



We're waiting every day. Every day I check the mailbox.  
They only have two words for us: "security check." That's it.

Maybe my name sounds criminal. I didn't choose my name.

My family has been divided for more than seven years. Every day feels like a year.

You feel depressed, you feel helpless. I want to know why this is happening.

# Americans on Hold

## Profiling, Citizenship, and the "War on Terror"



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**Immigrant Rights Clinic**

The Immigrant Rights Clinic at NYU School of Law has become a leading institution in both local and national struggles for immigrant rights. It has a litigation case docket, through which it provides representation to individual members of immigrant communities in asserting their rights and a group representation docket, through which it supports legislative, public education, and organizing campaigns brought by community-based groups. In all of its work, the Clinic seeks direction from community-based groups about the cases and projects that it should undertake.

**Council of Peoples Organization**

The Council of Peoples Organization, based in Brooklyn, New York, assists low-income South Asians to thrive and develop to their full capacity. COPO builds understanding and cooperation among diverse communities; offers essential programs that educate and empower community members about their rights and responsibilities; builds and supports emerging community leadership; and strives to develop youth leadership. For more information see: [www.copousa.org](http://www.copousa.org).

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## Glossary

“the profiled group”:	Immigrants perceived to be Muslim, Arab, Middle Eastern, or South Asian on the basis of their name, race, religion, ethnicity, or national origin
AAAN:	Arab American Action Network
ACLU:	American Civil Liberties Union
ACS:	FBI’s Automated Case Support System
CAIR:	Council on Islamic-American Relations
CHRGJ:	Center for Human Rights and Global Justice
CIS Ombudsman:	U.S. Citizenship and Immigration Services Ombudsman
CLINIC:	Catholic Legal Immigration Network, Inc.
COPO:	Council of Peoples Organization
DHS:	Department of Homeland Security
DOJ:	Department of Justice
FOIA:	Freedom of Information Act
FBI:	Federal Bureau of Investigation
HRC:	U.N. Human Rights Committee
IBIS:	Interagency Border Inspection System
ICERD:	International Convention on the Elimination of All Forms of Racial Discrimination
ICCPR:	International Covenant on Civil and Political Rights
ICESCR:	International Covenant on Economic, Social, and Cultural Rights
IHRC:	NYU School of Law International Human Rights Clinic
IRC:	NYU School of Law Immigrant Rights Clinic
INS:	Immigration and Naturalization Service
IVF:	Immigration Violators File
LPR:	Legal Permanent Resident
NSEERS:	National Security Entry-Exit Registration System
NYLAG:	New York Legal Assistance Group
NYPD:	New York Police Department
NYU:	New York University
SSI:	Supplemental Security Income
TANF:	Temporary Assistance for Needy Families
TSA:	Transportation Security Administration
U.N.:	United Nations
UNI:	FBI’s Universal Index
USCIS:	U.S. Citizenship and Immigration Services

*I have two sons in Pakistan. My wife is always weeping for them... Two years I've been waiting. I passed my citizenship interview, but they still haven't called me for my oath... Why are they doing this to us? I've given them every information about me.*

*My problem is my family is divided. This isn't about my life. It's their life. They are starting their life. We want the whole family to stay together—that's better. We're waiting every day. We check the mailbox. For two years, every day I check the mailbox. If we are bad people, don't do this to us—send us back. If we are good people, let us stay here with our family together.*

– Naturalization Applicant F<sup>1</sup>

*I have been to Federal Plaza, and the supervisor there told me, "It could be one day or it can be 99 years." I replied, "You treat the FBI like God." The supervisor responded, "Yeah they are God." "That day I felt so helpless and hopeless." I have been to Federal Plaza at least ten times... My name is maybe similar to some sort of criminal's. This is like a punishment... I didn't choose my name... If I know I did something wrong it's okay, if I know how long to wait. You cannot push me in a dark room and tell me there is no way out."*

– Naturalization Applicant D<sup>2</sup>

## I. Executive Summary

Since September 11, 2001 counter-terrorism efforts have increasingly informed immigration policy and have institutionalized a policy of discrimination against immigrants perceived to be Muslim, Arab, Middle Eastern, or South Asian on the basis of their name, race, religion, ethnicity, or national origin (the “profiled group”). Increased security checks in the citizenship application process, manifested in a substantial expansion of name check procedures, have illegally delayed the processing of thousands of applications from Muslim, Arab, Middle Eastern, and South Asian men. *Americans on Hold* documents the impact of these expanded name checks on the lives of those experiencing citizenship delays, often for years on end. The Report is based on research conducted by New York University (NYU) School of Law’s Center for Human Rights and Global Justice (CHRGJ), International Human Rights Clinic, and Immigrant Rights Clinic, in close collaboration with the Council of People’s Organization (COPO) in Brooklyn, New York.

As its title suggests, this Report is about *Americans on Hold*. Thousands of immigrants have chosen the United States (U.S.) as their adopted country; they abide by U.S. laws, pay U.S. taxes, contribute to our nation’s economy and strengthen its multi-cultural foundations. They have passed every test and fulfilled every requirement related to the naturalization process, but continue to wait for security clearance on their application. Caught between two worlds but unable to call either home, these individuals are living in limbo; treated as outsiders in their new home and hindered in their ability to effectively maintain ties with loved ones in their country of origin.

*Americans on Hold* seeks to highlight the “othering” effect of discriminatory, undemocratic, and ineffective policies pursued and justified in the name of ensuring national security. It highlights the very human problems these communities face, and underscores the rights owed to them under international law. The narratives and stories contained in this Report, though taken primarily from sources within New York City, are emblematic of the experiences of immigrants nationwide who suffer from profiling and discrimination as they strive to become American citizens.

Individuals interviewed for the Report include applicants from Pakistan, Bangladesh, Yemen, and Algeria. Although this Report focuses on the experience of the profiled group since the events of September 11, 2001, it does not suggest that citizenship delays are limited to these communities; nor does it suggest that citizenship delay is recent phenomenon. Though delays have taken a new form and intensity in relation to the communities discussed in this Report, both the delays and their human rights consequences affect a number of immigrant communities nationwide.

### **Delays for applicants from the profiled group**

In the post-September 11, 2001 environment, the category of “terrorist” has emerged as a racialized construction in which men perceived to be Muslim, Arab, Middle Eastern, or South Asian are classified as “terrorist Others.” Since 2001, immigration law has increasingly been used to target these individuals as potential threats to national security, while immigration bodies have been folded into national security institutions. In 2003, the U.S. Immigration and Naturalization Service (INS) ceased to exist, and its service and benefit functions were transferred to the newly created U.S. Citizenship and Immigration Services (USCIS) within the Department of Homeland Security (DHS).

In 2002, the government instituted the National Security Entry-Exit Registration System (NSEERS), which required non-citizen males from 25 countries that were designated as threats to national security to formally register with the government; 24 of these 25 countries have predominantly Arab or Muslim populations. As a result of NSEERS, the names, nationalities, and movements of all individuals registered—including those who were not deported as a result of the program—became a part of government record and therefore available to immigration authorities for future profiling.

The selective targeting of men from Arab and Muslim countries through the NSEERS program, combined with other forms of public as well as private profiling of Muslims or those perceived to be Muslim, renders a large number of Muslim, Arab, Middle Eastern, and South Asian men vulnerable to having their names or derivations of their names register as “hits” in any profiling system, including in the expanded Federal Bureau of Investigation (FBI) name check system for naturalization applicants.

According to a *Washington Post* article, “even as the overall backlog for immigration documents is shrinking... those whose names trigger a ‘hit’ in the security check can be stuck in limbo for years.” In response to repeated inquiries to immigration authorities, applicants are

simply told that their application is pending security clearance. As one applicant told CHRGI: “They only have two words for us: ‘security check.’ That’s it.”

## **Human rights protections owed to non-citizens by the United States**

The U.S. has ratified two of the key international instruments that guarantee non-citizens’ rights: the International Convention on the Elimination of all Forms of Racial Discrimination and the International Covenant on Civil and Political Rights. As a State party to these treaties, the U.S. is obligated to ensure non-discrimination in access to citizenship; specific substantive rights; and equality between citizens and non-citizens in access to particular rights.

The right to non-discrimination is non-derogable, even in times of public emergencies, and States are prohibited from violating this peremptory norm while enforcing their immigration laws. In particular, it has been affirmed by human rights bodies on numerous occasions that the “war on terror” cannot be invoked to deny the human rights protections owed to non-citizens.

Delays in the citizenship process implicate discrimination on grounds that are prohibited under international law. These grounds include: race, color, sex, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. Under international law, policies that impose a disproportionate burden on particular groups (either purposely or in effect) must be justified in order not to constitute prohibited discrimination. This Report analyzes the name check process under international law and concludes that the importance of the right infringed, combined with the lack of effectiveness and other detrimental consequences, renders this disproportionate burden unjustified and illegal under international law.

The U.S. is further bound under international law to ensure certain substantive rights and to ensure equality between citizens and non-citizens in the enjoyment of particular civil, political, economic, social and cultural rights. Extensive delays in citizenship processing implicate a number of these rights, including: the right to liberty of movement; the right to profess and practice one’s religion; and the right to non-discrimination in the enjoyment of economic, social and cultural rights, particularly the right to public health, medical care, social security and social services and related rights.

Profiling in airports since September 11, 2001, both before and after the creation of the federal no-fly list in 2003, means that anyone perceived to be Muslim or anyone with a “Muslim-sounding name” may be stopped, delayed, and subjected to extended and sometimes embarrassing and unnerving security checks in airports. Individuals from the profiled group fear not being able to reenter the country because they are aware of the heightened scrutiny they will receive from officials at the border. One applicant interviewed by CHRGI stated:

I have traveled to Pakistan twice since applying for naturalization, in 2003 and 2005, and I was stopped for interrogation at the airport both times when returning to the U.S. and was questioned about how long I had stayed in Pakistan. Each time I was held for two hours at the airport.

Another applicant from Algeria told CHRGI: “I want to visit my sick mother in Algeria, but I cannot go there. I sent a letter from the doctor in Algeria to an attorney here to see if that would help expedite the background check, but my lawyer advises me not to travel there.”

For persons living outside their country of origin and who are separated from their family, such restrictions and risks compromise their right to freely profess and practice their religion, which may require traveling across borders to attend religious meetings and undertake religious pilgrimages, or may trigger attempts by members of the profiled group to hide their religious identity for fear of being profiled while traveling. Since September 11, 2001 many Muslim immigrants or those perceived to be Muslims (such as members of the Sikh community) have altered their physical appearance and dress, have curtailed the extent to which they pray or worship publicly, and have even changed their names—the very hallmark of their religious and cultural identity.

Discriminatory profiling and its resulting citizenship delays also have a particular impact on one’s right to non-discrimination in the enjoyment of economic, social and cultural rights, particularly the right to public health, medical care, social security and social services. Delays affect the ability of naturalization applicants to receive welfare benefits, and, in turn, their access to healthcare and food.

### **Americans “on Hold”**

Citizenship plays a vital role in making effective the promise of fundamental human rights protection. It is a legal status that facilitates the enjoyment of many rights. In the U.S. citizenship rights include the right to vote, the right to obtain U.S. passports and freely enter and exit the country, the right to file visa petitions for immediate relatives, the right to government protection when outside the U.S., and the right to life-sustaining government benefits. Citizenship also enables political engagement and bestows identity by creating a feeling of community membership.

As evidenced throughout this Report, individuals experiencing citizenship delays and all of its attendant conditions—including lengthy separation from family members and restrictions on their ability to travel, work, receive life-saving benefits or otherwise live complete and meaningful lives—routinely experience stress, anxiety, frustration, and depression as a result of their uncertain status. A number of individuals spoke of the negative effects of delay on families, and of significant mental and emotional difficulties.

One applicant, who is separated from his family and is awaiting citizenship, told CHRGI “I call my family every day and whenever I call them my youngest daughter asks me, ‘Papa, when are you coming? When can I be there to meet you?’ All the time I carry the pictures of my family in my wallet and I am dying to see them.” Another applicant stated, “The whole purpose of our struggling now is to get the whole family together—we’ve been divided for more than 7 years. Every day is like more than a year for us now.”

## Recommendations

Citizenship delays are not mere bureaucratic inconveniences: they are the result of invidious and ineffective policies that profoundly affect the lives of thousands of families nationwide. The conflation of immigration and counter-terrorism policies has resulted in a name check dragnet that is breaking up families, engendering fear and insecurity, and disenfranchising communities as a whole. The U.S. must live up to its international human rights obligations and its democratic ideals and end discrimination and undue delays in the naturalization process.

In general, the government must make a greater investment in real intelligence work that is not based on discriminatory profiling of any kind. The government should additionally ensure greater public education about the human rights implications of public and private acts of profiling.

In particular, the Center for Human Rights and Global Justice urges the U.S. government to:

- Ensure that decisions on naturalization applications are made within 120 days of examination, as required by law. USCIS' attempts to circumvent this law by ordering districts offices not to schedule interviews until security clearances are completed should be investigated and proscribed.
- Ensure that the overall naturalization application process is completed within USCIS' stated six-month goal.

In order to address the current backlog of citizenship applications, the U.S. government should:

- Institute greater reporting requirements for USCIS and DHS on the extent of, and reasons behind, citizenship delays.
- Institute Congressional oversight hearings into key issues affecting the citizenship process, including whether additional resources in the form of funding or staffing is needed to alleviate the delays.
- Implement an effective and transparent system for inquiries and complaints directed to USCIS, which provides actual and substantive information about the status of pending cases.

In order to break the cycle of public and private acts of discriminatory profiling the U.S. government should:

- Introduce anti-discrimination training for USCIS and FBI officials, and other law enforcement officials.
- Ensure greater public education about the human rights implications of discriminatory profiling and citizenship delays.

## II. Introduction

This Report documents the experience of the “profiled group” in its applications for citizenship. The “profiled group” is defined for the purpose of this Report as immigrants perceived to be Muslim, Arab, Middle Eastern, or South Asian on the basis of their name, race, religion, ethnicity, or national origin. In practice, this category includes Muslim, Arab, Middle Eastern and/or South Asian men or men perceived to be Muslim, Arab, Middle Eastern and/or South Asian. This Report also analyzes citizenship delay and its consequences under international human rights law. Although this Report focuses on the experience of the profiled group since the events of September 11, 2001, it does not suggest that citizenship delay is limited to these communities, nor is it a recent phenomenon. While citizenship delays may have taken a new form and intensity in the post-September 11, 2001 context in relation to the communities discussed in this Report,<sup>3</sup> both the delays and their human rights consequences affect a number of immigrant communities nationwide.<sup>4</sup>

The Report first discusses the broader context in which these delays take place, and outlines the general trend of counter-terrorism profiling particularly within the context of immigration. The Report then examines the use of immigration law as a counter-terrorism tool, one manifestation of which is counter-terrorism profiling in naturalization applications through expanded name check procedures as part of the security check process. It examines the role of these name checks in causing citizenship delays and identifies factors that suggest these delays might be experienced disproportionately by the profiled group.

The Report then addresses both the legal and social consequences of these delays as experienced by the profiled group, including the specific impact of these delays on fundamental human rights. The Report argues that the implementation of the name check process may amount to discrimination under international human rights law and discusses additional human rights violations that occur as a result of prolonged delay in gaining access to citizenship. The Report concludes with specific policy recommendations for ending the numerous rights violations identified.

The stories contained in this Report are emblematic of the experiences of immigrants nationwide who suffer from profiling and discrimination as they strive to become American citizens. This Report is based on primary and secondary research conducted by the Center for Human Rights & Global Justice (CHRGJ), the International Human Rights Clinic (IHRC), and the Immigrant Rights Clinic (IRC) at NYU School of Law. The report is the product of an ongoing relationship and collaboration between IHRC, IRC and the Council of Peoples Organization (COPO) in Brooklyn, New York. The Report’s focus on communities in New York City was guided in part by the particular impact of post-September 11, 2001 measures on individuals in New York City and the broader nationwide trend that it represents. For example, harassment and violence against the profiled group led the New York City Commission on Human Rights to develop the 9/11 Discrimination Project which found that Muslims, Arabs, and South Asians in New York City felt that discrimination against them had intensified since September 11, 2001.<sup>5</sup>

COPO is a non-profit community-based organization that has serviced the many needs of the South Asian community post-September 11, 2001. In collaboration with immigration attorneys, COPO offers community members free monthly legal clinics and a variety of essential services. COPO has received a number of complaints and requests for help from community members experiencing citizenship delays due to prolonged security checks. Other groups have received similar complaints. For example, the Council on American-Islamic Relations (CAIR) notes that data collected from CAIR chapters across the country indicates that Muslim male applicants nationwide have been experiencing prolonged citizenship delays due to pending background checks.<sup>6</sup>

IHRC and IRC worked with COPO to identify and interview individuals for this Report<sup>7</sup> and to devise appropriate litigation and advocacy-based responses to the problem. Community leaders and immigration experts around the country who have direct experience with communities experiencing delays were also interviewed. Secondary research for the Report examined existing literature and news reports documenting the effects of the “war on terror” on the profiled group in the United States (U.S.), with particular emphasis on profiling and discrimination in immigration procedures and the resultant impact on human rights.

### III. The use of profiling and discrimination in immigration as a counter-terrorism measure

Counter-terrorism policies in the U.S. have been characterized by two broad trends: discriminatory targeting of those in the profiled group<sup>8</sup> and the subordination of immigration policy to counter-terrorism at the expense of immigrants' procedural and substantive rights.<sup>9</sup> The combined effect of these two trends is increased profiling in immigration as a means to enforce security measures against non-citizens.

#### A. Profiling and discrimination in private and public spheres

##### 1. *The profile of a "terrorist" suspect*

A series of racial, ethnic and religious connotations post September 11, 2001 have created a large pool of individuals who have come to be regarded as "suspect." For example, the racial "Arab" or "South Asian" is often conflated with the religious category "Muslim,"<sup>10</sup> and Islam is racialized so that "Muslim-looking people" are also targeted, thereby creating "religiously driven racial discrimination."<sup>11</sup> The term "Islam" is also increasingly used as an "ethnic marker" to designate a group as a minority irrespective of their faith.<sup>12</sup> The category of "terrorist" therefore emerges as a racialized construct in which men perceived to be Muslim, Arab, Middle Eastern or South Asian are classified as "terrorist Others."<sup>13</sup> This construction is reductive<sup>14</sup> in that it reduces individuals to the perception of their race.<sup>15</sup> When combined, the groups that are racialized and "othered" as terrorists include, in practice, Muslim and non-Muslims of Middle Eastern descent, as well as Muslim and non-Muslim of non-Middle Eastern descent, such as Sikhs and other South Asians.<sup>16</sup>

In contrast to phenotypic profiling, which relies on physical and behavioral traits as proxies for defining the category of "terrorist," in the immigration context (as described below), citizenship applicants may trigger higher scrutiny through profiling on the basis of their name, national origin, religion, and gender or some combination of the above.

##### 2. *Private profiling and discrimination*

The extent of profiling is evident in both the public and private spheres. For example, in the first six months following September 11, 2001 the Council on American-Islamic Relations (CAIR) received 1,717 complaints of discrimination from Arab-Americans.<sup>17</sup> These figures are consonant with the widely-publicized and numerous incidents of hate crimes and private incidents of bias committed against those perceived to be Muslim in the wake of September 11, 2001<sup>18</sup> and is a pattern that has since continued: in 2005, CAIR reported 1,972, incidents of harassment, violence, and discrimination, an increase from the 1,522 incidents reported in 2004, and the highest number of complaints reported in CAIR's twelve-year history.<sup>19</sup>

### **3. Public profiling and discrimination**

A series of legislative and policy measures introduced post-September 11, 2001 have directly affected the profiled group. Such measures include, for example, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, which severely curtailed non-citizens' civil liberties;<sup>20</sup> “shoot-to-kill” policies designed for use by law enforcement against those suspected of terrorist activity,<sup>21</sup> and the introduction of “behavioral profiles” in counter-terrorism training that act as proxies for ethnic, racial, and religious profiling.<sup>22</sup>

Similarly, discriminatory policies have been adopted and implemented in immigration measures. For example, the National Security Entry-Exit Registration System (NSEERS) required the special registration of individuals from countries designated as posing national security concerns (see below).<sup>23</sup> Immigration raids against the profiled group have persisted well after the end of NSEERS in 2003.<sup>24</sup> In addition, a number of applicants interviewed by CHRGI indicated that friends and family members in their country of origin were experiencing lengthy delays in their U.S. visa applications.

Profiling in immigration measures is part of a broader discriminatory trend wherein members of the profiled group are increasingly targeted by public and private actors. It is also the result of a second and related trend: the merging of immigration policy with counter-terrorism strategies.

#### **B. The merging of immigration policy with counter-terrorism strategies**

*Immigration and terrorism have become so conflated that it's difficult to distinguish between them. It's the 'spit on the sidewalk' approach to terrorism – 'if you can't get them for murder, get them for spitting on the sidewalk' turns into 'if you can't get them for terrorism, get them for being immigrants.' Immigration enforcement has adopted this mentality – just get people for being immigrants.*

– Aarti Shahani, Co-Founder and Co-Director of Families for Freedom<sup>25</sup>

The merging of counter-terrorism and immigration policy in the U.S. has taken two key forms: immigration measures have been used to target particular groups that are perceived to be a threat to national security; and immigration bodies have been merged into national security institutions.

#### **1. Use of immigration measures to target the profiled group**

In the post September 11, 2001 environment, one's immigration status is increasingly a “trigger for law enforcement scrutiny.”<sup>26</sup> Not all immigrants, however, are considered equally suspect with respect to national security; counter-terrorism policies have a particular impact on Muslim, Arab, Middle Eastern, and South Asian immigrants<sup>27</sup> whose immigration status, combined with nationality or religion “plus factors,” triggers increased scrutiny.<sup>28</sup> This pattern is exemplified by the NSEERS program mentioned above in Section III.A.3. On June 6, 2002, the

U.S. government introduced NSEERS to require: digital fingerprinting of all immigrants; special registration of all those staying in the U.S. for more than 30 days; regular re-registration once a year; and exit procedures for those leaving the country. The registration requirement also applied to those already in the country and who were citizens of the 25 countries designated as posing a national security concern. Twenty four of the 25 countries are countries with predominantly Arab or Muslim populations.<sup>29</sup> None of the approximately 13,000 individuals deported as a result of NSEERS—predominantly Arab and Middle Eastern men<sup>30</sup>—were charged with a terrorism-related offense.<sup>31</sup> The deportations, rather, were for minor and technical charges, which included immigration violations, credit card fraud, or false statements. A number were also deported without charge, and as “material witnesses.”<sup>32</sup>

As a result of NSEERS, the names, nationalities, and movements of all individuals registered—including those who were not deported as a result of the program—became a part of government record and therefore available to immigration authorities for future profiling.

The selective targeting of men from Arab and Muslim countries through the NSEERS program, combined with other forms of public as well as private profiling of Muslims or those perceived to be Muslim, renders a large number of Muslim, Arab, Middle Eastern, and South Asian men vulnerable to having their names or derivations of their names register in the name check system for naturalization applicants discussed below (see Section IV).

## *2. Merging of immigration bodies into national security institutions*

On March 1, 2003, the U.S. Immigration and Naturalization Service (INS) ceased to exist and its service and benefit functions were transferred to the newly created U.S. Citizenship and Immigration Services (USCIS) within the Department of Homeland Security (DHS).<sup>33</sup> USCIS is responsible for the administration of immigration and naturalization adjudication functions and for establishing immigration service policies and priorities.<sup>34</sup> The assimilation of immigration services into the DHS strongly communicates the message that immigrants are potential terrorism threats.<sup>35</sup> The insertion of civil immigration records into the country’s principal crime database (the National Crime Information Center)<sup>36</sup> also communicates the message that immigrants are potential criminals and further demonstrates the merging of counter-terrorism strategies with immigration enforcement.

## IV. Counter-terrorism profiling in the naturalization applications of the profiled group

Counter-terrorism profiling in naturalization applications is a manifestation of the pattern outlined above: namely, the use of profiling and discrimination in immigration policies as a counter-terrorism tool. This Section looks at the nature of expanded name check procedures in the naturalization process, and assesses the role of these procedures in causing citizenship delays.

### **A. The Naturalization Application Process**

#### *1. Overview*

To file an application for citizenship, a legal permanent resident (LPR)<sup>37</sup> must meet certain requirements, including a minimum length of residence in the U.S. as a permanent resident and a minimum physical presence in the U.S.<sup>38</sup> Eligible LPRs seeking citizenship must send their applications for naturalization (form N-400) along with the necessary documents, photographs, and fees, to a USCIS Service Center.<sup>39</sup> USCIS performs a three-part security check in processing these applications: name checks through the Interagency Border Inspection System (IBIS), Federal Bureau of Investigation (FBI) fingerprint checks, and name checks through the FBI National Name Check Program.<sup>40</sup> USCIS also schedules applicants for an in-person interview, where they are tested on their knowledge of English and U.S. history and government (the English and Civics tests).<sup>41</sup>

Applicants who are granted naturalization receive a date for their oath ceremony, at which they must answer questions about what they have done since their interview, return their permanent resident cards, and take an oath of allegiance to the U.S.<sup>42</sup> Upon completion of the oath ceremony, applicants acquire citizenship.<sup>43</sup>

If an application for naturalization is denied, the applicant should receive a notice from USCIS explaining the reason for denial.<sup>44</sup> Within 30 days of receiving the denial letter, the applicant may then request a hearing before an immigration officer.<sup>45</sup> If after such a hearing the application is again denied, the applicant may seek review of the denial in a U.S. district court.<sup>46</sup> The district court will then review the case anew and make its own decisions regarding the facts of the case and the law applicable to the case.<sup>47</sup> If a citizenship application is ultimately denied, the applicant retains LPR status. An applicant may reapply for naturalization at any point by submitting a new naturalization form, paying another fee, and having their fingerprints and photographs re-taken.<sup>48</sup>

#### *2. Rules regarding timeframe for processing naturalization applications*

A large number of applicants are currently neither granted nor denied their application, but are instead waiting in limbo for a USCIS decision. By law, if applicants have not received within 120 days<sup>49</sup> of the date of their “examination” a decision as to whether their application has been granted, denied, or whether the decision has been postponed (a continuance),<sup>50</sup> the applicant

may request a hearing in the federal district court with jurisdiction over the district where the applicant lives.<sup>51</sup> Applicants may request that the court decide their application on the merits, or compel USCIS to adjudicate the application.<sup>52</sup>

The content of this “examination” has been the subject of dispute between USCIS and applicants who have been waiting for years for security clearance. In response to allegations that USCIS has failed to grant a decision on the application within 120 days of applicants’ in-person interview where they are questioned and tested on English and Civics, USCIS has argued that the statutory use of the term “examination” is broader than the interview and tests, and that the “examination” is not completed until all security checks have been completed. Some federal courts have agreed with USCIS’ position and have refused to hear complaints of delay on the basis that “examinations” have not been completed.<sup>53</sup> However, a large number of federal district courts, as well as the Ninth Circuit, have found that the “examination” referenced in the statute is the in-person interview.<sup>54</sup>

In April 2006, USCIS circulated a memorandum stating that “for purposes of judicial economy, we will promptly cease even to schedule any naturalization interviews until all background checks have been completed in a particular case.”<sup>55</sup> This effectively delays the point at which the 120-day period after the “examination” is counted, and as a result indefinitely delays applicants’ abilities to seek judicial remedies.

## **B. Nature and extent of delay in the naturalization application process**

*We’ve been paying taxes since we got here. We didn’t do anything wrong. They have the whole record in front of them, and if they need to know anything, they can ask us and we will tell them. So why are we still waiting? They gave us enough time to prove we’re good citizens here – we proved that in 5 years. How much more time do they need?*

– Naturalization Applicant E<sup>56</sup>

Numerous sources point to delays in processing applications for naturalization applicants. These delays are often measured in two ways: delays in the time between filing the application and the USCIS decision; and delays in the time between the examination of the applicant and the USCIS decision.

### ***1. Delays in the time between filing the application and the USCIS decision***

It is the “sense of Congress” that a decision should be made within 180 days from the date of an application being filed.<sup>57</sup> Accordingly USCIS has stated that “[t]he time it takes to be naturalized varies by location,” but the agency “would like” to decrease the average wait time to 6 months after the N-400 form is filed.<sup>58</sup>

Figures provided by DHS in December 2006, in response to a Freedom of Information Act (FOIA) request filed by the Arab American Action Network (AAAN) and CAIR-Chicago on September 7, 2005,<sup>59</sup> indicate that this target timeframe is not being met.<sup>60</sup> These figures

indicate that more than two-thirds of the approximately 3.4 million naturalization applications filed between April 1, 2001 and approximately November 17, 2006<sup>61</sup> were not decided for more than 180 days from the date the applications were filed.<sup>62</sup> The DHS data confirmed that approximately 776,000 applicants did not receive a decision on their case for more than a year since they applied, and approximately 158,000 applicants have not received any decision for more than two years since the time of application.<sup>63</sup> More than 41,000 applicants have waited for a decision for three years or more.<sup>64</sup> According to the *Washington Post*, as of October 2003, the average wait time for a naturalization decision was reportedly 14 months; and as of February 2005, the average wait was reportedly 8 months.<sup>65</sup>

### ***2. Delays in the time between the examination and the USCIS decision***

As discussed above in Section IV.A.2, USCIS is required by law to make a decision on granting or denying citizenship within 120 days of an applicant's examination, which has been interpreted by a number of courts to mean an applicant's in-person interview. The data provided by DHS in response to the FOIA request mentioned above similarly indicates that this timeframe is not being met for a number of applicants – approximately 348,000 naturalization applicants have not received their decisions within the 120-day time period following their examinations.<sup>66</sup> Such delays exceed more than double the 120-day time period in approximately 175,000 cases, and in the most extreme cases of approximately 33,000 applicants, the time between the initial examination and a decision exceeds 720 days.<sup>67</sup> For instance, one applicant, Muhammad Jawwad, a worker at Coney Island Hospital in New York, applied for naturalization in November 2001, completed his interview and test within a year, but as of May 2006, was still waiting for a decision.<sup>68</sup> In addition, some individuals may continue to wait for notice of their oath ceremonies even after receiving notice that their naturalization has been granted.<sup>69</sup>

### ***3. Legal and legislative action as a result of extensive delays***

The extent of delays in the naturalization process has inspired both legal and legislative action. As mentioned briefly above in Section IV.A.2, a number of applicants, unable to obtain information through inquiries with USCIS (or through their Congressional representatives), have turned to federal courts for assistance with their long-delayed citizenship applications. These suits have generated substantial media attention and, for the most part, applicants who bring suit have been successful in getting their applications decided and approved.<sup>70</sup>

Delays have also generated legislative action: on March 7, 2007, a bill called the Citizenship Promotion Act of 2007 was introduced in the House of Representatives and the Senate “to assist aliens who have been lawfully admitted in becoming citizens of the U.S., and for other purposes.”<sup>71</sup> In addition to undertaking reforms in the areas of immigration service fees, the administration of naturalization tests, and the electronic filing of naturalization applications, the Act proposes a national citizenship promotion program and attempts to reduce the time taken to perform background checks and understand the reasons behind delays caused by these checks.<sup>72</sup>

## **Naturalization Application Process**

### **Completion of application**

- Fill out form, collect documents, get photographs.
- Send form, documents, photographs, and fee to Service Center.

### **Fingerprints/Security Check**

- **Interagency Border Inspection System name checks (IBIS)**  
Managed by U.S. Customs and Border Protection, IBIS is a computer database of lookouts, warrants, arrests, and convictions consolidated from over 20 agencies.
- **FBI Fingerprint check**  
The FBI's Integrated Automated Fingerprint Identification System matches criminal history records from federal, military, and most state apprehensions.
- **FBI National Name Check Program**  
This partially automated, name-based check searches over 86 million files documenting people who are the main subject or referenced in an FBI investigation.

### **Interview**

- Answer questions about application and background.
- Take English and Civics test.

### **Wait for USCIS decision on whether application is granted, denied or decision postponed**

- Decision meant to be received within 120 days of examination, but security checks may delay final decision for months or even years.
- If no final decision is received within 120 days of examination, can seek order to compel government action.

### **Take action based on USCIS decision**

- Within 30 days of a decision of "denial" can request a hearing with an immigration officer and later review by District Court.
- If receive a decision of "granted," must wait for letter with date of oath ceremony.

### **Receive oath letter with ceremony date**

### **Oath Ceremony**

- Answer questions about what have done since interview.
- Return permanent resident card.
- Take oath of allegiance.

### C. Explaining delays: name checks in the naturalization process

*My name is maybe similar to some sort of criminals. This is like a punishment if you are from Pakistan. I didn't choose my name.*

– Naturalization Applicant D<sup>73</sup>

Citizenship delays, and in particular the delays in the time between the examination and the USCIS decision, have been attributed to the FBI name check process that forms part of the security checks mandated for naturalization applications.

#### *1. The role of name checks in USCIS security checks pre and post-September 11, 2001*

Depending on the immigration benefit application submitted, USCIS runs up to four types of security checks:

- Interagency Border Inspection System (IBIS) name check (see below);
- FBI fingerprint check;
- FBI name check (see below); and
- Automated Biometric Identification System (IDENT).<sup>74</sup>

Of these four, name-based checks comprise the majority of USCIS' security-check workload.<sup>75</sup> Both of the name check procedures (the IBIS and FBI name check) are mandated for naturalization applications<sup>76</sup> and have been further developed after the events of September 11, 2001. A DHS report states that "USCIS began conducting automated, name-based queries of IBIS for all USCIS applications in 2002."<sup>77</sup> Also in 2002, the nature of FBI name checks was expanded (see below).

#### **a. Interagency Border Inspection System (IBIS)**

During the name check process USCIS runs applicants' names through IBIS,<sup>78</sup> which is managed by U.S. Customs and Border Protection. IBIS is a database of lookouts,<sup>79</sup> wanted persons,<sup>80</sup> warrants, arrests, and convictions consolidated from over 20 agencies,<sup>81</sup> including the FBI, Interpol, the Drug Enforcement Agency, the Bureau of Alcohol, Tobacco, and Firearms, the Internal Revenue Service, the Coast Guard, the Federal Aviation Administration, the Secret Service and the Animal Plant Health Inspection Service.<sup>82</sup> IBIS provides the law enforcement community with access to computer-based enforcement files of common interest.<sup>83</sup> It also provides access to the FBI's National Crime Information Center and allows its users to interface with all fifty states via the National Law Enforcement Telecommunications Systems.<sup>84</sup> IBIS keeps track of information on suspect individuals, businesses, vehicles, aircraft, and vessels.<sup>85</sup> The threshold of suspicion for inclusion in this database includes, for example, inadmissibility of a non-citizen into the U.S., immigration or visa violations, smuggling of aliens, actual convictions, and "suspected" criminal activity or terrorist affiliations. IBIS terminals can also be used to access the FBI's National Crime Information Center records on wanted persons, stolen vehicles, vessels or firearms, license information, criminal histories, and previous Federal inspections.<sup>86</sup>

## **b. FBI name checks**

USCIS additionally submits applicants' names to the FBI's National Name Check Program<sup>87</sup> by sending to the FBI a data tape<sup>88</sup> of names, which are electronically checked against the Federal Bureau of Investigation's Universal Index (UNI).<sup>89</sup> Although an FBI name check has been a part of the naturalization adjudication process since 1985,<sup>90</sup> in 2002 the "name check" process expanded to include not only the FBI's "main files" but also "references."<sup>91</sup> A "main file" name is assumed to be the name of an individual who is the subject of an FBI investigation, whereas a "reference file" name is one that simply appears in an FBI investigation because it has some connection to the investigation.<sup>92</sup> The searches seek all instances of an individual's name and approximate date of birth appearing in both "main files" and "reference files."<sup>93</sup>

A "No Record" indicates that the FBI's UNI database contains no identifiable information regarding a particular individual and is sent back to USCIS usually within 48 to 72 hours.<sup>94</sup> A match with a name in a FBI record, or a "Hit," requires a person to review the file or indices entry to further refine the names designated as "Hits."<sup>95</sup> If the search comes up with a name and birth date match, it is designated as an "Ident."<sup>96</sup>

The FBI subjects the "Hit" and "Ident" matches that resulted from the preliminary electronic check to additional investigation by conducting a secondary manual name search within 30 to 60 days to ensure that the "Hit" and "Ident" files positively correlate to the submitted names.<sup>97</sup> If the record is available in the FBI's Automated Case Support (ACS) electronic record-keeping system, it can be reviewed quickly.<sup>98</sup> If, however, the record is not available in the ACS, the relevant information must be retrieved from an existing paper record.<sup>99</sup> Review of this information determines whether the information is positively identified with the name check request.<sup>100</sup>

Less than one percent of the requests are identified with a file containing possible detrimental information.<sup>101</sup> If applicable, the FBI then forwards a summary of the information to the requesting agency.<sup>102</sup> According to USCIS, between December 2002 and March 2007 USCIS sent 8.5 million names to the FBI for name checks and received 8.2 million responses.<sup>103</sup>

The expansion of name-based security checks are a clear result of heightened national security concerns post-September 11, 2001.<sup>104</sup> According to the Section Chief of the National Name Check Program Section of the FBI, "a more detailed, in-depth clearance procedure" (which includes the FBI name check clearance)<sup>105</sup> was instituted in order to serve national security interests.<sup>106</sup> Additionally, according to the *Washington Post*, authorities note that "they have been heavily criticized in the past when terrorists slipped through the system and gained immigration benefits."<sup>107</sup> Bill Yates, an official at USCIS, states: "...We've got to do more."<sup>108</sup> Chris Bentley, a spokesman for USCIS, has similarly stated, "We will not compromise national security in the name of speeding someone through the application process."<sup>109</sup>

## **FBI Name Check Process**

### **Data is sent from USCIS to FBI**

#### **FBI checks names electronically against Universal Name Index (UNI)**

- “Main” and “reference” files are checked for names and approximate dates of birth.
- If no match is found, name is returned to USCIS as a “No Record.”
- If a name match is found, it is designated as a “Hit.”
- If a name and date of birth match is found, it is designated as an “Ident.”

#### **FBI performs a second manual search on the “Hit” and “Ident” records**

- If the record is on the FBI Automated Case Support (ACS) electronic record-keeping system, it can be reviewed quickly.
- If the record is not on the ACS system, the paper file must be retrieved, scanned and analyzed.

#### **Information is reviewed**

- If information is not relevant to the name check, it is sent back to USCIS as a “No record.”
- If information is derogatory, a summary of the derogatory information is sent to USCIS.

## ***2. FBI name checks as key cause of delay***

While the average time required to retrieve and review an FBI record for possible information related to a name check request is case specific—it depends on the number of files an analyst must obtain (which is dictated by the number of “Hits” on a name), the location and availability of those files, and the amount of information contained in a file<sup>110</sup>—the time taken to do FBI name checks is frequently cited as the main cause of delays in processing naturalization applications. For example, the U.S. Citizenship and Immigration Services Ombudsman (CIS Ombudsman) Annual June 2006 Report to Congress records that:

During the reporting period, processing delays due to FBI name checks were an issue in 15.7 percent of all written case problems received. Stakeholder organizations and USCIS personnel across the country also regularly raise the issue of FBI name check delays as the most pervasive problem preventing completion of cases.<sup>111</sup>

The report also notes that:

As of May 2006, USCIS reported 235,802 name checks pending, with approximately 65% (153,166) of those cases pending more than 90 days and approximately 35% (82,824) pending more than one year.<sup>112</sup>

In recognition of this problem, one of the CIS Ombudsman’s top five priorities and areas of focus for FY2007 is to review “processing delays caused by USCIS security screening.”<sup>113</sup> While USCIS fails to provide applicants with adequate information on reasons for delay or an

expected timeframe for the delay,<sup>114</sup> a spokeswoman for USCIS has also said that the timing of decisions by USCIS is dependent on the FBI, as it must wait for the FBI to complete and return background checks.<sup>115</sup> Additional causes for delay that are rooted in the FBI name check process have been identified as follows:

- **Additional checks:** According to Bill Carter, an FBI spokesman, the delays began in 2002, when USCIS “booted 2.7 million names of applicants back to the FBI for additional checks, causing a backlog.”<sup>116</sup>
- **Limited USCIS requests for expedited name checks:** As mentioned above, according to USCIS, from December 2002 to March 2007, USCIS had sent 8.5 million names to the FBI for name checks, and had received 8.2 million responses.<sup>117</sup> USCIS acknowledges a problem with the delays for the other 300,000 cases, but also says it does not have control over expediting requests.<sup>118</sup> This is not completely accurate; USCIS has a process whereby it directs the FBI to expedite the background checks in certain situations, such as when it learns that the applicant will lose his or her Social Security Income benefits absent an adjudication of the application.<sup>119</sup> Whereas previously USCIS would also expedite applications after a lawsuit was filed under 8 U.S.C. § 1447(b), in December 2006 USCIS directed staff to stop this procedure, thus limiting the effectiveness of such actions.<sup>120</sup>
- **Nature of checking required:** For instance, once there is a “Hit” in the system, the ensuing investigation may require manual checks of fragmented intelligence information by FBI agents.<sup>121</sup> Additionally, when a name pulls up a “Hit” that refers to a paper record, FBI agents must search paper files that may be stored in any of the 265 locations across the U.S.<sup>122</sup> If paper documents are found, they must then be scanned into a database and then analyzed.<sup>123</sup>
- **Bureaucratic and organizational limits:** There exists both a lack of FBI resources to complete the checks efficiently, and a high degree of “bureaucratic miscommunication and mismanagement,” including, for example, the lack of a system by which USCIS can follow up with the FBI on pending applications or even ensure that the FBI has received the application.<sup>124</sup>

Additionally, USCIS has in general terms cited two reasons for the prolonged processing times: the additional national security responsibilities levied on USCIS after the events of September 11, 2001; and the transition of USCIS to DHS.<sup>125</sup> The CIS Ombudsman has found that “While these explanations are compelling, none fully overcomes the anxiety and aggravation individuals and employers experience during the many months and possibly years they await a final USCIS decision.”<sup>126</sup>

#### **D. Factors suggesting disproportionate delays for applicants from the profiled group**

*It seems that the delays in the processing of immigration applications, particularly from countries that are predominantly Muslim, are no mistake. People are being subject to scrutiny simply because of the coincidence of where they were born. These citizenship delays are just a continuation of special registration and special detention-type policies.*

– Amardeep Singh, Executive Director, Sikh Coalition<sup>127</sup>

*USCIS has pointed out that they've reduced the backlog and that the average wait for citizenship is now about 5 months. That's wonderful for some people who have no bumps in the process. But for anyone who runs into a security check or who is even missing one document at their interview or who sent a document to CIS that CIS says they never received—nothing has changed for these people. So the system hasn't improved for everyone.*

– Laura Burdick, Senior Immigration Specialist, Catholic Legal Immigration Network, Inc. (CLINIC)<sup>128</sup>

While delays in the naturalization process affect many immigrant communities,<sup>129</sup> a number of factors suggest that applicants from the profiled group may experience disproportionate delays in the processing of their naturalization applications. These factors include:

- **Disproportionate presence of the profiled group in the security databases against which names are checked due to public and private profiling post-September 11, 2001.** According to a *Washington Post* report, “[a]uthorities say they have no alternative but to fully investigate when an applicant’s name resembles one in the government’s security databases.”<sup>130</sup> The selective targeting of men from Arab and Muslim countries through the NSEERS program,<sup>131</sup> along with the breadth of public and private profiling discussed above in Section III.A, suggests that a large number of the profiled group are vulnerable to having their names or derivations of their names register as “hits” in any name check process.
- **General shift toward use of immigration processes as a counter-terrorism measure where the profiled group is synonymous with the “terrorist” threat that immigration measures are meant to screen (see Sections III.A.1 and III.B).**
- **Specific implementation of enhanced name check procedures as a post-September 11, 2001 national security measure where the profiled group is regarded as the key threat to national security (see Sections IV.C).** While heightened scrutiny in the name check process is the newest facet of the government’s “dramatic shift in attitude toward immigration,”<sup>132</sup> it is deeply rooted in public and private conceptions of race, religion, national identity and terrorism, wherein the profiled group is regarded as inherently suspect and the primary target of name check procedures.

- **Checking of variations of applicants’ names, particularly those transliterated from other alphabets**, such that “Someone with a long Arab name could be entered in dozens of ways.”<sup>133</sup> The checking of variations of an applicant’s name increases the likelihood that an applicant’s name will resemble a name in the government’s databases.<sup>134</sup> As noted above, the profiled group is likely disproportionately represented in government databases, which in turn increases the likelihood that the name of an applicant from the profiled group will resemble a name in the database. This likelihood is enhanced by the fact that names in the profiled group will include both transliterations of non-English names and hyphenated spellings—two factors that complicate name-based checks.<sup>135</sup>
- **Likelihood that persons with common names will trigger “hits” in the system.** According to a *Washington Post* article, “Immigration authorities insist that they are not singling out any nationality for extra scrutiny. But they note that people with common names—like many from the Middle East—are more likely to get a match in the databases of records from dozens of federal agencies.”<sup>136</sup>

Extensive citizenship delays for applicants from the profiled group have been noted by a number of sources, including non-governmental organizations,<sup>137</sup> media reports,<sup>138</sup> and in CHRGI interviews with naturalization applicants for this Report. The *Washington Post* article adds that “even as the overall backlog for immigration documents is shrinking... those whose names trigger a ‘hit’ in the security check can be stuck in limbo for years.”<sup>139</sup>

An additional pattern that emerged from CHRGI interviews for this Report is the gendered dimension of delays, which suggest that men typically experience much longer delays than similarly placed women.<sup>140</sup> For example, a number of naturalization applicants told CHRGI that their wives or sisters got through the application process far more quickly. One applicant stated, “We all applied the same day... After 8 months, then they gave citizenship to my wife. And they still haven’t given citizenship to me. Two years I’ve been waiting. I passed my citizenship interview, but they still haven’t called me for my oath.”<sup>141</sup> Another added, “My wife was interviewed on the same day as me and by the same person and received her oath letter one week after the interview. [But I’m still waiting.]”<sup>142</sup> A third applicant noted, “[m]y sister was interviewed and received her oath letter one or two months after her interview and then received her passport and citizenship, but I am still waiting.”<sup>143</sup>

## V. The significance of citizenship and the impact of profiling and delay

*I have been to Federal Plaza, and the supervisor there told me, 'It could be one day or it can be 99 years.' That day I felt so helpless and hopeless...I am a legal resident for past 9 years. I work hard here. Once you are eligible for something and then you are thrown in the dark for some reason, you certainly feel depressed and discriminated against. I've not been treated as I should have been. You feel depressed, you feel helpless.*

– Naturalization Applicant D<sup>144</sup>

Citizenship plays a vital role in making effective the promise of fundamental human rights protection. It is a legal status that facilitates the enjoyment of many rights. In addition to its importance as a formal legal status, citizenship also enables political engagement and bestows identity on individuals through creating a feeling of community membership.<sup>145</sup> It is against the backdrop of these many different meanings of citizenship, that the significance of profiling and excessive delay in processing of applications must be initially understood.

### **A. Profiling and citizenship delay deprive persons of legal status and rights protections**

In the U.S., there are several key rights that attach to citizenship, including the right to vote,<sup>146</sup> the right to obtain U.S. passports;<sup>147</sup> the right to file visa petitions for immediate relatives;<sup>148</sup> the protection of the government when outside the U.S.;<sup>149</sup> and the right to life-sustaining federal benefits.<sup>150</sup> A number of persons interviewed by CHRGI pointed to the impact of delays on the right to vote as being of particular concern. For example, Nancy Morawetz, Professor of Clinical Law at NYU School of Law,<sup>151</sup> stated:

This is ultimately a question of democracy. Citizenship is the route to full participation in our political system. People who are living and working here and are not allowed to become citizens and are facing taxation without representation. They want to be members of society, and aren't allowed to—and no one can really explain why. This is not only painful for them, but it's a problem for everyone because it's an anti-democratic process.<sup>152</sup>

Similarly, Jagajit Singh, Director of Programs, COPO<sup>153</sup> noted:

The strongest form of empowerment is voting power, and in a democracy, voting power comes in numbers. If the community cannot naturalize and cannot vote, it has no voice in the democracy. These people are a part of the national community, but unable to participate in any real way—the lack of numbers at the polls means they cannot raise their voice.<sup>154</sup>

### **B. Profiling and citizenship delay undermine political and civic engagement**

The above statements also illustrate the ways in which prolonged delays deprive individuals of their ability to politically engage in the community. In addition to voting, citizens

take part in public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves; extensive delays in granting citizenship thereby also undermine related rights, such as freedom of expression, assembly, and association. Further, as Julia Mass, a staff attorney at the American Civil Liberties Union (ACLU) of Northern California who brought suit on behalf of delayed naturalization applicants in February 2007, told CHRGJ, “the fear in these communities as a result of governmental policies has greatly impacted people’s freedom to speak out.”<sup>155</sup> Citizenship delays also weaken the potential for political engagement by undermining people’s faith in democracy. As Jagajit Singh, Director of Programs, COPO,<sup>156</sup> told CHRGJ:

Young children see and hear what is going on, and the image of the U.S. that forms in their minds is a very frightening one. They ask, ‘is this the land of freedom that we were promised when we came here?’ What this community now thinks is that the government is not ‘of the people’ because it hates them, and it’s not ‘for the people’ because they are being discriminated against and profiled, and it’s not ‘by the people’ because they cannot get naturalized and they cannot vote. This community is completely disempowered and has no part in the democracy.<sup>157</sup>

### **C. Profiling and citizenship delay deny a sense of identity and community membership**

There are a number of ways in which profiling and extended citizenship delays undermine individuals’ sense of solidarity and identity with other groups in the U.S. First, individuals experiencing citizenship delays and all of its attendant conditions—including lengthy separation from family members and restrictions on their ability to travel, work, or otherwise live complete and meaningful lives—routinely experience feelings of stress, anxiety, frustration, and depression that undermine their sense of identity and community solidarity. One applicant, speaking about the time that had elapsed since his interview, told CHRGJ, “I heard nothing since that day, made many inquiries but [am] always told my application is pending security checks. This is a panic. I don’t know what/when it will [] happen. I don’t travel. They should have told me before. They have to. This is painful.”<sup>158</sup> Aarti Shahani, Co-Founder and Co-Director of Families for Freedom,<sup>159</sup> told CHRGJ, “People can’t travel back home to see elderly parents who may be ill. They also see how much targeting of immigrants is going on, and so the delay itself is very nerve-racking and frustrating.”<sup>160</sup>

Second, rather than strengthening ties amongst members in the community, delays cause separation of families and alienate naturalization applicants from the broader community. The extended processing times also cause individuals to “suffer lengthy separations from family members and experience difficulties in making long-term plans or commitments.”<sup>161</sup> One applicant, who is separated from his family and is awaiting citizenship, told CHRGJ: “I call my family every day and whenever I call them, my youngest daughter asks me, ‘Papa, when are you coming? When can I be there to meet you?’ I all the time carry the pictures of my family in my wallet and I am dying to see them.”<sup>162</sup> Another applicant stated, “The whole purpose of our struggling now is to get the whole family together – we’ve been divided for more than seven years. Every day is like more than a year for us now.”<sup>163</sup>

Third, delays for qualified and meritorious applicants may also result in lost employment opportunities and other financial hardships.<sup>164</sup> One's sense of community is particularly undermined when job opportunities that are lost are those that seek to serve the community. For example, Azhar Sajawal, a 26-year-old from Queens, New York, was unable to enroll in the Police Academy in January 2006 because he was not yet a citizen; he had been waiting for a year for his naturalization oath ceremony due to an FBI security check.<sup>165</sup> Sajawal has been recorded as saying "I passed the NYPD exam, I even passed their background check, eye exam, plus the hearing exam and other medical exams" and "I just want to serve this city. I want to be a cop."<sup>166</sup> Fatin Hannaney, an Iraqi immigrant in the D.C. area, applied for citizenship in 2001 and, as of 2005, was still awaiting security check clearance.<sup>167</sup> She claims that as a result of the delay she has lost numerous opportunities to work as an Arabic translator, including for the FBI.<sup>168</sup> Those that are permitted to serve in such jobs may still be delayed in their citizenship applications. For example, Kadhim al Kanani was a private first class in the U.S. Army.<sup>169</sup> Kanani is from Iraq and joined the Army to show his "appreciation" to the U.S. for its actions in Iraq.<sup>170</sup> He was able to achieve security clearance to join the Army, but as of February 2005 had been waiting two years for his name check to clear so that he could become a U.S. citizen.<sup>171</sup>

## VI. Nature and scope of human rights protections owed to non-citizens by the U.S.

As described in the Section above, citizenship delays deprive individuals of legal status and domestic rights protections; undermine political and civic engagement; and deny one's sense of identity and community membership. Citizenship delays for the profiled group also implicate a number of international human rights protections guaranteed to non-citizens. This next Section identifies the nature and scope of U.S. obligations to afford these protections under international law. This Section's focus on international law does not detract from the ways in which citizenship delays may violate U.S. law, including, for example, section 555(b) of the Administrative Procedure Act.<sup>172</sup>

### A. Source of U.S. obligations under international law vis-à-vis non-citizens

The U.S. has ratified two of the key international instruments that guarantee non-citizens' rights: the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD)<sup>173</sup> and the International Covenant on Civil and Political Rights (ICCPR).<sup>174</sup> As a State party to these treaties, the U.S. is obligated to ensure non-discrimination in access to citizenship; some particular substantive rights guarantees; and equality between citizens and non-citizens in access to particular rights.

The U.S. has not ratified the main instrument for the protection of economic, social and cultural rights (the International Covenant on Economic, Social and Cultural Rights),<sup>175</sup> but it nonetheless has specific obligations under ICERD to guarantee equality in the enjoyment of economic, social and cultural rights. This is provided for both in the definition of "racial discrimination" in Article 1(1) (which refers to restrictions on "human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life")<sup>176</sup> and Article 5(e), which specifically requires State parties to ensure equality in economic, social and cultural rights, including the right to public health, medical care, social security and social services.<sup>177</sup>

Unless otherwise stated, all references to international law on non-citizens in the following Sections refer to international law deriving from instruments to which the U.S. is a party.

### B. Content of U.S. obligations under international law vis-à-vis non-citizens

States increasingly grant, deny, or retract citizenship in a manner that serves political interests and undermines human rights protections owed to non-citizens. In particular, States seek to circumvent human rights protections in two key ways: through depriving or otherwise restricting access to citizenship, and through enforcing distinctions between citizens and non-citizens in the enjoyment of rights.<sup>178</sup> This focus on the distinction between citizens and non-citizens is a deliberate one. International, regional, and domestic law traditionally provided less protection to those discriminated against on the basis of their non-citizen status than to those discriminated against on the basis of other grounds, such as race.<sup>179</sup>

Some of the key principles that emerge from international law regarding the rights of non-citizens are as follows:

- **Rights with regard to entry or residence:** While it is “...in principle a matter for the State to decide who it will admit to its territory” it has been recognized that in certain circumstances non-citizens enjoy the protection of human rights law in “relation to entry or residence, for example, when considerations of non-discrimination, prohibition of inhuman treatment and respect for family life arise.”<sup>180</sup> Indeed, international law specifically requires that “particular groups of non-citizens are not discriminated against with regard to access to citizenship or naturalization.”<sup>181</sup> It similarly requires equality for non-citizens before courts and tribunals.<sup>182</sup> This prohibition on discrimination in access to citizenship is particularly relevant for evaluating the citizenship delay experienced by the profiled group. The key question here is whether there is differential treatment between different groups of non-citizens in access to citizenship and whether such treatment constitutes discrimination (see Section VII below).
- **Other rights owed to non-citizens under a State’s jurisdiction:** Although international human rights law recognizes that States can make distinctions between citizens and non-citizens for the provision of certain rights,<sup>183</sup> there are a number of rights that have been recognized by international law as being guaranteed to non-citizens.<sup>184</sup> In addition, as with the prohibition on discrimination in *access* to citizenship, international law requires equality between citizens and non-citizens in the enjoyment of civil, political, economic, social and cultural rights to the extent recognized under international law.<sup>185</sup> Section VIII delineates non-citizens’ rights implicated by delays resulting from profiling.
- **Non-derogability of key rights protections for non-citizens:** One human rights obligation that applies at all times, and to all elements of immigration policy, is the prohibition on discrimination. States must ensure no element of their immigration policy has the purpose or effect of discriminating on the basis of grounds such as race,<sup>186</sup> color,<sup>187</sup> sex, language, religion, political or other opinion,<sup>188</sup> national origin,<sup>189</sup> social origin, association with a national minority, property, birth or other status.<sup>190</sup> The right to non-discrimination is non-derogable, even in times of public emergencies,<sup>191</sup> and States are prohibited from violating this peremptory norm while enforcing their immigration laws.<sup>192</sup> In particular, it has been affirmed on numerous occasions that the “war on terror” cannot be invoked to deny the human rights protections owed to non-citizens.<sup>193</sup>

## VII. Rights violations in access to citizenship

### A. Overview of discrimination under international law

In determining whether the implementation of security check procedures against the profiled group in access to citizenship is illegal under international law, two key questions must be addressed.

First, *Do the Delays in Citizenship through Enhanced Security Check Procedures have the Purpose or Effect of Disproportionately Burdening a Particular Racial, Ethnic, Religious or National Group?* This question of whether there is disparate impact<sup>194</sup> is relevant to determining whether there is direct or indirect discrimination; both of which are prohibited under international human rights law.<sup>195</sup> Direct discrimination occurs when a policy or measure has the purpose of discriminating against a particular group.<sup>196</sup> Indirect discrimination occurs when a policy or measure, even if neutral on its face, has a disparate impact on that group.<sup>197</sup>

Second, *Is this Disproportionate Burden Justified?* International law allows differentiation to be justified in certain circumstances, where the aim of the measure is legitimate and the differentiation is objective, reasonable and proportional to that aim.<sup>198</sup>

### B. Do security-driven citizenship delays have the purpose or effect of disproportionately burdening a particular racial, ethnic, religious or national group?

Delays in the citizenship process implicate discrimination on grounds which are prohibited under international law. These grounds include: race, color, sex, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.<sup>199</sup> These grounds are closely related. For example, "...discrimination on the basis of nationality may actually be a proxy for discrimination on the basis of race"<sup>200</sup> and non-citizen status also regularly functions as a proxy for racial discrimination.<sup>201</sup>

The delays experienced by the profiled group have the *purpose* of disproportionately burdening a particular group, if the enhanced security measures in the naturalization application process were developed specifically to target the profiled group. As previously noted, the FBI name check program, much like NSEERS, was created in response to the heightened national security concerns following September 11, 2001, in which a "Muslim male" is posited as the main threat (see above Sections III.A.1 and IV.C). However, further information is required to definitively prove that name checks were instituted with the specific *intent* of targeting the profiled group.

Even if these policies and programs do not have a discriminatory *purpose*, there are a number of factors (see Section IV.D) that suggest that naturalization delays have the *effect* of disproportionately burdening the profiled group.

### C. Is this disproportionate burden justified?

As noted above, policies that impose a disproportionate burden on particular groups (either purposely or in effect) must be justified in order not to constitute prohibited discrimination. Some of the factors that may be considered in determining whether a burden is justified include:

- The importance of the right sought to be infringed by the measure;<sup>202</sup>
- The aim or objective of the measure, including its legitimacy;<sup>203</sup>
- The nature of the differentiation (whether it uses criteria that are “objective and reasonable”);<sup>204</sup> and
- The proportionality between the effects of the means used and the ends or aim sought to be achieved<sup>205</sup> (including an assessment of whether the means effectively advance that end,<sup>206</sup> such that means that do not meet the identified end will not be deemed proportional).

With regard to the importance of the right infringed by the measure, as described above, the prohibition on discrimination is a peremptory norm of international law<sup>207</sup> and applies to all parts of a State’s immigration policy, including rules about access to citizenship.<sup>208</sup>

In considering the second factor—the legitimacy of the aim or objective pursued—while the purpose of enhanced security procedures is arguably to identify potential threats and thereby defend national security, this objective or purpose should not be rarified: it has been consistently stated that this purpose must be pursued in compliance with human rights norms.<sup>209</sup> Additionally, it is arguably an equally legitimate and important goal for States to successfully balance counter-terrorism measures with the human rights protections by which they are bound.<sup>210</sup>

On the final two criteria—nature of differentiation and whether means used are proportional—the following points suggest that the extended security checks and subsequent citizenship delays for the profiled group are not justified:

#### ***1. Reliance on names and national origins as proxies for identification of national security threats is both over-inclusive and under-inclusive***

As previously noted, various grounds of discrimination merge together to form the category of “terrorist.”<sup>211</sup> As a result, efforts by the government to target “terrorists” result in reliance on overly broad factors such as name, ethnicity, national origin, religion, and gender.<sup>212</sup> Selective targeting based on these factors is at once over-inclusive, in that it encapsulates many people who pose no national security threats, and under-inclusive, in that it excludes individuals who do not fit the category of “suspect” groups, but who may pose a national security threat.<sup>213</sup> Both these over-inclusive and under-inclusive effects undermine the effectiveness of the profiling and suggest that the measure is not justified.

## *2. Extensive delays in granting citizenship do not yield timely or accurate information to further national security interests*

This system has been described as a “fiasco” and has been likened to “looking for a needle in a haystack.”<sup>214</sup> Most notably, the CIS Ombudsman has argued that delays in name check procedures may actually heighten rather than alleviate threats to national security:

...delays in the name check process actually prolong an individual’s presence (albeit in an interim status) in the U.S. while the check is pending. In that sense, the current USCIS name check policy may increase the risk to national security by prolonging the time a potential criminal or terrorist remains in the country. Further, checks do not differentiate whether the individual has been in the U.S. for many years or a few days, is from and/or has traveled frequently to a country designated as a State Sponsor of Terrorism, or is a member of the U.S. military.<sup>215</sup>

This inherent lack of logic in prolonged name checks has been noted by a number of commentators. For example, Laura Burdick, Senior Immigration Specialist, CLINIC,<sup>216</sup> states: “We understand the need to check people who are becoming citizens, but it’s in everyone’s best interest to have the checks done quickly. If someone’s really a threat, we should know that immediately—not three years later.”<sup>217</sup>

Nancy Morawetz, Professor of Clinical Law at NYU School of Law,<sup>218</sup> told CHRGJ:

It doesn’t seem that background checks for naturalization are really designed to be a counter-terrorism policy. They’re highly inefficient and ineffective. If there were a person that we were really worried about in terms of security issues, you would hope there would be a process to identify that person that wouldn’t take 3 or 4 years. And if someone were improperly granted citizenship, and it were later found that that person is a real threat, citizenship could be taken away from them. So these naturalization delays can’t fairly be called a counter-terrorism policy; more than anything else, they’re a counter-democracy policy.<sup>219</sup>

Similarly, Cyrus Mehta, founder and managing attorney of Cyrus D. Mehta & Associates, P.L.L.C.<sup>220</sup> stated:

It’s completely counter-intuitive to keep these people in the country if they really are a threat. And for the people who are experiencing these delays, it creates alienation and antagonism and less patriotism and fervor for their adopted country. Even if there’s no intention on the part of certain officials in the government to cause these lengthy delays, there’s inadequate funding and staffing to do all the security checks efficiently, and these are the effects.<sup>221</sup>

Ultimately, as the CIS Ombudsman concludes, prolonged name checks “significantly delay adjudication of immigration benefits for many applicants, hinder backlog reductions efforts, and rarely, if ever, achieve their intended national security objectives.”<sup>222</sup>

***3. Increased name check procedures divert limited law enforcement resources away from identifying real threats to national security***

Prolonged name checks undermine their intended national security objectives by diverting law enforcement resources. Manual reviews performed during the name checks can include burdensome and time consuming reporting on fragments of names of individuals who are not necessarily central or directly related to a case.<sup>223</sup> Data from the DHS also reveals the general ineffectiveness of using immigration status as an indicator of criminal behavior. Following the creation of the Immigration Violators File (IVF) within the FBI's National Crime Information Center database,<sup>224</sup> information on individuals with administrative, non-criminal immigration warrants is now searchable by local law enforcement officials who can check the immigration status of anyone who routinely interacts with the police.<sup>225</sup> According to DHS data, 42 percent of these immigration "hits" obtained by searching the IVF were not able to be confirmed, and it is likely that these "false positives" led not only to wrongful detentions, but also diverted police resources from real public safety priorities.<sup>226</sup>

***4. Extensive delays compromise the ability of the police to work with communities to identify security threats***

Extensive delays occasioned by name checks are counterproductive to efforts to fight terrorism as they undermine the police's capacity to establish trust with the communities that they have identified as sources of information on security threats. Successful police operations require trust between the police and the communities in which they operate. This trust has already been compromised by widespread law enforcement operations targeted at particular racial, ethnic and religious groups.<sup>227</sup>

***5. Imposing disproportionate security checks on the profiled group institutionalizes prejudice and legitimizes the prejudicial behavior of the general public***

Most fundamentally, profiling on the basis of religion, race, ethnicity or nationality institutionalizes prejudice and promotes and legitimizes the prejudice of the general public.<sup>228</sup> The connection between state-sanctioned profiling and the legitimization of private bias is evident in the extent of hate crimes against Muslims and Arabs and those perceived to be Muslim or Arab in the aftermath of September 11, 2001 as described above in Section III.A.2.

As noted by Amardeep Singh, Executive Director of the Sikh Coalition:<sup>229</sup>

Programs such as special registration, and the detention of over 1,200 people as "special interest detainees" in the aftermath of 9/11, the absconder initiative, and so on were all government actions that placed additional scrutiny on people based on their national origin, and therefore endorsed, either directly or indirectly, private discrimination. The idea in the mind of the general public was, 'If the government can do it, why can't we? If the government is more suspicious of these folks, why can't we be?'<sup>230</sup>

**D. Disproportionate burden on the profiled group is illegal under international law**

The importance of the right to be infringed by disproportionate name checks, combined with the lack of effectiveness and other detrimental consequences, render such a disproportionate burden unjustified and illegal under international law.

## VIII. Other rights violations caused by excessive delay in citizenship application processing

As discussed above, non-citizens are guaranteed certain rights under international law.<sup>231</sup> Extensive delays in citizenship processing implicate a number of these rights. This Section focuses on the impact of delays on the following rights:

- Right to liberty of movement and free choice of residence, including freedom to leave the country;
- The right, in community with other members of their group, to profess and practice one's own religion; and the right to freedom of thought, conscience and religion; and
- Enjoyment of economic, social and cultural rights by non-citizens, notably the right to public health, medical care, social security and social services.

The following Section describes these rights and explains how they are undermined by delays in the citizenship process.

### A. Infringements of the right to liberty of movement and related rights

*I have my parents, brothers, and sisters in Pakistan. But I am nervous about traveling because of my immigration status. I do not want to take any chances.*

– Naturalization Applicant J<sup>232</sup>

*I have been making trips to Yemen to see my family every two years. I hadn't had any problem at the airport so far, but am afraid of having a hard time that comes from my travel. Anything can happen.*

– Naturalization Applicant R<sup>233</sup>

*I want to visit my sick mother in Algeria, but I cannot go there. I sent a letter from the doctor in Algeria to an attorney here to see if that would help expedite the background check, but my lawyer advises me not to travel there.*

– Naturalization Applicant P<sup>234</sup>

#### 1. *The right to liberty of movement*

Some restrictions on the right to liberty of movement are allowed under U.S. and international law. However, under both legal regimes, the importance of this right limits the scope of permissible restrictions. In the U.S., for example, although some cases have allowed restrictions on travel for national security and foreign policy reasons,<sup>235</sup> the Supreme Court has held that the right to travel within the U.S. is a fundamental and constitutionally protected right.<sup>236</sup> The Court has also praised the value of international travel for self-fulfillment, learning about the world, participating in commerce, and maintaining ties with family and friends.<sup>237</sup>

The right to liberty of movement is also guaranteed under international human rights law, particularly under Article 12 of the ICCPR, which states that that everyone has the right to movement within a State and is entitled to freely leave any country.<sup>238</sup> International law enables some restrictions to be placed on the right,<sup>239</sup> but recognizes that these limits cannot be imposed lightly.<sup>240</sup>

## 2. *Impact of profiling on the right to liberty of movement*

In order to become citizens, lawful permanent residents must have continuously resided in the U.S. for at least five years prior to filing for naturalization and must not have left the U.S. for more than six months at a time.<sup>241</sup> Though permanent residents can travel outside the U.S. for a time period of up to six months, in practice, immigration provisions and enforcement limit or restrict their ability to travel by operating as an “invisible border that keeps non-citizens inside the country and degrades their ability to maintain ties that cross borders.”<sup>242</sup>

There are several factors that account for the restrictions on liberty of movement of the profiled group in practice:

- **As non-citizens do not have U.S. passports, they often cannot travel abroad without inconvenience and fear of harassment.**<sup>243</sup> Non-citizens fear not being able to reenter the country, because they are aware of the heightened scrutiny non-citizens receive from officials at the border. One applicant interviewed by CHRG stated, “I have traveled to Pakistan twice since applying for naturalization, in 2003 and 2005, and I was stopped for interrogation at the airport both times when returning to the U.S. and was questioned about how long I had stayed in Pakistan. Each time I was held for two hours at the airport.”<sup>244</sup>
- **Non-citizens may fear missing important updates regarding their immigration applications while they are traveling.**<sup>245</sup> For instance, one applicant told CHRGI, “I don’t want to be traveling and miss receiving the letter that I’ve been cleared and that I can take my citizenship oath.”<sup>246</sup>
- **Non-citizens who are Muslim or are perceived to be Muslim because of their name, ethnicity, nationality, or physical appearance may fear being profiled, questioned, and detained at the airport—whether traveling domestically or internationally.**

Profiling in airports since September 11, 2001, both before and after the creation of the federal no-fly list in 2003,<sup>247</sup> means that anyone perceived to be Muslim or having a “Muslim-sounding name” may be stopped, delayed, and subjected to extended and sometimes embarrassing and unnerving security checks in airports.<sup>248</sup> In what has been dubbed the “flying while Arab” phenomenon,<sup>249</sup> individuals who are profiled, questioned, and detained experience inconvenience, insecurity and anxiety (even if they are eventually released) as the entire process may take hours, can be extremely intimidating and frightening,<sup>250</sup> and may result in missing flights and important engagements.<sup>251</sup>

Muslim men have strong grounds for fearing that their right to travel will be restricted by virtue of the “no-fly list.” Created in 2003 by U.S. government intelligence agencies, the “no-fly list” is a list of names of potential terrorist suspects wanted by the US government.<sup>252</sup> If a passenger’s name appears on the “no-fly list,” he or she will not be able to board an aircraft.<sup>253</sup> Prior to September 11, 2001 the list of individuals suspected of terrorism and banned from air travel contained only 16 names; as of October 2006, the “no-fly list” contained 44,000.<sup>254</sup> Airport and Transportation Security Administration (TSA) officials are reportedly required to stop anyone with a “Muslim name” and name check that individual against the “no-fly list.”<sup>255</sup> Additionally, airport computers reportedly “throw up a red flag when a passenger name is similar to a name on the ‘no-fly list,’ or even if the name of the passenger and the name of the suspected terrorist share only a few common letters.”<sup>256</sup>

For persons living outside their country of origin and who are separated from their family, such restrictions and risks compromise their ability to enjoy a host of related rights (such as the right to religious freedom) which may require traveling across borders to attend religious meetings, and undertake religious pilgrimages, or, as described below, may trigger attempts to alter one’s appearance so as to hide one’s religious identity or curtail praying in public for fear of being profiled while traveling.

## **B. Infringements of the right to profess and practice one’s own religion**

### ***1. Right to profess and practice one’s own religion***

In addition to prohibiting discrimination on the basis of religion (see above Section VI.B), international law also requires that States ensure that individuals enjoy the freedom to profess and practice their religion. In particular, under Article 18(1) of the ICCPR the U.S. must ensure the right to freedom of thought, conscience and religion, which includes, “freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching” and requires that, “No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice” (Article 18(2)). Further, under Article 5(d)(vii) of ICERD the U.S. must guarantee that individuals are not discriminated against on the basis of race, color, or national or ethnic origin, in their right to freedom of thought, conscience and religion.<sup>257</sup>

### ***2. Impact of profiling on the right to profess and practice one’s own religion***

Profiling in citizenship applications is part of a broader pattern of discrimination that has affected the rights of Muslims or those perceived to be Muslims to practice and manifest their religion. Since September 11, 2001, Muslims or those perceived to be Muslims harbor a general fear of being profiled (including by members of the public) as well as a specific fear of the impact of such profiling on their immigration status.

In response to these fears, many Muslim immigrants, or those perceived to be Muslims (such as members of the Sikh community)<sup>258</sup> have felt compelled to mitigate how they practice and manifest their religion through altering their physical appearance or dress, curtailing public prayer or worship, and even by changing their name—the very hallmark of their religious and cultural identity. The source of these fears for the Sikh community was explained to CHRGI by Amardeep Singh, Executive Director of the Sikh Coalition,<sup>259</sup> as follows: “Our articles of faith and our national origin have made us suspect—both for private and public actors. Our primary article of faith, the turban, is identified in this country with terrorism.”<sup>260</sup> It has further been argued that surveillance or infiltration of mosques, are likely to have a chilling effect on the activities of Muslims and will stigmatize those who openly practice their faith.<sup>261</sup>

The link between profiling in citizenship applications and limits on the freedom of religion is most apparent in relation to name changes. For example, Tariq, a Muslim man in the U.S., felt compelled to change his name to Terry shortly after the events of September 11, 2001, citing how people would change their demeanor when they learned of his Muslim name.<sup>262</sup> A San Diego man changed his name from Mohammed to Michael, and on the name change form cited “[s]tereotype, discrimination and prejudice against my name” as his reasons for the change.<sup>263</sup> A New York immigration lawyer noted that many people wanted to change their names after September 11, 2001 in order to avoid being arbitrarily pulled into the government’s investigation and detention scheme.<sup>264</sup> Cyrus Mehta, founder and managing attorney of Cyrus D. Mehta & Associates, P.L.L.C.<sup>265</sup> similarly confirmed in an interview with CHRGI that “People who have names that just sound Muslim feel vulnerable—they ask me ‘what will happen to me? How will I be treated?’”<sup>266</sup>

### **C. Infringements of economic, social and cultural rights, particularly the right to health**

#### ***1. Economic, social and cultural rights, particularly the right to public health, medical care, social security and social services***

As mentioned above in Section VI.A, while the U.S. has not ratified the International Covenant on Economic, Social and Cultural Rights it nonetheless has specific obligations under ICERD (which it has ratified) to guarantee equality in the enjoyment of economic, social and cultural rights. In particular, Article 5(e)(iv) of ICERD specifically requires that the U.S. ensure equality in the right to public health, medical care, social security and social services.

#### ***2. Impact of profiling on equality in the right to public health, medical care, social security and social services and related rights***

Delays in acquiring citizenship affect the ability of naturalization applicants to receive welfare benefits, and in turn their access to healthcare and food. Medicare benefits are available to non-citizens once they have resided in the U.S. for five years after lawful admission for permanent residence.<sup>267</sup> The 1996 Welfare Act<sup>268</sup> increased restrictions on non-citizens’ eligibility for welfare benefits,<sup>269</sup> distinguishing between qualified immigrants who arrived in the U.S. before and after August 22, 1996.<sup>270</sup> Qualified immigrants who arrived prior to August 22, 1996 remain eligible for Supplemental Security Income (SSI) and food stamps,<sup>271</sup> but states have

discretion in giving them Temporary Assistance for Needy Families (TANF), Medicaid, and state or local public benefits.<sup>272</sup> Qualified immigrants arriving after August 22, 1996 are ineligible for SSI and food stamps unless they meet an exemption<sup>273</sup> (such as having at least 40 quarters of work,<sup>274</sup> qualifying for the military exemption,<sup>275</sup> or being a refugee or asylee<sup>276</sup>), and they are completely barred from receiving Medicaid and TANF for the first five years, with the state having the option of granting state and local public benefits.<sup>277</sup>

Some immigrants—those who entered the U.S. as refugees or in a refugee-like immigration status—are eligible for SSI benefits, but have a seven-year limit on receipt of SSI benefits.<sup>278</sup> Laura Burdick, Senior Immigration Specialist, CLINIC,<sup>279</sup> told CHRGJ, “We see that elderly refugees are affected. Some of them are Arab and Muslim, and they get caught in the backlog. They only have seven years eligibility for supplemental security income, and they could lose it if they don’t get their citizenship.”<sup>280</sup> Indeed, some immigrants have lost their SSI benefits as a result of citizenship delay. For example, Adil Rikabi is an Iraqi refugee with a physical disability who arrived in the U.S. in 1998.<sup>281</sup> In 2004 he applied for citizenship but as of March 2007 was still waiting to naturalize.<sup>282</sup> As a result, Rikabi lost the SSI benefits he had been receiving for his disability<sup>283</sup> as these benefits are only available to non-citizens for the first seven years after they enter the country.<sup>284</sup> Speaking on this issue, Laura Burdick told CHRGJ, “More broadly, Congress needs to de-link benefits from citizenship, especially for refugees, so that people aren’t dependent upon getting their citizenship to maintain benefits.”<sup>285</sup>

Some of the rights that are intertwined with the right to health, such as the right to food, are also negatively affected through delays in the citizenship process. Although the Farm Security and Rural Investment Act of 2002 restored food-stamp eligibility for legal permanent residents living in qualified status in the U.S. for at least five years,<sup>286</sup> legal permanent residents remain concerned about the negative impact of receiving food stamps on their naturalization applications and their ability to sponsor relatives.<sup>287</sup> Some also fear deportation of undocumented family members due to receipt of food stamps.<sup>288</sup> Despite the declaration by federal agencies that receipt of food stamps does not trigger “public charge”<sup>289</sup> determinations or in any way affect naturalization applications, applicants continue to believe that receipt of food stamps will have a negative effect on their applications.<sup>290</sup> Misinformation within immigrant communities, immigration lawyers’ preferences for their applicants to have “clean record” cases, general anxiety among immigrants about dealing with government agencies, and rumors about “public charge” cases contribute to naturalization applicants’ reluctance to receive food stamps despite their eligibility.<sup>291</sup> Furthermore, food stamp offices in some states, such as California and Texas, require fingerprinting, which aggravates naturalization applicants’ fears about receiving food stamps.<sup>292</sup>

## IX. Concluding Observations and Recommendations

### A. Concluding Observations

The name check procedure that inheres in the processing of all naturalization applications can be a potentially indefinite one for the profiled group, and is a manifestation of the influence of counter-terrorism policy on immigration law. These procedures problematically invite heightened scrutiny for individuals on the basis of their name, gender, religion, national origin, or some combination thereof. The effect of these delays is both discriminatory and illegal under international law. Additionally, undue delays in background checks are both inefficient and ineffective, suggesting their lack of utility as a counter-terrorism strategy.

Profiling on the basis of race, religion, ethnicity, or national origin cannot be considered a reliable substitute for real intelligence work. It does not make us safer, and in turn engenders fear and insecurity and helps institutionalize discriminatory and prejudicial behavior in the public and private spheres. As the U.S. increasingly turns its attention to what it perceives to be “homegrown” terrorist threats, such profiling, and resulting human rights violations, may continue to worsen and may increasingly prove to be counterproductive. Key policy interventions are needed now to reverse this dangerous trend.

### B. Recommendations

The United States must live up to its international human rights obligations and its democratic ideals and end discrimination and undue delays in the naturalization process. As a first step, the government should investigate the extent of the problem and scrutinize the discriminatory and faulty logic inherent to the name check process. It must then take swift, decisive, and multi-pronged governmental action to effectively address the problem. In general, the government must ensure greater investment in real intelligence work, and desist and denounce strategies that are based on discriminatory profiling of any kind. In particular, the Center for Human Rights and Global Justice urges the U.S. government to:

- Ensure that decisions on naturalization applications are made within 120 days of examination, as required by law. USCIS’ attempts to circumvent this law by ordering offices not to schedule interviews until security clearances are completed should be investigated and proscribed.
- Ensure that the overall naturalization application process is completed within USCIS’ stated six-month goal.

In order to address the current backlog of citizenship applications, the U.S. government should:

- Institute greater reporting requirements for USCIS and DHS on the extent of, and reasons behind, citizenship delays:
  - Accurate and reliable documentation and reporting of the problem should include periodic reporting requirements for USCIS and DHS on the number of applications denied, granted, postponed, and continued each year.
    - Statistics should be disaggregated by race, ethnicity, national origin, and gender. Ensure that Middle Easterners, who are currently classified as “white,” are classified as a distinct racial group and disaggregated in statistical reporting.
    - Statistics should be analyzed according to duration between the initial application, the final decision, and all significant points in between.
  - Additionally, there must be detailed reporting on all aspects of immigration and naturalization processes by the Government Accountability Office, and regular public investigations into these processes by the Office of the Inspector General.
- Institute Congressional oversight hearings into key issues affecting the citizenship process, including but not limited to:
  - The basis for heightened scrutiny in the name check process and its legality under U.S. and international law.
  - A review of the functioning of USCIS and the FBI with respect to citizenship applications (including whether additional resources in the form of funding or staffing is needed to alleviate the delays).
- Introduce institutional changes within relevant government agencies to increase transparency and resolve complaints:
  - USCIS should implement an effective and transparent system for inquiries and complaints, which provides actual and substantive information about the status of pending cases.

In order to break the cycle of public and private acts of discriminatory profiling the U.S. government should:

- Introduce anti-discrimination training for USCIS and FBI officials, and other law enforcement officials:
  - Greater training for government officials is needed to ensure that the prohibition on discrimination applies to the naturalization process and to counter-terrorism operations generally.
  - The government should also mainstream issues of citizenship access into human rights reporting mechanisms as well as domestic governmental reporting mechanisms.

- End discriminatory public and private profiling in the “war on terror:”
  - Ensure greater public education about the human rights implications of discriminatory profiling and citizenship delays.
  - Hate crimes against members of the profiled must be swiftly prosecuted and the government should make clear that discrimination on the grounds of religion, race, ethnicity, national origin, and gender are strictly prohibited under law.

Citizenship delays are not mere bureaucratic inconveniences: they are the result of invidious and ineffective policies that profoundly affect the lives of thousands of families nationwide. The conflation of immigration and counter-terrorism policies has resulted in a name check dragnet that is breaking up families, engendering fear and insecurity, and disenfranchising communities as a whole. The U.S. government’s vital national security goals can and must be pursued in compliance with its human rights obligations. Additionally, and as noted above, it is an equally legitimate and important societal goal that States manage to successfully balance counter-terrorism measures with the human rights protections by which they are bound.

## Appendix: Selected Narratives of Americans “on Hold”

### Naturalization Applicant F<sup>293</sup>

I’m from Pakistan. I came to this country in 1999, and after 4 years [in 2003], we applied for citizenship. We are four people—my two sons, my wife, and me. We all applied the same day. They gave citizenship to my two sons the same day. After 8 months, then they gave citizenship to my wife. And they still haven’t given citizenship to me. Two years I’ve been waiting. I passed my citizenship interview, but they still haven’t called me for my oath. We contacted with them, they gave us one letter.

My problem is that I’m the guardian of the family. I have two sons here and two are still in Pakistan. My wife is a diabetes patient – she is always weeping for them. [They can’t come until I can sponsor them as a citizen].

They only have two words for us: “security check.” That’s it.

We are here legally. Why are they doing this to us? I’ve given them every information about me.

My problem is my family is divided. This isn’t about my life—it’s their life. They are starting their life. We want the whole family to stay together—that’s better. We’re waiting everyday. We check the mailbox. For two years, every day I check the mailbox. If we are bad people, don’t do this to us—send us back. If we are good people, let us stay here with our family together.

When the President passes a law, nobody can challenge him—even the Supreme Court. I feel like I’m in the dark now because the President is not in favor of immigration.

They are the landlords, we are the tenants. They say don’t touch this one, don’t touch that one. Whatever they say is right, and that’s it for us. They always say “Security check. Stop.” And that’s it. We’re the small bird, they’re the elephant. What can we do?

### **Naturalization Applicant A<sup>294</sup>**

In November 2001, I applied for naturalization and in November 2002 I received a letter informing me that I passed my interview and tests but that a decision could not yet been granted because of my background check. I had to have my fingerprints taken four separate times during the process. I continue to wait (4 years) for notice of my oath ceremony. I went to my congressman about the delay and have been informed that my application is pending because of my background check.

I don't have any family in the U.S., but my parents and brothers and sisters live in Pakistan. I want to sponsor my parents to come to the U.S. because they are old and sick. I also have unmarried brothers and sisters in Pakistan. I have had no problems with my employment or medical or health benefits.

I have been paying tax regularly for the last 9 years, and I have no criminal record. I don't understand why this is happening to me. Four years is too much time to be waiting for my citizenship.

I have had friends in the U.S. from Pakistan who have had the same problem as me. One friend from Pakistan received his citizenship after two years and another friend received his after one year. I have no criminal record and have never received any tickets or ever been arrested. I have traveled to Pakistan twice since applying for naturalization, in 2003 and 2005, and I was stopped for interrogation at the airport both times when returning to the U.S. and was questioned about how long I had stayed in Pakistan. Each time I was held for two hours at the airport.

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<sup>1</sup> Interview with Naturalization Applicant F, in Brooklyn, N.Y. (Jan. 26, 2007).

<sup>2</sup> Interview with Naturalization Applicant D, in N.Y., N.Y. (Oct. 27, 2006).

<sup>3</sup> Shelley Murphy, *Immigrants Suing to End Citizenship Delays*, BOSTON GLOBE, Dec. 17, 2005, at A14 (noting that delays have worsened since September 11, 2001 and that many immigrants and immigration lawyers believe that Middle Easterners and Muslims “face more scrutiny and are more likely to face delays than other immigrants seeking citizenship”).

<sup>4</sup> *Id.* (noting that lawsuits brought in Massachusetts in 2005 to expedite citizenship applications were “brought by immigrants from many different countries, including Russia, China, Colombia, Brazil, India, Nigeria, Jordan, Iran, and Turkey”).

<sup>5</sup> The project’s investigation found that 69 percent of respondents reported incidents of perceived discrimination or bias-related harassment, while 79 percent felt that their lives had been negatively affected by the events of September 11, 2001. N.Y.C. COMM’N ON HUMAN RIGHTS, DISCRIMINATION AGAINST MUSLIMS, ARABS, AND SOUTH ASIANS IN NEW YORK CITY SINCE 9/11, i–iv, 9, 14 (2003), available at [http://www.nyc.gov/html/cchr/pdf/sur\\_report.pdf](http://www.nyc.gov/html/cchr/pdf/sur_report.pdf).

<sup>6</sup> Council on American-Islamic Relations (CAIR) – Chicago, Our News, Citizenship Delay Project Update (Dec. 16, 2005), available at [http://www.cairchicago.org/ournews.php?file=on\\_citizenshipdelay12162005](http://www.cairchicago.org/ournews.php?file=on_citizenshipdelay12162005).

<sup>7</sup> Names of individual naturalization applicants have been withheld. When quoted in the report, these individuals are designated by letter.

<sup>8</sup> See, e.g., CENTER FOR HUMAN RIGHTS AND GLOBAL JUSTICE, NYU SCHOOL OF LAW, IRREVERSIBLE CONSEQUENCES: RACIAL PROFILING AND LETHAL FORCE IN THE “WAR ON TERROR” 18 (2006), available at <http://www.chrgj.org/docs/CHRGJ%20Irreversible%20Consequences%20June%202006.pdf> [hereinafter IRREVERSIBLE CONSEQUENCES] (noting that “Profiling of Arabs, Muslims, and South Asians has increased dramatically in the U.S. and elsewhere since the events of September 11, 2001, with widespread reports of prejudice, harassment and attacks. For example, Arabs, Muslims, and South Asians (or those perceived to be Arab, Muslim or South Asian) have been subject to stops and searches while driving, flying, traveling through airports and even while praying”); AMNESTY INT’L, THREAT AND HUMILIATION: RACIAL PROFILING, DOMESTIC SECURITY AND HUMAN RIGHTS IN THE UNITED STATES 1–2 (2004), available at [http://www.amnestyusa.org/racial\\_profiling/report/tp\\_report.pdf](http://www.amnestyusa.org/racial_profiling/report/tp_report.pdf) (noting expansion in number of groups frequently targeted by racial profiling).

<sup>9</sup> Karen C. Tumlin, *Suspect First: How Terrorism Policy is Reshaping Immigration Policy*, 92 CAL. L. REV. 1173, 1177, 1227–37 (2004) (noting the need to “assess the spillover effects that terrorism policy is having on our national immigrant and immigration policy as well as on immigrants—both those here and those waiting to come” and analyzing how terrorism policy has concretely shaped immigration and immigration policy since September 11, 2001).

<sup>10</sup> IRREVERSIBLE CONSEQUENCES, *supra* note 8, at 19 (citing Margaret Chon & Donna E. Arzt, *Walking While Muslim*, 68 LAW & CONTEMP. PROBS. 215, 221–22 (2005)).

<sup>11</sup> *Id.* at 19 (citing Margaret Chon & Donna E. Arzt, *Walking While Muslim*, 68 LAW & CONTEMP. PROBS. 215, 216 (2005)).

<sup>12</sup> James A. Goldston, *Holes in the Rights Framework: Racial Discrimination, Citizenship, and the Rights of Noncitizens*, 20 ETHICS & INT’L AFF. 321, 328 (2006) (citing Olivier Roy, GLOBALIZED ISLAM: THE SEARCH FOR A NEW UMMAH 133 (2004)).

<sup>13</sup> IRREVERSIBLE CONSEQUENCES, *supra* note 8, at 18 (“[The terrorist] category has been described as a ‘complex matrix of ‘otherness’ based on race, national origin, religion, culture, and political ideology”) (citing Susan Akram & Kevin R. Johnson, *Race, Civil Rights, and Immigration Law After September 11, 2001: The Targeting of Arabs and Muslims*, 58 N.Y.U. ANN. SURV. AM. L. 295, 299 (2005)).

<sup>14</sup> See Muneer I. Ahmad, *A Rage Shared by Law: Post-September 11 Racial Violence as Crimes of Passion*, 92 CAL. L. REV. 1259, 1278 (2004) (explaining that the result of such reductive constructions “is

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to treat all people appearing to share a certain identity characteristic as fungible with some object—real or imagined—of suspicion.”).

<sup>15</sup> See *id.* at 1278 (explaining that the “Muslim-looking” construct is predominantly race-, rather than religion- or content-, based); see also IRREVERSIBLE CONSEQUENCES, *supra* note 8, at 51 n.130.

<sup>16</sup> IRREVERSIBLE CONSEQUENCES, *supra* note 8, at 19 (citing Margaret Chon & Donna E. Arzt, *Walking While Muslim*, 68 LAW & CONTEMP. PROBS. 215, 222–23, 240 (2005)).

<sup>17</sup> CAIR, THE STATUS OF MUSLIM CIVIL RIGHTS IN AMERICA 2002: STEREOTYPES AND CIVIL LIBERTIES, EXECUTIVE SUMMARY (2002), available at <http://www.cair.com/asp/execsum2002.asp>.

<sup>18</sup> Jason A. Abel, *Americans Under Attack: The Need for Federal Hate Crime Legislation in Light of Post-September 11 Attacks on Arab Americans and Muslims*, 12 ASIAN L. J. 41, 61 (2005). See also Chrystie Flournoy Swiney, *Racial Profiling of Arabs and Muslims in the US: Historical, Empirical, and Legal Analysis Applied to the War on Terrorism*, 3 MUSLIM WORLD J. HUM. RIGHTS 1, 5 (2006).

<sup>19</sup> Michelle Boorstein, *Surge in Anti-Muslim Incidents Reported*, WASH. POST, at B03 (Sept. 19, 2006). See also Flournoy Swiney, *supra* note 18, at 5.

<sup>20</sup> Flávia R. da Silva-Benson, *New United States Immigration Policies and How the Curtailment of Student Visas Will Affect the Interests of Diversity in American Society*, 38 NEW ENG. L. REV. 807, 810–11 (2004).

<sup>21</sup> See, e.g., IRREVERSIBLE CONSEQUENCES, *supra* note 8, at 12.

<sup>22</sup> *Id.* at 5. As proxies for racial, ethnic, and religious profiling, these behavioral indicators disproportionately target the profiled group. See *id.* at 6.

<sup>23</sup> *Id.* at 18; see also Flournoy Swiney, *supra* note 18, at 17–19 (detailing post-9/11 Special Registration program implemented through the National Security Entry Exit Registration System).

<sup>24</sup> See, e.g., Mary Beth Sheridan, *Immigration Law as Anti-Terrorism Tool*, WASH. POST, June 13, 2005, at A01; John Ryan, *Lodi’s Trumped-Up Terrorists*, LA WEEKLY, Mar. 3, 2006, at 18; *Feds Won’t Say Why They Raided Three Stores*, ASSOC. PRESS STATE & LOCAL WIRE, Feb. 16, 2005.

<sup>25</sup> Telephone Interview with Aarti Shahani, Co-Founder and Co-Director, Families for Freedom, in Brooklyn, N.Y. (Mar. 8, 2007). Families for Freedom is a New York-based multi-ethnic defense network with the primary goal of assisting immigrants who are facing and fighting deportation. Families for Freedom, <http://www.familiesforfreedom.org/> (last visited Apr. 14, 2007).

<sup>26</sup> Tumlin, *supra* note 9, at 1184.

<sup>27</sup> In addition to special registration requirements, these policies included the following: arrests and detentions immediately after the events of September 11, 2001; the Department of Justice’s “voluntary interview” program for men between the ages of eighteen and thirty-three who entered the country on nonimmigrant visas and were from countries with “al Qaeda presences;” Operation Liberty Shield, which allowed immediate detention for asylum seekers fleeing persecution in one of thirty-four “al Qaeda” nations; and the Absconder Apprehension Initiative, which focused on “Muslim” nations and allowed the deportation of a select group of undocumented immigrants with final deportation orders. See Tumlin, *supra* note 9, at 1186–1192 (explaining these policies in detail). For further information on the post-September 11, 2001 national security measures targeting Arabs and Muslims, see generally Stephen H. Legomsky, *The Ethnic and Religious Profiling of Noncitizens: National Security and International Human Rights*, 25 B.C. THIRD WORLD L.J. 161 (2005) (arguing that national security measures in the area of immigration target Arabs and Muslims through policies of detention, intelligence-gathering, expanding the substantive criteria for removing non-citizens, contracting procedural rights, tightening visa and other overseas policies, and upgrading apprehensions and inspections at ports of entry). See also Flournoy Swiney, *supra* note 18, at 14–20 (discussing secret detentions, the “voluntary” interview initiative, Absconders Apprehension Initiative, special registration, and the “Flying While Arab” phenomenon as elements of the government’s use of racial profiling as official government policy in the “War on Terrorism”).

<sup>28</sup> See Tumlin, *supra* note 9, at 1184 (“Immigration-plus profiling conflates nationality with religion and targets immigrants from nations with sizable Muslim populations for selective enforcement of

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immigration laws. In other words, immigration status combined with a presumed Muslim identity serves as a proxy for terrorism danger . . .”).

<sup>29</sup> IRREVERSIBLE CONSEQUENCES, *supra* note 8, at 48.

<sup>30</sup> *Id.* at 49 n.104 (citing *Oversight Hearing on the Reauthorization of the PATRIOT Act Before the House Judiciary Committee*, 108th Cong. 6 (2005) (statement of Carlina Tapia Ruano, First Vice President, Am. Immigr. Lawyers Ass’n), available at <http://www.aila.org/content/default.aspx?docid=16686>).

<sup>31</sup> *Id.* See also Flournoy Swiney, *supra* note 18, at 17–18 (describing special registration program and asserting that “not a single one of the individuals detained for failing to comply with an NSEER requirement have been publicly charged with terrorism.”).

<sup>32</sup> Goldston, *supra* note 12, at 331 (citing Daniel Benjamin & Steven Simon, *David Cole, Are We Safer?*, N.Y. REV. BOOKS (Mar. 9, 2006); MIGRATION POL’Y INST., AMERICA’S CHALLENGE: DOMESTIC SECURITY, CIVIL LIBERTIES AND NATIONAL UNITY AFTER SEPTEMBER 11 8 (2003).

<sup>33</sup> See Homeland Security Act of 2002, Pub. L. No. 107-296, § 471, 116 Stat. 2135, 2205 (to be codified at 6 U.S.C. § 291(a)); 8 U.S.C.A. § 1103(a)(1) (West 2007).

<sup>34</sup> The authority and responsibility to administer and enforce all laws pertaining to immigration, including the adjudication of naturalization applications, was transferred from the Commissioner of the INS to the Director of USCIS. See Homeland Security Act of 2002 § 451(a)(3) (to be codified at 6 U.S.C. § 271(b)(2)); 8 U.S.C.A. § 1103(a)(1).

<sup>35</sup> Tumlin, *supra* note 9, at 1179.

<sup>36</sup> HANNAH GLADSTEIN ET AL., MIGRATION POL’Y INST., BLURRING THE LINES: A PROFILE OF STATE AND LOCAL POLICE ENFORCEMENT OF IMMIGRATION LAW USING THE NATIONAL CRIME INFORMATION CENTER DATABASE, 2002–2004 3 (2005), available at [http://www.migrationpolicy.org/pubs/MPI\\_report\\_Blurring\\_the\\_Lines\\_120805.pdf](http://www.migrationpolicy.org/pubs/MPI_report_Blurring_the_Lines_120805.pdf).

<sup>37</sup> The term “lawfully admitted for permanent residence” means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed. 8 U.S.C. § 1101(a)(20) (2000).

<sup>38</sup> 8 U.S.C. § 1427 (a)–(b) (2000).

<sup>39</sup> 8 U.S.C. § 1445 (2000); U.S. CITIZENSHIP & IMMIGRATION SERVICES, A GUIDE TO NATURALIZATION 34 (2007), available at <http://www.uscis.gov/files/article/M-476.pdf> [hereinafter A GUIDE TO NATURALIZATION].

<sup>40</sup> 8 U.S.C. § 1446(a) (2000); 8 C.F.R. § 335.1–335.2 (2006). See OFFICE OF INSPECTOR GENERAL, U.S. DEP’T OF HOMELAND SECURITY, A REVIEW OF U.S. CITIZENSHIP AND IMMIGRATION SERVICES’ ALIEN SECURITY CHECKS 3–4 (2005), available at [http://www.dhs.gov/xoig/assets/mgmt/rpts/OIG\\_06-06\\_Nov05.pdf](http://www.dhs.gov/xoig/assets/mgmt/rpts/OIG_06-06_Nov05.pdf) [hereinafter ALIEN SECURITY CHECKS].

<sup>41</sup> 8 USC 1446(b) (2006). A GUIDE TO NATURALIZATION, *supra* note 39, at 26, 27, 31, 37.

<sup>42</sup> A GUIDE TO NATURALIZATION, *supra* note 39, at 37–39.

<sup>43</sup> *Id.* at 39.

<sup>44</sup> *Id.* at 37.

<sup>45</sup> 8 U.S.C. § 1447 (2000); A GUIDE TO NATURALIZATION, *supra* note 39, at 12.

<sup>46</sup> 8 U.S.C. § 1421 (2000).

<sup>47</sup> *Id.*

<sup>48</sup> A GUIDE TO NATURALIZATION, *supra* note 39, at 12.

<sup>49</sup> 8 C.F.R. § 335.3 (2006).

<sup>50</sup> 8 U.S.C. § 1446(d) (2000); A GUIDE TO NATURALIZATION, *supra* note 39, at 37.

<sup>51</sup> 8 U.S.C. § 1447(b) (2000).

<sup>52</sup> 8 U.S.C. § 1447(b) (2000).

<sup>53</sup> See *Danilov v. Aguirre*, 370 F.Supp. 2d 441 (E.D. Va. 2005); *Kassem v. DHS*, 06 Civ. 1010, 2006 U.S. Dist. LEXIS 74516 (D.N.J. Oct. 13, 2006); *Damra v. Chertoff*, 05 Civ. 929, 2006 U.S. Dist. LEXIS 45563 (N.D. Ohio 2006); *Abdelkhaleq v. BCIS Dist. Dir.*, 06 Civ. 427, 2006 U.S. Dist. LEXIS 50949 (N.D. Ind. 2006).

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<sup>54</sup> See, e.g., *U.S.A. v. Hovsepian*, 359 F.3d 1144, 1161-62 (9th Cir. 2004); *Khan v. Chertoff*, No. CV-05-0056, 2006 U.S. Dist. LEXIS 48937 at \*4 (D. Ariz. Jul. 14, 2006); *Khelifa v. Chertoff*, 433 F. Supp. 2d 836, 841 (E.D. Mich. 2006); *Meyersiek v. U.S. Citizenship & Immigration Serv.*, No. CA-05-398, 2006 U.S. Dist. LEXIS 37255 at \*5-6 (D.R.I. June 6, 2006); *Al Kudsi v. Gonzalez*, 05 Civ. 1584 (D. Ore. Mar. 22, 2006 (unpublished)); *Zhang v. Chertoff*, 05 Civ. 72121, 2006 U.S. Dist. LEXIS 45313 (E.D. Mich. Feb. 1, 2006); *Shalan v. Chertoff*, No. 05-10980-RWS, 2006 U.S. Dist. LEXIS 82795, at \*9 (D. Mass. Nov. 14, 2006); *El-Daour v. Chertoff*, 417 F. Supp. 2d 679, 680 (W.D. Pa. 2005).

<sup>55</sup> “Background Checks and Naturalization Interview Scheduling,” USCIS Interoffice Memorandum from Michael Aytes, Acting Associate Director, Domestic Operations (Apr. 25, 2006), available at <http://www.bibdaily.com/pdfs/Aytes%204-25-06%20background%20checks.pdf>. See also Nina Bernstein, *A Shorter Path to Citizenship, But Not for All*, N.Y. TIMES, Oct. 23, 2006, at B1.

<sup>56</sup> Interview with Naturalization Applicant E, in N.Y., N.Y. (Jan. 26, 2007).

<sup>57</sup> 8 U.S.C. §1571(b) (2000).

<sup>58</sup> See A GUIDE TO NATURALIZATION, *supra* note 39, at 12.

<sup>59</sup> The FOIA request asked for the following information: the state of residence of the applicant when the application was filed; the country of origin or asserted citizenship of each applicant; age, gender and stated religious belief of the applicant; the number of times the USCIS Interview and USCIS English and Civics Tests were taken; the date(s) such tests and interviews were conducted; the dates on which the interview and related tests were passed; the USCIS Officer who administered them; the USCIS office charged with reviewing the application; the number, if any, of subsidiary applicants; the status of those citizenship applications – including those who have had citizenship granted; and the date the applicant was informed to take the oath of citizenship, if such a date has been provided. It also requested—if it were known or could be calculated—the calculation of the number of days between the date the applicant passed the USCIS Interview and related tests and the date the applicant took the oath of citizenship or, if no oath had yet been taken, between the date the applicant passed the USCIS interview and related tests and the date the information was provided in response to this FOIA request. Complaint for Naturalization and Other Relief at ¶ 25, *Alsamman v. Gonzalez*, No. 06 Civ. 2518 (N.D. Ill. May 2, 2006). Note that in its initial response to the FOIA requests, USCIS stated that it “did not locate” any records responsive to the request. (Letter from Ave M. Sloan, U.S. Dep’t of Homeland Sec., Chief of FOIA Unit, to Suzanne Adely, Arab American Action Network (AAAN) (Sept. 29, 2005)).

<sup>60</sup> Second Amended Complaint for Naturalization and Other Relief at ¶ 38, *Alsamman v. Gonzalez*, *sub nom.* *Alwatik v. Gonzalez*, No. 06 Civ. 2518 (N.D. Ill. Jan. 26, 2007).

<sup>61</sup> *Id.* at ¶ 37.

<sup>62</sup> *Id.* at ¶ 38.

<sup>63</sup> *Id.* at ¶ 39.

<sup>64</sup> *Id.*

<sup>65</sup> See Mary Beth Sheridan, *Some Would-Be Citizens Languish For Years in Security-Check Limbo*, WASH. POST, Feb. 7, 2005, at B01.

<sup>66</sup> Second Amended Complaint for Naturalization and Other Relief at ¶ 40, *Alsamman v. Gonzalez*, *sub nom.* *Alwatik v. Gonzalez*, No. 06 Civ. 2518 (N.D. Ill. Jan. 26, 2007).

<sup>67</sup> *Id.* at ¶ 41.

<sup>68</sup> Leslie Casimir, *Arab-sounding immig? Wait, 1,001 nites*, N.Y. DAILY NEWS, May 28, 2006, at 29.

<sup>69</sup> *Id.*

<sup>70</sup> See, e.g., Pamela Manson, *Citizenship application delays snag trigger lawsuit by Catholic Community Services*, SALT LAKE TRIB., Apr. 12, 2007 (stating that 13 men and 10 women from Iraq, Somalia, Afghanistan, Vietnam and Mexico filed suit in the U.S. District Court of Utah to obtain a decision on their naturalization applications); John Iwasaki, *‘At my age, the day they give it to me, I’ll probably be dead,’ Delays frustrate citizens-in-waiting; background checks stall many immigrants’ applications*, SEATTLE POST-INTELLIGENCER, Mar. 27, 2007, at A1; Michele Marcucci, *Immigrants sue feds to end citizenship delays*, OAKLAND TRIB, Feb. 9, 2007, at 1; Stephen Deere, *50 Bosnians become citizens at*

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last, ST. LOUIS POST-DISPATCH, Dec. 30, 2006, at A10; *Immigrants waiting to take citizenship oath face prolonged delays; NYLAG files federal class action to compel USCIS*, U.S. NEWSWIRE, July 5, 2006, at 1; Dina Gerdeman, *Quincy man's citizenship bid delayed*, THE PATRIOT LEDGER, Jan 7, 2005, at 11; Sheridan, *supra* note 65.

<sup>71</sup> Citizenship Promotion Act of 2007, H.R. 1379, 110th Cong. (2007), available at [http://thomas.loc.gov/cgi-bin/query/z?c110:H.R.1379](http://thomas.loc.gov/cgi-bin/query/z?c110:H.R.1379;); Citizenship Promotion Act of 2007, S. 795, 110<sup>th</sup> Cong. (2007), available at <http://thomas.loc.gov/cgi-bin/bdquery/z?d110:s795>.

<sup>72</sup> In particular, the Act mandates that the Comptroller General conduct a study on the process used in the background checks and to report annually to Congress on the number, types, time spent on, and obstacles to completion of background checks. Furthermore, the Act states that a reasonable effort must be made to complete background checks within 91 days and in cases extending to 181 days, a report must be made to the appropriate congressional committee and the Secretary of Homeland Security, which must be made available to the naturalization applicant, on the reason for the delay and the earliest date by which the background check will be completed. Citizenship Promotion Act of 2007, H.R. 1379, 110th Cong. (2007), available at <http://thomas.loc.gov/cgi-bin/query/z?c110:H.R.1379>.

<sup>73</sup> Interview with Naturalization Applicant D, in N.Y., N.Y (Oct. 27, 2006).

<sup>74</sup> ALIEN SECURITY CHECKS, *supra* note 40, at 3-4.

<sup>75</sup> *Id.* at 6.

<sup>76</sup> *See supra* note 40.

<sup>77</sup> ALIEN SECURITY CHECKS, *supra* note 40, at 3.

<sup>78</sup> *See* Interagency Border Inspection System (IBIS) Fact Sheet – CBP.gov, [http://www.cbp.gov/xp/cgov/travel/inspections\\_carriers\\_facilities/ibis.xml](http://www.cbp.gov/xp/cgov/travel/inspections_carriers_facilities/ibis.xml) (last visited Apr. 14, 2007).

<sup>79</sup> Lookout entries are generated when an agency determines that an alien may be inadmissible into the United States, or may be of interest to a law enforcement agency. Reasons for posting a lookout include immigration or visa violations, alien smuggling, suspected criminal activity or actual convictions, and suspected terrorist affiliations. HOMELAND SECURITY GROUP, HOMELAND SECURITY REPORT No. 146 5 (2005), available at <http://www.mipt.org/pdf/hsr146.pdf>.

<sup>80</sup> “Wants” refer to persons listed on the Wanted Persons file of the National Crime Information Center. OFFICE OF INSPECTOR GENERAL, U.S. DEP’T OF JUSTICE, OIG EVALUATION AND INSPECTIONS REPORT I-2005-001: FOLLOW UP REVIEW OF STATUS OF IDENT/IAFIS INTEGRATION (2004), available at <http://www.usdoj.gov/oig/reports/plus/e0501/intro.htm>.

<sup>81</sup> ALIEN SECURITY CHECKS, *supra* note 40, at 3.

<sup>82</sup> *See* IBIS Fact Sheet, *supra* note 78.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *See The Post-9/11 Visa Reforms and New Technology: Achieving the Necessary Security Improvements in a Global Environment: Hearing Before the Subcomm. on Int’l Operations and Terrorism of the S. Comm. on Foreign Relations*, 103th Cong. (2003) (statement of David Hardy, Acting Assistant Director, Records Mgmt. Div., Federal Bureau of Investigation), available at <http://www.fbi.gov/congress/congress03/hardy102303.htm> [hereinafter Statement of David Hardy]; Federal Bureau of Investigation, National Name Check Program, available at <http://www.fbi.gov/hq/nationalnamecheck.htm> (last visited Apr. 14, 2007) [hereinafter FBI National Name Check Program]; Federal Bureau of Investigation, National Name Check Program: Frequently Asked Questions, available at <http://www.fbi.gov/page2/nationalnamecheck.htm> (last visited Apr. 14, 2007) [hereinafter FBI National Name Check Program: FAQ].

<sup>88</sup> Data is submitted to the FBI on magnetic tapes, which the FBI can then read electronically. *See, e.g.*, CRIMINAL JUSTICE INFORMATION SERVICES, U.S. DEP’T OF JUSTICE, HATE CRIME DATA COLLECTION

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GUIDELINES 9 (rev. 1999), *available at* <http://www.fbi.gov/ucr/hatecrime.pdf>; FBI National Name Check Program: FAQ, *supra* note 87.

<sup>89</sup> *See supra* note 87.

<sup>90</sup> ALIEN SECURITY CHECKS, *supra* note 40, at 4. *See also* Memorandum of Law in Support of Defendants' Motion to Dismiss and in Opposition to Plaintiffs' Motion for Class Certification at 9, *Yakubova v. Chertoff*, No. CV-06-3203 (E.D.N.Y. Sep. 1, 2006).

<sup>91</sup> Second Amended Complaint for Naturalization and Other Relief at ¶ 48, *Alsamman v. Gonzalez, sub nom. Alwatik v. Gonzalez*, No. 06 Civ. 2518 (N.D. Ill. Jan. 26, 2007).

<sup>92</sup> *See supra* note 87. References may be associates, conspirators, witnesses, or victims whose names have been indexed for later retrieval. The names are searched in a multitude of combinations that switch the order of first, last, and middle names, or combine just the first and last names, first and middle names, and so on. It also searches different phonetic spelling variations of the names. Statement of David Hardy, *supra* note 87. *See also* Deborah Bulkeley, *Wrong name, a long wait?: FBI is still clearing Utah Muslims for citizenship*, DESERET MORNING NEWS, Nov. 13, 2006, *available at* <http://deseretnews.com/dn/view/0,1249,650206650,00.html> ("A person may be singled out if his name has surfaced in an investigation, either as a target of the investigation, associate or witness, FBI spokesman Paul Bresson said.").

<sup>93</sup> *See supra* note 87.

<sup>94</sup> *Id.* Duplicate submissions (i.e., identically spelled names with identical dates of birth submitted within the last 120 days) are not checked, and the duplicate findings are returned immediately to the submitting agency. Statement of David Hardy, *supra* note 87; FBI National Name Check Program: FAQ, *supra* note 87.

<sup>95</sup> Statement of David Hardy, *supra* note 87.

<sup>96</sup> *Id.*

<sup>97</sup> *See supra* note 87. These secondary name checks usually result in "No Records," with ten percent of them being identified as possibly being the subject of an FBI record. The "No Records" are sent back to USCIS, while the FBI records for the remaining names must be retrieved and reviewed. FBI National Name Check Program: FAQ, *supra* note 87.

<sup>98</sup> Statement of David Hardy, *supra* note 87.

<sup>99</sup> *Id.*; FBI National Name Check Program: FAQ, *supra* note 87.

<sup>100</sup> *See supra* note 87. If the information is not relevant to the request, the request is closed as a "No Record," and the requesting agency is notified accordingly. Statement of David Hardy, *supra* note 87; FBI National Name Check Program: FAQ, *supra* note 87.

<sup>101</sup> *See supra* note 87.

<sup>102</sup> *See supra* note 87.

<sup>103</sup> Jonah Owen Lamb, *Name-Check Game: Salt Lake County refugees caught in the maw of national security requirements want citizenship and will sue to get it*, SALT LAKE CITY WEEKLY, Mar. 29, 2007, *available at* [http://www.slweekly.com/editorial/2007/cityweek\\_1\\_2007-03-29.cfm](http://www.slweekly.com/editorial/2007/cityweek_1_2007-03-29.cfm).

<sup>104</sup> *See, e.g.*, Memorandum of Law in Support of Defendants' Motion to Dismiss and in Opposition to Plaintiffs' Motion for Class Certification at 8–9, *Yakubova v. Chertoff*, No. CV-06-3203 (E.D.N.Y. Sep. 1, 2006).

<sup>105</sup> *See* Supplemental Declaration of Michael A. Cannon at ¶ 18, *Yakubova v. Chertoff*, No. CV-06-3203 (E.D.N.Y. Aug. 31, 2006). *See also* Memorandum of Law in Support of Defendants' Motion to Dismiss and in Opposition to Plaintiffs' Motion for Class Certification at 9, *Yakubova v. Chertoff*, No. CV-06-3203 (E.D.N.Y. Sep. 1, 2006).

<sup>106</sup> *See* Supplemental Declaration of Michael A. Cannon at ¶ 18, *Yakubova v. Chertoff*, No. CV-06-3203 (E.D.N.Y. Aug. 31, 2006). *See* Memorandum of Law in Support of Defendants' Motion to Dismiss and in Opposition to Plaintiffs' Motion for Class Certification at 9, *Yakubova v. Chertoff*, No. CV-06-3203 (E.D.N.Y. Sep. 1, 2006). *See also* Becca MacLaren, *Waiting for the G-Men: Alia Ahmadi should have had her green card four years ago, but a lagging federal bureaucracy put her freedom on the back*

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burner, EAST BAY EXP., Apr. 11, 2007, available at <http://www.eastbayexpress.com/2007-04-11/news/waiting-for-the-g-men>. (citing Celia D. Wang, a senior staff attorney with the ACLU Immigrants' Rights Project stating that "[The name-check] is something they simply started doing. The government just started this mysterious and somewhat secret process.").

<sup>107</sup> Sheridan, *supra* note 65.

<sup>108</sup> *Id.* (internal quotation marks omitted).

<sup>109</sup> *Id.* (internal quotation marks omitted).

<sup>110</sup> FBI National Name Check Program: FAQ, *supra* note 87. If a file is stored locally, an analyst will be able to obtain the file within a matter of days. *Id.*

<sup>111</sup> CITIZENSHIP & IMMIGRATION SERVICES OMBUDSMAN, ANNUAL REPORT 2006 24 (2006), available at [http://www.dhs.gov/xlibrary/assets/CISombudsman\\_AnnualReport\\_2006.pdf](http://www.dhs.gov/xlibrary/assets/CISombudsman_AnnualReport_2006.pdf) [hereinafter CIS OMBUDSMAN ANNUAL REPORT 2006]. See also Second Amended Complaint for Naturalization and Other Relief at ¶ 49, *Alsamman v. Gonzalez, sub nom. Alwatik v. Gonzalez*, No. 06 Civ. 2518 (N.D. Ill. Jan. 26, 2007).

<sup>112</sup> CIS OMBUDSMAN ANNUAL REPORT 2006, *supra* note 111, at 24.

<sup>113</sup> DEP'T OF HOMELAND SECURITY, CIS OMBUDSMAN: PRIORITIES FOR FISCAL YEAR FY2007, available at [http://www.dhs.gov/xabout/structure/gc\\_1172359525682.shtm#4](http://www.dhs.gov/xabout/structure/gc_1172359525682.shtm#4).

<sup>114</sup> For example, Army Staff Sergeant Kennedy Osara from Kenya applied in December 2002 for citizenship and as of 2006 had been waiting for the FBI to complete his background check, but the FBI cannot comment or give more information on his case. Marisa Taylor, *Noncitizens in U.S. military face naturalization obstacles*, MCCLATCHY NEWSPAPERS, July 31, 2006.

<sup>115</sup> H.G. Reza, *For Citizenship Delayed, 10 Taking U.S. to Court*, L.A. TIMES, Aug. 1, 2006, at B1; Bernstein, *supra* note 55. See also Bulkeley, *supra* note 92.

<sup>116</sup> Casimir, *supra* note 68.

<sup>117</sup> Lamb, *supra* note 103.

<sup>118</sup> *Id.*

<sup>119</sup> Plaintiffs' Memorandum of Law in Opposition to Defendants' Motion to Dismiss the Complaint and in Further Support of Plaintiffs' Motion for Class Certification at 8, *Yakubova v. Chertoff*, No. 06 Civ. 3203 (E.D.N.Y. Sept. 26, 2006).

<sup>120</sup> "FBI Name Checks Policy and Process Clarification for Domestic Operations," Interoffice Memorandum from Michael L. Aytes, Associate Director, Domestic Operations, U.S. Citizenship & Immigration Services to Regional Directors, Service Center Directors, District Directors, Officers in Charge, National Benefit Center Director 5–6 (Dec. 21, 2006).

<sup>121</sup> Sheridan, *supra* note 65.

<sup>122</sup> MacLaren, *supra* note 106.

<sup>123</sup> *Id.*

<sup>124</sup> Laura Burdick, Senior Immigration Specialist, Catholic Legal Immigration Network, Inc. (CLINIC), noted,

One reason for the delay is that the FBI doesn't have the necessary resources to complete the checks in a timely manner. The other part of the equation is bureaucratic miscommunications between the FBI and DHS—the FBI says they've completed the check, and CIS says they haven't received a response. This is because CIS doesn't seem to have a system in place to follow up on pending applications. So people just wait and wait. And if they make inquiries about their cases, CIS will just look in the file and see that it's pending and they'll just say, 'It's still being checked. Wait.' There's no system in place to see if the FBI even got the application, so there's no way for them to know. The two main problems seem to be bureaucratic miscommunication and mismanagement.

Telephone Interview with Laura Burdick, Senior Immigration Specialist, Catholic Legal Immigration Network, Inc. (CLINIC), in Wash. D.C. (Feb. 14, 2007). Catholic Legal Immigration Network, Inc. (CLINIC) is a non-profit organization that functions as the national supporting agency to Catholic-based

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immigration programs around the U.S. CLINIC has the largest network of immigration agencies in the country and provides a range of service for charitable immigration services. Catholic Legal Immigration Network, Inc. (CLINIC), <http://cliniclegal.org/> (last visited Apr. 14, 2007).

<sup>125</sup> CITIZENSHIP & IMMIGRATION SERVICES OMBUDSMAN, ANNUAL REPORT 2004 5 (2004), *available at* [http://www.dhs.gov/xlibrary/assets/CISReport\\_to\\_Congress.pdf](http://www.dhs.gov/xlibrary/assets/CISReport_to_Congress.pdf) [hereinafter CIS OMBUDSMAN ANNUAL REPORT 2004].

<sup>126</sup> *Id.*

<sup>127</sup> Telephone Interview with Amardeep Singh, Executive Director, Sikh Coalition, in N.Y., N.Y. (Feb. 20, 2007). The Sikh Coalition is a nonprofit organization dedicated to protecting the civil and human rights of all people, with an emphasis on the Sikh community. The Sikh Coalition, <http://www.sikhcoalition.org> (last visited Apr. 14, 2007).

<sup>128</sup> Telephone Interview with Laura Burdick, Senior Immigration Specialist, Catholic Legal Immigration Network, Inc. (CLINIC), in Wash. D.C. (Feb. 14, 2007). *See* Catholic Legal Immigration Services, Inc. (CLINIC), *supra* note 124.

<sup>129</sup> *See A Bumpy Road to Citizenship*, WORLD J., Sept. 18, 2003 (Shasha Dai trans.), *available at* [http://www.gothamgazette.com/citizen/oct03/chinese\\_citizenship.shtml](http://www.gothamgazette.com/citizen/oct03/chinese_citizenship.shtml). *See* Murphy, *supra* note 3 (explaining the high number of lawsuits in Massachusetts in 2005, brought by immigrants from many different countries including Russia, China, Colombia, Brazil, India, Nigeria, Jordan, Iran, and Turkey); Alejandro Lazo, *Suing to secure citizenships; Immigrants' class-action suit claims FBI background checks take too long*, NEWSDAY, July 31, 2006, at A13; Bulkeley, *supra* note 92. Additionally, Laura Burdick, Senior Immigration Specialist, Catholic Legal Immigration Network, Inc. (CLINIC), stated that, although mostly Muslims and Arabs experience citizenship delays, many Latinos and Cubans have reported these delays as well. Telephone Interview with Laura Burdick, Senior Immigration Specialist, CLINIC, in Wash. D.C. (Oct. 31, 2006).

<sup>130</sup> Sheridan, *supra* note 65.

<sup>131</sup> CAIR – Chicago, Our News, CAIR-Chicago Meets with Several Local Organizations on Citizenship Delays (Dec. 9, 2005), *available at* [http://www.cairchicago.org/ournews.php?file=on\\_citizenshipdelay12092005](http://www.cairchicago.org/ournews.php?file=on_citizenshipdelay12092005) (noting the scrutiny when applicants come from countries formerly on the NSEERS list or have names similar to other individuals from these countries).

<sup>132</sup> James H. Johnson, Jr., *U.S. Immigration Reform, Homeland Security, and Global Economic Competitiveness in the Aftermath of the September 11, 2001 Terrorist Attacks*, 27 N.C. J. INT'L L. & COM. REG. 419, 420 (2002).

<sup>133</sup> Sheridan, *supra* note 65.

<sup>134</sup> *Id.*

<sup>135</sup> ALIEN SECURITY CHECKS, *supra* note 40, at 7 (also noting that “The effectiveness of name-based checks is further limited by how the checks are run. Because of the manual data entry involved in creating and searching the records, misspellings and typographical mistakes can skew results”).

<sup>136</sup> Sheridan, *supra* note 65.

<sup>137</sup> *See, e.g.*, CAIR – Chicago, *supra* note 6 (describing collaboration of CAIR-Chicago and the AAAN on this issue).

<sup>138</sup> Bulkeley, *supra* note 92; Casimir, *supra* note 68; Editorial, *Lawsuit could be good*, CONTRA COSTA TIMES, Aug. 9, 2006; H.G. Reza, *7 Muslims Win Citizenship Tussle; U.S. approves their applications. An ACLU lawsuit had objected to delays that lasted years*, L.A. TIMES, Oct. 6, 2006, at B5 (discussing one lawsuit that ended in settlement and a granting of citizenship to the Muslim applicants, where the government did not explain the reason for the delays or why the applications were approved so quickly after the filing of the suit).

<sup>139</sup> Sheridan, *supra* note 65.

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<sup>140</sup> This targeting of men mirrors that of the NSEERS program implemented in 2002, which required *male* non-citizens from 25 designated countries to specially register with the government. See Tumlin, *supra* note 9, at 1189; Legomsky, *supra* note 27, at 8-9.

<sup>141</sup> Interview with Naturalization Applicant F, in Brooklyn, N.Y. (Jan. 26, 2007).

<sup>142</sup> Interview with Naturalization Applicant C, in Brooklyn, N.Y. (Oct. 27, 2006).

<sup>143</sup> Interview with Naturalization Applicant Q, in Brooklyn, N.Y. (Nov. 17, 2006).

<sup>144</sup> Interview with Naturalization Applicant D, in N.Y., N.Y. (Oct. 27, 2006).

<sup>145</sup> Four different discourses of citizenship can be described as follows: citizenship as formal legal status, citizenship as rights, citizenship as political activity, and citizenship as identity. Linda Bosniak, *Citizenship Denationalized*, 7 IND. J. GLOBAL LEGAL STUD. 447, 456-88 (2000); see also Will Kymlicka & Wayne Norman, *Return of the Citizen: A Survey of Recent Work on Citizenship Theory*, 104 ETHICS 352, 353 (1994). In contrast to citizenship as formal legal status, citizenship as rights, and citizenship as political activity, which rely on the acquisition of citizenship through birth or naturalization, the legal entitlements necessary to achieve full membership in society, and political engagement in the community, respectively, as the bases for citizenship, citizenship as identity refers to the feeling of community membership, a psychological dimension of citizenship that describes the affective ties of identification and solidarity maintained with groups of other people. Charles L. Black, *The Unfinished Business of the Warren Court*, 46 WASH. L. REV. 3, 8-10 (1970); Linda Bosniak, *Citizenship Denationalized*, 7 IND. J. GLOBAL LEGAL STUD. 447, 480 (2000). Citizenship as identity refers to the feeling of membership in a community, the quality of belonging, which can also include a feeling of patriotism, an identification with and loyalty to one's country and "a strong citizen identification around a sense of common good." *Id.* at 481 (citing Charles Taylor, *Cross Purposes: The Liberal-Communitarian Debate*, in LIBERALISM AND THE MORAL LIFE, 170, 173 (Nancy L. Rosenblum ed., 1989)).

<sup>146</sup> U.S. CONST. amend. XV, § 1; U.S. CONST. amend. XIX. See Bulkeley, *supra* note 92 (documenting cases of non-citizens wishing to naturalize in order to vote. One stated: "We want to be citizens for elections, we want to be a different person, part of the United States.")

<sup>147</sup> Obtaining a U.S. passport requires proof of U.S. citizenship. U.S. DEP'T OF STATE BUREAU OF CONSULAR AFFAIRS, HOW TO APPLY IN PERSON FOR A PASSPORT, *available at* [http://travel.state.gov/passport/get/first/first\\_830.html](http://travel.state.gov/passport/get/first/first_830.html).

<sup>148</sup> 8 U.S.C. § 1151(a)(1), b(2)(A)(i) (2000); 8 U.S.C. § 1153(a) (2000).

<sup>149</sup> *The Slaughter-House Cases*, 83 U.S. 36, 80 (1873).

<sup>150</sup> Many federal benefits are conditioned on citizenship. Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("Welfare Reform Act"), Pub. L. No. 104-193, 110 Stat. 2105 (1997) (codified as amended in scattered sections of 42 U.S.C., 25 U.S.C., 21 U.S.C., 8 U.S.C., and 7 U.S.C.). See also Complaint at ¶¶ 5-6, *Yakubova v. Chertoff*, No. 06 Civ. 3203 (E.D.N.Y. Sept. 26, 2006).

<sup>151</sup> Nancy Morawetz is a Professor of Clinical Law at NYU School of Law. She is the supervising attorney for the Immigrant Rights Clinic and the Advanced Immigrants Rights Clinic, and has written extensively on immigration, government benefits, and class actions.

<sup>152</sup> Interview with Nancy Morawetz, Professor of Clinical Law, NYU School of Law, in N.Y., N.Y. (Mar. 7, 2007).

<sup>153</sup> COPO, the Council of People's Organization, is a non-profit organization in Brooklyn providing multi-services directly to the South Asian community. <http://www.copousa.org>. (last visited Apr. 14, 2007).

<sup>154</sup> Interview with Jagajit Singh, Director of Programs, COPO, in N.Y., N.Y. (Feb. 23, 2007).

<sup>155</sup> Telephone Interview with Julia Mass, Staff Attorney, ACLU of Northern California, in S.F., Cal. (Feb. 13, 2007).

<sup>156</sup> See *supra* note 153.

<sup>157</sup> Interview with Jagajit Singh, Director of Programs, COPO, in N.Y., N.Y. (Feb. 23, 2007).

<sup>158</sup> Interview with Naturalization Applicant L, in N.Y., N.Y. (Nov. 17, 2006).

<sup>159</sup> See *Families for Freedom*, *supra* note 25.

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<sup>160</sup> Telephone Interview with Aarti Shahani, Co-Founder and Co-Director, Families for Freedom, in Brooklyn, N.Y. (Mar. 8, 2007).

<sup>161</sup> CIS OMBUDSMAN ANNUAL REPORT 2004, *supra* note 125, at 4.

<sup>162</sup> Interview with Naturalization Applicant M, in N.Y., N.Y (Oct. 27, 2006).

<sup>163</sup> Interview with Naturalization Applicant E, in N.Y., N.Y (Jan. 26, 2007).

<sup>164</sup> CIS OMBUDSMAN ANNUAL REPORT 2006, *supra* note 111, at 11.

<sup>165</sup> Casimir, *supra* note 68.

<sup>166</sup> *Id.*

<sup>167</sup> Sheridan, *supra* note 65.

<sup>168</sup> *Id.*

<sup>169</sup> *Id.*

<sup>170</sup> *Id.*

<sup>171</sup> *Id.*

<sup>172</sup> 5 U.S.C. § 555(b) (2000) (requiring that administrative agencies must conclude matters within “a reasonable time”). *See* Second Amended Complaint for Naturalization and Other Relief at ¶¶ 51-55, *Alsamman v. Gonzalez, sub nom. Alwatik v. Gonzalez*, No. 06 Civ. 2518 (N.D. Ill. Jan. 26, 2007). *See also id.* ¶¶ 64-70, and particularly ¶ 69 noting that “Because the internal agency rule requiring completion of an FBI name check was enacted without public notice and without the opportunity for the public to comment on the rule, it violates the [Administrative Procedure Act];” and ¶¶ 71-73, and particularly ¶ 72 arguing that “Failing to adjudicate the naturalization applications of Plaintiffs in a timely manner as compared to other similarly situated applicants is a violation of the Equal Protection Clause of the Fourteenth Amendment.”).

<sup>173</sup> International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), G.A. res. 2106 (XX), Annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, *entered into force* Jan. 4, 1969, *available at* <http://www.ohchr.org/english/law/cerd.htm> [hereinafter ICERD]; OFFICE OF THE U.N. HIGH COMM’R FOR HUMAN RIGHTS, INT’L CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION NEW YORK 7 MARCH 1966, *available at* <http://www.ohchr.org/english/countries/ratification/2.htm>.

<sup>174</sup> International Covenant on Civil and Political Rights (ICCPR), G.A. Res. 2200A (XXI), UN GAOR, 21st Sess., Supp. No. 16, at 52, UN Doc. A/6316 Dec. 16, 1966, *entered into force* 23 March 1976, 999 U.N.T.S. 171, *available at* <http://www.ohchr.org/english/law/ccpr.htm> [hereinafter ICCPR]; OFFICE OF THE U.N. HIGH COMM’R FOR HUMAN RIGHTS, INT’L COVENANT ON CIVIL AND POLITICAL RIGHTS NEW YORK 16 DECEMBER 1966, *available at* <http://www.ohchr.org/english/countries/ratification/4.htm>.

<sup>175</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), *entered into force* Jan. 3, 1976, 993 U.N.T.S. 3, *available at* <http://www.ohchr.org/english/law/cescr.htm> [hereinafter ICESCR]; OFFICE OF THE U.N. HIGH COMM’R FOR HUMAN RIGHTS, INT’L COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS NEW YORK 16 DECEMBER 1966, *available at* <http://www.ohchr.org/english/countries/ratification/3.htm>.

<sup>176</sup> ICERD, *supra* note 173. Article 1(1) states:

In this Convention, the term ‘racial discrimination’ shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

<sup>177</sup> *See* ICERD, *supra* note 173, Art. 5(e), stating that:

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin,

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to equality before the law, notably in the enjoyment of the following rights:... (e) Economic, social and cultural rights, in particular:

(i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;

(ii) The right to form and join trade unions;

(iii) The right to housing;

(iv) The right to public health, medical care, social security and social services;

(v) The right to education and training;

(vi) The right to equal participation in cultural activities.

<sup>178</sup> Goldston, *supra* note 12, at 323.

<sup>179</sup> Goldston, *supra* note 12, at 323, 338.

<sup>180</sup> U. N. Human Rights Committee, *General Comment No. 15: The position of aliens under the Covenant*, ¶ 5, U.N. Doc. HRI\GEN\1\Rev.1 at 18 (Nov. 4, 1986) [hereinafter *HRC General Comment No. 15*].

<sup>181</sup> U. N. Committee on the Elimination of Racial Discrimination, *General Recommendation No. 30: Discrimination Against Non Citizens*, ¶ 13, U.N. Doc. CERD/C/64/Misc.11/rev.3 (Oct. 1, 2004) [hereinafter *CERD Committee General Rec. No. 30*].

<sup>182</sup> *HRC General Comment No. 15*, *supra* note 180, at ¶ 7 (“Aliens shall be equal before the courts and tribunals, and shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law in the determination of any criminal charge or of rights and obligations in a suit at law.”). For guarantees of the right to equality before courts and tribunals and the right to remedy under international law, *see* ICCPR, *supra* note 174, Art. 2(3)(a), stating:

Each State Party to the present Covenant undertakes: ... (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.

ICCPR Article 14(1) states: “All persons shall be equal before the courts and tribunals.” *Id.* ICERD Article 6 obliges States Parties to:

assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

ICERD, *supra* note 173. Note, in this regard, the statement of Cyrus Mehta, Founder and Managing attorney, Cyrus D. Mehta & Associates, P.L.L.C.:

There seems to be a governmental attitude that there’s no need to hurry on these cases – just let them lie. Even with respect to filing law suits, the government has now adopted a much more hardened view. In the past, if you filed a lawsuit, they would look at the case and grant the benefit – now they’ll look at the case and do nothing about it because of supposed security checks. They take a very lackadaisical approach. It’s unconscionable to have someone’s clearance pending for over 5 years.

Telephone Interview with Cyrus Mehta in N.Y., N.Y. (Feb. 9, 2007).

<sup>183</sup> ICERD, *supra* note 173, Art. 1(2).

<sup>184</sup> As noted by the Human Rights Committee, “[E]ach State party must ensure the rights in the Covenant to ‘all individuals within its territory and subject to its jurisdiction’ (art. 2, para. 1). In general, the rights set forth in the Covenant apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness.” *HRC General Comment No. 15*, *supra* note 180, at ¶ 1. Furthermore, the Committee noted that “[a]liens thus have an inherent right to life, protected by law, and may not be arbitrarily deprived of life... They have the right to liberty of movement and free choice of residence; they shall be free to leave the country... They may not be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence... Aliens receive the benefit of the right of peaceful

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assembly and of freedom of association... Aliens are entitled to equal protection by the law. There shall be no discrimination between aliens and citizens in the application of these rights. These rights of aliens may be qualified only by such limitations as may be lawfully imposed under the Covenant.” *Id.* at ¶ 7.

<sup>185</sup> CERD Committee General Recommendation No. 30 makes clear that even though ICERD permits States to differentiate between citizens and non-citizens, they must still “avoid undermining the basic prohibition on discrimination.” *CERD Committee General Rec. No. 30, supra* note 181, ¶¶ 1-3. In other words, States should not detract in any way from the rights and freedoms recognized in particular in the UDHR, the ICESCR, and the ICCPR. *Id.* at ¶ 2.

<sup>186</sup> ICERD, *supra* note 173, Art. 1; ICESCR, *supra* note 175, Art. 2.2.

<sup>187</sup> ICERD, *supra* note 173, Art. 1; ICCPR, *supra* note 174, Art. 26.

<sup>188</sup> ICCPR, *supra* note 174, Art. 26; ICESCR, *supra* note 175, Art. 2.2.

<sup>189</sup> ICERD, *supra* note 173, Art. 1; ICCPR, *supra* note 174, Art. 26.

<sup>190</sup> ICCPR, *supra* note 174, Art. 26; ICESCR, *supra* note 175, Art. 2.2.

<sup>191</sup> ICCPR, *supra* note 174, Art. 4.

<sup>192</sup> U. N. Committee on the Elimination of Racial Discrimination, *Statement on racial discrimination and measures to combat terrorism*, ¶ 4, U.N. Doc. E/CN.4/Sub.2/2003/23/Add. 1 (Nov. 1, 2002) [hereinafter *CERD Committee Statement on racial discrimination*] (recalling that “the prohibition on racial discrimination is a peremptory norm of international law from which no derogation is permitted”).

<sup>193</sup> *CERD Committee General Rec. No. 30, supra* note 181, ¶¶ 6-7, ¶ 10; *CERD Committee Statement on racial discrimination, supra* note 192, ¶¶ 3-6 (2002). *See also* U. N. Committee on the Elimination of Racial Discrimination, *Concluding Observations: Canada*, ¶ 338, U.N. Doc. CERD C/61/CO/3(Nov. 1, 2002); U.N. Committee on the Elimination of Racial Discrimination, *Concluding Observations: Moldova*, ¶ 15, U.N. Doc. CERD/C/60/CO/9 (May 21, 2002) (“The Committee notes reports according to which, after the tragic events of 11 September 2001 in the United States, a parliamentary inquiry was conducted into the alleged existence of terrorists among students of Arab origin at the International Independent University of Moldova. The State party should ensure that actions taken should follow due process of law and that they avoid any suspicion of racial profiling.”). *See also* IRREVERSIBLE CONSEQUENCES, *supra* note 8, at 20.

<sup>194</sup> U. N. Committee on the Elimination of Racial Discrimination, *General Recommendation No. 14: Definition of racial discrimination*, ¶ 2, U.N. Doc. A/48/18 at 114 (Mar. 22, 1993) [hereinafter *CERD Committee General Rec. No. 14*].

<sup>195</sup> IRREVERSIBLE CONSEQUENCES, *supra* note 8, at 21 (citing to U.N. Human Rights Committee, *General Comment No. 18: Non-Discrimination*, ¶ 7, U.N. Doc. HRI/GEN/1/Rev.1 at 26 (Nov. 10, 1989) [hereinafter *HRC General Comment No. 18*]).

<sup>196</sup> IRREVERSIBLE CONSEQUENCES, *supra* note 8, at 21 (citing to INTERRIGHTS, NON-DISCRIMINATION IN INTERNATIONAL LAW: A HANDBOOK FOR PRACTITIONERS 72 (2005)).

<sup>197</sup> IRREVERSIBLE CONSEQUENCES, *supra* note 8, at 21, (citing to INTERRIGHTS, NON-DISCRIMINATION IN INTERNATIONAL LAW: A HANDBOOK FOR PRACTITIONERS 81 (2005)).

<sup>198</sup> ICERD, *supra* note 176, Art. 1(3); *CERD Committee General Rec. No. 30, supra* note 181, ¶ 4. *See also CERD Committee General Rec. No. 14, supra* note 194, ¶ 2; U. N. Committee on the Elimination of Racial Discrimination, *General Recommendation No. 20: Non-discriminatory implementation of rights and freedoms (Art. 5)*, ¶ 2, U.N. Doc. HRI/GEN/1/Rev.6 at 208 (Mar. 15, 1996); IRREVERSIBLE CONSEQUENCES, *supra* note 8, at 20. The Human Rights Committee has also stated that distinctions under Article 26 can only be consistent with the Covenant if they are reasonable, objective, and aimed at achieving a purpose which is reasonable under the Covenant. *HRC General Comment No. 18, supra* note 195, at ¶ 13 (“the Committee observes that not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant.”). *Accord* U.N. Human Rights Committee, *Karakurt v. Austria*, ¶ 8.3, U.N. Doc. CCPR/C/74/D/965/2000 (Apr. 4, 2002); U.N. Human Rights Committee, *Broeks v. The Netherlands*, U.N. Doc. CCPR/C/OP/2 at 196 (June 1, 1984 ); U.N. Human

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Rights Committee, *Sprenger v. The Netherlands*, U.N. Doc. CCPR/C/44/D/395/1990 (Mar. 31, 1992); U.N. Human Rights Committee, *Kavanagh v. Ireland*, U.N. Doc. CCPR/C/76/D/1114/2002/Rev.1 (Mar. 25, 1999). See generally Goldston, *supra* note 12, at 335.

<sup>199</sup> See *supra* notes 186 - 191.

<sup>200</sup> IRREVERSIBLE CONSEQUENCES, *supra* note 8, at 20 (citing to INTERRIGHTS, NON-DISCRIMINATION IN INTERNATIONAL LAW: A HANDBOOK FOR PRACTITIONERS 183 (2005) (noting that “Many victims of discrimination plead both race and national origin together as the relevant grounds”)); U.N. Human Rights Committee, *Ziad Ben Ahmed Habassi v. Denmark*, ¶¶ 9.3 - 10, U.N. Doc. CERD/C/54/D/10/1997 (Apr. 6, 1999).

<sup>201</sup> Goldston, *supra* note 12, at 330.

<sup>202</sup> IRREVERSIBLE CONSEQUENCES, *supra* note 8, at 31.

<sup>203</sup> *Id.* HRC General Comment No. 18, *supra* note 195, at ¶ 13. For examples of how this test is applied, see, e.g., U.N. Human Rights Committee, *Araujo-Jongen v. The Netherlands*, ¶ 7.4, U.N. Doc. CCPR/C/49/D/418/1990 (Oct. 22, 1993) (finding that the requirement that applicants for unemployment benefits be unemployed at time of application is reasonable and objective given that the purpose of unemployment-benefits legislation is to provide assistance to the unemployed); U.N. Human Rights Committee, *Danning v. The Netherlands*, ¶ 1.4, U.N. Doc. CCPR/C/OP/2 at 205 (Apr. 9, 1997) (finding that differentiation between benefits received by married couples and couples merely cohabiting are based on reasonable and objective criteria); U.N. Human Rights Committee, *Foin v. France*, ¶ 10.3, U.N. Doc. CCPR/C/67/D/666/1995 (Nov. 9, 1999) (finding that the decision by France to require conscientious objectors to serve double the period of military service violates Article 26 of the ICCPR as differentiation was based on purported need to ascertain whether beliefs of conscientious objectors was genuine, which is not reasonable and objective); U.N. Human Rights Committee, *Gueye v. France*, ¶ 9.5, U.N. Doc. CCPR/C/35/D/196/1985 (Apr. 6, 1989) (finding that differentiation by which soldiers of Senegalese origin were paid inferior pensions to soldiers of French origin in the French army serving in Senegal was not reasonable and objective and noted that mere administrative convenience is not a sufficient justification for differentiating in conflict with Article 26 of the ICCPR); U.N. Human Rights Committee, *Järvinen v. Finland*, ¶¶ 6.4 - 6.6, U.N. Doc. CCPR/C/39/D/295/1988 (Aug. 15, 1990) (finding that a 16-month period of civilian, non-combat service for conscientious objectors, compared to only 8 months for combat service, was non-punitive and justifiable); U.N. Human Rights Committee, *Snijders v. The Netherlands*, ¶ 8.3, U.N. Doc. CCPR/C/63/D/651/1995 (July 27, 1998) (finding that the requirement that non-resident beneficiaries of state health insurance pay a contribution when resident beneficiaries are not required to do so was justified on the basis that failure to make this differentiation would deplete the funds available to the insurance scheme). See also CERD Committee General Rec. No. 14, *supra* note 194, at ¶ 2.

<sup>204</sup> IRREVERSIBLE CONSEQUENCES, *supra* note 8, at 31; *Broeks v. The Netherlands*, *supra* note 198, at ¶ 13. See, e.g., *Danning v. the Netherlands*, *supra* note 203, at ¶ 13 (“The right to equality before the law and to equal protection of the law without any discrimination does not make all differences of treatment discriminatory. A differentiation based on reasonable and objective criteria does not amount to prohibited discrimination within the meaning of article 26.”); *Gueye v. France*, *supra* note 203, at ¶ 9.4 (“the right to equality before the law and to equal protection of the law without any discrimination does not make all differences of treatment discriminatory. A differentiation based on reasonable and objective criteria does not amount to prohibited discrimination within the meaning of article 26”); U.N. Human Rights Committee, *Cheban v. Russian Federation*, ¶ 7.2 U.N. Doc. CCPR/C/72/D/790/1997 (July 24, 2001) (“If distinctions are made, they must be based on objective and reasonable grounds”); U.N. Human Rights Committee, *Julian v. New Zealand*, ¶ 8.5, U.N. Doc. CCPR/C/59/D/601/1994 (Apr. 3, 1997) (noting the Committee’s prior jurisprudence “according to which a distinction based on objective and reasonable criteria does not constitute discrimination within the meaning of article 26 of the Covenant...”); U.N. Human Rights Committee, *Neefs v. The Netherlands*, ¶ 7.2 U.N. Doc. CCPR/C/51/D/425/1990 (July 15, 1994) (“the right to equality before the law and to the equal protection

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of the law without any discrimination does not make all differences of treatment discriminatory. A differentiation based on reasonable and objective criteria does not amount to prohibited discrimination within the meaning of article 26.”); U.N. Human Rights Committee, *Oulajin v. The Netherlands*, ¶ 7.3, U.N. Doc. CCPR/C/46/D/406/1990/426/1990 (Oct. 23, 1992) (“The principle of non-discrimination and equality before the law implies that any distinctions in the enjoyment of benefits must be based on reasonable and objective criteria.”); U.N. Human Rights Committee, *Pauger v. Austria*, ¶ 7.3, U.N. Doc. CCPR/C/44/D/415/1990 (Mar. 26, 1992) (“The Committee reiterates its constant jurisprudence that the right to equality before the law and to the equal protection of the law without any discrimination does not make all differences of treatment discriminatory. A differentiation based on reasonable and objective criteria does not amount to prohibited discrimination within the meaning of article 26.”).

<sup>205</sup> IRREVERSIBLE CONSEQUENCES, *supra* note 8, at 31. *See, e.g.*, U.N. Human Rights Committee, *Kall v. Poland*, U.N. Doc. CCPR/C/60/D/552/1993 (July 14, 1997) (individual opinion by Committee members Elizabeth Evatt and Cecilia Medina Quiroga, cosigned by Christine Chanet, dissenting) (disagreeing with the Committee’s finding that the rights of the applicant had not been violated, and stating that the test of “discrimination” under the Covenant requires the Committee to examine whether the classification in question “was both a necessary and proportionate means for securing a legitimate objective”); U.N. Human Rights Committee, *Toonen v. Australia*, ¶¶ 6.2 - 6.4 U.N. Doc. CCPR/C/50/D/488/1992 (2004) (with Australia identifying the following test to determine whether a measure constitutes “discrimination”: (a) Whether Tasmanian laws draw a distinction on the basis of sex or sexual orientation; (b) Whether Mr. Toonen is a victim of discrimination; (c) Whether there are reasonable and objective criteria for the distinction; (d) Whether Tasmanian laws are a proportional means to achieve a legitimate aim under the Covenant); *Habassi v. Denmark*, *supra* note 200, at ¶ 7.8 (State party arguing that “differentiation of treatment that pursues a legitimate aim and respects the requirement of proportionality is not prohibited discrimination”); U.N. Human Rights Committee, *Kristjánsson v. Iceland*, ¶ 7.2, U.N. Doc. CCPR/C/78/D/951/2000 (July 16, 2003) (State party arguing that “the aim of the differentiation is lawful and based on objective and reasonable considerations and that there is reasonable proportionality between the means employed and the aim pursued”).

<sup>206</sup> IRREVERSIBLE CONSEQUENCES, *supra* note 8, at 31; *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 94 Eur. Ct. H.R. (ser. A) at ¶ 81 (1985) (noting that “The Court accepts that the... Rules also had, as the Government stated, the aim of advancing public tranquility. However, it is not persuaded that this aim was served by the distinction drawn in those rules [in this case].”).

<sup>207</sup> *See supra* notes 192 - 193.

<sup>208</sup> *Id.*

<sup>209</sup> IRREVERSIBLE CONSEQUENCES, *supra* note 8, at 31.

<sup>210</sup> *Id.*

<sup>211</sup> *See supra* notes 10 - 16.

<sup>212</sup> *Id.*

<sup>213</sup> For example, the diversity of Al Qaeda shows the under-inclusiveness of the profiling criteria, as Al Qaeda is a pan-ethnic terrorist organization whose membership includes those of Asian, Anglo and ethnic European descent. Recent evidence suggests that Al Qaeda is seeking newer, more creative, and even more unlikely recruits. *See* Flournoy Swiney, *supra* note 18, at 26-27.

<sup>214</sup> Sheridan, *supra* note 65 (quoting Peter A. Schey, president of the Center for Human Rights and Constitutional Law in Los Angeles).

<sup>215</sup> CIS OMBUDSMAN ANNUAL REPORT 2006, *supra* note 111, at 25.

<sup>216</sup> *See* Catholic Legal Immigration Services, Inc. (CLINIC), *supra* note 124.

<sup>217</sup> Telephone Interview with Laura Burdick, Senior Immigration Specialist, Catholic Legal Immigration Network, Inc. (CLINIC), in Wash. D.C. (Feb. 14, 2007).

<sup>218</sup> *See supra* note 151.

<sup>219</sup> Interview with Nancy Morawetz, Professor of Clinical Law, NYU School of Law, in N.Y., N.Y. (Mar. 7, 2007).

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- <sup>220</sup> Cyrus D Mehta & Associates, P.L.L.C., is an established law firm in New York City, practicing primarily in the area of U.S. Immigration and Nationality Law. Cyrus D Mehta & Associates, P.L.L.C., <http://www.cyrusmehta.com> (last visited Apr. 14, 2007).
- <sup>221</sup> Telephone Interview with Cyrus Mehta, founder and managing attorney, Cyrus D. Mehta & Associates, P.L.L.C., in N.Y., N.Y. (Feb. 9, 2007).
- <sup>222</sup> CIS OMBUDSMAN ANNUAL REPORT 2006, *supra* note 111, at 23.
- <sup>223</sup> Sheridan, *supra* note 65; MacLaren, *supra* note 106.
- <sup>224</sup> GLADSTEIN, ET. AL., *supra* note 36, at 3.
- <sup>225</sup> *Id.*
- <sup>226</sup> *Id.*
- <sup>227</sup> IRREVERSIBLE CONSEQUENCES, *supra* note 8, at 33.
- <sup>228</sup> *Id.* at 34 (citing Kevin Lapp, *Pressing Public Necessity: The Unconstitutionality of the Absconder Apprehension Initiative* 29 N.Y.U. REV. L. & SOC. CHANGE 573, 575 n.11 (2005)).
- <sup>229</sup> See Sikh Coalition, *supra* note 127.
- <sup>230</sup> Telephone Interview with Amardeep Singh, Executive Director, Sikh Coalition, in N.Y., N.Y. (Feb. 20, 2007).
- <sup>231</sup> See *supra* notes 180 - 193.
- <sup>232</sup> Interview with Naturalization Applicant J, in N.Y., N.Y (Oct. 27, 2006).
- <sup>233</sup> Interview with Naturalization Applicant R, in N.Y., N.Y (Sept. 29, 2006).
- <sup>234</sup> Interview with Naturalization Applicant P, in N.Y., N.Y (Oct. 27, 2006).
- <sup>235</sup> *Haig v. Agee*, 453 U.S. 280, (1981); *Zemel v. Rusk*, 381 U.S. 1 (1965).
- <sup>236</sup> *Shapiro v. Thompson*, 394 U.S. 618, 630-31 (1969).
- <sup>237</sup> *Kent v. Dulles*, 357 U.S. 116, 125-27, (1958).
- <sup>238</sup> ICCPR, *supra* note 174, at Art. 12
- <sup>239</sup> “The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.” *Id.*, Art. 12(3).
- <sup>240</sup> U.N. Human Rights Committee, *General Comment 27: Freedom of movement*, ¶ 1, U.N. Doc CCPR/C/21/Rev.1/Add.9 (1999) (“[L]iberty of movement is an indispensable condition for the free development of a person.” Moreover, “[s]tates have often failed to show that the application of their laws restricting the rights enshrined in article 12... are in conformity with all requirements referred to in article 12, paragraph 3. The application of restrictions in any individual case must be based on clear legal grounds and meet the test of necessity and the requirements of proportionality”). *Id.* at ¶ 16.
- <sup>241</sup> A GUIDE TO NATURALIZATION, *supra* note 39, at 18, 22.
- <sup>242</sup> Nancy Morawetz, *The Invisible Border: Restrictions on Short-Term Travel for Non-citizens* 7 (New York University Law Sch. Pub. Law & Legal Theory Research Paper Series, Paper No. 06-26, Aug. 2006), available at <http://ssrn.com/abstract=931157>. Although the discussion in this paper regarding restrictions on short-term travel for legal permanent residents focuses mainly on legal permanent residents with criminal backgrounds, the increased level of scrutiny at the border and the fear of travel arising from such scrutiny apply to all legal permanent residents, including those without criminal backgrounds.
- <sup>243</sup> Caryle Murphy, *Intense Airport Scrutiny Angers Muslim Travelers*, WASH. POST, Sept. 14, 2003, at A08; Laurie Goodstein, *A Nation Challenged: Civil Rights; American Sikhs Contend They Have Become a Focus of Profiling at Airports*, N.Y. TIMES, Nov. 10, 2001 at B1; Kevin Lynch, *Muslims Get Rights Primer; Lawyers Tell How to React to Police, Discrimination*, CHIC. TRIB., Oct 15, 2001, at 8; Nurith C. Aizenman, *Middle Eastern Travelers Face Scrutiny; Arab American Activist Attacks Lengthy Interrogations as Profiling, Doubts Usefulness*, WASH. POST, Sept. 23, 2001, at A11. *Arabs removed from flights; airlines investigate*, CNN, Sept. 21, 2001, available at <http://archives.cnn.com/2001/US/09/21/gen.airlines.arabs.removed/index.html>.

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<sup>244</sup> Interview with Naturalization Applicant A, in N.Y., N.Y. (Oct. 27, 2006). Similarly, one applicant described the harsh airport security procedures imposed on him:

When I was coming back from Pakistan, I had a hard time at the airport. I was stopped, and even though I'd told the officer that I am a patient and sick, they didn't care and kept questioning me. I also told the officer that I could show him my doctor's letters, they didn't want to see them. They hold me for more than 2 hours and it seemed like they were checking my background and everything.

Interview with Naturalization Applicant T, in N.Y., N.Y. (Nov. 17, 2006).

<sup>245</sup> Casimir, *supra* note 68 (describing Mohammed Nasser, who has been afraid to travel because he fears that he will be called in for his naturalization ceremony and miss the notice).

<sup>246</sup> Interview with Naturalization Applicant C, in N.Y., N.Y. (Oct. 27, 2006).

<sup>247</sup> The federal "no-fly list," created in 2003 by U.S. government intelligence agencies, is a list of names of potential terrorist suspects wanted by the U.S. government who are not permitted to board an aircraft. Steve Kroft, *Unlikely Terrorists on No Fly List*, 60 MINUTES, Oct. 8, 2006, *available at*: <http://www.cbsnews.com/stories/2006/10/05/60minutes/main2066624.shtml>. The Department of Justice asserts that the no-fly list "has led to the successful apprehension of several dangerous terrorist suspects." News Release, Department of Justice, New Terrorist Screening Center Established; Federal Government Consolidates Terrorist Screening into Single Comprehensive Anti-Terrorist Watchlist (Sept. 16, 2003) (*available at* <http://www.fbi.gov/pressrel/pressrel03/tscpr091603.htm>). However, the TSA and the no-fly list have faced widespread criticism for inefficacy, inefficiency, and bad public relations. Sara Kehaulani Goo, *Air Security Agency Faces Reduced Role; Stone is the Third Chief to Leave*, WASH. POST, Apr. 8, 2005, at A01.

<sup>248</sup> *See supra* note 243.

<sup>249</sup> *See generally* Flournoy Swiney, *supra* note 18; IRREVERSIBLE CONSEQUENCES, *supra* note 8, at n. 115 (citing Christopher Gerson, *Airlines, passengers confront racial profiling*, CNN, Oct. 3, 2001, *available at* <http://archives.cnn.com/2001/TRAVEL/NEWS/10/03/rec.airlines.profiling/> (documenting the case of Vahid Zohrevandi, a Dallas software developer and Iranian-born U.S. citizen, who was told that "The pilot does not feel comfortable flying" and "The pilot does not like how you look . . .")). *See also* IRREVERSIBLE CONSEQUENCES, *supra* note 8, at n. 114 (discussing the case of Robert Rajcoomar, a former U.S. Army major and practicing physician of Indian descent who was arrested and detained on a flight in 2002. He was told "we didn't like the way you looked" and "we didn't like the way you looked at us." *See* James Bovard, *Gun Nuts at 30,000 feet?*, FREEDOM DAILY, Mar. 7, 2005, *available at* <http://www.fff.org/freedom/fd0412c.asp>).

<sup>250</sup> *See supra* note 243.

<sup>251</sup> *Id.*

<sup>252</sup> Kroft, *supra* note 247.

<sup>253</sup> *Id.* *See also* TRANSPORTATION SECURITY ADMINISTRATION, SECURITY THREAT ASSESSMENT FOR AIRCRAFT OPERATORS AND HELIPORT OPERATORS AND THEIR EMPLOYEES THAT CONDUCT AIR TOUR OPERATIONS IN NEW YORK CITY (2004), *available at* [http://www.dhs.gov/xlibrary/assets/privacy/privacy\\_pia\\_heliport.pdf](http://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_heliport.pdf).

<sup>254</sup> Kroft, *supra* note 247.

<sup>255</sup> Ira Berkow, *Rower with Muslim Name Is an All-American Suspect*, N.Y. TIMES, Feb. 21, 2003, at D2.

<sup>256</sup> Rex W. Huppke, *Name Can Set Off Bells with Airport Security; David Nelsons Need Extra Time, Patience at U.S. Checkpoints*, CHI. TRIB., June 29, 2003, at 1.

<sup>257</sup> ICERD, *supra* note 173, Art. 5. *See also* U.N. Human Rights Committee, *General Comment No. 22: The right to freedom of thought, conscience and religion*, U.N. Doc. HRI\GEN\1\Rev.1 at 35 (July. 30, 1993). Freedom of religion is also protected under Article 18 of the Universal Declaration of Human Rights: "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship or observance."

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Universal Declaration of Human Rights (UDHR) Art. 18, G.A. Res. 217A, at 71, U.N. GAOR, 3d Sess., 1st plen. Mtg., U.N. Doc A/810 (Dec. 12, 1948).

<sup>258</sup> See, e.g., The Sikh Coalition: The Voice of a People, *Incidents and Hate Crimes*, available at <http://sikhcoalition.org/ListReports.asp> (last visited Apr. 15, 2007); Laurie Goodstein, *A Nation Challenged: Civil Rights; American Sikhs Contend They Have Become a Focus of Profiling at Airports*, N.Y. TIMES, Nov. 10, 2001 at B1.

<sup>259</sup> See Sikh Coalition, *supra* note 127.

<sup>260</sup> Telephone Interview with Amardeep Singh, Executive Director, Sikh Coalition, in N.Y., N.Y. (Feb. 20, 2007).

<sup>261</sup> Tom Lininger, *Federalism and Antiterrorism Investigations*, 17 STAN. L. & POL'Y REV. 391, 403 (2006).

<sup>262</sup> *Muslim Americans changing Arabic-sounding names*, USA TODAY, Mar. 20 2002, available at <http://www.usatoday.com/news/nation/2002/03/20/arab-names.htm>.

<sup>263</sup> *Id.*

<sup>264</sup> *Id.*

<sup>265</sup> See Cyrus D. Mehta & Associates, P.L.L.C., *supra* note 220.

<sup>266</sup> Telephone Interview with Cyrus Mehta, founder and managing attorney, Cyrus D. Mehta & Associates, P.L.L.C, in N.Y., N.Y. (Feb. 9, 2007).

<sup>267</sup> 42 U.S.C. § 426a(a)(4) (2000).

<sup>268</sup> Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (“Welfare Reform Act”), Pub. L. No. 104-193, 110 Stat. 2105 (1997) (codified as amended in scattered sections of 42 U.S.C., 25 U.S.C., 21 U.S.C., 8 U.S.C., and 7 U.S.C.).

<sup>269</sup> Stephen W. Yale-Loehr & Lindsay Schoonmaker, *Overview of U.S. Immigration Law*, PRAC. L. INST., March 2007, at 32-33. Non-citizens can still receive certain benefits such as: emergency medical assistance; short-term, non-cash, in-kind emergency disaster relief; assistance or benefits under the National School Lunch Act; assistance or benefits under the Child Nutrition Act; public health assistance for immunizations and for the testing and treatment of communicable diseases; foster care and adoption assistance; programs, services, or assistance specified by the Attorney General that deliver in-kind services at the community level, including through public or private nonprofit agencies, and that do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources, and that are necessary for the protection of life or safety; student assistance; means-tested programs under the Elementary and Secondary Education Act; benefits under Head Start; and benefits under the Job Training Partnership Act. See Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (“Welfare Reform Act”), Pub. L. No. 104-193, 110 Stat. 2105, 2107 (1997) (codified as amended in scattered sections of 42 U.S.C., 25 U.S.C., 21 U.S.C., 8 U.S.C., and 7 U.S.C.); National Conference of State Legislatures (NCSL), NCSL.net: Personal Responsibility and Work Opportunity Act of 1996, Analysis of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996: Conference Agreement for H.R. 3734, <http://www.ncsl.org/statefed/hr3734.htm>.

<sup>270</sup> *Immigrants, their Families and their Communities in the Aftermath of Welfare Reform*, RES. PERSP. ON MIGRATION (Migration Pol’y Inst. & Urban Inst.), Vol. 3, No. 1 (2001), at 6-7, available at <http://www.migrationpolicy.org/files/RPMVol3-No1.pdf> [hereinafter *Immigrants, their Families and their Communities*].

<sup>271</sup> *Id.* at 6-7.

<sup>272</sup> *Id.*; Yale-Loehr & Schoonmaker, *supra* note 269, at 32; Michael J. Wishnie, *Laboratories of Bigotry? Devolution of the Immigration Power, Equal Protection, and Federalism*, 76 NYU L. REV. 493, 513-514 (2001).

<sup>273</sup> *Immigrants, their Families and their Communities*, *supra* note 270, at 6-7.

<sup>274</sup> “Legal permanent residents who have worked at least 40 qualifying quarters as defined by the Social Security Act are exempted from certain bars on eligibility.” *Immigrants, their Families and their*

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*Communities*, *supra* note 270, at 7. The Social Security Act defines the term “quarter” as “a period of three calendar months ending on March 31, June 30, September 30, or December 31.” 42 U.S.C. § 413(a)(1) (2000).

<sup>275</sup> “Noncitizens are exempt from bars on eligibility if they are or were: (1) on active duty (currently); (2) honorably discharged; (3) the spouse, unremarried surviving spouse and unmarried dependent child of a veteran or active-duty service member; (4) Filipino war veteran who fought under U.S. command in World War II.” *Immigrants, their Families and their Communities*, *supra* note 270, at 7.

<sup>276</sup> “Those admitted for humanitarian reasons from abroad under the US Refugee Act of 1980, persons admitted as asylees, persons with deportation/removal withheld, Cuban-Haitian entrants, Amerasians.” *Immigrants, their Families and their Communities*, *supra* note 270, at 7.

<sup>277</sup> *Id.* at 6-7.

<sup>278</sup> SOCIAL SECURITY ADMINISTRATION, WHAT YOU NEED TO KNOW WHEN YOU GET SUPPLEMENTAL SECURITY INCOME (SSI) 17 (2006), available at <http://www.ssa.gov/pubs/11011.pdf>; Complaint, *Yakubova v. Chertoff*, No. 06 Civ. 3203 (E.D.N.Y. Sept. 26, 2006). See also Mary Beth Sheridan, *Elderly Refugees Losing Federal Payments; Without Citizenship, Benefit Ends After 7 Years*, WASH. POST, Dec. 15, 2003, at B01 (discussing the language barriers for many refugees receiving SSI, which prevents them from passing the naturalization test and therefore results in the termination of their SSI benefits after seven years).

<sup>279</sup> See Catholic Legal Immigration Services, Inc. (CLINIC), *supra* note 124.

<sup>280</sup> Telephone Interview with Laura Burdick, Senior Immigration Specialist, Catholic Legal Immigration Network, Inc. (CLINIC), in Wash. D.C. (Feb. 14, 2007).

<sup>281</sup> Lornet Turnbull, *Citizenship application backlog holding up disability benefits*, SEATTLE TIMES, Mar. 22, 2007, available at [http://seattletimes.nwsourc.com/html/snohomishcountynews/2003630052\\_citizenship22m.html](http://seattletimes.nwsourc.com/html/snohomishcountynews/2003630052_citizenship22m.html).

<sup>282</sup> *Id.*

<sup>283</sup> *Id.*

<sup>284</sup> *Id.*

<sup>285</sup> Telephone Interview with Laura Burdick, Senior Immigration Specialist, Catholic Legal Immigration Network, Inc. (CLINIC), in Wash. D.C. (Feb. 14, 2007).

<sup>286</sup> RANDY CAPPS ET AL., THE URBAN INST., ASSESSING IMPLEMENTATION OF THE 2002 FARM BILL’S LEGAL IMMIGRANT FOOD STAMP RESTORATIONS: FINAL REPORT TO THE UNITED STATES DEP’T OF AGRICULTURE FOOD AND NUTRITION SERVICE i (2004), available at [http://www.urban.org/UploadedPDF/411138\\_LegalImmigrantRestorations.pdf](http://www.urban.org/UploadedPDF/411138_LegalImmigrantRestorations.pdf).

<sup>287</sup> *Id.* at 27-28.

<sup>288</sup> *Id.*

<sup>289</sup> *Id.*

<sup>290</sup> *Id.*

<sup>291</sup> *Id.*

<sup>292</sup> *Id.* at 28.

<sup>293</sup> Interview with Naturalization Applicant F, in Brooklyn, N.Y. (Jan. 26, 2007).

<sup>294</sup> Interview with Naturalization Applicant A, in N.Y., N.Y. (Oct. 27, 2006).

## Americans on Hold Profiling, Citizenship, and the “War on Terror”

Since September 11, 2001, counter-terrorism efforts have increasingly informed immigration policy and have institutionalized a policy of discrimination against immigrants perceived to be Muslim, Arab, Middle Eastern, or South Asian on the basis of their name, race, religion, ethnicity, or national origin. Increased security checks in the citizenship application process, manifested in a substantial expansion of name check procedures, have illegally delayed the processing of thousands of applications from Muslim, Arab, Middle Eastern, and South Asian men.

Based on research conducted by the Center for Human Rights and Global Justice (CHRGJ), the International Human Rights Clinic, and the Immigrant Rights Clinic at NYU School of Law, in collaboration with the Council of People’s Organization (COPO) in Brooklyn, New York, *Americans on Hold* documents the impact of these expanded name checks on the lives of those experiencing citizenship delays, often for years on end.

Thousands of immigrants have chosen the United States as their new home; they abide by U.S. laws, pay U.S. taxes, contribute to our nation’s economy, and strengthen its multi-cultural foundations. They have passed every test, and have fulfilled every requirement related to the naturalization process, but continue to wait for security clearance on their application. Caught between two worlds, but unable to call either home, these individuals are living in limbo; they are treated as outsiders in their new home and hindered in their ability to effectively maintain ties with loved ones in their country of origin.

*Americans on Hold* analyzes both the delays and their impact within an international human rights framework. It calls on the U.S. government to abide by its human rights obligations and live up to its democratic ideals, and offers specific policy recommendations to help end discrimination in access to citizenship and other human rights violations.

