



PRACTICE ADVISORY: USCIS’S CONTROLLED APPLICATION REVIEW AND RESOLUTION PROGRAM¹

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This advisory discusses United States Citizenship and Immigration Service’s (“USCIS”) Controlled Application Review and Resolution Program, or “CARRP.” In 2008, USCIS created CARRP as its policy for identifying, screening, and adjudicating applications for immigrant benefits, including naturalization, adjustment of status, and asylum, from individuals it considers a “national security concern.”

CARRP relies upon overbroad and discriminatory criteria to flag applicants for immigration benefits as national security concerns, particularly those who are Muslim or from Muslim-majority countries. It then directs USCIS officers to delay and ultimately deny their applications—all without informing applicants they are subject to the policy, let alone giving them an opportunity to respond to the agency’s classification of them as a “national security concern.”

This advisory: (I) provides an overview of CARRP; (II) describes the possible impact of CARRP on a client’s immigration application; (III) provides a checklist to help determine if a client is likely subject to CARRP; (IV) provides advice and considerations for litigating cases subject to CARRP; (V) discusses administrative appeals and federal court actions; and (VI) offers guidance on filing requests under the Freedom of Information Act (“FOIA”).

I. WHAT IS CARRP?

USCIS’s Controlled Application Review and Resolution Program or “CARRP” is a USCIS-wide policy for “identifying and processing cases with national security concerns.”³ CARRP is designed to “ensure that immigration benefits are not granted to individuals and

¹ This advisory is intended for lawyers and is not a substitute for independent legal advice provided by a lawyer familiar with a client’s case. Counsel should independently confirm whether the law in their circuit has changed since the date of this advisory.

² © ACLU of Southern California, 2016. Special thanks to Trina Realmuto, Staff Attorney with the National Immigration Project of the National Lawyers Guild for her valuable comments and detailed edits. Also thank you to Stacy Tolchin, with the National Immigration Project of the National Lawyers Guild and the Law Offices of Stacy Tolchin, for her advice and sharing her experiences litigating cases subject to CARRP.

³ Memorandum from Jonathan R. Scharfen, Deputy Director, U.S. Citizenship & Immigration Servs., to Field Leadership, U.S. Citizenship & Immigration Servs., *CARRP Policy for Vetting and Adjudicating Cases with National Security Concerns*, at 1 (Apr. 11, 2008) [hereinafter *CARRP Policy for Vetting and Adjudicating Cases with National Security Concerns*], available at <https://www.aclusocal.org/wp-content/uploads/2013/01/CARRP-Policy-for-Vetting-and-Adjudicating-Cases-w-NS-Concerns-Apr.-11-2008.pdf>.

organizations that pose a threat to national security.”⁴ Because CARRP uses discriminatory criteria to flag individuals as “national security concerns,” it disproportionately impacts immigrants who are Muslim, perceived as Muslim, and/or who are from Arab, Middle Eastern, Muslim, and South Asian countries.

USCIS reportedly has applied CARRP to over 41,800 immigration applications since its inception in 2008.⁵ While USCIS may apply CARRP to individuals from any country, the top five nationalities of immigration benefit applicants subjected to CARRP are Pakistan, Iraq, India, Iran and Yemen.⁶

The “immigration benefits” administered by USCIS that are subject to CARRP include “all applications and petitions that convey immigrant or nonimmigrant status.”⁷ According to the policy documents, 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).⁸ However, in recent years, practitioners have reported cases in these categories appearing to be subject to CARRP as well.

The CARRP policy for adjudicating immigration benefits applications has four stages, summarized here and described in detail in the ACLU of Southern California’s 2013 report titled *Muslims Need Not Apply*.⁹

⁴ U.S. Citizenship & Immigration Servs. Acad., *CARRP Officer Training: National Security Handouts*, at 2 (Apr. 2009) [hereinafter *CARRP Officer Training: National Security Handouts*], available at <https://www.aclusocal.org/wp-content/uploads/2013/01/Guiance-for-Identifying-NS-Concerns-USCIS-CARRP-Training-Mar.-2009.pdf> (emphasis added).

⁵ Yesenia Amaro, *Little-Known Law Stops Some Muslims from Obtaining U.S. Citizenship*, LAW VEGAS REVIEW-JOURNAL, Apr. 16 2016, <http://www.reviewjournal.com/news/little-known-law-stops-some-muslims-obtaining-us-citizenship>.

⁶ *Id.* (“The top five countries of birth for individuals affected by CARRP since 2008 are Pakistan, Iraq, India, Iran and Yemen, according to the records.”). See also U.S. Citizenship & Immigration Servs., *Persons with NS Concerns by Country and NS Concerns by Type, FY 2005 to 2012*, available at <https://www.aclusocal.org/wp-content/uploads/2014/07/Persons-with-NS-Concerns-by-Country-and-NS-Concerns-by-Type-for-FY-2005-2012.pdf>.

⁷ *CARRP Policy for Vetting and Adjudicating Cases with National Security Concerns*, *supra* note 3, at 1 n.4. 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.” *Id.* 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).

⁸ See U.S. Citizenship & Immigration Servs., *PowerPoint v. 1.1, Fraud Detection & National Security Controlled Application Review and Resolution Program (CARRP) Independent Study*, at 28 (Dec. 28, 2011) [hereinafter *FDNS CARRP PowerPoint v. 1.1*], available at <https://www.aclu-sc.org/wp-content/uploads/2013/01/FDNS-CARRP-Independent-Study-Powerpoint-v.-1.1-Dec.-28-2011.pdf>.

⁹ For more details on the CARRP program, including the stages of CARRP, see ACLU OF SOUTHERN CALIFORNIA ET. AL., *MUSLIMS NEED NOT APPLY* (AUG. 2013), available at <https://www.aclusocal.org/CARRP/>.

A. CARRP Step One: Identifying “National Security Concerns”

The **first stage** of CARRP, during which USCIS identifies an applicant as a “national security concern,” is the most critical to understanding whether an application is subject to CARRP. Under CARRP, a “national security concern” is broadly defined 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]¹⁰ of the Immigration and Nationality Act.”¹¹ Yet, the terms “articulable link” and “association with” are not defined. CARRP guidance suggests that officers should use the activities, individuals, and organizations described in the security and terrorism sections of the Immigration and Nationality Act (“INA”) as exemplars of indicators of a “national security concern.” However, that same guidance also provides 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.¹²

There are two types of “national security concerns” under CARRP: (1) “Known or Suspected Terrorists” (KSTs) and (2) “not-Known or Suspected Terrorists” (non-KSTs).

1. **KSTs:** Under CARRP, USCIS automatically labels an applicant a “national security concern” if her security checks reveal that she already has been labeled as a KST by the federal government. A KST is any person whose name has been placed in the Terrorist Screening Database (also known as the Terrorist Watch List).¹³

Because the government does not inform individuals that they are on Terrorist Watch List, most people will not know whether they are on it. One indicator of being on the list is if a person is frequently required to undergo additional screening or “secondary inspection” by Customs and Border Patrol (“CBP”) prior to boarding flights over U.S. airspace or upon a flight’s arrival in the United States. These individuals may be on the Selectee List or the Secondary Inspection Screening List, which are subsets of the Terrorist Watch List. These individuals may sometimes see “SSSS” on their boarding passes.¹⁴ Similarly, individuals on the No Fly list, another subset of the Terrorist Watch List, will not be allowed to board a commercial flight that originates in or passes through U.S. airspace. Keep in mind, however, that individuals can be on the Terrorist Watch List but not on the No Fly List or Selectee List. In addition,

¹⁰ 8 U.S.C. §§ 1182(a)(3)(A), (B), and (F), and 1227(a)(4)(A) and (B).

¹¹ *CARRP Policy for Vetting and Adjudicating Cases with National Security Concerns*, *supra* note 3, at 1 n.1.

¹² *CARRP Officer Training: National Security Handouts*, *supra* note 4, at 2.

¹³ *CARRP Policy for Vetting and Adjudicating Cases with National Security Concerns*, *supra* note 3, at 1 n.3; *see also* 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>.

¹⁴ For more information on the Terrorist Watch List *see* MUSLIMS NEED NOT APPLY, *supra* note 9, at 19.

applicants on a Terrorist Watch List may be prohibited from checking in for flights online or from an electronic kiosk at the airport.

2. **“Non-KSTs”:** USCIS may also label an applicant a “non-KST” national security concern if certain “indicators” are present.¹⁵ CARRP provides for three categories of such “indicators.”

- i. **Statutory Indicators**

CARRP relies on the Terrorist Related Inadmissibility Grounds (“TRIG”)¹⁶ to identify individuals as a “national security concern,” but then sweeps more broadly.

First, like TRIG, 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,¹⁷ as indicators of a “national security concern.”¹⁸ 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.” “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)¹⁹ 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).²⁰

In addition, CARRP instructs officers 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.”²¹ The Treasury Department designated a number of the largest U.S. Islamic charities as Terrorist Entities pursuant to this Executive Order.²²

¹⁵ *CARRP Policy for Vetting and Adjudicating Cases with National Security Concerns*, *supra* note 3, at 1 n.3.

¹⁶ INA §§ 212(a)(3)(A), (B), and (F) and 237(a)(4)(A) and (B) of the INA.

¹⁷ According to USCIS, “Generally, any individual who is a member of a ‘terrorist organization’ or who has engaged or engages in terrorism-related activity as defined by the Immigration and Nationality Act (INA) is ‘inadmissible’ (not allowed to enter) the United States and is ineligible for most immigration benefits.” USCIS, Terrorism-Related Inadmissibility Grounds (“TRIG”), <https://www.uscis.gov/laws/terrorism-related-inadmissibility-grounds/terrorism-related-inadmissibility-grounds-trig> (last visited Sept. 27, 2016).

¹⁸ *CARRP Policy for Vetting and Adjudicating Cases with National Security Concerns*, *supra* note 3, at 4.

¹⁹ 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, <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”). See Office of the Coordinator for Counterterrorism, *Terrorist Exclusion List*, U.S. DEP’T OF STATE, <http://www.state.gov/j/ct/rls/other/des/123086.htm>.

²⁰ 8 U.S.C. § 1182(a)(3)(B)(vi)(III).

²¹ *CARRP Policy for Vetting and Adjudicating Cases with National Security Concerns*, *supra* note 3, at 4 (emphasis added).

²² For example, the Treasury Department has 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),

Finally, CARRP provides that “the facts of the case do not need to satisfy the legal standard used in determining admissibility or removability.”²³ Thus, CARRP instructs USCIS officers to look *beyond* the already overbroad sections of the INA that list the security and terrorism grounds of inadmissibility and removability (the “TRIG” sections) for indicators of national security concerns. This further expands the vagueness and breadth of the definition of “national security concern,” resulting in unwarranted conclusions about whether an applicant is a national security concern.

ii. Non-Statutory Indicators

Under CARRP, officers must look at other indicators of a “national security concern,” specifically: (1) a person’s employment, training, or government affiliations; (2) “other suspicious activities”; and (3) “family member[s] or close associates.”²⁴

With respect to employment, training, and government affiliations, officers must “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.”²⁵

CARRP states that “other suspicious activities” 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”; and “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.”²⁶

Finally, CARRP mandates that officers consider whether the applicant has a family member or “close associate” who is a “national security concern.” A “close associate” is defined broadly to include a “roommate, co-worker, employee, owner, partner, affiliate, or friend.”²⁷

iii. Indicators Contained in Security Check Results

Finally, under CARRP, officers must examine the results of security checks to determine whether any indicators of a “national security concern” are present. As the CARRP Officer Training memo details, these security checks, including the FBI Name Check, the FBI Fingerprint or NCIC Criminal History Check, the OBIM and IDENT checks, and TECS/IBIS, can show a positive “national security” hit in a very wide variety of cases, ranging from

<http://www.treasury.gov/resource-center/terrorist-illicit-finance/Documents/Treasury%20Charity%20FAQs%206-4-2010%20FINAL.pdf>.

²³ CARRP Officer Training: National Security Handouts, supra note 4, at 2-3 (referencing 8 U.S.C. §§ 1182(a)(3)(A), (B), and (F), and 1227(a)(4)(A) and (B)).

²⁴ *Id.* at 4-5.

²⁵ *Id.* at 4.

²⁶ *Id.* at 5.

²⁷ *Id.*

individuals with “suspicious financial transactions” with a link to a “national security concern” to individuals who were detained by the U.S. in Afghanistan or Pakistan.²⁸

Notably, the FBI Name Check results in a particularly dragnet approach to labeling an individual a “national security concern” because CARRP states that if the results of that check are positive—that is, the applicant’s name is in a FBI file—and the file relates to national security, then this is an indicator of a “national security concern” for purposes of CARRP. This means that witnesses and individuals who gave a voluntary interview to the FBI and never was the subject of a national security investigation, could be flagged and subjected to CARRP.

B. Deconfliction (in-between stages of CARRP)

Deconfliction can take place at any stage of USCIS’ adjudication of an application or petition. Once USCIS identifies an applicant as a “national security concern” under CARRP, a USCIS officer must then conduct “deconfliction,” a process through which USCIS collaborates with the law enforcement agency that is the “owner” of the “national security concern” information to ensure that USCIS does not compromise or impede upon any ongoing investigation or interest of the other agency. This process also provides an opportunity for the law enforcement agency, usually the FBI, to submit questions to USCIS to ask the applicant in the interview or through a Request for Evidence (RFE), to comment on the proposed decision on the application, and to request that USCIS deny, grant, or hold the application in abeyance. Individuals who have been subject to deconfliction often report having been approached by law enforcement, usually the FBI, after applying for an immigration benefit, and sometimes also having had the FBI offer immigration assistance in exchange for his or her cooperation.

C. Remaining Stages of CARRP

The **second stage** of CARRP is when USCIS officers review USCIS records to assess whether an applicant is eligible for the immigration benefit sought and look for ways to 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). At this stage, a USCIS officer scrutinizes the application to find *any* basis to deny the application—more so than they would for a routine adjudication. CARRP specifically instructs USCIS officers to look for a reason to deny based upon false testimony or failure to prosecute an application. USCIS officers are also required to look for any indication of fraud (including at previous names, addresses listed, marriage history, travel history, tax returns, etc.) and any ineligibility for any previously granted immigration benefit.²⁹

If the officer cannot find a basis to deny the application and determines that the applicant appears eligible for the benefit, then he or she must explore the “national security concern” through DHS’ systems and databases, the applicants file, Requests for Evidence (“RFEs”), interviews, and site visits in order to find a reason to deny the application.³⁰

²⁸ *CARRP Officer Training: National Security Handouts*, *supra* note 4, at 5-7 (describing why individuals may have positive name checks for national security concerns in various databases). For guidance on how to read USCIS documents showing the results of security checks, *see* MUSLIMS NEED NOT APPLY, *supra* note 9 at 26-27.

²⁹ FDNS CARRP PowerPoint v. 1.1, *supra* note 8, at 54, 58-59.

³⁰ *CARRP Policy for Vetting and Adjudicating Cases with National Security Concerns*, *supra* note 3, at 4, 5 nn. 14, 17. *See also* U.S. Citizenship & Immigration Servs., *Domestic Operations Directorate (DomOps)*, *CARRP*

If, after internal USCIS vetting the “national security concern” remains but the USCIS officer still cannot find a reason to deny the application, the application goes to the **third stage** of CARRP. At this stage, officers externally vet the “national security concern” with whatever agency is the “record owner” of the “national security concern” (for example, the FBI) and request additional information regarding the concern from that agency.³¹

The final and **fourth stage** of CARRP is adjudication and usually denial.³² If after external vetting the “national security concern” remains, then officers are once again instructed to obtain any other additional information through an RFE, interview, or administrative site visit (as is the case during internal vetting and deconfliction). If the “national security concern” still is present and:

- If the individual is considered a KST, the USCIS officer cannot approve the application. If officer cannot find a basis to deny, he or she must send the application to USCIS headquarters for additional vetting and a decision on the application.³³
- If the individual is considered a non-KST, USCIS officers are not allowed to approve the application without supervisory approval and concurrence from a senior-level official. If the senior-level official recommends a denial, then she must seek assistance from the USCIS Fraud Detection and National Security unit at headquarters to find a reason for the denial.³⁴
- With both KSTs and non-KSTs, headquarters review entails a lengthy process with the ultimate goal of finding a reason to deny the application.

II. THE IMPACT OF CARRP ON YOUR CLIENT’S IMMIGRATION APPLICATION: INORDINATE DELAYS, PRETEXTUAL DENIALS, AND DEPORTATION

A. Inordinate delays

Individuals subjected to CARRP always face lengthy delays in the adjudication of their applications or petitions. This is because CARRP directs USCIS agents to delay or hold these cases in abeyance while they vet the cases and pursue deconfliction. CARRP does not impose any deadline. Rather, it expressly states that USCIS officers may hold cases in abeyance for periods of 180 days to investigate the “national security concerns”, and that the Field Office Director may extend the abeyance periods indefinitely as long as an investigation remains open.³⁵ When applicants subject to these delays inquire with USCIS about the status of their

Workflows, at 6 [hereinafter *DomOps CARRP Workflows*], available at <https://www.aclu-sc.org/wp-content/uploads/2013/01/CARRP-Workflows.pdf>.

³¹ *CARRP Policy for Vetting and Adjudicating Cases with National Security Concerns*, *supra* note 3, at 5.

³² *Id.* at 6.

³³ *Id.* at 7. *See also* *DomOps CARRP Workflows*, *supra* note 30, at 5-6 (Mid Level CARRP KST Workflow, Low Level CARRP KST Workflow: Identifying NS Concern).

³⁴ *Policy for Vetting and Adjudicating Cases with National Security Concerns*, *supra* note 3, at 8.

³⁵ 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 270-71, available at <https://www.aclu-sc.org/wp-content/uploads/2013/01/CARRP-Deconfliction-Vetting-and-Adjudication-of-NS-Concerns-Training-PowerPoint-v.-1.4.pdf>.

applications, USCIS typically tells them that their application is pending “administrative checks” or additional “security” or “background checks.”

In general, USCIS should adjudicate applications for immigration benefits no later than 180 days after the date upon which the application was filed.³⁶ USCIS increasingly is delayed in processing some applications, however, such as asylum applications. To determine whether an application is unusually delayed, check USCIS’s website for current processing times by application type in the applicable geographic area.³⁷ In addition, naturalization applicants who have not received a decision within 120 days of their examination/interview may sue USCIS for a decision in district court.³⁸ If an application is delayed beyond the usual processing time, one could consider filing a mandamus action in federal district court. The pros, cons, and how-to’s of filing a mandamus action are discussed below.

B. Pretexual denials

Because CARRP mandates denials for KSTs when the “national security concern” remains and many non-KST applications also are denied if the “national security concern” cannot be resolved, USCIS must find some basis to deny the application. As a result, USCIS regularly denies applications subject to CARRP based on pretextual, and often absurd, reasons.

CARRP guidance instructs officers to examine every aspect of an application and immigration history to find a reason to deny the application. CARRP instructs officers to consider “the whole picture,” “review every page” of an application, and to look for “inconsistency” in “testimony and documentation.”³⁹ CARRP training documents also provide that officers should look for “inconsistencies”, “misrepresentation and fraud”, “illegal, suspect or usual activity”, “civil infractions”, and “unexplained financial activities.”⁴⁰ It goes on to illustrate various specific factors that should be considered, including roommates, travel companions, military history, and club memberships.⁴¹ And CARRP also instructs that officers look for a reason to deny the application based upon “failure to prosecute” the application by refusing to respond to an RFE under 8 C.F.R. § 103.2(b)(13) or 8 C.F.R. § 335.7.

In the context of naturalization, CARRP instructs officers to carefully consider evidence of time inside the U.S. to meet the continuous presence requirement and to pay close attention to U.S. addresses. Officers also must look for a reason to deny the application based upon “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 good moral character, which is required for naturalization.

The practice advisory explains how to attempt to avoid these and other bases for pretextual denials below.

³⁶ 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.”).

³⁷ U.S. Citizenship & Immigration Servs., USCIS Processing Time Information, https://egov.uscis.gov/cris/processTimesDisplayInit.do_

³⁸ 8 U.S.C. § 1447(b).

³⁹ See FDNS CARRP PowerPoint v. 1.1, *supra* note 8, at 65, available at <https://www.aclu-sc.org/wp-content/uploads/2013/01/FDNS-CARRP-Independent-Study-Powerpoint-v.-1.1-Dec.-28-2011.pdf>.

⁴⁰ CARRP PowerPoint v. 1.4, *supra* note 35 at 18.

⁴¹ *Id.* at 19-25.

C. Deportation

If USCIS finds a reason to deny the application, CARRP also directs officers to look for grounds for deportation and to work with Immigration and Customs Enforcement (“ICE”) to initiate removal proceedings.

III. PUTTING IT ALL TOGETHER: IS THE APPLICATION SUBJECT TO CARRP?

Because USCIS never tells applicants that they are subject to CARRP, it is difficult to know for certain whether a client is subject to CARRP. Nonetheless, it is advisable that attorneys try to ascertain whether an application is likely subject to CARRP. To do so, attorneys are advised to request as much information as possible about their client’s case from the government, such as through a Freedom of Information Act (“FOIA”) request. In addition, attorneys might consider whether the application is usually delayed, whether there has been a pretextual denial, whether there are indications of external vetting or deconfliction, and whether any of the three categories of CARRP “national security concern” “indicators” are present.

CHECKLIST: Is my client's application likely subject CARRP?

Is client considered a "Known or Suspected Terrorist" (KST) "national security concern" under CARRP?

- Client may be on the Terrorist Watch List because he/she:
 - Has been subject to secondary inspection by U.S. authorities at the airport when boarding a plane or arriving in the United States from overseas travel;
 - Has seen "SSSS" on his/her flight boarding passes;
 - Is not allowed to board a plane; and/or
 - Is unable to check into flights online or from electronic airport kiosks.

Is client considered a "non-Known or Suspected Terrorist" (non-KST) "national security concern" under CARRP?

- Client is a member or associated with (broadly defined, including ever having given a donation, etc.) a "terrorist organization" as defined by the Secretary of State (a "Tier I" or "Tier II" organization) or an "organization[] likely to meet the Tier III undesignated terrorist organization definition."
- Client's name is likely in an FBI file relating to a national security investigation (due to any *direct contact* with FBI, including a voluntary interview, and/or *indirect contact*, such as attending a mosque that was investigated by the FBI or having a friend or relative who was investigated by the FBI).
- Client has donated to an Islamic charity, particularly one that has been investigated by U.S. law enforcement and/or designated by the Treasury Department as financing terrorism (including, but not limited to Al Haramain Foundation, Benevolence International Foundation, Global Relief Foundation, Goodwill Charitable Organization, Holy Land Foundation for Relief and Development, and Islamic American Relief Agency).
- Client was approached by the FBI after applying for an immigration benefit with USCIS, particularly where the FBI has offered immigration assistance in exchange for cooperation with an FBI investigation.
- Client was born in, has traveled to, and/or resided in "areas of known terrorist activity" (particularly countries in the Middle East, North Africa, and parts of South Asia).
- Client identifies as a Muslim and/or may be perceived as Muslim.
- Client has sent or received a "large" amount of funds from overseas.
- Client has a degree and/or employment in "technical skills" including "knowledge of radio, cryptography, weapons, nuclear physics, chemistry, biology, pharmaceuticals, and computer systems."
- Client has foreign military training and/or served in the military overseas.
- Client worked for a foreign government.
- Client has a criminal history (even if she was found innocent, conviction expunged, etc.), particularly if the history involves fraudulent document manufacture; trafficking or smuggling of persons, drugs, or funds; money laundering; or anything that could be considered "terrorism."
- Client has a family member and/or "close associate" (defined broadly to include a "roommate, co-worker, employee, owner, partner, affiliate, or friend (even former class mates)") who is a "national security concern."

- The results of client's FOIA request show law enforcement- or security-related redactions after the security check results, such as the FBI Name Check, the FBI Fingerprint or NCIC Criminal History Check, the OBIM and IDENT checks, and TECS/IBIS.
- Client was arrested or detained by the U.S. military overseas.
- Client speaks a "foreign language" (no particular foreign language is specified).

Although there is no way to know whether a client is subject to CARRP, the following are the strongest indicators:

- The application is delayed long beyond normal processing times for my USCIS area and application type.
- USCIS issued a pretextual denial (a denial that is illogical and suggests USCIS is trying to find some basis to deny).
- The FBI approached the client after applying for the immigration benefit and offered to help the client with that immigration benefit in exchange for cooperation.
- USCIS interviewed the client one or more times and no decision has been issued.
- USCIS videotaped the interview (without a request to do so) and/or a FBI officer (or other law enforcement agent) was present during the USCIS interview.
- USCIS has issued multiple requests for evidence ("RFEs").
- USCIS indicates the application is pending "security checks."

IV. PRACTICE POINTERS: ADVICE AND CONSIDERATIONS FOR LITIGATING CASES SUBJECT TO CARRP

A. Learn about CARRP

The most important step attorneys can take is to understand CARRP and then apply this understanding to try to determine whether clients are, or are likely, subject to CARRP (including understanding whether a client is considered a KST or a non-KST). Use the checklist above. This will help prepare clients for what to expect, including delays, pretextual denials, RFEs, and possible interview questions, and also inform attorneys of the pros and cons of taking the case to federal court. To make this determination, gather all possible information on the client and what USCIS knows about the client. At minimum, file a FOIA request for the client's A-file and consider filing other requests for information, detailed below, as well.

B. Avoid grounds for pre-textual denials

In CARRP cases, USCIS will be looking for any grounds, however trivial, to deny the application. Accordingly, we recommend the following regarding applications/petitions, interviews, and RFEs.

1. Ensure that clients are forthcoming and thorough in responding to questions and clarify any unclear terms.

First, provide thorough and detailed responses to application and interview questions. This is true even if the question does not appear to directly ask for that level of detail or information. For example, in naturalization cases that are delayed under CARRP, USCIS has read question Pt. 12, No. 23 on the N400 naturalization application, which asks whether the applicant has been "arrested, cited, or detained by any law enforcement officer (including any immigration official or any official of the U.S. armed forces) for any reason," to include seemingly routine stops for secondary inspection at airports and has denied applications based on failure to disclose such a stop. USCIS also has denied applications due to alleged discrepancies in addresses/places of U.S. residence.

Second, always clarify the definition of vague and ambiguous terms. Particularly common in naturalization cases are denials based on "false testimony" for failure to disclose an "association" or "membership," as described in detail below. Accordingly, attorneys must be especially careful answering any and all questions about associations, memberships, and affiliations in reference to such questions on the naturalization application. For instance, although most people believe that a donation to a charity does 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 concluding that the applicant provided false testimony.

One way to ensure that answers are thorough and that unclear terms are clarified is to attach an addendum to any application/petition that details the answers to the questions and sets

forth the understanding of vague terms used on any question on the application. For example, in responses to questions on the N400 naturalization application, attorneys may wish to explain inconsistencies in names the client used or use of multiple addresses, to describe any foreign military service, and to provide the details of any arrest or conviction. An attorney might also explain how she is defining “membership” or “association,” in addition to expansively answering that question. In sum, an attorney is advised to do all she can to ensure that the client is not denied for failure to withhold information or due to an alleged discrepancy. At the same time, as discussed below, attorneys must take care to protect clients from deportation and/or criminal proceedings.

Finally, attorneys should follow up with USCIS if a client remembers new information or he or she subsequently realizes that the client misunderstood or did not accurately or fully respond to a question on an application or in an interview. Counsel could submit a revised application with a cover letter explaining the modifications, or send a letter to the examining officer to correct or clarify statements in an interview.

2. Create a record of any interview and bring a witness.

Attorneys can request that USCIS videotape any interviews so that it cannot later accuse the client of saying something he or she did not say or take any statement out of context. This will ensure that there is a clear record of everything asked and answered during the interview. Videotaping is particularly critical for naturalization cases because it will be vital to a client’s ability to successfully challenge any denial based on false testimony in district court.

Consider bringing a second attorney to the interview both as a witness and to take detailed notes. Those notes will become an important record of the interview in the event that USCIS refuses to videotape the interview. The note taker can also be a witness, should litigation in district court be required.

Always accompany clients who are potentially subject to CARRP to the interview. In these cases, we have seen USCIS refuse a second attorney entry to the interview. To avoid confronting this problem the day of the interview, once the interview is scheduled write to the head of the relevant USCIS field office and your assigned examiner to request that USCIS allow a second attorney into the interview. Obtain such permission in writing.

Advise your client to fully answer questions and not to leave an interview unless doing so is necessary to avoid a greater harm than a denial of the application (such as removal proceedings or criminal charges). Refusing to answer questions can itself constitute a basis for denying an application. Similarly, walking out of an interview or refusing to answer questions could be deemed failure to prosecute an application or exhaust all administrative remedies, which also can be a basis for denial of the application.

3. Take extra care to protect naturalization applicants from denials based upon false testimony.

For naturalization applicants, it is particularly critical to be protected against accusations of “false testimony.” CARRP instructs officers to look for 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)—given that “false testimony” is the most amorphous statutory basis to deny an application—and to deny applications on that basis.

A naturalization applicant can be found lacking in the requisite “good moral character” and deemed ineligible to naturalize if he or she is found to have intentionally provided false testimony “for the purpose of obtaining any [immigration] benefits.”⁴² “False testimony” is limited to oral misrepresentations (not omissions or concealments), made under oath, with the subjective intent of obtaining an immigration benefit.⁴³ “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.⁴⁴ Importantly, the Supreme Court has concluded that a person can be found to have provided “false testimony” under 8 U.S.C. § 1101(f)(6) “if he has told even the most immaterial of lies” so long as it was accompanied by “the subjective intent of obtaining immigration or naturalization benefits.”⁴⁵ However, the Government bears the burden of proving by clear and convincing evidence that the misrepresentation was made with the requisite intent and, as the Supreme Court said, “it will be relatively rare that the Government will be able to prove that a misrepresentation that does not have the natural tendency to influence the decision regarding immigration or naturalization benefits was nonetheless made with the subjective intent of obtaining those benefits.”⁴⁶

There are a few common bases for denials based on “false testimony.” First, USCIS often relies on the vague N-400 naturalization application question about memberships and associations to find that an applicant falsely testified. Part 12 Question 9 of the N-400 asks applicants, “Have you ever been a member of, involved in, or in any way associated with, any organization, association, fund, foundation, party, club, society, or similar group in the United States or in any other location in the world?” Numerous courts have noted that the N-400 application does not define the terms “member” or “associated,” and when asked, USCIS officers notoriously give a range of answers, and sometimes refuse to define the terms at all. Because the question is vague, 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.

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. For example, ACLU SoCal client Tarek Hamdi was accused of providing false testimony for failing

⁴² 8 U.S.C. § 1101(f)(6); *see also* 8 C.F.R. § 316.10(b)(2)(vi).

⁴³ 8 C.F.R. § 316.10(b)(2)(vi).

⁴⁴ *Kungys v. United States*, 485 U.S. 759, 780 (1988); *see also Hovsepian*, 422 F.3d 883, 887-88 (9th Cir. 2005) (finding that there is no subjective intent to deceive under Section 1101(f)(6) where inaccuracies resulted from poor memory, mistake, or vague questioning).

⁴⁵ *Kungys*, 485 U.S. at 780.

⁴⁶ *Id.*

to disclose his association with the Islamic charity Benevolence International Foundation on the basis of a single donation made to the organization.

Second, USCIS often relies on undisclosed erroneous or misconstrued information, usually from the FBI, to support conclusions that an applicant is a “national security concern.” USCIS will rely on that information to claim that an applicant lied in his interview about a particular subject stating that it has “information”—which it will not reveal—that indicates the opposite is true. USCIS’s failure to disclose such information to the applicant prevents the agency from testing the veracity of the information, and thereby leaves erroneous assumptions untested in the adjudicative process.

For example, USCIS denied the naturalization application of Jamal Abusamhadaneh, a Jordanian national and practicing Muslim, on grounds that he failed to disclose his membership or association with a mosque he attended, the Muslim American Society, and the Muslim Brotherhood.⁴⁷ USCIS’s claim that he was a member of those organizations 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 adjudicated his naturalization application never confronted Jamal with the report during his naturalization interview. 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.”⁴⁸ 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.⁴⁹

Finally, USCIS routinely ignores 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.⁵⁰ Time and again, USCIS claims an applicant “falsely testified” absent any evidence that the applicant had the requisite intent to falsely testify. Such decisions are particularly absurd where the record of the administrative proceedings reflect that the applicants made every effort to be as accurate, forthcoming, and truthful as possible in answering the membership and association question. Accordingly, 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.

4. Thoroughly respond to requests for evidence to avoid denials based upon failure to prosecute.

⁴⁷ See generally *Abusamhadaneh v. Taylor*, 873 F. Supp. 2d 682, 684 (E.D. Va. 2012).

⁴⁸ *Id.* at 686.

⁴⁹ *Id.* at 699-702.

⁵⁰ 8 C.F.R. § 316.10(b)(2)(vi); see also 8 U.S.C. § 1101(f)(6); *Kungys*, 485 U.S. at 780 (“§ 1101(f)(6) applies to only those misrepresentations made with the subjective intent of obtaining immigration benefits.”).

Occasionally, USCIS uses the pretext that an applicant failed to fully comply with a Request for Evidence (“RFE”) as another tactic for denying applications in CARRP cases. USCIS will frequently issue multiple RFEs to applicants in an 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) or 8 C.F.R. § 335.7.

C. Vet clients thoroughly and consider whether they could be at risk of removal proceedings or criminal prosecution

Because CARRP encourages deportation and criminal prosecution, attorneys are advised to carefully vet a client’s background. 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.⁵¹ Attorneys who are familiar with the client’s history from the outset are better suited to protect the client from such retaliation. Pay particular attention to anything in a client’s history that could be deemed “material support” of terrorism, which is a basis for deportation (although not for denial of naturalization). Also consider prior immigration violations, and fraud or false statements on immigration applications. At least some individuals who were subject to CARRP have been prosecuted for criminal tax fraud, marriage fraud, and other criminal matters after filing a mandamus in federal court. In addition, be sure to vet your client for compliance with the Internal Revenue Service’s Report of Foreign Bank and Financial Accounts (“FBAR”) requirements, which mandate that certain foreign financial accounts are disclosed to the Department of Treasury.⁵²

D. Advise clients not to speak to an FBI agent or any other law enforcement officer without a lawyer present

If a law enforcement agency asks to speak with a client for a “voluntary interview” after she files for an immigration benefit, instruct the client not to speak with the agency without first checking with counsel and not unless counsel is present. Because CARRP instructs USCIS to rely upon derogatory information (provided by the FBI or any other agency) to find reasons to deny the application, any interview could be used against the client and lead to a denial of the application. For example, USCIS might compare the FBI’s report of an interview against statements given to USCIS to find discrepancies and allege false testimony.

Tell clients that if they are approached by an FBI or other law enforcement agent after filing an application for immigration benefits, they should get the officer’s contact information and call counsel immediately. Then, counsel can determine whether it is in the client’s interest to give a voluntary interview. To do so, contact the law enforcement agency and ask the purpose of the interview and whether the client is under investigation, and, if so, whether a U.S. attorney or

⁵¹ We are also aware of cases subject to CARRP where the government moved to denaturalize the applicant years later or argued that the applicant did not qualify for naturalization because of a false statement on a green card application.

⁵² INTERNAL REVENUE SERVICE, REPORT OF FOREIGN BANK AND FINANCIAL ACCOUNTS (FBAR), <https://www.irs.gov/businesses/small-businesses-self-employed/report-of-foreign-bank-and-financial-accounts-fbar> (last visited Sept. 27, 2016).

other prosecutor has been assigned to the investigation. If so, contact the prosecutor to get more information about the purpose of the interview. Make it clear that the client does not consent to an open-ended fishing expedition, as opposed to an interview on a specific investigational topic. After identifying the purpose of the interview, counsel and the client can discuss the pros and cons of doing the interview. If the client decides to do the interview, it is advisable to ask the FBI to conduct the interview at counsel's office, rather than at the FBI's office, the client's home, or a public place.

E. Use due process protections to protect and advocate for your client

USCIS never discloses that a case is subject to CARRP, that he or she has been designated a "national security concern," or the reasons for the designation. Often, this information is erroneous or misinterpreted by USCIS or the law enforcement agencies with which it is working. Counsel can try to get such information by using the "Inspection of Evidence" regulation, 8 C.F.R. 103.2(b)(16)(i) and (ii), which requires notice of intent to deny and full disclosure of any adverse information that formed the basis for determining statutory eligibility and an opportunity for the applicant to rebut that information prior to adjudication. According to this regulation, the decision itself only can 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. USCIS's failure to disclose derogatory information to applicants in such cases also likely violates an applicant's due process rights.

Accordingly, if you receive a notice of intent to deny, try pushing back by not only pointing out why the reasons for the denial are unmerited, but also by arguing that the denial is pretextual and that the reasons for the denial must be disclosed under the regulation. Attorneys may wish to 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.⁵³

F. Consider taking the case to federal court

Immigration attorneys are also advised to consider the benefits of challenging lengthy delays and, in the context of naturalization, implausible denials in federal court. Often it only takes an attorney filing an action in federal court to get a decision on the application. Moreover,

⁵³ 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 this decision 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).

as detailed below, de novo review in federal district courts is available for denials of naturalization applications. Some federal courts have favorably ruled for naturalization applicants whose cases appeared to have been subjected to CARRP by USCIS, and they have awarded attorneys' fees to the successful litigants under the Equal Access to Justice Act in at least some of those cases.

V. ADMINISTRATIVE APPEALS AND FEDERAL COURT ACTIONS

A. Non-Naturalization Cases and Naturalization Cases Delayed Before An Interview

If a client's application is delayed, attorneys may wish to consider filing a mandamus action in federal court requesting that the court order USCIS to adjudicate the delayed application. *See generally* 28 U.S.C. § 1361. There are some risks associated with filing a mandamus action to compel adjudication in a CARRP case. While a successful mandamus action will force the agency to make a decision, USCIS likely will deny the application if the agency still considers the person a possible "national security concern." Lawyers and their clients therefore also are advised to prepare for and consider what they would do in the event of a denial, including whether they would appeal the decision.

In delayed cases other than post-interview naturalization, such as asylum or adjustment of status, or in naturalization cases where a long period of time has passed and there has not been an interview, you may file a mandamus under 5 U.S.C. §§ 704 and 706.

B. Naturalization Cases Delayed After Interview

If USCIS has not adjudicated a naturalization application within 120-days after an interview, 8 U.S.C. § 1447(b) provides that a federal court has jurisdiction and may either: (1) conduct a hearing and adjudicate the naturalization application; or (2) "remand the matter, with appropriate instructions, to the Service to determine." The court has discretion whether to decide the matter itself or to remand back to the agency to compel it to make a decision. In CARRP cases, given the likelihood of denial by USCIS, it is advisable to ask the district court to conduct the hearing. To support this request, counsel may wish to advise the court about the existence of CARRP and why the client likely is subject to it, if you think it is appropriate to alert the court to why your case is being treated differently. However, in the Ninth Circuit, district courts ordinarily will remand the matter back to USCIS for a decision.⁵⁴

C. Appeal Naturalization Denials (Denials of N400s)

A denial of a N400 naturalization application may be appealed to an "immigration officer."⁵⁵ The appeal is filed by mail using Form N-336, Request for a Hearing on a Decision in Naturalization Proceedings. The N-336 filing must include a copy of the N-400 naturalization

⁵⁴ *See Hovsepian*, 307 F.3d at 932 ("[T]he district court should ordinarily remand the matter, which, of course, would permit judicial review once the applicant has exhausted his administrative remedies.").

⁵⁵ INA §336(a).

denial and a new form G-28. The N-336 must be filed within 30 days of receipt of the N-400 denial, or 33 days of denial if the decision was mailed.⁵⁶

D. Appeal of N-336 Denial to Federal District Court (8 U.S.C. § 1421(c))

In addition, attorneys may want to consider challenging naturalization denials in federal district court under 8 U.S.C. § 1421(c), particularly in CARRP cases where denials are so often pretextual.⁵⁷ Successful litigants may be able to recover attorneys' fees and costs under the Equal Access to Justice Act ("EAJA"). Indeed, even in CARRP cases, courts in the Ninth Circuit have awarded attorneys' fees.⁵⁸

An applicant who receives a denial of their N-336 appeal may appeal that denial to the United States district court for the district in which the applicant resides.⁵⁹ The district court will review the applicant's eligibility to naturalize de novo.⁶⁰ Because review is de novo, the district court will make its own findings of fact and conclusions of law and does not need to rely on the administrative record. The court must conduct a hearing (i.e. a bench trial) de novo on the application at the applicant's request,⁶¹ meaning an applicant should request a hearing in his or her complaint.

According to agency regulation, applicants have 120 days from the date of the decision on the N-336 to file a district court action under 8 U.S.C. § 1421(c). There is a good argument, however, that a court should not enforce this time limit because the agency lacked congressional authority to limit judicial review in this way. In *Nagahi v. INS*, 219 F.3d 1166, 1171 (10th Cir. 2000), the Tenth Circuit held that 8 C.F.R. § 336.9(b) "is beyond the authority delegated to the INS and will not be applied," noting that the relevant statutory limitation would be six years under the Administrative Procedures Act ("APA").

Generally, applicants must exhaust all administrative remedies with USCIS before seeking judicial review in a naturalization case. There is one exception to this rule. If USCIS

⁵⁶ 8 CFR §§ 336.2(a), 103.5a(b).

⁵⁷ Specifically, 8 U.S.C. § 1421(c) provides: "JUDICIAL REVIEW A person whose application for naturalization under this subchapter is denied, after a hearing before an immigration officer under section 1447(a) of this title, may seek review of such denial before the United States district court for the district in which such person resides in accordance with chapter 7 of title 5. Such review shall be de novo, and the court shall make its own findings of fact and conclusions of law and shall, at the request of the petitioner, conduct a hearing de novo on the application." And "Section 1447(a) of this title," referenced in 8 U.S.C. § 1421(c), provides "If, after an examination under section 1446 of this title, an application for naturalization is denied, the applicant may request a hearing before an immigration officer." This is done through filing an N366.

⁵⁸ See, e.g., *Hamdi v. USCIS*, No. 10-00894 (C.D. Cal. Feb. 15, 2013 and May 20, 2013) (awarding \$229,823.38 in attorneys' fees and \$7,827.09 in costs); *Hajro v. Barrett*, 2012 U.S. Dist. LEXIS 133363 (C.D. Cal. Sept. 18, 2012) (awarding \$66,764.44 in attorneys' fees and costs); but see *Atalla v. USCIS*, 586 Fed. Appx. 288, 290 (9th Cir. 2014) (reversing district court's award of EAJA fees).

⁵⁹ 8 U.S.C. § 1421(c).

⁶⁰ *Id.*

⁶¹ *Id.*

fails to render a decision within 120 days of the applicant's naturalization interview,⁶² then the applicant may seek judicial review under 8 U.S.C. § 1447(b), discussed above.

Any 8 U.S.C. § 1421(c) complaint must allege all the reasons why the client is eligible to naturalize and explain that your client has exhausted administrative options. In addition, counsel is advised to consider whether it makes sense to assert the basis for the belief that the denial is due to CARRP. Whether to mention CARRP, and if so, to what degree may depend on an individual client's circumstances. However, it may be helpful to give the court background on CARRP and assert that, upon information and belief, USCIS denied the application pursuant to CARRP and not based on any valid statutory basis.⁶³

As of the date of this advisory, federal court decisions in CARRP cases have been overwhelmingly favorable to the plaintiffs, including cases where USCIS denied applications based upon false testimony about membership or association with Islamic charities, Muslim student groups, Islamic religious practices, mosques, etc.⁶⁴

VI. FILING FREEDOM OF INFORMATION ACT REQUESTS AND OTHER REQUESTS FOR INFORMATION

In any case where there is a possibility that the case falls under CARRP, it is recommended that counsel make best efforts to compile evidence that USCIS has in its possession. Doing so will (1) possibly help demonstrate that the case has been subject to unauthorized delays and criteria not relevant to eligibility for the immigration benefit, and (2) possibly help identify why the case is subject to CARRP, which may inform how to address the "national security concern" in any litigation strategy. Consider whether there are ways to

⁶² If USCIS conducts multiple interviews, then the 120 days runs from the date of the first interview. 8 C.F.R. § 335.3.

⁶³ For a detailed explanation of why CARRP is unlawful, see the ACLU's complaint in *Muhanna v. USCIS*, No. 14-cv-05995 (C.D. Cal. July 31, 2014), available at https://www.aclusocal.org/wp-content/uploads/2014/07/CPT.DCT_.Complaint-073114.dkt-1.pdf, and our report on CARRP, *supra* note 9.

⁶⁴ See, e.g., *Khawaja v. Mueller*, 2012 U.S. Dist. LEXIS 143127 (S.D. Tex. 2012) (rejecting USCIS's accusations Khawaja falsely testified by failing to list his membership in PTA of Islamic school and mosque in his naturalization application); *Abusamhadaneh v. Taylor*, 873 F.Supp.2d 682 (E.D. Va. 2012) (rejecting in a ninety-page opinion USCIS's accusations as unfounded and overblown that petitioner falsely testified about his association with a mosque, the Muslim Brotherhood, and the Muslim American Society); *Hamdi v. USCIS*, 2012 WL 632397 (C.D. Cal. 2012) (rejecting USCIS's accusations that application falsely testified about his association with the Benevolence International Foundation and other accusations); *Hajro v. Barrett*, 2012 WL 968087 (N.D. Cal. 2012) (rejecting USCIS's accusations that Hajro falsely testified about his association with a Bosnian civilian patrol and an Islamic religious practice); *Atalla v. Kramer*, 2011 WL 2457492 (D. Ariz. 2011) (rejecting USCIS's accusations that he falsely testified about his association with the Global Relief Foundation and other charities).

In addition, several cases have been filed raising statutory and constitutional challenges to the legality of the CARRP program, starting with *Muhanna v. USCIS*, No. 14-cv-05995 (C.D. Cal. July 31, 2014), a case filed in 2014 in a California federal court by the ACLU of Southern California, the ACLU's national office, the Law Office of Stacy Tolchin, and Jones Day on behalf of five naturalization applicants. See <https://www.aclusocal.org/muhanna/>. Plaintiffs voluntarily dismissed the *Muhanna* case after USCIS swiftly adjudicated their applications. Since then, at least three cases raising identical claims and allegations to the *Muhanna* case have been filed in federal courts in Missouri and Florida, also on behalf of naturalization applicants. *Arapí et al v. U.S. Citizenship & Immigration Services et al.*, No. 16-00692 (E.D.M.O. May 18, 2016); *Al-Sasdoon, et al., v. Johnson*, No. 16-cv-0119, (D. Minn. Apr. 27, 2016); *Khan v. USCIS*, No. 15-23406 (S.D. FL (Sept. 9, 2015).

compel USCIS to disclose whether the case has been subject to CARRP, such as through a FOIA request, obligations to disclose your client’s A-file, or, if applicable, through immigration court discovery procedures.

A. Filing a FOIA request

We recommend that you file FOIA requests with USCIS, CBP, the Department of State, the FBI, and the Department of Homeland Security’s Office of Biometric Identity Management (“OBIM”). Be sure to ask for all records these departments have on a client, including all video and audio recordings. In the request, include the client’s name, A number, date of birth, a description of the request, and a time limitation on the request (for example, if your client entered the U.S. in 2007 but applied for a visa from abroad in 2005, you may want to request all documents since January 1, 2005). Follow the instructions for FOIA requests on each of these agencies respective websites.

Should the agency return a FOIA request with withholdings, it is advisable to file an appeal letter with the agency to see if you can get any information that was initially redacted. The deadline for an appeal to the agency will depend on the agency, so check the denial letter and the relevant agency’s website regarding FOIAs.

Be sure to exhaust administrative remedies by filing an appeal with the agency before trying to take your case to federal court. Federal courts have jurisdiction to “enjoin the agency from withholding agency records.”⁶⁵ Although FOIA exhaustion is not a jurisdictional requirement, it is a prudential one, so it is wise to “exhaust” administrative remedies by going through the options available at the agency level before seeking federal court review.⁶⁶ This is because “failure to exhaust precludes judicial review if the purposes of exhaustion and the particular administrative scheme support such a bar.”⁶⁷

B. What do all the FOIA redactions mean?

In general, materials produced by the government in CARRP cases contain an unusually high number of redactions. Some redactions may be an indication that the client’s case is being processed, has been processed, or will be processed, under CARRP. The following designations among any official TECS/IBIS or NCIS documents in the A-file are indicators that USCIS is treating, has treated, or will treat the client as a “national security concern” and process his or her application to CARRP:⁶⁸

TECS/IBIS Table Code	Code Description
SF	TSA “No Fly” List

⁶⁵ 5 U.S.C. § 552(a)(4)(B).

⁶⁶ See e.g., *Wilbur v. CIA*, 355 F.3d 675, 676 (D.C. Cir. 2004) (per curiam) (citing *Oglesby v. United States Dep’t of the Army*, 920 F.2d 57, 61-64, 65 n.9 (D.C. Cir. 1990)); see also DEP’T OF JUSTICE, DEPARTMENT OF JUSTICE GUIDE TO THE FREEDOM OF INFORMATION ACT, https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/procedural-requirements_0.pdf (last visited Sept. 27, 2016).

⁶⁷ *Wilbur*, 355 F.3d at 677 (quoting *Hidalgo v. FBI*, 344 F.3d 1256, 1258-59 (D.C.Cir.2003)) (internal quotation marks omitted).

⁶⁸ See MUSLIMS NEED NOT APPLY, *supra* note 9, at 57.

SK	Known Terrorist
ST	Suspected Terrorist
SX	Associate of Terrorist

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

VII. WANT MORE INFORMATION ON CARRP?

For more information on CARRP, check out the ACLU of Southern California's CARRP website and report on CARRP at <https://www.aclusocal.org/CARRP/>, as well as our library of policy documents on CARRP obtained through a Freedom of Information Act Request, <https://www.aclusocal.org/CARRP/library.html>. Individuals also can contact Jennie Pasquarella, Director of Immigrants' Rights/Senior Staff Attorney, ACLU of Southern California at jpasquarella@aclusocal.org

VIII. ADDENDUM: EXAMPLES

- Example FOIA request
- Example de novo review complaint
- Example federal court mandamus