

EXHIBIT 1

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U.S. Department of Homeland Security

U.S. Citizenship and Immigration Services
Office of the Director
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

Memorandum

Original Dated April 11, 2008

TO: FIELD LEADERSHIP

FROM: Jonathan R. Scharfen, Deputy Director /S/

SUBJECT: Policy for Vetting and Adjudicating Cases with National Security Concerns

I. Purpose

This memorandum outlines USCIS policy for identifying and processing cases with national security (NS) concerns,¹ and rescinds existing policy memoranda pertaining to reporting and resolving NS concerns. It also identifies Headquarters' Office of Fraud Detection and National Security (HQFDNS) as the point of contact for technical advice to assist the field² with vetting and adjudicating cases with NS concerns. This policy, known as the Controlled Application Review and Resolution Program (CARRP), establishes the following:

- The field is responsible for vetting and documenting Non-Known or Suspected Terrorist (Non-KST)³ NS concerns, and adjudicating all NS-related applications and petitions.⁴

¹A **NS 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 sections [212\(a\)\(3\)\(A\), \(B\), or \(F\)](#), or [237\(a\)\(4\) \(A\) or \(B\)](#) of the Immigration and Nationality Act (the Act). This determination requires that the case be handled in accordance with CARRP policy outlined in this memorandum.

² **Field** refers to Field Offices, Service Centers, the National Benefits Center, and equivalent offices within the Refugee, Asylum, and International Operations Directorate (RAIO).

³ **Known or Suspected Terrorist (KST)** is a category of individuals who have been nominated and accepted for placement in the Terrorist Screening Database (TSDB), are on the Terrorist Watch List, and have a specially-coded lookout posted in TECS/IBIS, and/or the Consular Lookout Automated Support System (CLASS), as used by the Department of State. **Non-KST** is the category of remaining cases with NS concerns, regardless of source, including but not limited to: associates of KSTs, unindicted co-conspirators, terrorist organization members, persons involved with providing material support to terrorists or terrorist organizations, and agents of foreign governments. Individuals and organizations that fall into this category may also pose a serious threat to national security.

⁴This policy applies to all applications and petitions that convey immigrant or non-immigrant status. This policy does not apply to petitions that do not convey immigrant or non-immigrant status. See Operational Guidance for instructions.

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- The FDNS-Data System (FDNS-DS) is the primary system for recording vetting, deconfliction, and other resolution activities.⁵
- HQFDNS maintains responsibility for external vetting⁶ of Known or Suspected Terrorist (KST) hits; and, upon request from the field, provides advice, technical assistance (including draft decisions), and operational support on KST and Non-KST cases with NS concerns.

II. Effective Date and Implementation

Operational Guidance implementing this policy will soon be issued by the Domestic Operations Directorate⁷ (DomOps) and individual components of the Refugee, Asylum, and International Operations Directorate (RAIO). This policy will be effective upon issuance of each directorate's respective guidance.

III. Rescission of Prior Policy and Procedures

Upon issuance of the Operational Guidance, the following policy memoranda and procedures will be rescinded:

- *Processing of Applications for Ancillary Benefits Involving Aliens Who Pose National Security or Egregious Public Safety Concerns*, dated May 11, 2007;
- *Processing of Forms I-90 Filed by Aliens Who May Pose National Security or Egregious Public Safety Concerns*, dated May 11, 2007;
- *National Security Reporting Requirements*, dated February 16, 2007;
- *National Security Record Requirements*, dated May 9, 2006;
- *Permanent Resident Documentation for EOIR and I-90 Cases*, dated April 10, 2006;
- Appendix A of the Inter-Agency Border Inspection System (IBIS) [Standard Operating Procedure](#), dated March 1, 2006;

⁵ If FDNS-DS is not currently available at any specific field office, officers must document CARRP procedures by another method as identified in Operational Guidance.

⁶ **External Vetting** consists of inquiries to record owners in possession of NS information to identify: (a) facts or fact patterns necessary to determine the nature and relevance of the NS concern, including status and results of any ongoing investigation and the basis for closure of any previous investigation; and (b) information that may be relevant in determining eligibility, and when appropriate, removability. See section IV.C for further instruction.

⁷ The **Domestic Operations Directorate** comprises Service Center Operations and Field Operations.

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- *Revised Instructions for Processing Asylum Terrorist/Suspected Terrorist Cases*, dated January 26, 2005; and
- Section VIII of the Asylum Identity and Security Check Procedures Manual.

Officers should refer to relevant Operational Guidance⁸ when adjudicating the following, *if found to involve NS or Egregious Public Safety*⁹ concerns:

- Petitions that do *not* convey immigrant or non-immigrant status;
- Applications for employment authorization;
- Applications for travel authorization;
- Replacement Lawful Permanent Resident cards;
- *Santillan*¹⁰ cases.

IV. Policy Guidance

This policy, in conjunction with Operational Guidance, provides direction to identify and process cases containing NS concerns in the most efficient manner. The process allows sufficient flexibility to manage the variety of cases encountered by USCIS.

Officers should note that at any stage of the adjudicative process described below, deconfliction may be necessary before taking action on a KST or Non-KST NS concern. Deconfliction is a term used to describe coordination between USCIS and another government agency owner of NS information (the record owner) to ensure that planned adjudicative activities (e.g., interview, request for evidence, site visit, decision to grant or deny a benefit, or timing of the decision) do not compromise or impede an ongoing investigation or other record owner interest.

A. Identifying National Security Concerns

As a result of the security checks¹¹ or at any stage during the adjudicative process, the

⁸ Including [Policy Memorandum 110](#) (*Disposition of Cases Involving Removable Aliens*) issued July 11, 2006. That memorandum is not rescinded and does not apply to asylum applications.

⁹An **Egregious Public Safety (EPS)** case is defined in Policy Memorandum 110.

¹⁰ *Santillan et al. v. Gonzales, et al.*, 388 F. Supp2d 1065 (N.D. Cal. 2005).

¹¹**Security checks** may consist of the FBI Name Check, FBI Fingerprint Check, Treasury Enforcement Communications System/Inter-Agency Border Inspection System (TECS/IBIS), or United States Visitor and Immigrant Status Indicator Technology/Automated Biometrics Identification System (US VISIT-IDENT). Specific checks or combinations of checks are required for each application or petition type, pursuant to each component's procedures.

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officer may identify one or more indicators¹² that may raise a NS concern. In such cases, the officer must first confirm whether the indicator(s) relates to the applicant, petitioner, beneficiary, or derivative (“the individual”).¹³ When a Non-KST NS indicator has been identified, the officer must then analyze the indicator in conjunction with the facts of the case, considering the totality of the circumstances, and determine whether an articulable link exists between the individual and an activity, individual, or organization described in sections 212(a)(3)(A), (B), or (F), or 237(A) or (B) of the Act.

1. For Non-KST NS indicators, the officer should refer to the Operational Guidance for instruction on identifying those indicators that may raise a NS concern.
2. After confirming the existence of a KST NS concern via a TECS/IBIS check, the officer must contact the Terrorist Screening Center (TSC), as instructed in the content of the TECS/IBIS record, and must determine whether the KST NS concern relates to the individual. Officers are not authorized to request from the record owner any NS information related to a KST NS concern other than identification of the subject.

The officer must also consider and evaluate, in all cases, indicators related to family members or close associates of the individual to determine whether those indicators relate to the individual as well.

B. Internal Vetting and Assessing Eligibility in Cases with National Security Concerns

For both Non-KST and KST concerns, once the concern has been identified, the officer must conduct a thorough review of the record associated with the application or petition to determine if the individual is eligible for the benefit sought. The officer must also conduct internal vetting¹⁴ to obtain any relevant information to support adjudication and, in some cases, to further examine the nature of the NS concern.¹⁵

For Non-KST NS concerns, the field is authorized to perform internal and external vetting. See step IV.C below for an explanation of external vetting.

For KST NS concerns, the field is only authorized to perform internal vetting. Record owners in possession of NS information are not to be contacted. HQFDNS has sole responsibility for external vetting of KST NS concerns.

¹² Guidelines for types of indicators that may be encountered during adjudication will be provided as an attachment to the Operational Guidance to assist officers in identifying NS concerns.

¹³ For purposes of this memorandum, the term “individual” may include a petitioner.

¹⁴ **Internal vetting** may consist of DHS, open source, or other systems checks; file review; interviews; and other research as specified in Operational Guidance.

¹⁵ If an [exemption is granted under section 212\(d\)\(3\)\(B\)\(i\) of the Act](#) for a terrorist-related inadmissibility ground, and if no other NS concern is identified, no further vetting is necessary and the application may continue through the routine adjudication process.

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The purpose of the eligibility assessment is to ensure that valuable time and resources are not unnecessarily expended externally vetting a case with a record owner when the individual is otherwise ineligible for the benefit sought. When this is the case, the application or petition may be denied on any legally sufficient grounds.¹⁶

When a NS concern exists, the NS information may be of a restricted or classified nature. These NS or law enforcement operations-based restrictions are often directly linked to protecting sensitive sources, methods, operations, or other elements critical to national security. Access to this information is therefore limited to those with a direct need to know and, when applicable, appropriate security clearance. As a policy matter, USCIS requires that a thorough eligibility assessment and completion of internal vetting precede any outreach for access to NS information.

C. External Vetting of National Security Concerns1. Non-KST NS Concerns

In a case with a Non-KST NS concern, the officer must initiate the external vetting process before the case may proceed to final adjudication if:

- the application or petition appears to be otherwise approvable, and internal vetting is complete;
- there is an identified record owner in possession of NS information; and
- the NS concern remains.

At this stage, the officer confirms with the record owner the earlier USCIS identification of the NS concern (*see* step IV.A above) and obtains additional information regarding the nature of the NS concern and its relevance to the individual. This is accomplished by obtaining from the record owner facts and fact patterns to be used in confirming whether an articulable link exists between the individual and an activity, individual, or organization described in sections 212(a)(3)(A), (B), or (F) or 237(A) or (B) of the Act.

Additionally, the officer seeks to obtain additional information that may be relevant in determining eligibility and, when appropriate, removability. This process requires close coordination with law enforcement agencies, the Intelligence Community,¹⁷ or other record owners. If the external vetting process results in a finding that the NS concern no longer exists, and if the individual is otherwise eligible for the benefit sought, the application or petition is approvable.

¹⁶ All references in this memorandum to “denying” a case also encompass the possibility of referring an asylum case to an Immigration Judge.

¹⁷ Officers are not authorized to contact Intelligence Community members; such outreach is conducted by HQFDNS.

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When USCIS obtains information from another government agency during the external vetting process, DHS policy guidance¹⁸ requires that authorization from the record owner be obtained prior to any disclosure of the information. Therefore, in order to use the information during adjudication, prior written authorization must be obtained from the record owner. If the information indicates that the individual is ineligible for the benefit sought, and if permission from the record owner has been secured for the use of unclassified information,¹⁹ the application or petition may be denied based on that unclassified information.

2. KST NS Concerns

For KST NS concerns, field officers are not authorized to conduct external vetting with record owners in possession of NS information. As stated above, only internal vetting of KST NS concerns is permitted at this stage. HQFDNS has sole responsibility for external vetting of KST NS concerns, which must be conducted in cases with a confirmed KST hit that have been determined to be otherwise approvable.

D. Adjudicating National Security Cases

Upon completion of required vetting, if the NS concern remains, the officer must evaluate the result of the vetting and determine any relevance to adjudication, obtain any additional relevant information (e.g., via a request for evidence, an interview, and/or an administrative site visit), and determine eligibility for the benefit sought. Adjudication of a case with a NS concern focuses on thoroughly identifying and documenting the facts behind an eligibility determination, and, when appropriate, removal, rescission, termination, or revocation under the Act.

If the individual is ineligible for the benefit sought, the application or petition may be denied.

If the vetting process results in a finding that the NS concern no longer exists, and if the individual is otherwise eligible for the benefit sought, the application or petition may be approved.

Non-KST NS Concerns

Officers are not authorized to approve applications with confirmed Non-KST NS concerns without supervisory approval and concurrence from a senior-level official (as

¹⁸ See [DHS Management Directive 11042.1](#), *Safeguarding Sensitive But Unclassified (For Official Use Only) Information*, dated 1-6-2005; and DHS Memorandum, *Department of Homeland Security Guidelines for the Use of Classified Information in Immigration Proceedings (“Ridge Memo”)*, dated 10-4-2004.

¹⁹Requests for declassification of information and use of classified information during adjudication may only be made by HQFDNS. Officers should refer to Operational Guidance for further instruction.

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defined in Operational Guidance). That official also has discretion to request additional external vetting assistance from HQFDNS in accordance with Operational Guidance.

2. KST NS Concerns

Officers are not authorized to approve applications with confirmed KST NS concerns. If the senior-level official concurs, external vetting assistance must be requested from HQFDNS in accordance with Operational Guidance.

V. Conclusion

Officers should make every effort to complete NS cases within a reasonable amount of time, by taking into consideration the nature of the concern and the facts contained in each individual case. HQFDNS is available to provide technical expertise in answering questions that may arise in these cases. Any questions or issues that cannot be resolved in the field regarding identification, vetting, or adjudication of cases with NS concerns are to be promptly addressed through the established chain of command.

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EXHIBIT 3

EXHIBIT

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The Honorable Richard A. Jones

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ABDIQAFAR WAGAFE, *et al.*,

Plaintiffs,

v.

DONALD TRUMP, *et al.*,

Defendants.

No. 2:17-cv-00094-RAJ

DECLARATION OF MATTHEW D.
EMRICH IN SUPPORT OF
DEFENDANTS' MOTION FOR
PROTECTIVE ORDER

I, Matthew D. Emrich, do hereby declare and say:

1. I am the Associate Director of the Fraud Detection and National Security (“FDNS”) Directorate, U.S. Citizenship and Immigration Services (“USCIS”), Department of Homeland Security (“DHS”). I have held this position since November 15, 2015.

2. As the head of FDNS, I report directly to the Director of USCIS and Deputy Director of USCIS. Prior to becoming Associate Director of FDNS, beginning in November 2012, I was the Deputy Associate Director of FDNS. I first joined USCIS in May 2010, as the Chief of FDNS’s Intelligence Division. Prior to my employment with USCIS, I held various positions within the DHS and its components, including as the

1 Chief of the DHS Threat Task Force and a Deputy Assistant Director of Immigration and
2 Customs Enforcement (“ICE”)'s Office of Intelligence.

3 3. As the FDNS Associate Director, I am responsible for overseeing all policy,
4 planning, management, and execution functions for FDNS. FDNS's mission is to
5 enhance the integrity of the legal immigration system by leading USCIS's efforts to
6 identify threats to national security and public safety, detect and combat immigration
7 benefit fraud, and remove systemic and other vulnerabilities.

8 4. After consideration of information available to me in my capacity as USCIS
9 Associate Director of the FDNS Directorate, the matters contained in this declaration are
10 based upon my understanding of the case of *Wagafe, et al., v. Trump, et al.*, Case No.
11 2:17-cv-00094, now pending in the United States District Court for the Western District
12 of Washington.

13 **How USCIS Identifies Individuals as a National Security Concern**

14 5. The Controlled Application Review and Resolution Process (“CARRP”)
15 policy is a consistent USCIS-wide approach to identify, process, and adjudicate
16 applications and petitions for immigration benefits that involve national security
17 concerns. There are four phases in CARRP: identifying the national security concern,
18 internal vetting, external vetting, and adjudication.

19 6. A national security concern exists when an individual or organization has
20 been determined to have an articulable link to prior, current, or planned involvement in,
21 or association with, an activity, individual, or organization described in 8 U.S.C.
22 §§1182(a)(3)(A), (B), or (F) or 1227(a)(4)(A) or (B).¹ If there is an indicator of a
23 national security concern, but USCIS determines that it does not relate to the individual
24 or there is no articulable link between the individual and the national security concern,
25 the application or petition is not subject to the CARRP policy.

26 ¹ These provisions refer to the statutory inadmissibility and deportability grounds that relate to espionage, sabotage,
27 trade violations, activities in opposition to or to control or overthrow the U.S. government, terrorism, and
28 associations with terrorist organizations where the alien intends, while in the U.S. to be involved in activities that
could endanger the U.S.

1 7. Although additional eligibility requirements must be met to be eligible for
2 adjustment of status to that of a lawful permanent resident or to naturalize, the grounds
3 above relate to national security, and when an articulable link to one of these grounds
4 exists, the individual is subject to the CARRP policy.

5 8. Individuals who raise national security concerns are considered either known
6 or suspected terrorists (“KST”) or non-KSTs.

7 9. A KST is an individual who has been nominated and accepted for placement
8 in the Terrorist Screening Database (“TSDB”) and is on the Terrorism Watchlist.
9 Individuals who are placed into the TSDB are included in the TECS² system with a
10 certain code indicating that the individual is a KST.

11 10. All other individuals who raise national security concerns are considered
12 non-KSTs. Non-KSTs can be identified in the following ways:

- 13 • Information contained within TECS;
- 14 • Information from an FBI name check;
- 15 • Information from an FBI fingerprint check;
- 16 • Information contained within other databases owned by the Department of
17 Homeland Security (DHS), Department of State (DOS), or other agency;
- 18 • Applicant-provided information, such as information on the benefit
19 application, or applicant testimony; or
- 20 • Any other manner in which USCIS is notified or obtains information that
21 an individual has an articulable link to a national security concern.

22 11. The fact that there is information about a particular individual from any of
23 these sources does not mean that the individual is subject to the CARRP policy. Rather,
24 if the information contained within these sources provides an articulable link between
25 that individual and a national security ground of inadmissibility or removal, then the
26

27 _____
28 ² TECS is a multiagency effort with a central system that combines information from multiple agencies, databases,
and system interfaces to compile data relating to national security risks and other issues.

1 individual would be identified as a national security concern and subject to the CARRP
2 policy.

3 **How the Class Members were Identified as National Security Concerns**

4 12. The composition of the classes certified in this litigation is fluid. Individuals
5 may leave the class when their case is adjudicated, and new individuals may enter the
6 class as their case becomes pending for six months.

7 13. Within the class, the reasons that an individual is subject to the CARRP
8 policy are also fluid. An individual may be added or removed from the TSDB, which
9 affects whether the individual is a KST or non-KST. Certain investigations may also
10 open or close, affecting which national security ground (if any) applies to a particular
11 individual.

12 14. Any individual's case may involve multiple pieces of information from
13 various sources, including multiple background check hits, establishing an articulable
14 link between the individual and a national security ground for inadmissibility or removal.

15 15. Even if an individual is identified as a national security concern, during
16 additional phases of CARRP, such as internal and external vetting, USCIS may conclude
17 from additional information that it receives that a particular individual is not a national
18 security concern and should no longer be subject to the CARRP policy. Depending on
19 how complex the information is and how much additional vetting is needed, the national
20 security concern that was identified for an individual may be resolved in a matter of a few
21 days or weeks. In other instances, additional time is needed to resolve the concern.

22 16. USCIS understands that individuals remain in the class even after the
23 national security concern is resolved, and the case is no longer subject to the CARRP
24 policy, as long as the individual was subject to the CARRP policy at some point after the
25 class was certified, and the case remains pending. Thus, individuals may still be included
26 in the class even though the individual is no longer subject to the CARRP policy.

27 17. About 24 percent of the current class members have had their USCIS
28 national security concern resolved, and are no longer subject to the CARRP policy, but

1 they remain class members because their immigration benefit request remains pending.³
2 In these cases, the adjudication time may be unrelated to the fact that the individual was
3 at some point subject to the CARRP policy. USCIS's current average adjudication time
4 for naturalization and adjustment of status is approximately ten months, even though an
5 individual becomes a class member if an application is pending at least six months.

6 18. If an applicant is ultimately found ineligible for the immigration benefit
7 sought, then the application is denied. If the applicant is ultimately found eligible for the
8 immigration benefit sought, then the application is granted.

9 **The Stipulated Protective Order is Not Sufficient**

10 19. I understand that, in October 2017, the then-Acting Director of USCIS,
11 James McCament, formally asserted a law enforcement privilege over information that
12 would confirm or deny that any particular individual was subject to CARRP, and
13 therefore is, or was, considered by USCIS to present a national security concern. Dkt.
14 No. 94-5. I also understand that the Court subsequently ruled that Plaintiffs' need to
15 obtain this information outweighed the Government's reasons for withholding it from
16 disclosure to Plaintiffs. Dkt. No. 98 at 4. I also understand that, in its ruling, the Court
17 noted "that there is a protective order in place, Dkt. # 86, and Plaintiffs' attorneys could
18 supplement the protective order." *Id.*

19 20. USCIS considers the identities of particular individuals subject to the
20 CARRP policy (and considered by USCIS to have an articulable link to a national
21 security ground for inadmissibility or removal) to be highly sensitive, non-public, "for
22 official use only" information.⁴ This information identifies individuals currently being
23 vetted by USCIS for national security concerns (or who were considered a national
24 security concern at some point after the class was certified, and their application remains

25
26
27 ³ The class members in this litigation are constantly changing as cases are adjudicated, or the individual's case
becomes pending for at least six months. This estimate is based on who was a class member on December 1, 2017.

28 ⁴ As Mr. McCament explained in his declaration, any disclosure of information that an individual is or was subject
to CARRP is contrary to USCIS policy and should not have occurred. *See* Dkt. No. 94-5 at ¶ 19.

1 pending) and who may also be under investigation by another law enforcement or
2 intelligence agency.

3 21. In my considered professional judgment, the Stipulated Protective Order,
4 Dkt. No. 86, is not sufficient to protect information identifying the class members that is
5 to be provided to Plaintiffs pursuant to the Court's October 19, 2017 Order. The
6 Stipulated Protective Order prohibits Plaintiffs from generally publicizing the class list or
7 telling unnamed class members whether they are included on the list.⁵ It does not,
8 however, prohibit plaintiffs' counsel from sharing the information with the named
9 plaintiffs, or witnesses to whom disclosure is reasonably necessary during their
10 depositions.

11 22. Although the named plaintiffs in this action will not be included on the class
12 list, as their cases have been adjudicated, those individuals have no need to know the
13 identities of other individuals who are class members.

14 23. The Stipulated Protective Order also allows plaintiffs' counsel to seek
15 depositions, potentially from unnamed class members, and then reveal to them, during
16 the depositions, that they are class members.

17 24. Unnamed class members have un-adjudicated benefits that are currently
18 pending before USCIS, and USCIS has determined that there may be a national security
19 inadmissibility ground that may affect their eligibility for the benefit sought.

20 25. Informing those individuals that they are class members is likely to disrupt
21 proper adjudication of the benefit that they are seeking, and may make it difficult or
22 impossible for USCIS to collect all relevant evidence related to eligibility for the benefit.

23 26. While 8 C.F.R. § 103.2(b)(16)(i) requires USCIS to inform an applicant
24 about derogatory information of which the applicant is unaware, and permit the applicant
25 an opportunity to respond, the regulation is only applicable if the derogatory information

26
27 ⁵ I understand that, despite the terms of the Stipulated Protective Order, Plaintiffs' counsel have indicated their intent
28 to disclose to unnamed class members that they are on the list, i.e. subject to CARRP and are or did have an
articulable link to a national security ground for inadmissibility or removal.

1 will form a basis of the decision. Unless the regulation is implicated in a particular case,
2 USCIS cannot and does not reveal privileged and sensitive information to an applicant.

3 27. In USCIS's experience, it is difficult to gather any additional evidence if the
4 individual prematurely becomes aware that they are being vetted for a particular reason.
5 Once aware, the individual may change his or her behavior, coordinate with others to
6 prevent USCIS from collecting statements from other relevant persons, stop certain
7 behaviors, or intentionally provide misleading information.

8 28. In addition, revealing that an individual is subject to the CARRP policy may
9 disrupt a criminal investigation related to terrorism or other national security issues. For
10 example, if an unnamed class member is a bad actor, notification that he or she has been
11 subject to the CARRP policy would certainly lead the individual to suspect that their bad
12 acts are being investigated. This could disrupt an individual investigation, or, if the
13 individual is the subject of an investigation involving a large number of people, that
14 individual could report back to others in the group that their activities are likely being
15 investigated. In this way, large investigations could also be adversely affected.

16 29. While USCIS continues to maintain that the identities of the class members
17 are subject to the law enforcement privilege, USCIS also respects this Court's ruling.
18 The information, however, remains highly sensitive, and should not be shared beyond
19 those to whom it is absolutely necessary to reveal it. To that end, USCIS seeks to limit
20 dissemination of the class members' identifying information, i.e. their names, A numbers,
21 and application filing date, to Plaintiffs' attorneys of record, any experts retained by
22 Plaintiffs, and the Court and court personnel, and to require Plaintiffs' counsel to handle
23 the information in a secure fashion, such as maintaining it in a password-protected file,
24 and not transmitting over electronic systems that do not employ point-to-point
25 encryption.

26 30. USCIS also seeks to have the Court make explicit that plaintiffs' counsel
27 may not contact unnamed class members based on their inclusion in the class members
28 list, and may not confirm to unnamed class members who contact them whether they are

1 included on the class list. Such an order would prevent individuals who are currently
2 being vetted by USCIS, and potentially investigated by law enforcement or intelligence
3 agencies, from prematurely becoming aware of that fact.

4 I declare under penalty of perjury that the foregoing is true and correct.

5 Executed this 1st day of March, 2018, at Washington, D.C.

6
7 

8 _____
9 Matthew D. Emrich
10 FDNS Associate Director
11 U.S. Citizenship and Immigration Service
12 Washington, D.C.

EXHIBIT 6

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Attachment A – Guidance for Identifying National Security Concerns

I. Introduction

USCIS seeks to ensure that immigration benefits are not granted to individuals and organizations that pose a threat to national security. It is important, therefore, that officers be able to identify certain indicators of a National Security (NS) concern. A NS 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 sections 212(a)(3)(A), (B), or (F), or 237(a)(4)(A) or (B) of the Immigration and Nationality Act (the Act). This includes, but is not limited to, terrorist activity; espionage; sabotage; and the illegal transfer of goods, technology, or sensitive information.

The officer should consider the *activities, individuals, and organizations* described in sections 212(a)(3)(A), (B), and (F), and 237(a)(4)(A) and (B) of the Act as examples of indicators of a NS concern and for determining whether a NS concern exists. When evaluating whether a NS indicator or NS concern exists, however, the facts of the case do not need to satisfy the legal standard used in determining admissibility or removability. This guidance provides examples of indicators of a NS concern that are intended as signals to alert the officer to consider the totality of circumstances in determining whether a NS concern exists. While this document is not exhaustive, it is intended to serve as a reference tool for all officers when evaluating cases that may have NS concerns.

This guidance does not apply to one type of NS concern: Known or Suspected Terrorist (KST) NS hits,¹ which automatically indicate the presence of a NS concern. Rather, officers must refer to this guidance when assessing whether a *Non-KST* NS concern exists in any given case. The Non-KST category refers to all other NS concerns, regardless of source, including but not limited to: associates of KSTs, unindicted co-conspirators, terrorist organization members, persons involved in providing material support to terrorists or terrorist organizations, and agents of foreign governments. Individuals and organizations that fall into this category may also pose a serious threat to national security.

¹A **Known or Suspected Terrorist (KST)** is a category of individuals who have been nominated and accepted for placement in the Terrorist Screening Database (TSDB), are on the Terrorist Watch List, and have a specially-coded lookout posted when queried in TECS/IBIS, and/or the Consular Lookout Automated Support System (CLASS), as used by the Department of State.

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II. Process for Identifying Cases that May Include a NS Concern

At any stage of the screening or adjudicative processes, an officer may identify an indicator of a NS concern with respect to an individual or organization. Such information may be identified through the following:

- Security check results, e.g., information obtained from FBI Name Checks, FBI Fingerprint Checks, The Enforcement Communications System/Interagency Border Inspection System (TECS/IBIS), Consular Lookout Automated Support System (CLASS), Department of State Security Advisory Opinions (SAOs), United States Visitor and Immigrant Status Indicator Technology/Automated Biometric Identification System (US-VISIT/IDENT), and other system checks;
- Testimony elicited during an interview;
- Review of the petition or application, supporting documents, the A-file, or related files;
- Leads from other US Government agencies or foreign governments; and
- Other sources, including open source research.

Once an indicator is identified, the officer must evaluate whether a NS concern exists. The officer must consider the totality of circumstances to determine whether an articulable link exists between the individual or organization and prior, current, or planned involvement in, or association with, an activity, individual, or organization described in sections 212(a)(3)(A), (B), or (F), or 237(a)(4)(A) or (B) of the Act.

III. Indicators of a NS Concern

An indicator of a NS concern may be identified at any stage of the screening or adjudicative processes through the review of USCIS security checks, file information, site visit results, and any other relevant sources. The guidance below provides examples of indicators of a NS concern that appear in the Act and in non-statutory sources.

A. Statutory Indicators

1. Sections 212(a)(3)(A), (B), and (F), and 237(a)(4)(A) and (B) of the Act contain comprehensive definitions of activities (including inchoate acts of threat, attempt, or conspiracy), associations, and organizations that may imply NS concerns:
 - “Terrorist Activity” is defined at section 212(a)(3)(B)(iii) of the Act.
 - Conduct that constitutes “engaging” in terrorist activity is defined at section 212(a)(3)(B)(iv) of the Act.
 - “Terrorist Organizations” are defined at section 212(a)(3)(B)(vi) of the Act. See the Department of State website (www.state.gov/s/ct/list/) for lists of Tier I and Tier II

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terrorist organizations. See the Department of Treasury listing of Specially Designated Global Terrorist Entities pursuant to Executive Order 13224 (www.state.gov/s/ct/list/) for some organizations likely to meet the Tier III undesignated terrorist organization definition.

2. Other sections of the Act whose reference in a record may imply NS concerns, and therefore may require further research to determine whether NS concerns exist, include:
 - 208(b)(2)(A) Exceptions to Asylum Eligibility;
 - 212(a)(2)(D) Inadmissible Aliens – Money Laundering;
 - 221(i) Issuance of visas – Revocation of visas or other documents;
 - 235(c) Removal of aliens inadmissible on security and related grounds;
 - 236A Mandatory detention of suspected terrorists; habeas corpus; judicial review; and
 - 237(a)(2)(D) Deportable Aliens – Miscellaneous crimes.

B. Non-Statutory Indicators

1. Employment, Training, or Government Affiliations

Certain types of employment, training, government affiliation, and/or behavior may (or may not) be indicators of a NS concern, depending on the circumstances of the case, and require additional scrutiny to determine whether a NS concern exists. For example, an individual may have been employed by a foreign government to engage in espionage or intelligence gathering, may have received training in such activities, or may have served as an official or diplomat in a hostile foreign government. Officers may also need to consider proficiency in particular technical skills gained through formal education, training, employment, or military service, including foreign language or linguistic expertise, as well as knowledge of radio, cryptography, weapons, nuclear physics, chemistry, biology, pharmaceuticals, and computer systems.

2. Other Suspicious Activities

Certain other types of suspicious activities may (or may not) be indicators of a NS concern, depending on the circumstances of the case, and require additional scrutiny to determine whether a NS concern exists. These include but are not limited to:

- 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

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- 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.

3. Family Member or Close Associate

In some instances, the officer may be aware that the petitioner, beneficiary, applicant, dependent, or derivative is a family member or close associate of a subject with a NS concern. Such information may impact the individual's eligibility for the benefit sought and/or may indicate a NS concern with respect to the individual. In these cases, the officer must determine if the NS concern relates to the individual, and if so, if it gives rise to a NS concern for the individual. A close associate includes but is not limited to a roommate, co-worker, employee, owner, partner, affiliate, or friend.

C. Indicators of a NS Concern as Contained in Security Check Results

1. FBI Name Check

The following terms may be contained in FBI name check responses (Letterhead Memoranda (LHMs)). They relate to law enforcement investigations,² and are examples of indicators of a NS concern:

- Foreign Counterintelligence
- Acts of Terrorism
- International Terrorism
- Domestic Terrorism
- Hostage-Taking - Terrorism
- Money Laundering or suspicious financial transactions with some link to a NS activity
- Violations of Arms Control Treaty Measures
- Sabotage
- Bombings and Explosives Violations
- Threats or Attempts to Use, Possess, Produce, or Transport Weapons of Mass Destruction (WMD)
- Use, Possession, Production, or Transport of WMD

² Please note that reference to a “closed” law enforcement investigation does not necessarily mean that there is no NS concern or that the NS concern was resolved during the course of the investigation. Law Enforcement Agencies (LEAs) close investigations for a number of reasons, some substantive and others administrative. Officers need to gather additional information to determine whether a NS concern remains despite closure of an investigation.

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Exception: In some instances, a LHM may indicate that upon completion and closure of the investigation, the case agent made a definitive finding of no nexus to national security in relation to the USCIS subject. No NS concern exists if the LHM indicates a definitive finding of no nexus to national security to the USCIS subject, and no other indicator of a NS concern exists.

2. FBI Fingerprint or NCIC Criminal History Check (NN16):³

The following are examples of indicators of a NS concern present in responses to the FBI Fingerprint Check or the NCIC Criminal History Check:

- Classified by the Attorney General as a known terrorist;
- Charged in immigration court with an inadmissibility/removability ground in sections 212(a)(3)(A), (B), or (F), or 237(a)(4)(A) or (B) of the Act; or
- Arrested/detained by the U.S. military overseas (e.g., detainees in Iraq or Guantanamo).

Note: A criminal charge of “terroristic threats” is not necessarily an indicator of a NS concern. For example, the “terroristic threats” offense is often used by local prosecuting authorities to charge a domestic violence crime. A request for additional documents such as certified police reports or court dispositions may be required to determine if the charge or conviction is an indicator.

3. US-VISIT/IDENT

Various government agencies, including DHS Components (USCIS, CBP, and ICE), DOS, the FBI, and the National Ground Intelligence Center (NGIC), load biographical and biometric information into US-VISIT/IDENT. The US-VISIT/IDENT Watchlist includes, but is not limited to, biographic and/or biometric information for KSTs; fingerprints for military detainees held in Afghanistan, Pakistan, and Guantanamo; and individuals inadmissible or removable under sections 212(a)(3)(A), (B), or (F), or 237(a)(4)(A) or (B) of the Act.

IV. TECS/IBIS

The following TECS/IBIS and NCIC Status Codes and Code Descriptions may (or may not) be indicators of a NS concern, depending on the circumstances of the case. Further inquiry by the officer is needed. These codes should not be considered a complete list of codes that the officer may encounter. The officer must verify any unfamiliar codes encountered.

³ See CIS policy memorandum, *Accessing National Crime Information Center Interstate Identification Index (NCIC III) Data*, dated June 3, 2005 indicating that “it is acceptable and in fact necessary to conduct an NCIC III query when fraud is articulated, or when background check processes, interviews, and/or informants indicate national security concerns or that an applicant may have a criminal record or may be involved in criminal activity.”

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TECS/IBIS TABLE CODE CODE DESCRIPTION

LE

NCIC OFFENSE CODE CODE DESCRIPTION

LE

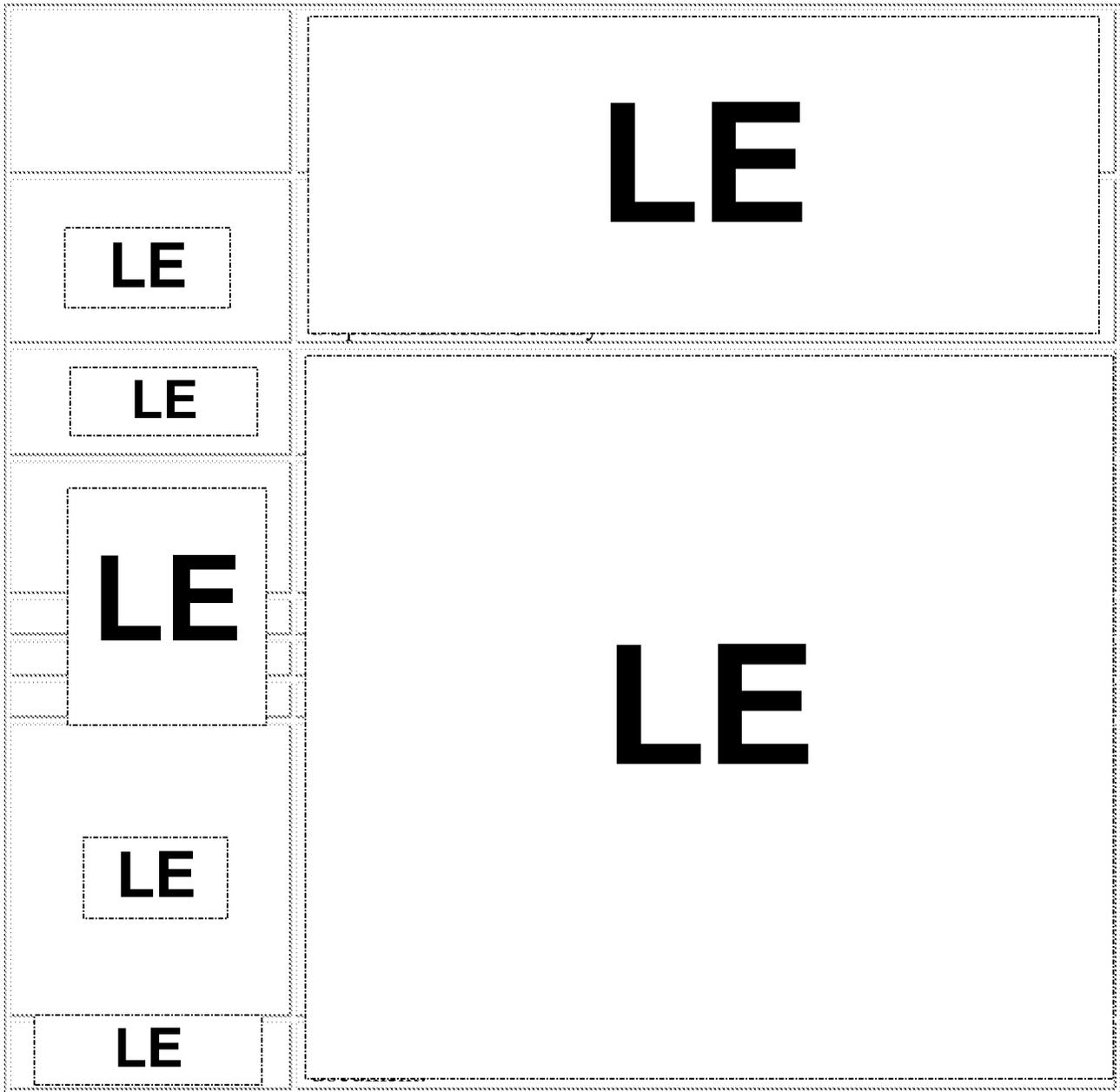
The following table contains terms and acronyms related to TECS/IBIS which may (or may not) be indicators of a NS concern, depending on the circumstances of the case. Further inquiry by the officer is needed.

CTR	Counter-Terrorism Response; this indicates that the subject has been identified, referred by or to a CTR team as a possible terrorist interest.
LE	LE

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LE

TIDE

Terrorist Identities Datamart Environment. This refers to a counter-terrorism database that coordinates the use of sensitive interagency intelligence for watch listing terrorists. This database was formerly known as TIPOFF and managed by the Department of State.

LE

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EXHIBIT 9

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

Abdiqafar Wagafe, et al.,
On behalf of himself and
others similarly situated,

Plaintiffs

vs.

CASE NUMBER:

DONALD TRUMP, President of the
United States, et al.,

2:17-CV-00094-RAJ

Defendants

_____ /

The virtual deposition, via Webex, of
JEFFREY ALEXANDER DANIK was held on Tuesday, August
26th, 2020, commencing at 10:02 a.m. before R. Dwayne
Harrison, a Notary Public.

CONFIDENTIAL DUE TO PROTECTIVE ORDER

REPORTED BY: R. Dwayne Harrison

1 A Generally -- again, I'm just going by what
2 I read in the training materials, that if somebody has
3 these criteria -- has these types of skill set and they
4 have some type of activity to combine with that and you
5 can articulate within that, I was -- my training
6 experience will say, well, you have to articulate the
7 two are connected.

8 In other words, whatever you're suspicious
9 of, it has to have some connection to one of these
10 indicators. There has to be -- there has to be
11 behavioral based indicators. Skill based indicators
12 are only then helpful based on the activity that you're
13 observing, so...

14 Q Okay. Is it your understanding that the
15 CARRP policy instructs CARRP officials to consider the
16 totality of the circumstances in the manner that you're
17 describing?

18 A Yes.

19 MS. KONKOLY: Okay. Noah, can we pull up
20 document number 4? I think that would only be exhibit
21 E for this exhibit. I want to go to Bates number 786.
22 I think that's going to be page 36 of the PDF.

23 Q Actually, before we do that, while we're on
24 that cover page, Mr. Danik, do you recognize this
25 document?

1 So if -- in a hypothetical situation in
2 which CIS is adjudicating an application for an
3 immigration benefit from an individual and, in the
4 course of adjudicating that application, CIS were to
5 become aware that there's an open FBI investigation on
6 this person.

7 Do you have an opinion about the propriety
8 of CIS informing the individual of that investigation?

9 A Well, it shouldn't be done without the
10 third party agency rule coming in which is that's FBI
11 information that's been given to immigration and
12 immigration can't disseminate anything that's not their
13 information without clearance by the owner.

14 So in some instances, you know, it may
15 actually help that the guy now thinks he's got an
16 immigration problem. He's not told that, but this is
17 what people think because his immigration officer is
18 bringing up the bank robbery investigation he's a
19 subject of.

20 So that could have a positive effect. It's
21 a lever -- and we're talking theoretically. It's a
22 lever that, hey, maybe I should rush in and get -- give
23 my information and maybe it will help my immigration,
24 that kind of thing.

25 People are always brokering. It's not the

1 that these are the problem people that we need to keep
2 out of certain down line systems, whether that be --
3 the other screening agencies that are out there.

4 That's the general -- that's the general
5 use, purpose of the terrorist screening database as far
6 as I used it.

7 Q Okay. Can you speak briefly to your
8 personal experience in using the TSDB when you were
9 with the FBI?

10 A Okay. Yeah, well, when I was at LX1, the
11 two offices are very close to each other. So there was
12 a lot of interaction between the two agencies, the two
13 operating arms, because we were just down the street,
14 really.

15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

1 So I was in their office a lot and then we
2 had personnel that were transferred. It was very good
3 because we had people that would go from unit to unit.
4 So we had cross train on what they did. So I had a lot
5 of experience listening to how these packages were put
6 together and shuffled through the bureaucratic system
7 of approval.

8 And then we also had, in my section, a very
9 interesting unit, the terrorist screening operation
10 unit which dealt directly with the Terrorist Screening
11 Center and the Terrorist Screening Database as a
12 realtime referral from the Terrorist Screening Center
13 so -- for anything that had to do with the FBI.

14 So that was a 24/7 operation and,
15 basically, if a police officer stopped you and you came
16 up listed in the NCIC computer in the VGTOF file --
17 I'll give you VGTOF in a minute here -- the VGTOF file,
18 the police officer got a readout and now the readout
19 usually said, hey, this person is the subject of a
20 terrorist database hit. For further information call
21 this number and that was usually the Terrorist
22 Screening Center. The Terrorist Screening Center would
23 get the call, realize it's an FBI information, let's
24 say -- this is hypothetical. This is my experience
25 with them. That's why I'm answering the question this

EXHIBIT 11

AMENDED REPORT

in the matter of

ABDIQAFAR WAGAFE, *et al.*

v.

DONALD TRUMP, President of the United States, *et al.*

By

Bernard R. Siskin, Ph.D.

Director

BLDS, LLC

Philadelphia, PA

July 17, 2020

EXECUTIVE SUMMARY

At Defendants' request, I reviewed seven fiscal years of data (FY 2013 – FY 2019) concerning the adjudication of applications for naturalization (N-400) and adjustment of status (I-485), including those referred to the Controlled Application Review and Resolution Program (CARRP) of the United States Citizenship and Immigration Service (USCIS).

This report details the methodology used to examine the data in the context of Plaintiffs' allegations, discusses the outcomes of that analysis, and presents my conclusions, including the principal ones summarized below.

Plaintiffs allege that there is anti-Muslim bias in CARRP referrals, and that USCIS has employed "extreme vetting" with the issuance of the Executive Orders 13769 and 13780 that adversely impacted adjustment of status and naturalization applications from applicants from countries with a majority Muslim population countries (referred to herein as majority Muslim countries) starting in 2017. Their allegation of anti-Muslim bias, as developed in reports submitted by Plaintiffs' designated "expert" witnesses, is founded on the premise that applications from applicants born in countries with a majority Muslim population have been more likely to be referred to CARRP than applications from applicants born in countries with non-majority Muslim populations. There is no valid statistical evidence to support these allegations.

First, I examined all adjustment of status and naturalization applications filed between FY 2013 and FY 2019, a total of 10,621,174 applications, and found that the volume of applications processed under CARRP during the examined period is very small, only 0.266% or about one of every 375 applications.

Second, the statistical evidence contradicts Plaintiffs' apparent premise that CARRP is intended and designed to deny immigration benefits to Muslim applicants. Indeed, there is no statistically valid basis on which to conclude there is anti-Muslim bias in CARRP. Only a small percentage of applicants from majority Muslim countries had applications processed under CARRP – 1.27% or only 18,403 of 1,444,306 applications.

Third, there is no statistically valid basis on which to conclude that there is an anti-Muslim bias in CARRP referrals by USCIS. While I-485 and N-400 applications for individuals from majority Muslim countries are more likely than those from majority non-Muslim countries to be referred to CARRP, the data shows that the [REDACTED] referrals to CARRP for applicants [REDACTED]. I estimate that [REDACTED] [REDACTED] the information for CARRP referrals approximately [REDACTED] the time. Moreover, in FY 2017 – FY 2019, [REDACTED] [REDACTED] of information if the applicant was born in a majority non-Muslim country than if they were born in a majority Muslim country. Therefore, although applications by individuals from Muslim countries are more likely to be referred to CARRP, the statistical evidence contradicts the allegation that the reason that individuals from majority Muslim countries are more likely to be referred to CARRP is [REDACTED] because of an anti-Muslim bias on the part of USCIS.

Furthermore, once an application is referred to CARRP, there is no relationship between being from a majority Muslim country and how long it will take to process the individual's application or whether it will be approved or denied. To the contrary, comparisons of outcomes by Muslim population status overall for the applicant's country of birth or citizenship or by changes over

time demonstrates that the data provides no support for a theory that applicants from majority Muslim countries were targeted because they were Muslim or from majority Muslim countries. Also, most applications adjudicated under CARRP were equally likely to be approved overall, for those for applicants from majority Muslim countries, and for applicants from majority non-Muslim countries, contradicting the notion that CARRP operates as a program intended to deny immigration benefits to otherwise eligible applicants. For CARRP cases, there is no statistical evidence that being from a Muslim country leads to an application taking longer to process or that it is more likely to be denied.

Fourth, the data establishes that the percentage of applications referred for CARRP processing hit its peak in FY 2015 and thereafter declined. Also, the statistical evidence is inconsistent with the allegation that USCIS has employed “extreme vetting” with the issuance of the Executive Orders 13769 and 13780 that adversely impacted adjustment of status or naturalization applications for applicants from majority Muslim countries starting in 2017. There is no statistically valid basis on which to conclude that application referrals to CARRP irrespective of their source have markedly increased since the issuance of the executive orders that are the subject of Plaintiffs’ allegations. Moreover, there is no statistical evidence that for applications processed through CARRP, the likelihood of approval, processing time to adjudication, or processing time to approval changed after the executive orders. The data shows that the outcomes in FY 2017 and FY 2018 are consistent with what one would expect based on the FY 2016 outcomes.¹

¹ I did not study FY 2109 data for those specific analyses because I was trying to get data close to FY 2016 so no adjustment for trends independent of the change in Administrations would be needed.

Finally, the Plaintiffs leap from the fact that a disproportionate percentage of applications from applicants born in majority Muslim countries are referred to CARRP to the supposition that the cause of that disparity is bias against Muslim applicants, confounding correlation with causation. Just because two factors are correlated does not mean that one causes the other. There is statistical evidence that there is no causal relationship between a country being majority Muslim and the number of CARRP referrals of applications from applicants born in that country.² There is strong statistical evidence that the level of terrorist activity in a country, and other factors, such as the volume of applications from a country and whether that country is a state sponsor of terrorism, explain a significant amount (2/3) of the variance among countries in CARRP referrals. After controlling for these factors, the percentage of a country's population that is Muslim has only a small and statistically non-significant correlation with the number of CARRP referrals from a country.

² Appendix C presents the corresponding analyses based on the applications country of citizenship. The conclusions are the same as with those based on country of birth.

I. INTRODUCTION, ASSIGNMENT, AND OVERVIEW OF ANALYSIS

A. Background

I am a Director of BLDS, LLC, a specialty statistical and economic consulting firm. Prior to joining BLDS, I did similar work at the specialty consulting firms, LECG, LLC, the Center for Forensic Economic Studies, Inc., and National Economic Research Associates (NERA). Prior to that, I was a tenured faculty member and Chairman of the Department of Statistics at Temple University in Philadelphia. I received my Ph.D. in Statistics with a minor in Econometrics from the Wharton School of the University of Pennsylvania in 1970. I have authored four books on statistical methodology, three book chapters, four research monographs, and numerous papers, including articles on the role of statistics in the analysis of employment discrimination issues. Since receiving my Ph.D., I have specialized in the application of statistics to the analysis of whether company data provides valid statistical support for a claim of discrimination. In this capacity, I have been retained by numerous governmental and private organizations including the Third Circuit Task Force on Race and Gender, the Equal Employment Opportunity Commission (EEOC), the Civil Rights Division of the United States Justice Department, the Office of Federal Contract Compliance (OFCCP), the Federal Bureau of Investigation, the Central Intelligence Agency, the Federal Housing Financial Administration, and various states and municipalities as well as numerous Fortune Five 500 corporations and other for profit and non-profit corporations. My resume is attached as Appendix A.

B. Assignment

I have been asked by Counsel for Defendants to review the data supplied to the Plaintiffs concerning the adjudication of naturalization and adjustment of status applications, including those referred to CARRP.

This report replaces the report I submitted on February 28, 2020. Subsequent to my completing that report, USCIS discovered an error in the determination of whether an application was in CARRP. USCIS then corrected that error and the Defendants resupplied the data to both me and the Plaintiffs. Therefore, I have rerun all my prior analyses and updated the tables and discussion of results. As a result of the new data and in response to the new results found in those tables, I ran a few new analyses.³ I also corrected three designations of the Muslim status of a country which were incorrectly designated. This had a trivial impact on my computations and no impact on my findings and conclusions.⁴ In addition, subsequent to finalizing my original report, several individuals whom Plaintiffs thereafter designated as expert witnesses (Plaintiffs' witnesses) asserted that USCIS operates CARRP with an anti-Muslim animus and effect,⁵ simply based on the observed correlation between the number of referral to CARRP from a country and whether the country has a majority Muslim population. I address the statistical fallacy of jumping from correlation to causation and study whether there is any valid statistical evidence that the percent of a country's population being Muslim causes more referrals to CARRP because of anti-Muslim bias.

³ Specifically, Tables 1.1, 2.1, 10.1, and 12.1 present the results of the new analyses.

⁴ I had incorrectly excluded Kosovo, which has at least 90% Muslim population, and incorrectly listed Reunion and South Sudan as majority Muslim countries. These represent a few thousand applications out of the millions of applications being studied.

⁵ See reports of Thomas K. Ragland (revised report ¶¶ 17, 21, 87, 120, 125-27, 129, 132, 146), Yliana Johansen-Mendez (revised report ¶¶ 23-25, 83, 86-89, 104), Nermeen Arastu (revised report ¶¶ 17, 19, 66-67, 76, 90, 93-95, 115, 117-18, 121, 123, 126), Sean M. Kruskol (¶¶ 48-57), and Narges Bajoghli (¶ 37). I anticipate that, in my responsive report to be submitted by August 7, 2020, I will respond to various opinions and statements contained within reports of several of Plaintiffs' witnesses, including to the amended report that Mr. Kruskol might provide.

The outcomes studied are (i) the frequency of being referred to CARRP, (ii) the likelihood of an application being approved, denied, or adjudicated,⁶ and (iii) the speed with which a decision is made. The tables supplied to us⁷ reported the data separately for each fiscal year (FY) from 2013 to 2019 for each of two application types: Application for Naturalization (Form N-400 applications); and Application for Adjustment of Status (Form I-485) applications. The tables reported the following data across all applications (for a given fiscal year and form type) and then again by country of birth and citizenship: (i) the number and percent of applications that were referred to CARRP; (ii) the agency source of the information recorded as supporting the referral to CARRP (USCIS, Third Agency, or indeterminate); (iii) if adjudicated, the number and percentage of applications approved or denied, by CARRP status;⁸ (iv) by CARRP status, (a) for adjudicated applications, the mean and median time from application receipt to adjudication, and (b) for non-adjudicated applications (*i.e.*, those still pending a decision), the mean and median time from application receipt to the end of the fiscal year being reported, and (c) for applications active in the fiscal year (*i.e.*, applications that had not been closed prior to the fiscal

⁶ A very small number of applications are closed without being approved or denied (*e.g.*, some applications are recorded as being withdrawn or administratively closed).

⁷ And to the Plaintiffs.

⁸ “CARRP status” refers to whether the application was processed pursuant to the CARRP policy at any point during the pending adjudication. A case is considered to be processed pursuant to the CARRP policy if there was an open Case Management Entity (CME) in the National Security tab of the Fraud Detection and National Security – Data System (FDNS-DS) at any point while the application was pending.

year), the mean and median time from application receipt until it was either adjudicated or until the end of the fiscal year if it was still pending a decision. I was also supplied with the underlying data producing the tables.⁹

Plaintiffs allege that referral to CARRP for class members results in an increased chance of denial; and applications taking longer to be adjudicated, irrespective of ultimate outcome (denial or approval), each of which has a disparate impact¹⁰ on individuals from majority Muslim countries.¹¹ Further, Plaintiffs allege that application of the CARRP policy, in both its original form and as purportedly expanded pursuant to Executive Orders 13769 and 13780 (referred to herein as the Executive Order or “EOs), which were issued by President Trump in 2017 and which Plaintiffs claim direct federal agencies to create and implement a policy of “extreme vetting,” have a discriminatory impact upon applicants who are Muslim or whose country of birth or citizenship is a majority Muslim country.¹² It is not clear what the Plaintiffs mean by “extreme vetting.” Plaintiffs have not specified whether they mean that the standard for referral to CARRP was expanded to capture more applicants presenting a potential national security concern at the expense of increasing the number of applicants who are not actually national security concerns being referred to CARRP, and/or making the CARRP review process more stringent in that it would increase the time for processing an application and/or result to

⁹ Initially, based on the underlying data, I was able to replicate all the tables except for the table entitled “Adjudicated Plus Pending Processing Times.” I notified counsel and USCIS, and USCIS corrected that table, which aligns with the underlying data provided.

¹⁰ Disparate impact occurs when a process (*e.g.*, a test) that is facially neutral as applied to all has an unintentional adverse impact on a particular class of applications. It is my understanding that a process which has a disparate impact is not discriminatory if the policy serves a valid purpose which cannot be accomplished by another process that both fulfills the purpose and has less disparate impact.

¹¹ See Second Amended Complaint for Declaratory and Injunctive Relief, paragraphs 7 and 10.

¹² *Id.*, paragraph 19.

some extent in targeting Muslims. Nevertheless, Plaintiffs allege that discrimination against Muslims increased significantly as a result of the issuance of the Executive Orders.

This report presents the results of my statistical analyses and resulting opinions as to the extent to which the statistical data supports or is inconsistent with the Plaintiffs' allegations.

C. Overview of Analytical Framework, Analysis, and Determination of Muslim Status

1. Analytical Framework

The Plaintiffs allege that the CARRP policy, as applied to the class members in this litigation, has a disproportionate effect on Muslims, and that the disproportionate effect was exacerbated by an alleged “extreme vetting” process that Plaintiffs claim was put forward by the EOs. The framework for my analysis assumes USCIS has applicants whose applications are processed routinely (*i.e.*, outside CARRP) and applicants whose applications are processed in CARRP. Routine processing is applied to an application when there is no indication that the applicant poses a potential national security concern. When an applicant presents as a potential national security concern, the applicant’s application is processed pursuant to the CARRP policy. CARRP processing involves vetting the national security concern, which includes consultation with Third Agencies that may possess information about the applicant or concern and/or that may be investigating the applicant or concern; and adjudicating the application. However, CARRP processing does not necessarily always involve all of these steps. At any point during CARRP processing, the agency may determine that an applicant is not a national security concern or no longer presents such a concern. In such cases, USCIS will determine the case to be “non-national security” and will remove the case from CARRP processing. However, in the data set that was provided to me, an application that was referred to CARRP is classified as a “CARRP” application, and the adjudication (or continued pending) of the

case is classified as a CARRP outcome, irrespective of whether the case remains subject to the CARRP policy, was adjudicated in accord with the CARRP policy, or has been referred back into routine processing.¹³

Both routine processing and CARRP processing also involve a determination of whether an applicant is ineligible for the immigration benefit sought, based on national security grounds of inadmissibility or otherwise. Accordingly, adjudication in CARRP processing requires determining: (i) whether the national security concern¹⁴ posed by the applicant makes the applicant ineligible for the benefit, so the application should therefore be denied, or (ii) whether the concern fails to warrant denial, or (iii) whether there are confidentiality or intelligence risks if the application is denied for national security reasons.¹⁵ In the two latter scenarios, an applicant posing a national security concern and processed in CARRP may ultimately have his/her application approved, assuming that the applicant is otherwise eligible for the immigration benefit sought. Conversely, an applicant who is actually a national security concern, and may be potentially ineligible for the benefit sought, may not be identified as being a potential national security concern, and thus, may not be referred to CARRP. Such applicants may incorrectly be processed, and even have their applications approved, through routine processing. Furthermore, in such a case, regardless of whether the application is approved or denied through routine processing, a Third Agency that may be investigating the applicant would not generally be alerted that their person-of-interest was

¹³ There is no indication in the data regarding whether an application referred to CARRP was referred back into routine processing.

¹⁴ USCIS defines a national security (“NS”) concern as follows: A NS 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 sections 212(a)(3)(A), (B), or (F) or 237(a)(4)(A) or (B) of the Immigration and Nationality Act.

¹⁵ Generally, denied applicants must be given the reason(s) for the denial of their application.

having an immigration benefit application adjudicated. Irrespective of whether adjudication results in approval or denial of the benefit, adjudication might have adverse consequences on an ongoing Third Agency investigation since failure to alert the Third Agency that a person-of-interest is requesting an immigration benefit could have adverse consequences to their investigation.

From a statistical perspective, there are two possible “outcome errors” with regard to the decision of whether to refer an applicant to CARRP. By outcome error, I mean classifying the decision based solely on the outcome. Applications referred to CARRP that are ultimately approved would presumably have been approved if not referred to CARRP, but often in less time. Hence, viewed only through the lens of the outcome, one outcome error is that an applicant who is referred to CARRP is approved, but since the application’s approval likely took longer because it was handled under the CARRP policy (rather than possibly disregarding a potential national security concern), it is viewed as an outcome error. The error here reflects the increase in the length of time to approval. By outcome error, I do not mean that the decision is incorrect, nor that the decision to refer the application for review under the CARRP policy was wrong, but only that the applicant could have been approved more quickly if not referred to CARRP. Moreover, since the purpose of the CARRP review is to determine whether someone is actually a national security concern, this outcome error should not be considered an error in the decision to refer the application to CARRP.

The desired outcome from a referral to CARRP is to determine if the applicant is a national security concern and then handle that application accordingly, not to automatically deny the application. If the applicant is actually a national security concern, the goal of CARRP is to coordinate with the agencies investigating the applicant to make the proper adjudication which, as discussed *supra*, could be to approve or deny the application.

The second type of “outcome error” is that an applicant who is actually a national security concern is not identified as such and the application is approved through routine processing, although it would have been denied if it had been sent to CARRP and undergone a more painstaking investigation for national security concerns.

Statistically speaking, the first outcome error is called a Type One error, in which we obtain what is technically called a “false positive” (*e.g.*, someone referred to CARRP is approved); the second type of error is called a Type Two error, in which we obtain what is technically called a “false negative” (*e.g.*, someone who would have been denied if they had been referred to CARRP is not referred to CARRP and is approved).¹⁶ Again, it is important to note that using the statistical term “error” to refer to the outcomes in isolation does not imply any error in either the outcome or in the original decision to refer or not refer an application to CARRP. For example, consider a case that would be considered a false positive, because an application referred to CARRP is approved. An applicant is a partner in a business that is being criminally investigated for financially supporting terrorist activities. That applicant is referred to CARRP based on his association with the business. During the vetting process, USCIS consults with the investigating agency, and one of two outcomes results: (i) the investigating agency informs USCIS that the applicant is not a national security concern, USCIS declares the applicant non-national security, and adjudicates his case to an approval in routine processing (although the data will indicate this as a CARRP approval); or (ii) the investigating agency confirms that the individual poses a national security

¹⁶ Note that while we can determine the false positives, we have no way of determining the false negatives, because we would need to put all the regular process approvals through CARRP in order to determine if they would have been denied as a result of CARRP processing.

concern, but USCIS determines that the remaining national security concern does not make the individual ineligible for the benefit he is seeking, and USCIS adjudicates his case to an approval in CARRP.¹⁷

The question in the hypothetical scenarios above is whether our applicant should not have been referred to CARRP because the decision resulted in a false positive (*i.e.*, an approval). The answer is that the referral is appropriate, because the cost of delay to the applicant while he is processed in CARRP (the cost of such a false positive) does not outweigh the very serious cost of failing to refer an applicant who is a national security concern. In the case of failure of referral, the lack of vetting with the investigating agency could result in the approval of an individual who is ineligible for the benefit based on national security disqualifications, or it could result in an adjudication (whether to approval or denial) that negatively impacts an ongoing law enforcement investigation. This example illustrates that sufficient information that an applicant *may be* a national security concern (not necessarily that he/she *is* a national security concern) justifies a referral to CARRP, and a high rate of false positives (*i.e.*, approved CARRP cases) is not an indication that the CARRP referral process, or the CARRP process in general, is not working properly. In fact, a high false positive rate would be an indication that identifying which applications are actually national security concerns cannot be achieved with great accuracy under routine vetting. If identifying applicants who are national security concerns is deemed to be very important, and the relative cost of failing to identify them is vastly greater than the cost of delaying applicants' adjudication, referring applicants to CARRP who are determined through the course of vetting to be a non-national security concern is an acceptable cost.

¹⁷ In both cases, we assume that the applicant is not ineligible for the benefit for any non-national security reason.

To illustrate this logic, consider the common problem of credit card fraud. Banks spend millions of dollars to develop and implement fraud detection models to flag fraudulent credit card applications or fraudulent purchases from a stolen card or card number. Fraud is a relatively rare event and most transactions give no indication of possible fraud. No fraud detection model is good enough to precisely determine whether a charge or application is or is not actually fraudulent, but the models can recognize applications or purchases that are indicative of possible fraudulent conduct. When the bank identifies such potentially fraudulent events, it can follow-up (*e.g.*, initially deny the charge or application and then call, text, or email the customer requesting verification that it was really their charge or application). Since the cost to the customer and the bank is so high if the charge is fraudulent and completed (identity theft for the customer and dollars lost for the bank) compared to the cost of delaying and investigating (inconvenience for the customer or cost of the investigation for the bank), banks are willing to flag potentially fraudulent¹⁸ transactions even though the probability of a given transaction being fraudulent is low.

Given the high cost of failing to refer an actual national security concern to CARRP (*i.e.*, a false negative), one might ask why all applicants should not be more thoroughly vetted through CARRP. There are two reasons: one reason is that the CARRP process generally takes longer than routine processing. Based on the number of CARRP referrals of cases for which there is information that indicates they could potentially be a national security concern, the number of applications that may actually be a national security concern is a very small percentage of the overall number of applicants. Thus, processing all applicants in CARRP would result in an

¹⁸ The degree to which the indication of fraud must increase in order for a bank to decide that the transaction must be verified depends on the bank's assessment of the costs associated with making a Type One or Type Two error.

extreme number of applicants subject to increased processing times a 375 fold expansion of the CARRP program with little expected gain in identifying applicants who are actual national security concerns. A second reason is that such an effort would be very costly and require a vastly larger amount of resources or result in extremely long processing times for all applications, rather than merely the one in 375 presently processed pursuant to the CARRP policy.

The statistical solution is to focus on the very small set of applications for which there is sufficient information to indicate that the applicant may pose a national security concern. What does that mean? It means that we would expect that, if the screening is based on an increased likelihood¹⁹ that the applicant is a national security concern, then the likelihood of denial for those in CARRP should be higher than the likelihood of denial for those not in CARRP, since applicants processed in CARRP may be ineligible for the immigration benefit sought based on a national security ground, or based on some other ground uncovered during CARRP's vetting and assessment procedures.²⁰ This implies that we would expect the denial rates of those in CARRP to be higher than the denial rates of those not in CARRP, and we would expect the time to decision to be longer for applications processed under CARRP because of the more extensive vetting process where there are potential or known national security concerns.

The number and percent of cases referred to CARRP over time could increase or decrease significantly for several reasons. One reason would be if the percentage of applicants who are actually potential national security concerns changes markedly. This

¹⁹ That is, based on the initial information available, the probability of the applicant being a national security concern is sufficiently higher than the probability of a randomly selected applicant being a national security concern. However, that probability may be low, since the probability of a randomly selected applicant being a national security concern is well below 1-in-375.

²⁰ Many denials in CARRP are for reasons other than national security.

could increase or decrease the referral rate to CARRP. A second reason would be if the criteria or information available to flag potential national security concerns are broadened to capture more potential national security risks, at a cost of referring proportionately more false positives. For example, this could occur if there was an increase in the United States Government's receipt of information from outside the United States which would identify applicants as potential national security concerns. In this case, we would expect the number of applications referred to CARRP to increase, as would the number of referrals that are determined not to be a national security concern (since almost no data source is a perfect indicator that an applicant is actually a national security concern). In our example, if the new data from sources outside the United States is equally reliable as the other sources in predicting that an applicant is actually a national security concern, the percent (not number) of cases that turn out to be false positives would not change. But if the data from the outside source is less reliable,²¹ then the false positive rate will increase.

Now, let us turn to the two specific claims in this matter: (i) that the CARRP policy results in Muslim applicants being more likely to be referred to CARRP, and thus Muslims disproportionately suffer delay in having their applications adjudicated, and (ii) that this disadvantage has been significantly aggravated by the purported "extreme vetting" discussed in the Trump Administration's 2017 Executive Orders, which Plaintiffs claim resulted in changes to CARRP and have increased the percent of Muslims among those referred to CARRP. As a result, the Plaintiffs conclude that the CARRP policy has an unjustified disparate impact on Muslims which

²¹ That is, more applicants with a lower probability of being selected than they would experience under more stringent criteria (although still a higher probability of being selected than under a random selection process) are referred as a result of the new source of information.

is caused by anti-Muslim bias and which has been exacerbated by the actions of the Trump administration. These claims taken together imply that these factors should result in increasing the false positive rate in CARRP overall and among applications from applicants born in majority Muslims countries, and extend the time to approval of those approved after referral to CARRP. While the data can never fully support or refute this aspect of the Plaintiffs' claims, because we cannot ever know the true rate of national security concerns in the applicant population by Muslim status, we can nevertheless assess the extent to which the data supports or refutes Plaintiffs' allegations by comparing the outcomes of applicants processed in CARRP with the outcomes of those not processed in CARRP, and comparing the outcomes for applicants from majority Muslim countries with those from majority non-Muslim countries overall and over time. We can also explore whether there are factors that would be expected to increase the likelihood an application would be referred to CARRP and that may also be correlated with the Muslim percentage of the population of the applicant's country of birth. One can then statistically test the extent to which the number of referrals to CARRP correlated with the country's Muslim population percent is caused by these factors, and the extent to which the correlation with the percent of a country that is Muslim remains after controlling for differences between countries in these factors. That is, we assess whether when we compare CARRP referrals from countries which are statistically the same with respect to these factors, does the number of referrals to CARRP increase meaningfully the larger the percent Muslim of the countries' populations, Thus, we can assess the extent to which the observed correlation is valid statistical evidence of an anti-Muslim bias.

2. Overview of Analysis of Outcomes by CARRP Status

I first focused on the CARRP policy in general independent of Muslim status. I examined the likelihood of being referred to CARRP overall and over time to see whether the rate of referral to CARRP changed over time. I also considered the fact that, to some extent, one would expect the numbers referred to CARRP to be somewhat reduced compared to earlier years because the time period for possible referral is shortened (since the data is truncated on September 30, 2019, the end of FY 2019). This is referred to as a censored data set since the number of applications received that will be referred to CARRP is censored by the data truncation as of September 30, 2019, and recipients who are or would be referred to CARRP after September 30, 2019 are not counted as CARRP referrals. I thus statistically adjusted the data for censorship to see if that altered the pattern of referrals to CARRP over time. I then explored the source of the information supporting such referrals to ascertain whether there were changes in the source of the information underlying the referral, and whether any changes in the agency sources would correlate with any change in the percent of cases being referred to CARRP. Finally, I examined the extent to which being referred to CARRP impacted one's likelihood of being denied naturalization or adjustment of status, as well as the impact of CARRP referral on how long an applicant would wait for adjudication (*i.e.*, how long the request was kept pending and not adjudicated) or approval. I examined the data over the whole time

period and then focused on changes over time. I focused, to the extent possible, on changes in trends over time and especially those changes that occurred after the issuance of the Executive Orders.²²

3. Determination of Muslim Status

While the analysis described above investigated the overall frequency of referral to CARRP, processing times for CARRP vs. non-CARRP, and adjudication outcomes for CARRP vs. non-CARRP, it did not address the Plaintiffs' concerns regarding the extent to which the outcomes differed by Muslim status. The data supplied does not identify the religion of any applicant, which I understand is because USCIS does not request or otherwise record an applicant's religion in relation to adjustment of status or naturalization applications. Plaintiffs allege or imply that all the named Plaintiffs (the representatives of all of the class Plaintiffs) identify as Muslim and/or are originally from majority Muslim countries. Since the tables are tabulated separately by the applicants' country of birth and citizenship, I use this data to classify each applicants' Muslim status based on the applicant's country of birth and citizenship. I first classified each country into one of three mutually exclusive categories²³ (majority Muslim, non-Muslim, or

²² The tables supplied report the data by fiscal year. The Executive Orders were issued in January and March of 2017, during the second quarter of fiscal year 2017; FY 2017 covers October 2016 through September 2017. Hence, actions in fiscal years before the second quarter of FY 2017 clearly occurred prior to issuance of the Executive Orders and those in fiscal years after the second quarter of FY 2017 clearly occurred after issuance of the Executive Orders. However, I am unable to determine from the table data whether an outcome in FY 2017 actually occurred before or after the Executive Orders of concern. Of course, two quarters of fiscal year 2017 occurred after both Executive Orders, while one quarter of FY 2017 preceded the EOs. Nevertheless, the trend of data over time will be informative of the impact of the implementation of the "extreme vetting" which presumably was in effect for most of FY 2017 and all fiscal years thereafter, presuming that such vetting was in fact undertaken as Plaintiffs allege.

²³ Appendix B delineates the specific classification of each country as to Muslim status. I used these classifications in my analyses.

indeterminate),²⁴ which allows me to compare results separately for applicants who were born in or are citizens of a majority Muslim country to applicants who were not born in or are not citizens of a majority Muslim country. The classification of majority Muslim countries was derived from three data sources that characterized the percent of a country's population that is Muslim: Pew-Templeton;²⁵ the CIA World Factbook;²⁶ and Wikipedia.²⁷ Among the three sources, there was a discrepancy as to whether a country is Muslim or non-Muslim in only two cases.²⁸ I further classified the countries as “predominately or \geq 90% Muslim” (rather than majority Muslim) if the population was at least 90% Muslim, and I compared the outcomes of applicants from predominantly Muslim countries with those from non-Muslim countries. Finally, I classified the seven majority Muslim countries referred to in EO 13769 as EO7 countries and compared the outcomes of applicants from those countries with the outcomes of applicants from non-Muslim countries.²⁹

²⁴ “Indeterminate” refers to the few cases where the country indicated in the data is not specified or is not a known country (*i.e.*, “South America”).

²⁵ <http://www.globalreligiousfutures.org/religions/muslims>

²⁶ <https://www.cia.gov/library/publications/the-world-factbook/docs/profileguide.html>

²⁷ https://en.wikipedia.org/wiki/Islam_by_country

²⁸ Bosnia-Herzegovina is classified as Muslim by the CIA World Factbook and by Wikipedia, but it is classified as non-Muslim by Pew. Eritrea is classified as non-Muslim by Pew. The CIA World Factbook declines to classify Eritrea, and Wikipedia refers to a study which would indicate that Eritrea is a majority Muslim country (see Brian J. Grim, Todd M. Johnson, Vegard Skirbekk and Gina A. Zurlo (eds.), *Yearbook of International Religious Demography 2017* (Leiden: Brill 2017)). Appendix B delineates how they were classified, but given the relatively trivial number of applications these represent, the decision of how to classify the countries has no impact on my findings.

²⁹ To test the sensitivity of my finding with respect to the EO regarding Muslim countries of birth and citizenship, I removed Iraq (which was not part of the later EO13780) from the definition of predominantly Muslim countries. This alternative definition did not alter any of my findings concerning the effect of Muslim countries of origin mentioned in the EO on outcomes.

4. Overview of Analysis of Outcomes by Muslim Status

I redid the above analysis, but focused on difference in outcomes by Muslim status. In the body of this report, I present the analysis defining Muslim status based on the country of birth of the applicant. In Appendix C, I present the tables corresponding to those presented in the body of the report, but base the definition of Muslim status on the citizenship of the applicant. My conclusions are the same, regardless of whether country of citizenship or country of birth is used to define Muslim status.

I then compared the differences in the rate of referral to CARRP, the denial, approval, and pending rates, and the time to adjudication (*i.e.*, how long the application was kept pending and not adjudicated) and to approval by Muslim status, and analyzed whether the pattern of differences by Muslim status changed significantly over time. By comparing the differences in the outcomes detailed above by whether referred to CARRP and Muslim status, I am able to determine the extent to which the Plaintiffs' allegations are supported or contradicted by the data.

5. Overview of Analysis of Whether There Are Factors Causing the Correlation Between the Number of Referrals to CARRP of Applications from Applicants born in a Country and the Muslim Percentage of the Population of the Country

Plaintiffs' witnesses' assertions that CARRP operates with anti-Muslim animus or effect are flawed because they failed to consider any factors that are correlated with whether a country's population is majority Muslim (such countries are referred to herein as "majority Muslim countries"), which may be the cause of or predictive of the likelihood an application would be referred to CARRP. Such factors could account for the higher rates of referral to CARRP that may appear when data for applicants from majority Muslim countries is considered collectively. One such possible factor, as discussed in detail in Section V below, is the

frequency of terrorist events or incidents in the countries of birth or citizenship for applicants with applications referred to CARRP. Using the available data, I tested the theory that the extent of terrorist events that takes place in a country may affect the likelihood that an application submitted by an applicant from that country will be referred to CARRP. Essentially, the theory is that the more terrorist events that occur in a country, the more likely it is that an applicant from that country will have some association with terrorist actors and/or activities, thereby increasing the likelihood that the applicant would be identified as a potential national security concern and processed in CARRP. To test this hypothesis, I collected data on the number of terrorist events by country, and statistically determined the correlation between the number of terrorist events in countries and the number of CARRP referrals of applications for applicants born in such countries. If I found a statistically significant and meaningful correlation, I made sure the relationship existed both among countries without a majority Muslim population and among countries with a majority Muslim population so as to assure the effect was not simply measuring whether a country's population was majority Muslim. I then examined the extent to which the disparity in referrals to CARRP for applicants from majority Muslim countries could be explained by differences in the amount of reported terrorist events.

More significantly, in addition to studying the correlation between the number of terrorism events in majority Muslim countries and the percentage of all I-485 and N-400³⁰ CARRP referrals where an applicant is from a majority Muslim country, I analyzed the results separately by country. These analyses were not limited to majority Muslim countries but likewise included

³⁰ I also ran the analyses separately by form type. My conclusion concerning all CARRP referrals applies equally to I-485 and N-400 applications.

countries without a Muslim majority. That is, I looked at the relationship between the percent of terrorist events in a country and the percent of referrals to CARRP, independent of the percent of the country's population that is Muslim.

I computed the Pearson correlation between the number of CARRP referrals from each country with the number of terrorism events from that country. The Pearson correlation measures the linear consistency between two variables. The Pearson correlation coefficient takes on values from zero to one. A correlation of 0 means there is no linear predictive relationship between the two variables. A correlation of 1 means there is a perfect predictive relationship between the two variables (*i.e.*, as one variable increases by one unit, the other variable always increases by a fixed number of units). Thus, one variable is a perfect predictor of the other variable. Values between 0 and 1 measure how consistent the linear relationship is. The square of the correlation equals the percent of the variation in one variable which can be predicted or statistically explained by the difference in the other variable. For example, a correlation of 0.50 means 25% of the variance³¹ between countries in the number of CARRP referrals can be statistically “explained” (*i.e.*, predicted) by the difference in the number of terrorism events in the countries. The Pearson correlation measures the linear relationship between two variables. To confirm that this correlation is not significantly inflated by bias against majority Muslim countries (that is, inflated by an impact which simply reflects the country's majority Muslim status), I ran the correlations separately, restricting the data to only non-majority Muslim countries and then to only majority Muslim countries. Studying only non-majority

³¹ The variance is a summary statistical measure which represents the extent to which the outcomes vary between observations (here the number of CARRP referrals between the various countries). The larger the variance, the greater the dispersion of the number of CARRP referrals is among the countries.

Muslim countries or only majority Muslim countries eliminates any confounding of the correlation between number of terrorist events and whether a country has a majority Muslim population or not the correlation were computed among countries which were majority Muslim or only non-Majority Muslim. Thus, if the correlation of the number of terrorist events and CARRP referrals is primarily casual and is not reflecting that terrorist events on average occur more in majority Muslim countries, then the correlation between terrorist events should exist in each subset of the data and be statistically similar. If so terrorist events in a country not the countries Muslim status are driving CARRP referrals.

To determine the extent to which the correlation between the percent Muslim of a country's population³² and the number of CARRP referrals of applications from applicants born in that country is caused by factors correlated with the percent of a country that is Muslim rather than anti-Muslim bias, I expanded the analysis to include consideration of other factors that might impact the number of CARRP referrals from a country. I computed the correlation between the percent of CARRP referrals represented by each country and (i) the country's percent Muslim population, (ii) the number of applications from the country, (iii) whether the country is a state sponsor of terrorism, and (iv) the number of terrorist events reported in the country during the time period 2013 through 2018.³³ To the extent that there is some degree of correlation between the factors, the simple correlation will pick up some of the effect of the other factors, so the simple correlations may be misleading as to the actual impact of the individual factors. To study the interaction among all the factors and isolate and estimate the specific effect of the factors on the number of referrals to CARRP by country, I ran a

³² I used the PEW-Templeton definition as the source for the percentage of a country's population that is Muslim.

³³ My analysis stops in 2018, because the data on terrorist events is not yet available for 2019.

regression analysis. The regression analysis predicts the number of applications from applicants born in a country that will be referred to CARRP as a function of the four variables: (i) the number of terrorist events associated with that country, (ii) the number of applications (N-400 and I-485) from persons born in that country, (iii) the percent of the country's population that is Muslim, and (iv) an indicator of whether that country was deemed a state sponsor of terrorism. This analysis allows one to statistically determine the extent to which the number of referrals to CARRP of applications from applicants born in a country is correlated with the country's percent Muslim population (*i.e.*, variable iii) after removing the effects on referrals of the other three variables (i, ii, and iv). Thus, the effect of the factor of the number of terrorist events is statistically significant and predictive of CARRP referral is measuring the impact of that factor on countries which are statistically similar with respect to the other factors. That is, it is comparing its effect on countries which are statistically adjusted so they have the same number of applications, the population of the countries are the same percent Muslim, and the countries are either all designated as state sponsors of terrorism or not. Similarly, when the regression is comparing the effect of the percent Muslim of the country's population on the number of CARRP referrals, it is comparing its effect on countries which are statistically adjusted so they have the same number of application, the number of terrorist events, and whether the countries are either all designated as state sponsors of terrorism or not. This means that the effect of terrorist events on CARRP referrals is the same regardless of whether the country is majority Muslim, and regardless of the percent Muslim of its population. That means the regression's estimate of the impact of the number of terrorist events on referral to CARRP is not in any way related to the percent Muslim of the population. It also means that the regression analysis isolates the effect of the percent of a country's population which is Muslim on CARRP referral among countries which have the same level of terrorist events. Thus the regression's

estimated impact of the percent of a country's population which is Muslim on the number of referrals to CARRP measures the extent to which the Muslim population percentage of the country effects the referrals to CARRP among countries which have the same number of terrorist incidents. If a meaningful effect is found, it could be indicative of potential anti-Muslim bias in referrals to CARRP,³⁴ while if no such meaningful effect is found the results would be inconsistent with and refute an allegation of anti-Muslim bias.

II. CONCLUSIONS

1. Only a very small portion of I-485 and N-400 applications are referred to CARRP: about 0.27% (roughly 1-in-375) for all applications during the 7-year period studied (FY 2013 - FY 2019); and no more than about 2% for applicants from EO7 countries; and less than that for all majority Muslim countries combined.
2. Contrary to Plaintiffs' suggestion that Muslim applicants tend to be pushed into CARRP where their applications are generally denied or not adjudicated, most applications adjudicated under CARRP are approved, not denied. The approval rates for CARRP-adjudicated applications are not lower for persons from EO7 countries or from majority Muslim countries than for other applicants, indicating that there is no tendency for denial of applications for persons from majority Muslim countries whose applications are adjudicated under CARRP.

³⁴ Evidence that other factors that were not controlled for and would be expected to influence the number of referrals to CARRP could explain the observed disparity, but absent such evidence it would be statistically appropriate to infer anti-Muslim bias.

3. There is no significant difference in time for adjudication under CARRP for applications from applicants from non-Muslim countries and applications from applicants from EO7 countries or all Muslim countries or all countries combined.

4. There is no significant trend toward increasing disproportionate referral to CARRP, or toward the denial of applications adjudicated under CARRP for applicants from EO7 countries or applicants from majority Muslim countries as compared to applicants from non-Muslim countries or all countries combined when examined over time, and comparing the period prior to the issuance of EO13769 and the period following the EOs.

5. Almost all applications referred to CARRP are [REDACTED]

[REDACTED]. Moreover, among applications referred to CARRP from applicants born in a majority Muslim country (or a predominantly Muslim country, *i.e.*, one with a 90% or greater Muslim country, or an EO7 country), the [REDACTED]

[REDACTED]. In addition, during the fiscal years under the Trump administration the [REDACTED] [REDACTED] if the application was from an applicant born in a non-majority Muslim country than if it was from an applicant born in a majority Muslim country (or a predominantly Muslim country or one of the EO7 countries).

6. From the beginning of the data (FY 2013), applications from applicants from majority Muslim countries are more likely than applications from applicants from majority non-Muslim countries to be processed through CARRP. While applications from applicants from majority Muslim and majority non-Muslim countries are treated essentially the same with respect to time to adjudication and approval rates, those in CARRP have a higher denial rate and a longer time to adjudication. Thus, the facially neutral application of the CARRP polices resulting from referral to CARRP has an unintended disparate impact upon applications from applicants from Muslim countries. However, contrary to Plaintiffs' claims, this disparate impact was not exacerbated by the alleged "extreme vetting" suggested by EO13769 and EO13780. From a statistical standpoint, the reason(s) for this disparity cannot be explained by the data alone.

7. There is strong statistical evidence that the level of terrorist events in a country and other factors, such as the magnitude of applications from a country and whether that country is a state sponsor of terrorism, explain a significant amount (two-thirds) of the variance in CARRP referrals (the summary statistic which measures the extent of the differences in the number of such referrals among countries). The percent of a country's population that is Muslim has only a small and statistically non-significant impact on the number of CARRP referrals from a country. After controlling for the level of terrorist events and the number of applications from the countries, and whether the country is a state sponsor of terrorism, the Muslim percentage of a country's population explains only 0.8% of the variance among countries in the number referrals to CARRP. These results mean that the disproportionate share of referrals to CARRP of applications from applicants born in countries whose population is majority Muslim is not caused by anti-Muslim bias, but is a result of a high level of terrorist events in those countries.

Moreover, the effect of the number of terrorist events is the same regardless of the Muslim population of a country. Thus, the disproportionate number of referrals from majority Muslim countries is not valid evidence of anti-Muslim bias in referring applicants to CARRP.

The bases for these conclusions are presented *infra*. I explain each analysis and present the statistical results in tables. After each table, I summarize the findings the tables support. At the end of the report, I summarize the findings from the analyses.

III. ANALYSIS OF THE DATA PROVIDED

A. ANALYSIS OF THE IMPACT OF CARRP STATUS ON OUTCOME

1. Processing Under CARRP

Table 1 presents the data concerning the number and percent of I-485 applicants who are processed under CARRP. Table 2 presents the same data concerning N-400 applicants.

TABLE 1						
THE NUMBER AND PERCENT OF FORM I-485 APPLICATIONS THAT ARE PROCESSED UNDER CARRP BY FISCAL YEAR APPLIED 2013 - 2019						
Counts of I-485s by Fiscal Year						
Fiscal Year	Not CARRP Processed	Processed Under CARRP	Percent Not CARRP Processed	Percent Processed Under CARRP	Change from prior Fiscal Year	Percent Change from prior Fiscal Year
2013	601,668	1,401	99.77%	0.23%		
2014	635,871	1,262	99.80%	0.20%	-0.034%	-14.737%
2015	635,991	1,719	99.73%	0.27%	0.071%	36.089%
2016	709,064	1,790	99.75%	0.25%	-0.018%	-6.584%
2017	759,142	1,540	99.80%	0.20%	-0.049%	-19.602%
2018	698,555	1,211	99.83%	0.17%	-0.029%	-14.518%
2019	596,303	545	99.91%	0.09%	-0.082%	-47.236%
2013-2019	4,636,594	9,468	99.80%	0.20%		

TABLE 2						
THE NUMBER AND PERCENT OF FORM N-400 APPLICATIONS THAT ARE PROCESSED UNDER CARRP BY FISCAL YEAR APPLIED 2013 - 2019						
Counts of N-400 by Fiscal Year						
Fiscal Year	Not CARRP Processed	Processed Under CARRP	Percent Not CARRP Processed	Percent Processed Under CARRP	Change from prior Fiscal Year	Percent Change from prior Fiscal Year
2013	771,046	2,024	99.74%	0.26%		
2014	783,399	2,977	99.62%	0.38%	0.117%	44.596%
2015	782,095	3,871	99.51%	0.49%	0.114%	30.098%
2016	982,803	3,546	99.64%	0.36%	-0.133%	-27.006%
2017	977,862	2,937	99.70%	0.30%	-0.060%	-16.706%
2018	837,625	2,219	99.74%	0.26%	-0.035%	-11.766%
2019	821,536	1,172	99.86%	0.14%	-0.122%	-46.083%
2013-2019	5,956,366	18,746	99.69%	0.31%		

With respect to the referral of applicants to CARRP, the data clearly shows that:

- i) The relative number of I-485 and N-400 applications processed pursuant to the CARRP policy from FY 2013 through FY 2019 is very small, well below 1%. Only 0.20% or 9,468 of the 4,640,062 I-485 applications were processed under CARRP, and only 0.31% or 18,746 out of 5,975,112 N-400 applications were processed under CARRP. Combining both groups, there were 10,621,174 applications, of which only 0.27% or 28,214 were processed under CARRP.

- ii) The percent of I-485 applicants who applied in a given year and whose applications were processed under CARRP reached the maximum in FY 2015 at 0.27% and decreased each year thereafter, falling to 0.09% in FY 2019. A similar pattern existed for N-400 applications. The maximum percent of applications processed under CARRP also occurred in FY 2015 (0.49%) and declined in each fiscal year thereafter, falling to 0.014% in FY 2019. Applications received in a fiscal year can be referred to CARRP in the fiscal year in which applicants apply or in any subsequent fiscal year.
- iii) While the present statistical analysis cannot tie a specific reason to the increase or decrease in referral of applications to CARRP or the pattern of change over time, it is notable that the rise in the number of I-485 and N-400 applications peaked in FY 2015 and then decreased consistently, starting in FY 2016. This rise in the number of CARRP referrals may be linked to any number of unexamined factors not addressed here, and may include trends in the applications USCIS receives, changes in global patterns of terrorist events or other events raising national security concerns, such as espionage, and reactions and responses to security incidents in the United States and worldwide. Similarly, the decrease in referrals could result from any number of unexamined factors.

To some extent, one would expect the numbers referred to CARRP to be somewhat reduced compared to earlier years because the time period for possible referral is shortened (since the data is truncated on September 30, 2019, the end of FY 2019). This is referred to as a censored data set since the number of applications received that will be referred to CARRP is censored by the data truncation as of September 30, 2019 and recipients who are or would be referred to CARRP after September 30, 2019 are not counted as CARRP referrals. This will obviously have a smaller impact the earlier the application was received before September 30, 2019.

However, this could not cause the referral rate to increase over time.³⁵ To account for this, I have estimated how many additional recipients who applied in a fiscal year would be referred to CARRP after September 30, 2019. This is done by looking at the percent of recipients who applied in a fiscal year who are referred to CARRP in the year they applied and in each fiscal year thereafter.³⁶ Then, if recipients were reviewed for fewer than six fiscal years because of the truncation of the data, I assume that the referral rate to CARRP in those fiscal years that are truncated would mirror the average number of new CARRP referrals for those subsequent fiscal years in which the data is not truncated. That is, for example, the applications that were referred to CARRP in FY 2014 only had five subsequent fiscal years before the data was censored. Looking at the data, we see that when we have data for the full six fiscal years after application, the sixth fiscal year since application accounts for 0.25% of the referrals to CARRP. Thus, we estimate that the referral of recipients who applied in FY 2014 would increase by 0.25% if the data were extended for another year so the FY 2014 recipients would be evaluated for CARRP referral for the full six years after application.

Tables 1.1 and 2.1 show the estimate of the referrals for CARRP adjusting for the censorship of the data. Here, the differences over time are comparable, since the impact of the censorship is removed.

³⁵ But, for fiscal years ending closer to September 30, 2019, it is possible that the reduction it causes may mask a true increasing pattern.

³⁶ I looked at up to six fiscal years because that is the maximum time span for which we have data on the likelihood of referral to CARRP in subsequent years.

TABLE 1.1						
TABLE 1 ADJUSTED FOR CENSORSHIP						
THE NUMBER AND PERCENT OF FORM I-485 APPLICATIONS THAT ARE PROCESSED UNDER CARRP BY FISCAL YEAR APPLIED 2013 - 2019						
Counts of I-485s by Fiscal Year						
Fiscal Year	Not CARRP Processed	Processed Under CARRP	Percent Not CARRP Processed	Percent Processed Under CARRP	Change from prior Fiscal Year	Percent Change from prior Fiscal Year
2013	601,668	1,401	99.77%	0.23%		
2014	635,871	1,270	99.80%	0.20%	-0.033%	-14.198%
2015	635,991	1,747	99.73%	0.27%	0.075%	37.430%
2016	709,064	1,834	99.74%	0.26%	-0.016%	-5.824%
2017	759,142	1,604	99.79%	0.21%	-0.047%	-18.272%
2018	698,555	1,407	99.80%	0.20%	-0.010%	-4.664%
2019	596,303	1,334	99.78%	0.22%	0.022%	11.045%
2013-2019	4,636,594	10,597	99.77%	0.23%		

TABLE 2.1						
TABLE 2 ADJUSTED FOR CENSORSHIP						
THE NUMBER AND PERCENT OF FORM N-400 APPLICATIONS THAT ARE PROCESSED UNDER CARRP BY FISCAL YEAR APPLIED 2013 - 2019						
Counts of N-400 by Fiscal Year						
Fiscal Year	Not Processed Under CARRP	Processed Under CARRP	Percent Not Processed	Percent Processed Under CARRP	Change from prior Fiscal Year	Percent Change from prior Fiscal Year
2013	771,046	2,024	99.74%	0.26%		
2014	783,399	2,987	99.62%	0.38%	0.118%	45.080%
2015	782,095	3,990	99.49%	0.51%	0.128%	33.630%
2016	982,803	3,571	99.64%	0.36%	-0.146%	-28.674%
2017	977,862	2,976	99.70%	0.30%	-0.059%	-16.192%
2018	837,625	2,410	99.71%	0.29%	-0.017%	-5.445%
2019	821,536	2,605	99.68%	0.32%	0.029%	10.176%
2013-2019	5,956,366	20,563	99.66%	0.34%		

Examining Tables 1.1 and 2.2, which adjust tables 1 and 2 for the data censorship, shows that:

- i) The referral rate to CARRP for I-485 recipients increased to 0.27% in FY 2015, and then declined consistently (except for a 0.02 uptick in FY 2019) to 0.22% in the last fiscal year.
- ii) The referral rate to CARRP for N-400 recipients increased each year by 0.12 percentage points until it reached its maximum level of 0.51% in FY 2015, and then declined consistently (except for a 0.03 percentage point uptick in FY

2019) to 0.32% in the last fiscal year. Plaintiffs allege that “extreme vetting” took place as a result of the Executive orders early in 2017 (during FY 2017), which implies that more applications would be referred to CARRP (and it would take longer to adjudicate cases referred to CARRP). The referral data does not support any allegation that in 2017 or thereafter there was any meaningful increase (or decrease) in the referral to CARRP. The drop in referrals in FY 2017 was consistent with the pattern shown in FY 2015 and FY 2016, and after FY 2017 remains fairly constant. Clearly, there is no statistical data showing that the alleged “extreme vetting” resulted in more referrals to CARRP. While this finding would statistically support an inference that the Plaintiffs’ allegation is incorrect, it cannot conclusively refute the allegation. It is possible that the alleged “extreme vetting” increased referrals to CARRP but other unspecified or measurable factors are simultaneously masking this impact.

2. Agency Source of Information Supporting Referral to CARRP

Data regarding the source of the information supporting the referral of an application to CARRP is available, but is limited. It is my understanding that when a referral is made, [REDACTED]

[REDACTED] The source of the reported information noted as supporting the referral to CARRP was grouped by USCIS into one of three possible categories: USCIS Information; Third Agency Information (which represents information from an agency other than USCIS); or Indeterminate (when the reported agency source of the data could not be classified into a specific agency source). The result of that coding tabulated for CARRP referrals by type of applicant (I-485 and N-400) and fiscal year of application is presented in Tables 3 and 4.

TABLE 3						
REPORTED SOURCE OF NATIONAL SECURITY CONCERNS RESULTING IN CARRP REFERRAL BY FISCAL YEAR 2013 - 2019 I-485 APPLICANTS						
Fiscal Year	USCIS Information	Percent USCIS	Third Agency Information	Percent Third Agency	Indeterminate	Percent Indeterminate
2013	█	█	█	█	█	█
2014	█	█	█	█	█	█
2015	█	█	█	█	█	█
2016	█	█	█	█	█	█
2017	█	█	█	█	█	█
2018	█	█	█	█	█	█
2019	█	█	█	█	█	█
2013-2019	█	█	█	█	█	█

TABLE 4						
REPORTED SOURCE OF NATIONAL SECURITY CONCERNS RESULTING IN CARRP REFERRAL BY FISCAL YEAR 2013 - 2019						
N-400 APPLICANTS						
Fiscal Year	USCIS Information	Percent USCIS	Third Agency Information	Percent Third Agency	Indeterminate	Percent Indeterminate
2013	6	0.30%	1,857	91.75%	161	7.95%
2014	5	0.17%	2,839	95.36%	133	4.47%
2015	7	0.18%	3,789	97.88%	75	1.94%
2016	4	0.11%	3,377	95.23%	165	4.65%
2017	14	0.48%	2,512	85.53%	411	13.99%
2018	5	0.23%	1,915	86.30%	299	13.47%
2019	7	0.60%	1,022	87.20%	143	12.20%
2013-2019	48	0.26%	17,311	92.35%	1,387	7.40%

The data shows that:

- i) The agency source recorded for [REDACTED] the cases, the source of information recorded [REDACTED].
- ii) The number and percent of referrals to CARRP reported as being based on information sourced [REDACTED] [REDACTED] are recorded as being supported by information [REDACTED].

iii) With respect to the pattern of the agency source reported for referrals, the data shows [REDACTED] [REDACTED] in FY 2017 and thereafter. [REDACTED] the amount [REDACTED] [REDACTED] Adjusting the percentages by eliminating the [REDACTED] and comparing the percent of pre-FY 2017 and post-FY 2017 (including FY 2017) applications for which the [REDACTED] [REDACTED] among I-485 applications [REDACTED] [REDACTED] for N-400 applications.

It is my understanding³⁷ that the actual reason for [REDACTED]

[REDACTED] To determine the extent to which that occurs, [REDACTED] [REDACTED], I selected a random sample³⁸ of 249 I-485 and N-400 applications that were identified [REDACTED] and a random sample of 102 of those identified as [REDACTED],³⁹ and instructed USCIS to have a knowledgeable employee(s) review the relevant information to determine [REDACTED] applicant's referral to CARRP. The employee(s) selected was not to be shown [REDACTED] If [REDACTED]

³⁷ Based on discussions with USCIS personnel.

³⁸ I originally drew a random sample of 135 applications where the source was [REDACTED], and 70 applications where the source was [REDACTED]. Given that there are more CARRP cases in the amended database, I augmented the sample retaining the same overall selection rate used in the original sample selection, and only chose from the newly added CARRP cases with the same sample selection rate, so the final sample would be self-weighting.

³⁹ The 102 randomly selected [REDACTED] consisted of 95 applications from the [REDACTED] [REDACTED] and 7 from the [REDACTED].

████████████████████ were found to be a source of the information supporting the referral to CARRP, then it was determined to the extent possible which ████████████████████ the information raising a potential national security concern with the applicant.

The results of the validation study are presented in Table 5.

TABLE 5

**RESULTS OF VERIFICATION OF "IDENTIFIED" PRIMARY BASED
FOR THE INDIVIDUAL'S NATIONAL SECURITY CONCERN**

<u>Identified Sources</u>	<u>Verified Sources</u>	<u>Counts</u>	<u>Percent</u>
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]

The study shows that:

- i) In all cases but one in which the agency source of the information is reported as [REDACTED] the validation study confirms that the reported source did provide relevant information supporting the referral to CARRP. Hence, the study validates the determination that [REDACTED] [REDACTED] of information that was relevant to the referral to CARRP.
- ii) However, a [REDACTED] of the referrals were supported by information from [REDACTED] [REDACTED]. Moreover, when the [REDACTED] of the information [REDACTED] [REDACTED] could not be specified [REDACTED] the validity study of the classification found that for about [REDACTED] the relevant data was supplied [REDACTED] of the cases there was relevant data supplied [REDACTED] of the cases there was relevant data supplied by [REDACTED].
- iii) When [REDACTED] are sources for referral to CARRP, in [REDACTED] of the time) the [REDACTED] of information supporting the referral.

Although I have no information as to how the [REDACTED] when multiple sources of information exist,⁴⁰ it is clear that the [REDACTED] being a source, and [REDACTED] extent [REDACTED] the amount of input [REDACTED]. However, it does appear that [REDACTED] supporting referral of an application to CARRP.

While I cannot precisely determine the frequency of [REDACTED] source of data or [REDACTED] source supporting the referral, I can estimate those frequencies based on the data in Tables 3, 4, and 5. Specifically, I estimate the percent of [REDACTED] of relevant information plus [REDACTED] of relevant information [REDACTED] of the cases where the [REDACTED]. Similarly, I estimate the number of cases where [REDACTED] reported as an [REDACTED] of the reported information as the number of cases where it was reported as [REDACTED] of the cases where the [REDACTED] plus [REDACTED] the [REDACTED] was [REDACTED]. I can also estimate the percent of cases in which the [REDACTED] by estimating the number of cases where the [REDACTED]

⁴⁰ I was informed by USCIS that there was [REDACTED] for referring an application for processing pursuant to the CARRP policy.

was the [REDACTED] was the [REDACTED] of the cases where [REDACTED] source. To be conservative, I assume that [REDACTED] of the remaining cases.

The results are presented in Tables 6 and 7:

TABLE 6								
ESTIMATED SOURCES OF NATIONAL SECURITY CONCERNS RESULTING IN CARRP REFERRAL BY FISCAL YEAR 2013-2019 I-485 APPLICANTS								
Fiscal Year	USCIS Information is a Source	Percent USCIS is a Source	Third Agency Information is a Source	Percent Third Agency is a Source	USCIS Information is First Source	Percent USCIS is First Source	Third Agency Information is First Source	Percent Third Agency is First Source
2013	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2014	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2015	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2016	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2017	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2018	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2019	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2013-2019	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

TABLE 7

ESTIMATED SOURCES OF NATIONAL SECURITY CONCERNS RESULTING IN CARRP REFERRAL BY FISCAL YEAR 2013-2019 N-400 APPLICANTS

Fiscal Year	USCIS Information is a Source	Percent USCIS is a Source	Third Agency Information is a Source	Percent Third Agency is a Source	USCIS Information is First Source	Percent USCIS is First Source	Third Agency Information is First Source	Percent Third Agency is First Source
2013								
2014								
2015								
2016								
2017								
2018								
2019								
2013-2019								

This analysis shows that

- i) A [REDACTED] is a source for [REDACTED] referrals to CARRP. I estimate that a [REDACTED] supplied relevant information for approximately [REDACTED] referrals. USCIS also supplied relevant information in about [REDACTED] referrals.

- ii) In [REDACTED] of the cases the [REDACTED] source was a [REDACTED] and in [REDACTED] of the cases [REDACTED] [REDACTED] source of information leading to referral of the application to CARRP.
- iii) Starting with applications supplied in FY 2017, there was [REDACTED] supplying information, [REDACTED] source of information relevant to the decision of referring the application to CARRP. However, these changes [REDACTED] of the applications received (almost always [REDACTED] [REDACTED]).

3. Comparison of CARRP and Non-CARRP Applications with Regard to Approval, Denial, and Time to Adjudication

Table 8 compares the approval rates for I-485 and N-400 applicants by CARRP status among those whose application was either approved or denied.

TABLE 8								
APPROVAL AND DENIAL RATES OF I-485 AND N-400 APPLICANTS BY CARRP STATUS								
Fiscal Year of Decision	Not CARRP Processed				Processed Under CARRP			
	Approved	Denied	Approval Percent	Denial Percent	Approve	Denied	Approval Percent	Denial Percent
Approval and Denial Rates of I-485 Applicants by CARRP Status								
2013-2019	3,559,984	257,529	93.25%	6.75%	5,844	1,472	79.88%	20.12%
Approval and Denial Rates of N-400 Applicants by CARRP Status								
2013-2019	4,835,184	434,154	91.76%	8.24%	12,317	2,761	81.69%	18.31%

Table 8 shows that overall

- i) While almost all applications processed through the normal vetting process are approved (93.25% of I-485 and 91.76% of N-400 applications) and most of those processed through CARRP are also approved (over 75% of the applications), the denial rate for those processed under CARRP is significantly higher than the denial rate for those not processed under CARRP. That is, those in the population referred to CARRP are more likely to be ineligible for an immigration benefit and be denied than the non-CARRP processed applications.⁴¹

⁴¹ Or, although unlikely, it could be that the non-CARRP screening simply misses more people who should be denied.

It is not surprising that the screening process for identifying who is and who is not a national security concern is far from perfect. Of course, if it were perfect, there would be no need for CARRP. The CARRP policy is based on the premise that a higher degree of scrutiny will permit deconfliction with other agencies, resolve whether the applicant is actually a national security concern, and resolve whether an applicant who is a national security concern is eligible for the benefit sought, so that appropriate action can be taken. Further, if the applicant turns out to not be a national security concern and is acceptable for an immigration benefit, the cost of the increased scrutiny will be an increase in the average⁴² time to approval; on the other hand, if the applicant turns out to be a national security concern, the benefit will be identifying a national security concern and taking appropriate action.

Table 9 compares the time to adjudication for I-485 and N-400 applicants by CARRP status given the applicant is adjudicated.⁴³

⁴² I say “on average” since some applications will be quickly determined not to be national security concerns and will therefore be more quickly approved if the applicant is not otherwise ineligible (perhaps almost as quickly as if not processed through CARRP).

⁴³ Almost all adjudications are denials or approvals, but there are a few cases which are closed without a denial or approval determination for administrative or other reasons. These cases are included in the time to adjudication calculation.

TABLE 9				
U.S. CITIZENSHIP & IMMIGRATION SERVICES FORM I-485, APPLICATION TO REGISTER PERMANENT RESIDENCE OR ADJUST STATUS FORM N-400, APPLICATION FOR NATURALIZATION AVERAGE AND MEDIAN PROCESSING TIMES FOR ADJUDICATED APPLICATIONS BY CARRP vs NON-CARRP IN DAYS APPLICATIONS RECEIVED FISCAL YEAR 2013 - 2019				
Form	CARRP	Completions	Mean	Median
I485	NO	3,838,407	262	206
	YES	7,414	635	585
N400	NO	5,307,244	233	197
	YES	15,370	613	570
Grand Total	NO	9,145,651	245	201
	YES	22,784	620	575

Table 9 shows that:

- i) The time to adjudication for applications adjudicated is significantly longer for those processed under CARRP, as expected since the CARRP policy requires a higher degree of scrutiny of the applicants because of the national security concern or potential concern.

However, one must be cautious in interpreting the data presented in Tables 8 and 9 due to the limitation of such analyses in assessing the change in denial and approval rates, comparisons over time because of the impact of pending decisions on the final outcome and time to such outcomes. When looking at time to adjudication, the data is restricted to those who have been adjudicated. This ignores the effect on applicants whose applications have not yet been adjudicated. Hence, the time to adjudication for applicants who apply at the same time is understated since, by definition, the time a case is pending is shorter than the time it will take from filing through adjudication. This will likely not change the conclusion that the time to adjudication is longer for those in CARRP. However, if one wants to compare differences by CARRP status over time, one should compare applicants who apply in the same fiscal year, not those whose applications are adjudicated in the same fiscal year. Moreover, when comparing approval rate differences, one must not only focus on applicants who applied in the same fiscal year, but also adjust for the differences in pending cases. To illustrate this issue, consider the following hypothetical.

<u>Number applied in 2017</u>	<u>Denied</u>	<u>Approved</u>	<u>Pending</u>
Non-CARRP	2,000	7,000	1,000
CARRP	10	35	45

The rates of denial are the same by CARRP status if one focuses only on the number denied and approved.⁴⁴ However, if one also assumes that the average time to adjudication is the same by CARRP status, the results could be misleading if the numbers pending are significant. When the pending cases are adjudicated, the average length of time to completion will increase significantly, and the increase would be even greater for those in CARRP.⁴⁵ More significantly, if the likelihood of a decision being favorable is higher (or lower) the longer a case is pending, then the denial and approval rates will change, since the percent of pending cases is likely larger among CARRP applications. Another issue is that the percentage of cases pending would be expected to be larger the closer the fiscal year in which the applicant applied is to the when the data collection is truncated (here, September 30, 2019). Hence, if one wants to compare denial rates and time to decision for applicants in the early years to denial rates and time to decision for applicants in the later years, one must account for the date of the application and the length of the possible period until a decision. That is, one must examine the decision process considering both when the application was made and when the decisions are made.

The change in the rates of approvals, denials, and pending decisions of applicants who apply in the same fiscal year by CARRP status will yield insight into whether there is any support for the Plaintiffs' allegations that (i) the alleged "extreme vetting"

⁴⁴ The approval rate for non-CARRP = $2000/(2000+7000)$, which equals the CARRP rate of 10/45.

⁴⁵ The median will generally be impacted less than the mean, but if the percentage of cases pending is large, then the effect on the median could still be large. However, the mean can be significantly impacted by a few extreme values.

resulting from the EOs increased the time to adjudication, especially for those approved, and that (ii) the alleged “extreme vetting” increased the number and percent of applicants who were not actually a national security concern but were referred to CARRP.⁴⁶

Thus, to analyze the changes in approval and denial rates over fiscal years, and the length of time to adjudications, I grouped applicants by the fiscal year in which they applied and by CARRP status, and computed the following for each group of applicants: approval rates; denial rates; and still pending rates by fiscal year of application and at the end of each subsequent fiscal year until FY 2019 (the last date for which information was collected). Tables 10 and 11 present the pending rates for I-485 and N-400 applications, respectively, while Tables 12 and 13 present the approval rates, and Tables 14 and 15 present the denial rates. All the tables show the rates over time. Hence, for each application fiscal year cohort, I present the rate of outcomes at the end of the fiscal year in which they applied and at the end of each fiscal year after they applied. The maximum number of fiscal years after they applied is six years for the FY 2013 cohort and is lower by one year for each subsequent fiscal year applicant cohort. For example, for the FY 2017 cohort there are values only for the fiscal year in which they applied and for the end of FY 2018 (one year after) and FY 2019 (two years after).

When comparing the results, one must compare results for which the exposure time is the same. The difference between outcomes for the CARRP and non-CARRP same fiscal year cohorts (with the same time to adjudication exposure) allows us to

⁴⁶ Since the data does not allow me to determine who was referred to CARRP but determined to not be of national security concern after review, I use the false positives as a proxy, assuming the percent of cases in which an applicant was found to be a national security concern but was nevertheless approved is a small percent of the approvals.

determine the difference in that outcome by CARRP status. The actual fiscal year after they applied will vary by fiscal year. I have identified the fiscal years which correspond with the Trump Administration. Focusing on the pending rates with the same time (number of subsequent fiscal years) since application, differences between those decisions that are highlighted (*i.e.*, those corresponding to the Trump Administration) and the unhighlighted decisions would indicate the extent to which the data supports or is inconsistent with Plaintiffs' claims that the Executive Orders' alleged call for "extreme vetting" increased the number of applications referred to CARRP and the number of those referred who were not actually a national security concern (and also had a disproportionate impact on Muslims).

Table 10 examines the extent to which I-485 applications remain pending beyond the fiscal year in which the application is submitted, and Table 11 examines the results for N-400 applications.

TABLE 10								
COMPARISON OF PERCENT OF I-485 APPLICANTS STILL PENDING BY THE END OF SUBSEQUENT FISCAL YEARS AFTER THE FISCAL YEAR THEY APPLIED BY CARRP STATUS								
Fiscal Year Applied	CARRP Status	Fiscal Years After Fiscal Year Applied						
		0	1	2	3	4	5	6
		Percent Pending						
2013	NON-CARRP	51.18%	10.90%	7.79%	6.65%	5.96%	5.56%	5.25%
2014	NON-CARRP	55.84%	10.73%	6.81%	5.62%	4.83%	4.35%	.
2015	NON-CARRP	59.47%	12.10%	6.48%	4.63%	3.82%	.	.
2016	NON-CARRP	61.62%	15.12%	6.99%	4.39%	.	.	.
2017	NON-CARRP	71.23%	21.12%	6.84%	.	.	.	.
2018	NON-CARRP	76.12%	20.04%	.	.	.	.	.
2019	NON-CARRP	78.27%	.	.	.	.	.	.
2013	CARRP	83.79%	36.32%	17.66%	11.29%	7.81%	5.28%	3.62%
2014	CARRP	89.78%	51.56%	26.74%	17.08%	11.81%	6.54%	.
2015	CARRP	96.02%	72.23%	36.32%	18.28%	7.21%	.	.
2016	CARRP	97.20%	77.86%	37.95%	14.07%	.	.	.
2017	CARRP	98.36%	72.83%	25.92%	.	.	.	.
2018	CARRP	95.60%	49.07%	.	.	.	.	.
2019	CARRP	88.02%	.	.	.	.	.	.
2013	Diff CRP - NCRP	32.61%	25.42%	9.87%	4.64%	1.85%	-0.28%	-1.63%
2014	Diff CRP - NCRP	33.94%	40.83%	19.93%	11.46%	6.98%	2.19%	.
2015	Diff CRP - NCRP	36.55%	60.13%	29.84%	13.65%	3.39%	.	.
2016	Diff CRP - NCRP	35.58%	62.74%	30.96%	9.68%	.	.	.
2017	Diff CRP - NCRP	27.13%	51.71%	19.08%	.	.	.	.
2018	Diff CRP - NCRP	19.48%	29.03%	.	.	.	.	.
2019	Diff CRP - NCRP	9.75%	.	.	.	.	.	.

Note: All applications that were approved, denied, or pending are considered.
Yellow represents fiscal years which are in the period FY 2017 - FY 2019.

TABLE 11								
COMPARISON OF PERCENT OF N-400 APPLICANTS STILL PENDING BY THE END OF SUBSEQUENT FISCAL YEARS AFTER THE FISCAL YEAR THEY APPLIED BY CARRP STATUS								
Fiscal Year Applied	CARRP Status	Fiscal Years After Fiscal Year Applied						
		0	1	2	3	4	5	6
		Percent Pending						
2013	NON-CARRP	40.93%	1.64%	0.71%	0.49%	0.39%	0.31%	0.06%
2014	NON-CARRP	49.47%	1.88%	0.66%	0.44%	0.31%	0.09%	.
2015	NON-CARRP	47.31%	2.29%	0.73%	0.42%	0.14%	.	.
2016	NON-CARRP	52.97%	5.34%	1.29%	0.42%	.	.	.
2017	NON-CARRP	70.22%	10.60%	0.67%	.	.	.	.
2018	NON-CARRP	74.52%	6.24%	.	.	.	.	.
2019	NON-CARRP	69.70%	.	.	.	.	.	.
2013	CARRP	84.83%	27.32%	12.25%	7.07%	4.55%	3.16%	1.14%
2014	CARRP	85.38%	34.95%	15.99%	9.14%	5.17%	1.75%	.
2015	CARRP	95.73%	60.65%	24.07%	10.78%	3.36%	.	.
2016	CARRP	98.19%	76.30%	29.60%	7.99%	.	.	.
2017	CARRP	99.56%	76.69%	25.05%	.	.	.	.
2018	CARRP	98.01%	48.73%	.	.	.	.	.
2019	CARRP	89.90%	.	.	.	.	.	.
2013	Diff CRP - NCRP	43.90%	25.68%	11.54%	6.58%	4.16%	2.85%	1.08%
2014	Diff CRP - NCRP	35.91%	33.07%	15.33%	8.70%	4.86%	1.66%	.
2015	Diff CRP - NCRP	48.42%	58.36%	23.34%	10.36%	3.22%	.	.
2016	Diff CRP - NCRP	45.22%	70.96%	28.31%	7.57%	.	.	.
2017	Diff CRP - NCRP	29.34%	66.09%	24.38%	.	.	.	.
2018	Diff CRP - NCRP	23.49%	42.49%	.	.	.	.	.
2019	Diff CRP - NCRP	20.20%	.	.	.	.	.	.

Note: All applications that were approved, denied, or pending are considered.
Yellow represents fiscal years which are in the period FY 2017 - FY 2019.

Tables 10 and 11 show that:

- (i) Clearly, in each FY, both I-485 and N-400 applications placed in CARRP take longer to be decided.

Plaintiffs claim that the alleged “extreme vetting” as a result of the EOs resulted in increasing the processing times in CARRP. To determine if there is any valid statistical evidence that the processing times meaningfully changed when the EOs were issued, I focused on the differences if any between the processing which took place in FY 2018 (the first full fiscal year which was entirely under the Trump administration) and what took place in FY 2016 (the last full fiscal year entirely which was entirely under the Obama administration). Three quarters of FY 2017 was under the Trump administration. Therefore, to test the sensitivity of the analysis, I also compared the results of FY 2016 to the combined results for FY 2017 and FY 2018, to answer the question of the extent to which what actually occurred differed from what would have occurred if the decisions made in FY 2017 and FY 2018 mirrored the decisions made in FY 2016. This would enable me to measure the impact of any change in outcomes caused by any change (if it existed) in the decision process and the random changes that would occur even if the process was the same. To measure the random change, I conducted the analysis for the non-CARRP population, since there is no allegation that the non-CARRP process would be affected by the “extreme vetting” or any issues associated specifically with the CARRP process. To make sure the comparison between what occurred and what would have been expected if the decisions were identical to the FY 2016 decision process was an “apples to apples” analysis, I controlled for how long the application was pending, measured in how many fiscal years it was pending at the start of the fiscal year decision being studied, since the data shows that how long an application had been pending impacts the likelihood it

still would be pending at the end of the fiscal year review process. I then assumed that if the FY 2017 and FY2018 results mirrored the result in FY 2016, the percent still pending at the end for each cohort⁴⁷ of applications in the initial Trump years would be identical to that which occurred in the last pre-Trump FY 2016. That is, for example, if 46% of the applications received in FY 2014 were still pending at the end of FY 2016, we should expect that 46% of the applications received in FY 2016, two fiscal years before FY 2018, should still be pending at the end of the FY 2018. Table 10.1 shows the results of this analysis.

⁴⁷ By cohort, I mean each group of applications that had applied the same number of fiscal years prior to the fiscal year being studied.

TABLE 10.1

**SHORTFALL OR SURPLUS OF ADJUDICATIONS AS OF END OF GIVEN FISCAL YEAR IF
THE RATE OF ADJUDICATIONS WAS THE SAME AS THAT AT THE END OF FY 2016
CONTROLLING FOR TIME SINCE RECEIPT OF APPLICATIONS**

	I-485				
	FY 2018		FY 2017 & FY 2018		
	ADJUDICATIONS		ADJUDICATIONS		
	Shortfall/Surplus		Shortfall/Surplus		
	(negative) in Adjudications		(negative) in Adjudications		
	Percent of		Percent of		
	Number	Adjudications	Number	Adjudications	
CARRP Applications	-310	4.99%	-664	5.32%	
Non-CARRP Applications	-156,963	5.63%	-242,317	4.39%	
Difference in Percent of Applications		-0.64%		0.93%	

	N-400				
	FY 2018		FY 2017 & FY 2018		
	ADJUDICATIONS		ADJUDICATIONS		
	Shortfall/Surplus		Shortfall/Surplus		
	(negative) in Adjudications		(negative) in Adjudications		
	Percent of		Percent of		
	Number	Adjudications	Number	Adjudications	
CARRP Applications	-534	4.26%	-673	2.60%	
Non-CARRP Applications	-135,774	3.80%	-155,880	2.20%	
Difference in Percent of Applications		0.46%		0.40%	

NOTE

Shortfall/Surplus is calculated by setting the approval rates as of the end of the post period (FY 2018 and FY 2018) for applications received the same number of fiscal years before equal to what the approval rates were at the end of FY 2016 and then subtracting from this expected value the number of actual approvals that occurred.

Table 10.1 shows that the rate of adjudications of CARRP decisions as of the end of either post period studied is not meaningfully different from what one would expect if the post period results were identical to the pre FY 2016 results. Table 10.1 indicates that slightly more adjudications than expected occurred in either post period, FY 2018, or FY 2017 combined with FY 2018. However, the differences between the actual and expected rates in CARRP decisions were not only small, they were similar to the differences between actual and expected decisions for non-CARRP applications. This implies that the small difference between expected and actual outcomes among CARRP applications is due to normal variation, and is not related to any changes specific to the CARRP process. Hence, the differences in the CARRP population are clearly not indicative of any impact due to the alleged “extreme vetting”. Instead, the statistical results indicate that the decision process to adjudication did not meaningfully change in either post period FY 2018 or FY 2017 combined with FY 2018. Thus, the data is inconsistent with a claim that the alleged “extreme vetting” initiated by the EOs resulted in increasing the time it takes to adjudicate an application processed in CARRP.

Table 12 examines the approval rate and Table 13 examines the denial rate for I-485 applicants as a function of the number of fiscal years from application. Tables 14 and 15 present the approval rates and denial rates as a function of the number of fiscal years from applications for N-400 applications.

TABLE 12								
COMPARISON OF PERCENT OF I-485 APPLICANTS APPROVED BY THE END OF SUBSEQUENT FISCAL YEARS AFTER THE FISCAL YEAR THEY APPLIED BY CARRP STATUS								
Fiscal Year Applied	CARRP Status	Fiscal Years After Fiscal Year Applied						
		0	1	2	3	4	5	6
		Percent Approved						
2013	NON-CARRP	47.03%	84.35%	86.65%	87.42%	87.88%	88.15%	88.32%
2014	NON-CARRP	42.44%	84.56%	87.65%	88.46%	89.03%	89.34%	.
2015	NON-CARRP	38.97%	83.32%	87.88%	89.18%	89.59%	.	.
2016	NON-CARRP	36.81%	79.99%	86.65%	88.38%	.	.	.
2017	NON-CARRP	27.39%	73.92%	85.85%	.	.	.	.
2018	NON-CARRP	22.76%	74.08%	.	.	.	.	.
2019	NON-CARRP	19.77%	.	.	.	.	.	.
2013	CARRP	14.69%	54.70%	68.45%	72.50%	74.67%	75.76%	76.56%
2014	CARRP	8.62%	41.10%	60.81%	67.20%	70.63%	73.58%	.
2015	CARRP	3.46%	23.43%	53.72%	67.19%	74.34%	.	.
2016	CARRP	1.85%	18.61%	51.63%	67.77%	.	.	.
2017	CARRP	0.85%	21.85%	56.63%	.	.	.	.
2018	CARRP	3.91%	40.95%	.	.	.	.	.
2019	CARRP	7.41%	.	.	.	.	.	.
2013	Diff CRP - NCRP	-32.34%	-29.65%	-18.20%	-14.92%	-13.21%	-12.39%	-11.76%
2014	Diff CRP - NCRP	-33.82%	-43.46%	-26.84%	-21.26%	-18.40%	-15.76%	.
2015	Diff CRP - NCRP	-35.51%	-59.89%	-34.16%	-21.99%	-15.25%	.	.
2016	Diff CRP - NCRP	-34.96%	-61.38%	-35.02%	-20.61%	.	.	.
2017	Diff CRP - NCRP	-26.54%	-52.07%	-29.22%	.	.	.	.
2018	Diff CRP - NCRP	-18.85%	-33.13%	.	.	.	.	.
2019	Diff CRP - NCRP	-12.36%	.	.	.	.	.	.

Note: All applications that were approved, denied, or pending are considered.
Yellow represents fiscal years which are in the period FY 2017- FY 2019.

TABLE 13								
COMPARISON OF PERCENT OF I-485 APPLICANTS DENIED BY THE END OF SUBSEQUENT FISCAL YEARS AFTER THE FISCAL YEAR THEY APPLIED BY CARRP STATUS								
Fiscal Year Applied	CARRP Status	Fiscal Years After Fiscal Year Applied						
		0	1	2	3	4	5	6
		Percent Denied						
2013	NON-CARRP	1.65%	4.45%	5.18%	5.48%	5.65%	5.76%	5.86%
2014	NON-CARRP	1.59%	4.45%	5.21%	5.55%	5.74%	5.88%	.
2015	NON-CARRP	1.43%	4.30%	5.30%	5.82%	6.18%	.	.
2016	NON-CARRP	1.41%	4.51%	5.90%	6.72%	.	.	.
2017	NON-CARRP	1.14%	4.41%	6.63%	.	.	.	.
2018	NON-CARRP	0.92%	5.41%	.	.	.	.	.
2019	NON-CARRP	1.86%	.	.	.	.	.	.
2013	CARRP	1.37%	8.25%	13.02%	15.12%	16.28%	17.51%	18.31%
2014	CARRP	1.52%	6.86%	11.57%	14.76%	16.44%	18.60%	.
2015	CARRP	0.47%	3.81%	8.90%	13.24%	17.05%	.	.
2016	CARRP	0.73%	3.08%	9.81%	17.38%	.	.	.
2017	CARRP	0.72%	4.92%	16.54%	.	.	.	.
2018	CARRP	0.51%	9.48%	.	.	.	.	.
2019	CARRP	3.99%	.	.	.	.	.	.
2013	Diff CRP - NCRP	-0.28%	3.80%	7.84%	9.64%	10.63%	11.75%	12.45%
2014	Diff CRP - NCRP	-0.07%	2.41%	6.36%	9.21%	10.70%	12.72%	.
2015	Diff CRP - NCRP	-0.96%	-0.49%	3.60%	7.42%	10.87%	.	.
2016	Diff CRP - NCRP	-0.68%	-1.43%	3.91%	10.66%	.	.	.
2017	Diff CRP - NCRP	-0.42%	0.51%	9.91%	.	.	.	.
2018	Diff CRP - NCRP	-0.41%	4.07%	.	.	.	.	.
2019	Diff CRP - NCRP	2.13%	.	.	.	.	.	.

Note: All applications that were approved, denied, or pending are considered.
Yellow represents fiscal years which are in the period FY 2017 - FY 2019.

TABLE 14								
COMPARISON OF PERCENT OF N-400 APPLICANTS APPROVED BY THE END OF SUBSEQUENT FISCAL YEARS AFTER THE FISCAL YEAR THEY APPLIED BY CARRP STATUS								
Fiscal Year Applied	CARRP Status	Fiscal Years After Fiscal Year Applied						
		0	1	2	3	4	5	6
		Percent Approved						
2013	NON-CARRP	55.77%	90.83%	91.39%	91.49%	91.53%	91.54%	91.56%
2014	NON-CARRP	47.77%	93.36%	91.13%	91.25%	91.28%	91.30%	.
2015	NON-CARRP	49.70%	89.35%	90.60%	90.76%	91.84%	.	.
2016	NON-CARRP	43.94%	86.64%	89.37%	89.75%	.	.	.
2017	NON-CARRP	28.09%	81.89%	89.71%	.	.	.	.
2018	NON-CARRP	24.03%	86.02%	.	.	.	.	.
2019	NON-CARRP	28.51%	.	.	.	.	.	.
2013	CARRP	12.94%	62.20%	73.57%	77.08%	78.46%	79.05%	79.55%
2014	CARRP	13.27%	55.65%	69.76%	74.60%	76.61%	77.69%	.
2015	CARRP	3.96%	34.20%	64.19%	73.55%	78.02%	.	.
2016	CARRP	1.55%	20.09%	58.49%	72.77%	.	.	.
2017	CARRP	0.31%	19.28%	59.66%	.	.	.	.
2018	CARRP	1.77%	42.84%	.	.	.	.	.
2019	CARRP	8.90%	.	.	.	.	.	.
2013	Diff CRP - NCRP	-42.83%	-28.63%	-17.82%	-14.41%	-13.07%	-12.49%	-12.01%
2014	Diff CRP - NCRP	-34.50%	-37.71%	-21.37%	-16.65%	-14.67%	-13.61%	.
2015	Diff CRP - NCRP	-45.74%	-55.15%	-26.41%	-17.21%	-13.82%	.	.
2016	Diff CRP - NCRP	-42.39%	-66.55%	-30.88%	-16.98%	.	.	.
2017	Diff CRP - NCRP	-27.78%	-62.61%	-30.05%	.	.	.	.
2018	Diff CRP - NCRP	-22.26%	-43.18%	.	.	.	.	.
2019	Diff CRP - NCRP	-19.61%	.	.	.	.	.	.

Note: All applications that were approved, denied, or pending are considered.
Yellow represents fiscal years which are in the period FY 2017- FY 2019.

TABLE 15								
COMPARISON OF PERCENT OF N-400 APPLICANTS DENIED BY THE END OF SUBSEQUENT FISCAL YEARS AFTER THE FISCAL YEAR THEY APPLIED BY CARRP STATUS								
Fiscal Year Applied	CARRP Status	Fiscal Years After Fiscal Year Applied						
		0	1	2	3	4	5	6
Percent Denied								
2013	NON-CARRP	3.05%	7.03%	7.37%	7.46%	7.51%	7.57%	7.72%
2014	NON-CARRP	2.55%	7.23%	7.64%	7.73%	7.81%	7.94%	.
2015	NON-CARRP	2.76%	7.66%	8.13%	8.26%	8.41%	.	.
2016	NON-CARRP	2.91%	7.45%	8.60%	8.99%	.	.	.
2017	NON-CARRP	1.49%	6.85%	8.67%	.	.	.	.
2018	NON-CARRP	1.18%	6.41%	.	.	.	.	.
2019	NON-CARRP	1.42%	.	.	.	.	.	.
2013	CARRP	2.17%	10.03%	13.39%	14.72%	15.76%	16.50%	17.34%
2014	CARRP	1.24%	8.84%	13.31%	15.15%	17.07%	18.99%	.
2015	CARRP	0.31%	4.86%	10.73%	14.19%	16.68%	.	.
2016	CARRP	0.25%	3.27%	10.69%	17.16%	.	.	.
2017	CARRP	1.40%	3.72%	13.72%	.	.	.	.
2018	CARRP	0.09%	6.61%	.	.	.	.	.
2019	CARRP	0.94%	.	.	.	.	.	.
2013	Diff CRP - NCRP	-0.88%	3.00%	6.02%	7.26%	8.25%	8.93%	9.62%
2014	Diff CRP - NCRP	-1.31%	1.61%	5.67%	7.42%	9.26%	11.05%	.
2015	Diff CRP - NCRP	-2.45%	-2.80%	2.60%	5.93%	8.27%	.	.
2016	Diff CRP - NCRP	-2.66%	-4.18%	2.09%	8.17%	.	.	.
2017	Diff CRP - NCRP	-0.09%	-3.13%	5.05%	.	.	.	.
2018	Diff CRP - NCRP	-1.09%	0.20%	.	.	.	.	.
2019	Diff CRP - NCRP	-0.48%	.	.	.	.	.	.

Note: All applications that were approved, denied, or pending are considered.
Yellow represents fiscal years which are in the period FY 2017 - FY 2019.

Tables 12 through 15 show that

- (i) Clearly, the percent approved was lower by the end of each subsequent FY for applications processed in CARRP, but the difference in the approval rate tends to narrow over time
- (ii) Almost all applicants not in CARRP and who will be approved are approved within one fiscal year after their application.
- (iii) At the end of the first one or two years, the denial rate of CARRP applications is slightly less than that of non-CARRP applications, but thereafter the denial rate for those in CARRP is markedly higher than that for those not in CARRP.
- (iv) Moreover, the disparity adverse to those in CARPP increases over time.

Plaintiffs' claim that the alleged "extreme vetting" as a result of the EOs would mean that more applicants should be referred to CARRP, and the approval rate should increase as a result of referring persons who should not have been referred and would have been approved faster if not referred to CARRP. As discussed above, the referral rate to CARRP did not increase with the installation of the Trump administration. Nevertheless, I conducted a study methodologically identical to that described above to produce Table 10.1, which analyzed whether the decision process of whether to leave a CARRP case pending changed after the issuance of the EOs in FY 2017. The only difference between the two analyses is that instead of studying whether an application was still pending, I studied whether an application was approved. The results are presented in Table 12.1

TABLE 12.1

SHORTFALL OR SURPLUS OF APPROVALS AS OF END OF GIVEN FISCAL YEAR IF THE RATE OF APPROVALS WAS THE SAME AS THAT AT THE END OF FY 2016 CONTROLLING FOR TIME SINCE RECEIPT OF APPLICATIONS

	I-485			
	FY 2018 APPROVALS		FY 2017 & FY 2018 APPROVALS	
	Shortfall/Surplus (negative) in Approvals		Shortfall/Surplus (negative) in Approvals	
	Number	Percent of Approvals	Number	Percent of Approvals
CARRP Applications	255	4.12%	544	4.36%
Non-CARRP Applications	164,163	5.89%	250,842	4.55%
Difference in Percent of Applications		-1.77%		-0.19%

	N-400			
	FY 2018 APPROVALS		FY 2017 & FY 2018 APPROVALS	
	Shortfall/Surplus (negative) in Approvals		Shortfall/Surplus (negative) in Approvals	
	Number	Percent of Approvals	Number	Percent of Approvals
CARRP Applications	475	3.78%	588	2.27%
Non-CARRP Applications	133,578	3.74%	151,389	2.13%
Difference in Percent of Applications		0.04%		0.14%

NOTE

Shortfall/Surplus is calculated by setting the approval rates as of the end of the post period (FY 2018 and FY 2018) for applications received the same number of fiscal years before equal to what the approval rates were at the end of FY 2016 and then subtracting from this expected value the number of actual approvals that occurred.

Table 12.1 shows that:

- (i) The rate of CARRP approval decisions as of the end of either of the two post time periods FY 2018 or FY 2017 and FY 2018 combined is not meaningfully different from what one would expect if the post periods results were identical to the pre FY 2016 results. Table 12.1 indicates that slightly fewer approvals than expected occurred in the post period. However, the differences between the actual and expected approval rates in CARRP were not only small, they were similar to the differences between actual and expected approval decisions for non-CARRP applications. This implies that the small difference between expected and actual outcomes among CARRP applications is due to normal variation and is not related to any changes specific to the CARRP process. Hence, the differences in the CARRP actual and expected approvals pre and post issuance of the EOs are not indicative of the any impact due to the alleged “extreme vetting”. The statistical results instead indicate that the rate of approvals did not change meaningfully in the either of the two time post periods FY 2018 or FY 2017 and FY 2018 combined. Thus, the data is inconsistent with any suggestion that the alleged “extreme vetting” initiated by the EOs resulted in proportionately more CARRP referrals being approved.

IV. ANALYSIS OF THE IMPACT OF MUSLIM STATUS ON OUTCOMES

1. Referral for processing under CARRP

There are three issues which the data may help address. One issue is whether there is any statistical data to support an inference that applicants from majority Muslim countries were treated differently than applicants from majority non-Muslim countries. That is, is there statistical data to affirm whether the CARRP policies were neutrally applied without regard to Muslim status? The second issue is whether there is any data to support the allegation that the disparate impact of the CARRP policy was exacerbated by the alleged “extreme vetting” resulting from the EOs. The third issue is whether the processes changed to the disadvantage of Muslims as a result of the EOs.

Plaintiffs claim that applicants from Muslim countries are more likely to be referred to CARRP for processing, and that this disparity was exacerbated by the Trump Administration’s EOs requiring “extreme vetting,” and that under the Trump Administration the processes were changed to the disadvantage of Muslims. Table 16 presents the overall percentage referred to CARRP by their status as born in a majority Muslim country or not and for fiscal year for I-485 applicants. Table 17 presents the same information for N-400 applicants.

TABLE 16

**COUNTS OF I-485 APPLICANTS, REFERRAL RATE TO CARRP
MUSLIM STATUS DEFINED BY BIRTH COUNTRY**

NON-MUSLIM (<50%)						MUSLIM (>50%)					
Fiscal Year	Total	CARRP	Percent Referred to CARRP	Percent Change from Prior Year	Percent of Those in CARRP	Fiscal Year	Total	CARRP	Percent Referred to CARRP	Percent Change from Prior Year	Percent of Those in CARRP
13	535,030	712	0.133%	N/A	50.9%	13	66,976	686	1.02%	N/A	49.1%
14	553,934	521	0.094%	-29.32%	41.3%	14	82,214	740	0.90%	-12.12%	58.7%
15	552,235	729	0.13%	40.35%	42.6%	15	84,385	982	1.16%	29.29%	57.4%
16	622,931	608	0.10%	-26.06%	34.0%	16	86,599	1,179	1.36%	16.99%	66.0%
17	662,514	587	0.09%	-9.22%	38.2%	17	96,864	950	0.98%	-27.96%	61.8%
18	603,243	397	0.07%	-25.72%	32.9%	18	95,557	811	0.85%	-13.46%	67.1%
19	527,980	211	0.04%	-39.28%	38.7%	19	67,347	334	0.50%	-41.57%	61.3%
TOTAL	4,057,867	3,765	0.09%		39.9%	TOTAL	579,942	5,682	0.98%		60.1%

MUSLIM (>90%)						7 MUSLIM COUNTRIES IDENTIFIED IN EO7					
Fiscal Year	Total	CARRP	Percent Referred to CARRP	Percent Change from Prior Year	Percent of Those in CARRP	Fiscal Year	Total	CARRP	Percent Referred to CARRP	Percent Change from Prior Year	Percent of Those in CARRP
13	47,719	580	1.22%	N/A	41.5%	13	23,304	270	1.16%	N/A	19.3%
14	61,619	622	1.01%	-16.95%	49.3%	14	35,024	342	0.98%	-15.72%	27.1%
15	63,005	884	1.40%	39.00%	51.7%	15	37,098	558	1.50%	54.04%	32.6%
16	60,842	1,071	1.76%	25.46%	59.9%	16	33,328	720	2.16%	43.63%	40.3%
17	66,576	836	1.26%	-28.67%	54.4%	17	38,065	585	1.54%	-28.86%	38.1%
18	64,169	705	1.10%	-12.51%	58.4%	18	36,758	483	1.31%	-14.50%	40.0%
19	36,137	282	0.78%	-28.97%	51.7%	19	11,317	153	1.35%	2.89%	28.1%
TOTAL	400,067	4,980	1.24%		52.7%	TOTAL	214,894	3,111	1.45%		32.9%

TABLE 17

**COUNTS OF N-400 APPLICANTS, REFERRAL RATE TO CARRP
MUSLIM STATUS DEFINED BY BIRTH COUNTRY**

NON- MUSLIM (<50%)						MUSLIM (>50%)					
Fiscal Year	Total	CARRP	Percent Referred to CARRP	Percent Change from Prior Year	Percent of Those in CARRP	Fiscal Year	Total	CARRP	Percent Referred to CARRP	Percent Change from Prior Year	Percent of Those in CARRP
13	654,672	475	0.07%	N/A	23.5%	13	117,814	1,548	1.31%	N/A	76.5%
14	669,260	745	0.11%	53.42%	25.1%	14	116,468	2,225	1.91%	45.39%	74.9%
15	662,153	1,151	0.17%	56.15%	29.8%	15	123,096	2,717	2.21%	15.54%	70.2%
16	859,305	1,219	0.14%	-18.39%	34.7%	16	125,401	2,295	1.83%	-17.08%	65.3%
17	856,071	1,275	0.15%	4.99%	43.5%	17	123,743	1,657	1.34%	-26.83%	56.5%
18	712,783	791	0.11%	-25.49%	36.2%	18	122,937	1,392	1.13%	-15.44%	63.8%
19	686,356	280	0.04%	-63.24%	24.0%	19	134,904	887	0.66%	-41.93%	76.0%
TOTAL	5,100,600	5,936	0.12%		31.8%	TOTAL	864,363	12,721	1.47%		68.2%

MUSLIM (>90%)						7 MUSLIM COUNTRIES IDENTIFIED IN EO7					
Fiscal Year	Total	CARRP	Percent Referred to CARRP	Percent Change from Prior Year	Percent of Those in CARRP	Fiscal Year	Total	CARRP	Percent Referred to CARRP	Percent Change from Prior Year	Percent of Those in CARRP
13	78,014	1,332	1.71%	N/A	65.8%	13	36,471	669	1.83%	N/A	33.1%
14	77,792	1,973	2.54%	48.55%	66.4%	14	38,061	1,123	2.95%	60.85%	37.8%
15	81,608	2,409	2.95%	16.39%	62.3%	15	40,531	1,438	3.55%	20.25%	37.2%
16	81,270	1,962	2.41%	-18.22%	55.8%	16	36,456	1,052	2.89%	-18.67%	29.9%
17	82,043	1,388	1.69%	-29.92%	47.3%	17	38,339	752	1.96%	-32.03%	25.6%
18	84,752	1,203	1.42%	-16.10%	55.1%	18	42,802	755	1.76%	-10.07%	34.6%
19	94,755	784	0.83%	-41.71%	67.2%	19	46,271	511	1.10%	-37.39%	43.8%
TOTAL	580,234	11,051	1.90%		59.2%	TOTAL	278,931	6,300	2.26%		33.8%

Examining the results presented in Tables 16 and 17 in aggregate and over the seven fiscal years, focusing on the results pre- and post- the Trump Administration inauguration in F2017, I find:

- (i) The I-485 data does not support the allegation that the disparity in the likelihood of referral to CARRP between an application from an applicant born in a majority Muslim country and an application from an applicant not born in a majority Muslim country was exacerbated by the Trump Administration's EOs requiring "extreme vetting. In FY 2016, the fiscal year prior to the Trump Administration, 1.36% of the applications from majority Muslim countries were referred to CARRP and 0.10% of applications from non-majority Muslim countries were referred to CARRP. The number and percent of referrals to CARRP declined under the Trump Administration for both applications from applicants born in majority Muslim countries and from non-majority Muslim countries, which is not consistent with an allegation of "extreme vetting" under the Trump Administration. Moreover, the percentage decrease in applications referred to CARRP between FY 2016 and FY 2019 was essentially the same for applications from applicants born in majority Muslim countries (63%) and those from non-majority Muslim countries (59%).
- (ii) Unlike the I-485 data, the N-400 data is not totally inconsistent with the allegation of "extreme vetting", but the pattern provides scant support to that allegation as referrals to CARRP decreased, but the rate of the decrease in referrals is larger for those born in non-majority Muslim countries than for those born in majority Muslim countries. In FY 2016, the fiscal year prior to the Trump Administration, 1.83% of the applications from majority Muslim countries were referred to CARRP and 0.14% of applications from non-majority Muslim countries were referred to CARRP. The number and percent of referrals to CARRP declined under the Trump Administration for both for applications from applicants born in majority Muslim countries and from non-majority Muslim countries, which is not consistent with an

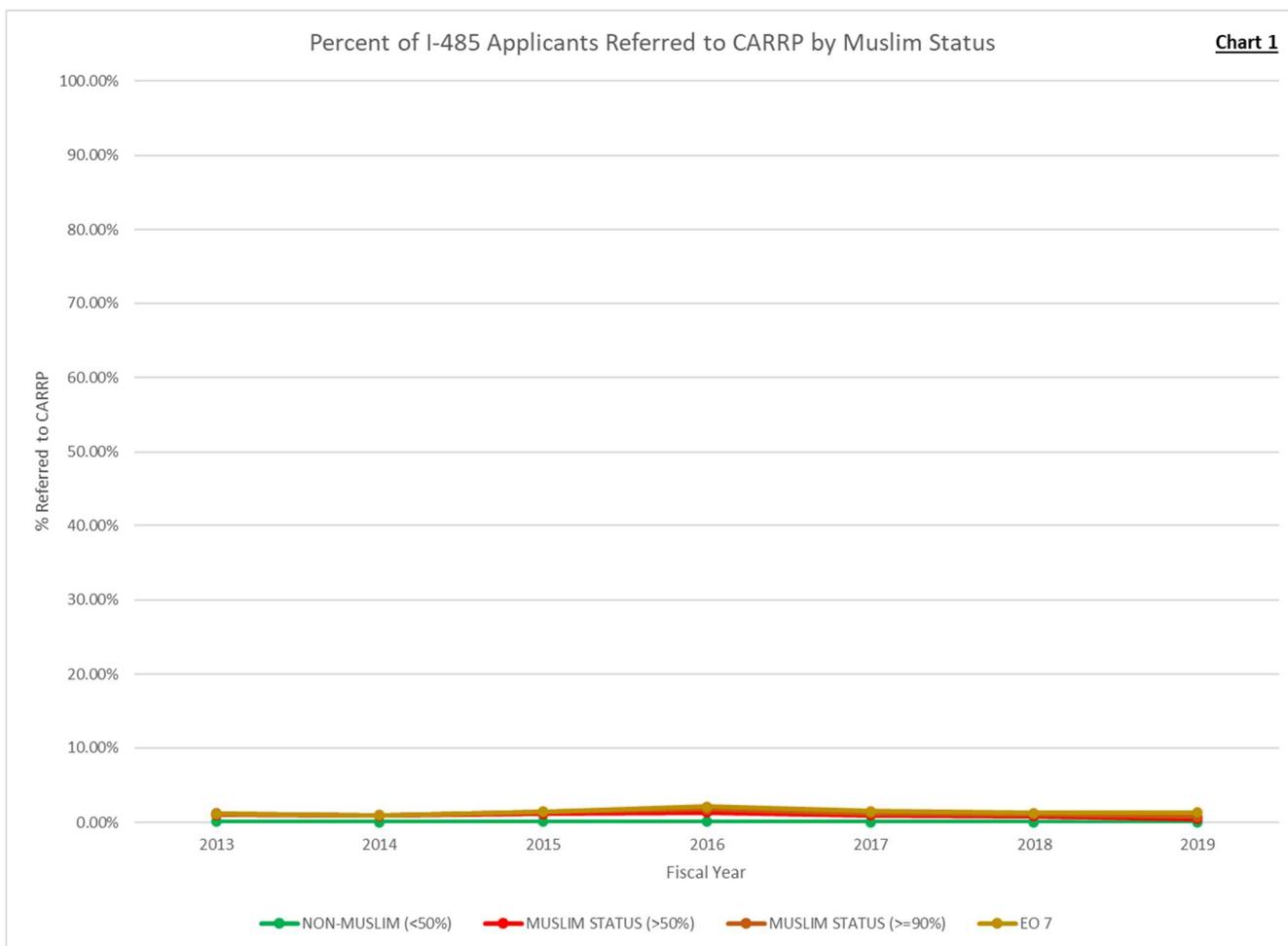
allegation of “extreme” vetting under the Trump Administration. Moreover, the percentage decrease in applications referred to CARRP between FY 2016 and FY 2019 was similar for applications from applicants born in majority Muslim countries (66%) and those from non-majority Muslim countries (96%). In aggregate and over all the years, the CARRP policy has a disproportionate impact on Muslim applicants⁴⁸. This impact existed from the beginning of the period and continued throughout the period. That is, while there is no statistical evidence that the CARRP policies are not uniformly applied independent of Muslim status, the effect is that the policies have a disparate impact on Muslims. There are limitations to the significance of such a statistical disparity, especially as regards inferring Muslim bias, given that disparate impact alone does not suggest or prove the reason(s) for it.⁴⁹

Examining the pattern of application by fiscal year and Muslim status of the applicants’ country of birth:

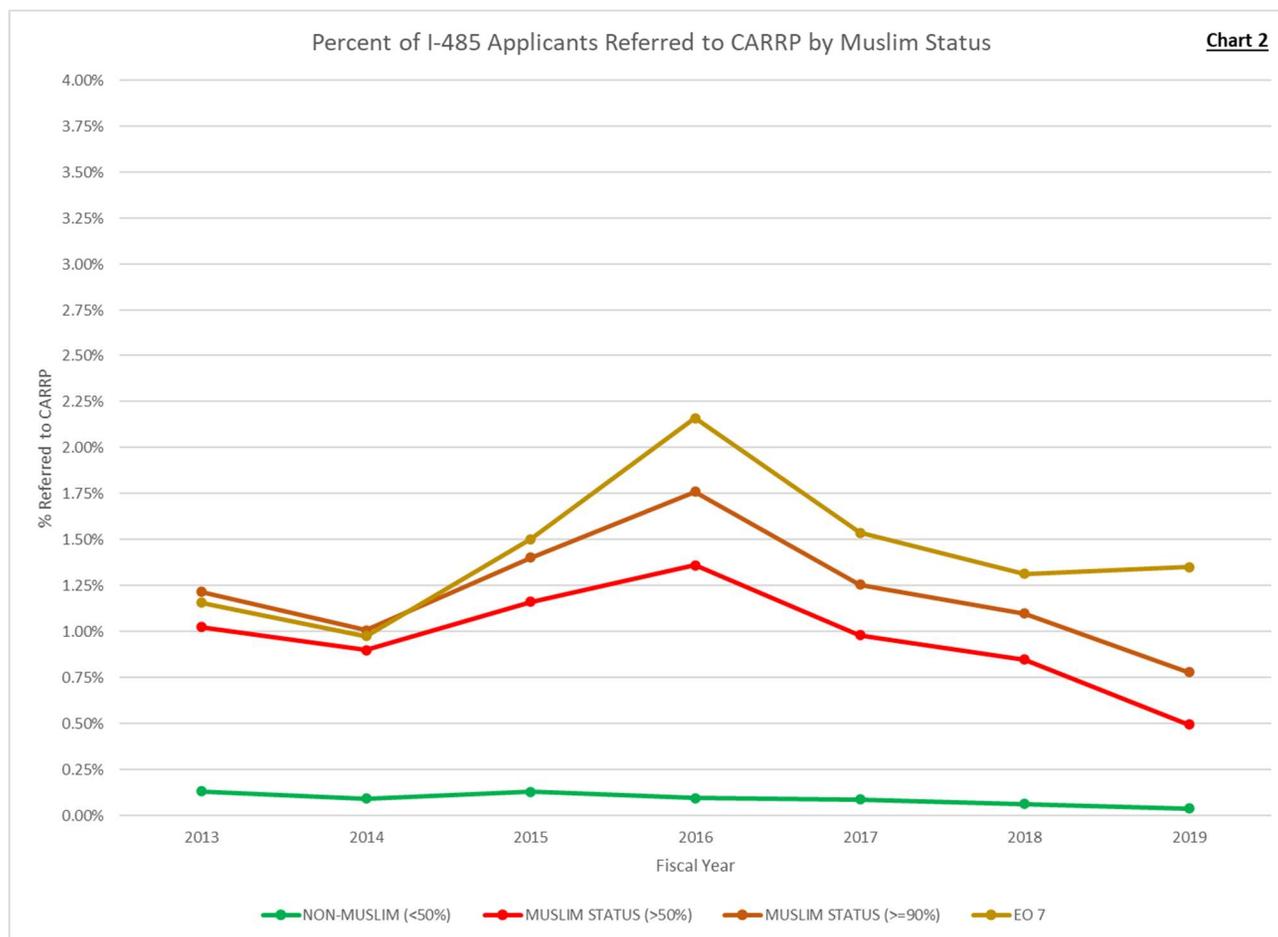
- (i) The percent of I-485 applicants referred to CARRP remains small overall and over time, regardless of Muslim status (overall, the maximum percentage of any Muslim status group referred to CARRP is always less than 1.45%, and over time, the maximum is 2.16% from the seven EO countries in FY 2016; but, in only three out of 21 year/status combinations is it greater than 1.5%). (See Chart 1 using a scale of 100%).

⁴⁸ Being referred to CARRP is an adverse action for an application since on average it will increase the likelihood that an application will be denied and likely increase the processing time for those ultimately approved, regardless of whether the application is from an applicant born in a non-majority Muslim country or a country with a majority Muslim population.

⁴⁹ Plaintiffs allege that the CARRP process has a disparate impact, but do not specify any particular policies causing the disparate impact. Nor do they show that similarly situated applications are treated differently because of where the applicant was born.

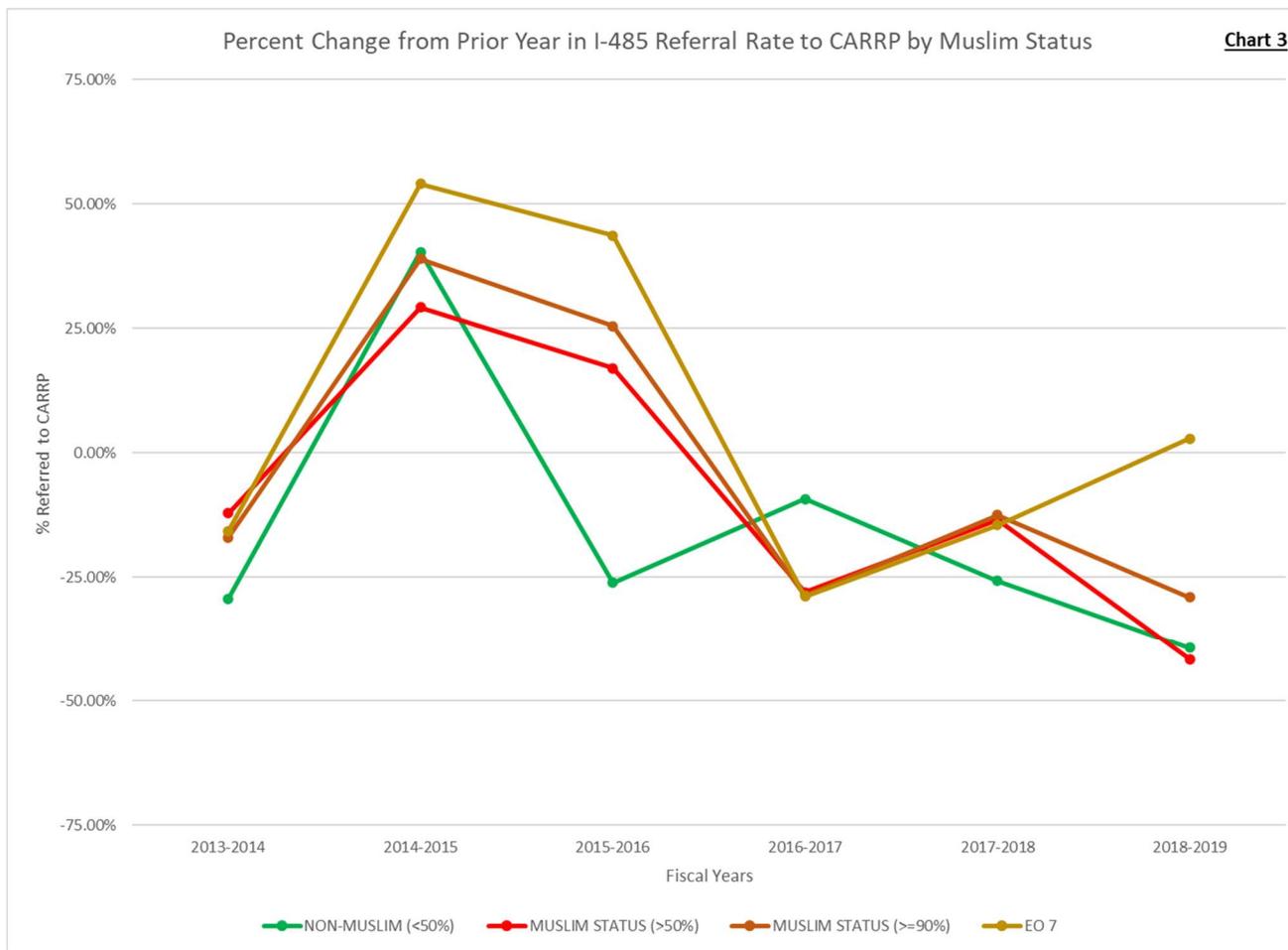


- (ii) Looking at the change in referral rates over time by Muslim status, we see that the pattern is very similar regardless of Muslim status. The fiscal year cohort rates start increasing for the FY 2015 cohort, with the biggest increase occurring for FY 2016 cohort. (See Chart 2 with a scale of 2.0%).

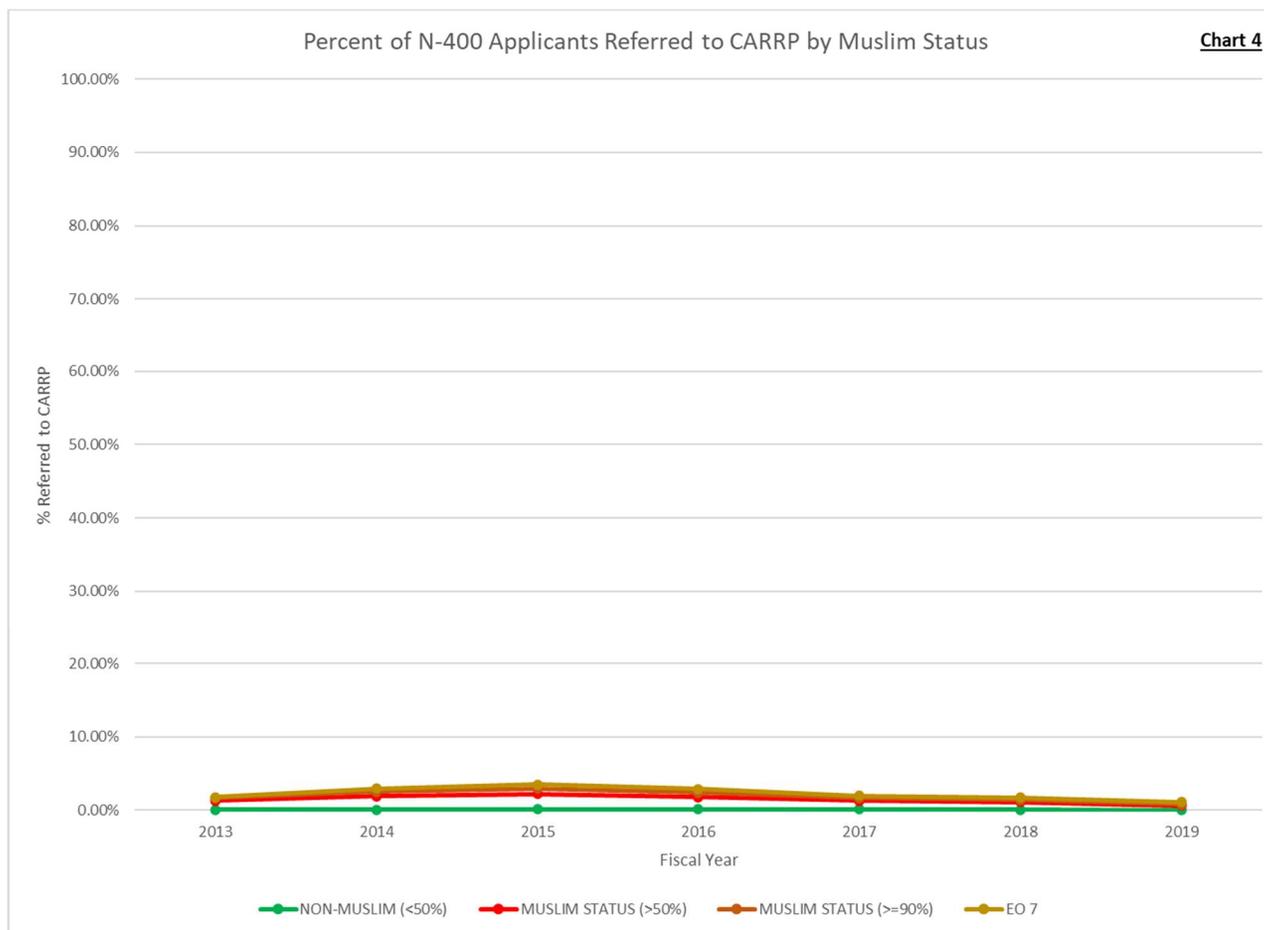


- (iii) While the pattern is the same without regard to Muslim status, the magnitude of the increases and number of referrals is greatest for applicants from majority Muslim countries. However, when we look at the relative percentage changes (that is, the percentage change from fiscal year to fiscal year), we find that not only is the pattern the same, but the

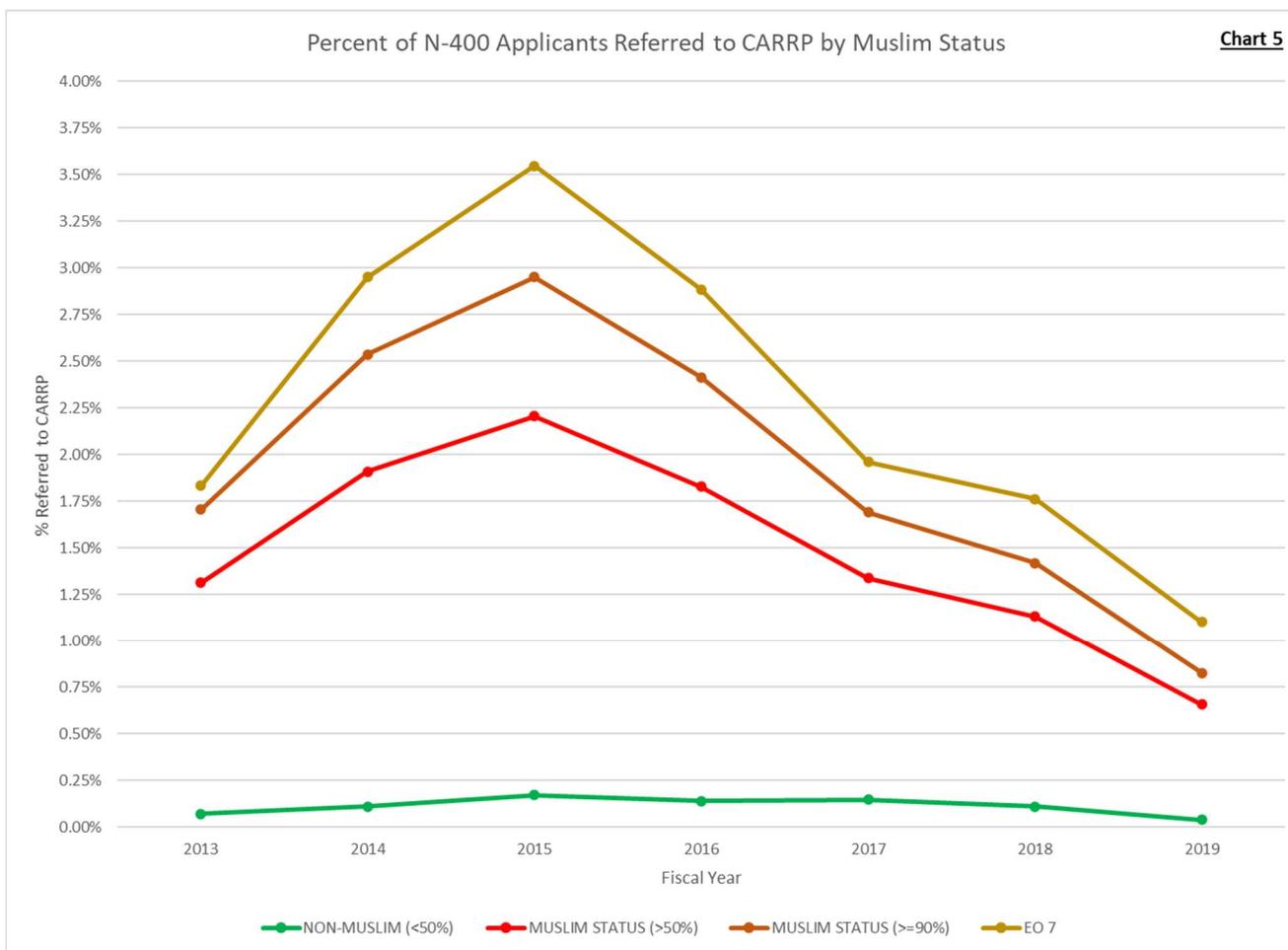
magnitude of change is also the same by Muslim status. Thus, we see no discernable effect based on Muslim status. (See Chart 3).

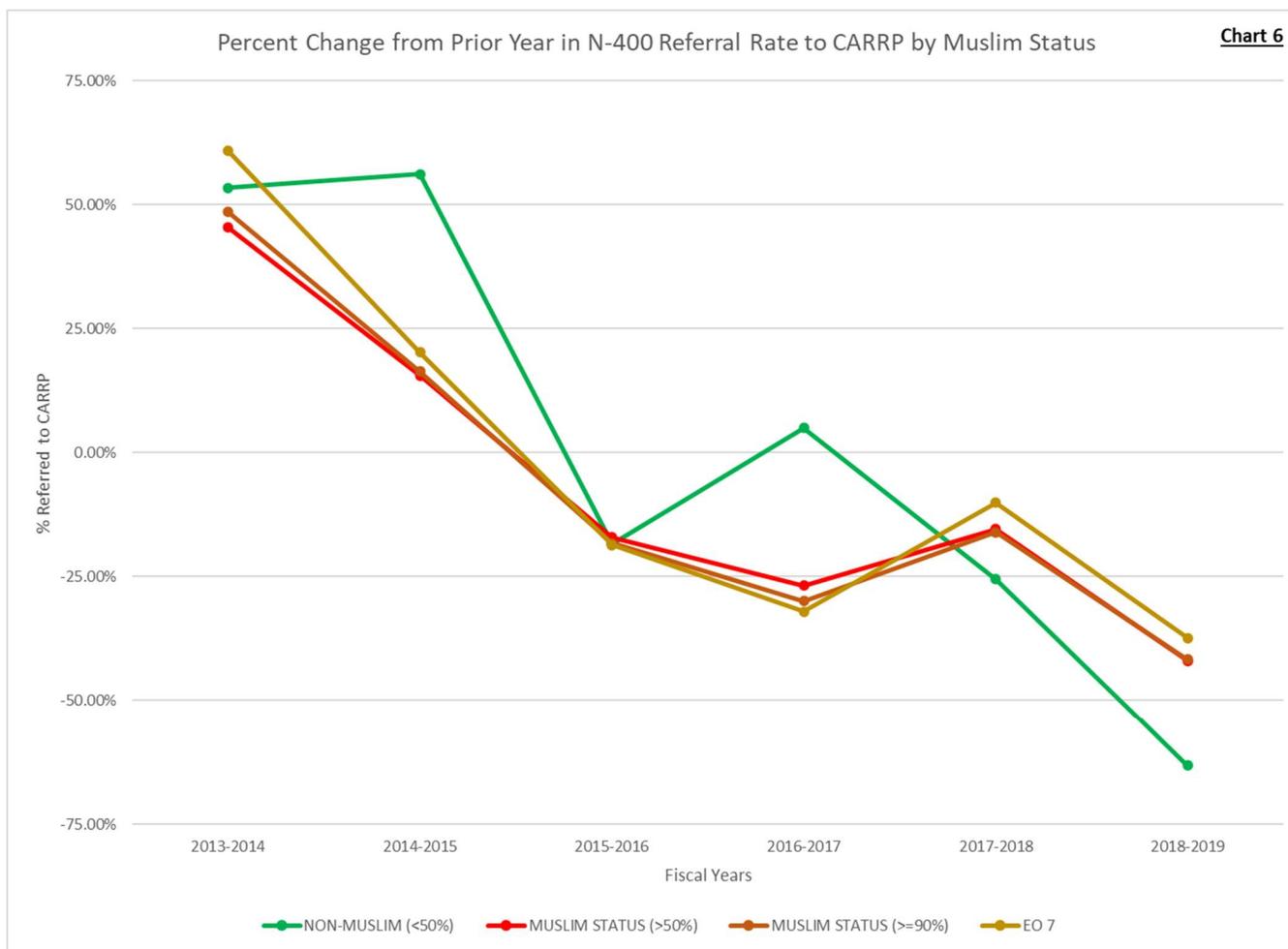


(iv) There is a similar pattern⁵⁰ for the N-400 applicants as for I-485 applicants. (See Charts 4, 5, and 6 below).



⁵⁰ Except the referral rate of all N-400 FY 2014 cohorts is higher than the FY 2013 referral rate, while the FY 2015 rate is lower. Thereafter, the patterns are the same.





Disparate impact is commonly measured by computing the ratio of the selection rate of the control group (non-Muslim) to that of the protected class (those with a given Muslim status). This ratio is referred to as the 80% rule⁵¹ and, as a rule of thumb, values less than 80% are considered to have a meaningful disparate impact. Normally, the outcome being measured is a positive outcome, such as passing a test or being hired. However, in this case, the outcome of referral to CARRP is considered to be adverse to the applicant (from the applicants' perspective). Therefore, in this case one can either switch the measure to look at not being referred to CARRP, or one can compute the inverse of the normal ratio (*i.e.*, compare the ratio of the selection of the control group to the that of the Muslim status group so a lower value represents a worse outcome for the protected class). To be conservative, rather than changing the outcome, I compute the 80% ratio as the inverse of the ratio.⁵² Changes in this ratio are determined by the changes in the relative percent of the protected and control groups. Table 18 computes the 80% rule by Muslim status for I-485 and N-400 applications by each FY.

⁵¹ The 80% rule put forth in the Uniform Guidelines for Employee Selection Procedures (See 43 FR 38290, et seq. (Aug. 25, 1978) and 43 FR 40223 (Sept. 11, 1978)) is a commonly used measure to assist the Court in determining if a difference is meaningful and valid statistical evidence of disparate impact. The decision of whether a disparity is large enough to be meaningful (of practical significance) is a judgment call which is ultimately up to the Court. Statistics such as the 80% rule or the gap between approvals and denials are offered only as an aid to the Court in making such a decision, which is normally based on the totality of the information available to the Court.

⁵² Since referral to CARRP is rare, studying the positive outcome of not being referred will always pass the 80% rule, while the inverse ratio may markedly fail the 80% rule. For example, if 0.5% of the control group fails the test, but 1.5% of the protected class passes the test, then the 80% rule using the inverse of the failure rates is 33% (0.5/1.5), which clearly fails the 80% rule (falling outside the 80% to 120% range). But, if we use the passing rate, then the 80% rule is satisfied with a 99% value (98.5%/99.5% or 0.985/0.995), which clearly passes the rule. However, since I am focusing on the change over time, which measure I use is not important since only the pattern over time is relevant.

TABLE 18

**80% RULE COMPARISONS OF CARRP REFERRALS
(OR NON-CARRP REFERRALS) BY MUSLIM STATUS
MUSLIM STATUS DEFINED BY BIRTH COUNTRY**

FISCAL YEAR	N-400 APPLICATIONS			I-485 APPLICANTS		
	80% Rule based on CARRP Referrals			80% Rule based on CARRP Referrals		
	90%			90%		
	Muslim Rate/non- Muslim Rate	Muslim Rate/non- Muslim Rate	EO7 Rate/non- Muslim Rate	Muslim Rate/non- Muslim Rate	Muslim Rate/non- Muslim Rate	EO7 Rate/non- Muslim Rate
13	5.5%	4.2%	4.0%	13.0%	10.9%	11.5%
14	5.8%	4.4%	3.8%	10.4%	9.3%	9.6%
15	7.9%	5.9%	4.9%	11.3%	9.4%	8.8%
16	7.8%	5.9%	4.9%	7.2%	5.5%	4.5%
17	11.1%	8.8%	7.6%	9.0%	7.1%	5.8%
18	9.8%	7.8%	6.3%	7.8%	6.0%	5.0%
19	6.2%	4.9%	3.7%	8.1%	5.1%	3.0%
TOTAL	7.9%	6.1%	5.2%	9.5%	7.5%	6.4%

Table 18 shows that the alleged “extreme vetting” did not result in a pattern of increased disparate impact on applications from applicants born in Muslim countries starting in FY 2017, as Plaintiffs allege.

2. Agency Source of Referrals to CARRP by Muslim Status

I also looked at the reported agency referrals to see if the agency sources reported in FDNS-DS supporting the referrals to CARRP are different by Muslim status and changed with the start of the Trump Administration. Table 19 compares the agency source of the single reported information source supporting the referral to CARRP by Muslim status for I-485 applicants, and Table 20 compares the agency source of the single reported information source supporting the referral to CARRP by Muslim status for N-400 applicants.

TABLE 19

**COMPARISON OF AGENCY SOURCE OF SINGLE REPORTED DATA SUPPORTING REFERRAL OF I-485 APPLICANTS
BY FISCAL YEAR AND MUSLIM STATUS**

Fiscal Year	Muslim Status Based on Birth Country											
	Percent of Reported Sources Assigned to USCIS				Percent of Reported Sources Assigned to Third Agency				Percent of Reported Sources Assigned to Indeterminate Agency			
	non Muslim	>=50% Muslim	>=90% Muslim	EO7 Countries	non Muslim	>=50% Muslim	>=90% Muslim	EO7 Countries	non Muslim	>=50% Muslim	>=90% Muslim	EO7 Countries
2013	1.7	0.9	0.9	1.1	94.8	92.7	92.6	91.1	3.5	6.4	6.6	7.8
2014	1.3	0.7	0.8	0.6	93.3	93.9	93.3	93.6	5.4	5.4	6.0	5.9
2015	0.7	1.0	0.9	0.9	95.5	95.3	95.3	94.3	3.8	3.7	3.9	4.8
2016	1.6	1.0	0.9	0.8	93.3	93.0	93.1	92.9	5.1	5.9	6.0	6.3
2017	2.4	2.1	1.9	1.9	91.1	89.4	89.5	89.4	6.5	8.5	8.6	8.7
2018	2.3	1.1	1.0	1.2	89.9	92.7	93.1	93.6	7.8	6.2	6.0	5.2
2019	1.9	1.8	1.4	1.3	78.2	85.3	88.7	92.2	19.9	12.9	9.9	6.5
2013-2019	1.6	1.2	1.1	1.1	92.5	92.4	92.6	92.5	5.9	6.4	6.3	6.4

TABLE 20

**COMPARISON OF AGENCY SOURCE OF SINGLE REPORTED DATA SUPPORTING REFERRAL OF N-400 APPLICANTS
BY FISCAL YEAR AND MUSLIM STATUS**

Fiscal Year	Muslim Status Based on Birth Country											
	Percent of Reported Sources Assigned to USCIS				Percent of Reported Sources Assigned to Third Agency				Percent of Reported Sources Assigned to Indeterminate Agency			
	non Muslim	>=50% Muslim	>=90% Muslim	EO7 Countries	non Muslim	>=50% Muslim	>=90% Muslim	EO7 Countries	non Muslim	>=50% Muslim	>=90% Muslim	EO7 Countries
2013	■	■	■	■	■	■	■	■	■	■	■	■
2014	■	■	■	■	■	■	■	■	■	■	■	■
2015	■	■	■	■	■	■	■	■	■	■	■	■
2016	■	■	■	■	■	■	■	■	■	■	■	■
2017	■	■	■	■	■	■	■	■	■	■	■	■
2018	■	■	■	■	■	■	■	■	■	■	■	■
2019	■	■	■	■	■	■	■	■	■	■	■	■
2013-2019	■	■	■	■	■	■	■	■	■	■	■	■

Tables 19.1 and 20.1 below present the percent by fiscal year of applications for which UCSIS was recorded as supplying relevant data to support the referral to CARRP, adjusted for the source being noted as Indeterminate by dividing the percentage reported for USCIS in Tables 19 and 20 by the percentage of cases where the source of the information was either USCIS or a Third Agency.

TABLE 19.1

**COMPARISON OF AGENCY SOURCE OF SINGLE
REPORTED DATA SUPPORTING REFERRAL OF I-485
APPLICANTS BY FISCAL YEAR AND MUSLIM STATUS**

**Muslim Status Based on Birth Country
Adjusted for Indeterminate Cases**

<u>Fiscal Year</u>	<u>Percent of Reported Sources Assigned to USCIS</u>			
	<u>non Muslim</u>	<u>>=50% Muslim</u>	<u>>=90% Muslim</u>	<u>EO7 Countries</u>
2013	■	■	■	■
2014	■	■	■	■
2015	■	■	■	■
2016	■	■	■	■
2017	■	■	■	■
2018	■	■	■	■
2019	■	■	■	■
2013-2019	■	■	■	■

Note: Indeterminate cases not considered in percent calculation.

TABLE 20.1

**COMPARISON OF AGENCY SOURCE OF OF SINGLE
REPORTED DATA SUPPORTING REFERRAL OF N-400
APPLICANTS BY FISCAL YEAR AND MUSLIM STATUS**

**Muslim Status Based on Birth Country
Adjusted for Indeterminate Cases**

<u>Fiscal Year</u>	<u>Percent of Reported Sources Assigned to USCIS</u>			
	<u>non Muslim</u>	<u>>=50% Muslim</u>	<u>>=90% Muslim</u>	<u>EO7 Countries</u>
2013	■	■	■	■
2014	■	■	■	■
2015	■	■	■	■
2016	■	■	■	■
2017	■	■	■	■
2018	■	■	■	■
2019	■	■	■	■
2013-2019	■	■	■	■

Note: Indeterminate cases not considered in percent calculation.

Tables 19, 19.1, 20, and 20.1 show that

- (i) The agency sources reported in FDNS-DS as supporting the referral of I-485 applications to CARRP are similar by the Muslim status of the applicant. Irrespective of whether the application was from an applicant born in a Muslim or non-

Muslim country, approximately [REDACTED]. More significantly, examining Table 19.1 it is clear that under the Trump administration, although it was [REDACTED] in terms of percentage points, [REDACTED] for applications from applicants born in a non-majority Muslim country than a majority Muslim country (or a 90% or greater Muslim country or an EO7 country). This finding is inconsistent with the plaintiffs' "extreme vetting" or Muslim bias allegations. However, the data does show that starting in FY 2017 and concurrent with the inauguration of the Trump administration the percent of sources which could not be assigned to either USCIS or a Third Agency [REDACTED].

- (ii) With respect to N-400 applications, the [REDACTED] [REDACTED] of the cases. Moreover, while reporting [REDACTED], and there was no significant difference by Muslim status (*i.e.*, for non-majority Muslim and majority Muslim countries, or predominantly (90% or greater) Muslim countries, EO7 countries), generally the [REDACTED] (unadjusted or adjusted) for applications from applicants born in non-Muslim countries. This finding is inconsistent with the plaintiffs' "extreme vetting" or Muslim bias allegations. However, the data does show that starting in FY 2017, concurrent with the inauguration of the Trump administration, the percent of sources which could not be assigned to either USCIS or Third Agency [REDACTED].

Based on the validity data presented in Table 5, as discussed above in reference to Tables 6 and 7, I estimated the extent to which [REDACTED] supporting the referral (not necessarily the [REDACTED] of

information recorded) and also estimated the extent to which either agency was the [REDACTED] supporting the referral. The data concerning whether the agency was a [REDACTED] appears to be independent of whether the applicant was born in a majority Muslim country. There is no statistically significant difference in the likelihood of USCIS being [REDACTED] irrespective of Muslim status.

The results with respect to USCIS and a Third Agency being a source are presented in Tables 21 and 22, and the results with respect to USCIS or the Third Agency being the [REDACTED] are presented in Tables 21.1 and 22.1.

TABLE 21

**ESTIMATED [REDACTED] SOURCE OF NATIONAL SECURITY CONCERN
INFORMATION RESULTING IN CARRP REFERRAL BY FISCAL YEAR BY MUSLIM
STATUS FOR I-485 APPLICANTS**

Muslim Status Based on Birth Country

Fiscal Year	Estimated Percent of Applications were [REDACTED] was Third Agency				Estimated Percent of Applications were [REDACTED] was USCIS			
	non- Muslim	>=50% Muslim	>=90% Muslim	EO7 Countries	non- Muslim	>=50% Muslim	>=90% Muslim	EO7 Countries
2013	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2014	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2015	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2016	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2017	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2018	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2019	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
TOTAL	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

TABLE 22

ESTIMATED [REDACTED] SOURCE OF NATIONAL SECURITY CONCERN INFORMATION RESULTING IN CARRP REFERRAL BY FISCAL YEAR BY MUSLIM STATUS FOR N-400 APPLICANTS

Muslim Status Based on Birth Country

Fiscal Year	Estimated Percent of Applications were [REDACTED] Source was Third Agency				Estimated Percent of Applications were [REDACTED] Source was USCIS			
	non-Muslim	>=50% Muslim	>=90% Muslim	EO7 Countries	non-Muslim	>=50% Muslim	>=90% Muslim	EO7 Countries
2013	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2014	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2015	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2016	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2017	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2018	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2019	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
TOTAL	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Tables 21 and 22 show that

- (i) A Third Agency source is [REDACTED] source supporting the application referral to CARRP for applicants born in a majority Muslim country. A Third Agency is [REDACTED] [REDACTED] source for referral of applicants born in a majority non-Muslim country. USCIS is also a

referral source [REDACTED] the time and [REDACTED] for applications from applicants born in non-Muslim countries.

- (ii) However, starting in FY 2017, concurrent with the issuance of the EOs, the USCIS [REDACTED] [REDACTED] for information relevant for referral of applications from applicants born in a non-Muslim country, and a Third Agency [REDACTED] of such information. The changes are [REDACTED] applications [REDACTED] applications, but the [REDACTED]. Thus, to the extent that the source of agency information supporting the referral to CARRP changed at all as a result of the Executive Orders, there is no statistical evidence to support an allegation of Muslim bias on the part of USCIS in referring applications to or operating CARRP. The fact that a [REDACTED] to CARRP, and [REDACTED] [REDACTED] for applications from applicants born in a majority Muslim country (or predominantly Muslim country, *i.e.*, with a 90% or greater Muslim population, or an EO7 country) [REDACTED]

TABLE 21.1

ESTIMATED [REDACTED] SOURCE OF NATIONAL SECURITY CONCERN INFORMATION RESULTING IN CARRP REFERRAL BY FISCAL YEAR BY MUSLIM STATUS FOR I-485 APPLICANTS

Muslim Status Based on Birth Country

Fiscal Year	Estimated Percent of Applications were [REDACTED] Source was Third Agency				Estimated Percent of Applications were [REDACTED] Source was USCIS			
	non-Muslim	>=50% Muslim	>=90% Muslim	EO7 Countries	non-Muslim	>=50% Muslim	>=90% Muslim	EO7 Countries
2013	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2014	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2015	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2016	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2017	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2018	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2019	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
TOTAL	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

TABLE 22.1

ESTIMATED [REDACTED] SOURCE OF NATIONAL SECURITY CONCERN INFORMATION RESULTING IN CARRP REFERRAL BY FISCAL YEAR BY MUSLIM STATUS FOR N-400 APPLICANTS

Muslim Status Based on Birth Country

Fiscal Year	Estimated Percent of Applications were [REDACTED] Source was Third Agency				Estimated Percent of Applications were [REDACTED] Source was USCIS			
	non-Muslim	>=50% Muslim	>=90% Muslim	EO7 Countries	non-Muslim	>=50% Muslim	>=90% Muslim	EO7 Countries
2013	[REDACTED]							
2014								
2015								
2016								
2017								
2018								
2019								
TOTAL	[REDACTED]							

Tables 21.1 and 22.1 show that

- (i) With respect to I-485 or N-400 applications referred to CARRP, irrespective of whether the applicant was born in a majority Muslim country (or predominantly Muslim country, *i.e.*, with a 90% or greater Muslim population, or an EO7 country), a [REDACTED] supplying information that the applicant may be a national security concern [REDACTED] cases. Moreover, to the extent that the [REDACTED] [REDACTED] among applications from applicants born in non-majority Muslim countries than among majority Muslim or predominantly Muslim countries or from an EO7 country. This

stands in direct contradiction of Plaintiffs' allegation that the Executive Orders under the current administration resulted in "extreme vetting" aimed at Muslim applicants and any anti-Muslim bias on the part of USCIS.

3. Comparison of CARRP and Non-CARRP applicants with regard to approval and denial by Muslim status and comparison of time to adjudication and time to approval among CARRP applicants by Muslim status

I have examined the outcomes to determine if there are any differences by Muslim status, and I have compared the results by fiscal year cohorts over time to see if the data indicates any changes in the pattern of outcomes consistent with Plaintiffs' allegation regarding the impact of "extreme vetting". I first looked at the difference in approval rates among those adjudicated over the complete time period from FY 2013 - FY 2019. Table 23 presents the results for I-485 applicants and Table 24 presents the results for N-400 applicants. I computed the approval rate among those adjudicated by Muslim status, using two common measures of disparate impact. One is the difference in the approval rate of the control group (non-Muslim) and the Muslim groups. A positive number means the approval rate is higher for non-Muslims. I also computed the relative difference in the approval rate of applications of applicants born in Muslim countries, divided by the approval rate of non-Muslims. This is referred to as the 80% rule,⁵³ and a ratio less than 100% means the rate for approval is higher for non-Muslims. As a rule of thumb, ratios below 80% (or above 120%) are considered meaningful and represent statistical evidence of disparate impact; differences that pass the 80% rule (*i.e.*, within the 80% to 120% range) are not valid evidence of disparate impact.

⁵³ See The 80% rule put forth in the Uniform Guidelines for Employee Selection Procedures (See 43 FR 38290, et seq. (Aug. 25, 1978) and 43 FR 40223 (Sept. 11, 1978)) is a commonly used measure to assist the Court in determining if a difference is meaningful and valid statistical evidence of disparate impact. The decision of whether a disparity is large enough to be meaningful (of practical significance) is a judgment call which is ultimately up to the Court. Statistics such as the 80% rule or the gap between approvals and denials are offered only as an aid to the Court in making such a decision, normally based on the totality of the information available to the Court.

TABLE 23

**COMPARISON OF ACCEPTANCE RATES BY MUSLIM STATUS FYs 2013-2019
MUSLIM STATUS BASED ON BIRTH COUNTRY**

FORM I-485 APPLICANTS

CARRP Status	NUMBER OF APPLICATIONS				ACCEPTANCE RATE			
	NON- MUSLIM (<50%)	Muslim Status (≥50%)	Muslim Status (≥90%)	EO7 Counties	NON- MUSLIM (<50%)	Muslim Status (≥50%)	Muslim Status (≥90%)	EO7 Counties
CARRP	2,973	4,330	3,838	2,418	81.8%	78.6%	79.5%	82.8%
Not CARRP	3,324,569	488,758	352,980	199,851	93.3%	92.9%	95.0%	97.4%
ALL	3,327,542	493,088	356,818	202,269	93.3%	92.8%	94.8%	97.2%

CARRP Status	ACCEPTANCE GAP			RELATIVE DIFFERENCE (80% RULE)		
	Muslim Status (≥50%)	Muslim Status (≥90%)	EO7 Counties	Muslim Status (≥50%)	Muslim Status (≥90%)	EO7 Counties
CARRP	3.2%	2.4%	-1.0%	96.1%	97.1%	101.2%
Not CARRP	0.4%	-1.7%	-4.1%	99.6%	101.8%	104.4%
ALL	0.5%	-1.5%	-3.9%	99.4%	101.6%	104.2%

TABLE 24

**COMPARISON OF ACCEPTANCE RATES BY MUSLIM STATUS FYs 2013-2019
MUSLIM STATUS BASED ON BIRTH COUNTRY**

FORM N-400 APPLICANTS

CARRP Status	NUMBER OF APPLICATIONS				ACCEPTANCE RATE			
	NON- MUSLIM (<50%)	Muslim Status (≥50%)	Muslim Status (≥90%)	EO7 Counties	NON- MUSLIM (<50%)	Muslim Status (≥50%)	Muslim Status (≥90%)	EO7 Counties
CARRP	4,631	10,371	9,043	5,156	85.5%	80.4%	80.6%	80.2%
Not CARRP	4,520,974	739,507	491,389	235,438	92.1%	90.3%	90.3%	89.2%
ALL	4,525,605	749,878	500,432	240,594	92.1%	90.1%	90.1%	89.0%

CARRP Status	ACCEPTANCE GAP			RELATIVE DIFFERENCE (80% RULE)		
	Muslim Status (≥50%)	Muslim Status (≥90%)	EO7 Counties	Muslim Status (≥50%)	Muslim Status (≥90%)	EO7 Counties
CARRP	5.1%	4.9%	5.3%	94.0%	94.3%	93.8%
Not CARRP	1.8%	1.8%	2.9%	98.0%	98.0%	96.9%
ALL	2.0%	2.0%	3.1%	97.9%	97.9%	96.7%

Tables 23 and 24 show that

- (i) With respect to the I-485 applicants, there is essentially no difference in outcomes for applications from applicants born in majority non-Muslim countries and majority Muslim countries (either majority Muslim, predominantly Muslim, or EO7 countries).

- (ii) With respect to N-400 applicants, the difference in rates of approval for applications of applicants born in majority non-Muslims and majority Muslim countries processed through CARRP is slightly more pronounced, with the approval rates of all the majority Muslim groups in CARRP being approximately 5% different than the approval rates of majority non-Muslim groups. However, the differences in approval rates between non-Muslims and the various Muslim groups processed through CARRP are still small, and the relative differences would easily pass the 80% rule test. Moreover, this data is inconsistent with Plaintiffs' allegation that applications from applicants born in Muslim countries are more likely than applications from applicants born in non-Muslim countries to be referred to CARRP when they are not actually a national security concern and would be subsequently approved but delayed in the process. Assuming that most applications referred to CARRP that were approved are not a national security concern, Plaintiffs' allegation would imply that the approval rate should be higher for Muslim applications.⁵⁴

I next studied the length of time from application to adjudication separately for I-485 and N-400 applicants by fiscal year for those processed thorough CARRP, comparing the time to adjudication for applicants from non-Muslim countries to the time to adjudication for applicants from (i) countries that are majority Muslim, (ii) predominately Muslim countries (90%), and (iii) the EO7 countries. Table 25 summarizes these results for the I-485 applicants, and Table 26 summarizes these results for the N-400 applicants.

⁵⁴ This assumes that applicants who are actually of national security concern are more likely than applicants who are not of national security concern to have their applications denied. This also assumes that reasons for being ineligible for the benefit other than national security concerns are the same regardless of whether the applicant is actually a national security concern, and that the decision to approve or deny the application for immigration benefits is not impacted by one's country of birth or citizenship.

TABLE 25

**TIME TO ADJUDICATION AMONG I-485 APPLICATIONS
PROCESSED IN CARRP BY FISCAL YEAR AND MUSLIM STATUS
(NOT MUSLIM OR MUSLIM)**

Muslim Status Based on Country of Birth

Fiscal Year	Muslim Status	Months Until Percent of Applications Adjudicated			Muslim Status	Months Until Percent of Applications Adjudicated		
		25%	50%	75%		25%	50%	75%
2013	<50%	6	10	16	>=50%	8	15	26
2014	<50%	9	16	31	>=50%	10	16	29
2015	<50%	17	24	32	>=50%	17	24	36
2016	<50%	19	25	35	>=50%	19	24	35
2017	<50%	17	23	30	>=50%	17	22	30
2018	<50%	13	18	23	>=50%	13	19	23
2019	<50%	11	N/A	N/A	>=50%	11	N/A	N/A

Fiscal Year	Muslim Status	Months Until Percent of Applications Adjudicated			Muslim Status	Months Until Percent of Applications Adjudicated		
		25%	50%	75%		25%	50%	75%
2013	>=90%	8	16	26	E0 7	10	18	26
2014	>=90%	10	16	28	E0 7	11	16	27
2015	>=90%	18	24	36	E0 7	18	24	35
2016	>=90%	19	24	34	E0 7	19	23	33
2017	>=90%	17	22	29	E0 7	17	21	29
2018	>=90%	13	19	23	E0 7	14	19	23
2019	>=90%	11	N/A	N/A	E0 7	N/A	N/A	N/A

Notes

Except if noted in red or green. If green, the time to adjudication is statistically significantly shorter than that of non-majority Muslim population; if red, the time to adjudication is statistically significantly longer than that of non-majority Muslim population.

 The time to adjudication is shorter than that of non-Muslim population.

 Adverse to Muslims (longer).

TABLE 26

**TIME TO ADJUDICATION AMONG N-400 APPLICATIONS
PROCESSED IN CARRP BY FISCAL YEAR AND MUSLIM STATUS
(NOT MUSLIM OR MUSLIM)**

Muslim Status Based on Country of Birth

Fiscal Year	Muslim Status	Months Until Percent of Applications Adjudicated			Muslim Status	Months Until Percent of Applications Adjudicated		
		25%	50%	75%		25%	50%	75%
2013	<50%	7	11	18	>=50%	7	10	18
2014	<50%	8	12	19	>=50%	8	12	21
2015	<50%	14	19	28	>=50%	15	20	29
2016	<50%	19	23	30	>=50%	19	23	31
2017	<50%	19	25	31	>=50%	18	23	29
2018	<50%	14	19	N/A	>=50%	13	17	N/A
2019	<50%	10	N/A	N/A	>=50%	11	N/A	N/A

Fiscal Year	Muslim Status	Months Until Percent of Applications Adjudicated			Muslim Status	Months Until Percent of Applications Adjudicated		
		25%	50%	75%		25%	50%	75%
2013	>=90%	7	10	18	E0 7	7	10	18
2014	>=90%	8	12	21	E0 7	8	12	20
2015	>=90%	15	20	29	E0 7	15	20	28
2016	>=90%	19	23	31	E0 7	18	23	30
2017	>=90%	18	22	28	E0 7	18	22	28
2018	>=90%	13	17	N/A	E0 7	13	16	N/A
2019	>=90%	11	N/A	N/A	E0 7	11	N/A	N/A

Notes

Except if noted in red or green. If green, the time to adjudication is statistically significantly shorter than that of non-majority Muslim population; if red, the time to adjudication is statistically significantly longer than that of non-majority Muslim population.

 The time to adjudication is shorter than that of non-Muslim population.

 Adverse to Muslims (longer).

The tables present for each fiscal year cohort by Muslim status (i) the number of months until 25% of the applicants were adjudicated, (ii) the number of months until 50% of the applicants were adjudicated (*i.e.*, the median time), and (iii) the number of months until 75% of the applicants were adjudicated. The tables show that

- (i) With respect to I-485 and N-400 applications separately for applicants born in majority non-Muslim countries and (a) applicants born in majority Muslims countries, (b) applicants born in predominately Muslim countries, and (c) applicants born in one of the EO7 countries who applied in the same FY, the distribution of the number of months until a percentage of cases are adjudicated is very similar. While the time lag to adjudication changes over time, the differences between the non-Muslims and Muslim groups remained fairly constant and similar. I statistically tested the hypothesis that the distribution of time lags to decision would be the same for each Muslim status group as for the non-Muslim group, using the 5% statistical benchmark to determine statistical significance.⁵⁵ Very few difference in time to adjudication were statistically significant. For I-485 applications, only in FY 2013 were those born in non-majority Muslim countries adjudicated statistically significantly more quickly than those from majority Muslim countries, or from predominantly (90% or greater) Muslim countries, or the EO7 countries. However, in FY 2016 and FY 2017,

⁵⁵ This is consistent with the two standard deviations level defined by the Supreme Court as determining when differences are statistically significant. In *Hazelwood School District v. United States*, 433 U.S. 299, 311 n.14 (1977), the Supreme Court relied upon a two to three standard deviations difference: “If the difference between the expected value and observed number is greater than two or three standard deviations, then the hypothesis that teachers were hired without regard to race would be suspect.”

those from the EO7 countries were adjudicated more quickly than those from non-majority Muslim countries. With respect to N-400 applications, only in FY 2015 were those born in non-majority Muslim countries processed statistically significantly more quickly those from majority Muslim countries, or predominantly (90% or greater) Muslim countries. However, in FY 2017 and FY 2018, those born in majority Muslim countries, or predominantly Muslim countries, or in one of the EO7 countries were adjudicated statistically significantly more quickly than those born in majority non-Muslim countries. These findings are inconsistent with the allegation that Muslims in CARRP were processed differently in terms of time to decisioning, and that alleged “extreme vetting” had a disproportionate effect of delaying time to adjudication for applicants born in Muslim countries.

I did a similar analysis studying time to approval rather than time to adjudication, to determine if applicants from majority Muslim countries who were processed in CARRP and approved had to wait longer for approval than applicants from majority non-Muslim countries. Table 27 present the results for I-485 approved CARRP applicants, and Table 28 presents the results for N-400 approved CARRP applicants.

TABLE 27

**TIME TO APPROVAL AMONG I-485 APPLICATIONS
PROCESSED IN CARRP BY FISCAL YEAR AND MUSLIM STATUS
(NOT MUSLIM OR MUSLIM)**

Muslim Status Based on Country of Birth

Fiscal Year	Muslim Status	Months Until Percent of Applications Approved			Muslim Status	Months Until Percent of Applications Approved		
		25%	50%	75%		25%	50%	75%
2013	<50%	5	9	16	>=50%	8	14	24
2014	<50%	9	15	28	>=50%	10	16	26
2015	<50%	17	23	31	>=50%	17	23	34
2016	<50%	19	24	35	>=50%	19	24	35
2017	<50%	18	23	34	>=50%	17	23	33
2018	<50%	14	19	N/A	>=50%	14	20	N/A
2019	<50%	N/A	N/A	N/A	>=50%	N/A	N/A	N/A

Fiscal Year	Muslim Status	Months Until Percent of Applications Approved			Muslim Status	Months Until Percent of Applications Approved		
		25%	50%	75%		25%	50%	75%
2013	>=90%	8	14	24	E0 7	10	15	25
2014	>=90%	10	16	26	E0 7	11	16	25
2015	>=90%	18	24	35	E0 7	18	23	35
2016	>=90%	19	24	35	E0 7	19	23	33
2017	>=90%	17	22	31	E0 7	17	22	31
2018	>=90%	14	20	N/A	E0 7	14	20	N/A
2019	>=90%	N/A	N/A	N/A	E0 7	N/A	N/A	N/A

Notes

Except if noted in red or green. If green, the time to adjudication is statistically significantly shorter than that of non-majority Muslim population; if red, the time to adjudication is statistically significantly longer than that of non-majority Muslim population.

 The time to adjudication is shorter than that of non-Muslim population.

 Adverse to Muslims (longer).

TABLE 28

**TIME TO APPROVAL AMONG N-400 APPLICATIONS
PROCESSED IN CARRP BY FISCAL YEAR AND MUSLIM STATUS
(NOT MUSLIM OR MUSLIM)**

Muslim Status Based on Country of Birth

Fiscal Year	Muslim Status	Months Until Percent of Applications Approved			Muslim Status	Months Until Percent of Applications Approved		
		25%	50%	75%		25%	50%	75%
2013	<50%	7	10	17	>=50%	7	10	15
2014	<50%	8	11	18	>=50%	8	11	18
2015	<50%	14	19	26	>=50%	15	20	27
2016	<50%	19	23	30	>=50%	19	23	30
2017	<50%	19	25	31	>=50%	18	23	30
2018	<50%	14	19	N/A	>=50%	13	18	N/A
2019	<50%	10	N/A	N/A	>=50%	11	N/A	N/A

Fiscal Year	Muslim Status	Months Until Percent of Applications Approved			Muslim Status	Months Until Percent of Applications Approved		
		25%	50%	75%		25%	50%	75%
2013	>=90%	7	10	15	E0 7	7	9	16
2014	>=90%	8	11	18	E0 7	8	11	18
2015	>=90%	15	20	27	E0 7	15	19	27
2016	>=90%	19	23	30	E0 7	18	22	29
2017	>=90%	18	23	29	E0 7	18	22	29
2018	>=90%	13	18	N/A	E0 7	13	17	N/A
2019	>=90%	11	N/A	N/A	E0 7	11	N/A	N/A

Notes

Except if noted in red or green. If green, the time to adjudication is statistically significantly shorter than that of non-majority Muslim population; if red, the time to adjudication is statistically significantly longer than that of non-majority Muslim population.

 The time to adjudication is shorter than that of non-Muslim population.

 Adverse to Muslims (longer).

Tables 27 and 28 show that

- (i) With respect to I-485 and N-400 applications, the average time that applications that are approved wait for approval is the same, irrespective of whether the applications are from applicants born in non-majority Muslim countries or countries with a majority Muslim population, a predominantly Muslim population, or one of the EO7 countries.
- (ii) There were very few statistically significant differences in time to adjudication. For I-485 applications, only in FY 2013 were those born in non-majority Muslim countries statistically significantly adjudicated more quickly than those from majority Muslim countries or predominantly Muslim countries, or the EO7 countries. However, in FY 2016 and FY 2017 those from the EO7 countries were adjudicated more quickly than those from non-majority Muslim countries. With respect to N-400 applications, those born in majority Muslim countries, predominantly Muslim countries, or the EO7 countries were approved statistically significantly more quickly than the applications from non-majority Muslim countries.

Finally, I computed and compared separately by fiscal year in which the application was received, the approval rate of I-485 and N-400 applicants by Muslim status (*i.e.*, comparing non-Muslims and the various Muslim groups). Table 29 presents the results for I-485 applicants, and Table 30 presents the results for N-400 applicants.

TABLE 29

**COMPARISON OF APPROVAL RATES BY FISCAL
YEAR APPLIED AND MUSLIM STATUS
I-485 APPLICANTS**

Muslim Status Based on Country of Birth

	<u>Approval Rates by Muslim Status</u>			
	<u><50% Muslim</u>	<u>>=50% Muslim</u>	<u>>=90% Muslim</u>	<u>EO7 Countries</u>
2013	82.23%	70.90%	71.33%	73.86%
2014	74.85%	72.79%	75.53%	80.00%
2015	76.41%	72.92%	73.55%	75.77%
2016	67.38%	68.05%	69.32%	73.47%
2017	56.60%	56.72%	58.98%	62.15%
2018	40.72%	41.09%	41.42%	45.55%
2019	6.86%	7.76%	8.73%	9.46%

NOTES

Unless noted in red or green, the difference in approval rates between those born in non-majority Muslim countries and those born in Muslim status countries is not statistically significant.

Green means the approval rate of applications from non-majority Muslim countries is statistically significantly lower than the approval rate of applications from the majority Muslim populations noted (at least 50%, at least 90%, or one of the EO7 countries).

Red means the approval rate of applications from non-majority Muslim countries is statistically significantly greater than the approval rate of applications from the majority Muslim populations noted (at least 50%, at least 90%, or one of the EO7 countries).

TABLE 30

**COMPARISON OF APPROVAL RATES BY FISCAL
YEAR APPLIED AND MUSLIM STATUS
N-400 APPLICANTS**

Muslim Status Based on Country of Birth

	Approval Rates by Muslim Status			
	<50% Muslim	>=50% Muslim	>=90% Muslim	EO7 Countries
2013	77.26%	80.23%	81.23%	79.82%
2014	80.13%	76.93%	77.59%	77.74%
2015	81.46%	76.58%	76.75%	77.12%
2016	77.59%	70.84%	71.04%	72.88%
2017	59.64%	59.73%	61.40%	61.65%
2018	41.69%	44.46%	43.46%	45.89%
2019	11.15%	8.25%	8.06%	8.45%

NOTES

Unless noted in red or green, the difference in approval rates between those born in non-majority Muslim countries and those born in Muslim status countries is not statistically significant.

 Green means the approval rate of applications from non-majority Muslim countries is statistically significantly lower than the approval rate of applications from the majority Muslim populations noted (at least 50%, at least 90%, or one of the EO7 countries).

 Red means the approval rate of applications from non-majority Muslim countries is statistically significantly greater than the approval rate of applications from the majority Muslim populations noted (at least 50%, at least 90%, or one of the EO7 countries).

Tables 29 and 30 show that

- (i) With respect to I-485 applicants, the approval rate in each fiscal year for application from applicants from non-majority Muslim countries is not statistically significantly higher than the approval rate of any of the Muslim groups, except in FY 2013 while in FY 2017 the approval rate for applications by applicants from EO7 countries is statistically significantly higher than that of applications from applicants born in majority non-Muslim countries.
- (ii) With respect to N-400 applicants, the data indicates that only in FY 2015 and FY 2016 were applications received from applicants born in non-majority Muslim countries statistically significantly more likely than applications from any of the Muslim groups to be approved. Both in the fiscal years before FY 2015, and the fiscal years during the Trump Administration (*i.e.*, those after FY 2016), the rate of approval for applications in the fiscal year received from applicants born in non-Muslim countries was the same as that for applications from applicants born in majority Muslim countries, predominantly Muslim countries, or one of the EO7 countries.

V. ANALYSIS OF CAUSE OF APPLICATIONS FROM APPLICANTS BORN IN MAJORITY MUSLIM COUNTRIES BEING DISPROPORTIONATELY REFERRED TO CARRP

1. Overview of Issue being Analyzed

With no or scant data analyses, several individuals whom Plaintiffs have designated as expert witnesses (“Plaintiffs’ witnesses”) assert that USCIS operates CARRP with an anti-Muslim animus and effect.⁵⁶ Plaintiffs’ witnesses focus on USCIS data showing that applications from persons born in majority Muslim countries, when considered collectively and without regard to specific countries, are more likely to be referred to CARRP than applicants born in countries without a Muslim majority. Plaintiffs incorrectly jump to the conclusion that this correlation in the data shows that CARRP operates with anti-Muslim animus. Plaintiffs’ witnesses’ assertions that CARRP operates with anti-Muslim animus are flawed, because they failed to consider any other factors that may underlie the number of referrals to CARRP and also are correlated with the percent of a country’s population that is Muslim.

Confusing correlation with causation is a common statistical error. Two examples of this error can be seen in the following illustrations. One illustration concerns the correlation between the sale of the summer corn crop in the Philadelphia area and the number of Philadelphia Phillies baseball games that are cancelled. Clearly, canceling Phillies games does not cause the corn crop to increase, nor do increases in the corn crop cause Phillies games to be canceled. However, rain is a third factor that causes both

⁵⁶ See reports of Thomas K. Ragland (revised report ¶¶ 17, 21, 87, 120, 125-27, 129, 132, 146), Yliana Johansen-Mendez (revised report ¶¶ 23-25, 83, 86-89, 104), Nermeen Arastu (revised report ¶¶ 17, 19, 66-67, 76, 90, 93-95, 115, 117-18, 121, 123, 126), Sean M. Kruskol (¶¶ 48-57), and Narges Bajoghli (¶ 37). I anticipate that, in my responsive report to be submitted by August 7, 2020, I will respond to various opinions and statements contained within reports of several of Plaintiffs’ witnesses, including to the updated report that Mr. Kruskol might provide.

outcomes. Thus, the two outcomes are correlated, but one does not cause the other. The second example concerns a well-documented positive correlation discovered in England in the 1990s between liquor sales and average academic salaries. While one might argue that higher academic salaries encourage or enable English faculty to consume more liquor, the fact is that academic liquor sales as a percentage of total liquor sales are miniscule, and thus any increase in academic liquor sales would not meaningfully impact liquor sales in England. However, higher academic salaries were a good indicator of increasing prosperity in England, and increased prosperity was a third factor that caused both liquor sales and academic salary to increase.

Daniel Renaud, the USCIS Associate Director in charge of USCIS's Field Operations Directorate, explained in his deposition: The determination of whether a case goes into CARRP is based on information USCIS "receives typically through [its] background check processes." USCIS does not make a determination as to whether to put a case into CARRP based on the applicant's country of birth or citizenship. Applicants' countries of birth or citizenship have no impact on whether they will be referred to CARRP. And once a case is in CARRP, USCIS "do[es] not process cases differently based on the country of ... citizenship or birth."⁵⁷ Applications of applicants associated with a potential national security concern are referred to CARRP, and those without such association are not, regardless of their country of birth or citizenship.⁵⁸

⁵⁷ See pages 203-212 of Associate Director Renaud's deposition for his testimony addressing these points.

⁵⁸ The data analyses presented in my report are not based upon Mr. Renaud's testimony, but are made independently of that testimony. The [REDACTED] Associate Director Renaud's statement. The data shows [REDACTED] of cases referred to CARRP are referred based on information [REDACTED]. [REDACTED] of I-485 and N-400 CARRP referrals in the dataset are also based on information [REDACTED].

However, the USCIS data shows that the number of referrals of applications to CARRP are disproportionately from applicants born in or citizens of a majority Muslim country. If, as Associate Director Renaud states, country of birth or citizenship is not considered in the referral process, then there must be an important factor or factors other than the fact that the country has a large Muslim population which makes the applicant more likely to have been viewed by a Third Agency or USCIS as a potential national security concern. Moreover, such factor(s) must be correlated with the extent to which the country's population is Muslim. That is, the likelihood of Third Agency information or USCIS information raising national security concerns is both caused by, and hence correlated with, certain factors, which are themselves correlated with but *not* caused by the percent Muslim of the country. The example I presented above of national prosperity standing as a third factor that causes and is correlated with both faculty salaries and liquor sales, while faculty salaries and liquor sales are themselves correlated but not causative, illustrates this situation. For a more relevant possible example, we know that if an applicant is a known or suspected terrorist (KST), that application will automatically be referred to CARRP. USCIS defines a KST as “a category of individuals who have been nominated and accepted for placement in the Terrorist Screening Database (TSDB), are on the Terrorist Watch List, and have a specially-coded lookout posted in TECS/IBIS, and/or the Consular Lookout Automated Support System (CLASS), as used by the Department of State.”⁵⁹ Individuals who are associated with KSTs, but who do not meet the KST definition, can also be referred to CARRP as a non-KST.⁶⁰ The CARRP policy

⁵⁹ CAR000001.

⁶⁰ CAR00001 (describing non-KSTs as national security concerns other than those meeting the definition of a KST, such as associates of KSTs).

also requires a referral for any individual who has an articulable link to the terrorist-related inadmissibility grounds (TRIG) described in Immigration and Nationality Act (INA) sections 212(a)(3)(A), (B), which includes individuals who engage in terrorist activity, are engaged or likely to engage in terrorist activity after entry, incited terrorist activity, are representatives or members of a terrorist organization, endorsed or espoused terrorist activity, received military-type training from or on behalf of a terrorist organization; or are spouses or children of anyone who has engaged in terrorist activity within the last five years (with certain exceptions). Engaging in terrorist activity includes being involved in providing material support to terrorists or terrorist organizations.⁶¹ While persons who are KSTs, associates of KSTs, or otherwise have an articulable link to the TRIG may be disproportionately born in a majority Muslim country, this does not show that the majority Muslim population status has a causal effect or is or is basis for referral to CARRP.⁶²

Moreover, these characteristics occur in non-majority Muslim countries and majority Muslim countries and, as my regression analysis below shows, there is statistical evidence that when these factors equivalently exist in a majority Muslim and non-majority Muslim country, the numbers of referrals to CARRP are the same. Thus, difference between the countries in the percent Muslim has no impact on the number of referrals to CARRP.

⁶¹ CAR000001; *see also* Terrorist-Related Inadmissibility Grounds (TRIG), available at <https://www.uscis.gov/legal-resources/terrorism-related-inadmissibility-grounds-trig>.

⁶² If that were the case, the disproportionate likelihood of applications from majority Muslim country applicants being referred to CARRP could be due to some extent to the increased likelihood of individuals from majority Muslim countries fitting within the described categories.

2. Terrorist Events in a Country

One factor that may cause the number of referrals to CARRP from a country is the extent of terrorist events that take place in that country. That is, one might hypothesize that the more terrorist events that occur in a country, the more likely it is that an applicant from that country will have some association with terrorist actors and/or events, thereby increasing the likelihood that the applicant would be identified as a national security concern and processed in CARRP. To test this hypothesis, I collected data on terrorist events by country, and statistically determined the correlation between the extent of terrorist events and CARRP referrals. If I found a statistically significant and meaningful correlation, I then examined the extent to which the disproportionate number of referrals to CARRP from applications from applicants born in countries with a majority Muslim population was explained by differences in the amount of reported terrorist events among countries.

3. The Global Terrorism Database (“GTD”) and Limitations

In order to determine the extent of terrorist events in a country, I used data from the Global Terrorism Database (“GTD”) which reports the number of terrorist incidents in each country.⁶³

The GTD is described as:

... the most comprehensive unclassified database of terrorist attacks in the world. The GTD is produced by a multi-disciplinary team of researchers at the National Consortium for the Study of Terrorism and Responses to Terrorism (START) at the University of Maryland, applying fundamentals of social sciences and computer and information sciences. It documents domestic and international terrorist attacks around the world since 1970, and contains more than 190,000 records. For each event, the database includes available details on more than 100 variables — the date and location of the attack, the weapons used, information about the target, the number of casualties, and the group or individual responsible. START makes the GTD publicly available in order to familiarize analysts, policymakers, scholars, and journalists with patterns of terrorism and increase understanding of terrorist violence.⁶⁴

The GTD is a university-sponsored, publicly accessible, open source database that lists all terrorist attacks identified by the GTD team using criteria detailed in the GTD Codebook by country. Like most databases, especially open source databases which rely on media reporting for their information, the GTD has limitations.⁶⁵ There are two principal issues concerning the accuracy of a database that

⁶³ Dr. Sageman’s report (¶ 62) draws upon the GTD to illustrate a point concerning the reported incidence of terrorism in the United States. Although characterizing it as a “flawed” database, Dr. Sageman identifies no flaws or basis for this critique of the GTD.

⁶⁴ See <https://grevd.org/consortium/partner/gtd>

⁶⁵ For a detailed discussion of its limitations, see *The Global Terrorism Database (GTD): Accomplishments and Challenges*, Gary LaFree Volume IV, Issue 1 March 2010, *Journal of the Terrorism Research Institute and Putting Terrorism in Context, Lessons from the Global Terrorism Database*, LaFree, Dugan, and Miller. Pages 22-25 Routledge 2015

relies on media reporting of possible terrorist events. One issue is the completeness of the database; that is, the data may not contain all relevant events because of limitations in the availability of data reporting⁶⁶ by countries.⁶⁷

The second issue concerns the possible misclassification of events due to a lack of specificity, as well as possible underreporting. In the case of the latter, it is also reasonable to conclude that media accounts will be more likely to miss unsuccessful attacks that were averted by authorities. And in the case of the former it can be especially challenging to disentangle acts of terrorism from acts of genocide, insurrection, insurgency, or massive civil unrest. Similarly, terrorist attacks sometimes share characteristics with the consequences of organized crime or hate crime. Accordingly, terrorist events may be misclassified as due to organized crime, or *vice versa*. The misclassification problem has led the GTD to flag cases which could not be categorized as terrorism based on the information available, so further research can test the sensitivity of the results to this determination.

Nevertheless, despite these limitations and caveats, the GTD database is frequently used by researchers studying terrorism, and frequently accessed and used by Government agencies. The GTD has been accessed and downloaded hundreds of times by U.S. Department of Defense agencies and their personnel, and also by other Government agencies (*e.g.*, U.S. Department of State, U.S.

⁶⁶ Some prominent factors are press limitations and government censorship.

⁶⁷ The GTD also only reports incidents in countries that currently exist and/or countries for which media data is available. The USCIS data I received lists the country of birth and citizenship of all applicants, regardless of whether or not that country still exists and/or whether media data is available. There were 35 countries in the USCIS database which are not in the GTD database. These countries account for 5.72% or 1,505 CARRP referrals. Almost two-thirds of these are applications from applicants from Cuba, a country which is not included in the GTD because of the unavailability of media data. The others are mostly countries which no longer exist.

Department of Homeland Security), the nation's network of national laboratories (*e.g.*, Sandia, Los Alamos) and others, including NATO.⁶⁸

Moreover, a perfectly accurate database is not a prerequisite to study the correlation between the number of referrals to CARRP and the number of terrorism events by applicant country of origin. Almost all databases have an error rate. A perfectly accurate database is not critical when studying whether a difference in outcomes between groups can be statistically explained by differences in some factors,⁶⁹ especially if the data shows that there is a correlation between the differences in outcomes and the factors being studied. Random inaccuracies (errors which are not directional in nature but are equally likely to overstate or understate the true value) in the database will only mask any true differences and minimize any correlations.⁷⁰

Thus, any correlation found will actually understate the true correlation between CARRP referrals from a country and the terrorist events in a country, and the extent to which the events explain the correlation between referrals to CARRP and Muslim status. Moreover, to the extent that the inaccuracies are not random, which may be the case with this data, one would expect that since the countries with the largest number of CARRP referrals tend to be more authoritarian and less developed, the data for countries with many referrals to CARRP should show an undercount of the number of attacks, which would likely understate the reporting of

⁶⁸ See GTD Metrics (US Dept. of Defense), updated November 2019, attached to June 19, 2020, email from Erin Elizabeth Miller, Program Director, GTD.

⁶⁹ Which is what I am studying here.

⁷⁰ See J Johnston, *Econometric Methods*, McGraw Hill Company Inc. 1960 pages 148-150.

terrorist events.⁷¹ Thus, my estimated correlations between the number of CARRP referrals and the number of reported terrorism attacks would be even more understated due to any non-random inaccuracies in the data.

Based on the foregoing and the GTD methodology discussed below, I believe that the GTD provides statistical information on global terrorism events and their geographical distribution that is sufficiently reliable for the correlations and regression analyses presented in this report. Moreover, the GTD is the type of data experts in statistical analyses commonly use and rely upon.

4. Global Terrorist Database Methodology

The GTD defines a terrorist attack as the threatened or actual use of illegal force and violence by a non-state actor to attain a political, economic, religious, or social goal through fear, coercion, or intimidation. In practice this means in order to consider an incident for inclusion in the GTD, all three of the following attributes must be present:

- The incident must be intentional – the result of a conscious calculation on the part of a perpetrator.
- The incident must entail some level of violence or immediate threat of violence -including property violence, as well as violence against people.
- The perpetrators of the incidents must be sub-national actors. The database does not include acts of state terrorism.

In addition, at least two of the following three criteria must be present for an incident to be included in the GTD:

- Criterion 1: The act must be aimed at attaining a political, economic, religious, or social goal. In terms of economic goals, the exclusive pursuit of profit does not satisfy this criterion. It must involve the pursuit of more profound, systemic economic change.

⁷¹ Authoritarian countries are more likely to censor the reporting of terrorist events, and less developed countries more likely to have less media coverage of such news.

- Criterion 2: There must be evidence of an intention to coerce, intimidate, or convey some other message to a larger audience (or audiences) than the immediate victims. It is the act taken as a totality that is considered, irrespective if every individual involved in carrying out the act was aware of this intention. As long as any of the planners or decision-makers behind the attack intended to coerce, intimidate or publicize, the intentionality criterion is met.
- Criterion 3: The action must be outside the context of legitimate warfare activities. That is, the act must be outside the parameters permitted by international humanitarian law, insofar as it targets non-combatants.

Each of these latter three criteria filters can be applied to the database. . . .

The inclusion criteria above are evaluated for each case to determine if it should be added to the GTD; however, there is often definitional overlap between terrorism and other forms of crime and political violence, such as insurgency, hate crime, and organized crime. Likewise, for many cases there is insufficient or conflicting information provided in source documents to allow coders to make a clear determination regarding whether or not the inclusion criteria are met. Such uncertainty, however, was not deemed to be sufficient to disqualify the incident from inclusion in the GTD. Users of the GTD can further govern the parameters of their search results by employing an additional terrorism definitional filter.

The “Doubt Terrorism Proper” field records reservation reported in source materials that the incident in question is exclusively terrorism. . . .

The GTD does not include plots or conspiracies that are not enacted, or at least attempted. For an event to be included in the GTD, the attackers must be “out the door,” in route to execute the attack. Planning, reconnaissance, and acquiring supplies do not meet this threshold.

The GTD does include attacks that were attempted but ultimately unsuccessful. The circumstances vary depending on tactics (for details see the success variable, below). However, in general if a bomb is planted but fails to detonate; if an arsonist is intercepted by authorities before igniting a fire; or, if an assassin attempts and fails to kill his or her intended target, the attack is considered for inclusion in the GTD, and marked success=0. . . .

If the information available for a complex event does not specify a time lag between, or the exact locations of, multiple terrorist activities, the event is a single incident. If any discontinuity in time or space is noted, the event is comprised of multiple incidents. In such cases, the related single incident is noted in the database.⁷²

Reliability of source information is an important feature that the GTD Team uses for the inclusion of cases in the GTD:

The availability of valid source documents cannot be taken for granted and in fact varies considerably, often over time and by location. Because the validity of the data is critically important, the GTD team recognizes this variation and assesses the quality of the sources. Information from high-quality sources—those that are independent (free of influence from the government, political perpetrators, or corporations), those that routinely report externally verifiable content, and those that are primary rather than secondary—is prioritized over information from poor sources. *In order for an event to be recorded in the GTD it must be documented by at least one such high-quality source.* Events that are only documented by distinctly biased or unreliable sources are not included in the GTD, however the GTD does include certain information from potentially biased sources, such as perpetrator claims of responsibility or details about the motive of the attack. Note that particular scarcity of high-quality sources in certain geographic areas results in conservative documentation of attacks in those areas in the GTD.⁷³

GTD employs a “Single Incident Determination” whereby “[i]ncidents occurring in both the same geographic and temporal point will be regarded as a single incident, but if either the time of occurrence of incidents or their locations are discontinuous, the events will be regarded as separate incidents.”⁷⁴

⁷² GTD Global Terrorism Database Codebook: Inclusion Criteria and Variables dated October 2019, pp. 10-12.

<https://www.start.umd.edu/gtd/downloads/Codebook.pdf>

⁷³ GTD Global Terrorism Database Codebook:, p. 9.

⁷⁴ GTD Global Terrorism Database Codebook:, p. 12.

The GTD reports each single terrorist incident by year, country, which of the criteria for inclusion the incident meets, and whether there is any doubt that the incident may not actually have been exclusively a terrorist act. If the incident is related to other incidents, the related incidents in the data are flagged.⁷⁵

5. Analysis of Factors Impacting the Number of Referrals to CARRP From a Country

I initially addressed the question of whether it is true that the level of terrorist events in a country is a strong predictor of the number of referrals to CARRP of applications of applicants born in that country, and if that would explain the disproportionality of the number of referrals to CARRP from countries with a majority Muslim population. For example, consider the following hypothetical case. I am studying two countries. One (Country A) has had 100 terrorist events and other (Country B) has had 50 terrorist events. Three hundred CARRP referrals of applicants who were born in one of the two countries are made. In this situation, I would expect 200 (two thirds of the 300) of the CARRP referrals to be born in Country A and 100 (one third of the 300) to be born in Country B if referrals were perfectly predicted by the level of terrorist events in the country of birth of an applicant. If the first country was a majority Muslim country and the second was not, and if the level of terrorist events is the factor causing the number of referrals to CARRP from a country, then I would expect to see a disproportionate number of all referrals (in this case, 67.7%) to come from the majority Muslim country, not because it is a majority Muslim country, but because the factor causing the referrals (*i.e.*, the level of terrorist events), disproportionately occurs in that country. If the number of actual referrals from Country A is around 200, then this

⁷⁵ *GTD Global Terrorism Database Codebook*., pp. 12 and 17.

causal factor could explain the disproportionate share of referrals. But if the number of referrals from Country A is considerably larger than would be expected given its proportionate disparity in terrorist events (for example if there were 270 (or 90% of the total 300) referrals, then the level of terrorist events would not explain the disproportionate share of referrals

Analysis of the actual data shows that the different levels of terrorist events among countries majority Muslim and non-majority Muslim countries, and the disparity of terrorist events by Muslim status, can explain the disproportionate number of CARRP referrals from majority Muslim countries. Analyzing the GTD data for the fiscal years 2013 through 2018,⁷⁶ the GTD data shows that, overall,⁷⁷ about 73% of all terrorist incidents occurred in majority Muslim countries. This is slightly higher than the actual percentage of CARRP-referred applications that are from applicants from majority Muslim countries, which is 68.9%. I examined the data overall, by incident categories, and also by criterion type. In addition, to test the sensitivity of my analysis to possible double counting events which may be related (*i.e.*, which may actually be a single terrorism event), and also to misclassifying as terrorism events that could be alternatively categorized (*e.g.*, genocide, insurrection, insurgency, massive civil unrest, hate crimes or organized crime), I also ran the analysis excluding the cases where there was doubt as to whether the incident was exclusively terrorism, and again both with and without the related incidents counted. The results of these different analyses – sixteen sets of analyses in all – are presented in the Table 31 below and Chart 7.

⁷⁶ My analysis stops in 2018, because the GTD information is not yet available for 2019.

⁷⁷ The results by year vary somewhat, but are always above 70% in the first 4 years, and above 60% in the later three years.

TABLE 31

**PERCENT OF TERRORIST INCIDENTS
WHICH WERE LOCATED IN MAJORITY MUSLIM COUNTRIES**

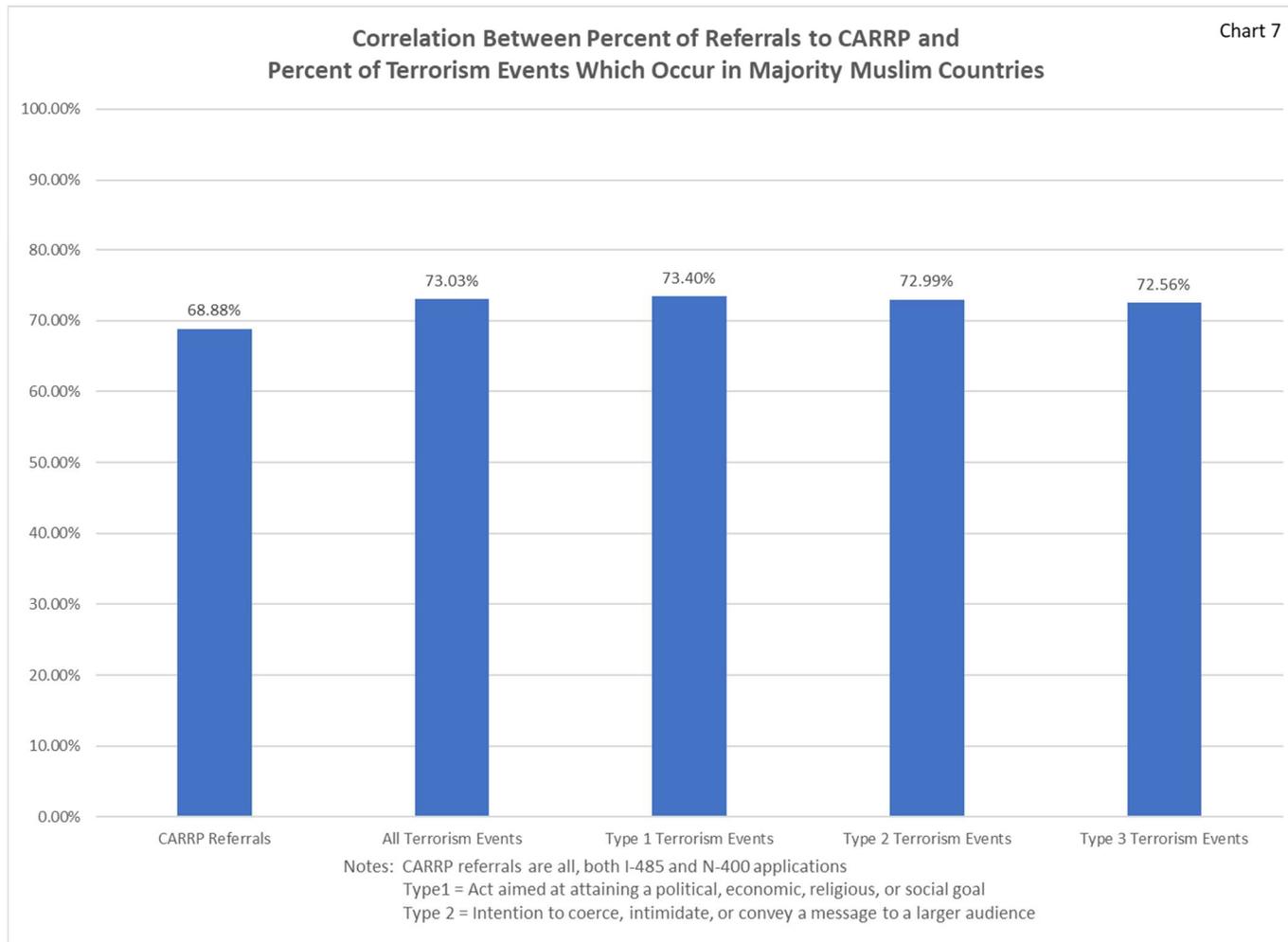
Fiscal Year 2013 - Fiscal Year 2018	All	Meets		
		Criterion 1	Criterion 2	Criterion 3
All	73.03%	73.40%	72.99%	72.56%
Excludes Doubtful*	73.04%	73.04%	73.04%	73.06%
All Less Related Incidents	73.01%	73.41%	72.97%	72.38%
Also Excludes Doubtful*	72.91%	72.91%	72.91%	72.92%

Percent of applications referred to CARRP from applicants who were born in a country with a majority Muslim population is 68.9%.

Note: * = Incidents which may not be exclusively terrorism.

Chart 7 shows a strong correlation between the percentage of referrals to CARRP by applicants from majority Muslim countries and the percentage of reported terrorism events occurring in majority Muslim (and non-majority Muslim) countries.⁷⁸ Table 31 presents the results of my examination of the sensitivity of the correlation to classification errors. Table 31 shows that the strong correlations computed in all sixteen analyses are not meaningfully affected by whether the event is actually an exclusively terrorism event, or whether multiple related events should have been considered only a single act of terrorism.

⁷⁸ This should not be viewed as implying that being Muslim or being born in a majority Muslim country causes terrorist events.



My second analysis looks at the degree to which the level of terrorist events in a country is actually correlated with the number of referrals to CARRP for applicants born in that country. The analysis also computes the correlations between other factors for the country and the number of CARRP referrals for applicants born in that country. That is, I computed the correlation between the

number of CARRP referrals from a country with the (i) the percent of the country's population that is Muslim, and also (ii) the number of applications from that country, (iii) whether the country was a state sponsor of terrorism, and (iv) the level of terrorist event in the country.

Specifically, I computed the Pearson correlation between the number of CARRP referrals from each country with the number of terrorism events from that country. The Pearson correlation measures the linear consistency between the two variables. The Pearson correlation coefficient takes on values from zero to one. The sign of the correlation can be positive or negative. A correlation of 0 means there is no linear predictive relationship between the two variables. A correlation of 1 means there is a perfect positive predictive relationship between the two variables (*i.e.*, as one variable increases by one unit, the other variable always increases by a fixed number of units) and a correlation of -1 means there is a perfect negative predictive relationship (*i.e.*, as one variable increases by one unit, the other variable always decreases by a fixed number of units). Thus, a correlation of +1 or -1 means that one variable is a perfect predictor of the other variable. Values between 0 and 1 measure how consistent the linear relationship is. In other words, the Pearson correlation measures the linear relationship between two variables.⁷⁹ The actual number of referrals varies by country. Some

⁷⁹ An issue with that statistical measure occurs in a situation in which a few extreme values exist in the data. If the data contains a few countries with a very high number of terrorism events and large number of CARRP referrals, while the majority of the countries have a small number of terrorism events and a small number of CARRP referrals, then the extreme values will dominate the calculation and the results will show a large correlation that would be drastically reduced if the extreme events were removed from the data. Hence, I also computed the Spearman rank correlation coefficient. The Spearman rank correlation ranks each variable from smallest to largest and then correlates the relationship between the ranks of the two variables. The Spearman rank correlation measures the linear relationship between the ranks of the two variables, rather than the actual values. Thus, a correlation of 1 means the ranks

countries have very few referrals to CARRP and some have many. Overall, a country had 541 terrorist events, on average, but the number of terrorist events varied by country from 1 up to 17,047. The measure of the degree to which the number of referrals varies by country is called the variance. The square of the correlation equals the percent of the variance in referrals between countries that can be statistically explained by the difference between the countries in the other variable. For example, a correlation of 0.50 means 25% of the variance between countries in the number of CARRP referrals can be statistically “explained” (*i.e.*, predicted) by the difference in the number of terrorism events in the countries and 75% cannot be explained by the difference in the countries in the number of terrorist events.

The Pearson⁸⁰ correlation between the number of CARRP referrals for applications by country of birth and the number of terrorism events in that country was 0.770. If the probability of as large a correlation occurring by chance is less than 1-in-20 or 5%, then the correlation is typically deemed statistically significant by statisticians and the Courts.⁸¹ This result of 0.770 is highly statistically significant, as the probability of this occurring by chance was less than one in 10,000. Moreover, a correlation of 0.770 means 59% of the variance in the number of CARRP referrals between countries can be statistically “explained” (predicted) simply by

perfectly align. That is, the country with the largest number of terrorist events also has the largest number of CARRP referrals, the country with the second largest number of terrorist events also has the second largest number of CARRP referrals, *etc.* Thus, the Spearman rank correlation measure is not disproportionately impacted by extreme values.

⁸⁰ The Spearman rank correlation is 0.641.

⁸¹ For a discussion of the 80% Rule and practical and statistical significance, see Paul Meier, Jerome Sacks, and Sandy L. Zabell, “*What Happened in Hazelwood: Statistics, Employment Discrimination, and the 80% Rule*” in Statistics and the Law, Morris H. DeGroot, Stephen E. Fienberg and Joseph B. Kadane (eds.), John Wiley & Sons, 1986, pages 1 to 40.

the difference between the countries in the number of terrorism events.⁸² Accordingly, the correlations between the number of referrals from each country and the values of the different variables for each country are presented in Table 32.

TABLE 32

PEARSON CORRELATION WITH REFERRALS TO CARRP

<u>Terrorism Events in Country</u>	<u>Percent Muslim Population of Country</u>	<u>Applications from Country</u>	<u>Whether State Sponsor of Terrorism</u>
0.770	0.329	0.280	0.262

As shown in Table 32, the factor which best explains the differences in the number of referrals to CARRP among countries is the difference in the terrorist events among countries. The difference in the level of terrorist events among countries can explain 59% percent of the variance in the number of referrals among countries, while the difference in the countries' Muslim population percentage by itself can explain only 10.8% of the variance in the number of referrals to CARRP. The concern here is that the country's Muslim population percentage is significantly correlated with the number of terrorist events⁸³ and thus the correlation with

⁸² To assure that the correlation is not inflated by anti-Muslim bias, I split the countries by whether or not the country's population was or was not majority Muslim. If the correlation is not confounded the country's Muslim status, the subpopulation correlations should be similar. I ran the Spearman rank test rather than the Pearson correlation because when the creation of subgroup populations can create a serious restriction of range in one of the populations, and the Spearman rank test is much less impacted than the Pearson correlation by restriction in range. The two correlations were very similar at 0.69 and 0.65, respectively, and the overall correlation was 0.64.

⁸³ Being correlated does not mean that Muslims are more likely to be terrorists.

the percent Muslim population of the country maybe misleading .since the extent that there is some degree of correlation between the factors, the simple correlation will pick up some of the effect of the other factors. To study the interaction between all the factors and isolate and estimate the specific effect of the factors on the number of referrals to CARRP of applications from applicants born in a country, I ran a regression analysis. The regression analysis predicts the number of applications from applicants born in a country that will be referred to CARRP as a function of the three variables: the number of terrorist events associated with that country, the number of applications (N-400 and I-485) from persons born in that country, and an indicator of whether that country was deemed a state sponsor of terrorism.

The four factors (the three mentioned above plus the percent of the country's population that is Muslim) together statistically explain 67.6% of the variance in CARRP referrals. If the percent of a country's Muslim population variable were dropped from the regression, the remaining three factors would explain 66.8% of the variance. Hence, including the variable representing the percent of the country's population that is Muslim in the model only increases the explanation of the variance in CARRP referrals among countries by 0.8%. This means that when we compare countries that are similarly situated with respect to the number of terrorist events, the number of applications, and whether it is a state sponsor of terrorism, we see no meaningful difference in the number of referrals to CARRP regardless of whether the country's population has no Muslims or is all Muslim, The percent of a country's population that is Muslim is irrelevant to being referred to CARRP, which is inconsistent with a claim of anti-Muslim bias.

The effect of each of the four variables after accounting for the impact⁸⁴ of the other variables is estimated and the statistical significance reported. The results are presented in Table 33 below.

⁸⁴ That is, the model estimates the effect of changing the value of that variable holding all the other variables constant.

TABLE 33

**SUMMARY OF RESULTS OF REGRESSION ANALYSIS
OF RELATIONSHIP BETWEEN REFERRALS TO CARRP
OF APPLICATIONS FROM PERSONS BORN IN A COUNTRY
AND VARIOUS CHARACTERISTICS ASSOCIATED WITH THE COUNTRY**

Variable	Standardized Coefficients	Probability of Occurring by Chance
Percent Muslim of population of the country	0.102	0.051
Number of terroristic events associated with country	0.705	less than 0.001
Applications from persons born in the country	0.157	0.002
Whether country is state sponsor of terrorism	0.216	less than 0.001

Notes

Standardized coefficients adjust for the differences in measurement of the variables, so the coefficients of the different factors are comparable. Thus, if a standardized coefficient of one variable is 1, and the standardized coefficient of the other variable is 2, the effect of the second variable is twice that of the first.

If the probability of seeing as large an effect by chance is less than 0.05, one considers the effect to be statistically significant. If the probability is greater than 0.05, the observed effect is considered to be not statistically significant, so the analysis does not provide valid statistical evidence from which to conclude that the effect of the factor is real.

Table 33 shows that the number of terrorist events is the dominant predictor of the number of CARRP referrals for applications from a country. The two variables (whether the applicants' country of birth is deemed to be a state sponsor of terrorism and the total number of applications from applicants born in a country) also have a statistically significant, but considerably lower impact. The impact of the percentage of the population of a country that is Muslim is one-seventh that of the number of terrorist events associated with that country, and that effect is not statistically significant. That is, the impact of the number terrorist events on the number of referrals is seven times that of the impact of the percent Muslim of the country, and more than 50 times less likely to be an artifact of the data and not a real factor impacting the number of the referrals.

In sum, it is clear that there is strong statistical evidence that the level of terrorist event in a country and other factors such as the magnitude of applications from a country and whether that country is a state sponsor of terrorism explain a significant amount (2/3s) of the variance among countries in CARRP referrals. The percent of a country's population that is Muslim has only a small and statistically non-significant impact on the number of CARRP referrals from a country. These results demonstrate that the magnitude of the Muslim population of the applicant's country of birth is not a factor in deciding whether an applicant will be referred to CARRP.

VI. SUMMARY OF FINDINGS

1. The relative and absolute number of I-485 and N-400 applications processed under CARRP from FY 2013 through FY 2019 is very small, well below 1%. Only 0.20% or 4,682 of the 4,646,062 I-485 applications were processed pursuant to

the CARRP policy, and only 0.31% or 18,746 out of 5,975,551 N-400 applications were processed under CARRP. For the combined total of 10,621,174 applications, only 0.27% or 28,214 were processed pursuant to the CARRP policy – which is about one of every 375 applications.

2. [REDACTED] to CARRP for I-485 and N-400 applicants are [REDACTED]
[REDACTED] present administration. The
[REDACTED]
for the referral of applications to CARRP [REDACTED]
[REDACTED] is also a basis for the referral, [REDACTED]
[REDACTED] also has [REDACTED] pre- and post-the current administration.
3. The maximum percentage of applications referred to CARRP occurs in FY 2015 for I-485 and N-400 applicants and decreases thereafter. The maximum number of I-485 applications referred to CARRP occurs for FY 2016 applications and then declines, while the maximum number of N-400 applications referred to CARRP occur for FY 2015 applications.
4. There is no valid statistical evidence that the likelihood of I-485 or N-400 application referrals to CARRP have markedly increased during the current administration. The process of referral to CARRP seems unchanged under the current administration.
5. [REDACTED] to CARRP. [REDACTED] that [REDACTED] supplied relevant information for approximately [REDACTED] referrals. [REDACTED] of all referrals.

6. In approximately [REDACTED] of information leading to referral of the application to CARRP was [REDACTED] of the cases [REDACTED] source.
7. With respect to referrals, starting with applications supplied in 2017 there was a [REDACTED] [REDACTED] of information relevant to the decision of referring the application to CARRP. However, these changes are [REDACTED] of the applications received [REDACTED]
8. While slightly more than three-quarters of the applicants processed through CARRP are approved, those processed through CARRP are significantly more likely than those not processed through CARRP to be denied. Further, it takes markedly longer for an application processed through CARRP than for an application not processed through CARRP to be adjudicated (even if approved).
9. There is no valid statistical evidence (based on examining the outcomes pre- and post- EO 13769) that the likelihood of approval for applications processed through CARRP, or the time lag to adjudication, or the time lag to approval changed as a result of the EOs.
10. The relative and absolute numbers of I-485 and N-400 applications submitted by individuals born in majority Muslim countries and processed under CARRP from FY 2013 through FY 2019 is small. Only 0.98% or 5,682 of the 579,942 I-485 applications of applicants from majority Muslim countries and 1.46% or 127,213 of the 864,363 N-400 applications of applicants from majority Muslim countries were processed through CARRP. Out of a total of 1,444,305 applications for

applicants from majority Muslim countries, only 1.27% or 18,403 were processed through CARRP, providing statistical evidence against Plaintiffs' apparent premise that the CARRP program is intended and designed to deny immigration benefits to Muslim applicants. Nevertheless, I-485 and N-400 applicants from Muslim countries are significantly more likely than those from non-Muslim countries to be referred to CARRP, overall and in every fiscal year. This impact is, of course, limited to the very small percentage of applicants from majority Muslim countries whose applications are processed pursuant to the CARRP policy.

11. However, the disparate impact of the CARRP process on applicants born in any majority Muslim country, or any predominately Muslim country, or any EO7 country, is evident from the beginning of the time period studied, FY 2013 to FY 2019, without any data suggesting an intended impact. Over time, the pattern of changes in applications referred to CARRP is similar for non-Muslims and all Muslim groups (majority Muslim, predominately Muslim, and EO7). While the pattern is the same, the magnitude of the increases and number of referrals is greater for applicants from majority Muslim countries. This would be expected, since the initial number of those processed through CARRP is higher for applicants from majority Muslim countries. That is, when a number is doubled, the doubled value is greater for the larger group than for the smaller group (*e.g.*, if group A is 5 and group B is 10, and we double both groups, then group A becomes 10 and group B becomes 20; the arithmetic difference between the groups increases and the magnitude of the change is larger for group B, though proportionately remains the same at a 1:2 ratio). When we look at the relative percentage changes (that is, the percentage change from fiscal year to fiscal year), we find that not only is the pattern the same by Muslim status, but

the magnitude of change is also the same. Thus, there is no statistical support for the Plaintiffs' allegation that alleged "extreme vetting" due to the executive orders issued by President Trump actually increased the disproportionate effect on Muslims in the CARRP process.

12. There is strong statistical evidence that the level of terrorist event in a country and other factors such as the magnitude of applications from a country and whether that country is a state sponsor of terrorism explain a significant amount (2/3s) of the variance among countries in CARRP referrals. The percent of a country's population that is Muslim has only a small and statistically non-significant impact on the number of CARRP referrals from a country. After controlling for the level of terrorist events and the number of applications from the countries and whether the country is a state sponsor of terrorism, the percent Muslim of the population of a country explains only 0.8% of the variance among countries in the number of referrals to CARRP. Conversely, the disproportionate share of referrals to CARRP of applications from applicants born in countries whose population is majority Muslim is not valid evidence of anti-Muslim bias in referring applicants to CARRP.

13. Comparing outcomes by Muslim status overall, and comparing changes over time (particularly pre- and post- EO 13769) provides no evidence to support a theory that applicants from majority Muslim countries were targeted simply because they were Muslim or from majority Muslim countries. Nor is there evidence that the process of USCIS referrals to CARRP was altered to target Muslims, or that applicants from majority Muslim countries were targeted as a result of the alleged "extreme vetting" following the EO. Specifically:

- a) [REDACTED] source supporting the application referral to CARRP for applicants born in a Muslim country. [REDACTED] [REDACTED] for referral of applicants from majority non-Muslim countries. [REDACTED] referral source slightly [REDACTED] time, and [REDACTED] for applications from applicants born in majority non-Muslim countries.
- b) However, starting in FY 2017, concurrent with the issuance of the Executive Orders, the USCIS becomes [REDACTED] [REDACTED] source for information relevant for referral of applications from applicants born in a majority non-Muslim country, and [REDACTED] source of such information. The changes are much less pronounced [REDACTED] applications, but the pattern is [REDACTED]. Thus, to the extent that the source of agency information supporting the referral to CARRP [REDACTED] there is no statistical evidence to support an allegation of anti-Muslim bias on the part of USCIS. However, the fact that [REDACTED] for applications from applicants born in a majority Muslim country (or a predominantly Muslim country or an EO7 country) [REDACTED] after the EOs were issued.
- c) With respect to I-485 or N-400 applications referred to CARRP, irrespective of whether the applicant was born in a majority Muslim country (or predominantly Muslim country or an EO7 country), [REDACTED] [REDACTED] source supplying information that the applicant may be a national security concern [REDACTED]

cases. Moreover, to the extent that the role of USCIS [REDACTED] after FY 2016, it [REDACTED] [REDACTED] applications from applicants born in majority Muslim countries (or predominantly Muslim countries or EO7 countries). This stands in direct contradiction of Plaintiffs' allegation that the EOs under the current administration resulted in "extreme vetting" aimed at Muslim applicants.

- d) The rate of approval was not meaningfully different irrespective of whether the applicant was born in a majority Muslim country, a predominately Muslim country, or one of the EO7 countries, or was an applicant from a majority non-Muslim country processed pursuant to the CARRP policy and who applied in the same fiscal year. This was true for almost all fiscal years and there is no meaningful change over time, which is inconsistent with and contradicts the Plaintiffs' theory that the alleged "extreme vetting" targeted Muslims and increased the disproportionate effect.
- e) The time to adjudication for applicants born in majority non-Muslim countries and for applicants born in a majority Muslim country, a predominately Muslim country, or an EO7 country was the same, and this was true for all fiscal years prior to and during the current administration (to the extent a difference was found, it almost always favored the applicants born in a majority Muslim country, a predominately Muslim country, or an EO7 country); and

- f) The time to approval for applicants born in a majority Muslim country, a predominately Muslim country, or an EO7 country was the same as the time to approval for applicants from a majority non-Muslim country, and this was true for all fiscal years prior to and during the current administration (to the extent a difference was found, it almost always favored the applicants born in a majority Muslim country, a predominately Muslim country, or an EO7 country).



Bernard R. Siskin, Ph.D.

Dated: July 17, 2020

APPENDIX A

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SUMMARY

Bernard Siskin received his B.S. degree in Mathematics from the University of Pittsburgh and a Ph.D. in Statistics from the University of Pennsylvania. For many years, he taught statistics at Temple University and served as Chairman of the Department of Statistics.

Dr. Siskin has specialized in the application of statistics in law, particularly in the area of analyzing data for statistical evidence of discrimination. He has testified for both plaintiffs and defendants in more than 200 cases, many of which were large employment class actions. In addition to discrimination studies, he has conducted statistical studies and has testified in commercial and environmental cases involving statistical issues.

Dr. Siskin has frequently been appointed by federal judges as a neutral expert to aid the court in statistical issues and he was the statistical consultant to the Third Circuit Court of Appeals Task Force on Equal Treatment in the Courts. I was also appointed by the Court as an Expert to measure the accuracy of the CCC vehicle valuation methodology and I suggested possible modifications to the methodology.

Dr. Siskin is the author of many articles and textbooks on statistics and quantitative techniques including *Elementary Business Statistics*, *Encyclopedia of Management* and *Quantitative Techniques for Business Decisions*. He has also written and lectured extensively on the use of statistics in litigation.

He has served as a statistical consultant to the U.S. Department of Justice, the Equal Employment Opportunity Commission, the U.S. Department of Labor, the Federal Bureau of Investigation, the Central Intelligence Agency, the Environmental Protection Agency, the National Aeronautics and Space Administration, Consumer Financial Protection Bureau (CFPB), OFCCP and Fannie Mae (the Federal National Mortgage Association) and Freddie Mac (the Federal Home Loan Mortgage Corporation), as well as numerous other federal, state and city agencies and Fortune Five Hundred corporations.

BLDS, LLC

EDUCATION

University of Pennsylvania
Ph.D., Statistics (Minor, Econometrics), 1970

University of North Carolina
Graduate Study (Major, Economics; Minor, Statistics), 1966

University of Pittsburgh
B.S., Mathematics (Minor, Economics), 1965

PRESENT POSITION

BLDS, LLC, Director, 2011

TEACHING EXPERIENCE

Temple University, Adjunct Professor of Law School, 1992 to 2005
Temple University, Tenured Associate Professor of Statistics, 1973 to 1984
Temple University, Chairman-Department of Statistics, 1973 to 1978
Temple University, Assistant Professor of Statistics, 1970 to 1973
Temple University, Instructor of Statistics, 1968 to 1970

OTHER POSITIONS HELD

LECG, Director, 2003 to 2011
Center for Forensic Economic Studies, Senior Vice President, 1991 to 2003
National Economic Research Associates, Inc., Senior Vice President, 1989 to 1991
National Economic Research Associates, Inc., Vice President, 1986 to 1989
Center for Forensic Economic Studies, Ltd., President, 1984 to 1986
Center for Forensic Economic Studies, Ltd., Consultant, 1980 to 1984

PUBLICATIONS

Books

1. B. Siskin and N. Schmidt, "Proper Methods for Statistical Analysis of Promotions," *Adverse Impact Analysis: Understanding Data, Statistics, and Risk*, Psychology Press, 2017, S. Morris and E. Dunleavy, eds.
2. B. Siskin, "Employment Discrimination Litigation: Behavioral, Quantitative, and Legal Perspectives" John Wiley & Sons, Inc. 2005, Chapter 5 *Statistical Issues in Litigation* (with Joseph Trippi).
3. B. Siskin, "Use of Statistical Models to Provide Statistical Evidence of Discrimination in the Treatment of Mortgage Loan Applicants: A Study of One Lending Institution," *Mortgage Lending, Racial Discrimination and Federal Policy*, Urban Institute Press, 1996, J. Georing and R. Wienk, eds.
4. B. Siskin and J. Staller, *What Are The Chances?*, Crown Publishers, 1989.

BLDS, LLC

PUBLICATIONS (Continued)

Books (Continued)

5. B. Siskin and R. Johnson, *Elementary Statistics: A First Course*, Duxbury Press, 1982.
6. B. Siskin and R. Johnson, *Elementary Business Statistics*, Duxbury Press, 1979
2nd Edition, 1985
7. B. Siskin, *Encyclopedia of Management*, McGraw Hill, 1979. (Ed. Les Bechtel).
8. B. Siskin and R. Johnson, *Quantitative Techniques for Business Decisions*, Prentice Hall, 1976.

Articles

1. B. Siskin and D. Griffin, "Litigating Employment Discrimination & Sexual Harassment Claims," *Litigation Handbook Series*, 2002.
2. B. Siskin, H. Carter, V. Lee, G. Page, M. Parker, R.G. Ford, G. Swartzman, S. Kress, S. Singer and D.M. Fry, "The 1986 Apex Houston Oil Spill in Central California: Seabird Mortality and Population Impacts, Injury Assessments, Litigation Process, and Initial Restoration Efforts," *Marine Ornithology*, 2002.
3. B. Siskin, Utilizing Statistics in Discrimination Cases, *Litigation Handbook Series*, 2001.
4. B. Siskin, B. Sullivan, J. Staller, and E. Hull, Defending and Proving Damages in Employment Discrimination Cases, *Litigation Handbook Series*, 2000.
5. B. Siskin, "Litigating Employment Discrimination Cases," *Litigation Handbook Series*, 1998.
6. B. Siskin and D. Kahn, "Litigating Employment Discrimination Cases," *Litigation Handbook Series*, 1997.
7. B. Siskin, R. DuPont, D. Griffin, S. Shiraki, and E. Katze Random Workplace Drug Testing. Does It Primarily Identify Casual or Regular Drug Users?, *Employment Testing Law & Policy Reporter*, Vol. 4, Number One, 1995.
8. B. Siskin, R. DuPont, D. Griffin, S. Shiraki, and E. Katze "Random Drug Tests at Work: The Probability of Identifying Frequent and Infrequent Users of Illicit Drugs," *Journal of Addictive Diseases*, Vol. 14, Number 3, 1995.
9. B. Siskin, J. Staller, B. Sullivan and L. Freifelder, "Litigating Employment Discrimination Cases," *Litigation Course Handbook Series*, 1995.
10. B. Siskin, "Comparing the Role of Statistics In Lending and Employment Cases," *Fair Lending Analysis: A Compendium of Essays on the Use of Statistics*, American Bankers Association, 1995.
11. B. Siskin, "Relationship Between Performance and Banding," *Human Performance*, Vol. 8, No. 3, July 1995.
12. B. Siskin, "Statistical Issues in Litigating Employment Discrimination Claims," *Federal Publications*, 1993.
13. B. Siskin, "Use of Statistical Models to Provide Statistical Evidence of Discrimination in the Treatment of Mortgage Loan Applicants: A Study of One Lending Institution," *Discrimination and Mortgage Lending Research and Enforcement Conference* Department of Housing and Urban Development, May 1993.

BLDS, LLC

SPEECHES (Partial List)

1. Alabama Bar Association
2. American Bar Association
3. American Financial Services Association
4. American Statistical Association
5. Defense Research Institute
6. Federal Bar Association
6. Harvard University
7. Institute of Industrial Research
8. International Organization of Human Rights Association
9. Law Education Institute
10. Law Enforcement Assistance Administration
11. Michigan Bar Association
12. National Center on Aging
13. Ohio Bar Association
14. Penn State University
15. Pennsylvania Human Relations Commission
16. Practising Law Institute
17. Security Industry Association
18. Women's Law Caucus: National Conference

STATISTICAL CONSULTANT (Partial List)

1. Attorney General's Office of the Commonwealth of Pennsylvania, and states of California, Oregon, Massachusetts, Connecticut, Mississippi, Louisiana and New Jersey
2. Board of Higher Education for Massachusetts and Oregon
3. Central Intelligence Agency (CIA)
4. Environmental Protection Agency (EPA)
5. Equal Employment Opportunity Commission (EEOC)
6. Federal Bureau of Investigation (FBI)
7. Freddie Mac (Federal Home Loan Mortgage Corporation)
7. Fannie Mae (Federal National Mortgage Association)
8. Homeland Security
9. International Organization of Human Rights Associations
10. Municipal Court of Philadelphia
11. National Aeronautics and Space Administration (NASA)
12. Office of Federal Contract Compliance, Department of Labor (OFCCP)
13. Pennsylvania Human Relations Commission
14. Security Exchange Commission
15. Third Circuit Court of Appeals Task Force on Equal Treatment in the Courts
16. U.S. Department of Agriculture
17. U.S. Department of Commerce
18. U.S. Department of Labor
19. U. S. Justice Department
20. Numerous Fortune 500 and other private corporations

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APPENDIX B

AFGHANISTAN	0	1	1
ALBANIA	0	1	0
ALGERIA	0	1	1
AMERICAN SAMOA	1	0	0
ANDORRA	1	0	0
ANGOLA	1	0	0
ANGUILLA	1	0	0
ANTARCTICA	0	0	0
ANTIGUA AND BARBUDA	1	0	0
ARABIAN PENINSULA	0	1	0
ARGENTINA	1	0	0
ARMENIA	1	0	0
ARUBA	1	0	0
AUSTRALIA	1	0	0
AUSTRIA	1	0	0
AZERBAIJAN	0	1	1
BAHAMAS, THE	1	0	0
BAHRAIN	0	1	0
BANGLADESH	0	1	0
BARBADOS	1	0	0
BELARUS	1	0	0
BELGIUM	1	0	0
BELIZE	1	0	0
BENIN	1	0	0
BERMUDA	1	0	0
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BOLIVIA	1	0	0
BOSNIA AND HERZEGOVINA	0	1	0
BOTSWANA	1	0	0
BRAZIL	1	0	0
BRITISH INDIAN OCEAN TERRITORY	0	0	0
BRITISH SOLOMON ISLANDS	1	0	0
BRITISH VIRGIN ISLANDS	1	0	0
BRUNEI	0	1	0
BULGARIA	1	0	0
BURKINA FASO	0	1	0
BURMA	1	0	0
BURUNDI	1	0	0
CABO VERDE	1	0	0
CAMBODIA	1	0	0
CAMEROON	1	0	0

AFGHANISTAN	0	1	1
ALBANIA	0	1	0
CAMPBELL ISLAND	1	0	0
CANADA	1	0	0
CANARY ISLANDS	1	0	0
CAPE VERDE	1	0	0
CAYMAN ISLANDS	1	0	0
CENTRAL AFRICAN REPUBLIC	1	0	0
CHAD	0	1	0
CHILE	1	0	0
CHINA	1	0	0
CHRISTMAS ISLAND	1	0	0
COCOS (KEELING) ISLANDS	1	0	0
COLOMBIA	1	0	0
COMOROS	0	1	1
CONGO (BRAZZAVILLE)	1	0	0
CONGO (KINSHASA)	1	0	0
COOK ISLANDS	1	0	0
COSTA RICA	1	0	0
COTE D'IVOIRE	1	0	0
CROATIA	1	0	0
CUBA	1	0	0
CYPRUS	1	0	0
CZECH REPUBLIC	1	0	0
CZECHIA	1	0	0
DENMARK	1	0	0
DJIBOUTI	0	1	1
DOMINICA	1	0	0
DOMINICAN REPUBLIC	1	0	0
EAST GERMANY	1	0	0
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EGYPT	0	1	1
EL SALVADOR	1	0	0
EQUATORIAL GUINEA	1	0	0
ERITREA	1	0	0
ESTONIA	1	0	0
ETHIOPIA	1	0	0
EUROPE	1	0	0
FALKLAND ISLANDS (ISLAS MALVINAS)	1	0	0
FIJI	1	0	0
FINLAND	1	0	0

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FRENCH GUIANA	1	0	0
FRENCH POLYNESIA	1	0	0
FRENCH SOUTHERN AND ANTARCTIC LANDS	1	0	0
FRENCH SOUTHERN TERRITORIES	1	0	0
GABON	1	0	0
GAMBIA, THE	0	1	1
GEORGIA	1	0	0
GERMAN DEMOCRATIC REPUBLIC	1	0	0
GERMANY	1	0	0
GERMANY, WEST	1	0	0
GHANA	1	0	0
GIBRALTAR	1	0	0
GREECE	1	0	0
GREENLAND	1	0	0
GRENADA	1	0	0
GUADELOUPE	1	0	0
GUAM	1	0	0
GUATEMALA	1	0	0
GUERNSEY	1	0	0
GUINEA	0	1	0
GUINEA-BISSAU	1	0	0
GUYANA	1	0	0
HAITI	1	0	0
HEARD ISLAND AND MCDONALD ISLANDS	1	0	0
HOLY SEE	1	0	0
HONDURAS	1	0	0
HONG KONG	1	0	0
HUNGARY	1	0	0
ICELAND	1	0	0
INDIA	1	0	0
INDONESIA	0	1	0
IRAN	0	1	1
IRA	0	1	1
IRELAND	1	0	0
ISLE OF MAN	1	0	0
ISRAEL	1	0	0
ITALY	1	0	0
JAMAICA	1	0	0

AFGHANISTAN	0	1	1
ALBANIA	0	1	0
JAPAN	1	0	0
JORDAN	0	1	1
KAMPUCHEA	1	0	0
KAZAKHSTAN	0	1	0
KENYA	1	0	0
KIRIBATI	1	0	0
KOREA, NORTH	1	0	0
KOREA, SOUTH	1	0	0
KOSOVO	0	1	1
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KYRGYZSTAN	0	1	0
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LATVIA	1	0	0
LEBANON	0	1	0
LESOTHO	1	0	0
LIBERIA	1	0	0
LIBYA	0	1	1
LIECHTENSTEIN	1	0	0
LITHUANIA	1	0	0
LU EMBOURG	1	0	0
MACAU	1	0	0
MACEDONIA	1	0	0
MADAGASCAR	1	0	0
MALAWI	1	0	0
MALAYSIA	0	1	0
MALDIVES	0	1	1
MALI	0	1	1
MALTA	1	0	0
MARSHALL ISLANDS	1	0	0
MARTINI UE	1	0	0
MAURITANIA	0	1	1
MAURITIUS	1	0	0
MAYOTTE	0	1	1
ME ICO	1	0	0
MICRONESIA, FEDERATED STATES OF	1	0	0
MOLDOVA	1	0	0
MONACO	1	0	0
MONGOLIA	1	0	0
MONTENEGRO	1	0	0

AFGHANISTAN	0	1	1
ALBANIA	0	1	0
MONTserrat	1	0	0
MOROCCO	0	1	1
MOZAMBIQUE	1	0	0
NAMIBIA	1	0	0
NAURU	1	0	0
NEPAL	1	0	0
NETHERLANDS	1	0	0
NETHERLANDS ANTILLES	1	0	0
NEW CALEDONIA	1	0	0
NEW ZEALAND	1	0	0
NICARAGUA	1	0	0
NIGER	0	1	1
NIGERIA	0	1	0
NIUE	1	0	0
NORTH VIETNAM	1	0	0
NORTHERN IRELAND	1	0	0
NORTHERN MARIANA ISLANDS	1	0	0
NORWAY	1	0	0
OMAN	0	1	0
PACIFIC ISLANDS	1	0	0
PAKISTAN	0	1	1
PALAU	1	0	0
PALESTINE	0	1	1
PANAMA	1	0	0
PAPUA NEW GUINEA	1	0	0
PARAGUAY	1	0	0
PERU	1	0	0
PHILIPPINES	1	0	0
PITCAIRN ISLANDS	1	0	0
POLAND	1	0	0
PORTUGAL	1	0	0
PUERTO RICO	1	0	0
ATAR	0	1	0
REUNION	1	0	0
ROMANIA	1	0	0
RUSSIA	1	0	0
RWANDA	1	0	0
SAINT BARTHELEMY	1	0	0
SAINT HELENA	1	0	0

AFGHANISTAN	0	1	1
ALBANIA	0	1	0
SAINT KITTS AND NEVIS	1	0	0
SAINT LUCIA	1	0	0
SAINT MARTIN (FRENCH PART)	1	0	0
SAINT PIERRE AND MIQUELON	1	0	0
SAINT VINCENT AND THE GRENADINES	1	0	0
SAMOA	1	0	0
SAN MARINO	1	0	0
SAO TOME AND PRINCIPE	1	0	0
SAUDI ARABIA	0	1	1
SENEGAL	0	1	1
SERBIA	1	0	0
SEYCHELLES	1	0	0
SIERRA LEONE	0	1	0
SINGAPORE	1	0	0
SLOVAKIA	1	0	0
SLOVENIA	1	0	0
SOLOMON ISLANDS	1	0	0
SOMALIA	0	1	1
SOUTH AFRICA	1	0	0
SOUTH SUDAN	1	0	0
SOUTH VIETNAM	1	0	0
SPAIN	1	0	0
SRI LANKA	1	0	0
STATELESS	0	0	0
SUDAN	0	1	1
SURINAME	1	0	0
SVALBARD AND JAN MAYEN	1	0	0
SWAZILAND	1	0	0
SWEDEN	1	0	0
SWITZERLAND	1	0	0
SYRIA	0	1	1
TAIWAN	1	0	0
TAJIKISTAN	0	1	1
TANZANIA	1	0	0
THAILAND	1	0	0
TIMOR-LESTE	1	0	0
TOGO	1	0	0
TONGA	1	0	0
TRINIDAD AND TOBAGO	1	0	0

AFGHANISTAN	0	1	1
ALBANIA	0	1	0
TRUST TERRITORY	0	0	0
TUNISIA	0	1	1
TURKEY	0	1	1
TURKMENISTAN	0	1	1
TURKS AND CAICOS ISLANDS	1	0	0
TUVALU	1	0	0
UGANDA	1	0	0
UKRAINE	1	0	0
UNITED ARAB EMIRATES	0	1	0
UNITED ARAB REPUBLIC	0	1	1
UNITED KINGDOM	1	0	0
UNKNOWN	0	0	0
URUGUAY	1	0	0
USSR	1	0	0
UZBEKISTAN	0	1	1
VANUATU	1	0	0
VENEZUELA	1	0	0
VIETNAM	1	0	0
VIRGIN ISLANDS, BRITISH	1	0	0
WALLIS AND FUTUNA	1	0	0
WESTERN SAHARA	0	1	1
WESTERN SAMOA	1	0	0
YEMEN	0	1	1
YUGOSLAVIA	1	0	0
ZAIRE	1	0	0
ZAMBIA	1	0	0
ZANZIBAR	0	1	1
ZIMBABWE	1	0	0

EXHIBIT 13

ATTORNEYS' EYES ONLY

Cook, Alexander Nicholas

February 11, 2020

1

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ABDIQAFAR WAGAFE, et al., on	:	
behalf of themselves and others	:	Case No.:
Similarly situated,	:	17-CV-00094 RAJ
Plaintiffs,	:	
VS.	:	
DONALD TRUMP, President of the	:	ATTORNEYS' EYES ONLY
United States, et al.,	:	
Defendants.	:	

Washington, DC

Tuesday, February 11, 2020

Videotaped Deposition of ALEXANDER
NICHOLAS COOK held at Perkins Coie, 700 13th Street,
NW, Suite 600, Washington, DC 20005, commencing at
9:06 a.m., before Sherry L. Brooks, Certified
LiveNote Reporter and Notary Public, in and for the
District of Columbia.

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

ATTORNEYS' EYES ONLY

Cook, Alexander Nicholas

February 11, 2020

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1 assessment?

2 A. Yes. That's part of the reason for the
3 eligibility assessment, yes.

4 Q. What's part of the reason?

5 A. To identify any questions that we may have
6 that need to be asked during the interview.

7 Q. I see. So it's to identify questions to
8 be asked during the interview. Is there anything
9 else that you would identify in the eligibility
10 assessment?

11 A. Whether or not the person is eligible for
12 the benefit they're seeking. Each officer has a
13 different way of logging how they -- each officer has
14 a different way of presenting the information in the
15 eligibility assessment.

16 For myself, I do a full immigration
17 timeline of anytime that person has encountered
18 immigration in the past, so applications for
19 non-immigrant visas and treason (sic) exits to the
20 United States, things of that nature.

21 And then I review the information on all
22 of those applications and documents to see, you know,

ATTORNEYS' EYES ONLY

Cook, Alexander Nicholas

February 11, 2020

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1 if their answers have been completely truthful the
2 entire time through their immigration process and if
3 there's any information that needs to be further
4 explored or is discrepant between what they're
5 presenting at the time they're requesting the current
6 benefit versus what they have previously presented to
7 us.

8 Q. What factors do you take into
9 consideration when you're looking at discrepancies
10 between documents -- different documents or
11 applications filed?

12 A. We look at trying to determine if the
13 person has been truthful throughout their immigration
14 history.

15 Q. How do you assess that?

16 A. I guess by judging the answers they're
17 giving us now with the ones they're giving us in the
18 past. And then if there is a discrepancy, we would
19 highlight it in the eligibility assessment and say
20 that it needed to be addressed in the interview with
21 the applicant.

22 Q. Does it matter what the discrepancy is

ATTORNEYS' EYES ONLY

Cook, Alexander Nicholas

February 11, 2020

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1 about, what the subject matter is?

2 A. Well, any discrepancy, but in particular
3 any that would cause an ineligibility or would have
4 caused an ineligibility at the time that it was -- if
5 it wasn't previously disclosed.

6 Q. When you're trying to assess the
7 truthfulness by looking at inconsistencies in the
8 application information, are you only looking at
9 issues that are -- that go to the person's
10 eligibility for that benefit?

11 A. Sometimes it also goes to identity, so
12 it's eligibility and identity. But at any time if
13 someone has lied on an immigration form, it's going
14 to cause ineligibility whether it's nats (sic) or
15 it's adjustment of status. It could end up being an
16 ineligibility, depending on the reason for the
17 discrepancy.

18 It could be an easy mistake that can be
19 explained at the interview, and that's why we do
20 interviews, or it could be something that they have a
21 pattern of trying to hide for one reason or another.

22 Q. When you're looking at the

ATTORNEYS' EYES ONLY

Cook, Alexander Nicholas

February 11, 2020

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1 inconsistencies, you don't -- do you know what the
2 reason the applicant has for the discrepancy?

3 A. No, which is why we don't make -- we don't
4 necessarily say someone is or isn't eligible at that
5 time. We say this needs to be looked at more
6 carefully or addressed during the interview, and a
7 line of questioning can develop from that issue.

8 Q. So are there times when you've closed out
9 an eligibility assessment and said a determination
10 can't be made at this point about whether the person
11 is eligible?

12 A. Normally the process is to say if there's
13 no clear statutory ineligibility to say the person
14 appears eligible. However, there are additional
15 lines of questioning that need to be pursued.

16 Q. Okay.

17 A. So we wouldn't -- yeah. We wouldn't
18 necessarily say a flat no. We would say there's
19 additional issues that may need to be looked into.

20 Q. Okay. And when you said earlier that you
21 would upload the eligibility assessment into FDNS/DS,
22 is there -- what is it -- what is it that you're

ATTORNEYS' EYES ONLY

Cook, Alexander Nicholas

February 11, 2020

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1 BY MS. PASQUARELLA:

2 Q. Well -- and if the policy was just about
3 vetting, then why would you have some of the aspects
4 of the policy that say that you should be looking for
5 ways to deny the applicant the benefit?

6 MR. MOORE: Objection to form.

7 A. I don't know that the policy says that.
8 When I was trained, we were told over and over again
9 that this is not a denial program. It came up all
10 the time. But -- yeah, that's how -- I was told over
11 and over, this is not a denial program.

12 BY MS. PASQUARELLA:

13 Q. And they also told you that it wasn't a
14 discriminatory program, right?

15 MR. MOORE: Objection. Form.
16 Argumentative.

17 A. Probably, but I don't remember that
18 specifically. I remember the denial part more. It
19 was very theatrical when he said it.

20 BY MS. PASQUARELLA:

21 Q. How about were they telling you that it
22 also wasn't a program to endlessly delay cases --

ATTORNEYS' EYES ONLY

Cook, Alexander Nicholas

February 11, 2020

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1 MR. MOORE: Objection. Form.

2 You can answer.

3 **A. I don't know that they ever said that.**

4 BY MS. PASQUARELLA:

5 Q. -- and that the allegations that have been
6 written about CARRP in the media are incorrect?

7 Did they tell you that?

8 MR. MOORE: Objection. Form.

9 **A. I don't know that they told us the**
10 **allegations are incorrect. They provided us with**
11 **some material regarding CARRP that had been printed**
12 **in the media, but they hadn't -- I don't know that**
13 **they commented on it, one way or the other. I can't**
14 **remember.**

15 BY MS. PASQUARELLA:

16 Q. What was it that they provided you?

17 **A. I think it was a report from the ACLU if I**
18 **can -- if I'm remembering correctly.**

19 Q. Did you read the report?

20 **A. I don't remember.**

21 Q. Do you remember having -- forming any
22 impression about the report?

EXHIBIT 15

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

----- x

ABDIQAFAR WAGAFE, et al., :

Plaintiffs, :

vs. : No. 2:17-cv-00094-RAJ

DONALD TRUMP, President of the :

United States, et al., :

Defendants. :

----- x

VIDEOTAPED DEPOSITION OF THOMAS K. RAGLAND
Conducted virtually via remote videoconference
September 18, 2020

Reported by:
Misty Klapper, RMR, CRR
Job No.: 636397

1 investigation by a third-party law enforcement
2 agency --

3 A. Um-hmm (affirmative).

4 Q. -- that is relevant to a national
5 security concern, should they attempt to protect
6 the existence of that ongoing investigation?

7 A. I think there's certainly
8 circumstances where they should and would be
9 required to. And I've had that circumstance.

10 Q. Do you have any experience with
11 declassifying classified information?

12 A. With -- with declassified
13 information?

14 Q. With declassifying --

15 A. No.

16 Q. -- classified information.

17 A. No.

18 Q. And you had a top secret clearance
19 when you worked for DOJ, correct?

20 A. For a period of time. They don't let
21 you keep it. It was case specific.

22 Q. And you're familiar with the rules on

1 know what the legal authority for it is and it
2 doesn't afford applicants due process in making
3 determinations on their applications.

4 Q. In your experience and based on your
5 belief, do you believe that USCIS has the
6 authority to investigate an alien's -- or an
7 applicant's eligibility for relief?

8 A. Yes. That's their job.

9 Q. Does USCIS -- do you believe that
10 USCIS has the authority to obtain information
11 from law enforcement agencies in determining
12 eligibility for relief?

13 A. Yes.

14 Q. How is CARRP different from USCIS's
15 regular investigatory process?

16 A. It's different because it's not -- it
17 doesn't disclose the basis for the concerns. In
18 other words, there's a provision in the
19 regulation and in the adjudicator's field manual
20 that requires that USCIS disclose to an applicant
21 derogatory information that may be the basis for
22 a denial of an application and afford them an

EXHIBIT 16

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ABDIQAFAR WAGAFE, et al., on)	
behalf of themselves and)	
others similarly situated,)	
)	
Plaintiffs,)	
)	
vs.	)	Case No. 17-cv-00094 RAJ
)	
DONALD TRUMP, President of)	
the United States, et al.,)	
)	
Defendants.)	
_____)	

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY
PURSUANT TO PROTECTIVE ORDER

REMOTE VIDEO-RECORDED DEPOSITION OF
KRISTIN E. AVERILL
December 11, 2020
7:08 a.m. - 4:47 p.m.

Taken before Carrie LaMontagne
CA CSR No. 13393
WA CSR No. 3500
OK CSR No. 1976
TX CSR No. 11742

1 Is that an accurate summation?

2 A. Yes. But, again, I said that in the
3 asylum context.

4 Q. Thank you. Yes, thank you for clarifying.

5 So going back here to Exhibit 10, DEF-00429824,
6 and the text that you read into the record.

7 Have you ever personally denied a CARRP
8 case -- or rather strike that.

9 Have you ever referred a CARRP case to
10 immigration court for failure to notify of a change
11 of address?

12 A. No.

13 Q. Have you ever referred a CARRP case to
14 immigration court for returning to one's country of
15 claimed persecution?

16 A. No.

17 Q. How about lack of attachment?

18 A. No.

19 Q. Is this consistent with your training
20 about processing CARRP cases?

21 A. No.

22 Q. Sorry, I'm just going to clean up the
23 record because I asked my question in an imprecise
24 way.

25 Are these statements in the [indiscernible] of

1 case is NS resolved?

2 A. FDNS does.

3 Q. You also testified earlier about the
4 articulable link determination.

5 Who makes the ultimate determination as to
6 whether there is an articulable link in a case.

7 A. FDNS does.

8 Q. You stated earlier today that it may be
9 common for individuals to make misstatements,
10 omissions, and mistakes in their asylum application.

11 What impact would such issues have on the
12 outcome of an asylum application?

13 A. Any minor inconsistencies or misstatements
14 or omissions would have no impact on an asylum
15 application.

16 Q. Have you ever denied an application on the
17 basis of minor misstatements, omissions, and
18 mistakes?

19 A. No.

20 Q. Can an asylum application be denied for
21 those reasons?

22 A. No, it can't.

23 Q. You were shown some training slides
24 earlier today that you would instruct from.

25 Have you ever delivered any [indiscernible]

1 concern is not confirmed?

2 A. No.

3 Q. Have you ever made a decision whether an
4 NS concern is resolved?

5 A. No.

6 Q. Have you ever made a decision whether an
7 articulable link exists?

8 A. Not the ultimate decision, no.

9 Q. Thank you for clarifying.

10 Have you ever -- sorry, strike that.

11 You stated that you have never denied a case
12 based on routine mistakes, minor misstatements, or
13 omissions?

14 A. You said -- I guess it was minor
15 misstatements, mistakes, or omissions; and, no, I
16 have not.

17 Q. And you stated that it is not possible to
18 deny an asylum application based on such omissions,
19 misstatements, or mistakes?

20 A. Correct, minor mistakes, omissions, or
21 mistakes are not grounds for a negative credibility
22 determination.

23 Q. Okay. So you've never heard of minor
24 misstatements, omissions, or mistakes being used to
25 deny any asylum application?

EXHIBIT 18

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ABDIQAFAR WAGAFE, et al., on behalf
of themselves and others similarly
situated,

Plaintiffs,

vs.

DONALD TRUMP, President of the United
States, et al.,
Defendants.

VIDEOTAPED DEPOSITION OF
ANTHONY NEGRUT-CALINESCU

Taken on Behalf of the Plaintiffs

DATE TAKEN: September 30, 2020
TIME: 9:12 AM - 5:34 PM
PLACE: VIA ZOOM

MAGNA LEGAL SERVICES
(866) 624-6221
www.magnaLS.com

1 Q. That's fair.

2 Do -- do you have knowledge of any
3 non-discrimination policies in USCIS?

4 A. Sure. I have knowledge that there's this new
5 training that I think it is mandatory for all field
6 officers, that is -- I think it's called the FOD
7 mosaic, and that's going to be a nondiscriminatory
8 training. It's going to fall under what you described.

9 Q. Okay. Can you think of anything else?

10 A. No, I can't think of anything else right now.

11 Q. Okay. And what -- I'm trying to
12 understand -- make sure I understand that we're talking
13 -- like are there any policies that you have been made
14 aware of that USCIS has regarding nondiscrimination?

15 A. Well, what I -- the policies I think that
16 they have is to provide good and detailed training on
17 applying the law correctly, and the law is
18 nondiscriminatory, and that's what I -- that's what I
19 think that one of the policies is having good training
20 on how to apply the law.

21 Q. Okay. Okay. Great. Can you maybe just
22 elaborate on your understanding of what applying the
23 law in a nondiscriminatory fashion means?

24 A. Sure. So if you look at the INA, the
25 Immigration Nationality Act, there's many different

1 types of laws there that apply to everybody. And you
2 apply them to everyone no matter where they're from
3 without discrimination.

4 Q. Okay. And what resources are available to
5 USCIS officers when they encounter as cultural let's
6 say cultural -- components of a culture that they're
7 unfamiliar with?

8 A. So I can --

9 MR. MOORE: Objection to form. Foundation.

10 A. I can give you an example in the MERP
11 training.

12 Q. Okay.

13 A. So when we -- when most people in the United
14 States think of the military training and military
15 history, they think, you know, you've had weapons
16 training and that you are -- you're, you know, you're
17 fighting for your country, you might have been involved
18 in some conflicts or tangentially involved in some
19 conflicts. But we've learned that in the Middle East,
20 in some countries some people, their whole duty is to
21 just serve tea. And they've told us that this is
22 actually pretty common, and not to find someone not
23 credible if they tell us that during my military
24 history I served tea to the officers because that's
25 actually something that they do.

1 A. Correct.

2 Q. Okay. And what's an example of something
3 that during the interview would -- might cause you to
4 recommend that the benefit be denied?

5 MR. MOORE: Objection to the extent it calls
6 for speculation. You can answer.

7 A. Okay. So this is really case-specific. So
8 are you asking me for like an example? Because
9 remember, has not happened to me. I have recommended
10 approval. So I would have to know of a certain
11 instance where this would have happened in order to say
12 okay, I denied that case. But that didn't happen so --

13 Q. Fair.

14 A. -- I haven't come across that situation.

15 Q. Would an omission on previous information
16 that an applicant had provided as part of their
17 application be a reason for you to recommend denying a
18 benefit?

19 MR. MOORE: Objection. Calls for
20 speculation. Incomplete hypothetical. But you can
21 answer.

22 A. It's a possibility. And again, it's case
23 specific and that could apply to CAARP or outside of
24 CAARP.

25 Q. Okay. Great. So when you're making that

1 lacked the necessary moral character to be eligible for
2 an immigration benefit?

3 A. Yes.

4 Q. Have you ever made that determination in the
5 context of a CAARP application?

6 A. No.

7 Q. And what about offering false testimony, have
8 you ever found that somebody was ineligible for a
9 benefit because they had provided false testimony?

10 A. Not in the CAARP context, but in other --
11 outside of CAARP.

12 Q. Okay. Okay. And so can you -- understanding
13 that it's not in the CAARP context, in your own
14 experience can you describe the circumstances in which
15 you found somebody to be ineligible for an immigration
16 benefit based on a lack of good moral character?

17 A. Sure. For instance, marriage fraud.

18 Q. Can you elaborate on what marriage fraud is?

19 A. It's when a petitioner, a U.S. citizen or
20 permanent resident, marries an immigrant who is seeking
21 an immigration benefit, and the only purpose that they
22 are getting married is for immigration benefits. And a
23 lot of times they wouldn't be living together, and then
24 they misrepresent where they're living and things like
25 that oftentimes.

EXHIBIT 20

1 A. I do.

2 Q. Is this Excel file the updated USCIS
3 summary data that was provided to Plaintiffs on
4 June 12th, 2020?

5 (Whereupon, the witness reviews the
6 material provided.)

7 THE WITNESS: It appears that way
8 to me.

9 BY MR. AHMED:

10 Q. So in addition to this USCIS summary
11 data that was provided in June of 2020, USCIS
12 also provided to Plaintiffs an anonymized version
13 of the underlying data set used to create the
14 USCIS summary data; is that correct?

15 A. That's correct.

16 Q. And that underlying data was produced
17 to Plaintiffs as a CSV file; is that correct?

18 A. That is correct.

19 Q. And so for simplicity, is it okay,
20 during this deposition, if we refer to that
21 underlying data as the, quote, "USCIS detail
22 data"?

1 A. That's fine.

2 Q. And did you play a role in creating
3 this USCIS detail data?

4 A. Yes. That's the result of my
5 queries.

6 Q. Okay. And this USCIS detail data
7 contains anonymized application level data and
8 information for over 10 million adjustment of
9 status and naturalization applications received
10 by USCIS between fiscal year 2013 and fiscal year
11 2019; is that correct?

12 A. That's correct.

13 MR. AHMED: Now I'd like to
14 introduce the CSV file as an exhibit to
15 this deposition, but it's so large that
16 I'm unable to open it on my computer.

17 So I would like to mark it as
18 Exhibit C.

19 - - -

20 (Deposition Exhibit C, CSV file,
21 marked for identification, as of

22

EXHIBIT 22

1 you're -- you had difficulty answering the question
2 because you've been sending what you believe to be
3 CARRP-vetted clients to these organizations that were
4 considering filing a lawsuit like this? Is that --
5 you've been doing that for some time?

6 A. That would be accurate.

7 Q. And how far back can you remember that
8 you've been sending clients to these various
9 organizations that were considering a lawsuit like the
10 one that is represented in Wagafe vs. Trump?

11 A. I mean, anytime I have a client who had a
12 very sticky issue that was potentially CARRP related,
13 for which they could not afford a private counsel, I
14 would refer them to it. So -- close to a decade. As
15 long as I've been practicing immigration law.

16 Q. Now, you represent four of the named --
17 you did represent four of the named plaintiffs in
18 their underlying immigration applications; isn't that
19 correct?

20 A. Yes.

21 Q. Mr. Wagafe?

22 A. Correct.

23 Q. Ms. Bengezi?

24 A. Correct.

25 Q. Mr. Jihad/Abraham?

1 A. Yes.

2 Q. And Mr. Manzoor?

3 A. Yes.

4 Q. Did you have any role in them becoming
5 named plaintiffs in this case?

6 A. I referred all of them to plaintiffs'
7 counsel. Wagafe I referred beforehand. The others I
8 referred fairly early on.

9 Q. Why did you do that?

10 A. Because those clients had cases that were
11 clearly, to me, impacted by CARRP, and I was, quite
12 frankly, hoping someone would take up the cause and
13 litigate it because this program has serious issues.

14 Q. When did you begin your work as an expert
15 in this case?

16 A. I've written several declarations for
17 this case -- or expert opinions for the case over the
18 years.

19 Is the question more when I was
20 specifically, to my knowledge, designated as an
21 expert, or when did I start being an expert on the
22 topic and talking to counsel related to the
23 plaintiff -- you know, the plaintiffs' counsel?

24 Q. When did you begin working as an expert?

25 There's certain rules that apply to

1 have?

2 A. I am an immigration and national security
3 attorney within -- so my areas of expertise are
4 immigration and national security law.

5 Q. And are those the fields of expertise
6 that are -- you are offering for purposes of this
7 case?

8 A. This case is within those, yes.

9 Q. Let's start with your expertise in
10 immigration law, as an immigration attorney. Can you
11 describe what this expertise entails, what it
12 involves, what the scope of it is?

13 A. With regards to this case or generally?

14 Q. Generally.

15 A. Generally, I understand the code and
16 procedures and rules regarding immigration cases and
17 how they are handled in order to shepherd and protect
18 the rights of my clients from the stage of requesting
19 a benefit until after receiving it and having to
20 defend said benefit.

21 Q. And what is this expertise based on?

22 A. It is based on that I've been -- I
23 started out as a paralegal working at an immigration
24 firm in 2006, and became an attorney in 2011, and have
25 throughout all of that time provided immigration

EXHIBIT 25

The Honorable Richard A. Jones

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8 IN THE UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT SEATTLE

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

13 Plaintiffs,

14 v.

15 DONALD TRUMP, President of the United
16 States, *et al.*,

17 Defendants.

CASE NO. 2:17-cv-00094-RAJ

**STIPULATION TO HOLD
OSTADHASSAN DEPOSITION
AFTER DEADLINE FOR
DEPOSITIONS**

18 WHEREAS the Court's October 24, 2019 Order revising the case schedule set the deadline
19 for depositions (other than of experts) for February 14, 2020; and

20 WHEREAS Defendants have noticed Named Plaintiff Mehdi Ostadhassan ("Mr.
21 Ostadhassan") for a deposition in Seattle, Washington, on February 7, 2020; and

22 WHEREAS Mr. Ostadhassan cannot attend his scheduled deposition because he is presently
23 in Iran, en route to China, and lacks authorization to re-enter the United States; and

24 WHEREAS legal and practical impediments prevent Defendants from deposing Mr.
25 Ostadhassan in Iran or China before the February 14, 2020 deposition deadline; and
26
27
28

1 WHEREAS the parties are working to determine where and when Mr. Ostadhassan's
2 deposition may be able to occur; and

3 WHEREAS the parties are mindful of their obligations to adhere to the case schedules
4 adopted by the Court, and have been endeavoring to comply, but jointly believe there is good cause
5 for a discrete modification of the case schedule because of the necessities of the case, as summarized
6 above,

7 NOW THEREFORE the parties through their respective counsel of record do hereby
8 stipulate and agree that the Court may make and enter the following order:
9

10 The deadline for depositions (other than experts) shall not apply to the deposition of Named
11 Plaintiff Medhi Ostadhassan. The parties are free to schedule Mr. Ostadhassan's deposition at a
12 mutually agreeable time and location after February 14, 2020.
13
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1 **SO STIPULATED.**

2 DATED: February 7, 2020

3 JOSEPH H. HUNT
4 Assistant Attorney General
5 Civil Division
6 U.S. Department of Justice

7 AUGUST FLENTJE
8 Special Counsel
9 Civil Division

10 ETHAN B. KANTER
11 Chief, National Security Unit
12 Office of Immigration Litigation
13 Civil Division

14 BRIAN T. MORAN
15 United States Attorney
16 Western District of Washington

17 BRIAN KIPNIS
18 Assistant United States Attorney
19 Western District of Washington

20 LEON TARANTO
21 Trial Attorney
22 Torts Branch

Respectfully submitted,

ANDREW C. BRINKMAN
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1 DATED: February 7, 2020.

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Counsel for Plaintiffs

23 **SO STIPULATED.**

24 DATED: February 7, 2020

EXHIBIT 26

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THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

ABDIQAFAR WAGAFE, *et al.*, on behalf
of themselves and others similarly situated,

Plaintiffs,

v.

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

Defendants.

No. 2:17-cv-00094-RAJ

**DECLARATION OF MEHDI
OSTADHASSAN IN SUPPORT OF
PLAINTIFFS' MOTION FOR
SUMMARY JUDGEMENT**

**NOTE ON MOTION CALENDAR:
July 2, 2020**

I, Mehdi Ostadhassan, hereby declare:

1. I am a named plaintiff in *Wagafe, et. al v. Joseph R. Biden, et al.*
2. The information contained in this declaration is true and correct to the best of my knowledge, and I am of majority age and competent to testify about the matters set forth herein.
3. I am a citizen of Iran and a practicing Muslim.
4. I came to the United States initially in August 2009 as a doctoral student studying petroleum engineering at the University of North Dakota. As a Ph.D. student, I worked on a Department of Energy-funded project studying oil production from the Bakken, one of the most prolific and strategic shale plays in the United States, from 2009-2013. During this time, I published numerous studies on characterization of shale plays, drilling safely in the Bakken, and successfully implementing stimulation plans in it, e.g. hydraulic fracturing. This was during the time when the combination of hydraulic fracturing and horizontal drilling became vital to produce

1 from shale oils, and it was being tested in the Bakken. It was well understood that shale plays are
2 complicated, hence the application of such methods could be risky. During my PhD, I investigated
3 the complicated nature of the Bakken without which deployment of stimulation plans cannot
4 provide us desirable outcomes. I presented my findings in several annual meetings (American
5 Rock Mechanics Association, Society of Petroleum Engineers and American Association of
6 Petroleum Geologists) where thousands of scientists gather. Moreover, I published the results in
7 mainstream journals of my field.

8 5. I earned my Ph.D. in Petroleum Engineering from the University of North Dakota
9 in 2013. My dissertation was about geomechanics and elastic anisotropy of the Bakken Shale. The
10 novelty of my research was that I proposed models to predict mechanical behavior of the Bakken
11 Shale Play, a critical characteristic for safe production, drilling and fracturing by considering its
12 complex nature.

13 6. Right before I earned my degree, I was hired to work at the University of North
14 Dakota's Energy and Environmental Research Center ("EERC"), a research center funded by the
15 Department of Energy which used to be a national lab during the 1970s. EERC had funded my
16 PhD in the last semesters. To get hired at this job involved passing a government background
17 check. In this role, under the "research scientist" title, I created geologic models and processed
18 and interpreted seismic and well log data for the Bell Creek oil field in Montana.

19 7. Shortly after that, in 2013, when I graduated, I was hired as an Assistant Professor
20 of Petroleum Engineering at the University of North Dakota, a tenure-track position.

21 8. As a Professor, I published numerous research papers, most of which focus on
22 developing methods to better understand unconventional reservoirs such as shale oil and gas that
23 are strategic and critical to U.S. energy independence. In my research group, we investigated how
24 the most advanced experimental equipment can give us insight to the transport and storage
25 properties of shale, and potential means of extracting resources and enhancing hydrocarbon
26 recovery from shale oil reserves. Through the expertise that I gained by utilizing advanced
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1 analytical equipment that are not commonly used in petroleum engineering in my research, I was
2 able to branch into other fields of science with a broader impact.

3 9. I also taught many undergraduate and graduate level (MS and PhD) classes and
4 have advised and graduated approximately 6 Ph.D. and 8 MSc students at the University of North
5 Dakota, two post-doctoral researcher and 5 researchers at the level of associate professor.

6 10. In 2018, due to my close collaboration with the United States Geological Survey
7 (“USGS”) and joint publications in the highest regarded geosciences journals, UND entered a
8 technical assistance agreement with USGS to enable us to freely share technical information and
9 our discoveries in the study of U.S. shale plays. The USGS committed to support my research by
10 performing advanced analytical experiments that would directly contribute to the production and
11 development of the U.S. shale plays.

12 11. Also in 2018, I proposed a quantitative (vs. pathological which is qualitative)
13 method for cancer diagnosis based on AFM force spectroscopy combined with data analytics to
14 dean of UND School of Medicine and Health Sciences. Together with a team of other researchers,
15 we submitted this idea in a proposal to the State of North Dakota. The State awarded us a grant for
16 \$480k to perform this work in mid-2018. Later, I was also invited by a professor at UND
17 Biomedical Sciences to be part of the commercialization team for his project that was awarded by
18 the National Science Foundation (NSF), which was a novel technique for RNA sequencing. Our
19 research group was selected and financially supported by the National Institute of Health (NIH) to
20 go through an intensive and highly prestigious business program, known as I-Corps, that took
21 place in California and Washington, DC, for two months, during the summer of 2018.

22 12. It was through these collaborations that I was appointed as the adjunct professor in
23 the Department of Biomedical Sciences in 2019 to teach the biophysics course for the first time at
24 UND School of Medicine. Later, I proposed an innovative technique to investigate Lyme’s
25 Disease, a tick-borne pathogen, which is very common in the U.S. and can become chronic, to
26 develop more robust treatment plans. I worked with a nationally known Lyme’s Disease researcher
27 on a proposal to NIH in 2018.
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1 13. My research group was also very active in researching additive manufacturing,
2 another field that the United States government considers an important area. As a part of our work
3 in this area, our group became a leader globally in work to integrate geosciences and 3D printing.
4 We published several papers focusing on whether it would be possible to replicate natural rocks
5 with 3D printing, and my efforts attracted Nature Journal to write an article about my research
6 progress in this emerging field (“Five innovative ways to use 3D printing in the laboratory” 2019
7 Jan; 565(7737):123-124). This research is important for NASA because they are interested in
8 printing rock-like habitats on the moon and other planets.

9 14. My research is frequently cited by other researchers, scientists, and professors in
10 many different fields, and as a result I have a high “h-index” score on Google Scholar. Although I
11 am still near the beginning of my career, based on these metrics, I am considered to be at the full
12 professor level (compared to other researchers at Tier 1 universities in similar field of science and
13 engineering). I also published the results of my research on shale plays as a book with Springer
14 Nature that is also translated into Chinese too due to its importance to China’s shale plays.

15 15. During my time as a Professor, I served as the graduate program director in the
16 petroleum engineering department, overseeing more than 40 MS and PhD students’ academics.

17 16. During the time my green card application was pending, I also got many invitations
18 as guest speaker for conferences around the globe but due to my pending application, I could not
19 accept any of them. I was afraid that if I left the United States, I wouldn’t be able to return because
20 my green card had not been approved, and this critically limited me to expand my network and
21 establish new collaborations with other scientists that could have benefitted me and the United
22 States.

23 17. In August 2019, I earned tenure and was promoted to the associate professor level
24 after undergoing a rigorous evaluation for my research, teaching, and service by external
25 reviewers, the committee at the college of engineering and mines, and the committee at the
26 university. The entire process took almost one year. These committees typically rely on the
27 feedback and evaluation that are provided to them by the external referees and endorsement by the
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1 department chair. In my case, four of the most prominent scientists in the field of petroleum
2 engineering reviewed my application package and highly recommended my tenure and promotion
3 to be granted.

4 18. But two months later, on October 5th, 2019, I lost my position when USCIS
5 terminated my employment authorization, following their denial in April of my I-485 adjustment
6 of status application. Losing my position so shortly after achieving such an important career
7 milestone was incredibly upsetting.

8 19. Shortly before losing my position, I had been working towards publication of a
9 significant scientific discovery regarding a previously unknown microbe that I had discovered to
10 be a source of H₂S gas. Production of H₂S is a notable concern in oil fields in North Dakota and
11 many other states, including Texas. This gas endangers the health of field workers, is very
12 corrosive, and imposes an economic burden to oil companies. I competed within UND to get
13 funding for two years to hire a post-doctorate researcher on this topic, got the award and hired a
14 microbiologist, and then advertised for and obtained funding from an oil company to perform
15 research I also created a consortium and submitted a research proposal to the state which got
16 approved for almost half a million dollars in funding in October 2020.

17 20. Unfortunately, the award came around the time I was losing my job at UND.
18 Because I had a relationship with oil industry in the state, our industry partners in the project
19 provided me with oil and water that was produced from the oil wells a few months before. Through
20 16S RNA sequencing of the nucleus that was isolated from the liquid samples, we discovered a
21 previously unknown anerobic microbe that had become trapped a hundred million years ago in the
22 subsurface and, we discovered, was now creating the H₂S gas by digesting the oil. This discovery
23 has significant importance because, among other things, it helps us to understand the source of
24 H₂S gas and opens new horizons for understanding antimicrobial resistance in human health and
25 developing new drugs.
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1 21. However, because I had lost my job at University of North Dakota due to USCIS's
2 decision, I was not able to continue the research and publish my research findings. These findings
3 could have become a turning point in my career.

4 22. I met my wife, Bailey Bubach, when I was a student at the University of North
5 Dakota. She is the assistant dean of the college of engineering and mines for student affairs and a
6 faculty of Petroleum Engineering Department at the University of North Dakota who teaches both
7 undergraduate and graduate level courses and contributes to my research in a variety of ways. We
8 began dating in 2012, and we married in 2014. She is a United States citizen.

9 23. Bailey and I have two children who are United States citizens, now aged 4.5 and
10 17 months.

11 24. In February 2014, shortly after marrying Bailey, I applied to adjust status and
12 become a permanent legal resident in the United States. Bailey also submitted an I-130 application
13 to have me recognized as her husband so that I could adjust status. We submitted these forms on
14 our own, without the assistance of a lawyer.

15 25. USCIS scheduled an interview with me in spring 2014 at USCIS's closest field
16 office, located in St. Paul, Minnesota. Bailey and I arrived at the appointment for my interview on
17 time, but after having us wait in the lobby for two hours, USCIS cancelled the interview. USCIS
18 never explained why it cancelled that interview.

19 26. After receiving no word from USCIS for several months after that, I scheduled
20 another appointment with USCIS in St. Paul to ask about our applications. When we arrived at that
21 appointment, a clerk told me that a "third party" was investigating the applications. USCIS gave
22 me no further information.

23 27. On October 23, 2014, I received a call from a person who identified himself as
24 Agent Richard with the FBI. He told me he would like to talk to me about my recent trip to Iran,
25 the purpose of which had been for Bailey to meet my family and to celebrate our marriage. Agent
26 Richard suggested that we meet at a coffee shop in Grand Forks, North Dakota to talk, and I
27 initially agreed because I thought I may be required to do so under the law.
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1 28. After that call, I consulted with a lawyer, Sabrina Balamwalla, to assist us with
2 our applications and advise us about speaking with the FBI. Ms. Balamwalla told us that meeting
3 with the FBI was voluntary and that the FBI had a history of using these interviews to pressure
4 people with pending immigration applications to serve as confidential informants in exchange for
5 the FBI recommending the approval of their application to USCIS. Given that, I decided I did not
6 want to meet with Agent Richard unless he told me more about what he wanted to talk about first.
7 Ms. Balamwalla called him, and he confirmed the interview was voluntary but would not give us
8 further information, so I decided not to meet with him.

9 29. Attached hereto as Exhibit A is a true and correct copy of an FBI memo on its
10 attempt to interview me that I received in response to a Freedom of Information Act request.

11 30. USCIS finally scheduled our interview for September 24, 2015. After that, we
12 formally retained Ms. Balamwalla to represent us at the interview. Based on her advice, I
13 provided an amendment to my application to provide a more comprehensive list of organizations
14 I have been affiliated with since my 16th birthday. I had not provided this more comprehensive
15 list before because, prior to hiring our lawyer and speaking to her about our applications, I had not
16 understood the question about “membership” and “affiliation” on the application as asking for that
17 information, so I had not realized such a comprehensive list was required.

18 31. At the interview on September 24, 2015, the USCIS interviewing officers
19 questioned Bailey and myself extensively about our religious practices, the mosques we have
20 attended, any religious or other trips we have made, and our participation in religious
21 organizations. Bailey also told me that the USCIS officers asked her if I had required her to convert
22 to Islam before we married, and if I required her to wear the hijab.

23 32. On March 24, 2017, USCIS finally approved Bailey’s I-130 petition to recognize
24 our marriage.

25 33. But on April 5, 2017, USCIS issued a Notice of Intent to Deny my adjustment of
26 status application because USCIS stated I did not initially disclose my full list of affiliations and
27 associations.
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1 34. On May 5, 2017, my lawyer responded to the Notice of Intent to Deny with a letter
2 and additional evidence explaining that my initial omission of those affiliations was inadvertent
3 and the result of me misunderstanding the question in the application without help from a lawyer.

4 35. Despite this, in October 2017, USCIS notified me that my adjustment of status
5 application was denied as a matter of discretion based on my initial failure to disclose my full list
6 of affiliations.

7 36. Shortly thereafter, I submitted a second adjustment of status application with
8 additional exhibits explaining my prior military service, training, affiliations and memberships,
9 and employment.

10 37. In April 2019, USCIS denied my second adjustment of status application, again as
11 a matter of discretion based on my initial failure to disclose my full list of affiliations.

12 38. If there are other reasons why USCIS denied my applications, USCIS never
13 informed me or gave me a chance to respond.

14 39. Because my applications were denied, I lost my tenured position at the University
15 of North Dakota, my ability to publish about the important scientific discovery I'd made, and the
16 ability to continue all my other research in the United States. I lost my position on the graduate
17 student committee at NASA Johnson Space Center because I lost my affiliation with UND. And
18 in the time since I was forced to leave UND, my research team at UND has been dismantled and
19 almost all members have left the university.

20 40. Losing my tenured position and any opportunity to lawfully remain in the United
21 States has been extraordinarily painful. That was my dream job. I came from a low-income family
22 and as long as I can remember, I wanted to become a professor in America. I achieved that dream,
23 but I never got to enjoy it. Even prior to losing my position, I lost many opportunities for
24 networking and funding because either I was not able to travel and/or most government agencies
25 required a green card to be eligible to apply for grants. I had to renew my work permit every year,
26 and there was always the stress that it might not come in time. But even then, I never stopped
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1 working because I was hopeful and felt in debt of this country, and committed to the undergraduate
2 students I was training, my PhD students, and my partners in the private sector.

3 41. Before I lost my job on October 5, 2019, I was on the verge of reaching the peak
4 of my academic career. But then I had to abandon everything, feeling that it was nothing but a
5 dream. Shortly after gaining tenure, the department chair had suggested I take over his role as the
6 next department chair since he saw the qualities of a leader and a well-established researcher in
7 me. I had worked with him closely for several years. This could have opened new doors, but
8 everything just crumbled right in front of me.

9 42. Given my inability to continue working in the United States, I was forced to pursue
10 employment elsewhere. I obtained a position in China, as a distinguished professor of Earth
11 Sciences at North East Petroleum University and a member of the National Key Laboratory of
12 Unconventional Hydrocarbon Shale Accumulation and Efficient Development in Daqing, the “Oil
13 Capital of China.” Bailey and I planned to move there in early 2020. We left the United States in
14 January 2020 and first went to Iran to visit my family. But the COVID-19 pandemic hit, while we
15 were there. As a result, we were unable to move to China as planned. Because of the pandemic, I
16 still have not been able to go begin my new job in China.

17 43. Due to the extreme uncertainty caused by COVID-19, we decided that Bailey and
18 our children should return to the United States for the sake of their health and safety. The United
19 States is Bailey and my children’s home country—and much of Bailey’s extended family remains
20 in North Dakota. They went back to the United States in the summer of 2020. They came back to
21 visit me in December and left for the second time in mid-January 2021. I have now been separated
22 from Bailey and my children for a total of 8 months.

23 44. Through the years of waiting for my green card application to be approved, my
24 family and I suffered other harms as well. I was the main provider for the family as soon as Bailey
25 and I got married. But when I applied to get a loan to buy us a house, the bank could not give me
26 the loan because my work permit was only valid for one year (subject to renewals). So, we had to
27 rent. Besides the amount of money that we lost in renting, the notion of not having a permanent
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1 place to raise our family was very saddening. Because I couldn't travel overseas, I lost two of my
2 grandparents in Iran during these years, missed my brother's wedding and felt totally disconnected
3 from my family in Iran. The amount of stress that Bailey and I went through was immense and
4 each letter we received from USCIS took an emotional toll. We felt we are living the American
5 Dream but when my green card application was denied, I started to question it. From April 17,
6 2019, when my application was denied, until today, our family has lost around \$150k in income.
7 From that day forward, my driver's license expired too and I was not able to renew it. In the months
8 before leaving the United States, I was dependent on Bailey to drive me around. When she was
9 pregnant with our second son, being in excruciating pain and having contractions, she had to pick
10 me up from the coffeeshop on campus and drive herself to the hospital. Additionally, due to my
11 situation, Bailey has to make the decision of either staying and working in her position at the
12 University of North Dakota, or to leave the US while I pursue my career. She has also worked
13 extremely hard to be in her position and she may have to abandon her hard work, due to the
14 outcome of USCIS decision.

15 45. During all these years, Bailey and I knew that we are productive members of this
16 society and we are contributing to the education and scientific advancements of United States,
17 especially in the energy sector. But now USCIS says I cannot call the United States home, so
18 Bailey has to raise our children as a single mother, and I am missing the most precious years and
19 moments of our sons' childhoods. I have missed my youngest son's first steps. And not being in
20 my older son's life, in the critical time that he should start to look up to his father and see him as
21 his life's hero, really bothers me and as Bailey tells me, it is very hard on him too. Bailey and I
22 have lost meaning and sense of purpose in our life, and all of our efforts currently are focused on
23 not allowing this situation and being apart affect our marriage.

24 I declare under penalty of perjury that the foregoing is true and correct.

25 EXECUTED this 24th day of March, 2021, in Karaj, Iran.

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Mehdi Ostadhassan

EXHIBIT A



U.S. Department of Justice

Federal Bureau of Investigation
Washington, D.C. 20535

November 18, 2016

MS. KATHERINE TRAVERSO
ACLU OF SOUTHERN CALIFORNIA
1313 WEST EIGHTH STREET
LOS ANGELES, CA 90017

FOIPA Request No.: 1333002-000
Subject: OSTADHASSAN, MEHDI

Dear Ms. Traverso:

The enclosed documents were reviewed under the Freedom of Information Act (FOIA), Title 5, United States Code, Section 552. Deletions have been made to protect information which is exempt from disclosure, with the appropriate exemptions noted on the page next to the excision. In addition, a deleted page information sheet was inserted in the file to indicate where pages were withheld entirely. The exemptions used to withhold information are marked below and explained on the enclosed Explanation of Exemptions:

Section 552		Section 552a
<input checked="" type="checkbox"/> (b)(1)		<input type="checkbox"/> (d)(5)
<input type="checkbox"/> (b)(2)		<input type="checkbox"/> (j)(2)
<input checked="" type="checkbox"/> (b)(3)		<input type="checkbox"/> (k)(1)
<u>50 U.S.C. 3024 (j)(1)</u>	<input type="checkbox"/> (b)(7)(A)	<input type="checkbox"/> (k)(2)
	<input type="checkbox"/> (b)(7)(B)	<input type="checkbox"/> (k)(3)
	<input checked="" type="checkbox"/> (b)(7)(C)	<input type="checkbox"/> (k)(4)
	<input type="checkbox"/> (b)(7)(D)	<input type="checkbox"/> (k)(5)
	<input checked="" type="checkbox"/> (b)(7)(E)	<input type="checkbox"/> (k)(6)
	<input type="checkbox"/> (b)(7)(F)	<input type="checkbox"/> (k)(7)
<input type="checkbox"/> (b)(4)	<input type="checkbox"/> (b)(8)	
<input type="checkbox"/> (b)(5)	<input type="checkbox"/> (b)(9)	
<input checked="" type="checkbox"/> (b)(6)		

2 pages were reviewed and 2 pages are being released.

Document(s) were located which originated with, or contained information concerning, other Government Agency (ies) [OGA].

This information has been referred to the OGA(s) for review and direct response to you.

We are consulting with another agency. The FBI will correspond with you regarding this information when the consultation is completed.

In accordance with standard FBI practice and pursuant to FOIA exemption (b)(7)(E) and Privacy Act exemption (j)(2) [5 U.S.C. § 552/552a (b)(7)(E)/(j)(2)], this response neither confirms nor denies the existence of your subject's name on any watch lists.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2006 & Supp. IV (2010)). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist. Enclosed for your information is a copy of the Explanation of Exemptions.

For questions regarding our determinations, visit the www.fbi.gov/foia website under "Contact Us." The FOIPA Request Number listed above has been assigned to your request. Please use this number in all correspondence concerning your request. Your patience is appreciated.

You may file an appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site: <https://foiaonline.regulations.gov/foia/action/public/home>. Your appeal must be postmarked or electronically transmitted within sixty (60) days from the date of this letter in order to be considered timely. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." Please cite the FOIPA Request Number assigned to your request so that it may be easily identified.

You may seek dispute resolution services by contacting the Office of Government Information Services (OGIS) at 877-684-6448, or by emailing ogis@nara.gov. Alternatively, you may contact the FBI's FOIA Public Liaison by emailing foipaquestions@ic.fbi.gov. If you submit your dispute resolution correspondence by email, the subject heading should clearly state "Dispute Resolution Services." Please also cite the FOIPA Request Number assigned to your request so that it may be easily identified.

The enclosed material is from the main investigative file(s) in which the subject(s) of your request was the focus of the investigation. Our search located additional references, in files relating to other individuals, or matters, which may or may not be about your subject(s). Our experience has shown when ident, references usually contain information similar to the information processed in the main file(s). Because of our significant backlog, we have given priority to processing only the main investigative file(s). If you want the references, you must submit a separate request for them in writing, and they will be reviewed at a later date, as time and resources permit.

See additional information which follows.

Sincerely,



David M. Hardy
Section Chief
Record/Information
Dissemination Section
Records Management Division

Enclosure(s)

This material is being provided to you at no charge.

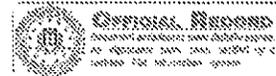
EXPLANATION OF EXEMPTIONS

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

- (b)(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified to such Executive order;
- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) information compiled in reasonable anticipation of a civil action proceeding;
- (j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k)(1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k)(4) required by statute to be maintained and used solely as statistical records;
- (k)(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.



~~SECRET//NOFORN~~

FEDERAL BUREAU OF INVESTIGATION

Electronic Communication

Title: (U//FOUO) Attempt to interview Mehdi Ostadhassan.

Date: 10/28/2014

From: MINNEAPOLIS

[Redacted]

b7E

Contact:

[Redacted]

Approved By: SSA [Redacted]

b6
b7C

Drafted By: [Redacted]

(S) Case ID #: [Redacted]

(U)
~~(S//NF)~~ [Redacted]
[Redacted] (S)

b1
b3
b7E

Synopsis: (U//FOUO) Documents attempt to interview Mehdi Ostadhassan.

~~Reason: 1.4(c)
Derived From: Multiple Sources
Declassify On: 20391231~~

[Redacted]

b7E

Details:

(U//FOUO) On 10/23/2014, writer contacted Mehdi Ostadhassan at telephone number [Redacted]. Ostadhassan stated that he was at a conference in West Virginia but would be in the Minneapolis area on 10/27/2014, for an appointment with U.S. Citizenship and Immigration Services (USCIS). Ostadhassan agreed to contact writer following his appointment with USCIS in order establish a time and place to meet.

(U//FOUO) On 10/24/2014, writer was contacted by [Redacted] [Redacted] telephone [Redacted] stated that she was an attorney that worked on immigration matters at the University of North Dakota (UND). She provided that Ostadhassan did not want to meet with

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b7C

CLASSIFIED BY: NSICG 312J92T64
REASON: 1.4 (C)
DECLASSIFY ON: 12-31-2039
DATE: 11-08-2016

~~SECRET//NOFORN~~

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

~~SECRET//NOFORN~~

Title: (U//FOUO) Attempt to interview Mehdi Ostadhassan.

(S) Re: [redacted] 10/28/2014 b1
b3

the FBI. She was advised that meeting with the FBI was voluntary. (A search of UND's website confirmed [redacted] was a faculty member there.)

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EXHIBIT 31

THE HONORABLE RICHARD A. JONES

1
2
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5
6
7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 ABDIQAFAR WAGAFE, MEHDI
11 OSTADHASSAN, HANIN OMAR
12 BENGZEZI, MUSHTAQ ABED
13 JIHAD, and SAJEEL MANZOOR,
14 on behalf of themselves and others
15 similarly situated,

16 Plaintiffs,

17 v.

18 DONALD TRUMP, President of the
19 United States; UNITED STATES
20 CITIZENSHIP AND
21 IMMIGRATION SERVICES, *et al.*,

22 Defendants.

CASE NO. C17-0094-RAJ

ORDER

23 This matter comes before the Court on Defendants' motion to dismiss (Dkt. No.
24 56) and Plaintiffs' amended motion for class certification (Dkt. No. 49). Having
25 thoroughly considered the parties' briefing and the relevant record, the Court finds oral
26 argument unnecessary and hereby GRANTS IN PART and DENIES IN PART
Defendants' motion to dismiss and GRANTS Plaintiffs' motion for class certification for
the reasons explained herein.

1 **I. BACKGROUND**

2 This section summarizes the facts as set forth in Plaintiffs’ second amended
3 complaint, as is appropriate on a motion to dismiss.

4 **A. The CARRP Policy**

5 This lawsuit is brought by immigration applicants to challenge an allegedly secret
6 and unlawful government program, the Controlled Application Review and Resolution
7 Program (CARRP). (Dkt. No. 47 at ¶¶ 1, 9.) The premise of Plaintiffs’ suit is that because
8 the Constitution expressly assigns the authority to establish uniform rules of
9 naturalization to Congress—which Congress has done in the Immigration and Nationality
10 Act (INA)—the United States Citizenship and Immigration Service (USCIS), as part of
11 the executive branch, has created an extra-statutory, unlawful, and unconstitutional
12 program in CARRP. (*Id.* at ¶¶ 1, 8, 9.)

13 Plaintiffs allege that USCIS created CARRP in 2008 “as an agency-wide policy to
14 identify, process, and adjudicate certain immigration applications that allegedly raise
15 ‘national security concerns.’” (*Id.* at ¶ 55.) They allege that CARRP implements “an
16 internal vetting policy that has not been authorized by Congress, nor codified, subjected
17 to public notice and comment, or voluntarily made public in any way.” (*Id.* at ¶ 10.) In
18 fact, CARRP was unknown to the public until it was discovered in litigation challenging
19 a denial of naturalization in *Hamdi v. USCIS*, 2012 WL 632397 (C.D. Cal. Feb. 25,
20 2012). The only information about CARRP that USCIS made public was in response to
21 Freedom of Information Act (FOIA) requests and the litigation necessary to compel those
22 responses. *See ACLU of S. Cal. v. USCIS*, No. 13-cv-0861 (D.D.C., filed June 7, 2013).

23 The policy imposes criteria to determine when an individual should be labeled a
24 “national security concern” that Plaintiffs claim “are vague and overbroad, and often turn
25 on discriminatory factors such as religion and national origin.” (Dkt. No. 47 at ¶¶ 62–76.)
26 The criteria also include many lawful activities such as donating to Muslim charities or

1 travelling to Muslim-majority countries. (*Id.* at ¶¶ 35–51, 62–76.) Plaintiffs maintain
2 these criteria are “untethered from the specific statutory criteria Congress has authorized
3 to determine when a person is eligible for immigration benefits.” (*Id.*)

4 Even if an applicant meets all the statutory requirements for citizenship or
5 adjustment of status under the INA, USCIS officers are instructed that an application in
6 CARRP cannot be approved. (*Id.* at ¶ 77.) If an applicant meets one of CARRP’s national
7 security concern criteria, officers are guided to deny the application or delay it as long as
8 possible. (*Id.* at ¶¶ 77, 78–97.) The applicant is neither informed that her application has
9 been submitted to CARRP, nor able to challenge her classification as a national security
10 concern. (*Id.* at ¶¶ 61, 96.) Ultimately, Plaintiffs allege that CARRP creates a substantive
11 regime for immigration application processing and imposes “eligibility criteria that
12 indefinitely delay adjudications and unlawfully deny immigration benefits to noncitizens
13 who are statutorily eligible and entitled by law.” (*Id.* at ¶ 95.)

14 **B. The President’s Executive Orders**

15 Although recent court decisions across the country¹ may make Defendant
16 President Trump’s (hereinafter “the president”) recent Executive Orders a non-issue, the
17 Court will briefly address their impact on this case.

18 Plaintiffs initiated this lawsuit on January 23, 2017, challenging only the CARRP
19 program. (Dkt. No. 1.) On January 27, 2017, the president issued Executive Order (E.O.)
20 13769, entitled “Protecting the Nation from Foreign Terrorist Entry into the United
21 States.” 82 Fed. Reg. 8977. Section 3(c) of the E.O. suspended entry into the United
22 States of citizens or nationals of Syria, Iraq, Iran, Yemen, Somalia, Sudan, and Libya. *Id.*

23
24 ¹ See, e.g., *Washington v. Trump*, 847 F.3d 1151 (9th Cir. 2017) (upholding a temporary
25 restraining order which enjoined portions of Executive Order 13769); *Int’l Refugee Assistance*
26 *Project v. Trump*, 2017 WL 2273306 (4th Cir. May 25, 2017) (upholding preliminary injunction
enjoining portions of Executive Order 13780); *Hawai’i v. Trump*, 2017 WL 2529640 (9th Cir.
June 12, 2017) (upholding preliminary injunction enjoining portions of Executive Order 13780).

1 at 8978. USCIS initially determined that E.O. 13769 required it to suspend taking action
2 on all pending applications—except those for naturalization—of nationals from those
3 seven countries. (*See* Dkt. No. 47 at ¶ 15; Dkt. No. 56 at 20; Dkt. No. 17 at ¶ 3.) Section
4 4 of E.O. 13769 called for the Secretaries of State and Homeland Security and the
5 Directors of National Intelligence and the FBI to “implement a program, as part of the
6 adjudication process for immigration benefits, to identify individuals seeking to enter the
7 United States on a fraudulent basis with the intent to cause harm, or who are at risk of
8 causing harm subsequent to their admission.” 82 Fed. Reg. at 8978.

9 In response to E.O. 13769, Plaintiffs amended their complaint to challenge
10 sections 3(c) and 4 of the order. (Dkt. No. 17.) Plaintiffs alleged that USCIS relied on
11 section 3 to suspend processing immigrant visas and other immigration benefits. (*Id.* at
12 ¶ 54.) Plaintiffs also alleged that Section 4 of the E.O. “directs federal agencies to create
13 and implement a policy of extreme vetting of all immigration benefits applications” and
14 that “[a]ny such ‘extreme vetting’ policy” would expand CARRP. *Id.* at 8978–79; Dkt.
15 No. 17 at ¶ 4. The day after Plaintiffs filed their amended complaint, USCIS Acting
16 Director Lori Scialabba sent a memo to all USCIS employees stating that section 3(c) did
17 not affect the immigration applications of individuals based on the country of their
18 nationality. (Dkt. No. 22 at 2–3.) In their notice of related cases, Plaintiffs stated that if
19 USCIS adhered to the position expressed by Acting Director Scialabba, “it would appear
20 that the Section 3(c) claims in this action may become moot.” (*Id.* at 3.)

21 After the Ninth Circuit upheld a temporary restraining order enjoining portions of
22 E.O. 13769 in *Washington v. Trump*, 847 F.3d 1151 (9th Cir. 2017), the president
23 promised to “go[] further” with a new executive action, and assured that “[e]xtreme
24 vetting will be put in place,” and that “it already is in place in many places.” (Dkt. No. 47
25 at ¶ 115.) The president then issued E.O. 13780, which rescinded E.O. 13769 in its
26 entirety. 82 Fed. Reg. 13209, 13218 (March 6, 2017). Stephen Miller, the president’s

1 Senior Advisor stated that E.O. 13780 would have “the same basic policy outcome for the
2 country.” (Dkt. No. 47 at ¶ 117 (citation omitted)). Sean Spicer, the president’s Press
3 Secretary, stated that the goal of E.O. 13780 was “obviously to maintain the way we did
4 it the first time.” (*Id.* at ¶ 118 (citation omitted)).

5 Portions of the second E.O. were soon after enjoined in *Hawai’i v. Trump*, 2017
6 WL 10111673 (D. Haw. Mar. 15, 2017). There, the court concluded that there was
7 “significant and un rebutted evidence of religious animus driving the promulgation of
8 [E.O. 13780] and its related predecessor.” *Id.* at *11. Based on this, “a reasonable,
9 objective observer . . . would conclude that [E.O. 13780] was issued with a purpose to
10 disfavor a particular religion.” *Id.* at *13. The Ninth Circuit largely upheld the district
11 court’s order, finding that the plaintiffs were likely to succeed on their claims that the
12 second E.O. “contravened the [Immigration and Nationality Act (INA)] by exceeding the
13 president’s authority under § 1182(f), discriminating on the basis of nationality, and
14 disregarding the procedures for setting annual admissions of refugees.” *Hawai’i v.*
15 *Trump*, 2017 WL 2529640, at *23 (9th Cir. June 12, 2017).

16 Following the issuance of E.O. 13780, Plaintiffs filed a second amended complaint
17 which added three named plaintiffs and a challenge to E.O. 13780, alleging that it
18 “sanctions a major expansion of the existing CARRP program.” (Dkt. No. 47 at ¶¶ 18,
19 26–28.)

20 **C. Named Plaintiffs**

21 All named Plaintiffs are foreign nationals from Muslim-majority countries, and
22 have applied for naturalization or adjustment of status. (*Id.* at ¶¶ 24–28.)

23 Plaintiff Wagafe is a Somali national and former lawful permanent resident. (*Id.* at
24 24.) He applied for naturalization in November 2013 and, although he met the statutory
25 criteria for naturalization, his application was submitted to CARRP. (*Id.* at ¶¶ 24, 142–
26 161.) There his application remained, until five days after Plaintiffs moved for class

1 certification, at which point he was contacted by USCIS and an interview was scheduled.
2 (*Id.* at ¶ 24) Within two weeks, he became a U.S. citizen. (*Id.*)

3 Plaintiff Ostadhassan is an Iranian national, and a Professor at the University of
4 North Dakota, who meets all the statutory requirements to adjust his status to that of a
5 lawful permanent resident. (*Id.* at ¶¶ 25, 162–175.) His application was submitted to
6 CARRP. (*Id.* at ¶¶ 25, 170.) Prior to this lawsuit, Mr. Ostadhassan waited over three and
7 a half years for a decision on his application. (*Id.* at 175, Dkt. No. 58 at 12.) On April 5,
8 2017, one day after Plaintiffs filed their second amended complaint, USCIS notified Mr.
9 Ostadhassan of its intent to deny his application. (Dkt. No. 58 at 3; Dkt. No. 53 at 1.)

10 Plaintiff Bengezi is a Libyan national married to a United States citizen. (Dkt. No.
11 47 at ¶ 26.) In February 2015, she applied for adjustment to lawful permanent resident
12 status. (*Id.*) Her application was submitted to CARRP. (*Id.* at ¶¶ 26, 196.) Soon after
13 being added as a named plaintiff, USCIS notified her that her interview had been
14 scheduled. (Dkt. No. 58 at 12.) USCIS approved her application on May 9, 2017. (Dkt.
15 No. 60 at 10; Dkt. No. 60-2.)

16 Plaintiff Jihad is an Iraqi refugee who has resided in Washington since 2008. (Dkt.
17 No. 47 at ¶¶ 27, 199–204.) His lawful permanent resident status became effective upon
18 arrival in the United States. (*Id.* at ¶ 205.) He applied for naturalization in July of 2013
19 and satisfied all of the statutory criteria, yet his application was submitted to CARRP. (*Id.*
20 at ¶¶ 26, 206–17.) Over three years passed with no action on Mr. Jihad’s application.
21 (Dkt. No. 58 at 12.) On April 4, 2017, Mr. Jihad was added as a named Plaintiff. (Dkt.
22 No. 47.) He received an interview notification on April 13, 2017 and was interviewed on
23 April 25, 2017. (Dkt. No. 58 at 12.) USCIS approved his application on May 9, 2017 and
24 he took his oath of citizenship on May 30, 2017. (Dkt. No. 60 at 10; Dkt. No. 60-4.)

25 Plaintiff Manzoor is a Pakistani national who has lived in the United States since
26 2001. (Dkt. No. 47 at ¶ 28.) He came to the United States to obtain his Master of Science

1 in Marketing Research from the University of Texas and was later granted an H-1B work
2 visa. (*Id.* at ¶¶ 221–22.) He applied for naturalization in 2015 and meets the statutory
3 criteria; his application was submitted to CARRP. (*Id.* at ¶¶ 228–34.) No action was
4 taken on his application, however on May 1, 2017, less than a month after being added as
5 a named plaintiff, Mr. Manzoor was interviewed and his application was approved on the
6 spot. (Dkt. No. 58 at 12.) He took his oath of citizenship the same day. (Dkt. No. 60-5.)

7 **D. Defendants’ Motion to Dismiss (Dkt. No. 56)**

8 In response to Plaintiffs’ second amended complaint, Defendants now bring this
9 motion to dismiss all claims for two reasons. (Dkt. No. 56.) First, Defendants maintain
10 that under Federal Rule of Civil Procedure 12(b)(1) this Court lacks subject matter
11 jurisdiction because (1) Plaintiffs lack standing, and (2) Plaintiffs’ claims are moot. (*Id.* at
12 10–11.) Second, Defendants argue that under Federal Rule of Civil Procedure 12(b)(6),
13 Plaintiffs have failed to state a claim upon which relief may be granted for Claims Four,
14 Seven through Nine, and any claims challenging “extreme vetting.” (*Id.* at 11.)

15 **E. Plaintiffs’ Motion for Class Certification (Dkt. No. 49)**

16 After filing the second amended complaint, Plaintiffs filed the present amended
17 motion for class certification. (Dkt. No. 49.) Plaintiffs argue that “[t]hrough CARRP, the
18 government surreptitiously blacklists thousands of applicants who are seeking
19 immigration benefits, labeling them ‘national security threats.’” (*Id.* at 8.) In addition to
20 themselves, “[t]housands of individuals . . . have had their applications for naturalization
21 or adjustment of status halted, delayed, or denied by CARRP.” (*Id.* at 9.) Accordingly,
22 Plaintiffs maintain that class treatment is the appropriate avenue through which to
23 “challenge CARRP and any other successor ‘extreme vetting’ program that the Executive
24 branch may seek to implement pursuant to Sections 4 and 5 of the Second EO or through
25
26

1 other extra-statutory means.”² (*Id.*)

2 Pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2), Plaintiffs
3 Wagafe, Jihad, and Manzoor move the Court to certify the following class, and appoint
4 them as class representatives:

5 A national class of all persons currently and in the future (1) who have or
6 will have an application for naturalization pending before USCIS, (2) that is
7 subject to CARRP or a successor “extreme vetting” program, and (3) that has
8 not been or will not be adjudicated by USCIS within six months of having
9 been filed.

10 (*Id.*) For simplicity, the Court refers to the above putative class as the “Naturalization
11 Class.” Additionally, Plaintiffs Ostadhassan and Bengezi move the Court to certify the
12 following class and appoint them as class representatives:

13 A national class of all persons currently and in the future (1) who have or
14 will have an application for adjustment of status pending before USCIS,
15 (2) that is subject to CARRP or a successor “extreme vetting” program, and
16 (3) that has not been or will not be adjudicated by USCIS within six months
17 of having been filed.

18 (*Id.*)³ For simplicity, the Court refers to the second putative class as the
19 “Adjustment Class.”

20 ² Defendants make much of the fact that Plaintiffs challenge a potential successor program.
21 Given the apparent background of CARRP, this is understandable. As Plaintiffs explain in the
22 second amended complaint, “USCIS did not make information about CARRP public, and the
23 program was only discovered through fortuity during federal court litigation. To the extent the
24 program has shifted in name, scope, or method, Plaintiffs may have no way to obtain that
25 information. Thus, Plaintiffs’ reference to ‘CARRP’ incorporates any similar non-statutory and
26 sub-regulatory successor vetting policy, including pursuant to Sections 4 and 5 of [E.O. 13780].”
(Dkt. No. 47 at ¶ 19, n.1.)

³ In Plaintiffs’ first amended complaint they asserted an additional “Muslim Ban Class,” relating
to the effect of Section 3(c) of E.O. 13769. (Dkt. No. 17.) In Plaintiffs’ second amended
complaint, they preserved the assertion of the “Muslim Ban Class” relating to the effect of
Section 2(c) of E.O. 13780. (Dkt. No. 47.) Due to recent court orders enjoining E.O. 13780, *see*
footnote 1, *supra*, Plaintiffs do not seek certification of the “Muslim Ban Class” at this time, but
“reserve the right to seek certification of the additional class if circumstances change again.”
(Dkt. No. 49 at 9–10, n.1.)

1 **II. DISCUSSION**

2 **A. Defendant’s Motion to Dismiss (Dkt. No. 56)**

3 Defendants move to dismiss Plaintiffs’ claims in part under Federal Rule of Civil
4 Procedure 12(b)(1) and in part under Federal Rule of Civil Procedure 12(b)(6). Under
5 Rule 12(b)(1), Defendants ask the Court to dismiss all claims for lack of a case or
6 controversy, and Claims One, Two, Three, Five, Six, and Ten for lack of standing. (Dkt.
7 No. 56 at 10–11.) Under Rule 12(b)(6), Defendants request dismissal of Claims Four,
8 Seven, Eight, Nine, and “extreme vetting” claims for failure to state a claim upon which
9 relief may be granted. (*Id.* at 11.) For the following reasons, Defendants’ motion to
10 dismiss is **GRANTED** as to Claim Four for the Adjustment Class only. The remainder of
11 Defendants’ motion to dismiss is **DENIED**.

12 **1. Standard of Review**

13 A defendant may move to dismiss an action for lack of subject matter jurisdiction.
14 Fed. R. Civ. P. 12(b)(1). A 12(b)(1) challenge to jurisdiction may be facial or factual.
15 *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). “The district court
16 resolves a facial attack as it would a motion to dismiss under Rule 12(b)(6): Accepting
17 the plaintiff’s allegations as true and drawing all reasonable inferences in the plaintiff’s
18 favor,” and then determining whether they are legally sufficient to invoke jurisdiction.
19 *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014) (citing *Pride v. Correa*, 719 F.3d
20 1130, 1133 (9th Cir. 2013)). A factual attack, on the other hand, challenges the facts that
21 serve as the basis for subject matter jurisdiction. In evaluating a factual attack, a court
22 may look beyond the complaint without converting the motion into one for summary
23 judgment. *Wolfe v. Strankman*, 392 F.3d 358, 362 (9th Cir. 2004).

24 A defendant may also move for dismissal when a plaintiff “fails to state a claim
25 upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). On a 12(b)(6) motion to
26 dismiss, the Court accepts all factual allegations in the complaint as true and construes

1 them in the light most favorable to the non-moving party. *Vasquez v. L.A. County*, 487
2 F.3d 1246, 1249 (9th Cir. 2007). However, to survive a motion to dismiss, a plaintiff
3 must cite facts supporting a “plausible” cause of action. *Bell Atlantic Corp. v. Twombly*,
4 550 U.S. 544, 555–56 (2007). A claim has “facial plausibility” when the party seeking
5 relief “pleads factual content that allows the Court to draw the reasonable inference that
6 the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 672
7 (2009) (internal quotations omitted). “Dismissal for failure to state a claim is appropriate
8 only if it appears beyond doubt that the non-moving party can prove no set of facts in
9 support of his claim which would entitle him to relief.” *Vasquez*, 487 F.3d at 1249
10 (internal quotations omitted).

11 **2. Case or Controversy**

12 Defendants ask this Court to dismiss Plaintiffs’ case in its entirety for lack of a
13 case or controversy because Plaintiffs admit they have no interest in adjudication of their
14 applications. (Dkt. No 56 at 18.) Defendants maintain that Plaintiffs “want only a
15 determination that CARRP is unlawful, and an injunction preventing Defendants from
16 applying it to the proposed class members.” (Dkt. No. 56 at 18 (citing Dkt. No. 26 at
17 15)). Defendants ask this Court to exercise its discretion and consider Plaintiffs’
18 statement as a judicial admission, and find that because Plaintiffs have no interest in the
19 adjudication of their claims, there is no case or controversy, which therefore deprives this
20 Court of jurisdiction on standing grounds. (Dkt. No. 56 at 18–19.) This argument fails for
21 three reasons.

22 First, what Plaintiffs actually said in the cited brief is that they are not asking the
23 Court to adjudicate their individual immigration applications. (Dkt. No. 26 at 9.)
24 Therefore, what Defendants are actually asking this Court to do is consider *their*
25 *interpretation* of a portion of Plaintiffs’ first motion to certify class (Dkt. No. 26) and
26 conclude it is a judicial admission. This the Court will not do.

1 Second, Defendants misconstrue Plaintiffs’ claims. While Plaintiffs do want a
2 determination that CARRP is unlawful, they also seek an order compelling USCIS to
3 “adjudicate Plaintiffs’ and proposed class members’ petitions, applications, or requests
4 based solely on the statutory criteria.” (Dkt. No. 47 at 51.)

5 Third, as Plaintiffs point out, “adjudicating the named Plaintiffs’ applications does
6 not resolve the core issue in this case: whether CARRP and any successor ‘extreme
7 vetting’ program is lawful.” (Dkt. No. 58 at 14.) Defendants’ contention that this Court
8 does not have jurisdiction for want of case or controversy fails. Defendants’ motion to
9 dismiss on this ground is **DENIED**.

10 **3. Claims One, Two, Three, Five, Six, and Ten**

11 Defendants next move to dismiss Claims One, Two, Three, Five, Six, and Ten for
12 lack of standing. (Dkt. No 56 at 19.) Standing consists of three elements: the plaintiff
13 (1) must have suffered an injury in fact, (2) that is fairly traceable to the challenged
14 conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial
15 decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992). Once a party
16 asserts the absence of subject matter jurisdiction, the opposing party invoking the court’s
17 jurisdiction bears the burden of proving it exists. *Kokkonen v. Guardian Life Ins. Co. of*
18 *Am.*, 511 U.S. 375, 377 (1994).

19 *a. Claims One, Two, Three, Five, and Six*

20 Defendants first argue that Plaintiffs have not suffered an injury in fact as to
21 claims One, Two, Three, Five, and Six because Executive Order (E.O.) 13780 “does not
22 suspend the adjudication of immigrant benefit applications by persons within the United
23 States, and USCIS has not suspended the adjudication of Plaintiffs’ benefit applications
24 pursuant to E.O. 13780.” (Dkt. No. 56 at 19.) Specifically, Defendants point to Plaintiffs’
25 notice of related cases, (Dkt. No. 22), in which they acknowledged that these claims
26 “may become moot.” (Dkt. No. 56 at 10, 19.) In that notice, Plaintiffs were referring to

1 then-Acting Director of USCIS Lori Scialabba’s memo regarding E.O. 13769—the
2 predecessor to E.O. 13780—in which she stated that E.O. 13769 “does not affect USCIS
3 adjudication of applications and petitions filed for or on behalf of individuals in the
4 United States regardless of their country of nationality.” (Dkt. No. 22 at 2–3; Dkt. No.
5 56-1.) Defendants argue that because adjudication of Plaintiffs’ applications have not
6 been suspended pursuant to E.O. 13780, they have not suffered an injury.

7 The Court makes three observations in response to Defendants’ arguments. First,
8 Plaintiffs stated only that their claims *may* be moot, and made such statements prior to the
9 president issuing E.O. 13780. Second, Acting Director Scialabba’s memo pertained to
10 E.O. 13769, which was rescinded by E.O. 13780, and therefore no longer has relevance.

11 Third, Plaintiffs’ claims do establish an injury in fact. Claims One and Two allege
12 that Defendants have interpreted the first E.O. and “will interpret the Second EO to
13 authorize the suspension” of immigration applications. (Dkt. No. 47 at ¶¶ 251, 257.) Claim
14 Three, which is based on the Establishment Clause, alleges that the “Second EO is
15 intended to target a specific religious faith—Islam,” because Defendants are “not
16 pursuing a course of neutrality with regard to different religious faiths.” (Id. at ¶ 261.)
17 Claim Five is a Due Process challenge based on Plaintiffs being “denied immigration
18 benefits for which they are statutorily eligible, and to which they are entitled by law.” (Id.
19 at ¶ 266.) Claim Six alleges an Equal Protection violation in that Defendants’ indefinite
20 suspension of applications under CARRP and E.O. 13780 discriminates on the basis of
21 “country of origin” and is “substantially motivated by animus toward—and has a
22 disparate effect on—Muslims.” (Id. at ¶¶ 268–69.) Furthermore, even if E.O. 13780 does
23 not suspend the applications, Plaintiffs allege that CARRP or another “extreme vetting”
24 program,⁴ independent of E.O. 13780, suspended Plaintiffs’ applications or will suspend
25 applications of the putative class, and that such suspension was unlawful. This is

26 ⁴ See note 2, *supra*.

1 sufficient to survive a motion to dismiss.

2 Another consideration for the Court is that USCIS has now acted on all of the
3 applications of the named Plaintiffs, after up to three and a half years of inactivity. (Dkt.
4 No. 58 at 11–12.) Curiously, USCIS’s actions on these applications took place almost
5 immediately after Plaintiffs were added as proposed class representatives. To the extent
6 that Defendants argue this fact moots Plaintiffs’ claims, “[i]t is well settled that ‘a
7 defendant’s voluntary cessation of a challenged practice does not deprive a federal court
8 of its power to determine the legality of the practice.’” *Friends of the Earth, Inc. v.*
9 *Laidlaw Env'tl. Servs., Inc.*, 528 U.S. 167, 189 (2000) (quoting *City of Mesquite v.*
10 *Aladdin’s Castle, Inc.*, 455 U.S. 283, 289 (1982)). It is the party asserting mootness that
11 has the “heavy burden of persuading” the Court that the challenged conduct will not
12 resume. *Id.* This standard is a “stringent” one, and even “if subsequent events made it
13 absolutely clear that the allegedly wrongful behavior could not reasonably be expected to
14 recur,” a case only “might become moot.” *Id.*

15 Here, Plaintiffs allege this unlawful practice has been ongoing since the inception
16 of the CARRP program in 2008. Plaintiff Wagafe waited three and a half years for action
17 on his application. That prompt action has been taken on Plaintiffs’ applications
18 subsequent to their being named class representatives does not convince the Court that
19 Defendants have met their burden that the alleged unlawful conduct could not reasonably
20 be expected to recur. Furthermore, acting on applications subjected to CARRP—that
21 were highlighted by a lawsuit challenging it—is very different than voluntary cessation of
22 the CARRP program.

23 *b. Claim Ten*

24 Defendants next argue that Plaintiffs lack standing to assert Claim Ten—a
25 violation of the Constitution’s Uniform Rule of Naturalization Clause—because (1) there
26 is no private right of action under the clause, and (2) even if CARRP violated the clause,

1 Congress would be injured, not Plaintiffs. (Dkt. No. 56 at 21–22.)

2 As to Defendants’ first argument, the cases cited do not support it. *Flores v. City*
3 *of Baldwin Park* dealt with a remand issue and whether the Uniform Rule of
4 Naturalization Clause completely preempted state law. 2015 WL 756877, *3 (C.D. Cal.
5 Feb. 23, 2015). *Cazarez-Gutierrez v. Ashcroft* dealt with sentencing. 382 F.3d 905, 912
6 (9th Cir. 2004). And *Korab v. Fink* mentioned the history of the clause but nowhere in
7 that opinion does this Court find the proposition that a private litigant does not have
8 standing to bring suit for its violation. 797 F.3d 572, 580–81 (9th Cir. 2014). In contrast,
9 a naturalization applicant was allowed to challenge a state law which barred
10 naturalization on the basis of homosexuality because “the resulting inconsistencies
11 undermine[d]” the Uniform Rule of Naturalization Clause. *Nemetz v. I.N.S.*, 647 F.2d
12 432, 435 (4th Cir. 1981).

13 Defendants’ second argument—that it is Congress, and not Plaintiffs, that would
14 be injured—also fails. Assuming Congress would be injured by CARRP’s alleged
15 addition of non-statutory and substantive requirements to naturalization, it does not
16 follow that Plaintiffs could not also be injured. For once Congress “establishes such
17 uniform rule [of naturalization], those who come within its provisions are entitled to the
18 benefit thereof as a matter of right, not as a matter of grace.” *See Schwab v. Coleman*,
19 145 F.2d 672, 676 (4th Cir. 1944). Defendants’ motion to dismiss Claims One, Two,
20 Three, Five, Six, and Ten on the basis of standing is **DENIED**.

21 **4. Extreme Vetting Claims**

22 Defendants argue that Plaintiffs’ claims “concerning ‘extreme vetting’ under E.O.
23 13780 must be dismissed” for failure to allege sufficient facts to support them. (Dkt. No.
24 56 at 22.) While the Court agrees that any claims about enjoining a potential future
25 extreme vetting program may be premature, Defendants do not direct the Court to any
26 specific claims for relief that must be dismissed. The only claim for relief that even

1 mentions “extreme vetting”⁵ is Claim Four. (Dkt. No. 47 at ¶ 263.) This claim alleges a
2 Due Process violation for failure to give Plaintiffs and members of the putative classes
3 “notice of their classification under CARRP (or successor ‘extreme vetting’ program), a
4 meaningful explanation of the reason for such classification, and any process by which
5 Plaintiffs can challenge their classification.” (*Id.*) The Court cannot enjoin a program that
6 is currently nonexistent; if the Court ultimately enjoins CARRP, and Defendants
7 implement a successor program substantially similar to CARRP,⁶ such conduct would be
8 in violation of the Court’s injunction. The main thrust of this case is the legality of
9 CARRP. The Court will not dismiss Plaintiffs’ claims because they include allegations of
10 a possible future and unlawful program that would embody CARRP in all but name.

11 **5. Claim Four**

12 Defendants next argue that Plaintiffs’ Fourth Claim for relief, which alleges a Due
13 Process violation, should be dismissed because Plaintiffs have not been deprived of a
14 protected liberty or property interest. (Dkt. No. 56 at 23.)

15 Procedural Due Process claims “hinge[] on proof of two elements: (1) a
16 protect[ed] liberty or property interest . . . and (2) a denial of adequate procedural
17 protections.” *Foss v. Nat’l Marine Fisheries Serv.*, 161 F.3d 584, 588 (9th Cir. 1998).
18 Given CARRP’s apparently clandestine nature, and a lack of opposition from Defendants
19 on this point, the second element is met. Thus, the issue is whether Plaintiffs have
20 asserted a protected liberty or property interest in having their applications adjudicated
21 lawfully. “To have a property interest in a benefit, a person clearly must have more than
22 an abstract need or desire for it. He must have more than a unilateral expectation of it. He

23
24 ⁵ Two of the proposed classes in the second amended complaint—but not the motion for class
25 certification—contain “extreme vetting” in their title, but bear no relevance to the motion to
dismiss.

26 ⁶ As Plaintiffs point out, due to the secretive nature of CARRP, it is plausible such a program is
already in existence. (Dkt. No. 47 at ¶¶ 19 n.1, 59.)

1 must, instead, have a legitimate claim of entitlement to it.” *Bd. of Regents of State Colls.*
2 *v. Roth*, 408 U.S. 564, 577 (1972).

3 The Ninth Circuit, and other courts, have held that naturalization applicants have a
4 property interest in seeing their applications adjudicated lawfully. *Brown v. Holder*, 763
5 F.3d 1141, 1147 (9th Cir. 2014); *see also Ching v. Mayorkas*, 725 F.3d 1149, 1155 (9th
6 Cir. 2013) (finding a constitutionally protected interest in nondiscretionary immigration
7 applications); *I.N.S. v. Pangilinan*, 486 U.S. 875, 884 (1988) (noting there is no
8 discretion to deny naturalization if an applicant is otherwise qualified); *Schwab*, 145 F.2d
9 at 676–77 (“[T]hose who come within [the Uniform Rule of Naturalization] are entitled
10 to the benefit thereof as a matter of right[.]”); *United States v. Shanahan*, 232 F.169, 171
11 (E.D. Pa. 1916) (“It is, of course, true that . . . admission to citizenship . . . is not a right,
12 but a privilege When an applicant has met all the requirements of the law, the
13 privilege accorded him ripens into a right . . . he is entitled to citizenship.”). As the
14 United States Supreme Court explained nearly 100 years ago:

15 The opportunity to become a citizen of the United States is said to be merely
16 a privilege, and not a right. It is true that the Constitution does not confer
17 upon aliens the right to naturalization. But it authorizes Congress to establish
18 a uniform rule therefor. Article 1, Sec. 8, cl. 4. The opportunity having been
19 conferred by the Naturalization Act, there is a statutory right in the alien to
submit his petition and evidence to a court, to have that tribunal pass upon
them, and, if the requisite facts are established, to receive the certificate.

20 *Tutun v. United States*, 270 U.S. 568, 578 (1926).

21 Defendants counter that “no alien has the slightest right to naturalization.” (Dkt.
22 No. 56 at 24 (quoting *Fedorenko v. United States*, 449 U.S. 490, 506 (1981))). However,
23 Defendants’ citation of *Fedorenko* omits a significant portion of the quote. The complete
24 citation reads, “No alien has the slightest right to naturalization *unless all statutory*
25 *requirements are complied with.*” *Fedorenko*, 449 U.S. at 506 (quoting *United States v.*
26 *Ginsberg*, 243 U.S. 472, 474–75 (1917)) (emphasis added). Here, Plaintiffs allege that all

1 the statutory requirements have been complied with, and the application of CARRP's
2 extra-statutory requirements deprives Plaintiffs of the right to which they are entitled.
3 This is sufficient to allege a violation of due process. Defendants' motion to dismiss
4 Claim Four is DENIED as to the Naturalization Class.

5 Plaintiffs who seek adjustment of their status is a different matter. "The status of
6 an alien . . . may be adjusted by the Attorney General, in his discretion." 8 U.S.C.
7 § 1255(a). As numerous courts have held, discretionary relief, such as adjustment of
8 status, is not a protected property interest. *Sandoval-Luna v. Mukasey*, 526 F.3d 1243,
9 1247 (9th Cir. 2008); *McCreath v. Holder*, 573 F.3d 38, 41 (1st Cir. 2009); *Hamdan v.*
10 *Gonzales*, 425 F.3d 1051, 1060 (7th Cir. 2005); *Nativi-Gomez v. Ashcroft*, 344 F.3d 805,
11 808 (8th Cir. 2003). Therefore, Plaintiffs who seek an adjustment of status cannot claim a
12 due process violation, and Claim Four is **DISMISSED WITH PREJUDICE** as to the
13 Adjustment Class.

14 Finally, Defendants argue that Plaintiffs do not have a constitutionally protected
15 interest in the pace of their adjudication. (Dkt. No. 56 at 24.) However, this misconstrues
16 Plaintiffs' claims. Plaintiffs' case centers on their allegation that an extra-statutory policy
17 based on discriminatory and illegal criteria is blocking the fair adjudication of
18 immigration benefits of which they are statutorily eligible. (*See* Dkt. No. 58 at 23.) Pace
19 of the adjudication is a byproduct of that allegation, not the allegation itself. The Court
20 therefore will not address Defendants' argument.

21 **6. Claim Seven**

22 Defendants argue that Plaintiffs' Claim Seven—that CARRP violates the INA—
23 must be dismissed because the INA does not create a private right of action, and therefore
24 Plaintiffs lack standing. (Dkt. No. 56 at 26.) The Court need not decide whether Congress
25 has implied a private right of action under the INA, because Plaintiffs are challenging
26 agency action. Section 10(a) of the Administrative Procedure Act (APA) provides a right

1 of action for plaintiffs who challenge administrative action that violates a federal statute.
2 Any “person . . . adversely affected or aggrieved by agency action within the meaning of
3 a relevant statute, is entitled to judicial review thereof.” 5 U.S.C. § 702; *see also*
4 *Cetacean Cmty. v. Bush*, 386 F.3d 1169, 1176–77 (9th Cir. 2004) (“[T]he end result is the
5 same whether the underlying statute grants standing directly or whether the APA
6 provides the gloss that grants standing. In both cases, the plaintiff can bring suit to
7 challenge the administrative action in question. In the first case, the substantive statute
8 grants statutory standing directly to the plaintiff. In the second case, the substantive
9 statute is enforced through Section 10(a) of the APA.”); *Hernandez-Avalos v. I.N.S.*, 50
10 F.3d 842, 846 (10th Cir. 1995) (“[A] plaintiff who lacks a private right of action under
11 the underlying statute can bring suit under the APA to enforce the statute.”). The proper
12 question for the Court, therefore, is whether Section 10(a) of the APA applies to
13 Plaintiffs’ suit.

14 Whether Section 10(a) applies to a given suit turns on whether a plaintiff is
15 “arguably within the zone of interests to be protected or regulated by the statute or
16 constitutional guarantee in question.” *Ass’n of Data Processing Serv. Orgs., Inc. v.*
17 *Camp*, 397 U.S. 150, 153 (1970). The “‘zone of interests’ test is ‘not meant to be
18 especially demanding,’ and a court should deny standing only ‘if the plaintiff’s interests
19 are so marginally related to or inconsistent with the purposes implicit in the statute that it
20 cannot reasonably be assumed that Congress intended to permit the suit.’” *Cetacean*, 386
21 F.3d at 1177 (quoting *Clarke v. Sec. Indus. Ass’n*, 479 U.S. 388, 399 (1987)). The
22 “benefit of any doubt goes to the plaintiff.” *Match-E-Be-Nash-She-Wish Band of*
23 *Pottawatomis Indians v. Patchak*, 132 S. Ct. 2199, 2210 (2012). Under this standard, it is
24 arguable that those applying for immigration benefits fall within the zone of interests of
25 the statute that sets forth the requirements for obtaining those benefits. Accordingly,
26 Defendants’ motion to dismiss Plaintiffs’ Claim Seven is **DENIED**.

7. Claim Eight

Defendants move the Court to dismiss Plaintiffs' Claim Eight—that CARRP is a final agency action that is arbitrary and capricious and in violation of the INA and USCIS's statutory authority—for failure to state a claim because it does not relate to a final agency action. (Dkt. No. 56 at 29.)

Under the APA, for an agency action to be reviewable, it must be final. 5 U.S.C. § 704. An action is final if it (1) "mark[s] the 'consummation' of the agency's decision-making process," and (2) is "one by which 'rights or obligations have been determined,' or from which 'legal consequences will flow.'" *Bennet v. Spear*, 520 U.S. 154, 178 (1997) (quoting *Port of Boston Marine Terminal Ass'n. v. Rederiaktiebolaget Transatlantic*, 400 U.S. 62, 71 (1970)).

Defendants argue that "the CARRP handling process" and the delays caused by CARRP are not final agency actions. However, Defendants again misrepresent Plaintiffs' claim. Plaintiffs allege that CARRP—the policy itself—is a final agency action, "not any one applicant's adjudication thereunder." (Dkt. No. 58 at 30; Dkt. No. 47 at ¶ 280.) The Court therefore analyzes whether the overall CARRP policy, its inception and implementation, constitutes final agency action under the *Bennet* test.

Plaintiffs allege that USCIS initiated CARRP in 2008, and since that time, it has been responsible for delaying and denying thousands of immigration applications. (See Dkt. No. 47 at ¶¶ 55–97.) The first prong is met because CARRP is an active program implemented by the agency and represents the culmination of USCIS's decision making process. The implementation of CARRP affects the thousands of applicants whose qualified applications are allegedly indefinitely delayed or denied without explanation. The second prong is met because this results in distinct legal consequences. The Court therefore finds that CARRP is a final agency action. Defendants' motion to dismiss Claim Eight is **DENIED**.

8. Claim Nine

1
2 Finally, Defendants move to dismiss Plaintiffs' Claim Nine—that CARRP was not
3 properly subjected to the notice-and-comment procedure—because it is not a substantive
4 or legislative rule. Under the APA, an agency may issue a “legislative rule” only by using
5 the APA’s notice-and-comment procedure. 5 U.S.C. § 553 (b), (c); *Hemp Indus. Ass’n v.*
6 *DEA*, 333 F.3d 1082, 1087 (9th Cir. 2003). Failure to implement the notice-and-comment
7 procedure invalidates the resulting regulation. *See Paulsen v. Daniels*, 413 F.3d 999,
8 1008 (9th Cir. 2005). Exempt from this rule, however, are “interpretive rules, general
9 statements of policy, or rules of agency organization, procedure or practice.” 5 U.S.C.
10 § 553(b)(3)(A); *Mora-Meraz v. Thomas*, 601 F.3d 933, 939 (9th Cir. 2010). Defendant’s
11 motion to dismiss Claim Nine therefore turns on whether CARRP is classified as an
12 interpretive rule or substantive rule.

13 “For purposes of the APA, substantive rules are rules that create law . . . imposing
14 general, extrastatutory obligations pursuant to authority properly delegated by Congress.”
15 *S. Cal. Edison Co. v. F.E.R.C.*, 770 F.2d 779, 783 (9th Cir. 1985). On the other hand, “the
16 critical feature of interpretive rules is that they are ‘issued by an agency to advise the
17 public of the agency’s construction of the statutes and rules which it administers.’” *Perez*
18 *v. Morg. Bankers Ass’n*, 135 S. Ct. 1199, 1204 (2015) (quoting *Shalala v. Guernsey*
19 *Memorial Hospital*, 514 U.S. 87, 99 (1995)). In the Ninth Circuit, a substantive or
20 legislative rule will be found “(1) when, in the absence of the rule, there would not be an
21 adequate legislative basis for enforcement action; (2) when the agency has explicitly
22 invoked its general legislative authority;⁷ or (3) when the rule effectively amends a
23 prior legislative rule.” *Hemp Indus.*, 333 F.3d at 1087 (citing *Am. Mining Congress v.*
24 *Mine Safety & Health Admin.*, 995 F.2d 1106, 1109 (D.C. Cir. 1993)).

25
26 ⁷ The parties agree that the second element does not apply here and the Court will not consider it.

1 Defendants argue that the statutes and regulations already in place in the INA, 8
2 U.S.C. §§ 1255, 1357(b), 1423–1427, and 1429, “constitute an adequate legislative basis
3 for USCIS to undertake the procedural steps laid out by CARRP in the adjudication of
4 benefit applications.” (Dkt. No. 56 at 31.) The Court finds that the sections cited of the
5 INA do not support Defendants’ argument. For example, Defendants maintain that
6 because 8 U.S.C. § 1446(a) requires a “personal investigation of the person applying for
7 naturalization,” an adequate legislative basis for CARRP exists. (Dkt. No. 56 at 31.)
8 However Plaintiffs’ allegations suggest that CARRP goes well beyond a personal
9 investigation and instead “creates a separate substantive regime for immigration
10 application processing and adjudication.” (Dkt. No. 58 at 28; Dkt. No. 47 at ¶ 95.)
11 Plaintiffs allege that “[u]nder CARRP, non-statutory indicators of a national security
12 concern include travel through or residence in areas of known terrorist activity; a large
13 scale transfer or receipt of funds; a person’s employment, training, or government
14 affiliations . . . [;] or other suspicious activities.” (Dkt. No. 47 at ¶ 74.) Those indicators
15 alone may seem like reasonable considerations under a “personal investigation.”
16 However, the allegation that the presence of such an indicator therefore labels the
17 application as a “national security concern” and “forbids USCIS from granting the
18 requested benefit,” (*id.* at ¶ 92) and guides “officers to deny such applications . . . or
19 delay adjudication as long as possible,” (*id.* at 77), taken as true, transports CARRP into
20 the realm of the substantive.

21 Addressing the third part of the framework, Defendants argue that CARRP does
22 not amend a prior legislative rule but rather “is a process to vet cases with an articulable
23 link to national security concerns and to determine the proper adjudicative action to take
24 within statutory limits.” (Dkt. No. 56 at 32.) The Court disagrees. The INA already
25 contains indicators of national security concerns for those seeking lawful permanent
26 resident status, asylum, or a visa. 8 U.S.C. §§ 1182(a)(3)(A), (B), and (F), 1227(a)(4)(A)

1 and (B). Taking Plaintiffs’ allegations as true, CARRP goes beyond these statutory
2 indicators. CARRP would therefore effectively amend a prior legislative rule.

3 Finally, the Court notes that because CARRP only came to light through litigation
4 and FOIA requests, (*see* Dkt. No. 47 at ¶ 59), its issuance cannot be said to be
5 interpretive because it “advise[d] the public of” nothing. *See Perez*, 135 S. Ct. at 1204.
6 Accordingly, the Court finds that Plaintiffs allege sufficient facts to support their claim
7 that CARRP is a substantive rule subject to the notice-and-comment procedure of the
8 APA. Defendants’ motion to dismiss Claim Nine is **DENIED**.

9 For the foregoing reasons, the Court **GRANTS IN PART and DENIES IN**
10 **PART** Defendants’ motion to dismiss (Dkt. No. 56). It is granted in that Claim Four is
11 **DISMISSED** as to the Adjustment Class only. It is **DENIED** in all other respects.

12 **9. Plaintiffs’ Amended Motion for Class Certification (Dkt. No. 49)**

13 **1. Legal Standard for Class Certification**

14 A party seeking to litigate a claim as a class representative must affirmatively
15 satisfy the requirements of Federal Rule of Civil Procedure 23(a) and the requirements of
16 at least one of the categories under Rule 23(b). *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S.
17 338, 345 (2011); *Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 588 (9th Cir. 2012). In
18 determining whether the plaintiffs have carried this burden, the Court must conduct a
19 “rigorous analysis.” *General Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 161 (1982). This
20 inquiry may “entail some overlap with the merits of the plaintiff’s underlying claim[,]”
21 though the Court considers the merits only to the extent that they overlap with the
22 requirements of Rule 23 and allow the Court to determine the certification issue on an
23 informed basis. *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 981 (9th Cir. 2011). The
24 ultimate decision to certify a class is within the Court’s discretion. *Vinole v. Countrywide*
25 *Home Loans, Inc.*, 571 F.3d 935, 944 (9th Cir. 2009).

2. Rule 23(a) Requirements

Rule 23(a) requires that one or more members of a class may sue as a representative plaintiff only if (1) the class is so numerous that joinder is impracticable; (2) there are common questions of law or fact to the class; (3) the claims or defenses of representative parties are typical of those of the class; and (4) the representatives will fairly and adequately protect the interests of the absent class members. Fed. R. Civ. P. 23(a); *See also Mazza*, 666 F.3d at 588 (Rule 23(a) requires “numerosity, commonality, typicality and adequacy of representation”). Defendants contest certification on commonality, typicality, and adequacy grounds. (Dkt. No. 60 at 13.) Because a rigorous analysis is required regardless of a defendant’s opposition, the Court addresses each requirement independently. However, the Court first addresses Defendants’ more general opposition to class certification on standing grounds.

Defendants oppose class certification because “[a] named plaintiff cannot represent a class alleging [] claims that the named plaintiff does not have standing to raise.” (*Id.*) (quoting *Hawkins v. Comparet-Cassani*, 251 F.3d 1230, 1238 (9th Cir. 2001)). Defendants argue that the named Plaintiffs, and all proposed class members, lack standing to challenge (1) CARRP, because “they have disclaimed any interest in obtaining decisions on their pending applications, and (2) an “extreme vetting” program under E.O. 13780, because they have not suffered an injury. (*Id.*)

As to the first argument, the Court has already concluded the Plaintiffs have standing to challenge CARRP. *See* Section II(A)(2)(a) and (b), *supra*. Regarding any “extreme vetting” program, Defendants are correct that Plaintiffs may not have not suffered any injury because Plaintiffs are unaware if such program currently exists. However, as discussed above, Plaintiffs’ allegations regarding an “extreme vetting” program safeguard against the Government doing away with CARRP and reinstating a substantially similar program under a different name, either in an effort to moot

1 Plaintiffs’ claims, or insulate CARRP from judicial review. *See* Section II(A)(2)(c),
2 *supra*. As Plaintiffs correctly point out, “[t]o the extent any ‘extreme vetting’ policy
3 developed pursuant to the Second EO expands or continues CARRP, it will suffer from
4 the same legal deficiencies as CARRP itself.” (Dkt. No. 49 at 13–14.) Thus, while the
5 Court cannot preemptively enjoin an “extreme vetting” program, it could enjoin CARRP.
6 If that happens, an “extreme vetting” program developed pursuant to E.O. 13780, which
7 suffers from the same legal deficiencies as CARRP, would violate this Court’s order.

8 *a. Numerosity*

9 Rule 23(a)’s first requirement is satisfied when the proposed class is sufficiently
10 numerous to make joinder of all members impracticable. Fed. R. Civ. P. 23(a)(1).⁸ The
11 numerosity requirement requires the examination of the specific facts of each case,
12 though “in general, courts find the numerosity requirement satisfied when a class
13 includes at least 40 members.” *Rannis v. Recchia*, 380 Fed. App’x 646, 651 (9th Cir.
14 2010); *see also Troy v. Kehe Food Distribs., Inc.*, 276 F.R.D. 642, 652 (W.D. Wash.
15 2011) (certifying a class of 43 to 54 workers). Here, between July 1, 2013 and September
16 20, 2013, USCIS reported 2,644 pending applications subjected to CARRP. (Dkt. No. 27-
17 1 at 164–169.) The putative class likely contains thousands of members. (Dkt. No. 114 at
18 4; Dkt. No. 51 at 25.) The Court finds that the numerosity requirement is met.

19 *b. Commonality*

20 Under Rule 23(a)(2)’s commonality requirement, a plaintiff must demonstrate that
21 the “class members’ claims ‘depend upon a common contention’ such that ‘determination
22 of its truth or falsity will resolve an issue that is central to the validity of each claim in
23 one stroke.’” *Mazza*, 666 F.3d at 588 (quoting *Dukes*, 564 U.S. at 350). The key inquiry
24 is not whether the plaintiffs have raised common questions, but whether “class treatment
25 will ‘generate common *answers* apt to drive the resolution of the litigation.’” *Abdullah v.*

26 ⁸ Defendants do not dispute numerosity. (*See generally* Dkt. No. 63.)

1 *U.S. Sec. Assocs., Inc.*, 731 F.3d 952, 957 (9th Cir. 2013) (quoting *Dukes*, 564 U.S. at
2 350) (emphasis in original). Every question of law or fact need not be common to the
3 class. Rather, all Rule 23(a)(2) requires is “a single significant question of law or fact.”
4 *Id.* (quotation omitted); *see also Meyer v. Portfolio Recovery Assocs.*, 707 F.3d 1036,
5 1041–42 (9th Cir. 2012). The existence of “shared legal issues with divergent factual
6 predicates is sufficient, as is a common core of salient facts coupled with disparate legal
7 remedies within the class.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir.
8 1998) (amended).

9 Plaintiffs posit that their claims present numerous common factual and legal
10 issues, including whether:

- 11 • CARRP violates the INA by creating additional, non-statutory, substantive
- 12 criteria that must be met prior to a grant of immigration benefits;
- 13 • CARRP violates the APA as a final agency action that is arbitrary and
- 14 capricious, exceeds statutory authority, and violates the Constitution;
- 15 • CARRP constitutes a substantive rule and is therefore unenforceable for failure
- 16 to provide a notice-and-comment period prior to implementation;
- 17 • CARRP violates the Uniform Rule of Naturalization, Article I, Section 8,
- 18 Clause 4 of the Constitution; and
- 19 • CARRP violates the Due Process Clause of the Fifth Amendment.

20 (Dkt. No. 49 at 19–20.)

21 Defendants argue that “[a]t the heart of this case is the allegation that USCIS has
22 unreasonably delayed adjudicating” immigration applications and resolution of this
23 allegation requires a “fact-intensive, individualized inquiry into the causes of the delay in
24 each case.” (Dkt. No. 60 at 15.) This is incorrect. Plaintiffs’ claim is that CARRP is an
25 unlawful program. A byproduct of CARRP’s alleged unlawful program is unreasonable
26 delays.

The common question here is whether CARRP is lawful. The answer is “yes” or
“no.” The answer to this question will not change based on facts particular to each class
member, because each class member’s application was (or will be) subjected to CARRP.

1 Therefore, “a classwide proceeding” will “generate common answers apt to drive the
2 resolution of the litigation.” *See Troy*, 276 F.R.D. at 652–53. The commonality
3 requirement is met.

4 *c. Typicality*

5 Plaintiffs must next show that their claims are typical of the class. Fed. R. Civ. P.
6 23(a)(3). “The test of typicality ‘is whether other members have the same or similar
7 injury, whether the action is based on conduct which is not unique to the named
8 Plaintiffs, and whether other class members have been injured by the same course of
9 conduct.’” *Ellis*, 657 F.3d at 984 (internal quotation omitted). The commonality and
10 typicality inquiries, which “tend to merge,” both serve as “guideposts for determining
11 whether under the particular circumstances maintenance of a class action is economical
12 and whether the named plaintiff’s claim and the class claims are so interrelated that the
13 interests of the class members will be fairly and adequately protected in their absence.”
14 *Dukes*, 131 S. Ct. at 2551, n.5 (quotations and citation omitted). Ultimately,
15 representative class claims are typical if they are “reasonably co-extensive with those of
16 absent class members; they need not be substantially identical.” *Hanlon*, 150 F.3d at
17 1020; *see also Rodriguez v. Hayes*, 591 F.3d 1105, 1124 (9th Cir. 2010) (noting the
18 “permissive” nature of the typicality inquiry).

19 Plaintiffs maintain that their claims are typical of the proposed classes because
20 “they proceed under the same legal theories, seek the same relief, and have suffered the
21 same injuries.” (Dkt. No. 49 at 21.) Defendants counter that because the named Plaintiffs
22 allege they are fully eligible for the benefits they seek, and the same cannot be said for
23 every member of the class, the named Plaintiffs are atypical of the class they seek to
24 represent. (Dkt. No. 60 at 21.) However, Rule 23(a)(3) requires that the claims of class
25 representatives be similar to claims of the class. Plaintiffs are not seeking specific
26 adjudication of their applications, only that USCIS adjudicate applications “based solely

1 on the statutory criteria,” and not pursuant to CARRP. (Dkt. No. 47 at 51.) Whether any
2 particular Plaintiff or putative class member were statutorily eligible for the benefits
3 sought is not determinative of typicality. Further, if an applicant were statutorily
4 ineligible under the INA, then submitting such an application to CARRP would be
5 redundant, and grounds for denial already exist.

6 The relevant claim for the typicality inquiry is whether subjecting a Plaintiff’s
7 immigration application to CARRP is lawful. The class definitions include only
8 immigration benefit applicants whose applications have been submitted to CARRP.
9 Defendants do not claim that any of the proposed class representatives did not have their
10 application submitted to CARRP. Accordingly, the typicality requirement is met.

11 *d. Adequacy*

12 Finally, Rule 23(a)(4) requires that the named plaintiff “fairly and adequately”
13 protect the interests of the class. Fed. R. Civ. P. 23(a)(4). To determine whether the
14 representative parties will adequately represent a class, the Court must examine (1)
15 whether the named plaintiff and her counsel have any conflicts of interest with other class
16 members; and (2) whether the named plaintiff and her counsel will prosecute the action
17 vigorously on behalf of the class. *Ellis*, 657 F.3d at 985 (citing *Hanlon*, 150 F.3d at
18 1020). As the Ninth Circuit has noted, adequate representation depends upon “an absence
19 of antagonism between representatives and absentees[] and a sharing of interest between
20 representatives and absentees.” *Ellis*, 657 F.3d at 985 (quotations and citation omitted).

21 Plaintiffs contend that the five named Plaintiffs are adequate representatives
22 because “there is no tension between their interests and those of the absent class members
23 they seek to represent.” (Dkt. No. 63 at 11.) The class members’ interests all focus on
24 challenging CARRP and preventing it from being applied to their or other class
25 members’ immigration applications. Further, the named Plaintiffs are all willing to
26 prosecute this action vigorously. (Dkt. Nos. 28, 29, 50, 51, and 52.)

1 Defendants contest adequacy on three grounds. First, Defendants argue that the
2 named Plaintiffs are inadequate representatives because there may be many putative class
3 members who are aware that their applications have been pending a long time, and who
4 would prefer to let the process “run its course.” (Dkt. No. 60 at 22.) This ignores the fact
5 that this lawsuit alleges that applicants do not receive notification that their application
6 has been submitted to CARRP, and Defendants have yet to deny such a claim.

7 Defendants presume that there are potential plaintiffs who applied for immigration
8 benefits but “might prefer to allow their applications to remain pending, continuing to
9 live and work in the United States in their current status, rather than risk having USCIS
10 determine they are inadmissible or removable and be placed in removal proceedings.”
11 (*Id.*) This argument is speculative at best, and as such, fails.

12 Second, Defendants repeat their argument regarding the fact that the named
13 Plaintiffs all claim to be eligible for the benefits they seek, and this would put them at
14 odds with putative class members who are ineligible. (*Id.* at 22–23.) The Court addressed
15 this argument above and applies the same reasoning here. Additionally, the Court sees no
16 basis for conflict on underlying eligibility grounds. If CARRP is an unlawful and
17 unconstitutional program to which all putative class members’ applications are submitted,
18 then they all have a shared interest—regardless of eligibility—in putting an end to it.

19 Finally, Defendants argue that the named Plaintiffs are inadequate representatives
20 because they have all had their applications adjudicated, and thus their claims are moot.
21 (Dkt. No. 60 at 24.) However, this argument has the opposite effect and actually
22 persuades the Court that class certification is appropriate.

23 Each named Plaintiff had his or her application acted on almost immediately *after*
24 joining this lawsuit. Assuming that this was merely CARRP and the application process
25 running its due course and that Plaintiffs’ ultimate adjudications happened to coincide
26 with being added as named Plaintiffs—even after their applications lay stagnant for up to

1 four years—class certification would still be appropriate. Defendants’ argument supports
2 the conclusion that Plaintiffs’ claims would appear to be “so inherently transitory that the
3 trial court will not have even enough time to rule on a motion for class certification
4 before the proposed representative’s individual interest expires.” *County of Riverside v.*
5 *McLaughlin*, 500 U.S. 44, 52 (1991) (internal citation omitted). The named Plaintiffs’
6 claims are therefore “capable of repetition, yet evading review.” *Pitts v. Terrible Herbst,*
7 *Inc.*, 653 F.3d 1081, 1091 (9th Cir. 2011) (citing *Gerstein v. Pugh*, 420 U.S. 103, 110
8 n.11 (1975)). In such a case, “mooting the putative class representative’s claims will not
9 necessarily moot the class action” even if “the district court has not yet addressed the
10 class certification issue.” *Id.* at 1090.

11 On the other hand, if adjudication of Plaintiffs’ applications is not happenstance,
12 and Defendants are purposely and strategically adjudicating Plaintiffs’ applications as
13 they are added as named Plaintiffs, such a blatant attempt to moot Plaintiffs’ claims will
14 not gain purchase with this Court. If this is true, Defendants appear to be engaging in a
15 strategy of picking off named Plaintiffs to insulate CARRP from meaningful judicial
16 review.

17 Such a strategy is apparently not without precedent. In *Muhanna v. USCIS*, No.
18 14-cv-05995 (C.D. Cal. July 31, 2014), five individual plaintiffs filed suit challenging
19 CARRP. After waiting years for adjudication, all five plaintiffs’ applications were
20 adjudicated within months of filing suit, and the lawsuit was voluntarily dismissed as
21 moot. *Id.*, Dkt. No. 51 (entered Dec. 23, 2014). Similarly, in *Arapi v. USCIS*, No. 16-cv-
22 00692 (E.D. Mo. 2016), 20 individuals filed suit regarding CARRP and their pending
23 naturalization applications. Soon after, USCIS adjudicated all 20 applications, at which
24 point 19 plaintiffs voluntarily dismissed their claims and USCIS moved to dismiss the
25 final plaintiff’s claim as moot. *Id.*, Dkt. No. 22 (filed Dec. 19, 2016).

26 Defendants’ argument that the mooting of named Plaintiffs’ claims requires a

1 finding that they are inadequate representatives, thus defeating class certification, does
2 not have the desired effect. In fact, it counsels in favor of granting class certification. *See*
3 *Ellsworth v. U.S. Bank, N.A.*, 30 F. Supp. 3d 886, 909 (N.D. Cal. 2014) (defendant’s
4 “calculated strategy that includes picking off named Plaintiffs” did not moot class action
5 claims); *Ramirez v. Trans Union, LLC*, 2013 WL 3752591, at *2 (N.D. Cal. July 17,
6 2013) (class certification appropriate where plaintiff’s claims would “evade review” if
7 the defendant were able to “pick off” each subsequent lead plaintiff).

8 Furthermore, despite their applications having been adjudicated by USCIS, the
9 Court remains confident that the named Plaintiffs will “fairly and adequately protect the
10 interests of the class.” Fed. R. Civ. P. 23(a)(4). The Court further finds that Plaintiffs’
11 counsel—attorneys from the ACLU, Law Offices of Stacy Tolchin, National Immigration
12 Project of the National Lawyers Guild, Northwest Immigrant Rights Project, and Perkins
13 Coie—have the experience and ability to vigorously and adequately represent the class.
14 The adequacy requirement is met.

15 **3. Rule 23(b)(2) Requirement**

16 After satisfying the Rule 23(a) prerequisites, a plaintiff must also demonstrate that
17 the case is maintainable as a class action under one of the three Rule 23(b) prongs.
18 Plaintiffs move for class certification under Rule 23(b)(2). (Dkt. No. 49 at 23.) In order to
19 satisfy Rule 23(b)(2), Defendants must “ha[ve] acted or refused to act on grounds that
20 apply generally to the class, so that final injunctive relief or corresponding declaratory
21 relief is appropriate respecting the class as a whole.” Rule 23(b)(2) is met where “a single
22 injunction or declaratory judgment would provide relief to each member of the class.”
23 *Dukes*, 564 U.S. at 360.

24 Here, Plaintiffs allege that CARRP is unlawful and ask the Court to enjoin the
25 Government from submitting putative class members’ immigration applications to
26 CARRP. A single ruling would therefore provide relief to each member of the class.

1 Accordingly, Rule 23(b)(2) is satisfied.

2 Having satisfied the requirements of Federal Rules of Civil Procedure 23(a) and
3 23(b)(2), Plaintiffs' motion for class certification (Dkt. No. 49) is **GRANTED**. The Court
4 approves of the two proposed classes, appoints the five named Plaintiffs as class
5 representatives, and appoints Plaintiffs' counsel as class counsel for both classes.
6 Because certification of anything less than a nationwide class would run counter to the
7 constitutional imperative of "a uniform Rule of Naturalization," U.S. CONST., art. I, § 8,
8 cl. 4, class certification is nationwide.

9 **III. CONCLUSION**

10 For the foregoing reasons, Defendants' motion to dismiss (Dkt. No. 56) is
11 **GRANTED IN PART and DENIED IN PART**, and Plaintiffs' motion for class
12 certification (Dkt. No. 49) is **GRANTED**.

13
14 DATED this 21st day of June, 2017.

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19 The Honorable Richard A. Jones
20 United States District Judge

EXHIBIT 32

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THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ABDIQAFAR WAGAFE, *et al.*, on behalf
of themselves and others similarly situated,

Plaintiffs,

v.

DONALD TRUMP, President of the
United States; *et al.*,

Defendants.

No. 2:17-CV-00094-RAJ

PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION FOR
PROTECTIVE ORDER RE CLASS LIST

NOTED ON MOTION
CALENDAR: MARCH 9, 2018

PLAINTIFFS' OPPOSITION TO GOV'T MOTION FOR
PROTECTIVE ORDER RE CLASS LIST

(No. 2:17-cv-00094-RAJ)

138851031.2

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1 The Court ordered Defendants to produce a class list in its October 19, 2017 Order. Dkt.
2 98 at 3-4. The Court denied Defendants' motion to reconsider that order. Dkt. 102. Five
3 months after the Court's initial order, Defendants have filed yet another motion, this time asking
4 the Court to impose certain restrictions on the class list. The Court should deny the motion
5 because it is procedurally improper and substantively meritless, and the relief Defendants seek is
6 unnecessary in light of the Stipulated Protective Order and Plaintiffs' proposed compromise.

7 The motion is improper for several reasons. First, although couched as a motion for
8 protective order, Defendants simply re-argue the same points they advanced in opposing
9 Plaintiffs' motion to compel and in their motion for reconsideration. In effect, Defendants now
10 bring an improper second motion for reconsideration. Notably, at the hearing on February 14,
11 2018, when Defendants commented that they might "come back to the Court prior to the
12 production deadline [of the class list] to seek further relief," the Court responded:

13 I just want to reemphasize, counsel, that two orders have already
14 been issued. I don't know how to make this any clearer of what the
15 court's expectations are. And unless there's something that's
16 *extraordinarily different* that I'm not aware of or hasn't already
17 been identified by either the parties, or the court's order, I expect
18 *full compliance* in a timely fashion without further delay.

19 Feb. 14, 2018 Transcript, at 27-28 (emphasis added). There is nothing "extraordinarily
20 different" identified in Defendants' motion; there is nothing different at all. Second, Defendants'
21 motion is untimely. There is no reason Defendants could not have made this request months ago,
22 rather than waiting until two business days before their production deadline to file this motion.
23 Third, Defendants did not fully meet and confer, as required by this Court's Standing Order.

24 Even were the Court to address the merits of Defendants' motion, it should be denied for
25 the same reasons the Court already articulated in its prior orders. As explained before, Plaintiffs'
26 counsel require the class list and class members' personally identifiable information both to
communicate with class members to obtain information that is directly relevant to the claims at
issue, and to respond to inquiries from potential class members to inform them if their interests

1 are represented in this case. The Court has already found (twice) that Plaintiffs’ counsel’s need
2 for the class list outweighs the exact same speculative law enforcement concerns that Defendants
3 raise again here. Far from striking a balance, the restrictions Defendants propose would defeat
4 Plaintiffs’ reasons for requesting the class list in the first place.

5 And finally, the relief Defendants seek is unnecessary. Defendants assert that the
6 Stipulated Protective Order is inadequate based on strained hypotheticals that involve Plaintiffs’
7 counsel violating “the spirit” of the Court’s orders. These are ad hominem attacks, not legal
8 arguments. There is no evidence that anyone entitled to receive confidential information under
9 the Stipulated Protective Order would violate either the letter or the spirit of that court order.
10 Additionally, consistent with the Stipulated Protective Order already in place, Plaintiffs’ counsel
11 suggested a reasonable compromise that would provide both an additional layer of protection to
12 the class list, and also enable the list to be used in a way the Court has already approved to
13 advance this litigation. Defendants’ counsel rejected this proposed compromise.

14 In light of the procedural, substantive, and practical flaws with Defendants’ motion,
15 Plaintiffs respectfully request that the Court deny the motion. Alternatively, if the Court believes
16 certain information in the class list should be subject to additional protections, the Court should
17 adopt Plaintiffs’ proposed compromise because it strikes the right balance.

18 I. BACKGROUND

19 This motion is another example of Defendants’ delay tactics. On June 21, 2017, the
20 Court granted Plaintiffs’ motion to certify two classes: a Naturalization Class and an Adjustment
21 Class. Dkt. 69. On August 1, 2017, Plaintiffs served Defendants with discovery requests asking
22 for, among other things, documents sufficient to identify the class members, including a list of
23 class members. Dkt. 92, Ex. A at 32, 34-39, 48-51. Defendants refused to provide a class list,
24 forcing Plaintiffs to file a motion to compel (Dkt. 91). The Court granted Plaintiffs’ motion on
25 October 19, 2017, ordering Defendants to produce a class list. Dkt. 98. Notably, in arguing
26 against producing a class list, Defendants asserted that disclosing class members’ personally

1 identifiable information would cause class members to “alter their behavior, conceal evidence of
2 wrongdoing, or attempt to influence others in a way that could affect national security interests.”
3 *Id.* at 3. The Court rejected these arguments as vague and speculative. *Id.* at 3-4. The Court
4 also reasoned “that the balance weigh[s] in favor of disclosure,” because the list “is relevant to
5 the claims and Plaintiffs’ needs outweigh the Government’s reasons for withholding.” *Id.* at 4.
6 The Court then denied Defendants’ motion for reconsideration. Dkt. 102 at 2-3.

7 In the ensuing months, Plaintiffs repeatedly asked Defendants about the status of the class
8 list, but several requests would go unanswered. *See* Declaration of David A. Perez (“Perez
9 Decl.”), Ex. A (2/5/18 Perez E-mail to White re Class List) (two requests go unanswered).
10 Defendants committed to producing the class list by March 5, 2018. Dkt. 114 at 4. On February
11 14, the Court reminded Defendants that it had already issued two orders concerning the class list,
12 and made clear that absent “something that’s *extraordinarily different*,” the Court expected full
13 compliance with its orders. Feb. 14, 2018 Transcript, at 27-28 (emphasis added).

14 At the end of the day on Friday, February 23, Defendants asked for a meet and confer
15 “concerning the production of the Class Member List.” Perez Decl., Ex. B (bottom e-mail).
16 Over the next five days, Plaintiffs repeatedly asked “what it is [Defendants] plan on requesting
17 so [Plaintiffs] can make sure [they] have the right people on the line, and prepare accordingly in
18 terms of checking in with our team and conducting research.” *Id.* Defendants declined to
19 provide details. Nevertheless, before the meet and confer Plaintiffs sent Defendants a proposed
20 compromise: (a) identifying information on the class list would be subject to “Attorneys’ Eyes
21 Only” protection; (b) Plaintiffs could challenge those designations later (pursuant to the
22 procedure in the Stipulated Protective Order); (c) class counsel could inform potential class
23 members whether they are on the list; (d) but the entire class list would not be shared with any
24 named plaintiff or class member. *Id.* (Gellert e-mail to White). Plaintiffs invited Defendants to
25
26

1 draft a supplement to the Stipulated Protective Order consistent with this compromise.

2 Defendants declined to compromise, and failed to explain the relief they were seeking.¹

3 On March 5, 2018, in violation of the Court’s order, Defendants produced a class list that
4 *fully redacted* the names, A-numbers and filing dates of each person. Perez Decl., ¶ 6.

5 II. ARGUMENT

6 A. Defendants’ Motion Is Procedurally Improper Because It Is Effectively an Untimely 7 Second Motion for Reconsideration.

8 The Court should deny Defendants’ motion because it is procedurally improper. First,
9 Defendants raise no new arguments that the Court has not already rejected. *See infra* Section B.
10 For example, the law enforcement concerns Defendants raise here are identical to the concerns
11 that Defendants previously raised in their October 2017 opposition to Plaintiffs’ motion to
12 compel production of the class list, and again in their motion for reconsideration. *Compare* Dkt.
13 126 at 3 (Disclosure to “class members of their status in CARRP” “would risk damage to
14 national security and intelligence interests and investigations.”) *with* Dkt. 94 at 7 (“[D]isclosure
15 of whether a particular individual application is subject to CARRP could cause substantial harm
16 to law enforcement investigations and intelligence activities.”). Defendants previously argued
17 that class members would “alter their behavior, conceal evidence of wrongdoing, or attempt to
18 influence others in a way that could affect national security interests.” Dkt. 98 at 3; *see also* Dkt.
19 102 at 2-3. Almost verbatim, Defendants repeat the same argument here. *See* Dkt. 126 at 3 (“the
20 individual may change his or her behavior, coordinate with others to prevent USCIS from
21 collecting statements from other relevant persons, stop certain behaviors, or intentionally provide
22 misleading information”). Back in October, Defendants advanced these arguments to resist
23 disclosing the class list altogether; here, Defendants are regurgitating these arguments to deny
24 Plaintiffs’ counsel the ability to *use* the class list in the way that Plaintiffs had requested in their

25 ¹ Defendants did not properly meet and confer. In fact, Plaintiffs did not know Defendants would be
26 seeking relief concerning the “application dates,” much less why, until after the motion was filed. Perez Decl., ¶ 4.

1 motion to compel—which, in effect, means that Defendants are seeking the same result they had
 2 sought back in October. In other words, Defendants’ motion is nothing more than an improper
 3 and untimely third attempt to get the Court to litigate the order issued five months ago. *See*
 4 *Lopez v. Bollweg*, No. CV 13-00691-TUC-DCB, 2017 WL 4677851, at *3 (D. Ariz. Aug. 28,
 5 2017) (“There is nothing in the Local Rules of Civil Procedure that provides for multiple
 6 motions for reconsideration, and filing a successive motion for reconsideration with the same
 7 unsuccessful arguments wastes valuable Court resources.”).

8 Second, the Court should reject Defendants’ delay tactics. Defendants acknowledge that
 9 they agreed to the Stipulated Protective Order two months after class certification, and two
 10 weeks after Plaintiffs had requested the class list. Dkt. 126 at 4. They have had six months to
 11 ask for this relief—but instead waited until the last possible day to file a motion before the class
 12 list was due. These dilatory tactics cast doubt on Defendants’ contentions regarding the sensitive
 13 nature of the information Defendants seek to protect because. If Defendants’ concerns had merit,
 14 Defendants would have been far more proactive in seeking this relief.²

15 In sum, this motion is a second request to reconsider, masquerading as a protective order,
 16 filed five months late. The Court should deny it.

17 **B. If the Court Addresses the Merits of Defendants’ Motion, it Should Be Denied for**
 18 **the Reasons That the Court Has Already Articulated.**

19 If the Court reaches the merits, it should deny the motion for the same reasons articulated
 20 in its previous orders, and because the relief Defendants are seeking would undermine Plaintiffs’
 21 reasons for seeking the class list.

22
 23
 24 ² Defendants also violated the Court’s Standing Order by failing to “discuss *thoroughly*, . . . the *substance*
 25 of the contemplated motion *and any potential resolution*. The Court construes this requirement strictly. Half-
 26 hearted attempts at compliance with this rule will not satisfy counsel’s obligation.” Dkt. 65 at 3 (emphasis in
 original). Plaintiffs asked Defendants several times what relief they would seek in their motion, and were not even
 aware that the motion would include class members’ application dates until *two hours* before the motion was filed.
 Perez Decl., Exs. B and C.

1 **1. The Government Raises the Same Law Enforcement Concerns That the**
2 **Court Has Already Rejected and Should Do So Again.**

3 Defendants contend that disclosure to “class members of their status in CARRP” “would
4 risk damage to national security and intelligence interests and investigations.” Dkt. 126 at 3.
5 The Court already rejected this argument twice, and should do so again here. In granting
6 Plaintiffs’ motion to compel, the Court expressly rejected Defendants’ assertion “that releasing
7 the identities of potential class members could lead individuals to potentially alter their behavior,
8 conceal evidence of wrongdoing, or attempt to influence others in a way that could affect
9 national security interests.” Dkt. 98 at 3. The Court recognized that Defendants’ argument
10 “consist[ed] of mere speculation and a hypothetical result [and] is not sufficient to claim
11 privilege over basic spreadsheets identifying who is subject to CARRP.” *Id.* at 3-4. Defendants
12 moved for reconsideration. The Court once again rejected Defendants’ claim, noting that “[t]he
13 Government may not merely say those magic words—‘national security threat’—and
14 automatically have its requests granted in this forum.” Dkt. 102 at 3.

15 As the Court has previously acknowledged on multiple occasions, permitting class
16 members to know that they are subjected to CARRP would not cause any of the speculative harm
17 that Defendants’ claim for multiple reasons. First, as Plaintiffs explained in their motion to
18 compel briefing, Defendants have *routinely* disclosed to individuals that they are subject to
19 CARRP in response to FOIA requests and in other litigation, and Defendants have failed to
20 provide a single example of how those disclosures caused any harm to law enforcement interests.
21 *See* Dkt. 95 at 4 (citing Dkt. 97 (attorney noting that, in response to FOIA requests, USCIS and
22 ICE have regularly provided him “with a copy of the CARRP Coversheet . . . and other CARRP-
23 related information when [his] client’s case has been held under the CARRP program”); *id.*, Exs.
24 A, B, & C (FOIA documents indicating individuals subjected to CARRP)); Dkt. 91 at 4 (citing
25 Dkt. 27-1, Ex. E (FOIA document indicating Plaintiff Wagafe’s file was reviewed by CARRP
26 officer); Dkt. 93, Exs. 1, 2 (FOIA documents indicating CARRP officers involved in

1 naturalization and adjustment of status applications); Dkt. 92, Ex. E at 276:15-17 (USCIS officer
2 confirming in deposition that plaintiff’s case was “a CARRP case”).

3 Second, Defendants repeat their argument that “disclosure that an applicant is (or was)
4 subject to CARRP . . . would allow the applicant to infer that he or she may be subject to
5 investigative scrutiny by law enforcement.” Dkt. 126 at 3-4. But the Court has already rejected
6 that argument too. Because the two certified classes are limited to individuals whose
7 applications have been languishing for at least six months, they are *already* on notice that their
8 applications have been subject to additional scrutiny. *See* Dkt. 95 at 3-4; *see also Latif v.*
9 *Holder*, 28 F. Supp. 3d 1134, 1151-62 (D. Or. 2014) (holding that individuals on the No Fly List
10 be provided “with notice regarding their status on the No-Fly List” and rejecting similar security
11 concerns raised by the Government). When denying Defendants’ motion for reconsideration, the
12 Court explicitly recognized that the limited scope of Plaintiffs’ request—only releasing “the
13 names of potential class members” to those individuals—cannot be “outbalanced by the
14 speculative scope of” Defendants’ alleged harm in part because “those potential class members
15 may already be aware of the Government’s additional scrutiny considering the passage of time.”
16 Dkt. 102 at 3.³ The Court should once again reject Defendants’ arguments here.⁴

17 **2. The Court Has Already Found that Plaintiffs’ Need for the Class List** 18 **Outweighs the Government’s Concerns.**

19 The Court should also reject Defendants’ request for an additional protective order
20 because it would defeat Plaintiffs’ purpose in requesting the class list in the first place. As

21 ³ Defendants also claim that “it is difficult [for USCIS] to gather evidence if an applicant prematurely
22 becomes aware of an investigation.” Dkt. 126 at 3. But that argument is as speculative, if not more so, than
23 Defendants’ other arguments. As mentioned above, class members whose applications have been unreasonably
24 delayed more than six months already suspect they are being investigated by Defendants, so confirmation of that
25 investigation would not cause any additional harm to the Government.

26 ⁴ Defendants also admit that “[a]bout 24 percent of the current class members have their USCIS national
security concern resolved . . . but they remain class members because their immigration benefit request remains
pending.” Dkt. 126-1 ¶ 17. Because these class members are not currently subject to an investigation, Defendants
have provided no justification as to why they cannot be notified that their applications were subjected to CARRP.

1 Plaintiffs previously explained, Plaintiffs’ counsel need the class list and class members’
2 personally identifiable information for two main reasons: (1) to communicate with class
3 members, who may be witnesses and sources of information that is directly relevant to Plaintiffs’
4 claims, and (2) to respond to inquiries from potential class members and inform them if their
5 interests are represented in this case. *See* Dkt. 91 at 5; Dkt. 95 at 1-2; Dkt. 100 at 5-6. In
6 granting Plaintiffs’ motion to compel, the Court found that these needs outweighed Defendants’
7 conclusory security concerns. *See* Dkt. 98 at 4 (“[T]he Court must balance the need for Plaintiffs
8 to obtain [the class list] against the Government’s reasons for withholding. In doing so, the
9 Court finds that the balance weigh in favor of disclosure.”); Dkt. 102 at 2 (denying Defendants’
10 motion for reconsideration because “the Court exercised its discretion in balancing the needs of
11 Plaintiffs versus those of Defendants and found that the balance weighed in favor of
12 disclosure.”).

13 Defendants’ request would undermine Plaintiffs’ ability to use the class list in a way that
14 the Court has already approved. Defendants contend that the ability of class members to know
15 they are Plaintiffs in this case is not relevant. *See* Dkt. 126 at 7 n.2 (“[T]here is no reason a
16 curious individual needs to know whether he or she is in one of the certified classes.”). This is
17 the same relevance argument that Defendants previously made. *See* Dkt. 94 at 4 (“Disclosing
18 personally identifiable information (i.e., names and A-numbers) of particular individuals adds
19 nothing to Plaintiffs’ case.”); *id.* at 6 (Plaintiffs’ “difficulty in advising individuals who may be
20 class members whether their interests are adequately represented ... is not relevant[.]”). The
21 Court considered Defendants’ arguments and found that they had no merit. *See* Dkt. 98 at 2-3
22 (“[T]he Government argues that the class members’ specific identities are neither relevant nor
23 required for Plaintiffs to pursue this class action. Many of the Government’s arguments in
24 opposition to this request are mere conclusions, and therefore are not sufficient to avoid
25 disclosure.” (internal citation omitted)); *id.* at 4-5 (“[T]he Court rejected the Government’s
26 conclusory arguments as to relevance.”).

1 The Court was correct. As Plaintiffs previously explained, Plaintiffs' counsel must be
2 able to communicate with class members to obtain information relevant to Plaintiffs' claims
3 regarding, *inter alia*, the unreasonable delays in their applications, the Government's failure to
4 provide them any notice that they are subject to CARRP or explanation for their classification
5 under CARRP, their religious background (given that the Government claims not to record that
6 information), and other harmful impacts of CARRP and successor extreme vetting programs.
7 *See* Dkt. 91 at 5; Dkt. 95 at 1-2; Dkt. 100 at 5-6. Defendants appear to now concede that some of
8 this information is relevant, but state that if Plaintiffs "need various items of information about
9 particular unnamed class members to develop evidence for use in their case, the parties can meet
10 and confer over ways in which the Defendants might be able to provide Plaintiffs with such
11 information." Dkt. 126 at 7 n.2. Defendants' offer to meet and confer makes no sense and fails
12 to explain how Plaintiffs' counsel can obtain information that is solely in the possession of
13 unnamed class members without making those class members aware that they are Plaintiffs in
14 this lawsuit and their applications have been subjected to CARRP.

15 Furthermore, as Plaintiffs also previously explained, individuals have a right to know that
16 they are members of this class action and their interests are being represented in this case. *See*
17 Dkt. 91 at 5; Dkt. 95 at 1; Dkt. 100 at 6. Defendants contend that Plaintiffs "are mistaken," Dkt.
18 126 at 7 n.2, but it is Defendants who misunderstand the importance of class counsel's duty to
19 advise individuals who inquire about class membership. "[C]lass counsel represents all class
20 members as soon as a class is certified." *Kleiner v. First Nat'l. Bank of Atlanta*, 751 F.2d 1193,
21 1207 n.28 (11th Cir. 1985); *see also Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117, 1122-
22 23 (9th Cir. 2014) (noting that "class counsel's ability to fairly and adequately represent
23 unnamed [class members]" is a "critical requirement[] in federal class actions"); *Resnick v. Am.*
24 *Dental Ass'n*, 95 F.R.D. 372, 376 (N.D. Ill. 1982) ("Class counsel have the fiduciary
25 responsibility and all the other hallmarks of a lawyer representing a client."). Therefore, when
26 individuals reach out to class counsel to inquire as to whether they are class members, class

1 counsel must be able to respond and appropriately advise their clients. It is very important for
2 individuals with pending naturalization and adjustment of status applications to know whether
3 they can seek and obtain relief through this lawsuit, or whether they face a separate issue causing
4 delay that requires a separate legal analysis and potential litigation to ensure the Government
5 properly adjudicates their applications.

6 Defendants' proposed restrictions would effectively put a ban on class counsel's ability to
7 communicate with class members. The Supreme Court has noted the "adoption of a
8 communications ban that interferes with . . . the prosecution of a class action" must include
9 "specific findings that reflect a weighing of the need for limitation and the potential interference
10 with the rights of the parties." *Gulf Oil Co. v. Bernard*, 452 U.S. 89, 101, 104 (1981); *see also*
11 *Domingo v. New England Fish Co.*, 727 F.2d 1429, 1441 (9th Cir. 1984) (finding that
12 "restrictions on [plaintiffs'] communications [with class members] created at least potential
13 difficulties for them as they sought to vindicate the legal rights of [the class]" (internal quotation
14 marks omitted). Here, Defendants have failed to demonstrate the need for the limitations they
15 seek. To the contrary, because of the important role that class counsel plays in advising and
16 protecting the rights of all class members, Defendants should produce the class list with class
17 members' personally identifiable information, as courts have ordered the Government to produce
18 in similar situations. *See, e.g., Inland Empire-Immigrant Youth Collective v. Nielsen*, No. EDCV
19 17-2048 PSG (SHKx), 2018 WL 1061408, at *23 (C.D. Cal. Feb. 26, 2018) ("Defendants shall
20 provide Class Counsel with a list of all [class members]. That list shall include the following
21 information for each person: Name, Alien Number . . ."); *Franco-Gonzalez v. Holder*, No. CV
22 10-02211-DMG (C.D. Cal. Mar. 2, 2015), Dkt. 810 at 8 & n.7 (ordering the government to
23 provide "Plaintiffs with a report from the Class Database indicating the [class members]
24 currently identified by Defendants," including their names and A numbers).

1 **C. The Current Protective Order Is Sufficient. Alternatively, the Court Should Adopt**
2 **the Compromise That Plaintiffs’ Proposed to Defendants.**

3 Defendants assert that they require added protection because the existing protective order
4 “is insufficient.” Dkt. 126 at 4. This argument fails for several reasons. First, it simply
5 highlights Defendants’ procrastination. Defendants agreed to the Stipulated Protective Order in
6 August—nearly eight months ago. Therefore, after class certification and after Plaintiffs had
7 requested a class list, Defendants expressly agreed to terms that “would permit named Plaintiffs
8 to receive the class list.” Dkt. 126 at 4. Contrary to Defendants’ suggestion, Plaintiffs never
9 agreed that “inform[ing] unnamed class members whether they are included on the class list”
10 would be subject to the Stipulated Protective Order. *Id.* Instead, Plaintiffs noted that “there is no
11 need to shield the identities of class members pursuant to a protective order.” Dkt. 100 at 8. The
12 Court rejected Defendants’ argument that class members cannot be made aware of their inclusion
13 in this case, and stated that “Plaintiffs’ attorneys could supplement the protective order . . . to
14 assuage any *remaining concerns* on the part of the Government.” Dkt. 98 at 4 (emphasis added).
15 But Defendants have raised no new concerns here to justify supplementing the protective order.

16 Second, Defendants also assert that their proposed changes are necessary because
17 Plaintiffs’ counsel “or the organizations for which they work,” will violate “the spirit” of the
18 Stipulated Protective Order. Dkt. 126 at 5-6. Put differently, Defendants request this order
19 because they do not believe the Court can trust Plaintiffs’ counsel or “the organizations for
20 which they work.” To be clear, this is not a legal argument, or a factual statement based on any
21 empirical evidence. It is an ad hominem attack. There is no basis to suggest, much less
22 conclude, that Plaintiffs’ counsel will violate either the letter or the spirit of any order, and
23 certainly not one to which Plaintiffs stipulated. On the contrary, Plaintiffs have demonstrated
24 throughout this case their commitment to following all the Court’s orders.

25 And finally, far from striking the right balance, Defendants’ proposed restrictions would
26 completely undermine Plaintiffs’ ability to use the class list to gather evidence and adequately

1 represent their clients. It would also cause significant practical obstacles that would impede
2 Plaintiffs' counsel from accessing the list. For instance, limiting access only to counsel of record
3 may exclude the many other attorneys and staff members (for instance, paralegals and discovery
4 attorneys at Perkins Coie) from accessing the list. And requiring encrypted point-to-point
5 communication would severely limit Plaintiffs' counsel's ability to communicate about the list.
6 Defendants have not explained why such restrictions are necessary (e.g., why Plaintiffs' current
7 e-mail systems are insufficient or why legal staff members could not access the list). Worse,
8 Defendants' proposed restrictions would contravene the very reasons this Court ordered the list
9 produced in the first place.

10 Alternatively, if the Court is inclined to add additional protections to the class list,
11 Plaintiffs' proposed compromise strikes the right balance. Under Plaintiffs' proposal, class
12 members' identifiable information (names and A numbers) would be subject to Attorneys' Eyes
13 Only protection,⁵ with the understanding that Plaintiffs could challenge that designation under
14 the process set forth in the Stipulated Protective Order. However, consistent with the Court's
15 prior orders, Plaintiffs would be able to inform individual persons whether they are on the list,
16 and thus are potential class members. But neither Named Plaintiffs nor unnamed class members
17 would have access to the list itself or information about other persons on the list. This practical
18 compromise gives Defendants the protections they need, while allowing Plaintiffs to use the
19 class list in a manner that is consistent with the underlying reasons for why Plaintiffs requested it
20 in the first place.⁶

22 ⁵ Consistent with the general understanding of Attorneys' Eyes Only restrictions, this would not be limited
23 to counsel of record, but would include legal and support staff, such as paralegals, legal secretaries, and others
24 working under the direction and supervision of the attorneys, but would not include Named Plaintiffs or unnamed
class members.

25 ⁶ Defendants also indicate that the class list they plan to produce "is based on who was a class member on
26 December 1, 2017." Dkt. 126-1, ¶ 17 n.3. As Plaintiffs previously noted, given Defendants' duty under Fed. R.
Civ. P. 26(e)(1)(A) to supplement discovery responses "in a timely manner," Plaintiffs request that Defendants
produce quarterly updates to the list. *See* Dkt. 95 at 3.

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CERTIFICATE OF SERVICE

The undersigned certifies that on the dated indicated below, I caused service of the foregoing PLAINTIFFS' OPPOSITION TO GOV'T MOTION FOR PROTECTIVE ORDER RE CLASS LIST via the CM/ECF system that will automatically send notice of such filing to all counsel of record herein.

DATED this 7th day of March, 2018, at Seattle, Washington.

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EXHIBIT 34

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS-2000)
Washington, DC 20529-2000



U.S. Citizenship
and Immigration
Services

PM-602-0150

October 19, 2017

Policy Memorandum

SUBJECT: Revised Guidance for Processing Cases Subject to Terrorism-Related
Inadmissibility Grounds and Rescission of the Prior Hold Policy for Such Cases

Purpose

This policy memorandum (PM) revises the agency hold policy for association or activity involving the terrorism-related inadmissibility grounds (TRIG).

Scope

This PM applies to and binds all USCIS employees.

Authorities

Sections 212(a)(3)(B) and 212(d)(3)(B)(i) of the Immigration and Nationality Act (INA).

Policy

I. Current Policy

The current agency hold policy¹ encompasses the following categories of cases:

1. Applicants, other than applicants for refugee status, asylum, and suspension of deportation or special rule cancellation of removal under Section 203 of the Nicaraguan Adjustment and Central American Relief Act (NACARA), who are inadmissible under the terrorism-related provisions of the INA based on any activity or association that was *not under duress* relating to any undesignated terrorist organization defined under INA Section (212)(a)(3)(B)(vi)(III) ("Tier III"), other than those for which an exemption currently exists.

¹ See PM-602-0137, "Revised Guidance for Processing Asylum Cases Involving Terrorism-Related Inadmissibility Grounds and Amendment to the Hold Policy for Such Cases," October 5, 2016; PM-602-0132, "Revised Guidance for Processing Refugee Cases Involving Terrorism-Related Inadmissibility Grounds and Amendment to the Hold Policy for Such Cases," May 5, 2016; "Revised Guidance on the Adjudication of Cases involving Terrorist-Related Inadmissibility Grounds and Amendment to the Hold Policy for such Cases" Memo, Michael Aytes, Acting Deputy Director (February 13, 2009); PM- 602-0051, "Revised Guidance on the Adjudication of Cases Involving Terrorism-Related Inadmissibility Grounds (TRIG) and Further Amendment to the Hold Policy for Such Cases," November 20, 2011.

Revised Guidance for Processing Cases Involving Terrorism-Related Inadmissibility Grounds
and Rescission of the Prior Hold Policy for Such Cases

Page 2

2. Applicants, other than applicants for refugee status, asylum, and suspension of deportation or special rule cancellation of removal under Section 203 of the Nicaraguan Adjustment and Central American Relief Act (NACARA), who are inadmissible under the terrorism-related provisions of the INA based on any activity or association related to any terrorist organization defined under INA Sections (212)(a)(3)(B)(vi)(I), (II), or (III) (“Tier I,” “Tier II” or “Tier III”) where the activity or association was *under duress* and for which an exemption does not currently exist.
3. Applicants, other than applicants for refugee status, asylum, and suspension of deportation or special rule cancellation of removal under Section 203 of the Nicaraguan Adjustment and Central American Relief Act (NACARA), who are inadmissible under INA 212(a)(3)(B)(i)(IX) as the spouses or children of aliens described above, whether or not the spouse or parent has applied for an immigration benefit.

II. Revision of the Hold Policy

Effective immediately, the above-described prior hold policy is rescinded. Cases for which no exemption(s) is currently available should not remain or be placed on hold absent direction from your component’s HQ TRIG POC.

Contact Information

Questions should be directed to your component’s TRIG point of contact.

Attachment: 212(a)(3)(B) EXEMPTION WORKSHEET (Rev. 09-11-2017)

EXHIBIT 38

ATTORNEYS' EYES ONLY

Emrich, Matthew

January 8, 2020

1

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ABDIQAFAR WAGAFE, et al., on :
 behalf of themselves and others : Case No. :
 Similarly situated, : 17-CV-00094 RAJ
 Plaintiffs, :
 VS. :
 DONALD TRUMP, President of the : ATTORNEYS' EYES ONLY
 United States, et al., :
 Defendants. :

Washington, DC
Wednesday, January 8, 2020

Videotaped Deposition of MATTHEW EMRICH
held at U.S. Department of Justice, 450 5th Street,
NW, Washington, DC 20530, commencing at 9:37 a.m.,
before Sherry L. Brooks, Certified LiveNote Reporter
and Notary Public, in and for the District of
Columbia.

ATTORNEYS' EYES ONLY

Emrich, Matthew

January 8, 2020

132

1 applicants does not impact their later applications
2 for adjustment of status or naturalization?

3 **A. No, not that I'm aware of.**

4 Q. Okay. And does the result of
5 country-specific vetting performed on applicants for
6 immigration benefits get stored in A-files?

7 **A. I do not know.**

8 Q. Do the results of country-specific vetting
9 on applicants for immigration benefits get stored in
10 FDNS/DS?

11 **A. Yes.**

12 Q. And what's the data retention period for
13 FDNS/DS?

14 **A. I do not know.**

15 Q. Are you aware of any USCIS policies,
16 procedures, directives, or guidance that apply to --
17 specifically to certain religions?

18 **A. Not that I'm aware of.**

19 Q. Are you aware of any USCIS policies,
20 procedures, directives, or guidance that apply to
21 people with associations to organizations that the
22 government deems to be involved in terrorist

EXHIBIT 39

Exhibit I

The Honorable Richard A. Jones

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ABDIQAFAR WAGAFE, et al.,

Plaintiffs,

v.

DONALD TRUMP, et al.,

Defendants.

No. 2:17-cv-00094-RAJ

DECLARATION OF JULIE E.
FARNAM IN SUPPORT OF
DEFENDANTS' RESPONSE TO
PLAINTIFFS' MOTION TO COMPEL

I, Julie E. Farnam, do hereby declare and say:

1. I am a Senior Advisor for Field Operations Directorate (FOD), United States Citizenship and Immigration Services ("USCIS"), Department of Homeland Security ("DHS"). From January 30, 2017 to August 7, 2017, I was detailed to the Acting Director's Office of USCIS as a Senior Advisor.

2. During my detail to the Acting Director's Office, I was tasked with leading implementation efforts for USCIS for Executive Order 13769, "Protecting the Nation from Foreign Terrorist Entry into the United States," 82 Fed. Reg. 8977 (Feb. 1, 2017), and Executive Order 13780, "Protecting the Nation from Foreign Terrorist Entry into the United States," 82 Fed. Reg. 13209 (Mar. 9, 2017) (hereinafter "Executive Orders" or "First EO and "Second EO" respectively). This assignment involved leading agency

1 efforts related to all applicable deliverables required in the Executive Orders, meeting
2 regularly with DHS headquarters officials, serving as USCIS's representative on the DHS
3 Executive Order Task Force and coordinating with other agencies and departments as
4 necessary.

5 3. The matters contained in this declaration are based on my review of the
6 Plaintiffs' First Requests for Production in *Wagafe, et al., v. Trump, et al.*, Case No. 2:17-
7 cv-00094, now pending in the United States District Court for the Western District of
8 Washington, and information available to me from leading implementation efforts of the
9 Executive Orders from January 30, 2017 to August 7, 2017.

10 4. I am aware of the class action litigation involving Plaintiffs that has been filed
11 in the United States District Court for the Western District of Washington, and that in this
12 class action Plaintiffs challenge the Controlled Application Review and Resolution
13 Program ("CARRP").

14 5. I am familiar with the USCIS Memorandum entitled "Policy for Vetting and
15 Adjudicating Cases with National Security Concerns," dated April 11, 2008 (hereinafter
16 "CARRP Memorandum"), which established CARRP.

17 6. I am aware of current CARRP policies and guidance.

18 7. I am familiar with the Executive Order 13769, "Protecting the Nation from
19 Foreign Terrorist Entry into the United States," 82 Fed. Reg. 8977 (Feb. 1, 2017), and
20 Executive Order 13780, "Protecting the Nation from Foreign Terrorist Entry into the
21 United States," 82 Fed. Reg. 13209 (Mar. 9, 2017). Based on my duties while detailed to
22 the Acting Director's Office, I reviewed all agency efforts to implement the Executive
23 Orders and participated in discussions regarding the actions that USCIS should take to
24 implement the EOs. I am aware of actions that USCIS took to implement the Executive
25 Orders.

26 8. To the best of my knowledge, information, and belief, neither the First nor
27 Second EO has impacted the development, adoption, review, or revision of CARRP.
28

1 9. To the best of my knowledge, information, and belief, efforts to implement the
2 Executive Orders have not involved changing, modifying, or updating CARRP policy.

3 10. To the best of my knowledge, information, and belief, CARRP and any policy,
4 program, or effort that supports implementation of the Executive Orders are unrelated
5 and distinct from one another.

6 11. If directed to search for information relating to CARRP and the relationship
7 between its development, adoption, review, or revision and the First and Second EOs, to
8 the best of my knowledge, information, and belief, such information does not exist at
9 USCIS.

10
11 I declare under penalty of perjury that the foregoing is true and correct.

12 Executed this 6th day of October, 2017 at Washington, D.C.

13
14 
15 Julie E. Farnam
16 Senior Advisor
17 U.S. Citizenship and Immigration Services
18 Washington, D.C.

EXHIBIT 40

The Honorable Richard A. Jones

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

ABDIQAFAR WAGAFE, *et al.*,

Plaintiffs,

v.

DONALD TRUMP, President of the United States, *et al.*,

Defendants.

No. 2:17-cv-00094-RAJ

STIPULATED MOTION FOR ENTRY OF PROPOSED AMENDED CASE SCHEDULE AND TRIAL DATE

NOTE ON MOTION CALENDAR: NOVEMBER 9, 2018

The Parties stipulate and jointly move for relief from the dates set by the Court’s Order of June 20, 2018 (ECF No. 197), as further modified by the Court’s Orders of September 26 (ECF No. 200), October 3 (ECF No. 201), October 16 (ECF 202), and October 29, 2018 (ECF 203) in setting the following schedule that will enable the parties to cooperatively complete discovery and pretrial proceedings. As shown below, good cause exists for extending these deadlines because the parties continue to negotiate over discovery issues with considerable success in resolving disputes – all aimed at allowing them to conclude discovery and pretrial proceedings.

The parties have been working hard over the past several months, collaborating to push document production and fact discovery toward a conclusion, and to pave the way for making

1 their initial and responsive expert disclosures. As a critical part of this effort, the parties have
2 negotiated and entered into various agreements on discovery, including limitations of various
3 discovery requests, and continue to discuss ways to resolve the few remaining differences on
4 discovery issues. Recently concluded agreements include removing from document production
5 (1) the U.S Department of Homeland Security’s Executive Secretariat Portal, a tool for managing
6 work flow (correspondence and briefings addressed to the Secretary and Deputy Secretary, as
7 well as taskings requiring inter-agency review), because of technological challenges to making
8 documents available from this work tool, which encompasses documents from key custodians
9 whose collections are already part of the discovery process and continuing productions to
10 Plaintiffs; and (2) four of the six programs Defendants identified as related to the Executive
11 Orders referenced in the Second Amended Complaint, specifically (a) ICE’s Request for
12 Proposals for an Extreme Vetting Initiative (which was abandoned and not implemented); (b)
13 Expanded Interviews for Form I-485, Adjustment of Status, Adjudications based on an approved
14 Form I-129F, Petition for Alien Fiancé(e) or an approved Form I-140, Immigration Petition for
15 Alien Worker; (c) Code 5 Identify Verification for certain biometrics appointments at
16 Application Support Centers; and (d) the National Vetting Center (which has not been applied to
17 the Controlled Application Review and Resolution Program (CARRP) or to applications for
18 naturalization or adjustment of status).¹ Counsel for the parties are in continuing discussions
19 regarding the two remaining programs related to the Executive Orders, and Plaintiffs’ request for
20 Alien Files (“A Files”) of a random sampling of unnamed members of the two certified classes,

21 ¹ If the National Vetting Center is applied to CARRP or applications for adjustment of status or
22 naturalization while this case is still pending, Plaintiffs reserve the right to seek discovery into
23 the National Vetting Center at a later date.

1 attempting to reach a resolution. The agreements to date, and progress on remaining issues, have
 2 enabled the parties to agree on the following proposed schedule for timely completing discovery
 3 and pretrial proceedings, and with the understanding and agreement that no new written
 4 discovery requests will be served.² The following proposed schedule would allow the parties to
 5 complete document production and written fact discovery before turning to depositions and
 6 expert discovery.

7	BENCH TRIAL DATE	July 23, 2019 [or otherwise set by the Court]
8	Length of Trial	5 days
9	Deadline to Complete Discovery	February 11, 2019
10	(other than expert discovery and all depositions), which extension does not authorize the propounding of any new written discovery requests except for Requests for Admission	
11	Expert Witness Disclosures/Reports Under FRCP 26(a)(2) Due	February 25, 2019
12	Deadline for Depositions (other than of experts)	March 11, 2019
13	Responsive Expert Witness Disclosure/ Reports Under FRCP 26(a)(2) Due	March 18, 2019
14		
15	Deadline to Complete Expert Discovery (including all expert depositions)	April 11, 2019
16	All dispositive motions must be filed by and noted on the motion calendar no later than the fourth Friday thereafter pursuant to LCR7(d)(3)	April 25, 2019
17		
18	All motions <i>in limine</i> must be filed by and noted on the motion calendar no later than three Fridays thereafter pursuant to	June 25, 2019
19		
20		

21 ² The parties may serve a limited number of Requests for Admission, not to exceed 25. Such
 22 Requests for Admission will not be bundled with other discovery requests and will not be subject
 to this agreement.

1 LCR7(d)(4)

2 Agreed Pretrial Order due July 9, 2019

3 Pretrial conference To be set by the Court

4 Trial briefs, deposition designations, and July 16, 2019
5 trial exhibits due

6 WHEREFORE, the Parties stipulate and jointly move for entry of an amended scheduling
7 order setting the dates detailed in this Motion
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1 Dated: November 9, 2018

Respectfully Submitted,

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Assistant Attorney General
3 Civil Division

/s/ Leon B. Taranto
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21

22

23 STIPULATED MOTION FOR ENTRY OF AMENDED CASE SCHEDULE
AND TRIAL DATE - 5
(2:17-CV-00094-RAJ)

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Civil Division, Office of Immigration Litigation
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CERTIFICATE OF SERVICE

I hereby certify that on November 9, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Leon B. Taranto
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EXHIBIT 41

THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

ABDIQAFAR WAGAFE *et al.*, on behalf of
themselves and others similarly situated,

Plaintiffs,

v.

DONALD TRUMP, President of the
United States *et al.*,

Defendants.

No. 17-cv-00094 RAJ

PLAINTIFFS’ OBJECTIONS AND
ANSWERS TO DEFENDANTS’ FIRST SET
OF REQUESTS FOR ADMISSION

Pursuant to Federal Rules of Civil Procedure 26 and 36, Abdiqafar Wagafe, Mehdi Ostadhassan, Hanin Omar Bengenzi, Noah Adam Abraham (f/k/a Mushtaq Abed Jihad), and Sajeel Manzoor, on behalf of themselves and others similarly situated (collectively, “Plaintiffs”), hereby submit the following Objections and Answers to Defendants’ First Set of Requests for Admission.

GENERAL OBJECTIONS AND RESERVATIONS

Plaintiffs’ responses to the Requests for Admission are subject to and without waiver of the following objections and reservations:

1. Plaintiffs object to the Requests for Admission that impose or seek to impose any requirement or discovery obligation greater than or different from those under the Federal Rules of Civil Procedure and the applicable Local Rules and Orders of the Court.

1 2. Plaintiffs object to the Requests for Admission because Defendants' Requests for
2 Admission exceed the "limited number of Requests for Admission, not to exceed 25" the parties
3 stipulated to serve, Dkt. 205 at 3 n.2, and the parties have not stipulated to increase the number
4 of Requests for Admission that each party may serve.

5 3. Plaintiffs object to each Request for Admission to the extent that the Request for
6 Admission calls for information protected from discovery or disclosure by any privilege or
7 doctrine, including, without limitation, the attorney-client privilege or work product doctrine and
8 any privilege or doctrine that protects information from discovery or disclosure because it
9 otherwise reflects the impressions, conclusions, opinions, legal research, litigation plans or
10 theories of their attorneys. Such information or documents shall not be provided in response to
11 Defendants' Requests for Admission and any inadvertent disclosure shall not be deemed a
12 waiver of any privilege with respect to such information or of any work product immunity which
13 may attach thereto. Fed. R. Civ. P. 26(b)(5)(B).

14 4. By providing certain information requested herein, Plaintiffs do not waive any
15 privilege or protection that is or may be applicable to such information.

16 5. Plaintiffs object to the Requests for Admission to the extent they seek information
17 no longer in existence or not currently in Plaintiffs' possession, custody, or control, or to the
18 extent it refers to persons, entities, or events not known to Plaintiffs or controlled by Plaintiffs,
19 on the grounds that such definitions or Requests for Admission are overly broad, seek to require
20 more of Plaintiffs than any obligation imposed by law, would subject Plaintiffs to unreasonable
21 and undue annoyance, oppression, burden, and expense, and would seek to impose upon Plaintiff
22 an obligation to investigate, discover, or produce information or materials from third parties or
23 otherwise that are accessible to Defendants or readily obtainable from public or other sources.
24 Fed. R. Civ. P. 26(b)(1), (2).

1 sources. Without waiving the General Objections, which are incorporated herein, and the
2 foregoing Specific Objections, Plaintiffs deny.

3
4 **REQUEST FOR ADMISSION NO. 2:** Admit that Plaintiffs cannot identify any documents or
5 other evidence supporting their allegation(s) in paragraph 11 of the Complaint that “CARRP
6 identifies national security concerns based on . . . characteristics such as national origin.”

7 **ANSWER:** Plaintiffs object to Request for Admission No. 2 because it seeks information that is
8 attorney work product privileged in that it asks for Plaintiffs’ counsel’s interpretation of
9 documents/information produced by Defendants and documents/information obtained from other
10 sources. Without waiving the General Objections, which are incorporated herein, and the
11 foregoing Specific Objections, Plaintiffs deny.

12
13 **REQUEST FOR ADMISSION NO. 3:** Admit that Plaintiffs cannot identify any documents or
14 other evidence supporting their allegation(s) in paragraph 13 of the Complaint that “two recent
15 immigration Executive Orders issued by Defendant Donald Trump suggest the number of
16 residents subjected to CARRP will expand in the coming months and years.”

17 **ANSWER:** Plaintiffs object to Request for Admission No. 3 because it seeks information that is
18 attorney work product privileged in that it asks for Plaintiffs’ counsel’s interpretation of
19 documents/information produced by Defendants and documents/information obtained from other
20 sources. Without waiving the General Objections, which are incorporated herein, and the
21 foregoing Specific Objections, Plaintiffs deny.

22
23 **REQUEST FOR ADMISSION NO. 4:** Admit that Plaintiffs cannot identify any documents or
24 other evidence supporting their allegation(s) in paragraph 15 of the Complaint, as to USCIS
25 suspending adjudication or of all pending petitions, applications and requests involving citizens
26

1 or nationals of the seven countries subject to Executive Order 13769, other than from January 28,
2 2017 through February 2, 2017.

3 **ANSWER:** Plaintiffs object to Request for Admission No. 4 because it misstates paragraph 15
4 of Plaintiffs' Second Amended Complaint, and because it seeks information that is attorney work
5 product privileged in that it asks for Plaintiffs' counsel's interpretation of documents/information
6 produced by Defendants and documents/information obtained from other sources. Without
7 waiving the General Objections, which are incorporated herein, and the foregoing Specific
8 Objections, Plaintiffs admit but reserve the right to amend this answer as discovery is still
9 ongoing.

10
11 **REQUEST FOR ADMISSION NO. 5:** Admit that Plaintiffs cannot identify any documents or
12 other evidence supporting their allegation(s) in paragraph 16 of the Complaint that any "extreme
13 vetting" policy implemented under the First Executive Order would expand CARRP or has
14 expanded CARRP.

15 **ANSWER:** Plaintiffs object to Request for Admission No. 5 because it seeks information that is
16 attorney work product privileged in that it asks for Plaintiffs' counsel's interpretation of
17 documents/information produced by Defendants and documents/information obtained from other
18 sources. Plaintiffs further respond that responsive documents related to the implementation of
19 Executive Order 13769 (the "First Executive Order") have been heavily redacted on several
20 grounds, including but not limited to attorney-client privilege, deliberative process privilege, law
21 enforcement privilege, and presidential communication privilege, making it difficult to ascertain
22 the implementation of the First Executive Order. Without waiving the General Objections, which
23 are incorporated herein, and the foregoing Specific Objections, Plaintiffs deny.

1 **REQUEST FOR ADMISSION NO. 6:** Admit that Plaintiffs cannot identify any documents or
2 other evidence supporting their allegation(s) in paragraph 18 of the Complaint that “the Second
3 EO sanctions a major expansion of the existing CARRP program.”

4 **ANSWER:** Plaintiffs object to Request for Admission No. 6 because it seeks information that is
5 attorney work product privileged in that it asks for Plaintiffs’ counsel’s interpretation of
6 documents/information produced by Defendants and documents/information obtained from other
7 sources. Plaintiffs further respond that responsive documents related to implementation of
8 Executive Order 13780 (the “Second Executive Order”) have been heavily redacted on several
9 grounds, including but not limited to attorney-client privilege, deliberative process privilege, law
10 enforcement privilege, and presidential communication privilege, making it difficult to ascertain
11 the implementation of the Second Executive Order. Without waiving the General Objections,
12 which are incorporated herein, and the foregoing Specific Objections, Plaintiffs deny.

13
14 **REQUEST FOR ADMISSION NO. 7:** Admit that Plaintiffs cannot identify any documents or
15 other evidence supporting their allegation(s) in paragraph 20 of the Complaint that “the
16 applications of Plaintiff Ostadhassan, Plaintiff Bengezi, and proposed class members will be
17 unlawfully suspended due to the application of the Second EO,” or that their applications have
18 been “unlawfully suspended due to the application of the Second EO.”

19 **ANSWER:** Plaintiffs object to Request for Admission No. 7 because it seeks information that is
20 attorney work product privileged in that it asks for Plaintiffs’ counsel’s interpretation of
21 documents/information produced by Defendants and documents/information obtained from other
22 sources. Plaintiffs further respond that responsive documents related to the implementation of
23 Executive Order 13780 (the “Second Executive Order”) have been heavily redacted on several
24 grounds, including but not limited to attorney-client privilege, deliberative process privilege, and
25 law enforcement privilege, making it difficult to ascertain the implementation of the Second
26 Executive Order. Additionally, Defendants have not produced an unredacted version Plaintiff

1 Mehdi Ostadhassan A-File nor have Defendants produced the A-Files of unnamed class
2 members. Without waiving the General Objections, which are incorporated herein, and the
3 foregoing Specific Objections, Plaintiffs deny the allegations as to Plaintiff Bengezi as moot
4 because USCIS approved Bengezi's I-485 application on May 9, 2017. *See* Dkt. 60 at 10.
5 Regarding the allegations as to Plaintiff Ostadhassan and the class members, Plaintiffs admit but
6 the admission does not extend to the allegations regarding the application of CARRP to their
7 applications. Plaintiffs reserve the right to amend this answer as discovery is still ongoing.
8

9 **REQUEST FOR ADMISSION NO. 8:** Admit that Plaintiffs cannot identify any documents or
10 other evidence supporting their allegation(s) in paragraphs 25 and 174 of the Complaint that
11 "Plaintiff Mehdi Ostadhassan . . . satisfies all statutory criteria for adjustment of status" to lawful
12 permanent resident," or their allegations in paragraph 173 that Plaintiff Ostadhassan "is
13 statutorily eligible for adjustment of status."

14 **ANSWER:** Plaintiffs object to Request for Admission No. 8 because it seeks information that is
15 attorney work product privileged in that it asks for Plaintiffs' counsel's interpretation of
16 documents/information produced by Defendants and documents/information obtained from other
17 sources. Plaintiffs further object to this Request for Admission because Defendants have not
18 produced an unredacted version Plaintiff Mehdi Ostadhassan A-File. Without waiving the
19 General Objections, which are incorporated herein, and the foregoing Specific Objections,
20 Plaintiffs deny.
21

22 **REQUEST FOR ADMISSION NO. 9:** Admit that Plaintiffs cannot identify any documents or
23 other evidence supporting their allegation(s) in paragraph 174 of the Complaint regarding
24 Plaintiff Mehdi Ostadhassan that "USCIS has suspended or will suspend adjudication of his
25 application under the First and Second EOs."
26

1 **ANSWER:** Plaintiffs object to Request for Admission No. 9 because it seeks information that is
2 attorney work product privileged in that it asks for Plaintiffs’ counsel’s interpretation of
3 documents/information produced by Defendants and documents/information obtained from other
4 sources. Plaintiffs further object because responsive documents related to Plaintiff Mehdi
5 Ostadhassan and the First and Second Executive Orders have been heavily redacted, making it
6 difficult to ascertain the implementation of the First and Second Executive Orders and their
7 effects on Ostadhassan’s application. Without waiving the General Objections, which are
8 incorporated herein, and the foregoing Specific Objections, Plaintiffs deny.

9
10 **REQUEST FOR ADMISSION NO. 10:** Admit that Plaintiffs cannot identify any documents or
11 other evidence supporting their allegation(s) in paragraphs 26 and 197 of the Complaint that
12 “under the First and Second EOs” the “USCIS has suspended or will suspend adjudication” of
13 Plaintiff Hanin Omar Bengezi’s application for adjustment to lawful permanent resident status.”

14 **ANSWER:** Plaintiffs object to Request for Admission No. 10 because it seeks information that
15 is attorney work product privileged in that it asks for Plaintiffs’ counsel’s interpretation of
16 documents/information produced by Defendants and documents/information obtained from other
17 sources. Plaintiffs further respond that responsive documents related to Plaintiff Hanin Omar
18 Bengezi and the First and Second Executive Orders have been heavily redacted, making it
19 difficult to ascertain the implementation of the First and Second Executive Orders and their
20 effects on Bengezi’s application. Without waiving the General Objections, which are
21 incorporated herein, and the foregoing Specific Objections, Plaintiffs deny but further respond
22 that USCIS approved Bengezi’s I-485 application on May 9, 2017. *See* Dkt. 60 at 10.

23
24 **REQUEST FOR ADMISSION NO. 11:** Admit that Plaintiffs cannot identify any documents or
25 other evidence supporting their allegation(s) in paragraphs 25-28, 160, 173, 196, 217, 234, 241,
26 and 243-44 of the Complaint that there is, or that USCIS operates, a “successor ‘extreme vetting’

1 program” to CARRP, and that USCIS has subjected or will subject the applications of the named
2 Plaintiffs and of the class plaintiffs to a “successor ‘extreme vetting’ program” to CARRP.

3 **ANSWER:** Plaintiffs object to Request for Admission No. 11 because it seeks information that
4 is attorney work product privileged in that it asks for Plaintiffs’ counsel’s interpretation of
5 documents/information produced by Defendants and documents/information obtained from other
6 sources. Plaintiffs further object because responsive documents related to the implementation
7 and evolution of CARRP have been heavily redacted, making it difficult to ascertain whether
8 USCIS operates a successor extreme vetting program to CARRP. Without waiving the General
9 Objections, which are incorporated herein, and the foregoing Specific Objections, Plaintiffs
10 admit as to successor programs but further respond, however, that new tools and programmatic
11 changes to CARRP have been implemented. Plaintiffs reserve the right to amend this answer as
12 discovery is still ongoing.

13
14 **REQUEST FOR ADMISSION NO. 12:** Admit that Plaintiffs cannot identify any documents or
15 other evidence supporting their allegation(s) in paragraph 66 of the Complaint that the Terrorist
16 Screening Database (TSDB) or Terrorist Watchlist includes the names of “many” persons who
17 “present no threat to the United States.”

18 **ANSWER:** Plaintiffs object to Request for Admission No. 12 because it seeks information that
19 is attorney work product privileged in that it asks for Plaintiffs’ counsel’s interpretation of
20 documents/information produced by Defendants and documents/information obtained from other
21 sources. Plaintiffs further object because the federal government refuses to disclose the names of
22 those in the Terrorist Screening Database. Without waiving the General Objections, which are
23 incorporated herein, and the foregoing Specific Objections, Plaintiffs deny.

24
25 **REQUEST FOR ADMISSION NO. 13:** Admit that Plaintiffs cannot identify any documents or
26 other evidence supporting their allegation(s) in paragraph 68 of the Complaint that “the Terrorist

1 DATED: October 11, 2019

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EXHIBIT 43

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Domestic Operations Directorate
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

HQ 70/23 & 70/28.1

FEB - 9 2009

Memorandum

TO: Field Leadership

FROM: Donald Neufeld 
Acting Associate Director, Domestic Operations

SUBJECT: National Security Adjudication and Reporting Requirements-Update

Background

U.S. Citizenship and Immigration Services (USCIS) conducts background checks on all applicants, petitioners and beneficiaries seeking immigration benefits.

On February 4, 2008, USCIS issued a memorandum advising USCIS officers that if the following types of applications were otherwise approvable, and the name check request was still pending with the FBI for more than 180 days, the application shall be approved.

- Form I-485, Application for Adjustment of Status ,
- Form I-601, Application for Waiver of Ground of Inadmissibility,
- Form I-687, Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act, or
- Form I-698, Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of Public Law 99-603).

USCIS issued this guidance in response to a DHS Office of Inspector General (OIG-06-06) recommendation that the agency conform its background and security check policies with those of U.S. Immigration and Customs Enforcement (ICE).

Over the past year, the FBI has worked diligently to ensure that definitive FBI name check results are returned to USCIS in less than 180 days. In fact, the FBI is currently returning name check results on average in 90 days. Few, if any, name checks remain pending at the FBI for 180 days. In light of FBI's improved processing and response times, USCIS is revising its policy of automatic approval of certain cases after 180 days. Effective immediately, adjudicators will be

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National Security Adjudication and Reporting Requirements-Update
Page 2

required to contact Headquarters to obtain authorization to approve the pending I-485, I-601, I-687, or I-698 prior to receiving the FBI name check results.

Implementation

This memorandum supersedes the February 4th, 2008, memorandum and is effective immediately. USCIS is also retracting the earlier released, January 22, 2009, memorandum that includes an identical subject line. Questions regarding this memorandum should be directed through appropriate supervisory and operational channels. Local offices should work through their chain of command.

Revised Guidance

A definitive FBI fingerprint check and the IBIS check must be obtained and resolved before an Application for Adjustment of Status (I-485), Application for Waiver of Ground of Inadmissibility (I-601), Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act (I-687), or Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of Public Law 99-603)(I-698) is approved.

USCIS will continue to initiate FBI name checks when those applications are received. Where the application is otherwise approvable and the FBI name check has been pending for more than 150 days, the adjudicator shall notify a designated point of contact at Headquarters. The Headquarters point of contact will reach out to the FBI to determine the reason for the FBI name check processing delay. HQDOMO will then provide the adjudicating officer with case specific guidance, including where appropriate authorization to approve the pending I-485, I-601, I-687, or I-698 prior to receiving the FBI name check results.

As described in the February 4, 2008, memorandum, if derogatory or adverse information is received from the FBI after the application is approved, USCIS will determine if rescission or removal proceedings are appropriate and warranted.

There is no change in the requirement that FBI fingerprint check, IBIS check, and FBI name check results must be obtained and resolved prior to approval of an Application for Naturalization (N-400).

Distribution List:
Regional Directors
Service Center Directors
District Directors (except foreign)
Field Office Directors (except foreign)
National Benefits Center Director

EXHIBIT 44

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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Field Operations
Washington, DC 20529

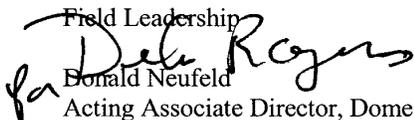


U.S. Citizenship
and Immigration
Services

JUN - 5 2009

HQ 70/43

Memorandum

TO: Field Leadership
FROM:  Donald Neufeld
Acting Associate Director, Domestic Operations

SUBJECT: Clarification and Delineation of Vetting and Adjudication Responsibilities for Controlled Application Review and Resolution Program (CARRP) Cases in Domestic Field Offices

I. Purpose

The purpose of this memorandum is to provide guidance to define the vetting and adjudication responsibilities for Controlled Application Review and Resolution Program (CARRP) cases in the domestic Field Offices. It outlines the distinctions between the duties and responsibilities of Fraud Detection and National Security – Immigration Officer (FDNS-IO) and CARRP-trained Immigration Services Officer (CARRP-ISO). It also explains the roles of Supervisory Immigration Services Officer (SISO) and FDNS-Supervisory Immigration Officer (FDNS-SIO) at each field office.

II. Background

On April 11, 2008, USCIS released the memorandum, *Policy for Vetting and Adjudicating Cases with National Security Concerns* (CARRP memo). This memo instituted the CARRP process, a disciplined approach for identifying, recording, and adjudicating applications and petitions where a National Security (NS) concern is identified. CARRP involves four unique, but overlapping, processing steps. These include:

1. Identifying a NS Concern
2. Assessing Eligibility in Cases with a NS Concern, consisting of:
 - i. Eligibility Assessment
 - ii. Internal Vetting
3. External Vetting
4. CARRP Adjudication

Moreover, CARRP decentralized the process of vetting and adjudicating cases with NS concerns. Prior to CARRP, all such cases were handled at the Headquarters Office of Fraud Detection and National Security (HQFDNS). With the release of CARRP, responsibility for vetting and

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2

Clarification and delineation of vetting and adjudication responsibilities for CARRP cases in Domestic Field Offices.

adjudicating most cases with NS concerns was placed with Field Offices, allowing USCIS to leverage field resources and experienced officers for handling these difficult cases.

After the release of the CARRP memo, Domestic Operations (DomOps), Refugee Affairs Division, International Operations, and the Asylum Division issued separate, but coordinated, Operational Guidance for the implementation of CARRP within their programs. The following guidance is provided to help define the vetting and adjudication responsibilities for CARRP cases in the Domestic Operations Field Offices.

III. Policy Guidance

The current *Operational Guidance for Vetting and Adjudicating Cases with National Security Concerns (Operational Guidance)*, issued by Domestic Operations, provides general guidelines for the processing of cases with National Security (NS) concerns under CARRP, stating the various steps of the process will be completed by a “designated officer”

While the *Operational Guidance* states that a “designated officer” may be “an Immigration Analyst, Immigration Officer, Adjudications Officer, Asylum Officer or Refugee Officer,” the Office of Field Operations (OFO) is issuing this memorandum in order to establish the assignment of specific CARRP duties and responsibilities to the FDNS-IOs and the CARRP-ISOs who perform CARRP adjudications within each Field and District Office or on temporary duty at a Field or District Office. Per the *Operational Guidance*, a Field Office Director (FOD) will designate a specific Immigration Services Officer(s) to be trained in both CARRP procedures and the use of the Fraud Detection and National Security Data System (FDNS-DS).

In addition, the memorandum entitled, *Actions to be Taken to Standardize CARRP File Identification and the Movement of CARRP Cases Between the Components of USCIS*, dated March 26, 2009, authorizes the FOD to also designate one or more SISOs in each Field Office to perform some or all of the duties described herein for a SISO if he or she chooses. The SISO will play a central role in managing the CARRP process by coordinating the movement of CARRP files, assigning CARRP cases to a CARRP-ISO for adjudication, and providing supervisory concurrence for final adjudication of CARRP cases. Additionally, the FOD will outline local procedures regarding supervision, coordination and actions of the FDNS-IO and CARRP-ISO when there is no FDNS-Supervisory Immigration Officer (FDNS-SIO) located in the Field Office.

Clarification of Duties and Responsibilities within the CARRP Process:

As mentioned earlier, The *Operational Guidance* breaks down the CARRP process into four steps.

1. Identifying a NS Concern – Step 1 of CARRP Process:

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3

Clarification and delineation of vetting and adjudication responsibilities for CARRP cases in Domestic Field Offices.

As noted in section III of the *Operational Guidance*, indicators of a NS concern may be identified at any time during the adjudicative processing of an application or petition. When such an indicator is noted for a case within a Field Office, the FDNS-IO is responsible for completing the identification of the NS concern. To do this, the FDNS-IO does the following:

LE

More detailed guidelines on completing the identification of a NS concern are available in the *Operational Guidance*, section III.

In many instances, CARRP cases received in a Field Office will have gone through Step One of the *Operational Guidance*, “Identifying a NS Concern” at either a Service Center or the National Benefits Center (NBC). In such cases, the SISO overseeing the CARRP process in each Field Office will coordinate with the FDNS-SIO, if available, or follow local procedures to have the case assigned to the appropriate FDNS-IO for Step Two of the *Operational Guidance*, “Assessing Eligibility in Cases with a NS Concern.” The SISO will also assign a CARRP-ISO to adjudicate the application or petition in each CARRP case.

2. Assessing Eligibility in Cases with a NS Concern – Step 2 of CARRP Process:

Step 2 of the *Operational Guidance* includes both an *eligibility assessment* and *internal vetting* of the CARRP case. The purpose of Step 2 is two-fold: First, it is at this point in the CARRP process where both the FDNS-IO and the CARRP-ISO are required to thoroughly review the case file. 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. Second, specific questions and issues are compiled by both the FDNS-IO and the CARRP-ISO for discussion with the Record Owner of the NS hit so that the critical decisions, such as when an interview should be scheduled, can be made regarding adjudicating the application or petition.

The FOD in each Field Office will decide on the workflow of the CARRP case for this step of the CARRP process. More detail about the features of the elements of step two are described below:

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4

Clarification and delineation of vetting and adjudication responsibilities for CARRP cases in Domestic Field Offices.

a. The Eligibility Assessment

The CARRP-ISO assigned to adjudicate the CARRP case will conduct a complete review of the case file in order to assess the individual's eligibility for the benefit sought and identify any questions and/or issues for discussion with the Record Owner during deconfliction. **Any denial** at this stage in the CARRP process shall be issued **only** after proper deconfliction, completion of required systems checks and supervisory concurrence. No denial shall be issued at this stage in the CARRP process based solely on discretionary grounds. See Section IV, "Assessing Eligibility in Cases with a NS Concern – Step 2 of CARRP Process" of the *Operational Guidance*. **The CARRP-ISO is responsible for documenting their actions related to the adjudication process in FDNS-DS at all stages of the adjudications process.**

b. Internal Vetting

The FDNS-IO is responsible for conducting the internal vetting of a CARRP case. This includes a complete review of the file to obtain any relevant information to support the adjudication, to perform the required systems checks, ensuring all systems checks are current, and, in some cases, to further examine the nature of the NS concern. A complete list of both the required and suggested systems checks which are a part of the internal vetting process can be found in Section IV, "Assessing Eligibility in Cases with a NS Concern – Step 2 of CARRP Process" of the *Operational Guidance*. **The FDNS-IO is responsible for documenting his or her actions in FDNS-DS throughout the CARRP process.**

As in the Eligibility Assessment part of this step, **any denial** at this stage in the CARRP process shall be issued **only** after proper deconfliction, completion of required systems checks and supervisory concurrence. No denial shall be issued at this stage in the CARRP process based solely on discretionary grounds. See Section IV, "Assessing Eligibility in Cases with a NS Concern – Step 2 of CARRP Process" of the *Operational Guidance*.

Performance of the eligibility assessment, internal vetting and deconfliction processes must be closely coordinated between the CARRP-ISO and the FDNS-IO. The FOD or SISO must ensure that there is efficient communication between CARRP-ISOs and FDNS-IOs so that mistakes are not made.

c. Deconfliction

As the Field Office's primary point of contact and liaison with Law Enforcement Agencies (LEA), the FDNS-IO is responsible for deconfliction with the Record Owner

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Clarification and delineation of vetting and adjudication responsibilities for CARRP cases in Domestic Field Offices.

for all CARRP cases. FDNS-IOs are reminded that deconfliction may be necessary at any stage of the CARRP process and that deconfliction may need to be completed more than once before the final adjudication of a CARRP case. Again, this emphasizes the need for the FDNS-IO to maintain efficient communication with the appropriate CARRP-ISO and the SISO.

When contacting an LEA, it is also important for FDNS-IOs to remember that they must be careful to observe all security and special handling precautions in accordance with DHS and originating Record Owner requirements. Maintaining good security protocols promotes close and productive relationships with USCIS' law enforcement partners.

As per the *Operational Guidance*, the FDNS-IO may ask the Record Owner whether their agency has additional information (other than NS related information) that would affect the eligibility for the benefit sought. The FDNS-IO may also seek to resolve any other relevant concerns (i.e., criminal, public safety, fraud) identified through the security check process or review of the file. The FDNS-IO should explain the benefit sought to the Record Owner and bring up any questions or issues requested by the CARRP-ISO during the eligibility assessment in order to gain as much information as possible for the adjudication of the case. When possible, the FDNS-IO should include the CARRP-ISO when contacting the Record Owner for deconfliction.

Complete instructions for deconfliction are in Section IV, part C, "Deconfliction" of the *Operational Guidance*.

d. Documenting Eligibility Assessment and Internal Vetting

The results of the eligibility assessment, internal vetting and deconfliction must be fully documented in FDNS-DS. A copy of the Background Check and Adjudicative Assessment (BCAA) Report should then be printed from FDNS-DS and placed in the A-File.

Both the FDNS-IO and the CARRP-ISO are responsible for entering their activities, documentation, etc. into the FDNS-DS system throughout the CARRP process. USCIS policy requires that each action taken while working on a CARRP case is immediately entered into FDNS-DS and that each process phase be immediately updated as it is completed in order to ensure accurate reporting for each NS case. Field Offices may have varying local procedures to ensure FDNS-DS is fully up-to-date at the end of each and every stage of the CARRP process. Such procedures are permissible provided that all information pertaining to each CARRP case is entered into FDNS-DS at the appropriate time as dictated by FDNS-DS User Guidelines. (See the FDNS web site on the USCIS intranet).

e. Individual Deemed Eligible for the Benefit

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Clarification and delineation of vetting and adjudication responsibilities for CARRP cases in Domestic Field Offices.

Per the *Operational Guidance*, when a NS concern remains and the individual is deemed eligible for the benefit at the Eligibility Assessment/Internal Vetting stage, no benefit may be granted until external vetting is complete, unless an exception applies. See Section VIII, “Case Specific Exceptions and Miscellaneous Guidance”, which includes ancillary benefits, I-90s, Santillan cases, motions, appeals, exemptions and dealing with classified information.

3. External Vetting – Step 3 of CARRP Process:

a. KST NS Concerns

Pursuant to current CARRP guidance, FDNS-IOs in the Field are not authorized to conduct external vetting with a Record Owner in possession of NS information where NS concerns indicate the subject is a KST. FDNS-IOs are authorized to conduct internal vetting of KST cases, as designated earlier in this memo, while CARRP-ISOs are authorized to conduct an initial eligibility assessment of KST cases. HQFDNS has sole responsibility for external vetting of KST NS concerns and conducts external vetting only as a last resort when the NS Concern remains and ineligibility grounds have not been identified.

If, following internal vetting and an initial eligibility assessment, the applicant or petitioner is found to be otherwise eligible, either the FDNS-IO or the CARRP-ISO must proceed as follows:

- The CARRP-ISO must complete the initial eligibility assessment and update FDNS-DS accordingly;
- The FDNS-IO must complete all internal vetting and deconfliction and update FDNS-DS accordingly; and
- Per local procedure established by the FOD, either the SISO in charge of CARRP or the FDNS-SIO, must verify that the internal vetting and deconfliction was completed, documented in the physical file by including a copy of the BCAA report (printed from FDNS-DS), and all actions are properly updated within FDNS-DS. Supervisory concurrence must be indicated in FDNS-DS.

Per the *Operational Guidance* “local management” (either the FOD or the District Director (DD) which is to be determined in each Field Office) must review the case to confirm that no grounds of ineligibility have been identified. Local management (FOD and/or DD as per local policy) concurrence must be indicated in FDNS-DS.

Per local office procedures, the FOD or designated supervisor (“Designated supervisor” may be an SISO or FDNS-SIO, depending on local staffing), in charge of CARRP will designate which officer, the FDNS-IO or the CARRP-ISO, must complete a Request for Assistance (RFA) to HQFDNS as noted in Section II.B of the *Operational Guidance*.

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Clarification and delineation of vetting and adjudication responsibilities for CARRP cases in Domestic Field Offices.

Also per local office procedures, the FOD or SISO will designate which personnel will charge the file to COW FD0004 in NFTS and forward the physical file to HQFDNS, attention Milagros Castillo, Staff Assistant. FDNS-IOs and CARRP-ISOs are reminded that they may request both vetting and adjudicative assistance from HQFDNS, and should do so in cases involving KSTs or cases in litigation.

b. Non-KST NS Concerns

The FDNS-IO in each Field Office is responsible for conducting external vetting of Non-KST cases. Complete instructions for Section V, “External Vetting – Step 3 of CARRP Process” are available in the *Operational Guidance*.

The FDNS-IO must seek any additional information that may be relevant to a determination of eligibility. This may include information concerning indicators of fraud, foreign travel and information about employment or family relationships that would otherwise not rise to the threshold necessary for criminal prosecution. It is vital for the FDNS-IO to clearly document any facts or fact patterns found during the external vetting process for use by the CARRP-ISO in the final adjudication of the case.

As stated earlier, the FDNS-IO is the primary point of contact and liaison for external vetting of Non-KST CARRP cases with any LEA, Record Owner and relevant agency. Complete instructions for Section V, “External Vetting – Step 3 of CARRP Process” are available in the *Operational Guidance*.

Throughout the CARRP process, FDNS-IOs must conduct deconfliction as necessary. This is done to ensure that planned adjudicative activities (e.g., interview, request for evidence, site visit, decision to grant or deny a benefit, or timing of the decision) do not compromise or impede an ongoing investigation or other Record Owner interest. This requires close coordination with the CARRP-ISO regarding any interview that may be necessary or required to complete the adjudicative process.

It is vital for the FDNS-IO to fully document all activities and their results connected with external vetting in FDNS-DS. This documentation must be completed before the case moves forward in the CARRP process.

The FDNS-IO must also ensure deconfliction is complete and documented properly in FDNS-DS before any CARRP case goes forward for adjudication.

4. CARRP Adjudication – Step 4 of CARRP Process:

CARRP-ISOs are responsible for the adjudication of CARRP cases assigned to them by the SISO in charge of CARRP, or the FOD, in each Field Office. The CARRP-ISO must check

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Clarification and delineation of vetting and adjudication responsibilities for CARRP cases in Domestic Field Offices.

FDNS-DS to ensure deconfliction is complete before adjudicating any CARRP case. If the deconfliction does not appear in the FDNS-DS record, the CARRP-ISO shall inform the SISO responsible for CARRP cases. The SISO must then contact the FDNS-SIO, if one is located in the Field Office, to direct the FDNS-IO to either complete the required deconfliction and document this action in FDNS-DS or, if deconfliction has been completed, direct the FDNS-IO to complete the documentation of the deconfliction in FDNS-DS. If a Field Office does not have an FDNS-SIO, the SISO must follow local procedures to contact an FDNS-IO to complete and/or document the required deconfliction in FDNS-DS.

a. Adjudicating Applications with KST NS Concerns

Upon completion of all external vetting, HQFDNS will return cases to the submitting officer when:

1. HQFDNS has determined that the information obtained during external vetting is sufficient to support a denial of the pending application or petition; or
2. HQ senior leadership and the USCIS Deputy Director recommend approval of the application or petition. Following this recommendation, the HQ program office with jurisdiction over the case, in coordination with HQFDNS and Office of Chief Counsel, will issue written direction to the field on how to proceed with adjudication.

b. Adjudicating Applications or Petitions with Non-KST NS Concerns

The CARRP-ISO must obtain supervisory approval and concurrence from the FOD in order to approve any application or petition that grants a benefit to an individual with remaining Non-KST NS concerns. Once the FOD concurs that the individual is otherwise eligible for the benefit, the FOD may use his or her discretion to have the CARRP-ISO grant the benefit or the FOD may designate either the FDNS-IO or the CARRP-ISO to request further assistance from HQFDNS/ASU (Adjudication Support Unit). (See Section VI, "Requesting Vetting Assistance from HQFDNS" in the *Operational Guidance*.) If, after consultation with the respective HQ component, the FOD decides to grant the benefit, the FOD, or FOD's designee, must document all adjudicative actions in FDNS-DS, and print out the BCAA report for inclusion in the case file.

REMEMBER: Both FDNS-IOs and CARRP-ISOs have distinct duties to perform in the processing of CARRP cases; however, close cooperation and coordination of effort between Officers is necessary in order to bring each case to completion.

Field Office personnel are reminded to follow the guidelines for confidentiality, Privacy Act requirements (e.g., DHS Handbook for Safeguarding Sensitive Personally Identifiable Information) and handling sensitive but unclassified (For Official Use Only – FOUO)

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Clarification and delineation of vetting and adjudication responsibilities for CARRP cases in Domestic Field Offices.

information while working on all CARRP cases. Specific guidelines may be found in Sections C & D, pages 7 & 8 of the *Operational Guidance*.

In addition, Field Office personnel are reminded to adhere to all security-related policies related to protecting FOUO and classified information. Specific guidelines regarding the provisions of Executive Order are found in the *Operational Guidance*. Information regarding the specific regulations governing the protection of FOUO and Executive Order 12958, as amended, Classified National Security Information, is available at the intranet site of the USCIS Office of Security and Investigations.

IV. Contact Information

Questions regarding this memorandum may be directed through official channels to HQ, Office of Field Operations.

Distribution List:

Regional Directors
District Directors
Service Center Directors
Field Office Directors
National Benefits Center Director

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EXHIBIT 45

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000



**U.S. Citizenship
and Immigration
Services**

July 26, 2011

PM-602-0042

Policy Memorandum

SUBJECT: Revision of Responsibilities for CARRP Cases Involving Known or Suspected Terrorists

Purpose

This memorandum provides revisions to the Controlled Application Review and Resolution Program (CARRP), the U.S. Citizenship and Immigration Services (USCIS) policy on processing cases containing national security (NS) concerns. This memorandum amends previous guidance established in the policy memoranda listed below and authorizes designated officers¹ in the field² to perform external vetting in cases involving Known or Suspected Terrorists (KSTs). Further, this memorandum rescinds guidance requiring the field to seek adjudicative assistance from Headquarters FDNS (HQFDNS) for both KST and Non-KST cases.

Scope

Unless specifically exempted herein, this policy memorandum applies to and is binding on all USCIS employees.

Authority

This memorandum revises:

The April 11, 2008, policy memorandum issued by Deputy Director Jonathan R. Scharfen titled "Policy for Vetting and Adjudicating Cases with National Security Concerns" (CARRP Memo).

Background

The April 11, 2008 memorandum established CARRP, a disciplined, agency-wide approach for identifying, processing and adjudicating applications and petitions involving NS concerns.

Under CARRP, responsibility for vetting and documenting Non-KST NS concerns and adjudicating all NS-related applications and petitions was delegated to the field. HQFDNS retained responsibility for the external vetting of KST cases.

¹ The term "designated" refers to those officers that are currently assigned and are responsible for various steps in the CARRP process (i.e., identifying, vetting/eligibility assessment, external vetting, CARRP Adjudication). This policy memorandum and the attached supplemental guidance do not intend to change the delineated roles and responsibilities (instituted by various USCIS Directorates) of USCIS officers currently processing CARRP cases.

² The field refers to Field Offices, Service Centers, the National Benefits Center, and equivalent offices within the Refugee, Asylum, and International Operations Directorate (RAIO), and the officers designated to perform different tasks related to the CARRP process.

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Over the past three years, the field has acquired valuable experience and expertise in vetting and adjudicating NS cases. In addition, the field has worked diligently to establish collaborative working relationships with their counterparts in the law enforcement community, including local Joint Terrorism Task Forces (JTTFs). This has resulted in an access to information and resources not previously available to the field. As such, authorizing the field to externally vet KSTs directly with the law enforcement and intelligence community (LEIC) will increase efficiency and effectiveness by reducing the often redundant movement of information between the field, HQFDNS, and the LEIC without compromising the integrity of the process.

Policy

The field is now authorized to contact the record owner or nominating agency to vet and deconflict NS concerns involving KSTs. The field, however, is not authorized to approve applications or petitions with confirmed KST NS concerns; that authority continues to rest with the senior leadership of this Agency.

In addition, if, after completing the vetting and deconfliction process in KST cases, there continue to be national security concerns, and there is insufficient evidence or other grounds to deny the application, offices are to seek further guidance from their respective HQ Directorate, in consultation with local and HQ counsel when appropriate. HQFDNS will no longer provide adjudicative assistance. HQFDNS will, however, remain available to provide vetting assistance, including the identification of the record owner and the resolution of issues involving record owners.

Implementation

As a result of this delegation of authority, the nature of assistance requested from HQFDNS is limited to those outlined below. Following the initial eligibility assessment and internal vetting, if no ineligibility grounds are identified, the field will conduct external vetting³. Upon obtaining local management approval, the field may e-mail a Request for Assistance (RFA) to HQFDNS (FDNS-NSB@dhs.gov) under the following circumstances:

- To identify the NS record owner of the KST nominating entity;
 - HQFDNS will identify a POC. The field must then contact the POC for external vetting and deconfliction.
 - If HQFDNS is unable to identify a POC⁴, HQFDNS will conduct external vetting and deconfliction.
- To seek assistance in contacting or resolving issues with the record holder; and
- To conduct queries of classified systems⁵.

Except as noted in this memo, all current CARRP guidance provided by various Directorates remains in effect.

³ External vetting must be conducted if no ineligibility grounds have been identified or if Field Management determines further processing is necessary to strengthen or support a decision. KST external vetting is to be conducted by officers who are currently conducting external vetting of Non-KST cases.

⁴ These KSTs are generally nominated by certain members of Intelligence Community for which a POC is not available.

⁵ Classified High Side checks must not be requested routinely. Rather, the field must articulate a need for such checks. For example, where the nominating agency is either a foreign entity or a member of Intelligence Community (other than the FBI) and additional information cannot be obtained through the local JTTF.

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Use

This PM is intended solely for the guidance of USCIS personnel in the performance of their official duties. It is not intended to, does not, and may not, be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

Contact Information

Questions or suggestions regarding this PM should be addressed through appropriate channels to HQFDNS.

EXHIBIT 48

THE HONORABLE RICHARD A. JONES

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

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

Plaintiffs,

v.

DONALD TRUMP, President of the United
States, *et al.*,

Defendants.

CASE NO. 2:17-cv-00094-RAJ

**DEFENDANTS' RESPONSE TO
PLAINTIFFS' MOTION TO
COMPEL DOCUMENTS
WITHHELD UNDER THE LAW
ENFORCEMENT AND
DELIBERATIVE PROCESS
PRIVILEGES**

INTRODUCTION

1
2 Defendants have properly, and in accordance with the Court’s prior orders, asserted the law
3 enforcement and deliberative process privileges over the redacted portions of the 41 documents
4 remaining at issue in Plaintiffs’ motion to compel. These documents contain redactions over types
5 of information the Court has found to be law enforcement-privileged, such as database codes,
6 personally identifying information, and third-party law enforcement agency information. The
7 documents also contain redactions over DHS information identifying the types of information the
8 United States receives from foreign governments and revealing the scope and limitations of the
9 government’s screening and vetting practices. The documents additionally contain redactions over
10 internal USCIS information that is closely interwoven with the aforementioned, third agency
11 privileged information, and accordingly, is privileged as well. Furthermore, Plaintiffs’ non-
12 compelling need for the law enforcement-sensitive information they seek is far outweighed by the
13 public’s interest in nondisclosure of information that, if disclosed, would pose risks to public safety
14 and national security.

15 These documents also contain redactions over types of information the Court has found to be
16 deliberative process-privileged, such as pre-decisional policy options, recommendations, proposals,
17 and suggestions that were never implemented. Nondisclosure of these types of deliberative
18 information is appropriate where the information lacks relevance to Plaintiffs’ claims, other evidence
19 related to Plaintiffs’ claims is available, and the disclosure would hinder agency officials’ candid
20 communication about policy choices.

21 Finally, contrary to Plaintiffs’ claims, the existence of a Stipulated Protective Order in this
22 case does not sufficiently guard against the harm that would result from the disclosure of the
23 information in these documents redacted pursuant to the law enforcement and deliberative process
24 privileges.

PROCEDURAL HISTORY

1
2 Plaintiffs challenge CARRP, USCIS's policy for identifying and processing cases with
3 national security concerns, on both statutory and constitutional grounds. *See generally* Dkt. 47.
4 Defendants have produced to Plaintiffs, *inter alia*, roughly 40,000 documents. Plaintiffs have made
5 numerous challenges to Defendants' law enforcement and deliberative process privilege redactions
6 in produced documents. *See, e.g.*, Dkt. Nos. 109, 152, 221, 260. And the Court has issued various
7 orders on these topics. *See, e.g.*, Dkt. Nos. 148, 189, 263, 274, 320.

9 On January 9, 2020, Plaintiffs filed a motion to compel challenging Defendants' law
10 enforcement and deliberative process privilege redactions in a number of documents in several
11 respects. However, following the Court's January 16, 2020 order addressing related issues, the
12 parties met and conferred, and Defendants reproduced a portion of the initially challenged
13 documents with fewer redactions. As a result, Plaintiffs currently challenge Defendants' redactions
14 in 41 documents, including five documents that are part of the Certified Administrative Record
15 ("CAR"),¹ pursuant to the law enforcement and deliberative process privileges. *See* Ex. B; *see also*
16 Dkt. 320. The response therefore addresses the propriety of the redactions in those documents.
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23 ¹ Based on Plaintiffs' initial challenge that privileges had never been properly asserted over the CAR, Defendants
24 directed Plaintiffs to CAR duplicates or near-duplicates that were produced with privilege logs and declarations. *See*
25 Dkt. 312 at 2; *see also* Ex. A, CAR Duplicate Chart. On January 31, 2020, Plaintiffs stated that they "agree[d] to
26 withdraw their challenge that Defendants improperly asserted privilege over the [CAR], at this time." Ex. B, E-Mails
27 Between Heath Hyatt and Victoria Braga. Then, on February 2, 2020, in response to a statement made by Defendants
28 following Plaintiffs' January 31, 2020 e-mail, Plaintiffs informed Defendants that they are challenging six CAR
documents, *see* Ex. B, for two of which Defendants identified the same document as a duplicate or near-duplicate, *see*
Ex. A. Defendants understand that Plaintiffs are challenging the redactions in these six CAR documents, and not the
manner in which Defendants claimed privilege over the redacted information therein. However, as a result of how
Plaintiffs initially challenged the CAR, Defendants will refer to these documents in this response by the Bates numbers
of their five otherwise-produced duplicates or near-duplicates. *See* Ex. A.

ARGUMENT

I. Defendants Have Properly Withheld Information as Law Enforcement-Privileged

Defendants' law enforcement redactions fall within the scope of the privilege as defined by applicable law and the Court in this litigation. The attached declarations of the Matthew D. Emrich – Associate Director of USCIS's Fraud Detention and National Security ("FDNS") Directorate – and Michael Scardaville – a Senior Advisor for the Screening and Vetting Directorate in the Office of Strategy, Policy, and Plans within the Department of Homeland Security ("DHS") – discuss three broad categories of law enforcement-privileged information within the 41 documents at issue: third-party agency information, USCIS information intertwined with third-party agency information, and DHS information. *See generally* Ex. C, Emrich Decl.; Ex. D, Scardaville Decl.

Defendants redacted third-party law enforcement agency information from 31 of the documents at issue. *See* Ex. C at 8 ¶ 23; Ex. D at 3 ¶ 4. The redacted information in these documents includes, *inter alia*, information about "sensitive electronic systems, as well as codes," Ex. C at 8 ¶ 24, information "related to the Federal Bureau of Investigation's ("FBI") National Namecheck Program and fingerprint check," *id.* at 8 ¶ 26, and information about law enforcement agencies "processes and techniques for making national security and law enforcement evaluations," Ex. D at 3 ¶ 6. Declarations submitted by third-party law enforcement agencies attest that such information is included in the documents at issue, and explain, as they have in the past, how the disclosure of such information poses a risk to national security and public safety. *See generally* Ex. E, Campbell Decl.; Ex. F, Allen Decl.; Ex. G, Jung Decl. Mr. Emrich and Mr. Scardaville add that the disclosure of third-party law enforcement agency information could harm critical information-sharing relationships that mutually benefit the work and mission of these agencies and USCIS and DHS. *See* Ex. C at 9-10 ¶ 32; Ex. D at 4 ¶ 9.

1 Moreover, this Court has been cognizant of the dangers of disclosing third-party law
2 enforcement agency information. *See In re Dept. of Homeland Security*, 459 F.3d 565, 569 (5th Cir.
3 2006) (noting reasons for protecting law enforcement information from disclosure “are even more
4 compelling” in “today’s times,” when “the compelled production of government documents could
5 impact highly sensitive matters relating to national security”). The Court has recognized the
6 existence of a law enforcement privilege four times in this litigation. *See* Dkt. 98 at 3, Dkt. 148 at 3;
7 Dkt. 274 at 4-5; Dkt. 320 at 6-8. Most recently, the Court specified that “[i]nformation regarding
8 law enforcement databases,” and “[t]hird-party law enforcement agency information” could remain
9 redacted as law-enforcement privileged information. Dkt. 320 at 6-; *see also In re Dep’t of*
10 *Investigation of the City of N.Y.*, 856 F.2d 481, 484 (2d Cir. 1988) (listing “prevent[ing] disclosure of
11 law enforcement techniques and procedures” and “otherwise prevent[ing] interference with an
12 investigation” as two “purpose[s] of the [law enforcement privilege”).
13

14 Plaintiffs, too, seemingly recognize the danger in the disclosure of this information, recently
15 noting that they are “not challenging redactions that appear to be screenshots of USCIS or third-
16 party computer databases . . . the redaction of personal identifying information . . . [or] the redaction
17 of methods and techniques that third-agencies use to collect information.” Ex. B; *see also*
18 *Frankenhauser v. Rizzo*, 59 F.R.D. 339, 344 (E.D. Pa. 1973) (listing “the importance of the
19 information sought to the plaintiffs’ case” as a factor to consider when balancing the public’s interest
20 in nondisclosure against the moving party’s need for access to the privileged information).
21 Ultimately, given this Court’s prior rulings and Plaintiffs’ clarification about the types of
22 information in which they are and are not interested, there is no question that the third-party law
23 enforcement agency information in the documents at issue has been properly withheld as law
24 enforcement privileged. *See* Dkt. 320 at 6-7; *see also Dep’t of Investigation of the City of N.Y.*, 856
25 F.2d at 484.
26
27

1 Defendants also protected USCIS information intertwined with third agency information as
2 law-enforcement privileged in 15 documents. Ex. C at 10 ¶ 34. Mr. Emrich indicates that the
3 withheld USCIS information in these documents is interlinked with the third agency law
4 enforcement-privileged information discussed above. *See generally id.* 10-13 ¶¶ 34-44. Redacted
5 UCSIS information within these documents is only withheld in so far as “the disclosure . . . would
6 provide insight into third agency law enforcement information.” *Id.* at 10 ¶ 34.

7
8 First, redacted USCIS information in these documents may reveal “investigative information
9 obtained from” law enforcement agencies. Ex. C at 10 ¶ 35. The Court’s January 16, 2020 order
10 squarely determined that “third-party agency information [relied upon] to make CARRP
11 determinations” and information that could “thwart future cross-agency information sharing” was
12 protected from disclosure. Dkt. 320 at 6-7. The Court also clarified that where USCIS information
13 is intertwined with third agency information, that information may remain redacted. *Id.* at 8, fn 2.
14 “Investigative information obtained from” law enforcement agencies fits within those categories.
15 *See Ex. C at 10 ¶ 35.*

16
17 Next, Mr. Emrich describes certain information related to the Fraud Detection and National
18 Security – Data System (FDNS-DS) and ATLAS (not an acronym) that remains withheld. *Id.* at 10-
19 12 ¶¶ 36-39. ATLAS is a USCIS platform that works within FDNS-DS and interacts with third
20 agency databases, such as TECS. *Id.* at 12 ¶ 39. In its January 16, 2020 order, the Court found that
21 information related to FDNS-DS in prior documents was properly withheld. *See* Dkt. 320 at 6
22 (citing the paragraphs of Mr. Emrich’s prior declaration discussing FDNS-DS and denying
23 Plaintiffs’ motion to compel this information). The redacted information at issue here is of the same
24 nature as the information the Court determined was properly withheld. Further, the redacted
25 information is generally screenshots, from which plaintiffs have disclaimed interest. *See Ex. B.*
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1 Last, Mr. Emrich describes information from actual “USCIS administrative investigation[s]”
2 where an individual “may have also been under investigation by a third-party law enforcement
3 agency.” Ex. C at 12 ¶ 40. In these instances, Defendants disclosed general descriptions of cases,
4 but withheld specific personally identifying information, in accordance with the Court’s recent order.
5 *Id.*; see Dkt. 320 at 6.

6 In its recent order, the Court found “the balance of factors [to] weigh in favor of disclosure”
7 of “[i]nternal USCIS information.” Dkt. 320 at 7. However, the Court was clear that to the extent
8 internal USCIS information implicates the types of information the Court found to be properly
9 redacted pursuant to the law enforcement privilege – third-party law enforcement agency
10 information, information regarding law enforcement databases, and personal identifying information
11 – the USCIS information could remain redacted. *Id.* at 8 n.2. As discussed above, the types of
12 internal USCIS information that remains redacted from the documents at issue here falls squarely
13 within this category of information, and is privileged on that basis.
14

15 Furthermore, the fact that all of the internal USCIS information discussed in paragraphs 34-
16 39 of Mr. Emrich declaration is intertwined with third agency information establishes a “strong
17 presumption against lifting the privilege.” See Dkt. 320, at 6-7; see also *In Re City of N.Y.*, 607 F.3d
18 923, 945 (2d Cir. 2010) (quoting *Dellwood Farms, Inc. v. Cargill, Inc.*, 128 F.3d 1122, 1125 (7th
19 Cir. 1997)). And Plaintiffs have certainly failed to show a “compelling need” for the redacted
20 USCIS information that is intertwined with third agency information, much less one that “outweighs
21 the public interest in nondisclosure.” See *City of N.Y.*, 607 F.3d at 945. In this regard, Plaintiffs
22 have admitted that they are not interested in databases, personally identifying information, and third-
23 party law enforcement agency methods and techniques, Ex. B, precisely the types of information
24 implicated by the USCIS information at issue, see Ex. C at 36-41; see also *Frankenhauser*, 59
25 F.R.D. at 344 (E.D. Pa. 1973) (listing “the importance of the information sought to the plaintiffs’
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1 case” as factor to consider when balancing the public interest’s in nondisclosure against the moving
2 party’s need for access to the privileged information). Additionally, in redacting USCIS information
3 that is intertwined with this otherwise privileged information in which Plaintiffs are not interested,
4 Defendants have endeavored to redact only information that is truly indistinguishable from the
5 otherwise privileged information, and to disclose to Plaintiffs information that is pertinent to their
6 claims. *See, e.g.*, Ex. C at 9 ¶ 27 (discussing the redaction of third-party law enforcement agency
7 information from hypotheticals, while otherwise releasing the content of the hypotheticals); *id.* at 12
8 ¶ 40 (noting that “descriptions of the [actual] cases themselves are generally revealed . . . however,
9 more specific information that may be sufficient to identify a particular individual . . . remains
10 redacted”); *see also Frankenhauser*, 59 F.R.D. at 344 (listing “whether the information sought is
11 available through other discovery or from other sources” as a factor to consider when balancing the
12 public interest’s in nondisclosure against the moving party’s need for access to the privileged
13 information). Based on these considerations, on balance, the withheld law enforcement privileged
14 USCIS information should remain redacted.
15

16
17 Finally, Defendants protected DHS information as law enforcement-privileged in
18 8 documents. *See* Ex. D at 5 ¶¶ 13-14, 6 ¶ 16, 6-7 ¶¶ 19-20, 22, 8 ¶ 26, 9 ¶ 28. Withheld
19 information includes information concerning an interagency evaluation of foreign governments’
20 information sharing capabilities, *id.* at 6 ¶ 16, the development of a uniform baseline for screening
21 and vetting procedures, *id.* at 6 ¶¶ 18-19, and information regarding sensitive electronic systems, *id.*
22 at 8 ¶ 26, 9 ¶ 28. The national security risks associated with the disclosure of such information are
23 readily apparent. *See, e.g., id.* at 6 ¶ 16, 6-7 ¶ 20; *see also Dept. of Homeland Security*, 459 F.3d at
24 569 (noting reasons for protecting law enforcement information from disclosure “are even more
25 compelling” in “today’s times,” when “the compelled production of government documents could
26 impact highly sensitive matters relating to national security”). Moreover, Plaintiffs again fall far
27

1 short of showing a compelling need for the DHS information they seek, much less one that
2 outweighs the public interest in nondisclosure. *See City of N.Y.*, 607 F.3d at 945. This is particularly
3 so where, as Mr. Scardaville explains, the DHS information Plaintiffs seek – excepting in one
4 instance of sensitive DHS law enforcement information in a USCIS document – “includes no
5 references to CARRP, much less any discussion of CARRP policy, procedure, or training.” Ex. D at
6 ¶ 17, 7 ¶ 23, 8 ¶ 27; *see Frankenhauser*, 59 F.R.D. at 344 (listing “the importance of the
7 information sought to the plaintiffs’ case” as a factor to consider when balancing the public interest’s
8 in nondisclosure against the moving party’s need for access to the privileged information). Indeed,
9 Plaintiffs have not even attempted to explain the relevance of DHS information unrelated to
10 CARRP—much less provide persuasive arguments that their interest outweighs the public interest in
11 nondisclosure. *See generally* Dkt. 312. Though the vast majority of DHS documents Plaintiffs seek
12 relate to Executive Order 13780, no mention of the Executive Order is even made in Plaintiffs’
13 motion. *See generally id.* In fact, no reference to DHS or its interests can be found in Plaintiffs’
14 motion at all—Plaintiffs arguments focus solely on USCIS and CARRP. *See generally id.*
15 Consequently, it is clear that, on balance, the withheld law enforcement-privileged DHS information
16 should remain redacted.

19 **II. Defendants Have Properly Withheld Information Under the Deliberative Process** 20 **Privilege**

21 Defendants’ deliberative process redactions fall within the scope of the privilege as defined
22 by applicable law and the Court in this litigation. Defendants have protected USCIS information in
23 14 documents, and DHS and/or third-party information in 11 documents, as deliberative. Ex. C at 5
24 ¶ 10; *see generally* Ex. D at 3-8 ¶¶ 4-27. The USCIS information withheld as deliberative includes
25 draft documents, as well as documents presenting “options,” “proposals,” “suggestions,” and
26 “considerations” regarding USCIS policy, many of which were not ultimately part of implemented
27

1 USCIS policy and/or may have been implemented in an altered form. *See* Ex. C at 5-6 ¶¶ 11-18.
2 The Court has recently confirmed that such information is “predecisional and deliberative,” and
3 therefore subject to the application of the deliberative process privilege. *See* Dkt. 320 at 9 (“the
4 deliberative process privilege applies to this document because it is (1) predecisional and (2)
5 deliberative in nature, in that it relates to “opinions, recommendations, [and] advice about agency
6 policies”) (citing *F.T.C. v. Warner Connc’ns Inc.*, 742 F.2d 1156, 1161 (9th Cir. 1984)); *see also*
7 Dkt. 189 at 4, Dkt. 263 at 3.
8

9 The privilege over the deliberative USCIS information at issue here should not be pierced.
10 Mr. Emrich details the detrimental effect the release of this information would have on candid
11 communication among USCIS policymakers, thereby impeding USCIS’s ability to base policy
12 decisions on the best information available. Ex. C at 7 ¶¶ 19-20. The Court has found the existence
13 of such risks to weigh against disclosure. Dkt. 320 at 9 (“the extent to which disclosure of this
14 document could hinder ‘frank and independent discussion[s] regarding contemplated policies and
15 decisions’ weighs in favor of denying the motion”); *see F.T.C. v. Warner Connc’ns Inc.*, 742 F.2d at
16 1161 (establishing this consideration as a factor to consider when balancing whether a moving
17 party’s need for materials and accurate fact-finding overrides the government’s interest in
18 nondisclosure). Additionally, Defendants have produced 40,000 documents to Plaintiffs, many of
19 which describe former and current CARRP policy, guidance, and training. As Mr. Emrich explains,
20 providing Plaintiffs, as these documents do, “with descriptions of unimplemented ideas, proposals,
21 and recommendations is confusing and has to potential to mislead” with regard to how CARRP
22 operated in the past and operates today. Ex. C at 7 ¶ 21. The release of this information is therefore
23 not only detrimental to the government, but also to the effective litigation of Plaintiffs’ claims. *See*
24 *F.T.C. v. Warner Connc’ns Inc.*, 742 F.2d at 1161 (establishing the relevance of the evidence and the
25 availability of other evidence as factors to consider when balancing whether a moving party’s need
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1 for materials and accurate fact-finding overrides the government's interest in nondisclosure).
2 Ultimately, on balance, the deliberative USCIS information in these documents should not be
3 disclosed. *See id.*

4 DHS information and/or third-party law enforcement agency information withheld as
5 deliberative includes draft documents, Ex. D at 3 ¶ 5, 7 ¶ 22, 8 ¶ 26; proposed talking points, *id.* at 8
6 ¶ 25; and deliberative, predecisional interagency discussions regarding the implementation of two
7 sections Executive Order 13780, which ordered the Secretary of Homeland Security, in consultation
8 with other agencies, to establish "global requirements for information sharing in support of
9 immigration screening and vetting," and which ordered the Secretary of State, the Attorney General,
10 the Secretary of Homeland Security, and the Director of National Intelligence to "implement a
11 program" that would include the "development of a uniform baseline for screening and vetting
12 standards and procedures," *id.* at 4-5 ¶¶ 12-14, 6-7 ¶¶ 18-20. The predecisional, deliberative nature
13 of these documents, particularly because these disclose interagency policymaking deliberations, is
14 unquestionable. *See NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 150 (1975) (stating that the
15 deliberative process privilege may be invoked to protect "documents reflecting . . . deliberations
16 comprising part of a process by which governmental decisions and policies are formulated").
17

18
19 As with the deliberative USCIS information discussed above, the privilege over the
20 deliberative DHS and third-party law enforcement agency information at issue here should not be
21 pierced. Mr. Scardaville explains that the disclosure of such information presents a risk of chilling
22 candid communication between policymakers as they make decisions concerning national security
23 policy, thereby posing a risk that such policy will not be based on the best information available.
24 *See Ex. D at 5 ¶ 14, 8 ¶¶ 25-26.* This weighs heavily against its disclosure. *See Dkt. 320 at 9* ("the
25 extent to which disclosure of this document could hinder 'frank and independent discussion[s]
26 regarding contemplated policies and decisions' weighs in favor of denying the motion"); *see F.T.C.*
27

1 v. *Warner Connc'ns Inc.*, 742 F.2d at 1161 (establishing this consideration as a factor to consider
2 when balancing whether a moving party's need for materials and accurate fact-finding override the
3 government's interest in nondisclosure). Also weighing against the disclosure of this information is
4 the fact that, in at least one instance of draft information, "[t]he final document . . . was produced."
5 See Ex. D at 7 ¶ 22; Dkt. 320 at 9; see also *F.T.C. v. Warner Connc'ns Inc.*, 742 F.2d at 1161
6 (establishing the availability of other evidence as a factor to consider when balancing whether a
7 moving party's need for materials and accurate fact-finding override the government's interest in
8 nondisclosure). Finally, and most importantly, additionally weighing against the disclosure of the
9 deliberative DHS information at issue is the fact that the information "includes no references to
10 CARRP, much less any discussion of CARRP policy, procedure, or training," and it is therefore
11 "unrelated to Plaintiffs' claims." Ex. D at 6 ¶ 17, 7 ¶ 23, 8 ¶ 27; see *F.T.C. v. Warner Connc'ns Inc.*,
12 742 F.2d at 1161 (establishing the relevance of the evidence as a factor to consider when balancing
13 whether a moving party's need for materials and accurate fact-finding override the government's
14 interest in nondisclosure). And, as explained above, Plaintiffs do not even argue that—much less
15 make compelling arguments explaining why—they are entitled to information regarding
16 deliberations between DHS officials and interagency partners that are wholly unrelated to CARRP.
17 See generally Dkt. 312. As such, on balance, it is clear that the deliberative DHS information in
18 these documents should not be disclosed. See *F.T.C. v. Warner Connc'ns Inc.*, 742 F.2d at 1161.

21 **III. Disclosing Privileged Documents Subject to a Protective Order is Insufficient to** 22 **Prevent Harm**

23 With respect to both the law enforcement-privileged information and deliberative process-
24 privileged information discussed above, Plaintiffs argue that harm resulting from disclosure will be
25 mitigated by the Stipulated Protective Order in this case. Dkt. 312 at 14, 16. As Defendants have
26 argued elsewhere, Dkt. 119 at 10-13, Dkt. 226-1 at 18-19, Dkt. 257 at 11-12, Dkt. 266 at 13, that
27

1 “deeply flawed procedure” cannot fully protect the confidentiality of the privileged information. *See*
2 *City of N.Y.*, 607 F.3d at 935 n.12. Defendants incorporate those arguments herein by reference.

3 Defendants emphasize that, given the highly sensitive nature of the law enforcement
4 information at issue in this case, only full protection of the withheld information ensures that public
5 safety and national security is not compromised. *See Dept. of Homeland Security*, 459 F.3d at 569
6 (noting reasons for protecting law enforcement information from disclosure “are even more
7 compelling” in “today’s times,” when “the compelled production of government documents could
8 impact highly sensitive matters relating to national security”); *see also* Ex. C at 13 ¶¶ 46 (explaining
9 that the USCIS information remaining redacted in the documents at issue “implicates the law
10 enforcement privilege of third-party agencies, and therefore should not be disclosed even under an
11 Attorneys Eyes Only restriction); Ex. D at 9 ¶ 29. Likewise, the deliberations reflected in (and
12 redacted from) these documents concern this type of law enforcement sensitive information – *i.e.*,
13 vetting, screening, and information-sharing practices. Ex C. at 5-7 ¶ 11-18, Ex. D at 5-9 ¶¶ 11-28. It
14 is therefore essential that these deliberations remain fully protected to ensure frank and candid
15 discussion on such issues, leading to decisions impacting national security and public safety that are
16 based on the best information available. *See* Ex. C at 7 ¶ 19, Ex. D at 5 ¶ 14, 8 ¶¶ 25-26; *see also*
17 Ex. C at 7-8 ¶ 22 (noting that the release of deliberative information under a protective order might
18 invite Plaintiffs to “explore these pre-decisional and deliberative discussions in depositions or
19 testimony, further chilling open and candid communications about contemplated policy changes”).
20
21

22 CONCLUSION

23 For the reasons set forth above, the Court should deny Plaintiffs’ Motion to Compel
24 Documents Withheld Under the Law Enforcement and Deliberative Process Privileges.
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1 DATED this 4th day of February, 2020.

2 Respectfully submitted,

3
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CERTIFICATE OF SERVICE

I hereby certify that on February 4, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

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EXHIBIT 49

EXHIBIT A

**Wagafe: Produced Duplicates of Documents in the
Certified Administrative Record**

CAR Index No.	CAR Page	Title	Duplicate Begin Bates No.	Duplicate End Bates No.
1	CAR_000001	4/11/08 Policy for Vetting and Adjudicating Cases with National Security Concerns	No Privilege Redactions	
2	CAR_000008	04/24/08 Operational Guidance for Vetting and Adjudicating Cases with National Security Concerns (Memo)	No Privilege Redactions	
3	CAR_000010	04/24/08 Operational Guidance for Vetting and Adjudicating Cases with National Security Concerns (Guidance)	DEF-00095009	DEF-00095054
4	CAR_000056	05/14/08 CARRP Operational Guidance for Vetting and Adjudicating Cases with National Security Concerns	No Privilege Redactions	
5	CAR_000058	06/24/08 USCIS DOMOPS CARRP Workflows	No Privilege Redactions	
6	CAR_000075	02/06/09 Additional Guidance on Issues Concerning the Vetting and Adjudications of Cases Involving National Security Concerns	DEF-00207274	DEF-00207282
7	CAR_000084	02/06/09 Attachment A - Guidance for Identifying NS Concerns	DEF-00351980	DEF-00351988

8	CAR_000093	2/09/09 National Security Adjudication and Reporting Requirements-Update	No Privilege Redactions	
9	CAR_000095	06/05/09 Clarification and Delineation of Vetting and Adjudication Responsibilities for CARRP Cases in Domestic Field Offices	DEF-00402579	DEF-00402587
10	CAR_000104	12/17/10 National Background Identity and Security Checks Operating Procedures	DEF-00003593	DEF-00003791
11	CAR_000303	04/01/11 Fact Sheet - Frequently Asked Questions (FAQ) CARRP Policy and Operational Guidance	DEF-00132598	DEF-00132636
12	CAR_000342	07/26/11 Revision of Responsibilities for CARRP Cases Involving Known or Suspected Terrorists	No Privilege Redactions	
13	CAR_000345	07/26/11 Supplemental Guidance: Revision of Responsibilities for CARRP Cases Involving Known or Suspected Terrorists	No Privilege Redactions	
14	CAR_000349	10/28/13 The Withholding of Adjudication (Abeyance) Regulation Contained at 8 CFR 103.2(b)(18)	No Privilege Redactions	
15	CAR_000366	07/14/17 Senior Leadership Review Board Standard Operating Procedures (SOP)	No Privilege Redactions	
16	CAR_000396	12/01/15 CARRP-Module 1- NSD Overview	No Privilege Redactions	

17	CAR_000414	12/01/15 CARRP- Module 1- NSD Overview (January 2017 update)	No Privilege Redactions	
18	CAR_000438	12/01/15 CARRP- Module 1- NSD Overview (June 2017 update)	No Privilege Redactions	
19	CAR_000463	12/01/15 CARRP Module 2 – Handling and Protecting Sensitive Information	No Privilege Redactions	
20	CAR_000491	12/01/15 CARRP Module 2 – Handling and Protecting Sensitive Information (December 2016 and January 2017 Updates)	No Privilege Redactions	
21	CAR_000556	12/01/15 CARRP Module 2 – Handling and Protecting Sensitive Information (June 2017 Update)	No Privilege Redactions	
22	CAR_000595	12/01/15 CARRP Module 3 CARRP Overview	DEF- 00373850	DEF- 00373989
23	CAR_000735	12/01/15 CARRP Module 3 CARRP Overview (Feb 2017 update)	No Privilege Redactions	

24	CAR_000751	12/01/15 CARRP Module 4 – Identifying National Security Concerns	DEF- 00373991	DEF- 00374165
25	CAR_000926	12/01/15 CARRP Module 4 – Identifying National Security Concerns (June 2016 update)	DEF- 00372280	DEF- 00372493
26	CAR_001140	12/01/15 CARRP Module 5 – Determining Eligibility and Vetting National Security Concerns	DEF- 0090770	DEF- 0090966
27	CAR_001337	12/01/15 CARRP Module 5 – Determining Eligibility and Vetting National Security Concerns (June 2017 Update)	DEF- 00116759	DEF- 00116957
28	CAR_001536	12/01/15 CARRP Module 6 – Adjudicating National Security Concerns	DEF- 0090968	DEF- 0091045
29	CAR_001614	12/01/15 CARRP Module 7 – Review and Test	DEF- 00269611	DEF- 00269670
30	CAR_001674	12/01/15 CARRP Module 7 – Review and Test (December 2016 Update)	DEF- 00065218	DEF- 00065294

31	CAR_001751	12/01/17 CARRP Module 1 – National Security and Public Safety Division Overview	No Privilege Redactions	
32	CAR_001767	12/01/17 CARRP Module 2 – Handling and Protecting Sensitive Information	No Privilege Redactions	
33	CAR_001789	12/01/17 CARRP Module 3 – CARRP Overview	DEF- 00204935	DEF- 00205002
34	CAR_001857	12/01/17 CARRP Module 4 – Identifying National Security Concerns	DEF- 00205003	DEF- 00205108
35	CAR_001963	12/01/17 CARRP Module 5 -- Determining Eligibility and Vetting National Security Concerns	DEF- 00116759+	DEF- 00116957+
36	CAR_002075	12/01/17 CARRP Module 6 – Adjudicating National Security Concerns	DEF- 00205109	DEF- 00205151
37	CAR_002118	12/01/17 CARRP Module 7 – Review and Test	DEF- 00207043*	DEF- 00207098*

+ Not an exact duplicate, but slides are substantially similar.

* Produced document includes a different title page from the document in the CAR and contains instructor notes, where the CAR document does not. Slides are duplicated.

EXHIBIT 51

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ABDIQAFAR WAGAFE, et al.,

Plaintiffs,

v.

DONALD TRUMP, President of the
United States, et al.,

Defendants.

CASE NO. C17-94 RAJ

ORDER

This matter comes before the Court on Defendants’ emergency motion for stay pending appellate review. Dkt. # 156. Plaintiffs oppose the motion. Dkt. # 157. The Court understands this motion to be one for reconsideration of its April 11, 2018 Order denying in part Defendants’ motion for a protective order. Dkt. # 148; *see also* Dkt. # 156 at 8. On May 9, 2018, the Court held a telephonic hearing on the matter. For the reasons that follow, the Court **GRANTS** Defendants’ motion for reconsideration. Dkt. # 156.

“Motions for reconsideration are disfavored.” LCR 7(h)(1). “The court will ordinarily deny such motions in the absence of a showing of manifest error in the prior

1 ruling or a showing of new facts or legal authority which could not have been brought to
2 its attention earlier with reasonable diligence.” *Id.*

3 On April 24, 2018, the Court gave Defendants the opportunity to file a sampling of
4 case-by-case determinations regarding individual national security threats as they appear
5 on the class list. Dkt. # 162. Defendants filed the sampling *ex parte* and the Court
6 reviewed *in camera*. Though the Court finds this to be a close call—Defendants could
7 have attempted this strategy earlier to present such information—the Court nonetheless
8 finds that Defendants’ motion for reconsideration has merit.

9 The Court reconsiders the portion of its prior Order, Dkt. # 148, that required
10 Defendants to produce case-by-case determinations to Plaintiffs’ attorneys under an
11 attorney eyes only provision. In reconsidering, the Court once more reviews the
12 underlying motion for protective order. Dkt. # 126. The Court finds that it is appropriate
13 to find in favor of Defendants. Accordingly, the Court GRANTS Defendants’ motion for
14 a limited protective order to produce the class list under an attorney eyes only provision.
15 Dkt. # 126.

16 The Court therefore **ORDERS** the parties to abide by the following limited
17 protective order:

18 Disclosure of, and access to, the names, Alien numbers (“A numbers”), and
19 application filing dates of the unnamed plaintiff members of the Naturalization Class and
20 Adjustment-of-Status Class shall be limited to the following:

- 21 (1) Plaintiffs’ attorneys of record, during such time as they continue to represent
22 Plaintiffs;
- 23 (2) Experts retained by Plaintiffs to the extent reasonably necessary to prepare expert
24 reports and testimony; and
- 25 (3) The Court and court personnel.

26 Plaintiffs’ attorneys of record shall maintain the above-described information in a
27 secure manner, i.e. in a locked filing cabinet (for any paper copy) or in a password-

1 | protected electronic file to which only authorized persons have access, and shall not
2 | transmit that information over any electronic mail or cloud-based sharing unless the
3 | method of transmission employs point-to-point encryption or other similar encrypted
4 | transmission.

5 | Plaintiffs' counsel, and any person acting on their behalf, are prohibited from
6 | either disclosing to any individual who contacts them whether that individual is an
7 | unnamed member of either the Naturalization Class or Adjustment-of-Status class, or
8 | contacting the unnamed plaintiff members of the Naturalization Class and Adjustment-of-
9 | Status class for any purpose absent prior order of this Court.

10 | Plaintiffs' counsel must strictly abide by this limited protective order.

11 | Defendants agree to meet and confer with Plaintiffs' counsel over ways in which
12 | Defendants might be able to provide Plaintiffs' counsel with information about particular
13 | unnamed class members to develop evidence for use in their case. Defendants agree to
14 | do so while keeping in mind their obligation to protect against dangers to important
15 | governmental interests.

16 | Dated this 10th day of May, 2018.

17 |
18 | 
19 | _____

20 | The Honorable Richard A. Jones
21 | United States District Judge

EXHIBIT 52

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ABDIQAFAR WAGAFE, et al.,

Plaintiffs,

v.

DONALD TRUMP, President of the
United States, et al.,

Defendants.

CASE NO. C17-94 RAJ

ORDER

This matter comes before the Court on Defendants' emergency motion for stay pending appellate review. Dkt. # 156. Plaintiffs oppose the motion. Dkt. # 157.

I. BACKGROUND

Despite the Court's orders, the Government maintains its refusal to produce the class list to Plaintiffs. This dispute has been pending since Plaintiffs' August 1, 2017 discovery requests, in which Plaintiffs sought the class list. Dkt. ## 91, 92. Plaintiffs filed a motion to compel, and on October 19, 2017, the Court granted it in part, requiring the Government to produce the class list. Dkt. # 98. On November 2, 2017, the Government moved for reconsideration, which the Court denied. Dkt. ## 99, 102. But the Government did not produce the class list.

1 On February 8, 2018, Plaintiffs filed another motion to compel the class list. Dkt.
2 # 109. On February 13, 2018, the Government agreed to produce “a copy of the list of
3 each potential class member by March 5, 2018,” but reserved the right to seek further
4 relief if necessary. Dkt. # 114. On February 14, 2018, the Court held a hearing regarding
5 the outstanding discovery issues. Dkt. # 115.

6 On March 1, 2018, the Government moved for a protective order with regard to
7 producing the class list. Dkt. # 126. On March 5, 2018, the Government produced a
8 redacted version of the class list to Plaintiffs. Dkt. # 127 at 7. On April 11, 2018, the
9 Court denied the Government’s motion for a protective order to the extent that all names
10 must be produced on the basis of “attorney eyes only.” Dkt. # 148. However, the Court
11 offered the Government an alternative: the Government could produce the class list under
12 the current stipulated protective order, or, it could make case-by-case determinations with
13 regard to names it refused to provide, *see Al Haramain Islamic Found., Inc. v. U.S. Dept.*
14 *of Treasury*, 686 F. 3d 965, 984 (9th Cir. 2012) *and Latif v. Holder*, 28 F. Supp. 3d 1134,
15 1162 (D. Or. 2014), and produce such information under the “attorney eyes only”
16 provision that it requested. *Id.* Either way, the Court required the Government to
17 produce the class list or the case-by-case determinations by April 25, 2018. *Id.* The
18 Government did not raise objections to this Order until filing an emergency motion on
19 April 20, 2018. Dkt. # 156.

20 II. DISCUSSION

21 Although the instant motion is styled as an emergency motion to stay, the Court
22 finds it more appropriate to consider the motion as one for reconsideration of its April 11,
23 2018 Order. *See* Local Rules W.D. Wash. LCR 7(h). The Government seeks
24 reconsideration of the portion of the Court’s Order requiring the Government to produce
25 the unredacted class list or to produce case-by-case determinations of the individuals for
26 whom production would create a national security concern. Dkt. # 156. However, the
27 Government grossly misreads the Court’s Order as “creat[ing] a new harm.” Dkt. # 156-

1 2 (Renaud Decl.) at ¶ 9. The Court did not order the Government to produce the case-by-
2 case information unless it continued to refuse to produce the class list under the current
3 stipulated protective order—something that the Court had ordered the Government to do
4 months earlier. The Government is under no obligation to produce this information to
5 Plaintiffs if it simply abides by the Court’s prior orders to produce the class list.
6 Importantly, the issue continues to be that the Government claims vague and speculative
7 national security threats when such general statements are not sufficient. *Hawaii v.*
8 *Trump*, 878 F.3d 662, 699 (9th Cir. 2017). “Everyone agrees that the Government’s
9 interest in combating terrorism is an urgent objective of the highest order.” *Holder v.*
10 *Humanitarian Law Project*, 561 U.S. 1, 28 (2010). Indeed, “no governmental interest is
11 more compelling than the security of the Nation.” *Haig v. Agee*, 453 U.S. 280, 307
12 (1981). But national security “cannot be used as a ‘talisman ... to ward off inconvenient
13 claims.’” *Hawaii*, 878 F.3d at 699.

14 It appears that the parties and the Court will never move past the endless cycle of
15 motions to compel, motions to reconsider, and the Government’s ultimate refusal to
16 produce the compelled documents. The Court maintains that, based on the record before
17 it, wholesale production of the class list under a more robust protective order is
18 unnecessary. At each junction, the Government has failed to present facts or arguments
19 that are meaningfully new or different that could not have been previously raised with
20 regard to its general “national security threat” arguments. The Government’s opposition
21 continues to be rooted in its fundamental disagreement with the Court’s determinations.
22 Such disagreement does not amount to manifest error. LCR 7(h) (moving parties carry
23 the burden to show manifest error when seeking reconsideration of a prior order).

24 The Court acknowledges that potential national security threats may exist with
25 regard to specific individuals on the class list. Rather than provide case-by-case
26 determinations to Plaintiffs, the Court will give the Government an opportunity to file a
27 sampling of such determinations *in camera* with the Court. The Court requires the

1 Government to identify the total number of potential class members to the Court. The
2 Court then requires a random sampling of these members with explanations why their
3 names may not be produced to Plaintiffs. *See, e.g., Latif*, 28 F. Supp. 3d at 1162
4 (“Defendants must make such a determination on a case-by-case basis including
5 consideration of, at a minimum, the factors outlined in *Al Haramain*; *i.e.*, (1) the nature
6 and extent of the classified information, (2) the nature and extent of the threat to national
7 security, and (3) the possible avenues available to allow the Plaintiff to respond more
8 effectively to the charges.”). The Court requests at least fifty records from this random
9 sample. The Government must file these case-by-case determinations with the Court
10 within seven (7) days from the date of this Order. The Court will reserve ruling on this
11 motion for reconsideration pending review of the Government’s samples.

12 The Court finds it appropriate to stay the April 25, 2018 deadline to produce the
13 unredacted class list until the Court has ruled on the motion for reconsideration. No other
14 discovery deadlines are stayed.

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16 Dated this the 24th day of April, 2018.

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20 The Honorable Richard A. Jones
21 United States District Judge
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EXHIBIT 53

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ABDIQAFAR WAGAFE, *et al.*, on
behalf of themselves and others
similarly situated,

Plaintiffs,

v.

DONALD TRUMP, President of the
United States, *et al.*,

Defendants.

CASE NO. C17-94 RAJ
ORDER

This matter comes before the Court on Plaintiffs' Motions to Compel (Dkt. # 221) and on Defendants' Cross-Motion for Protective Order (Dkt. # 226). For the following reasons, the Court **GRANTS IN PART AND DENIES** in part the parties' Motions.

I. BACKGROUND

The procedural history of this case has been recounted a number of times in prior orders, and the Court will not belabor to repeat it in detail. Of particular relevance to this dispute is this Court's Order on October 19, 2017. Dkt. # 98. In that Order, this Court granted Plaintiffs' previous motion to compel (Dkt. # 91), and ordered Defendants to produce information showing the reasons "why the Named Plaintiffs were subjected to

1 CARRP.” *Id.* at 4. This Court held that “this information is relevant to the claims and
2 Plaintiffs’ needs outweigh the Government’s reasons for withholding.” *Id.* Defendants
3 moved for an emergency stay pending appellate review, which this Court interpreted as a
4 motion for reconsideration. Dkt. ## 156, 183. In what this Court determined a “close
5 call,” it granted Defendants motion, allowing Defendants to produce a class list with a
6 limited protective order sharply limiting access to the list. Dkt. # 183.

7 The parties proceeded to engage in additional discovery and again have disputed
8 the extent to which Defendants must produce the “why” information. The parties have
9 attempted to resolve their discovery disputes without court intervention but have again
10 reached an impasse. Plaintiffs now move the Court again to compel the Government to
11 produce certain discovery related to the “why” information—information relating to why
12 the named Plaintiffs were subject to CARRP. Dkt. # 221. Plaintiffs also request Court
13 approval of a Public Notice to unnamed class members, and to compel the Government to
14 produce a random sample of 100 A Files of unnamed class members. *Id.* The
15 Government opposes, and also requests that certain information be subject to a limited
16 and more robust protective order. Dkt. # 226.

17 II. LEGAL STANDARD

18 The Court has broad discretion to control discovery. *Hallett v. Morgan*, 296 F.3d
19 732, 751 (9th Cir. 2002); *see also Avila v. Willits Env'tl. Remediation Trust*, 633 F.3d 828,
20 833 (9th Cir. 2011); *In re Sealed Case*, 856 F.2d 268, 271 (D.C. Cir. 1988). That
21 discretion is guided by several principles. Most importantly, the scope of discovery is
22 broad. A party must respond to any discovery request that is not privileged and that is
23 “relevant to any party’s claim or defense and proportional to the needs of the case,
24 considering the importance of the issues at stake in the action, the amount in controversy,
25 the parties’ relative access to relevant information, the parties’ resources, the importance
26 of the discovery in resolving the issues, and whether the burden or expense of the
27 proposed discovery outweighs its likely benefit.” Fed. R. Civ. P. 26(b)(1).

1 If a party refuses to respond to discovery, the requesting party “may move for an
2 order compelling disclosure or discovery.” Fed. R. Civ. P. 37(a)(1). “The party who
3 resists discovery has the burden to show that discovery should not be allowed, and has
4 the burden of clarifying, explaining, and supporting its objections.” *Cable & Computer*
5 *Tech., Inc. v. Lockheed Saunders, Inc.*, 175 F.R.D. 646, 650 (C.D. Cal. 1997).

6 **III. DISCUSSION**

7 **A. “Why” Information**

8 The Government has claimed that the law enforcement privilege protects its
9 documents for quite some time. To claim this privilege, the Government must satisfy
10 three requirements: (1) there must be a formal claim of privilege by the head of the
11 department having control over the requested information; (2) assertion of the privilege
12 must be based on actual personal consideration by that official; and (3) the information
13 for which the privilege is claimed must be specified, with an explanation why it properly
14 falls within the scope of the privilege. *In re Sealed Case*, 856 F.2d 268, 271 (D.C. Cir.
15 1988). This privilege is qualified: “[t]he public interest in nondisclosure must be
16 balanced against the need of a particular litigant for access to the privileged information.”
17 *Id.* at 272.

18 As an initial matter, whether or not the Named Plaintiffs were subject to CARRP
19 does not appear, based on the record, to be information properly withheld under the law
20 enforcement privilege. As Plaintiffs note, determination of whether Plaintiffs’
21 applications were subject to CARRP has already been disclosed either through FOIA
22 requests or disclosures by Defendants. *See generally* Dkt. # 243.

23 As for the production of the “why” information, the Court has already ruled that
24 such information must be disclosed, and the Court does not intend to reverse that decision
25 without a compelling reason to do so. In its previous Order, the Court rejected
26 Defendants’ vague descriptions of the harm of disclosure of USCIS’ procedures
27 regarding immigration benefits processing. Dkt. # 98. Defendants’ arguments here as for

1 why USCIS should not be forced to produce any “why” information largely mirror these
2 previously considered arguments, and the Court sees little reason to deviate from this
3 approach based on the current submissions. *See id.* Defendants have already produced a
4 number of documents that provide details about the procedures USCIS uses to determine
5 whether an application will initially be subject to CARRP or not, and Defendants’
6 submissions do not provide the Court with a basis to distinguish this information from
7 that redacted under the law enforcement privilege. Although it is true that some
8 functions of the USCIS relate to law enforcement and some of the withheld information
9 may properly be subject to that privilege, the mixed-function nature of the agency means
10 that the Court must analyze these privilege claim “with some skepticism.” *Am. Civil*
11 *Liberties Union of S. California v. United States Citizenship & Immigration Servs.*, 133
12 F. Supp. 3d 234, 245 (D.D.C. 2015). Defendants’ generalized descriptions of the internal
13 USCIS information contained within the A Files, and the resulting harm of disclosure, are
14 insufficient at this point to overcome this skepticism.

15 Defendants have, however, provided the Court with a number of Declarations
16 from departmental heads from other law enforcement agencies, such as the FBI, CBP,
17 and TSA, or information contained in TECS records. *See, e.g.*, Dkt. # 86, Exs. B-F. The
18 Court is persuaded by Defendants’ submissions, including those submitted *ex parte* and
19 *in camera*, that disclosure of certain information and methods originating from law
20 enforcement agencies external to USCIS immigration processing, such as the FBI or
21 CBP, could cause harm to national security. These agencies are not defendants in this
22 case, and their internal processes are not at issue. Moreover, disclosing details of past or
23 current investigations by these third-party law enforcement agencies would not, in this
24 Court’s view, offer much insight into the alleged internal misuse of CARRP by USCIS,
25 and the harm of disclosure would outweigh the value of this information.

26 This leaves the Court in a difficult position. Plaintiffs’ theory in this case is that
27 USCIS is improperly subjecting applications to CARRP; thus, evidence about whether

1 such an improper application has occurred would be highly relevant. If Plaintiffs’
2 applications were so subjected to CARRP for reasons purely internal to USCIS or only
3 related to the processing of immigration benefits, this information would be highly
4 relevant to Plaintiffs’ claims, and may only be contained in the A Files. As Defendants
5 note, the application of CARRP involves both “internal and external vetting” procedures.
6 Dkt. # 226-1 at 21. The Court believes the “internal” vetting procedures used by USCIS
7 to be most relevant for the current dispute, and the Court at this point sees little
8 justification for withholding this information based on the law enforcement privilege.
9 However, if Plaintiffs’ applications were subject to CARRP because of information
10 originating from law enforcement agencies such as the FBI, producing this information
11 could harm cooperation between law enforcement agencies and implicate ongoing
12 investigations.

13 The Courts thus **GRANTS IN PART AND DENIES IN PART** the parties’
14 Motions as to the “why” information in the Named Plaintiffs’ A Files. Defendants may
15 redact “why” information contained within the A Files that originates from law
16 enforcement agencies external to USCIS immigration processing, such as the FBI, ICE,
17 or CBP. Defendants may also redact communications between USCIS and these
18 agencies relating to this information. Defendants may not redact “why” information that
19 originated **solely** within USCIS, and may not redact out whether the application was
20 subject to CARRP, and when.¹

23 ¹ If Defendants still believe that disclosure of this “why” information would result in harm to
24 national security and should be withheld under the law enforcement privilege, they may file a
25 supplemental request for a protective order on the specific redactions they wish to make.
26 Defendants submission must be narrowly tailored, citing pages and the information contained
27 therein with particularity, and must present this information to the Court in an appropriate
format. The Court will continue to reject generalized descriptions of harm or unspecific
assertions of the law enforcement privilege, and may punish repeated attempts to do so with
additional sanctions.

1 Should this directive require an additional production of the Named Plaintiffs' A
2 Files, these productions are to occur within fourteen (14) days of this Order. These files
3 must bear the "ATTORNEYS EYES ONLY" designation, and may only be disclosed to
4 (1) Plaintiffs' attorneys of record, during such time as they continue to represent
5 Plaintiffs; (2) experts retained by Plaintiffs to the extent reasonably necessary to prepare
6 expert reports and testimony; and (3) the Court. Plaintiffs' attorneys shall maintain these
7 files in a secure manner, such as a locked filing cabinet or password protected electronic
8 file, and shall not transmit these files over any e-mail or cloud-based sharing platform
9 unless the transportation method utilizes appropriate encryption. Plaintiffs' counsel may
10 not disclose these files, or the newly-unredacted information contained therein (if
11 applicable), to any other individual. The Court expects strict compliance with this
12 directive, and will impose severe sanctions if the parties do not follow it.

13 B. Public Class Notice

14 As part of its Motion, Plaintiffs request the Court's permission to post a public
15 Notice to "Potential Class Members" that contains what they contend is only publicly
16 available information and requests that potential class members contact class counsel if
17 they have information that could assist in prosecuting the claims in this case. Dkt. # 221
18 at 19; *see also* Dkt. # 222, Ex. C.

19 The Court has reviewed Plaintiffs' proposed Class Notice, and finds that it states
20 little more than what is already contained in public records. The Court finds little fault
21 with the simple act of compiling this information and placing it in a format accessible to
22 the general public. The Notice also appears to comply with this Court's previous Orders,
23 as it does not disclose whether or not any particular individual was ever, or is, subject to
24 CARRP. The Court also has little indication that Plaintiffs' attorneys will not abide by
25 the applicable Orders in this case sharply limiting such communication with potential
26 class members. *See, e.g.*, Dkt. # 183. If they do, Defendants are instructed to
27 immediately bring this to the Court's attention, and the Court will issue appropriate and

1 severe sanctions. At this point, however, Defendants’ concerns that “[h]uman memory is
2 fallible and class counsel may confuse information provided under the AEO restriction
3 with information from public sources” is based on little more than speculative conjecture.
4 Dkt. # 226-1 at 11.

5 Accordingly, the Court **GRANTS** Plaintiffs’ Motion and **DENIES** Defendants’
6 Cross-Motion on this point.

7 C. 100 Additional A Files

8 Finally, the Government argues the Plaintiffs’ request to produce a random sample
9 of 100 additional A File would be costly, overly burdensome, and unlikely to furnish the
10 information Plaintiffs seek. Dkt. # 226-1 at 4-10. The Court agrees that this amount is
11 too many. While the Court agrees that information relating to unnamed class members
12 remains relevant, it is skeptical that a large, 100 A File production would be worth the
13 significant additional time and effort it would take to redact sensitive information and
14 litigate additional privilege disputes.

15 The Court will thus **DENY** Plaintiffs’ specific request for 100 additional A Files.
16 However, the Court is willing to entertain a production of a significantly smaller number
17 of additional A Files, within the realm of one to five A Files, redacted in accordance with
18 the directives of this Order. While Defendants contend that producing “even one” such A
19 File would create a “substantial burden” for the Government (Dkt. # 226-1 at 4-5),
20 Plaintiffs observe that FOIA requests for such A Files are routinely processed. Dkt. #
21 244 at 22. The parties are directed to meet and confer on this point, and are encouraged
22 to submit a joint status report indicating if an agreement for such a production can be
23 accomplished. If the parties cannot reach an agreement, Plaintiffs may move again on
24 this point for a significantly smaller subset of A Files.

25 Accordingly, pending the outcome of these negotiations in light of the Court’s
26 Order, the parties’ Motions are both **GRANTED IN PART AND DENIED IN PART**
27 on this point.

1 **IV. CONCLUSION**

2 For the foregoing reasons, the Court **GRANTS IN PART AND DENIES IN**
3 **PART** Plaintiffs' Motion to Compel and Defendants' Cross-Motion for a Protective
4 Order. Dkt. ## 221, 226.

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6 Dated this 9th day of July, 2019.

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9 The Honorable Richard A. Jones
10 United States District Judge

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