UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

ERIOLA ARAPI (A# 062 776 361)

SAMINA SYED (A# 041 471 464)

WAFAA ALWAN (A# 212 166 955)

SAQIB SARWAR (A# 059 821 029)

MOHAMMAD A. AL MUTTAN (A# 098 049 220)

SYED ASGHAR ALI (A# 076 839 968)

IBRAHIM MOHAMED ZIDAN (A# 074 538 330)

HANAA B. KAYEM (A# 212 247 400)

ABUBAKAR AHMED ABULFATHI (A# 096 453 286)

MIRZETA TURSUNOVIC (A# 075 082 331)

AMINA TURSUNOVIC (A# 075 082 332)

SYED TARIQ ALI (A# 096137926)

MOHAMMAD S. JAUDA (A# 212 247 047)

Plaintiffs,

vs.

U.S. CITIZENSHIP & IMMIGRATION SERVICES ("USCIS"),

JEH JOHNSON, in his official capacity as Secretary of Homeland Security;

LEON RODRIGUEZ, in his official capacity as Director of U.S. Citizenship and Immigration Services;

Case No. 4:16-CV-00692

MATTHEW D. EMRICH, in his official capacity as Associate Director, Fraud Detection and National Security Directorate of U.S. Citizenship and Immigration Services;

DANIEL RENAUD, in his official capacity as Associate Director, Field Operations Directorate of U.S. Citizenship and Immigration Services;

DAVID DOUGLAS, in his official capacity as District Director of the Kansas City District Office, U.S. Citizenship and Immigration Services;

and,

CHESTER MOYER, in his official capacity as Director of St. Louis Field Office of the U.S. Citizenship and Immigration Services.

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCIVE RELIEF
PETITIONS FOR NATURALIZATION

1. This lawsuit challenges the United States Citizenship and Immigration Service's ("USCIS") unlawful delay of Plaintiffs' applications for citizenship under a secretive policy that has blacklisted Plaintiffs as "national security concerns," when in fact they are not, and illegally prohibited them from upgrading their immigration status, despite their eligibility to do so.

2. Plaintiffs are law-abiding, long-time residents of the United States who meet the statutory criteria to be naturalized as American citizens.

3. Despite this, USCIS has refused adjudicated Plaintiffs' applications in accordance with applicable legal criteria. Instead, USCIS has applied different rules under a policy known as the Controlled Application Review and Resolution Program ("CARRP"), which has resulted in the agency refusing to adjudicate Plaintiffs' applications.

4. Plaintiffs bring this action to compel the USCIS to finally—after years of waiting—adjudicate their pending applications for naturalization as required by law.

5. The Constitution expressly assigns to Congress, not the executive branch, the authority to establish uniform rules of naturalization. The Immigration and Nationality Act ("INA") sets forth such rules.

6. When these rules and requirements have been met, as they have been in Plaintiffs' cases, USCIS is obligated to grant citizenship.

7. Since 2008, however, USCIS has used CARRP—an internal policy that has neither been approved by Congress nor subjected to public notice and comment—to investigate and adjudicate applications deemed to present potential "national security concerns."

8. CARRP prohibits USCIS field officers from approving an application with a potential "national security concern," instead directing officers to deny the application or delay adjudication—often indefinitely—in violation of the INA.

9. CARRP's definition of "national security concern" is far more expansive than the security-related ineligibility criteria for immigration applications set forth by Congress in the INA.

10. CARRP identifies "national security concerns" based on deeply-flawed and expansive government watchlists, and other vague and imprecise criteria that bear no relation to the security-related statutory ineligibility criteria.

11. The CARRP definition illegally brands innocent, law-abiding residents, like Plaintiffs—none of whom pose a security threat—as "national security concerns" on account of innocuous activity and associations, innuendo, suppositions and characteristics such as national origin.

12. Although the total number of people subject to CARRP is not known, USCIS data reveals that between FY2008 and FY2012, more than 19,000 people from twenty-one Muslim-majority countries or regions were subjected to CARRP.

13. Due to CARRP, USCIS has not adjudicated Plaintiffs' applications, as the law requires. Each Plaintiff has experienced an extraordinary processing delay of their case.

14. Although USCIS has thus far prevented Plaintiffs from becoming U.S. citizens , the agency has not notified Plaintiffs that it considers them potential "national security concerns," provided the reasons why it classified them in this way, or afforded them any opportunity to address and correct any basis for USCIS's concerns.

15. Plaintiffs therefore request that the Court enjoin USCIS from applying CARRP to their immigration applications and declare that CARRP violates the INA; Article 1, Section 8, Clause 4 of the United States Constitution (the naturalization clause); the Due Process Clause of the Fifth Amendment to the U.S. Constitution; and the Administrative Procedure Act ("APA").

JURISDICTION AND VENUE

16. Plaintiffs allege violations of the INA, the APA, and the U.S. Constitution. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 and 5 U.S.C. § 702 (waiver of federal government's sovereign immunity). This Court also has authority to grant declaratory relief under 28 U.S.C. §§ 2201 and 2202, and injunctive relief under 5 U.S.C. § 702 and 28 U.S.C. § 1361.

17. Venue is proper in the Eastern District of Missouri under 28 U.S.C. §§ 1391(b) and 1391(e) because (1) Plaintiffs reside in this district; (2) a substantial part of the events giving rise to the claims occurred in this district; and (3) Plaintiffs sue Defendants in their official capacity as officers of the United States.

Plaintiffs

18. Plaintiff Eriola Arapi (A# 062 776 361) is a twenty-three year old national of Albania and a lawful permanent resident ("LPR") of the United States. She is married to a United States citizen and resides in St. Louis, Missouri. She applied for naturalization on or about July 10, 2015. Ms. Arapi appeared for interview on December 8, 2015. Even though she satisfies all statutory criteria for

naturalization, USCIS subjected her application to CARRP, and as a result, has not finally adjudicated and approved it.

19. Plaintiff Samina Syed (A# 041 471 464) is a sixty-one year old national of Pakistan and a lawful permanent resident ("LPR") of the United States. She resides in St. Louis, Missouri. She applied for naturalization on or about May 1, 2015. USCIS has thus far refused to interview Ms. Syed. Even though she satisfies all statutory criteria for naturalization, USCIS subjected her application to CARRP, and as a result, has not finally adjudicated and approved it.

20. Plaintiff Wafaa Alwan (A# 212 166 955) is a forty-nine year old national of Iraq and a lawful permanent resident ("LPR") of the United States. She resides in St. Louis, Missouri. She applied for naturalization on December 17, 2014. Ms. Alwan appeared for interview on August 31, 2015. Even though she satisfies all statutory criteria for naturalization, USCIS subjected her application to CARRP, and as a result, has not finally adjudicated and approved it.

21. Plaintiff Saqib Sarwar (A# 059 821 029) is a twenty-nine year old national of Pakistan and a lawful permanent resident ("LPR") of the United States. He resides in St. Louis, Missouri. He applied for naturalization on June 22, 2015. Mr. Sarwar appeared for interview on December 17, 2015. Even though he satisfies all statutory criteria for naturalization, USCIS subjected his

application to CARRP, and as a result, has not finally adjudicated and approved it.

22. Plaintiff Mohammad A. Al Muttan (A# 098 049 220) is a thirty-four year old national of Palestine and a lawful permanent resident ("LPR") of the United States. He is married to a U.S. citizen and resides in St. Louis, Missouri. He applied for naturalization on February 23, 2015. USCIS has thus far refused to interview Mr. Al Muttan. Even though he satisfies all statutory criteria for naturalization, USCIS subjected his application to CARRP, and as a result, has not finally adjudicated and approved it.

23. Plaintiff Syed Asghar Ali (A# 076 839 968) is a forty-seven year old national of Pakistan and a lawful permanent resident ("LPR") of the United States. He resides in St. Louis, Missouri. He applied for naturalization on March 13, 2014. Mr. Ali was scheduled for an interview on April 14, 2014. USCIS unilaterally cancelled that interview and has refused to reschedule it despite the fact that two years have now passed. Even though he satisfies all statutory criteria for naturalization, USCIS subjected his application to CARRP, and as a result, has not finally adjudicated and approved it.

24. Plaintiff Ibrahim Mohamed Zidan (A# 074 538 330) is a forty-seven year old national of Egypt and a lawful permanent resident ("LPR") of the United States. He resides in St. Louis, Missouri. He applied for naturalization on March 17, 2015. USCIS has thus far refused to interview Mr. Zidan. Even though he

satisfies all statutory criteria for naturalization, USCIS subjected his application to CARRP, and as a result, has not finally adjudicated and approved it.

25. Plaintiff Hanaa B. Kayem (A# 212 247 400) is a fifty-one year old national of Iraq and a lawful permanent resident ("LPR") of the United States. She resides in St. Louis, Missouri. She applied for naturalization on or about July 31, 2015. USCIS has thus far refused to interview Ms. Kayem. Even though she satisfies all statutory criteria for naturalization, USCIS subjected her application to CARRP, and as a result, has not finally adjudicated and approved it.

26. Plaintiff Abubakar Ahmed Abulfathi (A# 096 453 286) is a thirty-five year old national of Nigeria and a lawful permanent resident ("LPR") of the United States. He resides in St. Louis, Missouri. He applied for naturalization on July 15, 2015. Mr. Abulfathi appeared for interview on January 4, 2016. Even though he satisfies all statutory criteria for naturalization, USCIS subjected his application to CARRP, and as a result, has not finally adjudicated and approved it.

27. Plaintiff Mirzeta Tursunovic (A# 075 082 331) is a thirty-eight year old national of Bosnia and a lawful permanent resident ("LPR") of the United States. She resides in St. Louis, Missouri. She applied for naturalization on or about December 22, 2014. USCIS has thus far refused to interview Ms. Tursunovic. Even though she satisfies all statutory criteria for naturalization, USCIS subjected her application to CARRP, and as a result, has not finally adjudicated and approved it.

28. Plaintiff Amina Tursunovic (A# 075 082 332) is a nineteen year old national of Bosnia and a lawful permanent resident ("LPR") of the United States. She resides in St. Louis, Missouri. Amina Tursunovic is the daughter of Plaintiff Mirzeta Tursunovic. Amina Tursunovic applied for naturalization on or about February 25, 2015. USCIS has thus far refused to interview Ms. Amina Tursunovic. Even though she satisfies all statutory criteria for naturalization, USCIS subjected her application to CARRP, and as a result, has not finally adjudicated and approved it.

29. Plaintiff Syed Tariq Ali (A# 096 137 926) is a fifty-two year old national of Pakistan and a lawful permanent resident ("LPR") of the United States. He resides in St. Louis, Missouri. He applied for naturalization on July 7, 2014. USCIS has thus far refused to interview Mr. Ali. Even though he satisfies all statutory criteria for naturalization, USCIS subjected his application to CARRP, and as a result, has not finally adjudicated and approved it.

30. Plaintiff Mohammad S. Jauda (A# 212 247 047) is a thirty-nine year old national of Iraq and a lawful permanent resident ("LPR") of the United States. He resides in St. Louis, Missouri. He applied for naturalization on October 28, 2014. USCIS has thus far refused to interview Mr. Jauda. Even though he satisfies all statutory criteria for naturalization, USCIS subjected his application to CARRP, and as a result, has not finally adjudicated and approved it.

31. Plaintiffs have suffered and continue to suffer prejudice from the unreasonable delay of their naturalization. While they await adjudication of their

respective applications, Plaintiffs are deprived of the substantial and unique rights and duties of U.S. citizenship, including the right to vote, to hold public office, to travel on a U.S. passport and other benefits of citizenship. The delay in citizenship is of additional concern given the fact that 2016 is an election year and the deadline for registering to vote in the November general election is October 12, 2016.

Defendants

32. Defendant USCIS is a component of the Department of Homeland Security ("DHS"), and is charged with overseeing lawful immigration to the United States and the naturalization of LPRs as U.S. citizens. USCIS implements federal law and policy with respect to immigration applications.

33. Defendant Jeh Johnson is the Secretary of DHS, the department under which USCIS and several other immigration agencies operate. Accordingly, Secretary Johnson has supervisory responsibility over USCIS. Plaintiffs sue Defendant Johnson in his official capacity.

34. Defendant Leon Rodriguez is the Director of USCIS. Director Rodriguez establishes and implements naturalization and other immigration applications policy for USCIS and its subdivisions, including the illegal CARRP program. Plaintiffs sue Defendant Rodriguez in his official capacity.

35. Defendant Matthew D. Emrich is the Associate Director of the Fraud Detection and National Security Directorate of USCIS ("FDNS"), which is ultimately responsible for determining whether individuals or organizations filing

naturalization and other immigration applications pose a threat to national security, public safety, or the integrity of the nation's legal immigration system. Associate Director Emrich establishes and implements policy for FDNS, including CARRP. Plaintiffs sue Defendant Emrich in her official capacity.

36. Defendant Daniel Renaud is the Associate Director of the Field Operations Directorate of USCIS, which is responsible for and oversees the processing and adjudication of immigration applications through the USCIS field offices and the National Benefits Center. Plaintiffs sue Defendant Renaud in his official capacity.

37. Defendant David Douglas is the District Director for District 15, Kansas City District Office of USCIS, which has responsibility for the St. Louis Field Office. District Director Douglas has been delegated the authority to adjudicate immigration applications filed within his district and is responsible for the adjudication of Plaintiffs' applications. Plaintiffs sue Defendant Douglas in his official capacity.

38. Defendant Chester Moyer is the Field Office Director for the St. Louis Field Office of USCIS. He is the official in charge of the field office assigned to conduct interviews on Plaintiffs' naturalization applications and he is responsible for the adjudication of their applications. Plaintiffs sue Defendant Moyer in his official capacity.

PERMISSIVE JOINDER

39. Plaintiffs bring this action jointly pursuant to Federal Rule of Civil Procedure 20, which allows for permissive joinder. Rule 20 provides that "persons may join in one action as plaintiffs if (A) they assert any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and (B) any question of law or fact common to all plaintiffs will arise in the action." FED. R. CIV. P. 20(a).

40. This action arises out of the same transaction or occurrence, or series of transactions or occurrences, in that the unlawful delays challenged are the result of the same pattern or practice by Defendants of unreasonably and unlawfully delaying the adjudication of applications for naturalization based on the CARRP program. This action also raises common issues of law and fact. As a factual matter, Plaintiffs are similarly situated. All have submitted applications for naturalization, are eligible for naturalization, and have been awaiting adjudication on their applications for more than a year for their naturalization. Plaintiffs have been told or have reason to believe that the sole reason for the delay is pendency of the "background" or "security" checks.

41. As a factual and legal matter, Plaintiffs allege that they have been injured by the same pattern or practice by Defendants of unlawfully and unreasonably delaying adjudication of their applications. Plaintiffs allege that

Defendants' unlawful delay is based on the illegal and unauthorized CARRP program described below.

42. In addition, Plaintiffs allege similar harms from the delay of their naturalization applications, including, but not limited to, the inability to participate in civic society by voting, delays in family reunification, the inability to apply for jobs that require U.S. citizenship, and the anxiety of having an uncertain status in the country they have made their home and where they have established themselves as part of a community.

43. Lastly, Plaintiffs jointly seek the same legal remedies: a declaration that Defendants have engaged in unreasonable and extraordinary delay in adjudicating Plaintiffs' naturalization applications; an order compelling Defendants to complete the Plaintiffs' applications, and adjudicate Plaintiffs' applications for naturalization, within 45 days of the Court's order; an order enjoining Defendants to take eliminate and dismantle the CARRP program; for attorneys' fees; and, for such further relief set forth below in Plaintiffs' prayer

44. This action thus satisfies the requirements for permissive joinder. It involves the same transaction (Defendants' unlawful policies, patterns and practices); and common questions of law and fact (regarding the lawfulness of Defendants' actions). Permissive joinder of these Plaintiffs, rather than multiple individual actions raising the same factual and legal allegations, would serve the purpose of Rule 20 by promoting judicial efficiency.

LEGAL FRAMEWORK

45. To naturalize as a U.S. citizen, an applicant must satisfy certain eligibility criteria under the INA and its implementing regulations. See 8 U.S.C. §§ 1421-27, 1458; 8 C.F.R. §§ 316.1-316.14.28.

46. Applicants must prove that they are "at least 18 years of age," 8 C.F.R. § 316.2(a)(1); have "resided continuously, after being lawfully admitted" in the United States "for at least five years" (or three years if married to a U.S. citizen); and have been "physically present" in the United States for "at least half of that time." 8 U.S.C. § 1427(a)(1).

47. Applicants must also demonstrate "good moral character" for the five years preceding the date of application, "attach[ment] to the principles of the Constitution of the United States, and favorabl[e] dispos[ition] toward the good order and happiness of the United States . . . ." 8 C.F.R. § 316.2(a)(7).

48. An applicant is presumed to possess the requisite "good moral character" for naturalization unless, during the five years preceding the date of the application, they are found (1) to be a habitual drunkard, (2) to have committed certain drug-related offenses, (3) to be a gambler whose income derives principally from gambling or has been convicted of two or more gambling offenses, (4) to have given false testimony for the purpose of obtaining immigration benefits; or if the applicant (5) has been convicted and confined to a penal institution for an aggregate period of 180 days or more, (6) has been convicted of an aggravated felony, or (7) has engaged in conduct such as aiding

Nazi persecution or participating in genocide, torture, or extrajudicial killings. 8 U.S.C. § 1101(f)(6).

49. An applicant is barred from naturalizing for national security-related reasons in circumstances limited to those codified in 8 U.S.C. § 1424, including, inter alia, if the applicant has advocated, is affiliated with any organization that advocates, or writes or distributes information that advocates "the overthrow by force or violence or other unconstitutional means of the Government of the United States," the "duty, necessity, or propriety of the unlawful assaulting or killing of any officer . . . of the Government of the United States," or "the unlawful damage, injury, or destruction of property."

50. Once an individual submits an application, USCIS conducts a background investigation, see 8 U.S.C. § 1446(a); 8 C.F.R. § 335.1, which includes a full FBI criminal background check, see 8 C.F.R. § 335.2.

51. After completing the background investigation, USCIS schedules a naturalization examination at which the applicant meets with a USCIS examiner for an interview.

52. In order to avoid inordinate processing delays and backlogs, Congress has stated "that the processing of an immigration benefit application," which includes naturalization, "should be completed not later than 180 days after the initial filing of the application." 8 U.S.C. § 1571(b). USCIS must either grant or deny a naturalization application within 120 days of the date of the examination. 8 C.F.R. § 335.3.

53. If the applicant has complied with all requirements for naturalization, federal regulations state that USCIS "**shall** grant the application." 8 C.F.R. § 335.3(a) (emphasis added).

54. Courts have long recognized that "Congress is given power by the Constitution to establish an uniform Rule of Naturalization. . . . And when it establishes such uniform rule, those who come within its provisions are entitled to the benefit thereof as a matter of right. . . ." *Schwab v. Coleman*, 145 F.2d 672, 676 (4th Cir. 1944) (emphasis added); *see also Marcantonio v. United States*, 185 F.2d 934, 937 (4th Cir. 1950) ("The opportunity having been 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." (quoting *Tutun v. United States*, 270 U.S. 568, 578 (1926))).

55. Once an application is granted, the applicant is sworn in to be sworn in as a U.S. citizen.

FACTUAL BACKGROUND

Controlled Application Review and Resolution Program

56. In April 2008, USCIS created CARRP, an agency-wide policy for identifying, processing, and adjudicating immigration applications that raise "national security concerns."

57. Upon information and belief, prior to CARRP's enactment, USCIS simply delayed the adjudication of many immigration applications that raised

possible "national security concerns," in part due to backlogs created by the FBI Name Check.

58. Congress did not enact CARRP, and USCIS did not promulgate it as a proposed rule with the notice-and-comment procedures mandated by the APA. See 5 U.S.C. § 553(b)-(c).

59. Since CARRP's inception, USCIS has not made information about CARRP available to the public, except in response to Freedom of Information Act ("FOIA") requests and litigation to compel responses to those requests. In fact, the program was unknown to the public, including applicants for immigration benefits, until it was discovered in litigation challenging an unlawful denial of naturalization and then through the government's response to a FOIA request.

60. CARRP directs USCIS officers to screen immigration applications—including applications for asylum, visas, lawful permanent residency, and naturalization—for "national security concerns."

61. If a USCIS officer determines that an application presents a "national security concern," it takes the application off a "routine adjudication" track and—without notifying the applicant—places it on a CARRP adjudication track where it is subject to procedures and criteria unique to CARRP that result in lengthy delays and prohibit approvals, except in limited circumstances, regardless of an applicant's statutory eligibility.

CARRP's Definition of a "National Security Concern"

62. According to the unauthorized CARRP definition utilized by Defendants, a "national security concern" arises when "an individual or organization [that] has been determined to have an articulable link"—no matter how attenuated or unsubstantiated—"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." Those sections of the INA make inadmissible or removable any individual who, inter alia, "has engaged in terrorist activity" or is a member of a "terrorist organization."

63. For the reasons described herein, an individual need not be actually suspected of engaging in any unlawful activity or joining any forbidden organization to be branded a "national security concern" under CARRP.

64. CARRP purportedly distinguishes between two types of "national security concerns": those ostensibly involving "Known or Suspected Terrorists" ("KSTs"), and those ostensibly involving "non-Known or Suspected Terrorists" ("non-KSTs").

65. USCIS automatically considers an applicant a KST, and thus a "national security concern," if his or her name appears in the Terrorist Screening Database ("TSDB") (also referred to as the Terrorist Watch List). USCIS, therefore, applies CARRP to any applicant whose name appears in the TSDB, regardless as to whether they actually belong on the list.

66. Upon information and belief, the TSDB includes as many as one million names, many of whom present no threat to the United States.

67. The government's recently disclosed criteria for watchlist nominations, known as the Watchlisting Guidance, impermissible allows non-U.S. citizens, including LPRs, to be listed in the TSDB even where the government does not have "reasonable suspicion" of involvement with terrorist activity.

68. The Guidance permits the watchlisting of non-citizens and LPRs simply for being associated with someone else who has been watchlisted, even when any involvement with that person's purportedly suspicious activity is unknown.

69. The Guidance further provides that non-citizens and LPRs may be watchlisted based on fragmentary or uncorroborated information, or information of "suspected reliability." These extremely loose standards significantly increase the likelihood that the TSDB contains information on individuals who are neither known nor appropriately suspected terrorists.

70. To make matters worse, the Terrorist Screening Center ("TSC"), which maintains the TSDB, has failed to ensure that innocent individuals are not watchlisted or are promptly removed from watchlists.

71. In the year 2013, the watchlisting community nominated 468,749 individuals to the TSDB, and the TSC rejected only approximately one percent of those nominations.

72. In 2009, the Government Accountability Office found that 35 percent of the nominations to the TSDB were outdated, and that tens of thousands of names had been placed on the list without an adequate factual basis.

73. The Inspector General of the Department of Justice has criticized the Terrorist Screening Center, which maintains the TSDB, for employing weak quality assurance mechanisms and for failing to remove subjects from the TSDB when information no longer supports their inclusion. Public reports also confirm that the government has nominated or kept people on government watchlists as a result of human error.

74. The federal government's official policy is to refuse to confirm or deny give individuals' inclusion in the TSDB or provide a meaningful opportunity to challenge that inclusion.

75. Nevertheless, individuals can become aware of their inclusion due to air travel experiences. In particular, individuals may learn that they are on the "Selectee List," a subset of the TSDB, if they have the code "SSSS" listed on their boarding passes. They may also learn of their inclusion in the TSDB if U.S. federal agents regularly subject them to secondary inspection when they enter the United States from abroad or when boarding a flight over U.S. airspace. Such individuals are also often unable to check in for flights online or at airline electronic kiosks at the airport.

76. Where the KST designation does not apply, CARRP instructs officers to look for "indicators" of a "non-Known or Suspected Terrorist" ("non-KST") concern.

77. These indicators fall into three categories: (1) statutory indicators; (2) non-statutory indicators; and (3) indicators contained in security check results.

78. "Statutory indicators" of a "national security concern" arise when an individual generally meets the definitions described in Sections 212(a)(3)(A), (B), and (F), and 237(a)(4)(A) and (B) of the INA (codified at 8 U.S.C. § 1182(a)(3)(A), (B), and (F) and § 1227(a)(4)(A) and (B)), which list the security and terrorism grounds of inadmissibility and removability.

79. However, CARRP expressly defines statutory indicators of a "national security concern" more broadly than the statute, stating "the facts of the case do not need to satisfy the legal standard used in determining admissibility or removability" under those provisions of the INA to give rise to a "non-KST" "national security concern." This is illegal and contrary to law.

80. For example, CARRP specifically directs USCIS officers to look at evidence of charitable donations to organizations later designated as financiers of terrorism by the U.S. Treasury Department and to construe such donations as evidence of a "national security concern," even if an individual had made such donations without any knowledge or any reasonable way of knowing that the organization was allegedly engaged in proscribed activity. Such conduct would not make an applicant inadmissible for a visa or lawful permanent resident status

under the statute, see INA § 212(a)(3)(B), 8 U.S.C. § 1182(a)(3)(B), nor does it have any bearing on a naturalization application.

81. "Non-statutory indicators" of a "national security concern" include "travel through or residence in areas of known terrorist activity"; "large scale transfer or receipt of funds"; a person's employment, training, or government affiliations; the identities of a person's family members or close associates, such as a "roommate, co-worker, employee, owner, partner, affiliate, or friend"; or simply "other suspicious activities."

82. Finally, security check results are considered indicators of a "national security concern" in instances where, for example, the FBI Name Check—one of many security checks utilized by USCIS—produces a positive hit on an applicant's name and the applicant's name is associated with a national security related investigatory file. Upon information and belief, this indicator leads USCIS to label applicants "national security concerns" solely because their names appear in a law enforcement or intelligence file, even if they were never the subject of an investigation.

83. Thus, an applicant's name could appear in a law enforcement file in connection with a national security investigation because he or she once gave a voluntary interview to an FBI agent, he or she attended a mosque that was the subject of FBI surveillance, or he or she knew or was associated with someone under investigation.

84. Upon information and belief, CARRP labels applicants “national security concerns” based on vague and overbroad criteria that often turn on lawful activity, national origin, and innocuous associations. These criteria are untethered from the statutory criteria that determine whether or not a person is eligible for the immigration status they seek, and are so general that they necessarily ensnare individuals who pose no threat to the security of the United States.

Delay and Denial

85. Once a USCIS officer identifies a CARRP-defined “national security concern,” the application is subjected to CARRP’s rules and procedures that guide officers to deny such applications or, if an officer cannot find a basis to deny the application, to delay adjudication as long as possible.

86. One such procedure is called “deconfliction,” which requires USCIS to coordinate with—and, upon information and belief, subordinate its authority to—the law enforcement agency, often the FBI, that possesses information giving rise to the supposed national security concern.

87. During deconfliction, the relevant law enforcement agency has authority to instruct USCIS to ask certain questions in an interview or to issue a Request for Evidence (“RFE”); to comment on a proposed decision on the benefit; and to request that an application be denied, granted, or held in abeyance for an indefinite period of time.

88. Upon information and belief, deconfliction not only allows law enforcement or intelligence agencies to directly affect the adjudication of a requested immigration benefit, but also results in independent interrogations of the immigration applicant—or the applicant's friends and family—by agencies such as the FBI.

89. Upon information and belief, USCIS often makes decisions to deny immigration applications because the FBI requests or recommends the denial, not because the person was statutorily ineligible for the benefit. The FBI often requests that USCIS hold or deny an application not because the applicant poses a threat, but because it seeks to use the pending immigration application to coerce the applicant to act as an informant or otherwise provide information.

90. In addition to "deconfliction," once officers identify an applicant as a "national security concern," CARRP directs officers to perform an "eligibility assessment" to determine whether the applicant is eligible for the benefit sought.

91. Upon information and belief, at this stage, CARRP instructs officers to look for any possible reason to deny an application so that "valuable time and resources are not unnecessarily expended" to investigate the possible "national security concern." Where no legitimate reason supports denial of an application subjected to CARRP, USCIS officers often invent false or pretextual reasons to deny the application.

92. Upon information and belief, if, after performing the eligibility assessment, an officer cannot find a reason to deny an application, CARRP

instructs officers to first "internally vet" the "national security concern" using information available in DHS systems and databases, open source information, review of the applicant's file, RFEs, and interviews or site visits.

93. After conducting the eligibility assessment and internal vetting, USCIS officers are instructed to again conduct "deconfliction" to determine the position of any interested law enforcement agency.

94. If the "national security concern" remains and the officer cannot find a basis to deny the benefit, the application then proceeds to "external vetting."

95. During "external vetting," USCIS instructs officers to confirm the existence of the "national security concern" with the law enforcement or intelligence agency that possesses the information that created the concern and obtain additional information from that agency about the concern and its relevance to the individual.

96. CARRP authorizes USCIS officers to hold applications in abeyance for periods of 180 days to enable law enforcement agents and USCIS officers to investigate the "national security concern." The Field Office Director may extend the abeyance periods so long as the investigation remains open.

97. Upon information and belief, CARRP provides no outer limit on how long USCIS may hold a case in abeyance, even though the INA requires USCIS to adjudicate a naturalization application within 120 days of examination, 8 C.F.R. § 335.3, and Congress has made clear its intent that USCIS adjudicate

immigration applications, including for naturalization and lawful permanent residence, within 180 days of filing the application. 8 U.S.C. § 1571(b).

98. When USCIS considers an applicant to be a KST "national security concern," CARRP forbids USCIS field officers from granting the requested benefit even if the applicant satisfies all statutory and regulatory criteria.

99. When USCIS considers an applicant to be a non-KST "national security concern," CARRP forbids USCIS field officers from granting the requested benefit in the absence of supervisory approval and concurrence from a senior level USCIS official.

100. In *Hamdi v. USCIS*, 2012 WL 632397, when asked whether USCIS's decision to brand naturalization applicant Tarek Hamdi as a "national security concern" affected whether he was eligible for naturalization, a USCIS witness testified at deposition that "it doesn't make him statutorily ineligible, but because he is a—he still has a national security concern, it affects whether or not we can approve him." The witness testified that, under CARRP, "until [the] national security concern [is] resolved, he won't get approved."

101. Upon information and belief, USCIS often delays adjudication of applications subject to CARRP when it cannot find a reason to deny the application. When an applicant files a mandamus action to compel USCIS to finally adjudicate his or her pending application, it often has the effect of forcing USCIS to deny a statutorily-eligible application because CARRP prevents agency field officers from granting an application involving a "national security concern."

102. CARRP effectively creates two substantive regimes for immigration application processing and adjudication: one for those applications subject to CARRP and one for all other applications. CARRP rules and procedures create substantive eligibility criteria that exclude applicants from immigration benefits to which they are entitled by law.

103. At no point during the CARRP process is the applicant made aware that he or she has been labeled a "national security concern," nor is the applicant ever provided with an opportunity to respond to and contest the classification.

104. Upon information and belief, CARRP results in extraordinary processing and adjudication delays, often lasting many years, and baseless denials of statutorily-eligible immigration applications.

COUNT I - IMMIGRATION & NATIONALITY ACT AND IMPLEMENTING REGULATIONS (ALL PLAINTIFFS)

105. Plaintiffs incorporate the allegations of the preceding paragraphs as if fully set forth herein.

106. To secure naturalization, an applicant must satisfy certain statutorily -enumerated criteria.

107. By its terms, CARRP creates additional, non-statutory, substantive criteria that must be met prior to a grant of a naturalization application.

108. Accordingly, CARRP violates 8 U.S.C. § 1427, 8 C.F.R. § 316.2, and 8 C.F.R. § 335.3, as those provisions set forth the exclusive applicable statutory and regulatory criteria for a grant of naturalization.

109. Because of this violation and because CARRP's additional, non-statutory, substantive criteria have been applied to Plaintiffs, Plaintiffs have suffered and continue to suffer injury in the form of unreasonable delays and unwarranted denials of their applications for naturalization.

COUNT II - UNIFORM RULE OF NATURALIZATION (ALL PLAINTIFFS)

110. Plaintiffs incorporate the allegations of the preceding paragraphs as if fully set forth herein.

111. Congress has the sole power to establish criteria for naturalization, and any additional requirements, not enacted by Congress, are *ultra vires*.

112. By its terms, CARRP creates additional, non-statutory, substantive criteria that must be met prior to a grant of a naturalization application.

113. Accordingly, CARRP violates Article I, Section 8, Clause 4 of the United States Constitution.

114. Because of this violation and because CARRP's additional, non-statutory, substantive criteria have been applied to Plaintiffs, all Plaintiffs have suffered and continue to suffer injury in the form of unreasonable delays and unwarranted denials of their naturalization applications.

COUNT III - ADMINISTRATIVE PROCEDURE ACT (5 U.S.C. § 706)
(ALL PLAINTIFFS)

115. Plaintiffs incorporate the allegations of the preceding paragraphs as if fully set forth herein.

116. CARRP constitutes final agency action that is arbitrary and capricious because it "neither focuses on nor relates to a [non-citizen's] fitness to" obtain the immigration benefits subject to its terms. *Judulang v. Holder*, 132 S. Ct. 476, 485 (2011).

117. CARRP is also not in accordance with law, is contrary to constitutional rights, and is in excess of statutory authority because it violates the INA and exceeds USCIS's statutory authority to implement (not create) the immigration laws, as alleged herein.

118. As a result of these violations, Plaintiffs have suffered and continue to suffer injury in the form of unreasonable delays and unwarranted denials of their immigration applications.

COUNT IV - ADMINISTRATIVE PROCEDURE ACT (NOTICE AND COMMENT)
(ALL PLAINTIFFS)

119. Plaintiffs incorporate the allegations of the preceding paragraphs as if fully set forth herein.

120. The APA, 5 U.S.C. § 553, requires administrative agencies to provide a notice-and-comment period prior to implementing a substantive rule.

121. CARRP constitutes a substantive agency rule within the meaning of 5 U.S.C. § 551(4).

122. Defendants failed to provide a notice-and-comment period prior to the adoption of CARRP. Because CARRP is a substantive rule promulgated without the notice-and-comment period, it violates 5 U.S.C. § 553 and is therefore invalid.

123. As a result of these violations, Plaintiffs have suffered and continue to suffer injury in the form of unreasonable delays and unwarranted denials of their immigration applications.

COUNT V - FIFTH AMENDMENT (PROCEDURAL DUE PROCESS)
(ALL PLAINTIFFS)

124. Plaintiffs incorporate the allegations of the preceding paragraphs as if fully set forth herein.

125. Plaintiffs' compliance with the statutory and regulatory requirements established in 8 U.S.C. § 1427 and 8 C.F.R. § 316.2 (for naturalization applicants), and in 8 U.S.C. § 1159 and 8 C.F.R. § 335.3 (for adjustment of status applicants), vests in them a constitutionally protected property and liberty interest.

126. This constitutionally-protected property or liberty interest triggers procedural due process protection.

127. Defendants' failure to give Plaintiffs notice of their classification under CARRP, a meaningful explanation of the reason for such classification,

and any process by which Plaintiffs can challenge their classification, violates the Due Process Clause of the Fifth Amendment to the United States Constitution.

128. Because of this violation, Plaintiffs have suffered and continue to suffer injury in the form of unreasonable delays and unwarranted denials of their immigration applications.

COUNT VI – PETITIONS FOR NATURALIZATION POST-EXAMINATION PLAINTIFFS (ARAPI, ALWAN, SARWAR AND ABULFATHI)

129. Plaintiffs incorporate the allegations of the preceding paragraphs as if fully set forth herein.

130. Defendants have failed to finally adjudicate the applications of Plaintiffs Arapi, Always, Sarwar and Abulfathi, in violation of 8 U.S.C. § 1447(b). That provision of the INA requires Defendants to adjudicate naturalization within 120 days of the naturalization examination. Pursuant to 8 U.S.C. § 1447(b), this Court should exercise its authority to grant the applications of these four Plaintiffs.

131. Each named post-examination Plaintiff seeks a determination by the Court that he meets the requirements of naturalization and is to be naturalized as a U.S. citizen without further delay, pursuant to 8 U.S.C. § 1447(b).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court grant the following relief:

1. Enter a judgment declaring that (a) CARRP violates the INA and its implementing regulations; Article 1, Section 8, Clause 4 of the United States Constitution; the Fifth Amendment to the United States Constitution; and the APA; and (b) Defendants violated the APA by adopting CARRP without promulgating a rule and following the process for notice and comment by the public;

2. Enjoin Defendants, their subordinates, agents, employees, and all others acting in concert with them from applying CARRP to the processing and adjudication of Plaintiffs' immigration benefit applications;

3. Order Defendants to rescind CARRP because they failed to follow the process for notice and comment by the public;

4. Naturalize Plaintiffs Arapi, Always, Sarwar and Abulfathi;

5. Award Plaintiffs reasonable attorneys' fees and costs under the Equal Access to Justice Act; and

6. Grant any other relief that this Court may deem fit and proper.

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