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Muslims Denied: How the USCIS Uses a Formerly Secret Program to Delay and Reject Naturalization Applications from Muslims and Other Minorities.

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COMMENTS

MUSLIMS DENIED: HOW THE USCIS USES A FORMERLY SECRET PROGRAM TO DELAY AND REJECT NATURALIZATION APPLICATIONS FROM MUSLIMS AND OTHER MINORITIES

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I. INTRODUCTION

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 Asgari¹

A formerly secret U.S. government program, the Controlled Application Review and Resolution Program (CARRP), was recently exposed by the American Civil Liberties Union of Southern California (ACLU/SC).² This covert program affected and continues to affect many individuals and families originating from Arab, Middle Eastern, Muslim, and South Asian communities.³ The United States Citizenship and Immigration

1. JENNIE PASQUARELLA, ACLU S. CAL., MUSLIMS NEED NOT APPLY: HOW USCIS SECRETLY MANDATES THE DISCRIMINATORY DELAY AND DENIAL OF CITIZENSHIP AND IMMIGRATION BENEFITS TO ASPIRING AMERICANS 39 (Ahilan Arulanantham et al. eds., 2013), available at <http://www.aclusocal.org/CARRP>.

2. The ACLU declares itself the “guardian of . . . individual rights and liberties[,]” including: First Amendment, equal protection, due process, and privacy rights. *About the ACLU*, ACLU, <https://www.aclu.org/about-aclu-0> (last visited Feb. 2, 2014). “The ACLU also works to extend rights to segments of our population that have traditionally been denied their rights, including people of color; women; lesbians, gay men, bisexuals and transgender people; prisoners; and people with disabilities.” *Id.* The organization’s work consists of legal, legislative, and community based action. *Id.* The ACLU/SC chapter was established in 1923 by author Upton Sinclair. *Our History*, ACLU S. CAL., <http://www.aclusocal.org/our-history> (last visited Feb. 2, 2014).

3. PASQUARELLA, *supra* note 1, at 1; see also Press Release, Lawyers’ Committee for Civil Rights of the San Francisco Bay Area, New Report Exposes a Covert U.S. Government Immigration Program that Unlawfully Prevents Many Muslim Applicants from Becoming Citizens and Lawful Immigrants (Aug. 21, 2013), available at <http://www.lccr.com/assets/press-releases/FINAL%20CARRP%20PRESS%20RELEASE%208-20-13.pdf> (“The ACLU of Southern California (ACLU S. Cal.), the Lawyers’ Committee for Civil Rights of the San Francisco Bay Area (LCCR), and the law firm of Mayer Brown . . . released a [seventy]-page report exposing a covert government program called the ‘Controlled Application Review and Resolution Program (CARRP)’”).

Services (USCIS)—the agency responsible for overseeing lawful immigration to the United States⁴—blacklists these minorities based on lawful religious activity, national origin, and obscure links to certain groups and associations.⁵ Shockingly, CARRP “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.”⁶

This Comment highlights the problems minorities, especially minorities of the Muslim faith, are subjected to in the unfair investigation and adjudication of their naturalization applications. This Comment references the official report produced by the ACLU/SC, titled *Muslims Need Not Apply: How USCIS Secretly Mandates the Discriminatory Delay and Denial of Citizenship and Immigration Benefits to Aspiring Americans*,⁷ to illustrate why it is imperative that the USCIS act on the recommendations set out by the ACLU/SC to further avoid discriminatory practices against these lawful residents.

To highlight these problems, Section II of this Comment provides a brief background on the legal authority of the USCIS, as well as the policy background of CARRP, and how the program has been designed to operate to the detriment of minorities. Sections III through V discuss some of the crucial findings by the ACLU/SC. Section III focuses on how CARRP unreasonably impacts law-abiding immigrants from obtaining naturalization. Section IV discusses how CARRP overreaches the authority of Congress by purposefully creating an extra-statutory section regarding which individuals are and are not eligible for naturalization. Section V illustrates how this policy delays and denies naturalization for many law-abiding immigrants by labeling them as members of terrorist organizations, based on remote and non-linear affiliations. This particular section will bring forth some eye-opening CARRP-related cases, in-

4. *About Us*, U.S. CITIZENSHIP AND IMMIGR. SERVS., <http://www.uscis.gov/aboutus> (last updated Sept. 12, 2009).

5. PASQUARELLA, *supra* note 1, at 1.

6. *Id.* Immigration benefits denied to such individuals include: “granting of U.S. citizenship to those who are eligible to naturalize, authorizing individuals to reside in the U.S. on a permanent basis, and providing aliens with the eligibility to work in the United States” *Providing Immigration Benefits & Information*, DEP’T. OF HOMELAND SEC., <https://www.dhs.gov/providing-immigration-benefits-information> (last visited Feb. 2, 2014).

7. See generally PASQUARELLA, *supra* note 1 (spotlighting CARRP policies and their USCIS application); Jennie Pasquarella & Bardis Vakili, *Muslims Need Not Apply: How USCIS Secretly Mandates the Discriminatory Delay and Denial of Citizenship and Immigration Benefits*, CLE Webinar, ACLU S. CAL. (Aug. 20, 2013), <http://vimeo.com/72833429> (administering a short presentation on CARRP).

cluding the stories of Tarek Hamdi,⁸ Hassan Razmara,⁹ Jamal Atalla,¹⁰ and Mirsad Hajro.¹¹

II. OVERVIEW OF THE USCIS AND CARRP

A. *The Naturalization Process and the Legal Authority of the USCIS*

To first understand the workings of CARRP, it is essential to discuss the naturalization process. Many decades have passed since Congress allegedly eradicated discrimination from the naturalization process by passing the Immigration and Nationality Act of 1952 (INA).¹² A person seeking United States naturalization must meet a prescribed set of requirements under the INA, including: “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

To apply for naturalization an individual “must have been a lawful permanent resident for at least five years and resided continuously in the United States up to the date of admission to citizenship, as well as be a person of good moral character.”¹⁴ This “good moral character” requirement is not an easy element to meet since Congress has not explicitly defined what it means to be of “good moral character.”¹⁵ Instead, the

8. See generally *Hamdi v. U.S. Citizenship & Immigration Servs.*, No. EDCV 10-894 VAP DTBx, 2012 WL 632397 (C.D. Cal. Feb. 25, 2012) (examining facts relevant to Mr. Hamdi’s application for naturalization).

9. See generally PASQUARELLA, *supra* note 1, at 8–9 (detailing problems faced by Mr. Razmara in his quest for citizenship).

10. See generally *Atalla v. Kramer*, No. CV09-1610-PHX-NVW, 2011 WL 2457492 (D. Ariz. June 20, 2011) (cataloging Mr. Atalla’s naturalization application and investigation).

11. See generally *Hajro v. Barrett*, 849 F. Supp. 2d 945 (N.D. Cal. 2012) (recounting Mr. Hajro’s roadblocks).

12. Immigration and Nationality Act of 1952, Pub. L. No. 82-414, 66 Stat. 163 (codified as amended in scattered sections of 8 U.S.C.). Importantly, federal law currently states, “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.” 8 U.S.C. § 1422 (2012).

13. PASQUARELLA, *supra* note 1, at 12; see generally 8 U.S.C. §§ 1423, 1427(a) (2012) (providing pertinent legislation).

14. Amber Pershon, Comment, *Processing Citizenship: Jurisdictional Issues in the Unreasonable Delay of Adjudication of Naturalization Applications*, 5 PHOENIX L. REV. 259, 270 (2011); see 8 U.S.C. § 1427(a) (2012) (announcing naturalization requirements).

15. See V. Woerner, Annotation, *What Constitutes Showing of “Good Moral Character” on the Part of an Applicant for Naturalization*, 22 A.L.R. 2d 244, § 2 (1952) (“[T]he statute makes no attempt to define ‘good moral character[.]’ . . .”). Cf. 8 U.S.C. § 1101(f) (2012) (enumerating reasons an individual fails to meet the good moral character requirement).

void has forced courts to decide on a case-by-case basis, as a matter of fact, what constitutes “good moral character.”¹⁶

Upon exploring these initial requirements, the next step of the naturalization process includes completion of a background check.¹⁷ The Federal Bureau of Investigation (FBI) completes the background check, at which point in time, the U.S. Citizenship Immigration Services (USCIS) is precluded from scheduling any further steps until it receives confirmation from the FBI indicating the full criminal background check has been completed.¹⁸

Upon receiving a response from the FBI, the applicant is tested to demonstrate his or her “understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language . . . and a knowledge and understanding of the fundamentals of the history, and of the principles and form of government, of the United States.”¹⁹ In addition to this test, the applicant must attend an in-person interview (scheduled by the USCIS), in which the USCIS examiner is able to ask questions and take additional testimony, as related to the naturalization application.²⁰

Based upon this information, the USCIS examiner must determine whether the application for naturalization is approved or denied.²¹ This USCIS process and the process to adjudicate naturalization applications should be completed within 180 days.²²

16. Woerner, (“[C]onsidering that the statute makes no attempt to define ‘good moral character,’ that it is not a term susceptible of precise definition, and that it is left to the judicial discretion of the courts to find its existence or nonexistence as a matter of fact in each individual case, it is not surprising that the cases should conflict. The conflict between the authorities is primarily one of application and result rather than of principle, for the courts are in accord as to the general rules and principles underlying the good moral character requirement of the naturalization statutes.”).

17. See Pershon, *supra* note 14, at 270.

18. 8 C.F.R. § 335.2(b) (2013); see Pershon, *supra* note 14, at 270–71 (discussing the disadvantageous nature of the regulation requiring a full background check through the FBI before the USCIS can proceed with the naturalization process).

19. 8 U.S.C. § 1423(a) (2006).

20. PASQUARELLA, *supra* note 1, at (outlining the naturalization process following the FBI background check, in which the applicant is interviewed to substantiate the information provided in the application).

21. See *id.* at 12 (noting candidate approval for naturalization is compulsory when all requirements have been met).

22. Statutory provisions related to naturalization will be discussed later; that discussion aims to show that it was the intent of Congress to ensure the USCIS process and adjudicate naturalization applications within one-hundred and eighty days of the application date. PASQUARELLA, *supra* note 1, at 13 (reiterating statutory language clearly indicates the “USCIS is generally expected to process and adjudicate a naturalization application within [one-hundred and eighty] days”).

B. *Controlled Access Review and Resolution Program (CARRP)*
Overview

The existence of CARRP in a post-9/11 world is an overly broad burden on certain minorities applying for immigration-related benefits to the USCIS. The atrocity of the 9/11 attacks continues to heavily impact immigration, as it is now “viewed through the prism of national security.”²³ The USCIS implemented and began using CARRP in 2008, “establish[ing] 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.’”²⁴

The existence of CARRP was first revealed during the case of Tarek Hamdi. It was through his case the ACLU/SC published the report titled “Muslims Need Not Apply: How USCIS Secretly Mandates the Discriminatory Delay and Denial of Citizenship and Immigration Benefits to Aspiring Americans.”²⁵ The information 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 . . . requests.”²⁶ This report gathered information based on existing facts and procedures regarding CARRP policy. Evidently, many of the documents requested from the USCIS through the Freedom of Information Act have been heavily redacted, leaving room for uncertainty and more confusion.²⁷

CARRP essentially operates as a four-stage program designed to cripple the naturalization process by burdening the applicant with much extra scrutiny. The program’s ultimate aim is pre-textual denial.

23. Cyrus D. Mehta, *The Insightful Immigration Blog – Commentaries on Immigration Policy, Cases and Trends, Nearly 12 Years After 9/11 Applicants Perceived as Muslims Still Targeted Under a Secret Immigration Program*, CYRUS D. MEHTA & ASSOC. PLLC (Aug. 25, 2013), <http://blog.cyrusmehta.com/2013/08/nearly-12-years-after-911-applicants.html>.

24. PASQUARELLA, *supra* note 1, at 15 (emphasis added); *see also* U.S. CITIZENSHIP & IMMIGRATION SERVS., CARRP OFFICER TRAINING: NATIONAL SECURITY HANDOUTS, GUIDANCE FOR IDENTIFYING NATIONAL SECURITY CONCERNS 3 (2009), *available at* <https://www.aclusocal.org/wp-content/uploads/2013/01/Guiance-for-Identifying-NS-Concerns-USCIS-CARRP-Training-Mar.-2009.pdf> (“A [national security] concern, exists when an individual or organization 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] of the Immigration and Nationality Act . . .”).

25. PASQUARELLA, *supra* note 1, at 7.

26. *Id.* at 9.

27. *Id.*

C. *Four Stages of CARRP*

The following excerpt provides an overview of the basic four stages of the CARRP policy:

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 policy. 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.²⁸

The USCIS is responsible for screening every application it receives from individuals applying for some sort of immigration benefit and ensuring that no possible "national security concern" exists.²⁹ Although the USCIS is not required to make a determination of an existing "national security concern" at the beginning of the process, potentially concerning applicants are generally identified early on.³⁰

"National security concerns" are identified as "individual[s] or organization[s] . . . determined to have an articulable link to prior, current, or planned involvement in, or association with, an activity, individual or organization described by [the security and terrorism sections]³¹ of the Immigration and Nationality Act."³² The words "link" and "association with" are not explicitly defined, leaving a gap in the statute, and thus increasing the non-statutory decision-making ability of the USCIS, leading it to continue using the vague definition of what it means to qualify as a national security concern.³³

28. *Id.* at 15; see U.S. CITIZENSHIP & IMMIGRATION SERVS., USCIS DOMESTIC OPERATIONS DIRECTORATE (DOMOPS) CARRP WORKFLOWS 1 (2008), available at <https://www.aclusocal.org/wp-content/uploads/2013/01/CARRP-Workflows.pdf> (illustrating and summarizing the four step process).

29. PASQUARELLA, *supra* note 1, at 17.

30. *Id.*

31. See 8 U.S.C. §§ 1182(a)(3)(A)–(B), (F), 1227(a)(4)(A)–(B) (2012) (relating to security and terrorism concerns barring admission into the United States).

32. See Pasquarella, *supra* note 1, at 17 (quoting Memorandum from Jonathan R. Scharfen, Deputy Director, U.S. Citizenship & Immigration Servs., to USCIS Field Leadership, Policy for Vetting and Adjudicating Cases with National Security Concerns 1 n.1 (Apr. 11, 2008)).

33. *Id.*

Security checks for applicants applying for naturalization are completed as soon as the applicant applies for immigration benefits.³⁴ In designating an applicant as 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.”³⁵

i. Stage One: Identifying and Confirming a “National Security Concern”

CARRP policy mandates the process of “deconfliction” begins before any adjudicative action may be taken in any case involving a national security concern, and continues at all stages of processing and adjudicating CARRP track applications.³⁶

Deconfliction means contacting the law enforcement agency that possesses the supposed national security information about the applicant . . . “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.”³⁷

The process of deconfliction allows the USCIS and other governmental agencies potentially holding any national security information to freely exchange information and “ensure that planned adjudicative activities do not compromise or impede an ongoing investigation.”³⁸

34. *USCIS Policy Manual*, Vol. 12, Pt. B, Ch. 2, Background and Security Checks, U.S. CITIZENSHIP & IMMIGR. SERVS., <http://www.uscis.gov/policymanual/HTML/PolicyManual-Volume12-PartB-Chapter2.html> (last visited Feb. 2, 2014). Security screening includes fingerprinting, “name checks” conducted by the FBI, and “other inter-agency criminal background and security checks.” *Id.*; see generally 8 C.F.R. § 335.2(b) (2013) (mandating a criminal background check be completed by the FBI before any further USCIS examination).

35. PASQUARELLA, *supra* note 1, at 17; see U.S. CITIZENSHIP & IMMIGRATION SERVS., CARRP OFFICER TRAINING: NATIONAL SECURITY HANDOUTS, GUIDANCE FOR IDENTIFYING NATIONAL SECURITY CONCERNS 3–7 (2009), available at <https://www.aclusocal.org/wp-content/uploads/2013/01/Guidance-for-Identifying-NS-Concerns-USCIS-CARRP-Training-Mar.-2009.pdf> (supplying a non-exhaustive list of possible national security concern indicators).

36. *Id.* at 28, 30.

37. *Id.* at 28 (quoting U.S. CITIZENSHIP & IMMIGRATION SERVS., FRAUD DETECTION AND NATIONAL SECURITY CONTROLLED APPLICATION REVIEW AND RESOLUTION PROGRAM (CARRP) INDEPENDENT STUDY 14 (2011)).

38. U.S. CITIZENSHIP & IMMIGRATION SERVS., CARRP DECONFLICTION, INTERNAL AND EXTERNAL VETTING AND ADJUDICATION OF NS CONCERNS 8 (2011), available at <https://www.aclusocal.org/wp-content/uploads/2013/01/CARRP-Deconfliction-Vetting-and-Adjudication-of-NS-Concerns-Training-PowerPoint-v.-1.4.pdf>. Deconfliction also “[p]ro-

By so doing, law enforcement agencies such as the FBI can interfere with any adjudicative action in place with leverage to delay or deny the application.³⁹ This policy blatantly abuses authority actually vested in the USCIS by empowering law enforcement agencies with the plenary power to interfere with and remain heavily involved in the determination of an immigration application.⁴⁰

Under CARRP policy there are two variations of “national security concerns.”⁴¹ Individuals either fall into the “Known or Suspected Terrorists” (KSTs) category or the “non-Known or Suspected Terrorists” (non-KSTs) category.⁴² KSTs are automatically considered national security concerns,⁴³ while non-KSTs qualify as national security concerns when certain indicators are also present.⁴⁴

CARRP policy prevents approval of any immigration benefits for applicants identified as KSTs.⁴⁵ Anyone on the Terrorist Watchlist is considered a KST and, therefore, automatically deemed a national security concern by the USCIS for CARRP purposes.⁴⁶ The Terrorist Watchlist is the product of the Terrorist Screening Center, which was seen as a collab-

vides [the] USCIS with [an] opportunity to ask about: aliases, family relationships, residence within or outside the U.S., membership or involvement with organizations, military training, and foreign travel.” *Id.* at 9.

39. PASQUARELLA, *supra* note 1, at 30.

40. *Id.*

41. *Id.* at 17.

42. *Id.*

43. *Id.* “[KST describes] individuals who: [1] have been nominated and accepted for placement in the Terrorist Screening Database (TSDB); [2] are on the Terrorist Watch List; [3] and have a specially coded lookout posted in TECS and/or the Consular Lookout Automated Support System (CLASS), as used by the Department of State.” U.S. CITIZENSHIP & IMMIGRATION SERVS., FRAUD DETECTION AND NATIONAL SECURITY CONTROLLED APPLICATION REVIEW AND RESOLUTION PROGRAM (CARRP) INDEPENDENT STUDY 9 (2011), available at <https://www.aclusocal.org/wp-content/uploads/2013/01/FDNS-CARRP-Independent-Study-Powerpoint-v.-1.1-Dec.-28-2011.pdf>.

44. PASQUARELLA, *supra* note 1, at 17; see U.S. CITIZENSHIP & IMMIGRATION SERVS., *supra* note 24, at 2 (establishing the guidance on indicators of a national security concerns does not apply to KSTs).

45. PASQUARELLA, *supra* note 1, at 3.

46. *Id.* at 18; U.S. CITIZENSHIP & IMMIGRATION SERVS., *supra* note 43, at 9. “Ironically, while CARRP treats applicants as supposedly too dangerous to naturalize, they are simultaneously treated as too harmless to expeditiously investigate, arrest or deport . . .” JENNIE PASQUARELLA, ACLU S. CAL., MUSLIMS NEED NOT APPLY: HOW USCIS SECRETLY MANDATES THE DISCRIMINATORY DELAY AND DENIAL OF CITIZENSHIP AND IMMIGRATION BENEFITS TO ASPIRING AMERICANS 2 (Ahilan Arulanantham et al. eds., 2013), available at <http://www.aclusocal.org/CARRP>.

orative effort by the government to further combat terrorism.⁴⁷ The federal government merged its “previously separate watchlists” maintained by various federal agencies, paving the way for the Terrorist Watchlist in March 2004.⁴⁸

The Terrorist Watchlist is itself a failure of various sorts. Aside from lawful minorities such as Muslims, many other innocent individuals fall into a category the ACLU calls the “Unlikely Suspects.”⁴⁹ The ACLU reports the Terrorist Watchlist is “bloated and over inclusive,” including a U.S. Attorney, a pilot, U.S. armed forces veterans, elected public officials, and even Nelson Mandela on its list.⁵⁰ The inclusion of Nelson Mandela, an international icon and crusader for freedom, on the U.S. Terrorist Watchlist speaks volumes to the efficacy of such lists. Consequentially, Mandela was required to seek special permission before visiting the United States.⁵¹ Appropriately, “Mandela was removed from the [Terrorist Watchlist] by an act of Congress in 2008—a solution the average person cannot rely upon.”⁵²

So what can the average person do? The broad reaches of power bestowed upon the USCIS are prevalent and the agency continually misidentifies correct national security concerns. In its CARRP report the ACLU/SC concluded the “Terrorist [Watchlist] is a faulty, over-inclusive list containing hundreds of thousands of names of individuals, including

47. U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-06-1031, TERRORIST WATCH LIST SCREENING: EFFORTS TO HELP REDUCE ADVERSE EFFECTS ON THE PUBLIC 7 (2006), *available at* <http://www.gao.gov/new.items/d061031.pdf>.

48. U.S. DEP'T OF JUSTICE, OFFICE OF THE INSPECTOR GEN., AUDIT DIV., THE FEDERAL BUREAU OF INVESTIGATION'S TERRORIST WATCHLIST NOMINATION PRACTICES i (2009), *available at* <http://www.justice.gov/oig/reports/FBI/a0925/final.pdf>.

49. *Unlikely Suspects*, ACLU, <https://www.aclu.org/technology-and-liberty/unlikely-suspects> (last visited Feb. 2, 2014).

50. *Id.* “James Robinson had security clearance as a US Attorney but he consistently receives additional screening at the airport when traveling.” *Id.* “Erich Sherfen, Commercial airline pilot and Gulf War veteran, has been threatened with termination from his job as a pilot because his name appears on a government watchlist, which prevents him from entering the cockpit.” *Id.* “Alexandra Hay, a college student with a double major in French and English at Middlebury College in Vermont in 2004, . . . joined an ACLU lawsuit due to problems she was having with the airline watch list.” *Id.* “Sarosh Syed, a naturalized U.S. citizen from Pakistan working for the ACLU of Washington in Seattle also had problems flying.” *Id.* “U.S. Senator Edward Kennedy (D, Mass.) . . . had trouble getting removed from the airline watch list despite calls to Homeland Security and eventually a personal conversation with the Secretary of DHS.” *Id.*

51. Mimi Hall, *U.S. Has Mandela on Terrorist List*, USA TODAY (Apr. 30, 2008, 8:10 PM), http://usatoday30.usatoday.com/news/world/2008-04-30-watchlist_N.htm.

52. PASQUARELLA, *supra* note 1, at 20.

U.S. residents, who are never told they are on the [Watchlist] or given a meaningful opportunity to dispute their inclusion on it.”⁵³

CARRP policy directs USCIS officer imposition of “an even more severe harm than the travel-related harms normally associated with inclusion on the [Terrorist Watchlist].”⁵⁴ By simply being on this Watchlist, CARRP gives the USCIS the ability to delay if not deny anyone’s immigration benefits application due to imputed national security concerns.⁵⁵

ii. Stage Two: Internal Vetting

After an immigrant is deemed a national security concern, the next steps involve vetting the individual to determine if the identified national security concern can be resolved.⁵⁶ Both the internal and external components of the vetting stages are decentralized and delegated to field offices, “allowing [the] USCIS to leverage field resources and experienced officers for handling these difficult cases”⁵⁷

The second step of CARRP policy has bifurcated purpose.⁵⁸ First, two agency officers— a Fraud Detection and National Security-Immigration Officer (FDNS-IO) and a CARRP-Immigration Services Officer (CARRP-ISO)—thoroughly review the case file.⁵⁹ “The FDNS-IO completes required systems checks and internal vetting, and the CARRP-ISO completes an eligibility assessment of the CARRP case to determine whether any statutory or regulatory ineligibility exist.”⁶⁰ These officials compile specific questions and issues “for discussion with the Record Owner of the [national security] hit so that the critical decisions, such as when an interview should be scheduled, can be made regarding adjudicating the application or petition.”⁶¹

At this particular stage of the CARRP application process, officers are responsible for scrutinizing the application in a stricter manner than what

53. *Id.* at 2.

54. *Id.*

55. *Id.* at 2.

56. *Id.* at 31; Memorandum from Donald Neufeld, Acting Assoc. Dir., Domestic Operations, U.S. Citizenship & Immigration Servs., to USCIS Field Leadership, Clarification and Delineation of Vetting and Adjudication Responsibilities for Controlled Application Review and Resolution Program (CARRP) Cases in Domestic Field Offices 3 (June 5, 2009), available at <https://www.aclusocal.org/wp-content/uploads/2013/01/Clarification-and-Delineation-of-Vetting-and-Adjudication-Resps.-for-CARRP-June-5-2009.pdf> [hereinafter Neufeld Memorandum].

57. Neufeld Memorandum, *supra* note 56, at 1–2.

58. *Id.* at 3.

59. *Id.*

60. *Id.*

61. *Id.*

would have been employed under a “routine adjudication.”⁶² More importantly, officers are looking for “any basis upon which they can deny the application in order to avoid spending time and resources *vetting* the national security concern (either internally or externally, with the relevant law enforcement agency) to determine whether there is a live concern.”⁶³

USCIS documents obtained from the ACLU/SC indicate officers are instructed to look at specific factors to further ascertain any reason to deny the application.⁶⁴ “The instructions are specifically geared toward finding a basis to deny an application on false testimony grounds or failure to prosecute an application.”⁶⁵

If during this assessment the officer identifies a policy reason to deny the application, the officer must again use the method of 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.”⁶⁶ It is sensible to think at this point, if nothing is found, the immigration application would be cleared from further scrutiny. Unfortunately, if even at this stage, the concern of national security remains on the applicant, “and [if] the officer cannot find a basis to deny the benefit” the application moves onto the third stage of CARRP.⁶⁷

iii. Stage Three: External Vetting

The third stage of the CARRP process focuses on external vetting procedures, versus the internal vetting methods used in the previous stage.⁶⁸

62. PASQUARELLA, *supra* note 1, at 31.

63. *Id.* at 31–32 (emphasis in original).

64. *Id.* at 31.

65. *Id.* The ACLU/SC highlights two cases, which, under CARRP policy, would have been subject to denial under the internal vetting process, one of which adds fortune teller to the list of credentials that the USCIS apparently holds:

Abraham 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, [the] USCIS denied Abraham’s application in 2010 on grounds that he failed to provide information that was never asked of him. Upon appeal, [the] USCIS again denied 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 [one-hundred and eighty] days.

Id. at 32.

66. *Id.* at 33.

67. PASQUARELLA, *supra* note 1, at 33.

68. *Id.*

While similar, the two may be distinguished by the fact that the “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.”⁶⁹

In a case dealing with non-KST national security concerns, USCIS officer will confer with the applicant regarding the relevant national security concern.⁷⁰ Officers obtain facts and fact patterns from the applicant to confirm “whether an articulable link exists between the individual and an activity, individual, or organization described in [the security and terrorism sections] of the Act.”⁷¹ On the other hand, in KST cases, field officers are not authorized to conduct the external vetting process with applicants who possess information related to national security concerns.⁷²

If at the end of the external vetting process the national security concern is no longer warranted and the applicant is concurrently eligible for the particular application for which he or she applied, then the USCIS has the discretion to approve the application.⁷³ Otherwise, the applicant moves into the fourth stage, adjudication.

iv. Stage Four: Adjudication

If the application advances to the fourth stage of the CARRP process and the national security concern designation remains on the individual, the officer is required to evaluate the vetting process outcome and determine how that outcome would affect adjudication of the application.⁷⁴ Officers are authorized to obtain other pertinent information through avenues such as a request for evidence, an interview, or an administrative site visit as a means of “provid[ing] a basis to deny the application.”⁷⁵ Ultimately, CARRP policy instructs USCIS officers “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.”⁷⁶

69. *Id.*

70. Memorandum from Jonathan R. Scharfen, Deputy Director, U.S. Citizenship & Immigration Servs., to USCIS Field Leadership, Policy for Vetting and Adjudicating Cases with National Security Concerns 5 (Apr. 11, 2008), available at <http://www.aclusocal.org/wp-content/uploads/2013/01/CARRP-Policy-for-Vetting-and-Adjudicating-Cases-w-NS-Concerns-Apr.-11-2008.pdf> [hereinafter Scharfen Memorandum].

71. *Id.*

72. *Id.* at 6; U.S. CITIZENSHIP & IMMIGRATION SERVS., *supra* note 28.

73. See Scharfen Memorandum, *supra* note 70, at 5.

74. PASQUARELLA, *supra* note 1, at 33; U.S. CITIZENSHIP & IMMIGRATION SERVS., *supra* note 28.

75. PASQUARELLA, *supra* note 1, at 33.

76. *Id.* at 33–34.

III. CARRP UNREASONABLY IMPACTS LAW-ABIDING IMMIGRANTS FROM OBTAINING NATURALIZATION

The CARRP program is inherently designed to blacklist specific minorities—particularly Muslims—and unduly delay (or in most instances, deny) their U.S. citizenship applications.⁷⁷ In 1990, Congress enacted a statutory provision to decrease the amount of cases backlogged in the naturalization process and reduce the wait time for naturalization applicants.⁷⁸ Federal law now mandates the USCIS, when dealing with naturalization applications, make a decision within 120 days of the naturalization interview.⁷⁹ Nonetheless, some minorities continue to “suffer the hardships of unreasonably and unlawfully delayed naturalization, including anxiety over their immigration status, prolonged family separations, ineligibility for certain employment opportunities or public benefits reserved for U.S. citizens, and exclusion from the political process due to the inability to vote.”⁸⁰

Unsurprisingly, “[a]gency delays in decision[-]making and action have been widely acknowledged as a fundamental impediment to the effective functioning of federal agencies for over thirty years, and more recently, significant delays in regulatory action have raised serious concerns about the political legitimacy of unfettered presidential control of the bureaucracy.”⁸¹ Until standards of accountability and transparency are forced upon these government agencies, things will not change.

Law-abiding immigrants seeking United States citizenship suffer under the broad power the USCIS exercises over the naturalization process. Delays in regulatory changes or even acting on recommendations made

77. *ACLU: Secret Government Program Blacklisted Muslims for U.S. Citizenship*, HUFFINGTON POST LIVE (Aug. 22, 2013), <http://live.huffingtonpost.com/r/archive/segment/aclu-secret-government-program-blacklisted-muslims-for-us-citizenship/5216b28bfe34444484000638>.

78. See Immigration Act of 1990, Pub. L. No. 101-649, § 407(d)(14), 104 Stat. 4978, 5044 (codified as amended at 8 U.S.C. § 1447(b) (2012)) (providing applicants the ability to petition the court for a determination of their case if no decision was made after one-hundred and twenty days).

79. 8 U.S.C. § 1447(b) (2012) (explaining statutory deadlines and procedures concerning naturalization interviews).

80. First Amended Complaint at 2, *Rangoonwala v. Swacina*, No. 08-21588-CIV, 2008 U.S. Dist. LEXIS 99053 (S.D. Fla. Nov. 25, 2008), available at <http://www.aifl.org/lac/chdocs/Weaver-cmpl.pdf>.

81. Michael D. Sant'Ambrogio, *Agency Delays: How a Principal-Agent Approach Can Inform Judicial and Executive Branch Review of Agency Foot-Dragging*, 79 GEO. WASH. L. REV. 1381, 1381 (2011). This Article comments on how agencies, such as the USCIS, may fall victim to the whims of the political priorities of the President rather than serve the people in the most effective way. *Id.* at 1396.

by the ACLU will only increase the number of law-abiding immigrants robbed of their lawful right to naturalize in the United States.

Weeding out national security concerns is seen as the pretext for implementing CARRP, but instead the policy is “‘based on criteria that ultimately have nothing to do with real security concerns’”⁸² In *Kungys v. United States*,⁸³ the United States initiated a citizenship revocation action against Juozas Kungys on the basis of material misrepresentations in procuring naturalization.⁸⁴ The U.S. Supreme Court discussed when both willful misrepresentation and concealment of material fact become relevant for purposes of denying naturalization.⁸⁵ The Supreme Court concluded, “[W]hat is relevant is what would have ensued from official knowledge of the misrepresented fact . . . not what would have ensued from official knowledge of inconsistency between a posited assertion of the truth and an earlier assertion of falsehood.”⁸⁶ Thus, the burden is overly onerous on applicants who may have inadvertently failed to mention a visit to their origin country or overlooked one trip while completing the application.

Such unreasonable delays and pretextual denials in adjudication of naturalization applications share an obvious link: equating applicants of the Muslim faith with terrorism.⁸⁷ In fact, many Muslim immigrants have spoken to the ACLU/SC about their experience with USCIS agents and have advised the ACLU/SC they have been subject to questions pertaining to their religious practices, the mosques they attend, and the number of times they pray.⁸⁸

Violations of immigration and naturalization law by CARRP policy mechanics aside, the fact that CARRP has zero imposed deadlines in processing these naturalization applications gives the USCIS plenary power over its applicants.⁸⁹ Despite being statutorily eligible, the USCIS holds denial and stalling power over the application unless its underlying policy is satisfied.⁹⁰ As a result, the application is continuously held by

82. Patrick Healy and Chris Henao, *ACLU: Covert Fed Program Illegally Blacklists Muslim and Arab Immigrants*, NBC S. CAL. (Aug. 22, 2013, 3:33 PM), <http://www.nbclosangeles.com/news/local/ACLU-Contends-Covert-Federal-Program-Illegally-Blacklists-Muslim-and-Arab-Residents-Seeking-Citizenship-220604971.html> (quoting Jennie Pasquarella).

83. *Kungys v. United States*, 485 U.S. 759 (1988).

84. *See id.* at 764–66 (reviewing the facts of the case).

85. *Id.* at 767–72.

86. *Id.* at 775.

87. *See PASQUARELLA, supra* note 1, at 41 (decrying CARRP’s disparate impact on Muslims).

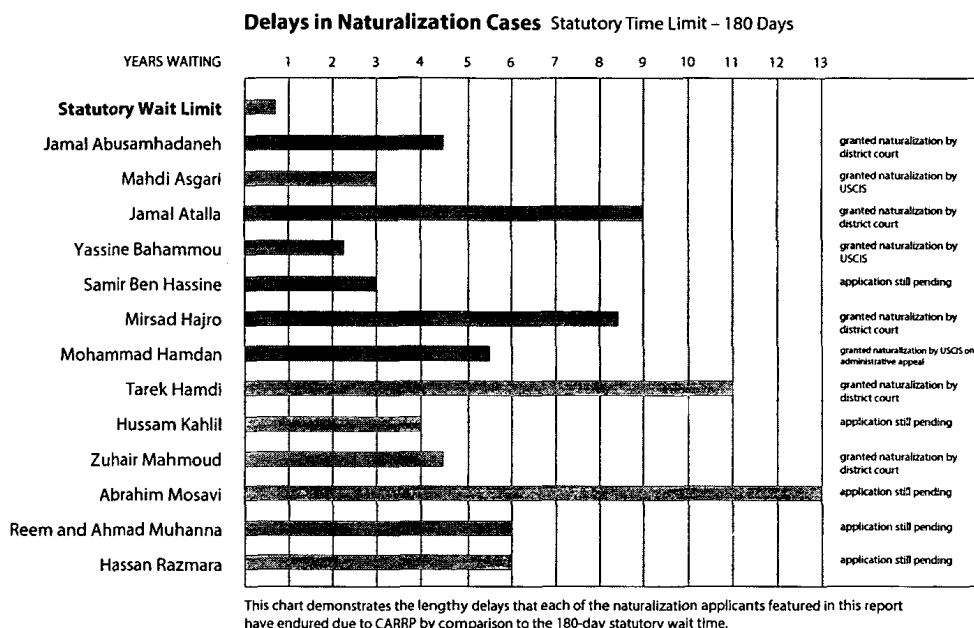
88. *Id.*

89. *See id.* at 42 (indicating CARRP enforces no deadline for any of its processes).

90. *Id.*

the USCIS as it looks for additional information and/or finds any reason to deny the application.⁹¹ If all else fails, the USCIS may hold the application in indefinite abeyance.⁹²

The game of cat and mouse begins during these critical stages of the naturalization application, in which the applicant has no choice but to wait.⁹³ When these applicants inquire about their application status they are advised the “application is pending ‘administrative checks’ or additional ‘security or background checks.’”⁹⁴ The following chart, published in ACLU/SC’s report, shows some of the shocking delays in naturalization cases.⁹⁵



Unreasonable delay of these naturalization applicants not only violates statutory guidelines promulgated by the INA, but fails to protect verified national security interests.⁹⁶ In reality the federal government has no

91. *Id.*

92. *Id.*; see U.S. CITIZENSHIP & IMMIGRATION SERVS., *supra* note 38, at 14 (“Cases will be held in abeyance for [one-hundred and eighty] days or until the investigation is complete, whichever is sooner. . . . [Th]e withholding of [the] adjudication period may be extended further.”).

93. See 8 U.S.C. § 1447(b) (2012) (requiring applicants wait at least 120 days before petition the court on the matter).

94. PASQUARELLA, *supra* note 1, at 42.

95. *Id.* at 44.

96. See *id.* at 2 (“Ironically, while CARRP treats applicants as supposedly too dangerous to naturalize, they are simultaneously treated as too harmless to expeditiously investi-

idea whether or not these individuals even pose a credible threat to the United States.⁹⁷ This criticism also incorporates the notion that applicants actually posing a credible national security threat are “equally dangerous whether they remain here as . . . lawful permanent resident[s] or as . . . citizen[s].”⁹⁸

At least one decision illustrates this apparent paradox.⁹⁹ In *Singh v. Still*,¹⁰⁰ “[t]he [California district 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.’”¹⁰¹

CARRP policy ramifications have sent some of these applicants to federal court as statutory guidelines stipulate an applicant may sue the USCIS for a decision in federal district court if the applicant has not received a decision “within 120 days of their examination.”¹⁰² However, as evidenced by extraordinarily long delays facing some applicants, ability to request relief from the courts does not facially solve the problem.¹⁰³ The USCIS must act upon ACLU/SC’s recommendation to heavily reform CARRP (or even rescind it) so it may “conform to existing immigration law, as well as basic standards of fairness and non-discrimination.”¹⁰⁴

gate, arrest or deport, undermining any argument that applicants subject to CARRP are true ‘national security concerns.’”).

97. *See id.* at 18 (arguing the Terrorist Watchlist is “over-inclusive”).

98. *Id.* at 44.

99. *Id.*

100. 470 F. Supp. 2d 1064 (N.D. Cal. 2007) (granting applicant’s request to force the USCIS to complete his adjudication after waiting for seven years).

101. PASQUARELLA, *supra* note 1, at 44 (quoting *Singh v. Still*, 470 F. Supp. 2d 1064, 1070 (N.D. Cal. 2007)).

102. *Id.* at 43; *see* 8 U.S.C. § 1447(b) (2012) (“If there is a failure to make a determination under section 1446 of this title before the end of the 120-day period after the date on which the examination is conducted under such section, the applicant may apply to the United States district court for the district in which the applicant resides for a hearing on the matter. Such court has jurisdiction over the matter and may either determine the matter or remand the matter, with appropriate instructions, to the Service to determine the matter.”).

103. *See* PASQUARELLA, *supra* note 1, at 44 (listing applications that were pending for years).

104. *Id.* at 4.

IV. CARRP OVERREACHES THE AUTHORITY OF CONGRESS BY CREATING AN EXTRA-STATUTORY SECTION ON NATURALIZATION ELIGIBILITY

The need for reform is particularly evident when considering the extra-statutory section governing naturalization eligibility created by the USCIS through its application of CARRP policy.¹⁰⁵ CARRP provides a clear directive, mandating denial of an applicant deemed a national security concern for any immigration benefit “except in limited circumstances.”¹⁰⁶ This is a serious divergence from conventional naturalization wisdom which recognizes if an applicant meets the burden on all the requirements prescribed by the USCIS, then the USCIS has no choice but to grant the application.¹⁰⁷ Indeed, the ACLU/SC recognizes:

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. Yet, CARRP teaches the opposite: that naturalization is instead a discretionary benefit to be provided only to those who not ensnared in CARRP’s overbroad national security criteria, in clear violation of governing law.¹⁰⁸

Additionally, contrary to CARRP policy the entire process of reviewing the naturalization application must not be delayed indefinitely.¹⁰⁹ The Code of Federal Regulations directs the USCIS to “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.”¹¹⁰ The provisions of 8 U.S.C. § 1447(b) then give the applicant the ability to file a determination suit in federal district court or have the court instruct the USCIS how to proceed.¹¹¹ This statutory provision was intended to reduce the wait period for naturalization applications and cut down the backlog within the system.¹¹²

105. *Id.* at 45.

106. *Id.*

107. *Id.* at 12; see 8 C.F.R. § 335.3(a) (2013) (“USCIS *shall* grant the application if the applicant has complied with all the requirements for naturalization”) (emphasis added).

108. *Id.* at 45.

109. PASQUARELLA, *supra* note 1, at 12.

110. *Id.*; see 8 C.F.R. § 335.3 (2013) (describing the time requirements for concluding determinations on applications).

111. 8 U.S.C. § 1447(b) (2012); PASQUARELLA, *supra* note 1, at 12.

112. PASQUARELLA, *supra* note 1, at 12; see 135 CONG. REC. H4539-02 (daily ed. July 31, 1989) (statement of Rep. Morrison) (“This legislation, while technical in nature, addresses a very substantial concern that so many of all of our constituents have faced, and that is the problem of long backlogs in moving through the naturalization process once the

Finally, 8 U.S.C. § 1571(b) states, “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”¹¹³ Instead, current CARRP directives provide the USCIS with the ability to bypass Congress—the Constitution endows Congress with the sole authority to “establish an [sic] uniform Rule of Naturalization”¹¹⁴—and ultimately set its own naturalization system of who remains in the country and who does not.¹¹⁵ This can result in a horrendous situation for an individual: after going through the naturalization process and calling the United States home for the last twenty years, he or she is no longer welcome. This may be an individual who is American in every sense—but not enough for citizenship.

USCIS reliance upon certain information in deeming an applicant a national security concern violates constitutional due process protections.¹¹⁶ First, the information may depend on unreliable sources and this unconfirmed evidence may be used as leverage when deciding whether to accept or deny an application.¹¹⁷ Second, and most troubling, an applicant is never advised of what information was used to deny his or her petition as the USCIS “never disclos[es] that information or allow[s] the applicant to confront it.”¹¹⁸

One of the tools enabling USCIS to disproportionately stop law-abiding immigrants from gaining naturalization is uncovering “false testimony.”¹¹⁹ “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.’”¹²⁰ This proves to be an extremely tough burden on the applicant because even a minor, immaterial account of accused misrepresentation can prevent the applicant from becoming naturalized.”¹²¹

time period for naturalization has been accomplished and the various requirements of naturalization have been met, delay often runs into the months and sometimes beyond a year before an individual can actually take his or her oath of allegiance to the United States and become a citizen.”).

113. PASQUARELLA, *supra* note 1, at 12 (quoting 8 U.S.C. § 1571(b) (2012)).

114. U.S. CONST. art. I, § 8, cl. 4.

115. PASQUARELLA, *supra* note 1, at 37.

116. *Id.* at 4.

117. *Id.* at 45.

118. *Id.* at 4.

119. *Id.* at 45.

120. *Id.*

121. *Gonzalez v. Sec’y of Dept. of Homeland Sec.*, 678 F.3d 254, 261 (3d Cir. 2012) (“A misrepresentation . . . need not be material to undermine a[] naturalization applicant’s good moral character.”).

By relying on the false testimony exception in labeling potential naturalization candidates as not having good moral character,¹²² an applicant applying for naturalization can lack the requisite good moral character requirement if he or she is found to have provided any intentionally false testimony in securing immigration benefits.¹²³ Application of this disqualification can be attributed to the “vagueness and overbreadth of the question on the N-400 naturalization application about memberships and associations” which in practice allows the USCIS to easily claim the applicant falsely testified.¹²⁴ Many court opinions have identified poorly defined terms in the application, thus allowing assignment of the USCIS, courts, and immigration attorney’s own definitions for vague terms.¹²⁵

The case of *Mirsad Hajro*,¹²⁶ discussed in greater detail in the next section, dealt with alleged false testimony.¹²⁷ Mr. Hajro “was accused of providing false testimony [by] failing to disclose his association with a religious practice.”¹²⁸ The USCIS argued Mr. Hajro was not forthcoming in his testimony, 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 the local defense group.”¹²⁹

The court rejected the USCIS’s argument, noting Mr. Hajro went above and beyond what was actually asked on the naturalization application by willingly sharing information about his military service and religious practice, even though question 8(a) “did not ask about military service.”¹³⁰ After waiting almost nine years, the court further concluded

122. PASQUARELLA, *supra* note 1, at 45; see 8 U.S.C. § 1101(f)(6) (2012) (codifying the false testimony exception).

123. PASQUARELLA, *supra* note 1, at 45; *USCIS Policy Manual*, *supra* note 34, at Pt. F, Ch. 5.

124. PASQUARELLA, *supra* note 1, at 46. For example, “Question 8(a) . . . 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?’” *Id.* The application asks for a list of those memberships and associations without specifying a relevant time period. *Id.*

125. See *id.* (identifying the terms “member” and “associated” included in Question 8(a) on the N-100 naturalization application).

126. See *Hajro v. Barrett*, 849 F. Supp. 2d 945, 963 (N.D. Cal. 2012) (finding Mr. Harjo eligible for naturalization after review of the alleged false testimony he gave in his naturalization application).

127. *Id.* at 849 F. Supp. 2d 945, 948; PASQUARELLA, *supra* note 1, at 46.

128. PASQUARELLA, *supra* note 1, at 46.

129. *Id.* at 49.

130. *Id.*; see *Hajro*, 849 F. Supp. 2d at 961 (“The Court agrees with Plaintiff that by its plain language, question 8a does not request disclosure of military service or other military groups.”).

Mr. Hajro was deserving of naturalization¹³¹ and granted his naturalization.¹³²

The USCIS's CARRP policy should not be used in denying an application that otherwise meets all statutory criteria.¹³³ However, the USCIS relies on unconfirmed evidence in supporting its conclusion that an applicant shall be deemed a national security concern.¹³⁴ Additionally, by not availing applicants of the information used in classifying them as a national security concern, the USCIS opens up the floodgates to further "erroneous assumptions untested in the adjudicative process."¹³⁵ This failure of disclosing information violates statutory obligations requiring notice of an adverse decision be given to an applicant.¹³⁶ This failure directly contradicts the USCIS's obligation of providing applicants an opportunity to rebut the derogatory information used against them.¹³⁷

Consequently, the USCIS uses the false testimony exception to delay or deny CARRP-impacted applicants because it is the simplest method. In so doing, the USCIS has created a backdoor in its naturalization laws.¹³⁸ Despite clear congressional authority in enacting immigration statutes, the USCIS has morphed into the recent big brother of U.S. immigration law, and CARRP is being used to the detriment of law-abiding individuals. The continued extra-statutory guidelines "den[y] applicants the fairness they are due under the Fifth Amendment to the U.S. Constitution and applicable immigration regulations."¹³⁹ The USCIS must follow the ACLU/SC's recommendation to refrain from barring applicant immigration benefits for which they would otherwise qualify.¹⁴⁰ Specifically, the USCIS should stop denying naturalization applicants who meet requisite statutory guidelines.¹⁴¹

131. *Hajro*, 849 F. Supp. 2d at 963.

132. See PASQUARELLA, *supra* note 1, at 44 (indicating Mr. Hajro spent nine years waiting for naturalization).

133. See *id.* at 4 ("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.").

134. *Id.* at 47.

135. *Id.*

136. *Id.* at 48; see 8 C.F.R. § 103.2(b)(16)(i)–(ii) (2013) (requiring disclosure of derogatory information with the applicant).

137. *Id.* at 48; 8 C.F.R. § 103.2(b)(16)(i) (2013).

138. See PASQUARELLA, *supra* note 1, at 51 ("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.").

139. *Id.* at 51.

140. *Id.* at 4.

141. *Id.*

V. LAW-ABIDING IMMIGRANTS “LINKED” TO TERRORIST ORGANIZATIONS

For most immigrants, the path to [U.S.] citizenship generally works like this: If you’ve lived here with a green card for five years, or three if you’re married to a citizen, and don’t have a criminal record, it should take a year or so to get citizenship. But that’s not how it works for everyone. Meet someone who waited [eleven] years.¹⁴²

Prior to the known existence of CARRP, the ACLU/SC worked with many individuals experiencing naturalization delays.¹⁴³ While working through these backlogs the ACLU/SC uncovered a “new class” of individuals who continued “to have inordinate delays in having their naturalization applications adjudicated,” and who were “denied for bizarre reasons.”¹⁴⁴ The following examples illustrate these instances.

A. *Tarek Hamdi*

Tarek Hamdi is the husband to a U.S. born wife and a father to four daughters—all of whom have been raised in the United States.¹⁴⁵ Mr. Hamdi submitted his naturalization application after living in the United States as a lawful permanent resident for nearly twenty-five years.¹⁴⁶ The U.S. government prevented him from becoming naturalized, for—to be blunt—being a Muslim.¹⁴⁷ Unfortunately, this is not a rare case. “[T]he government has barred thousands of eligible, law-abiding immigrants from becoming citizens, obtaining green cards and securing other immigration benefits. . . . [The USCIS] . . . has used the program to sweep up innocent, law-abiding Muslim immigrants, delaying and denying their applications—all without legal authority.”¹⁴⁸

The USCIS treated Mr. Hamdi as a national security concern because of the FBI’s inability to completely eliminate Mr. Hamdi as a potential threat to the United States.¹⁴⁹ The ACLU/SC initially filed suit in June

142. Monica Campbell, *A Recently-Uncovered Federal Program Turned One Man’s Path to Citizenship into a 11-Year Trek*, PUB. RADIO INT’L (Oct. 17, 2013; 4:45 PM), <http://www.pri.org/stories/2013-10-17/recently-uncovered-federal-program-turned-one-mans-path-citizenship-11-year-trek>.

143. See Pasquarella & Vakili, *supra* note 7 (explaining its work with individuals after September 11, 2011 and the problems it faced with naturalization delays).

144. *Id.*

145. Jennie Pasquarella & Ahilan Arulanantham, *Muslims Need Not Apply*, HUFFINGTON POST (Aug. 21, 2013, 5:44 PM), http://www.huffingtonpost.com/jennie-pasquarella/muslims-need-not-apply_b_3792214.html.

146. PASQUARELLA, *supra* note 1, at 7.

147. Pasquarella & Arulanantham, *supra* note 145.

148. *Id.*

149. PASQUARELLA, *supra* note 1, at 7.

2010 on behalf of Mr. Hamdi, requesting “the court finally review the matter of his eligibility to naturalize, after USCIS had lost, delayed, and finally denied his application.”¹⁵⁰ Eventually, litigation inadvertently led to discovery of “previously secret USCIS policies[,]” which seemed to be the cause of the delays and discriminatory treatment experienced by Mr. Hamdi during the process of his naturalization application.¹⁵¹

FBI assessment and subsequent labeling of Mr. Hamdi as a national security concern was based upon an act in which millions of Americans partake everyday—the act of charity.¹⁵² Mr. Hamdi provided a U.S.-based Islamic charity, the Benevolence International Foundation (BIF), “his annual Islamic tithing (or ‘zakhat’) . . . to fund humanitarian relief to refugees and orphaned victims of wars.”¹⁵³ This simple act of giving negatively impacted Mr. Hamdi two years later, when “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.”¹⁵⁴

It is ludicrous for the USCIS to use a donation to a U.S.-based group as a determinative factor in denying access to citizenship.

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 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.¹⁵⁵

The link between Mr. Hamdi’s lawful donation and eventual classification of BIF as a “financier of terrorism” is too remote to justify denial of his application.¹⁵⁶ Mr. Hamdi would eventually earn relief in February 2012 after U.S. District Court Judge Virginia Phillips ruled Mr. Hamdi—“a devout Muslim of Egyptian descent”—was entitled to naturalization,

150. *Tarek Hamdi Ruled Eligible To Naturalize After 11 Year Battle with U.S. Citizenship and Immigration Service*, ACLU S. CAL. (Mar. 1, 2012), <http://www.aclusocal.org/tarek-hamdi-ruled-eligible-to-naturalize-after-11-year-battle-with-u-s-citizenship-and-immigration-service>.

151. *Id.*

152. PASQUARELLA, *supra* note 1, at 7.

153. *Id.*

154. *Id.*

155. *Id.*

156. *See id.* at 23 (noting BIF defrauded thousands of U.S. donors).

eventually ending the continuously delayed, David versus Goliath application contest which “subjected [him] to discriminatory treatment.”¹⁵⁷

CARRP policy imposes extra scrutiny upon those law-abiding immigrants who have visited places linked to known terrorist activity, wired money back to their country, or even simply attended a mosque (all of which are of interest to the FBI).¹⁵⁸ The criteria used by the USCIS is overly broad and, unbeknownst to these lawful immigrants, punishes them for hailing from a region with prominent terrorist activity.¹⁵⁹ CARRP documents also indicate that mere mention in a FBI file, including as a witness or a victim of a crime, almost assures an immigrant applicant will be flagged as a national security concern.¹⁶⁰

B. *Hassan Razmara*

Mr. Razmara migrated to the United States in 2002 through the “diversity visa lottery.”¹⁶¹ As of September 2013 he is still waiting, and has been waiting for nearly six years, for an answer on his application for naturalization, which he filed in 2007.¹⁶²

The main issue delaying Mr. Razmara’s application is his past frequent attendance at and affiliation to an Iranian mosque in West Covina, California, which was the subject of intense surveillance by the FBI in 2008 based on allegations of wrongdoing by the mosque’s imam, Seyed M. Mousavi.¹⁶³ However, Mr. Razmara was neither implicated nor connected to crimes committed by Mr. Mousavi at the mosque.¹⁶⁴ Mr. Razmara was a practicing Muslim who simply attended the mosque,

157. ACLU S. CAL., *supra* note 150; see *Hamdi v. U.S. Citizenship & Immigration Servs.*, No. EDCV 10-894 VAP DTBx, 2012 WL 632397 (C.D. Cal. Feb. 25, 2012) (granting Mr. Hamdi citizenship).

158. Karen McVeigh, *FBI Granted Power to Delay Citizenship for Muslims*, *ACLU Report Says*, THE GUARDIAN (Aug. 21, 2013, 3:29 PM), <http://www.theguardian.com/world/2013/aug/21/fbi-power-delay-citizenship-muslims-aclu>.

159. HUFFINGTON POST LIVE, *supra* note 77.

160. PASQUARELLA, *supra* note 1, at 8; Nick Baumann, *If You’ve Ever Traveled to a “Suspicious” Country, This Secret Program May Target You*, MOTHER JONES (Aug. 21, 2013, 2:00 AM), <http://www.motherjones.com/politics/2013/08/carrp-fbi-immigration-terror-ism-aclu>.

161. PASQUARELLA, *supra* note 1, at 8; see *Diversity Visa (DV) Program*, BUREAU OF CONSULAR AFF. U.S. DEP’T OF ST. (Apr. 30, 2012), <http://travel.state.gov/content/visas/english/immigrate/diversity-visa.html> (“The congressionally mandated Diversity Immigrant Visa Program makes available up to 55,000 diversity visas . . . annually, drawn from random selection among all entries to persons who meet strict eligibility requirements from countries with low rates of immigration to the United States.”).

162. PASQUARELLA, *supra* note 1, at 30.

163. *Id.* at 8.

164. *Id.*

much like a Catholic parishioner attending the most convenient Cathedral or a Sikh attending the gurdwara (house of worship).

Mr. Razmara passed the naturalization exam the following year and completed his interview.¹⁶⁵ However, he was called three months later for an additional interview, but the interview now included an FBI agent.¹⁶⁶ This second interview consisted of the FBI agent asking Mr. Razmara “a series of questions about his community, his mosque, and . . . the imam.”¹⁶⁷ Soon after, Mr. Razmara received a call from the same FBI agent, advising Mr. Razmara “he would expedite his naturalization case if he agreed to work with the agency as an informant.”¹⁶⁸ The agent continued his requests for assistance yet Mr. Razmara “upon legal advice that his eligibility for naturalization could not be made contingent on his agreement to snitch on his community” never relented.¹⁶⁹

Based on the interviews and meetings between the USCIS, the FBI, and Mr. Razmara to date, his naturalization case does not indicate any credible threat to the security of the United States.¹⁷⁰ The government is simply using Mr. Razmara to potentially supply information of interest to the FBI. In other words, the FBI is subsidizing its work through Mr. Razmara’s contact with the USCIS. “[The] 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.”¹⁷¹

C. *Jamal Atalla*

Jamal Atalla is another lawful immigrant who has fallen victim to USCIS’s “false testimony” tactics.¹⁷² When Mr. Atalla challenged his naturalization denial in *Atalla v. Kramer*,¹⁷³ the USCIS argued Mr. Atalla’s failure to disclose membership or association with the Global Relief Foundation (GRF) caused him to not be considered for naturalization.¹⁷⁴ In reality, Mr. Atalla actually advised the USCIS on several occasions of

165. *Id.*

166. *Id.*

167. PASQUARELLA, *supra* note 1, at 8.

168. *Id.*

169. *Id.*

170. *Id.* at 9.

171. *Id.*

172. *Id.* at 46.

173. *Atalla v. Kramer*, CV09-1610-PHX-NVW, 2011 WL 2457492 (D. Ariz. June 20, 2011).

174. PASQUARELLA, *supra* note 1, at 49; see *Atalla*, 2011 WL 2457492, at *2–12 (detailing the paperwork completed by Mr. Atalla describing his affiliation with various groups as well as other details of his application). The case also explains the United States determined, despite the legitimate relief it provided around the world, the GRF also had strong terrorist ties. *Id.* at *16.

“his volunteer activities and charitable donations to the organization and that he did not consider himself a member or associate of the organization.”¹⁷⁵ The court sided with Mr. Atalla, drawing an important distinction between “specific disclosures” and the nebulous label of being “associated” with a particular group.¹⁷⁶ The court explained:

Even if he should have thought that his level of involvement with [GRF] 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.¹⁷⁷

Mr. Atalla is a lawful permanent resident, a physician by profession, and dedicated volunteer of emergency services.¹⁷⁸ Although the federal district court has found Mr. Atalla eligible to naturalize, “[t]he government’s appeal of that decision is pending before the Ninth Circuit.”¹⁷⁹

D. *Mirsad Hajro*

Mirsad Hajro was accused, *inter alia*, of failing to reveal his association with *Tablighi Jamaat*, “an informal Islamic religious practice that teaches ‘talking with other Muslims about their shared faith and practices and sometimes involv[ing] traveling to other communities.’”¹⁸⁰ The USCIS was quick to categorize *Tablighi Jamaat* as a terrorist organization, but the district court concluded otherwise, stating, “*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.”¹⁸¹

The USCIS frequently equates lawful charitable donations to acts allegedly evidencing a national security concern.¹⁸² Despite the non-linear links, the USCIS has broad powers in labeling an applicant a national security concern.¹⁸³ This alarming trend should not be taken lightly.

Ultimately, when applicants are denied immigration benefits based on national security grounds the grounds must fall under specific INA ineli-

175. PASQUARELLA, *supra* note 1, at 49.

176. *Id.* at 49; *Atalla*, 2011 WL 2457492, at *15.

177. *Atalla*, 2011 WL 2457492, at *15–16.

178. PASQUARELLA, *supra* note 1, at 23.

179. *Id.*

180. *Id.* at 41 (quoting *Hajro v. Barrett*, 849 F. Supp. 2d 945, 957 (N.D. Cal. 2012)).

181. *Id.* at 41; *Hajro v. Barrett*, 849 F. Supp. 2d 945, 962 (N.D. Cal. 2012).

182. PASQUARELLA, *supra* note 1, at 41.

183. *See id.* at 39 (noting problems with the Terrorist Watchlist nomination process as one cause of CARRP’s overbreadth).

gibility guidelines.¹⁸⁴ Specifically, applicants should not be denied “for their *lawful* donations to charities later accused of terrorism financing[,]” such denials should be based on whether “their donations were *knowingly* made to support terrorism financing”¹⁸⁵

VI. CONCLUSION

From a legal perspective, CARRP unduly burdens applicants and creates the nearly impossible task of erasing any national security concern. CARRP has made it “all but impossible for many Muslim, Arab, Middle Eastern, and South Asian individuals to become American citizens, or otherwise obtain legal residency or asylum status.”¹⁸⁶ The ramifications of being branded a national security concern are extremely serious, putting many applicants applying for any immigration benefit, such as asylum, visas, green cards, and naturalization, at risk of having their applications or petitions delayed indefinitely or denied outright.¹⁸⁷

If national security really is the concern surrounding these CARRP-impacted applicants, then, as a matter of policy, the government should act swiftly and not merely bury these risks in red tape.¹⁸⁸ These delays and denials contradict the level of fairness and environment of non-discrimination that aspiring Americans expect from the U.S. government when applying for naturalization.¹⁸⁹ Some of those impacted by CARRP are families who have been in the United States for more than two decades. Their children have been born and raised in the United States, and in reality, it is the only place they call home. What sets them apart from others seeking naturalization (which it absolutely should not) is the religion they practice. Putting immigrants’ religious beliefs under scrutiny foregoes the First Amendment protections provided to them under the Constitution and causes a significant psychological impact that should not be overlooked.

The USCIS cannot maintain a secret policy governing the way it selects candidates for naturalization. Instead, fair adjudication should be the norm for all applicants, regardless of their faith.

184. *Id.* at 4.

185. *Id.*

186. Press Release, *supra* note 3.

187. Ann Cun, *USCIS Takes Biographic Data and Clandestine Programs to New Heights*, LAWLOGIX (Sept. 11, 2013), <http://www.lawlogix.com/blog/uscistakesbiographicdataandclandestineprogramsnewheights>.

188. PASQUARELLA, *supra* note 1, at 51.

189. *Id.* at 59.