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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ROSHANAK ROSHANDEL; VAFA GHAZI-MOGHADDAM; HAWO AHMED; LIN HUANG; AHMAD ALKABRA; MOHAMMAD REZA AIDINEJAD, and ZAHRA ABEDIN, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

MICHAEL CHERTOFF, Secretary, United States Department of Homeland Security; EMILIO GONZALEZ, Director, United States Citizenship and Immigration Services, ANN CORSANO, Director, District 20, United States Citizenship and Immigration Services; JULIA HARRISON, Director, Seattle Field Office, United States Citizenship and Immigration Services; MICHAEL B. MUKASEY, Attorney General, United States Department of Justice; ROBERT MUELLER III, Director, Federal Bureau of Investigation; and the UNITED STATES OF AMERICA,

Defendants.

Case No. C07-1739MJP

ORDER GRANTING  
PLAINTIFFS' MOTION FOR  
CLASS CERTIFICATION

This matter comes before the Court on Plaintiffs' motion for class certification. (Dkt. No. 4.) Defendants filed a response to the motion (Dkt. No. 15) and Plaintiffs filed a reply (Dkt. No. 16). Having considered the parties' briefs and all documents submitted in support, and having heard oral argument on the issues, the Court GRANTS Plaintiffs' motion for class certification.

1 **Background**

2 This action involves delayed naturalization applications allegedly due to a pending “name  
3 check” with the Federal Bureau of Investigation (“FBI”). Plaintiffs are lawful permanent residents  
4 of the United States who have applied with the United States Citizenship and Immigration  
5 Services (“USCIS”) to be naturalized as United States citizens. Defendants are Michael Chertoff,  
6 Secretary of the United States Department of Homeland Security; Emilio Gonzalez, Director of  
7 USCIS; Ann Corsano, Director of USCIS District 20; Julia Harrison, Director of the USCIS  
8 Seattle Field Office; Michael B. Mukasey, United States Attorney General; Robert Mueller III,  
9 Director of the FBI; and the United States of America.

10 Each Plaintiff’s application has been pending for at least two (2) years since passing his or  
11 her naturalization examination. (Dkt. No. 21, First Amended Complaint [hereinafter “Compl.”] ¶  
12 2.) Plaintiffs Roshandel, Ghazi-Moghaddam, Ahmed, Huang, Alkabra, and Abedin were each told  
13 by USCIS that their applications were not yet complete due to a pending name check. (*Id.* ¶¶ 11,  
14 16, 21, 26, 29, and 34.) Plaintiffs allege that they have met all legal requirements for  
15 naturalization. (Compl. ¶ 2.)

16 **I. The Naturalization Process**

17 Persons seeking naturalization must submit an application to USCIS, the agency  
18 responsible for adjudicating naturalization applications. *See* 8 U.S.C. § 1445; 8 C.F.R. § 100.2(a)-  
19 (f); 6 U.S.C. § 291 (abolishing the INS). A naturalization applicant must meet certain  
20 requirements under the Immigration and Naturalization Act (“INA”), including an understanding  
21 of the English language and history of the United States, and good moral character. 8 U.S.C §§  
22 1423, 1427. USCIS is required to grant the application if the applicant meets all statutory  
23 requirements for naturalization. 8 C.F.R. § 335.3(a).

24 Once an application is submitted, USCIS conducts an investigation of each naturalization  
25 applicant. *See* 8 U.S.C. § 1446(a); 8 C.F.R. § 335.1. Under USCIS regulations, the investigation  
26 includes a “full criminal background check” performed by the FBI. 8 C.F.R. § 335.2(b). USCIS  
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1 cannot adjudicate any naturalization application without a “definitive response” from the FBI that  
2 a full criminal background check has been completed. Id. USCIS also conducts a naturalization  
3 interview, at which an applicant meets with a USCIS officer who asks questions and takes  
4 testimony. 8 C.F.R. §§ 335.1, 335.2(a). At the interview, the USCIS officer is required to inform  
5 the applicant of the remedies available to the applicant under section 1447(b). 8 U.S.C. § 1446(b).  
6 Under USCIS regulations, applicants are supposed to be interviewed only after the FBI has  
7 completed its full background check. 8 C.F.R. § 335.2(b).<sup>1</sup>

8 The regulations require that USCIS make a decision to grant or deny the application either  
9 at the initial examination or within 120 days of the date of the initial examination. See 8 C.F.R. §  
10 335.3(a) (“A decision to grant or deny the application shall be made at the time of the initial  
11 examination or within 120-days after the date of the initial examination of the applicant for  
12 naturalization under § 335.2.”). If USCIS fails to render a decision on a naturalization application  
13 within 120 days of the applicant’s naturalization examination, the applicant may seek district court  
14 adjudication of his or her application. 8 U.S.C. § 1447(b). The court may either determine the  
15 application, or remand the application to the agency with instructions. Id. Once a plaintiff has  
16 filed a petition under section 1447(b), the district court assumes exclusive jurisdiction over the  
17 naturalization application. United States v. Hovsepien, 359 F.3d 1144, 1161 (9th Cir. 2004).

## 18 **II. The Name Check Requirement**

19 Plaintiffs allege that in 2002, without promulgating any regulations and without statutory  
20 authorization, USCIS “dramatically altered the naturalization process by requiring that all

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22 <sup>1</sup> Contrary to USCIS’s own regulations, members of the proposed class were all interviewed  
23 prior to the completion of their full background check. Apparently, USCIS now waits until  
24 background investigations are complete before conducting an applicant’s examination interview.  
25 Stepchuk v. Gonzales, No. C06-570RSL, 2006 WL 3361776, \*5 n. 6 (W.D. Wash. Nov. 17, 2006)  
26 (Lasnik, C.J.) (noting that, “perhaps in response to the growing number of lawsuits that have resulted  
27 from the combination of lengthy background checks and [US]CIS’s deviation from the course of  
action dictated in its regulation, the agency recently declared its renewed intention to conduct  
examinations only after receiving the results of an applicant’s criminal background check”). The  
proposed class is therefore a shrinking one.

1 applicants pass a ‘name check’ by the FBI before final approval.” (Compl. ¶ 40.) According to  
2 the complaint, a name check is a search of FBI records and other records the FBI has access to  
3 based on the name of the applicant. (Id.) Plaintiffs allege that the name check is implemented in  
4 such a manner that an applicant may be erroneously identified as a “person of interest” to the FBI,  
5 thereby delaying adjudication of the naturalization application, even though the applicant has  
6 committed no crimes and is not a suspect, and even though the name check revealed no other  
7 information bearing on eligibility for naturalization. (Compl. ¶ 50.) Plaintiffs further allege that  
8 USCIS will not grant naturalization applications until it receives a completed background check  
9 from the FBI, and that neither USCIS nor the FBI has imposed any timeline for completion of the  
10 name checks. (Compl. ¶ 52.)

### 11 **III. The Class Action Complaint**

12 Plaintiffs’ complaint states four causes of action: (1) right to judicial determination of  
13 Plaintiffs’ naturalization applications pursuant to 8 U.S.C. § 1447(b); (2) unreasonable delay in  
14 violation of the Administrative Procedure Act (“APA”), 8 U.S.C. § 555(b); (3) failure to follow  
15 notice-and-comment requirements of the APA, 8 U.S.C. § 553; and (4) failure to provide notice  
16 of remedies as required by 8 U.S.C. § 1446(b).<sup>2</sup> Plaintiffs now move to certify a class comprised  
17 of the following members:

18 All lawful permanent residents of the United States residing in the Western District  
19 of Washington who have submitted naturalization applications to [US]CIS but whose  
20 naturalization applications have not been determined within 120 days of the date of  
their initial examination due to the pendency of a “name check.”

### 21 **Discussion**

#### 22 **I. Standing**

23 Standing is a jurisdictional element that must be satisfied prior to class certification. Lee  
24 v. State of Oregon, 107 F.3d 1382, 1390 (9th Cir. 1997). In order to assert claims on behalf of a  
25 class, “a named plaintiff must have personally sustained or be in immediate danger of sustaining

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26 <sup>2</sup> Plaintiffs’ claim under Count Four, Failure to Provide Notice of Remedies, is  
27 applicable only to a proposed subclass. Plaintiffs do not ask the subclass to be certified at this time.

1 ‘some direct injury as a result of the challenged statute or official conduct.’” Armstrong v. Davis,  
2 275 F.3d 849, 860 (9th Cir. 2001) (quoting O’Shea v. Littleton, 414 U.S. 488, 494 (1974)).  
3 “The harm suffered by a plaintiff must constitute ‘actual injury.’” Id. (quoting Lewis v. Casey,  
4 518 U.S. 343, 348-49 (1996)).

5 The Government argues that Plaintiffs fail to demonstrate actual harm because there is no  
6 right to naturalization until all the statutory requirements are met. Not only does this argument  
7 assume that the name check is a statutory requirement, which is itself at issue in this litigation,  
8 but it ignores the fact that under 8 C.F.R. § 335.3(a) and 8 U.S.C. § 1447(b), Plaintiffs are  
9 entitled to a naturalization decision by USCIS within 120 days of their naturalization  
10 examination. Congress may enact statutes creating legal rights, the invasion of which creates  
11 standing, even though no injury would exist without the statute. See Warth v. Seldin, 422 U.S.  
12 490, 514 (1975). Thus, even assuming that Plaintiffs do not have a right to naturalization, that  
13 does not mean they do not have a right to a prompt adjudication of their naturalization  
14 application. Plaintiffs, each deprived a naturalization decision within 120 days of their interview,  
15 are injured by the delay itself and have standing to enforce that right.

16 Plaintiffs also allege injuries beyond the delay itself, injuries that are a direct result of the  
17 challenged name check policy. Plaintiffs state in their complaint that they are unable to vote or  
18 serve on juries, they are unable to travel abroad without fear of being denied re-entry into the  
19 United States, and they are ineligible for jobs for which they are qualified. (Compl. ¶ 3.) In an ill-  
20 considered argument, the Government suggests that the inability to vote is not a harm sufficient  
21 to confer standing:

22 With respect to voting, simply because Plaintiffs are not United States citizens does  
23 not mean that they are unable to participate in civic society. The inability to vote  
24 does not render someone apolitical. Should a person sincerely be interested in  
25 politics, he or she can still participate in the political process by assisting with  
campaigns, attending political functions or providing monetary donations, and he or  
she may do so freely.

26 (Defs.’ Opp. at 8.) This suggestion that Plaintiffs should be resigned to participate vicariously in  
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1 civic society is shocking, offensive, and wrong. It echoes the sentiments of those who challenged  
2 women’s suffrage, suggesting that women should be content to participate in the political  
3 process vicariously through their husbands’ votes.

4         We might as well be dogs baying the moon as petitioners without the right to  
5         vote!

6 Susan B. Anthony, speech on November 16, 1895 (as quoted in The Life and Work of Susan B.  
7 Anthony, ch. 44, by Ida Husted Harper (1898) (reprinted in The Columbia World of Quotation  
8 (Columbia University Press, 1996)), available at [www. bartleby.com/br.66.html](http://www.bartleby.com/br.66.html) (last visited  
9 April 25, 2008).

10         The Government’s argument also flies in the face of the Supreme Court’s repeated  
11 conclusion that the right to vote is the most basic and fundamental of our constitutionally  
12 protected rights: “No right is more precious in a free country than that of having a voice in the  
13 election of those who make the laws under which, as good citizens, we must live. Other rights,  
14 even the most basic, are illusory if the right to vote is undermined.” Wesberry v. Sanders, 376  
15 U.S. 1, 17 (1964).

16         Rightfully, the Government does not even attempt to argue that the inability to serve on  
17 juries does not cause harm. See Powers v. Ohio, 499 U.S. 400, 407 (1991) (“With the exception  
18 of voting, for most citizens the honor and privilege of jury duty is their most significant  
19 opportunity to participate in the democratic process.”). The Government does argue, however,  
20 that the difficulties Plaintiffs have experienced with travel are either individual-specific or no  
21 worse than those suffered by American citizens in a post-9/11 world. Two named Plaintiffs  
22 specifically allege that they experience increased scrutiny when traveling due to their immigration  
23 status. (Compl. ¶¶ 12 and 17.) Moreover, a lawful permanent resident who remains abroad for  
24 more than a temporary period may be refused re-admission to the United States. See 22 C.F.R. §  
25 42.22. The Court rejects the Government’s argument that the difficulties Plaintiffs experience in  
26 traveling is immaterial — taking off one’s shoes pales in comparison to not being able to return  
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1 to one's home. All of these factors — the inability to vote, the inability to serve on juries, and  
2 difficulty traveling — are harms sufficient to confer standing.

3 Finally, in a case such as this one, where class plaintiffs seek prospective injunctive relief,  
4 they must also demonstrate that they are “realistically threatened by a repetition of the alleged  
5 violation.” Armstrong, 275 F.3d at 860 (quoting City of Los Angeles v. Lyons, 461 U.S. 95, 109  
6 (1983)). Plaintiffs may show that injury is likely to recur by demonstrating that the harm is part  
7 of a “pattern of officially sanctioned . . . behavior, violative of the plaintiffs’ [federal] rights.” Id.  
8 at 861 (quoting LaDuke v. Nelson, 762 F.2d 1318, 1323 (9th Cir. 1985)). “Thus, where the  
9 defendants have repeatedly engaged in the injurious acts in the past, there is a sufficient  
10 possibility that they will engage in them in the near future to satisfy the ‘realistic repetition’  
11 requirement.” Id.

12 Here, the existence of a policy and practice of delay in naturalization applications due to  
13 pending name checks is not reasonably in dispute.<sup>3</sup> Plaintiffs, for their part, have alleged delay-  
14 based injuries stemming directly from this name check requirement, including their inability to  
15 vote and to serve on juries, their inability to travel abroad without fear of being denied re-entry  
16 into the United States, and their ineligibility for jobs for which they are qualified. (Compl. ¶ 3.)  
17 Thus, the Court concludes that the existence of the name check policy within USCIS means that  
18 unnamed and future class members will face contested delays in the future, be it before the  
19 completion of the naturalization interview or after. Plaintiffs have standing to bring their class  
20 claims.

## 21 **II. Mootness**

22 After Plaintiffs moved for class certification, the FBI completed the name checks of the  
23 four named plaintiffs and USCIS announced that it was ready to immediately adjudicate their

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24 <sup>3</sup> In the last year, approximately 31 claims against USCIS for delayed naturalization  
25 applications due to a pending name check were heard by this Judge alone. See e.g., Abo Ghanim v.  
26 Gonzales, No. C07-0594MJP, 2007 WL 2712387 (W.D. Wash. Sept. 14, 2007) (adjudication of  
27 naturalization application delayed because of pending name check); Said v. Gonzales, No. C06-  
986MJP, 2006 WL 2789344 (W.D. Wash. Sept. 24, 2007) (same).

1 naturalization applications. Defendants then opposed class certification, in part, on the grounds  
2 that Plaintiffs' claims were moot. Plaintiffs have since filed an amended complaint (Dkt. No. 21)  
3 adding three additional named plaintiffs whose name checks have not been completed.<sup>4</sup> Because  
4 three of the named plaintiffs' claims present live controversies, their claims are not moot, and the  
5 modification in class representation has no effect on the viability of the class as a whole. See  
6 Swisher v. Brady, 438 U.S. 204, 213 (1978) (holding that a live controversy remained, and a  
7 class was properly certified, where the adversity between the defendant and all but one named  
8 plaintiff had been mooted). In addition, the Court notes that subsequent resolution of remaining  
9 named plaintiffs' claims following certification of this class will not moot this class action. See  
10 County of Riverside v. McLaughlin, 500 U.S. 44, 52 (1991) (holding that the mootness of named  
11 plaintiffs does not defeat class claims where unnamed class members continued to present  
12 justiciable claims and where the class has already been certified under Rule 23); Sosna v. Iowa,  
13 419 U.S. 393, 399-400 (1975). The three new named plaintiffs may represent the class.

### 14 **III. Class Certification Standard**

15 Class actions are governed by Federal Rule of Civil Procedure 23. The party seeking  
16 class certification bears the burden of demonstrating that he or she has met all four requirements  
17 in Rule 23(a) and at least one of the requirements of Rule 23(b). Zinser v. Accufix Research  
18 Inst., Inc., 253 F.3d 1180, 1186 (9th Cir. 2001). Although the trial court has broad discretion in  
19 deciding whether to certify a class, the trial court must conduct a "rigorous analysis" to  
20 determine whether the party seeking certification has satisfied all the necessary Rule 23 elements.  
21 Id. To satisfy subsection (a), Plaintiffs must show that (1) the class is so numerous that joinder  
22 of all members is impracticable ("numerosity"); (2) there are questions of law or fact common to  
23 the class ("commonality"); (3) the claims or defenses of the representative parties are typical of

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25 <sup>4</sup> Since oral argument, the Government has requested permission to apprise the Court  
26 of the status of the name checks for the remaining named plaintiffs. Because that request to consider  
27 additional material does not ripen until May 9, 2008, the Court has not yet ruled on whether to  
consider the additional material and so does not consider it here.



1 the claims or defenses of the class (“typicality”); and (4) the representative parties will fairly and  
2 adequately protect the interests of the class (“adequacy of representation”). Fed. R. Civ. P.  
3 23(a). Plaintiffs must also satisfy one of the elements in subsection (b). Here, Plaintiffs argue  
4 that they satisfy (b)(2), which provides as follows:

5 [T]he party opposing the class has acted or refused to act on grounds generally  
6 applicable to the class, thereby making appropriate final injunctive relief or  
corresponding declaratory relief with respect to the class as a whole.

7 Fed. R. Civ. P. 23(b)(2).

#### 8 **IV. Rule 23(a)**

9 The Government argues that Plaintiffs have not shown commonality, typicality, or  
10 adequacy of representation. The Government does not dispute that the class as defined is so  
11 numerous that joinder is impracticable.

##### 12 **1. Commonality and Typicality**

13 Rule 23(a)(2) requires that there be “questions of law or fact common to the class.”  
14 “All questions of fact and law need not be common to satisfy the rule. The existence of shared  
15 legal issues with divergent factual predicates is sufficient, as is a common core of salient facts  
16 coupled with disparate legal remedies within the class.” Staton v. Boeing, 327 F.3d 938, 953  
17 (9th Cir. 2003) (quoting Hanlon v. Chrysler Corp., 150 F.3d 1011, 1026 (9th Cir.1998)). Courts  
18 have found that this element can be met by raising a single common issue that is central to the  
19 class. See Slaven v. BP America, Inc., 190 F.R.D. 649, 655 (C.D. Cal. 2000). Here, all  
20 Plaintiffs’ naturalization applications have been delayed because of the FBI name check, and all  
21 Plaintiffs challenge the legality of the delayed adjudication. Because all Plaintiffs, whether  
22 present or future members of the class, challenge the legality of the same government program,  
23 they inherently share common issues. See LaDuke, 762 F.2d at 1332 (holding that case  
24 challenging the constitutionality of an INS procedure “plainly” created common questions of law  
25 and fact).

26 Defendants concede that there are “some common issues of law and fact,” but suggest  
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1 that, because “individual issues predominate” in the inquiry into whether adjudication delay is  
2 reasonable and in the naturalization decision itself, class treatment is improper. (Defs.’ Opp. at  
3 14-15.) This is not an appropriate factor to consider on a motion for 23(b)(2) certification:  
4 “Although common issues must predominate for class certification under Rule 23(b)(3), no such  
5 requirement exists under 23(b)(2).” Walters v. Reno, 145 F.3d 1032, 1047 (9th Cir. 1998)  
6 (rejecting defendants’ argument that factual distinctions in plaintiffs’ cases undermined common  
7 allegations that INS procedures provide insufficient notice). Moreover, as Plaintiffs explained at  
8 oral argument, they do not seek naturalization of the class as a whole. Whether Plaintiffs meet  
9 the individual requirements for naturalization and whether individual factors caused the delay in  
10 adjudication is irrelevant to class certification in this case.

11 Defendants also argue that the time taken to complete background checks is “reasonable”  
12 and that the FBI name check is not the sole reason for delay. However, the reasonableness and  
13 legality of Defendants’ policies and practices are not matters for the Court to consider on a  
14 motion for class certification. See Eisen v. Carlisle, 417 U.S. 156, 177-78 (1974) (improper for  
15 court to consider merits in denying motion for class certification). The Court finds that Plaintiffs  
16 have satisfied the commonality requirement.

17 In regards to the typicality element, “a plaintiff’s claims are typical if they arise from the  
18 same event or practice or course of conduct that gives rise to the claims of other class members  
19 and are based on the same legal or remedial theory.” 1 Alba Conte & Herbert Newberg,  
20 Newberg on Class Actions § 3:19, at 401 (4th ed. 2002); see also Alpern v. Utilicorp United,  
21 Inc., 84 F.3d 1525, 1540 (8th Cir. 1996). “Under the rule’s permissive standards, representative  
22 claims are ‘typical’ if they are reasonably coextensive with those of absent class members; they  
23 need not be substantially identical.” Dukes v. Wal-Mart, Inc., 509 F.3d 1168, 1184 (9th Cir.  
24 2007) (quoting Hanlon, 150 F.3d at 1020). Here, the claims of the named plaintiffs are typical of  
25 those of the class because all of the potential plaintiffs suffered delayed naturalization  
26 adjudications due to the name check requirement. Any differences in the length of delay or  
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1 subsequent consequences are immaterial for purposes of class typicality, which is concerned with  
2 the class members' shared interests and harms. See generally General Telephone Co. of the  
3 Southwest v. Falcon, 457 U.S. 147, 156 (1982). Plaintiffs have satisfied the typicality  
4 requirement.

## 5           **2. Adequacy**

6           To satisfy the adequacy requirement, plaintiffs must show that their interests are not  
7 antagonistic to those of the class and that they are able to prosecute the action vigorously  
8 through qualified and competent counsel. Linney v. Cellular Alaska P'ship, 151 F.3d 1234, 1238-  
9 39 (9th Cir. 1998). The Government argues that the Plaintiffs' claims are antagonistic because  
10 the relief sought — an injunction that would require adjudication of the class member's  
11 applications and completion of their name checks — would disrupt the FBI's current policy of  
12 completing name checks in the order in which they are received. An injunction would allow class  
13 members whose applications have been pending for shorter periods of time to "jump ahead" to  
14 the front of the line. But class treatment would not create antagonism among class members  
15 because all class members would be treated in exactly the same manner — an injunction would  
16 likely instruct USCIS to complete the name checks and adjudicate all naturalization applications  
17 by the same date certain.

18           The Court recognizes, however, that if certification is granted, the Court's exclusive  
19 jurisdiction over section 1447(b) petitions will sweep up and place on hold all pending individual  
20 naturalization applications falling within the proposed class, including those whose name checks  
21 are completed during the pendency of this litigation. See Hovsepian, 359 F.3d at 1161-64 (holding  
22 that 8 U.S.C. § 1447(b) provides district court with exclusive jurisdiction over naturalization  
23 applications). The Court can address this issue by allowing potential class members to opt-out of  
24 the class. The Ninth Circuit recently noted that, "a district court's discretion to include an opt-out  
25 notice is well-established." Dukes, 509 F.3d at 1189 (noting that district courts have discretion to  
26 order notice and opt-out rights when certifying a Rule 23(b)(2) class); see also Fed. R. Civ. P.

1 23(d)(1)(B). Although Dukes involved a “hybrid” Rule 23(b)(2) class seeking both injunctive  
2 relief and damages, the Court nonetheless has broad discretion in fashioning appropriate relief, and  
3 may require notice and the right to opt-out under its discretionary authority provided in Rule  
4 23(d)(1)(B). Given the potential for further delay in naturalization decisions as a result of the class  
5 action, potential members of the class may decide to opt-out and have their applications  
6 adjudicated by USCIS outside the context of this litigation.

7 **V. Rule 23(b)(2)**

8 Rule 23(b)(2) applies when “the party opposing the class has acted or refused to act on  
9 grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory  
10 relief is appropriate respecting the class as a whole[.]” Fed. R. Civ. P. 23(b)(2). The rule was  
11 “intended to reach situations where a party has taken action or refused to take action with respect  
12 to a class, and final relief of an injunctive nature or of a corresponding nature, settling the legality  
13 of the behavior with respect to the class as a whole, is appropriate.” Fed. R. Civ. P. 23, Comment  
14 to Subdivision (b)(2).

15 At least one other district court has certified a Rule 23(b)(2) class in an immigration case  
16 challenging the government’s policies and practices of delay. See Santillan v. Ashcroft, No. C04-  
17 2686 MHP, 2004 WL 2297990 (N.D. Cal. Oct. 12, 2004) (certifying under Rule 23(b)(2) a class  
18 action against USCIS based on delays in the issuance of documentation of their status as  
19 temporary or permanent lawful permanent residents due to pending background checks). In this  
20 case, the Government imposes a name check requirement that must be completed before  
21 naturalization applications can be adjudicated. Plaintiffs seek injunctive relief to end the delay and  
22 to change these national policies and practices. Plaintiffs’ case thus satisfies the dual requirements  
23 of Rule 23(b)(2).

24 The Government argues that the class should not be certified because Plaintiffs’ request for  
25 section 1447(b) relief in the form of a class-wide remand to USCIS is “impracticable,”  
26 “insurmountable,” and “would cause further delays in processing other applications, such as those  
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1 for adjustment of status.” (Defs.’ Opp. at 3-4.) The Court recognizes that it may be the first  
2 district court to certify a class under section 1447(b).<sup>5</sup> However, the Government’s argument  
3 confuses the question of appropriate remedy with the question of the best procedural tool for  
4 resolving common questions of law. Nothing in section 1447(b), or common sense, precludes  
5 resolving Plaintiffs’ section 1447(b) or APA claims on a class-wide basis.

### 6 **Conclusion**

7 The Court concludes that the requirements under Rule 23(a) and (b)(2) are met and class  
8 certification is appropriate. It is hereby ORDERED that:

- 9 1. The Plaintiffs’ motion for class certification is GRANTED.
- 10 2. The Court therefore CERTIFIES a class comprised of the following members:  
11 All lawful permanent residents of the United States residing in the Western District of  
12 Washington who have submitted naturalization applications to USCIS but whose  
13 naturalization applications have not been determined within 120 days of the date of  
14 their initial examination due to the pendency of a “name check.”
- 15 3. The named class representatives are Ahmad Alkabra, Mohammad Reza Aidinejad,  
16 and Zahra Abedin.
- 17 4. The counsel of named plaintiffs is counsel for the class.
- 18 5. Notice and an opportunity to opt-out shall be provided to the plaintiff class.

19 It is further ordered that counsel shall meet and confer and submit a proposed class notice in  
20 compliance with this order within fifteen (15) days of the date of this order.

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21 <sup>5</sup> It appears that no district court has yet certified such a class; and, in many cases  
22 Plaintiffs have not sought certification under section 1447(b). See Ahamadi v. Chertoff, No. C07-  
23 03455WHA (N.D. Cal. 2008) (in class action involving name check delays, pending motion seeks  
24 class certification on claims under the APA only); Mocanu v. Mueller, No. 07-445, 2008 WL 154606,  
25 at \*4-5 (E.D. Pa. Jan. 11, 2008) (granting summary judgment for plaintiffs in class action involving  
26 name check delay claims under APA only); Antonishin v. Keisler, No. 06 CV 2518, 2007 WL  
27 2788841, at \*4 (N.D. Ill. Sept. 20, 2007) (prior to Plaintiffs’ motion for class certification, granting  
motion to dismiss putative class name check delay claims under the APA and remanding individual  
section 1447(b) claims to USCIS for adjudication); Yakubova v. Chertoff, No. 06-CV-3203, slip op.  
at 3 (E.D.N.Y. Nov. 2, 2006) (attached to Dkt. No. 13, Pls.’ Resp. Mot., Ex. 4) (declining to rule  
on class certification involving both section 1447(b) and APA claims without the benefit of discovery;  
no certification motion currently pending).

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The clerk is directed to send copies of this order to all counsel of record.

Dated: April 25, 2008.

s/ Marsha J. Pechman

Marsha J. Pechman  
United States District Judge