

Apr. 20, 2009

STEVEN M. LARIMORE  
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S.D. OF FLA. - MIAMI

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

JUANA MACLEAN,  
  
Plaintiff,

Case No.:

**09-14118-Civ-GRAHAM/LYNCH**

JUDGE:

JANET NAPOLITANO, Secretary, U.S.  
Department of Homeland Security, MICHAEL  
AYTES, Acting Deputy Director, United  
States Citizenship and Immigration Services,  
KATHY REDMOND, District Director,  
United States Citizenship and Immigration  
Services, Tampa, Florida.

MAGISTRATE JUDGE:

Defendants.

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF AND  
PETITION FOR A WRIT OF  
MANDAMUS**

**INTRODUCTION**

COMES NOW the Plaintiff, JUANA MACLEAN, by and through her undersigned  
counsel, and sues the Defendants and alleges as follows:

**PRELIMINARY STATEMENT**

1. This is an action seeking declaratory, injunctive and mandamus relief from  
defendants determination that, as a matter of law, plaintiff lost status as an "immediate relative"  
spouse of a United States citizen when her citizen spouse died while plaintiff's immigration  
applications were filed and awaiting agency action. Plaintiff respectfully petitions this Court for  
injunctive, declaratory and mandamus relief to compel defendants and their subordinates to: (a)  
find that, as a matter of statutory interpretation, plaintiff remains an "immediate relative" under

INA § 201(b)(2)(A)(i), 8 U.S.C. § 1151(b)(2)(A)(i) due to marriage to a United States citizen; (b) order defendants to reopen and readjudicate the immigrant petition (I-130 petition) that was filed on behalf of plaintiff by her U.S. citizen spouse; and (c) order defendants to reopen and readjudicate the (i) adjustment of status application (I-485 application) that plaintiff filed as an immediate relative spouse of a U.S. citizen.

### **JURISDICTION AND VENUE**

2. This action arises under the Immigration and Nationality Act of 1952 ("INA"), 8 U.S.C. § 1151(b)(2)(A)(i) and 8 U.S.C. § 1255. This Court has jurisdiction over this action under 28 U.S.C. § 1331 (federal question), the INA, the Administrative Procedure Act, 5 U.S.C. § 701 *et. seq.*, and the Mandamus Act, 28 U.S.C. § 1361. Plaintiff additionally seeks relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 *et. seq.* (declaratory relief).

3. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and 28 U.S.C. § 1391(e)(1) (United States defendant resides in this district); 28 U.S.C. § 1391(e)(2) (cause of action arose in this district) and 28 U.S.C. § 1391(e)(4) (Plaintiff resides in this district and no real property is at issue).

### **PARTIES**

4. Plaintiff was born in Spain and is a citizen of Belgium and has been assigned file number A078 374 004 by defendants.

5. Defendant Janet Napolitano, is sued in her official capacity as Secretary of Department of Homeland Security ("DHS"). As Secretary of DHS, Ms. Napolitano is responsible for the administration and enforcement of the immigration laws of the United States.

6. Defendant Michael Aytes, is sued in his official capacity as Acting Deputy Director of United States Citizenship and Immigration Services (USCIS) and presently serves as

the agency's highest ranking official. In that capacity, Mr. Aytes is responsible for the overall administration of USCIS and implementation of immigration laws of the United States.

7. Defendant Kathy Redmond is sued in her official capacity as District Director of USCIS' Tampa District. Ms. Redmond is responsible for the overall administration of all USCIS offices in the Tampa district which includes jurisdiction over USCIS' West Palm Beach Field Office where the petition filed on behalf of plaintiff and plaintiff's application for adjustment of status were adjudicated.

8. Defendants are agents of the Department of Homeland Security and are charged with responsibility for admission of the Immigration and Nationality Act, 8 U.S.C. § 1101 *et seq.*, including, but not limited to, the statutory obligation to adjudicate immigrant visa petitions for alien relatives (USCIS Form I-130) and applications for adjustment of status (USCIS Form I-485).

### **EXHAUSTION**

9. There are no administrative remedies available for plaintiff to exhaust.

10. There is no administrative appeal of the denial of an application for adjustment of Status (I-485). 8 C.F.R. § 245.2(a)(5)(ii).

11. There also is no administrative appeal of the I-130 immigrant petition, even before the Executive Office for Immigration Review ("EOIR"), because the Board of Immigration Appeals ("BIA") has held that the immigration courts (within EOIR) and the BIA (administrative courts of limited and not general jurisdiction) lack jurisdiction under the administrative regulations to review such a denial. See *Matter of Sano*, 19 I&N Dec. 299 (BIA 1985). The procedure for obtaining lawful permanent resident status, the adjustment of status (I-485) application, requires an approved I-130 immigrant petition as a condition for approval.

12. While plaintiff may renew the adjustment of status application (Form I-485) in removal proceedings before EOIR, adjudication of this application requires an I-130 approval. Also, initiation of removal proceedings is at the sole discretion of DHS, and DHS has not elected to initiate removal proceedings against plaintiff. One cannot apply for initiation of removal proceedings. As such this is not a mandatory exhaustion requirement and cannot be imposed on plaintiff's APA action. *See Darby v. Cisneros*, 509 U.S. 137 (1993).

### **STATUTORY AND REGULATORY BACKGROUND**

13. Plaintiff seeks lawful permanent resident status, and applied for such status. Plaintiff challenges defendants' determinations that, as a matter of law, plaintiff was stripped of the status as an "immediate relative" spouse of a United States citizen when the citizen spouse tragically died while plaintiff's immigration applications were awaiting adjudication.

14. A United States citizen who marries a non-citizen may apply for his or her spouse to reside permanently in the United States with the citizen. Pursuant to 8 U.S.C. § 1154(1)(A)(i), a United States citizen may file a petition (USCIS Form *I-130*) on behalf of a spouse claiming the spouse is entitled to classification as an "immediate relative." The term "immediate relative", as applicable to the United States citizen's petition, is set forth in the *first* sentence of 8 U.S.C. § 1151(b)(2)(A)(i) as the "children, spouses, and parents of a citizen of the United States, except that, in the case of parents, such citizens shall be at least 21 years of age."

15. An alien spouse whose United States citizen *never filed* a petition on the alien's behalf, may also file a petition (Form *I-360* self-petition) on his or her own behalf, pursuant to 8 U.S.C. § 1154(1)(A)(ii), which states, "An alien spouse described in the *second sentence* of section 201(b)(2)(A)(i) *also* may file a petition...". *Id.*, (emphasis supplied) In such a case, the immediate relative definition set out in the *second* sentence of 8 U.S.C. § 1151(b)(2)(A)(i) is

applicable: “In the case of an alien who was the spouse of a citizen of the United States for at least 2 years at the time of the citizen’s death and was not legally separated from the citizen at the time of the citizen’s death, the alien (and each child of the alien) shall be considered, for purposes of this subsection, to remain an immediate relative after the date of the citizen’s death but only if the spouse files a petition under section 204(a)(1)(A)(ii) of this title within 2 years after such date and only until the date the spouse remarries.”

16. Defendants have applied the incorrect immediate relative definition to plaintiff’s petition and application. Specifically, defendants have taken the position that if the citizen spouse dies before the second anniversary of the marriage, the alien spouse is no longer considered a “spouse” entitled to immediate relative status. In doing so, defendants have confused the immediate relative definition applicable to *I-130* petitions filed by United States citizen spouses (the *first* sentence of 8 U.S.C. § 1151(b)(2)(A)(i)) with the immediate relative definition applicable to *I-360* self-petitions filed by alien spouses (the *second* sentence of 8 U.S.C. § 1151(b)(2)(A)(i)).

17. Courts have refused to follow the defendant’s position. See *Freeman v. Gonzales*, 444 F.3d 1031 (9<sup>th</sup> Cir. 2006); *Lockhart v. Napolitano*, No. 08-3321, \_\_\_ F.3d \_\_\_ (6<sup>th</sup> Cir. 2009); *Taing v. Chertoff*, 2007 U.S. Dist. LEXIS 911411 (D. Mass 2007), *appeal docketed*, No. 08-1179 (1<sup>st</sup> Cir. Feb. 11, 2008); *But see Robinson v. Napolitano*, No. 07-2977 \_\_\_ F.3d \_\_\_ (3<sup>rd</sup> Cir. 2009); *Burger v. McElroy*, 97 Civ. 8775 (RPP), 1999 U.S. Dist. LEXIS 4854 (S.D.N.Y. Apr. 12, 1999); and *Turek v. Dep’t of Homeland Security*, 450 F. Supp. 2d 736 (E.D. Mich. 2006).

18. Through the application of the improper standard, defendants have compounded plaintiff’s grief. Defendants have stripped plaintiff of immediate relative status, denied the

application for adjustment of status, and denied work and travel authorization. These actions have exacted grief, suffering, loss of work authorization, loss of travel authorization, separation of family members, and other injuries flowing from forced unlawful status such as loss of entitlement to estate benefits, social security benefits, loss of driving privileges due to state laws requiring proof of legal status, the ability to file immigrant visa petitions on behalf of family members, and loss of accrued lawful residence time that is a prerequisite for eventual United States citizenship.

### **STATEMENT OF THE FACTS**

19. On or about March 7, 1999, Plaintiff was inspected and admitted to the United States as a B-2 nonimmigrant visitor at Newark, New Jersey.

20. On or about January 14, 2000, plaintiff married Dr. Lloyd Ronald MacLean, a citizen of the United States.

21. On or about March 10, 2000, plaintiff's U.S. citizen spouse filed with the required fee a Form I-130, Petition for Alien Relative ("Petition") establishing his citizenship and that his spouse is an immediate relative, and executed an I-864 Affidavit of Support. On the same day, plaintiff filed with the required fee a Form I-485, Application to Register Permanent Residence or to Adjust Status ("Application"), seeking adjustment of status to lawful permanent resident, relying on the citizen spouse's Petition attesting to the alien's status as spouse. Plaintiff was issued an Employment Authorization Document and an Advance Parole Travel Document.

22. On or about October 24, 2001, plaintiff's spouse, Dr. Lloyd Ronald MacLean died of uremia (renal failure) as a result of improper kidney dialysis procedures.

23. On or about June 8, 2006, defendants denied the petition and application which were concurrently filed by the couple solely on the basis that plaintiff was no longer the spouse of a United States citizen and as a result the petition was no longer valid.

### COUNT I

24. Plaintiff realleges and incorporates by reference paragraphs 1 through 23 above.

25. Plaintiff is an immediate relative for purposes of INA § 201(b)(2)(A)(i), 8 U.S.C. § 1151(b)(2)(A)(i) and is eligible for adjustment of status under INA § 245(a), 8 U.S.C. § 1255(a).

26. Plaintiff was not stripped of the status of an "immediate relative" spouse by the death of plaintiff's spouse.

27. Plaintiff remains eligible to receive adjustment of status as the "immediate relative" surviving spouse of a United States citizen.

28. Plaintiff is admissible to the United States as a lawful permanent resident.

29. An immigrant visa was immediately available to plaintiff at the time plaintiff's applications were filed, pursuant to INA § 245(a), 8 U.S.C. 1255(a).

30. Plaintiff has suffered and will continue to suffer significant and irreparable harm because of defendants' policies, procedures, acts and failures to act as described herein.

31. Defendants violated plaintiff's statutory right to apply for relief which Congress has provided under the INA, depriving plaintiff of the opportunity to adjust status to lawful permanent resident and live lawfully in the United States under INA § 245, 8 U.S.C. 1255(a).

32. Defendants also improperly attempt to revoke the approval of an I-130 petition unless plaintiff present a request under 8 C.F.R. § 205.1(a)(3)(C)(2) for humanitarian

reinstatement, supported by a Form I-864 executed by an individual who qualifies under section 213A(f)(5)(B) of the Immigration and Nationality Act as a qualifying substitute sponsor.

33. The regulation found at 8 C.F.R. § 205.1(a)(3)(C)(2) is invalid as a matter of law.

34. The substitute sponsor provisions of section 213A(f)(5)(B) of the Immigration and Nationality Act (INA) do not apply to plaintiff whose U.S. citizen spouse executed an I-864 Affidavit of Support under section 213A(f)(1) of the INA, thereby fulfilling the requirement of section 212(a)(4)(C)(ii) of the INA that the person petitioning for the alien's admission has executed an I-864 Affidavit of Support.

## **COUNT II**

35. Plaintiff realleges and incorporates by reference paragraphs 1 through 34 above.

36. Plaintiff has suffered a "legal wrong" or has been "adversely affected or aggrieved" by agency action. 5 U.S.C. § 702. Plaintiff is a person aggrieved by agency action, for which there is no other adequate remedy in a court. 5 U.S.C. § 704.

37. Defendants have unlawfully and erroneously interpreted the definition of the term "immediate relative" in INA § 201(a)(b)(2)(A)(i). Based on this erroneous interpretation, defendants have erroneously denied both the immediate relative petition filed on plaintiff's behalf and plaintiff's adjustment of status in violation of Congressional intent. Plaintiff is entitled to injunctive relief to "compel agency action unlawfully withheld or unreasonably delayed" and to hold unlawful and set aside agency action that, as here, is not in accordance with the law. 5 U.S.C. §§ 706(1) and (2).

## **COUNT III**

38. Plaintiff realleges and incorporates by reference paragraphs 1 through 37 above.

39. Defendants owe plaintiff a clear and certain duty to adjudicate plaintiff's applications on the basis that plaintiff remains an "immediate relative" spouse of a United States citizen, and was not stripped of this status by the death of plaintiff's spouse. See *Freeman v. Gonzales*, 444 F.3d 1031 (9th Cir. 2006).

40. Defendants denied plaintiff's applications solely on the basis that plaintiff was stripped of the status of spouse, and not for discretionary reasons. Defendants have failed to perform their duties by determining that plaintiff is no longer the "spouse" of a U.S. citizen and therefore not entitled to adjustment of status and for issuance of an immigrant visa, and by failing to exercise discretion.

41. Plaintiff has no other adequate remedy.

### **RELIEF REQUESTED**

**WHEREFORE**, Plaintiff, JUANA MACLEAN, prays that this Honorable Court grant her the following relief:

1. Accept jurisdiction over this action;
2. Declare that plaintiff filed the necessary petition and application for lawful permanent resident status, and was not stripped of the status of "spouse" of a United States citizen upon the death of the citizen spouse;
3. Declare that plaintiff is entitled to the process that flows from a properly filed petition and application, and must be considered a spouse for purposes of the petition and application;
4. Declare that plaintiff is an immediate relative under 8 USC § 1151(b)(2)(A)(i) and for the purposes of adjudicating an I-130 petition;

5. Declare that defendants also improperly attempt to revoke the approval of an I-130 petition unless plaintiff presents a request under 8 C.F.R. § 205.1(a)(3)(C)(2) for humanitarian reinstatement, supported by a Form I-864 executed by an individual who qualifies under section 213A(f)(5)(B) of the Immigration and Nationality Act as a qualifying substitute sponsor;

6. Declare that 8 C.F.R. § 205.1(a)(3)(C)(2) is invalid as a matter of law;

7. Declare that plaintiff whose citizen spouse executed a Form I-864 Affidavit of Support has satisfied the requirements of 212(a)(4)(C)(ii) of the INA in that the person petitioning for the alien's admission has executed an I-864 Affidavit of Support, and that plaintiff is not required to submit a Form I-864 from a qualifying substitute sponsor under section 213A(f)(5)(B) of the INA;

8. Declare that I-130 petition procedure is not the forum for determining substantive questions of admissibility under the immigration laws, and when eligibility for immediate relative classification is established, the petition shall be granted;

9. Issue an injunction prohibiting defendants from using the death of the U.S. citizen spouse as a discretionary factor in the adjudication of the petition and application;

10. Issue an injunction prohibiting defendants from using factors flowing from the unlawful denial of the application to again deny the petition and application upon reopening, including but not limited to claims of abandonment of the application due to departure from the United States, and bars to admissibility related to "unlawful presence" caused by the wrongful denial;

11. Issue an injunction prohibiting defendants from revoking approval of an I-130 petition where plaintiff does not present a request under 8 C.F.R. § 205.1(a)(3)(C)(2) for

humanitarian reinstatement, supported by a Form I-864 executed by an individual who qualifies under section 213A(f)(5)(B) of the Immigration and Nationality Act as a qualifying substitute sponsor, where plaintiff's citizen spouse previously executed a Form I-864.


12. Issue a writ of mandamus compelling defendants to (a) reopen plaintiff's adjustment of status application on the ground that the application was unlawfully denied on the basis of defendants' erroneous determination that plaintiff's status as an "immediate relative" spouse of a United States citizen was stripped by the death of plaintiff's spouse, (b) treat plaintiff as an "immediate relative" spouse and adjudicate the immigrant petition filed on plaintiff's behalf accordingly, and (c) treat plaintiff as an "immediate relative" spouse and exercise discretion to adjudicate plaintiff's adjustment of status application;

13. Award plaintiff suit money, costs and attorney's fees incurred as a result of bringing this action; and

14. Grant such further relief as Plaintiff may request and /or this Honorable Court deems just and proper under the circumstances.

Respectfully Submitted,

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JS 44 (Rev. 11/05)

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.) **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.**

<p><b>I. (a) PLAINTIFFS</b></p> <p style="text-align: center;">Juana MACLEAN</p> <p><b>(b) County of Residence of First Listed Plaintiff</b> <u>Martin</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p><b>(c) Attorney's (Firm Name, Address, and Telephone Number)</b></p> <p style="font-size: 2em; font-weight: bold;">09 CV 14118 <sup>See Attachment</sup> <u>DLG/FJL</u></p>	<p><b>DEFENDANTS</b></p> <p><b>Janet Napolitano</b>, Secretary Department of Homeland Security;  <b>Michael Aytes</b>, Acting Director United States Citizenship and Immigration Services;  <b>Kathy Redman</b>, District Director, USCIS, Tampa, Florida</p> <p>County of Residence of First Listed Defendant <u>Washington, D.C.</u> (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT LAND INVOLVED.</p> <p>Attorneys (If Known) <u>See Attachment</u></p>
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**(d) Check County Where Action Arose:**  MIAMI-DADE  MONROE  BROWARD  PALM BEACH  MARTIN  ST. LUCIE  INDIAN RIVER  OKEECHOBEE HIGHLANDS

<p><b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p> <p style="font-size: 1.5em; font-weight: bold;">09 CV 14118 <u>DLG/FJL</u></p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;">Citizen of This State</td> <td style="width:10%; text-align: center;">PTF 1</td> <td style="width:10%; text-align: center;">DEF 1</td> <td style="width:33%;">Incorporated or Principal Place of Business In This State</td> <td style="width:10%; text-align: center;">PTF 4</td> <td style="width:10%; text-align: center;">DEF 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;">PTF 2</td> <td style="text-align: center;">DEF 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;">PTF 5</td> <td style="text-align: center;">DEF 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;">PTF 3</td> <td style="text-align: center;">DEF 3</td> <td>Foreign Nation</td> <td style="text-align: center;">PTF 6</td> <td style="text-align: center;">DEF 6</td> </tr> </table>	Citizen of This State	PTF 1	DEF 1	Incorporated or Principal Place of Business In This State	PTF 4	DEF 4	Citizen of Another State	PTF 2	DEF 2	Incorporated and Principal Place of Business In Another State	PTF 5	DEF 5	Citizen or Subject of a Foreign Country	PTF 3	DEF 3	Foreign Nation	PTF 6	DEF 6
Citizen of This State	PTF 1	DEF 1	Incorporated or Principal Place of Business In This State	PTF 4	DEF 4														
Citizen of Another State	PTF 2	DEF 2	Incorporated and Principal Place of Business In Another State	PTF 5	DEF 5														
Citizen or Subject of a Foreign Country	PTF 3	DEF 3	Foreign Nation	PTF 6	DEF 6														

IV. NATURE OF SUIT (Place an "X" in One Box Only)			FORFEITURE/PENALTY		BANKRUPTCY		OTHER STATUTES	
<p><b>CONTRACT</b></p> <p><input type="checkbox"/> 110 Insurance</p> <p><input type="checkbox"/> 120 Marine</p> <p><input type="checkbox"/> 130 Miller Act</p> <p><input type="checkbox"/> 140 Negotiable Instrument</p> <p><input type="checkbox"/> 150 Recovery of Overpayment &amp; Enforcement of Judgment</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)</p> <p><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits</p> <p><input type="checkbox"/> 160 Stockholders' Suits</p> <p><input type="checkbox"/> 190 Other Contract</p> <p><input type="checkbox"/> 195 Contract Product Liability</p> <p><input type="checkbox"/> 196 Franchise</p>	<p><b>TORTS</b></p> <p><b>PERSONAL INJURY</b></p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel &amp; Slander</p> <p><input type="checkbox"/> 330 Federal Employers' Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p>	<p><b>PERSONAL INJURY</b></p> <p><input type="checkbox"/> 362 Personal Injury - Med. Malpractice</p> <p><input type="checkbox"/> 365 Personal Injury - Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p> <p><b>PERSONAL PROPERTY</b></p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p>	<p><input type="checkbox"/> 610 Agriculture</p> <p><input type="checkbox"/> 620 Other Food &amp; Drug</p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 630 Liquor Laws</p> <p><input type="checkbox"/> 640 R.R. &amp; Truck</p> <p><input type="checkbox"/> 650 Airline Regs.</p> <p><input type="checkbox"/> 660 Occupational Safety/Health</p> <p><input type="checkbox"/> 690 Other</p>	<p><input type="checkbox"/> 422 Appeal 28 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p><b>PROPERTY RIGHTS</b></p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 840 Trademark</p>	<p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 410 Antitrust</p> <p><input type="checkbox"/> 430 Banks and Banking</p> <p><input type="checkbox"/> 450 Commerce/ICC Rates/etc.</p> <p><input type="checkbox"/> 460 Deportation</p> <p><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations</p> <p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 490 Cable/Sat TV</p> <p><input type="checkbox"/> 810 Selective Service</p> <p><input type="checkbox"/> 850 Securities/Commodities/Exchange</p> <p><input type="checkbox"/> 875 Customer Challenge 12 USC 3410</p> <p><input checked="" type="checkbox"/> 890 Other Statutory Actions</p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input type="checkbox"/> 892 Economic Stabilization Act</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 894 Energy Allocation Act</p> <p><input type="checkbox"/> 895 Freedom of Information Act</p> <p><input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p>	<p><b>LABOR</b></p> <p><input type="checkbox"/> 710 Fair Labor Standards Act</p> <p><input type="checkbox"/> 720 Labor/Mgmt. Relations</p> <p><input type="checkbox"/> 730 Labor/Mgmt. Reporting &amp; Disclosure Act</p> <p><input type="checkbox"/> 740 Railway Labor Act</p> <p><input type="checkbox"/> 790 Other Labor Litigation</p> <p>791 Empl. Ret. Inc Security Act</p>	<p><b>SOCIAL SECURITY</b></p> <p><input type="checkbox"/> 861 HIA (1395ff)</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 DIWC/DIWW (405(e))</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI (405(e))</p>	<p><b>FEDERAL TAX SUITS</b></p> <p><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)</p> <p><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609</p>
<p><b>REAL PROPERTY</b></p> <p><input type="checkbox"/> 210 Land Condemnation</p> <p><input type="checkbox"/> 220 Foreclosure</p> <p><input type="checkbox"/> 230 Rent Lease &amp; Ejectment</p> <p><input type="checkbox"/> 240 Torts to Land</p> <p><input type="checkbox"/> 245 Tort Product Liability</p> <p><input type="checkbox"/> 290 All Other Real Property</p>	<p><b>CIVIL RIGHTS</b></p> <p><input type="checkbox"/> 441 Voting</p> <p><input type="checkbox"/> 442 Employment</p> <p><input type="checkbox"/> 443 Housing/Accommodations</p> <p><input type="checkbox"/> 444 Welfare</p> <p><input type="checkbox"/> 445 Amer. w/Disabilities - Employment</p> <p><input type="checkbox"/> 446 Amer. w/Disabilities - Other</p> <p><input type="checkbox"/> 440 Other Civil Rights</p>	<p><b>PRISONER PETITIONS</b></p> <p><input type="checkbox"/> 510 Motions to Vacate Sentence</p> <p><b>Habeas Corpus:</b></p> <p><input type="checkbox"/> 530 General</p> <p><input type="checkbox"/> 535 Death Penalty</p> <p><input type="checkbox"/> 540 Mandamus &amp; Other</p> <p><input type="checkbox"/> 550 Civil Rights</p> <p><input type="checkbox"/> 555 Prison Condition</p>	<p><input type="checkbox"/> 610 Agriculture</p> <p><input type="checkbox"/> 620 Other Food &amp; Drug</p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 630 Liquor Laws</p> <p><input type="checkbox"/> 640 R.R. &amp; Truck</p> <p><input type="checkbox"/> 650 Airline Regs.</p> <p><input type="checkbox"/> 660 Occupational Safety/Health</p> <p><input type="checkbox"/> 690 Other</p>	<p><input type="checkbox"/> 422 Appeal 28 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p><b>PROPERTY RIGHTS</b></p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 840 Trademark</p>	<p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 410 Antitrust</p> <p><input type="checkbox"/> 430 Banks and Banking</p> <p><input type="checkbox"/> 450 Commerce/ICC Rates/etc.</p> <p><input type="checkbox"/> 460 Deportation</p> <p><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations</p> <p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 490 Cable/Sat TV</p> <p><input type="checkbox"/> 810 Selective Service</p> <p><input type="checkbox"/> 850 Securities/Commodities/Exchange</p> <p><input type="checkbox"/> 875 Customer Challenge 12 USC 3410</p> <p><input checked="" type="checkbox"/> 890 Other Statutory Actions</p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input type="checkbox"/> 892 Economic Stabilization Act</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 894 Energy Allocation Act</p> <p><input type="checkbox"/> 895 Freedom of Information Act</p> <p><input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p>	<p><b>LABOR</b></p> <p><input type="checkbox"/> 710 Fair Labor Standards Act</p> <p><input type="checkbox"/> 720 Labor/Mgmt. Relations</p> <p><input type="checkbox"/> 730 Labor/Mgmt. Reporting &amp; Disclosure Act</p> <p><input type="checkbox"/> 740 Railway Labor Act</p> <p><input type="checkbox"/> 790 Other Labor Litigation</p> <p>791 Empl. Ret. Inc Security Act</p>	<p><b>SOCIAL SECURITY</b></p> <p><input type="checkbox"/> 861 HIA (1395ff)</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 DIWC/DIWW (405(e))</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI (405(e))</p>	<p><b>FEDERAL TAX SUITS</b></p> <p><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)</p> <p><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609</p>

**V. ORIGIN** (PLACE AN "X" IN ONE BOX ONLY)

1 Original Proceeding  2 Removed from State Court  3 Re-filed - (see VI below)  4 Reinstated or Reopened  5 Transferred from another district (specify)  6 Multidistrict Litigation  7 Appeal to District Judge from Magistrate Judgment

**VI. RELATED/RE-FILED CASE(S).** (See instructions second page):

a) Re-filed Case  YES  NO      b) Relates Cases  YES  NO

JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

**VII. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. (Do not cite jurisdictional statutes unless diversity): Writ of Mandamus re: Naturalization

LENGTH OF TRIAL 1 Days estimated (for both sides to try entire case)

**VIII. REQUESTED IN COMPLAINT:**  CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

**DEMAND \$** Writ of Mandamus      **CHECK YES only if demanded in complaint:** **JURY DEMAND:**  Yes  No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE      SIGNATURE OF ATTORNEY OF RECORD \_\_\_\_\_      DATE April 20, 2009

**FOR OFFICE USE ONLY**

AMOUNT 350      RECIPT # 725720      IFP \_\_\_\_\_

CIVIL COVER SHEET ATTACHMENT

(Rev. 3/99)

I. (a) PLAINTIFFS

Juana MACLEAN

(b) County of Residence of First Listed Plaintiff Martin  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

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Palm Beach Gardens, Florida 33420-0189  
(561) 478-5353

DEFENDANTS

Secretary Department of Homeland Security, Ja  
Acting Director US Citizenship and Immigratio  
District Director, USCIS, Miami, Florida, Kath

County of Residence of First Listed Defendant Washington, D.C.

(IN U.S. PLAINTIFF CASES ONLY)  
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

R. Alexander Acosta, Esq.  
United States Attorney  
500 E. Broward Boulevard  
Ft. Lauderdale, Florida 33394  
(954) 356-7255

Apr. 20, 2009

STEVEN M. LARIMORE  
CLERK U.S. DIST. CT.  
S.D. OF FLA. - MIAMI