Delay and Deny

How the U.S. Government Condemns Aspiring Americans to Immigration Purgatory

Every year, hundreds of thousands of people who live and work in the United States apply for immigration benefits, like obtaining a green card or becoming a citizen. U.S. Citizenship and Immigration Services (USCIS) is the federal agency responsible for reviewing these applications and deciding whether to grant or deny them.

But USCIS doesn't treat all applications equally. Since 2008, USCIS has applied a secretive policy under which it brands some otherwise eligible applicants as "national security concerns" based on vague suspicion. It then quietly removes their applications from normal review and subjects them to a long, onerous process of extreme vetting. This policy is called the **Controlled Application Review and Resolution Program (CARRP)**.

CARRP—which was never approved by Congress—is designed to create delays and facilitate denials. Once USCIS places an application in the CARRP vetting system, immigration officers must place the case on hold until they either "resolve" the "national security concern" or find a reason to deny the application. Denial—for any reason, even an applicant's paperwork error—is the first resort, and USCIS can spend years searching for a reason to reject an application after putting it in CARRP. All the while, applicants remain in the dark: contrary to USCIS's own regulations, the agency never tells applicants its "concern" or provides them an opportunity to respond. In short, USCIS's CARRP policy is an egregious violation of fundamental fairness and due process.

In 2017, the ACLU, the Northwest Immigrant Rights Project, and their partners filed a federal class action lawsuit on behalf of people whose green card or citizenship applications had been placed in CARRP.[1] Over our objection, the government has forced much of the case to be litigated in secrecy—lawyers for the plaintiffs cannot even confirm or deny whether a specific applicant has been subjected to CARRP. But after years of litigation efforts to provide transparency, the court recently agreed to unseal certain records in the case, and the information in this briefing paper, together with other

[1] The lawsuit, *Wagafe v. Biden*, No. 17 Civ. 94 (LK), is before the U.S. District Court for the Western District of Washington. The plaintiffs are represented by the ACLU, the ACLU of Southern California, the Northwest Immigrant Rights Project, the Law Offices of Stacy Tolchin, and the law firm Perkins Coie.

publicly available information, is the first comprehensive account of CARRP and its harms since 2016.[2]

Newly public government records and court filings provide details on how CARRP functions. They confirm that USCIS puts people in CARRP processing even if they've done nothing wrong. The agency's definition of a "national security concern" does not require illegal activity; on the contrary, USCIS teaches immigration officers that people may be deemed national security concerns based on where they come from, who they know or are related to, their religious activity, the languages they speak, their professions, and other innocuous characteristics. USCIS's own data reveals that immigration officers place people from Muslim-majority countries in CARRP at a far higher rate than other applicants.

CARRP serves no discernable national security purpose. Without input from law-enforcement officials, USCIS created a program that instructs immigration officers to label people as "national security concerns" based on common attributes shared by millions of law-abiding U.S. citizens and residents. Many of the people USCIS places in CARRP are aspiring Americans who have already built homes, families, and careers in the United States. Making law-abiding applicants wait for years in limbo has no logical connection to public safety; nor does denying their applications for secret reasons unconnected to congressionally mandated eligibility requirements. Instead, CARRP protects no one, even as it irretrievably damages the lives, families, and careers of aspiring Americans.

Did Congress approve CARRP?

No. Before 2008, USCIS repeatedly tried to get Congress to pass a CARRP-like law. When those efforts failed, USCIS secretly created CARRP on its own.

Congress set out the criteria for citizenship and other immigration benefits in the Immigration and Naturalization Act (INA).[3] In 2001 and 2005, Congress added certain provisions to the INA that are now known as the "terrorism-related inadmissibility grounds" (TRIG). In essence, these provisions say that someone who has engaged in "terrorist activity" or belongs to a "terrorist organization" cannot enter, or remain in, the United States.[4]

USCIS wasn't satisfied with these new provisions. The agency lobbied Congress for authorization to deny *any* benefit to *anyone* with a pending security check—even people who didn't meet any of the

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[2] Records filed in *Wagafe v. Biden,* including the unsealed records cited in this briefing paper, are available here. In 2013, the ACLU of Southern California—and its partners at the Lawyers' Committee for Civil Rights of the San Francisco Bay Area and Mayer Brown—published a detailed report on CARRP, based on documents obtained through interviews, litigation, and public records requests. Additionally, in 2016, the ACLU of Southern California published a CARRP practice advisory for attorneys. Other resources compiled by the ACLU of Southern California can be found here.

[3] 8 U.S.C. § 1101 et seq.

[4] 8 U.S.C. §§ 1182(a)(3), 1227(a)(4).

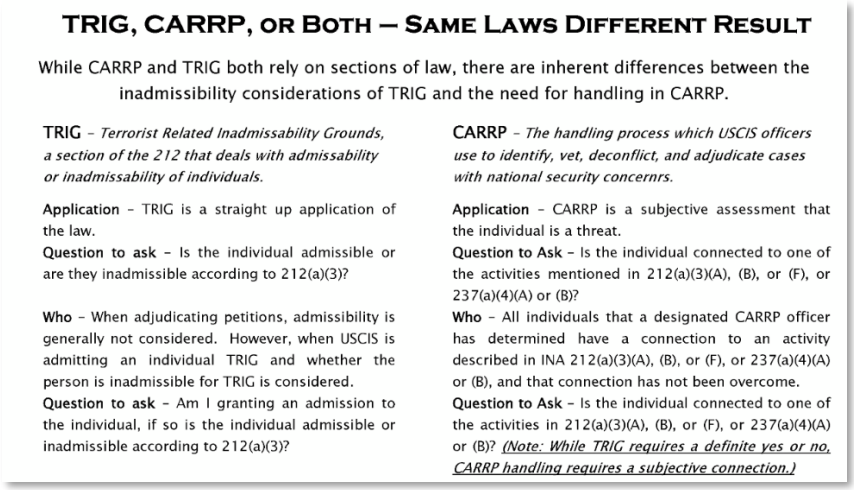
TRIG criteria. Between 2005 and 2007, Congress considered passing CARRP-like laws suggested by USCIS eleven times. Each time, Congress said no.

In 2008, USCIS took matters into its own hands and issued an internal policy memorandum creating CARRP. In doing so, the agency did not consult with any law enforcement officials or other government agencies. Later, USCIS supplemented its CARRP policy with operational guidance and training materials. CARRP is a unilateral and secretive USCIS and DHS program applying rules that Congress repeatedly rejected.

Who does USCIS subject to CARRP?

USCIS applies CARRP vetting to anyone an immigration officer labels a "national security concern." The agency's definition of "national security concern" has no basis in law. According to USCIS, applicants present a national security concern when an immigration officer "has determined" that they "have an articulable link to prior, current, or planned involvement in, or association with, an activity, individual, or organization described in" the ineligibility grounds of the INA.[5]

On its face, this definition is vague and overbroad. In practice, it is virtually meaningless. Officers can label someone a national security concern based on nearly anything. All they have to do is describe some connection between an applicant for immigration benefits and the TRIG provisions. This connection can consist of **completely legal conduct**, including conduct that does not fall under any of the INA's ineligibility grounds—like expertise in biology or a foreign language.[6] As USCIS puts it in a newly public training handout, CARRP is nothing but "a subjective assessment that [an] individual is a threat."



TRIG, CARRP, or Both – Same Laws Different Result

While CARRP and TRIG both rely on sections of law, there are inherent differences between the inadmissibility considerations of TRIG and the need for handling in CARRP.

TRIG – *Terrorist Related Inadmissability Grounds, a section of the 212 that deals with admissability or inadmissability of individuals.*

Application – TRIG is a straight up application of the law.
Question to ask – Is the individual admissible or are they inadmissible according to 212(a)(3)?

Who – When adjudicating petitions, admissibility is generally not considered. However, when USCIS is admitting an individual TRIG and whether the person is inadmissible for TRIG is considered.
Question to ask – Am I granting an admission to the individual, if so is the individual admissible or inadmissible according to 212(a)(3)?

CARRP – *The handling process which USCIS officers use to identify, vet, deconflict, and adjudicate cases with national security concernrs.*

Application – CARRP is a subjective assessment that the individual is a threat.
Question to Ask – Is the individual connected to one of the activities mentioned in 212(a)(3)(A), (B), or (F), or 237(a)(4)(A) or (B)?
Who – All individuals that a designated CARRP officer has determined have a connection to an activity described in INA 212(a)(3)(A), (B), or (F), or 237(a)(4)(A) or (B), and that connection has not been overcome.
Question to Ask – Is the individual connected to one of the activities in 212(a)(3)(A), (B), or (F), or 237(a)(4)(A) or (B)? *(Note: While TRIG requires a definite yes or no, CARRP handling requires a subjective connection.)*

Excerpt of an unsealed CARRP training handout, ECF #645-63, at 1 (undated).

[5] Policy for Vetting and Adjudicating Cases with National Security Concerns, ECF #645-36, at 1 fn. 1 (dated Apr. 11, 2008).

[6] Attachment A - Guidance for Identifying National Security Concerns, ECF #645-54, at 3–4 (undated).

- Because CARRP has nothing to do with the actual adjudicative decision in a case, it does not require a person to actually be inadmissible under one of the security grounds. Therefore, we can take an expansive reading of what INA security activities should be reviewed as a potential NS concern, because all we're doing is using the security grounds to outline what should be handled through the process of CARRP
- When considering if an NS concern is present, ISO's must consider all the facts in a case, regardless of where they come from
- Security checks are only one source of facts that could indicate a concern
- Just because security checks are clear, that does not automatically mean there's no concern

Excerpt of an unsealed CARRP training handout, ECF #666-8, at 3 (undated).[7]

Strikingly, CARRP training documents tell immigration officers that they "can still try to articulate a link" between an applicant and the INA's TRIG provisions even if "a law enforcement or intelligence agency—tells USCIS "that an individual does not threaten the national security":

- If a law enforcement or intelligence agency tells us that their investigation uncovers a threat to national security, we will consider that case a national security concern.
  - This concern could be NS Confirmed or NS Not Confirmed, depending on the specific information provided.
- The opposite, however, is not necessarily true: Even if another agency tells us that an individual does not threaten the national security, USCIS can still handle a case under CARRP.
  - If you identify an area of national security concern, and suspect that the applicant may be involved with it, USCIS can still try to articulate a link.

Excerpt of a CARRP training module, ECF #645-55, at 58 (dated Dec. 2015).

To make matters worse, USCIS trains immigration officers to label applicants as national security concerns even when an applicant does *not* fit the agency's official definition—i.e., when officers cannot identify an "articulable link" between the applicant and the INA's ineligibility provisions:

- Just because the link between the person and the NS ground does not rise to the evidentiary level of Articulable link, it can still be a CARRP case
- So think back all the way to my definitions, when I mentioned non-KST NS Confirmed and non-KST NS Not Confirmed
- What did I say the difference between those two labels was?
- NS Confirmed rises to the level ~~of~~ of an articulable link
- NS Not Confirmed is based on indicators

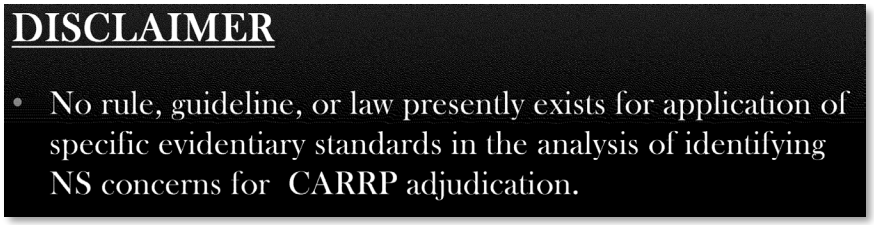
Excerpt of an unsealed CARRP training module, ECF #645-55, at 38 (dated Dec. 2015).

[7] The highlighting in this document was added by counsel for the plaintiffs in a court filing in the CARRP challenge.

Finally, USCIS encourages its officers to err on the side of placing people in CARRP—in the agency's own words, to "over-refer."[8] The results are entirely foreseeable: CARRP sweeps in and causes irreparable harm to a huge number of law-abiding applicants who have done nothing wrong.

National Security "Indicators"

Most of the time, USCIS labels people national security concerns based on "indicators." An indicator is a piece of information about an applicant. Although USCIS training materials frequently refer to indicators as "evidence," no rules or evidentiary standards govern the use or significance of indicators.[9]



Excerpt of an unsealed CARRP training module, ECF #645-53, at 7 (undated).

Examples of indicators from newly revealed USCIS policy documents include:[10]

- Being a "close associate"—a family member, roommate, co-worker, or friend—of someone USCIS has already labeled a national security concern.
- Traveling through, or living in, "areas of known terrorist activity"—a broad and undefined term that could encompass entire countries or regions of the globe.
- Having "technical skills gained through formal education," like knowledge of a foreign language, radio, chemistry, biology, nuclear physics, pharmaceuticals, computer systems, or other entirely legitimate fields of study.

These aren't the only types of indicators, but they illustrate how widely USCIS casts its net.

What makes an indicator an indicator? When is a fact about an applicant, like knowledge of a foreign language, an "indicator," and when is it just an innocuous fact? It can all come down to USCIS officers' subjective impressions. As USCIS puts it, identifying a national security concern is a "subjective decision for which there may be multiple, equally valid, assessments."[11] USCIS provides no scientific basis for its identification of or reliance on purported indicators, which may be common to

[8] Training Points of Emphasis, ECF #645-59, ¶ 9 (undated).

[9] Evidentiary Standards, ECF #645-53, at 7 (undated) .

[10] Attachment A - Guidance for Identifying National Security Concerns, ECF #645-54, at 3–4 (undated).

[11] Training Points of Emphasis, ECF #645-59, ¶ 16 (undated); *see also* Identifying and Documenting NS Concerns, ECF #666-19, at 96 (undated).

millions of people who are innocent of any wrongdoing. This unscientific and unreliable process—which leaves the door wide open to bias—is how most people end up in CARRP.[12]

The watchlist

There is one exception to USCIS's unilateral and subjective CARRP referrals. If an applicant for immigration benefits has been placed on the government's master terrorism watchlist, USCIS automatically labels them a "confirmed" national security concern and places them in CARRP. This per se rule is as seriously flawed as the subjective "indicator" assessments described above. The master watchlist has grown exponentially to include approximately 2 million people,[13] and is itself notoriously bloated, secretive, and unreliable—as federal courts, Congress, the ACLU, and other rights groups have repeatedly explained.[14] The bar for placing someone on the watchlist is very low; U.S. citizens and non-citizens can be watchlisted based on information that hasn't been verified, or for knowing someone already on the watchlist.[15] Unsurprisingly, the watchlist includes people who are entirely innocent of criminal wrongdoing and the government has thus far refused to provide watchlisted individuals with a fair process to challenge wrongful placement and clear their names.

Despite these glaring flaws in the watchlisting regime, USCIS, like other executive agencies, refers to people on the master watchlist as "known or suspected terrorists" (KSTs). USCIS uses the term "non-KSTs" for all other "national security concerns"—i.e., people singled out by USCIS officers through indicators.

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[12] RAIO Directorate – Officer Training, ECF #645-71, at 18 (dated Oct. 26, 2015).

[13] CBS News, *The Watchlist: 20 Years of Tracking Suspected Terrorists*, YouTube, at 22:03 (December 14, 2023), available here.

[14] *See, e.g.*, *Ibrahim v. Dep't of Homeland Sec.*, 669 F.3d 983, 989–91 (9th Cir. 2012); *El Ali v. Barr*, 473 F. Supp. 3d 479, 512–13, 521 (D. Md. 2020); *Coker v. Barr*, No. 19-CV-2486, 2020 WL 9812034, at *2, *11 (D. Colo. Sept. 15, 2020); Press Release, Warren, Carson, Porter, Lawmakers Raise Concern over Accuracy, Due Process, Civil Rights Violations with Terrorism Watchlist (Dec. 21, 2023), available here; Senator Elizabeth Warren et al. Letter to Attorney General Merrick Garland et al. (Dec. 20, 2023), available here; Majority Staff Rep., U.S. Senate Comm. on Homeland Sec. & Governmental Affs., Mislabeled As A Threat: How the Terrorist Watchlist & Government Screening Practices Impact Americans (Dec. 2023), available here; Brennan Center for Justice, Overdue Scrutiny for Watch Listing and Risk Prediction (Oct. 19, 2023), available here; Council on American Islamic Rels., Twenty Years Too Many, A Call to Stop the FBI's Secret Watchlist (June 12, 2023) available here; ACLU, Trapped in a Black Box: Growing Terrorism Watchlisting in Everyday Policing (Apr. 2016), available here; ACLU, U.S. Government Watchlisting: Unfair Process and Devastating Consequences (Mar. 2014), available here.

[15] Placement on a watchlist does not require "any evidence that the person engaged in criminal activity, committed a crime, or will commit a crime in the future." *Elhady v. Kable*, 391 F. Supp. 3d 562, 569 (E.D. Va. 2019), rev'd and remanded, 993 F.3d 208 (4th Cir. 2021) (internal quotation marks omitted). Something as innocuous as "an individual's travel history" or course of "study of Arabic" suffices to support a nomination onto the No Fly List. *Id*.

Confirmed vs. not confirmed

USCIS divides national security concerns into two categories: "confirmed" and "not confirmed." These categories, and the differences between them, illustrate how absurdly far CARRP sweeps.

When a national security concern is **confirmed**, it means one of two things: either the applicant is on the government's master watchlist, or a USCIS officer has used indicators to describe a "clear connection"—or "articulable link"—between an applicant and one of the security-related prohibitions in the INA.[16] USCIS documents reveal that a "clear" connection can be anything but. "Indirect links can suffice, 'regardless of the number of links involved.'"[17] Concerns can be "confirmed" based not on actionable evidence but unanswered questions or lingering doubts that USCIS cannot resolve.[18]

When a national security concern is **not confirmed**, it means a USCIS officer has identified at least one indicator, but *cannot* describe even a clear connection, or "articulable link," between the applicant and any of the security-related prohibitions in the INA.[19]

CARRP vetting applies to anyone deemed a national security concern, confirmed or not.[20]

- Just because the link between the person and the NS ground does not rise to the evidentiary level of Articulable link, it can still be a CARRP case
- So think back all the way to my definitions, when I mentioned non-KST NS Confirmed and non-KST NS Not Confirmed
- What did I say the difference between those two labels was?
- NS Confirmed rises to the level ~~of~~ of an articulable link
- NS Not Confirmed is based on indicators

Excerpt of an unsealed CARRP training module, ECF #645-55, at page 38 (dated Dec. 2015).

The majority of CARRP referrals based on indicators are not confirmed: USCIS has not drawn a clear connection between them and the INA's security prohibitions.[21] In the words of a former intelligence official and expert witness in the CARRP lawsuit: "applicants can be, and often are, referred for CARRP processing based on the presence of a *potential* national security concern to which they *may or may not* be linked."[22]

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[16] CARRP Training Slides, ECF #645-55, at 44 (dated Dec. 2015).

[17] Expert Report of Marc Sageman, ECF #645-8, ¶ 23 (dated June 29, 2020) (quoting materials produced by the government in discovery).

[18] Plaintiffs' Motion for Summary Judgment, ECF #665, at 15 (dated Mar. 25, 2021) (citing portions of documents produced in discovery).

[19] CARRP Training Slides, ECF #645-55, at 64, 66 (dated Dec. 2015).

[20] *Id.* at 32.

[21] Expert Report of Marc Sageman, ECF #645-8, ¶ 21 (dated June 29, 2020).

[22] *Id.* (emphasis added).

What happens when an application is subjected to CARRP?

Delays

CARRP leads to extended processing delays, stranding aspiring Americans in legal purgatory and putting their jobs, healthcare, and families at risk.

People subject to CARRP have to wait **more than twice as long** for a decision on their applications. A data analyst who was an expert witness in the CARRP lawsuit found that from October 2012 to September 2019, green card and citizenship applicants subject to CARRP waited an average of 617 days (over 20 months) for USCIS to decide their applications—compared to just 244 days (or eight months) for applicants not subject to CARRP.[23]

Many applicants wait longer, or never receive a decision at all. Using information produced by USCIS, the ACLU and its partners calculated the following wait times for green card and naturalization applicants who, in March 2021, were still subject to CARRP:

Time Waiting	20+ Years	15+ Years	10+ Years	5+ Years	3+ Years	2+ Years
Number of Applicants	18 People	81 People	162 People	309 People	715 People	1348 People

In many instances, applications ready for adjudication have been left dormant for no known reason. One USCIS official testified that after the CARRP lawsuit was filed in 2017, the agency reviewed its files and identified approximately 6,000 cases subject to CARRP that were stuck in limbo, awaiting a decision.[24]

Noah Abraham
Named plaintiff in CARRP challenge[25]

Noah lived in Iraq, where he was a successful businessman. Around 2008, a local militia group kidnapped and tortured him for money. He escaped and worked with the U.S. military to bring the perpetrators to justice. In retaliation, the militia attacked him with a bomb, killing his newborn son and causing Noah brain and leg injuries. Militia members then shot Noah and left him for dead.

Eventually, American soldiers found Noah, gave him first aid, and brought him to a hospital, where doctors amputated his leg. The American soldiers gave Noah a "protection card" that allowed him to leave Iraq as a refugee. He arrived in the United States in 2008.

[23] Exhibit AV to Supplemental Expert Report of Sean M. Kruskol, ECF #645-14, at 64 (PDF pagination) (dated July 17, 2020).

[24] Excerpted Deposition of Daniel Renaud, ECF #645-28, at 125–26 (PDF pagination) (dated Jan. 10, 2020).

[25] *See generally* Declaration of Noah Abraham, ECF #468 (dated Mar. 19, 2021). The ACLU and its partners can neither confirm nor deny that Mr. Abraham is, or ever was, subject to CARRP.

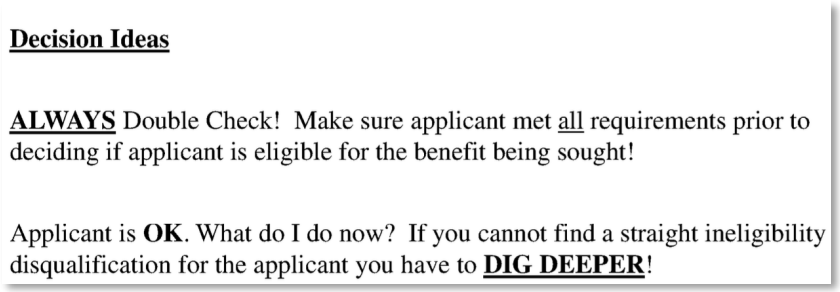
In 2013, Noah applied for citizenship. Without citizenship, he would lose his eligibility for social security benefits. He needed his social security benefits so he could receive chemotherapy for recently diagnosed leukemia, as well as ongoing care related to his amputated leg, brain injury, and other wounds.

But USCIS neither granted nor denied his application. In 2014, Noah's lawyer, his congressional representative, and members of the media asked USCIS about the delay. USCIS did not act. In 2015, Noah lost his social security benefits. He had to take on various manual jobs and work long hours to pay for his medical care and support his family, despite his disability and his battle with cancer. The toll was agonizing. In 2016, Noah's lawyer sent 33 letters from community members to USCIS testifying to Noah's good moral character. Still, USCIS didn't act on Noah's application.

On April 4, 2017, Noah joined the class-action lawsuit against CARRP. USCIS interviewed him on April 25 and granted his citizenship application on May 9. There appears to be only one logical conclusion: USCIS sat on Noah's application for four years, right up until litigation and resulting public attention spurred the agency to act.

Pretextual denials

Once USCIS routes an application into CARRP, its instructions push immigration officers to find a reason for denial. Indeed, discovering a pretext for denying applications is one of the reasons CARRP exists. CARRP training materials "describe the vetting process as 'not just for collecting information, but towards the specific end of not approving.'"[26] Consistent with this goal, the CARRP policy instructs USCIS officers to scrutinize and re-scrutinize applicants' paperwork, run their names through byzantine government databases of dubious reliability, and generally seek any datum, no matter how minor, that could serve as a pretext for denial.[27] In the words of one training presentation for CARRP adjudicators, "If you cannot find a straight ineligibility disqualification for the applicant you have to **DIG DEEPER**!"[28]



Decision Ideas

ALWAYS Double Check! Make sure applicant met all requirements prior to deciding if applicant is eligible for the benefit being sought!

Applicant is **OK**. What do I do now? If you cannot find a straight ineligibility disqualification for the applicant you have to **DIG DEEPER**!

Excerpt from an unsealed CARRP training module, ECF #645-47, at page 174 (undated).

[26] Expert Report of Marc Sageman, ECF #645-8, ¶ 31 (dated June 29, 2020) (quoting a document produced in discovery).

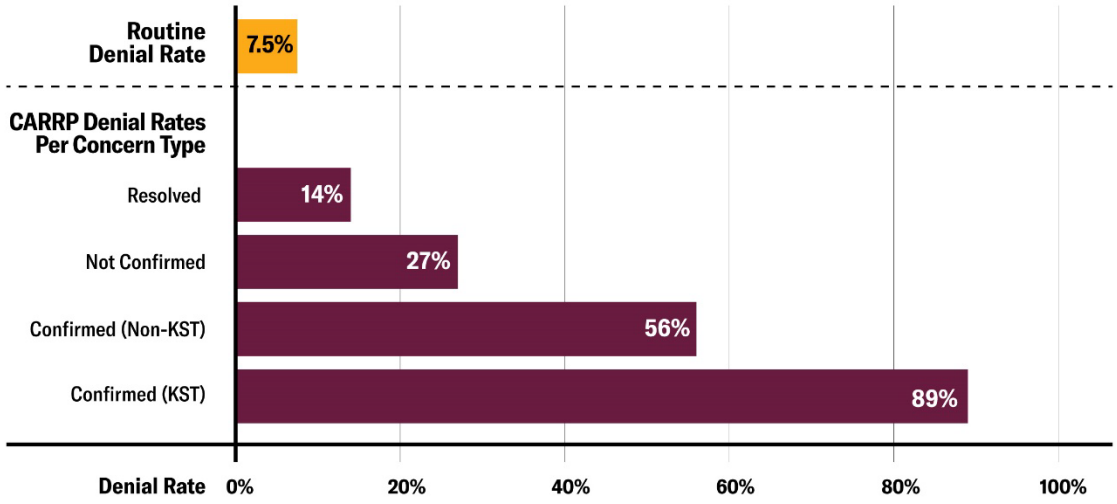
[27] CARRP Adjudicator Training, ECF #645-47, at 46 (undated).

[28] *Id.* at 174.

A minor misstatement on a form, even if it's irrelevant to the applicant's eligibility, can suffice as a basis for denial.[29]

In short, CARRP is designed to make denials easier and approvals harder. And it works as intended. Once applications are subject to CARRP, immigration officers cannot approve them without senior-level review, whereas denying them is comparatively seamless.[30] Specifically, immigration officers cannot approve applications from people on the master watchlist unless the deputy director of USCIS agrees, and they cannot approve applications from other people with unresolved "national security concerns" unless they get agreement from their supervisors and the local field office director.

Based on government records, the ACLU and its partners calculated that between 2012 and 2019, applications for green cards or citizenship processed in CARRP were **denied at vastly higher rates** than applications for green cards or citizenship not processed in CARRP.[31] Even applications that were placed in CARRP but eventually cleared of a national security concern (in USCIS parlance, "resolved") were denied at nearly double the rate of applications that were never placed in CARRP to begin with.[32]



[29] Expert Declaration of Nermeen Arastu, ECF #645-24, ¶¶ 82–84 (dated July 1, 2020).

[30] CARRP training materials repeatedly exhort USCIS officers to seek supervisory assistance when they are unable to find a reason to deny an application. *See, e.g.*, CARRP Adjudicator Training, ECF #645-47, at 68–71, 267 (undated).

[31] Supplemental Expert Report of Sean M. Kruskol, ECF #645-14, ¶ 7 (dated July 17, 2020).

[32] *See* Plaintiffs' Opposition to Defendants' Motion to Dismiss for Lack of Jurisdiction, ECF #634, at 5 (dated Oct. 20, 2023).

Mehdi Ostadhassan
Named plaintiff in CARRP challenge[33]

For 10 years, Mehdi Ostadhassan worked to build a happy and productive life in the United States. A practicing Muslim who grew up in Iran, he was a tenured professor at the University of Dakota, where he'd earned a PhD in petroleum engineering. He and his wife, a U.S. citizen, had two small children. Mehdi was a recognized leader in his field, and he headed teams of researchers on numerous projects funded by the U.S. government and the State of North Dakota—projects critical to U.S. energy independence. In doing so, he collaborated with the U.S. Geological Survey, the National Science Foundation, the National Institute of Health, and other federal agencies.

USCIS took it all away. In 2014, Mehdi and his wife had submitted immigration forms so Mehdi could obtain a green card and eventually become a citizen. Mehdi submitted his application without a lawyer's help. After several months of delay, Mehdi had no definitive response from USCIS, although he was told a "third party" was investigating the application. An FBI agent later called Mehdi to set up a "voluntary" interview. Concerned, Mehdi contacted an immigration lawyer, who told him of the FBI's history of pressuring people with pending immigration applications to become informants in return for recommending approval of the application to USCIS. Mehdi declined the FBI's voluntary interview.

When USCIS finally scheduled an interview with Mehdi months later, his immigration lawyer reviewed his application and advised him to give USCIS a comprehensive list of all the organizations he'd been affiliated with since he was a 16 years old. Mehdi had misunderstood what a question on the form required, and he amended his application with a more comprehensive list. At the interview itself, USCIS officers questioned Mehdi about his religious practices and activities. Another long delay followed. Finally, in 2017, USCIS told Mehdi that it intended to deny his green card application, stating that he'd initially failed to disclose a full list of his affiliations.

Mehdi's lawyer repeatedly provided an explanation and evidence to USCIS: omissions in his original application were inadvertent, based on a misunderstanding of the forms. USCIS denied his application anyway.

Shortly thereafter, Mehdi submitted a second green card application, with every piece of required information. But USCIS denied his second application, again citing only the (inadvertent) initial error.

As a result, Mehdi lost his tenured professorship. After a decade spent building what he and his wife describe as the "American Dream," Mehdi was forced to find work abroad and separate from his wife, his children, and his community.

Is CARRP discriminatory?

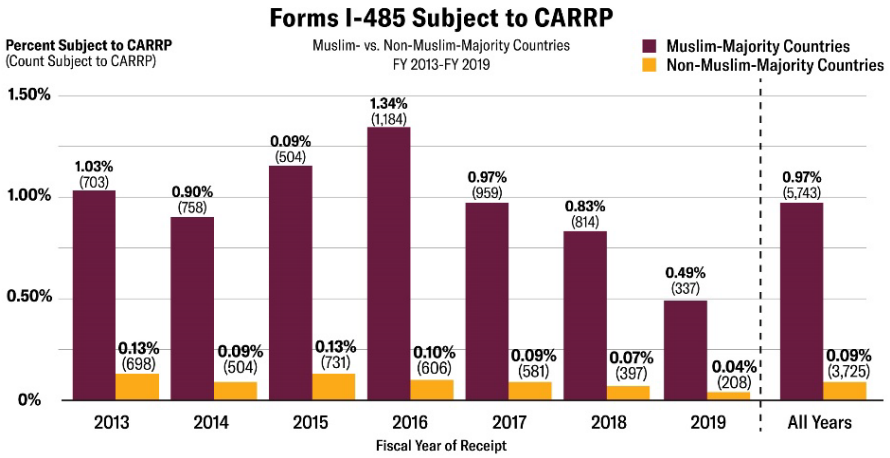
Yes. Records in litigation show that green card applicants from Muslim-majority countries are routed into CARRP at over **10 times** the rate of applicants from non-Muslim-majority countries. Applicants

[33] *See generally* Declaration of Mehdi Ostadhassan, ECF #466 (dated Mar. 24, 2021). The ACLU and its partners can neither confirm nor deny that Mr. Ostadhassan is, or ever was, subject to CARRP.

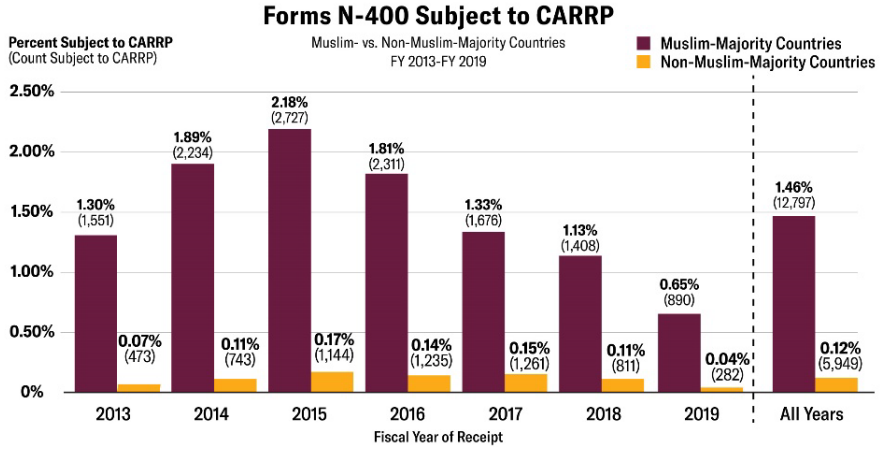
for citizenship from Muslim-majority countries are routed into CARRP at **12 times** the rate of applicants from non-Muslim-majority countries.[34]

CARRP is an artifact of the post-9/11 era, during which baseless suspicion of Muslims and people perceived to be Muslim became normalized in federal agencies and policies. It is hardly surprising, then, that CARRP disproportionately targets people from Muslim-majority countries—and drastically so.

As CARRP has continued and expanded, applicants from certain other countries, including China, are also viewed with baseless suspicion, particularly during times of political or diplomatic tension with those countries.[35]



Adapted from an unsealed expert report analyzing data provided by USCIS, ECF #645-14, at 54 (PDF Pagination) (dated July 17, 2020). Form I-485 is filed by applicants seeking green cards.



Adapted from an unsealed expert report analyzing data provided by USCIS, ECF #645-14, at 56 (PDF Pagination) (dated July 17, 2020). Form N-400 is filed by applicants seeking citizenship.

[34] Supplemental Expert Report of Sean M. Kruskol, ECF #645-14, ¶ 9 (dated July 17, 2020).

[35] ACLU, Restoring Access to Citizenship and Immigration Benefits at 2, available here.

Is CARRP effective?

No. There's no evidence CARRP serves a legitimate government interest, and extensive evidence that it does not. Three former law enforcement and intelligence officials who provided expert analysis in the CARRP challenge—Jeffrey Danik, Marc Sageman, and Christopher Burbank—have explained why.

Jeffrey Danik served as an award-winning FBI agent for more than 28 years. He has extensive experience in many hundreds of terrorism and counterterrorism investigations, including as an FBI supervisor in the counterterrorism division of the National Threat Center Section, Threat Management Unit. He analyzed information on CARRP provided by USCIS and said, "**CARRP is an ill-conceived program when it comes to protecting national security**. Applicants for lawful permanent residence and naturalization who are already in the United States are open books—they can be investigated by law enforcement officials," not immigration officers.[36] According to Danik, several issues he identified in CARRP policies cause him "to believe USCIS is misunderstanding and misusing the FBI information presented to them."[37] As a result, "the consequences USCIS imposes on applicants because of information originating with the FBI and other federal agencies can be exceedingly inappropriate and unfair."[38]

Marc Sageman is a former CIA case officer with advanced degrees in medicine and political sociology. He has worked as a consultant to the U.S. Secret Service and a special adviser to the U.S. Army Deputy Chief of Staff (Intelligence) and has spent decades studying and publishing research on political violence and terrorism. After studying USCIS-provided information on CARRP, Dr. Sageman said that "CARRP misuses and misapplies [terrorism watchlist] information," which "is not a reliable indication that a person poses any national security risk."[39] He added that USCIS's "indicators" "significantly raise the risk that applicants are subjected to CARRP because of officers' arbitrary suspicions and biases, not of valid science or any attempt to assess risk objectively with an estimated risk of error." He also explained that subjecting applicants for green cards or citizenship "to a more stringent application process or denying their applications based on low-quality information or speculative inferences, without affording them the opportunity to address and resolve such concerns, **serves no legitimate national security purpose**."[40]

Christopher Burbank served in the Salt Lake City, Utah police department for 23 years, 9 of them as chief of police. He is a past president of the National Executive Institute Associates, a nonprofit organization of chief executives of the largest law enforcement agencies throughout the United States, Canada, Australia, and Europe. He said that "**CARRP does not meaningfully advance public safety**. First, the program lacks a valid security-based rationale: Nothing about granting or denying

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[36] Expert Report of Jeffrey Danik, ECF #645-56, ¶ 99 (dated July 1, 2020).

[37] *Id.* ¶ 89.

[38] *Id.* ¶ 102.

[39] Expert Report of Marc Sageman, ECF #645-8, ¶ 11 (dated June 29, 2020).

[40] *Id.* ¶ 13.

immigration benefits makes someone more or less dangerous. In fact, applying for an immigration benefit draws attention to the applicant in a way that would be counterintuitive and risky for someone intending to engage in terrorism or any other crime implicating national security."[41] In Burbank's view, "CARRP is more likely to undermine public safety and security than promote it," and if USCIS had consulted him before implementing CARRP, he "would have advised that the program is inconsistent with effective policing principles."[42]

Is CARRP legal?

No. CARRP violates the Administrative Procedures Act and the INA by imposing criteria for immigration benefits that are not authorized by law. Because of the policy's secrecy, unfairness, and discriminatory impact, it also violates immigrants' constitutional rights to due process and equal protection.

What should USCIS do about CARRP?

Because it is unlawful, ineffective, and unnecessary, USCIS should rescind CARRP.

[41] Expert Report of Christopher Burbank, ECF #645-76, ¶ 34 (dated Feb. 28, 2020).

[42] *Id.* ¶ 38.