

CITIZENSHIP DELAYS AND DISENFRANCHISEMENT: A FACT SHEET AND CALL TO ACTION

FBI NAME CHECKS AND NATURALIZATION: HOW THE PROGRAM OPERATES

- Prior to finalizing naturalization applications, the United States Citizenship and Immigration Services (USCIS) forwards information about applicants to the Federal Bureau of Investigation (FBI) to compare against the information in the FBI's Universal Name Index (UNI).¹ The FBI then searches for all mentions of the naturalization applicant's name, a close date of birth, and social security number.² This is a service that the FBI provides to the USCIS as part of its National Name Check Program (NNCP).
- The FBI's UNI database contains approximately 94.6 million records from FBI administrative and investigative cases.³ Names and birthdates are searched in a variety of permutations.
- An estimated 68% of queries come back with a "No Record" result within 48 hours, indicating that the UNI database has no information regarding the individual.⁴
- The remaining 32% of queries undergo a secondary search.⁵ During this secondary search an FBI employee physically enters the applicant's name and searches different fields and information in the FBI's computerized databases.⁶ This takes 30 to 60 days and results in an additional 22% of the name check requests as having a "No Record" result.⁷
- Some 90% of all name check requests have a final response of "No Record" in less than three months.⁸
- The remaining 10% of the names have possible matches in FBI records, requiring the FBI to pull the applicable records in respect of each name. If the records are electronic, this task is fairly straightforward. However, paper records exist for all documents that predate the FBI's Automated Case Support (ACS) system, which was implemented in October 1995.⁹ Paper records must be located and retrieved from one or more of the 56 FBI field offices in 265 different locations.¹⁰
- After records are located they are reviewed by FBI analysts who determine whether they are responsive, and if so whether they contain possible derogatory information.¹¹ If the FBI analysts uncover derogatory information, they then submit a summary of this information to the USCIS.¹²

MYTHS AND FACTS ABOUT FBI NAME CHECKS OF NATURALIZATION APPLICANTS

MYTH: *The USCIS' current use of the FBI NNCP has a long precedent.*

FACT: In 2002, the USCIS drastically expanded the scope of records searched as part of the NNCP by requiring that the FBI search reference files (pertaining to someone whose name appears in or is linked to an FBI investigation....¹³) in addition to main files, which include the names of individuals who are the main subject of an FBI investigation.¹⁴

MYTH: *The FBI NNCP is legitimate because it only slows down the application process for those who are the subject of an FBI investigation.*

FACT: The FBI's search of reference files means that a hit can register against a naturalization applicant's name not only when it matches that of a main subject of an FBI investigation, but also when it matches the name of any person referenced in an FBI investigation. Persons referenced in an FBI investigation include any "associates, witnesses, co-conspirators, or victims whose name has been indexed for later retrieval."¹⁵

MYTH: *Only a handful of individuals have been adversely impacted by the USCIS' current use of the FBI NNCP.*

FACT: The FBI NNCP denies hundreds of thousands of would-be citizens their fundamental rights. According to former USCIS Ombudsman Prakash Khatri, approximately 150,000 to 200,000 naturalization applicants are experiencing delays because of the NNCP.¹⁶ According to the most recent USCIS Ombudsman Annual Report, as of May 6, 2008 there were 269,943 Pending FBI Name Checks,¹⁷ of which 185,162 have been pending for more than six months and 74,260 for more than one year.¹⁸

MYTH: *Using the FBI NNCP in the naturalization process is a necessary, accurate, and effective way to protect national security.*

FACT: The use of the FBI NNCP in the naturalization process jeopardizes the rights of a significant number of individuals without any discernible benefits to national security. According to former USCIS Ombudsman Prakash Khatri, FBI name checks, "significantly delay adjudication of immigration benefits for many customers, hinder backlog reductions efforts, and may not achieve their intended national security objectives."¹⁹ Moreover, "...the name checks are not sought by the FBI as part of ongoing investigations or from a need to learn more about an individual because of any threat or risk perceived by the FBI. Instead, the name checks are a fee-for-service that the FBI provides to USCIS at its request...the FBI does not record any additional information about the names USCIS submits and does not routinely take any further action."²⁰

MYTH: *Use of the FBI NNCP in the naturalization process does not disproportionately impact certain religious and minority groups.*

FACT: Immigrant rights advocates have consistently held that certain religious and racial minorities are being unfairly scrutinized and subjected to naturalization delays²¹ In fact, individuals with

transliterated names are more likely to produce “hits” because several potential English spellings of their names will be checked and are more likely to match names in the FBI’s UNI.²²

CALL FOR ACTION: HOW YOU CAN HELP

LOBBY FOR LEGISLATION

Without Congressional intervention thousands of individuals will be disenfranchised in the upcoming Presidential election due to delays, inefficiency, and discrimination. Congress has the opportunity to take action now by reviving legislation to address this problem. As Congress resumes work this September, one of the first items on its agenda should be to revive previously introduced legislation ahead of the voter registration deadlines in October 2008. The advocacy community should pressure Congress to act now in light of these previous efforts:

- On March 7, 2007 Senator Barack Obama and Representative Luis Guterrez introduced the **Citizenship Promotion Act of 2007**, in response to the USCIS’ announced intent to increase citizenship application fees.²³ The bill authorizes the USCIS to receive congressional appropriations so that it is not wholly dependent upon application fees for its funding. It also calls for the timely processing and adjudication of naturalization applications.²⁴ This bill was read twice and referred to the Committee on the Judiciary on March 7, 2007.²⁵ There has been no subsequent activity on this bill.²⁶
- In October, 2007, Representative Yvette Clark introduced the **Citizenship Immigration Backlog Reduction Act**. The bipartisan bill calls for the FBI to “develop a plan” to address name check delays within 18 months and “demonstrate how the FBI and USCIS will improve efficiency and maintain the privacy of the applicants while preserving high security standards.” The bill also mandates that a person legally residing in the United States who waits for more than six months for a name check, “must have any application for interim work and travel permits adjudicated, unless the Secretary of Homeland Security determines they pose a security risk or have broken immigration law.”²⁷ On October 15, 2007, the bill was referred to the House Committee on the Judiciary. On November 2, 2007, it was referred to the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law. There has been no subsequent activity on the bill.²⁸

CALL FOR ACCOUNTABILITY

The USCIS has pledged to take action to curtail naturalization delays and must be held accountable for its backlog reduction schedules. In particular, the USCIS should be required to account for the following promises:

- In a February 4, 2008 memorandum, the USCIS stated that it would adjudicate green card and other selected applications if FBI name checks were pending in excess of 180 days and the applications were otherwise approvable.²⁹
- On August 11, 2008 the USCIS released an updated schedule for projected naturalization processing times.³⁰ The USCIS anticipates that the average processing time nationwide

will be 10 to 12 months by the end of September 2008 and its goal is to reach a five month processing time.³¹

CALL FOR TRANSPARENCY

There must be greater transparency to ascertain exactly how indices are populated in the FBI's UNI; whether and the extent to which they contain the names of individuals not suspected of criminal wrongdoing; and the period for which individuals' names remain in the UNI once entered. In calling for such transparency, advocates could usefully emphasize the following:

- Increased knowledge of the FBI's NNCP would enable concrete strategizing about solutions to the delays.
- The USCIS' system should allow an individual to know easily, quickly, and inexpensively the status of his or her application and security check and the decision timeframe.

¹ *Mocanu v. Mueller*, et. al, No. 07-cv-00445, No.28, at p.9 (MMB) (E.D. Pa. Feb. 8, 2008); *see also* Supplemental Declaration of Michael A. Cannon, *Yakuba v. Chertoff*, No. 1:06-cv-3203 (E.D.N.Y. Aug. 31, 2006) ¶ 12.

² *Id.*

³ Nina Bernstein, *A Shorter Path to Citizenship but Not for All*, N.Y. TIMES, Oct. 23, 2006.

⁴ Supplemental Declaration of Michael A. Cannon, *Yakuba v. Chertoff*, No. 1:06-cv-3203 (E.D.N.Y. Aug. 31, 2006) ¶ 12.

⁵ *Id.* at ¶ 13.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at ¶ 14, 25.

¹⁰ *Id.*

¹¹ *Id.* at ¶ 14.

¹² *Id.*

¹³ Fed. Bureau of Investigation, Fed. Bureau of Investigation National Name Check Program: Frequently Asked Questions, <http://www.fbi.gov/page2/nationalnamecheck.htm>.

¹⁴ DEP'T OF HOMELAND SEC., OFFICE OF INSPECTOR GEN., A REVIEW OF U.S. CITIZENSHIP AND IMMIGRATION SERVICES' ALIEN SEC. CHECKS 4 (2005), *available at* http://www.dhs.gov/xoig/assets/mgmttrpts/OIG_06-06_Nov05.pdf; Second Amended Complaint for Naturalization and Other Relief, *Alsamman v. Gonzalez*, *subnom.* *Alwatik v. Gonzalez*, No. 06 Civ. 2518 (N.D. Ill. Jan. 26, 2007) ¶ 48.

¹⁵ *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> .

¹⁶ Interview with Prakash Khatri, former Citizenship & Immigration Services Ombudsman, in N.Y., NY. (May 12, 2008).

¹⁷ CITIZENSHIP & IMMIGRATION SERVICES OMBUDSMAN ANNUAL REPORT 2008 6 (2008), *available at* http://www.dhs.gov/xlibrary/assets/CISOMB_Annual_Report_2008.pdf.

¹⁸ *Id.*

¹⁹ CITIZENSHIP & IMMIGRATION SERVICES OMBUDSMAN ANNUAL REPORT 2006 23 (2006) *available at*, http://www.dhs.gov/xlibrary/assets/CISombudsman_AnnualReport_2006.pdf.

²⁰ *Id.* at 24.

²¹ Leslie Casimir, *Arab-sounding Immigrant? Wait 1,001 Nites*, N.Y. DAILY NEWS, May 28, 2006, at 29; Mary Beth Sheridan, *Some Would-Be Citizens Languish for Years in Security-Check Limbo*, WASH. POST., Feb. 7, 2005, at B01; Michele Marcucci, *Immigrants Sue Feds to End Citizenship Delays*, OAKLAND TRIB., Feb. 9, 2007; Pamela MacLean, *Attempts to Speed Up Asylum Cases Meet Jurisdictional Hurdles*, MIAMI DAILY BUS. REV., July 20, 2007; Deborah Bulkeley, *Wrong Name, a Long Wait, FBI is Still Clearing Utah Muslims for Citizenship* Deseret News, Nov. 13, 2006; Shelley Murphy, *Immigrants are Suing to Speed Up*

Citizenship: Willing to Risk Confrontation to End Delays, THE BOSTON GLOBE, Dec. 17, 2005; Anna Gorman, *Caught in a Black Hole of Red Tape*, LA TIMES, Sept 11, 2007.

²² Mary Beth Sheridan, *Some Would-Be Citizens Languish For Years in Security-Check Limbo*, WASH. POST., Feb. 7, 2005, at B01.

²³ S. 795, 110th Cong. (2007).

²⁴ *Id.*

²⁵ *Id.*

²⁶ United States Bill Tracking, 2007 U.S. SENATE BILL NO. 795.

²⁷ *Rep. Clarke Introduces Immigration Backlog Reduction Bill*, Rep. Yvette Clark D-NY (11th CD), U.S. FED. NEWS, Oct. 17, 2007.

²⁸ H.R. 3828, 110th Cong. (2007).

²⁹ CIS Ombudsman teleconference on “CIS Ombudsman’s 2008 Annual Report: Your Questions and Comments” (July 29, 2008).

³⁰ Press Release, Citizenship & Immigration Services, USCIS Updates Projected Naturalization Processing Times, Aug. 11, 2008, *available at*

<http://www.uscis.gov/portal/site/uscis/template.PRINT/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=72fd5d63502bb110VgnVCM1000004718190aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>.

³¹ *Id.*