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8 UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
10 SAN FRANCISCO DIVISION

11 MOHAMED NAGIB HAMADA ABOUSHABAN )

12 Plaintiff, )

13 v. )

14 )  
15 )  
16 ROBERT S. MUELLER, Director )  
17 Federal Bureau of Investigation )  
18 EVELYN C. UPCHURCH, Acting Director, )  
19 Nebraska Service Center, USCIS )  
20 EMILIO T. GONZALEZ, Director, USCIS )  
21 MICHAEL CHERTOFF, Secretary )  
22 Department of Homeland Security, )  
23 ALBERTO GONZALES, Attorney General, )  
24 Department of Justice )

25 Defendants )

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**Civil Action No.**

**COMPLAINT FOR  
MANDAMUS**

**IMMIGRATION CASE**

1 **COMPLAINT FOR MANDAMUS**

2  
3 **I. INTRODUCTION**

4 This action is brought by Plaintiff to compel Defendants to process the  
5 necessary background checks and adjudicate his application for Adjustment of  
6 Status to Permanent Residence (Form I-485). Plaintiff's application was filed  
7 on June 17, 1998 with the Immigration and Naturalization Service (now known  
8 as the United States Citizenship and Immigration Services "USCIS") district  
9 office in Portland, Oregon. Plaintiff's file was later transferred to the Nebraska  
10 Service Center where it is currently pending. Plaintiff has made numerous  
11 inquiries and requests for adjudication concerning this application.  
12 Defendants have failed to complete his background checks and failed to  
13 adjudicate the application.

14  
15 **II. PARTIES**

16  
17 1. Plaintiff, Mohamed Aboushaban, was granted political asylum in the  
18 United States in 1997. He is currently an applicant for adjustment of status to  
19 lawful permanent residence and resides in Santa Rosa, California. He is also  
20 the father of three United States citizen children and the husband of a lawful  
21 permanent resident.

22  
23 2. Defendant Robert S. Mueller is sued in his official capacity as the  
24 Director of the Federal Bureau of Investigation ("FBI"). He is responsible for  
25 conducting both criminal record checks and the National Name Check Program  
26 ("NNCP"). The NNCP disseminates information from the FBI's Central Records  
27 System in response to requests submitted by federal agencies, including  
28 USCIS.

1           3. Defendant Evelyn C. Upchurch is sued in her official capacity as the  
2 Acting Director of the Nebraska Service Center of the United States Citizenship  
3 and Immigration Services, an agency within the Department of Homeland  
4 Security, which is charged by law with the duty of adjudicating I-485  
5 applications for adjustment of status to lawful permanent residence for  
6 persons granted political asylum.

7  
8           4. Defendant Emilio T. Gonzalez is sued in his official capacity as the  
9 Director of the United States Citizenship and Immigration Services, an agency  
10 within the Department of Homeland Security, which is charged by law with the  
11 duty of adjudicating I-485 applications for adjustment of status to lawful  
12 permanent residence for persons granted political asylum.

13  
14           5. Defendant Michael Chertoff is sued in his official capacity as the  
15 Secretary of the Department of Homeland Security. In this capacity he has  
16 responsibility for the administration and enforcement of the immigration laws  
17 pursuant to 8 U.S.C. §1103(a) including the accurate, efficient and secure  
18 processing of immigration benefits.

19  
20           6. Defendant Alberto Gonzales is sued in his official capacity as the  
21 Attorney General of the United States and is charged with the authority and  
22 duty to direct, manage, and supervise all employees and all files and records of  
23 the Department of Justice including the security checks required to obtain an  
24 immigration benefit such as adjustment of status to lawful permanent  
25 residence.

26 //

27 //

28 //

1 **III. JURISDICTION**

2  
3 7. This is a civil action brought pursuant to 28 USC §§ 1331 and  
4 1361 to redress the deprivation of rights, privileges and immunities secured to  
5 Plaintiff, by which jurisdiction is conferred, to compel Defendants to perform  
6 duties owed to Plaintiff.

7  
8 8. Jurisdiction is also conferred by 5 USC § 704. Plaintiffs are  
9 aggrieved by adverse agency action in this case, as the Administrative  
10 Procedures Act requires in order to confer jurisdiction on the District Courts. 5  
11 USC § 702 *et seq.*

12  
13 9. The aid of the Court is invoked under 28 USC §§ 2201 and 2202,  
14 authorizing a declaratory judgment.

15  
16 10. Costs and attorneys fees will be sought pursuant to the Equal  
17 Access to Justice Act, 5 USC § 504, and 28 USC 2412(d), *et seq.*

18 **IV. VENUE**

19  
20  
21 11. Venue is proper in San Francisco, California and the Northern  
22 District of California since Plaintiff resides in Northern California.

23 **V. EXHAUSTION OF REMEDIES**

24  
25  
26 12. Plaintiff has exhausted his administrative remedies. Plaintiff and  
27 his attorney have made numerous inquiries concerning the status of his I-485  
28 application to no avail. (*See Attachment A*) Plaintiff has no other adequate

1 remedy available for the harm he seeks to redress - the failure of Defendants to  
2 adjudicate his application for adjustment of status to permanent residence in a  
3 timely manner.

#### 4 5 **VI. REMEDY SOUGHT**

6  
7 13. Plaintiff seeks to have the Court compel Defendant Mueller to  
8 conduct a criminal record check and security/name check and issue the  
9 results within 30 days.

10  
11 14. Plaintiff seeks to have the Court compel Defendants Upchurch and  
12 Gonzalez to promptly adjudicate his pending I-485 application upon receipt  
13 of the required background checks.

#### 14 15 **VII. CAUSE OF ACTION**

16  
17 15. Plaintiff is a stateless Palestinian. He was born in Gaza in 1953. He  
18 moved to Kuwait in 1978. Plaintiff was living in Kuwait with his family at the  
19 time of the first Gulf war. Plaintiff and his wife, Laila Khalil Huneidi, were  
20 brought to the United States by the U.S. government under a special program  
21 for "Persian Gulf Evacuees". He and his wife were paroled into the United  
22 States on September 23, 1990 for "humanitarian reasons" and instructed to  
23 apply for political asylum by officials of the U.S. government. Plaintiff and his  
24 wife filed applications for political asylum on September 26, 1990.

25  
26 16. After waiting years for their asylum applications to be processed,  
27 plaintiff and his wife contacted United States Senator Mark Hatfield in  
28 September 1994 for assistance in getting their asylum applications

1 adjudicated. Plaintiff and his wife were eventually interviewed on their asylum  
2 applications on December 5, 1996 and were granted political asylum on  
3 January 22, 1997. Plaintiff's alien registration number is A29 669 697. His  
4 wife's alien registration number is A29 671 404. *See Attachment F.*

5  
6 17. Plaintiff and his wife applied for adjustment of status to lawful  
7 permanent residence (Form I-485) as "asylees" pursuant to 8 U.S.C. §1158(b)  
8 on June 17, 1998 with the district office of the immigration service in Portland,  
9 Oregon where they were living at the time. *See Attachment B.* Their  
10 applications were entered into the computer system on July 9, 1998. Plaintiff  
11 and his wife were interviewed on their I-485 applications in Portland on May 1,  
12 2000.

13  
14 18. Plaintiff and his wife's I-485 applications were transferred to the  
15 Nebraska Service Center on January 7, 2002. *See Attachment C.* Plaintiff's  
16 wife's I-485 application was approved on February 26, 2003.

17  
18 19. Plaintiff's application (LIN-02-145-51431) remained adjudicated  
19 at the Nebraska Service Center until April 28, 2003 when it was transferred  
20 back to the Portland district office "in order to speed processing". *See*  
21 *Attachment D.*

22  
23 20. On November 17, 2004 plaintiff's application was transferred back  
24 to the Nebraska Service Center where it remains pending.

25  
26 21. The Nebraska Service Center is currently processing I-485  
27 applications for asylees filed as of December 1, 2000. *See List of Nebraska*  
28 *Service Center Processing Dates as of February 8, 2006 (Attachment E).* Since

1 Plaintiff's I-485 application was filed on June 17, 1998, it is significantly past  
2 the current processing time.

3  
4 22. Plaintiff alleges that Defendants have a non-discretionary duty to  
5 complete the processing of his application for permanent residence in a  
6 reasonable time. Despite the fact that Plaintiff's application has been pending  
7 for more than seven years, Defendants have failed to complete the processing of  
8 the application.

9  
10 23. Plaintiff has made numerous inquiries about the status of his  
11 application over the course of several years. In response to these inquiries,  
12 Plaintiff was scheduled for a fingerprint appointment on February 3, 2006. On  
13 information and belief it is alleged that criminal background checks at the FBI  
14 take 3-5 days. Therefore, Plaintiff's criminal background check should now be  
15 completed. *See Attachment A.*

16  
17 24. Plaintiff received a letter from USCIS dated January 27, 2006 which  
18 states: "A check of our records establishes that your case is not yet ready for  
19 decision, as the required investigation into your background remains open.  
20 Until the background investigation is completed, we cannot move forward on  
21 your case..." *See Attachment A.*

22  
23 25. Plaintiff understands the need for a criminal record check and a  
24 security/name check clearance for applicants for permanent residence.  
25 However, Plaintiff's name check clearance request has been pending with  
26 Defendant Mueller for years and years. Despite Defendants' claims to the  
27 contrary, Plaintiff suspects that no actual background investigation is ongoing  
28 at this time and his case is just sitting on a shelf somewhere where it will likely



**LIST OF ATTACHMENTS**

*Description*

- A Copies of various inquiries and responses
- B Proof of filing Application for Adjustment of Status (Form I-485) on June 17, 1998.
- C Letter dated January 7, 2002 notifying Plaintiff of the transfer of his pending application and file from the Portland district office to the Nebraska Service Center
- D Transfer notice dated April 29, 2003 from the Nebraska Service Center to the Portland district office “to speed processing”.
- E Nebraska Service Center Processing Dates Posted February 8, 2006
- F Letter granting political asylum and “Assessment to Grant”.