

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

Jorge Arturo Cruz, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 Eric H. Holder, Jr., United States Attorney )  
 General; Janet Napolitano, Secretary of )  
 The Department of Homeland Security; )  
 Alejandro Mayorkas, Director of the )  
 United States Citizenship & Immigration )  
 Services; Linda Swacina, District Director, )  
 District Miami, United States Citizenship & )  
 Immigration Services; Joseph Hackbarth, )  
 Acting Kendall Field Office Director, )  
 United States Citizenship & Immigration )  
 Services; )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

Case No.

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF  
AND FOR HEARING ON NATURALIZATION APPLICATION**

Plaintiff, Jorge Arturo Cruz, by and through his undersigned attorney, seeks *de novo* review and adjudication of his Naturalization Application and redress for violation of the Rehabilitation Act of 1973, 29 U.S.C. § 794.

**I. INTRODUCTION**

1. Mr. Cruz appeals the denial of his Naturalization petition pursuant to § 310(c) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1421(c), and the Administrative Procedure Act (APA), 5 U.S.C. § 702 et seq.



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2. Furthermore, Mr. Cruz, who is ill and disabled, was denied an equal opportunity to receive the program benefits and services of the United States Citizenship & Immigration Service (hereinafter “USCIS”), specifically Naturalization, as required by § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, on the basis of his disability.

## **II. JURISDICTION AND VENUE**

3. Under INA § 310(c), 8 U.S.C. § 1421(c), 28 U.S.C. § 1331, 28 U.S.C. § 1361, and the APA, 5 U.S.C. § 702 *et seq.*, the Court has jurisdiction over this case as Mr. Cruz’s application for Naturalization has been denied after a hearing before an immigration officer under 8 U.S.C. § 1447(a). Mr. Cruz’s claim of violation of the Rehabilitation Act also presents a federal question.
4. Pursuant to INA § 310(c), 8 U.S.C. § 1421(c), 28 U.S.C. § 1311(e), venue is proper in this district because Mr. Cruz resides in this district, Defendants Swacina and Hackbarth reside in this district, and the events complained of occurred in this district.

## **III. STANDARD OF REVIEW**

5. INA § 310(c) and 8 U.S.C. § 1421(c) mandate that review of Mr. Cruz’s Naturalization application be conducted *de novo* and that the Court make its own findings of fact and conclusions of law. In accordance, Mr. Cruz



requests that the Court conduct a hearing *de novo* on the application for Naturalization.

#### **IV. PARTIES**

6. Plaintiff, Jorge Arturo Cruz, is a resident of Miami, Florida.
7. Defendant, Eric H. Holder, Jr., is the United States Attorney General with ultimate authority over the United States Department of Homeland Security. He is sued in his official capacity.
8. Defendant, Janet Napolitano, is the Secretary of Homeland Security, which is the parent agency for USCIS. She is sued in her official capacity.
9. Defendant, Alejandro Mayorkas, is the Director of USCIS. He is sued in his official capacity.
10. Defendant, Linda Swacina, is the District Director of the Miami District USCIS office. She is sued in her official capacity.
11. Defendant, Joseph Hackbarth, is the Acting Director of the Kendall Field Office of USCIS that failed to properly adjudicate Plaintiff's application in accordance with the INA and the Rehabilitation Act. He is sued in his official capacity.

#### **V. FACTS**



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12. Mr. Cruz is a citizen of El Salvador and is 45 years old. He has been a lawful permanent resident of the United States since 1990. (Copy of Lawful Permanent Resident Card, Exhibit 1).
13. Mr. Cruz suffers from severe mental and physical impairments, which have substantially limited his life activities and have made him, at the young age of 45, dependent on the aid of others to perform daily life functions.
14. Mr. Cruz is autistic, a condition characterized by impaired development in communication, social interaction, and behavior. As a result, Mr. Cruz has a diminished ability to effectively communicate and interact with others and difficulty acquiring language skills.
15. Mr. Cruz suffered a brain aneurysm and has a history of cerebrovascular accidents (also known as stroke(s)) that result in mild to severe temporary or permanent damage to the brain. Mr. Cruz has suffered several strokes that have caused damage to his brain. Additionally, Mr. Cruz suffered a traumatic brain injury further disturbing the normal function of his brain.
16. Mr. Cruz also is epileptic, suffering from recurrent seizures that come without notice and disturb his brain functioning.
17. Mr. Cruz has Acquired Immunodeficiency Syndrome (hereinafter AIDs), a severe immunodeficiency disease that results in symptoms such as, but not limited to, profound and unexplained fatigue, memory loss, depression, and



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recurring fevers. As a result of the advanced stage of his AIDs, Mr. Cruz also suffers from toxoplasmosis, an opportunistic infection targeting the brain.

18. Two clinical psychologists, Dr. Lourdes Illa and Dr. Melissa Becher, have made the medical determination that Mr. Cruz suffers from a depressive disorder and a cognitive disorder. (Copy of N-648 prepared by Dr. Illa, Exhibit 2 and copy of N-648 prepared by Dr. Beecher, Exhibit 4). Both of these disorders affect an individual's ability to concentrate as well as their general mental functioning. Dr. Becher further noted that Mr. Cruz suffers from anxiety which can manifest itself physically through headaches, nausea, and fatigue.
19. Because of the above described impairments the federal Social Security Administration (SSA) has determined that Mr. Cruz is a disabled individual unable to engage in any substantial gainful activity by reason of his medically determinable physical and/or mental impairment(s) which can be expected to result in death or which have lasted or can be expected to last for a continuous period of not less than 12 months. Social Security Act, 42 U.S.C. §1382c(a)(3)(A).
20. Mr. Cruz's medical requirements have resulted in the overall deterioration of his mental and physical well-being. Mr. Cruz is dependent on his life



partner, Blanca Hernandez, for performing many day-to-day functions, especially at times when his medical conditions worsen. His depression and anxiety have led to his social withdrawal.

21. Mr. Cruz's medical conditions impair his ability to learn and retain new information. He does, however, wish to become a citizen of the United States.
22. On February 2, 2010, Mr. Cruz filed an application for Naturalization and submitted a N-648 Medical Certification for Disability Exceptions (herein N-648). (Exhibit 2).
23. As an applicant unable to fulfill the English and civics requirements of the Naturalization process due to physical or developmental disability or mental impairment(s), Mr. Cruz submitted two N-648s in an effort to exert his right to a waiver pursuant to INA § 312(b)(1). The waivers complied with the N-648 instructions, describing his severe impairments, the medically acceptable test used, and explaining the nexus between these impairments and his inability to demonstrate knowledge of English or civics.
24. As a federal agency, USCIS is required to make reasonable accommodations for persons with disabilities and may not exclude persons with disabilities from its programs or activities based solely on the person's disability. § 504 of the Rehabilitation Act, 29 U.S.C. § 794.



25. For applicants with physical or developmental disability or mental impairment(s), the only recourse is to seek an N-648 medical waiver as otherwise they would be unable to participate in the examination part of the Naturalization process that certain disabilities impede.
26. On May 12, 2010, Mr. Cruz appeared for a preliminary examination on his application for Naturalization. Defendants' designees at the Kendall Field Office deemed his N-648 insufficient and Mr. Cruz was given another opportunity to be tested. (Copy of N-652, Naturalization Interview Results, Exhibit 3).
27. On July 27, 2010, Mr. Cruz appeared for a follow up interview and submitted a second N-648 completed by Dr. Becher. Dr. Becher described Mr. Cruz's medical conditions with the appropriate DSM-IV-TR codes, delineated the medically approved exams she used such as the Folstein Mini Mental Examination, (MMSE), explained the role his conditions play in Mr. Cruz's ability to pay attention, store information, convert short-term memory into long-term memory, and most significantly learn. (Exhibit 4).
28. The N-648 included the following language illustrating that Mr. Cruz was eligible for the waiver:

Based on the results of the neuropsychological examination given to Mr. Cruz, he meets the criteria for the diagnosis of Cognitive Disorder related to TBI and history of cerebro vascular accidents (CVA) (DSM code 294.9), Depressive Disorder NOS (DSM code 311.0), and



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Anxiety State NOS (DSM code 300.0). (...) Mr. Cruz is exhibiting significant memory consolidation, visual perception, attention and concentration deficits which cause impairments in his mental organization and incidental learning. (...) These brain impairments affect his ability to encode and consolidate information from short term memory into long term memory. (Page 5 of Exhibit 4).

29. On August 4, 2010, Mr. Cruz's Naturalization application was denied. (Decision dated August 4, 2010, Exhibit 5).
30. Mr. Cruz made a timely request for a hearing on his Naturalization application under INA § 336(a), 8 U.S.C. § 1447(a), and submitted a supplemental brief in support which included a table explaining the effects each condition Mr. Cruz suffers has on learning. (N-336, Request for Hearing, Exhibit 6).
31. A review hearing was scheduled for January 21, 2011, where an officer of the USCIS was to review Plaintiff's "application, conduct an examination, and render an independent decision." (Appointment Notice, Exhibit 7).
32. At the review hearing, the USCIS officer began the hearing by inappropriately requesting yet another N-648.
33. Mr. Cruz expected the USCIS officer to conduct a new hearing and interview with the file on record as provided for under Section 336 of the INA, 8 U.S.C. 1447. At this hearing, Mr. Cruz additionally submitted the results of a neuropsychological evaluation administered by Dr. Becher,



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which explained in detail the results of the psychological tests that led to her medical conclusion that Mr. Cruz qualified for an N-648 waiver.

34. At the hearing, the USCIS officer, defendants' designee, then informed Mr. Cruz that the N-648 medical exception was accepted and he was required to initial all pages of the civics and English test that was not administered.
35. Mr. Cruz was told he would receive a decision in the mail.
36. On January 28, 2011, Defendants affirmed the denial of Mr. Cruz's Naturalization application. (Hearing Results, Exhibit 8)
37. The denial states that Mr. Cruz is ineligible for Naturalization because he failed to meet the requirements of INA § 312 and failed to establish eligibility for Naturalization under INA § 316(a) or any other section of the INA. (Exhibit 8).
38. Mr. Cruz was denied Naturalization because he is disabled in violation of the Rehabilitation Act. 29 U.S.C. § 794.
39. As a disabled applicant substantially limited in his ability to learn and care for himself, Mr. Cruz sought the *only* adequate accommodation available to him to have an equal opportunity to receive the program benefits and services of the Naturalization process, an N-648 medical waiver.
40. Mr. Cruz is entitled to exemption from the requirements of INA § 312 if he can establish the he is "unable because of physical or developmental



disability or mental impairment to comply therewith". INA § 312(b)(1), 8 U.S.C. § 1423 (b)(1).

41. To establish eligibility under INA § 316(a) and 8 U.S.C. §1427(a) Mr. Cruz must show: (1) he meets the residence requirements prior to filing his Naturalization application; (2) he has resided continuously within the United States from the date of application; and (3) during the periods referred to in this subsection, he has been and still is a person of good moral character.
42. Mr. Cruz has demonstrated his eligibility for Naturalization.
43. Mr. Cruz has been a lawful permanent resident for over five years and during that time has and continues to reside in the United States. (Exhibit 1).
44. Mr. Cruz has been and still is a person of good moral character.
45. Mr. Cruz suffers from many mental and physical disabilities such as depression, anxiety, and cognitive disorders that contribute to his overall anxious state and lessened sense of security. His conditions have worsened or been exacerbated by defendants' denial of his application.
46. Mr. Cruz has exhausted his administrative remedies.

## **VI. CLAIMS FOR RELIEF**

### **A. Violation of INA**

47. Mr. Cruz realleges paragraphs 1- 46 herein.



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48. Because Mr. Cruz satisfies all requisite criteria for Naturalization and has properly sought Naturalization, Defendants have unlawfully denied his application.
49. Mr. Cruz requests that the Court conduct a hearing *de novo* of Mr. Cruz's Naturalization application pursuant to INA § 310(c) and 8 U.S.C. § 1421(c).
50. Mr. Cruz requests that the Court grant his Naturalization application in accordance with the INA § 316 or any other section of the Act.

### **B. Violation of APA**

51. Mr. Cruz realleges paragraphs 1- 50 herein.
52. Defendants' denial of Mr. Cruz's application is an arbitrary, capricious abuse of discretion not in accordance with the law.
53. Mr. Cruz further requests that the court hold unlawful and set aside Defendants' denial of Mr. Cruz's Naturalization application pursuant to the APA, 5 U.S.C. § 706(2).

### **C. Violation of the Rehabilitation Act**

54. Mr. Cruz realleges paragraphs 1- 53 herein.
55. Defendants' denial of Mr. Cruz's Naturalization application denied him an equal opportunity to participate in the Naturalization process and to receive the substantial benefit of United States Citizenship on the basis of his disabilities.



56. Mr. Cruz requests that this court declare Defendants' denial of his Naturalization application violates the Rehabilitation Act, 29 U.S.C. § 794.

### VII. PRAYER FOR RELIEF

57. Wherefore, Mr. Cruz respectfully requests that this Court:
- a. Accept Jurisdiction and Venue as proper.
  - b. Conduct a hearing *de novo* on Mr. Cruz's Naturalization application.
  - c. Grant Mr. Cruz's application for Naturalization.
  - d. Hold unlawful and set aside Defendants' denial of Mr. Cruz's application for Naturalization.
  - e. Order Defendants to grant Mr. Cruz citizenship.
  - f. Grant reasonable attorney's fees, expenses, and costs of court pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412 and the Rehabilitation Act, 29 U.S.C. § 794a(c).
  - g. Grant Mr. Cruz any other relief as the Court may deem proper.

Respectfully Submitted,

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