

AMERICANS ON HOLD

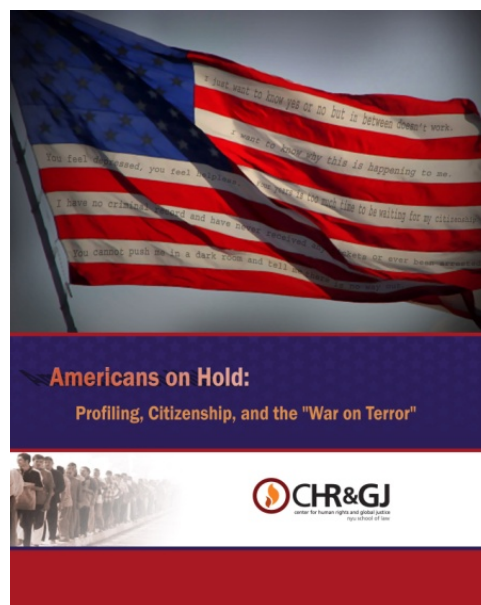
PROFILING, CITIZENSHIP, AND THE “WAR ON TERROR”

Summary Briefing Paper

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, South Asian, Arab, or Middle Eastern on the basis of their name, race, 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, sometimes for years on end. The narratives and 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. Individuals interviewed for the Report include applicants from Pakistan, Bangladesh, Yemen, and Algeria.

Although this Report focuses on the experience of the profiled group, citizenship delays are not limited to these communities, nor are they a recent phenomenon. Though delays have taken a new form and intensity for members of the profiled group, these delays and their human rights consequences affect a number of immigrant communities nationwide. *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 underscores the rights owed to non-citizens under international law, and highlights the alienation and additional burdens these communities now face.



“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.”

-American “on Hold” since 2001

“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.”

-Son of American “on Hold”

Americans “on Hold”

As its title suggests, this Report is about Americans “on Hold.” Thousands of immigrants have chosen the United States as their new home: they abide by U.S. laws, pay U.S. taxes, and 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; they are treated as outsiders in their new home and hindered in their ability to maintain ties with loved ones in their country of origin.

Citizenship plays a vital role in making effective the promise of fundamental human rights protections. It is a legal status that facilitates the enjoyment of many rights in the U.S., including the right to vote, the right to obtain a U.S. passport and to 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 bestows identity by creating a feeling of community membership.

Citizenship delays undermine people’s faith in democracy and deprive individuals of these rights. As a result, the profiled group has no political voice. The fear psychosis generated by profiling and application delays undermines freedom of expression, assembly, and association, and has greatly affected individuals’ ability to voice their concerns.

Individuals experiencing citizenship delays and the subsequent effects—including lengthy separation from family members and restrictions on their ability to travel, work, and receive life-saving benefits—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. Even in the face of such extensive and detrimental delays, the U.S. government maintains that national security concerns trump all other considerations; even as these measures divert resources from addressing real security threats.

Rights protections owed to non-citizens by the U.S.

States increasingly bestow, deny, or retract citizenship in a manner that serves political interests and undermines human rights protections owed to non-citizens. The United States 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) and the International Covenant on Civil and Political Rights (ICCPR). 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. Human rights bodies have affirmed on numerous occasions that the “war on terror” cannot be invoked to deny the human rights protections owed to non-citizens.

The Conflation of Immigration and Counter-Terrorism

Since 2001, immigration law has increasingly been used to target the profiled group. 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. Not one of the 93,000 men “specially registered” was charged with a terrorism-related offense; instead the consequences of special registration were mass deportations and detention for minor or technical immigration violations. Discriminatory policies have also been implemented in visa applications and immigration raids.

Since 2001, immigration bodies have also been folded into national security institutions. In 2003, the U.S. Immigration and Naturalization Service 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).

As a State party to human rights 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.

“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.’”

*-Aarti Shahani,
Families for
Freedom*

Federal law requires USCIS to grant or deny citizenship within 120 days of an applicant’s examination.

USCIS has also set a policy goal of processing applications within six months from the time of filing.

DHS data shows that more than two-thirds of the over 2.2 million applications filed since April 1, 2001 were not processed within 180 days.

More than 776,000 applicants had been waiting more than a year.

Approximately 158,000 applicants had been waiting for more than two years.

While around 41,000 applicants had been waiting for three years or more.

Arabs, Muslims, Middle Easterners, and South Asians are now facing the next phase of the immigration backlash in the form of prolonged security checks in the naturalization process. These security checks delay their ability to become citizens and to fully participate in the democratic process.

Citizenship Delays and the Name Check Process

The processing delays for naturalization applications can in large part be attributed to name checks. According to a Federal Bureau of Investigation (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.” Others have attributed the problems to “bureaucratic miscommunication and mismanagement.”

Naturalization applicants must now have their names checked through two vast electronic databases; if a name, or any of its variant spellings, results in a match within the FBI database, the name is then subjected to a manual check, which may require hand-searching of fragmented intelligence information, and which may take years.

Federal law requires USCIS to grant or deny citizenship within 120 days of an applicant’s examination. In addition, USCIS has set a policy goal of processing applications, from the date of filing to the date of decision, within a period of six months. Data from DHS, however, shows that more than two-thirds of the over 2.2 million applications filed since April 1, 2001 were not processed within 180 days of filing. More than 776,000 applicants had not received a decision for more than a year since filing; approximately 158,000 applicants had not received a decision for more than two years; while approximately 41,000 applicants had been waiting for three years or more.

By law, applicants who are not given a decision on their naturalization applications within 120 days after their examination can seek a court order compelling government action. In May 2006, citing national security concerns, USCIS circumvented this law by ordering offices not to schedule interviews until security clearances were completed.

Delays for Applicants from Arab and Muslim Countries

In the post-September 11, 2001 environment, the category of “terrorist” has emerged as a racialized construct in which men perceived to be Muslim, Arab, Middle Eastern, or South Asian are classified as “terrorist Others.” As a result, 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.

As a result of NSEERS, the names, nationalities, and movements of all individuals registered 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, 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 the name-check system.

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.” “Authorities say they have no alternative but to fully investigate when an applicant’s name resembles one in the government’s security databases.” The chances of such resemblance are quite high, since variations of applicants’ names, particularly those transliterated from other alphabets, are also checked.

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. In response to repeated inquiries to immigration authorities, applicants are simply told that their application is pending security clearance.

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

-American “on Hold” since 2003

“People who have names that just sound Muslim feel vulnerable—they ask me ‘what will happen to me? How will I be treated?’... People aren’t rebelling or getting angry—they’re just confused and scared... It’s a feeling of victimization.”

– Cyrus Mehta, Immigration Attorney

“It seems that 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, Sikh Coalition

“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?’”

- Jagajit Singh,
Council of Peoples
Organization.

“Discriminatory profiling is illegal under international law and is a poor substitute for real intelligence work. Taking years to identify individuals who are security threats does not make us safer. Ensuring timely and good faith completions of background checks will help the U.S.’ advance its national security goals.”

- Jayne Huckerby,
CHRGJ

Profiling in the Citizenship Application Process is a Violation of International Law

Delays in the citizenship process implicate discrimination on grounds that are prohibited under international law. These grounds include: race, color, sex, language, religion, and national or social origin. These grounds are closely related. For example, discrimination on the basis of nationality may be a proxy for discrimination on the basis of race, while citizenship status also regularly functions as a proxy for racial discrimination.

While evidence suggests that these policies and programs have a discriminatory *purpose*, in that they appear to be profiling individuals based on their name, race, religion, gender, or national origin, further evidence of the government’s intent is needed before reaching such a conclusion. Evidence cited throughout the Report, however, makes clear that prolonged security checks in the naturalization process have the *effect* of disproportionately burdening the profiled group.

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. Factors that may be considered in determining whether a burden is justified include: the importance of the right infringed by the measure; the aim and legitimacy of the measure; whether it uses criteria that are “objective and reasonable”; and whether the means used are proportional to, and effectively advance, the aim.

The right infringed by these measures—the right to be free from discrimination—is a peremptory norm of international law that applies to all parts of a State’s immigration policy, including rules about access to citizenship. The purported aim of prolonged security checks is to help identify potential threats to national security—clearly a legitimate purpose, but one that must be pursued in compliance with human rights norms. Additionally, it is arguably an equally legitimate and important goal that States successfully balance counter-terrorism measures with the human rights protections by which they are bound.

Regarding the criteria used to determine whether the means used are proportional to and effectively advance the aim of protecting national security, the following points suggest that extended security checks and subsequent citizenship delays for the profiled group are not justified:

A reliance on names and national origins as proxies for identifying national security threats is both over-inclusive and under-inclusive.

- Profiling on the basis of name, race, ethnicity, national origin, religion, and gender is over-inclusive in that it encapsulates many people who pose no national security threat, and under-inclusive in that it excludes individuals who do not fit this “suspect” category but who may pose a national security threat.

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

- The name check system has been described as “looking for a needle in a haystack” and calls into question the inherent logic of delaying applications, sometimes for years, on the reasoning that applicants may be threats to national security.

Prolonged name checks undermine national security objectives by diverting law enforcement resources.

- Manual reviews performed during the name checks can, for example, include burdensome and time consuming reporting on fragments of names of individuals who are not necessarily central or directly related to a case.

Profiling institutionalizes prejudice and promotes and legitimizes the prejudice of the general public.

- The connection between state-sanctioned profiling and the legitimization of private bias is evident in the extent of hate crimes against Muslims, Arabs, and those perceived to be Muslim or Arab in the aftermath of September 11, 2001.

Our Report concludes that the importance of the right infringed, combined with the lack of effectiveness and other detrimental consequences, render such discrimination unjustified and illegal under international law.

“Citizenship delays are not just bureaucratic inconveniences; they are the result of discriminatory and undemocratic policies that violate fundamental human rights. In the name of fighting a ‘war on terror,’ the government is breaking up families, engendering fear and insecurity, and disenfranchising entire communities.”

- Smita Narula,
CHRGI

Prolonged name checks “significantly delay adjudication of immigration benefits for many applicants, hinder backlog reduction efforts, and rarely, if ever, achieve their intended national security objectives.”

- Citizenship &
Immigration
Services
Ombudsman

“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.”

-American “on Hold” since 2004

Anyone with a “Muslim-sounding name” may be stopped, delayed, or detained in airports... As of October 2006, the “no-fly” list contained 44,000 names.

In response to profiling, immigrants have altered their appearance, curtailed praying in public, and have even changed their names—the very hallmark of their religious and cultural identity.

The Impact of Discriminatory Profiling on Other Rights Owed to Non-citizens

The U.S. is 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, and social services.

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, detained, 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. 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.

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 for fear of being profiled. Many have curtailed the extent to which they pray or worship publicly, and some 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. Qualified immigrants arriving after August 22, 1996 are ineligible for Supplemental Security Income and food stamps unless they meet certain exemptions and they are completely barred from receiving Medicaid and Temporary Assistance for Needy Families for the first five years.

Legal and Legislative Responses to Citizenship Delays

Numerous lawsuits have been filed against the U.S. government to expedite citizenship applications that have been allowed to linger indefinitely due to security checks. Immigrant rights advocates say hundreds, if not thousands, of men with Arabic-sounding or Muslim-sounding names are experiencing endless delays in the final stage of the citizenship application process. Enhanced security procedures are also hindering general backlog reduction efforts, and are affecting immigrants of all backgrounds.

The extent of delays in the naturalization process has also inspired legislative action. On March 7, 2007 a bill titled the Citizenship Promotion Act of 2007 was introduced in the House of Representatives “to assist aliens who have been lawfully admitted in becoming citizens of the United States, and for other purposes.”

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. These proposed legislative measures are a welcome step.

“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. My name is maybe similar to some sort of criminals’. 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.”

-American “on Hold” since 2003.

The U.S. must abide by its international human rights obligations and live up to its democratic ideals. It must end discrimination and undue delays in the naturalization process.

“We are in the process of ‘democratizing’ other nations in order to help people freely voice their concerns. Yet we neglect democracy in our own home. We silence the voice of our own people.

The administration should reduce the bureaucratic hurdles that prevent our communities from getting citizenship. Their voice must be heard.”

*-Mohammad Razvi,
Council of Peoples
Organization*

Recommendations

The United States must abide by its international human rights obligations and live up to 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. With respect to citizenship delays:

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; and require reports to disaggregate statistics regarding citizenship delay by race, sex, ethnicity, national origin, and religion.
- Institute Congressional oversight hearings into key issues affecting the citizenship process;
- Introduce institutional changes within relevant government agencies to increase transparency and resolve complaints;
- Introduce anti-discrimination training for immigration and law enforcement officials; and
- Ensure greater public education about the human rights implications of discriminatory profiling and citizenship delays.

Concluding Observations

Citizenship delays are not just 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 and disenfranchising communities as a whole.

As noted by Prof. Nancy Morawetz, Supervising Attorney for the Immigrant Rights Clinic at NYU School of Law:

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 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.

Undue delays in background checks are both inefficient and ineffective, additionally 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 sphere.

As the government increasingly turns its attention to what it perceives to be “homegrown” terrorist threats such scrutiny, and resulting human rights violations, may continue to worsen for the profiled group and increasingly prove to be counterproductive. Key policy interventions are needed now to reverse this dangerous trend

“I have two sons in Pakistan. She is always weeping for them... 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... We’re waiting every day. 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.”

-American “on Hold” since 2003

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about COPO visit

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About the Report

Americans on Hold: Profiling, Citizenship, and the “War on Terror” 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 collaboration between IHRC, IRC and the Council of Peoples Organization (COPO) in Brooklyn, New York. COPO is a non-profit community-based organization that has serviced the many needs of the South Asian community since September 11, 2001. With the assistance of immigration attorneys, COPO offers community members free monthly legal clinics and a variety of essential services.

COPO has received a number of requests for help from community members experiencing citizenship delays due to prolonged security checks. IHRC and IRC worked with COPO to identify and interview individuals for the Report, and to devise appropriate litigation and advocacy-based responses to the problem. COPO is now considering bringing suit on behalf of select individuals in New York City who have been illegally delayed. IHRC also interviewed a number of community leaders and immigration experts from around the country with direct experience with communities experiencing delays.

The names of naturalization applicants interviewed for this Report, along with all other identifying information, have been removed. In this Summary they are identified as Americans “on Hold,” along with the year in which they applied for citizenship. Our effort to protect their identity is a testament to the state of fear and insecurity in which these communities now live. We are profoundly grateful to these individuals for their courage and trust in sharing their stories with us, and to the many experts and community leaders whose insights have helped shape our understanding of the nature and extent of the problem, as well as the policy responses that must now follow to end discriminatory profiling in immigration policies.

Americans on Hold and related materials are available at

www.chrgj.org