The Honorable Lauren King

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ABDIQAFAR WAGAFE, *et al.*, on behalf of himself and other similarly situated,

Plaintiffs,

v.

JOSEPH R. BIDEN, President of the United States, *et al.*,

Defendants.

CASE NO. C17-00094-LK

DEFENDANTS' REPLY RE: MOTION TO DISMISS CLAIMS OF PLAINTIFF NATURALIZATION CLASS FOR LACK OF SUBJECT-MATTER JURISDICTION

INTRODUCTION

Defendants' motion to dismiss sets out three independent grounds showing that the Court lacks subject-matter jurisdiction over all Naturalization Class claims. First, under *Thunder Basin*, the special statutory review scheme created for agency naturalization proceedings displaces federal question jurisdiction. Second, the Naturalization Class claims are not prudentially ripe. Third, the Court is unable to issue classwide relief to the Naturalization Class because some of its members are statutorily barred from obtaining relief under the Administrative Procedure Act. Plaintiffs' opposition fails to undermine any of these grounds. The Court should therefore grant the motion to dismiss.

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ARGUMENT

I. FEDERAL QUESTION JURISDICTION IS DISPLACED BY THE SPECIAL STATUTORY REVIEW SCHEME

The D.C. Circuit's application of *Thunder Basin* in *Miriyeva v. USCIS*, 9 F.4th 935 (D.C. Cir. 2021), and the Supreme Court's recent reliance on *Thunder Basin* in *Axon Enterprise, Inc. v. FTC,* 598 U.S. 175, 185 (2023) (citing and discussing *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 207 (1994)), pose an insurmountable jurisdictional obstacle to maintaining the Naturalization Class claims in this forum. *Thunder Basin* concerns jurisdictional preclusion implicit in a special statutory review scheme. The naturalization process created by the Immigration Act of 1990 includes such a review scheme, with attendant jurisdictional ramifications that bar federal question jurisdiction over the Naturalization Class claims.

Plaintiffs misunderstand the *Thunder Basin* analysis in two key respects. First, they eschew the multi-factor analysis of the statutory scheme as a whole, instead focusing narrowly on two specific naturalization provisions, 8 U.S.C. §§ 1447(b) and 1421(c). Second, Plaintiffs complain that §§ 1447(b) and 1421(c)'s judicial remedies are inadequate because they become available only *after* naturalization examinations or denials, which Plaintiffs claim disable them from challenging *pre*-examination and *pre*-decisional national security policies. But restraining premature judicial review is a major concern of the *Thunder Basin* line of cases, which address whether post-decisional statutory review schemes *displace* pre-enforcement and pre-decisional challenges relying on federal question jurisdiction. Thus, what Plaintiffs claim is wrong with the naturalization scheme (*i.e.*, preclusion of pre-examination challenges) is actually what Congress intended, as the D.C. Circuit recognized in *Miriyeva*.[1]

[1] This is also borne out by the legislative history. See 135 Cong. Rec. H4539-02, 135 Cong. Rec. H4539-02, H4543, 1989 WL 182156, *H4543 (Rep. Smith of Texas), indicating that judicial review was to occur only at the interview stage, "after the application has already been reviewed by the INS."

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A. Plaintiffs' analysis ignores *Thunder Basin*

Plaintiffs erroneously interpret §§ 1447(b) and 1421(c) to the exclusion of the broader naturalization scheme and contend that only the explicit terms of those provisions control the scope of any jurisdictional bar. *See* Plfs' Opp. to Mot. to Dismiss, ECF-634 ("Opp."), at 7-10. That approach might be appropriate in considering a jurisdiction-stripping provision. *See Axon Enterprise,* 598 U.S. at 185 (Congress may bar certain lawsuits "explicitly, providing in so many words that district court jurisdiction will yield"). But Congress "also may [bar review] *implicitly*, by specifying a *different method* to resolve claims about agency action." *Id*. (emphasis added). It is not that §§1447(b) and 1421(c) do not contribute to the preclusive effect of the statutory scheme. It is that Plaintiffs disregard *Thunder Basin* by treating two provisions as the beginning and end of the jurisdictional inquiry. *See* Opp. at 6 (misframing the issue as whether §§ 1447(b) and 1421(c) "strip district courts of original federal-question jurisdiction").[2] In this way, they ignore the thrust of *Thunder Basin*, failing to recognize Congress's specification of post-examination and post-decisional "methods" to resolve naturalization-related grievances implicitly "divests district courts of their ordinary jurisdiction." *Axon Enterprise*, 598 U.S. at 185.

Plaintiffs also ask the wrong question. They observe that §§ 1447(b) and 1421(c) expressly pertain to the review of "individual applications," so they ask only whether §§ 1421 and 1447's express terms govern "all other claims relating to naturalization." Opp. at 8. But the *Thunder Basin* line of cases addresses the different question of whether a special review scheme's post-decisional remedies *implicitly* bar *pre*-enforcement or *pre*-decisional challenges. *See Thunder Basin*, 510 U.S. at 208 (holding that Mine Act's statutory and administrative structure bar review of pre-enforcement challenge, even though the Act is "facially silent with respect to pre-enforcement claims"); *Elgin v. Dep't of Treasury*, 567 U.S. 1, 21 (2012) (holding that special statutory review scheme barred pre-decisional challenge in district court, even though agency could not adjudicate constitutional claims,

[2] Because Plaintiffs mistakenly analyze the two provisions in a vacuum, their analysis relies heavily on *McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479 (1991). *See* Opp. at 9-10. But *McNary* did not consider whether the relevant Act was a special statutory review scheme with attendant jurisdictional consequences. *McNary* is also inapt because, in the unique circumstances of the case, a different interpretation of the relevant statute would be "the practical equivalent of a total denial of judicial review." *See* 498 U.S. at 496-97.

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and ruling Federal Circuit review of such claims was "sufficient to ensure 'meaningful review'"); *cf. Axon Enterprise*, 598 U.S. at 189 (upholding pre-enforcement challenge to SEC action because plaintiffs challenged "structure or very existence of [the SEC]" rather than decisions in agency proceedings); *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 489 (2010) (to same effect). Thus, Plaintiffs misunderstand the purpose of §§ 1447(b) and 1421(c) to provide jurisdiction in specific instances, and they also fail to engage correctly with the Supreme Court's wholistic analysis for determining the implications of special jurisdictional grants.[3]

Plaintiffs attempt to distinguish *Miriyeva* in the same manner – as though that case represents only an effort to have naturalization denials reviewed in district court by way of federal question jurisdiction, rather than under § 1421(c). *See* Opp. at 11. They assert that *Miriyeva* does not hold that §§ 1447(b) and 1421(c) displace federal question jurisdiction "over all claims" relating to naturalization, but only over claims regarding individuals "challenging their naturalization denial[s]." Opp. at 11.[4] The D.C. Circuit, however, described its conclusion differently. Like Plaintiffs here, Miriyeva claimed that she was *not* seeking review of any "naturalization decision or an order of naturalization," but rather attacking an agency policy (regarding "uncharacterized" military discharges) that she claimed dictated her application's denial. *Miriyeva*, 9 F.4th at 939. Like the *Wagafe* naturalization plaintiffs, Miriyeva asked the Court to "stop the agency from 'maintaining the denial of any naturalization application'" on the basis of the challenged policy. *Id.* at 942. Absent from Plaintiffs' attack on *Miriyeva* is any discussion, much less rebuttal, of the D.C.

[3] Plaintiffs purport to apply *Thunder Basin*'s multi-factor analysis, but do so in a highly-skewed manner. They contend that a congressional intention to preclude pre-examination/pre-decisional naturalization challenges is not "fairly discernible," but only within the "narrow confines" of §§ 1421 and 1447, which describe only post-examination/post-decisional claims. Thus, according to their flawed analysis, those sections provide no "meaningful review" of such challenges, seemingly rendering those claims "wholly collateral." Plaintiffs choose to skip the "agency expertise" factor altogether, claiming it "simply does not fit." Opp. at 17; *see id.* at 6-17. Their truncated approach thus leads, erroneously, to the result they urge.

[4] Plaintiffs argue their lawsuit is not concerned with class members' eligibility for naturalization. *See*, *e.g.*, Opp. at 3. This is not so. While Defendants have consistently asserted the CARRP policy does not dictate eligibility, Plaintiffs have just as consistently taken the opposite position, repeatedly asserting that CARRP is a process centered on eligibility issues. *See*, *e.g.*, ECF-47 at 14 (noting the CARRP standard of an "articulable link" to a national security-related ground of ineligibility); *cf.* ECF-47 at 18 (alleging pretextual denials in CARRP cases); Pls' MSJ (filed as HSD) at 27 (same). Thus, under Plaintiffs' theory of the case, in seeking review of the legality of CARRP, they are asking the Court to evaluate USCIS' policy in relation to statutory eligibilities of Naturalization Class members. Such review is appropriate only when timely, and only under §§ 1421(c) and 1447(b); not here.

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Circuit's *Thunder Basin* analysis. Yet, it was that macro-statutory analysis – not solely parsing the terms of § 1421(c) – that led to the Court's conclusion that "what matters is that Miriyeva's claims can be reviewed, and she can obtain relief from the alleged unlawful policy as it relates to her." *Id.* at 941; *see id.* (being restricted to Congress's review scheme does not foreclose "'all meaningful judicial review,' even if it does foreclose the review that Miriyeva wants.") (citing *Thunder Basin*, 510 U.S. at 212-13). Plaintiffs' attempted distinction of *Miriyeva* thus fails.

B. Congress intended to bar pre-examination and pre-decisional claims

Miriyeva's application of *Thunder Basin* to the naturalization review scheme has particular resonance here concerning why Congress intended CARRP-related claims *not to be heard before examination plus 120 days*. *Miriyeva* evaluated the "intertwined" nature of §§ 1421, 1446 and 1447, observing that it is "no coincidence they repeatedly cross reference each other," because "Congress intended these sections to collectively (and exclusively) direct the review process of naturalization application denials." *Id.* at 940. One such cross-reference appears in § 1447(b), which authorizes applicants to seek review in district court if the agency fails to determine an application within 120 days after "examination under [section 1446]." Section 1446 is significant, but Plaintiffs do not discuss what it provides or why its cross-reference in § 1447(b) is pivotal here. Section 1446(a) commands that the agency "*shall* conduct a personal investigation of the [applicant]," (emphasis added), and § 1446(b) further authorizes that such investigation may concern "any matter touching or in any way affecting the admissibility of any applicant for naturalization." This broad scope of inquiry includes the national security-related inadmissibilities vetted through CARRP. Critically, the statute containing this investigation and examination provision is cross-referenced in § 1447(b), raising several textually-based inferences: (1) Congress was expressly mindful of the agency's pre-examination and pre-decisional vetting process when it imposed the examination-plus-120-day threshold for seeking *any* review regarding a naturalization grievance; (2) Congress was equally mindful of delays in the pre-examination process, because the 120-day provision is aimed at remediating delay; and (3) By making the judicial remedy available only *after* examinations, Congress protected the agency's investigative responsibilities. *See also* 8 U.S.C. § 1421(d)

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(restricting naturaliz[ations] to the "manner and . . . conditions prescribed in this subchapter and not otherwise.").[5]

C. Sections 1447(b) and 1421(c) permit meaningful review

Plaintiffs' arguments regarding Congress's intent depend upon reading §§ 1421(c) and 1447(b) in isolation to avoid the conclusion that they foreclose federal question jurisdiction. However, they abandon that textual approach when arguing that those provisions "foreclose *all* meaningful judicial review." Opp. at 13 (emphasis added).[6] The Court need not address this maximalist contention because, as demonstrated above, Congress intended to preclude jurisdiction over pre-examination and pre-decisional claims. Nevertheless, a plain reading of the statutes and established caselaw refutes Plaintiffs' argument. First, the "*de novo*" review afforded under §§ 1421(c) and 1447(b) comprises "a fresh, independent determination of 'the matter' at stake," and the court's inquiry neither is limited to or "constricted by the administrative record, nor is any deference due the agency's conclusion." *See Doe v. United States*, 821 F.2d 694, 697-98 (D.C. Cir. 1987). Further, *de novo* review allows the district court to conduct "whatever further inquiry it finds necessary or proper to the exercise of court's independent judgment." *Id.* Far from depriving Plaintiffs of "meaningful review," these naturalization review remedies offer the gold standard of judicial oversight. *See Escaler v. USCIS*, 582 F.3d 288, 291 n.1 (2d Cir. 2009) ("Nor have we been informed as to what judicial relief the APA might authorize that adds to the sweeping *de novo* review provided by Section 1421(c).").

Second, while Plaintiffs contend the naturalization statute precludes "challenge [to] the legality of agency policy and practices," Opp. at 14, *Miriyeva* held the opposite, *see Miriyeva*,

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[5] Plaintiffs emphasize CARRP causes lengthy delays, particularly with respect to pre-examination applicants who cannot seek judicial review under §§ 1447(b) or 1421(c). Opp. at 3-4, 14. But as this Court previously recognized, Plaintiffs have not asserted an unreasonable delay claim in their complaint. *See* ECF-69 at 17, 25. Accordingly, because not present in this lawsuit, it is not necessary for the Court to address whether pre-interview individuals could raise unreasonable delay claims outside the context of §§ 1447(b) or 1421(c).

[6] According to Plaintiffs, "Defendants concede that the Naturalization Class cannot bring their claims under either statute now, yet offer no explanation for how class members could do so in the future." Opp. at 14. This mischaracterizes Defendants' position. The opportunity for meaningful judicial review is available to naturalization applicants on an individual basis in their districts of residence once their applications have reached the stage at which review is authorized under §§ 1447(b) and 1421(c).

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9 F.4th at 942. Moreover, Plaintiffs do not explain the basis for their conclusory statement. Indeed, § 1447(b) provides that the district court "has jurisdiction over the matter and may either determine the matter or remand the matter, with appropriate instructions, to [USCIS] to determine the matter." Those "instructions could of course include directions to [USCIS] to take a particular course of action on an application, to adjudicate an application within a particular period of time, or to follow any number of other directions." *Etape v. Chertoff*, 497 F.3d 379, 384 (4th Cir. 2007). There is no apparent reason on the statute's face that any Naturalization Class member could not assert CARRP-related claims once their application reaches the requisite stage.

Paradoxically, Plaintiffs contend that § 1421(c) is not a meaningful remedy for their claims because it only applies to denials. However, by Plaintiffs' own account, no Naturalization Class member has had, or ever will have, their application denied, Opp. at 11, because class members must have *pending* applications. ECF-69 at 8; *and see* Defs' Mot. to Dismiss, ECF-628 ("MTD") at 4, n.3. Thus, § 1421(c) is not an available remedy to the Naturalization Class because of the way in which they chose to define the class. Moreover, also as a function of the class definition, whether a denied naturalization applicant could obtain meaningful review under § 1421(c) is not germane to this motion, which seeks dismissal only of the claims the Naturalization Class actually asserts in this lawsuit.

In any event, Plaintiffs' contention that CARRP would be found "irrelevant" on *de novo* review rests on a single, isolated district court opinion. *See* Opp. At 15 (citing *Hamdi v. USCIS*)); *but see Saleh v. Garland*, No. 21-CV-5998 (PKC), 2022 WL 4539475, at *5 (E.D.N.Y. Sept. 28, 2022) (holding "the Court can decide Plaintiff's challenges to CARRP based on the Court's *de novo* review pursuant to § 1421(c)"); *Moya v. United States Dep't of Homeland Sec*., 975 F.3d 127 (2d Cir. 2020) ("Section 1421(c) offers an expansive form of judicial review through which Plaintiffs could raise systemic challenges."); *id.* ("If an applicant wishes to raise systemic constitutional or statutory challenges to the naturalization process as part of her [§ 1421(c)] appeal, the district court has the 'factfinding and record-developing capabilities' to create 'an adequate record as to the

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pattern' of systemic violations."); *Abuirshaid v. Johnson,* 155 F. Supp. 3d 611, 615 (E.D. Va. 2015) (alleging CARRP claim but dismissed on other grounds).

In sum, while Congress intended the naturalization scheme to bar pre-examination and pre-decisional challenges, that framework clearly provides a basis for meaningful review of claims of the type alleged by the Naturalization Class.

II. THE NATURALIZATION CLASS CLAIMS ARE NOT PRUDENTIALLY RIPE

Plaintiffs' arguments that their claims are ripe lack merit. First, Plaintiffs mistakenly equate federal question jurisdiction with ripeness. *See* Opp. at 20-21. The issues, however, are "independently dispositive," MTD at 14, because, while claims properly brought under §§ 1421(c) or 1447(b) will be ripe, the claims brought here are still not ripe even if jurisdiction existed under 28 U.S.C. § 1331 . *See* MTD at 14-17.

Second, Plaintiffs contend that this Court has effectively decided that they have suffered a sufficient injury-in-fact to demonstrate their claims are constitutionally ripe. *See* Opp. at 21–22. But the Court's rulings on injury-in-fact were far more limited, *see* ECF-69 at 11-14, 17-18, and anyway injury-in-fact does not establish the requirement of prudential ripeness. *See* MTD at 15-16. Plaintiffs fail to show it would be prudent for the Court to consider their claims at this juncture because their applications may be denied on grounds unrelated to CARRP, or they may be granted. *See Reno v. Cath. Soc. Servs*., 509 U.S. 43, 58 & n.19, 59 n.20 (1993) ("*CSS*"); *Aparicio v. Blakeway*, 302 F.3d 437, 446 & n.2 (5th Cir. 2002); *see also Scott v. Pasadena Unified Sch. Dist.*, 306 F.3d 646, 662 (9th Cir. 2002) ("As a prudential matter we will not consider a claim to be ripe . . . if it rests upon contingent future events that may not occur as anticipated, or . . . at all.") (cleaned up).

Third, Plaintiffs vaguely refer to the "prudential considerations" of ripeness as being "discretionary." Opp. at 22. The case they quote does not explain this proposition, *see Bishop Paiute Tribe v. Inyo Cnty.*, 863 F.3d 1144, 1154 (9th Cir. 2017). While the Supreme Court in *CSS* referred to the injunctive and declaratory judgment remedies sought as "discretionary," 509 U.S. at

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57, nothing in *CSS* indicates that a court could dispense with the prudential ripeness requirement as a matter of discretion.

Fourth, Plaintiffs have virtually no response to Defendants' argument that the unpredictable manner that CARRP or instead some non-CARRP consideration would cause class members' naturalization applications to be denied (particularly when they actually might be granted) means their claims are not fit for review. *See* MTD at 15–17. Rather than identifying grounds for denial, Plaintiffs merely claim that the relevant approval rate for CARRP cases is 42.6%, rather than exceeding 75% as asserted by Defendants. *See* Opp. at 21, n.5; MTD at 15.[7] This difference is immaterial – either way, there is a significant possibility that CARRP-processed applications will not be denied at all. But the point remains: whether a given class member's application will be denied because of CARRP is unknown.

Consequently, Plaintiffs attempt to to rely on delayed adjudications allegedly *caused* by CARRP, rather than denials, in an attempt to show the naturalization claims are ripe. *See* Opp. at 21-22. Just as Plaintiffs cannot establish the ripeness of their challenges merely by alleging that they are uniformly naturalization-eligible, but for CARRP, when there are other possible bases for potential denial (as well as the possibility of approval), *see* MTD at 16-17 & n.8, so too are claims of delay caused by CARRP inadequate to show ripeness when there are other possible reasons for delay. *See Aparicio*, 302 F.3d at 448 (finding lack of ripeness where naturalization was "delayed for an uncertain reason"); *see also* Defs' MSJ at 35-36 (setting out potential non-CARRP causes of delay). Following the same prudential ripeness principles with respect to alleged sources of either potential denial or ongoing delay makes sense regarding claims attacking an agency policy when a separate cause of action may exist for "pure delay" – *i.e.*, where the harm alleged is delay itself

[7] Plaintiffs criticize Defendants' statement that "75% of CARRP cases are approved," instead indicating a 42.6% grant rate. Opp. at 21 n.5. Indisputably, "over 75% of applications *adjudicated after referral to CARRP*" are granted. MTD at 15 (emphasis added); *see* Defs' MSJ, Ex. 11 at 50 (showing approval rate of naturalization applications processed under CARRP as 81.69%). To arrive at their contrary conclusion, Plaintiffs remove from their calculation applications "subject to CARRP" where the NS concern was resolved before adjudication. This understates the CARRP grant rate and discounts that NS concerns are resolved through CARRP. It is also inconsistent with how the Plaintiffs have defined a CARRP case. *See*, *e.g.*, ECF-47 at 20 ¶ 95 ("CARRP effectively creates two substantive regimes for immigration application processing and adjudication: one for those applications subject to heightened scrutiny and vetting under CARRP and one for all other applications."); Pls' MSJ at 17 ("CARRP taints adjudication even of applicants ultimately determined not to be a concern.") (emphasis in original).

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regardless of its source. Plaintiffs have disclaimed "pure delay" claims here, however. *See* ECF-58, at 8, 23, 27; ECF-63 at 5, 7-8, 12; *see also* ECF-69 at 17, 25. Because Plaintiffs cannot plausibly allege that CARRP is the sole source of possible delay, delay cannot suffice to ripen their substantive challenges to CARRP.

Fifth, Plaintiffs mistakenly contend that "the 'hardship' factor weighs decisively in favor of ripeness." Opp. at 22. Even by Plaintiffs' count, at least 42.6% of naturalization applications subject to CARRP are approved. *See* Opp. at 21, n.5. For those that are denied, *de novo* judicial review is available under § 1421(c). For those that are unreasonably delayed, relief is available after interview under § 1447(b), and possibly also in "pure delay" causes of action, which Plaintiffs have disclaimed. *Cf. In re Aiken Cnty.*, 645 F.3d 428, 435-36 (D.C. Cir. 2011) (noting availability of mandamus for unreasonable delay in the course of finding claim prudentially unripe).

Sixth, Plaintiffs' efforts to distinguish *CSS* and *Aparicio* fail. Plaintiffs assert that the *CSS* ripeness ruling depended on the absence of "attempt[s] to file applications." Opp. at 23 (quoting *Proyecto San Pablo v. I.N.S.*, 189 F.3d 1130, 1137 (9th Cir. 1999)). In fact, it was not only this absence, but also the INS not yet "block[ing] [the] path by applying the [contested] regulations" that made plaintiffs' claims unripe. *Proyecto*, 189 F.3d at 1136 (cleaned up). Similarly, here USCIS has not yet blocked applicants' path by denying naturalization based specifically on CARRP. The fact that the Naturalization Class has applied for the benefit they seek is not enough to ripen their challenges. Plaintiffs also attempt to distinguish *Aparicio* by asserting, "CARRP imposes injuries concretely felt by members of the Naturalization Class." Opp. at 23. But in the absence of actually denied applications, it is not apparent the claimed harms to pending applications arose from the challenged practice rather than some other source.

Finally, Plaintiffs rely on *Proyecto* to argue that ripeness could be "established . . . based on pre-denial injuries caused by the agency's challenged procedures—injuries the plaintiffs incurred while their applications were pending." Opp. at 23. Notably, *Proyecto* involved a class only of denied applicants. *See* 189 F.3d at 1135. Moreover, the Ninth Circuit has cited *Proyecto* only for the conventional proposition that the agency must block, based on the challenged practice, an

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applicant's pursuit of a benefit before a challenge to the practice will be prudentially ripe. *See City of Rialto v. West Coast Loading Corp.*, 581 F.3d 865, 874, 878 (9th Cir. 2009). Ultimately, the Naturalization Class claims fail to meet that ripeness test, and therefore, this Court lacks jurisdiction to consider them.

III. THE NATURALIZATION CLASS INCLUDES PERSONS BARRED FROM RELIEF UNDER THE ADMINISTRATIVE PROCEDURE ACT

Even if the Court rejects Defendants' *Thunder Basin* and ripeness arguments, the Court is unable to issue relief to the Naturalization Class as a whole, as required to proceed in a class action. Fed. R. Civ. P. 23(b)(2). "Rule 23(b)(2) applies only when a single injunction or declaratory judgment would provide relief to each member of the class." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 360 (2011). While undifferentiated within the certified class, some class members with pending applications may not yet have been examined by USCIS, while others may have been examined but not had their applications adjudicated within the ensuing 120 days. *See* Opp. at 3 ("Most class members have not had an interview . . ."). Those members of the Naturalization Class who are more than 120 days post interview clearly have an adequate alternative remedy under § 1447(b) and are therefore foreclosed by 5 U.S.C. § 704 from obtaining APA relief. *Boakye v. Hansen*, 554 F. Supp. 2d 784, 787 (S.D. Ohio 2008).[8]

Because some class member circumstances are not entitled to relief under the APA, this Court is unable, as required by Rule 23(b)(2), to issue a single injunction or declaratory order providing relief to the class as a whole on the basis of the claims asserted by Plaintiffs. Accordingly, the claims of the Naturalization Class should be dismissed.[9]

[8] Plaintiffs' reliance on *Roshandel v. Chertoff*, No. C07-1739MJP, 2008 WL 1969646, at *1 (W.D. Wash. May 5, 2008), for the proposition that § 1447(b) is not an "adequate remedy in court" is misplaced. The case was wrongly decided. Nowhere in the Court's opinion is § 1447(b) shown to be inadequate, and numerous district courts have held that § 1447(b) is a fully adequate remedy that forecloses an APA remedy. MTD at 19. Notably, no other district court opinion published in Westlaw has adopted *Roshandel*'s holding. *Roshandel* was ultimately resolved by settlement, so its holding was never tested on appeal. *See* Minute Order (ECF-92), Dec. 8, 2008.

[9] Alternatively, the Court may decertify the Naturalization Class *sua sponte* because it does not meet the requirements of Rule 23. *See Jin v. Shanghai Original, Inc.*, 990 F.3d 251, 261–62 (2d Cir. 2021); Fed. R. Civ. P. 23(c)(1)(C).

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CONCLUSION

The Naturalization Class claims and the individual claims of named plaintiffs Wagafe, Jihad and Manzoor should be dismissed for lack of subject-matter jurisdiction.

LENGTH CERTIFICATION

I certify that the foregoing contains 4,187 words, in compliance with Local Civil Rule 7(e)(3).

Respectfully Submitted,

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