

THE HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ROSHANAK ROSHANDEL, et al., individually  
and on behalf of all others similarly situated,

Plaintiffs,

v.

MICHAEL CHERTOFF, et al.,

Defendants.

No. C07-1739 MJP

**JOINT MOTION AND  
[PROPOSED] ORDER FOR  
PRELIMINARY APPROVAL OF  
PROPOSED SETTLEMENT AND  
APPROVAL OF NOTICE OF  
SETTLEMENT**

Noted for Consideration:  
August 11, 2008

**I. INTRODUCTION**

Plaintiffs, on behalf of themselves and all others similarly situated Class Members, commenced this class action lawsuit to challenge delays in the naturalization process caused by pending FBI name checks. Defendants deny Plaintiffs' allegations.

Subject to this Court's approval, the parties have reached a proposed settlement (the "Proposed Settlement") of all claims in this case. The Proposed Settlement provides, among other things, that the majority of the Class Members' naturalization applications will be adjudicated and eligible Class Members will be scheduled for an oath ceremony in time to register to vote in the 2008 Presidential elections in November. Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, the parties respectfully request that the Court (1) preliminarily

1 approve the Proposed Settlement and (2) approve the form and manner of notice of the Proposed  
2 Settlement to the Class.

## 3 **II. BACKGROUND**

### 4 **A. Procedural History**

5 Named Plaintiffs commenced this action on October 29, 2007 and filed an Amended  
6 Complaint on April 8, 2008. Named Plaintiffs asserted four causes of action in the Amended  
7 Complaint:  
8

- 9 • In Count I, Named Plaintiffs request judicial determination of the Class Members'  
10 naturalization applications, or, in the alternative, remand to USCIS with instructions to  
11 timely adjudicate the Class Members' applications, pursuant to the Immigration and  
12 Nationality Act ("INA"), 8 U.S.C. § 1447(b).
- 13 • In Count II, Named Plaintiffs assert that Defendants' conduct constitutes unreasonable  
14 delay under the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 555(b), 706(1).
- 15 • Count III alleges that USCIS' requirement that the Class Members pass a "FBI name  
16 check" as a prerequisite to naturalization – the root of the unlawful delays at issue – was  
17 implemented without requisite public notice and comment in violation of the APA.
- 18 • Count IV concerns USCIS' failure to provide some Class Members with notice of  
19 remedies available under INA 8 U.S.C. § 1446.

20 The Court denied Defendants' Motion to Dismiss and/or Remand the Amended  
21 Complaint in its entirety by Order dated May 5, 2008.

22 On April 25, 2008, the Court certified a Rule 23(b)(2) class, as clarified by Order dated  
23 June 3, 2008, as follows:

24 All lawful permanent residents of the United States residing in the  
25 Western District of Washington who have submitted naturalization  
26 applications to USCIS and (1) whose naturalization applications were  
not determined within 120 days of the date of their initial examination,  
(2) whose name checks remained pending on the 120th day after their  
initial examination, (3) whose FBI name checks remained pending on  
October 29, 2007, and (4) whose naturalization applications were not  
adjudicated as of April 25, 2008.

“[R]esiding in the Western District of Washington” means that an  
applicant was a resident of the Western District of Washington at the

1 time the application was filed, or that the applicant subsequently moved  
2 into the Western District of Washington and informed USCIS of his or  
3 her change of address. Applicants who filed in the Western District of  
Washington but who have subsequently moved are not part of the class.

4 In addition to certifying the Class, the Court designated Named Plaintiffs Ahmad  
5 Alkabra, Reza Aidenijad, and Zahra Abedin as Class Representatives. The Court also appointed  
6 Alfred Day of Ropes & Gray LLP, Rita Latsinova of Stoel Rives, Sarah Dunne of ACLU of  
7 Washington Foundation, and Matt Adams and Chris Strawn of NWIRP as Class Counsel.  
8 Finally, the Court ordered the parties to provide Class Members with notice and an opportunity  
9 to opt-out of the Class. Class notice was mailed on July 1 and 2, 2008. To date, 37 class  
10 members have opted-out.  
11

12 On May 29, 2008, Named Plaintiffs on behalf of the Class moved for partial summary  
13 judgment on Count I of the Amended Complaint. The motion is partially briefed and was noted  
14 for consideration on August 8, 2008 as Defendants' Motion for Continuance was granted.  
15

16 **B. The Class**

17 In their opposition to Plaintiffs' motion for partial summary judgment, Defendants  
18 estimated that there were 472 potential Class Members. Out of that group, 79 Class Members'  
19 naturalization applications were remanded by stipulation of the parties (72 whose applications  
20 were adjudicated after April 25, 2008 and the seven Named Plaintiffs). 37 individuals have  
21 opted-out of the Class, and Defendants determined several more individuals originally included  
22 in the estimate of the class size did not in fact meet the class definition.  
23

24 As of July 21, 2008, 371 Class Members' naturalization applications remain pending.  
25 Defendants determined that 283 naturalization applications from this group were ready for  
26 adjudication upon order of remand.

1           **C. Settlement Negotiations**

2           The parties have engaged in informal settlement negotiations throughout the pendency of  
3 this case, including numerous telephone conversations and the exchange of several letters. Upon  
4 reaching an impasse in their informal efforts to resolve this matter, the parties requested that the  
5 Court appoint a federal magistrate judge to mediate a settlement conference. The Court granted  
6 the parties' request by Order dated July 7, 2008.  
7

8           In the Court-approved mediation on July 21, 2008 before the Hon. Brian Tsuchida,  
9 United States Magistrate Judge, the parties conducted approximately 12 hours of discussions and  
10 arm's length negotiations with respect to a compromise and settlement of this matter and reached  
11 a proposed settlement agreement.  
12

13           **D. The Proposed Settlement**

14           The details of the Proposed Settlement are set forth in the Settlement Agreement and  
15 Release executed by the parties, a copy of which is attached as Exhibit 1. The key terms of the  
16 Proposed Settlement follow:

17           (1) USCIS agrees to adjudicate the naturalization applications of 283 (82%) Class  
18 Members and schedule eligible Class Members from this group for oath ceremonies on or before  
19 September 19, 2008. Eligible Class Members from this group will be naturalized in plenty of  
20 time to allow the individual to register to vote in the 2008 Presidential election by mail. The  
21 parties further agree to meet and confer and, if unable to reach a voluntary agreement, seek relief  
22 from the Court with respect to any Class Members from this group whose naturalization  
23 applications remain pending on September 19, 2008.  
24  
25  
26

1 (2) USCIS agrees to adjudicate the remaining Class Members' naturalization  
2 applications and schedule eligible Class Members from this group for oath ceremonies on or  
3 before October 18, 2008. Eligible Class Members from this group will be naturalized in time to  
4 allow the individual to register to vote in person for the 2008 Presidential election. The parties  
5 agree to meet and confer, mediate, and, if unable to reach a voluntary agreement, seek relief from  
6 the Court with respect to any Class Members whose applications remain pending as of October  
7 18, 2008.

9 (3) Defendants agree to pay Class Counsel \$185,000 in attorneys' fees and costs.

10 (4) Plaintiffs agree to dismiss the Action with prejudice and release Defendants from  
11 any and all claims that were, or could have been, asserted in the Action, except for individual  
12 Class Members' claims pursuant to 8 U.S.C. § 1421(c) challenging denial of a naturalization  
13 application.  
14

15 **E. Notice of Proposed Settlement**

16 The Court has scheduled a fairness hearing regarding the Proposed Settlement at 1:30  
17 P.M. on August 28, 2008. The parties propose to send individual notice of the Proposed  
18 Settlement to all Class Members (the "Settlement Notice") via U.S. Mail within five (5) days of  
19 this Court's order preliminarily approving the Proposed Settlement. A proposed form of  
20 Settlement Notice is attached to the Settlement Agreement as Exhibit B. The Settlement Notice  
21 will inform the Class Members of their right to object to the Proposed Settlement, to opt-out of  
22 the Class, and to appear at the fairness hearing. The cost of the Settlement Notice will be borne  
23 by Class Counsel.  
24  
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1 **III. THE COURT SHOULD PRELIMINARILY**  
2 **APPROVE THE PROPOSED SETTLEMENT**

3 Settlement of class actions is encouraged in the Ninth Circuit. See, e.g., Class Plaintiffs  
4 v. City of Seattle, 955 F.2d 1268, 1276 (9th Cir. 1992). Individual claims threaten to tax judicial  
5 resources. Class action litigation and, in this case, settlement are the best vehicles to provide  
6 complete relief to the Class.

7 Approval of class action settlement involves a two-step process. First, the Court issues a  
8 preliminary approval of the Proposed Settlement and the manner and form of the Settlement  
9 Notice. Preliminary approval means that the Proposed Settlement is within the "range of  
10 reasonableness" of possible settlements warranting notice to the Class and scheduling of a  
11 fairness hearing. Upon preliminary approval, the Settlement Notice will be disseminated to the  
12 Class informing the Class Members of the terms of the Proposed Settlement and the time and  
13 date of the fairness hearing. At the fairness hearing, Class Members will have the opportunity to  
14 be heard regarding the settlement, so long as they submit timely objections with the Clerk of the  
15 Court, and the parties may present evidence and argument concerning the adequacy, fairness, and  
16 reasonableness of the Proposed Settlement. See Manual for Complex Litigation 3d § 30.41.  
17  
18

19 **A. The Criteria for Preliminary Approval Are Satisfied**

20 A class settlement should be approved if it is "fundamentally fair, adequate and  
21 reasonable." Torrisi v. Tucson Elec. Power Co., 8 F.3d 1370, 1375 (9th Cir. 1993) (citation  
22 omitted); see Manual for Complex Litigation 3d § 30.41 (settlement should be preliminarily  
23 approved unless there exist "grounds to doubt its fairness or other obvious deficiencies"). A  
24 settlement reached through arms-length negotiations between capable counsel is presumptively  
25 fair. See, e.g., Berenson v. Faneuil Hall Marketplace, 671 F. Supp. 819, 822 (D. Mass. 1987).  
26

1 Here, the Proposed Settlement is the result of intensive, arms-length negotiations between  
2 experienced counsel who are familiar with the factual and legal underpinnings of the case. In  
3 addition, the Proposed Settlement was the product of a lengthy mediation before a neutral third  
4 party, Hon. United States Magistrate Judge Brian Tsuchida.

5  
6 The Proposed Settlement provides complete relief to the Class, in that it sets timeframes  
7 for USCIS to adjudicate all remaining Class Members' naturalization applications. Specifically,  
8 the majority of the remaining Class Members' naturalization applications (approximately 283)  
9 will be adjudicated, and eligible Class Members will be naturalized, by September 19, 2008 –  
10 approximately 60 days from the date the parties reached their compromise. The remaining Class  
11 Members' naturalization applications will be adjudicated, and eligible Class Members will be  
12 naturalized by October 18, 2008 – approximately 90 days from the date the parties reached their  
13 compromise.  
14

15 These timeframes are designed to allow the Class Members who are eligible to be  
16 naturalized to register to vote in the 2008 Presidential election this November. For the first  
17 group, there will be sufficient time to register to vote by mail. For the second group, there will  
18 be time to register to vote in person. It is also important to note that newly naturalized citizens  
19 are given voter registration cards at the oath ceremony.  
20

21 These timeframes are also consistent with the relief the Class sought in their pending  
22 motion for partial summary judgment, in which the Class requested an order directing  
23 Defendants to adjudicate the remaining Class Members' naturalization applications within 90  
24 days.  
25  
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1 The Proposed Settlement treats all Class Members fairly. The first group of 283 Class  
2 Members will proceed through the naturalization process more expeditiously based on  
3 Defendants' representations that all prerequisites to adjudication are complete for this group.  
4 The second group, whose applications will be completed only 30 days later, may include  
5 individuals who are still subject to pending requests for additional information or investigations.  
6 The additional 30-day period is intended to accommodate both the Class Members' interest in  
7 prompt adjudication of their naturalization applications and Defendants' interest in completing  
8 thorough investigations. USCIS will only be able to meet the timeframes for adjudications if the  
9 Court issues an immediate remand thereby giving USCIS jurisdiction prior to the final approval  
10 of the Agreement.  
11

12 **B. Remand Is Appropriate to Facilitate Settlement**

13 This Court has exclusive jurisdiction over the Class Members' naturalization applications  
14 pursuant to United States v. Hovsepien, 359 F.3d 1144 (9th Cir. 2004). In order for Defendants  
15 to meet the deadlines in the Proposed Settlement, the parties respectfully request that the Court  
16 enter an Order remanding the remaining Class Members' applications to USCIS effective  
17 immediately. A Stipulation and Proposed Order of Remand (the "Proposed Remand") is  
18 attached to the Proposed Agreement as Exhibit A and separately filed herewith. The Proposed  
19 Remand provides that if the Proposed Settlement is not approved, jurisdiction over the remaining  
20 Class Members' naturalization applications will revert to the Court.  
21

22 **C. The Proposed Settlement Notice Is Constitutionally Sound.**

23 The parties will provide individual notice of the Proposed Settlement to the Class  
24 Members via U.S. Mail in advance of the fairness hearing. Individual notice by mail is a fair and  
25  
26

1 reasonable method by which to apprise the Class Members of the Proposed Settlement and their  
2 right to be heard at the fairness hearing. Compare Fed. R. Civ. P . 23(e)(1) ("court must direct  
3 notice in a reasonable manner ") with Fed. R. Civ. P . 23(c)(2)(B) (providing for individual  
4 notice in damages classes).

5  
6 **D. The Requested Attorneys' Fees Are Fair and Reasonable**

7 Defendants have agreed to pay Plaintiffs attorneys' fees of approximately \$285 per hour  
8 for the 600 hours of attorney time Class Counsel invested in this case through June 2008, plus  
9 Plaintiffs' costs to date. The proposed fee award is fair and reasonable. Class Counsel, all of  
10 whom are experienced attorneys, worked in a very efficient manner to defeat Defendants' Motion  
11 to Dismiss and/or Remand, obtain class certification, conduct discovery, move for partial  
12 summary judgment, and obtain a favorable settlement that provides complete relief to the Class.  
13

14 **IV. CONCLUSION**

15 For the foregoing reasons, the parties jointly request that the Court enter an order  
16 preliminarily approving the Proposed Settlement, authorizing the manner and form of the  
17 Settlement Notice, and remanding the remaining Class Members' naturalization applications to  
18 USCIS effective immediately. In addition, a proposed order approving the final settlement is  
19 attached as Exhibit C to the Proposed Settlement for the Court's consideration after the fairness  
20 hearing.  
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1 DATED August 11, 2008

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**ORDER**

Based on the foregoing joint motion of the parties and a review of the record and file herein, and finding that the requested relief is warranted under existing law, it is hereby

**ORDERED** that the Proposed Settlement is preliminarily approved pursuant to Rule 23(e) of the Federal Rules of Civil Procedure; and it is further

**ORDERED** that Class Counsel shall mail individual notice of the Proposed Settlement in substantially the form attached to the Proposed Settlement as Exhibit B to the remaining Class Members within five (5) days of the date of this Order; and it is further

**ORDERED** that the parties shall appear for a fairness hearing before the Court at 1:30 P.M. of August 28, 2008.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
The Honorable Marsha J. Pechman  
United States District Judge