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

ABDIQAFAR WAGAFE and MEHDI OSTADHASSAN on behalf of themselves and others similarly situated,

Plaintiffs,

v.

DONALD TRUMP, President of the United States; UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES; JOHN F. KELLY, in his official capacity as Secretary of the U.S. Department of Homeland Security; LORI SCIALABBA, in her official capacity as Acting Director of the U.S. Citizenship and Immigration Services; MATTHEW D. EMRICH, in his official capacity as Associate Director of the Fraud Detection and National Security Directorate of the U.S. Citizenship and Immigration Services; DANIEL RENAUD, in his official capacity as Associate Director of the Field Operations Directorate of the U.S. Citizenship and Immigration Services,

Defendants.

COMPLAINT-CLASS ACTION

Case No: 2:17-cv-00094-JCC

AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

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INTRODUCTION

1. This class action lawsuit seeks to stop the federal government from unconstitutionally preventing Plaintiffs, and others like them, from obtaining immigration benefits, including, but not limited to, asylum, naturalization, lawful permanent residence, and employment authorization.

2. On January 27, 2017, President Trump issued an Executive Order entitled "Protecting the Nation from Foreign Terrorist Entry into the United States."

3. Section 3 of the Executive Order suspends entry into the United States of citizens or nationals of Syria, Iraq, Iran, Yemen, Somalia, Sudan, and Libya, all of which are predominantly Muslim countries, for 90 days or more. Although the Executive Order says nothing about suspending adjudications, U.S. Citizenship and Immigration Service ("USCIS") has determined that the Executive Order requires it to suspend adjudication or final action on *all* pending petitions, applications, or requests involving citizens or nationals of those seven countries with the exception of naturalization applications.

4. Section 4 of the Executive Order further directs federal agencies to create and implement a policy of extreme vetting of all immigration benefits applications to identify individuals who are seeking to enter the country based on fraud and with the intent to cause harm or who are at risk of causing harm after admission. Any such "extreme vetting" policy will expand a current USCIS program called the Controlled Application Review and Resolution Program ("CARRP"). CARRP imposes extra-statutory rules and criteria to delay and deny immigration benefits to which applicants are entitled.

5. Plaintiff Abdiqafar Wagafe is a Somali national who has applied for and is eligible to naturalize as a United States citizen. He has been waiting three and a half years for a decision on his naturalization application.

6. Plaintiff Mehdi Ostadhassan is an Iranian national who has applied for and is eligible to adjust his status to that of a permanent resident. He has waited three years for a decision on his adjustment of status application.

7. Both Plaintiffs are practicing Muslims and long-term residents of the United States. Adjudication of Plaintiff Ostadhassan's application is now suspended. This suspension, as well as the inordinate delays both he and Plaintiff Wagafe have faced, have held and will hold the lives of Plaintiffs, and others like them, in a state of limbo. They are prevented from having certainty about their future

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residence in the United States, from being able to travel overseas, from petitioning for immigration benefits for family members, from obtaining jobs available only to U.S. citizens, and from voting in U.S. elections.

8. On behalf of themselves, and others similarly situated, Plaintiffs request that this Court order USCIS to resume adjudications of immigration benefits applications for citizens or nationals of Syria, Iraq, Iran, Yemen, Somalia, Sudan, and Libya. They also seek to enjoin the federal government from subjecting them and others like them—immigrants who are living in the United States and who are applying for naturalization or adjustment of status as permanent residents—to any "extreme vetting" and screening program that imposes unlawful criteria for adjudication and approval of their applications and that is ultra vires to the Constitution and immigration laws and is based on unconstitutional animus towards people of the Muslim faith or from Muslim-majority countries.

9. The Executive Order and application of CARRP[1] to pending immigration applications are unlawful and unconstitutional. The Executive Order reflects a preference for one religious faith over another in the adjudication of immigration applications, and, *inter alia*, discriminates against immigrants who are Muslim or from Muslim-majority countries on the basis of their religion and country of origin. CARRP and the "extreme vetting" program to be established under the Executive Order are similarly unlawful and ultra vires. The Constitution expressly assigns to Congress, not the executive branch, the authority to establish uniform rules of naturalization. The Immigration and Nationality Act ("INA") sets forth those rules, along with the requirements for adjustment of status to lawful permanent residence, asylum, and all other immigration benefits. By creating additional, non-statutory, substantive criteria for adjudicating immigration applications, CARRP and any successor "extreme vetting" program violate the INA, Article I of the Constitution, and the Due Process Clause.

10. Without intervention by this Court, the applications of Plaintiff Ostadhassan and proposed class members will be unlawfully suspended due to the application of the Executive Order, and adjudications

[1] As set forth below in paragraph 70, USCIS did not make information about CARRP public, and the program only was discovered through fortuity during federal court litigation. To the extent the program has shifted in name, scope, or method, Plaintiffs may have no way to obtain that information. Thus, Plaintiffs' reference to "CARRP" incorporates any similar non-statutory and sub-regulatory successor vetting policy.

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of both Plaintiff's and proposed class members' applications will be unlawfully subject to, and adjudicated under, CARRP or a successor "extreme vetting" program.

11. Plaintiffs therefore request that the Court order USCIS to resume adjudications of immigration benefits applications for citizens and nationals of the seven countries identified in the Executive Order and enjoin USCIS from applying CARRP (or any similar ultra vires policy/successor "extreme vetting" program) to their immigration applications and the applications of similarly situated individuals.

JURISDICTION AND VENUE

12. Plaintiffs allege violations of the INA, the Administrative Procedure Act ("APA"), and the U.S. Constitution. This Court has subject matter jurisdiction under 28 U.S.C. § 1331. This Court also has authority to grant declaratory relief under 28 U.S.C. §§ 2201 and 2202, and injunctive relief under 5 U.S.C. § 702 and 28 U.S.C. § 1361.

13. Venue is proper in the Western District of Washington under 28 U.S.C. §§ 1391(b) and 1391(e) because (1) Plaintiff Abdiqafar Wagafe, a lawful permanent resident of the United States, resides in this district and no real property is involved in this action; (2) a substantial part of the events giving rise to the claims occurred in this district; and (3) Plaintiffs sue Defendants in their official capacity as officers of the United States.

PARTIES

14. Plaintiff Abdiqafar Wagafe is a thirty-two-year-old Somali national and a lawful permanent resident of the United States. He has lived in the United States since May 2007 and currently resides in SeaTac, Washington. He is Muslim. He applied for naturalization in November 2013. Even though he satisfies all statutory criteria for naturalization, USCIS has subjected his application to CARRP or its successor "extreme vetting" program, and as a result, a final decision has not been issued.

15. Plaintiff Mehdi Ostadhassan is a thirty-three-year-old national of Iran. He has lived in the United States since 2009 and resides in Grand Forks, North Dakota. He applied for adjustment to lawful permanent resident status in February 2014. He is Muslim. Even though he satisfies all statutory criteria for adjustment of status, USCIS has suspended adjudication of his application under the Executive Order and subjected his application to CARRP or its successor "extreme vetting" program,

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and as a result, a final decision has not been issued.

16. Defendant Donald Trump is the President of the United States. Plaintiffs sue Defendant Trump in his official capacity.

17. Defendant USCIS is a component of the Department of Homeland Security ("DHS"), and is responsible for overseeing the adjudication of immigration benefits. USCIS implements federal law and policy with respect to immigration benefits applications.

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

19. Defendant Lori Scialabba is the Acting Director of USCIS. Acting Director Scialabba establishes and implements immigration benefits applications policy for USCIS and its subdivisions. Plaintiffs sue Defendant Scialabba in her official capacity.

20. Defendant Matthew D. Emrich is the Associate Director of the Fraud Detection and National Security Directorate of USCIS ("FDNS"), which is ultimately responsible for determining whether individuals filing applications for immigration benefits pose a threat to national security, public safety, or the integrity of the nation's legal immigration system. Associate Director Emrich establishes and implements policy for FDNS. Plaintiffs sue Defendant Emrich in his official capacity.

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

LEGAL FRAMEWORK

A. Naturalization

22. To naturalize as a U.S. citizen, an applicant must satisfy certain eligibility criteria under the INA and its implementing regulations. *See generally* 8 U.S.C. §§ 1421-1458; 8 C.F.R. §§ 316.1-316.14.

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

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§ 1427(a)(1).

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

25. An applicant is presumed to possess the requisite "good moral character" for naturalization unless, during the five years preceding the date of the application, he or she is found (1) to be a habitual drunkard, (2) to have committed certain drug-related offenses, (3) to be a gambler whose income derives principally from gambling or has been convicted of two or more gambling offenses, (4) to have given false testimony for the purpose of obtaining immigration benefits; or if the applicant (5) has been convicted and confined to a penal institution for an aggregate period of 180 days or more, (6) has been convicted of an aggravated felony, or (7) has engaged in conduct such as aiding Nazi persecution or participating in genocide, torture, or extrajudicial killings. 8 U.S.C. § 1101(f)(6).

26. The statutory and regulatory requirements set forth in paragraphs 23-24 are less stringent for certain persons who married U.S. citizens and employees of certain nonprofit organizations, in that less than five years of residency and good moral character are required. *See generally* 8 U.S.C. § 1430; 8 C.F.R. §§ 319.1 and 319.4.

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

28. Once an individual submits an application, USCIS must conduct a background investigation, *see* 8 U.S.C. § 1446(a); 8 C.F.R. § 335.1, which includes a full criminal background check by the Federal Bureau of Investigation ("FBI"), *see* 8 C.F.R. § 335.2.

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

30. In order to avoid inordinate processing delays and backlogs, Congress has stated "that the

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processing of an immigration benefit application," which includes naturalization, "should be completed not later than 180 days after the initial filing of the application." 8 U.S.C. § 1571(b). USCIS must either grant or deny a naturalization application within 120 days of the date of the examination. 8 C.F.R. § 335.3.

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

32. Courts have long recognized that "Congress is given power by the Constitution to establish a uniform Rule of Naturalization. . . . And when it establishes such uniform rule, those who come within its provisions are entitled to the benefit thereof as a matter of right. . . ." *Schwab v. Coleman*, 145 F.2d 672, 676 (4th Cir. 1944) (emphasis added); *see also Marcantonio v. United States*, 185 F.2d 934, 937 (4th Cir. 1950) ("The opportunity having been conferred by the Naturalization Act, there is a statutory right in the alien to submit his petition and evidence to a court, to have that tribunal pass upon them, and, if the requisite facts are established, to receive the certificate." (quoting *Tutun v. United States*, 270 U.S. 568, 578 (1926))).

33. Once an application is granted, the applicant is sworn in as a United States citizen.

B. Adjustment of Status to Lawful Permanent Resident

34. Federal law allows certain non-citizens to adjust their immigration status to that of a lawful permanent resident ("LPR").

35. Several events may trigger eligibility to adjust to LPR status, including, but not limited to, an approved petition through a family member, such as a U.S. citizen spouse, or employer. *See*, *e.g.*, 8 U.S.C. § 1255(a); 8 C.F.R. § 245.1.

36. In general, a noncitizen who is the beneficiary of an approved immigrant visa petition and who is physically present in the United States may adjust to LPR status if he or she "makes an application for such adjustment," was "inspected and admitted or paroled" into the United States, is eligible for an immigrant visa and admissible to the United States, and the immigrant visa is immediately available to the applicant at the time the application is filed. 8 U.S.C. §§ 1255(a)(1)-(3); 8 C.F.R. § 245.1.

37. An adjustment applicant may be found inadmissible, and therefore ineligible to become an LPR, if certain security-related grounds apply, including, inter alia, the applicant has engaged in terrorist

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activity, is a representative or member of a terrorist organization, endorses or espouses terrorist activity, or incites terrorist activity. *See* 8 U.S.C. § 1182(a)(3). USCIS's definition of a national security concern in CARRP is significantly broader than these security-related grounds of inadmissibility set by Congress.

38. Congress has directed USCIS to process immigration benefit applications, including for adjustment of status, within 180 days. 8 U.S.C. § 1571(b).

C. Other Immigration Benefits

39. Federal laws provide noncitizens living within the United States the opportunity to apply for a myriad of other immigration benefits apart from either naturalization or adjustment of status.

40. For example, persons fleeing persecution or torture may apply for asylum under 8 U.S.C. § 1158, or withholding of removal, under 8 U.S.C. § 1231(b)(3). Victims of certain crimes and trafficking who have suffered serious harm and who have cooperated with law enforcement may apply for nonimmigrant visas under 8 U.S.C. §§ 1101(a)(15)(T), (U). Certain noncitizens from designated countries may apply for Temporary Protected Status ("TPS") in the event of, *inter alia*, a natural disaster or political upheaval in their country of origin. 8 U.S.C. § 1254a. In addition, a significant number of noncitizens within the United States are eligible for employment authorization based on either their current immigration status, their employment status, or their temporary immigration status, including while other applications for immigration benefits are pending. *See generally* 8 C.F.R. § 274.12a(a)-(c).

41. Every immigration benefit has enumerated statutory and/or regulatory requirements that applicants must affirmatively establish to demonstrate eligibility. In addition, each applicant generally must show that they are admissible under 8 U.S.C. § 1182 and/or are that any past immigration violation or criminal conduct does not disqualify them for the benefit sought. *See*, *e.g.*, 8 U.S.C., §§ 1158(b)(2) (precluding asylum eligibility to individuals found to have persecuted others, to have been convicted of "a particularly serious crime," or to present a danger to national security); 1231(b)(3)(B) (precluding applicants from receiving withholding of removal based on national security grounds); 1254a(c)(2)(B)(i) (precluding applicants from qualifying for TPS if they have been convicted of a felony or two or more misdemeanors).

FACTUAL BACKGROUND

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A. Executive Order of January 27, 2017

42. President Donald Trump campaigned for election on promises to ban Muslims from coming to the United States.

43. On December 7, 2015, the Trump campaign issued a press release stating that "Donald J. Trump is calling for a total and complete shutdown of Muslims entering the United States until our country's representatives can figure out what is going on." The press release is attached hereto as Exhibit A.

44. In March 2016, Defendant Trump said, "Frankly, look, we're having problems with the Muslims, and we're having problems with Muslims coming into the country." Alex Griswold, *Trump Responds to Brussels Attacks: 'We're Having Problems with the Muslims*,' MEDIAITE, Mar. 22, 2016, *available at* http://www.mediaite.com/tv/trump-responds-to-brussels-attack-were-having-problems-with-the-muslims/ (last visited: Feb. 1, 2017).

45. On June 14, 2016, Defendant Trump promised to ban all Muslims entering this country until "we as a nation are in a position to properly and perfectly screen those people coming into our country." The transcript of his speech is attached hereto as Exhibit B.

46. In a speech on August 15, 2016, Defendant Trump said that the United States could not "adequate[ly] screen[]" immigrants because it admits "about 100,000 permanent immigrants from the Middle East every year." Defendant Trump proposed creating an ideological screening test for immigration applicants, which would "screen out any who have hostile attitudes towards our country or its principles—or who believe that Sharia law should supplant American law." During the speech, he referred to his proposal as "extreme, extreme vetting." A copy of his prepared remarks are attached hereto as Exhibit C. A video link to the delivered speech is available at: https://www.c-span.org/video/?413977-1/donald-trump-delivers-foreign-policy-address (quoted remarks at 50:46).

47. During an August 2016 speech, Michael Flynn, who is now President Trump's National Security Advisor, called Islam "a political ideology," suggesting it is not a religion, and called it "a vicious cancer inside the body of 1.7 billion people on this planet and it has to be excised." A copy of a news article reporting this speech is attached hereto as Exhibit D. A video link with clips of his speech is available at: http://www.cnn.com/2016/11/22/politics/kfile-michael-flynn-august-speech/.

48. On January 20, 2017, Donald Trump was inaugurated as the President of the United States.

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49. In his first television appearance as President, he again referred to his plan for "extreme vetting." The transcript of this interview is attached hereto as Exhibit E.

50. On January 27, 2017, one week after taking office, Defendant Trump signed an executive order entitled, "Protecting the Nation from Foreign Terrorist Entry into the United States." The Executive Order is attached hereto as Exhibit F and is hereinafter referred to as the "EO." On information and belief, and in light of the statements by Mr. Trump and his advisors set forth above, the EO was intended to target Muslims.

51. Citing the threat of terrorism committed by foreign nationals, the EO directs a variety of changes to the processing of certain immigration benefits. Most relevant to the instant action is Section 3 of the EO, which falls within a section entitled "Suspension of Issuance of Visas and Other Immigration Benefits," in which President Trump orders, in Section 3(a), an immediate "review to determine the information needed from any country to adjudicate any visa, admission, or other benefit under the INA (adjudications) in order to determine that the individual seeking the benefit is who the individual claims to be and is not a security or public-safety threat." In Section 3(c), the order then explains that to reduce the burden of the reviews described in Section 3(a), "immigrant and nonimmigrant entry into the United States of aliens from countries referred to in section 217(a)(12) of the INA, 8 U.S.C. 1187(a)(12), would be detrimental to the interests of the United States," and that Defendant Trump is therefore "suspend[ing] entry into the United States, as immigrants and nonimmigrants, of such persons for 90 days from the date of this order."

52. There are seven countries that fit the criteria in 8 U.S.C. § 1187(a)(12): Iraq, Iran, Libya, Somalia, Sudan, Syria, and Yemen. The populations of those countries are overwhelmingly Muslim.

53. The EO purports to rely on 8 U.S.C. § 1182(f) for the authority to suspend entry into the United States.

54. On information and belief, USCIS relies on Section 3 of the EO to suspend processing immigrant visas and immigration benefits.

55. Section 4 of the EO orders the creation of a screening program for all immigration benefits applications, which will seek to identify individuals "who are seeking to enter the United States on a fraudulent basis with the intent to cause harm, or who are at risk of causing harm subsequent to their

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admission" and "a process to evaluate the applicant's likelihood of becoming a positively contributing member of society and the applicant's ability to make contributions to the national interest."

56. Sections 5(a) and (b) of the EO suspends the U.S. Refugee Admissions Program in its entirety for 120 days and then, upon its resumption, directs the program to prioritize refugees who claim persecution on the basis of religious-based persecution, "provided that the religion of the individual is a minority religion in the individual's country of nationality." Section 5(e) states that notwithstanding the suspension of the Refugee Program, on a case-by-case basis, the United States may admit refugees "only so long as they determine that the admission of such individuals as refugees is in the national interest—including when the person is a religious minority in his country of nationality facing religious persecution."

57. In a January 27, 2017, interview with the Christian Broadcasting Network, President Trump confirmed his intent to prioritize Christians in the Middle East for admission as refugees. A copy of the report of this interview is attached hereto as Exhibit G (David Brody: "As it relates to persecuted Christians, do you see them as kind of a priority here?" President Trump: "Yes.").

B. Ban on the Adjudication of Immigration Benefits Applications for Immigrants from the Seven Countries

58. After the issuance of the EO, at least two department heads within USCIS sent internal communications barring any final action on any petition or benefits application involving citizens or nationals of Syria, Iraq, Iran, Somalia, Yemen, Sudan, and Libya.

59. On January 28, 2017, Associate Director of Service Center Operations for USCIS, Donald Neufeld, issued instructions to Service Center directors and deputies in an email message directing the suspension of the "adjudication of all applications, petitions or requests involving citizens or nationals of the [seven] listed countries." The email continues, "At this point there are no exceptions for any form types, to include I-90s or I-765s. Please physically segregate any files that are impacted by this temporary hold pending further guidance." Photographs of the internal email communication are attached hereto as Exhibit H.

60. In another email to staff from Daniel M. Renaud, Associate Director of Field Operations for USCIS, on January 28, 2017, Mr. Renaud stated, "Effectively [sic] immediately and until additional

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guidance is received, you may not take final action on any petition or application where the applicant is a citizen or national of Syria, Iraq, Iran, Somalia, Yemen, Sudan, and Libya." Alice Speri and Ryan Devereaux, *Turmoil at DHS and State Department*, THE INTERCEPT, Jan. 30, 2017, *available at* https://theintercept.com/2017/01/30/asylum-officials-and-state-department-in-turmoil-there-are-people-literally-crying-in-the-office-here/. The email continued, "Offices are not permitted [to] make any final decision on affected cases to include approval, denial, withdrawal, or revocation. Please look for additional guidance later this weekend on how to process naturalization applicants from one of the seven countries listed above who are currently scheduled for oath ceremony or whose N-400s have been approved and they are pending scheduling of oath ceremony." *Id*.; *see also* Michael D. Shear and Ron Nixon, *How Trump's Rush to Enact an Immigration Ban Unleashed Global Chaos*, NEW YORK TIMES (Jan. 29, 2017), *available at* https://www.nytimes.com/2017/01/29/us/politics/donald-trump-rush-immigration-order-chaos.html.

61. On January 31, 2017, U.S. Customs and Border Protection, a subdivision of DHS, published a clarification on its website regarding whether the EO applies to people with pending naturalization applications. The site reported that the EO does not so apply and that "USCIS will continue to adjudicate N-400 applications for naturalization and administer the oath of citizenship consistent with prior practices." *Protecting the Nation from Foreign Terrorist Entry into the United States*, CBP, https://www.cbp.gov/border-security/protecting-nation-foreign-terrorist-entry-united-states.

62. Referencing the hold on adjudications for people from the seven countries, a USCIS official told The Intercept, "We know what is coming. These cases will all be denied after significant waits." Alice Speri and Ryan Devereaux, *Turmoil at DHS and State Department*, THE INTERCEPT, Jan. 30, 2017.

63. The application of the EO to immigration benefits applications for immigrants from the seven countries will effectuate the intent of the EO to target Muslims.

C. "Extreme Vetting" of Muslim Immigrants

64. As described above, Section 4 of the EO orders the Secretary of State, the Secretary of Homeland Security, the Director of National Intelligence, and the Director of the Federal Bureau of Investigation to "implement a program, as part of the adjudication process for immigration benefits" to identify individuals "who are at risk of causing harm." The EO calls for the implementation of a

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"program [that] will include the development of a uniform screening standard and procedure," including "a process to evaluate the applicant's likelihood of becoming a positively contributing member of society and the applicant's ability to make contributions to the national interest," as well as "a mechanism to assess whether or not the applicant has the intent to commit criminal or terrorist acts after entering the United States."

65. Upon information and belief, this "extreme vetting" program will dramatically expand CARRP, an existing program USCIS has implemented since April 2008.

66. CARRP is an agency-wide policy for identifying, processing, and adjudicating immigration applications that raise "national security concerns." As described below, however, CARRP unlawfully imposes extra statutory rules and criteria to delay and deny applicants immigration benefits to which they are entitled.

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

68. Upon information and belief, prior to CARRP's enactment, USCIS simply delayed the adjudication of many immigration applications that raised possible national security concerns, in part due to backlogs created by the FBI Name Check process (one of many security checks utilized by USCIS).

69. Indeed, the U.S. District Court for the Western District of Washington previously certified a district class of hundreds of naturalization applicants whose cases were delayed due to FBI Name Checks, *see Roshandel v. Chertoff*, 554 F. Supp. 2d 1194 (W.D. Wash. 2008), and denied the defendants' motion to dismiss the suit, *see Roshandel*, 2008 WL 1969646 (W.D. Wash. May 5, 2008). The case resulted in a settlement in which the defendants agreed to adjudicate class member applications within a specified time period. *See Roshandel*, No. C07-1739MJP, Dkt. 81 (W.D. Wash. Aug. 25, 2008).

70. Now, in lieu of delays based on the FBI Name Check process, USCIS delays applications by applying CARRP. Since CARRP's inception, USCIS has not made information about CARRP available to the public, except in response to Freedom of Information Act ("FOIA") requests and litigation to compel responses to those requests. *See ACLU of Southern California v. USCIS*, No. CV 13-861

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(D.D.C. filed June 7, 2013). In fact, the program was unknown to the public, including applicants for immigration benefits, until it was discovered in litigation challenging an unlawful denial of naturalization in *Hamdi v. USCIS*, No. EDCV 10-894 VAP (DTBx), 2012 WL 632397 (C.D. Cal. Feb. 25, 2012), and then revealed in greater detail through the government's response to a FOIA request.

71. CARRP directs USCIS officers to screen citizenship and immigration benefits applications for national security concerns.

72. If a USCIS officer determines that an application presents a national security concern, he or she will take the application off a routine adjudication track and—without notifying the applicant—place it on a CARRP adjudication track where it is subject to distinct procedures, heightened scrutiny, and, most importantly, extra-statutory criteria that result in lengthy delays and prohibit approvals, except in limited circumstances, regardless of an applicant's statutory eligibility.

1. CARRP's Definition of a National Security Concern

73. According to the CARRP definition, a national security concern arises when an individual or organization has been determined to have an articulable link—no matter how attenuated or unsubstantiated—to prior, current, or planned involvement in, or association with, an activity, individual, or organization described in sections 212(a)(3)(A), (B), or (F), or 237(a)(4)(A) or (B) of the Immigration and Nationality Act. Those sections of the INA make inadmissible or removable any individual who, *inter alia*, "has engaged in terrorist activity" or is a member of a "terrorist organization." 8 U.S.C. §§ 1182(a)(3) and 1227(a)(4).

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

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

76. USCIS automatically considers an applicant a KST, and thus a national security concern, if his or her name appears in the Terrorist Screening Database, also referred to as the Terrorist Watchlist ("TSDB" or "Watchlist"). USCIS, therefore, applies CARRP to any applicant whose name appears in

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the TSDB.

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

78. The government's Watchlisting Guidance sets a very low "reasonable suspicion" standard for placement on the Watchlist. Under the Guidance, concrete facts are not necessary to satisfy the reasonable suspicion standard, and uncorroborated information of questionable or even doubtful reliability can serve as the basis for blacklisting an individual. The Guidance further reveals that the government blacklists non-U.S. citizens, including LPRs, even where it cannot meet the already low reasonable suspicion standard of purported involvement with terrorist activity. The Guidance permits the watchlisting of noncitizens simply for being associated with someone else who has been watchlisted, even if there is no known involvement with that person's purportedly suspicious activity. The Guidance also states explicitly that noncitizens may be watchlisted based on information that is very limited or of suspected reliability. These extremely loose standards significantly increase the likelihood that the TSDB contains information on individuals who are neither known nor appropriately suspected terrorists.

79. Furthermore, the Terrorist Screening Center ("TSC"), which maintains the TSDB, has failed to ensure that individuals who do not meet the Watchlist's criteria are promptly removed from the TSDB (or not blacklisted in the first place). In 2013 alone, the watchlisting community nominated 468,749 individuals to the TSDB, and the TSC rejected only approximately one percent of those nominations. Public reports also confirm that the government has nominated or retained people on government watchlists as a result of human error.

80. The federal government's official policy is to refuse to confirm or deny any given individual's inclusion in the TSDB or provide a meaningful opportunity to challenge that inclusion. Nevertheless, individuals can become aware of their inclusion due to air travel experiences. In particular, individuals may learn that they are on the "Selectee List" or the "Expanded Selectee List," subsets of the TSDB, if their boarding passes routinely display the code "SSSS" or they are routinely directed for additional screening before boarding a flight over U.S. airspace. They may also learn of their inclusion in the TSDB if U.S. federal agents regularly subject them to secondary inspection when they enter the United States from abroad. Such individuals are also often unable to check-in for flights online or at airline

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electronic kiosks at the airport.

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

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

83. Statutory indicators of a national security concern arise when an individual generally meets the definitions described in Sections 212(a)(3)(A), (B), and (F), and 237(a)(4)(A) and (B) of the INA (codified at 8 U.S.C. § 1182(a)(3)(A), (B), and (F) and § 1227(a)(4)(A) and (B)), which list the security and terrorism grounds of inadmissibility and removability.[2] However, CARRP expressly defines statutory indicators of a national security concern more broadly than the statute, stating that the facts of the case do not need to satisfy the legal standard used in determining admissibility or removability under those provisions of the INA to give rise to a non-KST national security concern.

84. For example, CARRP policy specifically directs USCIS officers to scrutinize evidence of charitable donations to organizations later designated as financiers of terrorism by the U.S. Treasury Department and to construe such donations as evidence of a national security concern, even if an individual had made such donations without any knowledge that the organization was engaged in proscribed activity. Such conduct would not make an applicant inadmissible for a visa, asylum, or LPR status under the statute, *see* 8 U.S.C. § 1182(a)(3)(B), nor does it have any bearing on a naturalization application.

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

[2] These security and terrorism grounds of inadmissibility, if applicable, may bar an applicant from obtaining lawful permanent resident status, asylum, or a visa. However, they do not bar an applicant who is already a lawful permanent resident from naturalization, which is governed by the statutory provisions specific to naturalization. *See* 8 U.S.C. §§ 1421-1458. The security and terrorism provisions may also render a non-citizen removable, *see* 8 U.S.C. § 1227(a)(4), but the government has not charged Plaintiffs with removability under these provisions.

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suspicious activities.

86. Finally, security check results are considered indicators of a national security concern in instances where, for example, the FBI Name Check produces a positive hit on an applicant's name and the applicant's name is associated with a national security-related investigatory file. Upon information and belief, this indicator leads USCIS to label applicants national security concerns solely because their names appear in a law enforcement or intelligence file, even if they were never the subject of an investigation. For example, an applicant's name could appear in a law enforcement file in connection with a national security investigation because he or she once gave a voluntary interview to an FBI agent, he or she attended a mosque that was the subject of FBI surveillance, or he or she knew or was associated with someone under investigation.

87. Upon information and belief, CARRP labels applicants national security concerns based on vague and overbroad criteria that often turn on national origin or innocuous and lawful activities or associations. These criteria are untethered from the statutory criteria that determine whether a person is eligible for the immigration status or benefit they seek, and are so general that they necessarily ensnare individuals who pose no threat to the security of the United States.

2. Delay and Denial

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

a) Deconfliction

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

90. During deconfliction, the relevant law enforcement agency has authority: to instruct USCIS to ask certain questions in an interview or to issue a Request for Evidence ("RFE"); to comment on a proposed decision on the benefit; and to request that USCIS deny, grant, or hold the application in abeyance for an indefinite period of time.

91. Upon information and belief, deconfliction allows law enforcement or intelligence agencies such

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as the FBI to directly affect the adjudication of a requested immigration benefit, and also results in the agencies conducting independent interrogations of the applicant—or the applicant's friends and family.

92. Upon information and belief, USCIS often makes decisions to deny immigration benefit applications because the FBI requests or recommends the denial, not because the person is statutorily ineligible for the benefit.

93. The FBI often seeks to use the pending immigration application to coerce the applicant to act as an informant or otherwise provide information.

b) Eligibility Assessment

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

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

c) Internal Vetting

96. Upon information and belief, if, after performing the eligibility assessment, an officer cannot find a reason to deny an application, CARRP instructs officers to first "internally vet" the national security concern using information available in DHS systems and databases, open source information, review of the applicant's file, RFEs, and interviews or site visits.

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

d) External Vetting

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

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

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individual.

100. CARRP policy instructs USCIS officers to hold applications in abeyance for periods of 180 days to enable law enforcement agents and USCIS officers to investigate the national security concern. According to CARRP policy, the USCIS Field Office Director may extend the abeyance periods as long as the investigation remains open.

101. Upon information and belief, CARRP provides no outer limit on how long USCIS may hold a case in abeyance, even though the INA requires USCIS to adjudicate a naturalization application within 120 days of examination, 8 C.F.R. § 335.3, and Congress has made clear its intent that USCIS adjudicate immigration applications, including visa petitions and accompanying applications for adjustment of status to lawful permanent residence, within 180 days of filing the application. 8 U.S.C. § 1571(b).

e) Adjudication

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

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

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

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

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106. CARRP effectively creates two substantive regimes for immigration application processing and adjudication: one for those applications subject to heightened scrutiny and vetting under CARRP and one for all other applications. CARRP rules and procedures create substantive eligibility criteria that indefinitely delay adjudications and unlawfully deny immigration benefits to noncitizens who are statutorily eligible and entitled by law.

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

108. Upon information and belief, CARRP results in unauthorized adjudication delays, often lasting many years, and pre-textual denials of statutorily-eligible immigration applications.

B. Facts Specific To Each Plaintiff

Abdiqafar Wagafe

109. Plaintiff Abdiqafar Aden Wagafe is a thirty-two-year-old Somali national who currently resides in SeaTac, Washington.

110. Between 2001 and 2007, Mr. Wagafe lived in refugee camps and temporary refugee housing in Kenya and Ethiopia.

111. On May 24, 2007, he moved to the United States with nine family members and was admitted as a refugee. He has lived in the United States since then.

112. After arriving in the United States, Mr. Wagafe briefly stayed in Minneapolis, Minnesota with his brother. He then moved to Seattle, where his two sisters and another brother live.

113. All of the nine family members who moved to the United States with Mr. Wagafe have become U.S. citizens.

114. From July 2007 until February 2011, Mr. Wagafe worked for Delta Global Services until widespread layoffs left him without a job. Since February 2011, he has worked at a Somali restaurant, which he currently co-owns and manages.

115. On May 28, 2008, Mr. Wagafe filed an application for refugee adjustment of status to become an LPR.

116. USCIS granted his application on November 3, 2008, retroactively granting him LPR status as of

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May 24, 2007, the date he was admitted to the U.S. as a refugee. *See* 8 C.F.R. § 209.1(e).

117. Mr. Wagafe filed his first application for naturalization on July 3, 2012. USCIS interviewed him on October 29, 2012, but he failed the English-language portion of the exam. USCIS interviewed Mr. Wagafe a second time on January 3, 2013, but he again failed the English writing portion of the exam. He also did not understand English sufficiently to comprehend the Oath of Allegiance. On these bases, USCIS denied his first application for naturalization on January 9, 2013.

118. Mr. Wagafe has since improved his English skills significantly.

119. Mr. Wagafe filed a second application for naturalization on November 8, 2013. USCIS scheduled his interview for February 25, 2014, but cancelled it on January 29, 2014 without explanation.

120. Mr. Wagafe has made various inquiries concerning his case to USCIS, but he has not received an explanation for the delay. USCIS last responded to his queries in July 2015, instructing his attorney to have patience and that the agency would let him know when the agency was ready to interview him. His subsequent inquiries have gone unanswered.

121. Mr. Wagafe has resided continuously in the United States for at least five years preceding the date of filing his application for naturalization, and has resided continuously within the United States from the date of filing his application until the present.

122. Mr. Wagafe has never been convicted of a crime.

123. There is no statutory basis for denying his naturalization application.

124. Mr. Wagafe is Muslim and regularly attends Mosque. He also frequently sends small amounts of money to his relatives in Somalia, Kenya, and Uganda. He has been married to a woman in Uganda since December 2015 and makes visits to see her. He has been unable to bring her to the United States because of the delays in his case.

125. Mr. Wagafe's immigration Alien file ("A-file") makes clear that USCIS subjected his pending application to CARRP. The A-file states that a CARRP officer handled his case. In addition, a document in the A-File shows that on December 8, 2013, there was a hit on Mr. Wagafe's name in the FBI Name Check and that the Name Check result contained "derogatory information." The document also states that Mr. Wagafe appears eligible for naturalization absent confirmation of national security issues. The document then states that the case is being forwarded for external vetting.

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126. Upon information and belief, Mr. Wagafe's naturalization application is subject to CARRP or its successor "extreme vetting" program, which is causing the delay in adjudication of his naturalization application, despite the fact that he is statutorily entitled to naturalize.

127. Mr. Wagafe has suffered significant harm due to the delay in adjudication of his naturalization application. Although he is married to a Ugandan woman, he has been unable to bring her to live with him in the United States, because he must become a United States citizen in order for her to qualify as an immediate relative, *see generally* 8 U.S.C. § 1151, and thus avoid the waiting list for petitions filed by lawful permanent residents on behalf of their spouses. CARRP has also has harmed his professional options and prevented him from voting in local and national elections.

Mehdi Ostadhassan

128. Plaintiff Mehdi Ostadhassan is a thirty-three-year-old national of Iran. He resides in Grand Forks, North Dakota.

129. Mr. Ostadhassan moved to the United States in 2009 on a student visa and studied at the University of North Dakota. He earned his Ph.D. in Petroleum Engineering, and, after graduation, was immediately hired by the University of North Dakota as an Assistant Professor of Petroleum Engineering.

130. At the University of North Dakota, Mr. Ostadhassan met Bailey Bubach, a United States citizen. In January 2014, they were married in a small religious ceremony in California, and then obtained their marriage license in Grand Forks, North Dakota. Their first child was born in July 2016.

131. In February 2014, Ms. Bubach filed an immigrant visa petition (USCIS Form I-130) for Mr. Ostadhassan and he concurrently filed an application to adjust status (USCIS Form I-485) based upon his marriage.

132. Mr. Ostadhassan has never been convicted of a crime.

133. USCIS scheduled Mr. Ostadhassan for an interview on May 19, 2014, but when he appeared for the interview, USCIS informed him that it was cancelled.

134. USCIS rescheduled and conducted an interview almost a year and a half later, on September 24, 2015. At that interview, a USCIS officer told Mr. Ostadhassan that the agency still could not make a decision and that it needed to complete further background and security checks. To date, Mr.

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Ostadhassan is still waiting for a decision from USCIS.

135. Mr. Ostadhassan and Ms. Bubach are Muslim and active participants in their religious community. Each year they donate to Muslim charities in accordance with the teachings of Islam. They are both involved in the Muslim Student Association at the University of North Dakota. In addition, they run a Muslim Sunday School. Mr. Ostadhassan also coordinates the Muslim Congress's Koran competition every year.

136. Upon information and belief, USCIS considers Mr. Ostadhassan a non-KST national security concern and is subjecting him to CARRP. USCIS may have subjected Mr. Ostadhassan's adjustment application to CARRP because he has resided in and traveled through what the government considers areas of known terrorist activity—namely, Iran—and because of his donations to Islamic charities and involvement in the Muslim community.

137. In October 2014, an FBI agent contacted Mr. Ostadhassan and asked to meet to discuss his recent trip to Iran to visit family. Mr. Ostadhassan declined to meet with the FBI, and his lawyer informed the agent that any further communications should go through the attorney. The FBI has not contacted Mr. Ostadhassan since.

138. Upon information and belief, the request for a visit by the FBI was a product of CARRP's deconfliction process. As Mr. Ostadhassan is a citizen of Iran, one of the seven countries listed in the EO, his application for adjustment of status is subject to the EO. Upon information and belief, adjudication of his application therefore has been suspended indefinitely.

139. Upon information and belief, Mr. Ostadhassan's application for adjustment of status is also subject to CARRP or its successor "extreme vetting" program, which is has delayed the adjudication of his application, despite the fact that he is statutorily eligible for adjustment of status.

140. Mr. Ostadhassan has been significantly harmed by the delay in adjudication of his adjustment of status application. Because of his temporary nonimmigrant status, and without an approved adjustment application, he cannot travel outside the United States. He recently was unable to travel to Iran to introduce his American wife and infant to his Iranian family; his wife and child traveled to Iran without him. He has also lost out on significant professional opportunities. He is a college professor, and his unapproved adjustment application has prevented him from attending conferences overseas. Due to the

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delay, he and his wife feel that their lives and future in the United States are suspended in limbo, not knowing whether they have a future in the United States.

CLASS ACTION ALLEGATIONS

141. Pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2), Plaintiffs bring this action on behalf of themselves and all other similarly-situated individuals. Plaintiffs do not bring claims for compensatory relief. Instead, Plaintiffs seek injunctive relief broadly applicable to members of the Plaintiff Classes, as defined below. The requirements for Rule 23 are met with respect to the classes defined below.

142. Plaintiffs seek to represent the following nationwide classes:

> A **Muslim Ban Class** defined as:
> A national class of all persons currently and in the future (1) who are in the United States, (2) have or will have an application for an immigration benefit pending before USCIS that is not a naturalization application, and (3) are a citizen or national of Syria, Iraq, Iran, Yemen, Somalia, Sudan, or Libya.
>
> An **Extreme Vetting Naturalization Class** defined as:
> A national class of all persons currently and in the future (1) who have or will have an application for naturalization pending before USCIS, (2) that is subject to CARRP or its successor "extreme vetting" program, and (3) that has not been or will not be adjudicated by USCIS within six months of having been filed.
>
> An **Extreme Vetting Adjustment of Status Class** defined as:
> A national class of all persons currently and in the future (1) who have or will have an application for adjustment of status pending before USCIS, (2) that is subject to CARRP or its successor "extreme vetting" program, and (3) that has not been or will not be adjudicated by USCIS within six months of having been filed.

143. Plaintiff Ostadhassan is an adequate class representative of the Muslim Ban class. Plaintiff Wagafe is an adequate representative of the Extreme Vetting Naturalization Class. Plaintiff Ostadhassan is also an adequate representation of the Extreme Vetting Adjustment of Status Class.

144. The Proposed Classes are each so numerous that joinder of all members is impracticable.

145. Although Plaintiffs do not know the total number of people from the seven countries targeted in the EO who have *pending* immigration benefits applications (excluding naturalization applications) at any given time, publicly available USCIS data reveals that in 2015, there were 83,109 people from those seven countries who were *granted* applications for lawful permanent residence, asylum, and refugee admission.

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146. Similarly, although Plaintiffs do not know the total number of people subject to CARRP or any successor "extreme vetting" program at any given time, USCIS data reveals that between Fiscal Year 2008 and Fiscal Year 2012, more than 19,000 people from twenty-one Muslim-majority countries or regions were subjected to CARRP. Upon information and belief, between 2008 and 2016, USCIS opened 41,805 CARRP cases.

147. This data includes individuals with pending naturalization and adjustment of status applications. For example, in March 2009, there were 1,437 adjustment of status (I-485) applications subject to CARRP that had been pending for at least six months and 1,065 naturalization (N-400) applications subject to CARRP that had been pending for at least six months.

148. The exact number of individuals subject to the EO, CARRP or any successor "extreme vetting" program at any given time fluctuates as applications are filed and USCIS applies these policies and practices to the applications. Moreover, members of the class reside in various locations across the country. For these and other reasons, joinder of the members of the Classes would create substantial challenges to the efficient administration of justice. Joinder is thus impracticable here.

149. In addition, there are questions of law and fact common to the members of the Classes. The Muslim Ban and Extreme Vetting Adjustment of Status Class are subject to Defendants' unauthorized suspension of immigration benefits adjudications. All classes are subject to CARRP (or a successor "extreme vetting" program). Accordingly, common questions of law and fact include, but are not limited to, the following:

- Whether Defendants' unauthorized suspension of immigration benefits adjudications under the EO violates Defendants' duty to timely adjudicate immigration benefit applications authorized by the Immigration and Nationality Act;
- Whether Defendants' unauthorized suspension of immigration benefits adjudications under the EO to Plaintiff Ostadhassan's application violates the Establishment Clause of the First Amendment to the United States Constitution by not pursuing a course of neutrality with regard to different religious faiths;
- Whether Defendants' unauthorized suspension of immigration benefits adjudications under the EO and application of CARRP (or a successor "extreme vetting" program) to Plaintiffs' applications discriminates against Plaintiffs on the basis of their country of origin, and without sufficient justification, and therefore violates the equal protection component of the Due Process Clause of the Fifth Amendment to the United States Constitution.

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- Whether Defendants' unauthorized suspension of immigration benefits adjudications under the EO and application of CARRP (or a successor "extreme vetting" program) to Plaintiffs' applications is substantially motivated by animus toward—and has a disparate effect on—Muslims in violation of the equal protection component of the Due Process Clause of the Fifth Amendment to the United States Constitution;

- Whether Defendants' unauthorized suspension of immigration benefits adjudications under the EO and application of CARRP or a successor "extreme vetting" program to Plaintiffs' applications for immigration benefits, for which they are statutorily eligible and to which they are legally entitled, constitutes an arbitrary denial in violation of Plaintiffs' right to substantive due process under the Fifth Amendment to the United States Constitution;

- Whether Defendants' unauthorized suspension of immigration benefits adjudications under the EO and application of CARRP (or a successor "extreme vetting" program) to Plaintiffs' applications violates the INA by creating additional, non-statutory, substantive criteria that must be met prior to a grant of a naturalization or adjustment of status application;

- Whether Defendants' unauthorized suspension of immigration benefits adjudications under the EO and application of CARRP (or a successor "extreme vetting" program) to Plaintiffs' applications violates the APA, 5 U.S.C. § 706, as final agency action that is arbitrary and capricious, contrary to constitutional law, and in excess of statutory authority;

- Whether Defendants' the application of CARRP (or a successor "extreme vetting" program) to Plaintiffs' applications constitutes a substantive rule and, as a result, Defendants violated the APA, 5 U.S.C. § 553, when they promulgated CARRP without providing a notice-and-comment period prior to implementing it;

- Whether Defendants' failure to give Plaintiffs notice of their classification under CARRP (or a successor "extreme vetting" program), a meaningful explanation of the reason for such classification, and a process by which Plaintiffs can challenge their classification violates the Due Process Clause of the Fifth Amendment to the United States Constitution; and

- Whether Defendants' application of CARRP (or a successor "extreme vetting" program) to Plaintiff Wagafe's application violates the Uniform Rule of Naturalization, Article I, Section 8, Clause 4 of the United States Constitution by establishing criteria for naturalization not authorized by Congress.

150. The claims of the named Plaintiffs are typical of their respective Plaintiff Classes. Plaintiffs know of no conflict between their interests and those of the Plaintiff Classes they seek to represent. In defending their own rights, the named Plaintiffs will defend the rights of all proposed Plaintiff Class members fairly and adequately. The members of the Classes are readily ascertainable through notice and discovery.

151. Plaintiffs are represented by counsel with particular expertise in immigration and constitutional

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law, and extensive experience in class action and other complex litigation.

152. Defendants have acted or refused to act on grounds generally applicable to each member of the Plaintiff Classes by unlawfully applying the EO and/or CARRP (or its successor "extreme vetting" program) to their immigration applications—thus applying additional non-statutory, substantive requirements for naturalization and adjustment of status, and causing them to have suffered and continue to suffer injury in the form of unreasonable delays and denials of their applications.

153. A class action is superior to other methods available for the fair and efficient adjudication of this controversy because joinder of all members of the Classes is impracticable. Absent the relief they seek here, there would be no other way for the Plaintiff Class members to individually redress the wrongs they have suffered and will continue to suffer.

CAUSES OF ACTION

FIRST CLAIM FOR RELIEF

Immigration and Nationality Act and the Administrative Procedure Act

(Plaintiff Ostadhassan on behalf of himself and the Muslim Ban Class)

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

155. Section 212(f) of the Immigration and Nationality, 8 U.S.C. § 1182(f), is entitled "Suspension of Entry or Imposition of Restrictions by President." That provision authorizes the President to suspend entries or impose restrictions on entries. That provision does not authorize the President to suspend adjudication of immigration petitions, applications, or requests of any class of persons.

156. Defendants have interpreted the EO to authorize the suspension of immigration petitions, applications, or requests involving Plaintiff Ostadhassan and members of the Muslim Ban Class.

157. Accordingly, Defendants have suspended adjudication of such immigration benefits petitions, applications, or requests.

158. Defendants' actions in suspending adjudications violates 8 U.S.C. § 1182(f) and is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; contrary to constitutional right, power, privilege, or immunity; in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; and without observance of procedure required by law, in violation of the Administrative Procedure Act, 5 U.S.C. §§ 706(2)(A)-(D).

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SECOND CLAIM FOR RELIEF

Mandamus (28 U.S.C. § 1361)

(Plaintiff Ostadhassan on behalf of himself and the Muslim Ban Class)

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

160. Defendants have a duty to adjudicate all immigrant benefits petitions, applications or requests authorized by the Immigration and Nationality Act, implementing regulations, or other law.

161. The EO does not authorize the suspension of adjudication of immigration benefits petitions, applications, or requests.

162. Defendants have interpreted the EO to authorize the suspension of immigration benefit applications for petitions, applications, or requests involving Plaintiff Ostadhassan and members of the Muslim Ban Class.

163. Accordingly, Defendants have suspended adjudication of immigration benefits petitions, applications, or requests.

164. Defendants' refusal to adjudicate immigration benefits petitions, applications, or requests violates Defendants' statutory and constitutional duty to adjudicate these matters, and to do so in a nondiscriminatory manner.

THIRD CLAIM FOR RELIEF

First Amendment (Establishment Clause)

(Plaintiff Ostadhassan on behalf of himself and the Muslim Ban Class)

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

166. The EO was intended to target a specific religious faith, Islam, and gives preference to other religious faiths, principally Christianity, and it has that intended effect when applied to Plaintiffs and members of the Muslim Ban Class. Defendants' application of the EO to Plaintiffs and members of the Plaintiff Classes violates the Establishment Clause of the First Amendment to the United States Constitution by not pursuing a course of neutrality with regard to different religious faiths.

FOURTH CLAIM FOR RELIEF

Fifth Amendment (Procedural Due Process)

(All Plaintiffs on behalf of themselves and the Plaintiff Classes)

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

168. Defendants' failure to give Plaintiffs and members of the Extreme Vetting Naturalization and Extreme Vetting Adjustment of Status Classes notice of their classification under CARRP (or successor "extreme vetting" program), a meaningful explanation of the reason for such classification, and any process by which Plaintiffs can challenge their classification, violates the Due Process Clause of the Fifth Amendment to the United States Constitution.

169. The EO's directive to screen applicants for immigration benefits based on "the applicant's likelihood of becoming a positively contributing member of society and the applicant's ability to make contributions to the national interest" also is void because it is unconstitutionally vague under the Due Process Clause of the Fifth Amendment to the United States Constitution.

170. Because of these violations of their constitutional rights, Plaintiffs and members of the Plaintiff Classes have suffered and continue to suffer injury in the form of unreasonable delays and unwarranted denials of their immigration applications.

FIFTH CLAIM FOR RELIEF

Fifth Amendment (Substantive Due Process)

(All Plaintiffs on behalf of themselves and the Plaintiff Classes)

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

172. Defendants' unauthorized and indefinite suspension of the adjudication of Plaintiffs' and the Proposed Classes' applications for immigration benefits violates their right to substantive due process under the Fifth Amendment to the United States Constitution, because Plaintiffs cannot be denied immigration benefits for which they are statutorily eligible, and to which they are entitled by law, in an arbitrary manner.

SIXTH CLAIM FOR RELIEF

Fifth Amendment (Equal Protection)

(All Plaintiffs on behalf of themselves and the Plaintiff Classes)

173. Plaintiffs incorporate the allegations of the proceeding paragraphs as if fully set forth herein.

174. Defendants' indefinite suspension of the adjudication of Plaintiffs' applications for immigration benefits on the basis of their country of origin, and without sufficient justification, violates the equal

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protection component of the Due Process Clause of the Fifth Amendment.

175. Additionally, Defendants' indefinite suspension of the adjudication of Plaintiff Ostadhassan and the Muslim Ban Class applications for immigration benefits under the EO was substantially motivated by animus toward—and has a disparate effect on—Muslims, which also violates the equal protection component of the Due Process Clause of the Fifth Amendment.

176. Applying a general law in a fashion that discriminates on the basis of religion violates Plaintiffs' and the Plaintiff Classes' rights to equal protection under the Fifth Amendment Due Process Clause.

177. The EO is intended and will be applied primarily to exclude individuals on the basis of their national origin and religion. Further, the President has promised that preferential treatment will be given to Christians, unequivocally demonstrating the special preferences and discriminatory impact that the EO has upon Plaintiffs and the Proposed Classes.

178. Defendants have applied the EO with discriminatory animus and discriminatory intent in violation of the equal protection component of the Fifth Amendment.

SEVENTH CLAIM FOR RELIEF

Immigration and Nationality Act and Implementing Regulations

(Plaintiffs on behalf of themselves and the Extreme Vetting Naturalization and Extreme Vetting Adjustment of Status Classes)

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

180. To secure naturalization and adjustment of status, an applicant must satisfy certain statutorily-enumerated criteria.

181. By its terms, CARRP creates additional, non-statutory, substantive adjudicatory criteria.

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

183. CARRP also violates 8 U.S.C. § 1255, 8 U.S.C. § 1159, 8 C.F.R. § 245.1, and 8 C.F.R. § 209.1, as those provisions set forth the applicable statutory and regulatory criteria for individuals present in the United States to adjust their status.

184. Because of these violations and/or because CARRP's additional, non-statutory, substantive criteria have been applied to their applications, Plaintiffs and Plaintiff Class members have suffered and

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will continue to suffer injury in the form of unreasonable delays and unwarranted denials of their applications for naturalization and adjustment of status.

EIGHTH CLAIM FOR RELIEF

Administrative Procedure Act (5 U.S.C. § 706)

(Plaintiffs on behalf of themselves and the Extreme Vetting Naturalization and Extreme Vetting Adjustment of Status Classes)

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

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

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

188. As a result of these violations, Plaintiffs and members of the Proposed Extreme Vetting Naturalization and Extreme Vetting Adjustment of Status Classes have suffered and continue to suffer injury in the form of unreasonable delays and unwarranted denials of their immigration applications.

NINTH CLAIM FOR RELIEF

Administrative Procedure Act (Notice and Comment)

(Plaintiffs on behalf of themselves and the Extreme Vetting Naturalization and Extreme Vetting Adjustment of Status Classes)

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

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

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

192. Defendants failed to provide a notice-and-comment period prior to the adoption of CARRP.

193. Because CARRP is a substantive rule promulgated without the notice-and-comment period, it violates 5 U.S.C. § 553 and is therefore invalid.

194. As a result of these violations, Plaintiffs and members of the Plaintiff Classes have suffered and

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continue to suffer injury in the form of unreasonable delays and unwarranted denials of their immigration applications.

TENTH CLAIM FOR RELIEF

"Uniform Rule of Naturalization"

(Plaintiff Abdiqafar Wagafe on behalf of himself and the Naturalization Class)

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

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

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

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

199. Because of this violation and because CARRP's additional, non-statutory, substantive criteria have been applied to their applications, Plaintiff Wagafe and Naturalization Plaintiff Class members have suffered and will continue to suffer injury in the form of unreasonable delays and unwarranted denials of their naturalization applications.

200.

PRAYER FOR RELIEF

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

1. Certify the case as a class action as proposed herein;
2. Appoint Plaintiff Ostadhassan a representative of the Muslim Ban Class;
3. Appoint Plaintiff Wagafe as representative of the Extreme Vetting Naturalization Class, and Plaintiff Ostadhassan as representative of the Extreme Vetting Adjustment of Status Class;
4. Order Defendants to adjudicate the petitions, applications or requests of Plaintiffs and members of the proposed classes;
5. Order Defendants to adjudicate Plaintiffs' and proposed class members' petitions, applications, or requests based solely on the statutory criteria;
6. Declare that Sections 3(c) and 4 of the Executive Order contrary to the Constitution and the INA;
7. Issue an order enjoining Defendants from applying Section 3(c) and 4 to Plaintiffs and members

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of the proposed classes;

8. Declare that CARRP or any successor "extreme vetting" program violates the Constitution, the INA and the APA;
9. Enjoin Defendants, their subordinates, agents, employees, and all others acting in concert with them from applying CARRP or any successor "extreme vetting" program to the processing and adjudication of the immigration benefit petitions, applications, or requests of Plaintiffs and members of the proposed classes;
10. Order Defendants to rescind CARRP because they failed to follow the process for notice and comment by the public;
11. Alternatively, order Defendants to provide Plaintiffs and members of the proposed classes with notice that they have been subjected to CARRP or any successor "extreme vetting" program, the reasons for subjecting them to CARRP or any successor "extreme vetting" program, and a reasonable opportunity to respond to those allegations before a neutral decisionmaker;
12. Award Plaintiffs and other members of the proposed class reasonable attorneys' fees and costs; and
13. Grant any other relief that this Court may deem fit and proper.

Respectfully submitted this 1st day of February, 2017.

By:

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