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NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

BEI CHENG,

Plaintiff,

v.

ALBERTO GONZALES, UNITED STATES
ATTORNEY GENERAL, et al.,

Defendants..

Case Number C 06-01514 JF (RS)

ORDER¹ TO SHOW CAUSE

[Docket No. 1]

On February 27, 2006, Plaintiff Bei Cheng, proceeding *pro se*, filed a “petition for hearing on naturalization application under 8 U.S.C. § 1447(b)” against Defendants Alberto Gonzales, United States Attorney General, Michael Chertoff, Secretary of the Department of Homeland Security, Emilio T. Gonzalez, Director of United States Citizenship and Immigration Services, David Still, San Francisco Director, United States Citizenship and Immigration Services, and Robert S. Mueller, Director of the Federal Bureau of Investigation (“FBI”).

Plaintiff alleges the following. She is a lawful permanent resident of the United States,

¹ This disposition is not designated for publication and may not be cited.

1 and she applied for naturalization on August 2, 2004. On March 15, 2005, Plaintiff underwent a
2 naturalization interview at the San Jose office of the United States Citizenship and Immigration
3 Services (“USCIS”). She was told that she passed the English and United States History and
4 Government tests, but that a decision could not be made until an FBI name check was completed.
5 On May 13, 2005, Plaintiff had an appointment at the San Jose USCIS office, during which she
6 was again told that her FBI name check was still pending. On May 27, 2005, June 24, 2005, and
7 November 7, 2005, Plaintiff sent e-mail inquiries to the FBI National Name Check Program.
8 These inquiries prompted no response. In response to a Freedom of Information and Privacy Act
9 request, Plaintiff received a letter from the FBI dated June 8, 2005. The letter stated: “A search
10 of the automated indices to the central records system files at FBI Headquarters located no
11 records.” Plaintiff made inquiries of San Jose USCIS office regarding the status of her
12 naturalization application on June 16, 2005, September 7, 2005, November 4, 2005, December 8,
13 2005, and January 19, 2006. In response to each inquiry, she was told that the FBI name check
14 was pending. She has not yet received a determination of her application for citizenship.

15 Plaintiff alleges that Defendants have violated 8 U.S.C. § 1447(b), which provides:

16 If there is a failure to make a determination under section 1446 of this title before
17 the end of the 120-day period after the date on which the examination is
18 conducted under such section, the applicant may apply to the United States district
19 court for the district in which the applicant resides for a hearing on the matter.
Such court has jurisdiction over the matter and may either determine the matter or
remand the matter, with appropriate instructions, to the Service to determine the
matter.

20 Plaintiff requests that this Court adjudicate the naturalization application or issue a writ of
21 mandamus requiring Defendants to adjudicate her application immediately.

22 Good cause therefore appearing, IT IS HEREBY ORDERED as follows:

23 (1) The Clerk of the Court shall serve by certified mail a copy of the petition and a
24 copy of this Order upon counsel for Defendants, the Office of the United States Attorney. The
25 Clerk of the Court also shall serve a copy of this Order upon Plaintiff Bei Cheng.

26 (2) Defendants shall, within thirty (30) days after receiving this order, file and serve
27 upon Plaintiff an answer, showing cause why a writ of mandamus should not issue. At the time
28 the answer is filed, Defendants shall lodge with the Court all records relevant to a determination

1 of the issues presented by the complaint. If Defendants contend that Plaintiff has failed to
2 exhaust administrative remedies as to any ground for relief asserted in the complaint, Defendants
3 shall specify what administrative remedy remains available to Plaintiff. If Defendants waive or
4 concede the issue of exhaustion, Defendants shall so state in their answer.

5 (3) Plaintiff may file a response to the matters raised in the answer within thirty (30)
6 days after receiving the answer.

7 (4) Unless otherwise ordered by the Court, the matter will be deemed submitted upon
8 the filing of the response or upon the expiration of time to file a response.

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11 DATED: March 20, 2006

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14 JEREMY FOGEL
United States District Judge

1 This Order has been served upon the following persons:

2 Bei Cheng
3 1507 Marlene Court
4 San Jose, CA 95118

5 Office of the United States Attorney
6 150 Almaden Blvd., Suite 900
7 San Jose, CA 95113

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