

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**SHMUL KAPLAN, TASIM MANDIJA,
FERIDE MANDIJA, ROUZBEH ALIAGHAEI**
by and through his parents and guardians ad litem
**MASHAALAH and MARYAMREZAEI ALIAGHAEI,
LIDIYA BURTSEVA, NELLI OLEVSKAYA,
ESHETU MERI,** individually and
on behalf of all others similarly situated,

Plaintiffs,

vs.

MICHAEL CHERTOFF, as Secretary of the
Department of Homeland Security,
ALBERTO GONZALES, as Attorney General
of the United States,
EMILIO T. GONZALEZ,
as Director of U.S. Citizenship and Immigration Services,
ROBERT S. MUELLER, III, as Director of the Federal
Bureau of Investigation,
JO ANNE B. BARNHART, as Commissioner of Social
Security,
DONALD MONICA, as District Director of the U.S.
Citizenship and Immigration Services,
Philadelphia District Office,

Defendants.

*assigned to
Judge E. R. Breno*

CLASS ACTION

CIVIL ACTION

NUMBER 06-

**COMPLAINT FOR DECLARATORY, INJUNCTIVE
AND MANDAMUS RELIEF**

I. INTRODUCTION

1. Named and class plaintiffs are all elderly or disabled humanitarian immigrants whose Supplemental Security Income (SSI) disability payments have been or will be terminated because of the actions and omissions of the defendants, in violation of plaintiffs' due process and equal protection constitutional rights, as well as statutory rights under the Administrative Procedure Act.

2. All plaintiffs have been found eligible for SSI benefits as a result of severe disabilities or advanced age and means-tested poverty. Plaintiffs would all be able to continue receiving this SSI entitlement, but for the defendants' delays in processing their applications for lawful permanent resident (LPR) status and thereafter for United States citizenship. These delays are beyond the control of plaintiffs.

3. Affirmatively welcomed by our nation's immigration laws, most refugees and asylees obtain employment and achieve self-sufficiency after arrival. But a minority faces barriers to self-sufficiency due to age and medical disabilities often resulting from the persecution they experienced in their countries of origin.

4. Humanitarian immigrants who arrive in the United States after August 22, 1996, are eligible for SSI benefits for seven years from either the date of their entry (for refugees) or from the date they were granted asylee status. Congress established a procedural pathway for humanitarian immigrants to avoid the termination of their SSI benefits by becoming United States citizens before the conclusion of their seven-year period of eligibility. Congress expected that the executive branch would promptly process LPR and naturalization applications so that there would be no interruption of SSI. Congress never intended that these refugees and asylees would lose their SSI after seven years if they pursued citizenship.

5. Yet due to the defendants' failure to process LPR and naturalization applications in a timely and expeditious manner, over 6,000 humanitarian immigrants have lost their SSI benefits due to the expiration of the seven-year bar. Many of these immigrants have also lost the Medicaid that usually accompanies SSI. The Social Security Administration (SSA) projects that over 46,000 immigrants will be cut off from SSI in the years 2006-2012 as a result of the delays in granting citizenship and the operation of the seven year rule.

6. Having been approved for SSI, plaintiffs have a statutory property interest in continued receipt of SSI benefits. Defendants' failure to process LPR and naturalization applications in a timely fashion and their failure to expedite these applications, even while knowing that many impoverished and severely disabled humanitarian immigrants rely upon SSI as subsistence income, denies plaintiffs a timely and fair determination on the merits of their citizenship applications even where they have done everything within their power to become citizens. These failures violate the Constitution and statutes of the United States.

7. Plaintiffs' applications for LPR and naturalization are most commonly delayed because of background and "name check" investigations, despite the fact that duly admitted refugees and asylees are particularly unlikely to pose a security risk.

8. Plaintiffs therefore seek judicial relief pursuant to the due process and equal protection guarantees of the Fifth Amendment to the United States Constitution and the protections against improper rulemaking and unreasonably delayed or withheld federal agency actions under the Administrative Procedure Act, mandating defendants to reinstate and continue payment of SSI benefits to all named plaintiffs and their class until plaintiffs have been provided a fair opportunity to show that they are eligible for citizenship by completing the LPR and naturalization processes.

II. JURISDICTION AND VENUE

9. This action arises under the Constitution of the United States; the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et seq., as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, 110 Stat. 1570; the Social Security Act, 42 U.S.C. § 405(g); and the Administrative Procedure Act (APA), 5 U.S.C. § 701 et seq. This Court has jurisdiction under 28 U.S.C. § 1331 (federal question jurisdiction); 42 U.S.C. § 405(g); 28 U.S.C. §§ 1361 (Mandamus Act) and 2201 (Declaratory

Judgment Act); and 5 U.S.C. §§ 701 - 702 (Administrative Procedure Act). This Court may grant relief pursuant to 28 U.S.C. §§ 1361 and 2202, and 5 U.S.C. § 702.

10. Further exhaustion of administrative remedies, to the extent that any exist, would be futile. Plaintiffs have no adequate remedy at law.

11. For all plaintiffs who have been terminated from SSI, the Social Security Commissioner has made a final adverse decision, and exhaustion of administrative remedies concerning the Commissioner's actions would be futile.

12. Venue lies in the Eastern District of Pennsylvania pursuant to 28 U.S.C. § 1391(e)(2) because a substantial part of the actions, omissions, or events giving rise to the claim occurred in this judicial district and due to the provisions of 42 U.S.C. § 405(g). In addition, several named plaintiffs and at least one defendant reside in the Eastern District of Pennsylvania. 28 U.S.C. § 1391(e).

III. PARTIES

Plaintiffs

13. Named and class representative plaintiffs in this action are Shmul Kaplan, Tasim Mandija, Feride Mandija, Rouzbeh Aliaghaei by his parents and guardians ad litem Maryamrezaei and Mashaalah Aliaghaei, Lidiya Burtseva, Nelli Olevskaya and Eshetu Meri, all of whom are refugees or asylees lawfully residing in the United States.

Defendants

14. Michael Chertoff is the Secretary of Homeland Security. He is charged with "[a]ll authorities and functions of the Department of Homeland Security [DHS] to administer and enforce the immigration laws," 8 C.F.R. § 2.1; 8 U.S.C. § 1103(a). He is sued in his official capacity.

15. Alberto Gonzales is the Attorney General of the United States. He is charged with administering and enforcing the nation's immigration laws, 8 U.S.C. § 1103(a), (g). The Attorney General is the head of the Department of Justice (DOJ), of which the Executive Office of Naturalization is part. He also has the sole authority to naturalize persons as citizens of the United States. 8 U.S.C. § 1421. He is sued in his official capacity.

16. Robert S. Mueller, III, is the Director of the Federal Bureau of Investigation (FBI). He is charged with administering the FBI's duties to perform investigations in connection with citizenship applications under review by CIS, including performing background and name checks. He is sued in his official capacity.

17. Emilio T. Gonzalez is the Director of United States Citizenship and Immigration Services (CIS). He is charged with administering the immigration laws on behalf of the Secretary of Homeland Security throughout the United States, including the processing and adjudicating of LPR and citizenship applications. He is sued in his official capacity.

18. Jo Anne Barnhart is the Commissioner of the Social Security Administration (SSA). She is charged with administering the provisions of the Social Security Act, including the SSI program. She is sued in her official capacity.

19. Donald Monica is the District Director of the CIS Philadelphia District Office. He is sued in his official capacity.

20. Defendants Michael Chertoff, Alberto Gonzalez, Emilio T. Gonzales and Donald Monica are responsible for the adjudication, grant and denial of applications for LPR and naturalization filed by named plaintiffs and their class pursuant to 8 U.S.C. § 1421; 8 U.S.C. § 1427; 8 U.S.C. § 1446; 8 C.F.R. § 2.1; 8 C.F.R. § 103.1(a); 8 C.F.R. § 310.2 and 8 C.F.R. § 316.3.

21. Defendants Alberto Gonzales and Robert S. Mueller, III, are responsible for providing pertinent background and name check information relating to applicants for LPR and naturalization pursuant to 8 U.S.C. § 1427(d) and (e), and 8 C.F.R. § 316.10(b). Defendant Jo Anne Barnhart is responsible for the administration of the SSI program pursuant to 42 U.S.C. § 1382a et seq.

IV. STATUTORY AND REGULATORY SETTING

A. Humanitarian Immigrant Eligibility for SSI

22. "Humanitarian immigrants" are largely refugees and asylees, all of whom are granted permission to reside in the United States because they have demonstrated a reasonable fear of persecution in their country of origin. Refugees are people who, prior to their entry, applied for and received permission to come to the United States due to the threat of persecution in their home country. Asylees are those who have applied for and received protected status after coming to the U.S., likewise due to a threat of persecution. Also included in this classification of humanitarian immigrants are a small number of Cuban and Haitian entrants and certain Amerasians.

23. Supplemental Security Income (SSI) is a federal means-tested program administered by SSA that pays a subsistence cash benefit for necessities of life to very low income elderly, disabled and blind people. Currently, SSI provides a monthly benefit of \$603 for an individual and \$904 for a couple. In most states, including Pennsylvania, SSI recipients are automatically entitled to receive Medicaid coverage, which insures access to needed health care. This coverage is especially important for those with severe mental and physical disabilities or advanced age.

24. Immigrants who are found eligible for SSI under Title XVI of the Social Security Act have a constitutionally-protected property interest in continued receipt of SSI benefits.

Those receiving SSI are, by definition, not expected to work because they are disabled or elderly. Until 1996, humanitarian immigrants, if they were otherwise eligible, could receive SSI without any time limitation, just as United States citizens do.

25. In 1996, Congress enacted the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), which limited SSI benefits for humanitarian immigrants arriving after August 22, 1996, to five years. 8 U.S.C. § 1612(a)(2)(A). It was assumed that during these five years these immigrants could become United States citizens and continue receiving SSI benefits without interruption.

26. Understanding that prompt action by the Executive Branch was key to fulfilling congressional intent, President Clinton, in signing the PRWORA, stated that he was directing the INS (now CIS) to: "...[remove] all bureaucratic obstacles that stand in the way of citizenship for legal immigrants who are eligible." Statement by President William J. Clinton Upon Signing H.R. 3734, 1996 U.S.C.C. & A.N. 2891, 2892; 32 Weekly Comp. Pres. Doc. 1487 (Aug. 26, 1996).

27. After the signing of the PRWORA, the Attorney General issued Order No. 2049-96 (August 23, 1996) entitled "Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation." The purpose of this order was to protect life and safety by providing certain exceptions to the law's disqualification of non-citizens from receiving various public benefits. Attached as Exhibit A.

28. In the summer of 1997, pursuant to the Balanced Budget Act of 1997, Pub. L. 105-33, 111 Stat. 251, Congress extended the time period for humanitarian immigrants who arrived after August 22, 1996, from five to seven years from the date of entry for refugees, and,

similarly, from five to seven years from the grant of asylum for asylees. 8 U.S.C. §§ 1612(a)(2)(A)(i) - (ii).

29. In enacting the extension to seven years, Congress made clear its intent to avoid any interruption in the continuing receipt of SSI benefits. "The 5-year exception in the welfare law was designed to allow refugees and asylees, who often arrive in the U.S. with few possessions, time to adjust to life here. However, because of delays in adjusting to permanent resident status, mandatory residency requirements before applying for citizenship, and recent increases in waiting times in the naturalization process, under the 5-year eligibility period, many would become ineligible for welfare benefits despite their attempting to naturalize at their earliest opportunity. By extending the exception to allow these groups 7 instead of 5 years of eligibility, these noncitizens would be given more time to naturalize while continuing to receive welfare benefits without interruption." H. R. Report No.149, 105th Cong., 1st Sess. 1182 (1997) (emphasis added).

30. Consistent with the President's signing statement and the Attorney General's Order, the Executive Office of Naturalization issued a Policy Memorandum on October 6, 1997, establishing a policy and procedure of giving priority to applicants at risk of losing SSI benefits as "emergent circumstances." Executive Office of Naturalization Operations Policy Memorandum No. 22: Guidance on Expeditious Naturalization Processing for Applicants Affected by the Welfare Reform Act. Attached as Exhibit B.

31. The procedure concerning expedited applications in "emergent circumstances" was reiterated in further internal guidance on August 23, 2000, with the issuance of Field Operations Policy Memorandum No. 70: Processing Expedited Naturalization Applications by the Immigration Services Division. Attached as Exhibit C.

B. Lawful Permanent Residency

32. Immigrants must be lawful permanent residents (LPR) before they can apply for naturalization. Refugees may apply for LPR status one year after they enter the country. 8 C.F.R. § 209.1 (a)(1). Once granted, the LPR status of a refugee is back-dated to the date of entry into the United States. 8 C.F.R. § 209.1(e).

33. Asylees may apply for LPR status one year after they are granted asylee status, but their permanent residency is back-dated only to one year before the date that the LPR status was granted. 8 C.F.R. §209.2(a)(1)(ii).

34. LPR applicants are subjected to various name, background, and security investigations. These investigations have delayed the granting of applications for LPR status, a prerequisite for applying for naturalization.

C. Naturalization

35. The United States Constitution grants Congress the power to “establish a Uniform Rule of Naturalization.” Art. I, § 8, cl. 4.

36. The Attorney General has the “authority to naturalize persons as citizens of the United States,” 8 U.S.C. § 1421(a); Pub. L. No. 101-649, Title IV, 104 Stat. 4978, 5038-48 (Nov.29, 1990), and has delegated the authority to administer and enforce the Immigration and Nationality Act and all other laws relating to immigration, naturalization and nationality to the Director of Immigration and Naturalization Services (INS). 8 C.F.R.§ 100.2(a); 28 C.F.R. § 0.105. On March 1, 2003, INS ceased to exist and its principal functions were transferred to the newly created CIS within DHS. Homeland Security Act of 2002, Pub.L.No.107-296, § 471, 116 Stat. 2135, 2205 (codified at 6 U.S.C. § 291 (a)); 8 U.S.C. § 1103 (a) (1). Along with this transfer, the authority and responsibility to administer and enforce all laws pertaining to

immigration, including the adjudication of applications for naturalization, was transferred from the Commissioner of INS to the Director of CIS. See 6 U.S.C. § 271(b)(2); 8 U.S.C. § 1103(a)(1).

37. Immigrants, including refugees and asylees, are not permitted to apply for naturalization until ninety days prior to the five-year anniversary of the effective date of their LPR status. 8 U.S.C. § 1445(a)-(b); 8 C.F.R. §§ 316.4, 334.1, 334.2. Refugees who are granted LPR status, therefore, can apply for naturalization four years and nine months after their entry into the United States, since their permanent residency status is back-dated to the date of entry. Since asylees only have their LPR status back-dated to one year before the grant of that status, they must wait at least three years and nine months after the grant of LPR status to apply for naturalization.

38. Applicants for naturalization initiate the process by completing and filing a lengthy application form and paying a \$330 application fee. 8 C.F.R. § 334.2(a). Once the application has been filed, CIS conducts a background investigation of the applicant. 8 U.S.C. § 1446(a); 8 C.F.R. §§ 335.1, 335.2. Since 1997, the FBI must also conduct a criminal background check. Pub. L. 105-119, Title I; 111 Stat. 2440, 2448-49 (1997); 8 U.S.C. § 1446; 8 C.F.R. § 335.2(b). The applicant must pass tests of English proficiency and civic knowledge (unless CIS waives the tests on medical grounds). 8 C.F.R. §§ 312.1, 312.2. Also, CIS must conduct a face-to-face "examination" interview of the applicant. 8 U.S.C. § 1446(a); 8 C.F.R. §§ 335.2(a), 332.1.

39. The CIS utilizes the FBI's National Name Check Program (NNCP) to access the FBI's Central Records Systems to do the requisite checks for naturalization applicants. In fiscal year 2005, when the FBI processed a total of 3.7 million name checks; 45% of the total incoming

name check requests were submitted by CIS. The FBI has acknowledged that "CIS's name check requests outpace NNCP available resources." Suppl. Decl. of Michael A. Cannon of Aug. 31, 2006, para. 21 filed in Yakubova v. Chertoff, No. 1:06-cv-3203-ERK-RLM (E.D.N.Y.). Since April 2006, or earlier, CIS will not schedule the naturalization "examination" interview until CIS has received a "definitive response" from the FBI that the background investigation has been completed. 8 C.F.R. § 335.2(b).

40. The Inspector General of the Department of Homeland Security has issued a report critical of the inefficiencies and delays in the security check processes which have resulted in "stall[ed] application processing for long periods" and "stalled cases...contributing to hundreds of lawsuits against USCIS." Office of Inspector General, Department of Homeland Security, "A Review of U.S. Citizenship and Immigration Services' Alien Security Checks," pp. 15, 24 (OIG-06-06, November 2005).

41. As of July 2006, CIS has publicly acknowledged a "gross backlog" of 1.1 million unprocessed naturalization applications with 140,000 under CIS "control," and the other 960,000 not within its "control," the majority of the latter constituting applications which are pending before the FBI, described as "pending law enforcement security checks." CIS News Release, Sept. 15, 2006, available at:

<http://www.uscis.gov/graphics/publicaffairs/newsrels/N400Bklg091506NR.pdf>.

42. On information and belief, every year, CIS processes and resolves the applications for LPR status and for naturalization of thousands of humanitarian immigrants within seven years. CIS and the FBI are capable of processing all applications of members of the plaintiff class within that time frame.

43. In theory, CIS (and its predecessor, INS) have, at the direction of President Clinton, had a policy and procedure of expediting naturalization processing for applicants at risk of being cut off SSI due to the seven year limitation. The President's signing statement called for the removal of "all bureaucratic obstacles".

44. Subsequently, the INS issued an Operations Policy Memorandum on October 6, 1997, acknowledging that, "Many LPRs fac[e]...termination of SSI... [and] are eligible to apply for citizenship. However, due to increasing naturalization application receipts and current naturalization processing times, many, if not most, will not be able to complete the naturalization process before the termination of benefits." The Memorandum then directed that applicants faced with "emergent circumstances," including "loss of [SSI] benefits," be given a priority in processing. Executive Office of Naturalization Operations Policy Memorandum No. 22: Guidance On Expeditious Naturalization Processing for Applicants Affected by the Welfare Reform Act, (Oct. 6, 1997), pp. 1-2. Attached as Exhibit B. Although applications are usually processed in chronological order of receipt, "an exception may be permitted... upon showing of emergent circumstances." Id. The INS directive further recognized that "the expeditious processing of naturalization applications from individuals facing the loss of...SSI benefits from the Welfare Reform Act [PRWORA] is in keeping with the spirit of concern for the protection of life and safety in the [Attorney General] order." Id.

45. The procedure for expediting applications in "emergent circumstances" was reiterated in further guidance on August 23, 2000, with the issuance of Field Operations Policy Memorandum No. 70: Processing Expedited Naturalization Applications by the Immigration Services Division. Attached as Exhibit C.

46. These expediting policies and procedures, however, have been ineffective for the plaintiff class for a variety of reasons. First, CIS does not inform immigrant service agencies, the public, or, perhaps most importantly, SSI recipients at risk of losing their eligibility, of the existence of these policies and procedures. Further, the policies are not published in the Federal Register nor codified in the Code of Federal Regulations. As a result, the policies and procedures are rarely invoked. Second, in the few cases where expedition is requested, the request is often ignored.

47. Moreover, SSA and CIS have no joint policy or procedure in place to identify applicants whose SSI has been or will be terminated. Thus, they cannot insure the expediting of the LPR and naturalization applications of those humanitarian immigrants. Like CIS, SSA has no policy or procedure for advising recipients, immigration service agencies, or the public that an applicant may seek expeditious handling of his or her applications for LPR status and for citizenship based on the possible effect of the seven-year limitation.

48. Indeed, the cases of humanitarian immigrants are often arbitrarily and irrationally delayed well beyond seven years, resulting in the termination of SSI benefits to thousands of refugees and asylees.

IV. CLASS ALLEGATIONS

49. Pursuant to Fed. R. Civ. P. 23(a) and 23(b)(2), named plaintiffs bring this action on behalf of themselves and all similarly situated persons. The plaintiff class consists of:

All refugees, asylees, Cuban/Haitian entrants and Amerasians who (i) arrived in the United States after August 22, 1996, (ii) are eligible to apply for lawful permanent residency and thereafter naturalization, (iii) have been authorized to receive SSI, (iv) continue to meet all non-citizenship SSI eligibility criteria and (v) either have had their SSI benefits suspended or

terminated, or are at risk of having their SSI benefits suspended or terminated as a result of the expiration of the seven-year limitation on SSI benefits.

50. The class is so numerous that joinder of all members is impracticable. According to SSA, from 1998 through December 2005, a total of 5,662 humanitarian immigrants have lost their SSI benefits as a result of the expiration of the seven-year period. SSA estimates that, in the years 2006-2012, an additional 46,780 humanitarian immigrants will lose their SSI due to such delays. See Freedom of Information Act (FOIA) response from Willie J. Polk, SSA, Oct. 20, 2006, attached as Exhibit D. SSA estimates that each year more humanitarian immigrants will reach the expiration of the seven-year time period without having been approved for citizenship. Id.

51. There are questions of law and fact that are common to the class members, namely whether defendants, in failing to promptly process LPR and naturalization applications, and to properly implement expediting policies for the class, have violated plaintiffs' rights to due process and equal protection under the Fifth Amendment to the United States Constitution, violated the notice and rulemaking requirements of the Administrative Procedure Act (APA) and have unlawfully withheld and unreasonably delayed agency action to which plaintiffs are entitled under the APA.

52. The claims of the named plaintiffs are typical of the claims of the class they seek to represent. Named plaintiffs seek to challenge and remedy delays in the LPR and naturalization process resulting in the termination of SSI benefits; these are the very claims made by all class members. There is no conflict between their interests and those of the class they seek to represent.

53. In defending their own rights, the individual named plaintiffs will fairly and adequately defend the rights of all proposed class members. Named plaintiffs are adequate representatives of the class and are represented by counsel with considerable experience and expertise in public benefits, immigration, and class action litigation.

54. Defendants, by their delayed processing, their refusal to announce and implement an effective expediting processes, and their termination or threatened termination of SSI benefits, have acted or refused to act on grounds generally applicable to the class, so that final injunctive, declaratory, and mandamus relief is appropriate with respect to the class as a whole.

V. FACTS OF NAMED CLASS REPRESENTATIVE PLAINTIFFS

Shmul Kaplan

55. Shmul Kaplan is an 80-year-old Holocaust survivor and current resident of Levittown, Pennsylvania. He had his right leg amputated above the knee in the former Soviet Union and lives with a prosthesis that does not function properly. His left leg, which had been badly fractured, is now deformed and causes him pain. Mr. Kaplan also has other serious health problems, including prostate and high blood pressure conditions.

56. Mr. Kaplan was the victim of religious persecution in the former Soviet Union because of his Jewish background and activism. He entered the United States in November 1996 at the age of 71 and was granted asylum in January 1997. Mr. Kaplan established his eligibility for SSI and Medicaid in March 1997. Five years later, Mr. Kaplan also qualified for the Medicare health insurance program.

57. In 1998, Mr. Kaplan applied for permanent residency status, but defendants delayed ruling upon the application for five years. It was not granted until September 2003. Mr. Kaplan cannot apply for naturalization until June 2007, over ten years after he was granted asylum.

58. Because Mr. Kaplan had been living in the country for seven years, the Social Security Administration terminated his SSI in July 2004. He was also wrongly terminated from the Medicare health insurance program, losing access to his treating urologist, and not reinstated until over two years later.

Tasim Mandija

59. Plaintiff Tasim Mandija is an 80-year-old resident of Philadelphia. He suffers from prostate cancer, cardiovascular disease, poor circulation, and neuropathy. He cannot stand for more than a few minutes at a time and must use a wheelchair or walker for mobility.

60. Mr. Mandija is from Albania, where he was persecuted and spent four years in prison and five years in a concentration camp for his opposition to the government of Albania. He came to the United States with his wife, Feride Mandija, in September 1996. He was granted asylum as of November 24, 1998.

61. Mr. Mandija was authorized to receive SSI and Medicaid benefits starting in November 1998.

62. Mr. Mandija applied for LPR status in February 2000, but defendants delayed ruling upon the application for six years. CIS denied his application in February 2006 because it claimed not to have Mr. Mandija's fingerprints. In fact, Mr. Mandija had submitted his fingerprints to CIS, but the agency apparently lost or misfiled them. In August 2006, on its own motion CIS re-opened Mr. Mandija's application in order to take another set of fingerprints from Mr. Mandija.

63. Even if Mr. Mandija's application for LPR status were granted before the end of 2006, he would not be able to apply for naturalization until late 2009.

64. Mr. Mandija's SSI benefits were terminated in December 2005, seven years after he was granted asylum.

Feride Mandija

65. Plaintiff Feride Mandija is a 67-year-old resident of Philadelphia and the wife of Tasim Mandija. She suffers from severe arthritis.

66. Ms. Mandija is originally from Albania, where she was beaten by the Albanian police in order to force her to reveal her husband's whereabouts. She came to the United States with her husband, Tasim Mandija, in September 1996. She was granted asylum as of November 1998.

67. Based upon her disabilities, Ms. Mandija was approved for SSI starting in November 1998.

68. Ms. Mandija applied for lawful permanent residency status in February 2000, but defendants delayed ruling upon her LPR application for five years. It was finally granted on March 9, 2005, and backdated one year to March 9, 2004. As a result, Ms. Mandija can first apply for naturalization only on December 9, 2008. This date is ten years after she was granted asylum.

69. Like her husband's, Ms. Mandija's SSI benefits ended in December 2005, seven years after she was granted asylum.

Mashaalah and Maryamrezaei Aliaghaei on behalf of their son, Rouzbeh Aliaghaei

70. Mr. Mashaalah Aliaghaei and his wife, Ms. Maryamrezaei Aliaghaei, immigrated to the United States from Iran. They came with their children, including their son, Rouzbeh. They are currently residents of the Commonwealth of Virginia.

71. Ms. Aliaghaei had been outspoken in Iran about the lack of freedom and equality for women. As a result, she was fired from her high school teaching job and jailed as a political prisoner. She was incarcerated for the first three months of her pregnancy with Rouzbeh and received no prenatal care.

72. Rouzbeh has Bannayan-Riley-Ruvalcaba Syndrome (BRRS), a rare genetic disorder which has caused severe macrocephaly (enlarged head), autism, seizures, impaired mobility, and marked mental retardation.

73. Ms. Alighaei and Rouzbeh entered the United States on June 14, 1998.

74. When Rouzbeh arrived in the United States, he was nine years old and suffered from the severe physical and cognitive disabilities associated with BRRS.

75. Political asylum was granted to the entire family on February 12, 1999. Rouzbeh began receiving SSI on the basis of his severe disabilities in February 1999 upon the grant of asylum. Because he was eligible for SSI, Rouzbeh also received Medicaid.

76. Mr. Alighaei and Rouzbeh's two siblings entered the United States on September 10, 1999.

77. Mr. and Ms. Alighaei applied for lawful permanent residency for their entire family in November 2000. Defendants delayed ruling upon the LPR application for five years. The family was not granted legal permanent residency until October 2005. As a result of the defendants' delay in granting lawful permanent residency, the Alighaeis will not be eligible to apply for naturalization until July 2009.

78. Today, at age 17, Rouzbeh is small in stature, nonverbal, and unresponsive to his surroundings. His estimated level of cognitive functioning is 2-3 years of age.

79. Ms. Alighaei currently works as a teacher's aide in Fairfax County, Virginia. Mr. Alighaei is Rouzbeh's primary care giver. As a result of this major responsibility and the time it demands, Mr. Alighaei has been unable to obtain paid employment.

80. Rouzbeh's SSI benefits were terminated in February 2006, because seven years had expired since the grant of asylum. Due to the loss of SSI, Rouzbeh's eligibility for Medicaid

also came to an end. 8 U.S.C. § 1612(b)(2)(A)(i)(I). Rouzbeh no longer has access to the physical therapy, speech therapy, and medical treatment he needs.

Lidiya Burtseva

81. Lidiya Burtseva, aged 59, is a resident of Warminster, Pennsylvania, and was born in the Ukraine – formerly part of the USSR – on June 20, 1947. She and her husband suffered persecution in the Ukraine because her husband was Jewish. Although Ms. Burtseva is not Jewish, she was persecuted because her husband was.

82. The couple entered the United States on September 18, 1999, as refugees. Ms. Burtseva applied for lawful permanent residency status in April 2001 and was approved in September 2002, retroactive to September 1999.

83. Ms. Burtseva initially worked as a home health aide from January 2000 until October 2002, when she became too disabled to work. Ms. Burtseva suffers from hypertension, major depression, and hallucinatory psychosis with reduced ability to recall or memorize basic facts necessary for her to function on a daily basis.

84. Ms. Burtseva applied for SSI in March 2003 and was approved for benefits. Her SSI benefits were her only source of income. In November 2003, she and her husband were divorced.

85. Ms. Burtseva applied for naturalization in October 2004, five years after her entry into the United States. As a result of her severe medical condition, she also applied for a waiver from the English language and United States history and government portions of the naturalization examination, pursuant to the Immigration and Nationality Act §312(b)(1). 8 U.S.C. §1423(b)(1).

86. The CIS scheduled Ms. Burtseva's naturalization examination interview for July 11, 2005, but then abruptly cancelled it on July 5, 2005. It has never been rescheduled.

87. In June 2006, Ms. Burtseva's lawyers at the HIAS and Council Migration Service of Philadelphia (HIAS and Council) wrote to Evangelia Klapakis, Acting District Director of the CIS Philadelphia office, requesting "expedite[d] processing" of the case due to Ms. Burtseva's "emergent circumstances" caused by the expected loss of her SSI benefits in September 2006, seven years after her entry as a refugee. See Letter from Ayodele Gansallo, Esq., to Evangelia Klapakis, attached as Exhibit E. Counsel cited the expedited processing policies averred above, namely Executive Office of Naturalization Operations Policy Memorandum No. 22: Guidance On Expeditious Naturalization Processing for Applicants Affected by the Welfare Reform Act (Oct. 6, 1997), attached as Exhibit B, and the Field Operations Policy Memorandum No. 70: Processing Expedited Naturalization Applications, issued by the Immigration Services Division (Aug. 23, 2000). Attached as Exhibit C.

88. HIAS has not received a response to this letter, nor has Ms. Burtseva's case been expedited, despite CIS being informed that Ms. Burtseva's SSI benefits would be terminated in September 2006.

Nelli Olevskaya

89. Ms. Olevskaya is a 63-year-old refugee from the Ukraine. As Jews, Ms. Olevskaya and her family suffered severe, open persecution. Following the breakup of the Soviet Union in 1991, she could no longer maintain steady employment as a result of her ethnic origin and religious identity.

90. In April 1999, Ms. Olevskaya, along with her husband, Yevgny, entered the United States as refugees. She applied for lawful permanent residency status in May 2000. In May 2001, her LPR status was approved, retroactive to April 1999.

91. Ms. Olevskaya began to receive SSI benefits in 2002 as a result of severe multiple mental and physical impairments, including coronary artery disease, hypertension, hypothyroidism, and major depressive and personality disorders.

92. Ms. Olevskaya applied for naturalization in March 2005.

93. CIS initially scheduled Ms. Olevskaya for an examination on August 18, 2005. However, CIS postponed the examination "due to unforeseen circumstances." The examination has not been rescheduled.

94. In June 2006, Ms. Olevskaya's lawyers at HIAS and Council wrote to Evangelia Klapakis, Acting District Director of the CIS Philadelphia, requesting "expedite[d] processing" of the case due to her "emergent circumstances" caused by the loss of her SSI benefits seven years after her entry as a refugee. Counsel cited the expedited processing policies averred above. See Letter from Ayodele Gansallo, Esq., to Evangelia Klapakis, attached as Exhibit E.

95. HIAS has not received a response to this letter, nor has Ms. Olevskaya's case been expedited. Ms. Olevskaya's SSI benefits were terminated on May 1, 2006.

Eshetu Meri

96. Eshetu Meri, age 51, is a blind Ethiopian, now living in Fairfax, Virginia with his wife and three children.

97. In 1993, while still living in Ethiopia, Mr. Meri was fired from his job because of his political beliefs and ethnic identity. In 1998, while visiting the United States in an attempt to treat his failing eyesight, Mr. Meri learned that the Ethiopian government had seized his property and that his life would be in danger if he returned to Ethiopia because of his civic activities to promote democracy. Mr. Meri stayed in the United States. He applied for and received political asylum in March 1999. His wife and three children also received asylum and joined him in the United States in 2000.

98. When Mr. Meri was granted asylum in 1999, he was totally blind, diabetic, insulin dependent, and on medication for high blood pressure. Due to these disabilities, Mr. Meri was found eligible for SSI and Medicaid immediately upon the grant of asylum.

99. Mr. Meri has since contracted coronary artery disease, prostate enlargement, and kidney infections, rendering him even more severely disabled and dependent on Medicaid. He had been receiving home health care for eight hours per day due to the life-threatening nature of his illnesses and his blindness.

100. Mr. Meri applied for lawful permanent residency status in 2000, as soon as he was eligible to do so. However, defendants did not act upon his request for five years. It was only on September 30, 2005 that he was granted LPR status, effective September 30, 2004.

101. The earliest Mr. Meri can now apply for naturalization is June 30, 2009, four years and nine months from September 30, 2004.

102. In June 2006, Mr. Meri's SSI benefits were terminated due to the passage of seven years from the grant of asylum. After a failed administrative appeal, his Medicaid benefits were also terminated in October 2006. 8 U.S.C. § 1612(b)(2)(A)(i)(I). Mr. Meri has not been able to see a physician nor purchase medications, and his home health care has ended.

VI. FACTS COMMON TO THE CLASS

103. Class plaintiffs are humanitarian immigrants who have either applied for legal permanent residency status, or have applied for citizenship after the four year and nine months waiting period as LPRs. Due to a variety of delays at the hands of the defendants, class plaintiffs have not become citizens or will not become citizens within the allotted seven years.

104. Class plaintiffs are all seriously disabled or elderly persons with little or no income or resources. They meet all eligibility criteria for receipt of SSI benefits other than United States citizenship.

105. Class plaintiffs have lost, or are at risk of losing, eligibility for SSI, due to the expiration of the seven-year SSI limitation. They will not be eligible to have their SSI restored until defendants act to review and make a final determination on their applications for naturalization.

106. Class plaintiffs have actively pursued citizenship during the seven-year period afforded them.

107. Defendants have failed to act in a timely fashion in reviewing and making determinations on applications by these humanitarian immigrants for lawful permanent residency, and thereafter on their applications to become United States citizens. This failure has resulted in unreasonable delays and the loss of eligibility for SSI.

108. CIS and SSA have together failed to implement a joint plan and process to take requisite expediting actions in order to avoid the loss of SSI benefits because of the seven-year time period.

VII. CLAIMS FOR RELIEF

First Claim – Due Process of Law Violation

109. Plaintiffs hereby incorporate the averments as set forth above.

110. Defendants have violated plaintiffs' rights to due process of law under the Fifth Amendment to the United States Constitution, in that they have terminated, or plan to terminate benefits in which plaintiffs possess a statutory property interest. In addition, defendants have deprived plaintiffs of a fair opportunity and process to demonstrate their qualifications for citizenship.

111. Defendants' denial of a fair opportunity and process to achieve United States citizenship in a timely manner, including implementation of an effective expediting procedure,

vitiates plaintiffs' interest in the receipt of SSI benefits which the Congress intended to be maintained without interruption.

Second Claim – Equal Protection of the Laws Violation

112. Plaintiffs hereby incorporate the averments as set forth above.

113. Defendants have violated plaintiffs' right to equal protection of the laws under the Fifth Amendment to the United States Constitution, in that defendants' actions and delays have caused some humanitarian immigrants to be denied SSI, while other similarly situated humanitarian immigrants have had their applications for citizenship processed in time to avoid interruption in their SSI benefits. This arbitrary treatment of two similarly situated groups violates equal protection.

114. Defendants' arbitrary and irrational processing of LPR and naturalization applications results in an unconstitutional and discriminatory application of the seven year provision and the arbitrary termination of SSI benefits for many humanitarian immigrants.

Third Claim – Administrative Procedure Act Violation

115. Plaintiffs hereby incorporate the averments as set forth above.

116. Defendants have violated the Administrative Procedure Act and abused their discretion in that they have unlawfully withheld and unreasonably delayed agency action on plaintiffs' applications for lawful permanent residency and for naturalization.

117. Defendant Gonzalez of the CIS has also abused his discretion by refusing to expedite processing of the naturalization applications for members of the class in accordance with CIS' own stated policies and internal operating guidance, and has also abused his discretion by failing to inform plaintiffs, refugee service agencies and the public of the opportunity for expedited processing of naturalization applications.

118. The direct consequence of withholding or delaying the administrative agency actions has been the inability of class members to obtain naturalization and United States citizenship within their first seven years of residency in the U.S., thereby leading to the termination of life sustaining SSI benefits and the Medicaid which usually accompanies SSI.

119. The Administrative Procedure Act provides that persons suffering a legal wrong because of an agency's failure to act are entitled to seek judicial review. 5 U.S.C. § 702. The reviewing court must compel agency action unlawfully withheld or unreasonably delayed, and hold such unlawful agency action to be an abuse of discretion. 5 U.S.C. § 706(1), (2)(A).

VIII. REQUESTS FOR RELIEF

Wherefore, named plaintiffs and their class respectfully request that this Court:

a. Declare on behalf of named plaintiffs and the certified class that defendants' failure to act in a timely fashion in reviewing and making determinations on plaintiffs' applications for lawful permanent residency and naturalization in accordance with defendants' own stated policies and internal operating guidance, and failure to implement policies to expedite naturalization applications, results in the unlawful termination of SSI benefits, and thus violates the guarantees to due process of law and the equal protection of the laws in the Fifth Amendment to the United States Constitution, and constitutes agency action unlawfully withheld or unreasonably delayed and an abuse of discretion, in violation of the Administrative Procedure Act.

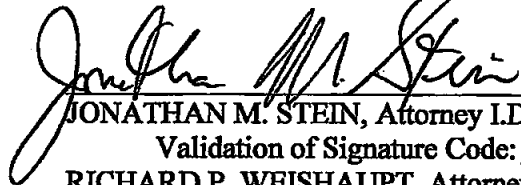
b. Issue a preliminary and final injunction, and a mandamus order requiring that SSA reinstate payment of SSI benefits to plaintiffs and those members of the plaintiff class whose SSI benefits have been terminated due to the expiration of the seven-year period, and continue SSI benefits to plaintiffs and their class until they have had a fair opportunity to complete the LPR and naturalization processes, and until defendants have fully ceased their

arbitrary practices wherein class members' applications for lawful permanent residency and naturalization are unreasonably and arbitrarily delayed beyond the seven-year time period.

c. Issue a preliminary and permanent injunction, and a mandamus order requiring that CIS and the FBI promptly process plaintiffs' applications for LPR status and naturalization, including expediting all LPR and naturalization applications where loss of SSI benefits is present or threatened, to avoid any terminations of SSI benefits after the expiration of the seven year period.

d. Award plaintiffs the costs of suit and reasonable attorneys' fees pursuant to the Equal Access to Justice Act. 28 U.S.C. § 2412.

e. Award such other relief as this Court may deem just and proper.



JONATHAN M. STEIN, Attorney I.D. No. 15223

Validation of Signature Code: jms211

RICHARD P. WEISHAUPT, Attorney I.D. No. 19382

MICHAEL R. FROEHLICH, Attorney I.D. No. 92767

Community Legal Services, Inc.

1424 Chestnut Street

Philadelphia, PA 19102-2505

Tel. (215) 981-3742

Fax (267) 765-6481

THOMAS B. ROBERTS, Attorney I.D. No. 31196

JORDANA GREENWALD, Attorney I.D. No. 93836

Ballard Spahr Andrews & Ingersoll, LLP

1735 Market Street, 51st Floor

Philadelphia, PA 19103-7599

Tel. (215) 665-8500

JUDITH BERNSTEIN-BAKER, Attorney I.D. No. 41831

Hebrew Immigrant Aid Society and Council

Migration Service of Philadelphia

2100 Arch Street

Philadelphia, PA 19103

Tel. (215) 832-0900

Fax (215) 832-0919

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