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By Regular and Certified Mail, Return Receipt Requested

May 17, 2012

United States Citizenship and Immigration Services
National Records Center, FOIA/PA Office
P.O. Box 648010
Lee's Summit, MO 64064-8010
(816) 350-5570
Fax: (816) 350-5785
uscis.foia@dhs.gov

Re: Freedom of Information Act Request
Fee waiver requested

Dear FOIA Officer:

This letter constitutes a request for records made pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, by the American Civil Liberties Union Foundation of Southern California ("ACLU/SC").

The ACLU/SC makes this request for records related to the policies and procedures of the U.S. Citizenship and Immigration Services (USCIS) with respect to the processing and adjudication of applications for naturalization and other immigration benefits. The Requestor, a non-profit civil rights group, is concerned that certain immigrants – including Muslim, Arab, Middle Eastern and South Asian immigrants – are treated differently than other applicants in their efforts to obtain naturalization and other important immigration benefits. Through this FOIA Request, the ACLU/SC seeks information about the policies and practices that result in USCIS's apparently different treatment of those immigrants.

The ACLU/SC has learned of or assisted dozens of Muslim, Arab, Middle Eastern and South Asian immigrants who are statutorily eligible for naturalization and other immigration benefits, yet have encountered extraordinary hurdles by USCIS in the processing and adjudication of their applications. The ACLU/SC is concerned that USCIS subjects these applicants to higher scrutiny and different treatment due to its policies for identifying and vetting national security concerns, creating significant obstacles to their ability to obtain these important benefits.

Accordingly, through this Request, we seek information regarding USCIS' national security policies and procedures governing the identification, vetting and adjudication of

Chair Stephen Rohde **President** Douglas Mirell

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Communications Director Jason Howe **Development Director** Sandy Graham-Jones **Director of Strategic Partnerships** Vicki Fox

Legal Director & Manheim Family Attorney for First Amendment Rights Peter J. Eliasberg **Deputy Legal Director** Ahilan T. Arulanantham

Director of Policy Advocacy Clarissa Woo **Director of Community Engagement** Elvia Meza **Executive Director Emeritus** Ramona Ripston *deceased

applications for naturalization and other immigration benefits categorized as presenting national security concerns.

THE REQUESTOR

ACLU/SC is a non-profit organization dedicated to defending and securing the rights granted by the U.S. Constitution and Bill of Rights. ACLU/SC's work focuses on immigrants' rights, the First Amendment, equal protection, due process, privacy, and furthering civil rights for disadvantaged groups. As part of its work, ACLU/SC disseminates information to the public through newsletters, news briefings, "Know Your Rights" documents, and other educational and informational materials. The ACLU/SC regularly submits FOIA requests to USCIS and other agencies – including, past FOIA requests related to the adjudication of naturalization applications – and publicizes the information it obtains through its website, newsletters and "Know Your Rights" presentations and materials.

THE REQUEST FOR RECORDS

We seek disclosure of **any** records¹ created from January 2003 to the present, **relating to or concerning:**²

Policies for the identification, vetting and adjudication of immigration benefits applications³ with national security concerns

- (1) The Operational Guidance, which implements the 2008 "Policy for Vetting and Adjudicating Cases with National Security Concerns," attached hereto as Exhibit A, including:
 - a. Any and all attachments;
 - b. Any and all training materials;

¹ The term "records" as used herein includes but is not limited to all communications preserved in electronic or hard copy form, including but not limited to correspondence, documents, data, videotapes, audio tapes, CDs, DVDs, floppy disks, zip disks, faxes, files, e-mails, notes (including handwritten notes), letters, summaries or records of personal conversations, reports and/or summaries of interviews, reports and/or summaries of investigations, guidelines, evaluations, instructions, analyses, memoranda, agreements, orders, prescriptions, charts, expressions of statements of policy, procedures, protocols, reports, rules, training manuals, or studies.

² The term "concerning" means referring to, describing, evidencing, commenting on, responding to, showing, analyzing, reflecting, or constituting.

³ The phrase "immigration benefits applications" as used herein refers to those applications or petitions, which confer citizenship by naturalization or immigrant or non-immigrant status.



- c. Any and all policy, procedure and/or guidance related to implementation of the Operational Guidance and/or “Policy for Vetting and Adjudicating Cases with National Security Concerns.” *See* Exh. A.
- (2) Any and all policies, procedures, guidelines and training materials pertaining to CARRP (Controlled Application Review and Resolution Program), including, but not limited to,
 - a. The CARRP Manual;
 - b. CARRP policy memoranda;
 - c. CARRP training materials.
 - (3) Any and all policies, procedures, guidelines and training materials relating to the processing⁴ and adjudication of immigration benefit applications with a “national security concern”⁵ from any Directorate, department, unit, or entity within USCIS, including but not limited to the:
 - a. Fraud Detection and National Security Directorate (FDNS)
 - b. Domestic Operations Directorate (DomOps), including, but not limited to, the DomOps Operational Guidance referenced on page 13 of the 2008 “Policy for Vetting and Adjudicating Cases with National Security Concerns.” *See* Exh. A.
 - c. Service Center Operations Directorate
 - d. Field Operations Directorate
 - e. Background Check Unit (BCU)
 - f. The Screening Coordination Office (SCO) of FDNS
 - (4) The Operational Guidance related to the adjudication of Replacement Lawful Permanent Resident cards when there is a “national security concern” described on page 14 of the 2008 “Policy for Vetting and Adjudicating Cases with National Security Concerns.” *See* Exh. A.
 - (5) The DHS Memorandum entitled “Department of Homeland Security Guidelines for the Use of Classified Information in Immigration Proceedings” (also referred to as “Ridge Memo”) referenced on page 17, footnote 18 of the 2008 “Policy for Vetting and Adjudicating Cases with National Security Concerns.” *See* Exh. A.

⁴ For the purposes of this FOIA request, “processing” refers to all steps taken by USCIS from the moment that a naturalization application is filed until it is finally adjudicated. This includes but is not limited to, background/security checks, identification of a national security concern, internal/external vetting, deconfliction, adjudication, the naturalization interview and examination, requests for additional documentation or evidence, etc

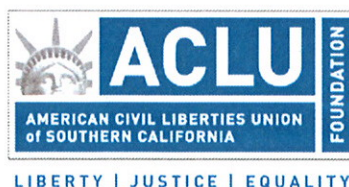
⁵ The 2008 memo, Exhibit A, defines a “national security concern” as existing when “an individual or organization has been determined to have an articulable link to prior, current, or planned involvement in, or association with, an activity, individual, or organization described in sections 212(a)(3)(A), (B), or (F), or 237(a)(4)(A) or (B) of the Immigration and Nationality Act.”

- (6) The memorandum entitled “Additional Guidance on Issues Concerning Vetting and Adjudication of Cases Involving National Security Concerns,” mentioned on page 271 of the PowerPoint entitled “CARRP: Deconfliction, Internal and External Vetting and Adjudication of NS Concerns,” attached hereto as Exhibit B.
- (7) The Deconfliction video referenced on page 264 of the PowerPoint entitled “CARRP: Deconfliction, Internal and External Vetting and Adjudication of NS Concerns,” attached hereto as Exhibit B.
- (8) The IBIS Standard Operating Procedure (SOP) referenced on page 109 of the May 21, 2004 memorandum entitled “New National Security-Related IBIS Procedures,” attached hereto as Exhibit C.
- (9) The name of and a description and/or explanation of the purpose and function of the “new office” created to centralize and effectively manage the screening initiatives with partners inside and outside the agency, as referenced on page 4 of USCIS Director Mayorkas’ congressional testimony in a hearing entitled “Safeguarding the Integrity of the Immigration Benefits Adjudication Process” on February 15, 2012, before the House Committee on the Judiciary, Subcommittee on Immigration Policy and Enforcement, attached hereto as Exhibit D.
- (10) A description and/or explanation of the purpose and function of the Screening Coordination Office (SCO) within the Fraud Detection and National Security (FDNS) Directorate, a new office created in fiscal year 2011 to enhance USCIS’s screening for national security threats and other information.
- (11) Policies, procedures, guidelines, and training materials pertaining to the internal collaboration and coordination between and among USCIS directorates, offices, branches, programs during security checks and deconfliction.
- (12) A description and/or explanation of the purpose and function of the “comprehensive recurrent vetting strategy to lead the [DHS’s] biographic and biometric screening initiatives and studies,” as referenced in Director Mayorkas’ congressional testimony on February 15, 2012. *See* Exh. C.
- (13) Provide a complete list of all security check and background check systems that are used by USCIS in the processing and adjudication of a naturalization application, including, but not limited to, the systems checked by FDNS or other USCIS entities on cases involving “national security concerns” or “national security indicators,” such as the FBI Name Check, the FBI Fingerprint Check, TECS/IBIS, CLASS, SAOs, US-VISIT/IDENT, etcetera.

- (14) Policies, procedures, guidelines and training materials related to “national security indicators” (as referenced on page 2 of the CARRP Officer Training’s National Security Handout, Attachment A “Guidance for Identifying National Security Concerns,” attached hereto as Exhibit E, and the 2008 Memo, page 15, Exh. A), including, but not limited to, the identification of “national security indicators” (including statutory indicators and non-statutory indicators); the evaluation of “national security indicators;” the relationship between “national security indicators” and “national security concerns;” and the vetting, deconfliction and resolution of “national security indicators.”
- (15) To the extent not covered by (14) above, policies, procedures, guidelines and training materials related to the “suspicious activities” type of “national security indicator,” referenced on page 5 of Exh. E, including but not limited to:
- a. “Unusual travel patterns and travel through or residence in areas of known terrorist activity;”
 - b. “Large scale transfer or receipt of funds;”
 - c. “Membership or participation in organizations that are described in, or that engage in, activities outlined in sections 212(a)(3)(A), (B), or (F), or 237(a)(4)(A) or (B) of the Act.”
- (16) To the extent not covered by (14) above, policies, procedures, guidelines and training materials related to the “family member or close associates” type of “national security indicator,” described on page 5 of Exh. E, including but not limited to:
- a. How it is determined that a family member or close associate is a subject with a “national security concern;”
 - b. How that information could impact an individual’s eligibility for the benefit sought and/or may indicate a “national security concern” with respect to that individual;
 - c. How an officer may determine if the “national security concern” relates to the individual and if it gives rise to a “national security concern” for the individual.
- (17) Provide a list with the name, author and date of the *current* policies pertaining to the processing and adjudication of immigration benefits applications with a “national security concern.” Because some of the policies requested through this FOIA request may have been superseded by later policies, this list will instruct the Requestor and the public as to which records reflect current USCIS policy.

Statistical Information

- (1) The number of applications filed in the years 2012, 2011, 2010, 2009 and 2008 for the following types of applications or petitions:
- a. N-400;
 - b. I-485;
 - c. I-130;



- d. I-129F;
- e. I-751.
- f. For each application or petition type, the number of cases by beneficiary's country of birth for the following countries or territories:
 - i. Afghanistan
 - ii. Egypt
 - iii. Indonesia
 - iv. Iraq
 - v. Iran
 - vi. Jordan
 - vii. Kuwait
 - viii. Lebanon
 - ix. Libya
 - x. Morocco
 - xi. Pakistan
 - xii. Palestine or the Palestinian Territories
 - xiii. Saudi Arabia
 - xiv. Somalia
 - xv. Sri Lanka
 - xvi. Sudan
 - xvii. Syria
 - xviii. Tunisia
 - xix. Uzbekistan
 - xx. Yemen

(2) The number of applications granted for the years 2012, 2011, 2010, 2009 and 2008 for the following types of applications or petitions:

- a. N-400;
- b. I-485;
- c. I-130;
- d. I-129F;
- e. I-751.
- f. For each application or petition type, the number of cases by country of birth for the following countries or territories:
 - i. Afghanistan
 - ii. Egypt
 - iii. Indonesia
 - iv. Iraq
 - v. Iran
 - vi. Jordan
 - vii. Kuwait
 - viii. Lebanon
 - ix. Libya
 - x. Morocco



- xi. Pakistan
- xii. Palestine
- xiii. Saudi Arabia
- xiv. Somalia
- xv. Sri Lanka
- xvi. Sudan
- xvii. Syria
- xviii. Tunisia
- xix. Uzbekistan
- xx. Yemen

(3) The number of immigration benefits applications denied for the years 2012, 2011, 2010, 2009 and 2008 for the following types of applications or petitions:

- a. N-400;
- b. I-485;
- c. I-130;
- d. I-129F;
- e. I-751.
- f. For each application or petition type, the number of cases by country of birth for the following countries or territories:
 - i. Afghanistan
 - ii. Egypt
 - iii. Indonesia
 - iv. Iraq
 - v. Iran
 - vi. Jordan
 - vii. Kuwait
 - viii. Lebanon
 - ix. Libya
 - x. Morocco
 - xi. Pakistan
 - xii. Palestine
 - xiii. Saudi Arabia
 - xiv. Somalia
 - xv. Sri Lanka
 - xvi. Sudan
 - xvii. Syria
 - xviii. Tunisia
 - xix. Uzbekistan
 - xx. Yemen

(4) The number of pending immigration benefits applications that have one or more “national security indicator(s)” and/or “hits” for the years 2012, 2011, 2010, 2009 and 2008;

- a. Of those numbers, provide the following for each year:



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- i. The number of cases for the following types of applications or petitions:
 1. N-400;
 2. I-485;
 3. I-130;
 4. I-129F;
 5. I-751.
 - ii. For each application type, the number of cases by country of birth.
- (5) The number of pending immigration benefits applications that had a “national security concern” for the years 2012, 2011, 2010, 2009 and 2008
- a. Of those numbers, provide the following for each year:
 - i. The numbers of cases for the following types of applications or petitions:
 1. N-400;
 2. I-485;
 3. I-130;
 4. I-129F;
 5. I-751.
 - ii. For each application type, the number of cases by country of birth;
 - iii. For each application type, the number of cases of Known or Suspected Terrorists (KST);
 - iv. For each application type, the number of cases of non-Known or Suspected Terrorists (non-KSTs).
- (6) The number of immigration benefits applications where the national security concern was resolved or determined to no longer be of concern for the years 2012, 2011, 2010, 2009 and 2008
- a. Of those numbers, provide the following for each year:
 - i. The numbers of cases for the following types of applications or petitions:
 1. N-400;
 2. I-485;
 3. I-130;
 4. I-129F;
 5. I-751.
 - ii. For each application type, the number of cases by country of birth;
 - iii. For each application type, the number of cases of Known or Suspected Terrorists (KST);⁶
 - iv. For each application type, the number of cases of non-Known or Suspected Terrorists (non-KSTs).
- (7) The number of immigration benefits applications with a “national security concern” that were approved for the years 2012, 2011, 2010, 2009 and 2008
- a. Of those numbers, provide the following for each year:

⁶ The 2008 Memo, Exh. A at page 1, footnote 3, defines a KST and a non-KST.

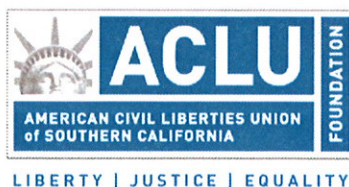
- i. The numbers of cases for the following types of applications or petitions:
 1. N-400;
 2. I-485;
 3. I-130;
 4. I-129F;
 5. I-751.
 - ii. For each application type, the number of cases by country of birth;
 - iii. For each application type, the number of cases of Known or Suspected Terrorists (KST);
 - iv. For each application type, the number of cases of non-Known or Suspected Terrorists (non-KSTs).
- (8) The number of immigration benefits applications with a “national security concern” that were denied for the years 2012, 2011, 2010, 2009 and 2008
- a. Of those numbers, provide the following for each year:
 - i. The numbers of cases for the following types of applications or petitions:
 1. N-400;
 2. I-485;
 3. I-130;
 4. I-129F;
 5. I-751.
 - ii. For each application type, the number of cases by application type and country of birth;
 - iii. For each application type, the number of cases of Known or Suspected Terrorists (KST);
 - iv. For each application type, the number of cases of non-Known or Suspected Terrorists (non-KSTs).
- (9) The number of immigration benefit applications with a national security concern that are pending as of the date that this request is processed
- a. More than one year since the date of filing;
 - b. More than two years since the date of filing;
 - c. More than three years since the date of filing;
 - d. More than four years since the date of filing;
 - e. More than five years since the date of filing;
 - f. More than six years since the date of filing;
 - g. More than seven years since the date of filing;
 - h. More than eight years since the date of filing;
 - i. More than nine years since the date of filing;
 - j. More than ten years since the date of filing.
- (10) To the extent that a case bearing a “national security concern” is not necessarily a case also designated as a CARRP case, please provide the data requested above in (4)-(9) for CARRP cases.

As to all requests, we do not seek any personal identifying information protected under the Privacy Act, and therefore request that any such personal identifying information be redacted from responsive materials and replaced with a unique identifier that would allow us to identify the treatment of any given case across the various responses, but without revealing the individual identities of the applicants to whom the records pertain.

LIMITATION OR WAIVER OF SEARCH AND REVIEW FEES

We request a limitation of processing fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) (“fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by ... a representative of the news media ...”) and 6 C.F.R. § 5.11(d)(1) (search fees shall not be charged to “representatives of the news media”). The information sought in this request is not sought for a commercial purpose. The Requestor is a non-profit organization who intends to disseminate the information gathered by this request to the public at no cost, including through the Requestor’s website, newsletters and other publications. Requestors may also compile a report or other publication on USCIS’s policies and practices based on information gathered through this FOIA. This information is of critical importance to the public at large to understand how USCIS adjudicates applications for immigration benefits where national security concerns are present, particularly in light of the numerous news stories and repeated complaints regarding USCIS’s processing of applications by Muslim, Arab, Middle Eastern and South Asian immigrants. *See, e.g.*, Ctr. for Human Rights and Global Justice, *Americans on Hold: Profiling, Prejudice and National Security*, *Americans on Hold Documentary Film and Advocacy Project* (2010), Preview Footage at <http://www.chrgj.org/projects/profiling.html> (last visited Jun. 14, 2010); Press Release, Ctr. for Human Rights and Global Justice, *CHRGJ Launches Documentary Americans on Hold, Exposing Discrimination* (Apr. 27, 2010); Anna Gorman, *A Victory for Southern California Citizenship Applicants*, L.A. TIMES, Nov. 10, 2009; Cindy Carcamo, *THE O.C. REGISTER, Deal Allows Hundreds to Gain U.S. Citizenship*, Nov. 9, 2009; Press Release, Ctr. for Human Rights and Global Justice, *CHRGJ Calls on Administration to Stop Racial Profiling in Citizenship Process* (Mar. 31, 2009); Sandra Hernandez, *Suit Seeks to Expedite Backlog-Plagued Naturalization Process*, L.A. DAILY JOURNAL, Dec. 5, 2007; Anna Gorman, *Groups Sue Over Citizenship Delays*, L.A. TIMES, Dec. 5, 2007; *SoCal Immigrants Sue Over Citizenship Delay*, THE NATIONAL LAW JOURNAL, Dec. 5, 2007; Press Release, Ctr. For Human Rights and Global Justice, *Profiled Immigrants Delayed Years in Seeking Citizenship* (Apr. 25, 2007); Shreema Mehta, *Barriers Inhibit Legal Road to U.S. Citizenship*, THE NEW STANDARD, Nov. 15, 2006; Bethany McAllister, Esq., *Rumors in Limbo: Muslims Applying for Citizenship*, MUSLIM MEDIA NETWORK, Sep. 28, 2006; Diana Day, *Los Angeles Civil Rights Groups Sue the Government Over Citizenship Delays*, PASADENA STAR-NEWS, Aug. 2, 2006; H.G. Reza, *For Citizenship Delayed, 10 Taking U.S. to Court*, L.A. TIMES, Aug. 1, 2006.

The “term ‘a representative of the news media’ means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. §



552(a)(4)(A)(ii). The statutory definition does not require that the requester is a member of the traditional media. As long as the requester meets the definition in any aspect of its work, it qualifies for limitation of fees under this section of the statute.

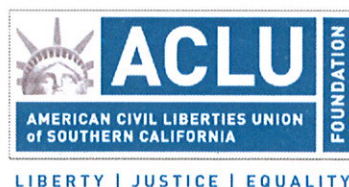
For the reasons stated above, the Requester qualifies as a “representative of the news media” under the statutory definition, because it routinely gathers information of interest to the public, use editorial skills to turn it into distinct work, and distribute that work to the public. *See Electronic Privacy Information Center v. Department of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003) (non-profit organization that gathered information and published it in newsletters and otherwise for general distribution qualified as representative of news media for purpose of limiting fees). Courts have reaffirmed that non-profit requestors who are not traditional news media outlets can qualify as representatives of the new media for the purposes of the FOIA after the 2007 amendments to the FOIA, including specifically as to other ACLU affiliates. *See ACLU of Washington v. U.S. Dep’t of Justice*, No. C09-0642RSL, 2011 WL 887731, at *18 (D. Wash. Mar. 10, 2011). Accordingly, any fees charged must be limited to duplication costs.

WAIVER OR REDUCTION OF ALL COSTS

We request a waiver or reduction of all costs pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) (“Documents shall be furnished without any charge . . . if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester”); *see also* 6 C.F.R. § 5.11(k). USCIS has granted the ACLU/SC fee waiver in the past, including as recently as April 13, 2011, attached hereto as Exhibit F.

The public interest fee waiver provision “is to be liberally construed in favor of waivers for noncommercial requesters.” *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987). The Requestor needs not demonstrate that the records would contain evidence of misconduct. Instead, the question is whether the requested information is likely to contribute significantly to public understanding of the operations or activities of the government, good or bad. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003).

Disclosure of the information sought is in the public interest and will contribute significantly to public understanding of the federal government’s policies and practices in adjudicating naturalization and other immigration benefit applications for applicants from certain countries, or with certain affiliations. As shown by the news reporting cited above, these issues are of intense public concern. The requested records relate directly to operations or activities of the government that potentially impact or infringe fundamental rights and freedoms. The Requestor has received numerous complaints from Muslim, Arab, Middle Eastern and South Asian communities regarding the processing of applications for immigration benefits. This information is of particular interest to these communities, as well as the public at large that is concerned about the fairness, equal treatment, and transparency in USCIS’s processes.



The records are not sought for commercial use, and the Requestor plans to disseminate the information disclosed through print and other media to the public at no cost, and through meetings with members and affected communities. As demonstrated above, the Requestor has both the intent and ability to convey any information obtained through this request to the public.

The Requestor states “with reasonable specificity that [their] request pertains to operations of the government,” and “the informative value of a request depends not on there being certainty of what the documents will reveal, but rather on the requesting party having explained with reasonable specificity how those documents would increase public knowledge of the functions of the government.” *Citizens for Responsibility and Ethics in Washington v. U.S. Dept. of Health and Human Services*, 481 F. Supp. 2d 99, 107-109 (D.D.C. 2006).

In the event a waiver or reduction of costs is denied, please notify me in advance if the anticipated costs exceed \$100.

CONCLUSION

If this request is denied in whole or part, please justify all deletions by reference to the specific FOIA exemption(s) that apply to each specific request. We expect you to release all segregable portions of otherwise exempt material. For example, we expect you to redact names of individuals for whom privacy waivers are not enclosed, if such redaction is required by the Privacy Act or other law, and release any otherwise disclosable records as redacted. We also expect that this FOIA request will be processed in accordance with the presumption of disclosure and President Obama’s directive to federal agencies on January 26, 2009. Pres. Obama, Memo. for the Heads of Exec. Offices and Agencies, Freedom of Information Act, 74 Fed. Reg. 4683 (Jan. 26, 2009) (“The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears.”).

We reserve the right to appeal any decision relating to this FOIA request, including but not limited to the decision to withhold any information, or to deny expedited processing or to deny a waiver or reduction of fees. We look forward to your reply to the request for expedited processing within ten (10) calendar days, as required under 5 U.S.C. § 552(a)(6)(E)(ii)(I). Notwithstanding your decision on the matter of expedited processing, we look forward to your reply to the records request within twenty (20) business days, as required under 5 U.S.C. § 552(a)(6)(A)(I).

With respect to the form of production, *see* 5 U.S.C. § 552(a)(3)(B), we request that responsive statistical information be provided electronically and include all associated metadata. Our first preference is that they be provided in their native file format, if possible. However, when using native formats we request to be consulted first to ensure the particular native formats will be readable at our end. Alternatively, we request that the statistical records be provided




electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency's possession, and that the records be provided in separate, bates-stamped files.

We further request that the agencies provide an estimated date by which they will complete the processing of this request. *See* 5 U.S.C. § 552(a)(7)(B); *Muttitt v. U.S. Cent. Command*, 2011 WL 4478320 (D.D.C. Sept. 28, 2011).

If you have questions, please contact Jennie Pasquarella at 213-977-5236 or via e-mail at jpasquarella@aclu-sc.org. Thank you in advance for your timely consideration of this request. Please furnish records as soon as they are identified to the undersigned at:

ACLU of Southern California
1313 W. Eighth Street
Los Angeles, CA 90017

Sincerely,



Jennie Pasquarella
Staff Attorney
ACLU of Southern California



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EXHIBIT

A

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



U.S. Citizenship
and Immigration
Services

Memorandum

Original Dated April 11, 2008

TO: FIELD LEADERSHIP

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

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

I. Purpose

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

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

¹A **NS concern** exists when an individual or organization has been determined to have an articulable link to prior, current, or planned involvement in, or association with, an activity, individual, or organization described in sections 212(a)(3)(A), (B), or (F), or 237(a)(4) (A) or (B) of the Immigration and Nationality Act (the Act). This determination requires that the case be handled in accordance with CARRP policy outlined in this memorandum.

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

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

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

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EXHIBIT 77

Witness: R. Osuna
C Sletta CSR 7354 9-23-11

Policy for Vetting and Adjudicating Cases with National Security Concerns
Page 2

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

II. Effective Date and Implementation

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

III. Rescission of Prior Policy and Procedures

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

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

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

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

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

Policy for Vetting and Adjudicating Cases with National Security Concerns
Page 3

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

Officers should refer to relevant Operational Guidance⁸ when adjudicating the following, *if* found to involve NS or Egregious Public Safety⁹ concerns:

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

IV. Policy Guidance

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

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

A. Identifying National Security Concerns

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

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

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

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

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

Policy for Vetting and Adjudicating Cases with National Security Concerns

Page 4

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

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

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

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

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

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

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

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

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

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

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

Policy for Vetting and Adjudicating Cases with National Security Concerns
Page 5

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

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

C. External Vetting of National Security Concerns

1. Non-KST NS Concerns

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

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

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

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

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

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

Policy for Vetting and Adjudicating Cases with National Security Concerns
Page 6

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

2. KST NS Concerns

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

D. Adjudicating National Security Cases

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

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

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

Non-KST NS Concerns

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

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

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

Policy for Vetting and Adjudicating Cases with National Security Concerns
Page 7

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

2. KST NS Concerns

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

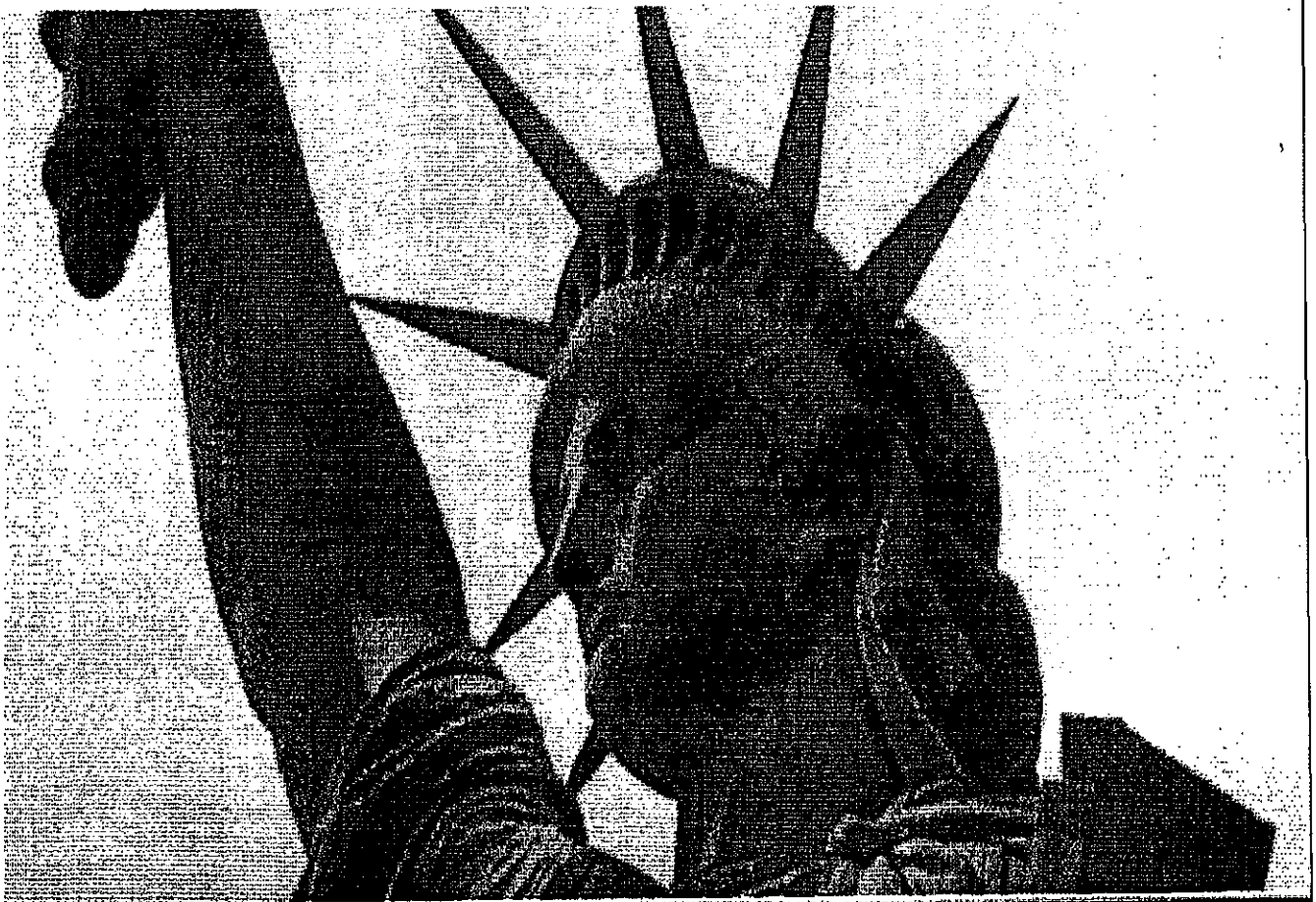
V. Conclusion

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

Distribution List: Regional Directors
 District Directors
 Field Office Directors
 Service Center Directors
 Asylum Office Directors

EXHIBIT

B



CARRP

Deconfliction, Internal and External Vetting and Adjudication of NS Concerns



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EXHIBIT 83

Witness: R. Osuna
C Sletta CSR 7354 9-23-11

(b)(7)(e)

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ENABLING PERFORMANCE OBJECTIVE (EPOs)

- EPO #1: Discuss the purpose of deconfliction and the importance of coordination with law enforcement/record owners.
- EPO #2: Discuss the purpose of internal vetting and identify various tools and techniques used.
- EPO #3: Discuss the purpose of external vetting and the roles and responsibilities of external vetting KSTs and non-KSTs.
- EPO#4: Apply USCIS policies in adjudicating applications or petitions in cases involving national security concerns.
- EPO #5: Identify standards for documenting deconfliction and vetting activities.
- EPO#6: Identify Information Sharing & Confidentiality Rules and Provisions



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RECAP: Controlled Application Review & Resolution Program (CARRP)- Four Stages

1. Identify NS Concern
2. Eligibility Assessment/Internal Vetting
3. External Vetting
4. Final Adjudication

***Deconfliction

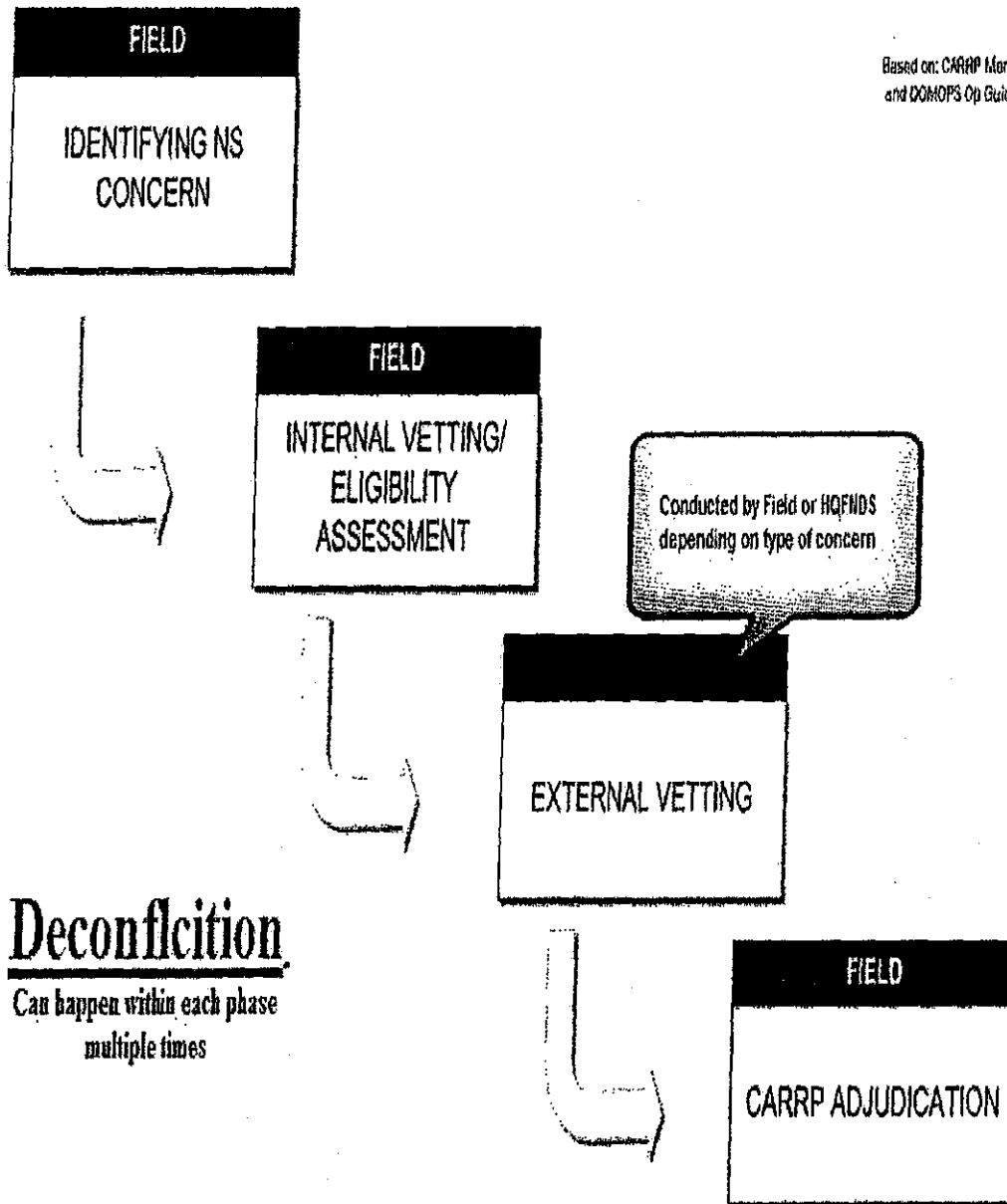


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Deconfliction



Deconfliction

Can happen within each phase multiple times



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DECONFLICTION

DECONFLICTION VIDEO



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May 2009

FDNS Immigration Officers

- Primary liaison officers and points of contact (POC) for law enforcement and intelligence agencies
 - All coordination with the Intelligence Community is conducted through HQFDNS.
 - For CARRP, Background Check Unit (BCU) Officers have been designated to coordinate with law enforcement.
- Note: Local management certainly has the discretion to engage additional personnel in this capacity, as the intent is to maximize communication and cooperation, not impede it.



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Deconfliction

- Coordination between USCIS and another governmental agency owner of NS information
- To ensure that planned adjudicative activities do not compromise or impede an ongoing investigation or other record owner interest.
 - Interview
 - Request for Evidence
 - Site visit
 - Decision to grant or deny a benefit



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Deconfliction

- Ensures that record owner is aware that the individual has a benefit pending with USCIS
- Provides USCIS with opportunity to ask about
 - Aliases;
 - Family relationships;
 - Residence within or outside the U.S.;
 - Membership or involvement with organizations;
 - Military Training; and
 - Foreign Travel.



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Deconfliction

- Provides USCIS with opportunity to ask about criminal activity to include fraud and immigration violations
 - For which he/she was arrested or detained
 - or which he/she has been charged;
 - For which he/she will be charged; and
 - For which he/she will not be charged (i.e., not relevant to the current criminal investigation)



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Deconfliction

- Preparing for RFE, Interview or Site Visit
 - Also provides record owner with opportunity to submit questions
 - Must be material to benefit sought
- Following receipt of additional information/evidence
 - Also provides record owner with the opportunity to consider additional information that may inform further action or investigation of the case
- Preparing for Decision
 - Also provides record owner with the opportunity to comment on decision



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Deconfliction - Guidance

Request by Law Enforcement Agency for Abeyance or Expedited Processing during Deconfliction -

- Designated officers in receipt of LEA requests to grant, deny or place in abeyance the issuance of immigration benefits must refer the request to the USCIS chain of command.
- Request must be in writing, in accordance with the Operational Guidance.
- Designated officer must prepare a written recommendation to Field Director requesting to place the case in abeyance or for expedited processing.
- On a case-by-case basis, the Field Director will determine whether the request comports with the requirements for abeyance (8 CFR 103.2(b)(18)) or warrants expedited processing.



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Deconfliction - Guidance

- Case will be held in abeyance for 180 days or until the investigation is completed, whichever is sooner.
 - If closed and there is still a nexus to NS – Document file and FDNS-DS and proceed with External Vetting (advising the LEA/record owner that USCIS will continue the process to adjudicate the application)
 - If closed and no other NS Concerns- A-file and FDNS-DS is updated and case is returned for routine adjudication.
 - If still OPEN – Request a current formal abeyance and re-submit to the District Director for review.
 - The withholding of adjudication period may be extended further.

For more information see: *Additional Guidance on Issues Concerning Vetting and Adjudication of Cases Involving NS Concerns* pg. 7-8 and 8 CFR 103.2(b)(8)



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QUESTIONS?



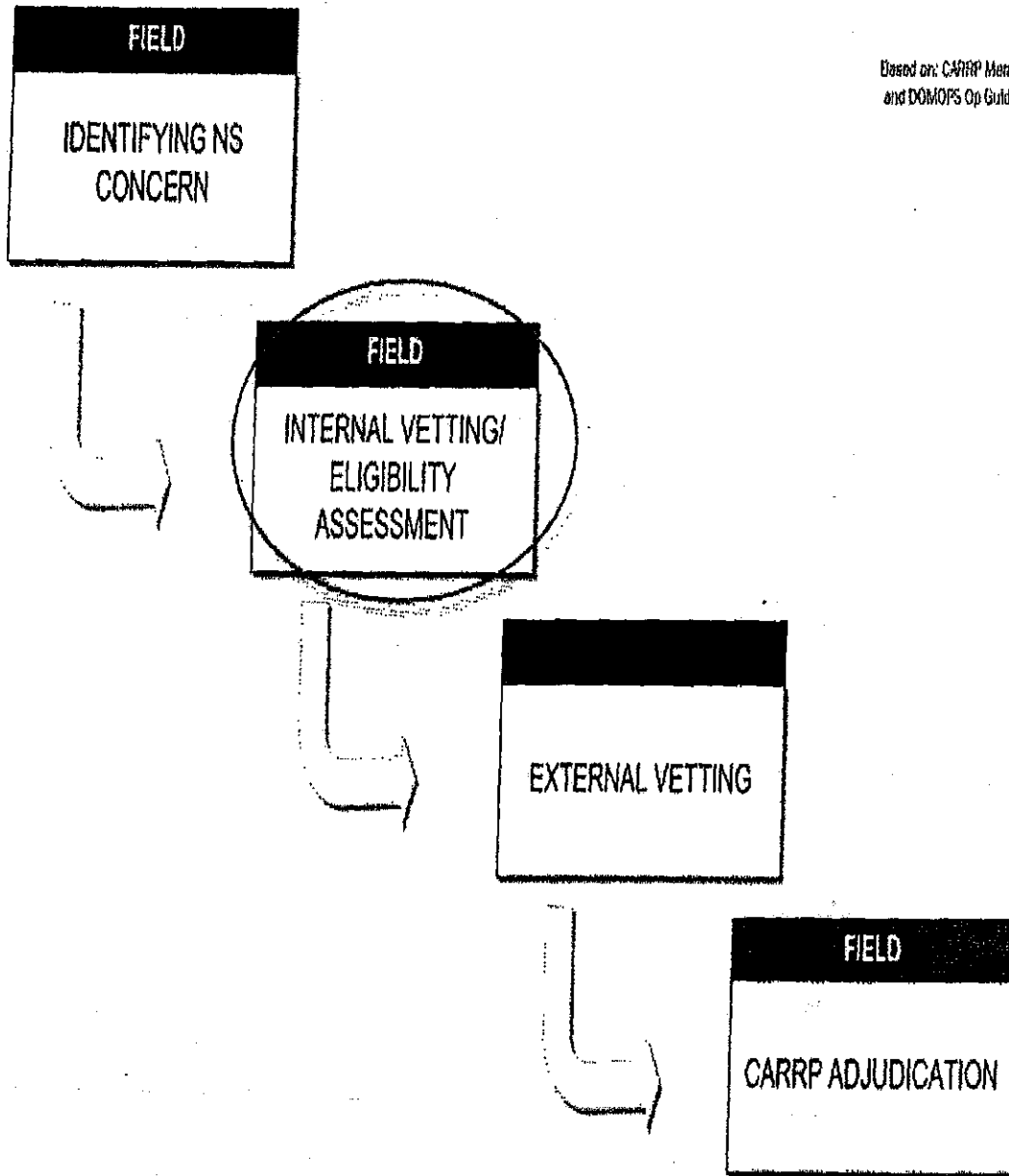
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EPO #4: Identify the process for internal vetting of cases involving national security concerns.

Based on: CARRP Memo on 4/11/08
and DOMOPS Op Guidance 4/25/08



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Things to consider during review of case

- Look at whole picture and from multiple angles.
- Review every page of application/petition.
- Review G-325 for completeness.
- Review Security Checks results, review them for relevance to applicant.
- Look for consistency in testimony and documentation to establish credibility.
- Clearly document changes made to the application or petition during the interview.
- Ask questions in the same order.
- Ensure that all biographical data is current and accurate to include current contact information.



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Internal Vetting/Eligibility Assessment- cont'd

- Consider: *What do Designated Officers Need?*
- Information regarding eligibility, admissibility, credibility
 - Inconsistencies
 - Misrepresentation and fraud
 - Illegal, suspect or unusual activity
 - Civil infractions
 - Unexplained financial activities
- What systems will need to be checked?
- For Official Use Only (FOUO)/Law Enforcement Sensitive information cannot be disclosed without permission from the record owner
- Classified information cannot be disclosed



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Biographical Information

- Aliases, various spellings, maiden names
- Marital status
- Children
- Location of family members
 - Immediate
 - Siblings, parents, ex-spouses



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Immigration History

- Dates of and status at entry
- Purpose of stay
- Type of visa
- Applications/petition filings
- Previous denials
- Suspected immigration fraud

DHS Form I-485 (Rev. 03-2004) (Pages 1-7 of 7)
**I-485, Application to Register
 Permanent Residence or Adjust Status**

Department of Homeland Security
 U.S. Citizenship and Immigration Services

START HERE - Please type or print in black ink.

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Part 1. Information about you.			Received	Recy:
Family Name SMITH	Given Name John	Middle Name A		
Address - C.O.			Registered	
Street Number and Name 1234 Main Street	City Los Angeles	State CA	Public Seal	
Zip Code 90780	Date of Birth (mm-dd-yyyy) 02/21/67	Country of Birth Nigeria	Public Seal	
Country of Citizenship Nigeria	U.S. Social Security # 123-45-6789	A # of entry None	Public Seal	
Date of Last Arrival (mm-dd-yyyy) 06/08/1977	U.S. Social Security # 123456789	Current USCIS Status F-1	Public Seal	
Expected date of departure (mm-dd-yyyy) 06/30/2005	Part 2. Application type. (check one)			Applicant Information
I am applying for an adjustment to permanent resident status because:				
<input checked="" type="checkbox"/> I am an immigrant petition filed on or transferred to this file because my spouse has been approved. (Attach a copy of the approval notice or a relative special immigrant petition or special immigrant military visa petition filed with this application that will give you an immediately available visa number, if approved.)				
<input type="checkbox"/> my spouse or parent applied for adjustment of status or was granted lawful permanent residence in an immigrant visa category that allows derivative status for spouses and children				
<input type="checkbox"/> I received a K-1 (Bancroft) visa United States consulate whom I married within 90 days of entry, or I am the K-2 child of such a Bancroft. (Attach a copy of the fiancé(e) petition approval notice and the marriage certificate.)				
<input type="checkbox"/> I was granted asylum or derivative asylum status as the spouse or child of a person granted asylum and am eligible for adjustment.				
Section of Law			Country Chargeable	
<input type="checkbox"/> Sec. 101(b)(1)(A) <input type="checkbox"/> Sec. 101(b)(1)(B) <input type="checkbox"/> Sec. 101(b)(1)(C) <input type="checkbox"/> Sec. 101(b)(1)(D) <input type="checkbox"/> Sec. 101(b)(1)(E) <input type="checkbox"/> Sec. 101(b)(1)(F) <input type="checkbox"/> Other				



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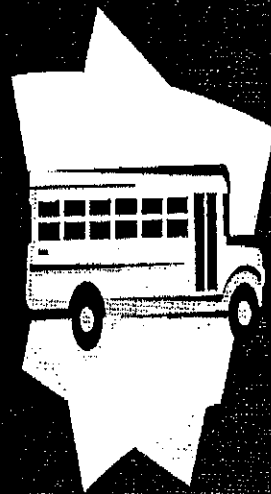
Education & Employment

- Education

- Institutions
- Degrees

- Work history

- Current and past occupation
- Business or professional licenses
- Tax information/sources of income
- Business associates

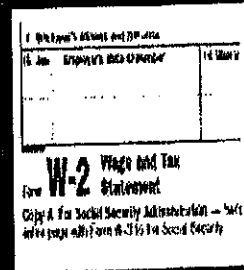


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Address History



• Immigration forms

• Taxes

• School Records

• Outside sources

• Check for roommates

OMB No. 1625-0045, Exp. 03-31-09

Department of Homeland Security
U.S. Citizenship and Immigration Services

G-325, Biographic Information

(Family Name)		(First Name)		(Middle Name)		<input type="checkbox"/> Male	Birth Date (mm-dd-yyyy)	Citizenship/Nationality	File Number A
						<input type="checkbox"/> Female			
All Other Names Used (including names by previous marriages)							City and Country of Birth		U.S. Social Security # (if any)
Father Name (Middle Name)		Family Name		First Name		Date, City and Country of Birth (if known)		City and Country of Residence	
Mother Name (Middle Name)		Family Name		First Name		Date, City and Country of Birth (if known)		City and Country of Residence	
Husband or Wife (Name, Family Name at time)		Family Name		First Name		Birth Date (mm-dd-yyyy)	City and Country of Birth	Date of Marriage	Place of Marriage
Name of Spouse or Partner (Name, Family Name at time)		Family Name		First Name		Birth Date (mm-dd-yyyy)	City and Country of Birth	Date of Marriage	Place of Marriage
Name of Spouse or Partner (Name, Family Name at time)		Family Name		First Name		Birth Date (mm-dd-yyyy)	City and Country of Birth	Date of Marriage	Place of Marriage
Name of Spouse or Partner (Name, Family Name at time)		Family Name		First Name		Birth Date (mm-dd-yyyy)	City and Country of Birth	Date of Marriage	Place of Marriage
Applicant's residence last five years. List present address first.							From	To	
Street and Number	City	Province or State	Country	Month	Year	Month	Year	Present Time	
Applicant's last address outside the United States of more than one year.							From	To	
Street and Number	City	Province or State	Country	Month	Year	Month	Year		
Applicant's employment last five years. (If none, so state.) List present employment first.							From	To	
Full Name and Address of Employer			Occupation (Specify)			Month	Year	Month	Year
								Present Time	



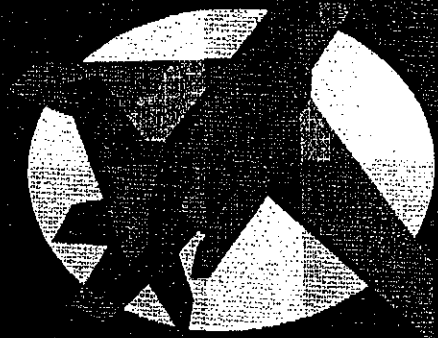
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Military History

- Dates
- Rank
- Military training
- Active combat
- Compulsory service
- Weapons training
- Flight training



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Membership in Groups

- Position in group?
- Solicit funds?
- Speak on behalf of group?
- Voluntary or automatic?
- Clubs, Unions, or Organizations
 - Political
 - Social
 - Religious
 - Professional
 - Educational



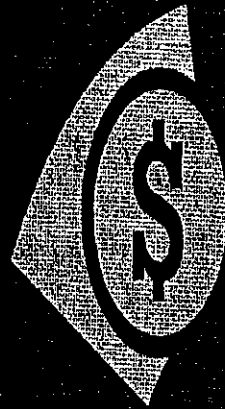
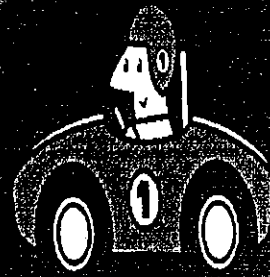
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Version 1.4

Travel

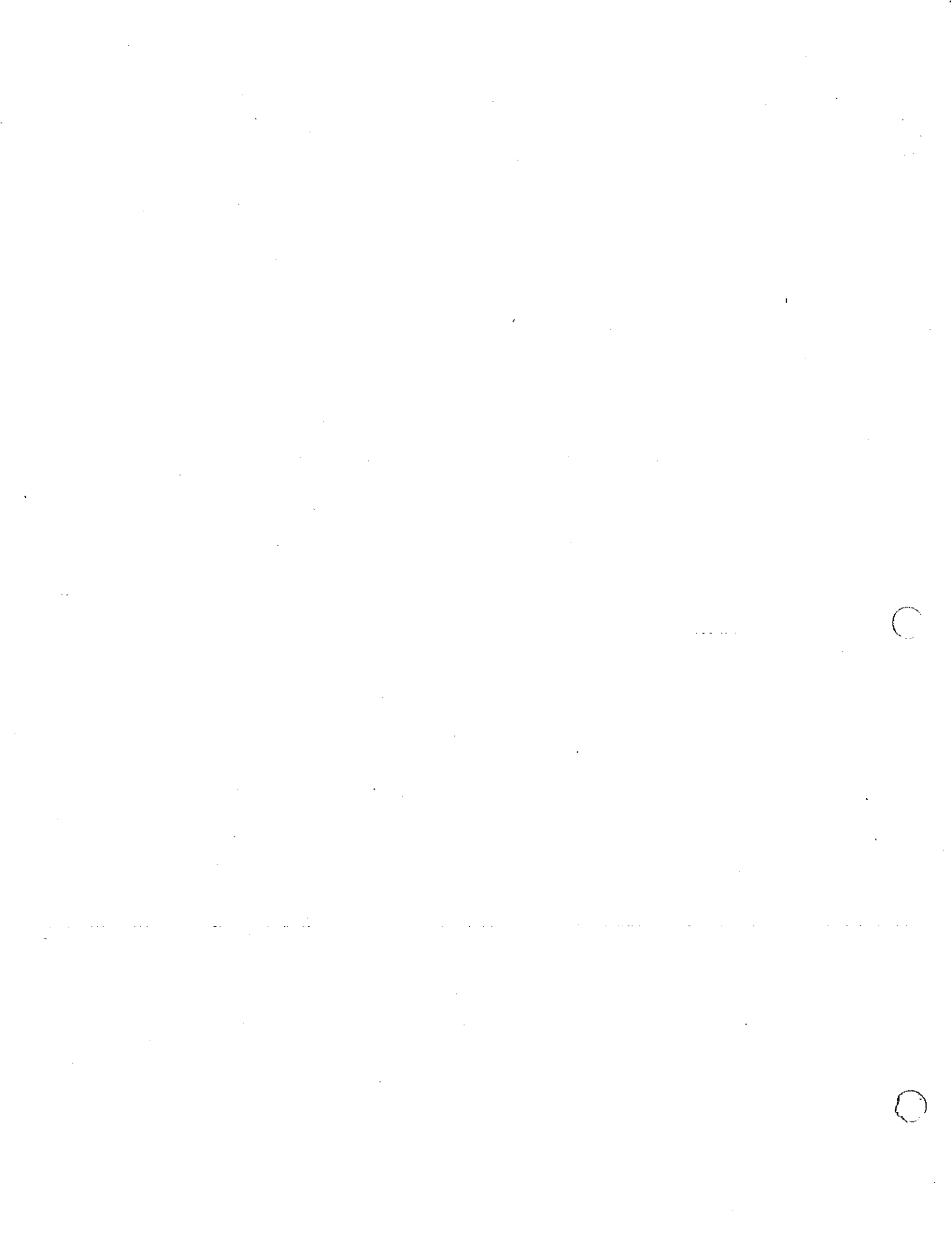
- Frequency and length of trips
- Reason for each trip
- Countries of interest
- Travel companions
- Taking money overseas for self or others
- Travel documents used
- Contacts



U.S. Citizenship
and Immigration
Services

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EXHIBIT

C

Appendix, Continued

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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services

May 21, 2004
HQ FDNS 70/2.1

425 I Street, NW
Washington, DC 20536

MEMORANDUM FOR REGIONAL DIRECTORS
DISTRICT DIRECTORS
SERVICE CENTER DIRECTORS
NATIONAL BENEFITS CENTER DIRECTOR
ADMINISTRATIVE APPEALS OFFICE DIRECTOR
OFFICE OF INTERNATIONAL AFFAIRS DIRECTOR
ASYLUM DIRECTORS

FROM: William R. Yates /S/
Associate Director of Operations
Citizenship & Immigration Services

SUBJECT: New National Security-Related IBIS Procedures

The purpose of this memorandum is to lift the adjudicative hold placed on national security-related IBIS hit responses provided by ICE's Office of National Security and Threat Protection Unit (NSTP)¹, and provide further instructions related to the processing of these cases.

Lifting of Hold on Pending Cases

On February 19, 2004, in a memorandum entitled *National Security Unit Case Closures*, I suspended (placed on hold) the adjudicative processing of cases with IBIS national security-related hits, notwithstanding responses from NSTP. As pointed out in that memorandum, this suspension was to enable CIS and ICE to examine the process for referring and resolving all terrorist and national security-related positive IBIS hits. Over the past few months, FDNS and NSTP worked together to enhance the process aimed at identifying individuals who pose a threat to this Country's national security, and ultimately, getting adjudicators the information necessary to make appropriate decisions on the pending (suspended) applications and/or petitions. What we learned was that no matter how thoroughly NSTP vetted the hits internally and with other law enforcement and intelligence agencies, we (CIS) frequently required additional information to determine whether applicants, petitioners, and/or beneficiaries were entitled to the benefits sought, notwithstanding the discontinued interest of the posting and/or other law enforcement or intelligence agency.

¹ NSTP was formerly known as the National Security Unit (NSU).

1
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Appendix, Continued

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With this said, while NSTP has improved their process and added more personnel to their operation, and we (CIS) have realigned the process within FDNS, we have not achieved the desired objective of ensuring the information you get (after vetting) is always sufficient in which to make an accurate adjudicative decision. While NSTP will continue to obtain and provide as much information as possible, it appears the sensitive nature of the information and multifaceted objectives of the agencies involved make it inevitable that we (CIS) will sometimes need to undertake further action². This means that adjudicative personnel must be aware of the need to thoroughly evaluate the information prior to making adjudicative decisions. Adjudicators are not to assume a case is approvable simply because ICE and/or other law enforcement or intelligence agencies are no longer interested in the individuals and/or do not possess sufficient information in which to prosecute them.

While my memorandum of February 19, 2004 is rescinded, hereby authorizing you to resume the adjudication process on cases that you have received a response from NSTP, you must ensure that the information contained in those responses is thoroughly reviewed by designated journeyman personnel³, and the appropriate decision and/or follow-up action taken.

Processing of Future Hits

Effective this date, our new Office of Fraud Detection and National Security (FDNS) will be responsible for directing, coordinating, and overseeing the administration of background checks conducted within CIS. This means that all IBIS national security-related Significant Incident Reports⁴ (SIR) are to be faxed to FDNS, Attention: IBIS NS Hit Unit, at 202-305-0107. There is no need to fax a copy to region or headquartered Operations components, unless requested to do so by your chain-of-command, as FDNS will be tracking the information in a database that will be shared, in part, with these offices. SIRs should not be faxed, or calls made, directly to NSTP. FDNS and NSTP will be exchanging data electronically, and working cases jointly. For the sake of data and process integrity, it is essential that internal CIS communications be made with FDNS. If there are extenuating circumstances, and you feel an SIR to FDNS is insufficient, you should contact FDNS Intelligence Research Specialist (IRS) Melissa Shafford via e-mail or telephone at 202-305-9660. In IRS Shafford's absence, call 202-305-3347, and simply ask to speak to the IBIS Desk Officer⁵. Given the potential volume of inquiries, SIRs and/or e-mails are the preferred method of communication.

² An example of when the posting agency may need to be contacted is when there was an active investigation at one time, relative to an alien. Some questions that may be deemed appropriate to seek answers for would be relative to whether or not there is any documentation that the posting agency could release to CIS pertaining to the investigation and if so, can CIS obtain a copy for our file. This is just an example and other instances may require follow-up, with additional questions being asked of the posting agency. This information is provided only as an example.

³ Center and Field Directors are encouraged to engage their most knowledgeable and experienced adjudicators in the review and processing of cases involving national security-related issues. FDNS will designate a lead Intelligence Research Specialist for each office to work with, when the need arises.

⁴ An SIR is required on all IBIS-related national security hits. They are not required on non-national security (criminal and other) IBIS hits, absent extenuating circumstances warranting the reporting of unusual or otherwise sensitive information. Non-national security positive IBIS responses should be resolved at the local level.

⁵ In IRS Shafford's absence, e-mail and voice-mail will be managed by the designated IBIS Desk Officer.

2
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Appendix, Continued

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Upon receipt of a SIR, FDNS will review the information to determine whether any additional notification or handling is necessary, key the appropriate data into its local IBIS National Security Hit /SIR Database, and provide the information to NSTP for "enforcement vetting". NSTP's access to this database will negate the need to transmit hard copy information. This will improve the record keeping process as well as help facilitate the process. Be further advised that NSTP is currently reporting an average processing time of 60-90 days.

When NSTP completes the vetting of a particular case (hit), it will respond to FDNS, who upon receipt will review the information provided to determine whether it is sufficient for adjudicative purposes. Intelligence research specialists and adjudicators, assigned to the FDNS, in an effort to reduce the need for field adjudicators to follow-up with the posting or other agencies, will review NSTP responses. FDNS will provide appropriate resolution information directly to the CIS office submitting the SIR. It will also provide regional CIS offices with monthly reports generated from the aforementioned database. Headquarters' Office of Field Operations will have direct access to FDNS' database.

Please note that just because ICE, via NSTP, has cleared an IBIS hit for national security or terrorism-related purposes, this does not mean the applicant, petitioner, and/or beneficiary are entitled to the benefit sought, nor that there aren't any public safety-related issues in need of resolution prior to adjudicative action. With this said, please ensure that all IBIS hits are resolved prior to granting any benefits, and the file noted appropriately. Any and all apparent violations or deficiencies, to include the inadvertent granting of an immigration benefit, are immediately reported to FDNS, with a copy to the appropriate chain-of-command. An SIR is to be used for this purpose as well.

These guidelines supercede all prior instructions as they pertain to national security-related IBIS hits. The IBIS SOP will be modified accordingly. Non-national security-related IBIS hits submitted in accordance with these national security instructions will be returned (by FDNS) for processing in accordance with the existing IBIS SOP. Questions resulting from these instructions are to be directed to IRS Melissa Shafford (FDNS), through regional CIS POCs.

FOIA →
IBIS SOP

3
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APPENDIX Q

Memorandum of Understanding Between the U.S. Customs Service and the Immigration and Naturalization Service for Use of the Treasury Enforcement Communications System (July 9, 1993)

[Redacted text block containing the main body of the memorandum of understanding]

EXHIBIT D



U.S. Citizenship and Immigration Services

WRITTEN TESTIMONY

of

ALEJANDRO N. MAYORKAS
DIRECTOR
U.S. CITIZENSHIP AND IMMIGRATION SERVICES

FOR A HEARING ON

SAFEGUARDING THE INTEGRITY OF THE IMMIGRATION BENEFITS ADJUDICATION PROCESS

BEFORE
THE HOUSE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON IMMIGRATION POLICY AND ENFORCEMENT

February 15, 2012
2:00 p.m.
2141 Rayburn House Office Building
Washington, DC

Chairman Gallegly, Ranking Member Lofgren, Members of the Subcommittee,

Thank you for the opportunity to testify before you about the efforts of U.S. Citizenship and Immigration Services (USCIS) to protect the integrity of our nation's immigration system and to help safeguard our nation's security. I appreciate this Committee's interest in learning about our continued prioritization of the agency's efforts, which are unprecedented in their scope and effect.

I want to take the opportunity to thank the men and women of USCIS whose dedication to the agency's mission is unwavering and whose hard work makes our vital mission a reality. Together as an agency we are committed to administering our nation's immigration laws efficiently and with fairness, honesty, and integrity.

I also want to thank the U.S. Department of Homeland Security's Office of Inspector General (OIG) for its role in reviewing our efforts. The OIG's independent review of our agency's operations assists us in our pursuit to improve each and every day, including in the priority areas of combating fraud and strengthening national security. In its report, *The Effects of USCIS Adjudication Procedures and Policies on Fraud Detection by Immigration Services Officers*, the OIG made valuable recommendations to improve our efforts to detect fraud in immigration benefit adjudications. We already have begun to implement many of the recommendations.

As soon as I took the oath of office as the Director of USCIS in August 2009, I began to deliver on my promise to the Senate Judiciary Committee and promptly commenced a top-to-bottom review of the agency. I did so through the perspective of my previous federal service.

From my current and former positions in the federal government, I know what can be accomplished when the dedicated men and women of a federal agency are motivated and supported to excel and deliver their very best in the service of our country. I previously had the honor to serve as United States Attorney for the Central District of California, leading an office of 245 Assistant United States Attorneys responsible for the largest federal judicial district in the nation, comprised of approximately 180 cities with an aggregate population of 18 million people. From my nearly twelve years as a federal prosecutor, I also know what it means to enforce the law and to do so in furtherance of our national security and public safety. It is these collective experiences, and the wise counsel of outstanding USCIS employees and current and former USCIS leaders, that I have applied to define the direction of the agency throughout these past few years.

Upon arriving at USCIS, I determined that there was an opportunity for organizational changes to both the culture and structure of the agency in several areas, including in our anti-fraud and national security programs. As I had emphasized to the Senate Judiciary Committee during my confirmation hearing:

Protecting our national security and public safety is a critical component of the USCIS mission, not an after-thought. This means we must continue to strive to improve the Agency's fraud prevention and detection operations, increase collaboration with U.S. Immigration & Customs Enforcement (ICE) and other law enforcement agencies to respond to fraud, and improve the efficiency and accuracy of the E-Verify system.

Historically, USCIS has been challenged by a culture that primarily focuses upon making adjudication decisions quickly, resulting in a significant and ongoing tension between the quality of adjudications and the speed with which they are made. This tension, in an agency that processes approximately seven million applications and petitions annually, has existed for many years.

The most recent decade provides a compelling snapshot. Ten years ago, Congress was focused on reducing the backlog of cases that arose from the then-Immigration and Naturalization Service's slow processing times. Five years ago, USCIS promulgated a fee rule that committed to proportionately faster-than-ever processing standards, requiring the agency to reduce its processing times by more than 20 percent. Indeed, when I came to the agency in August 2009, its first of ten top priorities was to achieve production and service goals.

Early in my tenure, I determined that we must enhance the emphasis on quality in our adjudicative approach. This means that immigration benefit decisions are informed, adhere to the law and the facts, are made in a timely manner, and further the integrity and goals of the immigration system. In order to institutionalize a culture of quality and one that reinforces the integrity of the immigration benefits system, in January 2010 – five months after my arrival – I realigned our agency's organizational structure.

Chief among the organizational changes I made was the creation of the Fraud Detection and National Security Directorate (FDNS), an elevation and expansion from its previous status as an office within a directorate. The previous alignment did not fully reflect my priorities. At the time, I informed all USCIS employees that “[t]his change reflects the prioritization of our anti-fraud and national security responsibilities and will bring greater focus to them.” The prioritization of these core responsibilities has in fact enabled us to achieve unprecedented results, most of which were not included in the Inspector General's report. For example, our significant achievements since January 2010 include the following:

Fraud Detection Enhancements

- To date, we have increased the number of FDNS officers, analysts, and staff to more than 780, an approximately 25 percent increase over the prior two years, and allocated new FDNS positions in field offices and service centers to strengthen coordination and collaboration with our front-line employees.

- We established a new National Security Branch in our Field Operations Directorate to achieve more integrated and effective coordination on national security and fraud matters, both within Field Operations and with other USCIS offices. The new National Security Branch supports our enhanced collaboration on intelligence and enforcement matters via the Joint Terrorism Task Forces (JTTFs) around the country.
- We enhanced our overseas verification efforts, increasing the number of FDNS officers posted overseas. Our overseas verification program combats immigration fraud by helping foreign-based USCIS officials confirm statements and authenticate documents that originate overseas. We developed standardized protocols to enhance the program's consistency and effectiveness and have continued to increase the staffing of FDNS officers overseas.
- We increased the staffing of our Administrative Site Visit Verification Program (ASVVP) and expanded the analytical use of ASVVP data. Through ASVVP, we conduct unannounced pre- and post-adjudication site inspections to verify information contained in certain visa petitions. The program is designed both to detect and deter fraud. We hired and trained more than 74 new federal officers to replace contractors, hired 13 senior officers and analysts to oversee the program, performed more than 17,000 ASVVP inspections in FY 2011 (an increase of over 2,000 ASVVP inspections from the previous fiscal year) and began to use data derived from ASVVP in analytical studies that inform and improve our ongoing anti-fraud efforts.
- We launched the Validation Instrument for Business Enterprises (VIBE), a Web-based tool that uses commercially available information to validate the business operations of companies and organizations looking to employ foreign workers. VIBE enhances USCIS's ability to adjudicate employment-based immigrant and nonimmigrant petitions efficiently and accurately.
- We enhanced the analytics and reporting capabilities of our Fraud Detection and National Security Data System (FDNS-DS). The system is used to document, analyze, and manage our agency's fraud and national security cases. Among other steps, the separate applications previously used to manage fraud cases and national security cases, respectively, were combined into a single system. The new, consolidated system allows officers to conduct person-centric queries and display all relevant information about an applicant, petitioner, or beneficiary. We also expanded the system's ability to import application-related data from other USCIS systems, substantially enhancing the breadth, accuracy, and utility of records in FDNS-DS.
- We launched fraud reporting tools and began delivering fraud bulletins in real-time to agency personnel. The fraud-detection bulletins are designed to inform our officers of the latest fraud issues, including identifiable trends and practices.

National Security, Screening and Vetting Enhancements

- We created a new office to centralize and effectively manage our screening initiatives with partners inside and outside the agency and enhanced our rigorous existing screening for national security threats. We broadened the scope of our screening protocols and also increased their frequency to ensure that we address national security threats as soon as they are identified within the Department of Homeland Security or by other law enforcement and intelligence partners. We also developed a comprehensive recurrent vetting strategy to lead the Department's biographic and biometric screening initiatives and studies.
- We enhanced our collaboration with JTTFs and other intelligence and law enforcement partners. FDNS officers have established working relationships with 39 local JTTFs and all State and Major Urban Area Fusion Centers. FDNS officers are detailed to the U.S. Immigration and Customs Enforcement National Security Unit, the U.S. Customs and Border Protection National Targeting Center, the Department of Homeland Security's Office of Intelligence and Analysis, the Department of Homeland Security's Threat Task Force, the National Joint Terrorism Task Force, the National Counter-Terrorism Center, the Department of State's Kentucky Consular Center and National Visa Center, the FBI's Operational Deconfliction and Analysis Team, the Terrorist Screening Center, the FBI's National Name Check Program, the Central Intelligence Agency, and INTERPOL's U.S. National Central Bureau.
- We strengthened the international exchange of threat information, including biometrics. Working with US-VISIT, we expanded our exchange of information related to asylum claimants under existing data-sharing agreements with foreign-government partners.
- We developed and implemented with the intelligence community new vetting protocols for refugee applicants. The new vetting protocols subject refugee applicants to more rigorous screening against a number of security databases to ensure that they are eligible for refugee status and that they do not pose a threat to national security or public safety.

Anti-Fraud and National Security Improvements to Process Integrity

- We issued a newly designed, more secure naturalization certificate to reduce fraud. The redesigned certificate features the naturalization candidate's digitized photograph and signature embedded into the document. The background also features a color-shifting ink pattern that is difficult to reproduce. In addition, we began using a more secure printing process that renders the certificate more tamper-proof.
- We issued a newly designed, more secure Employment Authorization Document and a more secure permanent resident card, commonly known as the "Green

Card.” State-of-the-art technologies incorporated into the new cards, including more secure optical media, holographic images, laser engraved fingerprints, and high resolution micro-images, prevent counterfeiting, obstruct tampering, and facilitate quick and accurate authentication of card holders.

- We expanded the Secure Mail initiative. We partnered with the U.S. Postal Service to enable delivery confirmation for secure immigration documents (Permanent Resident Cards, employment-authorization documents, and travel documents). Secure Mail allows our agency to confirm mailing and delivery and enables the U.S. Postal Service to track delivery and respond to applicants’ status queries. The initiative enhances the integrity of the system and improves customer service.
- We further strengthened the E-Verify program’s anti-fraud capabilities. We introduced U.S. passport photo-matching as a new feature in the E-Verify program, enhancing the program’s integrity by enabling E-Verify to check the validity and authenticity of all U.S. passports and passport cards presented for employment verification. This tool enhances E-Verify’s previous, more limited, capacity to detect identify theft by enabling the employer to ensure that the identity document presented belongs to the applicant. We also began expanding E-Verify’s anti-fraud capabilities in partnership with state motor-vehicle bureaus. The new effort allows USCIS for the first time to verify driver’s licenses presented for employment authorization against state records. We began piloting the effort with one state, with opportunities for other states to participate as the program expands.
- We promoted E-Verify to attract wider use, developing a robust customer service and outreach staff to increase public awareness of E-Verify’s significant benefits and inform employers and employees of their rights and responsibilities. In fiscal year 2011 alone, we informed more than 37 million people about E-Verify through radio, print, and online ads in English and Spanish, and approximately a half million more through 130 live presentations, 111 conference exhibitions, 305 live webinars, and distribution of informational materials. We also handled more than 98,000 calls from employees through our employee hotline. As a result of these collective efforts, 17.4 million queries were run in fiscal year 2011, one million more than the previous year. More than 958,000 worksites were enrolled, with more than 1,000 employers enrolling per week.
- We worked with the Department of Justice and the Federal Trade Commission to launch the Unauthorized Practice of Immigration Law initiative. Together, we partnered with state and local governments to develop and implement a comprehensive initiative that combats the unauthorized practice of immigration law by building capacity to deliver legitimate assistance, educating the public about finding bona fide legal advice, and strengthening prevention and enforcement efforts.

I am proud of these initiatives and the steps that we have taken to combat fraud and advance our nation's security. Some members of the public have not been so pleased. In fact, some stakeholders have been critical of our prioritization of these efforts, believing that the balance is shifting away from efficiency in favor of security.

Despite these public criticisms, I have been unwavering in my steadfast commitment to the fraud detection and national security aspects of our work. I believe firmly that as a federal fee-for-service agency, it is our mandate and our responsibility to deliver both efficiency and security in our adjudications for the benefit of the customers we serve and for the country we protect. As I repeated to agency personnel last year, "USCIS has no mission more important than guarding against those who might seek access to the United States to do our nation harm." I have continued to set this tone for the agency, and our top strategic priority for the last two years emphasizes this effort: "Strengthen National Security Safeguards and Combat Fraud."

I appreciate that the DHS Inspector General, in his recent report, recognized and praised our anti-fraud efforts and noted the many recent advances our workforce achieved to further integrate our efforts:

Through process improvements and additional systems checks, USCIS has taken important steps to improve national security and fraud detection. USCIS has also increased fraud detection resources and training.

The Inspector General then made several recommendations as to how the agency could better achieve its goal of combating immigration fraud. We concurred with many of the recommendations and are already implementing them. For example, efforts to promote better collaboration between FDNS officers and our adjudications officers are underway, and training programs are being strengthened for all decision-makers, including improved guidance on the roles and responsibilities of officers and supervisors in the area.

The Inspector General's report, admittedly based on limited testimonial information and not empirical data, captures the reality that the tension, whether real or perceived, between quality and speed still exists. No one has sought to tackle the breadth of the age-old tension between quality and speed more vigilantly than I. I have not only articulated my expectations both inside and outside the agency, I also have made structural improvements to strengthen a culture of quality within the agency.

In addition to the creation of the FDNS directorate in January 2010, I also created an Office of Performance and Quality to ensure that our agency prioritized quality throughout its adjudication practices and mission-support processes. In addition, we have been working to reform the agency's performance management system, striving to implement metrics that reinforce a broader focus on quality rather than production alone. The Inspector General recognized the importance of this undertaking:

USCIS recently revised its policies and reorganized its organizational structure to address immigration security concerns and facilitate fraud

detection. One key change is a shift from employee performance measures that focus on the number of applications or petitions that an [Immigration Services Officer] processes.

It is of paramount importance to me that no USCIS employee, whether because of any perceived pressure to process an immigration benefit quickly or for any other reason, ever adjudicates a case other than in accordance with what the law and the facts warrant. This is an ethic I have articulated and reinforced since I first became the Director of USCIS. Indeed, in a public question-and-answer session in early 2010, an immigration attorney articulated her hope that USCIS adjudicators will exercise their discretion “to get to yes.” My response was clear and direct on this point: “[T]he discretion to get to yes can be as pernicious as the discretion to get to no. It’s supposed to be the discretion to get to ‘right’.” In a conversation with the USCIS workforce last year, I reiterated to an employee who expressed concern about the effect of time pressure on adjudicative quality:

And if in fact there is a supervisor that is instructing an individual to just be fast at the expense of quality, then that’s something that one should raise to the top leadership . . . who would not tolerate that instruction and who, I can assure you, would find that instruction to be not consistent with the teachings of the program nor the agency as a whole.

I appreciate that the Inspector General emphasized that this is the ethic that I and the leadership of the agency continue to demand and promote:

USCIS has taken action to diminish threats to the immigration benefits system. General employee concerns about the impact of production pressure on the quality of an ISO’s [Immigration Services Officer’s] decisions do not mean that systemic problems compromise the ability of USCIS to detect fraud and security threats. No ISOs presented us with cases where benefits were granted to those who pose terrorist or national security threats to the United States.

....

The Director of USCIS informed us that managers and supervisors must ensure the integrity of each benefit determination, based on the evidence presented in the case file. ISOs who are pressured to approve cases that do not warrant approval should report such incidents to OSI [the Office of Security and Integrity].

Mr. Chairman, Ranking Member Lofgren, and Members of the Subcommittee, thank you again for the opportunity to share with you the great work we in U.S. Citizenship and Immigration Services have done and continue to do to safeguard our national security and combat fraud. This work allows us to remain the welcoming nation of immigrants we are so proud to be. Thank you again to the Inspector General for his independent work to further these efforts.

And, finally, I want to once again express my deep thanks and appreciation to the men and women of USCIS who dedicate each and every day to our noble mission, and whose hard work and commitment to our principles have made our achievements possible.

EXHIBIT

E



U.S. Citizenship and Immigration Services

CARRP Officer Training

NATIONAL SECURITY HANDOUTS

April 2009

EXHIBIT 82

Witness: R. Osuna

C Sletta CSR 7354 9-23-11

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March 2009

Ex. B2

TABLE OF CONTENTS

<u>ATTACHMENT A – GUIDANCE FOR IDENTIFYING NATIONAL SECURITY CONCERNS</u>	2
<u>CASE SUMMARY SAMPLE</u>	12
<u>CASE SUMMARY SAMPLE - ASYLUM ADJUSTMENT</u>	16
<u>DATABASE SEARCHES</u>	17
<u>DENIAL SAMPLES</u>	32
<u>G-56 ATTACHMENT – ASYLUM ADJUDICATION INTERVIEW</u>	72
<u>FRAUD INDICATORS</u>	73
<u>GOOD MORAL CHARACTER AND MISREPRESENTATION</u>	75
<u>INTERVIEW QUESTIONS</u>	78
<u>N-14 REMINDERS</u>	92
<u>OPENING STATEMENT FOR AUDIO/VISUAL RECORDED INTERVIEWS</u>	96
<u>OPENING STATEMENT FOR AUDIO/VISUAL RECORDED INTERVIEWS AFTER TAPE CHANGE</u>	97
<u>TERMS OF REFERENCE</u>	98
<u>TIMELINE SAMPLE</u>	101
<u>VIDEOTAPING INTERVIEWS</u>	104

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ATTACHMENT A – GUIDANCE FOR IDENTIFYING NATIONAL SECURITY CONCERNS

I. Introduction

USCIS seeks to ensure that immigration benefits are not granted to individuals and organizations that pose a threat to national security. It is important, therefore, that officers be able to identify certain indicators of a National Security (NS) concern. A NS concern exists when an individual or organization has been determined to have an articulable link to prior, current, or planned involvement in, or association with, an activity, individual, or organization described in sections 212(a)(3)(A), (B), or (F), or 237(a)(4)(A) or (B) of the Immigration and Nationality Act (the Act). This includes, but is not limited to, terrorist activity; espionage; sabotage; and the illegal transfer of goods, technology, or sensitive information.

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

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

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

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organizations that fall into this category may also pose a serious threat to national security.

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

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

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

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

III. Indicators of a NS Concern

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

A. Statutory Indicators

1. Sections 212(a)(3)(A), (B), and (F), and 237(a)(4)(A) and (B) of the Act contain comprehensive definitions of activities (including inchoate acts of threat, attempt, or conspiracy), associations, and organizations that may imply NS concerns:

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- “Terrorist Activity” is defined at section 212(a)(3)(B)(iii) of the Act.
 - Conduct that constitutes “engaging” in terrorist activity is defined at section 212(a)(3)(B)(iv) of the Act.
 - “Terrorist Organizations” are defined at section 212(a)(3)(B)(vi) of the Act. *See* the Department of State website (www.state.gov/s/ct/list/) for lists of Tier I and Tier II terrorist organizations. *See* the Department of Treasury listing of Specially Designated Global Terrorist Entities pursuant to Executive Order 13224 (www.state.gov/s/ct/list/) for some organizations likely to meet the Tier III undesignated terrorist organization definition.
2. Other sections of the Act whose reference in a record may imply NS concerns, and therefore may require further research to determine whether NS concerns exist, include:
- 208(b)(2)(A) Exceptions to Asylum Eligibility;
 - 212(a)(2)(I) Inadmissible Aliens – Money Laundering;
 - 221(i) Issuance of visas – Revocation of visas or other documents;
 - 235(c) Removal of aliens inadmissible on security and related grounds;
 - 236A Mandatory detention of suspected terrorists; habeas corpus; judicial review; and
 - 237(a)(2)(D) Deportable Aliens – Miscellaneous crimes.

B. Non-Statutory Indicators

1. Employment, Training, or Government Affiliations

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

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2. Other Suspicious Activities

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

- Unusual travel patterns and travel through or residence in areas of known terrorist activity;
- Criminal activities such as fraudulent document manufacture; trafficking or smuggling of persons, drugs, or funds; or money laundering;
- Large scale transfer or receipt of funds; and
- Membership or participation in organizations that are described in, or that engage in, activities outlined in sections 212(a)(3)(A), (B), or (F), or 237(a)(4)(A) or (B) of the Act.

3. Family Member or Close Associate

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

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

1. FBI Name Check

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

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

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

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

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

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

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

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

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

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dispositions may be required to determine if the charge or conviction is an indicator.

3. US-VISIT/IDENT

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

IV. TECS/IBIS

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

<u>TECS/IBIS TABLE CODE</u>	<u>CODE DESCRIPTION</u>
SF	TSA "NO FLY" LIST
SK	KNOWN TERRORIST
ST	SUSPECTED TERRORIST
SX	ASSOCIATE OF TERRORIST

<u>NCIC OFFENSE CODE</u>	<u>CODE DESCRIPTION</u>
0103	Espionage
0104	Sabotage
0105	Sedition
5299	Weapons/Explosives (may be only a criminal indicator;
	must check context)

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

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EXHIBIT

F



U.S. Citizenship
and Immigration
Services

April 13, 2011

APP2010001003

Jennie Pasquarella
ACLU of Southern California
1313 W. 8th Street
Los Angeles, CA 90017

Dear Jennie Pasquarella:

Re: COW2010000083

You appealed the action of the National Records Center regarding your waiver of fees request applicable to access to records pertaining to Policies and procedure on the Processing of Naturalization Applications relating to Muslims, dated December 06, 2010.

On the basis of all of the information available to us, we have determined that your request for a waiver of fees has been approved.

Sincerely,

A handwritten signature in cursive script that reads "Peter D. Gregory".

Peter D. Gregory, Chief,
Commercial & Administrative Law Division
Department of Homeland Security
Citizenship and Immigration Services