



**MUSLIMS NEED
NOT APPLY***

***How USCIS Secretly Mandates the Discriminatory Delay and Denial of
Citizenship and Immigration Benefits to Aspiring Americans**



MAYER • BROWN

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DEDICATION

This report is dedicated to the men and women whose lives and dreams have been forever altered by the U.S. government’s discriminatory treatment, needless delay, and unwarranted denials of their applications for citizenship and other immigration benefits. We are particularly indebted to the men and women who told us their stories and allowed us to share them in this report. It is only because of their courage to speak up that this report could be written. And it is only because of their resolve to seek change that the harms of CARRP can be undone, and fairness and equality in the immigration process restored.

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TABLE OF CONTENTS

GLOSSARY OF ABBREVIATIONS.....ii

EXECUTIVE SUMMARY 1

Findings 2

Recommendations..... 4

I. INTRODUCTION7

II. BACKGROUND 11

The Origins of CARRP 11

Naturalization Procedure 12

III. CARRP: USCIS’S NATIONAL SECURITY POLICY 15

How it Works: The Mechanics of CARRP 15

Stage One: Identifying “National Security Concerns,” *Catching Far Too Many in the Net* 17

 Known or Suspected Terrorist (“KST”)..... 18

 Non-Known or Suspected Terrorist (“Non-KST”) 22

In-Between Stages: Deconfliction, *Ceding Authority Expressly Granted to DHS* 28

Stage Two: Eligibility Assessment and Internal Vetting, *Looking for a Reason to Deny* 31

Stage Three: External Vetting, *Looking for More Reasons to Deny* 33

Stage Four: Adjudication 33

All Roads Lead to Denial 33

If the “National Security Concern” Remains, Officers are Not Authorized to Approve the Application 34

Deportation is Encouraged..... 36

IV. THE IMPACT OF CARRP: DISCRIMINATION, DELAY, AND DENIAL.....39

Problem One: CARRP Disproportionately Impacts AMEMSA Immigrants and Mislabels them “National Security Concerns” 39

 The Terrorist Watch List and FBI Name Check 39

 National Origin and Associational Criteria 40

 Equating Islam with Terrorism..... 41

Problem Two: CARRP Mandates Endless Delays in Violation of the Immigration and Naturalization Laws 42

Problem Three: CARRP Creates Secret Exclusions to Immigration Benefits Not Authorized by Law and Mandates Pretextual Denials 44

 Secret Exclusions 45

 Pretextual Denials 45

 False Testimony..... 45

 Failure to Prosecute 50

V. CARRPe DIEM: PRACTICE POINTERS FOR IMMIGRATION LAWYERS53

VI. CONCLUSION.....59

GLOSSARY OF ABBREVIATIONS

ACLU	American Civil Liberties Union
AMEMSA	Arab, Middle Eastern, Muslim, and South Asian
CARRP	Controlled Application Review and Resolution Program
CLASS	Consular Lookout Automated Support System
FBI	Federal Bureau of Investigation
FDNS	Fraud Detection and National Security unit
FOIA	Freedom of Information Act
IBIS	Inter-Agency Border Inspection System
IDENT	Automated Biometrics Identification System
KST	Known or Suspected Terrorist
NCIC	National Crime Information Center
Non-KST	Non-Known or Suspected Terrorist
OBIM	Office of Biometric Identity Management
TECS	Treasury Enforcement Communications System
TSC	Terrorist Screening Center
TSDB	Terrorist Screening Database
SAO	Security Advisory Opinions
USCIS	United States Citizenship and Immigration Services

“I joined the army to fight for other people’s freedom, and I ended up losing my own.”

— Specialist Yassine Bahammou, to whom the Army promised expedited citizenship when he joined as an Arabic translator, but who instead endured years of delay to become a citizen after unfounded accusations were made against him and other Muslim soldiers.

“I always played by the rules. I paid taxes, contributed to society and raised a beautiful family. The U.S. government treated me differently in the citizenship process because I am a Muslim man. It was incredibly frustrating and truly demoralizing. No person of faith, no honest man should have to face the discrimination I have, especially when striving to take an oath of allegiance to the United States.”

— Tarek Hamdi

“Part of the reason that people love to become United States citizens is because of the great features of the U.S. Constitution and the U.S. system in general. Equality for everybody and you expect that would be true in the process of becoming a U.S. citizen. But instead we are being treated in a way directly opposite because of our religion and national origin. I never expected that the U.S. government, which is the most important preserver of the Constitution, would itself be violating it and doing it secretly so that most people cannot even know about it. That is hurtful, and it strikes me that it is un-American too. It shatters your belief to some extent in what America stands for.”

— Mahdi Asgari

EXECUTIVE SUMMARY

The CARRP program directs agency officers to delay and ultimately deny the immigration benefits applications to applicants it has blacklisted, all without even telling these individuals that they were labeled threats to our nation, let alone giving them an opportunity to respond to the allegations.

Millions of immigrants and aspiring Americans apply to U.S. Citizenship and Immigration Services (“USCIS”) each year for immigration benefits, including to naturalize as American citizens. But, under a previously-unknown national security program, USCIS secretly excludes many of those aspiring Americans from Arab, Middle Eastern, Muslim, and South Asian communities from the promises of citizenship, legal residency, asylum, and other benefits by delaying and denying their applications without legal authority. For years, and without notice to applicants, their lawyers, or the public at large, USCIS has been blacklisting law-abiding applicants as “national security concerns” based on lawful religious activity, national origin, and innocuous associations. Once blacklisted, these aspiring Americans are barred from obtaining immigration benefits to which they are legally entitled. As a result, by putting their applications on indefinite hold or rejecting them for unfounded reasons, thousands of law-abiding immigrants have had their dreams of citizenship and other immigration status dashed, without ever being told why their applications were treated differently than others.

In 2008, USCIS implemented this covert agency program, known as the “Controlled Application Review and Resolution Program” or “CARRP,” to “ensure that immigration benefits are not granted to individuals and organizations that pose a threat to national security.” But the program relies on deeply flawed mechanisms to identify “national security concerns,” including error-ridden and overbroad watch-list systems and security checks; and religious, national origin, and associational profiling. Predictably, the CARRP program not only catches far too many harmless applicants in its net, but it has overwhelmingly affected applicants who are Muslim or perceived-to-be Muslim.

The CARRP program directs agency officers to delay and ultimately deny the immigration benefits applications of applicants it has blacklisted, all without even telling these individuals that they were labeled threats to our nation, let alone giving them an opportunity to respond to the allegations. Although the U.S. Constitution expressly forbids USCIS from creating its own rules of naturalization, it secretly has done precisely that under CARRP. By barring the provision of citizenship and other immigration benefits to applicants who are legally eligible for those benefits under the criteria enacted by Congress, and by mandating inordinate delays in direct contravention of statutory processing time limits, CARRP directs USCIS officers to violate the very immigration laws that they are meant to administer.

Through a process known as “deconfliction,” CARRP also cedes much of the authority reserved solely for the immigration agency to federal law enforcement, in particular the Federal Bureau of Investigation (“FBI”). It directs USCIS officers to work with the law enforcement agency that possesses “national security” information about the applicant – which is almost always the FBI – to determine what action the law enforcement agency would like it to take on the application. Under CARRP, USCIS officers are instructed to follow FBI direction as to whether to deny, approve, or hold in abeyance (potentially indefinitely) an application for an immigration benefit. As a result, CARRP has effectively turned the immigration benefits adjudication process over to the FBI.

This report focuses in particular on the harm CARRP has done to the naturalization process – that is, the process by which lawful permanent residents become U.S. citizens. Although

USCIS paints a picture of a government that welcomes some, but shuns others based on their religion, national origin, and other profiling criteria, and that secretly deprives those it blacklists of the rights and benefits afforded them by law.

naturalization applications must generally be adjudicated within six months of filing, CARRP has led USCIS to hold applications for *years* without adjudication. While the applicants wait, they continue on with their lives as lawful permanent residents in the United States. Ironically, while CARRP treats applicants as supposedly too dangerous to naturalize, they are simultaneously treated as too harmless to expeditiously investigate, arrest or deport, undermining any argument that applicants subject to CARRP are true “national security concerns.” CARRP’s endless delays often amount to USCIS searching for a basis to deny the application that simply is not there, or perhaps not even searching at all; they certainly do not manifest an urgent or serious concern for national security. Meanwhile, contributing members of our society, with hopes of participating in our political process and, in many cases, joining their families as U.S. citizens, are blocked from fully realizing their American dreams.

For most people who apply for immigration benefits, the process of becoming a citizen or permanently immigrating to this country represents the American promise of freedom, equal opportunity, and a system of laws that promotes fairness and equality. But in practice, people subject to the CARRP policy find that their initial encounters with the U.S. government convey the opposite message. By relegating the applications of Muslim (or perceived-to-be Muslim) aspiring Americans to a deceptive system designed to deny them membership in our Nation’s community without fair process, USCIS paints a very different picture of the America we believe in. It paints a picture of a government that welcomes some, but shuns others based on their religion, national origin, and other profiling criteria, and that secretly deprives those it blacklists of the rights and benefits afforded them by law. For far too many lawful permanent residents who apply to become citizens of this great nation, many of whom have lived in the United States for decades and made it their home, CARRP sends one strong message: “Muslims need not apply.”

Findings

Misidentifies “national security concerns”

- CARRP disproportionately impacts immigrants from Arab, Middle Eastern, Muslim, and South Asian communities. It does so by relying on extraordinarily overbroad criteria that treat religious practices, national origin, and innocuous associations and activities as “national security concerns,” and through reliance on a faulty watch-list system and FBI surveillance data that sweeps in people who do not present any actual threat.
- CARRP broadly defines a “national security concern” as an individual with a “link to prior, current, or planned involvement in, or association with, an activity, individual or organization described in [the security and terrorism sections] of the Immigration and Nationality Act,” but then further expands the breadth and vagueness of that definition by explicitly instructing officers to ignore the legal standards of proof set forth in those sections of the Act.
- CARRP automatically deems applicants whose names appear on the Terrorist Watch List as “national security concerns,” thereby imposing an even more severe harm than the travel-related harms normally associated with inclusion on the Watch List. Under CARRP, USCIS will delay (and likely deny) the application of an individual labeled a “national security concern.”
- The Terrorist Watch List is a faulty, over-inclusive list containing hundreds of thousands of names of individuals, including U.S. residents, who are never told they are on the Watch List or given a meaningful opportunity to dispute their inclusion on it.
- CARRP instructs USCIS officers to label applicants “national security concerns” if they gave lawful donations to several large Muslim-American charities, even if those dona-

CARRP creates new, secret eligibility criteria for immigration benefits by preventing the approval of any application for an immigration benefit that the agency labels a “national security concern.”

tions were made long before any accusations that the charities were providing “material support” to terrorist organizations. CARRP encourages such labeling despite the fact that the U.S. government portrayed the very same donors as innocent, misled victims of these charities when it shut them down.

- CARRP instructs officers to label applicants “national security concerns” based on national origin and other overbroad criteria, such as if they have “travel[ed] through or resid[ed] in areas of known terrorist activity” (effectively singling applicants out as “concerns” based on the country they are from); if they wire money back to their families in their home countries; or if they speak a foreign language or have certain professions.
- CARRP instructs officers to label applicants “national security concerns” if their names are contained in an FBI file related to a national security investigation, even if they were not the subject of the investigation and even if, for example, their names appear in the file only because they attended a mosque that the FBI subjected to surveillance, or they once gave a voluntary interview to the FBI, as many Muslim immigrants have in the last decade.

Authorizes inordinate delays

- CARRP mandates that USCIS officers delay adjudication of applications in direct contravention of statutory time limitations.
 - It provides that USCIS may hold cases in abeyance for periods of 180 days to provide for investigations of the “national security concern” – whether by the FBI or USCIS – and that the Field Office Director may extend those abeyance periods indefinitely so long as the investigation remains open.
 - Because CARRP prohibits an applicant considered a “national security concern” from being approved for the benefit even if they are statutorily eligible, it requires USCIS officers to delay adjudication until or unless they can find a reason to deny the application or otherwise decide that the “concern” has been “resolved.”

Encourages FBI interference and harassment

- CARRP effectively turns over the immigration benefits application process to the FBI, allowing them to dictate to USCIS when or whether an application should be granted, denied, or held in abeyance. It also provides the FBI an opportunity to comment on USCIS’s proposed decisions in immigration cases, to submit questions for USCIS to ask in interviews, and to suggest Requests for Evidence that USCIS should make.
- CARRP requires USCIS officers to inform the FBI or other relevant law enforcement agencies as soon as an applicant it has labeled a “national security concern” has applied for an immigration benefit. As a result, far too often, the FBI exploits this information to blackmail applicants to work for them as informants, telling applicants that the FBI can help them get their long-delayed immigration application adjudicated and approved if they agree to snitch on their communities.

Mandates pretextual denials

- CARRP creates new, secret eligibility criteria for immigration benefits by preventing the approval of any application for an immigration benefit that the agency labels a “national security concern.” USCIS is not authorized to make rules, beyond those set forth by Congress, for granting naturalization or other immigration benefits.
 - CARRP prohibits USCIS officers from approving any application for immigration benefits belonging to a person whose name appears on the Terrorist Watch List.

- CARRP also prohibits USCIS officers from approving any application belonging to a person it deems a “national security concern” for any other reason, unless they have supervisory approval.
- CARRP mandates that USCIS find a pretextual, statutory basis to deny any application blacklisted as a “national security concern,” even where the applicant is statutorily eligible for the benefit. Such denials are often facially implausible or otherwise unfounded.
 - As a result of CARRP’s requirement that officers invent a reason to deny otherwise eligible applicants, USCIS often misuses the “false testimony” grounds as a basis to deny naturalization applications.

Deprives applicants of any fair process

- Under CARRP, USCIS will neither tell applicants that they have been deemed a “national security concern,” nor give them an opportunity to contest that designation.
- USCIS violates Constitutional due process protections and its own regulations by relying on derogatory information (that creates the alleged “national security concern”) in deciding to deny an application, and never disclosing that information or allowing the applicant to confront it.

Recommendations

1. USCIS should rescind or substantially reform CARRP to conform to existing immigration law, as well as basic standards of fairness and non-discrimination.
2. Applicants must not be barred from obtaining immigration benefits for which they are legally eligible. In particular, USCIS must approve naturalization applications that meet the statutory criteria permitting naturalization.
3. Investigations of immigration benefits applications must be conducted expeditiously, with a general practice of adjudicating them within six months. USCIS should not hold applications in abeyance for prolonged periods, and must never do so indefinitely.
4. Decisions to deny an application must be made based on statutory criteria, not secret policy. USCIS should not provide pretextual reasons for denying benefits applications.
 - a. USCIS should clearly define the terms “affiliation,” “membership,” and “association” used in question 8(a) on the N-400 naturalization application.
 - b. USCIS officers must apply uniform standards to all naturalization applicants. For example, a Muslim applicant must not be denied naturalization for failing to disclose their mosque if a Christian applicant is not similarly expected to disclose their church on the application.
5. Applicants may only be denied immigration benefits based on national security-related concerns if such concerns actually render them ineligible under immigration law.
 - a. For example, applicants may not be denied immigration benefits for their *lawful* donations to charities later accused of terrorism financing. They may only be denied such benefits if their donations were *knowingly* made to support terrorism financing and, as a result, they are ineligible for the benefit under immigration law.

Investigations of immigration benefits applications must be conducted expeditiously, with a general practice of adjudicating them within six months.

Decisions to deny an application must be made based on statutory criteria, not secret policy.

6. Applicants must be afforded an opportunity to meaningfully respond to any evidence that serves as the underlying reason for the denial.
7. USCIS should not permit the FBI or other law enforcement agencies to delay, exploit, or otherwise obstruct the immigration benefits adjudication process.
 - a. In particular, USCIS should not permit the FBI to use information about a pending immigration benefit application to coerce or blackmail an applicant into serving as an informant. At a minimum, any discussion between the FBI and an applicant in connection with an immigration application must be knowing and voluntary, and USCIS must make clear that an applicant's eligibility for an immigration benefit is not contingent on their cooperation with the FBI.
 - b. USCIS should not permit the FBI to use the immigration application process to obtain information about individuals that does not pertain to USCIS's adjudication of the benefit application.



I. INTRODUCTION

TAREK HAMDI'S STORY



Tarek Hamdi

In 2001, after nearly twenty-five years residing in the United States as a lawful permanent resident (or green card holder), Tarek Hamdi, an Egyptian national and practicing Muslim, decided to become a U.S. citizen, like his American-born wife and four daughters. Unbeknownst to Tarek or his lawyers, his naturalization¹ application was deliberately delayed and denied by United States Citizenship and Immigration Services (“USCIS”) due to the secret “national security” policy known as the “Controlled Application Review and Resolution Program” or “CARRP.” Under CARRP, USCIS has quietly deprived Arab, Middle Eastern, Muslim, and South Asian (“AMEMSA”)² immigrants – who aspire to be citizens – across the United States the immigration benefits they are entitled to under law. For Tarek, becoming a citizen should have taken no more than six months by law, but instead it became a grueling eleven-year ordeal that ultimately required two interventions by the federal courts, all because of CARRP.

USCIS treated Tarek as a “national security concern” because the Federal Bureau of Investigation (“FBI”) told USCIS that they were “unable to rule out the possibility that Mr. Hamdi may be a threat to the security of the United States.” The FBI based its assessment of Tarek on an act of charity. In 2000, Tarek gave his annual Islamic tithing (or “zakat”) to a U.S.-based Islamic charity, Benevolence International Foundation (“BIF”), to fund humanitarian relief to refugees and orphaned victims of wars. Two years later, the federal government shut down BIF based on allegations of terrorism financing and prosecuted its leader for defrauding its donors – donors like Tarek – by telling them their money was solely being used for humanitarian purposes. Even though Tarek’s act of giving was, from his perspective, no different than a Catholic tithing to the American Red Cross, and even though BIF was shut down precisely because the government had determined that donors like Tarek were the victims of fraud, USCIS nonetheless treated Tarek’s naturalization application as suspect, labeling him a “national security concern.” The agency took his application off a “routine adjudication” track and placed it on the CARRP track, which required the agency to concoct a pretextual reason to deny Tarek’s application in spite of his statutory eligibility to naturalize.

After the agency delayed adjudicating his case for years and denied it three times, based on, among other things, his alleged “affiliation” with BIF, Tarek took his case to court in hopes of a fair decision on his application. In February 2012, after a three-day trial, a federal district court judge rejected all of USCIS’s pretextual claims for why Tarek was ineligible to naturalize. The judge personally swore him in as an American citizen a few months later.

While Tarek overcame CARRP and became an American citizen, he is, unfortunately, the exception, not the rule. As detailed throughout this report, many other law-abiding aspiring Americans have had their applications for citizenship and other immigration benefits unfairly stymied through the secret CARRP process.

MAHDI ASGARI'S STORY



Mahdi Asgari

Photo Credit: Lewis Guzzetta

Mahdi Asgari, an Iranian and practicing Muslim, has waited three years for a decision on his naturalization application. Mahdi is a Cornell University and Oklahoma State University mathematics professor who came to the United States in 1994 to pursue his Ph.D. After completing his Ph.D. at Purdue University, USCIS granted Mahdi a National Interest Waiver, allowing him to adjust his status to that of a lawful permanent resident in recognition of his unique specialization in the field of mathematics. USCIS also found it in the “national interest” for him to remain in the United States. He and his wife have since made the United States their home, and are raising their daughter here.

After submitting his application for naturalization in August 2010, Mahdi began receiving visits from FBI agents in connection with his application. One agent told Mahdi’s lawyer that the visits were just “fishing expeditions” to talk to him about Iran. But during one interview, the FBI agents’ questions focused on his relationship with a fellow Iranian graduate student at Purdue University, where Mahdi had studied for his Ph.D., who is now on the Specially Designated Nationals list of the Office of Foreign Assets Control. During Mahdi’s naturalization interview, a USCIS officer also asked him about his relationship with this individual. Mahdi explained to the USCIS officer, as he did to the FBI, that the man is a former acquaintance and peer from graduate school with whom he has since had very little contact, except for occasional holiday greeting emails.

By law, Mahdi should have received a decision on his application more than two and a half years ago, but USCIS has placed his application on a “CARRP” processing track. Being placed on the “CARRP” track means endless delay and, eventually, a denial. Mahdi is anything but a “national security concern,” but so long as USCIS treats him as such under CARRP, USCIS will follow directions from the FBI to delay and ultimately deny Mahdi’s application.³

HASSAN RAZMARA'S STORY



Hassan Razmara

Hassan Razmara, an Iranian national and practicing Muslim, has waited nearly six years for a decision on his naturalization application. In 2002, Hassan migrated to the United States after obtaining lawful permanent residence through the “diversity visa lottery.” He and his wife applied to naturalize in 2007. Although his wife’s application was approved, Hassan’s was delayed.

Hassan attended an Iranian mosque in West Covina, California that was heavily surveilled by the FBI in and around 2008. The federal government prosecuted its imam, Seyed M. Mousavi, in 2008, for naturalization fraud, filing false tax returns, and violating the U.S. economic embargo against Iran. But Hassan himself had no connection of any kind to that misconduct.

In February 2009, Hassan passed his naturalization exam and interview, but three months later, USCIS called him in for a second interview. An FBI agent attended that second USCIS interview and asked Hassan a series of questions about his community, his mosque, and Mr. Mousavi, the imam. About one month later, the same FBI agent called him for a meeting and told Hassan that he would expedite his naturalization case if he agreed to work with the agency as an informant. Although he continued to receive calls from the agent, Hassan declined the invitation to become an informant upon legal advice that his eligibility for naturalization could not be made contingent on his agreement to snitch on his community.

More than four years later, Hassan's naturalization application is still pending with USCIS for "additional background checks." Though Hassan's naturalization presents no threat to our nation's security, USCIS likely put his case on a "CARRP" track – requiring delay and ultimately denial in spite of his eligibility to naturalize – at the FBI's request.

Since 2008, USCIS has used CARRP to quietly deny, without legal authority, the benefits to which these individuals are entitled.

Uncovering CARRP

Tarek, Mahdi, and Hassan's stories are not unique. They are like those of an untold number of AMEMSA immigrants and aspiring citizens whose applications for naturalization, lawful permanent residence, asylum, and visas have been unfairly delayed and denied on pretextual grounds, in spite of their legal eligibility for the benefits they seek. Since 2008, USCIS has used CARRP to quietly deny, without legal authority, the benefits to which these individuals are entitled. USCIS's attempts to detect "national security concerns" among applicants for immigration benefits rely on a dragnet approach that treats lawful religious activity, national origin, and innocuous associations as reason to label people as "national security concerns." Moreover, under CARRP, USCIS takes its cues from the FBI, converting the immigration benefits system into an instrument of law enforcement, but without any accountability.

Congress long ago sought to eradicate discrimination from our naturalization system by passing the Immigration and Nationality Act of 1952.⁴ But since 2008, USCIS has effectively resurrected this discrimination under the cover of CARRP. Through CARRP, USCIS has established its own undisclosed set of criteria that do not relate to statutory eligibility, but nonetheless delay and exclude certain applicants from obtaining benefits without congressional approval.

Although USCIS has used CARRP to delay and deny immigration benefits applications for years, causing great harm to applicants and their communities (as well as considerable confusion for immigration lawyers), it was not publicly known until recently what was causing these problems. Through this report, we seek to publicly reveal this policy for the first time and explain how it operates to harm law-abiding aspiring Americans from AMEMSA communities.

The information contained in this report is based on USCIS CARRP policy documents, memoranda, officer training materials, and other information obtained through litigation and Freedom of Information Act ("FOIA") requests. It is also based on dozens of interviews with applicants for immigration benefits as well as immigration lawyers representing individuals whose cases have been subjected to the CARRP process.

While this report attempts to summarize and distill the great deal of information we have learned to date about CARRP, much remains unknown. USCIS has yet to respond to a number of our requests for information under FOIA, and it has failed to disclose key documents that will be essential to a full and comprehensive understanding of how the program works. Many of the documents USCIS produced through FOIA were highly redacted, leaving many questions unanswered. On June 7, 2013, the ACLU of Southern California sued USCIS to obtain additional information.⁵ Furthermore, while CARRP applies to all applications to USCIS for immigration benefits – including asylum, visas, green cards, and naturalization – we have focused this report primarily on the program's impact on those seeking naturalization, about which we have the most information.

In the meantime, we hope that this report can serve as a helpful guide for applicants and immigration lawyers working on cases affected by CARRP. We also hope that it will inform lawmakers, advocates, and the public in a shared attempt to ensure that our immigration system remains fair and true to our core values as a nation. Aspiring Americans seek to become part of a nation that promotes fairness, embraces religious freedom, and forbids discrimination. Our immigration process should live up to and reflect those ideals.

See It Online:

The CARRP policy documents obtained through FOIA are available online at www.aclusocal.org/carrp.

II. BACKGROUND

The end of the FBI Name Check delay problem, however, marked the beginning of a new set of administrative delays in processing immigration applications.

The Origins of CARRP

Since the attacks on September 11, 2001, the federal government has made efforts to improve security screenings in every aspect of government. In the realm of immigration, the Department of Homeland Security has sought to ensure not only that it thoroughly vets the immigration applications and petitions of those who seek to live in this country, but that this screening is done in coordination with other federal agencies, particularly law enforcement agencies. While USCIS's policies and procedures to improve security screenings have changed and evolved since 9/11, these changes have sometimes brought with them administrative and legal problems for the agency and, in turn, for the applicants.

One significant problem resulted from the adoption of a new rule in November 2002 that requires the agency to run all applications for immigration benefits through an additional security check, known as the FBI Name Check, before adjudication.⁶ Prior to 2002, USCIS performed FBI criminal background checks on all applicants. Those checks, however, would search only FBI "main files" for records of individual applicants.⁷ After 2002, the FBI Name Check added additional screening by running an applicant's name through other FBI files and databases to determine whether or not there was a match – that is, whether or not an applicant's name appeared in any file or database.⁸

Due to the number of USCIS applications as well as inadequate resources and staffing at the FBI to process the Name Checks, hundreds of thousands of immigration applications for naturalization and green cards were delayed for years following this change.⁹ However, under naturalization law, USCIS is expected to process and adjudicate an application for naturalization within six months of the date of its filing.¹⁰ In response to the unlawful delays, a series of class-action lawsuits were filed across the country challenging the lengthy naturalization delays resulting from the FBI Name Check.¹¹ Following these lawsuits, the federal government cleared out the backlogs, and many applicants who waited years finally had their applications adjudicated.¹²

The end of the FBI Name Check delay problem by 2008-09, however, marked the beginning of a new set of administrative delays in processing immigration applications. USCIS issued the CARRP intra-agency policy in 2008, apparently as an attempt to create an agency-wide policy for identifying, processing, and adjudicating cases involving national security concerns and coordinating with outside agencies.

No description of CARRP can be complete without mention of the significant disparate impact on AMEMSA immigrants. Unlike the pre-existing Name Check policy, which led only to lengthy delays, CARRP prevents the fair adjudication of immigration benefit applications and results in pretextual, unjustified denials of those benefits that disproportionately impact people from the AMEMSA communities. Moreover, under the FBI Name Check problem, applicants, with some diligence, were able to discover the reason for the delay in their case. In contrast, USCIS has worked to keep CARRP itself a secret, and it does not inform applicants of the causes of the delays they experience. As a result, neither applicants nor their lawyers have known or understood the reason for the inordinate delays or unjustified denials in their cases, nor why certain applicants suddenly face extensive investigations, removal proceedings, or criminal prosecution.

The naturalization process also can not be prolonged indefinitely: USCIS must make a final determination on every naturalization application, either at the time of the examination or, at the latest, within 120 days after the date of the examination.

Naturalization Procedure

Under federal immigration law, persons who have been residing in the United States as lawful permanent residents may become U.S. citizens through a process known as naturalization.

A person seeking naturalization must meet certain requirements under the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101 et seq. Those requirements include a sufficient period of physical presence in the United States, good moral character, an understanding of the English language, and some knowledge of the history and government of the United States.¹³ In particular, a lawful permanent resident can naturalize as a U.S. citizen after five years of continuous residence in the United States, or three years of continuous residence if she is married to a U.S. citizen.¹⁴ The applicant must demonstrate by a preponderance of the evidence that she is “a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States.”¹⁵ The immigration code sets out a list of persons who shall not be regarded as having good moral character. This includes, for example, someone who is a “habitual drunkard,” someone whose income is derived principally from illegal gambling or has been convicted of two or more gambling offenses, someone who has been convicted of an aggravated felony, someone confined to a penal institution for 180 days or more following a conviction, someone who has participated in persecution, or someone who gives false testimony under oath for the purpose of obtaining an immigration benefit.¹⁶ This list is circumscribed by design as courts have recognized “we do not require perfection in our new citizens” in order to establish that they possess the requisite good moral character required for citizenship.¹⁷

A person seeking to naturalize must submit an application for naturalization (Form N-400) to USCIS for adjudication, along with a fee.¹⁸ Once USCIS receives a naturalization application, it conducts a background investigation of the applicant.¹⁹ Under federal regulations, the FBI performs a criminal background check on each naturalization applicant, which involves a fingerprint and database check to determine whether the applicant has an administrative or criminal record.²⁰ USCIS, in cooperation with other agencies, also now performs a series of additional security checks.²¹ After the background investigation and security checks are complete, USCIS schedules an in-person naturalization interview and examination, at which point an applicant meets with a USCIS examiner who is authorized to ask questions and take testimony.²² The examination typically includes a review to verify that the information submitted in the Form N-400 naturalization application is correct, a test of the applicant’s English literacy, and a test of basic knowledge of the history and government of the United States.²³ The USCIS examiner must then determine whether to grant or deny the naturalization application.²⁴ Naturalization is not discretionary: if the applicant has complied with all the requirements, USCIS must grant the application.²⁵

The naturalization process also can not be prolonged indefinitely: USCIS must make a final determination on every naturalization application, either at the time of the examination or, at the latest, within 120 days after the date of the examination.²⁶ If USCIS does not issue a decision within 120 days of the examination, an applicant may file suit in federal district court under 8 U.S.C. § 1447(b), which confers jurisdiction on the court either to determine the matter – namely to grant or deny citizenship – or to remand with appropriate instructions to USCIS to determine the matter.²⁷ A primary purpose of the statutory provision at 8 U.S.C. § 1447(b), enacted in 1990, was to decrease backlogs in the naturalization process and reduce waiting times for naturalization applicants.²⁸

In addition to the specific 120-day deadline for adjudicating applications after the examination, 8 U.S.C. § 1571(b) states, “[i]t is the sense of Congress that the processing of an immigration benefit application should be completed not later than 180 days after the initial date of filing of the application.” This provision, along with other statutory provisions,²⁹ makes clear Congress’s intent to eliminate persistent backlogs in the processing of immigration benefit applications. Congress has defined backlogs as “the period of time in excess of 180 days that such application has been pending before [USCIS].”³⁰ These provisions make clear that USCIS is generally expected to process and adjudicate a naturalization application within 180 days.



MAGRA

III. CARRP: USCIS'S NATIONAL SECURITY POLICY

CARRP procedures govern all stages of the processing and adjudication of an immigration benefit application – from the moment the application is filed to the moment it is decided.

Adopted by USCIS in April 2008, “CARRP” or the “Controlled Application Review and Resolution Program” established a uniform, agency-wide policy for handling applications with perceived national security concerns intended to “ensure that immigration benefits are not granted to individuals and organizations that pose a threat to national security.”³¹ The “immigration benefits” administered by USCIS include naturalization, green cards (*i.e.*, lawful permanent resident status), asylum, and certain visas.

How It Works: The Mechanics of CARRP

CARRP procedures govern all stages of the processing and adjudication of an immigration benefit application – from the moment the application is filed to the moment it is decided. It applies to all applications or petitions to USCIS that request immigrant or non-immigrant status,³² making CARRP inapplicable to only a handful of applications handled by USCIS.³³

CARRP’s process for adjudicating benefits applications proceeds in four basic stages. Stage One involves identifying whether a “national security concern” exists in an individual case. If so, USCIS will move the case from a “routine adjudication” track to a CARRP track, and every aspect of the case will be handled in accordance with the CARRP policy.³⁴ The case will remain on a CARRP track so long as the agency continues to believe that the person poses a “national security concern” or is otherwise instructed by the FBI to treat them as a concern. Stages Two and Three are investigative stages, aimed at finding a reason to deny an application, and Stage Four is the adjudicative stage at which point a decision must be rendered.

The following USCIS chart summarizes, in the agency’s terms, the four stages of CARRP.

The case will remain on a CARRP track so long as the agency continues to believe that the person poses a “national security concern” or is otherwise instructed by the FBI to treat them as a concern.



U.S. Citizenship and Immigration Services

Controlled Application Review and Resolution Program (CARRP) Summary

FIELD	
IDENTIFYING A NATIONAL SECURITY (NS) CONCERN	<p>Identifying a NS Concern: As a result of the security checks or at any stage during the adjudicative process, the officer may identify one or more indicators that may raise a NS concern. In such cases, the officer must first confirm whether the indicator(s) relates to the applicant, petitioner, beneficiary, or derivative ("the individual"). When a Non-KST NS indicator has been identified, the officer must analyze the indicator and determine whether an articulable link exists between the individual and an activity, individual, or organization described in sections 212(a)(3)(A), (B), or (F), or 237 (A) or (B) of the Immigration and Naturalization Act ("the Act"). A KST NS concern must be confirmed via a TECS/IBIS check. If confirmed, the officer must contact the Terrorist Screening Center in order to determine whether the KST NS concern relates to the individual. (CARRP Policy Memorandum, p. 4).</p>

Based on: CARRP Memo on 4/11/08 and DOMOPS Op Guidance 4/25/08

FIELD	
INTERNAL VETTING/ ELIGIBILITY ASSESSMENT	<p>Assessing Eligibility in Cases with a NS Concern: If it is determined that a NS concern exists, the officer must conduct a thorough review of the record associated with the application or petition to determine if the individual is eligible for the benefit sought. The officer must also conduct internal vetting to obtain any relevant information to support adjudication and, in some cases, to further examine the nature of the NS concern. (CARRP Policy Memorandum, p. 4).</p>

FIELD-NON-KST OR HQFDNS-KST	
EXTERNAL VETTING	<p>External Vetting Non-KST Cases: If an application or petition appears to be otherwise approvable, and internal vetting is complete; there is an identified record owner in possession of NS information; and the NS concern remains, then the officer must initiate the external vetting process (Non-KST cases only) before the case may proceed to final adjudication. (CARRP Policy Memorandum, p. 5). KST Cases: Field officers are not authorized to conduct external vetting with record owners in possession of NS information. If the application/petition is otherwise approvable for KST cases, HQFDNS must conduct external vetting of KST concerns. (CARRP Policy Memorandum, p. 6).</p>

FIELD	
CARRP ADJUDICATION	<p>CARRP Adjudication: Upon completion of required vetting, if the NS concern remains, the officer must evaluate the result of the vetting and determine any relevance to adjudication, obtain any additional relevant information, and determine eligibility for the benefit sought. Adjudication of a case with a NS concern focuses on thoroughly identifying and documenting the facts behind an eligibility determination, and, when appropriate, removal, rescission, termination, or revocation under the Act. (CARRP Policy Memorandum, p. 6).</p>

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In order to determine whether an applicant presents a “national security concern,” USCIS officers are directed to look for “indicators” that may implicate “national security concerns” through responses to security checks or other information obtained during the adjudicative process.

a. Stage One: Identifying “National Security Concerns”

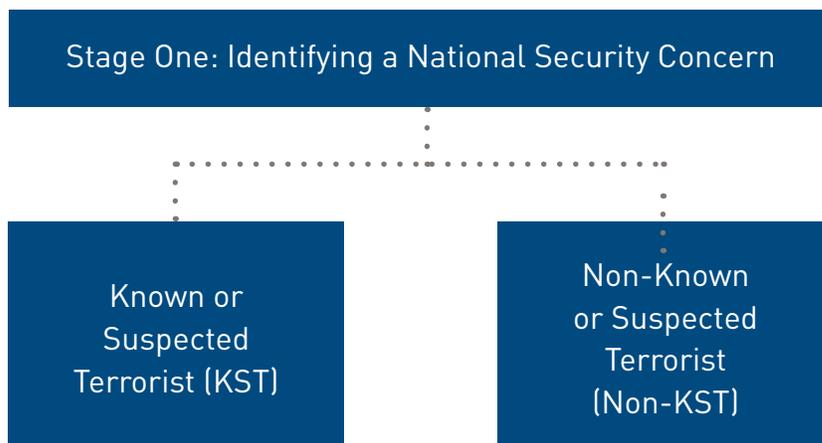
Catching Far Too Many in the Net

USCIS screens every application for an immigration benefit at the outset through a series of security and background checks to determine if any possible “national security concern” is present. “National security concerns” can be identified at any stage of the immigrant benefit screening or adjudicative process, but in most cases, they will be identified at the outset.

CARRP defines a “national security concern” as “an individual or organization [that] has been determined to have an articulable link to prior, current, or planned involvement in, or association with, an activity, individual or organization described in [the security and terrorism sections]³⁵ of the Immigration and Nationality Act.”³⁶ The terms “link” and “association with” are not further defined, thus leaving this definition extremely vague. Moreover, while the policy suggests that officers should use the activities, individuals, and organizations described in the security and terrorism sections of the Act as exemplars of indicators of a “national security concern,” it also makes clear that “the facts of the case do not need to satisfy the legal standard used in determining admissibility or removability,” a qualification that only further expands the vagueness and breadth of the definition.³⁷

In order to determine whether an applicant presents a “national security concern,” USCIS officers are directed to look for “indicators” that may implicate “national security concerns” through responses to security checks or other information obtained during the adjudicative process.³⁸ Security checks are now conducted at the outset of the processing of an application, soon after an individual applies for an immigration benefit.³⁹ While a number of security checks are performed, the FBI Name Check appears to be the security check most utilized for identifying indicators of a “national security concern.”

Under CARRP, there are two types of “national security concerns”: those described as “Known or Suspected Terrorists” (“KSTs”) and “non-Known or Suspected Terrorists” (“non-KSTs”). USCIS will automatically label an applicant a “national security concern” whose security checks reveal that he or she has already been labeled by the federal government as a “KST.” USCIS may also label an applicant a “non-KST” “national security concern” if certain “indicators” are present.⁴⁰ Both categories cast extremely wide nets, rely on discriminatory profiling, and yield imprecise, inaccurate, and often absurd results that disproportionately impact AMEMSA applicants.



If USCIS’s security checks reveal that an applicant appears on the Terrorist Watch List, he or she is thus a KST and, under CARRP, USCIS will automatically consider that applicant a “national security concern.”

i. Known or Suspected Terrorist (“KST”)

Under CARRP, a KST is any person whose name has been placed in the Terrorist Screening Database, otherwise known as the Terrorist Watch List.⁴¹

If USCIS’s security checks reveal that an applicant appears on the Terrorist Watch List, he or she is thus a KST and, under CARRP, USCIS will automatically consider that applicant a “national security concern.”⁴² Applicants are not told that they are on the Terrorist Watch List, nor are they given a meaningful opportunity to dispute their inclusion on the list. Instead, unbeknownst to them, their applications will proceed on a CARRP track, causing delay and likely preventing USCIS from granting their application.

The Terrorist Watch List is notoriously over-inclusive, containing among its at least 875,000 names,⁷⁰ thousands of U.S. residents of AMEMSA descent who pose no threat to the security of this country. This over-inclusion arises because the Watch List does not require evidence that the listed individuals pose a threat of engaging in any terrorist activity. Nonetheless, once someone’s name is on the Watch List, the federal government does not provide a meaningful way for that person to contest her placement and have her name removed. The Watch List’s operation is particularly unfair when coupled with CARRP. Even if an applicant’s name erroneously appears

on the Watch List, she is also blacklisted from obtaining the immigration benefit that she seeks. (See the text box “How Does the Terrorist Watch List Work?” for more information).

DECODING USCIS DOCUMENTS

Defining a KST

CARRP defines a “Known or Suspected Terrorist (KST)” as “a category of individuals who have been nominated and accepted for placement in the Terrorist Screening Database (TSDB), are on the Terrorist Watch List, and have a specially-coded lookout posted when queried in TECS/IBIS, and/or the Consular Lookout Automated Support System (CLASS), used by the Department of State.”⁴³

This definition effectively means that a KST is anyone whose name appears on the Terrorist Watch List. The Terrorist Watch List is synonymous with the Terrorist Screening Database, and, according to testimony from the Director of the Terrorist Screening Center, nearly every person accepted into the Terrorist Watch List will also have a record in the Treasury Enforcement Communications System/ Inter-Agency Border Inspection System (“TECS/IBIS”) and CLASS systems.⁴⁴

DECODING USCIS DOCUMENTS

How Does the Terrorist Watch List Work?

The Terrorist Watch List, or Terrorist Screening Database (“TSDB”) is developed and maintained by the Terrorist Screening Center (“TSC”), which is administered by the FBI.⁴⁵ The Terrorist Screening Database is the federal government’s consolidated list of suspected international and domestic terrorists. It is used for watch list-related screening.⁴⁶ The TSC sends records from the Terrorist Watch List to other government agencies, which use them to identify and screen known or suspected terrorists. For example, the TSC provides records to U.S. Customs and Border Protection (“CBP”) for use in screening travelers entering the United States and to the State Department for use in determining whether to grant or revoke a visa.⁴⁷

The National Counterterrorism Center (“NCTC”) and the FBI are the two government agencies primarily responsible for “nominating” individuals for inclusion on the Terrorist Watch List.⁴⁸ The TSC ultimately determines whether a nomination satisfies the reasonable suspicion standard for inclusion in the Watch List.⁴⁹ According to the TSC, “reasonable suspicion requires articulable facts which, taken together with rational inferences, reasonably warrant the determination that an individual ‘is known or suspected to be or has been engaged in conduct constituting, in preparation for, in aid of or related to terrorism and terrorist activities.’”⁵⁰ The term “related to” is not further defined. The federal government has not disclosed guidelines or criteria explaining how it determines that the government has “reasonable suspicion” that a person is a “known or suspected terrorist.” According to TSC Director Timothy Healy’s testimony to Congress, the “reasonable suspicion standard is based on the totality of the circumstances in order to account for the sometimes fragmentary nature of terrorist information. Due weight must be given to the reasonable inferences that a person can draw from the available facts.”⁵¹

Given the vagueness of the standard, it is no surprise that the Terrorist Watch List is notoriously over-inclusive and includes individuals who present no threat to our nation. A 2007 Government Accountability Office report found that the TSC rejects only one percent of nominations it receives to the Watch List.⁵² For example, until 2008, Nobel Peace Prize Winner Nelson Mandela was on the Watch List.⁵³

In 2010, the U.S. government expanded the Terrorist Watch List in response to the intelligence failures that permitted Nigerian citizen Umar Farouk Abdulmutallab, a would-be bomber, to fly from Amsterdam to Detroit on December 25, 2009. TSC Director Timothy Healy reported that the TSC had identified additional individuals from “high-threat countries” and “upgraded” them either for inclusion in the consolidated Terrorist Watch List or for inclusion in the “No Fly List” or “Selectee List.”⁵⁴

The federal government’s “No Fly List” and “Selectee List” are subsets of the Terrorist Watch List.⁵⁵ Inclusion in these lists requires that nominees meet criteria more stringent than the reasonable suspicion standard required for inclusion in the Terrorist Watch List itself.⁵⁶ That is, a person can be on the Terrorist Watch List but not on the No-Fly or Selectee lists. Individuals on the No-Fly List are entirely prohibited from boarding commercial flights that originate in or pass through U.S. airspace.⁵⁷ Individuals on the Selectee List, also known as the Secondary Security Screening Selection (“SSSS”) List,⁵⁸ are subjected to additional inspection prior to being permitted to board commercial flights over U.S. airspace.⁵⁹

The government does not provide any notice to an individual who is placed on the Terrorist Watch List, or the No-Fly or Selectee lists.⁶⁰ An individual will likely discover their Watch List inclusion only when denied boarding on a flight (due to placement on the No-Fly List), when subject to secondary inspection by the Transportation Security Administration (“TSA”) prior to boarding a flight (due to placement on the Selectee List), or when subject to secondary inspection by Customs and Border Protection (“CBP”) after entering the United States from travel abroad (due to inclusion on the Terrorist Watch List).⁶¹ Usually, persons included on the Selectee List will see the code SSSS listed on their boarding pass.

Importantly, once an individual is placed on the Terrorist Watch List, it is very difficult to get off the list.⁶² The government does not provide Watch Listed persons any meaningful redress process after being denied boarding on flights, secondary screening prior to boarding, or secondary inspection after returning to the U.S. from travel abroad. The only redress process available is the Department of Homeland Security Traveler Redress Inquiry Program (“DHS TRIP”), which permits travelers to submit a standard online form describing the travel problem and providing identification information.⁶³ DHS TRIP submits these traveler complaints to the TSC, which determines whether the complainant is a positive match on the Terrorist Watch List and, if so, whether the individual should remain on the list.⁶⁴ The TSC has provided no publicly available information about how it makes these decisions.⁶⁵ The TSC is the final arbiter of whether an individual’s name is retained on or removed from the list.⁶⁶ Once the TSC makes a final determination regarding a particular individual’s status on the Watch List, the TSC advises DHS that it has completed its process.⁶⁷ DHS TRIP then responds to the individual with a letter that explicitly states that it can neither confirm nor deny the existence of any Terrorist Watch List records related to the individual.⁶⁸ The letters do not set forth any basis for inclusion in a Terrorist Watch List and do not state how the government has resolved the complaint at issue.⁶⁹

CARRP IN PRACTICE



Abraham Mosavi

KSTs: Getting It Wrong

ABRAHIM MOSAVI is a 61 year-old Iranian national, a Muslim, and a thirty-five year lawful resident of the United States. He has waited for thirteen years for a decision on his naturalization application, which he filed in 2000. Abraham has never been convicted of a crime and has lived a peaceful life in the United States. He believes the government placed his name on the Terrorist Watch List (for reasons unknown to him), because Border Patrol agents routinely subject him to interrogation at secondary inspection when he enters the United States from overseas trips. These inspections demonstrate that USCIS considers him a KST, and that his naturalization application is subject to CARRP, thus explaining the thirteen-year delay he has experienced.

SAMIR,⁷¹ a Tunisian national, practicing Muslim, and thirteen-year lawful resident of the United States, has been waiting for three years for a determination on his naturalization application. He has never been charged with or convicted of a crime. Samir is routinely subject to secondary inspection when he returns to the United States and he was once denied boarding on a U.S. flight. He is thus likely on the Terrorist Watch List. As a result, USCIS likely considers him a KST and has put his naturalization application on a CARRP track, explaining the delay and disparate treatment he has experienced in the application process. During his naturalization interview in September 2011 – for which USCIS gave him only one day’s notice – a USCIS agent questioned him extensively about his religious affiliations and ongoing relationships back home in Tunisia, and about how much money he has sent in support of his family. Such questions have no bearing on his eligibility to naturalize.

KSTs: Getting It Obviously Wrong

The following individuals are or were at one time on the Terrorist Watch List. If any of these individuals were to apply for an immigration benefit, USCIS would have automatically deemed them a KST “national security concern” and would delay and, ultimately, deny their applications under CARRP.

NELSON MANDELA was listed on the Terrorist Watch List and needed special permission to enter the United States. Fortunately, Mandela was removed from the Watch List by an act of Congress in 2008 – a solution the average person cannot rely upon.⁷²

SENATOR EDWARD KENNEDY (D-Mass) learned his name was on the Terrorist Watch List after suffering repeated delays at airport security. Removal of his name eventually required him to have a personal conversation with the Secretary of DHS.⁷³

REPRESENTATIVE JOHN LEWIS (D-Ga), a hero of the Civil Rights Movement, was on the Terrorist Watch List.⁷⁴

YUSUF ISLAM, FORMERLY KNOWN AS CAT STEVENS, the popular singer is on the Terrorist Watch List (and, apparently, on the more restrictive subset of the Watch List known as the No-Fly List).⁷⁵

This USCIS CARRP flow chart demonstrates the process by which a KST national security concern is identified and, if the concern is confirmed, the path towards denying the application.

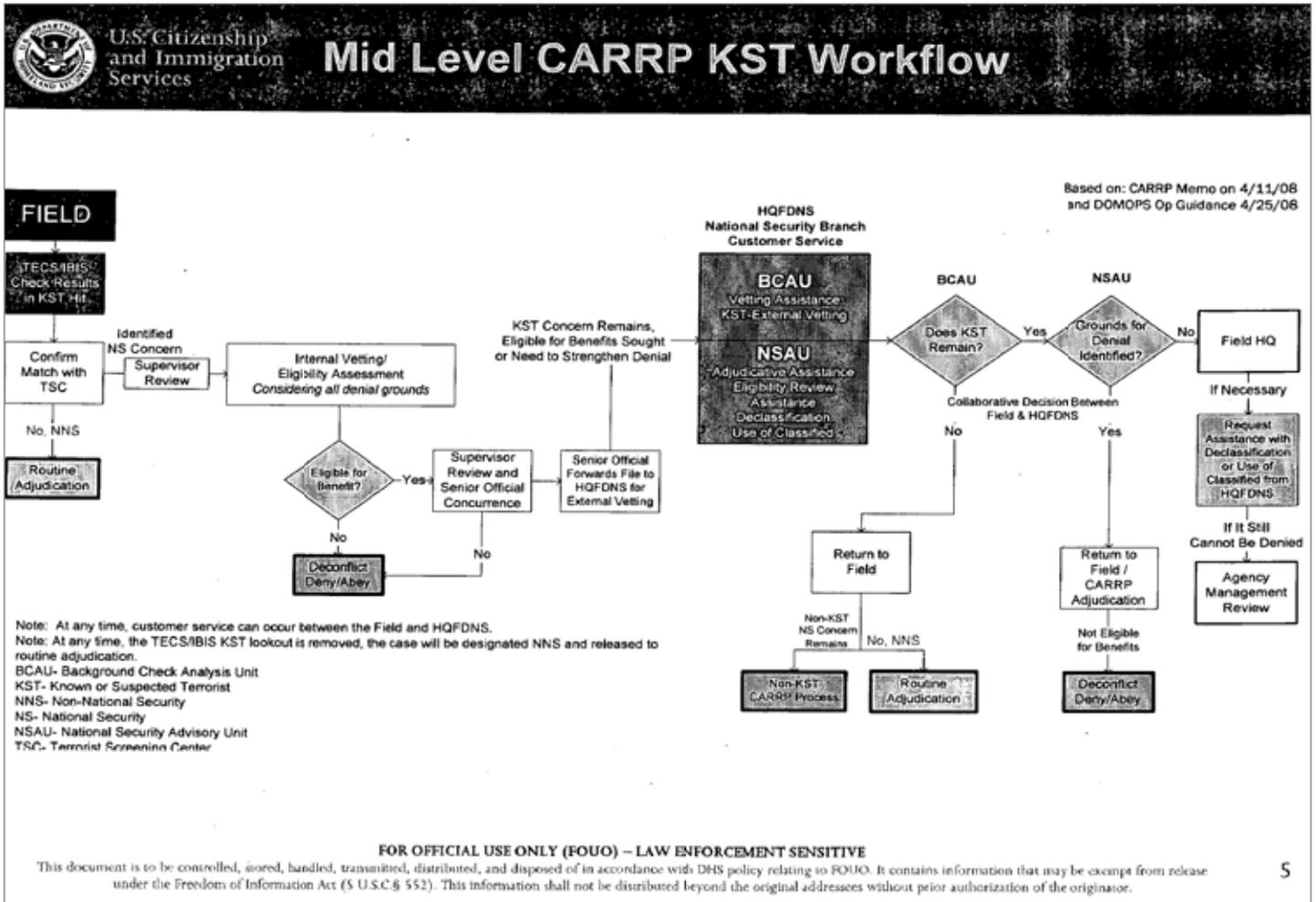




Photo Credit: Mai-Chun Jan

"I've lived in the United States 25 years, more than I've lived in any other place. I feel the U.S. is my home. And now you are telling me that my citizenship is denied because I donated to this organization? The lady in the interview was asking me 'Reem, you are a smart lady. You have a master's degree in engineering. How come you didn't know at the time when you were giving money to this organization that it was going to end up being a terrorist organization?' I told her, 'Well, I'm not smarter than the U.S. government. Why would you expect me to know that before the government itself found out?'"

— Reem Muhanna

ii. Non-Known or Suspected Terrorist ("Non-KST")

If the security checks do not indicate that an applicant is a KST, then officers are directed by CARRP to look for other "indicators" from any relevant sources that the applicant could be a "national security concern" even though she is not a known or even suspected terrorist. CARRP refers to this kind of applicant as a "Non-KST."⁷⁶

The policy sets out three types of indicators of a non-KST national security concern: statutory indicators, non-statutory indicators, and indicators contained in security check results.⁷⁷ All are extraordinarily overbroad categories that often lead to wildly inaccurate conclusions about an applicant's connection to any actual threat to national security.

Non-KST Indicators: Statutory Indicators

CARRP instructs officers to use the activities, individuals, and organizations described in Sections 212(a)(3)(A), (B), and (F), and 237(a)(4)(A) and (B) of the INA, which list the security and terrorism grounds of inadmissibility and removability, as indicators of a national security concern.

This collection of sections makes inadmissible or removable any person who is a member of or associated with a "terrorist organization" or who "has engaged in terrorist activity," but the terms are broadly defined.⁷⁸ "Terrorist organizations" are defined as either (1) those designated by name as foreign terrorist organizations by the Secretary of State (known as "Tier I" or "Tier II" organizations)⁷⁹ or (2) any "group of two or more individuals, whether organized or not, which engages in, or has a subgroup which engages in" certain enumerated terrorist activities (known as "Tier III" non-designated organizations).⁸⁰ The vast overbreadth of the Tier III category has been extensively documented.⁸¹ Among other things, the statute provides that an individual has "engaged in terrorist activity" if she committed "an act that the actor knows, or reasonably should know, affords material support. . . . for the commission of a terrorist activity" or to "a terrorist organization."⁸² "Material support" includes, among other things, "funds, transfer of funds or other material financial benefit," no matter how small.⁸³ Courts have read the provision broadly, such that it applies even to minimal forms of support, support that is lawful under international law, and, in some cases, involuntary support.⁸⁴

Importantly, under the statute, an individual who "did not know, and should not reasonably have known," that she was providing "material support" to a "terrorist organization" or that the recipient planned to commit a terrorist activity is not inadmissible or removable.⁸⁵ CARRP, however, instructs officers to look far beyond the statute's already broad applicability for indicators of national security concerns. CARRP makes clear that "the facts of the case do not need to satisfy the legal standard used in determining admissibility or removability" in order to constitute a national security concern.⁸⁶ In addition, it instructs officers to look not only at the Department of State website for lists of Tier I and Tier II terrorist organizations with which an applicant may have some association, but to look at the Department of Treasury listings of Specially Designated Global Terrorist Entities pursuant to Executive Order 13224 for "organizations likely to meet the Tier III undesignated terrorist organization definition."⁸⁷ The Treasury Department designated a number of the largest U.S. Islamic charities as Terrorist Entities pursuant to this Executive Order.⁸⁸

These instructions have led USCIS to make unwarranted conclusions about whether an applicant is a "national security concern." The requirement that USCIS officers look at associations with organizations designated by the Treasury Department (including charities), combined with the instruction that an applicant's "association" need not meet the legal standard for

inadmissibility or removability to be a “national security concern,” may explain why USCIS has singled out so many Muslim immigrants as “concerns” for their donations to Islamic charities later designated by the Treasury Department as financiers of terrorism, such as the Holy Land Foundation, Global Relief Foundation, and Benevolence International Foundation – donations that were not only lawful, but made with the good faith intention that they would be used only for humanitarian purposes. It is particularly ironic that USCIS would now claim that donors to these charities are “national security concerns” when the government previously accused these charities of misrepresenting to donors that their money was being spent on solely charitable causes, thereby portraying the donors to these charities as innocent victims of organizations that supported terrorism.⁸⁹

While the material support provisions of the statute were designed to ensure that individuals who did not or should not have known that they were supporting terrorism would not be held liable for their support, CARRP’s guidance leads to the opposite result, as it encourages officers to ignore the statute’s requirement that a person *knowingly* provide material support by directing them to scrutinize *any* “material support” provided to an organization designated by the Treasury Department (*i.e.*, many of the largest American Muslim charities).⁹⁰ It thus punishes people who engaged in no wrongdoing by preventing them from obtaining immigration benefits.

CARRP IN PRACTICE

Singling Out Muslim Applicants for Their Charitable Donations



TAREK HAMDI was labeled a “national security concern” because of evidence of a donation he made to the Benevolence International Foundation (“BIF”), an American Islamic charity based in Chicago, before the Treasury Department ever accused it and designated it a financier of terrorism. In

2003, BIF’s leader Enaam Arnout pled guilty to charges of racketeering conspiracy for misleading the organization’s donors by holding BIF out to be a charitable organization involved solely in humanitarian work, when it instead used some of the monies to support militants fighting for the unrecognized government of Chechnya.⁹¹ Although Tarek was one of thousands of U.S. donors defrauded by BIF, USCIS nonetheless subjected his application to CARRP, delaying and ultimately denying his naturalization application on pretextual grounds until a federal court reversed that decision.⁹²

JAMAL ATALLA, a physician who volunteered his time providing emergency services, was likely labeled a “national security concern” and had his naturalization application subjected to CARRP because of volunteer work and donations he made to the Global Relief Foundation (“GRF”), an American Islamic charity, prior to its designation by the Treasury Department as a financier of terrorism.⁹³ Like Tarek Hamdi, Jamal was also a victim of GRF to the extent GRF misrepresented its charitable activities. USCIS likely put his application on a CARRP track, delaying and ultimately denying his naturalization application on pretextual grounds. Jamal appealed to the federal district court, which disagreed with USCIS and found him eligible to naturalize. The government’s appeal of that decision is pending before the Ninth Circuit.⁹⁴

Non-KST Indicators: Non-Statutory Indicators



Abraham Mosavi. Travel to see family? CARRP'd.



Tarek Hamdi. Donated \$ to charities? CARRP'd.



Mahdi Asgari. Suspicious former classmates? CARRP'd.

CARRP also instructs officers to look at non-statutory indicators of a national security concern, such as (1) a person's employment, training, or government affiliations; (2) "other suspicious activities"; and (3) family members or close associates.⁹⁵ With respect to employment, training, and government affiliations, it instructs officers "to consider proficiency in particular technical skills gained through formal education, training, employment, or military service, including foreign language or linguistic expertise, as well as knowledge of radio, cryptography, weapons, nuclear physics, chemistry, biology, pharmaceuticals, and computer systems."⁹⁶

CARRP states that "other suspicious activities" could include:

- "Unusual travel patterns and travel through or residence in areas of known terrorist activity";
- "Criminal activities such as fraudulent document manufacture; trafficking or smuggling of persons, drugs, or funds; or money laundering";
- "Large scale transfer or receipt of funds";
- "Membership or participation in organizations that are described in, or that engage in, activities outlined in sections 212(a)(3)(A), (B), or (F), or 237(a)(4)(A) or (B) of the Act."⁹⁷

Finally, CARRP directs officers to look at whether the applicant has a family member or "close associate" who is a national security concern to determine whether that association gives rise to a national security concern for the applicant. The policy states that a "close associate" could be a "roommate, co-worker, employee, owner, partner, affiliate, or friend."⁹⁸

Such indicators are obviously vague and overbroad, and therefore necessarily capture individuals who pose no threat to national security at all. As discussed in Chapter IV(a), they also lead to national origin and religious discrimination. By defining "suspicious activities" as including "travel through or residence in areas of known

CARRP IN PRACTICE

Finding a National Security Concern Based Solely on a Casual Association

MAHDI ASGARI may have been deemed a "national security concern" solely because he attended university with and casually associated with another Iranian student who years later the U.S. government placed on its Specially Designated Nationals list of the Office of Foreign Assets Control. USCIS has placed his application on a CARRP track, given the lengthy delays in his case and repeat visits from the FBI in connection with his naturalization application.

ZUHAIR MAHMOUD is a practicing Muslim originally from Jordan who has resided in the United States for twenty-three years. He is blind and is active in advocacy for people with disabilities. His application for naturalization was delayed for five years, ultimately requiring the intervention of the federal district court on two separate occasions. USCIS may have deemed Zuhair a "national security concern" and subjected his application to CARRP and its predecessor policies on account of non-KST "indicators" that amount to religious and other profiling. For example, Zuhair regularly attended mosque, served on the Board of the Islamic Schools of Denver, and made donations to charitable organizations during fundraisers at his mosque. His career has been spent working in information technology. He was regularly subject to secondary inspection at the airport. After two successful federal lawsuits, a federal court finally ruled that he was eligible to naturalize in 2009.

The policy effectively directs officers to find national security concerns simply because an applicant is from a given country where his family or friends still reside.



Photo Credit: Shealah Craighead

Zuhair Mahmoud. IT Professional? CARRP'd.

CARRP's Non-KST indicators are obviously vague and overbroad, and therefore necessarily capture individuals who pose no threat to national security at all.

terrorist activity,” the policy effectively directs officers to find national security concerns simply because an applicant is from a given country where his family or friends still reside. Similarly, “[l]arge scale transfer or receipt of funds” is so broad as to include individuals who wire money back to their families in their home countries. In addition, by directing agents to consider a person's profession, military training, or foreign language expertise, for example, as indicators of a “national security concern,” this indicator could apply broadly to a large segment of skilled immigrant applicants, and, ultimately, to anyone who speaks a language other than English.

Non-KST Indicators: Indicators Contained in Security Check Results

Finally, officers are directed to examine the results of security checks, such as the FBI Name Check, the FBI Fingerprint or NCIC Criminal History Check,⁹⁹ the OBIM and IDENT checks,¹⁰⁰ and TECS/IBIS,¹⁰¹ to determine whether any indicators of a “national security concern” are present.

DECODING USCIS DOCUMENTS

Security Checks

USCIS performs the following security checks on applications for immigration benefits: the FBI Name Check; the FBI Fingerprint Check; Treasury Enforcement Communications System/ Inter-Agency Border Inspection System (TECS/IBIS); the Consular Lookout Automated Support System (CLASS); Department of State Security Advisory Opinions (SAOs); the Office of Biometric Identity Management (OBIM), formerly the U.S. Visitor and Immigrant Status Indicator Technology (US VISIT); the Automated Biometrics Identification System (IDENT)); and other system checks.¹⁰²

FBI Name Check is the FBI name-based background check called the National Name Check Program.¹⁰³ The FBI receives name check requests from federal agencies, including USCIS; from components within the legislative, executive, and judicial branches of the federal government; and from foreign police and intelligence agencies.¹⁰⁴ Agencies request a name check prior to bestowing certain benefits.¹⁰⁵ After receiving a request, the FBI reviews documents to determine whether a specific individual has been the subject of or mentioned in any FBI investigation, and, if so, what information the FBI can release to the requesting agency.¹⁰⁶

FBI Fingerprint Check is the FBI's national fingerprint and criminal history check called the Integrated Automated Fingerprint Identification System (IAFIS).¹⁰⁷ The FBI responds to requests submitted by local, state, and federal partners (like USCIS), inquiring about apprehensions.¹⁰⁸ IAFIS provides fingerprint search capabilities, latent search capabilities, electronic image storage, and electronic exchange of fingerprints and responses.¹⁰⁹

TECS/IBIS is the Department of Homeland Security's primary lookout system. U.S. Customs and Border Protection (CBP) is the principal owner and primary user of TECS.¹¹⁰ It uses the system to screen individuals at all ports of entry.¹¹¹

CLASS is a database administered by the Department of State's Bureau of Consular Affairs. The database is used by consular officers abroad to screen visa applicants for travel to the United States.¹¹²

SAO is a system used by the U.S. Department of State, whereby consular officers abroad are required to refer visa applications with suspect names or other flags identified by CLASS and other systems to Washington-based agencies (intelligence and other law enforcement bodies) for further review, before granting U.S. nonimmigrant visas to foreign nationals.¹¹³

OBIM (formerly US-VISIT, the system for collecting and sharing biometric data at points of entry) is the central database created within the Department of Homeland Security in March 2013 to streamline the provision of technologies for collection, storage, and analysis of biometric data, and upkeep of watchlists.¹¹⁴ All non-U.S. citizens, with limited exception, are subject to OBIM procedures, including digital fingerprints and photographs upon entry or reentry into the United States.¹¹⁵

IDENT serves as a biographic and biometric repository for the Department of Homeland Security. Once a person's biometric data has been collected by OBIM, IDENT stores and enables the sharing and cross-checking of that data. It automatically compares new encounters to identified data within the system, and checks against its KST, criminal, and other immigration violation-related watchlists.¹¹⁶

Among these security checks, the use of the FBI Name Check is perhaps the most troubling, because it is most likely to have a dragnet effect, leading USCIS to erroneously label a person a “national security concern” without any legitimate basis to do so.

Among these security checks, the use of the FBI Name Check is perhaps the most troubling, because it is most likely to have a dragnet effect, leading USCIS to erroneously label a person a “national security concern” without any legitimate basis to do so. CARRP states if the results of the FBI Name Check are positive – meaning the applicant’s name is somehow mentioned in a file – and the result relates to certain types of national security law enforcement investigations, such as terrorism-related investigations, then they are indicators of a “national security concern.”¹¹⁷

When an applicant receives a positive name check hit in an FBI file related to a national security investigation, CARRP directs USCIS officers to treat the applicant as a “national security concern,” except in “those instances where a Letterhead Memorandum (“LHM”) on file states that the case agent made a *definitive* finding that the applicant had no nexus to national security.”¹¹⁹

Therefore, USCIS may deem any applicant a “national security concern” whose name is merely contained in a file associated with one of these types of investigations and, as will generally be the case, no definitive finding has been made that the person is *not* a “national security concern.” As a result, USCIS’s reliance on FBI Name Check results to determine whether an individual is a “national security concern” disproportionately impacts AMEMSA immigrants, and leads to the denial of benefits for many people who do not present any threat to our nation.

DECODING USCIS DOCUMENTS

Positive FBI Name Check Hits

If an applicant has a positive FBI Name Check result linking their name to a file relating to certain types of investigations, USCIS may deem them a “national security concern.”

These investigations include:

- foreign counterintelligence;
- acts of terrorism;
- international terrorism;
- domestic terrorism;
- hostage taking – terrorism;
- money laundering or suspicious financial transactions with some link to a national security activity;
- violations of arms control treaty measures;
- sabotage;
- bombings and explosives violations;
- threats or attempts to use, possess, produce, or transport weapons of mass destruction (WMD); and
- use, possession, production, or transport of a WMD.¹¹⁸

Notably, an individual applicant may receive a positive name check from merely being “referenced” (*i.e.*, mentioned) in a file, regardless of whether he or she was the suspect of the investigation. In this way, witnesses, family members, and even victims of the above-mentioned crimes, as well as individuals with the same or similar sounding names as people in FBI files, may receive a positive “hit” in the FBI Name Check.

CARRP IN PRACTICE



Tarek Hamdi



Ahmad and Reem Muhanna

Positive FBI Name Checks as Indicators of a National Security Concern

TAREK HAMDİ's naturalization application was initially flagged as a “national security concern” because his FBI name check produced a “positive hit” related to a counterterrorism investigation. Specifically, there was a “hit” on his name in the investigative files of the FBI’s investigation of Benevolence International Foundation. An FBI record of a voluntary interview Tarek gave to the FBI regarding a donation he made to the Benevolence International Foundation was contained in the file and triggered the “hit.”¹²⁰ Further, a Letterhead Memorandum on file stated that the FBI could not rule out the possibility that Tarek was a national security concern. As a result, USCIS treated him as a “concern.”¹²¹

AHMAD and **REEM MUHANNA**, nationals of Palestine and practicing Muslims, have resided together in the United States since 1988. They filed their naturalization applications in May 2007 and have since waited six years for a final decision on their naturalization applications. FBI Name Check results likely identified FBI records from its investigation of the Holy Land Foundation, an Islamic charity, that showed that the Muhannas made donations to the charity before it was shut down by the government. USCIS likely deemed them “national security concerns,” and placed their applications on a CARRP track, because of their donations, which would explain the lengthy delays they have experienced and USCIS’s implausible denial of their applications. The Muhannas have administratively appealed that determination and are awaiting a decision on their appeal.

b. In-Between Stages: Deconfliction

Ceding Authority Expressly Granted to DHS

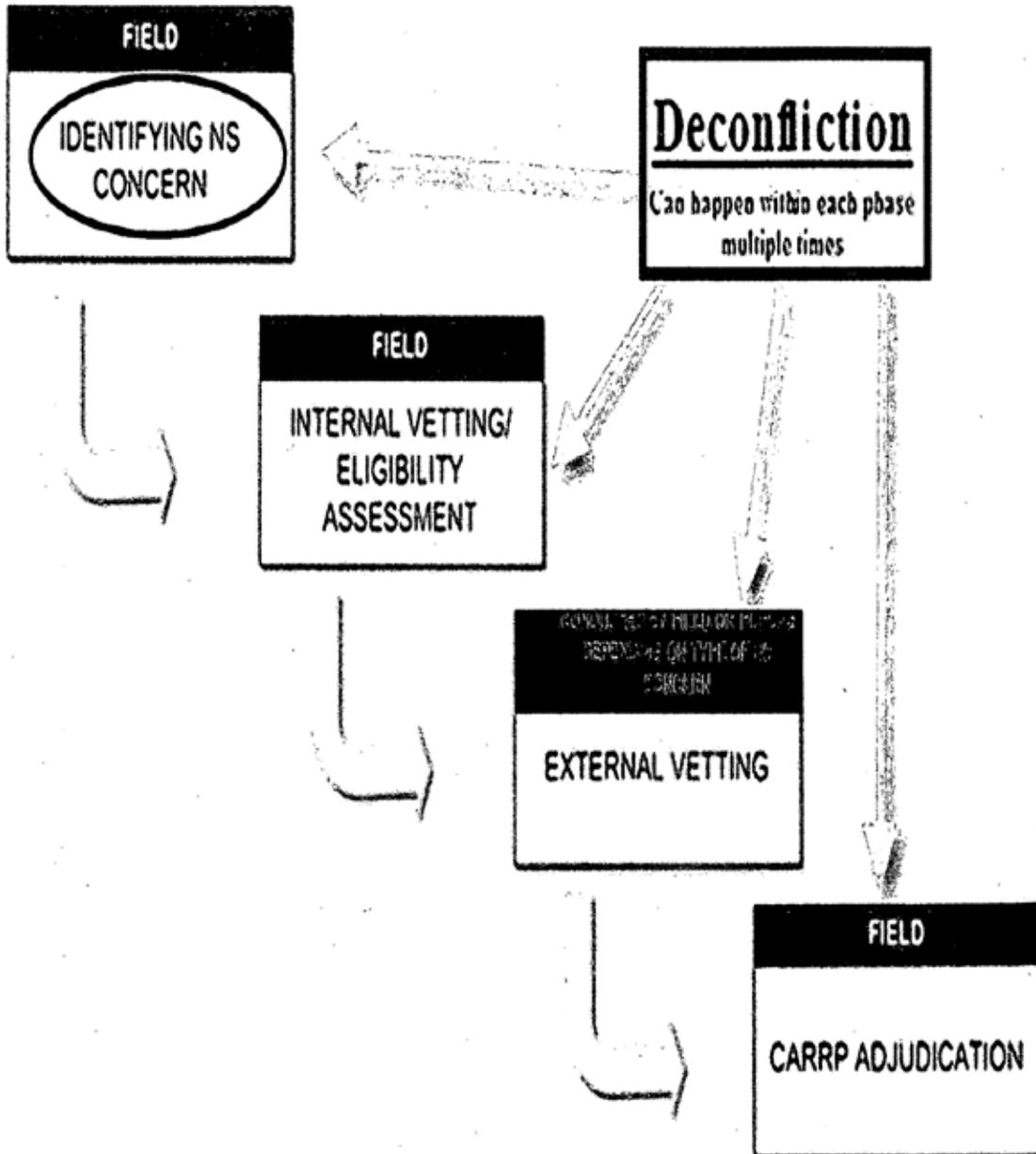
Once USCIS has identified a “national security concern” in a particular case (Stage One of CARRP), CARRP then encourages an officer to conduct so-called “deconfliction.” Deconfliction means contacting the law enforcement agency that possesses the supposed national security information about the applicant (described as “the record owner” of the information) “to ensure that any USCIS adjudicative activities (e.g., an interview, request for evidence, site visit, decision to grant or deny a benefit, or timing of the decision) do not compromise or impede any ongoing investigation or other record owner interest.”¹²² CARRP requires that USCIS officers conduct “deconfliction” at all stages throughout the processing and adjudication of a CARRP application.

According to USCIS, deconfliction provides USCIS an opportunity to inquire with the law enforcement agency about an applicant’s criminal and immigration history, as well as to request information about a person’s associations, travel, military training, and residences, among other things.¹²³ However, it also expressly provides an opportunity for the law enforcement agency – usually the FBI – to submit questions that USCIS will ask in an interview or through a Request for Evidence (“RFE”), to comment on a proposed decision on the benefit, and to request that a case be denied, granted, or held in abeyance.¹²⁴ According to the policy, USCIS may hold cases in abeyance for periods of 180 days to enable law enforcement and USCIS investigations of the national security concern, and the Field Office Director may extend the abeyance periods indefinitely so long as the investigation remains open.¹²⁵



U.S. Citizenship and Immigration Services

CARRP Stage One



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“At my second naturalization interview, an FBI agent, ‘Ali,’ was present and asked me a lot of questions about my community, my mosque, my imam, and other people I knew there. I answered all of his questions to the best of my understanding. Later on, I received several calls from Agent Ali to have another informal interview at a coffee shop. I agreed to meet with him and he repeated all the questions about me and my community again. He said there is not any problem with my naturalization case and they are not holding it up. But he also said he would expedite my naturalization case if I signed an agreement with him that I become an informant for the FBI. I believe that the USCIS and the FBI is keeping my naturalization application open so that the FBI can pressure me into becoming an informant and providing them information about my community. I do not believe that spying on my community is a requirement of U.S. citizenship.”

— Hassan Razmara

CARRP directs that deconfliction take place before adjudicative action is taken in a case involving a “national security concern.”¹²⁶ This requirement ensures that the law enforcement agency always has an opportunity to opine on the adjudicative action being taken and to request delay or denial.

While some level of interagency cooperation (beyond information sharing) may be appropriate in the benefits adjudication process, CARRP’s deconfliction process, by design, blurs the lines of USCIS authority by empowering the law enforcement agency to interfere in the processing and adjudication of an immigration application. Not only does the policy provide that law enforcement can opine on whether or not a person should receive a benefit, thereby empowering them to influence decisions that they are not legally authorized to make, it also very often leads law enforcement to misuse information it obtains from USCIS about an applicant and his or her pending application.¹²⁷

For example, the FBI routinely uses this information to blackmail individuals into becoming informants for the agency, claiming that if the individuals agree to work with the FBI, the agency will ensure that their applications are finally approved.

See It Online:

For CARRP deconfliction training manuals and videos, go to www.aclusocal.org/carrp.

CARRP IN PRACTICE

Deconfliction: FBI Interference and Mandatory Delays

ZUHAIR MAHMOUD was contacted by the FBI on four separate occasions for voluntary interviews after filing his naturalization application. On all four occasions, the agents pushed Zuhair into becoming an informant for the FBI, and once offered to assist him with his pending naturalization application in exchange for his working as an informant for them. On one occasion they also asked for his expertise as an IT specialist to log into Arabic-language chat rooms. Zuhair was willing to talk with the FBI, but not willing to work as an informant. USCIS delayed adjudicating his application for five years, ultimately requiring the intervention of a federal district court on two separate occasions before he was finally naturalized.

HASSAN RAZMARA applied to naturalize in 2007. In the following year, when the federal government put Hassan’s mosque under surveillance and prosecuted its imam, USCIS stalled Hassan’s naturalization process. Although he passed his naturalization examination, three months later USCIS called Hassan back for additional questioning about the mosque, with an FBI agent present in the interview. Subsequently, the same FBI agent contacted him several more times in an effort to coerce him into acting as an informant, with promises that if he agreed, his naturalization would be expedited. Hassan declined to spy on his community; years later, his USCIS application is still pending, likely at the behest of the FBI.

CARRP IN PRACTICE

Deconfliction: FBI Interference and Mandatory Delays



Mahdi Asgari

MAHDI ASGARI's naturalization application has been delayed three years due, at least in part, to "deconfliction." Since filing his application, FBI agents have approached him for questioning on multiple occasions, each time referencing his naturalization application. Their questions centered on what he knew of an Iranian man who had attended the same graduate university, whose name now appears on the Specially Designated Nationals list of the Office of Foreign Assets Control. USCIS later asked him many of the same questions in his naturalization interview – questions that the FBI likely instructed USCIS to ask through the deconfliction process. Although Mahdi's casual association with the man years ago cannot impact his eligibility for naturalization, and although he has explained everything he knows and remembers, he still has not received a decision on his application.

SAMIR was visited by the FBI on a few occasions after filing his naturalization application, likely due to deconfliction. The FBI continues to approach his friends for questioning about him. Three years after filing his application and two years after his naturalization interview, he is still waiting for a decision.



Ahmed Osman Hassan

AHMED OSMAN HASSAN is a Somali refugee who spent 14 years of his childhood in a refugee camp in Kenya before resettling in the United States in 2004 with the help of the United Nations High Commissioner for Refugees. Soon after applying for his green card in 2006, police looking for a suspect with similar features mistakenly arrested Ahmed. Despite his release, the FBI file created in his name likely led his application to be subject to CARRP, resulting in USCIS's multiyear delay in processing his green card application and, ultimately, the FBI targeting him as a potential informant. Between 2009 and 2010, the FBI repeatedly interfered in Ahmed's life to question him on his religious practices and access to other Somali Muslims in his community, promising immigration assistance to him and his family in exchange for information. When Ahmed eventually tired of the anxiety-provoking calls and visits by the FBI, however, and exercised his right to decline additional questions, USCIS (likely at the behest of the FBI) immediately denied Ahmed's green card application and terminated his refugee status.

c. Stage Two: Eligibility Assessment and Internal Vetting

Looking for a Reason to Deny

Once a "national security concern" has been identified, USCIS officers are directed under CARRP to conduct a "thorough review of the record associated with the application or petition to determine if the individual is eligible for the benefit sought" – *i.e.* to conduct an "eligibility assessment."¹²⁸

Notably, "[t]he purpose of the eligibility assessment is to ensure that valuable time and resources are not unnecessarily expended externally vetting a case with a record owner when the individual is otherwise ineligible for the benefit sought. When this is the case, the application or petition may be denied on any legally sufficient grounds."¹²⁹

In other words, at this stage of the CARRP process, officers scrutinize the application or petition – far more than they would for a "routine adjudication" – to find any basis upon which they can deny the application in order to avoid spending time and resources *vetting* the

At this stage of the CARRP process, officers scrutinize the application to find any basis upon which they can deny the application.

national security concern (either internally or externally, with the relevant law enforcement agency) to determine whether there is a live concern.

Through “internal vetting,” officers assess whether the applicant is eligible for the immigration benefit, and, if so, further examine the nature of the “national security concern.”¹³⁰ At this stage, officers are only permitted to review information available on DHS systems and databases, open source information, the applicant’s file, and other information obtained through Requests for Evidence (RFEs), interviews or site visits.¹³¹

CARRP IN PRACTICE

Searching for Pretextual Reasons to Deny through Internal Vetting

MOHAMMAD HAMDAN¹³² is a Jordanian national and practicing Muslim, who runs a successful dentistry practice and serves in leadership roles within his religious community. Like many in his community, after the September 11, 2001 attacks, the FBI visited Mohammad for general questioning; the FBI likely created a record of that interview that would be triggered by the FBI Name Check. Since that time, he has been subjected to extensive secondary inspection each time he travels, and is frequently met by officials at the plane upon landing in the United States and abroad. As a result, USCIS likely considered Mohammad to be a “national security concern,” and therefore it was required by CARRP to find a reason to deny his naturalization application. Upon internally vetting his file, it issued Mohammad an RFE for his business licensing dating back five years. Mohammad complied fully with the request. One of his business records, however, was dated two months late one year. Although Mohammad explained that the license was valid the entire year, despite being dated two months late, USCIS denied his application alleging that he failed to comply with the RFE by failing to provide a license for the two-month period. Mohammad administratively appealed the unwarranted denial, and was ultimately granted his citizenship.

ABRAHIM MOSAVI, an Iranian national with no strong religious identity, has been waiting thirteen years for a fair adjudication of his application to naturalize. After subjecting him to years of delays and multiple RFEs regarding information that has no statutory bearing on his eligibility for citizenship, and thousands of dollars in filing and attorneys’ fees, USCIS denied Abraham’s application in 2010 on grounds that he failed to provide information that was never asked of him. Upon appeal, USCIS again denied his application, this time by making the false and illogical claim that in February 2010 he was outside the country into the future through June 2010 and that he had been absent from the country for more than 180 days.



Abraham Mosavi

CARRP training documents specifically instruct officers on what factors to assess to determine whether they can come up with a reason to deny the benefit. The instructions are specifically geared toward finding a basis to deny an application on false testimony grounds or failure to prosecute an application. Officers are instructed to document an eligibility assessment by creating a complete timeline of the person’s immigration history, to create a detailed summary and assessment of all the eligibility factors for the benefit sought, to conduct a thorough fraud assessment, and to review whether there were any ineligibility factors affecting the previous underlying benefit.¹³³ Officers are encouraged to carefully review names, addresses listed, marriage history, travel history, and other sources, to detect discrepancies and possible evidence of fraud. They are further instructed to look at open source information and tax returns to find evidence of discrepancies on the application that could indicate fraud.

If, after conducting the eligibility assessment, an officer concludes that there is a basis to deny the application, officers are instructed to again conduct “deconfliction” to determine the position of any interested law enforcement agency, and then, based on the results, either deny the application or hold it in abeyance per law enforcement instructions.

For example, one training document suggests that officers compare the following:

- addresses listed on applications with those found in other open sources;
- an applicant’s tax returns with his immigration application for discrepancies in information about spouses or children;
- information found in open sources about an applicant’s employment with information about employment listed on an application; and
- information about charitable contributions found in open sources or tax returns with information contained on an application or provided in an interview.¹³⁴

If officers identify questions, they are encouraged to send RFEs requesting additional documents and information and to follow up on their questions in interviews with the applicants.¹³⁵

If, after conducting the eligibility assessment, an officer concludes that there is a basis to deny the application, officers are instructed to again conduct “deconfliction” to determine the position of any interested law enforcement agency, and then, based on the results, either deny the application or hold it in abeyance per law enforcement instructions.¹³⁶ However, if the national security concern remains and the officer cannot find a basis to deny the benefit, the application then proceeds to Stage Three of CARRP.

d. Stage Three: External Vetting

Looking for More Reasons to Deny

If the internal vetting and eligibility assessment reveal that the “national security concern” remains and the applicant is eligible for the benefit, the case proceeds to the third stage of CARRP, during which officers externally vet the “national security concern” before the application can be adjudicated.¹³⁷ External vetting is similar to internal vetting in that its purpose is to vet the “national security concern” and to look for a reason to deny the application. The difference is that internal vetting relies on investigations using DHS’s own data systems while external vetting relies on outside agencies to provide additional information, and may involve handling sensitive or classified information.¹³⁸

During external vetting, a USCIS officer must confirm the existence of the “national security concern” with the “record owner” of the information that created the concern and obtain additional information from that agency regarding the nature of the concern and its relevance to the individual.¹³⁹ The officer is also instructed to collect additional information from that agency to support an eligibility determination and removability.¹⁴⁰ If there is no record owner because an officer identified the national security concern through interactions with the applicant or other means, then external vetting is not required.¹⁴¹

External vetting is similar to internal vetting in that its purpose is to vet the “national security concern” and to look for a reason to deny the application.

e. Stage Four: Adjudication

All Roads Lead to Denial

If after external vetting the “national security concern” remains, officers are instructed to evaluate whether the results of the vetting have any relevance to adjudication and seek to obtain any other additional information, such as through an RFE, interview, or administrative site visit that could provide a basis to deny the application. They are instructed to thoroughly

document an eligibility determination and to document and pursue facts that would support removal, rescission, termination, or revocation of the person’s underlying immigration benefit.¹⁴²

All paths for a case labeled a “national security concern” lead USCIS to find a reason to deny the application.

Ultimately, if a KST “national security concern” remains after deconfliction and vetting, and the applicant is otherwise eligible for the benefit, CARRP states that the application may not be approved.

If the “National Security Concern” Remains, Officers are Not Authorized to Approve the Application

Ultimately, if a KST “national security concern” remains after deconfliction and vetting, and the applicant is otherwise eligible for the benefit, CARRP states that the application may not be approved.¹⁴³ The policy states bluntly “Officers are not authorized to approve applications with confirmed KST [National Security] concerns.”¹⁴⁴ Instead, the policy suggests that the case must then be sent to headquarters for additional vetting to find a reason to deny the benefit and also to find a basis to initiate removal proceedings.¹⁴⁵

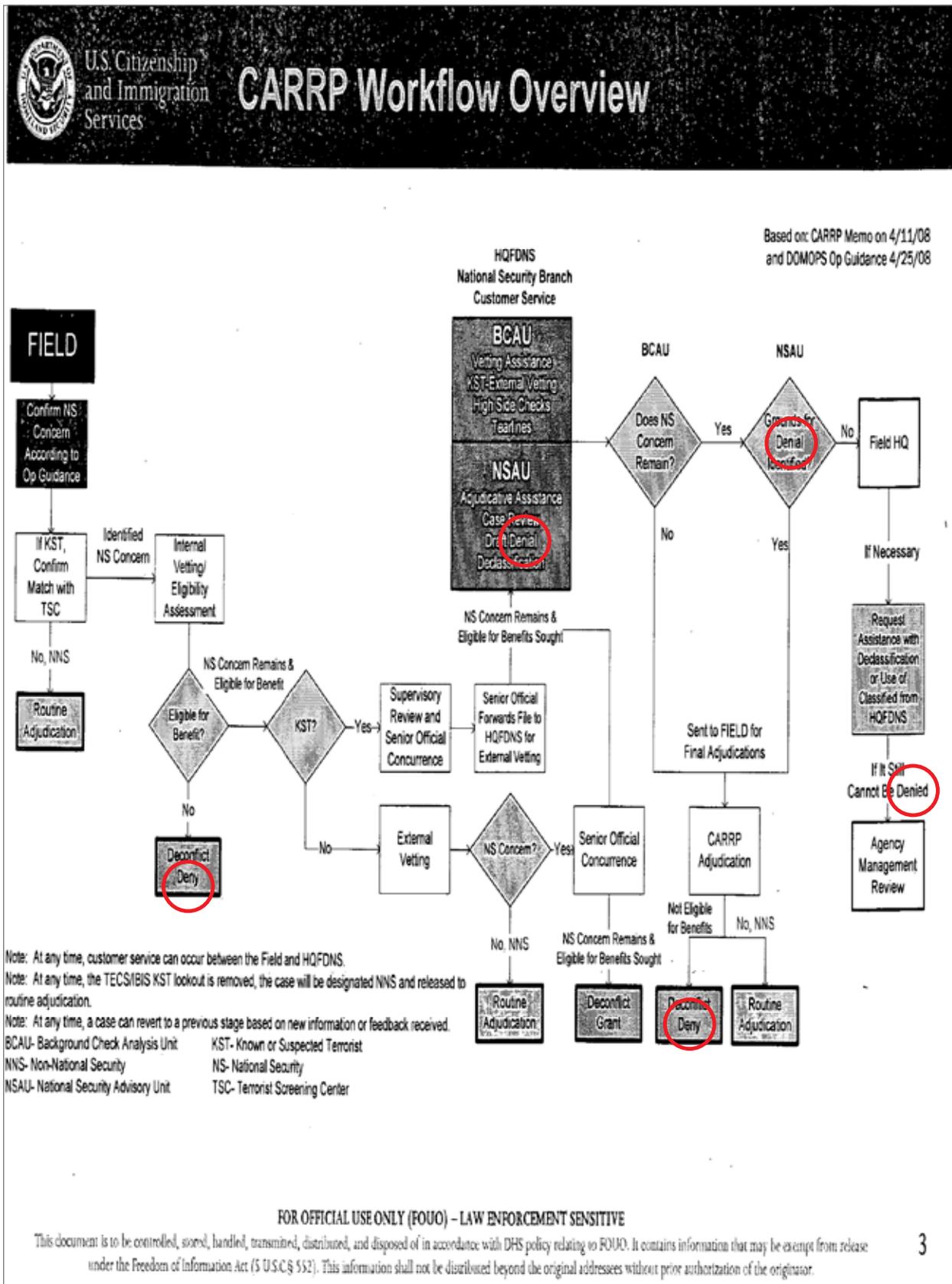
CARRP IN PRACTICE

KSTs Cannot Be Approved Unless Removed from the Terrorist Watch List

JAMEEL HADDAD,^{145a} a Palestinian national and practicing Muslim, moved to the United States with his Palestinian-American wife eight years ago with conditional permanent residency status. He filed an I-751 petition to remove the conditions in 2007 as required, but has been repeatedly told that his petition remains “pending security checks,” and is thus forced to file costly extensions every year. Three years ago, Jameel tried to naturalize. Although he passed his interview, he was again told that USCIS could not adjudicate his application before the resolution of his I-751. Despite this, he has yet to be afforded the opportunity to interview on the I-751 to which he is entitled. Jameel is routinely referred to secondary inspection when he travels, indicating that he is on the Watch List, and in 2010, U.S. Customs and Border Protection held him and his family at John F. Kennedy International Airport for fourteen hours with no explanation. Jameel is likely considered a KST, and it seems that as long as his name remains in the system, and there is no cause for denial or deportation, USCIS will continue to indefinitely hold his application in abeyance.

YASSINE BAHAMMOU is one of a number of Arabic-speaking immigrants who joined the U.S. Army as interpreters during the Iraq war through a program known as O9 Lima, which offered expedited naturalization and other benefits to enlistees in exchange for their service. Specialist Bahammou, who already held a valid green card when he enlisted, hoped to build a career in law enforcement after his service. As soon as he applied to naturalize in 2009, however, USCIS received a request from the Army to place his application in abeyance pending an investigation that was later dropped and proven to be entirely unfounded. Ignoring official letters from the Army clearing his name, USCIS continued to question him on the debunked investigation, and prevented his application from moving forward until 2012. Despite his innocence, Specialist Bahammou’s name was also never removed from the government’s Watch List, and as a result, he has been barred not only from serving with the D.C. National Guard, as he had planned, but prevented from gaining other employment in the security sector.¹⁴⁶

All Roads Lead to Denial or Delay. This USCIS CARRP flow chart demonstrates how every step of the CARRP vetting and adjudication process is designed to find a basis to deny or hold an application in abeyance.



If a non-KST “national security concern” remains after deconfliction and vetting, and the applicant is otherwise eligible for the benefit, CARRP states that “[o]fficers are not authorized to approve applications with confirmed Non-KST NS concerns without supervisory approval and concurrence from a senior-level official.”¹⁴⁷ If a senior-level official does not concur with the officer’s recommendation to approve, the senior-level official then may seek assistance from the USCIS Fraud Detection and National Security unit at headquarters. Assistance from headquarters entails a lengthy review process involving multiple USCIS sub-agencies whose purpose is to find a reason to deny the application and information to support that determination.¹⁴⁸

Deportation Is Encouraged

If the agency ultimately finds grounds to deny the benefit, the policy directs officers to also look for grounds to support deportation and to coordinate with Immigration and Customs Enforcement (“ICE”) to initiate removal proceedings by serving a Notice to Appear in immigration court on the applicant.¹⁴⁹ Thus, the policy does not stop at merely finding pretextual grounds to deny naturalization, but goes even further to encourage actual deportation with all of the concomitant hardship, including the separation of entire families. An officer who denies a benefit based on a non-KST concern is required to enter a record into TECS for future reference by law enforcement,¹⁵⁰ presumably creating a record for the use of other federal agencies indicating that the individual was deemed to have a “national security concern.” Similarly, non-KST concern cases that are approved must also be documented in Fraud Detection and National Security unit (“FDNS”) databases to reflect that the national security concern was not resolved.¹⁵¹

The policy does not stop at merely finding pretextual grounds to deny naturalization, but goes even further to encourage actual deportation with all of the concomitant hardship, including the separation of entire families.

CARRP IN PRACTICE

Searching for Grounds for Deportation

Once USCIS determined that **TAREK HAMD** was a “national security concern” and that it would not approve his application in spite of his eligibility to naturalize, it worked with Immigration and Customs Enforcement (“ICE”) to investigate possible grounds to place him in removal proceedings. The investigation focused on whether the government could place him in removal proceedings on grounds that his single donation to the Benevolence International Foundation (“BIF”) constituted “material support” to a terrorist organization. In order to do so, the government needed evidence from Tarek that he donated to BIF knowing that it was financing terrorism-related activities. In order to obtain this evidence, USCIS scheduled Tarek for a second interview in connection with his naturalization application. Even though USCIS scheduled the interview as a naturalization interview, the actual purpose of this interview was to question him for the purpose of initiating removal proceedings. Unable to establish that Tarek knowingly provided material support, ICE ultimately concluded that there was no basis upon which they could initiate removal proceedings.

Through its four stages and “deconfliction,” CARRP systematically mandates that USCIS agents delay processing and adjudication and exclude law-abiding immigrants from obtaining the immigration benefits, including naturalization, to which they are lawfully entitled. It does this by relying on dragnet techniques that fail to identify people who genuinely pose a threat to our national security, and by improperly ceding its decision-making authority to the FBI.¹⁵² As discussed in the next chapter, these techniques disproportionately impact AMEMSA immigrants, and the delays and denials they cause violate governing immigration law. Through CARRP, USCIS has sought to circumvent Congress – which has sole authority

under the Constitution to “establish an uniform Rule of Naturalization”¹⁵³ – by establishing its own set of rules for adjudication. In doing so, it has fundamentally strayed not just from its duty to administer (not make) the laws governing immigration benefits, but has also infused the immigration process with discrimination and a lack of fairness that are profoundly un-American.

Through CARRP, USCIS has sought to circumvent Congress – which has sole authority under the Constitution to “establish an uniform Rule of Naturalization” – by establishing its own set of rules for adjudication.

Q [H]ow does [the fact that USCIS considered him a national security concern] affect whether Mr. Hamdi is eligible for naturalization?

A Well, it – it doesn’t make him statutorily ineligible, but because he is a – he still has a national security concern, it affects whether or not we can approve him. . . .

Q Okay. And why does it affect whether or not you can approve him?

A Because he’s – because there’s still a national security concern.

Q And although that doesn’t make him ineligible statutorily, how does it make him ineligible otherwise?

A Well, until – until that national security concern is – is resolved, he won’t get approved.

Q And how – does that come from a body of law or policy?

A Well, it comes from – yes it does.

Q What body of law or policy does that come from?

A That comes [from] the CARRP policy.”

— *Deposition of USCIS witness Officer Robert Osuna.*¹⁵⁴



THE WHITE HOUSE
WASHINGTON

Dear Fellow American:

I am honored to congratulate you on becoming a citizen of the United States of America. You represent the promise of the American Dream, and because of your determination, this great Nation is now your Nation.

You have sworn a solemn oath to this country, and you share in its privileges and responsibilities. Our democratic principles and liberties are yours to uphold through active and engaged participation. I encourage you to be involved in your community and to promote the values that guide us as Americans: hard work and honesty, courage and fair play, tolerance and curiosity, loyalty and patriotism.

Since our founding, generations of immigrants have come to this country full of hope for a brighter future, and they have made sacrifices in order to pass that legacy on to their children and grandchildren. This is the price and the promise of citizenship. You are now part of this precious history, and you serve as an inspiration to those who will come after you.

We embrace you as a new citizen of our land, and we welcome you to our American family.

Sincerely,

IV. THE IMPACT OF CARRP: DISCRIMINATION, DELAY, AND DENIAL



"I think what's actually more hurtful to me in the citizenship process than the length of time it's taken, is the way some of us are treated differently. If everybody was subject to the same process and it took everybody a long time to naturalize, maybe that would be more understandable. But when the government picks people out of the line and keeps them waiting for long, long periods of time, especially when this seems to be done on account of people's religion or national origin and when they have been law-abiding, they do not deserve this."

- Mahdi Asgari

Though there are numerous legal and policy problems with CARRP, three problems in particular raise the greatest concerns. First, CARRP disproportionately impacts law-abiding immigrants from AMEMSA communities, mislabeling them "national security concerns" based on arbitrary and discriminatory criteria. Second, it mandates inordinate delays in the processing and adjudication of immigration benefits applications, thereby leaving law-abiding aspiring Americans waiting for years in limbo while their applications remain unadjudicated. And, third, it creates secret exclusions to immigration benefits not authorized by law, resulting in pretextual (and often unfounded) denials of such benefits. Yet, despite these serious consequences, applicants are never told that their applications have been subjected to CARRP's processing rules, and they have no opportunity to contest that classification.

This chapter will evaluate these three principal problems with CARRP and their legal and policy implications for immigration benefits applicants, particularly naturalization applicants.

a. Problem One: CARRP Disproportionately Impacts Law-Abiding Immigrants from AMEMSA Communities and Mislabels Them "National Security Concerns"

CARRP disproportionately impacts law-abiding AMEMSA immigrants and mislabels them as "national security concerns." Rather than identifying real threats to the United States, CARRP instead directs USCIS officers to disregard actual statutory eligibility criteria and make determinations about whether an applicant is a "national security concern" based on a notoriously overbroad and error-ridden Terrorist Watch List system and other criteria that are discriminatory. As a result, large numbers of Muslims and others from Muslim-majority countries are ensnared in CARRP's processes. In practice, CARRP works to covertly exclude aspiring Americans in AMEMSA communities from the immigration benefits to which they are entitled.

i. The Terrorist Watch List and FBI Name Check

USCIS's reliance on the Terrorist Watch List and the FBI Name Check to identify applicants that pose a "national security concern" leads to the unjustified misidentification of many immigrants as "concerns."

As described in Chapter III(a)(i), USCIS automatically deems any applicant on the Terrorist Watch List a "Known or Suspected Terrorist" ("KST") and, thus, a "national security concern," subject to CARRP. The Terrorist Watch List is not only notoriously overbroad, but the Terrorist Screening Center ("TSC"), which operates the Watch List, does not require evidence that would meet ordinary legal standards of proof, such as reasonable suspicion, before a person's name can be placed on the Watch List. Rather, federal agents can "nominate" individuals to the List based on a series of "inferences" that do not rise to the level of reasonable suspicion, such as the mere fact that a person comes from a "high threat country."¹⁵⁵ The elimination of evidentiary criteria from watchlisting practices makes them highly dependent on religious and national origin profiling, and thus inherently error-prone.¹⁵⁶ Because CARRP relies on the Terrorist Watch List to identify "national security concerns," it replicates the same errors and profiling inherent in the Watch List.

CARRP's use of the Name Check process disproportionately impacts Muslim immigrants because of the FBI's extensive surveillance and data collection on the Muslim community.

In addition, USCIS's reliance on the FBI Name Check as an indicator of a "national security concern" also has a disproportionate impact on AMEMSA immigrants who pose no threat. As described in Chapter III(a)(ii), if the Name Check produces a "positive hit," which can occur whenever an individual's name is mentioned in the file for a law enforcement investigation involving terrorism, USCIS may label the applicant a "national security concern."

CARRP's use of the Name Check process disproportionately impacts Muslim immigrants because of the FBI's extensive surveillance and data collection on the Muslim community. For example, the FBI has engaged in massive programs to interview Muslims living in the United States, including Muslim immigrants, over the past decade. Sometimes these interviews relate to ongoing investigations, while in other cases they are simply part of FBI efforts to gather information about the Muslim population in the United States.¹⁵⁷ Records of these interviews, even if the person was never the subject of an investigation, are electronically stored by the FBI and will trigger a positive response to the FBI Name Check.¹⁵⁸ Similarly, the mere mention of an applicant's name in FBI records or reports of interviews with others will also trigger a positive response to the FBI Name Check.¹⁵⁹ These positive Name Check results can lead USCIS to mislabel applicants as "national security concerns."

In addition, other sweeping initiatives of the FBI to gather information on the Muslim population similarly lead innocent Muslim applicants to receive positive FBI Name Check hits, which can lead USCIS to mislabel them as "national security concerns." In particular, the FBI has engaged in extensive surveillance of the Muslim community through the use of informants. For example, between 2006 and 2007, the FBI utilized an informant named Craig Monteilh as part of an investigation named "Operation Flex" in Orange County, California. Monteilh conducted surveillance at nearly a dozen mosques in Orange County. He spoke with hundreds of regular mosque attendees and observed many more, both directly and by copying membership lists from mosque rosters. Through this process, he collected names, addresses, cell phone numbers, email addresses, car license plate numbers, and other forms of identifying information.¹⁶⁰ Mr. Monteilh shared all of the personal information that he gathered with the FBI, and it is now part of the FBI's record of the Operation Flex counter-terrorism investigation.¹⁶¹ Under CARRP, an FBI Name Check run on the name of anyone subject to Mr. Monteilh's information gathering would likely trigger a positive hit and lead USCIS to mislabel that applicant a "national security concern."

As described in Chapter III(a)(ii), a further source of harm to innocent members of the Muslim communities arises from the relationship between the Name Check process and the FBI's actions against several large Muslim charities. Through its investigations of Islamic charities, the FBI obtained years of records of lawful financial donations to those charities made by American Muslims. The FBI stores the donors' names in files related to investigations of those charities – a fact that, by itself, can trigger a positive hit on the FBI Name Check, as it did in Tarek Hamdi's case and likely did in the cases of Reem and Ahmad Muhanna and Jamal Atalla.¹⁶²

ii. National Origin and Associational Criteria

CARRP also explicitly directs agents to identify applicants as "national security concerns" based on inherently discriminatory (and extremely amorphous) criteria. (See Chapter III(a)(ii) for a description of the criteria.) In particular, CARRP directs officers to rely on national origin as an indicator of a "national security concern," instructing them that "[u]nusual travel patterns and travel through or residence in areas of known terrorist activity" can constitute grounds for finding a "concern."¹⁶³ The broad, discriminatory reach of this instruction is apparent: a USCIS officer could deem an applicant a "national security concern" because he or

she, for example, frequently travels to the Middle East to visit relatives, like Abraham Mosavi, or was merely born and raised in the Palestinian Occupied Territories before immigrating to the United States, like Reem and Ahmad Muhanna. This factor could arguably apply to virtually every applicant originally from the Middle East, North Africa, and parts of South Asia, who would be deemed to have resided in “areas of known terrorist activity.”

CARRP also permits an applicant’s associations to give rise to a “national security concern” if a family member or “close associate” is considered to be a “national security concern,” thus allowing entire families or closely-knit communities to suffer harmful immigration consequences through its operation. For example, if an applicant’s spouse is considered a KST and thus a “national security concern,” that concern could be imputed to the applicant so long as the “concern” could also “relate to” the applicant.¹⁶⁴ As Mahdi Asgari’s case illustrates, an agent applying CARRP could deem a former classmate a “close associate,” and thereby subject an entirely innocent person’s application to years of delay or pretextual denial.

These national origin and associational criteria necessarily leads USCIS to disproportionately (mis)label immigrants from AMEMSA communities as “national security concerns.”

iii. Equating Islam with Terrorism

Given the obvious disparate impact of the criteria described above, it is unsurprising that, in practice, CARRP’s protocols have led USCIS officials to erroneously equate Muslim religious observance and practices with evidence of “national security concerns” during the naturalization process itself.

Over the years, many Muslim immigrants and immigration lawyers in the Los Angeles area have reported to the ACLU of Southern California that USCIS agents ask extensive questions about naturalization applicants’ religious practices during naturalization interviews, including questions about what mosque they attend and how often they pray. The questioning was so commonplace in Los Angeles that in December 2009 a member of the Los Angeles American Immigrant Lawyers Association (“AILA”) raised concerns at a Los Angeles District liaison meeting with then-USCIS District Director Jane Arellano about improper and irrelevant religious questioning in naturalization interviews.¹⁶⁵

Patterns of USCIS agents inappropriately equating lawful religious practices with terrorism activities have also emerged in several federal court naturalization cases in recent years. For example, in *Hajro v. Barrett*, the government argued at trial, among other things, that the applicant, a Bosnian national and Muslim, failed to reveal in his naturalization interview his “association” with “Tablighi Jamaat,” an informal Islamic religious practice that teaches “talking with other Muslims about their shared faith and practices and sometimes involves traveling to other communities.”¹⁶⁶ Although USCIS implied that Tablighi Jamaat was some sort of terrorist-related organization, the Court concluded that Tablighi Jamaat was a community of people practicing an informal religious practice, not an organized entity akin to the types of groups asked about on the naturalization form and in the interview.¹⁶⁷

In addition, as described above in Chapter III(a)(ii), USCIS commonly construes lawful Islamic charitable giving practices as evidence of a “national security concern,” despite the lack of any evidence connecting the donors to terroristic intentions, as demonstrated in the cases of Tarek Hamdi, Jamal Atalla, and Reem and Ahmad Muhanna.

Over the years, many Muslim immigrants and immigration lawyers in the Los Angeles area have reported to the ACLU of Southern California that USCIS agents ask extensive questions about naturalization applicants’ religious practices during naturalization interviews, including questions about what mosque they attend and how often they pray.



"I've waited for 13 years and am very tired of the endless waiting. In order to live in the United States, I must have my citizenship in order to have a certain and stable future. I wished that one day this problem would be over because becoming a U.S. citizen is my dream. I'm 61 years old and have spent almost 40 years of my life in the United States and 21 years in Iran. I am a stranger in Iran; the United States is my home."

— Abraham Mosavi

"The U.S. government never tells you why your application has been delayed. In a sense, it is denying you the dream of citizenship, without really denying you citizenship. But by simply taking a lot of time – which seems like forever – it denies you that dream."

— Mahdi Asgari

CARRP IN PRACTICE

USCIS denied **REEM** and **AHMAD MUHANNA**'s applications for naturalization on grounds that they could not establish the requisite good moral character to naturalize. It alleged that their lawful charitable donations to the Holy Land Foundation, prior to it being shut down, precluded them from showing good moral character, and that they failed to disclose their membership and association with the Holy Land Foundation, even though they disclosed that they made charitable donations to HLF, attended its fundraisers, and knew some of its employees (while also making clear that those activities did not make them members of the organization). Although USCIS presented no evidence that the Muhannas knew that HLF was engaged in anything but lawful charitable work, USCIS nonetheless denied their naturalization applications and threatened them with deportation in their denial letters.

b. Problem Two: CARRP Mandates Endless Delays in Violation of the Immigration and Naturalization Laws

CARRP subjects applicants for immigration benefits to inordinate delays in the processing and adjudication of their applications. As described in Chapter III(b), the policy expressly directs USCIS agents to delay or hold cases in abeyance while they pursue deconfliction and internal or external vetting. Given that CARRP imposes no deadlines for any of these processes, and that it explicitly forbids the approval of an application – even when the applicant is statutorily eligible for the benefit – unless its dictates have been satisfied, CARRP produces indefinite delays for people awaiting naturalization. Because USCIS is unable to approve the application, it may continue to vet the case until finding a reason to deny or simply hold it in abeyance indefinitely.¹⁶⁸

When applicants subject to these delays inquire with USCIS about the status of their applications, they are typically told that their application is pending "administrative checks" or additional "security" or "background checks." Aspiring citizens are thus forced to choose between endlessly waiting for movement on their applications and filing mandamus lawsuits (against the country to which they wish to swear allegiance) at great burden and expense. While they wait, applicants are also deprived of the opportunity to vote and to participate in the U.S. democratic process, as well as many educational or job opportunities, because they are not U.S. citizens.



“Just because I did not sign an agreement with the FBI to spy on my community, I’ve not received my citizenship and I lost a lot of job opportunities. I am an engineer, and many employers only hire U.S. citizens. I’ve struggled to afford my family expenses, rent, and credit card payments. During the last two years, I went to the immigration building but nothing has changed – they just repeat that my application is pending further ‘background checks.’”

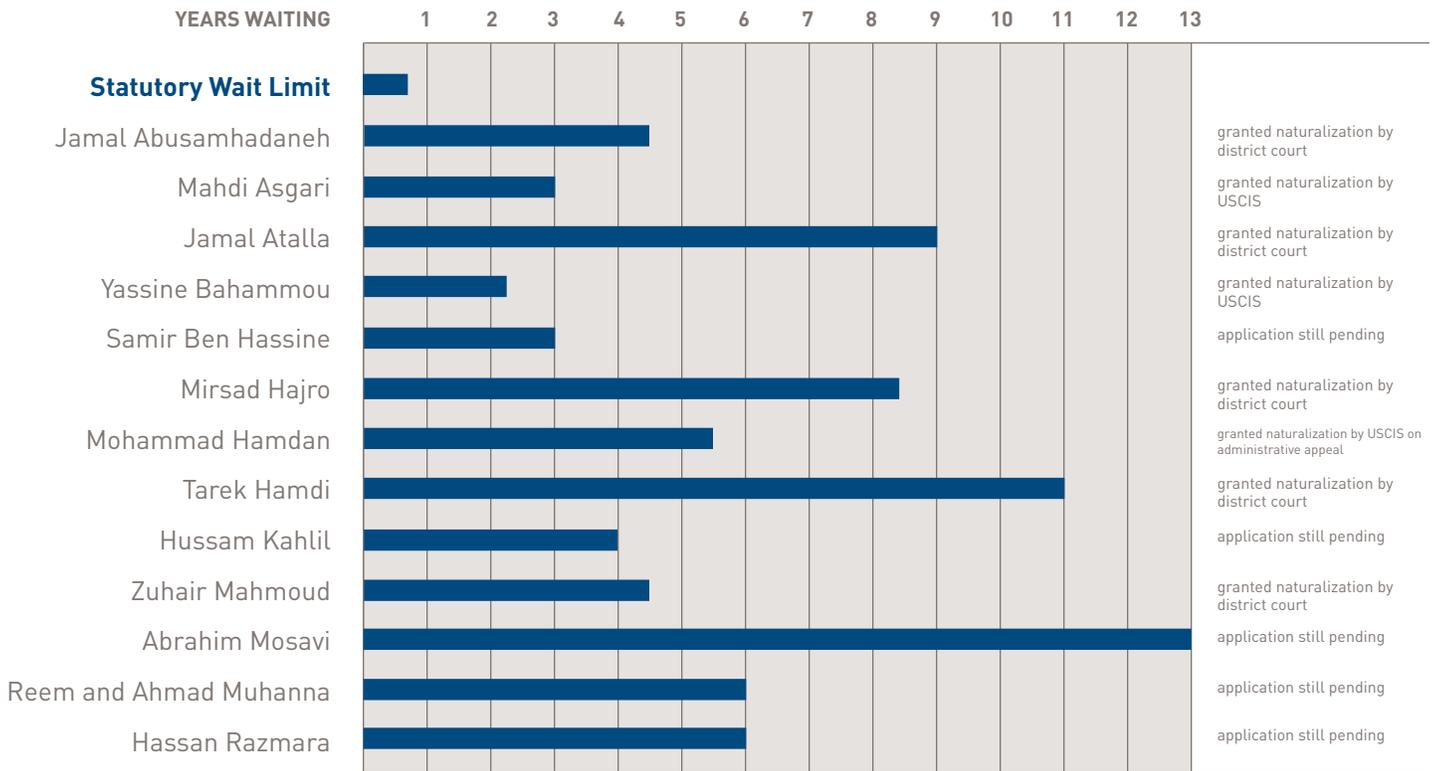
— Hassan Razmara



Tarek Hamdi was granted citizenship by a district court judge in time to vote for President. He proudly participated in his first American election.

CARRP’s instruction to USCIS officers to delay or hold in abeyance applications for immigration benefits violates statutory limitations on processing and adjudication times. In general, USCIS must adjudicate applications for immigration benefits not later than 180 days after the date on which the application was filed.¹⁶⁹ As described in Chapter II, in the context of naturalization, an applicant who has not received a decision within 120 days of their examination may sue USCIS for a decision in district court.¹⁷⁰ CARRP expressly directs officers to flout these statutory rules by purporting to authorize them to delay and hold cases in abeyance without limitation.

Delays in Naturalization Cases Statutory Time Limit – 180 Days



This chart demonstrates the lengthy delays that each of the naturalization applicants featured in this report have endured due to CARRP by comparison to the 180-day statutory wait time.

The lengthy nature of these delays violates USCIS's statutory obligations, works an obvious unfairness on the applicants, and makes no sense as a strategy for protecting our national security. If an individual actually presents some threat to our nation, they are equally dangerous whether they remain here as a lawful permanent resident or as a citizen. At least one court has already recognized the error in attempting to justify excessive delays by reference to national security. In *Singh v. Still*, USCIS argued that its years of delay in processing an applicant's I-485 adjustment of status application was reasonable because it needed additional time to assess sensitive information contained within the FBI Name Check response.¹⁷¹ The Court held that the agency's delay was in fact unreasonable, stating "the mere invocation of national security is not enough to render agency delay reasonable per se."¹⁷² Notably, the Court pointed out that the government had made "no real effort to advance the security check on [the applicant] for years until after [the mandamus litigation] was filed" and that, given this inaction, "[n]othing in the government's conduct [bespoke] any urgent or serious concern with national security."¹⁷³

c. Problem Three: CARRP Creates Secret Exclusions to Immigration Benefits Not Authorized by Law and Mandates Pretextual Denials

CARRP bars applicants deemed to be "national security concerns" from obtaining immigration benefits even in cases where they are statutorily eligible. As described in Chapter III(e), under CARRP, no KST may be approved for an immigration benefit, and applicants with non-KST "national security concerns" may only be approved with supervisory approval. CARRP

USCIS has effectively created its own set of criteria for who should and should not receive immigration benefits, entrusting itself with the authority to make determinations based on its own policy dictates rather than what the law requires.

instructs officers to look for a basis to deny the application of an individual deemed to be a “national security concern,” and, if they cannot find a basis to do so, then to indefinitely delay adjudication.

i. Secret Exclusions

By establishing that no person the agency determines to be a “national security concern” can be approved for an immigration benefit except in limited circumstances,¹⁷⁴ CARRP has created extra-statutory exclusions that find no support in existing law. The agency has effectively created its own set of criteria for who should and should not receive immigration benefits, entrusting itself with the authority – authority it does not have – to make determinations based on its own policy dictates rather than what the law requires. To make matters worse, these determinations are largely unreviewable because USCIS does not tell applicants that their applications have been subject to CARRP or give them any opportunity to contest that designation.

From a legal point of view, CARRP’s secret exclusions are particularly troubling in the context of naturalization because any person who meets the statutory criteria is entitled to naturalize.¹⁷⁵ Yet, CARRP teaches the opposite: that naturalization is instead a discretionary benefit to be provided only to those not ensnared in CARRP’s overbroad national security criteria, in clear violation of governing law.¹⁷⁶

ii. Pretextual Denials

In order to deny an otherwise approvable application, CARRP instructs officers to look at certain eligibility factors to find statutory bases for denial. In naturalization cases, CARRP encourages officers to look for (1) anything that can be construed as “false testimony” under 8 U.S.C. § 1101(f)(6) and 8 C.F.R. § 316.10(b)(2)(vi), because such testimony precludes a finding of requisite good moral character for naturalization, and (2) anything that can be construed as “failure to prosecute” an application by failing to respond to a request for evidence under 8 C.F.R. § 103.2(b)(13) and 8 C.F.R. § 335.7 because failure to prosecute is itself a separate basis to deny an application.¹⁷⁷ As a result, when USCIS makes a decision in a naturalization case that CARRP prevents it from approving, false testimony and failure to prosecute are often the statutory and regulatory reasons given for the denial. In practice, such denials are often factually flawed, legally erroneous, or simply illogical, which is perhaps unsurprising given that they are pretexts for the undisclosed CARRP-policy decision that the application not be approved, regardless of the applicant’s actual eligibility for the benefit.

False Testimony

As a pretextual basis to deny a CARRP case, USCIS very often relies on the “false testimony” exception to establish the requisite “good moral character.” A naturalization applicant can be found lacking in the requisite “good moral character” and be ineligible to naturalize if he or she is found to have intentionally provided false testimony “for the purpose of obtaining any [immigration] benefits.”¹⁷⁸ “False testimony” is limited to oral misrepresentations (not omissions or concealments), made under oath, with the subjective intent of obtaining an immigration benefit.¹⁷⁹

Analysis of CARRP cases where USCIS has argued that a person is precluded from naturalizing on account of false testimony reveals a few distinct trends that demonstrate the unfairness of these decisions.



Photo Credit: Mera Churn Jan

“We love to donate. We have been donating to the Red Cross for any disaster that happens. During the Haitian earthquake we were donating big time. We have an annual donation to the Texas women’s shelter here in Texas. So, this idea that we are associated with an organization simply because we donated to it, didn’t cross my mind. Honestly I thought, why would I need to list the Holy Land Foundation and not the Red Cross or the Texas women’s shelter? I thought a donation is not an association. I made this clear to the immigration officer. I did donate and I declared it on my taxes; its not like I’m hiding anything. But the government rejected my citizenship saying I lied when I did not list my association with the Holy Land Foundation.”

— Reem Muhanna

First, USCIS very often relies on the vagueness and overbreadth of the question on the N-400 naturalization application about memberships and associations in order to claim that an applicant subject to CARRP falsely testified. Question 8(a) of the N-400 naturalization application asks applicants, “Have you ever been a member of or associated with any organization, association, fund, foundation, party, club, society, or similar group in the United States or in any other place?” The application asks for a list of those memberships and associations without specifying a relevant time period. Numerous courts have noted that the application does not define the terms “member” or “associated,”¹⁸⁰ and when asked, USCIS officers notoriously give a range of answers, and sometimes refuse to define the terms at all.¹⁸¹ Because the question is vague and undefined, it is necessarily left open to interpretation by the individual applicants answering the questions. CARRP, however, directs USCIS officers to exploit this vagueness in order to assert that an applicant failed to reveal a membership or association and thereby provided false testimony.

For instance, USCIS often claims in CARRP cases that an applicant failed to disclose an association or membership with an Islamic organization, whether a charity, organization, or mosque. Unsurprisingly, USCIS does not make the same claims about Christian, Jewish, or secular organizations.¹⁸²

CARRP IN PRACTICE

Exploiting the Vagueness of the Association and Membership Question

In the following cases, USCIS claimed that the applicants provided false testimony because they failed to list all required organizations on the naturalization form, despite the fact that the applicants were not members of or associated with the organizations by any reasonable standard and were forthcoming about the nature of their relationships with these organizations when asked about them.

TAREK HAMD was accused of providing false testimony for failing to disclose his association with the Islamic charity Benevolence International Foundation on the basis of a single donation made to the organization.¹⁸³

MIRSAD HAJRO was accused of providing false testimony for failing to disclose his association with a religious practice.¹⁸⁴

SAMI MIZRAHI¹⁸⁵ was accused of providing false testimony for failing to disclose his association with the Holy Land Foundation on the basis of the fact that he, at one time, designed a flyer for them through his graphic design business.

REEM and **AHMAD MUHANNA** were accused of providing false testimony for failing to disclose their association with the Holy Land Foundation on the basis of the fact that they made donations, attended fundraisers, and personally knew some of the HLF employees.

JAMAL ATALLA was accused of providing false testimony for failing to disclose his association with GRF based on some volunteer work and donations he made to the organization.¹⁸⁶

JAMAL ABUSAMHADANEH was accused of providing false testimony for failing to disclose his association and membership with a mosque, the Muslim American Society, and the Muslim Brotherhood.¹⁸⁷

Second, USCIS often relies on erroneous or misconstrued evidence, usually from the FBI, that it refuses to disclose, but then uses to support conclusions that an applicant is a “national security concern” and that a person falsely testified or is otherwise ineligible to naturalize. The failure to disclose such information prevents the agency from testing the veracity of the information, and thereby leaves erroneous assumptions untested in the adjudicative process.

CARRP IN PRACTICE

Reliance on Secret Evidence Not Disclosed to the Applicant



Jamal Abusamhadaneh

JAMAL ABUSAMHADANEH, a Jordanian national and practicing Muslim, was denied naturalization by USCIS on grounds that he failed to disclose his membership or association with a mosque he attended, the Muslim American Society, and the Muslim Brotherhood.¹⁸⁸ USCIS’s claim that he was a member of the Muslim American Society and the Muslim Brotherhood was based entirely on an FBI report of a voluntary interview that falsely stated that a third person had claimed that Jamal belonged to these groups. The USCIS officer who handled his naturalization application never confronted Jamal with the report during his naturalization proceedings. As the Court noted in his district court case, “Mr. Abusamhadaneh was never given the opportunity to examine the report and potentially identify the inaccuracies and explain the source of confusion.”¹⁸⁹ Had the officer confronted Jamal with the report at the time of his interview, the confusion could have been resolved at the administrative stage rather than through years of costly litigation that the government ultimately lost. The Court found the FBI report to be inaccurate and unreliable at trial, and affirmed that Jamal was never a member of the Muslim Brotherhood.¹⁹⁰

TAREK HAMD was denied naturalization by USCIS on grounds that he failed to disclose his membership or association with the Benevolence International Foundation. Tarek only learned during the litigation of his case that USCIS’s claim that he was a member or associate of BIF was based entirely on an FBI declaration describing an interview he voluntarily gave to the FBI and a copy of a check he wrote to BIF. As a federal judge later found, USCIS misconstrued the FBI declaration to mean that Tarek played a leadership role in the BIF. As in the Abusamhadaneh case, had USCIS confronted Tarek with the FBI declaration during the administrative process of his case, he could have explained the inaccuracies and resolved USCIS’s confusion.

“They never tell you what the reason is for the delay. The whole secrecy about it makes it so much worse. They never tell you what the issue is so that you can address it. All I can do is keep inquiring about my case. I’ve sent a dozen inquires so far. And every time they just write back a little paragraph saying ‘we need to do further review on your case’ and that’s it. Why am I being treated differently than everybody else? Why is my application different from anybody else’s? If it is different, then at least tell me why.”

— Mahdi Asgari

The failure of USCIS to disclose the derogatory information it relies on to deny CARRP applications may violate its obligations under 8 C.F.R. § 103.2(b)(16)(i) and (ii). These regulations require that if a decision will be adverse to the applicant, USCIS must provide the applicant notice of intent to deny the application and an opportunity to rebut the derogatory information. According to the regulations, the decision itself can only be made on the basis of information contained in the record of proceedings and disclosed to the applicant. In addition, the USCIS Adjudicator’s Field Manual states that a petitioner must be afforded an opportunity to inspect and rebut adverse information.¹⁹¹ USCIS’s failure to disclose derogatory information to applicants in such cases also likely violates an applicant’s due process rights.¹⁹²

Third, USCIS routinely ignores – even in litigation of CARRP naturalization cases – the legal requirement that any false testimony must be accompanied by the subjective “intent to obtain an immigration benefit” in order to serve as a basis to deny naturalization.¹⁹³ Time and again, USCIS agents assert false testimony to justify denials absent any evidence that the applicant had the requisite intent to falsely testify. Such decisions are particularly absurd in the numerous cases where applicants evidently make every effort to be as accurate, forthcoming, and truthful as possible in answering the membership and association question.



Finally, after three years of waiting and as this report went to print, Mahdi Asgari learned that USCIS had finally decided to grant his application and swear him in as a U.S. citizen.

CARRP IN PRACTICE

Ignoring the Requisite Legal Standard that Applicants Intentionally Testify Falsely to Obtain an Immigration Benefit

In the following cases, USCIS argued that the applicant falsely testified despite clear evidence in the administrative record that the applicant was forthcoming and could not have intentionally lied.

In the case of **JAMAL ABUSAMHADANEH**, USCIS argued that he failed to disclose his membership at a mosque, even though he was forthcoming about explaining that he attended the mosque but was not a formal member. Though the USCIS officer handling his case testified in court that normally “she would not generally expect an applicant to answer Question 8(a) listing his church or mosque membership,”¹⁹⁴ she nonetheless asked him in his interview, “Are you a member of a church or a mosque or anything like that,” and he responded “No. I visit the mosque but I am not a member.”¹⁹⁵ Even though Jamal made clear to the officer his own definition of the terms “membership” and “association” in the interview and was forthcoming with details describing his relationship with the mosque and why he was not a formal “member,” USCIS nonetheless denied his application because he failed to disclose his membership.¹⁹⁶

In the case of **MIRSAD HAJRO**, USCIS argued that he falsely testified by failing to disclose his service in the Bosnian army and a local defense group, his participation in a Muslim religious practice, and that he carried an AK-47 when working with the local defense group.¹⁹⁷ In analyzing each of USCIS’s claims, the court rejected them as unfounded, noting that question 8(a) did not ask about military service and that, far from attempting to hide information, Mirsad had voluntarily disclosed information about his military service, religious practice, and the fact that he carried an AK-47 during the military service.¹⁹⁸

In the case of **TAREK HAMDI**, USCIS argued that he falsely testified by failing to disclose that his membership or association with the Benevolence International Foundation, despite the fact that Tarek voluntarily disclosed in the administrative process that he gave money to the BIF and explained that the donation did not make him a member or an associate of the organization. The court rejected USCIS’s claims and granted him citizenship.

In the case of **JAMAL ATALLA**, USCIS argued that he falsely testified by failing to disclose his membership or association in the Global Relief Foundation, despite the fact that he voluntarily disclosed in detail, in multiple interviews, his volunteer activities and charitable donations to the organization and that he did not consider himself a member or associate of the organization.¹⁹⁹ The court found “[e]ven if he should have thought that his level of involvement with Global Relief Foundation counted as being ‘associated’ with it, his specific disclosures were far more important than this quarrel over what label to put on those disclosures. . . . USCIS’s attempt to find deception by ignoring the most important parts of what was said does not comport with the reality of oral communication or with common sense.”²⁰⁰

In the cases of the **MUHANNAS**, which are still pending on administrative appeal, USCIS acknowledged in its denials of their naturalization applications that Reem and Ahmad discussed in their interviews that they made donations to the Holy Land Foundation, that they had attended a fundraiser, and provided extensive details about the leaders of the Holy Land Foundation that they knew and how they knew them. Nonetheless, USCIS claimed in denying their naturalization application that they failed to disclose their membership and association with the organization.

USCIS heavily relies on “false testimony” as grounds to deny naturalization applications subject to CARRP. Because the policy requires officers to find a basis to deny an application subject to CARRP, the “false testimony” grounds for lacking the requisite good moral character is the easiest statutory ground to assert because it is relatively amorphous.

USCIS heavily relies on “false testimony” as grounds to deny naturalization applications subject to CARRP. Because the policy requires officers to find a basis to deny an application subject to CARRP, the “false testimony” grounds for lacking the requisite good moral character is the easiest statutory ground to assert because it is relatively amorphous. Because USCIS is intent on finding any basis to deny the application, its claims of “false testimony” in CARRP cases are often wholly implausible. This deliberate distortion of an otherwise legitimate standard for establishing a person’s good moral character actually discourages honesty, as the Court in *Hajro* noted.²⁰¹ Ultimately, no matter how an applicant answers the naturalization questions, the agency will nonetheless be forced to find some basis to deny the application under CARRP or delay its resolution indefinitely.

Failure to Prosecute

USCIS also sometimes uses the pretext that an applicant failed to fully comply with a Request for Evidence as another tactic for denying applications in CARRP cases. USCIS will often issue multiple Requests for Evidence to applicants in transparent attempt to create a greater likelihood that the applicant will not fully respond, thereby enabling the agency to deny the application under 8 C.F.R. § 103.2(b)(13) and 8 C.F.R. § 335.7.

In many cases where an applicant is statutorily eligible for a benefit, CARRP’s secret exclusions lead the agency to simply delay adjudication of the immigration benefit application as long as possible. But when forced to make a decision, USCIS will deny the application for pretextual reasons, very often on grounds that the applicant falsely testified or failed to prosecute his or her application.

CARRP IN PRACTICE

Pretextual Denials on Failure to Prosecute Grounds

USCIS denied **ABRAHIM MOSAVI**’s naturalization application, ten years after he filed his application, on grounds that he failed to provide information in response to an RFE that the agency never requested. The agency claimed he failed to prosecute his application under 8 C.F.R. § 335.7. Abraham appealed, explaining that their decision was in error because he could not have provided evidence that USCIS never requested. Two years later, in August 2012, the agency denied Abraham’s appeal on a different ground, stating that in February 2010 it had denied Abraham’s N-400 application on grounds he was “continuously absent from the United States from November 15, 2008 through June 6, 2010.” This statement was not only false because he had not been denied on those grounds, but also illogical. USCIS could not have concluded in February 2010 that Abraham was absent from the country into the future. He is still waiting for a final determination on his naturalization application.

USCIS initially denied the naturalization application of **MOHAMMAD HAMDAN**, a board member of a Los Angeles mosque, based on the claim that he failed to completely respond to a request for evidence that sought copies of the past five years of business licenses for his dentistry business. Although he produced all of the requested documents, USCIS argued that because one license was registered two months late, he had failed to prosecute his application by failing to provide evidence of a license to cover the missing two months. Mohammad appealed the decision, explaining that he in fact had provided all the business licenses for the period in question and that the late-registered license retroactively applied to the missing two months. After waiting for five and a half years, the agency ultimately granted his naturalization application.

In sum, CARRP has mandated delays in processing and, ultimately, denials in many cases involving AMEMSA immigrants, even though the applicants are lawfully entitled to the benefits they seek.

In sum, CARRP has mandated delays in processing and, ultimately, denials in many cases involving AMEMSA immigrants, even though the applicants are lawfully entitled to the benefits they seek. USCIS officers identify “national security concerns” through criteria, watchlists, and other screening mechanisms that overwhelmingly rely on national origin, religious activity, and other factors that simply identify members of the AMEMSA community, not people who actually pose a threat to our nation. By permitting and, usually, requiring that USCIS delay (without end) the adjudication of applications subject to its rules, CARRP violates the statutory time limits mandated by immigration law, particularly in the context of naturalization. It also makes little sense as a matter of policy: if applicants subject to CARRP are truly “national security concerns,” then our government should act with expediency in such cases, rather than simply delaying any action for years at a time. Finally, by prohibiting certain applicants from being approved for immigration benefits, despite their statutory eligibility, USCIS has given itself authority to wield a power over the immigration process that properly belongs only to Congress—the power to make the laws governing naturalization and immigration. By giving itself the authority to deny applications based on secret criteria that it never discloses, USCIS denies applicants the fairness they are due under the Fifth Amendment to the U.S. Constitution and applicable immigration regulations.

We the People

...re domestic Tranquillity, provide
for our Posterity, do ordain and

...All Legislative Powers

V. CARRP*e* DIEM: PRACTICE POINTERS FOR IMMIGRATION LAWYERS

At present, there is no way to receive formal confirmation from the federal government that it has labeled a person a KST. Thus, the best and perhaps only way to determine whether USCIS will consider your client a KST is through travel experiences.

The following practice pointers are designed to help immigration lawyers navigate the immigration benefits adjudication process and protect their clients in CARRP cases.

1. Determine if your client has been or will be considered a “national security concern” and, thus, “CARRP’d.”

Only by identifying the risk factors for a case to be subject to CARRP can you prepare your clients for what to expect, including delays and pretextual denials. More importantly, doing so will help you best prepare applications in a way that minimizes the risk that USCIS will find a statutory basis to deny the application.

a. Will your client be considered a Known or Suspected Terrorist (“KST”) “national security concern”?

At present, there is no way to receive formal confirmation from the federal government that it has labeled a person a KST. Thus, the best and perhaps only way to determine whether USCIS will consider your client a KST is through travel experiences. Remember, a KST is anyone whose name appears on the Terrorist Watch List. If your client has had any of the following experiences, he or she is likely on the Terrorist Watch List and thus considered a KST:

- Applicant has repeatedly been subject to secondary inspection upon entering the United States from travel abroad.
- Applicant has been subject to secondary inspection prior to boarding a flight over U.S. airspace.
- Applicant has the code “SSSS” listed on his or her boarding pass.
- Applicant is unable to check in for flights online or at airline electronic kiosks at the airport.
- Applicant has been prohibited from boarding a commercial flight over U.S. airspace.

Of course, relying on travel patterns to determine whether an individual is likely considered a KST can be imprecise, particularly if the individual has not recently traveled by plane or made any recent return trips to the United States. Nevertheless, when preparing an application for immigration benefits, interviewing your clients about past travel experience may be the best available practice to identify whether KST issues may arise in your case.

b. Will your client be considered a non-Known or Suspected Terrorist (“non-KST”) “national security concern”?

Even if the federal government has not classified your client as a KST, USCIS may still identify a supposed “national security concern” and process the case under CARRP. To determine whether your client may be considered a “non-KST” “national security concern,” carefully review your client’s background to identify anything that could trigger a “concern” under the CARRP policy. In general, you will want to evaluate whether the FBI is likely to have any records that mention your client and that are related to a national security investigation. The following are examples of factors an attorney can identify in a client interview that may – either together or in isolation – cause USCIS to label your client a “national security concern”:

In general, you will want to evaluate whether the FBI is likely to have any records that mention your client and that are related to a national security investigation.

- Applicant has given a voluntary interview to the FBI in connection with a national security investigation (or as part of general information gathering about the Muslim community).
- Applicant has donated money to an Islamic charity that was later designated by the Treasury Department as a financier of terrorism and/or whose leaders were prosecuted for providing “material support” to terrorists. These charities include, but are not limited to, the Holy Land Foundation, the Global Relief Foundation, Benevolence International Fund, Al Haramain Foundation, Islamic American Relief Agency, and Goodwill Charitable Organization.
- Applicant has been subject to pretextual law enforcement investigations after applying for an immigration benefit.
- Applicant has attended a mosque known to be under FBI surveillance.
- Applicant is related to or in any way “associated with” a KST or person believed to be a “national security concern,” such as: (1) a person who was prosecuted or placed in removal proceedings for providing “material support” to terrorists; (2) a person who is on the No Fly List or Selectee List of the Terrorist Watch List (as evidenced by problems they have when attempting air travel); (3) a person whom the federal government has placed on the Specially Designated Nationals list of the Office of Foreign Assets Control; or (4) a person who is otherwise subject to FBI or other law enforcement investigation for any national security-related reason.
- Applicant is from or has traveled in a country known for terrorist activity.
- Applicant has been party to monetary transactions with people or entities in states under U.S. sanctions.
- Applicant has particular technical skills, such as foreign language expertise or knowledge of radio, cryptography, weapons, nuclear physics, chemistry, biology, pharmaceuticals, and computer systems.
- Applicant is Muslim or perceived to be Muslim.

By at least asking your clients whether any of these (admittedly vague) factors apply to them, you may at least be able to assess the risk of the case being processed under CARRP, and thus prepare yourself, and your clients, accordingly.

2. Has your client been “CARRP’d”? Signatures of a CARRP case.

Although you may have identified the risk that your client’s case might be subject to CARRP, there is no way to know for sure because USCIS, to date, does not disclose whether it has labeled an individual a “national security concern” or whether the case has been subject to CARRP. However, the following are good indicators that a case has been placed on a CARRP track and will not be treated as “routine adjudication.”

- Processing and adjudication has been inordinately delayed.
- The FBI visited the client sometime after the client filed the immigration benefit application, in connection or apparent connection with that application.
- The applicant has already been interviewed, but no decision has been issued, and USCIS says the delay is due to pending “security checks” or “administrative checks.”
- The applicant was subject to more than one interview and/or multiple requests for evidence.
- The application was denied on specious grounds that appear pretextual.

3. Protect your client against allegations of false testimony in naturalization interviews.

CARRP cases pose particular difficulties for lawyers and their clients because, as long as the agency deems the applicant to be a “national security concern,” the entire adjudicative process is oriented towards finding any conceivable basis to deny the application.

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Therefore, in naturalization interviews in cases likely subject to CARRP, we recommend that you consider instructing your clients to follow these general principles:

- Answer all questions asked and be forthcoming with information, even if the question does not appear to directly ask for that information.

Remember that to prove that an applicant falsely testified, USCIS has to show that the applicant did so with the intent to gain an immigration benefit. Voluntarily disclosing information and being forthcoming in providing answers to questions asked in the interview will ultimately help the applicant demonstrate that he or she did not intend to deceive the agency.

- Clarify the definition or meaning of the terms “association,” “membership,” and any other vague terms or questions used by the examining officers. Be especially thorough answering any and all questions about associations, memberships, and affiliations in reference to question 8(a) on the naturalization application. For instance, although to most people a mere donation to a charity may not qualify as an “association with” or a “membership” in that charity, providing information about charitable giving may help prevent the examining officer in a CARRP case from arguing that your client testified falsely in response to question 8(a).

Note: Lawyers should carefully vet their client’s background and potential responses to the question about memberships and associations to ensure that their client’s statements will not subject them to removal proceedings.

- Ask USCIS to videotape the interview.

Video recording is your friend – it will ensure that there is a clear record of everything asked and answered during the interview, a record that will be vital to your client’s ability to successfully challenge any denial based on false testimony in district court.

- Accompany your client to all interviews.

If possible, bring another lawyer or paralegal to take copious notes of the questions asked and answers given. Those notes will become an important record of the interview in the event that USCIS refuses to videotape the interview and then ultimately claims the client falsely testified. The note taker can also be a witness to statements made, should litigation in district court be required.

- If your client remembers additional information not previously disclosed in the interview, it is important for him to provide that information as soon as possible either during the course of the interview or subsequently, so that the omission is not deemed an intentional misrepresentation for the purposes of obtaining an immigration benefit.
- Do not refuse to answer questions or walk out of naturalization interviews unless necessary to avoid greater exposure (such as to avoid removal proceedings).

Refusing to answer questions can itself constitute a basis for denying a naturalization application.²⁰² Similarly, walking out of a naturalization interview or refusing to answer questions could be deemed failure to exhaust all administrative remedies or failure to prosecute an application, which also can be a basis for denial of the application.²⁰³

4. Meticulously respond to any Request for Evidence.

In responding to Requests for Evidence, be meticulous and thorough. If requested evidence does not exist, explain why and add that the nonexistence of that information cannot be held against the applicant. Remember that USCIS will be looking for anything that could be deemed a failure to completely respond to the RFE in order to deny the application on the grounds that the applicant failed to prosecute his or her application under 8 C.F.R. § 335.7 and 8 C.F.R. § 103.2(b)(13).

5. Protect any potential CARRP client from removal proceedings, benefit rescission or termination, or criminal prosecution.

Remember that CARRP directs USCIS officers not only to find a basis to deny applications, but also to pursue removal proceedings and criminally prosecute wherever possible. Be familiar with your client's history from the outset so that you can ensure that you are not exposing your client to the possibility of removal proceedings or criminal prosecution. Pay particular attention to anything in your client's history that could be deemed "material support" of terrorism.²⁰⁴ Also pay careful attention to prior immigration violations, and fraud or false statements on immigration applications.

6. Ensure that clients do not speak with the FBI or other law enforcement agents without you or another lawyer present.

If the FBI or other law enforcement agencies seek to speak with your client after she files for an immigration benefit, advise your client not to speak with them unless you or another lawyer can be present. Remember that CARRP instructs USCIS to rely on derogatory information provided by the FBI and to look for bases to deny the application and initiate removal proceedings. Therefore, any interview provided to the FBI or other law enforcement agencies will most likely be used in the adjudication of the application. USCIS may use an FBI agent's report of an interview to find discrepancies between statements given to the FBI and statements given during naturalization interviews to support a false testimony claim. Voluntary FBI interviews are not generally recorded; therefore, the only record created of the interview is usually the FBI agent's own recitation of what took place and what the individual said.

A lawyer should first assess whether it is in the client's interest to give the interview. You should first talk to the FBI agent about the reasons for the interview and the questions they want to ask. Ask whether your client is the subject of an investigation and, if so, if a United States Attorney has been assigned to the investigation. Do not agree to open-ended fishing expeditions during interviews. After establishing the FBI's stated reasons for the interview, evaluate whether it is in the client's interest to give the interview and discuss it with the client. If the client wants to do the interview, arrange for the interview to take place at your office. Do not agree to hold interviews at the FBI's office, the client's home, or a public place.

7. Recognize that mandamus actions may force denials in CARRP cases.

Lawyers should be particularly aware of the risks associated with filing a mandamus action to compel an agency decision in a CARRP case. While a mandamus action can force the agency to make a decision rather than delay, if a court remands it back to the agency to make the decision, the agency will almost certainly deny any application subject to CARRP. Lawyers and their clients should be prepared for what they would do in the event of a denial, including whether they would be prepared to appeal the decision or file for *de novo* review in federal court under 8 U.S.C. § 1421(c).

If the FBI or other law enforcement agencies seek to speak with your client after she files for an immigration benefit, advise your client not to speak with them unless you or another lawyer can be present.

Remember that in CARRP cases USCIS will typically not disclose whatever derogatory information they believe makes your client a “national security concern.”

8. Think creatively about how to use due process protections in immigration law to protect your client.

Remember that in CARRP cases USCIS will typically not disclose whatever derogatory information they believe makes your client a “national security concern.” Very often such derogatory information is erroneous or misinterpreted by USCIS or other federal agencies, and has no bearing on an individual’s eligibility for the immigration benefit. Think creatively about ways to uncover the derogatory information, so that you may contest it and, ideally, change the agency’s position.

For example, you may argue that the “Inspection of Evidence” provision of 8 C.F.R. § 103.2(b) (16)(i) and (ii) requires USCIS to provide a notice of intent to deny, fully disclose any adverse information, and provide the applicant an opportunity to rebut the derogatory information prior to adjudication. Similarly, you could also argue that procedural due process compels USCIS to at least provide naturalization applicants notice that their applications have been subject to CARRP and an opportunity to contest any CARRP classification.

You may also want to try to build a record that USCIS has applied CARRP to your client’s case. Doing so may help demonstrate that the case has been subject to unauthorized delays and criteria not relevant to your client’s eligibility to naturalize. If your client is ultimately denied naturalization, such a record could also help support the claim that your client is actually statutorily eligible, but was denied the benefit simply because the policy required it. Consider whether there are ways to compel USCIS to disclose whether the case has been subject to CARRP, either through a FOIA request, obligations to disclose your client’s A-file, or, if applicable, through immigration court discovery procedures. If you are able to receive your client’s A-file through any of these methods, an unusually high number of redactions may be a clue that your client’s case has been processed under CARRP. Furthermore, look for the following designations among any official TECS/IBIS or NCIS documents in the A-file, which are indicators that USCIS will treat your client as a “national security concern”:

TECS/IBIS Table Code	Code Description
SF	TSA “No Fly” List
SK	Known Terrorist
ST	Suspected Terrorist
SX	Associate of Terrorist

NCIC Offense Code	Code Description
0103	Espionage
0104	Sabotage
0105	Sedition
5299	Weapons/Explosives

9. Don’t be afraid to make a federal case of it.

Immigration practitioners should also seriously consider the benefits of challenging lengthy delays and implausible denials in federal court. To date, district courts throughout the country have favorably ruled for naturalization applicants whose cases appeared to have been subject to CARRP at the administrative level, and they have awarded attorneys’ fees to the successful litigants (at the Equal Access to Justice Act (“EAJA”) rates) in at least some of those cases.



VI. CONCLUSION

The fairness and non-discrimination that aspiring Americans expect from the U.S. government when they apply to naturalize or permanently immigrate to the United States must not reside exclusively in the courts.

“It wasn’t until the day after I was sworn in as an American citizen that I actually started to feel like a citizen of this country. I truly did feel a change. Even though I have lived here for over 34 years, I feel like I belong, I’m official now.”

— Tarek Hamdi

Because of CARRP, it took Tarek eleven years to finally receive the U.S. citizenship that he had earned long before. Only because he took his case to court, taking the decision out of the hands of USCIS and entrusting it to the judicial system, which simply applied the legal requirements for naturalization, did he ultimately receive a fair adjudication of his application. The fairness and non-discrimination that aspiring Americans expect from the U.S. government when they apply to naturalize or permanently immigrate to the United States must not reside exclusively in the courts. USCIS can and must ensure that its policies comport with the Constitution and laws it is sworn to protect and administer. If we ask our newest citizens to take a meaningful oath to uphold “the principles of the U.S. Constitution” and be “well disposed to the good order and happiness of the United States,” we must ask the very agency that administers that oath to do the same.



Tarek Hamdi, after being sworn in as an American citizen.

End Notes

- 1 Under federal immigration law, persons who have been residing in the United States as lawful permanent residents may become United States citizens through a process known as naturalization.
- 2 This report will refer to the AMEMSA community to describe the community of immigrants who experience discrimination on account of their Muslim identity, perceived Muslim identity, or other identify categories – whether race, ethnicity, or national origin – that cause them to be perceived as threatening or somehow associated with terrorism.
- 3 On the eve of publication of this report, USCIS informed Mahdi that it had granted his naturalization application and would swear him in as a U.S. citizen. As this report explains, under CARRP, USCIS would not have approved Mahdi’s application unless it was able to resolve the supposed “national security concern” that caused it to hold up his application in the first place. While USCIS obviously came to the correct conclusion that he was not a “national security concern” and his application could be approved, it does not make up for the harm he suffered waiting years for a decision while his application was subject to CARRP.
- 4 See 8 U.S.C. § 1422 (adopted in 1952) (“The right of a person to become a naturalized citizen of the United States shall not be denied or abridged because of race or sex or because such person is married.”).
- 5 Complaint for Declaratory and Injunctive Relief, *Am. Civil Liberties Union of S. Cal. v. U.S. Citizenship & Immigration Servs.*, No. 13-861 (D.D.C. filed June 7, 2013).
- 6 See Spencer S. Hsu & N.C. Aizenman, *FBI Name Check Cited in Naturalization Delays*, WASH. POST, June 17, 2007, available at http://www.washingtonpost.com/wp_dyn/content/article/2007/06/16/AR2007061601360.html.
- 7 See 8 C.F.R. § 335.2(b) (stating FBI criminal background checks confirm whether or not an applicant has an “administrative or criminal record”); Office of Inspector Gen., Dep’t of Homeland Sec., A REVIEW OF U.S. CITIZENSHIP AND IMMIGRATION SERVICES’ ALIEN SECURITY CHECKS 4 (2005) (“The legacy INS queried the main files since 1985 but added reference files to security checks in 2002.”), available at http://www.oig.dhs.gov/assets/Mgmt/OIG_06-06_Nov05.pdf.
- 8 See Robert J. Garrity, Jr., Acting Assistant Director, Records Management Division, Federal Bureau of Investigation, *Statement Before the House of Representatives Committee on Government Reform*, July 10, 2003, <http://www.fbi.gov/news/testimony/the-fbis-visa-name-check-process> (“The searches seek all instances of the individual’s name and close date of birth, whether a main file name or reference. By way of explanation, a main file name is that of an individual who is, himself, the subject of an FBI investigation, whereas a reference is someone whose name appears in an FBI investigation. References may be associates, witnesses, conspirators, or a myriad of other reasons may exist to explain why an FBI Agent believed it important to index a particular name in an investigation for later recovery.”); see also Hsu, *FBI Name Check Cited in Naturalization Delays*, *supra* note 6 (“A policy decision was made to check applicants’ names not only against the list of individuals under investigation by the FBI but also against the list of those named in investigative files for any reason.”).
- 9 CITIZENSHIP AND IMMIGRATION SERVICES OMBUDSMAN ANNUAL REPORT 2006, at 23, available at www.dhs.gov/cisombudsman (last visited May 31, 2013); CITIZENSHIP AND IMMIGRATION SERVICES OMBUDSMAN ANNUAL REPORT 2007, at 37, available at www.dhs.gov/cisombudsman (last visited May 31, 2013).
- 10 8 U.S.C. § 1571(b) (“It is the sense of Congress that the processing of an immigration benefit application should be completed not later than 180 days after the initial filing of the application[.]”).
- 11 See, e.g., *Kolhatkar v. Filip*, No. 07-01394-DOC (C.D. Cal. filed Dec. 4, 2007) (class action on behalf of naturalization applicants subject to FBI name check delays within the jurisdiction of the Los Angeles Field Office); *Roshandel v. Chertoff*, No. 07-1739 MJP (W.D. Wa. filed Oct. 29, 2007) (same for naturalization applicants residing in the Western District of Washington); *Yakubova v. Chertoff*, No. 06-3203-ERK (E.D. NY filed June 28, 2006) (same for naturalization applicants in five NY state counties); see also *Mocanu v. Mueller*, 2008 WL 372459, at *1 (E.D. Pa. Feb. 8, 2008), order corrected 2008 WL 570953 (E.D. Pa. Feb. 28, 2008) (holding that the FBI name check has caused unreasonable delays and that USCIS needed to initiate notice and comment procedures due to its revised name check regulation).
- 12 See Nat’l Immigration Law Center, Press Release, *Hundreds of Immigrants Will Finally Become U.S. Citizens*, Nov. 9, 2009, available at <https://nilc.org/natdelay.html>.
- 13 8 U.S.C. §§ 1423 and 1427(a).
- 14 The applicant must have resided continuously in the United States for five years (or three years if married to a U.S. citizen) immediately preceding her application to naturalize. She must have been physically present in the United States at least half of that time, and must have resided within the state or USCIS district in which she filed her application for at least three months. *Id.* § 1427(a)(1); see 8 C.F.R. § 316.5.
- 15 8 U.S.C. § 1427(a)(3); see 8 C.F.R. §§ 316.2(a)(7) and (b); *id.* § 316.10-316.11; see also *United States v. Housepian*, 359 F.3d 1144, 1168 (9th Cir. 2004) (*en banc*).
- 16 8 U.S.C. § 1101(f).
- 17 See, e.g., *Plewa v. INS*, 77 F. Supp. 2d 905, 913 (N.D. Ill. 1999) (citations omitted).
- 18 8 U.S.C. § 1445; 8 C.F.R. § 334.2.
- 19 8 U.S.C. § 1446(a); 8 C.F.R. § 335.1.

- 20 8 C.F.R. § 335.2(b).
- 21 U.S. Citizenship & Immigration Servs. Acad., CARRP OFFICER TRAINING: NATIONAL SECURITY HANDOUTS, *Guidance for Identifying National Security Concerns* 3 (2009) [hereinafter *Guidance for Identifying National Security Concerns*], available at <https://aclusocal.org/wp-content/uploads/2013/01/Guance-for-Identifying-NS-Concerns-USCIS-CARRP-Training-Mar.-2009.pdf>.
- 22 8 C.F.R. § 335.2(a).
- 23 *Id.* § 335.2(c).
- 24 8 U.S.C. § 1446(d).
- 25 8 C.F.R. § 335.3 (“USCIS *shall* grant the application if the applicant has complied with all the requirements for naturalization. . . .”) (emphasis added).
- 26 *Id.* § 335.3.
- 27 *See also Housepian*, 359 F.3d at 1151-52.
- 28 H.R. REP. NO. 101-187, at 8 (1989); 135 CONG. REC. H4539-02, H4542 (1989) (statement of Rep. Morrison).
- 29 *See* 8 U.S.C. §§ 1571(a), 1572 and 1573.
- 30 *Id.* § 1572(1).
- 31 *Guidance for Identifying National Security Concerns*, *supra* note 21, at 2-3.
- 32 Memorandum from Jonathan R. Scharfen, Deputy Director, U.S. Citizenship & Immigration Servs., to Field Leadership, U.S. Citizenship & Immigration Servs., *Policy for Vetting and Adjudicating Cases with National Security Concerns* 1 n.4 (Apr. 11, 2008) [hereinafter *Policy for Vetting and Adjudicating Cases with National Security Concerns*], available at <https://aclusocal.org/wp-content/uploads/2013/01/CARRP-Policy-for-Vetting-and-Adjudicating-Cases-w-NS-Concerns-Apr.-11-2008.pdf>.
- 33 CARRP does not apply to the following applications: I-129F (Petition for Alien Fiancé/e, I-130 (Petition for Alien Relative), I-140 (Immigrant Petition for Alien Worker), I-360 (Petition for Amerasian, Widow(er), or Special Immigrant), I-526 (Immigrant Petition by Alien Entrepreneur), I-600/I-800 (Petition to Classify Orphan as an Immediate Relative/Petition to Classify Convention Adoptee as an Immediate Relative), and I-824 (Application for Action on an Approved Application or Petition). The USCIS PowerPoint training on CARRP specifically states that it does not apply to I-360 petitions with respect to religious workers, thus leaving unclear whether it only excludes those I-360 petitions on behalf of religious workers or whether it also excludes every other type of I-360 applicant. *See* U.S. Citizenship & Immigration Servs., PowerPoint v. 1.1, *Fraud Detection & National Security Controlled Application Review and Resolution Program (CARRP) Independent Study* 28 (Dec. 28, 2011) [hereinafter FDNS CARRP PowerPoint v. 1.1], available at <https://aclusocal.org/wp-content/uploads/2013/01/FDNS-CARRP-Independent-Study-Powerpoint-v.-1.1-Dec.-28-2011.pdf>. USCIS directs immigration officers to refer to the relevant “Operational Guidance” when adjudicating petitions that involve national security or public safety concerns but are petitions that do not convey immigrant or non-immigrant status, applications for employment authorization, applications for travel authorization, applications to replace lawful permanent resident cards, and “*Santillan* cases.” *Policy for Vetting and Adjudicating Cases with National Security Concerns*, *supra* note 32, at 3; *see Santillan v. Gonzales*, 388 F. Supp. 2d 1065 (N.D. Cal. 2005) (class action involving persons granted lawful permanent resident (“LPR”) status by the Justice Department’s Executive Office of Immigration Review for whom USCIS failed to timely issue evidence of LPR status).
- 34 *Policy for Vetting and Adjudicating Cases with National Security Concerns*, *supra* note 32, at 1 n.1.
- 35 8 U.S.C. §§ 1182(a)(3)(A), (B), and (F), and 1227(a)(4)(A) and (B).
- 36 *Policy for Vetting and Adjudicating Cases with National Security Concerns*, *supra* note 32, at 1 n.1.
- 37 *Guidance for Identifying National Security Concerns*, *supra* note 21, at 2-3 (referencing 8 U.S.C. §§ 1182(a)(3)(A), (B), and (F), and 1227(a)(4)(A) and (B)).
- 38 For example, the policy specifically mentions testimony elicited during an interview; review of the petition or application including supporting documents, the A-file or related files; “leads” from other U.S. government agencies or foreign governments; and other sources, including open source research. *Id.* at 3.
- 39 8 C.F.R. § 335.2(b); *see also* U.S. Citizenship & Immigration Servs., *Policy Manual*, vol. 12, part B, chapter 2 (regarding background and security checks prior to the naturalization examination), available at <http://www.uscis.gov/policymanual/HTML/PolicyManual-Volume12-PartB-Chapter2.html#text:note-IDAL-N4OH>.
- 40 *Guidance for Identifying National Security Concerns*, *supra* note 21, at 2.
- 41 *Policy for Vetting and Adjudicating Cases with National Security Concerns*, *supra* note 32, at 1 n.3; *see* Timothy Healy, Director, Terrorist Screening Ctr., Fed. Bureau of Investigation, *Statement Before the Senate Committee on Homeland Security and Governmental Affairs* (Mar. 10, 2010) (stating that the Terrorist Watch List is synonymous with the Terrorist Screening Database), available at <http://www.fbi.gov/news/testimony/the-lessons-and-implications-of-the-christmas-day-attack-watchlisting-and-pre-screening>.

- 42 CARRP directs officers to confirm that the KST “hit” relates to the applicant and to confirm that match with the Terrorist Screening Center (“TSC”) (to ensure it is the same person). If the KST hit relates to the applicant, CARRP will then govern the adjudication of their case. If it does not, the case will proceed to “routine adjudication.”
- 43 *Policy for Vetting and Adjudicating Cases with National Security Concerns*, *supra* note 32, at 1 n.3.
- 44 Healy, *Statement Before the Senate Committee on Homeland Security*, *supra* note 41 (stating that CLASS and TECS accept nearly all records from the TSDB).
- 45 Fed. Bureau of Investigation, *Terrorist Screening Center: Frequently Asked Questions*, http://www.fbi.gov/about-us/nsb/tsc/tsc_faqs (last visited July 15, 2013).
- 46 *Id.*
- 47 U.S. GOV’T. ACCOUNTABILITY OFFICE, GAO-06-1031, *TERRORIST WATCH LIST SCREENING: EFFORTS TO HELP REDUCE ADVERSE EFFECTS ON THE PUBLIC 8-9* (2006), *available at* <http://www.gao.gov/new.items/d061031.pdf>.
- 48 *Id.* at 7.
- 49 Healy, *Statement Before the Senate Committee on Homeland Security*, *supra* note 41.
- 50 *Id.*
- 51 *Id.*
- 52 U.S. GOV’T. ACCOUNTABILITY OFFICE, GAO-08-110, *TERRORIST WATCH LIST SCREENING: OPPORTUNITIES EXIST TO ENHANCE MANAGEMENT OVERSIGHT, REDUCE VULNERABILITIES IN AGENCY SCREENING PROCESSES, AND EXPAND USE OF THE LIST 22* (2007), *available at* <http://www.gao.gov/new.items/d08110.pdf>.
- 53 CNN.com, *Mandela Off U.S. Terrorism Watch List*, July 2, 2008, <http://www.cnn.com/2008/WORLD/afri-ca/07/01/mandela.watch/>.
- 54 Healy, *Statement Before the Senate Committee on Homeland Security*, *supra* note 41.
- 55 GAO, *TERRORIST WATCH LIST SCREENING*, *supra* note 52, at 30-31.
- 56 Healy, *Statement Before the Senate Committee on Homeland Security*, *supra* note 41.
- 57 Transp. Sec. Admin., *Secure Flight Program*, <http://www.tsa.gov/stakeholders/secure-flight-program> (last visited July 16, 2013).
- 58 See Joseph S. Szyliowicz, *Safeguarding Critical Transportation Infrastructure: The US Case*, 28 *TRANSPORT POLICY* 69, 71 (2013).
- 59 GAO, *TERRORIST WATCH LIST SCREENING*, *supra* note 52, at 35.
- 60 Fed. Bureau of Investigation, *Terrorist Screening Center: Frequently Asked Questions*, http://www.fbi.gov/about-us/nsb/tsc/tsc_faqs (last visited July 15, 2013) (noting that the Terrorist Screening center “cannot reveal whether a particular person is in the [Terrorist Screening Database],” which includes the No-Fly and Selectee lists); *see also Gordon v. Fed. Bureau of Investigation*, 388 F. Supp. 2d 1028, 1037 (N.D. Cal. 2005) (holding that the FBI was not required to confirm whether or not the plaintiffs’ names were included on the No-Fly list or other aviation watch lists).
- 61 *See, e.g., Sarah Kehaulani Goo, Senator Kennedy Flagged by No-Fly List*, *WASH. POST* (Aug. 20, 2004), <http://www.washingtonpost.com/wp-dyn/articles/A17073-2004Aug19.html> (describing how airline staff told Senator Ted Kennedy at the airport that they could not issue him a boarding pass because his name may have been on the No-Fly list); Shashank Bengali, *Secret No-Fly List Blamed for American’s Bangkok Nightmare*, *L.A. TIMES* (June 28, 2013), <http://www.latimes.com/news/nationworld/nation/la-na-0629-no-fly-20130629,0,3153695.story> (describing how a US citizen medical student was prevented from boarding a flight to Los Angeles from Bangkok, potentially because of his inclusion on the No-Fly or Selectee lists. The student was eventually allowed to board a flight to the United States, but was subjected to extensive questioning and confiscation of his possessions upon his return).
- 62 *See* Conor Friedersdorf, *Am I on the ‘No Fly’ List?—and Other FAQs to the FBI*, *THE ATLANTIC* (May 18, 2012, 4:18 AM), <http://www.theatlantic.com/national/archive/2012/05/am-i-on-the-no-fly-list-0151-and-other-faqs-to-the-fbi/257316/> (referencing the May 2012 oral argument in *Latif v. Holder* where the government attorney admitted that individuals on the watch list have limited options for redress outside of the DHS inquiry process); Dep’t of Homeland Sec., *Step 3: After Your Inquiry*, <http://www.dhs.gov/step-3-after-your-inquiry> (last visited July 16, 2013) (noting that “[e]ven after completing the redress process . . . a traveler may be selected for enhanced screening”); *see also, e.g., Joe Slezak, Dearborn Heights Paraplegic Removed From Federal No Fly List*, *PRESS & GUIDE NEWSPAPERS* (March 20, 2013), <http://www.sourcenewspapers.com/articles/2013/03/20/news/doc514a19d83f1e1622992949.txt?viewmode=default> (recounting the story of a paraplegic U.S. citizen who was forced to sue the federal government to get his name off of the No-Fly list); Goo, *Senator Kennedy Flagged by No-Fly List*, *supra* note 61 (explaining that it took a U.S. senator and his staff over three weeks to get the senator’s name removed from what he believed to be the No-Fly list).

- 63 See Dep't of Homeland Sec., *DHS Traveler Redress Inquiry Program* (DHS TRIP), <http://www.dhs.gov/dhs-trip> (last visited July 16, 2013) (stating that DHS TRIP is a “single point of contact for individuals who have inquiries . . . regarding difficulties they experienced during travel screening at transportation hubs . . . including . . . watch list issues”); Dep't of Homeland Sec., *Step 2: How to Use DHS Trip*, <http://www.dhs.gov/step-2-how-use-dhs-trip> (last visited July 16, 2013) (providing access to the DHS Traveler Inquiry Form, which can be submitted online or by hard copy). The legislative directive for this redress program is set out at 49 U.S.C. § 44926 (2012).
- 64 See *Shearson v. Holder*, 865 F. Supp. 2d 850, 857 (N.D. Ohio 2011) (noting that DHS refers the redress requests of individuals who may be on the Watch List to TSC's Redress Unit for evaluation, and that the TSC determines the outcome of the review).
- 65 Brief of Plaintiffs-Appellants at 6, *Latif v. Holder*, No. 11-35407 (9th Cir. Aug. 22, 2011).
- 66 *Id.*; see also *Ibrahim v. Dep't of Homeland Sec.*, 538 F.3d 1250, 1256 (9th Cir. 2008) (finding that “[t]he No-Fly List is maintained by the [TSC]” and that the TSC was ultimately responsible for the placement of the plaintiff's name on the list).
- 67 *Shearson*, 865 F. Supp. 2d at 857 (explaining that “[a]t the conclusion of the review, the TSC Redress Unit notifies the DHS TRIP of the outcome and DHS TRIP issues a determination letter to the traveler”).
- 68 *Id.* at 857 (noting that “the determination letter will not inform the individual of his or her status on a watchlist”).
- 69 See Brief of Plaintiffs-Appellants at 8-9, *Latif v. Holder*, No. 11-35407 (9th Cir. Aug. 22, 2011) (quoting a DHS TRIP determination letter received by a plaintiff failed to include “any basis for Plaintiff[s] inclusion on such a list”).
- 70 Shaun Waterman, *Terror watch list grows to 875,000*, WASH. TIMES, May 3, 2013, available at <http://www.washingtontimes.com/news/2013/may/3/terror-watch-list-grows-875000/?page=all>.
- 71 This individual preferred to be identified only by his first name.
- 72 See *Unlikely Suspects*, ACLU, <http://www.aclu.org/technology-and-liberty/unlikely-suspects> (last visited July 22, 2013); CNN.com, *Mandela Off U.S. Terrorism Watch List*, *supra* note 53.
- 73 See *Unlikely Suspects*, ACLU, *supra* note 72; Goo, *Senator Kennedy Flagged by No-Fly List*, *supra* note 61.
- 74 See *Unlikely Suspects*, ACLU, *supra* note 72; Sara Kehaulani Goo, *Hundreds Report Watch-List Trials*, WASH. POST (Aug. 21, 2004), <http://www.washingtonpost.com/wp-dyn/articles/A20199-2004Aug20.html>.
- 75 See *Unlikely Suspects*, ACLU, *supra* note 72; *Cat Stevens In the Dark Over No-Fly List*, ABC NEWS (Oct. 1, 2004), <http://abcnews.go.com/2020/News/story?id=139607&page=1#.Udtdsju1GSo>.
- 76 *Guidance for Identifying National Security Concerns*, *supra* note 21, at 2. According to CARRP, the “Non-KST category refers to all other [national security] concerns, regardless of source, including but not limited to: associates of KSTs, unindicted co-conspirators, terrorist organization members, persons involved in providing material support to terrorists or terrorist organizations, and agents of-foreign governments.” *Policy for Vetting and Adjudicating Cases with National Security Concerns*, *supra* note 32, at 1 n.3. Given that much of the conduct defined in these categories constitutes “terrorist activity” as that term is defined under federal law, the relationship between the criteria for being labeled a KST and a non-KST national security concern remains unclear, and, most likely, ambiguous in practice. See, e.g., 8 U.S.C. § 1182(a)(3)(B)(i)(V)-(VI) (stating that terrorist organization members are inadmissible); *id.* § 1182(a)(3)(B)(iv)(VI) (stating that providing material support constitutes engaging in terrorist activity).
- 77 *Guidance for Identifying National Security Concerns*, *supra* note 21, at 3-7.
- 78 See 8 U.S.C. § 1182(a)(3)(A)-(B) (laying out the national security and terrorism inadmissibility grounds); 8 U.S.C. § 1227(a)(4)(A)-(B) (laying out the national security and terrorism deportability grounds).
- 79 *Id.* § 1182(a)(3)(B)(vi)(I)-(II). The designation of a Tier I organization by the Secretary of State may be done only after notifying certain members of Congress by classified communication. *Id.* § 1189(a)(2)(A)(i) (2012). The designation of a Tier II organization by the Secretary of State must be in consultation with or upon the request of the Attorney General or the Secretary of Homeland Security. *Id.* § 1182(a)(3)(B)(vi)(I)-(II). The State Department maintains a public list of Tier I organizations, or Foreign Terrorist Organizations (“FTOs”). See Bureau of Counterterrorism, *Foreign Terrorist Organizations*, U.S. DEP'T OF STATE (Sept. 28, 2012), <http://www.state.gov/j/ct/rls/other/des/123085.htm>. The State Department also maintains a list of Tier II organizations, or the Terrorist Exclusion List (“TEL”). Office of the Coordinator for Counterterrorism, *Terrorist Exclusion List*, U.S. DEP'T OF STATE (Dec. 29, 2011), <http://www.state.gov/j/ct/rls/other/des/123086.htm>.
- 80 8 U.S.C. § 1182(a)(3)(B)(vi)(III).
- 81 See, e.g., HUMAN RIGHTS FIRST, DENIAL AND DELAY: THE IMPACT OF THE IMMIGRATION LAW'S “TERRORISM BARS” ON ASYLUM SEEKERS AND REFUGEES IN THE UNITED STATES (2009), available at <http://www.humanrightsfirst.org/wp-content/uploads/pdf/RPP-DenialandDelay-FULL-111009-web.pdf>.
- 82 8 U.S.C. § 1182(a)(3)(B)(iv)(VI).
- 83 *Id.* § 1182(a)(3)(B)(iv)(VI).

- 84 *See Singh-Kaur v. Ashcroft*, 385 F.3d 293, 299 (3d Cir. 2004) (holding the provision of food and shelter constitutes “material support” under the INA); *Khan v. Holder*, 584 F.3d 773, 784 (9th Cir. 2009) (holding the definition of “terrorist activity” under the INA does not provide an exception for armed resistance against military targets that is permitted under the international law of armed conflict); *Annachammy v. Holder*, 686 F.3d 729, 740 (9th Cir. 2012) (holding that the “material support” bar under the INA does not include an implied exception for individuals who provide support under duress).
- 85 8 U.S.C. § 1182(a)(3)(B)(iv)(VI)(dd).
- 86 *Guidance for Identifying National Security Concerns*, *supra* note 21, at 2 (referencing 8 U.S.C. §§ 1182(a)(3)(A), (B), and (F), and 1227(a)(4)(A) and (B)).
- 87 *Id.* at 4 (emphasis added).
- 88 For example, the Treasury Department designated the Holy Land Foundation for Relief and Development, Benevolence International Foundation, Global Relief Foundation, Islamic African Relief Agency, Al Haramain Islamic Foundation, and Goodwill Charitable Organization, among others, as financiers of terrorism. See U.S. Dep’t. of the Treasury, *Protecting Charitable Giving: Frequently Asked Questions* (June 4, 2010), <http://www.treasury.gov/resource-center/terrorist-illicit-finance/Documents/Treasury%20Charity%20FAQs%206-4-2010%20FINAL.pdf>.
- 89 For example, in a statement released the day the Treasury Department shut down four Holy Land Foundation (“HLF”) offices, then-Secretary Paul O’Neill said that “[i]nnocent donors who thought they were helping someone in need deserve protection from these scam artists who prey on their benevolence.” Press Release, U.S. Dep’t of the Treasury, Statement of Secretary Paul O’Neill on the Blocking of Hamas Financiers’ Assets (Dec. 4, 2001), <http://www.treasury.gov/press-center/press-releases/Pages/po837.aspx>. Later, when the Justice Department indicted several HLF leaders, then-Attorney General John Ashcroft stated that the charges were not “a reflection on well-meaning people who donated funds to the foundation,” and that the indictment sent a clear message to “those who exploit good hearts to fund secretly violence and murder.” John Ashcroft, U.S. Attorney Gen., Prepared Remarks: Holy Land Foundation Indictment (July 27, 2004), <http://www.justice.gov/archive/ag/speeches/2004/72704ag.htm>. Similarly, the Justice Department charged Enaam Arnaout, the President of the Benevolence International Foundation (“BIF”) with racketeering conspiracy for defrauding its donors. Mr. Arnaout pled guilty to defrauding donors to his charity. Plea Agreement, *U.S.A. v. Arnaout*, CR 02-892 (N.D. Ill., filed Feb. 10, 2003) (“Defendant admits that starting in May 1993, BIF solicited donations from the public by purporting that BIF and its related overseas offices was a charitable organization involved solely in humanitarian work for the benefit of civilian populations, including refugees and orphans, with a small amount being used for administrative expenses.”). Similarly, the Justice Department’s indictment of leaders of the Islamic African Relief Agency (“IARA”) charged them with fraudulently using its tax-exempt status “to solicit funds, representing that they were legitimate charitable contributions.” Second Superseding Indictment at 22, ¶ 76, *U.S.A. v. Islamic African Relief Agency*, No. 07-00087-01/07-CR-W-NKL, 2008 WL 7088018 (W.D. Mo., Oct. 21, 2008). See also Press Release, U.S. Dep’t of the Treasury, Treasury Designates Global Network, Senior Officials of IARA for Supporting Bin Laden, Others (Oct. 13, 2004), <http://www.treasury.gov/press-center/press-releases/Pages/js2025.aspx>.
- 90 *Guidance for Identifying National Security Concerns*, *supra* note 21, at 4 (emphasis added).
- 91 Plea Agreement at 3, *United States v. Arnaout*, CR 02-00892 (N.D. Ill. Feb. 10, 2003), (stating that “Defendant admits that he and others agreed to conceal from donors, potential donors, and federal and state governments in the United States that a material portion of the donations received by BIF based on BIF’s misleading representations was being used to support fighters overseas.”).
- 92 *Tarek Hamdi Ruled Eligible to Naturalize After Eleven Year Battle with United States Citizenship and Immigration Service*, ACLU (March 1, 2012), <http://aclusocal.org/tarek-hamdi-ruled-eligible-to-naturalize-after-11-year-battle-with-u-s-citizenship-and-immigration-service/>.
- 93 See generally *Atalla v. Kramer*, 2011 U.S. Dist. LEXIS 65839 (D. Ariz. June 20, 2011).
- 94 *Atalla v. Kramer*, 2011 U.S. Dist. LEXIS 65839, *appeal docketed*, No. 11-16987 (9th Cir. Aug. 30, 2011).
- 95 *Guidance for Identifying National Security Concerns*, *supra* note 21, at 4-5.
- 96 *Id.* at 4.
- 97 *Id.* at 5.
- 98 *Id.*
- 99 FBI Fingerprint or NCIC Criminal History Check results that indicate a “national security concern” include responses that the person is “[c]lassified by the Attorney General as a known terrorist;” “[c]harged in immigration court with an inadmissibility/removability ground in sections 212(a)(3)(A), (B), or (F), or 237(a)(4)(A) or (B) of the Act;” or “[a]rrested/detained by the U.S. military overseas (e.g., detainees in Iraq or Guantanamo).” *Id.* at 5-7.
- 100 OBIM (formerly US-VISIT) and IDENT results that indicate a “national security concern” include biographical and biometric information for KSTs; military detainees held in Afghanistan, Pakistan and Guantanamo; and individuals inadmissible or removable under the terrorism sections of the INA. See *id.* at 7.

101 The following TECS/IBIS and NCIC Status Codes may also be indicators of “national security concerns” according to the policy. *Id.* at 7.

TECS/IBIS Table Code	Code Description
SF	TSA “No Fly” List
SK	Known Terrorist
ST	Suspected Terrorist
SX	Associate of Terrorist

NCIC Offense Code	Code Description
0103	Espionage
0104	Sabotage
0105	Sedition
5299	Weapons/Explosives

- 102 See *id.* at 3 (note: as of March 2013 US-VISIT has been replaced by the Office of Biometric Identity Management (OBIM)).
- 103 See Fed. Bureau of Investigation, Name Checks; National *Name Check Program*, <http://www.fbi.gov/stats-services/name-checks> (last visited July 17, 2013).
- 104 See *id.*; see also Office of Inspector Gen., ALIEN SECURITY CHECKS, *supra* note 7, at 3-4.
- 105 See FBI, *National Name Check Program*, *supra* note 103.
- 106 *Id.*
- 107 See Fed. Bureau of Investigation, *Integrated Automated Fingerprint Identification System*, http://www.fbi.gov/about-us/cjis/fingerprints_biometrics/iafis/iafis (last visited July 17, 2013); see also Office of Inspector Gen., ALIEN SECURITY CHECKS, *supra* note 7, at 3.
- 108 See FBI, *Integrated Automated Fingerprint Identification System*, *supra* note 107; Office of Inspector Gen., ALIEN SECURITY CHECKS, *supra* note 7, at 3.
- 109 See FBI, *Integrated Automated Fingerprint Identification System*, *supra* note 107.
- 110 Healy, *Statement Before the Senate Committee on Homeland Security*, *supra* note 41.
- 111 *Id.* CARRP specifically directs officers to look for B10 and NIC/T responses to TECS queries because they are indicators of a “known or suspected terrorist” (we were not able to determine what the terms “B10” and “NIC/T” mean). FDNS CARRP PowerPoint v. 1.1, *supra* note 33, at 9.
- 112 Healy, *Statement Before the Senate Committee on Homeland Security*, *supra* note 41.
- 113 RUTH ELLEN WASEM, CONG. RESEARCH SERV., R41093, VISA SECURITY POLICY: ROLES OF THE DEPARTMENTS OF STATE AND HOMELAND SECURITY 8 (2011), available at <http://www.fas.org/sgp/crs/homsec/R41093.pdf>; see also *Post-9/11 Visa Reforms and New Technology: Achieving the Necessary Security Improvements in a Global Environment*, Hearing Before the Subcommittee on International Operations and Terrorism of the Committee on Foreign Relations, 108th Cong. (2003), available at <http://www.gpo.gov/fdsys/pkg/CHRG-108shrg92725/html/CHRG-108shrg92725.htm>.
- 114 Dep’t of Homeland Sec., Office of Biometric Identity Management, <http://www.dhs.gov/obim> (last visited June 16, 2013).
- 115 Dep’t of Homeland Sec., *Factsheet: Expansion of Office of Biometric Identity Management to Additional Travelers*, <http://www.dhs.gov/obim-expansion-fact-sheet> (stating that biometric identity management procedures including digital fingerprints and photographs upon entry or reentry into the U.S. would be expanded to all non-U.S. citizens as of January 18, 2009, with the exception of a limited class of Canadian visitors) (last visited June 16, 2013).
- 116 Dep’t of Homeland Sec., Privacy Impact Assessment For The Automated Biometric Identification System (IDENT) 2 (2012), available at http://www.dhs.gov/sites/default/files/publications/privacy/PIAs/privacy_pia_usvisit_ident_appendix_jan2013.pdf.
- 117 *Guidance for Identifying National Security Concerns*, *supra* note 21, at 3.
- 118 *Id.* at 5-6.
- 119 *Id.* at 5.
- 120 Deposition of FBI Agent Michael Caputo, *Hamdi v. U.S. Citizenship & Immigration Servs.*, No. 10-00894 VAP (C.D. Cal., deposition taken Apr. 26, 2001) (deposition transcript on file with author).
- 121 Deposition of USCIS 30(b)(6) Witness Robert Osuna, *Hamdi v. U.S. Citizenship & Immigration Servs.*, No. 10-00894 (C.D. Cal., deposition taken Sept. 23, 2011) (deposition transcript on file with author).

- 122 See FDNS CARRP PowerPoint v. 1.1, *supra* note 33, at 14.
- 123 U.S. Citizenship & Immigration Servs., PowerPoint v. 1.4, *CARRP: Deconfliction, Internal and External Vetting and Adjudication of NS Concerns* [hereinafter CARRP PowerPoint v. 1.4] at 267, available at <https://aclusocal.org/wp-content/uploads/2013/01/CARRP-Deconfliction-Vetting-and-Adjudication-of-NS-Concerns-Training-PowerPoint-v.-1.4.pdf>.
- 124 *Id.* at 269.
- 125 *Id.* at 270-1. CARRP appears to rely on 8 C.F.R. § 103.2(b)(18) for a Field Office Director's authority to hold an application in abeyance at the request of a law enforcement agency. *Id.* at 271. However, the regulation only provides authority to a district director and only where an investigation has been undertaken involving a matter relating to eligibility or the exercise of discretion. 8 C.F.R. § 103.2(b)(18). In practice, CARRP abeyances often appear to be made not for purposes of USCIS determining eligibility, but for purposes of law enforcement investigations that may or may not relate to the actual applicant. Sometimes these investigations appear aimed not at determining whether an applicant is eligible for a benefit, but at finding a basis to criminally prosecute or place an individual in removal proceedings. In other cases, a law enforcement agency, usually the FBI, may request that a case be held in abeyance in order to use the pending immigration application as a basis to coerce an individual to become an informant or provide information.
- 126 See *Policy for Vetting and Adjudicating Cases with National Security Concerns*, *supra* note 32, at 3. See generally U.S. Citizenship & Immigration Servs., Domestic Operations Directorate (DomOps), *CARRP Workflows* [hereinafter DomOps CARRP Workflows], available at <https://aclusocal.org/wp-content/uploads/2013/01/CARRP-Workflows.pdf>.
- 127 Note that it is not apparent from the CARRP documents thus far made available whether USCIS has taken any steps to protect the confidentiality of an applicant's immigration file when sharing information with the FBI or other law enforcement agencies.
- 128 *Policy for Vetting and Adjudicating Cases with National Security Concerns*, *supra* note 32, at 4-5.
- 129 *Id.* at 5.
- 130 *Id.* at 4.
- 131 *Id.* at 4, 5 nn. 14, 17; see also DomOps CARRP Workflows, *supra* note 126, at 6 (Low Level CARRP KST Workflow: Identifying NS Concern). See generally CARRP PowerPoint v. 1.4, *supra* note 123.
- 132 This individual preferred to be identified by an alias.
- 133 U.S. Citizenship & Immigration Servs., Nat'l Sec. Division, Fraud Detection & Nat'l Sec. Division, PowerPoint v. 2.3.1, *Controlled Application Review and Resolution Program (CARRP)* at 54 (Jan. 2012) [hereinafter CARRP PowerPoint v. 2.3.1], available at <https://aclusocal.org/wp-content/uploads/2013/01/CARRP-Course-Powperpoint-Natl-Sec.-Division-FDNS-v.2.3.1-Jan.-2012.pdf>.
- 134 *Id.* at 58.
- 135 *Id.* at 59.
- 136 See DomOps CARRP Workflows, *supra* note 126, at 3 (CARRP Workflow Overview) (showing need to deconflict before denying benefit); FDNS CARRP PowerPoint v. 1.1, *supra* note 33, at 30-31, 81 (instructing always "deconflict prior to USCIS action").
- 137 The 2008 CARRP memo originally assigned external vetting of KST national security concerns to FDNS Headquarters. *Policy for Vetting and Adjudicating Cases with National Security Concerns*, *supra* note 32, at 6. However, in a 2011 memo, USCIS rescinded this requirement and reassigned external vetting of KST concerns to officers in the field, along with non-KST concerns. Memorandum from U.S. Citizenship & Immigration Servs., *Revision of Responsibilities for CARRP Cases Involving Known or Suspected Terrorists 1* (July 26, 2011) [hereinafter *Revision of Responsibilities for CARRP Cases*], available at <https://aclusocal.org/wp-content/uploads/2013/01/Revision-of-Responsibilities-for-CARRP-Cases-Involving-KST-July-26-2011.pdf>.
- 138 *Policy for Vetting and Adjudicating Cases with National Security Concerns*, *supra* note 32, at 5.
- 139 *Id.*; see *Revision of Responsibilities for CARRP Cases*, *supra* note 137, at 2.
- 140 *Policy for Vetting and Adjudicating Cases with National Security Concerns*, *supra* note 32, at 5.
- 141 CARRP PowerPoint v. 2.3.1, *supra* note 133, at 86.
- 142 *Policy for Vetting and Adjudicating Cases with National Security Concerns*, *supra* note 32, at 6.
- 143 *Id.* at 7.
- 144 *Id.*
- 145 *Id.*; see DomOps CARRP Workflows, *supra* note 126, at 5-6 (Mid Level CARRP KST Workflow, Low Level CARRP KST Workflow: Identifying NS Concern).
- 145a This individual preferred to be identified by an alias.

- 146 Mr. Bahammou's story has also been reported in the news media. See James Dao, *Allegations Upend Lives of 2 Muslims in Army*, N.Y. TIMES, May 13, 2011, at A13, available at http://www.nytimes.com/2011/05/14/us/14muslim.html?pagewanted=all&_r=0; Joseph Rhee & Chris Cuomo, *Army Investigation Over False Accusations Ruined Our Lives, Say Muslim Soldiers*, ABC NEWS, May 13, 2011, available at <http://abcnews.go.com/TheLaw/soldiers-allege-army-investigation-anti-muslim-harassment-ruined/story?id=13590030#.UdtYHju1GSo>.
- 147 *Policy for Vetting and Adjudicating Cases with National Security Concerns*, *supra* note 32, at 6.
- 148 This is particularly apparent in the Low Level CARRP Non-KST Workflow charts on adjudication. See DomOps CARRP Workflows, *supra* note 126, at 15-16 (Low Level CARRP Non-KST Workflow: CARRP Adjudication Part I and Low Level CARRP Non-KST Workflow: CARRP Adjudication Part II).
- 149 *Policy for Vetting and Adjudicating Cases with National Security Concerns*, *supra* note 32, at 5 n.16; DomOps CARRP Workflows, *supra* note 126, at 15 (Low Level CARRP Non-KST Workflow: CARRP Adjudication Part I).
- 150 CARRP PowerPoint v. 2.3.1, *supra* note 133, at 86.
- 151 *Id.* at 106.
- 152 Although the policy explicitly provides for “law enforcement agencies” in general to play decision-making roles in adjudicating immigration applications, in practice, it is generally the FBI that plays that role.
- 153 Art. I, Sec. 8, cl. 4.
- 154 Deposition of USCIS 30(b)(6) Witness Robert Osuna, *supra* note 121, at 171:15-172:11.
- 155 See the text box “How Does the Terrorist Watch List Work?” in Chapter III(a)(i) for more information.
- 156 For the many individuals on the Watch List who actually pose no threat to the United States, CARRP imposes a double penalty. The federal government does not afford these individuals a meaningful way to contest their designation on the list and to avoid the associated travel burdens. Now, because of CARRP, they are not only subject to travel burdens such as routine secondary inspection – *i.e.*, interviews and searches – and inability to check in to flights online or at kiosks, but are also deprived of their entitlement to important immigration benefits and to timely decisions.
- 157 See, *e.g.*, Charlie Savage, *FBI Scrutinized for Amassing Data on American Communities*, N.Y. TIMES, Oct. 20, 2011; Richard B. Schmitt and Donna Horowitz, *FBI Starts to Question Muslims in U.S. About Possible Attacks, Islamic advocacy groups contend that the latest program 'stigmatizes the entire community'*, L.A. TIMES, July 18, 2004; Mary Beth Sheridan, *Interviews of Muslims to Broaden, FBI Hopes to Avert a Terrorist Attack*, WASH. POST, July 17, 2004.
- 158 See, *e.g.*, Deposition of FBI Agent Michael Caputo, *supra* note 120, at 84-85 (explaining that a record of a voluntary interview, even if the person interviewed was not the subject of the investigation, could trigger a positive FBI Name Check response).
- 159 See *Abusamhadaneh v. Taylor*, 873 F. Supp. 2d 682, 686 (E.D. Va. 2012) (noting that there was a positive FBI Name Check result for Mr. Abusamhadaneh due to the existence of an FBI report of an interview with a third person that mentioned Mr. Abusamhadaneh by name).
- 160 See, *e.g.*, Declaration of Craig Monteilh Submitted by Plaintiffs in Support of Their Oppositions to Motions to Dismiss ¶¶ 20-26, *Fazaga v. Fed. Bureau of Investigations*, No. 11-00301 CJC (C.D. Cal. filed on Dec. 23, 2011) (“Over the course of my work, I went to about ten mosques and conducted surveillance and audio recording in each one.”).
- 161 See, *e.g.*, *id.* ¶¶ 19-22, 24-25 (“[My FBI handlers] assured me that all the information I collected was retained, and that they didn’t discard any of the information,” referring to the indiscriminate collection of personal information he collected on Muslims. “My handlers told me that every person who I contacted – whose phone number I got, who I emailed, who I identified through photographs – had an individual file in which the information I gathered was retained.”).
- 162 In addition, the FBI approached many individuals who made donations to these charities for voluntary interviews, as it did in Tarek Hamdi’s case. Records of these voluntary interviews would trigger a positive hit on the FBI Name Check. See Deposition of FBI Agent Michael Caputo, *supra* note 120, at 84-85; see also ACLU, BLOCKING FAITH, FREEZING CHARITY: CHILLING MUSLIM CHARITABLE GIVING IN THE “WAR ON TERRORISM FINANCING” 100-01 (2009), available at <http://www.aclu.org/pdfs/humanrights/blockingfaith.pdf> (reporting that members of the American Muslim immigrant community “feared immigration consequences, such as deportation or denial of citizenship, asylum or a green card, because of their charitable donations”).
- 163 *Policy for Vetting and Adjudicating Cases with National Security Concerns*, *supra* note 32, at 5.
- 164 See *Guidance for Identifying National Security Concerns*, *supra* note 21, at 5; *Policy for Vetting and Adjudicating Cases with National Security Concerns*, *supra* note 32, at 4.

- 165 The lawyer submitted a question to the District Director asking whether it was appropriate for officers to ask questions regarding religious affiliation during naturalization interviews, including “What is your religion?” “What mosque do you attend?” and “How often do you attend mosque?” In the approved minutes of the December 2009 Liaison meeting, USCIS’s response to the question was: “No directives have been issued regarding an applicant’s method of worship for any faith or denomination. N-400 applicants are asked if they belong to organized groups or associations. If questions regarding religious practice are put to an applicant, the applicant or their representative should ask to speak with a supervisor. Officers only ask questions that pertain to the N-400 application; if further information is required, the officer will continue a line of questions to determine eligibility.” Minutes of AILA-USCIS Liaison meeting (December 2009) (on file with author). As this report makes clear, USCIS’s response – and in particular the claim that “officers only ask questions that pertain to the N-400 application” – cannot be reconciled with practices under CARRP.
- 166 *Hajro v. Barrett*, 849 F. Supp. 2d 945, 957, 962 (N.D. Cal. 2012).
- 167 *Id.*
- 168 *See, e.g., Policy for Vetting and Adjudicating Cases with National Security Concerns, supra* note 32, at 5 (“In a case with a Non-KST NS Concern, the officer must initiate the external vetting process before the case may proceed to final adjudication if: the application or petition appears to be otherwise approvable, and internal vetting is complete....”); CARRP PowerPoint v. 1.4, *supra* note 123, at 271 (stating that cases may initially be placed in abeyance for 180 days for investigation by LEAs, but “the withholding of [the] adjudication period may be extended further.”).
- 169 8 U.S.C. § 1571(b) (“It is the sense of Congress that the processing of an immigration benefit application should be completed not later than 180 days after the initial date of filing of the application.”).
- 170 *Id.* § 1447(b).
- 171 *Singh v. Still*, 470 F. Supp. 2d 1064, 1065 (N.D. Cal. 2007).
- 172 *Id.* at 1069.
- 173 *Id.* at 1070.
- 174 Under CARRP, an applicant whom USCIS considers a “national security concern” can only be approved for an immigration benefit if he is considered a non-KST and there is supervisory approval to grant the application.
- 175 8 C.F.R. § 335.3(a) (“USCIS shall grant the application if the applicant has complied with all requirements for naturalization. . . .”).
- 176 In particular, USCIS CARRP training documents incorrectly instruct officers that naturalization applications can be denied on the basis of discretion in accordance with 8 C.F.R. § 103.2(b)(8)(i). CARRP PowerPoint v. 2.3.1, *supra* note 133, at 68. (Note that the training PowerPoint actually refers to 8 C.F.R. §103.2(b)(i), however, such section of the regulation does not exist and must be intended to refer to 103.2(b)(8)(i), which describes USCIS’s power to deny an application based on the exercise of discretion.) This agency regulation merely provides that USCIS should approve an application that establishes statutory eligibility, “except that in any case in which the applicable statute or regulation makes the approval of a petition or application a matter entrusted to USCIS discretion,” USCIS must make an additional finding that the petitioner or applicant “warrants a favorable exercise of discretion.” 8 C.F.R. § 103.2(b)(8)(i). Importantly, contrary to USCIS’s teachings here, the statute does not make naturalization discretionary; if the applicant has complied with all the requirements, USCIS must grant the application. *Id.* § 335.3(a) (“USCIS shall grant the application if the applicant has complied with all the requirements for naturalization. . . .”).
- 177 CARRP PowerPoint v. 2.3.1, *supra* note 133, at 68. The training PowerPoint refers to 8 C.F.R. § 316.10(b)(vi), however, this must be a typo because such section of the regulation does not exist. The applicable section regarding misrepresentations is 8 C.F.R. § 316.10(b)(2)(vi). Similarly, 8 C.F.R. § 103(b)(13) also does not exist. The relevant section that applies to the failure to respond to a RFE is 103.2(b)(13).
- 178 8 U.S.C. § 1101(f)(6); *see* 8 C.F.R. § 316.10(b)(2)(vi).
- 179 8 C.F.R. § 316.10(b)(2)(vi); *see Kungys v. United States*, 485 U.S. 759, 780 (1988) (“Willful misrepresentations made for other reasons, such as embarrassment, fear, or a desire for privacy” do not constitute false testimony because they lack the invalidating intent); *see also Housepian*, 422 F.3d at 887-88 (finding that there is no subjective intent to deceive under Section 1101(f)(6) where inaccuracies resulted from poor memory, mistake, or vague questioning).
- 180 *See Abusamhadaneh*, 873 F. Supp. 2d. at 689 (“Question 8(a) does not specify religious organizations or the meaning of the terms member and associated.”); *Atalla*, 2011 U.S. Dist. LEXIS 65839, at *40 (“The phrase ‘associated with’ has diverse [] meanings. . . . and the phrase is not defined by federal statute or regulation.”).
- 181 *See, e.g., Order Granting-in-Part and Denying-in-Part Defendants’ Motion for Summary Judgment at 37, Hamdi v. U.S. Citizenship & Immigration Servs.*, No. 10-00894 (C.D. Cal. filed Dec. 14, 2011) (finding that the Government does not “offer a definition of the word ‘associate.’ Indeed, when deposed as to its meaning as he applies it, [Immigration Officer Robert] Osuna first said the definition he uses ‘came from the English dictionary,’ then said he did not have to look it up because it is a word he knows, and then said he learned it in grade school. He did not, however, give much by way of a substantive definition.”).

- 182 See, e.g., Deposition of USCIS Officer Robert Osuna at 28-29, 153, *Hamdi v. U.S. Citizenship & Immigration Servs.*, No. 10-00894 (C.D. Cal., deposition taken Apr. 13, 2011) (deposition transcript on file with author) (noting that he does not ask naturalization applicants about membership in churches or synagogues or charitable donations to such organizations as the Red Cross).
- 183 See generally *Hamdi v. U.S. Citizenship & Immigration Servs.*, 2012 U.S. Dist. LEXIS 25609 (C.D. Cal. Feb. 25, 2012).
- 184 See generally *Hajro*, 849 F. Supp. 2d 945.
- 185 This individual preferred to be identified by an alias.
- 186 See generally *Atalla*, 2011 U.S. Dist. LEXIS 65839.
- 187 See generally *Abusamhadaneh*, 873 F. Supp. 2d 682.
- 188 See generally *id.*
- 189 *Id.* at 686.
- 190 *Id.* at 699-702.
- 191 U.S. CITIZENSHIP & IMMIGRATION SERVS., ADJUDICATOR'S FIELD MANUAL, Preparing Denial Orders § 10.7(b)(3) ("If the applicant or petition[er] cannot reasonably be presumed to be already aware of the evidence, he or she must be given an opportunity to rebut the evidence before a decision is made."), available at www.uscis.gov; see also *Abusamhadaneh*, 873 F. Supp. 2d at 686; 8 C.F.R. § 103.2(b)(16)(i) (stating that if a decision is adverse to the applicant and "is based on derogatory information considered by the Service and of which the applicant or petitioner is unaware, he/she shall be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered").
- 192 The Ninth Circuit has held that due process prohibits the government from denying an applicant adjustment of immigration status on the basis of undisclosed classified information. See *American-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045, 1070 (9th Cir. 1995). Though the Ninth Circuit has since questioned the validity of ADC to the extent it implied a blanket bar on the use of classified information, it has made clear that the government must take measures to mitigate nondisclosure even where national security concerns justify the use of ex parte evidence. *Al Haramain Islamic Found. v. U.S. Dep't of Treasury*, 686 F.3d 965 (9th Cir. 2011). The Ninth Circuit has also recognized the "serious due process problem" that would arise if an immigrant were denied access to her immigration file, known as an "A file," in removal proceedings, and in doing so has employed reasoning that supports the due process right of applicants to access government information used against them in naturalization proceedings. See *Dent v. Holder*, 627 F.3d 365, 374 (9th Cir. 2010); *Hajro v. U.S. Citizenship & Immigration Servs.*, 832 F. Supp. 2d 1095, 1114-15 & n.107 (N.D. Cal. 2011) (citing *Dent*, 627 F.3d at 371-72).
- 193 8 C.F.R. § 316.10(b)(2)(vi); 8 U.S.C. § 1101(f)(6); see also *Kungys*, 485 U.S. at 780 ("§ 1101(f)(6) applies to only those misrepresentations made with the subjective intent of obtaining immigration benefits.").
- 194 *Abusamhadaneh*, 873 F. Supp. 2d at 689.
- 195 *Id.* at 691.
- 196 *Id.* at 689-694.
- 197 See generally *Hajro*, 849 F. Supp. 2d 945.
- 198 *Id.* at 960-963.
- 199 In the litigation of his case, USCIS also argued that he failed to disclose his association with the Benevolence International Foundation, the Holy Land Foundation, and Islamic African Relief Agency solely on the basis that he made monetary charitable contributions to these organizations prior to their designation by the Treasury Department as having ties to terrorism. The Court rejected these claims as well. *Atalla*, 2011 U.S. Dist. LEXIS 65839, at *43.
- 200 *Id.* at *41-43.
- 201 *Hajro*, 849 F. Supp. 2d at 961 n.3 (noting that "[a]ccepting the Government's [false testimony claims] would mean that, if in response to questions that the Government itself characterizes as broad and open-ended, an applicant does not include involvement with a particular entity because, as is the case here, the applicant misunderstood the question or genuinely believed that the entity did not fall within the scope of the question, and later voluntarily discloses involvement with that entity, the applicant's response may be a basis for the Government to find that the applicant either intentionally withheld information when completing the written application or provided inconsistent testimony and therefore lacks good moral character").
- 202 See *Price v. U.S. Immigration & Naturalization Serv.*, 962 F.2d 836 (9th Cir. 1992).
- 203 See, e.g., *Shweika v. Dep't of Homeland Sec.*, No. 09-11781-BC, 2012 U.S. Dist. LEXIS 41473 (E.D. Mich. Mar. 27, 2012), vacated and remanded, No. 12-1645, 2013 U.S. App. LEXIS 15104 (6th Cir. July 25, 2013) (finding that 8 U.S.C. § 1421(c)'s administrative-hearing requirement is nonjurisdictional and remanding for determination on whether § 1421(c)'s administrative-hearing requirement implies a completion requirement).
- 204 See 8 U.S.C. § 1182(a)(3)(B)(iv)(VI) (material support definition); 8 U.S.C. § 1227(a)(4)(B) (grounds for removal).

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