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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

**SERVICE EMPLOYEES INTERNATIONAL
UNION**, an organization; and,
**PINEROS Y CAMPESINOS UNIDOS DEL
NOROESTE**, an organization,

Plaintiffs,

v.

Michael Chertoff, Secretary of
Homeland Security of the United
States; **Emilio T. Gonzalez**,
Director, United States
Citizenship and Immigration
Services,

Defendants.

A Civil Action

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

Under 5 U.S.C. § 701

**REQUEST FOR ORAL
ARGUMENT**

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

This is an action brought under the auspices of the Administrative Procedures Act, 5 U.S.C. § 701, for declaratory, injunctive and other appropriate relief. Plaintiffs challenge as unlawful Defendants' rule imposing excessive fees for adjudication and naturalization services because it violates section 286 of the Immigration and Nationality Act and the Constitution of the United States.

Subject Matter Jurisdiction

1. This Court has subject matter jurisdiction for declaratory and injunctive relief under 28 U.S.C. § 1331, the general federal question statute.

Venue

2. Venue lies in the District of Oregon because that is where the Plaintiffs reside, where the events giving rise to this action occurred, and where Defendants reside. 28 U.S.C. § 1391(e).

Parties

3. Plaintiff, Service Employees International Union (SEIU), is the nation's largest and fastest growing union. SEIU's mission is to improve the lives of workers and their families and creating a more just and humane society. They have nearly 2 million registered members many of whom are immigrants

of all nationalities. More than 900,000 SEIU members are caregivers and hospital employees, 500,000 are long-term care workers, and some 225,000 members work in building maintenance.

4. Plaintiff, Pineros y Campesinos Unidos del Noroeste (Northwest Treeplanters and Farmworkers United) (PCUN), is Oregon's union of farmworkers, nursery, and reforestation workers, and Oregon's largest Latino organization. PCUN's fundamental goal is to empower farmworkers to understand and take action against systematic exploitation and all of its effects. To achieve this end, PCUN is involved in community and workplace organizing on many different levels. Founded in 1985 by 80 farmworkers, PCUN has since grown to include more than 5,000 registered members, 98% of which are Mexican and Central American immigrants, and to encompass a wide variety of organizing projects.

5. Defendant, Michael Chertoff is the Secretary of Homeland Security and is being sued in his official capacity. In his official capacity, Mr. Chertoff is in charge of administering the immigration laws of the United States.

6. Defendant, Emilio T. Gonzalez is the Director of the United States Citizenship and Immigration Services, a component agency of the Department of Homeland Security and is being sued in his official capacity. In his official capacity, Mr.

Gonzalez is in charge of administering the immigration laws of the United States.

Statement of Claim

7. SEIU is a membership-based organization headquartered in Washington, D.C. with some 300 local union affiliations across the United States. It has nearly 2 million members and several thousand of these members are immigrants. It is organized to represent its members in labor and community-based issues. Many of its immigrant members have and will file applications under the Immigration and Nationality Act and have and will be charged fees for making such applications.

8. PCUN is a membership-based organization located in Woodburn, Oregon. It has several thousand members, many of whom are immigrants. It is organized to represent its members in labor and community-based issues. Many of its immigrant members have and will file applications under the Immigration and Nationality Act and have and will be charged fees for making such applications.

9. On March 1, 2003, service and benefit functions of the U.S. Immigration and Naturalization Service (INS) transitioned into the Department of Homeland Security (DHS) and is now called United States Citizenship and Immigration Services (USCIS). USCIS's responsibilities include providing adjudication and naturalization services; creating and maintaining information

record systems; disseminating information about administrative procedures, processing times, and how to complete immigration forms; processing and producing information under the Freedom of Information Act and Privacy Act; communicating with Congress about legislative matters; and maintaining its physical infrastructure, among other activities.

10. Of the responsibilities delegated to USCIS, some of the most important, in both an individual and national sense, are providing citizenship and permanent residence services. These services include adjudicating applications filed by non-citizens seeking permanent residence status or citizenship status.

11. Permanent residence is the most favored immigrant status. Qualified individuals from every country in the world seek permanent residence status in the United States each year. These individuals include persons with close family ties, persons who are highly-skilled, and persons who suffered past political persecution. Many members of PCUN and SEIU have and will seek permanent residence status.

12. United States citizenship is one of the greatest and most important individual achievements possible. Each year, many qualified individuals seek United States citizenship. For an individual who is an immigrant, United States citizenship bestows numerous benefits, the most central of which is the

ability to fully participate in the political process. Many members of PCUN and SEIU have and will seek United States citizenship.

13. Each day, qualified individuals seek benefits, such as permanent residence status or United States citizenship, to which they are entitled by statute under our nation's immigration laws. To seek these benefits, these individuals file application forms as prescribed and published by USCIS.

14. By statute, USCIS may assess an adjudication fee for providing adjudication and naturalization services. The power to assess the fee is limited by statute: the agency may not impose a fee which would exceed the costs for providing adjudication or naturalization services.

15. USCIS publishes in the Federal Register from time to time a fee schedule which delineates a particular adjudication fee for each of its published forms. Adjudication fees have been assessed by the agency for many years.

16. On May 30, 2007, USCIS published a final rule implementing a new fee schedule. The published fee schedule took effect on July 30, 2007 and the fees outlined in it will be assessed against any person filing an application under the nation's immigration laws on and after that date. This final rule is called the 2007 Fee Rule.

17. In promulgating the 2007 Fee Rule, USCIS improperly accounted for its revenue and costs by including charges unrelated to adjudication and naturalization services and by misappropriating revenues controlled and imposed by Congress. USCIS's 2007 Fee Rule imposes fees on individuals which exceed the costs of providing adjudication and naturalization services.

18. The 2007 Fee Rule misstates the revenues and costs received and incurred by Defendants in the course of their statutorily authorized responsibilities.

Causes of Action

19. **First Claim.** Plaintiffs and their members are entitled to access the adjudication and naturalization services function of USCIS by paying only fees authorized by statute. USCIS's promulgation and implementation of the 2007 Fee Rule is a violation of section 286 of the Immigration and Nationality Act, and is therefore unlawful.

20. **Second Claim.** Plaintiffs and their members are entitled to access the adjudication and naturalization services function of USCIS paying only fees authorized by statute. The 2007 Fee Rule is a revenue-raising measure which is a power not delegated to them by statute. Defendants' promulgation and implementation of the 2007 Fee Rule violates the immigration and

nationality organic acts, the Administrative Procedures Act, and the United States Constitution and is, therefore, unlawful.

21. **Third Claim.** Plaintiffs are entitled to proper accounting of revenues and costs received and incurred by Defendants. Defendants' refusal to properly account for their revenues and costs violates the Chief Financial Officers Act of 1990 (as amended), the Immigration and Nationality Act, and the Administrative Procedures Act and is, therefore, unlawful.

Prayer For Relief

Plaintiffs respectfully pray that this Court grant the following relief:

- 1) Assume jurisdiction over this matter;
- 2) Declare that Defendants' 2007 Fee Rule is unlawful;
- 3) Vacate the 2007 Fee Rule and instruct Defendants regarding the statutory requirements for establishing adjudication fees;
- 4) Award Plaintiffs their costs and reasonable attorneys' fees in this action as provided by 28 U.S.C. § 2412 or other statute; and
- 5) Grant such further relief as the Court deems just and proper.

Respectfully submitted this 28th day of August 2007,

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