The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ABDIQAFAR WAGAFE, *et al.*,

Plaintiffs,

v.

UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, *et al.*,

Defendants.

No. 2:17-cv-00094-JCC

REPLY IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS SECOND AMENDED COMPLAINT

NOTED ON MOTION CALENDAR:
May 12, 2017

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INTRODUCTION

On April 18, 2017, Defendants moved the Court to dismiss Plaintiffs' Second Amended Complaint in its entirety under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). ECF No. 56. Plaintiffs opposed the motion and filed their opposition on May 8, 2017. ECF No. 58. In essence, Plaintiffs (a) claim that they are or will be harmed by an Executive Order that does not direct USCIS to suspend adjudication of benefit applications (as evidenced by both the plain language of the Order and the actual adjudication of Plaintiffs' applications); (b) seek to maintain a claim contingent on the speculative possibility of future injuries; and (c) attempt to recast decade-old procedures implemented in the interest of national security as arbitrary substantive rules. None of Plaintiffs' responses are meritorious; their claims either fail to identify a live case or controversy or fail on their own terms as a matter of law. Defendants' motion should be granted.

ARGUMENT

I. Either the Court Lacks Jurisdiction or Class Treatment Is Inappropriate

To begin, the Court lacks jurisdiction over this matter in its entirety. Plaintiffs contend that they have "never suggested" they have no personal interest in adjudication of their applications. ECF No. 58 at 6. Yet in their Motion for Class Certification, Plaintiffs stated, "Plaintiffs do not request that this Court adjudicate their individual immigration applications." ECF No. 26 at 9. Plaintiffs went on to explain that they did not seek an order compelling Defendants to adjudicate their applications within any particular time, either; rather, they sought only a declaration that CARRP was unlawful and an order enjoining Defendants from applying CARRP to their applications, without any regard to the actual length of the adjudication process. *See* ECF No. 58 at 6.

Plaintiffs now suggest that they want both adjudication of (what they deem) long-pending applications, *and* a declaration that CARRP is unlawful. *Id.* But as Plaintiffs acknowledge, a declaration that CARRP is unlawful untethered to its effect, if any, on individual cases presents the exact sort of "abstract harm" that the Ninth Circuit and the Supreme Court have cautioned are insufficient to establish jurisdiction. *Lance v. Coffman*, 549 U.S. 437, 441-42 (2007) (per

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curiam) ("The only injury [they] allege is that the law . . . has not been followed"); *Allen v. Wright*, 468 U.S. 737, 754 (1984) ("This Court has repeatedly held that an asserted right to have the Government act in accordance with law is not sufficient, standing alone, to confer jurisdiction on a federal court"), *abrogated on other grounds by Lexmart Int'l v. Static Control Components, Inc.*, 134 S. Ct. 1377 (2014); *Novak v. United States*, 795 F.3d 1012, 1018 (9th Cir. 2015). The Court has no jurisdiction to evaluate the legality of CARRP absent a plausible allegation that CARRP is the proximate cause of unlawful delay. Plaintiffs cannot make that showing because it would require facts suggesting both that the processing time for all of Plaintiffs' applications is unreasonable, and that CARRP, as opposed to any other reason, is the cause. They have not and cannot plausibly make such an allegation as to each named Plaintiff, much less every class member.[1] *Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 594 (9th Cir. 2012) (citing *Denney v. Deutsche Bank AG*, 443 F.3d 253, 264 (2d Cir.2006)) ("[N]o class may be certified that contains members lacking Article III standing.").

On the other hand, if Plaintiffs do seek to challenge CARRP as applied to particular cases, the multitude of factors playing into the pace of adjudication would have to be considered on the merits. The need to request additional evidence from applicants, sometimes more than once; the need for additional investigation; the need to coordinate with other agencies; the ordinary pace of adjudication of the benefit in question at one of dozens of offices; and simple bureaucratic delay, among others, would all have to be evaluated to determine whether adjudication of an application subject to CARRP has been unlawfully delayed, and that CARRP is the cause of that delay. The need for individualized consideration of the reasons for delay – which might or might not be attributable to CARRP, or attributable in different degrees – would preclude class treatment. *Wal–Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011) ("[i]t is not the raising of common 'questions'—even in droves—but, rather the capacity of a classwide proceeding to generate common *answers* apt to drive the resolution of the litigation" that makes a case appropriate as a class action) (emphasis in original). In short, Plaintiffs cannot have it

[1] For example, Mr. Ostadhassan's wife took nearly six months to provide USCIS with evidence about the termination of her husband's previous marriage, which evidence was necessary to adjudicate her Form I-130, and by extension Mr. Ostadhassan's adjustment-of-status application

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both ways: either they are mounting a facial attack on CARRP, over which the Court has no jurisdiction for lack of across-the-board concrete particularized harm, or they are mounting as as-applied challenge to CARRP for which class treatment is inappropriate because Plaintiffs cannot meet the requirements of commonality under Rule 23(a), or the additional requirements of Rule 23(b)(2).

II. Plaintiffs Have No Colorable Claim that Adjudication of Applications Is Currently or Will Imminently Be Suspended

Plaintiffs next claim that they "have suffered an injury-in-fact with respect to their first, second, third, fifth, and sixth claims to the extent that they challenge the suspension of adjudication of adjustment and naturalization applications." ECF No. 58 at 7. They make this claim while simultaneously acknowledging that Mr. Wagafe has been naturalized, *id.* at 5, Mr. Ostadhassan has been issued a Notice of Intent to Deny, *id.*, Mr. Manzoor has been naturalized, ECF No. 59 at 1, Mr. Jihad is scheduled for an interview on May 22, 2017, *id.*, and Ms. Bengezi has been interviewed and is awaiting a final decision,[2] *id.* Plaintiffs' own evidence demonstrates that processing of Plaintiffs' applications is not currently suspended. Despite this, Plaintiffs assert that their first, second, third, fifth, and sixth claims – all challenging the purported suspension of processing benefit application – are not moot, and characterize Defendants' argument as "based entirely on a single memorandum" issued by the former acting Director of U.S. Citizenship and Immigration Services. ECF No. 58 at 8. This line of reasoning is unsupportable.

To begin, as Plaintiffs recognize, the Scialabba Memorandum (*see* ECF No. 56-1, Exhibit A), construed Executive Order 13769. Subsequently, Executive Order 13780 rescinded Executive Order 13769 in its entirety. *See* 82 Fed. Reg. 13209, 13218 (Mar. 6, 2017). Nothing in Executive Order 13780 directs the suspension of processing of immigration benefit applications filed by or on behalf of any individuals present in the United States. Section 3 of Executive Order 13780 addresses the "Scope and Implementation of Suspension" which applies

[2] Mr. Jihad's application was subsequently approved and he is scheduled to take the Oath of Allegiance on May 30, 2017. *See* ECF No. 60-4. Ms. Bengezi's application for adjustment of status was approved on May 9, 2017. *See* ECF No. 60-2.

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only to *entry* of certain foreign nationals outside the United States on the effective date of the order. To the extent that any doubt about Defendants' position remains, Defendants now clarify that nothing in Executive Order 13780, including but not limited to Section 2(c), directs or authorizes the suspension of processing of immigration benefit applications filed by or on behalf of members of Plaintiffs' proposed "Muslim Ban class" on a class-wide basis. *See* ECF No. 47, ¶ 237.

Relying on the Scialabba Memorandum, rather than the now-in-force Executive Order 13780, Plaintiffs contend that the "voluntary cessation" exception to mootness saves their claims because the Scialabba Memorandum was not a "permanent change." *See* ECF No. 58 at 9-10. That is not the relevant question, and Plaintiffs' analysis is flawed in any event. Executive Order 13769 and the Scialabba Memorandum, which implemented it, have both been superseded by Executive Order 13780. An Executive Order is a "permanent change" under *White v. Lee*, 227 F.3d 1214, 1243 (9th Cir. 2000).

The new Executive Order implements a congressional grant of authority and changes the governing standards in a way that renders the case moot. *See Silver Dollar Graving Ass'n v. U.S. Fish & Wildlife Serv.*, No. 07-35612, 2009 WL 166924, *2 (9th Cir. Jan. 13, 2009) (noting in some circumstances Executive Orders explicitly promulgated pursuant to constitutional or statutory authority carry the force of law). Changes like this one are, absent evidence to the contrary, "permanent" changes. *Cf. Green v. Mansour*, 474 U.S. 64, 73 (1985) (holding plaintiff's claim was moot where Congress amended the relevant statute clarifying, and thereby resolving, the controversy that has arisen due to ambiguities in the original statute); *Chem. Prod. & Distribs. v. Helliker*, 463 F.3d 871, 876 (9th Cir. 2006) ("[A] case is moot when the challenged statute is repealed, expires or is amended to remove the challenged language."); *In re Investigation Pursuant to the Comprehensive Envt'l Response*, 820 F.2d 308, 311-12 (9th Cir. 1987) (dismissing case because Congress enacted substantial amendments to the relevant statutory provisions, and reasoning that "[w]here new legislation represents a complete substitution for the last as it existed . . . arguments based upon the superseded part are moot").

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Because Executive Order 13780[3] does not suspend adjudication of benefit applications by members of any of Plaintiffs' proposed classes, Plaintiffs' first, second, third, fifth, and sixth claims for relief, all of which are premised on the suspension of benefit application processing, must fail.

Furthermore, Plaintiffs' allegation that Defendants "'*will* interpret the Second EO to authorize the suspension' of immigration applications involving Plaintiffs and the Muslim Ban Class," ECF No. 58 at 10 (emphasis in original), is both contingent on future events and lacks plausible factual support. Plaintiffs have identified no basis in the text of Executive Order 13780 itself that would permit such an interpretation, nor does recent experience with Plaintiffs themselves support it. Plaintiffs, and the class they seek to represent, have not suffered an injury-in-fact because Executive Order 13780 does not suspend adjudication of their applications and does not provide a basis for any future class-wide suspension. In the absence of any current injury-in-fact or imminent threat of injury concerning the purported suspension of processing benefit applications, the Court should dismiss the first, second, third, fifth, and sixth claims for relief for lack of jurisdiction.

III. The Uniform Rule of Naturalization Clause Provides Plaintiffs No Cause of Action

Plaintiffs' Tenth Claim for Relief fails because there is no private right of action under Article I, section 8, clause 4 of the Constitution ("Uniform Rule" clause) and, even assuming one, Plaintiffs have failed to plead facts demonstrating a plausible entitlement to relief. *See Flores v. City of Baldwin Park*, No. 14-cv-9290, 2015 WL 756877, *3 (C.D. Cal. Feb. 23, 2015) ("this constitutional clause does not create a cause of action"). Rather, Congress's power to create "a uniform Rule of Naturalization" speaks to the relative powers of Congress vis-à-vis the States, not private individuals. *See Cazarez-Gutierrez v. Ashcroft*, 382 F.3d 905, 912 (9th Cir. 2004) (citing The Federalist No. 32 (Alexander Hamilton)). As the Ninth Circuit recently explained, "[t]he uniformity requirement was a response to tensions that arose from the

[3] Moreover, even if the Scialabba Memorandum and Executive Order 13769 were still in force, the Scialabba Memorandum was not "by its terms [] not permanent," ECF No. 58 at 9 (quoting *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., Inc.*, 528 U.S. 167, 189 (1982)). Nothing internal to the memorandum indicated that it was intended to sunset at any time.

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intersection of the Articles of Confederations Comity Clause and the states' divergent naturalization laws, which alleged an alien ineligible for citizenship in one state to move to another state, obtain citizenship, and return to the original state as a citizen entitled to all of its privileges and immunities." *Korab v. Fink*, 797 F.3d 572, 580-81 (9th Cir. 2015) (citing *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 6 (1824)). As such, it is hardly surprising that, as Plaintiffs observe, some litigants have challenged state or municipal laws criminalizing conduct that would not be criminal in other jurisdictions, contending that the immigration consequences of conduct proscribed in some, but not all, locales, violates the constitutionally-required uniformity. But the clause simply reflects that in joining the Union, the States surrendered their sovereign power to naturalize. *See In re Bleimeister*, 251 B.R. 383, 390 (Bankr. D. Ariz. 2000) ("States no more retained sovereign powers over bankruptcy laws than they did over naturalization").

Implied causes of action are disfavored, *Ashcroft v. Iqbal*, 556 U.S. 662, 675 (2009), and the decision to create one is "'better left to legislative judgment in the great majority of cases,'" *Mirmehdi v. United States*, 689 F.3d 975, 981 (9th Cir. 2012) (quoting *Sosa v. Alvarez-Machain*, 542 U.S. 692, 727 (2004)). Plaintiffs have identified no authority suggesting that a constitutional provision addressing the powers of the federal government relative to state governments was intended to provide them a private right of action. Certainly, they have shown nothing to overcome the presumption against implying constitutional causes of action, as the Supreme Court and Ninth Circuit have recently made clear.

Moreover, even assuming a cause of action, CARRP would not constitute unconstitutional disuniformity. For historically related reasons, Article I, section 8, clause 4 of the Constitution empowers the federal government to establish both "an uniform Rule of Naturalization and uniform Laws on the subject of Bankruptcies,"[4] U.S. Const. Art. I, § 8, cl. 4. In *Hanover Nat'l Bank v. Moyses*, 186 U.S. 181, 190 (1902), the Supreme Court upheld the incorporation of

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[4] With respect to both subjects, stringent states laws were circumvented by relocating to states with more lenient laws. The states with more stringent laws were then legally required to recognize the official acts of the more lenient states as valid. *Ry. Labor Execs. Ass'n v. Gibbons*, 455 U.S. 457, 471-72 (1982) (bankruptcy); *Korab*, 797 F.3d 580-81 (naturalization).

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various state laws into the Bankruptcy Code holding that incorporation of state law was "in the constitutional sense, uniform throughout the United States" in general operation, despite the different particulars in different states. *Id.* The procedural differences Plaintiffs allege CARRP requires for individual applicants fall far short of the substantive differences in incorporating divergent state laws, which the Supreme Court held is itself permissible. Because the "basic operation" is uniform throughout the United States, *see Stellwagen v. Clum*, 245 U.S. 605, 613 (1918); *Korab*, 797 F.2d at 581-82, CARRP is constitutionally sound under the Uniform Rule clause. Just as the Supreme Court has held that the Uniform Rule clause "is not a straightjacket that forbids Congress to distinguish among classes of debtors," *Ry. Labor Execs. Ass'n*, 455 U.S. at 469, so too is the Executive authorized to distinguish among classes of aliens in processing requests for benefits. *Cf. Moyses*, 186 U.S. at 188 ("The laws passed on the subject must . . . be uniform throughout the United States, but that uniformity is geographical, and not personal"); *Chavez-Perez v. Ashcroft*, 386 F.3d 1284, 1292 ("the government's different treatment of groups of aliens must be upheld unless it is 'wholly irrational'"). Because there is no private cause of action under the Uniform Rule clause, and, if there is, such claim would fail because plaintiffs failed to demonstrate a plausible claim to relief as a matter of law, the Court should dismiss Plaintiffs' tenth claim for relief.

IV. Plaintiffs Have Failed to State a Claim Concerning New Vetting Procedures

Plaintiffs submit that their complaint "included allegations about additional or future 'extreme vetting' measures to avoid an argument that the allegations about CARRP are moot because CARRP has been replaced or supplemented by new 'extreme vetting' procedures." ECF No. 58 at 13. Plaintiffs, by their own admission, are seeking to enjoin "an intent to impose vetting procedures even more 'extreme' than CARRP." *Id.* But even assuming the Court would have jurisdiction over the mere possibility of a future injury, Plaintiffs have failed to raise their claim for relief above a speculative level. As previously explained, Plaintiffs have alleged no facts that Defendants have adopted, or will adopt, measures that would entitle Plaintiffs to judicial relief. And in response to Defendants' observation that Plaintiffs had failed to plead sufficient facts to raise a plausible claim, Plaintiffs pointed to no actual facts at all. *See id.*

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V. Plaintiffs Have Failed to Allege a Deprivation of a Protected Liberty or Property Interest

"To establish a due process violation, a plaintiff must show that he has a protected property interest under the Due Process Clause and that he was deprived of the property without receiving the process that he was constitutionally due." *Levine v. City of Alameda*, 525 F.3d 903, 905 (9th Cir. 2008)*; see also Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 571 (1972). Here, Plaintiffs have failed to state a viable claim for relief because there is no liberty or property interest in adjudication within any particular time.[5] Plaintiffs contend that "USCIS does not have discretion to deny naturalization to a statutorily eligible applicant," ECF No. 58 at 15, but that is not what Plaintiffs are challenging. Plaintiffs have identified no unlawful denial of naturalization to any eligible applicant. Indeed, any such individual would not even be a class member of any of Plaintiffs' putative classes, all of which concern individuals with current or future *pending* applications. *See* ECF No. 47 ¶ 237. Plaintiffs challenge only the processing of applications, specifically delays attributable to CARRP or future procedures issued under Executive Order 13780.[6]

As previously explained, delays in adjudication "do not deprive aliens of a substantive liberty or property interest unless the aliens have a 'legitimate claim of entitlement' to have their applications adjudicated within a specified time." *Mendez-Garcia v. Lynch*, 840 F.3d 655, 666 (9th Cir. 2016). No time limit is specified by statute. Plaintiffs erroneously rely on 8 U.S.C. § 1571(b) as creating an enforceable time limit. But the Ninth Circuit has held that "sense of the Congress" provisions such as Section 1571(b), "do not in themselves create individual rights or, for that matter, any enforceable law." *Orkin v. Taylor*, 487 F.3d 734, 740 (9th Cir. 2007). Moreover, even if section 1571(b) constituted positive law rather than a policy judgment, the Ninth Circuit has cautioned that "[a] statutory time period providing a directive to an agency or public official is not ordinarily mandatory 'unless it *both* expressly requires the agency or public

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[5] Plaintiffs also aver to their "protected interest in having USCIS adjudicate their applications lawfully." ECF No. 58 at 15. But this contention suffers from the same problem described above: it is an abstract harm divorced from any tangible effects that could support a case-or-controversy. *Lance*, 549 U.S. at 441-42; *Allen*, 468 U.S. at 754; *Novak*, 795 F.3d at 1018.

[6] Likewise, Plaintiffs conflate denials on the merits with processing timelines in arguing that lack of notice violates 8 C.F.R. § 103.2(b)(16)(i).

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official to act within a particular time period *and* specifies a consequence for failure to comply with the provision.'" *Ezell v. United States*, 778 F.3d 762, 765 (9th Cir. 2015)) (quoting *In re Siggers*, 132 F.3d 333, 336 (6th Cir. 1997)) (emphasis in original). Here, there is no express statutory guarantee of consideration of either naturalization or adjustment of status applications within any particular time-frame, and there can be no consequence for failing to adhere to a nonexistent schedule.

Accordingly, there is no liberty or property interest at stake protected by the Due Process Clause. And without a liberty or property interest in an adjudication within any particular time, there can be no interest in receiving "a meaningful explanation of the reasons for [CARRP] classification, and any process by which Plaintiff can challenge their classification." ECF No. 47, ¶ 263. *See Olim v. Wakinekona*, 461 U.S. 238, 250 (1983) ("Process is not an end in itself. Its constitutional purpose is to protect a substantive interest to which the individual has a legitimate claim of entitlement."). Without a substantive interest at stake, Plaintiffs are not entitled to notice or an opportunity to challenge processing of their applications under CARRP. Accordingly, Plaintiffs have failed to state a claim upon which relief may be granted, and this portion of their Fourth Claim for Relief should be dismissed. *See* Fed. R. Civ. P. 12(b)(6).

VI. Plaintiffs Complaint Fails to Allege Facts Supporting the Contention that CARRP Constitutes Final Agency Action

Plaintiff's Second Amended Complaint does not allege facts supporting their contention that CARRP constitutes a "final agency action" subject to this Court's review. Under 5 U.S.C. § 706(2)(A), courts may hold unlawful and set aside agency action that is "arbitrary" or "capricious." 5 U.S.C. § 706(2)(A). But courts are empowered to review an agency action only in connection with review of a "*final* agency action." 5 U.S.C. § 704 (emphasis added). A final agency action is one that "'mark[s] the consummation of the agency's decisionmaking process'" and that determines rights and obligations "'from which legal consequences will flow.'" *U.S. Army Corps of Eng'rs v. Hawkes Co., Inc.*, 136 S. Ct. 1807, 1814 (2016) (quoting *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997)). As alleged, CARRP meets neither of these conditions: Rather than the consummation of the agency's decisionmaking process, Plaintiffs allege CARRP

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1 to be the process itself. *See* ECF No. 47, ¶ 65-97. In their Response, Plaintiffs suggest that it is
2 CARRP standing alone, rather than its application to a particular request for a benefit, that is the
3 relevant final agency action. *See* ECF No. 58 at 23. But Plaintiffs have no standing to challenge
4 CARRP independently of its application to them. As explained above, the decontextualized
5 policy alone causes them no harm, and without harm there is no injury in fact, no case or
6 controversy, and no jurisdiction. *Lance*, 549 U.S. at 441-42; *Allen*, 468 U.S. at 754; *Novak*, 795
7 F.3d at 1018. The only dispute the Court would have jurisdiction over would be the application
8 of CARRP as a final agency action in the context of Plaintiffs' applications for benefits.

9 Furthermore, even assuming the relevant decisionmaking process was the process leading
10 to the implementation of CARRP, rather than individual adjudications, CARRP is still not the
11 source of legal consequences. Plaintiffs make a sweeping and confusing claim that "CARRP
12 creates a separate substantive regime for immigration application processing and adjudication."
13 ECF No. 58 at 21. But a regime for *processing* applications is *ipso facto* not substantive.[7] *See*
14 5 U.S.C. § 553(b)(3)(A); *Mora-Meraz v. Thomas*, 601 F.3d 933, 939 (9th Cir. 2010); *Hemp*
15 *Indus. v. DEA*, 333 F.3d 1082, 1087 (9th Cir. 2003). Moreover, Plaintiffs' very specific factual
16 allegations about how CARRP operates do not support their legal conclusion that it defines rights
17 or benefits. *See* ECF No. 47, ¶¶ 55-97. Plaintiffs have adequately alleged that CARRP is a rule
18 of "agency organization, procedure or practice," *see* 5 U.S.C. § 553(b)(3)(A), but not a
19 substantive or legislative rule that must be promulgated under the APA's notice-and-comment
20 procedure. The lack of a jurisdictionally sound challenge to any final agency action precludes
21 relief on Plaintiffs' Seventh,[8] Eighth, and Ninth Claims for Relief.

22

23 [7] Plaintiffs are not complaining of CARRP's effect on applications that have already been adjudicated.

24 [8] In their Seventh Claim for Relief, Plaintiffs alleged violations of various sections of the Immigration and
25 Nationality Act ("INA") and implementing regulations. ECF No. 47 ¶¶ 273-78. Defendants moved to dismiss this claim on the basis that the charged provisions did not contain a private right of action. ECF No. 56 at 17-20. In
26 their Opposition, Plaintiffs then suggested for the first time that this claim is actually brought under the Section 10(a) of the Administrative Procedure Act (5 U.S.C. § 702). ECF No. 58 at 17-18. Plaintiffs should be held to the
27 claims fairly raised in their Second Amended Complaint, and the Seventh Claim for Relief should be dismissed for failure to state a claim for the reasons discussed in Defendants' motion to dismiss. But if the Court were to indulge
28 Plaintiffs' post-hoc revision of the claim, it would still fail to state a claim under the APA for lack of a final agency action, for the reasons explained above.

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VII. CARRP is Not a Substantive or Legislative Rule Requiring Notice and Comment

Generally speaking, Plaintiffs concur with Defendants' identification of the relevant framework and legal authorities to determine whether CARRP is either a "substantive" or "legislative" rule or an "interpretive rule[], general statement[] of policy, or rule[] of agency organization procedure or practice." *see* ECF No. 20-21 & n.23. But Plaintiffs insist that CARRP constitutes a substantive rule. First, they claim that it creates an oxymoronic "substantive regime for immigration application processing." *Id.* at 21. Second, relying on paragraph 74 of the Second Amended Complaint, Plaintiffs contend that they have adequately alleged that "CARRP discriminates against applicants from Muslim-majority countries." *Id.* at 21-22. The cited paragraph makes no mention of applicants' religion.[9] ECF No. 47, ¶ 74. Nor does a purported disparate impact on the basis of national origin in the immigration context evince any purposeful unlawful discrimination. *See Ashcroft v. Iqbal*, 556 U.S. 662, 680-84 (2009). Third, Plaintiffs contend that CARRP requires concurrence from two supervisory officials before a benefit may be granted. ECF No. 58 at 22 (quoting ECF No. 47, ¶ 97). That, too, is a matter of internal procedure and not a substantive addition to the requirements for either adjustment of status or naturalization.

Having failed to identify any substantive changes to the eligibility criteria for the benefits at issue, Plaintiffs suggest that they should be relieved of their burden to adequately plead their claims, and instead should be permitted discovery in order to better ascertain what injuries they might have suffered. ECF No. 58 at 22. That is backward. *See Iqbal*, 556 U.S. at 685 ("Because respondent's complaint is deficient under Rule 8, he is not entitled to discovery, cabined or otherwise"). Plaintiffs have failed to allege facts demonstrating a "plausible entitlement to relief," *see* Fed. R. Civ. P. 8(a)(2), and their CARRP-related claims should be dismissed.

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[9] It is questionable whether the vague statistics Plaintiffs allege, which group together people from "twenty-one Muslim-majority countries or regions," *see* ECF No. 47, ¶ 12, would even form a viable disparate-impact complaint in a Title VII case, *see Watson v. Fort Worth Bank and Trust*, 487 U.S. 977, 994 (1988).

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CONCLUSION

For the foregoing reasons, the Court should dismiss the entirety of the Second Amended Complaint, in part for lack of jurisdiction, and, in part for failure to state claims upon which relief can be granted.

Dated: May 12, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 12, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following CM/ECF participants:

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