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Chief, Regulatory Coordination Division  
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U.S. Citizenship and Immigration Services  
Department of Homeland Security  
5900 Capital Gateway Drive  
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**RE: RIN 1615-ZB87, USCIS-2021-0004: Identifying Barriers Across U.S. Citizenship and Immigration Services (USCIS) Benefits and Services; Request for Public Input**

Dear Chief Deshommes:

Muslim Advocates respectfully submits the following comment in response to the United States Citizenship and Immigration Services' Identifying Barriers Across U.S. Citizenship and Immigration Services (USCIS) Benefits and Services; Request for Public Input, 86 Fed. Reg. 20398 (Apr. 19, 2021).

Muslim Advocates is a national legal advocacy and educational organization that works on the frontlines of civil rights to guarantee freedom and justice for Americans of all faiths. This comment focuses on the issue of denaturalization and related government policies threatening or stripping U.S. citizenship. These policies disproportionately target Muslim, Arab, Middle Eastern, and South Asian communities and chill their access to naturalization, green cards, asylum, refugee status, and many other immigration benefits, and important civic engagement. Through Freedom of Information Act (FOIA) requests and litigation, Muslim Advocates has collected information from USCIS, as well as from Immigration and Customs Enforcement (ICE), Department of Justice (DOJ), and Executive Office for U.S. Attorneys (EOUSA), on the government's activities related to denaturalization, including Operation Janus. In addition, Muslim Advocates has been engaged in advocacy on this issue and has consulted and given advice with regard to individual denaturalization cases.

On January 14, 2021, Muslim Advocates and almost 50 organizations sent a letter to the Biden-Harris Transition Team, highlighting the ways in which the government can address the severe harms caused by denaturalization (see Attachment). This comment expands on that letter and covers issues related to denaturalization that threaten citizenship. While denaturalization is operationalized across multiple departments, including the Department of Homeland Security (DHS), DOJ, and Department of State, this comment focuses on USCIS and tailors its recommendations to USCIS to address these barriers.

First, this comment will provide an overview of the denaturalization problem and the severe harms associated with the practice. Then, it will discuss USCIS policies and practices on denaturalization. Next, this comment will cover USCIS policies and practices that present the

ways in which USCIS functions as an arm of immigration enforcement. Finally, it will discuss citizenship stripping policies beyond denaturalization. The recommendations included at the end of this comment are a start for USCIS to rectify the presented problems and a step towards reaffirming the security of citizenship for 21 million naturalized Americans; ensuring access to citizenship for the nearly nine million lawful permanent residents (LPRs) who are eligible to become U.S. citizens; and removing barriers for millions more who are chilled from accessing immigration benefits for which they are eligible due to the threat of denaturalization. Implementing the enclosed recommendations would ensure that USCIS is following the mandate of Executive Order (E.O.) 14012, “Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans”—to ensure that our laws and policies encourage full participation by immigrants in our civic life; that immigration processes and other benefits are delivered effectively and efficiently; and that the government eliminates sources of fear, instability, and other barriers that prevent immigrants from accessing government services available to them.

## **I. OVERVIEW OF THE DENATURALIZATION PROBLEM**

Denaturalization is the process by which the government strips naturalized Americans of their citizenship. The current denaturalization regime reflects the racialized and criminalized narratives about who belongs in America. The very threat of denaturalization prevents immigrants from fully and freely exercising their rights as U.S. citizens or residents and engaging in social and political life. By using tremendous government resources to go after U.S. citizens who have been rooted in their communities for decades, the government destabilizes citizenship for those that already have it, sends a chilling message to those seeking to naturalize, and diverts resources from serving families seeking other immigrant benefits.

Under the Trump administration, the denaturalization apparatus drastically expanded in ways and numbers that starkly departed from the practice of the last half century. Without action to address this issue, this expansion remains policy under the current administration. Individuals who are targeted for civil or criminal denaturalization are pitted against a massive interagency apparatus with insufficient procedural safeguards in place to check the government’s abusive and biased practices. The immigrant communities targeted for denaturalization are the same communities that were targeted by Trump’s dehumanizing immigration policies and racist demagoguery. The Trump administration has morphed USCIS to use denaturalization as a weapon against Muslim Americans and Americans of color and create a kind of fragile, second-class citizenship for Americans who were not born in the United States. Absent reforms to end USCIS’s citizenship-stripping practices and restore USCIS to a service-oriented benefits agency, the current administration betrays the trust of those who voted for change.

### **a. Continuing Threat Posed by Expansion of Denaturalization Efforts**

The drastic expansion in denaturalization operations under the Trump administration continues to impact the 21 million naturalized Americans whose citizenship is at risk, the nearly nine million lawful permanent residents (LPRs) who are eligible to become U.S. citizens, and millions more who are chilled from accessing immigration benefits that they are eligible for or engage fully in civic life due to the threat of denaturalization. To this day, denaturalization

proceedings and operations continue, possibly at a rate indistinguishable from under the last administration.

The Trump administration sought to strip naturalized Americans and their families of their citizenship in numbers exponentially greater than any previous administration. In 2017 and 2018, the Trump administration filed double the average number of denaturalization cases filed in the prior 12 years. At the same time, the Trump administration institutionalized the denaturalization apparatus across different agencies, setting up specialized offices and units in the Departments of Justice and Homeland Security for the sole purpose of denaturalizing citizens. As such, individuals targeted for denaturalization are faced with an interagency force, spanning across DHS, DOJ, and Department of State (DOS), and in close collaboration through various working groups and task forces.<sup>1</sup>

Additionally, the Trump administration drastically expanded the scope of activities that the government is willing to allege as grounds for denaturalization to include innocent mistakes, allegations of minor unlawful acts, or even mistakes made by the government. From the 1960s to the early 2000s, denaturalization was largely considered a last resort to be used only against alleged Nazis and other war criminals who had committed crimes against humanity. Since the early 2000s, the criteria for denaturalization have quietly expanded to include “national security” cases and cases involving certain criminal convictions as well as others’ mistakes.<sup>2</sup> Now, we are seeing cases targeting U.S. citizens who have called the United States their home for decades and since they were minors. Many recent denaturalization cases are punitive in nature, pursuing individuals already punished by the criminal legal system. Individuals are being denaturalized based on the same, often minor, conduct for which they were incarcerated. There are also cases where individuals without criminal convictions are targeted for denaturalization solely on the basis of their answer to the overly broad and ambiguous question on the N-400 naturalization application which asks: “Have you EVER committed, assisted in committing, or attempted to commit, a crime or offense for which you were NOT arrested?” One such case involved an individual who was denaturalized even though they had not yet been charged with a crime when they applied for citizenship and pled guilty only after becoming a U.S. citizen. In other cases, denaturalization is sought on the basis of the mistakes of others, such as bad attorneys and translators, or even the government’s failures in recordkeeping or the failures of the immigration system. Finally, many denaturalization cases are based on the government’s allegations of fraud, but the government has never substantiated its sweeping justification of fraud prevention to warrant the irreparable harm to American families and society that is caused by denaturalization. In many of these cases, the government bases denaturalization on questionable “evidence,” alleging fraud based only on the testimony from unqualified “experts” or questionable card stock fingerprint files that resulted from the early efforts of U.S. agencies to collect fingerprint information. In those cases, the government is likely unable to verify that the fingerprints on paper cards belonged to the individual listed, as private vendors, including untrained storefront processors, often completed these fingerprint cards.<sup>3</sup>

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<sup>1</sup> Open Society Justice Initiative (OSJI), *Unmaking Americans: Insecure Citizenship in the United States* (2019), <https://www.justiceinitiative.org/uploads/e05c542e-0db4-40cc-a3ed-2d73abcf37f/unmaking-americans-insecure-citizenship-in-the-united-states-report-20190916.pdf> [hereinafter OSJI Report].

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

## **b. A New Tool of Immigration Enforcement Lacking Procedural Safeguards**

Today, denaturalization is increasingly used as an immigration enforcement tool and a precursor to deportation. Not only is the U.S. citizen who is targeted for denaturalization at risk of losing their citizenship, but the government sometimes seeks the denaturalization of that individual's family members as well.<sup>4</sup> As currently operationalized, denaturalization echoes the practice of separating families present in the Muslim and African Bans, family separation at the border, and deportations by tearing people from their loved ones. Moreover, denaturalization is a costly and time-consuming process, involving multiple cabinet-level departments and federal litigation and requiring a significant expenditure of resources.<sup>5</sup>

This enormous denaturalization apparatus is all the more concerning because the procedural loopholes in civil denaturalization proceedings prevent targeted individuals from adequately defending themselves. According to the DOJ, the Office of Immigration Litigation—which houses DOJ's specialized Denaturalization Section—had a 95% “success” rate in denaturalization cases.<sup>6</sup> Such a high rate of “success” underlines the shortcomings of the civil denaturalization proceedings. U.S. citizens facing civil denaturalization have been stripped of their citizenship through coercive settlement agreements or civil mechanisms, often without procedural protections, and often based on questionable evidence such as a single disputable fingerprint. Civil denaturalization is the preferred method of stripping citizenship because of the lower burden of proof required and lack of procedural protections in comparison to criminal denaturalizations. In fact, U.S. attorneys at the Department of Justice openly urged federal prosecutors to refer criminal denaturalization efforts ending in acquittal, or cases beyond the ten-year statute of limitations, to civil denaturalization proceedings. Civil denaturalizations lack any statute of limitations, the right to jury trial, the right to appointed counsel, and do not require personal service. As such, there are cases where U.S. citizens are stripped of their citizenship on the basis of questionable evidence, on a motion to summary judgment, and without their presence or an opportunity to contest the government's allegations. In one case involving an individual who was denaturalized within a short three months after the government initiated civil denaturalization proceedings against them, it is possible that they do not know of their denaturalization because personal service is not required in civil denaturalization cases.<sup>7</sup>

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<sup>4</sup> National Immigration Project of the National Lawyers Guild (NIPNLG) and Immigrant Legal Resource Center (ILRC), *Practice Advisory: Denaturalization and Revocation of Naturalization* (last updated April 7, 2020), [https://www.nationalimmigrationproject.org/PDFs/practitioners/practice\\_advisories/fed/2020\\_07Apr\\_denaturalization-pa.pdf](https://www.nationalimmigrationproject.org/PDFs/practitioners/practice_advisories/fed/2020_07Apr_denaturalization-pa.pdf) [hereinafter *Denaturalization Practice Advisory*].

<sup>5</sup> U.S.C.I.S. Ombudsman, *Annual Report 2020* (June 30, 2020), [https://www.dhs.gov/sites/default/files/publications/20\\_0630\\_cisomb-2020-annual-report-to-congress.pdf](https://www.dhs.gov/sites/default/files/publications/20_0630_cisomb-2020-annual-report-to-congress.pdf) [hereinafter *USCIS Ombudsman 2020 Annual Report*].

<sup>6</sup> U.S. Department of Justice, “The Department of Justice Creates Section Dedicated to Denaturalization Cases,” press release, February 26, 2020, <https://www.justice.gov/opa/pr/department-justice-creates-section-dedicated-denaturalization-cases>.

<sup>7</sup> OSJI Report, *supra* note 1.

### **c. Potential Discriminatory Targeting Based on National Origin, as a Proxy for Race, Ethnicity, and Religion**

The existing denaturalization apparatus grew and evolved from a prior initiative called Operation Janus. Operation Janus began in 2008 and targeted naturalized Americans from “special interest countries” (SICs) and countries bordering SICs for denaturalization. While there is no public document definitively identifying the countries designated as SICs, the available data strongly suggests that the operation largely focused on Muslim-majority countries and countries with large Muslim populations.<sup>8</sup> By the end of 2018, roughly 10 percent of the civil denaturalization cases that were filed under the Trump Administration have been against people from three countries—Yemen, Somalia, and Iran—that were included in the Muslim Ban. But people from these countries make up only about one percent of the U.S. population of people born outside of the United States.<sup>9</sup> Nearly half of all cases filed by the Trump Administration in 2017-18 targeted citizens whose country of origin was a SIC, which reflects the U.S. government’s decision to impose collective suspicion on individuals based on their country of origin alone. During this same period, there was a surge in denaturalization cases targeting naturalized Americans from Mexico, Haiti, and Nigeria as well. The administration has offered no rebuttal to the strong evidence that U.S. citizens are being targeted for denaturalization based on their national origin, and that national origin in this context serves as a proxy for race, ethnicity, and religion.<sup>10</sup>

## **II. USCIS POLICIES AND PRACTICES SPECIFIC TO DENATURALIZATION**

The denaturalization apparatus is institutionalized across DHS, DOJ, and Department of State, and each of these departments and their agencies work in close collaboration to pursue denaturalization. USCIS has a crucial role in this operation. This section focuses on USCIS policies and practices that are specific to denaturalization. The next section discusses USCIS policies and practices that further denaturalization.

### **a. USCIS’s Denaturalization Task Force**

USCIS’s denaturalization task force is a crucial part of the denaturalization apparatus. In January 2018, USCIS established the Historical Fingerprint Enrollment (HFE) Unit in its Los Angeles District Office to support the denaturalization efforts of Operation Janus.<sup>11</sup> Although L. Francis Cissna, then-head of USCIS, declared that “there is no denaturalization task force,”<sup>12</sup> the Trump Administration’s actions, public government documents, and documents released through a Muslim Advocates FOIA request belie those contentions. When USCIS created the HFE Unit, it was reviewing files of naturalized citizens who either did not or may not have had their full

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<sup>8</sup> *Id.*

<sup>9</sup> Seth Freed Wessler, *Is Denaturalization the Next Front in the Trump Administration’s War on Immigration?*, N.Y. TIMES (Dec. 19, 2018), <https://www.nytimes.com/2018/12/19/magazine/naturalized-citizenship-immigration-trump.html> [hereinafter Wessler Article].

<sup>10</sup> OSJI Report, *supra* note 1.

<sup>11</sup> *Id.*

<sup>12</sup> L. Francis Cissna Remarks at Annual Immigration Policy Conference (Oct. 1, 2018), <https://www.c-span.org/video/?452248-3/frank-cissna-remarks-annual-immigration-policy-conference&start=272> [hereinafter Cissna Remarks].

fingerprint records in government databases, in order to refer denaturalization cases to DOJ. This denaturalization-focused unit has since expanded its focus from naturalization applications to all requests for immigration benefits and re-branded as the USCIS's Benefits Integrity Office (BIO), which is the Los Angeles office that had been reported to focus solely on denaturalization. BIO is now staffed with 64 full-time employees and funded by immigration application fees. These employees consist of at least 54 officers from the USCIS's Fraud Detection and National Security division, 9 associate attorneys, and a division chief. Beyond the centralized BIO Unit pursuing denaturalization proceedings, local field offices can also review potential denaturalization cases for referral to DOJ.<sup>13</sup>

The growth and institutionalization of a USCIS denaturalization task force is particularly concerning due to USCIS's crucial role in the denaturalization process. When DHS was established, USCIS sent denaturalization cases to ICE, which made the final decision on whether to send the case to DOJ. However, because USCIS wanted more visibility into the outcomes of these referrals, USCIS determined that through a DHS delegation of authority, it had the authority to refer cases to DOJ directly as well. In addition to this direct line of referral, USCIS plays a crucial role in investigating an individual's file and preparing a draft of the Affidavit of Good Cause (AGC), which is the statutorily-required document that presents the legally sufficient ground(s) for denaturalization. DOJ's "success" in a denaturalization case depends on the file that it receives from USCIS.<sup>14</sup>

Individual USCIS staff have the power to choose whether to recommend referral of the case for civil denaturalization or to proceed without action, i.e. to forgo denaturalization.<sup>15</sup> USCIS often allows cases with questionable or weak evidence to continue to denaturalization. Documents produced in response to Muslim Advocates' FOIA requests reveal that USCIS engages in questionable practices regarding the sufficiency of evidence.

For one, according to the USCIS Office of Chief Counsel (OCC) Guidance for HFE Denaturalization Cases, there is no requirement to certify copies of foreign birth, marriage, or death certificates because the grounds of denaturalization do not generally rely on the truth of any of those dates. Yet these documents that are not certified are being used by the government to justify the denaturalization action in the first instance. Consequently, given the government's push to resolve denaturalization cases through settlement, it is likely that one can be denaturalized on the basis of a document that was never certified. Additionally, in cases where the original adjudicating officer is unavailable—whether deceased, retired, or cannot be located, the practice is to use a supervisor or another officer who may be interviewed to establish the deceased/retired officer's pattern and practice. This is a common situation due to the decades that usually precede the initiation of a denaturalization action. More often than not, the officer that interviewed the targeted individual as part of their naturalization application, for example, will be unable as a witness when called decades after the interview took place. The guidance states that USCIS can assess whether a denaturalization case may be referred without a particular ground for denaturalization if that ground is dependent upon an officer's testimony and there are

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<sup>13</sup> USCIS Ombudsman 2020 Annual Report, *supra* note 5.

<sup>14</sup> *Id.*

<sup>15</sup> USCIS Office of Chief Counsel Guidance for HFE Denatnz Cases, last updated 5/23/2018 (FOIA Production) [hereinafter USCIS OCC Guidance].

concerns or issues with that officer’s testimony. In other words, USCIS staff are encouraged to find alternative grounds for denaturalization to work around situations where an officer’s testimony is problematic or unavailable.<sup>16</sup>

### **b. USCIS’s Denaturalization Case Settlement Process**

In 2019, a USCIS Decision Memorandum, “Settlement Process for Historical Fingerprint Enrollment Denaturalization Cases,” created a panel within USCIS to review and respond to settlement offers in denaturalization cases that implicate “USCIS interests.” This panel’s power over settlements extends to all denaturalization cases, well beyond Historical Fingerprint Enrollment, or Operation Janus, cases. USCIS’s stated goal in creating this panel is to efficiently secure denaturalizations. This authority is relevant where the individual targeted for denaturalization seeks to obtain concessions by the government in exchange for an order of denaturalization because USCIS may need to agree to the terms in order to accept such an offer.<sup>17</sup>

The most typical settlement demand that would require USCIS consent is a decision not to initiate cancellation of certificate of citizenship proceedings against derivative children of the defendant. In other words, USCIS can determine if the denaturalization target’s spouse and/or child should be permitted to retain their derived or acquired citizenship and residence status. Additionally, USCIS may opine on issues of non-removability. USCIS can determine if removal of the targeted individual is a priority or if denaturalization is sufficient punishment. While USCIS does not have unilateral authority to agree to non-removal as part of a settlement agreement without ICE’s concurrence, USCIS may have authority to reject a proposed settlement in these cases, and it may also have authority to agree to certain settlement terms.<sup>18</sup>

### **c. Coercive Targeting of Derivatives**

A U.S. citizen targeted for denaturalization is at risk of losing their citizenship and even deportation. Under current practice, the risks of denaturalization and deportation also haunt the children and spouses of the individual targeted for denaturalization. Children are enumerated as a specific area of review in investigating an individual targeted for denaturalization.<sup>19</sup> Under INA § 340(d), derivative U.S. citizens may lose their citizenship if they “claimed” it through a parent or spouse, depending on why the parent was denaturalized, how the derivatives claimed the citizenship, and where they were when it happened.<sup>20</sup>

As discussed above, the most typical demand of an individual targeted for denaturalization in settlement negotiations is a decision by USCIS not to strip the citizenship of their derivative children. In other words, the most typical request of the individual targeted for denaturalization is to protect the citizenship of their children who derived citizenship from them. In assessing settlement offers, USCIS can determine if the subject’s spouse and/or child should

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<sup>16</sup> *Id.*

<sup>17</sup> USCIS Decision Memorandum, “Settlement Process for Historical Fingerprint Enrollment Denaturalization Cases,” dated May 10, 2018 (FOIA Production) [hereinafter USCIS Decision Memorandum].

<sup>18</sup> *Id.*

<sup>19</sup> USCIS OCC Guidance, *supra* note 15.

<sup>20</sup> Denaturalization Practice Advisory, *supra* note 4.

be permitted to retain their derived or acquired citizenship and residence status. More troubling, however, is USCIS’s ability to seek additional restrictions in the settlement offer to enhance “enforcement or deterrent value” even in cases where a derivative child or spouse is determined to be outside enforcement priorities. This puts a denaturalization target in an impossible situation where they are forced to admit to the grounds of denaturalization, no matter how weak the evidence, in order to protect their children and spouse from denaturalization and potential deportation. Such a policy also operationalizes guilt by association. The children or spouse of the targeted individual are punished even though they have no part in the underlying conduct that the government is alleging as grounds for denaturalization.<sup>21</sup>

### **III. USCIS AS ARM OF IMMIGRATION ENFORCEMENT**

The policies and practices discussed in this section present the ways in which USCIS functions as an arm of immigration enforcement. USCIS’s immigration enforcement efforts stand in stark contrast to Congress’s intent in creating USCIS to adjudicate immigration benefit and USCIS’s mission to facilitate access to these benefits.

#### **a. Misuse of USCIS Funds for Denaturalization and Immigration Enforcement**

The misuse of fees collected from naturalization applications to fund denaturalizations is a reflection of the existential shift within USCIS from a service-oriented benefits agency to a well-resourced surrogate enforcement agency.<sup>22</sup> While this section focuses on the misuse of Immigration Examinations Fee Account (IEFA) funds for denaturalization, this misuse of IEFA funds is by no means limited to denaturalization efforts. The IEFA “is the primary funding source for USCIS” and is used to “fund the cost of processing immigration benefit applications and associated support benefits, as well as to cover the cost of processing similar benefit requests for applicants without charge, such as refugee and asylum applicants.”<sup>23</sup> However, instead of funding the processing of immigration benefits, IEFA funds are being used to fund denaturalization efforts. Case in point, the BIO—the re-branded denaturalization task force within USCIS—is funded from immigration application fees.<sup>24</sup>

In its FY 2019 budget, the Trump administration’s DHS proposed to transfer \$207.6 million from USCIS’s IEFA budget to ICE for denaturalizations and other immigration enforcement measures. In February 2019, 86 members of Congress sent a letter to USCIS regarding the “alarming growth in processing delays” for naturalization. The letter also expressed alarm over the request to transfer IEFA funds to ICE for denaturalization purposes, stating that “[t]his appears to represent part of USCIS’s larger shift toward prioritizing immigration enforcement over the service-oriented adjudications at the core of the agency’s mandate.”<sup>25</sup> Given the extraordinary delays in processing the backlog of more than 750,000 naturalization applications, USCIS must ensure that all IEFA funds are geared towards ensuring

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<sup>21</sup> USCIS Decision Memorandum, *supra* note 17.

<sup>22</sup> OSJI report, *supra* note 1.

<sup>23</sup> USCIS, Department of Homeland Security, *Budget Overview - Fiscal Year 2019 Congressional Justification*, <https://www.dhs.gov/sites/default/files/publications/USCIS%20FY19%20CJ.pdf>.

<sup>24</sup> USCIS Ombudsman 2020 Annual Report, *supra* note 5.

<sup>25</sup> Miriam Jordan, *Wait Times for Citizenship have Doubled in the Last Two Years*, N.Y. TIMES (Feb. 21, 2019), <https://www.nytimes.com/2019/02/21/us/immigrant-citizenship-naturalization.html>.



access to immigration benefits, rather than directed to immigration enforcement efforts like denaturalization.

### **b. Dragnet Targeting Based on Collective Suspicion**

The government's use of digital records, databases, and screening technologies in identifying targets for potential denaturalization operationalizes dragnet targeting based on collective suspicion. Operation Janus was made possible because the government developed the capacity to digitize, then store, paper fingerprint cards. Through the Automated Biometric Identification System (also known as IDENT), DHS's digital fingerprint database which was established in 2007, Operation Janus initially identified a pool of 315,000 records meeting certain criteria and lacking fingerprint records, for potential denaturalization. The Trump administration then proposed to review up to 700,000 records by locating and uploading scans of old fingerprint cards. According to a report by Open Society Justice Initiative (OSJI), "Operation Janus seems to have broken with previous executive branch practice in its scrutiny of digitized bulk data for the purposes of investigating cases for possible denaturalization. No other operation employing these tactics, whether for counterterrorism enforcement, immigration enforcement, or some other reason, is known to exist." Through technologies and databases that allow the government to flag individuals meeting certain criteria, the government casts collective suspicion on entire communities, thereby subjecting them to possible investigation for denaturalization.<sup>26</sup>

Case in point, Operation Janus specifically targeted naturalized Americans from "special interest countries" (SICs) and countries bordering for denaturalization. As discussed above, SICs were broadly defined as countries that implicate national security concerns and largely centered on Muslim-majority countries or countries with large Muslim populations. In effect, the digitization of fingerprints and new technologies allowed the government to identify targets for potential denaturalization and engage in dragnet enforcement operations based on collective suspicion, by targeting individuals based on their national origin.<sup>27</sup> The government's practice of dragnet, discriminatory targeting will exponentially grow without action by the current administration to halt such enforcement tactics, as DHS is planning on spending \$4.3 billion to replace IDENT with an even larger database called Homeland Advanced Recognition Technology (HART). HART would increase the government's capacity to store a trove of sensitive personal information about individuals, ranging from their biometric information like facial recognition data, digital fingerprints, iris image, palmprint, voice print, and DNA, to their political affiliations, religious activities, and relationship patterns.<sup>28</sup> HART will be integrated into the National Vetting Center (NVC)—which was established to create and facilitate a consolidated interagency effort to vet "an individual's suitability for access to the United States or travel- or immigration-related benefits" against information available across immigration, law enforcement, and intelligence agencies<sup>29</sup>—to exponentially enhance the scrutinizing of

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<sup>26</sup> OSJI Report, *supra* note 1.

<sup>27</sup> *Id.*

<sup>28</sup> Just Futures Law, *Freeze Expansion of the HART Database Fact Sheet* (April 2021), <https://justfutureslaw.org/wp-content/uploads/2021/04/HART-Appropriations-2022.pdf>.

<sup>29</sup> U.S. Customs and Border Protection, "National Vetting Center," <https://www.cbp.gov/border-security/ports-entry/national-vetting-center>.

immigrants seeking to access immigration benefits or travel to the United States.<sup>30</sup> New technologies like the HART database and NVC would create unprecedented capacity in the hands of the state to identify and target supposed “threat” communities and engage in collective punishment, rhetorically justified by the imagined demands of fraud prevention, public safety, and national security.

The government’s capacity to identify targets en masse through its databases is made possible by screening or vetting functionalities like ATLAS and Continuous Immigration Vetting (CIV). ATLAS is a screening functionality, or tool, that is incorporated into USCIS’s primary case management system. ATLAS contains a rules engine that applies pattern-based algorithms and predictive analytics to look for indicators of *potential* fraud, public safety, and national security concerns.<sup>31</sup> CIV is a vetting capability that continuously vets applicants and beneficiaries from the time of the initial immigration filing, through the duration of the benefit or status, until the individual becomes a naturalized citizen.<sup>32</sup>

USCIS’s primary case management system, Fraud Detection and National Security Data System (FDNS-DS), houses ATLAS as its screening functionality. Even though ATLAS is incorporated into the USCIS’s primary data system, it interfaces with a large number of data systems external to USCIS. Functionally, ATLAS receives information from the individual’s form submission and biographic and biometric-based checks and then screens that through a predefined set of rules to determine whether the individual presents *potential* fraud, public safety, or national security concerns. These rules are secret and not available to the public. Previously, FDNS-DS received information primarily through manual referrals from USCIS adjudications staff. However, since the development of ATLAS, when there is a match to a rule, ATLAS produces a flag or notification, which is then elevated for manual review or investigation.<sup>33</sup>

According to a USCIS news release, in FY 2019, ATLAS processed more than 16.5 million screenings, through law enforcement and other federal databases, generating approximately 124,000 automated potential fraud, public safety, and national security detections requiring further analysis and manual review by USCIS officers.<sup>34</sup> Each of these detections or flags translates into an investigation of an individual and their family. Once ATLAS flags an individual’s case, that case is then elevated for investigation. Upon investigation, that individual

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<sup>30</sup> U.S. Department of Homeland Security Public Action Plan, “Strategic Framework for Countering Terrorism and Targeted Violence” (Sept. 2020), [https://www.dhs.gov/sites/default/files/publications/cttv\\_action\\_plan.pdf](https://www.dhs.gov/sites/default/files/publications/cttv_action_plan.pdf).

<sup>31</sup> Privacy Impact Assessment for the ATLAS, DHS Reference No. DHS/USCIS/PIA-084 (Oct. 30, 2020), [https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis084-atlas-october2020\\_0.pdf](https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis084-atlas-october2020_0.pdf) [hereinafter ATLAS PIA]; Privacy Impact Assessment for the Fraud Detection and National Security Data System, DHS Reference No. DHS/USCIS/PIA-013(a) (May 18, 2016), <https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis-013-A-fdns%20ds%20update-may2016.pdf> [hereinafter FDNS-DS PIA].

<sup>32</sup> Privacy Impact Assessment for the Continuous Immigration Vetting, DHS Reference No. DHS/USCIS/PIA-076 (Feb. 14, 2019), [https://www.dhs.gov/sites/default/files/publications/pia-uscis-fdnciv-february2019\\_0.pdf](https://www.dhs.gov/sites/default/files/publications/pia-uscis-fdnciv-february2019_0.pdf) [hereinafter CIV PIA].

<sup>33</sup> ATLAS PIA, *supra* note 29; FDNS-DS PIA, *supra* note 29.

<sup>34</sup> USCIS Press Release, “Cuccinelli Announces USCIS’ FY 2019 Accomplishments and Efforts to Implement President Trump’s Goals” (Oct. 16, 2019), <https://www.uscis.gov/news/news-releases/cuccinelli-announces-uscis-fy-2019-accomplishments-and-efforts-to-implement-president-trumps-goals>.

can potentially be subject to everything from denaturalization or denial of naturalization or other immigration benefit, or even deportation. Moreover, because the rules or factors underlying ATLAS's screening functionality are unknown, there is no way to assess whether ATLAS is disproportionately flagging certain communities. In fact, the Privacy Impact Assessment for ATLAS states that an individual's country of birth or citizenship could be a screening criterion.<sup>35</sup> As was the case in Operation Janus, any rule based on country of origin is likely designed to target individuals from Muslim-majority countries. Additionally, algorithms and predictive analytics, like that deployed by ATLAS, are known to amplify anti-Blackness and racism in U.S. institutions and discriminate against Black and Brown communities.<sup>36</sup> These very communities consequently will be investigated in higher numbers.

In addition to ATLAS, USCIS has been working with CBP and ICE to develop Continuous Immigration Vetting (CIV)—a vetting capability that vets applicants and beneficiaries from the time of the initial immigration filing, through the duration of the benefit or status, until the individual becomes a naturalized citizen. While CIV was focused on screening for national security concerns when it began in 2017, it is now being expanded to screen for public safety and fraud concerns as well. Already, USCIS has expanded CIV's application to go beyond just naturalization applicants to include applicants seeking lawful permanent residence as well. At the time of the CIV PIA dated February 14, 2019, USCIS was also working with ICE to develop an automated process to electronically send referrals to ICE via ATLAS for possible enforcement action or criminal investigation. Previously, when criminal investigation or enforcement action was deemed necessary, USCIS manually sent referrals to ICE. USCIS and CBP have already established a connection between USCIS ATLAS and CBP's data system.<sup>37</sup> In effect, without any concrete reason justifying investigation, CIV allows for the continuous surveillance of an individual up until the point of naturalization.

Under the blanket justification of *potential* fraud, public safety, and national security concerns, USCIS uses ATLAS and CIV to investigate and continuously surveil individuals en masse without any actual evidence substantiating suspicion of wrongful conduct. For the individuals flagged by ATLAS or CIV, their subsequent investigation has the potential to lead to immigration enforcement actions including denaturalization or deportation.

### **c. Controlled Application Review and Resolution Program (CARRP)<sup>38</sup>**

Particularly since September 11, 2001, many programs, policies, and laws have targeted Muslim, Arab, Middle Eastern, and South Asian communities, and often have been expanded to target other Black and Brown communities. CARRP is a particularly egregious program that has prevented thousands of eligible individuals and their families from obtaining immigration benefits, including citizenship. This program formalized USCIS post-9/11 practices that prohibit the approval of applications for immigration benefits to anyone the agency flags as a possible "national security concern," despite an individual's eligibility for the benefit. CARRP, which

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<sup>35</sup> ATLAS PIA, *supra* note 29.

<sup>36</sup> Southerland, Vincent, *The Intersection of Race and Algorithmic Tools in the Criminal Legal System* (October 1, 2020), MARYLAND LAW REVIEW, Forthcoming, <https://ssrn.com/abstract=3797102>.

<sup>37</sup> CIV PIA, *supra* note 30.

<sup>38</sup> This section draws from ACLU, "Restoring Access to Citizenship and Immigration Benefits," [https://www.aclu.org/sites/default/files/field\\_document/access\\_to\\_citizenship\\_and\\_immigration\\_benefits\\_final.pdf](https://www.aclu.org/sites/default/files/field_document/access_to_citizenship_and_immigration_benefits_final.pdf).

was never approved by Congress, profiles immigrants from predominantly Muslim-majority countries as “concerns” based on national origin. Tens of thousands of meritorious applicants—including aspiring citizens, refugees, and spouses of U.S. citizens—have had their applications denied or delayed for years since the program began, leaving many unable to naturalize under the guise of national security.<sup>39</sup>

USCIS subjects applicants to CARRP in secret, without ever revealing to the applicant the agency’s “concern” or providing them an opportunity to respond. Under CARRP, individuals are flagged as “national security concerns” based on mere suspicion and according to subjective criteria that can include national origin, associations, professions, and viewpoints. People can be subjected to CARRP and typecast as “concerns” based on nothing more than who they know or are related to; their travel back to their country of birth or origin; the mere refusal to voluntarily serve as an FBI informant; financial support sent to relatives or friends in their home countries; or even a person’s “re-tweets” on social media. Once an applicant is subject to CARRP, officers are instructed to find ways to deny the application or withhold adjudication.<sup>40</sup>

From its creation in 2008 to 2016, USCIS reported its use of CARRP in over 41,800 immigration applications with people from India, Iran, Iraq, Pakistan, and Yemen as the top five countries of origin impacted. The program disproportionately impacts Muslims and those perceived to be Muslim, such as Arab, Middle Eastern, and South Asian community members—much like other policies that use the blanket term “national security.” In fact, approximately 80 percent of all people subjected to this program are from Muslim-majority countries. Others, including applicants from China, are also viewed with baseless suspicion, particularly during times of political or diplomatic tension with those countries.<sup>41</sup>

#### **d. USCIS Policy Rejecting Adoptions in Countries that Follow Islamic Law**

Like CARRP, USCIS’s policy of categorically rejecting adoptions in countries that follow Islamic law for immigration purposes specifically targets Muslims and individuals from Muslim-majority countries. The overly broad, simplistic interpretation of Islamic law reduces the issue of adoption to a black and white issue, devoid of the nuance necessary to adequately assess adoptions for individuals from countries of origin that follow Islamic law, such as Yemen. While we have seen this issue arise in the context of a denaturalization case and removal proceedings, USCIS’s policy on adoptions in countries that follow Islamic law affects its adjudication of immigration benefits as well. This policy directly targets Muslim Americans and immigrants, resulting in investigation and eventually either immigration enforcement, including denaturalization, or denials of immigration benefit applications.

The INA does not define “adoption” for immigration purposes. Instead, adoptions have been defined by Board of Immigration Appeals (BIA) decisions. One of the requirements for adoption is that the adoption must be “valid under the law of the country or place granting the adoption.” The BIA, in *Matter of Mozeb*, 15 I&N Dec. 430 (BIA 1975) and *Matter of Ashree, Ahmed and Ahmed*, 14 I&N Dec. 305 (BIA 1973), blanketly ruled that all adoptions in countries

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<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

that follow traditional Islamic law are invalid under the laws of those countries. USCIS Policy Memorandum dated 11/6/2012, “Guidance for Determining if an Adoption is Valid for INA Purposes,” (PM-602-0070.1) enumerates this blanket rule.<sup>42</sup>

The blanket policy of not recognizing adoptions in countries that follow traditional Islamic law categorically rejects adoptions that are, in fact, valid under Islamic law. To say that Islamic law forbids adoptions “misses the complexity of Islamic law, the scope of adoption laws and practices across the world, and the overwhelming emphasis on taking care of orphans and foundlings found within Islamic sources.”<sup>43</sup> A determination as to whether the adoption at issue is recognized under Islamic law requires a fact-intensive inquiry into individualized circumstances and practices of the individual, as well as a recognition that there is no single, monolithic interpretation of Islamic law that governs all who adhere to the religion. In addition, this policy also bars the recognition of adoptions in cases where there is a clear adoptive relationship as commonly understood in the United States.

Due to this policy, individuals faced with this issue need to litigate this issue against a presumption that their adoption was invalid. This may require a highly-specialized expert witness who may be hard to find or cost-prohibitive for individual cases. Of particular concern is that this issue can become a basis for later immigration enforcement, including even denaturalization, for adults who had come to the United States as toddlers or children on a visa by a parent petitioner. We have seen this policy applied as the basis for invalidating one’s citizenship in both denaturalization and removal proceedings. In addition to being used to challenge the citizenship of a U.S. citizen, this policy is also applied to reject the initial adjudication of immigration visas for individuals from countries that follow traditional Islamic law.

#### **e. Screening and Adjudication Starting from the Presumption of Fraud**

Beyond CARRP, during the Trump administration, applicants for naturalization have been increasingly viewed by USCIS adjudicators with suspicion. Screening for immigration benefits, including naturalization, has become more difficult, more time intensive, and more burdensome to apply.<sup>44</sup> There is no indication that enhanced vetting efforts are resulting in any improvement in adjudications, let alone any showing that there was a need for enhanced vetting in the first instance. These efforts slow USCIS’s work on its core mission and effectively cost time and effort without showing any results that are helping the country.<sup>45</sup>

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<sup>42</sup> USCIS Policy Memorandum, PM-602-0070.1, “Guidance for Determining if an Adoption is Valid for INA Purposes” (Nov. 6, 2012).

<sup>43</sup> Global Women’s Shura Council, *Wise Up About Adoption and Care of Orphans*, Women’s Islamic Initiative in Spirituality & Equality, <http://www.wisemuslimwomen.org/wp-content/uploads/2017/10/WISE-UP-Adoption.pdf>.

<sup>44</sup> Immigrant Legal Resource Center, *Blueprint for the Next Administration* (Sept. 2020), [https://www.ilrc.org/sites/default/files/resources/2020.09\\_ilrc\\_blueprint\\_for\\_the\\_next\\_admin.pdf](https://www.ilrc.org/sites/default/files/resources/2020.09_ilrc_blueprint_for_the_next_admin.pdf) [hereinafter ILRC Blueprint].

<sup>45</sup> Testimony of Eric Cohen, Executive Director of Immigrant Legal Resource Center, House Judiciary Committee, Subcommittee on Immigration and Citizenship, “Policy Changes and Processing Delays at USCIS (July 16, 2019), [https://www.ilrc.org/sites/default/files/resources/ilrc\\_testimony\\_for\\_hjc\\_hearing\\_on\\_uscis\\_policy\\_changes\\_and\\_processing\\_delays.pdf](https://www.ilrc.org/sites/default/files/resources/ilrc_testimony_for_hjc_hearing_on_uscis_policy_changes_and_processing_delays.pdf) [hereinafter ILRC Testimony].

In March 2019, the Immigration Legal Resource Center (ILRC) sent surveys to New American Campaign (NAC) partners across the nation asking them to report any changes in USCIS practice they have observed in the last eighteen-to-twenty-four months. According to the results of those surveys, practitioners reported an increase in suspicion among USCIS adjudicators towards their clients, a “fraud first” mentality, longer interviews, and changes in the types of questions asked. On average, nationalization interviews lasted approximately twice as long as before. Additionally, NAC partners reported that USCIS adjudicators were unjustifiably viewing LPR applicants with more suspicion. According to survey results, USCIS adjudicators were asking for more proof of marriage if the applicant is applying based on their marriage, and operating with the default assumption that applicants are engaged in fraud, without any evidence indicating fraud. Often, adjudicator inquiries required applicants to provide information outside the scope of their applications, such as USCIS adjudicators improperly asking for travel history beyond the five-year statutory period and additional information about their N-648. Finally, respondents to the survey reported that USCIS adjudicators were exercising less positive discretion, e.g. good moral character denied in cases where it might not have been in the past.

In addition to the systemic barriers erected to seeking immigration benefits and citizenship, this type of unreasonable vetting has resulted in applicants feeling fearful, anxious and concerned about the fate of their applications and whether it will lead to immigration enforcement. USCIS must ensure that unreasonable vetting does not continue to chill immigrants from seeking citizenship.<sup>46</sup> All naturalization applicants undergo a rigorous screening process, in addition to having already been vetted at least once before applying for naturalization and many have been vetted two or even three times before applying for naturalization.<sup>47</sup>

#### **IV. CITIZENSHIP STRIPPING BEYOND DENATURALIZATION**

The issue of stripping U.S. citizenship and its threat and chilling effect extends beyond denaturalization. This section highlights the government’s use of passport revocations or denials and cancellations of certificates of citizenship as proxy denaturalizations that sidestep the federal court proceeding required for denaturalization. While civil denaturalization proceedings are lacking in procedural protections, the requirement to be before a federal court provides some process that is entirely lacking in each of these issues.

The question of denaturalization today is one that falls squarely within the jurisdiction of the federal courts. The Immigration Act of 1990 transferred power of naturalization from the judiciary to the United States Attorney General.<sup>48</sup> In 1996, Attorney General Reno issued new regulations for the administrative denaturalization, which allowed the Immigration and Naturalization Service (INS) “on its own motion... [to] reopen a naturalization proceeding and revoke naturalization” under certain circumstances.<sup>49</sup> This administrative denaturalization policy was challenged in a nationwide class action and in *Gorbach v. Reno*, the Ninth Circuit Court of Appeals held that there was no statutory authority authorizing the INS to take away citizenship, and that the only way to revoke the citizenship of a naturalized person is for a petition to be filed

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<sup>46</sup> ILRC Blueprint, *supra* note 42.

<sup>47</sup> ILRC Testimony, *supra* note 43.

<sup>48</sup> Immigration Act of 1990 § 401, 8 U.S.C. §1421.

<sup>49</sup> *Gorbach v. Reno*, 219 F.3d 1087, 1090 (9th Cir. 2000).

by a U.S. Attorney in a federal district court.<sup>50</sup> Subsequent to this decision, denaturalization was only allowed through a federal court proceeding.

With the administrative route barred and denaturalization made more difficult, the government has turned to other means by which to de-facto deprive U.S. citizens of their citizenship. Two forms that this has taken are the revocation of passports and the cancellation of certificates of citizenship.

#### **a. USCIS Practice of Cancellation of Certificates of Citizenship**

A certificate of citizenship (COC) is an identity document providing U.S. citizenship that is generally issued to derivative citizens and to person who acquired U.S. citizenship. A COC is different than a certificate of naturalization, which is obtained when one naturalizes as a U.S. citizen. The process by which USCIS can cancel or revoke a COC is entirely administrative.

The cancellation of COC process starts with a letter from USCIS to the targeted individual of its intent to cancel their certificate of citizenship. Within 60 days of receiving notice, the targeted individual may submit an answer challenging the cancellation in writing and/or appear in person supporting their claim. If the adjudicator still recommends moving forward with cancellation, the individual can appeal.<sup>51</sup> No part of this process—appeal included—involves the federal courts as required for denaturalization, even though the result of a cancellation of COC can have the same effect as a denaturalization.

For certificates of naturalization, it is clear that while USCIS can cancel the certificate, it cannot revoke the underlying citizenship status.<sup>52</sup> In *Xia v. Tillerson*, 865 F.3d 643 (D.C. Cir. 2017), the D.C. Circuit clearly distinguished the revocation of a certificate of naturalization from revocation of citizenship itself and ruled that the administrative cancellation of a certificate of naturalization does not affect the underlying citizenship. The court noted that only the document itself, the certificate, is affected by such administrative cancellation.<sup>53</sup> Accordingly, USCIS's cancellation of a COC should not impact the underlying citizenship status, as is the case for certificates of naturalization. But in practice, this has not been true. What explains this difference is that the owners of certificates of naturalization are naturalized citizens, whereas the owners of COCs are derivative citizens. In *Matter of Falodun*, 27 I&N Dec. 52, 55 (BIA 2017), the BIA held that while naturalized citizens can only be denaturalized through federal court proceedings, derivative citizens can be denaturalized administratively. Thus for Americans who derived their citizenship, their status as a U.S. citizen can be stripped from them through an administrative process that skirts around the federal court process required of denaturalization. In effect, this reinforces the denaturalization regime's stratification of citizenship which devalues citizenship for those who were not born in the United States, and further enforces a hierarchy of U.S. citizenship that reflects different levels of belonging in America.

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<sup>50</sup> *Id.* at 1099.

<sup>51</sup> 8 C.F.R. § 342 (2021).

<sup>52</sup> Denaturalization Practice Advisory, *supra* note 4.

<sup>53</sup> *Xia v. Tillerson*, 865 F.3d 643 (D.C. Cir. 2017) (finding that the cancellation of naturalization certificates did not have any effect on the actual citizenship of the plaintiffs in question and warning the government that §1451 of the INA obligates it to institute a denaturalization proceeding if a certificate has been illegally procured).

Due to this distinction, upon cancellation of their COC, individuals can be forced in removal proceedings and deported—a practice that usually follows for individuals who are denaturalized. In a case that we consulted on, the client—who came to the U.S. as a young child and derived citizenship through their parent—had their COC cancelled by USCIS and was subsequently put in removal proceedings. If the immigration judge in their case does not recognize the client’s U.S. citizenship, then the client will be ordered deported. The problem with this case and cases where the targeted individual is put into removal proceedings is that a final order of deportation must precede the process of bringing their claim to citizenship before a federal court. When an individual in removal proceedings seeks to challenge the cancellation of their COC, their case must first be heard by an immigration judge. If they are ordered deported, the individual must then appeal to BIA. From there, the individual can appeal to the federal circuit court in which they reside. And only when the circuit court finds that an issue of material fact does exist could the individual get to federal district court. This client and others who have had their COCs cancelled are stuck with this unacceptable process of getting to federal court, which could take years and is without the guarantee that the individual will not be detained in immigration prison during the duration of the process.

#### **b. Passport Revocations<sup>54</sup>**

Like certificates of citizenship (COCs), U.S. passports function as proof of citizenship. And, like cancellations of COCs, the process of revoking or denying passport revocations is entirely administrative. While the Department of State (DOS) is responsible for passport revocations and denials, this issue is included in this comment in light of its nexus to USCIS’s referral role in the denaturalization apparatus. DOS’s unchecked discretion in determining when to revoke or deny passports is made possible because there is a lack of guidance and documentation of how policies are developed and deployed, at home and abroad, as a DOS Office of Inspector General (OIG) investigation of passport denials in Yemen underscored.<sup>55</sup> DOS has thus been able to target whole communities for passport revocation with little more than unsubstantiated suspicion of the validity of their citizenship—a suspicion rooted in national origin or race. In particular, DOS has sought to deny or revoke passports from Yemeni-Americans and U.S. citizens born or living in the southern border of the United States.<sup>56</sup>

In OSJI’s case study of the Rio Grande Valley in Texas, a quantitative analysis of judicial actions in the Southern District of Texas revealed an increase of approximately 64.5% in the number of cases seeking to confirm citizenship in relation to passport revocations or denials filed since the beginning of 2017, over the same period immediately prior to this date. Attorneys representing targeted individuals reported that a recent change in practice under the Trump

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<sup>54</sup> For an in-depth discussion of passport revocations, see OSJI Report, *supra* note 1; Department of State, Office of Inspector General (DOS-OIG), *Review of Allegations of Improper Passport Seizures at Embassy in Sana’a, Yemen*, OIG-ESP-19-01 (October 2018), [https://www.stateoig.gov/system/files/esp-19-01\\_0.pdf](https://www.stateoig.gov/system/files/esp-19-01_0.pdf) [hereinafter DOS-OIG Report] (noting also that in some cases other documents including certificates of naturalization were confiscated); and *Stranded Abroad: Shadow Report on Coercive Interrogations and Due Process Violations in the Confiscation or Revocation of Passports of American Citizens of Yemeni Origin*, Asian Americans Advancing Justice (the Asian Law Caucus) and the City University of New York (CUNY) Creating Law Enforcement Accountability & Responsibility Project (January 2016).

<sup>55</sup> DOS-OIG Report, *supra* note 52.

<sup>56</sup> OSJI Report, *supra* note 1



administration has been that DOJ, which represents the government in defending passport cases, is aggressively defending all cases—regardless of the merits—rather than settling.<sup>57</sup>

There is no codified burden of proof, thereby empowering DOS, on a discretionary basis, to require unlimited additional proof, including requiring unsuspecting citizens to obtain obscure records, sometimes more than 50 years old. Accordingly, there are cases where DOS effectively denied passports by “filing without action” on the basis of insufficient proof over and over again, forcing the applicant to pay the costly fees to reapply while foreclosing their claim in federal court due to the absence of a denial or final action. Moreover, DOS’s tactics—including harsh interrogations, detention, and threats to family members—have resulted in false testimony concerning citizenship. The onus is on the targeted individual to prove citizenship, which can only be done after the revocation or denial of their passport. There is no cut-off point limiting the power of the U.S. government in raising retroactive suspicion that an individual is not, and never was, a citizen.<sup>58</sup>

The consequences are especially dire for targeted individuals who are abroad and attempting to return to the United States. Americans in such circumstances must first seek permission to enter the U.S. as noncitizens, subjecting themselves to the full force of the immigration system, including detention and possible criminal immigration penalties. Even citizens who are in the U.S. when their passports are denied or revoked face unjustified hurdles, including the lack of a right to counsel, in challenging the agency’s decision.<sup>59</sup> This was the reality for Yemeni-Americans who had traveled to Yemen and had their passports confiscated by the U.S. government at the embassy in Sana, Yemen’s capitol.

Starting in 2013, DOS officials in Sana, and then later in the United States, were telling these suddenly paperless Yemeni-Americans that their U.S. passports would not be returned or renewed until they could prove that they were indeed who they said they were. The problem for Yemenis is that documentation to prove identity often does not exist in the country, which did not have a civil department that recorded births and deaths until the mid-1980s. The government has treated this lack of strong documentation as an indicator of fraud. In fact, the USCIS manual issued during the Obama administration notes that because “civil documents concerning marriage, birth, death, etc., are often issued in Yemen based solely on information furnished by an interested party, often the petitioner or beneficiary of the petition, they are usually not considered conclusive to establish claimed relationships.” Relevantly, the Trump administration used a lack of strong documentation to justify the Muslim Ban on individuals from five Muslim-majority countries, arguing that the Yemeni government and other banned countries could not provide the United States with the information it needs to verify the identity of a potential immigrant. Now, those passport seizures appear to have created yet another pool of people who can be targeted for denaturalization.<sup>60</sup> In fact, many denaturalization cases reveal that the applications for passport renewals initiate an investigation that often leads to the initiation of a denaturalization proceeding.

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<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> Wessler Article, *supra* note 9.

## V. RECOMMENDATIONS

### I. Overview of the Denaturalization Problem

For recommendations on denaturalization beyond USCIS, see:

- January 14, 2021 Letter to Biden-Harris Transition Team from Muslim Advocates and 48 organizations (Attached)<sup>61</sup>
- Open Society Justice Initiative’s “Unmaking Americans” report<sup>62</sup>
- ACLU’s “Restoring Access to Citizenship and Immigration Benefits” report<sup>63</sup>

### II. USCIS Policies and Practices Specific to Denaturalization

#### USCIS’s Denaturalization Task Force

- Halt all referrals for denaturalization pending review of denaturalization and passport revocations, as required by Executive Order 14012, “Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans.”
- Disband the denaturalization task force that has been re-branded as the Benefits Integrity Office.
- Publish guidance to local offices to halt denaturalization referrals.
- Publish guidance to local offices to review and rescind referrals of cases with weak or insufficient evidence.
- Publicly disclose data on referrals and denaturalizations, disaggregated by country of origin, how it was flagged for investigation (including whether target was a derivative), alleged grounds for denaturalization, manner and date of disposition (including whether individual became stateless), gender, manner of entry (including port of entry and immigration status upon entry), and any other relevant criteria.
- Ensure that the review of and report on denaturalization and passport revocations required by Executive Order 14012, “Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans,” is publicly released, including sections pertaining to USCIS.

#### USCIS’s Denaturalization Case Settlement Process

- Rescind the 2019 Decision Memorandum, “Settlement Process for Historical Fingerprint Enrollment Denaturalization Cases,” and replace with guidance to prevent the targeting and use of derivatives as bargaining chips to coerce an individual to settle.

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<sup>61</sup> Denaturalization Organizational Sign-on Letter to the Biden-Harris Transition Team, dated January 14, 2021, [https://muslimadvocates.org/wp-content/uploads/2021/01/Denaturalization-Organizational-Sign-On-Letter\\_FINAL.pdf](https://muslimadvocates.org/wp-content/uploads/2021/01/Denaturalization-Organizational-Sign-On-Letter_FINAL.pdf) (See Attachment).

<sup>62</sup> OSJI Report, *supra* note 1.

<sup>63</sup> ACLU, “Restoring Access to Citizenship and Immigration Benefits,” [https://www.aclu.org/sites/default/files/field\\_document/access\\_to\\_citizenship\\_and\\_immigration\\_benefits\\_final.pdf](https://www.aclu.org/sites/default/files/field_document/access_to_citizenship_and_immigration_benefits_final.pdf).

- Publicly release all quarterly reports—which was mandated by the 2019 Decision Memorandum—describing outcomes of cases handled by the settlement panel.
- Publish guidance to USCIS officers to exercise authority to recommend against denaturalization of target and derivatives and against removal.

#### Coercive Targeting of Derivatives

- Publish guidance halting the cancellation of certificates of citizenship against derivative children and spouses.
- Publish guidance preventing the use of derivatives as bargaining chips to force the target of denaturalization into coercive and unfair settlements.

### **III. USCIS as Arm of Immigration Enforcement**

#### Misuse of USCIS Funds for Denaturalization and Immigration Enforcement

- Reimburse IEFA for all funds that were used for denaturalization operations or immigration enforcement.
- Reallocate all IEFA funds that are directed to denaturalization, including funding for the BIO Unit, to facilitate access to immigration benefits.
- Ensure that all current and future use of IEFA funds for immigration enforcement, including fraud related enforcement actions, are dedicated to processing immigration benefits and facilitating access to those benefits.

#### Dragnet Targeting Based on Collective Suspicion

- Make public the rules or screening criteria employed by ATLAS.
- Disband CIV and halt implementation of its expansion.
- Halt ATLAS pending disparate impact review and public disclosure of:
  - The rules that ATLAS is using to flag individuals for further investigation;
  - The population being flagged by ATLAS, disaggregated by race, country of origin, etc.; and
  - The number of screening and flags, and the outcomes of those flags.
- Conduct independent audit of ATLAS and CIV.
- Disconnect USCIS data systems from other immigration enforcement and law enforcement databases.
- End all referrals from USCIS to ICE or other immigration or law enforcement agencies.
- Commit to suspending development of HART and diverting funding for HART to ensuring access to immigration benefits.

### Controlled Application Review and Resolution Program (CARRP)<sup>64</sup>

- Publish guidance and memos terminating CARRP.
- Publish guidance and memos requiring officers to apply uniform standards to all naturalization applicants and ensuring that all naturalization applications are held to the same statutory eligibility requirements.
- Release all applications currently subject to CARRP to the normal adjudicative track and grant all benefit-eligible applicants within 180 days.
- Clarify that USCIS officers may not deny benefits to applicants based on information not disclosed to applicants or based on third-agency information not relevant to eligibility.
- Publish guidance and memos clarifying that the only national security concerns relevant to the grant or denial of an immigration benefits are those that determine statutory eligibility under the INA.
- Publish FAQs regarding the definition of “affiliation,” “membership,” and “association” used on the N-400 naturalization application.

### USCIS Policy Rejecting Adoptions in Countries that Follow Islamic Law

- Provide guidance rescinding blanket policy of not recognizing adoptions in countries that follow Islamic law.
- Halt referrals for denaturalization or further immigration enforcement and denials of immigration benefits on the sole basis of this policy.
- Designate a point person within USCIS to review policies and practices targeting Muslim Americans and immigrants and those perceived to be Muslim, such as Arab, Middle Eastern, and South Asian community member.

### Screening and Adjudication With the Goal of Enforcement<sup>65</sup>

- Revert USCIS’s mission statement to what it was before the Trump administration and establish a USCIS agency culture that emphasizes its mission of adjudicating and facilitating access to immigration benefits and providing quality customer service.
  - Start adjudications with a neutral review for eligibility.
  - Implement additional training for USCIS staff, including diversity and inclusion training, particularly on anti-Muslim animus and bias, and customer service.
- Revise Notice to Appear (NTA) guidance so that USCIS issues an NTA only if it is statutorily or regulatorily required.
  - Rescind the 2018 NTA memo which announced new guidance dictating the initiation of removal proceeding against individuals whose application for immigration benefits is denied.
  - Halt the issuing of NTAs categorically to removable applicants where not required by statute.

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<sup>64</sup> Recommendations in this section are drawn from ACLU, “Restoring Access to Citizenship and Immigration Benefits.”

<sup>65</sup> Recommendations are drawn from naturalization-focused organizations, including the Naturalization Working Group and Immigrant Legal Resources Center.

- Provide guidance to clarify that adjudication officers shall not initiate or participate in enforcement actions (beyond any necessary provision of files and other information to enforcement officers) other than those that are specifically authorized by law.
- Review all policies on Requests for Evidence (RFE) and Notices of Intent to Deny (NOID). USCIS has issued many inconsistent and unnecessary RFEs creating significant burdens for applicants and organizations and representatives assisting them. These RFEs also unnecessarily increase processing times. In other cases, USCIS has stopped issuing necessary RFEs and NOIDs and instead has been denying cases without giving the applicant a chance to address questions or fix deficiencies in the record.
  - Rescind the July 13, 2018 memo giving adjudicators the ability to deny cases without issuing a request for evidence or a notice of intent to deny.
  - Require that RFEs and NOIDs be issued in advance of a denial.
  - Establish more thorough review of RFEs and NOIDs issuance, including timely and continuous review of template language and training for adjudicators on how to modify the template language. This should include identifying trends in the deficiencies noted in RFEs/NOIDs so that form instructions, training for adjudicators, or public guidance can address these issues.
- Eliminate USCIS Tip Form launched in 2020 (<https://www.uscis.gov/report-fraud/uscis-tip-form>) as it is an unnecessary and inappropriate use of USCIS resources that encourages the perception of presumption of fraud in immigration and is based on notions of fraud that are vague and overbroad.
- Withdraw the November 18, 2020 Policy Alert to the USCIS Policy Manual, “Prerequisite of Lawful Admission for Permanent Residence under All Applicable Provisions for Purposes of Naturalization,” which requires unnecessary scrutiny and re-adjudication of the green card process for naturalization applicants and unnecessary use of agency resources.
- Withdraw the section on “extreme vetting” described in 12 USCIS-PM D.2(d) of the USCIS Policy Manual in its entirety, which requires officers to engage in unnecessary, time-intensive, and burdensome re-adjudication of prior immigration applications. Officers must “verify” the underlying lawful permanent residency (LPR) status in all naturalization cases, even where no question about eligibility is raised, in essence re-adjudicating an individual’s LPR status.
- Rescind Policy Manual sections that expand beyond statutory grounds the list of acts that may result in failure to establish good moral character, and direct adjudicators throughout the country to consider counterbalancing factors that mitigate in favor of finding that an applicant possesses good moral character, as required in the jurisdiction of the Ninth Circuit Court of Appeals.
- Limit “good moral character” analysis to conduct within the statutory time period. USCIS adjudicators should not give undue weight to a naturalization applicant’s conduct before the five or three year statutory period for good moral character.
- Revise USCIS’s approach to the Form N-648, Medical Certification for Disability Exceptions. The current approach is one of suspicion and an assumption of fraud that is not appropriate for a situation when individuals are claiming a disability.
- Simplify the N-400 application for naturalization and eliminate the overly broad questions in the N-400 relating to criminal conduct.

#### IV. Citizenship Stripping Beyond Denaturalization

##### USCIS Practice of Cancellation of Certificates of Citizenship

- Halt the use of cancellation of certificates of citizenship (COCs) as a roundabout around denaturalization.
- Publicly disclose data on USCIS's cancellation of COCs, including the number of successful cancellations of COCs and the number of cancellation of COCs investigations, disaggregated by country of origin, how it was flagged for investigation (including whether target was a derivative), alleged grounds for cancellation, manner and date of disposition (including whether individual became stateless), gender, manner of entry (including port of entry and immigration status upon entry), and any other relevant criteria.

##### Passport Revocations

- End engagements or working group relationships with Department of State (DOS), including the Diplomatic Security Service, that pursue denaturalization or de facto denaturalization through passport revocations and denials.
- Halt referrals to DOS for the purpose of investigation passport revocations.
- Publicly disclose data on USCIS referrals to DOS for further investigation, including the number of such referrals, disaggregated by country of origin, how it was flagged for investigation (including whether target was a derivative), alleged grounds for denaturalization, manner and date of disposition (including whether individual became stateless), gender, manner of entry (including port of entry and immigration status upon entry), and any other relevant criteria.

Thank you for the opportunity to submit a comment in response to the Request for Public Input. Please do not hesitate to contact Deborah Choi at [deborah@muslimadvocates.org](mailto:deborah@muslimadvocates.org) to obtain further information.

Respectfully submitted,

/s/ Deborah Choi

Deborah Choi  
Legal Fellow  
Muslim Advocates

January 14, 2020

The Honorable Susan Rice  
Biden-Harris Transition Team

Dear Ambassador Rice,

We, the undersigned 48 leading national and local immigration and civil rights advocacy organizations, write to urge the Biden-Harris Administration to take immediate action to halt the denaturalization apparatus that has been quietly stripping naturalized Americans of their citizenship in ways and numbers that starkly depart from the practice of the last half century.

The Trump Administration has sought to strip naturalized Americans and their families of their citizenship in numbers exponentially greater than any previous administration. From the 1960s to the early 2000s, denaturalization was largely considered a last resort to be used only against alleged Nazis and other war criminals who had committed crimes against humanity. Today, denaturalization is increasingly used as an immigration enforcement tool and a precursor to deportation. As currently operationalized, denaturalization echoes the practice of separating families present in the Muslim and African Bans, explicit policy of family separation at the border, and deportations.

In 2017 and 2018, the Trump Administration filed double the average number of denaturalization cases filed in the prior 12 years with apparent targeting of people of color and Muslims. At the same time, the Trump Administration has institutionalized the denaturalization apparatus across different agencies, setting up offices and units in the Departments of Justice and Homeland Security for the sole purpose of denaturalizing citizens.<sup>1</sup> Denaturalization itself is a costly and time-consuming process, involving multiple cabinet-level departments and federal litigation and requiring a significant expenditure of resources.<sup>2</sup> Additionally, the Trump Administration has drastically expanded the scope of activities that the government is willing to allege as grounds for denaturalization to include innocent mistakes, allegations of minor unlawful acts, or even mistakes made by the government.<sup>3</sup> The current denaturalization regime reflects the racialized and criminalized narratives about who belongs in America and reinforces a kind of second-class citizenship for Americans who were not born in the U.S.

In order to prevent greater harm to communities, the Administration should take the following actions:

On Day One:

- **Impose an immediate moratorium on both civil and criminal denaturalizations.** The Administration should immediately announce a moratorium on all denaturalizations until

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<sup>1</sup> Open Society Justice Initiative, *Unmaking Americans: Insecure Citizenship in the United States* (2019), <https://www.justiceinitiative.org/uploads/e05c542e-0db4-40cc-a3ed-2d73abcf37f/unmaking-americans-insecure-citizenship-in-the-united-states-report-20190916.pdf>.

<sup>2</sup> U.S.C.I.S. Ombudsman, *Annual Report 2020* (June 30, 2020), [https://www.dhs.gov/sites/default/files/publications/20\\_0630\\_cisomb-2020-annual-report-to-congress.pdf](https://www.dhs.gov/sites/default/files/publications/20_0630_cisomb-2020-annual-report-to-congress.pdf).

<sup>3</sup> Open Society Justice Initiative, *supra* note 1.

the new Administration has fully assessed the current operations and put appropriate safeguards in place.

In the First 30 Days:

- **Conduct a thorough review of federal agencies with an eye toward dismantling offices or units focused on denaturalizing citizens.** The Administration should dismantle the Trump Administration's denaturalization apparatus in the Departments of Homeland Security, Justice, and State within the first 100 days. This dismantling should disband Operations Janus, Second Look, and Prison Lookout; USCIS's Benefits Integrity Office; and DOJ Office of Immigration Litigation's Denaturalization Section.
- **Publish without delay all data relating to denaturalization priorities and policies and individual denaturalization cases since 2008.** In addition, publish a report analyzing denaturalization investigations and prosecutions to determine whether these actions have been disproportionately aimed at particular racial, religious, ethnic, cultural, or other groups.

In the First Six Months:

- **Work with impacted individuals and advocacy organizations to evaluate the civil and criminal denaturalization apparatus.** Pending evaluation, issue guidance to federal agencies that denaturalization should be pursued in only the most egregious cases.
- **Institute a process for reviewing recent denaturalizations with an eye toward reinstating citizenship of denaturalized individuals and their derivatives.** Through civil denaturalization, naturalized Americans and their children and spouses have been stripped of their citizenship through coercive settlement agreements or civil mechanisms, often without procedural protections, and often based on questionable evidence such as a single disputable fingerprint.
- **Institute oversight measures to ensure that the expanding use of new technologies and databases designed to track identities across government bureaucracies do not discriminatorily surveil communities of color.** Digitization of highly questionable paper-based fingerprint cards and the gradual linking of immigration and law enforcement databases are central to immigration enforcement through denaturalization.
- **Support legislation designed to limit denaturalization and institute procedural protections for those subject to civil denaturalization.** Support legislation providing procedural protections in civil denaturalization proceedings and eliminating all but the most egregious grounds of denaturalization.

These recommendations are a start for this Administration to rectify this problem and a step towards reaffirming the security of citizenship for 21 million naturalized Americans.

Thank you for your consideration. We look forward to working with you to make this vision a reality. You may direct further inquiries to Deborah Choi at [Deborah@muslimadvocates.org](mailto:Deborah@muslimadvocates.org).

Respectfully,

Muslim Advocates



Advocating Opportunity  
African Communities Together  
Alianza Nacional de Campesinas  
Asian Americans Advancing Justice - AAJC  
Asian Americans Advancing Justice - Atlanta  
Asian Law Alliance  
CARECEN  
Center for Gender & Refugee Studies  
Center for Victims of Torture  
Central American Resource Center of California (CARECEN Los Angeles)  
Church World Service  
Citizenship News  
City of Seattle Office of Immigrant and Refugee Affairs  
Coalition for Humane Immigrant Rights (CHIRLA)  
Colectiva Legal del Pueblo  
Colorado Immigrant Rights Coalition (CIRC)  
Disciples Refugee and Immigration Ministries  
Entre Hermanos  
Freedom Network USA  
Georgia Association of Latino Elected Officials (GALEO)  
GMHC  
Haitian Bridge Alliance  
HIAS Pennsylvania  
Hispanic Federation  
Illinois Coalition for Immigrant and Refugee Rights  
Immigrant Legal Resource Center (ILRC)  
League of Women Voters of the United States  
Multicultural Efforts to end Sexual Assault (MESA)  
Muslim Bar Association of New York  
NALEO Educational Fund  
National Immigration Project (NIPNLG)  
National Partnership for New Americans (NPNA)  
North Carolina Asian Americans Together  
Network in Solidarity with the People of Guatemala (NISGUA)  
OneAmerica  
Open Society Justice Initiative  
Oxfam America  
Project South  
Self-Help for the Elderly  
Service Employees International Union (SEIU)  
The Sikh Coalition  
South Asian Americans Leading Together (SAALT)  
Southeast Asia Resource Action Center  
Southern Poverty Law Center  
U.S. Committee for Refugees and Immigrants  
Union for Reform Judaism

United We Dream  
West African Community Council  
Wind of the Spirit Immigrant Resource Center