial function, in a timely manner.

#### **ALLEGATIONS SPECIFIC TO PLAINTIFF'S APPLICATION**

41. Plaintiff Bella Ivkova ("Ivkova") entered the United States on or about February 21, 1999.

42. Ivkova timely applied for naturalization on or about February 29, 2004. Her application was timely filed five years and eight days from the date of her entry into

the United States. By law, she was ineligible for naturalization until February 21, 2004, as more fully described above. *See* 8 U.S.C. § 1427(a).

43. Plaintiff's naturalization interview was conducted by the CIS in Boston on October 20, 2004. She received a receipt that although she passed the required tests of English and US History and was otherwise eligible, "a decision cannot yet be made about your application." At that time, she was informed that she could not be sworn in as a citizen because of an incomplete FBI name check.

44. Plaintiff has made numerous administrative efforts with the Boston District Office of the CIS throughout the period from 2004 to 2006 to bring her case to completion. During this time, she repeatedly informed the defendants that she was concerned that her eligibility for her sole source of income, the SSI, would expire. In response, she has been informed repeatedly that adjudication was delayed because of an incomplete FBI name check. The Plaintiff's inquiry with the FBI went unanswered.

45. The plaintiff's seven-year eligibility period ended on February 21, 2006. As a result, defendant SSA has discontinued disbursing her SSI as of March 1, 2006.

46. INA Section 336(b), 8 U.S.C. § 1447(b), provides for judicial review for stalled naturalization petitions:

If there is a failure to make a determination under [INA] § 335 [8 U.S.C. § 1446] before the end of the 120-day period after the date on which the examination is conducted under such section [i.e. the applicant's interview with the CIS], the applicant may apply to the United States District Court for the District in which the applicant resides for a hearing on the matter. Such court has jurisdiction over the matter and may either determine the matter or remand the matter, with appropriate instructions to the Service to determine the matter.

The examination referred to is the initial interview scheduled under 8 U.S.C. § 1446(a). *See also* 8 C.F.R. § 335.2.

47. Plaintiff has not signed a waiver of the 120-day decision deadline.

48. Following an “initial” examination, the CIS may schedule a “reexamination” under 8 C.F.R. § 335.3(b) (“[T]he reexamination on the continued case shall be scheduled within 120 days of the initial examination”), but a decision on the application should nevertheless be made within 120 days of the “first” examination. *See* 8 C.F.R. § 336.1(a). Plaintiff has never been scheduled for a reexamination. Upon information and belief, a favorable decision has been made since the plaintiff readily satisfied all criteria for naturalization. But for the mechanical operation of obtaining information that the plaintiff has no criminal record, which has been unreasonably delayed, she would have been sworn in as a citizen of the United States years ago.

49. With the filing of the instant Petition under 8 U.S.C. § 1447(b), unless Plaintiff's claims are subsequently dismissed, this Court assumes exclusive jurisdiction over Plaintiff's naturalization application, and CIS no longer maintains any authority to decide the case. *United States v. Hovsepian*, 359 F.3d 1144 (9th Cir. 2004) ( en banc); *Shalan v. Cheroff*, D.Mass., No. Civ.A. 05-10980.

50. The Defendants' have failed and refused to perform a non-discretionary, ministerial duty to complete the processing of naturalization applications and name checks in a reasonable time causing damages to the plaintiff as more fully described below..

#### **IRREPARABLE INJURY AND AFFIRMATIVE MISCONDUCT**

51. Plaintiff has suffered and will continue to suffer irreparable harm because of Defendants' challenged policies and practices as described throughout this Complaint.

Plaintiff has already experienced and will continue to experience the loss of her sole source of support as a result of inordinate and unreasonable delay in obtaining the status of citizenship to which she is entitled pursuant to laws enacted by Congress. In addition, she will continue to suffer from restrictions on her ability to travel abroad, and the inability to participate in the important forthcoming Congressional elections.

**COUNT ONE:**

52. Plaintiff hereby incorporates by reference paragraphs 1-43 of this Complaint as though fully set forth herein.

53. The unreasonable delays in completing naturalization applications caused by IBIS and FBI name checks as described throughout this Complaint violate Plaintiff's right to naturalization as set forth in INA § 310, *et seq.*, 8 U.S.C. § 1421, *et seq.*, and Defendants' nondiscretionary duty to perform the name check verification and to adjudicate her application within a reasonable period of time.

54. The plaintiff has been suffered and continues to suffer irreparable damages as a result of the defendants' actions, as more fully described above.

**COUNT TWO:**

55. Plaintiff hereby incorporates by reference paragraphs 1-45 of this Complaint as though fully set forth herein.

56. The unreasonable delays in completing naturalization applications caused by IBIS and FBI name checks as described throughout this Complaint violate Plaintiff's rights to due process and equal protection under the Fifth Amendment of the United States Constitution inasmuch as (i) the name checks are conducted in a manner that is so overbroad as to bear no rational relationship to an applicant's eligibility for naturalization,

and (ii) similarly situated individuals whose names are checked for other reasons such as attendance at White House events, for visas to enter the United States, or to purchase guns are processed and completed more timely than name checks for applicants for naturalization.

WHEREFORE, plaintiff prays that this Court

1. Enter a preliminary injunction directing the defendants to continue the payment of the Supplemental Security Income to the plaintiff during the pendency of her application for naturalization;
2. Schedule an expedited hearing on plaintiff's petition for naturalization to determine her eligibility;
2. Enter a declaratory judgment stating that the Defendants' unreasonable delay in concluding adjudication of the Plaintiff's naturalization application and scheduling her to be sworn in as a citizen of the United States is in violation of the Immigration and Naturalization Act and the due process and equal protection clauses of the Fifth Amendment to the United States Constitution;
3. Issue temporary and permanent injunctions enjoining the Defendants from unreasonably delaying completion of Plaintiff's naturalization application;
4. Order the Defendants to conduct the name check operations within 30 days.
4. Grant Plaintiff's petition to be sworn in as a citizen of the United States;
5. Award Plaintiff her costs and fees pursuant to the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412; and
6. Grant such further relief to the Plaintiff as to the Court seems just and proper.



BELLA IVKOVA  
By her attorneys,

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#### SERVICE

Rule 4(i) of the Federal Rules of Civil Procedure (FRCP) governs service of the summons in suits against the United States or its agencies, officers, or employees. Additionally, regulations for the Department of Homeland Security instruct that service of the summons and complaint in suits against DHS or its officers and employees is to be sent to the Office of General Counsel, United States Department of Homeland Security, Washington, DC, 20528.  
See 6 C.F.R. § 5.42(a). (Note 7)