

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

THOMAS CARTER; INMAR JONY)
BARCO FLORIAN; CAROLINA)
CONTRERAS MARTINEZ; ALVIN)
DE JESUS JIMENEZ; HIRA)
FAHAD; FAHAD FAROOQ;)
ENQUILBERT GODINEZ;)
SVETLANA KARTSHIKYAN;)
ALI MOHAMMED; KIMIYO)
NAKA; MOHAMMAD NUR TARIQUL)
ALAM; MERCED DIAZ GONZALEZ;)
BHAVISHI BHARATKUMAR PATEL,)

Plaintiffs, Individually and on Behalf)
of All Others Similarly Situated,)

v.)

U.S. CITIZENSHIP AND)
IMMIGRATION SERVICES;)
UR M. JADDOU, Director of USCIS;)
and UNITED STATES OF AMERICA,)

Defendants.)

Case No.: 1:22-cv-10803-MLW

FIRST AMENDED COMPLAINT FOR DECLARATORY RELIEF AND
RELIEF UNDER THE ADMINISTRATIVE PROCEDURE ACT
CLASS ACTION

INTRODUCTION

1. Plaintiffs each filed naturalization applications (Form N-400) with Defendant U.S. Citizenship and Immigration Services (USCIS) in 2020 to become U.S. citizens, but they have not yet been interviewed by USCIS about their naturalization application. While many others who filed their applications at a later date have already had their interviews and taken the oath to become U.S. citizens, the Plaintiffs and the class members they seek to represent wait.

They wait for interviews and adjudication of their naturalization applications because USCIS did not plan for or prioritize the retrieval of their immigration files after storage facilities with limited access due to COVID-19 restrictions returned to full capacity operations.

2. Upon information and belief, the immigration files of Plaintiffs and the class members they seek to represent were stored at a Federal Records Center storage facility. Federal Records Center storage facilities are operated by the National Archives and Records Administration (NARA). Defendant USCIS chose to place immigration files for which it is responsible at a Federal Records Center and then disclaimed responsibility when the COVID-19 pandemic restricted access to the Federal Records Centers.

3. Even after the Federal Records Centers returned to full capacity operations in March 2022, USCIS did not act to prioritize retrieving immigration files and interviewing people who have pending naturalization applications (i.e., for U.S. citizenship). Upon information and belief, at a date after this lawsuit was filed on May 25, 2022, NARA retrieved from the Federal Records Centers the immigration files of Plaintiffs and the class members they seek to represent, but Plaintiffs and proposed class members still await, in some cases, the scheduling of their interview. In each case, USCIS has yet to conduct their naturalization interview.

4. Instead of proactively targeting the immigration files of naturalization applicants so they can be interviewed, as recently as May 2022, Defendant USCIS has responded to some Plaintiffs' inquiries with such statements as "USCIS anticipates a delay in completing this application"—when these applications were filed in 2020. USCIS acknowledges that the naturalization applicants have not caused the delay yet expects the applicants to simply continue to wait.

5. Plaintiffs and other naturalization applicants whose immigration files were stuck in a Federal Records Center are prejudiced by USCIS' delay in a manner unlike any other applicant for immigration benefits. U.S. mid-term elections are fast approaching. If Plaintiffs and the class members they seek to represent are not interviewed promptly—because USCIS did not prioritize the retrieval and transfer of their immigration files and their interviews—they cannot have their applications adjudicated and, when approved, take the oath of citizenship in time to vote in November 2022.

JURISDICTION

6. This court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 (federal question).

7. This Court has the authority to grant relief pursuant to the Administrative Procedure Act (APA), 5 U.S.C. § 701 *et seq.*, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02. The United States has waived sovereign immunity under 5 U.S.C. § 702.

8. Venue is proper in this district under 28 U.S.C. § 1391(e)(1)(C) because Plaintiffs Thomas Carter and Alvin De Jesus Jimenez reside in this district and no real property is at issue.

PARTIES

9. Plaintiff Thomas Carter is a U.S. lawful permanent resident who resides in Framingham, Massachusetts. He filed his naturalization application (Form N-400) with USCIS on May 21, 2020, which is the “received date” listed on the USCIS receipt notice for his application. When Plaintiff Carter inquired as to the status of his naturalization application on November 19, 2021, USCIS replied December 6, 2021, stating that his inquiry was being forwarded to the USCIS National Benefits Center for response—but he never received a response. A February 17, 2022 inquiry resulted in a March 10, 2022 reply that the processing of

his naturalization application “is delayed pending receipt of your A-file.” The reply referred to USCIS storing immigration files at Federal Records Centers operated by the National Archives and Records Administration. USCIS scheduled Plaintiff Carter to be interviewed on July 12, 2022.

10. Plaintiff Inmar Jony Barco Florian is a U.S. lawful permanent resident who resides in Herndon, Virginia. He filed his naturalization application (Form N-400) with USCIS on April 24, 2020, which is the “received date” listed on the USCIS receipt notice for his application. His attorney submitted an inquiry on his behalf on October 8, 2021, and another on January 3, 2022. In both its October 22, 2021 and January 10, 2022 replies, USCIS stated that “your case is pending the transfer of your immigration file from one of our records facilities.” Plaintiff Barco Florian inquired again on March 22, 2022. USCIS replied on April 14, 2022, that the processing of his naturalization application “is delayed pending receipt of your A-file.” An inquiry submitted on his behalf on April 4, 2022, also received a reply dated April 14, 2022, that “his case is currently undergoing the required security checks.” USCIS scheduled Plaintiff Barco Florian to be interviewed on July 12, 2022.

11. Plaintiff Carolina Contreras Martinez is a U.S. lawful permanent resident who resides in Fair Oaks Ranch, Texas. She filed her naturalization application (Form N-400) with USCIS on April 14, 2020, which is the “received date” listed on the USCIS receipt notice for her application. When she inquired on October 7, 2021, about the status of her application, she received an October 19, 2021 reply that her inquiry was being forwarded to the USCIS National Benefits Center, to be “best addressed by the USCIS office processing your case.” But the National Benefits Center did not reply. When she inquired again on February 8, 2022, USCIS replied on March 5, 2022 that the processing of her naturalization application “is delayed

pending receipt of your A-file.” The reply referred to USCIS storing immigration files at Federal Records Centers operated by the National Archives and Records Administration. Plaintiff Contreras Martinez telephoned USCIS through its USCIS Contact Center on June 23, 2022, and was told that USCIS had cancelled an interview scheduled for June 28, 2022, and that USCIS would schedule a new appointment within thirty days. While USCIS committed to *scheduling* the interview within the next thirty days, the agency did not commit to the interview taking place within thirty days. .

12. Plaintiff Alvin De Jesus Jimenez is a U.S. lawful permanent resident who resides in Lawrence, Massachusetts. He filed his naturalization application (Form N-400) with USCIS on April 6, 2020, which is the “received date” listed on the USCIS receipt notice for his application. On September 15, 2021, his attorney submitted an inquiry to USCIS about the status of his long-pending naturalization application. On September 22, 2021, a USCIS Community Relations Officer in Boston, Massachusetts, responded that his file was stored at a Federal Records Center operated by NARA, and that USCIS could not move forward until the file was received. The attorney submitted another status request as to Plaintiff De Jesus Jimenez’s application on February 16, 2022, to which USCIS did not respond until May 16, 2022. USCIS replied that it “anticipates a delay in completing your case.” USCIS added only that his “case is proceeding correctly and will be scheduled for interview as soon as possible.” USCIS scheduled Plaintiff De Jesus Jimenez to be interviewed on July 5, 2022.

13. Plaintiff Hira Fahad is a U.S. lawful permanent resident who resides in Niskayuna, New York. She filed her naturalization application (Form N-400) with USCIS on March 29, 2020, which is the “received date” listed on the USCIS receipt notice for her application. Plaintiff Fahad requested assistance from the office of Senator Kirsten Gillibrand

(D.-NY). The Senator's office responded on January 28, 2022, by transmitting a reply that their office received from USCIS. In USCIS' response, the agency said Plaintiff Fahad's "N-400 is still currently at the USCIS National Records Center (NRC)"—although a naturalization application ordinarily would not be in storage (as contrasted with the applicant's A-file). USCIS then stated: "Typically, archived files which are not in the custody of the NRC must be requested through NARA." USCIS said that due to COVID-19, "NARA has suspended or closed its storage facilities." USCIS also acknowledged that it was "unable to render a decision" on Plaintiff Fahad's application until the agency could access and review the stored information. USCIS scheduled Plaintiff Fahad to be interviewed on July 11, 2022.

14. Plaintiff Fahad Farooq is a U.S. lawful permanent resident who resides in Niskayuna, New York, and is the spouse of Hira Fahad. He filed his naturalization application (Form N-400) with USCIS on March 22, 2020, which is the "received date" listed on the USCIS receipt notice for his application. Plaintiff Farooq requested assistance from the office of Senator Kirsten Gillibrand (D.-NY). The Senator's office responded on February 14, 2022, by transmitting a reply from USCIS that resembled the agency's reply when the Senator's office inquired for Plaintiff Fahad. In USCIS' response, the agency said Plaintiff Farooq's "N-400 is currently at the USCIS National Records Center (NRC)." USCIS then stated: "Typically, archived files which are not in the custody of the NRC must be requested through NARA." USCIS said that due to COVID-19, "NARA has suspended or closed its storage facilities." USCIS also acknowledged that it was "unable to render a decision" on Plaintiff Farooq's application until the agency could access and review the stored information. USCIS scheduled Plaintiff Farooq to be interviewed on July 11, 2022.

15. Plaintiff Enquilbert Godinez is a U.S. lawful permanent resident who resides in Clearwater, Florida. He filed his naturalization application (Form N-400) with USCIS on May 7, 2020, which is the “received date” listed on the USCIS receipt notice for his application. On January 3, 2022, Plaintiff Godinez received a response from USCIS that the office of Representative Charlie Crist (D.-Fl.) had obtained for, and forwarded to him, as to the status of his application. USCIS stated: “Due to workload factors not related to the applicant’s case, USCIS anticipates a delay in completing this application. We are currently awaiting the applicant’s physical immigration file in order to complete the pre-processing of this case.” USCIS said that once it received the file, Plaintiff Godinez’s application would be placed “in the interview queue for the Tampa Field Office” and when scheduled, the USCIS National Benefits Center would send an interview notice and forward the file to the field office. USCIS scheduled Plaintiff Godinez to be interviewed on July 15, 2022.

16. Plaintiff Svetlana Kartshikyan is a U.S. lawful permanent resident who resides in Burbank, California. She filed her naturalization application (Form N-400) with USCIS on April 29, 2020, which is the “received date” listed on the USCIS receipt notice for her application. In December 2021, she contacted the office of Representative Adam Schiff (D.-Cal.) for assistance. By letter dated January 31, 2022, the Congressman’s office forwarded a response from USCIS that the agency could not make a decision on Plaintiff Kartshikyan’s application until it is “able to access and review information currently unavailable to us due to its storage at the NARA.” On April 27, 2022, the office of the Citizenship and Immigration Service Ombudsman (which is not part of USCIS) responded to a February 2022 inquiry about USCIS’ delay in processing Plaintiff Kartshikyan’s application. The Ombudsman’s office replied that its “review indicates that [USCIS] must receive a related file in order to resume processing” her application. The

Ombudsman's office said USCIS was "experiencing serious delays in file transfers due in part to measures taken to ensure employee safety during the COVID-19 pandemic." Yet this was after the Federal Records Centers, where the A-files of naturalization applicants were stored, had reopened. USCIS scheduled Plaintiff Kartshikyan to be interviewed on July 18, 2022. As the result of a family emergency, she is trying to reschedule.

17. Plaintiff Ali Mohammed is a U.S. lawful permanent resident who resides in Miami Beach, Florida. He filed his naturalization application (Form N-400) with USCIS on April 8, 2020, which is the "received date" listed on the USCIS receipt notice for his application. He requested assistance from the office of Representative Gerald Connolly (D-Va.). On January 6, 2022, the Congressman's office forwarded to him a USCIS response to the office's December 5, 2021 inquiry. USCIS stated that the case was under "extended review" and USCIS could not decide "until certain issues are resolved." Yet, when Plaintiff Mohammed inquired directly to USCIS on February 28, 2022, USCIS replied on March 17, 2022 that the processing of his naturalization application "is delayed pending receipt of your A-file." The reply referred to USCIS storing immigration files at Federal Records Centers operated by the National Archives and Records Administration. USCIS scheduled Plaintiff Mohammed to be interviewed on July 25, 2022.

18. Plaintiff Kimiyo Naka is a U.S. lawful permanent resident who resides in Chicago, Illinois. She filed her naturalization application (Form N-400) with USCIS on April 13, 2020, which is the "received date" listed on the USCIS receipt notice for her application. She requested assistance from the office of Senator Richard Durbin (D.-Ill.). On February 14, 2022, the Senator's office forwarded to her a February 11 reply received from the USCIS National Benefits Center: "Due to workload factors not related to the applicant's case, USCIS anticipates

a delay in completing this application. A review of our systems shows we are currently awaiting the applicant's physical file in order to complete the pre-processing of this case." The reply continued that once the USCIS National Benefits Center received the file, Plaintiff Naka's application would be placed "in the interview queue" for an unnamed field office and when scheduled, the NBC would send an interview notice and forward the file to the field office. On March 7, 2022, USCIS replied to an October 7, 2021 inquiry submitted on Plaintiff Naka's behalf. USCIS repeated that it "anticipates a delay in completing your case." USCIS added only that her "case is proceeding correctly and will be scheduled for interview as soon as possible." USCIS scheduled Plaintiff Naka to be interviewed on July 5, 2022.

19. Plaintiff Mohammad Nur Tariqul Alam is a U.S. lawful permanent resident who resides in Brooklyn Park, Minnesota. He filed his naturalization application (Form N-400) on July 13, 2020, which is the "received date" listed on the USCIS receipt notice for his application. On April 20, 2022, Plaintiff Alam's attorney received an email response to his inquiry from USCIS that "USCIS' records indicate your immigration record is located within [NARA's] federal records centers (FRCs)."

20. Plaintiff Merced Diaz Gonzalez is a U.S. lawful permanent resident who resides in Brentwood, California. She filed her naturalization application (Form N-400) on March 27, 2020, which is the "received date" listed on the USCIS receipt notice for her application. On October 5, 2021, Plaintiff Diaz Gonzalez's representative submitted an online inquiry, to which USCIS was supposed to respond by October 27, 2021. When USCIS did not respond, the representative sent an expedite request by email on October 28, 2021, to the Section Chief of the USCIS San Francisco, California Field Office. Plaintiff Diaz Gonzalez needed to expedite because if she became a U.S. citizen before her unmarried daughter became 21 years old in

December 2021, then her daughter would be eligible for U.S. lawful permanent residence as an immediate relative, the child of a U.S. citizen—and not subject to the family-based immigration annual visa limitations. If Ms. Diaz Gonzalez became a U.S. citizen after her daughter’s twenty-first birthday, then the daughter would be stuck in a category with an annual limit and a backlog of several years. When the representative received no response, she sent a second email to the Section Chief. Although the Section Chief responded on November 3, 2021 that they were looking into why the interview had not been scheduled, the representative received no further information. On November 16, 2021, the representative again emailed the Section Chief and also emailed the San Francisco Field Office Director. The Field Office Director responded the same day (November 16): “The hold up on your client’s case is that her file is at the Federal Record[s] Center (FRC). The FRC currently has a severe backlog of pending file transfer requests.” He was “not optimistic” about the file being retrieved in time. The representative did not receive a response after she replied asking if anything could be done. On November 16, 18, and 21, 2021, Plaintiff Diaz Gonzalez’s representative left voicemails requesting assistance from the office of Representative Gerald N. McNerney (D.-Cal.). On November 21, 2021, the representative was notified that a congressional inquiry had been made. In December 2021, Plaintiff Diaz Gonzalez’s representative followed up by email with both Representative McNerney’s office and the USCIS San Francisco Field Office Director. While the Field Office Director did not respond, Representative McNerney’s office followed up several times with USCIS, culminating in a December 15, 2021 response from the congressional liaison at the USCIS San Francisco Field Office that the USCIS National Benefits Center had requested Plaintiff Diaz Gonzalez’s file from the National Records Center, which was operating at reduced capacity due to COVID, and her case was not considered “urgent” for transfer. USCIS said that the local field office was

“unable to expedite or schedule an interview” until the National Benefits Center completed pre-processing. USCIS has scheduled Plaintiff Diaz Gonzalez to be interviewed on July 24, 2022.

21. Plaintiff Bhavishi Bharatkumar Patel is a U.S. lawful permanent resident who resides in Las Vegas, Nevada. She filed her naturalization application (Form N-400) on October 21, 2020, which is the “received date” listed on the USCIS receipt notice for her application. USCIS scheduled Plaintiff Patel for an interview at the Las Vegas, Nevada Field Office on November 5, 2021. When Plaintiff Patel and her attorney appeared for the interview, they were told that it had been descheduled, with no other information provided, and that they should have received the cancellation notice “a while ago.” When they finally received the cancellation notice on November 9, 2021, it was dated November 2, 2021. By email dated November 9, 2021 to an individual in the USCIS Las Vegas, Nevada Field Office, Plaintiff Patel’s attorney complained about late notice of the interview cancellation. On February 6, 2022, Plaintiff Patel’s attorney emailed the same individual to inquire about why Plaintiff Patel had not been rescheduled for interview when many new applications had already been scheduled. On February 9, 2022, USCIS responded to a February 2, 2022 inquiry by Plaintiff Patel’s attorney, stating that Plaintiff Patel’s “previous interview was descheduled because of a missing file” that USCIS has requested. By email dated May 19, 2022, to the same individual in the Las Vegas, Nevada Field Office, Plaintiff Patel’s attorney again requested his help because Plaintiff Patel’s A-file was stuck in the Federal Records Center. Plaintiff Patel’s attorney did not receive a response to her three emails to the individual in the Las Vegas, Nevada Field Office.

22. Defendant USCIS is a component of the U.S. Department of Homeland Security, 6 U.S.C. § 271, and an agency within the meaning of the APA, 5 U.S.C. § 551(1). USCIS is responsible for adjudicating immigration benefits, including applications for naturalization.

23. Defendant Ur M. Jaddou is the Director of USCIS. As Director, she is responsible for overseeing, and has ultimate responsibility for, the timely adjudication of immigration benefits and establishing and implementing governing policies. She is sued in her official capacity.

24. Defendant United States of America is responsible for the issuance of naturalization, and exercises authority to adjudicate and approve applications for naturalization, including the applications filed by Plaintiffs. Defendant United States of America is sued pursuant to 5 U.S.C. §703.

FACTUAL AND LEGAL BACKGROUND

25. With some exceptions, a lawful permanent resident who is at least 18 years old becomes eligible to apply for U.S. citizenship in the following timeframes. One timeframe is continuous residence in the United States for at least five years since becoming a lawful permanent resident and physical presence for at least half of the five years immediately prior to filing a naturalization application, 8 U.S.C. § 1427(a)(1). The other timeframe is, if based on marriage to a U.S. citizen, continuous residence in the United States for at least three years since becoming a lawful permanent resident and physical presence for at least half of the three years immediately prior to filing a naturalization application. 8 U.S.C. § 1430(a).

26. After noncitizens become lawful permanent residents, USCIS usually will not have an immediate need for their individual immigration files, because most lawful permanent residents will have to wait at least three years before becoming eligible to apply for U.S. citizenship.

27. An individual immigration file (also known as an “Alien file” or “A-file”) includes that person’s immigration history, such as applications and petitions for immigration benefits, investigative reports, correspondence, and memoranda.

28. Defendant USCIS has its own records storage center, the National Records Center. USCIS contracted with NARA to store A-files, including the A-files of lawful permanent residents which USCIS did not have an immediate need to retrieve, at Federal Records Centers.

29. NARA preserves and maintains the federal government’s document collection. Congress authorized the Archivist of the United States, who is the head of NARA, to establish, maintain, and operate records centers for federal agencies. 44 U.S.C. § 2907. NARA operates the Federal Records Centers, which provide records storage for other federal agencies, described as “federal agency customers.”

30. Plaintiffs’ naturalization applications are processed at the USCIS National Benefits Center before transfer to USCIS Field Offices. Defendant USCIS interviews naturalization applicants and adjudicates their applications at the USCIS Field Office that has jurisdiction over their residence address. Occasionally, USCIS may temporarily assign another USCIS Field Office to conduct interviews because of workload considerations.

31. After the National Benefits Center determines that a naturalization application is ready for interview, it places the application in a queue for the USCIS Field Office that is designated to conduct the interview. When a USCIS Field Office has appointments available for naturalization applicants, the Field Office notifies the National Benefits Center. The National Benefits Center selects from the queue of interview-ready naturalization applications to fill the appointments identified by the Field Office and sends the interview notices for the Field Office to the naturalization applicants in the interview queue for that Field Office.

32. As part of its processing, the National Benefits Center must receive a naturalization applicant's A-file. The National Benefits Center does not place a naturalization application into a Field Office interview queue until the A-file is available. A USCIS adjudicator must review a naturalization applicant's A-file before deciding whether to approve the naturalization application and schedule the applicant for an oath ceremony. *See* 8 C.F.R. § 335.1.

33. In March 2020, the Federal Records Centers, where USCIS had stored A-files, closed due to the COVID-19 pandemic. By February 2022, these Federal Records Centers had resumed operations at partial capacity. As of March 15, 2022, these Federal Records Centers had removed their capacity limits. As of May 25, 2022, when the original complaint was filed, these Federal Records Centers had completed the recall of their staff and there are no longer capacity limits. As of May 25, 2002, the source for this information was *FRC Operating Status*, National Archives, <https://www.archives.gov/frc/operating-status> (last modified on May 3, 2022), but this page is no longer found on NARA's website. Selections for the *FRC Operating Status* page and *FRC Reopening Frequently Asked Questions* (FRC FAQs) were found on July 1, 2002, at <https://www.archives.gov/frc/records-transfer>. The FRC FAQs refer to Federal Records Center staff reentry as of March 28, 2022, <https://www.archives.gov/frc/reopening-faq> (visited on July 1, 2022).

34. Since the Federal Records Centers returned to full capacity operations, NARA was retrieving A-files, and USCIS provided personnel to assist with the retrieval. Upon information and belief, NARA has completed the retrieval of the A-files. However, to Plaintiffs' knowledge, Defendants USCIS and Jaddou did not have a plan for prioritizing processing and adjudicating the naturalization applications for applicants whose A-files were retrieved from the Federal Records Centers.

35. Defendants USCIS, and Jaddou and her predecessors, had roughly two years to develop and implement a plan to: (1) identify the A-files of naturalization applications for priority for retrieval when the Federal Records Centers reopened, (2) to deliver the A-files promptly from the Federal Records Centers to the National Benefits Center and for the National Benefits Center to process the applications; and (3) to schedule the interviews at the USCIS Field Offices.

36. Plaintiffs are facing a loss from the continued delay in interviewing them and adjudicating their naturalization applications that other applicants for immigration benefits will not—the right to vote in the upcoming November 2022 elections.

37. Defendant USCIS has a duty to conduct an interview of a naturalization applicant. “The [Secretary of the Department of Homeland Security] shall designate employees of [USCIS] to conduct examinations upon applications for naturalization.” 8 U.S.C. § 1446(b). “The employee designated to conduct any such examination shall make a determination as to whether an application should be granted or denied.” 8 U.S.C. § 1446(d).

TRAC FACTORS AND UNREASONABLE DELAY

38. Courts often evaluate whether an agency’s delay is unreasonable by applying the six factors identified by the D.C. Circuit in *Telecomms. Rsch. & Action Ctr. v. FCC* (“TRAC”):

(1) the time agencies take to make decisions must be governed by a ‘rule of reason’; (2) where Congress has provided a timetable or other indication of the speed with which it expects the agency to proceed in the enabling statute, that statutory scheme may supply content for this rule of reason; (3) delays that might be reasonable in the sphere of economic regulation are less tolerable when human health and welfare are at stake; (4) the court should consider the effect of expediting delayed action on agency activities of a higher or competing priority; (5) the court should also take into account the nature and extent of the interests prejudiced by delay; and (6) the court need not ‘find any impropriety lurking behind agency lassitude in order to hold that agency action is unreasonably delayed.’

Telecomms. Rsch. & Action Ctr. v. FCC, 750 F.2d 70, 80 (D.C. Cir. 1984) (citations omitted). See *Towns of Wellesley, Concord & Norwood, Mass. v. Fed. Energy Regul. Comm'n*, 829 F.2d 275, 277 (1st Cir. 1987) (per curiam) (citing *TRAC* guidelines as relevant to determining whether agency delay is unreasonable).

TRAC Factors 1 and 2: “Rule of Reason” and a Statutory Benchmark

39. USCIS has a policy of encouraging naturalization. USCIS has a “Citizenship Resource Center” on its website which is managed by its Office of Citizenship. USCIS, *Citizenship Resource Center*, <https://www.uscis.gov/citizenship> (last visited July 1, 2022).

40. Congress established the position of Chief of the Office of Citizenship in § 451(f) of the Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135, 2197 (Nov. 25, 2002). The USCIS Office of Citizenship’s mission “is to provide federal leadership, tools, and resources to proactively foster civic integration.” USCIS, *Office of Citizenship*, <https://www.uscis.gov/about-us/organization/directorates-and-program-offices/external-affairs-directorate/office-of-citizenship> (Feb. 17, 2021). The Office of Citizenship’s work includes “[p]roviding immigrants with opportunities and tools to become vested citizens” and to “raise awareness” of the importance of civic integration to society. *Id.*

41. In addition, the Biden-Harris administration issued an Executive Order in the first weeks of their administration, directing government agencies to take a number of actions to promote naturalization and improve naturalization processing. See Exec. Order No. 14,012, *Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans* (Feb. 2, 2021), available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/02/02/executive-order-restoring-faith-in-our-legal-immigration-systems-and-strengthening-integration-and-inclusion-efforts-for-new-americans/>.

42. The Administration directed multiple federal agencies to create an interagency naturalization working group with a particular focus on “eliminat[ing] barriers in and otherwise improv[ing] the existing naturalization process, including by conducting a comprehensive review of that process with particular emphasis on the N-400 application, fingerprinting, background and security checks, interviews, civics and English language tests, and the oath of allegiance.” *Id.* Notably, the naturalization process was the only immigration application or petition type specifically mentioned in the Executive Order, evincing the Administration’s prioritization of naturalization applicants.

43. The priority Congress and the Administration place on naturalization and improving the naturalization process is underscored by the Fiscal Year 2022 Citizenship and Integration Grant Program. The Department of Homeland Security recently announced the open application period for a grant program the agency expanded after Congress doubled the funding from \$10 million to \$20 million. *DHS Announces Expansion of Citizenship and Integration Grant Program and Open Application Period*, <https://www.uscis.gov/newsroom/news-releases/dhs-announces-expansion-of-citizenship-and-integration-grant-program-and-open-application-period> (June 27, 2022). The announcement stated:

These competitive grant opportunities are open to organizations that prepare immigrants for naturalization and promote civic integration through increased knowledge of English, U.S. history, and civics. In addition to the traditional programs that fund citizenship and English acquisition classes, the 2022 grants have been expanded to include opportunities for creative and innovative approaches to preparing immigrants for naturalization.

Id. Defendant Jaddou stated: “These organizations are helping immigrants become citizens and integrate into the United States, and I am pleased that this year’s program will support innovative initiatives and deepen regional and local collaborations to reach more geographic areas around the country.” *Id.*

44. The Application for Naturalization, Form N-400, is one of only thirteen forms that USCIS has digitized for electronic filing.

45. Many USCIS Field Offices offer administrative naturalization so that applicants who receive approval can become U.S. citizens the same day that they attend their interview.

46. Congress has expressed its expectation that USCIS adjudicate a naturalization application within 180 days. “It is the sense of Congress that the processing of an immigration benefit application should be completed not later than 180 days after the initial filing of the application.” 8 U.S.C. § 1571(b).

TRAC Factors 3 and 5: Prejudice and Harm to Health and Welfare Due to Delay

47. Defendants’ delay in processing and adjudicating the naturalization applications of Plaintiffs, and the class members they seek to represent, after the Federal Records Centers where the A-files were stored returned to full capacity operations, leaves them in a stress-filled limbo. Until they are interviewed, they cannot move forward with the naturalization process. Serious issues about the future of the United States, as to immigration, family, education, the economy will be determined by who is elected at the national, state, and local levels. If USCIS does not promptly interview Plaintiffs, and the class members they seek to represent, they will have no possibility of being scheduled for oath ceremonies and becoming U.S. citizens in time to vote in November 2022.

48. As permanent residents, they are subject to different treatment than U.S. citizens under U.S. tax and criminal laws, when they return to the United States after traveling abroad and are ineligible for certain types of U.S. employment.

49. Plaintiff Thomas Carter is fearful that he and his husband could be separated if they do not share the same citizenship. He is anxious to participate in the electoral process, to be

able to put down roots, feel part of society, and share life in the United States with his U.S. citizen husband and their infant child. He experiences anxiety when he travels abroad, such as when he traveled abroad to attend his grandmother's funeral in October 2021, and upon his return had to process through U.S. immigration as a lawful permanent resident rather than a U.S. citizen.

50. Plaintiffs Inmar Jony Barco Florian, Carolina Contreras Martinez, Alvin De Jesus Jimenez, Svetlana Kartshikyan, and Ali Mohammed are anxious about whether the delays in processing and deciding their naturalization applications will make them unable to become U.S. citizens in time to vote in the November 2022 election. Plaintiff Contreras Martinez and her husband applied for naturalization together and he is already a U.S. citizen while she is still waiting for her interview.

51. Plaintiff Fahad Farooq is a physician. He has been experiencing stress from being “in limbo”—because of the delay in processing his naturalization application. He has postponed international travel because of the difficulty of obtaining a visa to enter certain countries as a U.S. lawful permanent resident when these countries do not require a visa for U.S. citizens. Plaintiff Farooq has friends who he believes filed their naturalization applications a few months after he filed his application and they became U.S. citizens in less than a year. Plaintiff Fahad Farooq and his wife Hira Fahad are anxious about whether the delays in processing and adjudicating their naturalization applications will make them unable to become U.S. citizens in time to vote in the November 2022 election.

52. Plaintiff Enquibert Godinez is a foreman for a company that installs and maintains air conditioning systems. He is anxious about whether the delay in processing and deciding his naturalization application will make him unable to become a U.S. citizen in time to

vote in the November 2022 election. Plaintiff Godinez's father, who lives in the Philippines, is his only surviving parent. As a U.S. citizen, Plaintiff Godinez would be able to sponsor his father for permanent residence. Plaintiff Godinez is anxious about the continued delay because his father is 74 years old.

53. Plaintiff Kimiyo Naka is the President and founder of a Chicago-based boutique public relations agency, KCommunications, LLC. Plaintiff Naka is the Chair of the Osaka Committee of Chicago Sister Cities International, and in Fall 2021 she was recognized for her civic activism by her selection as the 2021 Chicago Sister Cities International Volunteer of the Year. She is anxious about whether the delay in processing and adjudicating her naturalization application will make her unable to become a U.S. citizen in time to vote in the November 2022 election. She also has been worried about the uncertainties of traveling abroad and then processing in the United States as a lawful permanent resident and has not visited her elderly parents in Japan.

54. Plaintiff Mohammad Nur Tariqul Alam has been in the United States for seven years. He has not visited relatives, or traveled abroad for any reason, because he is uncomfortable with the uncertainties of traveling abroad and then processing in the United States as a lawful permanent resident. Plaintiff Alam is anxious about whether the delay in processing and deciding his naturalization application will make him unable to become a U.S. citizen in time to vote in the November 2022 election.

55. Plaintiff Merced Diaz Gonzalez cannot understand why Defendants did not prioritize the retrieval of her A-file after the Federal Records Centers returned to full capacity operations. When USCIS did not expedite the A-file retrieval in order for Plaintiff Diaz Gonzalez to be interviewed and her naturalization application adjudicated before her daughter

turned 21 in December 2021, Plaintiff Diaz Gonzalez could not become a U.S. citizen in time for her daughter to receive an immigrant visa as the immediate relative of a U.S. citizen, which is not subject to any quota. Because her daughter became 21 years old in December 2021, Plaintiff Diaz Gonzalez's receipt of U.S. citizenship can no longer qualify her daughter as an immediate relative. Instead, Plaintiff Diaz Gonzalez is already suffering from the years-long wait she and her daughter face because of the annual and per country limits on immigrant visas for a daughter who has reached 21 years of age. Plaintiff Diaz Gonzalez is anxious about whether the delay in processing and adjudicating her naturalization application will make her unable to become a U.S. citizen in time to vote in the November 2022 election.

56. Plaintiff Bhavishi Bharatkumar Patel has lived in the United States for eleven years and is an attorney in the hospitality industry. Plaintiff Patel wants to participate fully in the political and economic opportunities only available to U.S. citizens. She has to sit on the sidelines: she cannot get involved in petition drives aimed at those who can vote in the United States, and she cannot receive grants open only to U.S. citizens when she could be assisting others. She has been uncomfortable with the treatment she receives as a U.S. permanent resident when returning to the United States from trips abroad. Plaintiff Patel is anxious about whether the delay in processing and adjudicating her naturalization application will make her unable to become a U.S. citizen in time to vote in the November 2022 election. Plaintiff Patel also wants to be able to sponsor her parents for U.S. permanent residence, which she could do as a U.S. citizen. Plaintiff Patel envisions that her parents, who currently reside in the United Kingdom, would be able to replicate their business success and invest in the United States economy instead.

TRAC Factor 4: Competing Priorities

57. As discussed in Paragraph 41, the Biden-Harris administration issued an Executive Order in the first weeks of their administration, discussing and prioritizing naturalization. *See* Exec. Order No. 14,012, *supra*. Notably, the naturalization process was the only immigration application or petition type specifically mentioned in the Executive Order, evincing the Administration’s prioritization of naturalization applicants.

58. Defendant USCIS also considers naturalization a priority, as evidenced by the public statements of Defendant Jaddou. In an October 2021 speech at the 2021 National Immigrant Integration Conference, Director Jaddou said:

At the heart of this effort [to work towards restoring trust and confidence in USCIS and the naturalization process] is a whole of government approach to do just that: Break down barriers to the naturalization process through policy changes and operational means; and Promote naturalization and the importance of U.S. citizenship through outreach and promotion, understanding that our goal is to strengthen integration for new Americans.

USCIS is driving this effort through policy and operational changes that we are making internally but also in partnership with 11 federal agencies who are member[s] of an interagency Naturalization Working Group that USCIS chairs. Together, we developed a strategy for promoting naturalization and integration for new Americans that was released by the White House in July. This working group is building capacity for new and expanded partnerships, and implementing a robust public engagement strategy with federal, state, and local partners, community-based organizations, networks, and businesses.

Remarks Delivered by Director Ur M. Jaddou, *available at*

<https://www.uscis.gov/newsroom/speeches-statements-testimony/remarks-delivered-by-director-ur-m-jaddou-at-the-2021-national-immigrant-integration-conference>. Director Jaddou also stated that USCIS is committed to ensuring an accessible naturalization process, recognizing “that accessibility inherently includes affordability” and that applicants understand the “many benefits” of U.S. citizenship. “We know that naturalization allows applicants and their family

members to more fully participate in life as citizens of this great country, empowered with the many rights and responsibilities that the title ‘citizen’ confers.”

59. Other evidence that Defendant USCIS considers naturalization a priority include the congressionally mandated Office of Citizenship, the recent doubling in funding for, and the expansion of the Citizenship and Integration Grant Program, and efforts such as electronic filing and administrative naturalization to increase processing.

60. Placing Plaintiffs’ naturalization applications into the Field Office interview queue based on the received date for their applications treats them equitably with other naturalization applicants. Naturalization applicants with later received dates should not be scheduled ahead of Plaintiffs just because the National Benefits Center was not waiting for their A-files to be transferred from a Federal Records Center.

61. Defendants’ delay in retrieving the A-files from Federal Records Center storage after these facilities reopened, failure to prioritize A-file retrieval, and failure to prioritize the interview and adjudication of the naturalization applications of Plaintiffs and class members is unreasonable; unreasonableness does not have to be the result of bad faith or other impropriety.

CLASS ALLEGATIONS

62. The individually named Plaintiffs bring this action on behalf of themselves and others similarly situated pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2). A class action is proper because this action involves questions of law and fact common to the class, the class is so numerous that joinder of all members is impracticable, Plaintiffs’ claims are typical of the claims of the class, Plaintiffs will fairly and adequately represent the interests of the class, and Defendants have acted on grounds that apply generally to the class, so that final injunctive or corresponding declaratory relief is appropriate with respect to the class as a whole.

63. The individually named Plaintiffs seek to represent the following class:

All individuals:

- (a) who filed an application for naturalization; and
- (b) whose A-files USCIS had stored in NARA Federal Records Centers; and
- (c) who have not yet been interviewed on their naturalization application.

64. The proposed class is so numerous that joinder of all members is impracticable.

The named plaintiffs are not aware of the precise number of potential members but reasonably estimate that the number of current class members totals at least 40 class members.

65. Questions of law and fact predominate over any questions affecting the individually named Plaintiffs. Common questions of law include: (1) whether Defendants' failure to prioritize the retrieval and transfer of the A-files of naturalization applicants from the Federal Records Centers when they returned to full capacity operations to the USCIS National Benefits Center is an unreasonable delay; and (2) whether Defendants USCIS and Jaddou's failure to prioritize the completion of National Benefits Center processing after the National Benefits Center receives the A-files and the interviewing of naturalization applicants and adjudication of their applications at a USCIS Field Office is an unreasonable delay.

66. Common questions of fact include whether Defendants have a policy and practice of not prioritizing the retrieval and transfer of the A-files of naturalization applicants to the USCIS National Benefits Center from the Federal Records Centers when they returned to full capacity operations and of not prioritizing the interviewing of naturalization applicants and adjudication of their applications at a USCIS Field Office. Resolution of these common questions will resolve the entire case.

67. Plaintiffs' claims are typical of those of the entire class as they filed applications for naturalization for which USCIS delayed processing and adjudication.

68. Plaintiffs will fairly and adequately represent the interests of the proposed class as they seek relief on behalf of the class as a whole and they have no interest antagonistic to the class members.

69. Plaintiffs are represented by competent counsel with extensive experience in both complex class actions and immigration law.

70. In failing to prioritize the retrieval and transfer of the A-files of naturalization applicants to the USCIS National Benefits Center from the Federal Records Centers when they returned to full capacity operations and to prioritize the completion of National Benefits Center processing and the interview of the naturalization applicants and adjudication of their naturalization applications at the Field Offices, Defendants have acted and will continue to act on grounds generally applicable to the entire class, thus making final declaratory or other relief appropriate to remedy harms to the class as a whole. The class may therefore be properly certified under Fed. R. Civ. P. 23(b)(2).

COUNT ONE

Administrative Procedure Act—5 U.S.C. § 706(1)

Administrative Procedure Act Violation by Unreasonably Delaying Adjudication of Plaintiffs' Naturalization Applications

71. Plaintiffs reallege and incorporate by reference, as if fully set forth herein, the allegations above.

72. The APA provides for judicial review when a person is adversely affected by agency action. 5 U.S.C. § 702. Agency action includes an agency's failure to act. 5 U.S.C. § 551(13). A court "shall compel agency action . . . unreasonably delayed." 5 U.S.C. § 706(1).

73. Interviewing Plaintiffs and the proposed class regarding their naturalization applications and deciding whether to approve or deny the applications are discrete actions that USCIS is required to take within a reasonable time.

74. Defendants' failure to take the following actions constitutes an unreasonable delay: (1) Develop and implement a plan to prioritize the retrieval of the A-files of Plaintiffs and proposed class members from the Federal Records Centers when they reopened and promptly transfer the A-files to the National Benefits Center; and (2) Develop and implement a plan to prioritize the completion of National Benefits Center processing and the interviewing of Plaintiffs and proposed class members, the adjudication of their naturalization applications at the Field Offices, and their participation in an oath ceremony when their naturalization applications are approved..

75. There are no available remedies for Plaintiffs to exhaust.

REQUEST FOR RELIEF

WHEREFORE Plaintiffs request that this Court grant the following relief:

- (1) Assume jurisdiction over this matter;
- (2) Certify the case as a class action as proposed herein;
- (3) Appoint Plaintiffs as representatives of the class and Plaintiffs' counsel as class counsel;
- (4) Declare that Defendants have violated the Administrative Procedure Act by unreasonably delaying the adjudication of the naturalization applications of Plaintiffs and the class members;
- (5) Compel Defendant Jaddou to require the USCIS National Benefits Center to complete the processing of Plaintiffs' and the class members' naturalization applications and

place their applications in the interview queue no later than 14 days after the National Benefits Center received Plaintiffs' and the class members' A-files from Federal Records Center storage;

(6) Compel Defendant Jaddou to require USCIS Field Offices to interview Plaintiffs and the class members, to adjudicate their naturalization applications within 10 days after the USCIS National Benefits Center places Plaintiffs' and the class members' naturalization applications in the interview queue for the respective USCIS Field Office, and, when their naturalization applications are approved, to include them in an oath ceremony that will occur within 5 days after approval, or as soon thereafter as the next oath ceremony is due to occur;

(7) Award Plaintiffs' counsel reasonable attorneys' fees and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412(d), 5 U.S.C. § 504, or any other applicable law; and

(8) Grant such other and further relief as the Court deems just, equitable, and appropriate.

DATE: July 1, 2022

Respectfully submitted,

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