Testimony of

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On

Naturalization Delays: Causes, Consequences and Solutions

Before

The Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law

of the

JUDICIARY COMMITTEE

U.S. House of Representatives

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Madame Chairwoman, Ranking Member King, Members of the Subcommittee, thank you for the opportunity to appear before you today to talk about how the growing delays in our naturalization process should be addressed. My organization, NumbersUSA, represents more than half a million U.S. citizens and lawful permanent residents (LPRs) from every Congressional district in the country and from across the political spectrum. They are environmentalists, engineers, drywallers, retirees, college students, stay-at-home moms, small business owners, police officers, and teachers. The represent every socio-economic group and every race and ethnicity, and they approach the immigration issue from half a million different perspectives. One thing that every single one of our activists agrees on, however, is the value of U.S. citizenship because they experience it directly every time they send a fax or make a phone call to their Senators or Representative.

NumbersUSA believes strongly that naturalization should be the goal of every LPR and the highpoint of the immigrant experience in America. We believe just as strongly that U.S. citizenship should be bestowed only upon those who have earned it by meeting the legal requirements and who are willing to take on the responsibilities of citizenship, as well as enjoy the rights it affords. We believe that the naturalization process should be as efficient and timely as is possible without compromising its integrity or America's security. We adamantly oppose attempts to "balance" efficiency with security and/or integrity. National security and the integrity of the process must always come first.

The good news is that the naturalization workload is, to a large extent, predictable three to five years in advance. Since most1 naturalization applicants must have resided in the United States as LPRs for either three years, in the case of spouses of U.S. citizens, or five years, annual LPR grants can be used as a rough indicator of what to expect with naturalization applications in three to five years.

Clearly, there are other factors—including election cycles, the enactment of laws like welfare reform that affect aliens and citizens differently, and the adoption of alien-specific policies like the green card replacement program implemented in the mid-1990s—that may encourage eligible LPRs to apply for naturalization in large numbers at a given time. However, a cursory look at official LPR and naturalization numbers supports the use of the former to predict trends in the latter. For example, the record numbers of aliens granted LPR status in 1990 and 1991, the peak years of the 1986 IRCA amnesty, should have served as notice to the then-Immigration and Naturalization Service (INS) that there would be a surge in naturalization applications beginning as early as 1993. Ideally, the INS would have used this lead-time to hire additional staff, ensure that new hires were fully trained, test data systems, and review background check procedures. It would have methodically ramped up its adjudications capacity while maintaining the integrity of the process. Ideally, Congress would have given the INS the green light to do all this and used its oversight authority to ensure that it was done properly.

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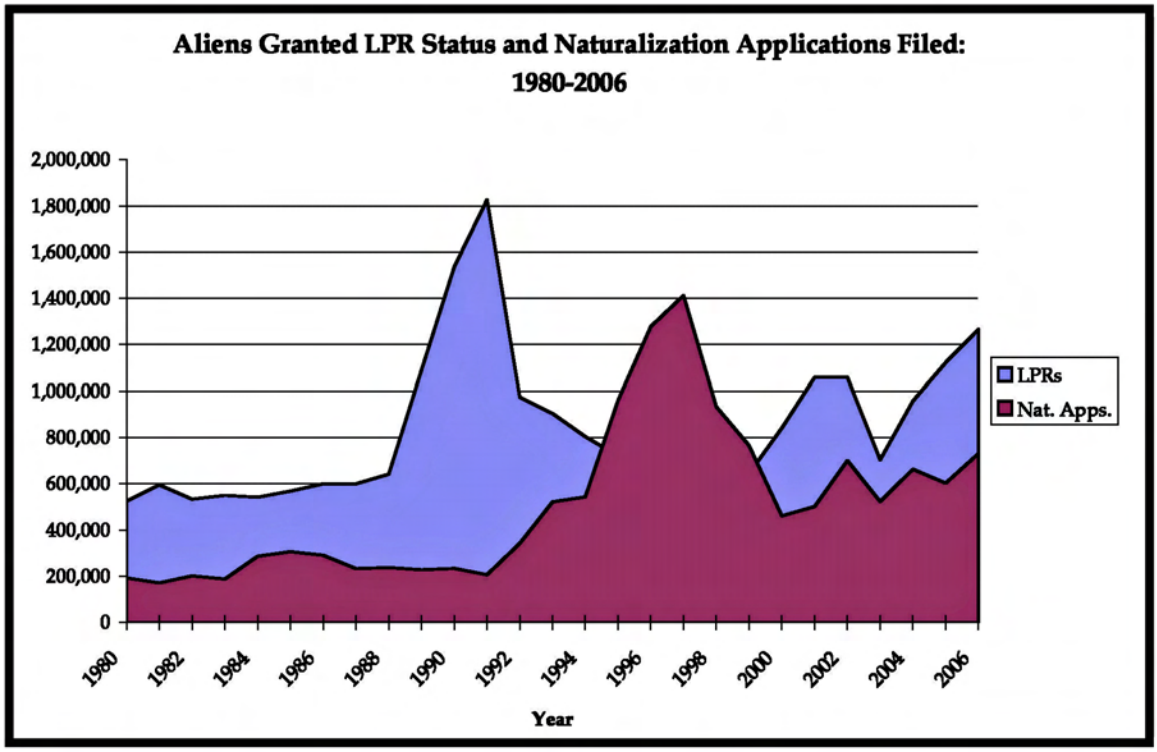
[1] There is no residence requirement for employees of certain nonprofit organizations or active-duty members of the Armed Forces, along with their spouses and children. 8 U.S.C. 1430, 1439, 1440.



Instead, the INS went on with business as usual until the surge in naturalization applications had overwhelmed every office.

Over the past 18 years of observing first INS', and more recently US Citizenship and Immigration Services' (USCIS), attempts to address backlog pressures, I have come to dread hearing the phrase, "backlog reduction," or anything synonymous with it. It is as if this phrase causes some irresistible impulse in agency managers to make the same bad decisions and take the same risky shortcuts that inevitably get them in trouble in the hopes that the outcome will be different this time.

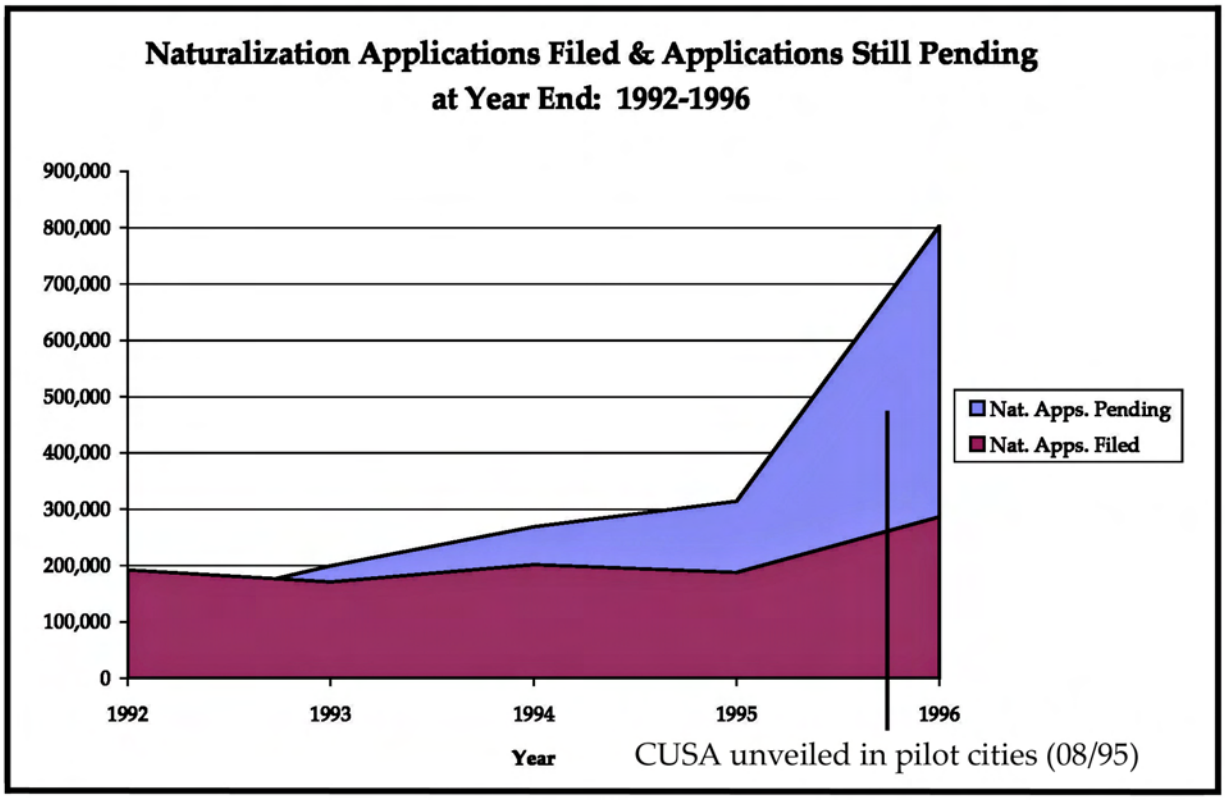
Backlog reduction programs should be put in the context of a larger, predictable (and thus avoidable) sequence of events. The sequence starts with a rapid, often foreseeable, rise in the number of applications of one sort or another being filed. Front-line adjudicators, who

generally already have plenty of work to keep them busy, have to bear the brunt of the additional workload and soon begin to fall behind. As the pending caseload grows, frustrated applicants increase the frequency of their calls to the agency to try to sort out the cause of the delay. When calls to the agency fail to produce results, the applicants (or their family members) begin calling their elected officials, including Members of Congress. Eventually, the political offices will shift the pressure back onto the agency to speed up the process.

Once INS/USCIS management is on the radar screen of enough Members of Congress to make them uncomfortable, bad decisions start piling up. First, they attempt to address the backlog by shifting resources from other programs into the one that is backed up. Rather than fixing the problem, the transfer of resources results in delays or backlogs in the programs from which the resources are being transferred, which only generates more pressure from Congress.

At this point, management decides they need to bring in a consultant and "reinvent" or "re-engineer" the process that first bogged down. The first step is for the outside firm to assess the current process, which slows it down even more as adjudicators and supervisors are tasked with educating the consultants.

Once the assessment is complete—or at least as complete as can be expected from outside consultants whose expertise is generally efficient management, rather than national security or immigration—the consultants propose a "streamlined" process, usually with a catchy name, that promises to slash processing times and eliminate the backlog. Field offices are sent a memo from Headquarters that details the new procedures, which are effective immediately, and chaos ensues.



For example, as this chart indicates, the Citizenship USA program was announced and implemented at a time when the backlog was still increasing rapidly and new applications were being filed at record levels. The collapse of the entire process was almost a foregone conclusion.

Almost immediately, adjudicators begin to realize that "streamlining" actually means eliminating some of the security procedures, since they are the most time-consuming parts of the adjudication process. Oftentimes they find that the plan involves contracting out part of the process, and that there are no safeguards in place to govern who the contractors are or whether they may have their own agendas. Then they find themselves working side-by-side with "term workers" or other new hires who have been provided no training, have not been

subjected to background checks, and have no security clearances to access the databases required to do background checks on applicants for benefits, but are nonetheless approving applications at break-neck speed.

Before long, a handful of employees will decide they cannot, in good conscience, remain silent about the "reinvented" process, and they will quietly begin to pass along information to Members of Congress detailing the failures of the process. They will almost certainly lose their jobs for their efforts, but Congress will make enough of a stink that management will abandon the new program and reinstitute the old process. Of course, by that time, the applications from the backlog will virtually all have been approved and the mission accomplished, except for some minor cleanup efforts if Congress is really upset.

Then, it's back to business as usual—except for the fact that the recent focus on one form of application and the elimination of that backlog allowed a backlog another kind of application to start piling up. And thus it begins again.

This sequence has repeated itself over and over again. It has played out in every major backlog reduction effort I have seen over the past 18 years, and I have no doubt it will continue to play out in every future such effort until Congress finally breaks the pattern.

Citizenship USA

Almost 11 years ago, I testified before this Subcommittee about the integrity of the naturalization process in the aftermath of the Citizenship USA initiative. I have attached my statement from that hearing for several reasons:

1) In the months before I wrote it, I was given access to the thousands of pages of internal memos, emails, and other documents that had been subpoenaed from INS by the National Security, International Affairs and Criminal Justice Subcommittee of the House Government Reform and Oversight Committee. It contains a level of detail that is not necessary for today's hearing, but it would be useful for anyone at USCIS interested in what NOT to do to address the current backlog of naturalization applications;

2) In 1996 and 1997, when I was discovering the lengths to which INS officials were willing to go in order to meet their processing goals, my primary concern, as the statement makes clear, was the irreparable harm they had done to the integrity of our citizenship process. Today, while I am still appalled at the absolute contempt they showed for the integrity of the process, I am most horrified by the certainty that, through the Citizenship USA program and in its aftermath, the highest honor America has to offer was bestowed upon terrorists and their supporters who would destroy everything America represents; and

3) Despite the assurances of then-INS Commissioner Doris Meissner that the mistakes of Citizenship USA had been corrected (see pages 12-13), despite a direct warning in the KPMG Pear Marwick review of the implementation of the post-Citizenship USA naturalization policy about our continuing inability to identify statutorily-barred applicants, and despite the subsequent Coopers and Lybrand review of the entire

process, there is reason to believe that we still have not fully closed the loopholes that could allow terrorists to become naturalized U.S. citizens.

Naturalizing a Known Terrorist

A report by the Office of Internal Audit of the then-INS details how a known terrorist was naturalized in late 2002 (report is attached). Some of the procedural deficiencies cited as having allowed this outcome are identical to those uncovered during the Citizenship USA program and those that Commissioner Meissner stated unequivocally had been corrected:

- The naturalization interview was scheduled and the application approved before results from the FBI check were received;
- The adjudicator failed to catch a disqualifying violation listed in the National Automated Inspector Lookout System (NAILS);
- The adjudicator was not properly trained in doing background checks in the Interagency Border Inspection System (IBIS);
- The INS employee in possession of the terrorist's A-file failed to forward it to the adjudicator upon the latter's request, so the adjudicator created a temporary file instead; and
- The INS Agent assigned to the Joint Terrorism Task Force failed to report information about the terrorist to INS.

USCIS Continues to Ignore FBI Fingerprint Check Law

In 1998, Congress codified the requirement that INS/USCIS adjudicators receive affirmative results from the FBI indicating that all required criminal background checks have been completed prior to making a final determination on an application for naturalization. (Pub.L 105-119) The federal regulations that govern USCIS adjudicators state unequivocally that the naturalization interview may not be scheduled until affirmative results on the criminal

background check have been received from the FBI. Despite this, an internal USCIS memo (attached) dated March 16, 2006, includes the following paragraph essentially arguing that USCIS continues to violate the law and its own regulations on this *because* of "Congressional and Presidential mandates on processing times and backlog reduction."

> *American-Arab Anti-Discrimination Committee (ADC) "120 Day Cases" in District Court. The Department of Justice is greatly concerned with the number of these actions that are pending. A concerted effort to file such cases in district court pursuant to 336(b) of the Act is being championed by the American-Arab Anti-Discrimination Committee. DOJ/OIL believes that CIS violates its own regulations (at 8 C.F.R. 335.2(b)) in holding interviews before checks are done, and that DOJ is left without a good argument to make when advocating these cases before district courts. While DOJ understands the Congressional and Presidential mandates on processing times and backlog reduction that CIS labors with, OIL nonetheless has expressed in the strongest terms a desire that CIS conducting the naturalization process in this way* [sic].

Conclusion

The immigration adjudication system is broken. For too long, we have focused on quick fixes to sudden crises, rather than on building a solid foundation on which increased capacity could be built without collapsing the entire system. USCIS needs to focus on the basics:

- A solid, integrated information technology system that can be upgraded and expanded as needed;
- Training—in the law, in the national security threats we face, and in the adjudication process—for all adjudicators *before* they are put on the job;
- Personnel policies that measure quality, not quantity, of adjudications and that reward employees for doing the right thing, not just the expedient thing; and
- An understanding that nothing trumps national security or the integrity of the process.

Once the basic foundation is in place, USCIS will be in a better position to handle all the challenges that will come—and come, they will. Only three years in the history of immigration to the United States saw larger numbers of aliens granted LPR status than 2006. The next surge in naturalization applications is likely to follow right on the heels of the current one.

It is time for Congress to step in and exercise its oversight authority with a firm hand and finally help USCIS establish a solid, secure adjudications system that we can all be proud of and that will assist in the effort to secure our homeland, rather than undermine that effort. Otherwise, history will continue to repeat itself and the lists below will grow longer.

Naturalized U.S. Citizens Involved in Terrorist Activities[2]

- Abdurahman Alamoudi—Country of birth: Kuwait. Pleaded guilty on July 30, 2004, to federal offenses relating to terrorist financing and to making false statements in his naturalization application, and is now serving a 23-year prison sentence. Alamoudi was naturalized in 1996 under the Citizenship USA program.
- Nada Nadim Prouty—Country of birth: Lebanon. Entered the United States with a student visa in 1989 and overstayed it. Entered into a sham marriage in 1990 and was naturalized in August 1994. She worked for the FBI and the CIA. On November 13, 2007, she pleaded guilty to naturalization fraud, illegally accessing a government database, and conspiracy to defraud the government.
- Iyman Faris—Country of birth: Kashmir. Pleaded guilty in May 2003 to casing the Brooklyn Bridge for al Qaeda, as well as researching and providing information to al Qaeda regarding the tools necessary for possible attacks on U.S. targets. He was naturalized in 1999 and used his new U.S. passport to travel to Afghanistan and Pakistan where he met with Osama bin Ladin and Khalid Sheik Mohammed about potential U.S. targets. He also conspired with Nuradin Abdi to bomb a Columbus shopping mall. In October 2003, Faris was sentenced to 20 years in prison.

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[2] This list and the two that follow it are by no means exhaustive. They are based on:
(1) Information available on the internet;
(2) Steve Camarota, *The Open Door: How Militant Islamic Terrorists Entered and Remained in the United States, 1993-2001.* Center for Immigration Studies. (2002).
(3) Janice L. Kephart, *Immigration and Terrorism: Moving Beyond the 9/11 Staff report on Terrorist Travel,* Center for Immigration Studies, September 2005.

- Ali Khaled Steitiye—Country of birth: Lebanon. Linked to the "Portland Six" terror cell. Naturalized in May 2000, despite four felony convictions and lying during his naturalization interview. Convicted on unrelated fraud charges, sentenced to a prison term of 30 months, and denaturalized in September 2002.
- Enaam M. Arnaout—Country of birth: Syria. Pleaded guilty on February 10, 2002, of racketeering conspiracy and admitted that, as director of the Benevolence International Foundation, he "fraudulently obtained charitable donations in order to provide financial assistance to persons engaged in violent activities overseas."
- Yong Ki Kwon—Country of birth: South Korea. Member of the Virginia Jihad Network, which provided weapons training to its members in preparation for Jihad. Pleaded guilty to conspiracy and weapons charges and is serving a prison term of more than 11 years.
- Fawaz Damrah. PIJ fundraiser and mosque leader in Ohio. Denaturalized in 2004.
- Sami Al-Arian—Country of birth: Kuwait. PIJ leader in U.S. Sentenced in May 2006 to 57 months in prison.
- Hassan Faraj—Country of birth: Syria. Benevolence Int'l Foundation (BIF), Al Qaeda links. Came to US in 1993 as Bosnian refugee; charged with naturalization fraud in June 2004.
- Sami Khoshaba Latchin—Country of birth: Iraq. "Sleeper spy" for Iraqis during Saddam Hussein era. Charged with naturalization fraud.
- Rafir Dhafir—Country of birth: Iraq. Sent money to Iraq in violation of U.S. sanctions; possible PIJ/Hamas association but not confirmed. Naturalized and charged with defrauding his own charity, Help the Needy and violating U.S. sanctions against Iraq.
- Rasmi Khader Almallah—Country of birth: Jordan. HLF (Holy Land Fdn) (Hamas) and former employer of a WTC1 bomber. Entered into a sham marriage in 1981 and naturalized in 1988; civil complaint filed in 2004 to revoke naturalization based on sham marriage.
- Ahmed Al Halabi—Country of birth: Syria. Al Qaeda link and former Gitmo translator accused of spying for Syria. Naturalized in 1990s and pled guilty to mishandling military documents in 2004.
- Abdulrahman Odeh. Hamas, HLF. Indicted in 2004 for terror financing, providing material support.
- Numan Maflahi—Country of birth: Yemen. Suspected Al Qaeda member. Convicted in July 2004 for lying to fed authorities about ties to a known Al Qaeda-linked sheik.
- Mufid Abdulquader—Country of birth: Palestinian areas. Laundered money from HLF to Hamas. Indicted for terror financing.
- Tariq Isa—Country of birth: Palestinian areas. Laundered money from HLF to Hamas. Indicted for terror financing.
- Muhammad Salah—Place of birth: Jerusalem. Hamas financier. Naturalized in 1990s, charged with RICO violations in 2004.

- Soliman Biheiri—Country of birth: Egypt. Major Hamas financier in N Va w/ the SAAR Network. Indicted for making false statements on his naturalization application in 2000; pleaded guilty to passport fraud.
- Mukhtar Al-Bakri—Country of birth: Yemen. Lackawanna Group attended Afghan training camp. Charged with material support to Al Qaeda in 2002. Currently serving a 10-year prison sentence.

Plot to Bomb New York Landmarks

- El Sayyid Nosair—Country of birth: Egypt. Entered in 1981 on tourist visa, then married an American in 1982 and became a U.S. citizen in 1989. Involved in extremist movements in Egypt in the 1970s before coming to America. Convicted of federal charges in connection with the assassination of Rabbi Meir Kahane in 1990. Also convicted as conspirator in plot to bomb NY landmarks. El Sayyid Nosair married a U.S. citizen in 1981 and was naturalized in 1989 despite the fact that the FBI was aware that he had conducted weapons training for Islamic Jihadists.

African Embassy Bombings

- Ali Mohammed—Country of birth: Egypt. Apparently placed on the watch list as a suspected terrorist in 1984 but was still given a visa in 1985, perhaps with CIA assistance, because he helped train and recruit anti-Soviet forces in Afghanistan. The list was not automated then, and his common name may account for his being issued a visa. Received permanent residency after marrying an American in 1986, served in the U.S. Army for three years, and became a U.S. citizen. Helped to recruit members for bin Laden's organization while in the United States. Helped train al Qaeda members in Afghanistan and Sudan and is thought to have written large sections of the organization's handbook on how to operate in the West and plan attacks. Pleaded guilty to embassy bombing.
- Khalid Abu al Dahab—Country of birth: Egypt. Came in on a student visa in 1986 to study medicine. Lived in California and tried to quickly marry an American in order to obtain permanent residency. His first marriage lasted only one month, and his second was also short-lived. A court investigator concluded that the second marriage was "primarily based on convenience." Finally gained permanent residency by his third marriage and later became a naturalized U.S. citizen. Thought to have participated in a half-dozen terrorist attacks, including the embassy bombings in Africa. Currently in prison in Egypt.
- Wadih el Hage—Country of birth: Lebanon. Entered the United States as a student in 1978 to study at the University of Southwestern Louisiana. He acquired legal permanent residence after marrying an American in 1986. When the Soviets invaded Afghanistan, he went to Pakistan to assist anti-Soviet forces. Gained permanent residence by marriage to an American in 1985. He naturalized in 1989. A personal secretary to bin Laden, he raised money and ran businesses in the U.S. and Africa that provided funds for the organization. Helped bin Laden purchase an airplane to transport antiaircraft missiles. Found guilty in

June 2001 and sentenced to life in prison for his role in the embassy bombings and other terrorist activity.

- Essam al Ridi—Country of birth: Egypt. Al Ridi said he first met el Hage in 1982, at a Muslim Youth Association convention in Louisiana, where el Hage was a student. At the direction of el Hage, he arranged the purchase of an airplane in the U.S. and flew it to the Sudan in 1993, turning it over to bin Laden. Admitted in court that he knew the plane would be used by bin Laden to transport Stinger missiles from Afghanistan to the Sudan. Also helped obtain other equipment for al Qaeda, such as high-powered rifles. Testified against el Hage at the African embassy bombing trial and has not been charged with any crime to date.

1993 World Trade Center Bombing

- Nidal Abderrahman Ayyad—Country of birth: Egypt. A Rutgers-educated chemical engineer who provided the explosives expertise for the attack and is currently serving a 240-year prison sentence. Ayyad was naturalized in 1991.

Naturalized U.S. Citizens Indicted for Terrorist Activities

- Mohamad Shnewer—Country of birth: Jordan. The only U.S. citizen among the "Fort Dix Six," indicted on May 7, 2007, for plotting to kill U.S. soldiers at Fort Dix Army Base in New Jersey.
- Rahmat Abdhir—Country of birth: Malaysia. Indicted on August 1, 2007, for providing material support, including equipment used to construct and detonate improvised explosive devices (IEDs), to his brother who is believed to have been involved in a series of terrorist bombings in the Philippines in 2006.

Lawful Permanent Residents Involved in Terrorist Activities

1993 World Trade Center Bombing

- Mahmud Abouhalima—Country of birth: Egypt. Entered on a tourist visa in 1985 and failed to leave when it expired in spring of 1986. A New York City cab driver involved in both the World Trade Center and landmarks plots, he was granted amnesty under the Seasonal Agricultural Workers (SAW) program included in the 1986 Immigration Reform and Control Act after falsely claiming that he picked beans in Florida. He used his newly-acquired green card to travel to Afghanistan for terrorist training. In March 1994, he was sentenced to 240 years in prison with no possibility of parole.

Plot to Bomb New York Landmarks

- Ibrahim el Gabrowny—Country of birth: Egypt. Not clear how he obtained legal permanent resident status. Passed messages between conspirators and planned to get Nosair, his cousin, out of the country after a jailbreak the group was planning. Obtained fake Nicaraguan passports for use by Nosair and his family.
- Mohammed Saleh—Country of birth: Jordan. Obtained legal permanent residence by marrying an American. Provided money and 255 gallons of fuel from a gas station he owned in Yonkers, NY, to make bombs.
- Amir Abdelg(h)ani—Country of birth: Sudan. Entered in 1983 on apparently a tourist visa. Cousin of F. Abdelgani. Obtained permanent residency by marrying an American. About to be naturalized at the time of arrest. Helped determine targets and picked up fuel.
- Fadil Abdelg(h)ani—Country of birth: Sudan. Came on a tourist visa in 1987 and overstayed, becoming an illegal alien. Obtained legal residence through sham marriage to an American in 1991. Helped mix explosives.
- Tarig Elhassan—Country of birth: Sudan. Obtained legal permanent residence by marrying an American. Helped mix explosives.
- Fares Khallafalla—Country of birth: Sudan. Obtained legal permanent residence by marrying an American. Purchased fertilizer for the bombs.
- Siddig Ibrahim Siddig Ali—Country of birth: Sudan. Obtained legal permanent residence by marrying an American. Considered a ring leader of the plot. Helped select targets and directed production of bombs. Worked as translator for Rahman. Surprised other defendants by pleading guilty to charges and testifying against others. Sentenced in February 1995.
- Matarawy Mohammed Said Saleh—Country of birth: Egypt. Obtained legal permanent residence by marrying an American. Was supposed to supply stolen cars to plotters. A minor player, he testified against others and pleaded guilty to conspiracy. Sentenced to time served, and deported.
- Abdo Mohammed Haggag—Country of birth: Egypt. Obtained legal permanent residence by marrying an American. Took part in plan to assassinate Egyptian President Mubarak on a visit to U.S. Testified against others in conspiracy trial and was allowed to plead guilty to lesser charges. Now in witness protection program.

Statement of

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Center for Immigration Studies, Washington, DC

On

Safeguarding the Integrity of the Naturalization Process

Before the

Immigration and Claims Subcommittee

of the

Committee on the Judiciary

of the

United States House of Representatives

April 30,
1997

Mr. Chairman and Members of the Subcommittee, I am Rosemary Jenks, a Senior Fellow at the Center for Immigration Studies, a non-profit, non-advocacy research institution. Thank you for the opportunity to appear before you to discuss an issue that is central to our national identity, the bond that holds us united as one people: United States citizenship. United States citizenship is the most valuable and the most cherished privilege our nation can bestow upon an individual. It is a privilege that is sought by millions around the world. It carries with it the right to travel freely, to hold certain public offices and to petition for the immigration of family members. Most importantly, however, it carries with it the right, and the responsibility, to take part in shaping and securing the future of this country by voting for elected officials at all levels of government.

The requirements for naturalization are set out in the Immigration and Nationality Act. Among other things, applicants are required to submit an application form, the N-400, a copy of their alien registration card, the "green card," fingerprints, photographs and a fee of $95 to the INS. In general, they must prove that they are at least 18 years of age; that they have resided in the United States as lawful permanent residents for a minimum of five years (unless they marry a U.S. citizen, in which case it is three years); that they are able to read, write, speak and understand English; that they have at least a minimal knowledge of U.S. history and government; that they are of good moral character; and that they do not have a serious criminal record. Upon receiving the N-400 and the accompanying paper work, INS enters the information into an INS database and forwards the fingerprints to the FBI for a criminal record check. As of November 29, 1996, INS policy is to wait for a definitive response from the FBI regarding the criminal record check before scheduling an interview with the applicant. During the interview, INS examiners (or District Adjudications Officers, DAOs) review the information on the N-400 and test the applicant's knowledge of English, history and civics, unless he or she presents a certificate from one of

the non-government testing entities. If all the requirements are met, the application is approved and the applicant is scheduled for a swearing in ceremony. Otherwise, the application is either denied or continued, depending on the nature of the problem.

Citizenship USA

At the start of FY 1994, when Commissioner Meissner took office, some 270,000 N-400 applications were pending (not including any that had been received, but not been entered into the computer). The number of N-400 applications received in FY 1994 (543,353) surpassed FY 1993 receipts (521,866) by only 21,487. At the beginning of FY 1995, however, the backlog of applications had grown to more than 314,000 and INS expected a surge in new applications because of a combination of factors, including the 2.7 million beneficiaries of the 1986 Immigration Reform and Control Act (IRCA) amnesty becoming eligible based on the five-years residence requirement, the passage of Proposition 187 in California in November 1994, and legislative proposals to bar noncitizens from certain means-tested welfare benefits.

To prepare for this expected surge, an INS working group conducted a survey in June 1994 of ways to streamline the naturalization process. Then, in April of 1995, Commissioner Meissner contracted a management consulting firm, PRC, to work with INS staff to overhaul the naturalization process. PRC and the INS staff conducted a four-week review of the process and produced a "radical redesign" of naturalization. The final report, issued in May 1995, is called *Results in 30 Days: Re-Engineering the Naturalization Process*. Among other things, it recommends that INS develop strong partnerships with "Service Providers"— community-based organizations (CBOs) and voluntary agencies (VOLAGS)—which would involve "total sharing of information, joint decision making, and aggressive coloration aimed at best

meeting the needs of the applicant." It recommends the introduction of high-tech, fully automated and integrated systems to facilitate data entry and criminal background checks, in addition to automatically triggering "pre-qualified 'invitations' to immigrants as they become legally eligible for citizenship." It adds that "long-standing interpretations of eligibility laws and regulations will be reviewed to...[focus] upon meeting the demands of today's eligible customers." Finally, it concludes that processing time from submission "to approval will be reduced to 'same day service' for 80% of the applicants."

In June, 1995, Commissioner Meissner submitted a request that the naturalization program be designated as a "Reinvention Lab" under the auspices of Vice President Gore's National Performance Review (NPR). Her request letter and subsequent INS documentation make clear that the PRC report was to provide the basis for the "re-engineering" of the naturalization process.

In the meantime, N-400 applications were on the rise and examiners were being overwhelmed. District Offices lacked the equipment they needed to process N-400s efficiently. Many offices did not have access to the Naturalization Automated Case System (NACS) database, and those that did were experiencing problems with it.

Commissioner Meissner unveiled the "Citizenship USA" (CUSA) initiative on August 31, 1995. The stated objective of CUSA, at least initially, was "to become current" on N-400 applications, meaning that applications would be processed from start to citizenship within six months, by the end of FY 1996. INS designated five "CUSA cities," including Los Angeles, San Francisco, New York, Miami and Chicago, which had the largest numbers of pending cases when the program started. Resources, including personnel, equipment and building space, were to be funneled into these five cities, which would serve as the "Reinvention Labs."

The naturalization initiative was approved as an NPR Reinvention Lab on September 5, 1995. On September 11, Commissioner Meissner forwarded to all field offices the executive summary of the PRC report with a memo explaining its origin and asking for comments. She wrote that "wherever possible, we will use validated re-engineering techniques as outlined in the PRC report to attack the caseload." She added that the report offers "a basic road map for change."

In January 1996, INS implemented a "Direct Mail" initiative in all the CUSA cities except San Francisco. Under this system, N-400s are mailed directly to one of the four INS Service Centers (Vermont Service Center (VSC), Nebraska Service Center (NSC), Texas Service Center (TSC) and California Service Center (CSC)) instead of being submitted to District Offices. The Service Centers are supposed to enter the application data into NACS and pull the fingerprint cards and submit them daily to the FBI.

The implementation of the Direct Mail initiative resulted in almost immediate chaos. Neither Service Center staff nor District Offices fully understood the new procedures. INS offices around the country were being overwhelmed by the increase in N-400 applications—the largest group of aliens amnestied in 1986 had met the five-year residence requirement by December 1995. CUSA offices, in addition to being inundated with backlogged and new cases, were attempting to adopt the new "re-engineered" and streamlined adjudication process, thus compounding the confusion. Non-CUSA offices had been forced to detail some portion of their resources, mainly personnel, to the CUSA offices, so they, too, were falling behind. The number of N-400 applications pending on October 1, 1995 surpassed 800,000, and new applications were being received in record numbers.

On May 1, 1996, INS Associate Commissioner for Examinations Louis Crocetti announced in a memo to all field offices that the "new ideas and innovative

procedures" that were tested at CUSA sites with "remarkable results," were to be expanded Servicewide to all offices. As the nationwide expansion of these "Streamlining Initiatives" was predicated on the "remarkable results" of the pilots in the CUSA cities, a brief look at those results is warranted.

Adjudication Speed—The five CUSA cities managed to accelerate naturalization processing times from more than one year in many cases to six months. This allowed the INS to meet its goal of adjudicating more than one million naturalization applications in FY 1996, but only at great cost to the integrity of the system.

FBI Fingerprint Checks—A February 1994 report from the Office of the Inspector General (OIG) of the Justice Department identified three major problems with the INS policy on fingerprint checks:

1) the INS had no way to verify that the fingerprints submitted by an applicant actually belonged to that applicant since the INS was no longer taking the fingerprints itself;
2) some applications were wrongly approved because the FBI had not completed the criminal history check before the interview was scheduled or because the FBI "hit" had not been properly filed; and
3) INS often did not resubmit new fingerprint cards when the FBI rejected the original set as illegible.

OIG found that 5.4 percent of aliens submitting applications for benefits had an arrest record. The top reasons for arrest were immigration violations/ deportation proceedings (32%), assault/battery/rape (19%), theft/robbery/burglary (18%) and drug possession/distribution (10%). A December 1994 General Accounting Office (GAO) report identified the same problems with the INS fingerprint policy.

The "streamlined" naturalization process did not address any of these problems, but instead, exacerbated them. The INS still had no way to verify that the fin-

gerprints an applicant submitted actually belonged to the applicant. In May 1995, the INS published a proposed rule to require that all applicants have their fingerprints taken by an INS-certified "designated fingerprint service" (DFS). Personnel at these DFSs would be properly trained to take fingerprints and fill out the necessary paperwork, and they would be required to ask for identification showing that the person named on the fingerprint card was the same person being fingerprinted. The final rule, however, was not published until June 1996, and final implementation was delayed from November 1, 1996 to March 1, 1997 to insure that INS had certified an adequate number of DFSs.

Fingerprint cards were supposed to be mailed by the Service Centers to the FBI on a daily basis to insure that the FBI had adequate time to run the criminal history check. In March 1996, however, the FBI did a sampling of receipts from 20 INS offices. Over 60 percent of the fingerprint cards received from Los Angeles had been at the Los Angeles office for more than 30 days before they were submitted. For the New York City office, 90 percent had been at the office for more than 30 days.At the same time the INS was dramatically increasing the workload of the FBI, it was, in practice, cutting the FBI's response time.

The preliminary results of the INS internal review of naturalization applications approved during CUSA, as presented to the Subcommittee by Assistant Attorney General for Administration Stephen Colgate clearly show that the problems were severe. Of the 1,049,872 immigrants granted U.S. citizenship under CUSA:

- 71,557 were found to have FBI criminal records, including INS administrative actions (e.g., deportation proceedings or other immigration violations), and misdemeanor and felony arrests and convictions;
- Of these 71,557, 10,800 had at least one felony arrest, 25,500 had at least one misdemeanor arrest, but no felonies, and 34,700 had only administrative actions initiated against them;

- 113,126 had only name checks because their fingerprint cards were returned to the INS by the FBI because they were illegible;
- 66,398 did not have FBI criminal record checks because their fingerprint cards were never submitted to the FBI by the INS; and
- 2,573 were still being processed by the FBI.

As of late February 1997, 168 of these new citizens had been found to be "presumptively, statutorily ineligible" for naturalization based on their criminal record, and in another 2,800 cases, it could not be determined based on available information whether they were eligible or not.

It is important to note that none of the numbers given above indicates the degree to which applicants for naturalization lied on their applications, thereby committing perjury, which should make them ineligible for naturalization. They also do not indicate the number of applicants who may have submitted someone else's fingerprints to avoid having their criminal record revealed. Finally, for the 180,000 applicants whose fingerprints were illegible or never submitted, the INS has no way to go back and check because it is not legally allowed to require citizens to resubmit their fingerprints. Thus, unless these new citizens volunteer to have their fingerprints taken, we will never know if they were actually eligible or not.

Personnel—Temporary workers comprised most of the additional personnel for CUSA. Some 900 temporary adjudicators and clerical workers were hired by INS to accomplish the goal of naturalizing over a million people in FY 1996. As of June 1996, the Inspector General was investigating the training standards for these temporary workers, along with those workers who were detailed from other agencies or offices. In August 1996, the INS conducted an evaluation of the CUSA training program and found two major deficiencies in the program:

1) personnel were poorly trained in doing the computer checks that, among

other things, tell whether an applicant is in deportation proceedings or has had other administration actions taken against him or her; and

2) training in the procedures to deny an application were inadequate at best.

These results point to a larger problem that has since been confirmed by INS employees and by the recent KPMG Peat Marwick review of the implementation of the November 29, 1996 naturalization policy changes. A training program that teaches personnel good customer relations, but not how to do computer checks or deny applications sends an implicit message that it is more important to keep the applicant happy and approve the application than it is to maintain the integrity of the process and demand compliance with the regulations. This is precisely the message that many INS adjudicators received, not only from their training, but also from their supervisors. A number of INS employees testified, under oath, last fall that adjudicators feel pressured by their supervisors to "approve, approve, approve;" that good moral character standards are being ignored; that representatives of Community Based Organizations (CBOs) complain to supervisors about adjudicators who continue or deny applications, and that sometimes those adjudicators are removed from their duties; that adjudicators who go on outreach interviews have to provide copies of their tally sheets (showing approvals, denials and continueds) to the CBO representatives; that adjudicators have been told by their supervisors that they are not IRS agents and so shouldn't concern themselves with possible tax fraud, even though it is inconsistent with the good moral character requirement.

Volunteer workers were also utilized by many INS offices. These volunteers included members of CBOs, family members of INS employees, and, in at least one case, legal permanent residents. These volunteers performed clerical duties, including filing, mailed naturalization certificates, and collected Alien Registration

Cards and distributed naturalization certificates at citizenship ceremonies, among other things. According to INS employees, this practice continued even after INS Headquarters Counsel notified Regional Directors that it is a violation of Federal law for a government agency to use volunteers to perform duties that are normally performed by agency personnel, as it constitutes an unauthorized augmentation of the agency appropriation.

Testing Fraud

In addition to internal INS problems with the naturalization process, there is well-documented evidence of widespread fraud in the testing of naturalization applicants by outside (i.e., non-government) testing entities (OTEs). In 1991, the INS established criteria under which OTEs, including for-profit businesses, could be authorized to administer standardized tests to determine a naturalization applicant's ability to read and write in English, along with his or her knowledge of history and civics. The INS criteria do not require that administrators of the tests be U.S. citizens or have criminal history checks in order to be approved.

The tests are comprised mainly of multiple choice questions, but applicants also have to write two simple sentences that are dictated to them. Five OTEs currently are authorized to administer these tests:

- Educational Testing Service (ETS);
- Comprehensive Adult Student Assessment System (CASAS);
- Southeast College;
- Marich Associates; and
- American College Testing (ACT).

(There was a sixth OTE, Naturalization Assistance Services (NAS), until earlier this year when its authorization was terminated after repeated instances of fraud.) These OTEs in turn may license community based organizations (CBOs) and other

affiliates to administer the tests on their behalf. However, neither INS, nor the individual OTEs, are able to monitor all the affiliates to ensure that requirements relating to the security of the tests or the integrity of the testing are met.

Reports of testing fraud at affiliates of the OTEs, which first surfaced in 1992, began to increase dramatically in late 1994. INS examiners came across increasing numbers of naturalization applicants who, despite having an OTE test certificate, were unable to communicate in or understand English. Some affiliates were charging as much as $850 to prepare and test immigrants. Examples of documented fraud during the administration of the tests include test proctors pointing to the correct answers on the answer sheet, tests being given in the applicants' native language instead of English, and the sentences being written on a blackboard so applicants simply have to copy them. Some affiliates guaranteed that, as long as applicants could sign their names in English, they would pass the test. Affiliates were using print media—often ethnic newspapers—radio and television ads to advertise their services. Some ads included false promises and/or blatant lies, but there were no regulations governing the ads' contents.

In April 1996, INS Headquarters sent instructions to the field offices on procedures to follow to report and initiate investigations of complaints of testing fraud. In May 1996, after it was notified of an investigation into testing fraud by the television show "20/20," INS Headquarters sent a memo to field offices with guidelines on conducting unannounced on-site inspections of testing sites. The guidelines required each District Office to visit one site per quarter.

During the past couple of months, I have been contacted by the directors of two separate testing affiliates operating in separate regions of the country. Both told me that fraud in the outside testing entities continues, with unauthorized groups administering tests and issuing counterfeit certificates, applicants cheating

on the tests, tests being given in the applicants' native language, and in one case, the director of an authorized affiliate simply filling out the answer forms for the applicants. They also told me about designated fingerprint services (DFSs) selling clean fingerprints to applicants, accepting inadequate identification, such as letters from family members or friends attesting to the person's identity, and accepting blatantly false identification.

Like the criteria for OTEs, those for DFSs do not require that the person taking the fingerprints be a U.S. citizen or have a criminal record check done. While many of the DFSs are police departments, others raise questions about the judgement of the INS in the selection process. Some of the more interesting DFSs are:

- Harbor Liquors in Baltimore;
- Biscayne Haircutters in Miami; and
- Express Courier Service in Passaic, NJ.

Hermandad Mexicana Nacional in Ontario, CA and Pookies Post and Parcel in Pasadena, CA had applications pending at the end of February 1997.

INS Responds

The National Security, International Affairs and Criminal Justice Subcommittee of the House Government Reform and Oversight Committee held the first hearing on the Citizenship USA program on September 24, 1996, after it had subpoenaed and sorted through thousands of pages of INS documents, memos and e-mails detailing most of the problems described herein. Despite the evidence, CUSA Project Director David Rosenberg testified at that hearing that, as a result of CUSA, the INS had "successfully reduced processing times for citizenship applications nationwide to traditional levels while maintaining the integrity of the citizenship process. We have initiated major improvements to naturalization procedures and operations." The Senate Immigration Subcommittee held a hearing on naturalization practices on October 9,

1996, in which the former Executive Associate Commissioner for Programs, Alexander Aleinikoff, testified that, as a result of CUSA, the INS had "reduced processing times for citizenship applications nationwide to traditional levels while maintaining the integrity of the citizenship process, and [had] initiated major improvements to naturalization procedures and operations."

On October 18, 1996, in an official INS response to Senator Alan Simpson regarding testimony I presented at the October 9 Senate hearing, Commissioner Meissner wrote that, under CUSA, the INS had "made numerous improvements to the [naturalization] process, and [had] addressed this workload with efficiency and integrity."

Sometime between late October and late November 1996, INS officials realized that the problems with the naturalization process could no longer be ignored. On November 29, 1996, Commissioner Meissner sent a memo to the field offices detailing new "Naturalization Quality Procedures." The memo outlined seven "key enhancements" to the naturalization process, including:

1) standardization of work process;
2) fingerprint check integrity;
3) enhanced supervisory review;
4) instructions regarding the use of temporary files;
5) implementation of a quality assurance program;
6) guidance regarding revocation procedures; and
7) requirements for increased monitoring of OTEs.

The new procedures were effective upon receipt.

In a joint hearing before this Subcommittee and the National Security Subcommittee on March 5, 1997, Commissioner Meissner testified that the new procedures

"have eliminated the possibility of naturalization cases being completed without verification of an FBI fingerprint check." She concluded by saying, "It is very important that Congress and the American people understand the validity of these corrections we have made to the naturalization process....We made mistakes in Citizenship USA...We have corrected those mistakes and have put into place a series of new measures to prevent them in the future."

The recently-released KPMG Peat Marwick review of the implementation of these new measures brings into question the ability, and the willingness, of INS management to seriously address the problems with the naturalization procedures. The fact that three of the 23 offices surveyed did not even have the correct copy of the new procedures clearly points to a severe lack of communication between INS Headquarters and field offices. It is interesting to note here that, once a draft of the review was given to the INS, Commissioner Meissner called all the District Directors to Washington for a briefing and sent 200 naturalization personnel to a training course. Perhaps if those actions had been taken when the new policies were first implemented, the review would have found better results. Such actions also may have helped to communicate the sense of urgency the reviewers found lacking at the field level.

Despite the fact that field offices had been issued guidelines on monitoring outside testing entities in May 1996, as well as the "enhanced" monitoring procedures in the November 29 memo, the KPMG Peat Marwick review team was "frequently informed that INS Headquarters [not the field offices] was responsible for monitoring all outside testing agencies."

That three of the service processing centers, along with three field offices, had the wrong FBI address is patently absurd. Most worrisome is the report's conclu-

sion that "the INS continues to have the most significant control problems with the fingerprint process and the identification of statutorily-barred applicants."

Recommendations for Improvement

Congress and the American people were assured repeatedly by the INS over the last year that there were no major problems with the naturalization process under Citizenship USA. Then, we were assured that, if there were any problems, they had been fixed. Now, we know that these assurances were unfounded. The Justice Department is correct that the process needs a major overhaul from top to bottom. However, we must be somewhat cautious in our expectations of the re-engineering of the process by Coopers and Lybrand; after all, previous re-engineering efforts got us where we are today.

It is important to recognize that many of the problems with the naturalization process have existed for many years. It is equally important to recognize that any attempt to speed up the adjudication of applications without first addressing the underlying problems will only exacerbate them, as happened under the Citizenship USA program.

The INS was well aware at least as far back as 1993 that naturalization applications would rise dramatically in 1995 simply because the 2.7 million amnestied aliens would become eligible. And yet, all of a sudden in 1995, there was a frantic rush to hire new employees and accelerate an outdated system that had already reached its limits. Had the millions of dollars now being spent on re-engineering, reviewing and auditing the naturalization process been invested in computer equipment, electronic fingerprint scanners and personnel training, we likely would not be having this discussion.

The Coopers and Lybrand review of the process is expected to take 18 months to two years to complete. The naturalization process cannot wait that long. The INS expects 1.8 million new applications this year, and they must not be adjudicated under the conditions described in the KPMG Peat Marwick review. There are a number of areas that need immediate improvement:

- In order to process these applications, the INS desperately needs an updated and integrated computer system, just as any business needs to process orders. Scanners, which now have accuracy rates of 90 percent or better, could be used to minimize the data entry workload. Eventually, the INS needs to integrate some of its numerous data bases to facilitate status checks and ensure that immigrants being deported by one branch of the INS are not naturalized by another. Paper files must become a thing of the past. One of the biggest problems throughout the INS is its inability to locate paper files on a timely basis.
- The INS also needs to prioritize its electronic fingerprint pilot program. Police departments around the country use electronic fingerprint scanners to identify criminals in a matter of minutes, rather than waiting anywhere from two to six months as the INS does. Electronic scanners could reduce naturalization processing time to a matter of days.
- Most importantly, the INS needs to train its personnel adequately. Each adjudicator must know how to use the computer system to check an applicant's status, to ensure the applicant is not in deportation proceedings, and to update the applicant's file. Adjudicators must be trained not only in customer relations, but also in the procedures used to deny an application. They should have a clear understanding of what they should be looking for during the interview. Standardized interview guidelines would be helpful. Finally, every adjudicator must understand that the integrity of the naturalization process is always more important than expediency. INS

Headquarters should strongly discourage supervisors from rating employees based on the number of applications they process, instead of the way in which they process the applications. A short delay in the process is a much smaller problem for the INS than the granting of citizenship to a child molester.

- Crimes that constitute a lack of good moral character, including perjury, should be standardized, rather than being left to the discretion of individual adjudicators.
- Both Congress and the INS must recognize that the INS will always have less control over the integrity of those parts of the process that it farms out to other organizations, such as testing and fingerprinting. If the INS is going to continue to use OTEs for language, history and civics testing, it must require:
    - 1) that all administrators of the tests be U.S. citizens and undergo criminal background checks;
    - 2) that the OTEs register all testers and insist that they wear photo identification badges while administering tests; and
    - 3) proof from the OTEs that every affiliate has passed at least one undercover inspection each year.

If the INS is going to continue to use DFSs to take fingerprints, it should certify only law enforcement agencies. INS adjudicators can use the interview to check an applicants knowledge of English, but there is no secondary check if an applicant submits someone else's fingerprints to avoid having a criminal record uncovered. This is too integral a part of the naturalization process to leave it to those who may have a vested interest, financial or otherwise, in allowing fraud.

I will be happy to answer any questions you may have.

United States Department of Justice
Immigration and Naturalization Service
Office of Internal Audit

Special Review

Review of the Circumstances Surrounding the Naturalization of an Alien Known to be an Associate of a Terrorist Organization

Report Number 03-02

Executive Summary
Circumstances Surrounding the Naturalization of an Alien Known to be an Associate of a Terrorist Organization

Background

A routine alien status query performed by an INS Agent assigned to the New York City Joint Terrorism Task Force (JTTF) on November 5, 2002, disclosed the alien -- known to be associated with a terrorist organization -- was recently naturalized by INS' Newark District Office. This occurred despite significant information available in various Federal lookout systems that, if properly accessed by INS staff, would have provided INS the basis to delay or prevent the naturalization.

Scope

As a result of a request by the INS Commissioner, the Office of Internal Audit initiated a review to ascertain the facts behind the naturalization.

Methodology

The review team conducted structured interviews of various INS personnel in both the Newark and New York Districts. Some sworn statements and affidavits were obtained. INS documents related to the policies and procedures for the Naturalization Program and related memoranda and locally developed guidance were also examined.

Results of Review

The INS naturalization procedures should have detected and prevented the naturalization of an alien having known terrorist affiliations. However, close scrutiny of these procedures disclosed several system deficiencies and weak controls that contributed to the inappropriate naturalization. In addition, we determined that human error, slow development/distribution of INS policy, and poor judgement on the part of INS officials significantly impacted the problem.

Objective Number 1: Ascertain the extent to which available Federal lookout systems were either not accessible or not used by INS officials during the naturalization process.

- Initial name checks performed by the Federal Bureau of Investigation (FBI) failed to disclose the alien's terrorist affiliations
- A disqualifying violation readily available to the District Adjudication Officer in INS' National Automated Inspector Lookout System (NAILS) was ignored during the adjudication process.
- District operating procedures to conduct pre-adjudication Interagency Border Inspection System (IBIS) checks were insufficient to ensure an accurate result.

Objective Number 2: Identify any procedural weaknesses or control deficiencies in the naturalization process that may have contributed to the naturalization of an ineligible alien subject to this review.

- Unresolved FBI name checks are routinely overridden by Newark District Adjudication Officers during the naturalization process.

- Routine File Transfer Requests to obtain the alien's A-File were ignored by the INS official who possessed the file and INS' Standard Operating Procedures do little to ensure retrieval.

- Naturalization Quality Procedures related to the resolution of outstanding file transfer response issues are ignored by the New York District records staff.

Objective Number 3: Identify any weaknesses or failures in ancillary INS processes that may have contributed to the improper naturalization of the subject alien.

- INS Members of the New York JTTF failed to provide the Agency with advanced knowledge that would have prevented the naturalization.

- INS Headquarters has no record of a Letterhead Memorandum purportedly forwarded to INS' FBI Liaison Officer in Headquarters advising INS not to Naturalize the Subject Alien.

- INS Agents assigned to the New York JTTF are not fully aware of their reporting responsibilities to their supervisors and the INS National Security Unit.

- Supervisory Officials in the Newark District Office are not sufficiently involved in overseeing activities related to INS' Naturalization Program.

Other Observations:

Although not specifically part of this review's stated objectives, we have reported other observations resulting from our interviews and analysis. We believe these observations are relevant to decisions that might result from this review and are found in the body of the report beginning on page 11.

RECOMMENDATIONS:

Executive Associate Commissioner, Office of Field Operations should:
(1) Take individual corrective actions as deemed appropriate.

(2) Ensure that all INS Agents and Supervisors assigned to work as members of the Joint Terrorism Task Force are trained and made aware of their reporting responsibilities to INS. Training should particularly address INS policy related to the reporting of sensitive and special interest cases to the National Security Unit and other responsible INS officials.

(3) Immediately develop Standard Operating Procedures for the handling of official documents by INS Special Agents who serve as Liaison Officers with FBI Headquarters. Procedures should particularly address the need for INS Special Agents to log-in the receipt and disposition of all documents. The log should include a brief summary of the document, the date received, who it was received from, the date forwarded and the name of the INS official who actually took possession of the document.

(4) Require the sequential numbering of all policy memoranda that is provided by the Office of Field Operations. All policy related memoranda should be included in a summary index and include a statement detailing at least the minimum procedural requirements to help ensure general Service-wide compliance. All memoranda should ultimately be included in appropriate Field Manuals or Administrative Manuals.

(5) Ensure that all INS officers are properly trained in how to respond to Service-wide requests for A-Files. Guidance should include steps to be taken when files are unavailable for review,

particularly those that are classified or are subject to some type of investigation. Consideration can also be given to a file location code that identify classified or otherwise "unavailable" files.

Deputy Executive Associate Commissioner, Immigration Services Division should:

(6) Develop procedures to ensure a definitive response for all name checks sent to the FBI related to naturalization applications. Presumptive assurance should no longer be considered an acceptable policy. New procedures should prohibit the processing of any application that might have an unresolved *indices popular* designation in the CLAIMS 4 System. Procedures should include a management control to prevent the routine override of this process designation.

(7) Initiate steps to ensure that all required FBI name checks are properly conducted to include search detail that is comprehensive enough to disclose an applicant's known terrorist affiliations and criminal history.

(8) Initiate steps to revise the Naturalization Quality Procedures to ensure that manual National Automated Inspection Lookout System (NAILS) checks are routinely performed for all naturalization applications regardless of the type of file being used (A or T-file).

(9) Require the immediate development and issuance of formal Service-wide Standard Operating Procedures for conducting IBIS queries at INS District Offices and Service Centers prior to the approval of any application. At a minimum, procedures should include the availability of the actual file while conducting the query and a search of the file for any aliases or other names of interest that must be run as part of the query process.

(10) Develop a program to provide uniform training to all District and Service Center INS officials who are expected to perform IBIS checks on alien applications for INS benefits. Training procedures should include a mechanism to formally certify attendance and student comprehension of the material presented.

(11) Require all District Offices to review their internal procedures related to the receipt and disposition of Reprint Reports provided by a Service Center in order to facilitate the transfer of delinquent A-Files. Internal procedures should ensure the proper elevation of these reports to the specific attention of the Assistant District Director for Examinations and the District Director.

(12) Institute a policy to require periodic Naturalization Quality Procedures refresher training for adjudicators in the District Offices. This policy should consider the possible re-certification for all Adjudication Officers involved in the naturalization process every two or three years.

(13) Initiate a re-assessment of the Naturalization Program's Quality Assurance process to incorporate quality assurance steps that address the NQP concerns noted in this review related to FBI name checks, IBIS checks, NAILS lookout queries, File Transfer Requests, and Reprint Reports.

(14) This report suggests the high probability that similar naturalizations of ineligible aliens may have occurred in the past. As a result, the Immigration Services Division should evaluate the report's impact on the universe of INS naturalizations that occurred in past years. This evaluation should consider the practicality or potential benefit of having ISD selectively assess the appropriateness of past naturalizations to identify those that may be improper.

Executive Associate Commissioner, Office of Management should:

(15) Provide immediate Service-wide guidance to District based records staff to clarify their responsibilities in the INS file transfer process. This guidance should address roles and responsibilities when responses are not received to file transfer requests.

Special Review
Circumstances Surrounding the Naturalization of an Alien Known to be an Associate of a Terrorist Organization

Background

A routine alien status query performed by an INS Agent assigned to the New York City Joint Terrorism Task Force on November 5, 2002, disclosed the alien -- known to be associated with a terrorist organization -- was recently naturalized by INS' Newark District Office. The naturalization --adjudicated by the Newark District Office on a Temporary file[1] – occurred despite significant information available in various Federal lookout systems that, if properly accessed by INS personnel, would have provided INS the basis to delay or prevent the naturalization. Existing management controls built into the naturalization process were not sufficient to prevent the naturalization of the subject alien.

Scope

As a result of a request by the INS Commissioner, the Office of Internal Audit immediately initiated a review to ascertain the facts behind the naturalization of the above referenced alien. The review objectives were:

- Ascertain the extent to which available Federal lookout systems were either not accessible or not used by INS officials during the naturalization process.
- Identify procedural weaknesses or control deficiencies in the naturalization process that may have contributed to the naturalization of the alien.
- Identify any weaknesses or failures in ancillary INS processes that may have contributed to the improper naturalization of the subject alien.

Methodology

The naturalization occurred in INS' Newark District Office and was also impacted by staff in the New York District Office. The review team conducted structured interviews of various INS personnel in both Districts. The interviews involved a

[1] The application was initially received by the Vermont Service Center on December 10, 2001. The requisite number file transfer requests for the A-file were appropriately made as required by Naturalization Quality Procedures before the application was sent to the Newark District Office for adjudication.

cross-section of INS staff including District Directors, Deputy District Directors, Assistant District Directors for Examinations and Investigations, Supervisors, Investigators, District Adjudication Officers and District Office Records staff. Some interviews resulted in the need to obtain sworn statements and affidavits. The review team also examined various INS documents related to the policies and procedures for the Naturalization Program and various related memoranda and locally developed guidance. Discussions and interviews also included certain non-INS officials who were considered essential to the final resolution of the review.

Results of Review

The INS naturalization procedures should have detected and prevented the naturalization of an alien having known terrorist affiliations. However, close scrutiny of these procedures disclosed several system deficiencies and weak controls that contributed to the inappropriate naturalization. In addition, we determined that human error, slow development/distribution of INS policy, and poor judgement on the part of INS officials significantly impacted the problem.

Objective Number 1: Ascertain the extent to which available Federal lookout systems were either not accessible or not used by INS officials during the naturalization process.

Initial name checks performed by the Federal Bureau of Investigation (FBI) failed to disclose the alien's terrorist affiliations

Current INS procedures require a FBI name check for all aliens who apply to become naturalized citizens of the United States. This procedure is conducted immediately following the receipt of the naturalization application as part of the pre-adjudication clerical phase of the naturalization process. The specific FBI check for the subject alien yielded an electronic response that indicated a possible lookout match needing further research (annotated in the INS case tracking system as *Indices Popular*). At this point, a built in administrative hold is automatically activated in INS' CLAIMS 4 Case Status System to prevent adjudication. Once the FBI G-325 name check search is completed, a response is forwarded to INS *only* if the extended search confirms a lookout match to the subject alien. Should a match not materialize, nothing will be forth coming from the FBI and, after 60 days, INS will presume that no match was made and clear the application for adjudicative processing. Lacking a definitive response from the FBI, INS has adopted a presumptive clearance policy.

Since the subject alien had several terrorist related warnings posted in Federal lookout systems and is the subject of on-going interest by the Joint Terrorism Task Force and other law enforcement entities, it is highly unlikely the original FBI name check would have yielded a negative response. It was significant to

ascertain whether the FBI actually sent a confirmation that was perhaps lost, ignored, miss-filed or for whatever reason withheld from INS. We were unable to obtain this information because the FBI does not maintain a tracking system that could confirm the result of the original search.

On November 12, 2002, a new name check was initiated to confirm what should have been a positive match result. The FBI result yielded another negative response. Further analysis disclosed the FBI protocol used to conduct INS name checks was not detailed enough to disclose the alien's terrorist associations. It was further disclosed that this protocol has been utilized for over 17 years for all FBI conducted name checks requested by INS. A third check performed by the FBI using an expanded search format yielded a positive match result. Based on the type of name check conducted by the FBI, this process had no reliable expectation to disclose any known terrorist association for the subject alien.

A disqualifying violation readily available to the District Adjudication Officer in INS' National Automated Inspector Lookout System (NAILS) was ignored during the adjudication process.

The subject alien was interviewed and approved for naturalization on the basis of information found in a Temporary (T) File. Several requests for the applicant's A-File were not successful. INS Naturalization Quality Procedures (NQP) detail specific conditions that must be met before any naturalization application may be adjudicated on a T-File. We determined that one critical condition was omitted from the process that in itself would have prevented the naturalization of the subject alien. Adjudicators processing T-File applications must always determine that no disqualifying information exists in INS databases that might be reflected in the Central Index System (CIS). Specifically, NQP states: " An N-400 must not be adjudicated until the violation(s) and/or deportation issue(s) have been resolved." A NAILS violation was annotated and included as part of a Central Index System (CIS) screen print that was reviewed by the adjudicator. However, the violation was ignored during adjudication. We determined that Newark District Naturalization Adjudication Officers were not aware of the NQP requirement to resolve noted violations. When discussed with the Supervisory District Adjudication Officer, he stated it was his understanding the NAILS check was the responsibility of the Vermont Service Center.

District operating procedures to conduct pre-adjudication Interagency Border Inspection System (IBIS) checks were insufficient to ensure an accurate result.

In a memorandum dated July 2, 2002, the Office of Field Operations mandated that lookout checks be made in the Interagency Border Inspection System (IBIS) for all pending INS applications at least 35 days before an application is

adjudicated and approved. The Newark District conducted the required IBIS check for the subject alien. However, despite a detailed lookout record, the check did not yield a positive "match" result. Analysis of the Newark District's procedures used to conduct the IBIS query disclosed several deficiencies that ultimately yielded an inaccurate IBIS result.

At the time the IBIS query was conducted, INS had not developed Standard Operating Procedures to ensure Service-wide accuracy and consistency. General INS guidance required that IBIS queries be made but left implementation up to individual District Offices. The Newark District uses a same day naturalization process[2]. To facilitate this same-day policy, the Newark District conducted the required IBIS checks from a list of people scheduled to be interviewed rather than using the original alien file. The computer generated list of names, manually annotated with the applicant's date-of-birth, was provided to a District Adjudication Officer who conducted the IBIS check [3]approximately two or three weeks before the Vermont Service Center actually sends the file to the District for the alien's scheduled interview. The District's procedures contained several material weaknesses that increased the risk that checks would yield inaccurate results.

- The District's process does not make the applicant's file available to the person conducting the actual IBIS check. This methodology eliminates the ability to query known aliases and other names of interest in the file.

- The use of a computer generated interview list with manually annotated dates of birth ensures that only one name can be queried in IBIS. In addition, non-validated manually annotated dates of birth increase the risk that an error might occur during the lookout check. If only one digit is incorrectly annotated on the list, the resulting IBIS check would be inaccurate.

- The methodology used does not provide assurance to the adjudication officers conducting the alien interviews that IBIS checks were performed within the 35-day time frame. In addition, other than Adjudication Officer annotations to the interview list, there was no way to validate the IBIS check was made or that it was properly conducted.

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[2] The Newark District has initiated a naturalization process where the N-400 application is reviewed, the alien is interviewed, the application is approved and the alien attends a naturalization ceremony to be sworn in as a United States Citizen all on the same day

[3] The system query conducted -- known as an SQ11 IBIS query -- was required by INS Headquarters guidance. This query is based on an exact name match. If any letter is misspelled or if any digit related to the date-of-birth is incorrect, the system check will automatically result in a negative response. This search does not look for sound alike or close name matches for possible consideration by the IBIS reviewer.

- The time limits imposed by the Newark District's same day naturalization process made it unlikely that any adjudicator would have initiated a further review to scan the actual file for any additional names of interest that might have warranted an additional IBIS check. In this case, had the adjudicator looked closely at the file, the officer might have noticed several aliases or that the alien's name experienced some minor changes throughout the INS history reflected in the file.

The Newark District's internal IBIS procedures were insufficient to ensure that alien IBIS checks would yield accurate results.

Objective Number 2: *Identify any procedural weaknesses or control deficiencies in the naturalization process that may have contributed to the naturalization of an ineligible alien subject to this review.*

Unresolved FBI name checks are routinely overridden by Newark District Adjudication Officers during the naturalization process.

Based on the FBI's name check protocol, approximately 20 percent of all naturalization applications are initially designated *Indices Popular*. Historically, very few of these initial designations prove to be a positive system match. Since a definitive response only results from a positive match, District Adjudicators assume presumptive clearance once the applicant appears for an interview. As a result, it is now common practice in the Newark District to ignore the *Indices Popular* designation and automatically remove built in system safeguards. Adjudicators are instructed by their Supervisory Adjudication Officer to access a dropdown menu to override the system safeguard by selecting a status that indicates the original *Indices Popular* did not relate to the subject applicant. Adjudicators make no effort to validate or justify this determination. Unless the *Indices Popular* designation is overridden, the adjudicator would not be able to proceed with an interview or adjudicate the application. Adjudicators routinely ignore the possibility the file might contain a positive FBI result or that the FBI check was not yet completed. The time between the request for FBI name check and the time that lapses before an A-File is actually received by the Vermont Service Center usually exceeds the FBI's 60 day response period. Current procedures in the Newark District do not ask adjudicators to confirm that this 60-day period has lapsed so that they might at least have a basis to correctly assume a presumptive negative match on the alien to justify the system override.

Adjudication Officers in the Newark District stated they encounter *Indices Popular* designations frequently. They indicate that if the file was forwarded to them, they assume no lookout related impediments exist that would prevent adjudication. In addition, adjudicators pointed out that INS' current policy to conduct IBIS checks prior to any applicant interview further mitigates any risk that might be associated

with the District's routine policy to override all *Indices Popular* designations in the CLAIMS 4 system. Adjudicators base this judgement on the fact that properly conducted IBIS checks essentially query a comprehensive database that accesses the same data used in the FBI name check search. In the Newark District, the IBIS check would have been completed before the alien's file was received by the District and or provided to adjudicator for interview. However, as discussed earlier in this report, Newark District IBIS checks were systemically deficient yielding a high probability the result could be inaccurate. The assumptions made by the adjudicator related to lookout assurances were not valid.

Routine File Transfer Requests to obtain the alien's A-File were ignored by the INS official who possessed the file and INS' Standard Operating Procedures do little to ensure retrieval.

Upon receipt of naturalization applications INS Service Centers begin an A-File retrieval process to marry the applicant's original A-File (case history file) with the application prior to adjudication. The retrieval is part of an electronic process that identifies a file's current location within INS and initiates several automated attempts to retrieve the file through the Records staff at the INS District where the file is located. In this case, seven automated requests beginning on December 19, 2001, were documented for the subject alien's A-File. The subject file was requested by the Vermont Service Center and was determined to be in the New York District Office. The A-File was never forwarded to the Vermont Service Center. As a result, and in accordance with NQP procedures, a Temporary-File was created and forwarded with the N-400 naturalization application to the Newark District Office for adjudication

Our review established the file retrieval process correctly identified the holder of the file. However, since the INS' CLAIMS4 naturalization case tracking system only records file transfer requests, we were unable to review any actions that might have resulted in response to these requests. It is a fact, however, the file was never sent to the Newark District Office prior to the adjudication of the application.

The actual holder of the file, was an INS Agent assigned to the New York Joint Terrorism Task Force (JTTF). When interviewed the agent could only recall receiving two of the seven requests. The Agent cited unfamiliarity with the retrieval process and a Service-wide Inventory file freeze as the main reasons the A-file was not forwarded.

New York District Records staff stated unless there is a definitive response[4] to the request, their responsibility ends with the delivery of file request to identified file holders in the District. The records supervisors stated the District does not have the responsibility, time or resources to actively pursue the retrieval of any outstanding file requests. Unless a definitive response is received from the holder of the file, the New York District Records Office believes it has no other responsibility in the process. When the issue was discussed with INS Headquarters Office of Records, we were referred to the Records Operations Handbook which states that within 3 days of the request, either the file should be sent or a reason why it was not should be annotated in the CIS system. Exact follow-up procedures to locate or retrieve files are left up to the discretion of individual Districts. There is currently no Service-wide standard or policy statement to address this issue.

Naturalization Quality Procedures related to the resolution of outstanding file transfer response issues are ignored by the New York District records staff.

In accordance with NQP procedures, INS service centers are directed to take specific action if an automated file transfer request results in a response code "R"[5], as was the case with the subject alien's A-file. In such case, after 60 days, the service center is supposed to forward a File Transfer Request Reprint Report to the ADD in charge of records at the responsible file control office with the intent to facilitate file retrieval -- in this case, the New York District Office. Lacking a definitive response to this report, a similar 90-day report should be sent to both the responsible District Director and the Regional Director. New York District officials and staff indicated that it was their belief that these Reprint Reports are no longer required by the most recently revised NQP procedures. District officials stated that they have not seen these reports in quite some time.

Discussions with officials at the Vermont Service Center revealed that these reports are still sent to the Districts as required by NQP. They are sent to predetermined individuals via FAX at each District office. No definitive response to Reprint Reports are required by the Service Center. The New York District Records Office was contacted and confirmed receipt of these reports. However, they were forwarded to the District's records contractors for resolution and essentially placed back into the cue for normal resolution. The Reprint Reports

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[4] Should the Records staff actually receive a response to a File Transfer Request (FTR), the staff will mail the file (if it is provided) to the requestor. Any response to the FTR will require Records staff to update the file's status by annotating the File Locator Code in the INS Central Index System.

[5] The CIS designation "R" means the file was initially "Requested". If the "R" remains unchanged it is assumed that no search was actually conducted for the file or that no response was provided as a result of the File Transfer Request.

were not provided to the Assistant District Director for Examinations or the District Director. The New York District's current handling of these reports defeats their intended purpose -- to elevate issues related to delinquent file transfer requests to a high enough authority in the District to ensure timely compliance with delinquent file transfer request.

This procedural breakdown in the Naturalization Quality Process contributed, at least in part, to the inappropriate naturalization of the subject alien.

Objective Number 3: Identify any weaknesses or failures in ancillary INS processes that may have contributed to the improper naturalization of the subject alien.

INS Members of the New York Joint Terrorism Task Force failed to provide the Agency with advanced knowledge that would have prevented the naturalization.

INS had an Agent on the New York JTTF who had information the subject alien was under investigation by the JTTF. In addition, the Agent was aware the alien had filed an application to naturalize several months before the naturalization had been approved. The Agent never reported any of this information to a JTTF INS supervisor or made any effort to contact any INS officials involved in the naturalization process. INS procedures found in Office of Field Operations Memorandum, *Policy Guidance for Handling of Special Interest Cases*, dated October 25, 1999, detail an Agent's responsibility to report this type information to INS. When questioned under oath[6], the INS Agent -- in a third interview -- confirmed that she was aware of the pending naturalization but stated she had no responsibility to report it since it was not her actual case[7]. In addition, the INS Agent stated she considered the information to be privileged "Intelligence" data that was not normally released. In her opinion, the information could not be used as the basis to stop the naturalization. She felt it was up to the FBI to determine the necessity to share the information with INS officials. The INS Agent also stated her belief that INS policy guidance dated October 25, 1999, only related to special interest cases that were specifically designated as such by the Attorney General. Since the Attorney General never designated the subject alien a special interest case, the Agent believed the referenced INS guidance did not relate to the alien in question.

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[6] The INS JTTF Agent's third interview resulted in a sworn statement that is included in its entirety as Attachment 1 of the report.

[7] The referenced case belonged to a non-INS Agent assigned to the New York City JTTF. This JTTF Agent also provided an affidavit that details the extent to which the INS JTTF Agent was aware of the subject alien's pending naturalization. This affidavit is provided as Attachment 2 of the report.

The agent's immediate supervisor stated that this information should have been reported to INS[8]. The supervisor also stated that he had made it very clear to all INS JTTF Agents in New York that sensitive information must always be passed directly to him. Had this information been shared with INS in a timely fashion, the naturalization would not have occurred and the entire situation averted.

INS Headquarters has no record of a Letterhead Memorandum purportedly forwarded to INS' FBI Liaison Officer in Headquarters advising INS not to Naturalize the Subject Alien.

A member of the New York Joint Terrorism Task Force prepared a Letterhead Memorandum (LHM)[9] dated June 20, 2002, to the Federal Bureau of Investigation with the intention the LHM would be provided to INS Headquarters in Washington D.C. The LHM contained a statement specifically asking that INS not allow the subject alien to naturalize. There was evidence the LHM was forwarded to INS on August 8, 2002, through the INS Agent assigned as the Liaison Officer to FBI Headquarters. However, INS has no record that it actually received the LHM. The INS Agent who would have received this LHM has since retired. He was interviewed and stated he had no recollection of having received the document. Further review concluded there is no reliable way to confirm receipt of the LHM. The Office of Field Operations has not established any formal procedures that require INS Liaison Agents to log-in the receipt of documents provided by the FBI. INS Liaison Agents are expected to rely on their experience and to exercise professional judgement regarding disposition of these documents. If the FBI's notation the LHM was delivered to INS is correct, the original document should be somewhere in INS. The absence of formal log-in procedures places at risk the receipt of all information provided by the FBI to INS Headquarters Liaison Agents.

INS Agents assigned to the New York Joint Terrorism Task Force are not fully aware of their reporting responsibilities to their supervisors and the INS National Security Unit.

When conducting interviews with the New York District JTTF Supervisor and the JTTF Special Agent it became apparent there was confusion regarding INS' JTTF reporting requirements. Officials with the INS National Security Unit stated the Office of Field Operations Memorandum, *Policy Guidance for Handling of*

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[8] A transcript of the INS JTTF Supervisor's sworn interview is included in its entirety as Attachment 3 to the report

[9] The letterhead Memorandum is a common reporting instrument used by FBI Agents to formally report the annual status of each open investigation. The LHM is also used by Agents to report special developments or other items of case-related interest.

Special Interest Cases, dated October 25, 1999[10], is considered the basic operational handbook for INS Agents assigned to the JTTF. This policy memorandum details the general expectations and responsibilities of INS Special Agents who must report on or oversee sensitive or other special interest cases. The guidance is disseminated regularly at annual INS JTTF Conferences and provided on a Compact Disk to all JTTF Agents. The National Security Unit believes this policy guidance should be very familiar to and well understood by all INS JTTF Agents. It is their belief that had the JTTF Special Agent complied with the guidance, the subject alien's naturalization most likely would not have occurred.

The INS JTTF Special Agent involved in this review seemed to express some general knowledge of the document but felt it only applied to cases that were designated "Special Interest" by the Attorney General. The Agent can remember only one such designation in her six years on the JTTF. She said she was not aware of any INS policy related to her JTTF reporting requirements other than a requirement to submit monthly summary reports to the National Security Unit.

An interview with INS' New York District JTTF Supervisor revealed that it was his expectation that INS JTTF Special Agents should pass on sensitive information that could impact INS processes, programs, and alien benefits. He also indicated that he had stressed this "common sense" expectation with all of his staff. However, when presented with the actual October 1999 special interest cases policy guidance the New York District JTTF Supervisor was not familiar with it. In regard to JTTF reporting requirements to the National Security Unit, the Supervisor was aware of each Agent's monthly reporting requirements but stated he did not usually review any of the monthly reports prepared by the 12 INS JTTF Agents in his charge.

There were significant differences in what New York District INS Special Agents and Supervisors assigned to the JTTF believed to be their responsibility and the reporting requirements contained in the October 1999 policy.

Supervisory Officials in the Newark District Office are not sufficiently involved in overseeing activities related to INS' Naturalization Program.

The review included interviews of Newark District officials who were most directly responsible for the daily operations of the office's Naturalization Program. Interviews were conducted with the Assistant District Director of Examinations (ADDE), the Deputy Assistant District Director of Examinations (DADDE), the Supervisory District Adjudication Officer (SDAO) for Naturalization and the

[10] Provided as Attachment 8 to the report

Naturalization Training Officer.[11] Both the ADDE and the DADDE have given the responsibility to run the day-to-day operations of the Districts Naturalization program to the SDAO. When questioned about the Newark District's Naturalization Program, both the ADDE and the DADDE had little knowledge related to the specifics of the internal processes and procedures that were implemented to comply with Service-wide policy directives. Most decisions related to the adjudication of naturalization applications are left solely up to the SDAO with little oversight other than to inquire as to whether the District's planned Naturalization performance goals are met. We also noted the SDAO not only oversees the program but also adjudicates applications. The Training Officer who is primarily an Adjudication Officer, is for the most part left on her own to provide District-wide naturalization training with little oversight from her superiors.

Although no one of these individuals is solely responsible for the process deficiencies noted in this report, it appears that better management oversight and better communication would have resulted in a naturalization process that might have prevented the naturalization of the subject alien. The implementation of Service-wide policy and the development of related internal procedures was left up to one person with little higher level oversight. Inadequacies in the process went undetected until a glaring error was brought to light. The implementation of revised policy, assessments of office training needs, the development of training materials, the development of new procedures to implement Interagency Border Inspection System lookout queries are just some of the issues that should not be left up to one individual to interpret, develop and implement.

Other Observations:

Although not specifically part of this review's stated objectives, the following observations resulted from our interviews and analysis. We believe these observations are potentially relevant to decisions that might result from this report.

- While conducting interviews with the District Adjudication Officers (DAO's) who were conducting the Newark District IBIS checks, we determined these adjudicators had passed the United States Customs on-line IBIS users test. However, not all officers attended the District's detailed training session. The District maintained no record of attendance and District Officials did not realize that all DAO's conducting the IBIS checks were not fully trained. If training is thought to be important enough to provide, procedures should be implemented to ensure that all required training is provided to those in need.

[11] Transcripts from these interviews are provided as Attachments 4, 5, 6 and 7 to the report.

Procedures should include a mechanism to formally certify attendance and student comprehension of the material presented.

- Since September 2001, the Office of Field Operations has been issuing a continuous series of memorandums regarding significant 9/11/01 related policies, procedures and clarifications. These memoranda were intended to provide a quick notification to the field to implement new policies but they often lacked procedural guidance to help Districts comply with the stated requirements. This was the case with the Office of Field Operations memorandum *"Interagency Border Inspection Systems Records Checks"* dated July 2, 2002. The memorandum established the need for Districts to conduct IBIS checks for all INS applications but left process implementation up to each District Office. It was the Newark District Office's internally developed IBIS procedures that contributed to the inaccurate IBIS system query for the subject alien. INS Headquarters is currently developing formal Standard Operating Procedures for distribution to the field that should ensure Service-wide consistency on IBIS check methodology. Considering the volume and frequency of policy memoranda already issued, and the expectation that this will continue, all memoranda should be sequentially numbered and recorded in a summary index and include a statement detailing at least the minimum procedural requirements to help ensure general Service-wide compliance.

- INS Naturalization Quality Procedures (NQP) clearly specify the use of National Automated Inspection Lookout System (NAILS) checks for the normal processing of T-Files. However, the vast majority of naturalizations occur on A-Files and we determined that NQP is silent regarding the use of NAILS checks for this voluminous universe of applications. NAILS checks were conducted by INS clerical processing staff prior to the implementation of NQP in 1997. Currently, contractor personnel perform the clerical function and the requirement to check NAILS was not included as part of the clerical procedures outlined in the national contract. As a result, this important check is not conducted for the majority of INS applications processed by contractor personnel.

- Discussions with Newark DAO's disclosed unfamiliarity with some of the information in the INS Central Index System that is often necessary to properly adjudicate naturalization applications. Specifically, the use of the 9101 and 9504 CIS screen prints[12], and the need to query NAILS matches that become evident to them during the naturalization process. In addition,

[12] The 9101 CIS screen print contains applicant biographical data and might also provide potentially disqualifying lookout data that could influence the decision to approve or deny the application. The 9504 CIS screen print confirms the requisite number of File Transfer Requests were appropriately made. It also contains a File Locator Code that specifies the file's status and may influence how the application is processed.

DAO's seemed to lack familiarity with NQP policy memorandums that were issued after June 1998. The DAO's stated that naturalization policy is transmitted by the Supervisory District Adjudication Officer (SDAO) via office E:mail. The SDAO prepares a brief message summarizing any policy revisions. Some DAO's could not recall having received these E:mails and most did not retain any copies of what they received. There is a need for the District to consider immediate refresher training for DAO's on INS' Naturalization Quality Procedures.

- While conducting interviews in the Newark District, it was disclosed there was no central depository or office library in the District where all naturalization quality procedures, guidelines, directives, policy memorandums etc. could be easily retrieved for review or clarification. Most adjudication officers involved in the naturalization process had the Naturalization Quality Procedures Manual but almost none had copies of any other policy guidance and in most instances had no awareness that other policy memoranda had been issued by INS Headquarters.

RECOMMENDATIONS:

Executive Associate Commissioner, Office of Field Operations should:

(1) Take individual corrective actions as deemed appropriate.

(2) Ensure that all INS Agents and Supervisors assigned to work as members of the Joint Terrorism Task Force are trained and made aware of their reporting responsibilities to INS. Training should particularly address INS policy related to the reporting of sensitive and special interest cases to the National Security Unit and other responsible INS officials.

(3) Immediately develop Standard Operating Procedures for the handling of official documents by INS Special Agents who serve as Liaison Officers with FBI Headquarters. Procedures should particularly address the need for INS Special Agents to log-in the receipt and disposition of all documents. The log should include a brief summary of the document, the date received, who it was received from, the date forwarded and the name of the INS official who actually took possession of the document.

(4) Require the sequential numbering of all policy memoranda that is provided by the Office of Field Operations. All policy related memoranda should be included in a summary index and include a statement detailing at least the minimum procedural requirements to help ensure general Service-wide compliance. All memoranda should ultimately be included in appropriate Field Manuals or Administrative Manuals.

(5) Ensure that all INS officers are properly trained in how to respond to Service-wide requests for A-Files. Guidance should include steps to be taken when files are unavailable for review, particularly those that are classified or are subject to some type of investigation. Consideration can also be given to a file location code that might identify classified or otherwise "unavailable" files.

Deputy Executive Associate Commissioner, Immigration Services Division should:

(6) Develop procedures to ensure a definitive response for all name checks sent to the FBI related to naturalization applications. Presumptive assurance should no longer be considered an acceptable policy. New procedures should prohibit the processing of any application that might have an unresolved *indices popular* designation in the CLAIMS 4 System. Procedures should include a management control to prevent the routine override of this process designation.

(7) Initiate steps to ensure that all required FBI name checks are properly conducted to include search detail that is comprehensive enough to disclose an applicant's known terrorist affiliations and criminal history.

(8) Initiate steps to revise the Naturalization Quality Procedures to ensure that manual National Automated Inspection Lookout System (NAILS) checks are routinely performed for all naturalization applications regardless of the type of file being used (A or T-file).

(9) Require the immediate development and issuance of formal Service-wide Standard Operating Procedures for conducting IBIS queries at INS District Offices and Service Centers prior to the approval of any application. At a minimum, procedures should include the availability of the actual file while conducting the query and a search of the file for any aliases or other names of interest that must be run as part of the query process.

(10) Develop a program to provide uniform training to all District and Service Center INS officials who are expected to perform IBIS checks on alien applications for INS benefits. Training procedures should include a mechanism to formally certify attendance and student comprehension of the material presented.

(11) Require all District Offices to review their internal procedures related to the receipt and disposition of Reprint Reports provided by a Service Center in order to facilitate the transfer of delinquent A-Files. Internal procedures should ensure the proper elevation of these reports to the specific attention of the Assistant District Director for Examinations and the District Director.

(12) Institute a policy to require periodic Naturalization Quality Procedures refresher training for adjudicators in the District Offices. This policy should consider the possible re-certification for all Adjudication Officers involved in the naturalization process every two or three years.

(13) Initiate a re-assessment of the Naturalization Program's Quality Assurance process to incorporate quality assurance steps that address the NQP concerns noted in this review related to FBI name checks, IBIS checks, NAILS lookout queries, File Transfer Requests, and Reprint Reports.

(14) This report suggests the high probability that similar naturalizations of ineligible aliens may have occurred in the past. As a result, the Immigration Services Division should evaluate the report's impact on the universe of INS naturalizations that occurred in past years. This evaluation should consider the practicality or potential benefit of having ISD selectively assess the appropriateness of past naturalizations to identify those that may be improper.

Executive Associate Commissioner, Office of Management should:

(15) Provide immediate Service-wide guidance to District based records staff to clarify their responsibilities in the INS file transfer process. This guidance should address roles and responsibilities when responses are not received to file transfer requests.

due process rights to which they were entitled" and to report in writing by March 30, 2006, on "its efforts to comply with this order."

- European Connections & Tours, Inc. v. Gonzalez: On 3/3/06, the U.S. District Court for the Northern District of Georgia granted a temporary restraining order (TRO) against the Government, finding that plaintiff, an international marriage broker, had demonstrated a substantial likelihood of showing that the International Marriage Broker Regulation Act of 2005 (sections 832 - 834 of the Violence Against Women Act of (VAWA) 2005) was unconstitutional under the 1st & 5th Amendments. The district court's precise findings went to the 5th Amendment equal protection argument. The district court also found that there was no governmental interest furthered by the distinctions between for-profit and not-for-profit international marriage brokers and that the statute was more extensive than necessary to protect foreign women from abuse by American men. The TRO was verbally entered. The District Court will likely enter a written order sometime this week.

- Abghari v. Gonzales. On 2/14, the US District Court for the Central District of California ordered USCIS to adjudicate the naturalization application of an Alien Entrepreneur Conditional Resident (EB-5) within 120 days after the date on which the naturalization interviews were conducted. The court found that USCIS' inability to adjudicate the petitioner's six and a half year old petition to remove conditions (because of the absence of regulations) did not justify delaying adjudication of the naturalization application. The Court was not persuaded by the Government's argument that an alien whose residence is subject to conditions is ineligible to naturalize. ICE has suggested that there may be derogatory information about the applicant, but the information is unavailable to USCIS at this time. Absent prompt promulgation of the EB-5 regulations, USCIS will likely be forced to grant this, and other, naturalization applications. The District Court's order, widely disseminated by the immigration bar, has already resulted in a flurry of threatened lawsuits by other EB-5 conditional residents, in addition to the other currently existing lawsuits in regard to this matter.

- American-Arab Anti-Discrimination Committee (ADC) "120 Day Cases" in District Court. The Department of Justice is greatly concerned with the number of these actions that are pending. A concerted effort to file such cases in district court pursuant to 336(b) of the Act is being championed by the American-Arab Anti-Discrimination Committee. DOJ/OIL believes that CIS violates its own regulations (at 8 C.F.R. 335.2(b)) in holding interviews before checks are done, and that DOJ is left without a good argument to make when advocating these cases before district courts. While DOJ understands the Congressional and Presidential mandates on processing times and backlog reduction that CIS labors with, OIL nonetheless has expressed in the strongest terms a desire that CIS conducting the naturalization process in this way.

- U-visa Regulations Litigation. The plaintiffs failed to file a response to oppose the Government's motion to dismiss in the suit against USCIS for failure to promulgate the U-visa regulations. OIL is very appreciative of USCIS cooperation and support in the litigation effort. It is expected that the court will issue an order dismissing the case soon.

- *Padilla & Santillan* Litigation Update. First, as to Padilla, Judge Hinajosa, has sua sponte decided to put the case back on the calendar and hold a hearing on the pending motion to dismiss without further briefing. The Padilla hearing will be held 3/22 and OIL is not aware of what the judge intended or why he had decided upon this course of action after accepting a stipulation between the parties to hold the case in abeyance pending resolution in Santillan. In Santillan, there have been some events that turn upon the technical details of federal court judgments and decisions. Although the court has rendered a decision and issued an injunction, the separate order formally entering judgment has yet to be issued by the court. The plaintiffs moved for such an order, which was summarily denied. The plaintiffs then moved for costs in the case, approximately $36,000, which was rejected by the clerk,