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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

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11 ABDIQAFAR WAGAFE, et al.,

12 Plaintiff,

13 v.

14 JOSEPH R. BIDEN, President of the United
States, et al.,

15 Defendants.

CASE NO. 2:17-cv-00094-LK

ORDER ON CROSS-MOTIONS
FOR SUMMARY JUDGMENT

16 This matter is before the Court on the parties' cross-motions for summary judgment. *See*
17 Dkt. Nos. 665, 665-6.¹ The Court held oral argument on the motions on July 19, 2024. Dkt. No.
18 672. After thoroughly reviewing the parties' motions, as well as the remainder of the relevant
19 record, and for the reasons stated below, the Court grants in part and denies in part the parties'
20 motions.

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22 ¹ The parties initially refrained from publicly filing their cross-motions for summary judgment due to Defendants'
23 contention that the motions constituted highly sensitive documents ("HSDs"). *See* Gen. Order No. 03-21 (issued Mar.
24 1, 2021). They later filed provisionally redacted versions of their summary judgment briefing. *See* Dkt. Nos. 595–595-
5. Following the Court's orders regarding what materials can be filed publicly, *see* Dkt. Nos. 626, 626-1, 662, 662-1,
the parties then filed updated versions of their redacted motion briefing and related documents, *see generally* Dkt.
Nos. 645, 665. Where possible, the Court cites herein to the unsealed iterations of the parties' motion briefing and
related materials filed following Court's September 2023 and May 2024 orders.

1 In sum, although Plaintiffs have raised some legitimate concerns regarding the United
2 States Citizenship and Immigration Services' ("USCIS") Controlled Application Review and
3 Resolution Program ("CARRP"), the evidence they have submitted in support of the Naturalization
4 Class's claims is ultimately insufficient for most of their claims to survive summary judgment.
5 However, the Court does grant summary judgment to Plaintiffs on their claim that CARRP is
6 arbitrary and capricious because USCIS failed to (1) explain its basis for implementing this policy,
7 (2) indicate what data, evidence, or factors the agency considered before doing so, and (3) consider
8 an important aspect of the problem—i.e., USCIS's statutory mandate to adjudicate naturalization
9 applications within a reasonable time.

10 I. BACKGROUND

11 A. Procedural Background

12 Plaintiffs initiated this class action in early 2017 against USCIS, a component of the
13 Department of Homeland Security ("DHS"), as well as several government officials. Dkt. Nos. 1,
14 17. Plaintiffs seek declaratory and injunctive relief related to USCIS's CARRP, a national security
15 vetting program which affects the evaluation and processing of some individuals' applications for
16 immigration benefits. *See generally* Dkt. No. 47. In June 2017, the Court certified two nationwide
17 classes to be represented by the five named Plaintiffs in this case: the "Naturalization Class" and
18 the "Adjustment Class." Dkt. No. 69 at 8, 31. The parties have agreed to a continuing stay of the
19 Adjustment Class's claims. *See* Dkt. No. 613 at 2; Dkt. No. 660 at 1.²

20 Following a lengthy discovery period, the parties each moved for summary judgment. *See*
21 Dkt. Nos. 665, 665-5, 665-6, 665-14 (redacted summary judgment briefing). The parties also
22 moved to exclude the opinions, testimony, and reports of five expert witnesses. *See* Dkt. Nos. 460,
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24 ² Unless otherwise specified, this Order pertains only to the claims of the Naturalization Class.

1 463, 471, 475, 477 (sealed and redacted motions to exclude expert opinions). While these motions
2 were pending, Defendants also moved to dismiss the Naturalization Class’s claims for lack of
3 subject matter jurisdiction. Dkt. No. 628. The Court denied Defendants’ motion to dismiss on May
4 20, 2024, Dkt. No. 661, and then granted in part and denied in part the parties’ respective motions
5 to exclude the opinions, testimony, and reports of the five expert witnesses, Dkt. No. 668.

6 Separately, after striking 17 pending motions that either sought to seal materials or
7 requested leave to file HSDs, the Court issued two orders addressing the parties’ disputes as to
8 which materials could be filed publicly on the docket. First, the Court issued an order on the
9 parties’ consolidated response regarding material to be sealed or designated as HSDs. Dkt. Nos.
10 587, 609, 626, 626-1. As part of that order, the Court permitted some filings to be unsealed or filed
11 publicly on the docket, and allowed other filings to remain under seal or be filed on the docket
12 under seal. Dkt. No. 626 at 20; *see also generally* Dkt. Nos. 626-1, 645–646. The Court further
13 directed the parties to submit supplemental information for certain categories of documents,
14 including documents for which Defendants were required to either consent to publication or
15 propose specific redactions, as well as documents Defendants were required to resubmit with
16 proposed redactions. Dkt. No. 626 at 19–20. The parties then submitted a joint submission seeking
17 clarification, Dkt. No. 637, and Defendants filed a motion for reconsideration, Dkt. Nos. 640, 642-
18 2; *see also* Dkt. No. 645-1 (summarizing status of each document following the Court’s September
19 2023 Order). On May 23, 2024, the Court granted in part and denied in part Defendants’ motion
20 for reconsideration and further clarified its rulings as to the appropriate sealing and redactions on
21 the docket, prompting a final round of sealed, redacted, and unsealed filings. Dkt. No. 662; *see*
22 *also generally* Dkt. Nos. 662-1, 664–66.

23 **B. The Naturalization Class and Its Claims**

24 The Naturalization Class, represented by Plaintiffs Abdiqafar Wagafe, Noah Abraham

1 (formerly known as Mushtaq Jihad), and Sajeel Manzoor, is comprised of all people “(1) who have
2 or will have an application for naturalization pending before USCIS, (2) that is subject to CARRP
3 or a successor ‘extreme vetting’ program, and (3) that has not been or will not be adjudicated by
4 USCIS within six months of having been filed.” Dkt. No. 69 at 8. On behalf of this class, Plaintiffs
5 allege that USCIS “has refused to adjudicate their applications in accordance with the governing
6 statutory criteria,” and instead “applied impermissible ultra vires rules” under CARRP, preventing
7 “the agency from granting Plaintiffs’ applications (and, in the case of Mr. Wagafe, caus[ing] the
8 agency to delay granting his application until this lawsuit motivated it to do so.” Dkt. No. 47 at 3;
9 *see also id.* at 33 (“Mr. Wagafe’s naturalization application was subject to CARRP or its successor
10 ‘extreme vetting’ program, which caused the delay in adjudication of his naturalization
11 application, despite the fact that he was statutorily entitled to naturalize,” and the delay caused him
12 “significant harm”); *id.* at 39 (similar allegations as to Mr. Abraham); *id.* at 41 (similar allegations
13 as to Mr. Manzoor); *id.* at 42–45 (similar allegations as to the Naturalization Class).

14 Plaintiffs assert seven causes of action on behalf of themselves and the Naturalization
15 Class, alleging that CARRP violates (1) the Due Process Clause of the Fifth Amendment through
16 failure to provide notice and an opportunity to respond to CARRP classification, Dkt. No. 47 at
17 47;³ (2) the Due Process Clause of the Fifth Amendment through the unauthorized and indefinite
18 suspension of the adjudication of applications, Dkt. No. 47 at 47; (3) the equal protection
19 component of the Fifth Amendment’s Due Process Clause through the indefinite suspension of the
20 adjudication of applications based on country of origin, *id.* at 47–48; (4) the Immigration and
21 Nationality Act (“INA”) and its implementing regulations through the imposition of additional
22 non-statutory, substantive adjudicatory criteria for naturalization, *id.* at 48–49; (5) the
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24 ³ The Court previously dismissed this claim as to the Adjustment Class. Dkt. No. 69 at 17, 22.

1 Administrative Procedure Act (“APA”) through arbitrary and capricious final agency action, *id.* at
2 49, (6) the APA through failure to provide a notice and comment period before implementing a
3 substantive rule, *id.* at 49–50; and (7) the “Uniform Rule of Naturalization” clause of the
4 Constitution through the creation of additional naturalization requirements not enacted by
5 Congress, *id.* at 50.

6 In light of the above, Plaintiffs request, among other things, the following relief: (1) an
7 order directing Defendants to adjudicate Plaintiffs’ and the class’s applications, and to do so “based
8 solely on the statutory criteria”; (2) a declaration that CARRP or any successor “extreme vetting”
9 program violates the Constitution, the INA, and the APA; (3) an injunction prohibiting Defendants
10 “from applying CARRP or any successor ‘extreme vetting’ program to the processing and
11 adjudication of’ Plaintiffs’ and the class’s applications; (4) an order directing Defendants to
12 “rescind CARRP or any successor ‘extreme vetting’ program because they failed to follow the
13 process for notice and comment by the public”; and, in the alternative, (5) an order directing
14 Defendants to provide Plaintiffs and class members “with notice that they have been subjected to
15 CARRP or any successor ‘extreme vetting’ program, the reasons for subjecting them to
16 CARRP . . . , and a reasonable opportunity to respond to those allegations before a neutral
17 decision-maker[.]” *Id.* at 51–52.

18 C. Overview of Naturalization

19 The Secretary of Homeland Security possesses “sole authority to naturalize persons as
20 citizens of the United States,” 8 U.S.C. § 1421(a); *see* 6 U.S.C. § 557, and USCIS is the agency
21 within DHS that implements this authority, *see* 8 C.F.R. § 310.1(b); 6 U.S.C. § 271(b); *see also*
22 *Mestanek v. Jaddou*, 93 F.4th 164, 170–71 (4th Cir. 2024);⁴ *Roshandel v. Chertoff*, 554 F. Supp.

23 _____
24 ⁴ The Court notes that Defendants submitted *Mestanek* as part of their June 11, 2024 Notice of Supplemental Authority. *See* Dkt. No. 663 at 3, 97–110.

1 2d 1194, 1199 (W.D. Wash. 2008). To become a naturalized United States citizen, an applicant
2 must normally show (1) continuous residence in the United States for five years immediately
3 preceding the date of filing the application, (2) certain physical presence and residence
4 requirements both before and after filing her application, and (3) that she “has been and still is a
5 person of good moral character[.]” 8 U.S.C. § 1427(a); *see also id.* § 1101(f); 8 C.F.R. §§ 316.2(a),
6 316.10. “An applicant bears the burden to show his or her eligibility for citizenship in every
7 respect.” *Hussein v. Barrett*, 820 F.3d 1083, 1088 (9th Cir. 2016); *accord Berenyi v. Dist. Dir.,*
8 *Immigr. & Naturalization Serv.*, 385 U.S. 630, 637 (1967); 8 C.F.R. § 316.2(b).

9 In evaluating naturalization applications, USCIS officers are authorized to, among other
10 things, “take and consider evidence concerning the privilege of any person to . . . reside in the
11 United States, or concerning any matter which is material or relevant to the enforcement of [8
12 U.S.C. §§ 1101–1537] and the administration of the Service[.]” 8 U.S.C. § 1357(b). When
13 adjudicating naturalization applications, designated USCIS employees are also required to
14 “conduct a personal investigation” of the applicant and “to conduct examinations,” or interviews,
15 and are authorized to “take testimony concerning any matter touching or in any way affecting the
16 admissibility of any applicant for naturalization[.]” *Id.* § 1446(a)–(b); *see also id.* § 1443(a); 8
17 C.F.R. §§ 335.1–335.2. “[I]f the applicant has complied with all requirements for naturalization
18 under this chapter,” then “USCIS shall grant the application[.]” 8 C.F.R. § 335.3(a).

19 If the applicant has submitted “all required initial evidence . . . but the evidence submitted
20 does not establish eligibility,” USCIS may (1) deny the application due to ineligibility; (2) request
21 more information or evidence from the applicant; or (3) notify the applicant of its intent to deny
22 the application. 8 C.F.R. § 103.2(b)(8)(iii). USCIS is also permitted to hold an application in
23 abeyance if it “determines that an investigation has been undertaken involving a matter relating to
24 eligibility or the exercise of discretion . . . in connection with the benefit request, and that the

1 disclosure of information to the applicant or petitioner in connection with the adjudication of the
2 benefit request would prejudice the ongoing investigation.” 8 C.F.R. § 103.2(b)(18). If the
3 investigation has not been completed within one year of its inception, USCIS must determine
4 whether adjudication “should be held in abeyance for six months or until the investigation is
5 completed, whichever comes sooner,” and must review that determination every six months
6 thereafter. *Id.*⁵ If USCIS decides to notify an applicant of its intention to deny the application, the
7 agency is required to “specify . . . the bases for the proposed denial sufficient to give the applicant
8 . . . adequate notice and sufficient information to respond.” 8 C.F.R. § 103.2(b)(8)(iii)–(iv). If
9 USCIS denies an application, it must “explain in writing the specific reasons for denial.” *Id.*
10 § 103.3(a)(1)(i). Subject to certain exceptions, a naturalization applicant “shall be permitted to
11 inspect the record of proceeding which constitutes the basis for the decision.” *Id.* § 103.2(b)(16).
12 Relevant exceptions include decisions based on classified information: applicants “shall not be
13 provided any information contained in the record or outside the record which is classified” unless
14 the classifying authority authorizes such disclosure, and “[a] decision based in whole or in part on
15 such classified information shall state that the information is material to the decision.” *Id.*
16 § 103.2(b)(16)(iv).

17 If the government has not adjudicated a naturalization application within 120 days
18 following an applicant’s interview, the applicant may apply to a district court for a hearing. 8
19 U.S.C. § 1447(b). In addition, Section 1447(a) permits naturalization applicants to request a
20 hearing before an immigration officer once their application has been denied, and Section 1421(c)
21 permits them to seek de novo review in district court of that denial thereafter. 8 U.S.C. §§ 1421(c),
22

23 ⁵ USCIS guidance implementing this regulation requires supervisory approval to hold a case in abeyance, and
24 extending abeyances beyond one year requires a USCIS District Director to obtain a Regional Director’s approval; beyond 18 months requires the joint approval of two headquarters directorates. Dkt. No. 645-86 at 7.

1 1447(a).

2 **D. Overview of CARRP**

3 USCIS describes CARRP as a “policy for identifying and processing [immigration] cases
4 with national security . . . concerns[.]” Dkt. No. 286-3 at 1; *see also id.* at 40 (June 5, 2009 USCIS
5 memo referring to CARRP as “a disciplined approach for identifying, recording, and adjudicating
6 applications and petitions where a National Security (NS) concern is identified”); Dkt. No. 126-1
7 at 3; Dkt. No. 517 at 3.⁶ CARRP was not created by statute or regulation; it is an internal USCIS
8 policy “memorialized in a series of memoranda.” Dkt. No. 517 at 9; *see* Dkt. No. 286-3 at 1–11;
9 *see also* Dkt. No. 74 at 18; Dkt. No. 645-33 at 14–15.⁷

10 Although all applicants for naturalization in the United States are subject to background
11 checks run by the USCIS National Benefits Center (“NBC”), not all applications are subject to
12 CARRP review. Dkt. No. 645-34 at 12–13; Dkt. No. 522 at 2–3; Dkt. No. 665-17 at 9. In routine
13 cases, following the completion of these background checks, NBC schedules an applicant for an
14 interview and sends the case to a benefits adjudication officer, or Immigration Services Officer
15 (“ISO”), who evaluates the applicant’s eligibility, conducts an interview, and, if the eligibility
16 requirements are met, approves the application. Dkt. No. 645-28 at 25–28; Dkt. No. 645-35 at 11;

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18 ⁶ USCIS’s website currently defines CARRP as a “USCIS-wide process for handling cases with national security
19 concerns,” which generally arise “when a person or organization has been determined to have a link to past, current,
20 or planned involvement in an activity or organization involved in terrorism, espionage, sabotage, or the illegal transfer
of goods, technology, or sensitive information.” Refugee Processing and Security Screening: USCIS National Security
Processing, USCIS (March 14, 2024), <https://www.uscis.gov/humanitarian/refugees-and-asylum/refugees/refugee-processing-and-security-screening> (last visited January 9, 2025). The Court takes judicial notice of the contents of a
governmental website. *See, e.g., Daniels-Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992, 998–99 (9th Cir. 2010); *Arizona
Libertarian Party v. Reagan*, 798 F.3d 723, 727 n.3 (9th Cir. 2015).

21 ⁷ In the years following September 11, 2001, Congress amended the INA to expand the class of individuals considered
22 inadmissible and deportable due to national security concerns. *See* USA PATRIOT Act, Pub. L. No. 107-56, 115 Stat.
272 (Oct. 26, 2001); The REAL ID Act, Pub. L. No. 109-13, 119 Stat. 231 (May 1, 2005). These statutory provisions
23 are known as the terrorism-related inadmissibility grounds (“TRIG”). 8 U.S.C. §§ 1182(a)(3)(A)–(B), (F),
1227(a)(4)(A)–(B). The statute that lists requirements for naturalization does not explicitly mention any terror-related
24 grounds for denial; however, “[i]n determining whether the applicant has sustained the burden of establishing good
moral character and the other qualifications for citizenship,” the Attorney General may take into consideration the
applicant’s conduct and acts at any time prior to the filing of the application. 8 U.S.C. § 1427(e).

1 Dkt. No. 522 at 2. In cases where applications are reviewed under CARRP, however, applicants
2 face several other steps prior to adjudication.

3 There are four phases to CARRP. Dkt. No. 666-25 at 3; Dkt. No. 126-1 at 3. The first phase
4 involves identifying a national security (“NS”) concern associated with an applicant. Dkt. No. 645-
5 32 at 21; Dkt. No. 645-55 at 13; Dkt. No. 665-18 at 8–9. If a concern is identified, the agency
6 moves to the second stage and internally vets the applicant’s eligibility for the benefit, followed
7 by, if necessary, the third phase of external vetting, and then fourth, adjudication. Dkt. No. 286-3
8 at 3–7; *see also* Dkt. No. 645-37 at 6.

9 Only a small percentage of total naturalization applications are processed through CARRP,
10 and most are ultimately approved. *See, e.g.*, Dkt. No. 645-5 at 34, 51. However, CARRP delays
11 the adjudication of applications relative to non-CARRP processing—sometimes significantly. *See,*
12 *e.g.*, Dkt. No. 645-14 at 12 (“Applications subject to CARRP and adjudicated by USCIS decision
13 were pending for two and a half times longer than applications not subject to CARRP.”); Dkt. No.
14 645-26 at 1 (certain applicants subjected to CARRP “waited on average 3.15 times longer to be
15 adjudicated than routine applicants”); Dkt. No. 645-33 at 61 (noting that as of August 10, 2020,
16 the mean wait time for the Naturalization Class was 881 days and the median wait time was 588
17 days); Dkt. No. 665 at 26–27 (a class list from March 2021 indicated that 1,348 class members
18 had waited more than two years for a decision and 1,285 had waited more than three years, and
19 that CARRP cases were significantly delayed compared to non-CARRP cases); Dkt. No. 665-14
20 at 20 (Defendants’ reply brief acknowledging that “naturalization applications subject to CARRP
21 are adjudicated more slowly than other naturalization applications”).⁸ In addition, USCIS does not
22 inform individuals that their applications are being reviewed under CARRP or provide them an
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24 ⁸ Following Plaintiffs’ filing this lawsuit, USCIS identified a large number of “adjudication ready” CARRP cases and adjudicated 6,000 such cases. Dkt. No. 645-28 at 17–22.

1 opportunity to challenge the agency’s decision to process their application pursuant to the program.
2 Dkt. No. 645-32 at 22.

3 1. Identifying NS Concerns

4 An NS concern exists under CARRP “when an individual or organization has been
5 determined to have an articulable link to prior, current, or planned involvement in, or association
6 with, an activity, individual, or organization described in sections 212(a)(3)(A), (B), or (F), or
7 237(a)(4)(A) or (B) of the [INA].” Dkt. No. 286-3 at 1 n.1; Dkt. No. 645-32 at 15; *see also* Dkt.
8 No. 645-55 at 15, 22; Dkt. No. 126-1 at 3. The term “articulable link” does not appear in the
9 relevant TRIG statutes, 8 U.S.C. §§ 1182(a)(3)(A)–(B), (F), 1227(a)(4)(A)–(B); *see also* Dkt. No.
10 645-32 at 15, but under USCIS policy, an articulable link is “a synopsis of facts which tie an
11 individual or organization to a national security ground,” Dkt. No. 666-21 at 2. “[A]rticulating a
12 link (or determining that no link exists)” may involve interagency coordination “or research in
13 another system,” and “[u]ntil a definitive judgment is reached about whether an articulable link
14 exists, the case must remain open.” Dkt. No. 665-19 at 185.

15 If an applicant presents an NS concern, USCIS places the applicant into one of two
16 categories: Known or Suspected Terrorists (“KSTs”) or Non-Known or Suspected Terrorists
17 (“non-KSTs”). Dkt. No. 286-3 at 1–2 & n.3; Dkt. No. 645-32 at 16. A KST includes any person in
18 the Terrorist Screening Database (“TSDB”), placed on the Terrorist Watch List, and designated as
19 a “KST” in TECS,⁹ whereas a non-KST “is the category of remaining cases with NS concerns,
20 regardless of source, including but not limited to: associates of KSTs, unindicted co-conspirators,
21 terrorist organization members, persons involved with providing material support to terrorists or
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23 _____
24 ⁹ TECS “is a multiagency effort with a central system that combines information from multiple agencies, databases,
and system interfaces to compile data relating to national security risks and other issues.” Dkt. No. 126-1 at 4 n.2; *see also* Dkt. No. 517 at 5; Dkt. No. 645-29 at 3–4; Dkt. No. 645-45 at 8; Dkt. No. 645-54 at 3.

1 terrorist organizations, and agents of foreign governments.” Dkt. No. 286-3 at 1 n.3; *see also* Dkt.
2 No. 645-54 at 2 & n.1; Dkt. No. 126-1 at 4.¹⁰

3 KSTs “automatically indicate the presence of a NS concern” and satisfy the articulable link
4 standard. Dkt. No. 645-54 at 2; Dkt. No. 645-33 at 37–38; Dkt. No. 665-20 at 32, 47; *see also* Dkt.
5 No. 665-19 at 158. For non-KSTs, USCIS identifies NS concerns by relying on information from
6 the following sources: TECS, FBI name and fingerprint checks, agency databases, the applicant,
7 and “[a]ny other manner in which USCIS is notified or obtains information that an individual has
8 an articulable link to a national security concern.” Dkt. No. 126-1 at 4; *see also* Dkt. No. 645-54
9 at 2–3; Dkt. No. 665-20 at 58. Utilizing these information sources, officers are instructed to
10 exercise their judgment and assess applications for “indicators” of an NS concern. Dkt. No. 645-
11 54 at 3; Dkt. No. 645-59 at 3; *see also* Dkt. No. 645-33 at 35–36; Dkt. No. 665-18 at 42, 61. Such
12 indicators can relate to, among other things, an individual’s employment, education, training,
13 travel, associations and/or affiliations, and activities. Dkt. No. 645-54 at 3–5; Dkt. No. 665-24 at
14 31. USCIS’s training materials state that “protected characteristics, such as national origin or
15 religion, ARE NOT indicators of an NS concern,” Dkt. No. 666-17 at 28,¹¹ and that connecting an
16 individual to an NS ground “must be based on evidence, not instinct,” Dkt. No. 645-59 at 3; *see*
17 *also* Dkt. No. 522 at 3–4, 6.¹²

18 USCIS also subdivides non-KSTs into two additional categories: “confirmed” and “not
19 confirmed” NS concerns, as well as a third designation of “Non-NS” if the concern is resolved
20

21 ¹⁰ As of June 2017, the Terrorism Watchlist contained more than 1 million people. Dkt. No. 645-8 at 16; *see also*
22 *Elhady v. Kable*, 993 F.3d 208, 213 (4th Cir. 2021). However, KSTs represent a minority of CARRP applicants:
between fiscal years 2013 and 2019, one percent of adjustment of status and naturalization applications adjudicated
through CARRP (and five percent of non-adjudicated applications) were considered KSTs. Dkt. No. 645-13 at 10.

23 ¹¹ Prior to 2020, this statement was not contained in USCIS’s training materials. Dkt. No. 546 at 2; Dkt. No. 549 at
24 15; *see also* Dkt. No. 665-14 at 21.

¹² Plaintiffs move to strike USCIS’s updated CARRP training modules. Dkt. No. 665-5 at 48–50. As discussed below,
this motion is denied. *See infra* II.C.

1 through vetting. Dkt. No. 645-31 at 19; Dkt. No. 645-33 at 53–56; Dkt. No. 645-55 at 27–32; Dkt.
2 No. 666-17 at 27. A “confirmed” NS concern occurs when an officer expresses an articulable link,
3 i.e., describes “a clear connection between a person (on the one hand), and an activity that threatens
4 the safety and integrity of the United States or another nation (on the other).” Dkt. No. 666-13 at
5 2; *see also* Dkt. No. 645-31 at 17; Dkt. No. 645-71 at 18–19; Dkt. No. 645-33 at 54.¹³ A “not
6 confirmed” NS concern, on the other hand, is when a USCIS officer identifies at least one
7 “indicator” of concern that does not reach the threshold of an “articulable link” but signals a
8 potential NS concern. Dkt. No. 645-31 at 18; Dkt. No. 645-33 at 54–55; Dkt. No. 645-70 at 8–9;
9 Dkt. No. 645-55 at 31; Dkt. No. 665-24 at 31; Dkt. No. 666-17 at 42. A “not confirmed” NS
10 concern based on “indicators” is still subject to CARRP review. Dkt. No. 645-33 at 57–58; Dkt.
11 No. 645-55 at 38–39; Dkt. No. 665-19 at 144–45, 181; Dkt. No. 666-13 at 2. However, if USCIS
12 determines that such indicators do not to relate to the applicant or confirms that there is no
13 articulable link between the applicant and the national security concern, the application is no longer
14 subject to CARRP. Dkt. No. 126-1 at 3.

15 Once a field office identifies a potential NS concern or confirms an articulable link, an
16 application will move into the second phase of CARRP: internal vetting and eligibility assessment.
17 Dkt. No. 666-25 at 3; *see also* Dkt. No. 286-3 at 4 (“[O]nce the concern has been identified, the
18 officer must conduct a thorough review of the record associated with the application or petition to
19 determine if the individual is eligible for the benefit sought” and also “conduct internal vetting to
20 obtain any relevant information to support adjudication and, in some cases, to further examine the
21 nature of the NS concern.” (footnotes omitted)).

22
23 ¹³ According to USCIS data for fiscal years 2013 through 2019, three percent of adjudicated and 13 percent of pending
24 naturalization applications processed through CARRP were designated as “NS confirmed.” *See* Dkt. No. 645-13 at
18–19.

1 2. Internal Vetting and Eligibility Assessment

2 At the second stage of CARRP, the focus is on the applicant’s eligibility for the desired
3 immigration benefit. Dkt. No. 645-37 at 3; Dkt. No. 286-3 at 4; Dkt. No. 666-14 at 14. “The
4 purpose of the eligibility assessment is to ensure that valuable time and resources are not
5 unnecessarily expended externally vetting a case . . . when the individual is otherwise ineligible
6 for the benefit sought.” Dkt. No. 286-3 at 5. In such instances, “the application or petition may be
7 denied on any legally sufficient grounds.” *Id.*; *see also* Dkt. No. 645-78 at 3. Officers evaluate
8 whether the applicant is “not ineligible,” warranting a continuation in CARRP processing, as
9 opposed to “clearly ineligible,” at which point the application can be denied. Dkt. No. 666-14 at
10 21–22 (“[W]e can’t always make a decision about whether someone is eligible . . . [b]ut we can
11 definitely say that they’re not clearly ineligible[.]”). The internal vetting is conducted by “any
12 CARRP designated officer,” which in some cases is a USCIS officer within the Office of Fraud
13 Detection and National Security (“FDNS”). Dkt. No. 666-14 at 24; *see also* Dkt. No. 645-31 at 26;
14 Dkt. No. 645-45 at 8; Dkt. No. 645-93 at 3.¹⁴ If, after the completion of this internal assessment
15 and vetting, the applicant appears potentially eligible for the benefit sought, “or if field
16 management determines further processing is necessary to strengthen or support a decision,” the
17 application will proceed to the third phase: external vetting. Dkt. No. 645-48 at 141; *see also* Dkt.
18 No. 666-25 at 3–5; Dkt. No. 666-14 at 80.

19 3. External Vetting

20 The external vetting phase of CARRP focuses on whether an NS concern exists, which
21 generally requires coordination with third-party law enforcement agencies who possess further
22

23 _____
24 ¹⁴ FDNS is the “office within USCIS established to enhance the integrity of the legal immigration system by
identifying threats to national security and public safety, detecting and combating benefit fraud and removing systemic
and other vulnerabilities.” Dkt. No. 645-45 at 8; *see also id.* at 10; Dkt. No. 517 at 7.

1 information about the NS concern. Dkt. No. 286-3 at 5–6; Dkt. No. 645-49 at 21–23; Dkt. No.
2 666-14 at 83, 87, 100, 103; *see also* Dkt. No. 666-25 at 5 (declaration of Mathew Relph, an
3 Immigration Officer assigned to the FDNS, stating that: “Between the initial processing at NBC
4 and the internal vetting, I would have learned which third agencies have records related directly or
5 indirectly to the applicant. . . . The most common record holders are Homeland Security
6 Investigations, Customs and Border Patrol, and the Federal Bureau of Investigation[.]”).¹⁵ The
7 conversations with record holders are geared toward exploring “the details of the agency’s records
8 that may relate to the applicant or give context to the national security concern” and engaging in
9 “deconfliction.” Dkt. No. 666-25 at 5. Deconfliction, which can take place at any stage of CARRP,
10 is a term used to describe “[t]he coordination between USCIS and other governmental agencies
11 who own NS information” in order to “ensure that planned adjudicative activities do not
12 compromise or impede an ongoing investigation or other record owner interest.” Dkt. No. 645-31
13 at 25, 46–48; *see also* Dkt. No. 645-45 at 9.

14 Ultimately, “the goal is to achieve an outcome: resolve the concern or decide the benefit.”
15 Dkt. No. 666-14 at 137;¹⁶ *see also id.* at 135 (“If there’s no more NS concern, or if the person is
16 clearly ineligible, there’s an easy end to CARRP[.] The challenge comes when the individual
17 seems eligible, but we’ve done enough vetting to know that we’re probably not going to be able
18 to resolve the concern[.]”); Dkt. No. 645-31 at 44. If the NS concern is “resolved,” the application
19 is returned to the normal processing track for final adjudication of the application. *See* Dkt. No.
20 286-3 at 5; Dkt. No. 666-25 at 7; *see also* Dkt. No. 645-31 at 30 (explaining that “resolved” is a
21

22 ¹⁵ For KST NS concerns, field officers are not authorized to conduct external vetting. Instead, such vetting is conducted
23 by FDNS headquarters “only as a last resort when ineligibility grounds have not been identified.” Dkt. No. 645-49 at
24 28; *see also* Dkt. No. 286-3 at 7; Dkt. No. 645-51 at 5.

¹⁶ The 2017 version of this training phrased the purpose as: “[r]esolve the concern, or deny the case.” Dkt. No. 645-
78 at 4.

1 synonym for “overcome,” and that “‘We resolved the NS concern’ is clearer when you think of it
2 as ‘We overcame the NS concern’); Dkt. No. 645-33 at 52 (“A national security concern in a
3 CARRP case is considered resolved when we have investigated the factors that led to the
4 articulation of a national security concern and indicated that . . . those factors no longer apply to
5 the case.”). “If the national security concern is resolved through the vetting process and if the
6 applicant is otherwise eligible for the immigration benefit sought, the USCIS field-level
7 adjudicator may approve the application.” Dkt. No. 645-32 at 22. If the NS concern remains
8 “unresolved,” USCIS may either “(1) approve the application (despite the continued existence of
9 the NS concern) after receiving proper supervisory approval, or (2) deny the application based on
10 statutory or regulatory grounds of ineligibility that are legally sufficient and can be cited in a
11 decision.” Dkt. No. 645-93 at 15 (citing Dkt. No. 666-22 at 10). To achieve the latter outcome,
12 USCIS engages in a process called “lead vetting,” whereby the officer builds a separate but parallel
13 evidentiary basis for a denial because the NS-related evidentiary basis is classified or otherwise
14 restricted. Dkt. No. 666-14 at 150–57; *see also* Dkt. No. 286-3 at 6 (explaining that the third-party
15 record owner must authorize USCIS to use information obtained during the external vetting
16 process); Dkt. No. 666-22 at 23; Dkt. No. 645-78 at 5–6.

17 Although USCIS instructs officers to “make every effort to complete NS cases within a
18 reasonable amount of time,” Dkt. No. 286-3 at 7, the external vetting period can take anywhere
19 from weeks to years, Dkt. No. 666-25 at 7. This phase can also be delayed due to the USCIS
20 regulation that allows for a case to be placed in abeyance. Dkt. No. 666-25 at 6; *see supra* I.C.; 8
21 C.F.R. § 103.2(b)(18). In the CARRP context, this occurs when the record owner asks that USCIS
22 hold the application in abeyance because it has a pending investigation implicating an applicant’s
23 eligibility for a pending benefit, and disclosure of certain information may impede the
24 investigation. Dkt. No. 666-25 at 6; *see also* Dkt. No. 666-22 at 44.

1 4. Adjudication

2 After external vetting is complete, the application enters the final stage of CARRP:
3 adjudication. Dkt. No. 286-3 at 6. This stage differs depending on whether the applicant is
4 considered a KST or non-KST. *Id.* at 6–7; Dkt. No. 645-49 at 31; Dkt. No. 666-22 at 43; *see also*
5 645-37 at 5–18 (CARRP workflows). If an applicant is a KST with an unresolved NS concern,
6 “officers must obtain concurrence from the USCIS Director or Deputy Director before approving
7 the application.” Dkt. No. 645-32 at 14; *see also* Dkt. No. 666-22 at 31–32. Between fiscal years
8 2013 and 2019, USCIS approved 25 total KST applicants and denied 193. Dkt. No. 645-13 at 10;
9 *see also* Dkt. No. 645-50 at 2 (internal USCIS email from 2015 noting that “KSTs cannot be
10 approved and that is why we have some cases over 3 years pending”). For non-KSTs with
11 unresolved NS concerns, CARRP prohibits officers from approving their applications “without
12 supervisory approval and concurrence from a senior-level official,” and also permits officers to
13 “request additional external vetting assistance from HQFDNS[.]” Dkt. No. 286-3 at 6–7; *see also*
14 Dkt. No. 645-32 at 14; Dkt. No. 645-37 at 13, 17–18; Dkt. No. 645-49 at 29, 31; Dkt. No. 666-22
15 at 33.

16 **E. Named Plaintiffs**

17 As noted above, there are five named Plaintiffs representing the certified classes in this
18 case, three of whom represent the Naturalization Class.

- 19 • Abdiqafar Aden Wagafe is a Somali national who resettled in the United States as a
20 refugee in March 2007. Dkt. No. 646-1 at 11. He applied for naturalization in
21 November 2013. *Id.* USCIS took no adjudicatory action until February 22, 2017, when
22 it interviewed Mr. Wagafe and approved his application. *Id.* at 2.
- 23 • Noah Abraham—formerly known as Mushtaq Jihad—is an Iraqi refugee and Muslim
24 who resettled in the United States in 2008 with his wife and children. Dkt. No. 468 at

1 1. He applied to naturalize in July 2013. *Id.* at 2. On his naturalization application, he
2 requested that his name be changed “from Mushtaq Jihad to Noah Abraham because
3 [he] found that Americans misunderstood the name ‘Jihad’ and discriminated against
4 [him] as a result.” *Id.* Later that year, FBI agents questioned him at his house in front
5 of his family for nearly six hours, and thereafter he did not receive updates about his
6 application for several years. *Id.* In 2015, Mr. Abraham, who suffers from leukemia,
7 lost his social security benefits due to his lack of citizenship status. *Id.*; see 8 U.S.C.
8 § 1612(a)(2). Shortly after joining this lawsuit, he was interviewed and approved for
9 naturalization. Dkt. No. 468 at 3. He avers that the delay in adjudication took a toll on
10 his health and caused him and his family severe stress. *Id.*

- 11 • Sajeel Manzoor is a Pakistani national and Muslim who came to the United States as a
12 student in 2001. Dkt. No. 469 at 1. He applied for adjustment of status in October 2007,
13 and, after a two-hour interview with the FBI, was not approved until the fall of 2010.
14 *Id.* at 2. Mr. Manzoor then applied to naturalize in November 2015. *Id.* In 2016, he
15 received another visit and call from the FBI, and again experienced a delay in his
16 application process. *Id.* Then, in May 2017 after joining this litigation, USCIS
17 scheduled his naturalization interview and granted his application on the same day as
18 his interview. *Id.* at 3. The delay in adjudication caused him to refrain from traveling
19 internationally due to fear of not being able to re-enter the country, forcing him to forgo
20 attending important life events in Pakistan. *Id.* at 2–3.

21 II. DISCUSSION

22 Plaintiffs move for summary judgment on several of the Naturalization Class’s claims.
23 First, they seek summary judgment on their claims that CARRP violates the APA because it is
24 contrary to law, results in agency action unlawfully withheld or unreasonably delayed, was adopted

1 without notice and comment rulemaking, and is arbitrary and capricious. Dkt. No. 665 at 36–53;
2 *see* Dkt. No. 47 at 49–50. Second, they contend summary judgment is warranted on their claim
3 that CARRP violates the procedural aspect and equal protection component of the Fifth
4 Amendment’s Due Process Clause. Dkt. No. 665 at 53–60; *see* Dkt. No. 47 at 47–48. Defendants
5 seek summary judgment on “Plaintiffs’ First through Tenth Claims, excepting the Fourth Claim
6 regarding adjustment of status.” Dkt. No. 665-6 at 43; *see also id.* at 74 (“[T]he Court should grant
7 Defendants’ cross-motion for summary judgment . . . , deny Plaintiffs’ motion for summary
8 judgment, and enter judgment for Defendants on all claims.”).

9 Plaintiffs argue that “Defendants do not move for summary judgment on all of Plaintiffs’
10 claims, despite their passing reference to doing so,” because “[t]heir brief only addresses . . .
11 Claims Four (procedural due process), Six (equal protection), Eight (Administrative Procedure Act
12 (“APA”), 5 U.S.C. § 706), and Nine (APA, *id.* § 553),” and does not address “Claim Eight
13 contrary-to-law arguments except in a footnote (thus conceding it), nor Claims Five (substantive
14 due process), Seven (INA and regulations), or Ten (Uniform Rule of Naturalization).” Dkt. No.
15 665-5 at 16. This is true only with respect to Plaintiffs’ fifth claim. Defendants clearly move for
16 summary judgment—complete with substantive argument—on Plaintiffs’ first through third
17 claims and seventh and tenth claims in footnotes, Dkt. No. 665-6 at 49 n.6, 70 n.12, and while it
18 is not a best practice to do so, it does not mean Defendants “concede this claim as a matter of law,”
19 Dkt. No. 665-5 at 22. Defendants do not, however, substantively address Plaintiffs’ fifth claim.
20 *See generally* Dkt. No. 665-6. Although Defendants argue that “omissions in summary judgment
21 briefing are not concessions,” Dkt. No. 665-14 at 13 n.8; *see also id.* at 21, that is true only with
22 respect to opposition briefs, Fed. R. Civ. P. 56(e)(2); LCR 7(b)(2). A non-moving party must
23 receive adequate notice and an opportunity to respond to the moving party’s arguments before
24 summary judgment can properly be entered against it. *See Portland Retail Druggists Ass’n v.*

1 *Kaiser Foundation Health Plan*, 662 F.2d 641, 645 (9th Cir. 1981); *see also Rodman v. Safeway*
2 *Inc.*, No. 11-CV-03003-JST, 2015 WL 660214, at *1 (N.D. Cal. Feb. 12, 2015) (“As the party
3 moving for summary judgment, Plaintiff was required to frame the relief sought by his motion
4 clearly, in order to provide adequate notice to the opposing party and to the Court.”). Because
5 Defendants’ motion does not provide such notice to Plaintiffs with respect to claim five, the Court
6 does not entertain that request.

7 **A. Legal Standard**

8 Summary judgment is appropriate only when “the movant shows that there is no genuine
9 dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R.
10 Civ. P. 56(a). The Court does not make credibility determinations or weigh the evidence at this
11 stage. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). The sole inquiry is “whether the
12 evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-
13 sided that one party must prevail as a matter of law.” *Id.* at 251–52.

14 When parties file simultaneous cross-motions for summary judgment on the same claim,
15 the Court “must consider the appropriate evidentiary material identified and submitted in support
16 of both motions, and in opposition to both motions, before ruling on each of them.” *Fair Hous.*
17 *Council of Riverside Cnty., Inc. v. Riverside Two*, 249 F.3d 1132, 1134 (9th Cir. 2001); *see also*
18 *Tulalip Tribes of Wash. v. Washington*, 783 F.3d 1151, 1156 (9th Cir. 2015) (the district court
19 “rule[s] on each party’s motion on an individual and separate basis, determining, for each side,
20 whether a judgment may be entered in accordance with the Rule 56 standard” (cleaned up)). The
21 Court “giv[es] the nonmoving party in each instance the benefit of all reasonable inferences.”
22 *ACLU of Nev. v. City of Las Vegas*, 333 F.3d 1092, 1097 (9th Cir. 2003). However, to the extent
23 the Court resolves factual issues in favor of the nonmoving party, this is true “only in the sense
24 that, where the facts specifically averred by that party contradict facts specifically averred by the

1 movant, the motion must be denied.” *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 888 (1990).

2 The Court will enter summary judgment “against a party who fails to make a showing
3 sufficient to establish the existence of an element essential to that party’s case, and on which that
4 party will bear the burden of proof at trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).
5 Once the moving party has carried its burden under Rule 56, “the nonmoving party must come
6 forward with specific facts showing that there is a genuine issue for trial.” *Matsushita Elec. Indus.*
7 *Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (cleaned up). Metaphysical doubt is
8 insufficient, *id.* at 586, as are conclusory, non-specific allegations, *Lujan*, 497 U.S. at 888–89. Nor
9 is it the Court’s job to “scour the record in search of a genuine issue of triable fact”; rather, the
10 nonmoving party must “identify with reasonable particularity the evidence that precludes summary
11 judgment.” *Keenan v. Allan*, 91 F.3d 1275, 1279 (9th Cir. 1996) (quotation marks and citation
12 omitted).¹⁷

13 **B. Plaintiffs’ Motion to Strike**

14 Plaintiffs move to strike two categories of evidence that Defendants included in their
15 consolidated opposition and cross-motion. First, Plaintiffs argue that certain of Defendants’

16
17 ¹⁷ Defendants contend that a “somewhat modified” standard for summary judgment applies here with respect to
18 Plaintiffs’ claim under 5 U.S.C. § 706(2). Dkt. No. 665-6 at 42 (contending that “[t]he Court’s task in judicial review
19 under the APA is not to determine whether genuine issues of material fact preclude summary judgment, but to
20 determine only ‘whether the agency could reasonably have found the facts that it did’” (citing *Occidental Eng’g Co. v.*
21 *INS*, 753 F.2d 766, 770 (9th Cir. 1985))). A motion for summary judgment is generally the proper mechanism for a
22 court to decide as a matter of law whether an agency’s administrative decision is supported by the administrative
23 record under the APA, *Nw. Motorcycle Ass’n v. U.S. Dep’t of Agric.*, 18 F.3d 1468, 1471–72 (9th Cir. 1994), because
24 the court “is not required to resolve any facts in a review of an administrative proceeding” except under limited
circumstances, such as when the agency fact-finding is inadequate. *Occidental Eng’g Co.*, 753 F.2d at 769 (citing,
inter alia, *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 415 (1971)). In other circumstances, such
as when the agency’s “fact-finding procedures are inadequate,” *Overton Park*, 401 U.S. at 415; *Proietti v. Levi*, 530
F.2d 836, 838 (9th Cir. 1976), de novo review of the agency’s decision is appropriate, and the typical summary
judgment standard applies, *Occidental Eng’g*, 753 F.2d at 769 (citing, *inter alia*, *Overton Park*, 401 U.S. at 415);
Ahmed v. United States Dep’t of State, No. 23-CV-02474-SVK, 2024 WL 315705, at *2 (N.D. Cal. Jan. 26, 2024)
(applying “typical summary judgment standard” where parties agreed there was no administrative record for the court
to review). As reflected below, even if the Court considered only the administrative record—as Defendants request—
it would still grant summary judgment to Plaintiffs on their claim that CARRP is arbitrary and capricious. And even
if the Court were to consider extra-administrative-record evidence—as Plaintiffs request—it would grant summary
judgment to Defendants on Plaintiffs’ other APA claims.

1 “revised” 2020 CARRP training modules created during this litigation and disclosed after the
2 expiration of the fact discovery deadline, as well as agency testimony relying on these exhibits,
3 are inadmissible under Federal Rule of Civil Procedure 26(e) and should be stricken under Federal
4 Rule of Civil Procedure 37. Dkt. No. 665-5 at 48–50. Plaintiffs specifically take issue with
5 Defendants’ Exhibits 4 (Dkt. No. 666-17), 5 (Dkt. No. 666-18), 14 (Dkt. No. 666-22), and 19 (Dkt.
6 No. 666-23). Dkt. No. 665-5 at 48–50. According to Plaintiffs, “[t]hese exhibits contain an
7 ‘updated’ version of the CARRP training modules that Defendants transparently sanitized in
8 response to Plaintiffs’ challenges and disclosed one year after the close of discovery.” *Id.*; *see* Dkt.
9 Nos. 645-78–81 (side by side comparisons of 2017 and 2020 training slides); Dkt. No. 298 at 1
10 (setting non-expert discovery deadline of November 29, 2019). Second, Plaintiffs ask that the
11 Court strike the rebuttal expert report of Kelli Ann Burriesci because Defendants improperly offer
12 her testimony as affirmative evidence in support of their case-in-chief. Dkt. No. 665-5 at 50; *see*
13 Dkt. No. 645-84 (Burriesci report).¹⁸

14 With respect to the first category of evidence, Defendants respond that USCIS periodically
15 updates the CARRP training modules and that “[t]he 2020 version of the training represents a
16 continuation of the agency’s effort to improve the resources it publishes for its personnel[.]” Dkt.
17 No. 665-14 at 21. Defendants further contend that “the update is consistent with [the] core content”
18 contained in older training modules, that “the parties continued certain aspects of discovery
19 through the spring of 2021,” and that Defendants “produced the 2020 trainings in accord with their
20

21 ¹⁸ Separately, Plaintiffs urge the Court to “disregard” Defendants’ “self-serving, conclusory agency declarations
22 unsupported by (and often contradicted by) documentary evidence.” Dkt. No. 665-5 at 16 (citing Dkt. Nos. 517, 520,
23 522). While it is true that courts may “disregard a self-serving declaration that states only conclusions and not facts
24 that would be admissible evidence,” declarations will often be “self-serving.” *Nigro v. Sears, Roebuck & Co.*, 784
F.3d 495, 497 (9th Cir. 2015). On summary judgment, district courts must “focus on the admissibility of the
evidence’s . . . contents,” *Fraser v. Goodale*, 342 F.3d 1032, 1036 (9th Cir. 2003), and Plaintiffs do not object to
specific portions of these declarations or contend that they “cannot be presented in a form that would be admissible in
evidence,” Fed. R. Civ. P. 56(c)(2). Accordingly, the Court will consider them.

1 Rule 26 duty to supplement.” *Id.* at 21 & n.15; *see* Dkt. No. 563-6 (Oct. 14, 2020 email noting
2 Plaintiffs’ “Fourth Supplemental Initial Disclosures”); Dkt. No. 563-7 (Oct. 15, 2020 email stating
3 that “[i]n compliance with Defendants’ obligations under Rule 26(e),” Defendants would “soon be
4 producing some additional documents . . . , including CARRP training materials that were updated
5 in September of [2020]”). With respect to the Burriesci expert report, Defendants argue that it
6 “clearly rebuts Plaintiffs’ experts, so the request to strike is groundless.” Dkt. No. 665-14 at 21.

7 1. Updated CARRP Training Materials

8 Under Federal Rule of Civil Procedure 26(e), if a party learns that its Rule 26(a) disclosure
9 or response is incomplete or incorrect in some material respect, “and if the additional or corrective
10 information has not otherwise been made known to the other parties during the discovery process
11 or in writing,” that party must, in a timely manner, “supplement or correct its disclosure or
12 response.” Fed. R. Civ. P. 26(e)(1)(A). Courts in the Ninth Circuit have found that the duty to
13 supplement can persist “even after the discovery cut-off date.” *Hernandez v. Polanco Enters., Inc.*,
14 19 F. Supp. 3d 918, 933 (N.D. Cal. 2013); *see also K.J.P. v. Cnty. of San Diego*, 621 F. Supp. 3d
15 1097, 1138 (S.D. Cal. 2022); *Sanders v. Univ. of Idaho, Coll. of L.*, No. 3:19-CV-00225-BLW,
16 2022 WL 280875, at *2 (D. Idaho Jan. 31, 2022). Failure to comply with Rule 26(e) precludes that
17 party from using such information “to supply evidence on a motion, at a hearing, or at a trial,
18 unless the failure was substantially justified or is harmless.” Fed. R. Civ. P. 37(c)(1); *see Goodman*
19 *v. Staples The Off. Superstore, LLC*, 644 F.3d 817, 826 (9th Cir. 2011). Rule 37(c)(1) “gives teeth”
20 to the requirements of Rule 26(a)(2)(B) and affords the district court “particularly wide
21 latitude . . . to issue sanctions” for a party’s failure to meet those requirements. *Yeti by Molly, Ltd.*
22 *v. Deckers Outdoor Corp.*, 259 F.3d 1101, 1106 (9th Cir. 2001). “The party requesting sanctions
23 bears the initial burden of establishing that the opposing party failed to comply with the disclosure
24 requirements established in Rule 26.” *Silvagni v. Wal-Mart Stores, Inc.*, 320 F.R.D. 237, 241 (D.

1 Nev. 2017).

2 Although the Court understands Plaintiffs' concerns regarding Defendants' motivations for
3 revising the training modules, *see* Dkt. No. 665-5 at 49, it disagrees that Defendants' production
4 contravenes Rule 26(e) or otherwise warrants sanction. Moreover, these documents are relevant to
5 the Naturalization Class's due process, INA, APA, and Uniform Rule of Naturalization claims,
6 which each allege ongoing harm. *See* Dkt. No. 47 at 47–50. And even if Defendants' disclosure
7 failed to comply with Rule 26, the Court finds that Defendants have adequately shown that such
8 failure was “substantially justified” because they could not have disclosed the updated training
9 modules prior to their creation. Fed. R. Civ. P. 37(c)(1); *cf. Sanders*, 2022 WL 280875, at *4–5.
10 Accordingly, the Court will consider the disputed exhibits along with the other relevant training
11 materials in the record.

12 2. Burriesci Rebuttal Expert Report

13 As for Burriesci's rebuttal expert report, Plaintiffs concede that Defendants disclosed
14 Burriesci as a rebuttal witness to Plaintiffs' law enforcement experts in accordance with Federal
15 Rule of Civil Procedure 26(a)(2)(D)(ii), but object to Defendants' reliance on her report “as new,
16 affirmative evidence in support of their case-in-chief.” Dkt. No. 665-5 at 50 (citing Dkt. No. 665-
17 6 at 12, 13, 58). “The scope of an expert's rebuttal report is limited,” and “[e]xperts designated as
18 rebuttal experts . . . may not testify in a party's case-in-chief” or “explore new areas not raised in
19 initial reports.” *Ahtna Design-Build, Inc. v. Asphalt Surfacing, Inc.*, No. 3:21-CV-00228-JMK,
20 2024 WL 473615, at *14 (D. Alaska Feb. 7, 2024). However, because Plaintiffs do not challenge
21 Burriesci's report itself, but instead Defendants' citations to that report in support of their case-in-
22 chief, the Court finds that striking the report in its entirety is unnecessary. The Court will consider
23 Burriesci's report only for its proper purpose of rebutting Plaintiffs' law enforcement experts. *Cf.*
24 *Huawei Techs., Co., Ltd. v. Samsung Elecs. Co., Ltd.*, 340 F. Supp. 3d 934, 996 (N.D. Cal. 2018)

1 (permitting the use of proper portions of rebuttal expert’s opinions); *Dolan v. Sentry Credit, Inc.*,
2 No. C17-1632-RAJ, 2018 WL 6604212, at *3 (W.D. Wash. Dec. 17, 2018) (clarifying that the
3 court will only consider evidence properly before it on summary judgment).

4 **C. Claims Seven through Ten**

5 Turning to the substance of the Naturalization Class’s claims, Plaintiffs argue that CARRP
6 violates the APA for four separate reasons: (1) it is contrary to the INA and its implementing
7 regulations, (2) it results in agency action unlawfully withheld or unreasonably delayed, (3) it was
8 adopted without notice and comment rulemaking, and (4) it is arbitrary and capricious. Dkt. No.
9 665 at 36; Dkt. No. 47 at 49–50. Plaintiffs therefore seek summary judgment on their eighth and
10 ninth causes of action. Dkt. No. 665 at 36–53. Defendants seek summary judgment on these claims
11 as well, contending that CARRP is not a reviewable agency action, and even if it were, the decision
12 to adopt CARRP was not arbitrary and capricious and did not require notice and comment
13 rulemaking, and Plaintiffs have failed to identify any discrete agency action that has been
14 unlawfully withheld or delayed. Dkt. No. 665-6 at 59–70.¹⁹

15 Before addressing the merits of Plaintiffs’ claims, the Court first addresses Defendants’
16 contentions that CARRP is unreviewable under the APA, or in the alternative, that such review
17 must be limited to the administrative record. *See* Dkt. No. 665-6 at 59–65. Ultimately, the Court
18 finds that Plaintiffs are entitled to summary judgment on their claim that CARRP is arbitrary and
19 capricious.

20 1. Reviewability Under the APA

21 The APA “embodies a ‘basic presumption of judicial review[.]’” *Dep’t of Com. v. New*
22

23 ¹⁹ The Court previously held that Plaintiffs’ seventh claim is subsumed by their eighth claim because it challenges
24 agency action. Dkt. No. 69 at 17–18. The same is true for Plaintiffs’ tenth claim. Dkt. No. 47 at 50. Defendants seek
summary judgment on these claims for the same reason they seek summary judgment on claims eight and nine. Dkt.
No. 665-6 at 70 n.12.

1 *York*, 588 U.S. 752, 771 (2019) (quoting *Abbott Lab’ys v. Gardner*, 387 U.S. 136, 140 (1967)).
2 The statute “authorizes suit by ‘[a] person suffering legal wrong because of agency action, or
3 adversely affected or aggrieved by agency action within the meaning of a relevant statute,’” but
4 “[w]here no other statute provides a private right of action, the ‘agency action’ complained of must
5 be ‘final agency action.’” *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 61–62 (2004) (emphasis
6 omitted) (quoting 5 U.S.C. §§ 702, 704); *see also* 5 U.S.C. § 551(13) (“‘[A]gency action’ includes
7 the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial
8 thereof, or failure to act[.]”). Within this framework, reviewing courts shall: “(1) compel agency
9 action unlawfully withheld or unreasonably delayed; and (2) hold unlawful and set aside agency
10 action” deemed to be “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance
11 with law,” or “in excess of statutory jurisdiction, authority, or limitations, or short of statutory
12 right[.]” 5 U.S.C. § 706(1)–(2).

13 Plaintiffs contend that “CARRP is reviewable . . . because, as this Court has already held,
14 it is final agency action under 5 U.S.C. § 704.” Dkt. No. 665 at 36 n.12 (citing Dkt. No. 69 at 19);
15 *see also* Dkt. No. 665-5 at 16–19. Defendants maintain that “CARRP is not a discrete ‘agency
16 action’ under 5 U.S.C. § 702” or a “final agency action” subject to review under 5 U.S.C. § 704,
17 but instead “an internal vetting process” and an “ongoing, day-to-day operation subject to change
18 as USCIS management sees fit.” Dkt. No. 665-6 at 60–61; Dkt. No. 665-14 at 11–12. Defendants
19 argue in the alternative that CARRP is unreviewable under 5 U.S.C. § 701(a)(2) because it is
20 “committed to agency discretion by law.” Dkt. No. 665-6 at 63–64; Dkt. No. 665-14 at 12–13. For
21 the reasons in the Court’s prior order, Dkt. No. 69 at 19, and as explained below, the Court again
22 holds that CARRP is subject to review under the APA.

23 (a) *CARRP Qualifies as Final Agency Action*

24 “As a general matter, two conditions must be satisfied for agency action to be ‘final’: First,

1 the action must mark the ‘consummation’ of the agency’s decisionmaking process,” and “second,
2 the action must be one by which rights or obligations have been determined, or from which legal
3 consequences will flow[.]” *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997) (quotation marks and
4 citations omitted); *accord Navajo Nation v. U.S. Dep’t of Interior*, 819 F.3d 1084, 1091 (9th Cir.
5 2016). The core question under the *Bennett* test is “whether the agency has completed its
6 decisionmaking process, and whether the result of that process is one that will directly affect the
7 parties.” *Indus. Customers of Nw. Utilities v. Bonneville Power Admin.*, 408 F.3d 638, 646 (9th
8 Cir. 2005) (cleaned up). In making this determination, courts “focus on the practical and legal
9 effects of the agency action.” *Or. Nat. Desert Ass’n v. U.S. Forest Serv.*, 465 F.3d 977, 982 (9th
10 Cir. 2006) (“The requirement of finality is interpreted pragmatically.” (citations omitted)).
11 Regardless of an agency’s characterization of its policies, courts “consider the actual effects of the
12 action to determine whether it is final.” *Gill v. United States Dep’t of Just.*, 913 F.3d 1179, 1184
13 (9th Cir. 2019).

14 Here, Defendants argue that CARRP does not meet this two-part test because (1) “CARRP
15 is simply an internal USCIS process to systematize the vetting of certain benefit applications, *i.e.*,
16 those that raise NS concerns, before those applications reach the same adjudicative juncture and
17 legal standards as other applications,” and (2) “as a process or form of guidance for USCIS Field
18 Offices,” CARRP is not “an action by which rights or obligations are determined, or from which
19 legal consequences will flow.” Dkt. No. 665-6 at 62 (cleaned up). The Court disagrees.

20 The record reveals that CARRP established a mandatory USCIS policy, rescinded prior
21 guidance, and has remained in effect since 2008. *See* Dkt. No. 74 at 18; Dkt. No. 286-3 at 1–3, 8–
22 9; Dkt. No. 645-32 at 13. By implementing CARRP, USCIS created a new, formal process that is
23 triggered whenever USCIS identifies an “NS concern” in a naturalization application. *See* Dkt. No.

1 645-36 2–4.²⁰ Under CARRP, an applicant with an “NS concern” generally must clear at least
2 three hurdles: (1) the background check; (2) assessment of eligibility and internal vetting; and
3 (3) if the applicant’s NS concern is not resolved, external vetting. Dkt. No. 287-3 at 15–26; Dkt.
4 No. 645-36 at 4–7; Dkt. No. 666-17 at 69; Dkt. No. 472-1 at 496, 499. Applicants with NS concerns
5 may also be required to undergo lead vetting and deconfliction. Dkt. No. 472-1 at 148, 489, 550,
6 699–702, 743–44. And applicants who either have unresolved NS concerns or are KSTs face
7 additional hurdles: supervisory approval and concurrence from the local field office director. Dkt.
8 No. 645-36 at 7–8; Dkt. No. 645-32 at 14. In contrast, an applicant on the “normal” adjudication
9 track must clear two hurdles: (1) the background check and (2) an interview and assessment of
10 benefit eligibility. Dkt. No. 645-28 at 24–27.

11 CARRP also satisfies the second prong of the *Bennett* test because the policy creates
12 concrete obligations for USCIS officers. *See Sierra Club v. Trump*, 929 F.3d 670, 698 n.23 (9th
13 Cir. 2019) (in determining finality, a court may consider “whether the agency action imposes
14 obligations on the agency”). “[A]ll Field Offices are directed to comply with [CARRP] when
15 adjudicating applications or petitions with national security concerns.” Dkt. No. 645-91 at 3. In
16 particular, CARRP imposes specific obligations and procedures for adjudicating immigration
17 applications that present NS concerns. *Id.*; *see, e.g.*, Dkt. No. 645-49 at 5–6; Dkt. No. 666-22 at
18 44. This includes external vetting, which generally requires coordination with third-party law
19 enforcement agencies, *see* Dkt. No. 286-3 at 5–6; Dkt. No. 645-49 at 21–23, as well as a separate
20 adjudication and approval process if an NS concern remains unresolved or if the applicant is

21
22 ²⁰ CARRP’s definition of an “NS concern” is purportedly “tethered to the national security-related statutory grounds
23 set forth in the INA,” Dkt. No. 641-5 at 21 (citing Dkt. No. 645-93 at 6–7), and therefore reflects the agency’s
24 interpretation of the INA, *id.* at 58 (“The document creating CARRP ‘outlines USCIS policy for identifying and
processing cases with national security (NS) concerns,’ defined in terms of the relevant INA removal grounds.”
(quoting Dkt. No. 645-36 at 2 and citing *id.* at 4–8 (setting out policy))); *see also* Dkt. No. 666-17 at 16; Dkt. No. 645-
54 at 2–4.

1 considered a KST or non-KST, Dkt. No. 645-93 at 15; Dkt. No. 666-14 at 150–57; Dkt. No. 286-
2 3 at 6–7. For instance, USCIS officers cannot approve the applications of non-KSTs with
3 unresolved NS concerns “without supervisory approval and concurrence from a senior-level
4 official.” Dkt. No. 286-3 at 6–7; *see also* Dkt. No. 287-3 at 19 (“When the NS concern remains
5 and the individual is deemed eligible for the benefit at the [internal vetting] stage, no benefit may
6 be granted until external vetting is complete, unless an exception applies.”); Dkt. No. 645-32 at
7 14; Dkt. No. 645-37 at 13, 17.

8 For these reasons, the Court finds that CARRP satisfies both prongs of the *Bennett* test and
9 is a final agency action under the APA. *See, e.g., Biden v. Texas*, 597 U.S. 785, 808–10 (2022);²¹
10 *Jafarzadeh v. Nielsen*, 321 F. Supp. 3d 19, 41–43 (D.D.C. 2018); *cf. R.F.M. v. Nielsen*, 365 F.
11 Supp. 3d 350, 375–76 (S.D.N.Y. 2019) (new guidance instructing USCIS employees on how to
12 interpret a statute satisfies *Bennett*’s second prong because the guidance was “the source of
13 profound legal consequences for the plaintiffs because the USCIS relie[d] on it to deny their . . .
14 petitions”); *Texas v. United States*, 555 F. Supp. 3d 351, 391 (S.D. Tex. 2021) (memoranda
15 effectively substituting a prioritization scheme in place of enforcement mandates set forth in
16 statutory provisions and imposing preapproval requirements on certain detentions constituted a
17 change in the Department of Homeland Security’s legal obligations).

18 Defendants also argue that Plaintiffs’ APA claims qualify as an “unreviewable
19 programmatic challenge” to USCIS policy. Dkt. No. 665-6 at 60 (citing, *inter alia*, *Lujan*, 497 U.S.
20 at 889–91; *Norton*, 542 U.S. at 64). “While a single step or measure is reviewable, an on-going
21 program or policy is not, in itself, a ‘final agency action’ under the APA.” *Cobell v. Norton*, 240
22 F.3d 1081, 1095 (D.C. Cir. 2001); *see id.* (“A plaintiff cannot seek wholesale improvement of a
23

24 ²¹ Defendants submitted *Biden v. Texas* as part of their June 11, 2024 Notice of Supplemental Authority. *See* Dkt. No. 663 at 2, 60–96.

1 program by court decree, rather than in the offices of the Department or the halls of Congress,
2 where programmatic improvements are normally made.” (cleaned up)); *see also Ams. For*
3 *Immigrant Just. v. U.S. Dep’t of Homeland Sec.*, No. CV 22-3118 (CKK), 2023 WL 1438376, at
4 *18 (D.D.C. Feb. 1, 2023). But here, rather than challenging an unidentified “national security
5 vetting measure”—which would be more analogous to the “land withdrawal review program” at
6 issue in *Lujan*—Plaintiffs are challenging a final, specific policy—CARRP—which “appl[ies]
7 some particular measure across the board” and therefore “can of course be challenged under the
8 APA by a person adversely affected[.]” *Lujan*, 497 U.S. at 890–91 & n.2; *Jafarzadeh*, 321 F. Supp.
9 3d at 43 n.14; *Nat’l Urb. League v. Ross*, 489 F. Supp. 3d 939, 971–72 (N.D. Cal. 2020); *Doe v.*
10 *Trump*, 288 F. Supp. 3d 1045, 1070 (W.D. Wash. 2017). The fact that CARRP is “subject to change
11 as USCIS management sees fit,” Dkt. No. 665-6 at 60, does not render it nonfinal. *U.S. Army*
12 *Corps of Eng’rs v. Hawkes Co.*, 578 U.S. 590, 598 (2016) (possibility of revision “is a common
13 characteristic of agency action, and does not make an otherwise definitive decision nonfinal”).

14 Thus, the Court concludes that CARRP constitutes a final agency action subject to review
15 under Section 704 of the APA.

16 (b) *CARRP is Not an Action Committed to Agency Discretion*

17 Separately, Defendants argue that even if CARRP qualifies as a final agency action, it is
18 unreviewable under the APA because it “is committed to agency discretion by law.” Dkt. No. 665-
19 6 at 63 (quoting 5 U.S.C. § 701(a)(2)); *see also* Dkt. No. 665-14 at 12–13.

20 Section 701(a) “limits application of the entire APA to situations in which judicial review
21 is not precluded by statute [(Subsection (a)(1))], and the agency action is not committed to agency
22 discretion by law [(Subsection (a)(2))].” *Webster v. Doe*, 486 U.S. 592, 599 (1988) (citations
23 omitted). “Subsection (a)(1) is concerned with whether Congress expressed an intent to prohibit
24 judicial review,” whereas “subsection (a)(2) applies in those rare instances where statutes are

1 drawn in such broad terms that in a given case there is no law to apply.” *Id.* (quotations marks and
2 citations omitted); *see also Samma v. United States Dep’t of Def.*, 486 F. Supp. 3d 240, 261 (D.D.C.
3 2020). Thus, “even where Congress has not affirmatively precluded review” under Section
4 701(a)(1), “review is not to be had if the statute is drawn so that a court would have no meaningful
5 standard against which to judge the agency’s exercise of discretion.” *Heckler v. Chaney*, 470 U.S.
6 821, 830 (1985). “In such a case, the statute (‘law’) can be taken to have ‘committed’ the
7 decisionmaking to the agency’s judgment absolutely.” *Id.*

8 Defendants maintain that Section 701(a)(2) “applies to agency actions such as CARRP that
9 concern the scope of, and methods, for agency inquiries.” Dkt. No. 665-6 at 63. However,
10 Defendants identify no specific law that commits the formulation of national security vetting
11 criteria to USCIS’s discretion such that CARRP is unreviewable under Section 701(a)(2). Dkt. No.
12 665-5 at 20; *see* Dkt. No. 665-7 at 63–64; Dkt. No. 665-13 at 12–13; *see also, e.g., Dep’t of Com.*,
13 588 U.S. at 772 (citing *Weyerhaeuser Co. v. U.S. Fish & Wildlife Serv.*, 586 U.S. 9, 23 (2018)).
14 Nor do Defendants establish that there is truly “no law to apply” here. *Perez Perez v. Wolf*, 943
15 F.3d 853, 861 (9th Cir. 2019). Indeed, applicable law imposes a mandatory, nondiscretionary duty
16 to adjudicate naturalization applications in accordance with statutory naturalization criteria within
17 a reasonable time. 8 U.S.C. § 1446(d); 8 C.F.R. § 316.14(b)(1); 8 C.F.R. § 335.3(a); 5 U.S.C.
18 § 555(b). Policies such as CARRP that directly bear upon this duty cannot escape judicial review.
19 As one court put it:

20 If defendants have an obligation to decide applications but have unfettered
21 discretion to put off deciding an application for as long as they want, how could the
22 duty to decide ever be judicially enforced? Under defendants’ view, the answer to
23 that question would be never, except perhaps if they expressly refused to make a
24 decision. So long as defendants say that they are still reviewing the application (or
even if they say nothing at all), an applicant must continue to wait indefinitely, no
matter how long the delay has been. Such discretion would strip defendants’ duty
of any meaning: “The duty to act is no duty at all if the deadline is eternity.” *Tang*
v. Chertoff, 493 F. Supp. 2d 148, 149 (D. Mass. 2007).

1 *Saleem v. Keisler*, 520 F. Supp. 2d 1048, 1055 (W.D. Wis. 2007); *see also Sidhu v. Chertoff*, No.
2 1:07-CV-1188AWISMS, 2008 WL 540685, at *5–6 (E.D. Cal. Feb. 25, 2008) (“Without APA
3 relief, [US]CIS could withhold a decision indefinitely in contravention of its statutory duty to
4 process these applications.”); *Cobell*, 240 F.3d at 1095 (an inability to challenge agency failures
5 to act would allow agencies to “effectively prevent judicial review of their policy determinations
6 by simply refusing to take final action”). The Court accordingly finds that Section 701(a)(2) does
7 not apply.

8 2. Scope of the Record for Plaintiffs’ APA Claims

9 The parties further dispute the appropriate scope of the record for Plaintiffs’ APA claims,
10 and in particular, Plaintiffs’ claim that the decision to implement CARRP was arbitrary and
11 capricious. Plaintiffs state that “[w]hile APA review is generally limited to the administrative
12 record, a court may consider extra-record evidence to determine ‘whether the agency has
13 considered all relevant factors and has explained its decision.’” Dkt. No. 665 at 48 n.20 (quoting
14 *Lands Council v. Powell*, 395 F.3d 1019, 1030 (9th Cir. 2005)). Defendants argue that the Court
15 should confine its review to the administrative record, i.e., those documents contained in Docket
16 Numbers 286 and 287, “including certain lesser redacted duplicates produced in discovery.” Dkt.
17 No. 665-6 at 64–65 & n.10; *see also* Dkt. No. 665-14 at 16–17.

18 “In general, a court reviewing agency action under the APA must limit its review to the
19 administrative record” because doing so “ensures that the reviewing court affords sufficient
20 deference to the agency’s action.” *San Luis & Delta-Mendota Water Auth. v. Locke*, 776 F.3d 971,
21 992 (9th Cir. 2014); *see also Nat’l Wildlife Fed’n v. U.S. Army Corps of Eng’rs*, 384 F.3d 1163,
22 1170 (9th Cir. 2004); *Sw. Ctr. for Biological Diversity v. U.S. Forest Serv.*, 100 F.3d 1443, 1450
23 (9th Cir. 1996). The APA provides that district courts must “review the whole record or those parts
24 of it cited by a party[.]” 5 U.S.C. § 706. The whole administrative record “consists of all documents

1 and materials directly or indirectly considered by agency decision-makers and includes evidence
2 contrary to the agency’s position.” *Thompson v. U.S. Dep’t of Labor*, 885 F.2d 551, 555 (9th Cir.
3 1989) (citing *Exxon Corp. v. U.S. Dep’t of Energy*, 91 F.R.D. 26, 33 (N.D. Tex. 1981)). There are,
4 however, exceptions to this general rule which allow district courts to admit extra-record evidence
5 in limited circumstances:

6 (1) if admission is necessary to determine whether the agency has considered all
7 relevant factors and has explained its decision, (2) if the agency has relied on
8 documents not in the record, (3) when supplementing the record is necessary to
explain technical terms or complex subject matter, or (4) when plaintiffs make a
showing of agency bad faith.

9 *Lands Council*, 395 F.3d at 1030 (quotation marks and citation omitted). These exceptions must
10 be “narrowly construed and applied.” *Safari Club Int’l v. Haaland*, 31 F.4th 1157, 1177 (9th Cir.
11 2022) (quoting *Goffney v. Becerra*, 995 F.3d 737, 747–48 (9th Cir. 2021)).

12 Plaintiffs argue that the consideration of extra-record evidence is permissible here under
13 the first *Lands Council* exception—the “relevant factors” exception—which “is the most difficult
14 to apply[.]” *Locke*, 776 F.3d at 993; see Dkt. No. 665 at 48 n.20; Dkt. No. 665-5 at 35–37. The
15 Ninth Circuit has explained that “[a]lthough the relevant factors exception permits a district court
16 to consider extra-record evidence to develop a background against which it can evaluate the
17 integrity of the agency’s analysis, the exception does not permit district courts to use extra-record
18 evidence to judge the wisdom of the agency’s action.” *Locke*, 776 F.3d at 993. Rather, “[r]eviewing
19 courts may admit evidence under this exception only to help the court understand whether the
20 agency complied with the APA’s requirement that the agency’s decision be neither arbitrary nor
21 capricious.” *Id.*; see also *Friends of the Earth v. Hintz*, 800 F.2d 822, 829 (9th Cir. 1986);
22 *Amalgamated Transit Union, Int’l v. United States Dep’t of Lab.*, 647 F. Supp. 3d 875, 889 (E.D.
23 Cal. 2022).

24 Significantly, where, as here, there are no formal contemporaneous administrative findings,

1 *see generally* Dkt. Nos. 286–87, consideration of extra-record evidence may be “the only way
2 there can be effective judicial review.” *Overton Park*, 401 U.S. at 420; *see also Animal Def.*
3 *Council v. Hodel*, 840 F.2d 1432, 1436 (9th Cir. 1988) (“[W]here no formal findings [are] made
4 by administrator, a court may examine information outside of the administrative record[.]” (citing
5 *Overton Park*, 401 U.S. at 420)); *Zirkle Fruit Co. v. United States Dep’t of Lab.*, No. 1:19-CV-
6 03180-SMJ, 2020 WL 1917343, at *4 (E.D. Wash. Jan. 27, 2020) (same). Accordingly, the Court
7 finds that it may consider evidence beyond the administrative record in order to determine whether
8 USCIS considered all relevant factors and adequately explained its decision to implement CARRP.
9 However, as reflected below, even if it considered the administrative record alone, the Court would
10 conclude that USCIS’s implementation of CARRP was arbitrary and capricious.

11 3. The Naturalization Class’s APA Claims

12 (a) *Whether CARRP is Contrary to Law*

13 Plaintiffs argue that CARRP should be held unlawful and set aside because it is not in
14 accordance with, and is in excess of, the statutory authority under the INA for two reasons. First,
15 it imposes extra-statutory eligibility requirements for naturalization, and second, it deprives
16 naturalization applicants of their rights under 8 C.F.R. § 103.2(b)(16) to know about and respond
17 to alleged NS concerns. Dkt. No. 665 at 36–43; Dkt. No. 665-5 at 21–30. In their opposition,
18 Defendants address this argument in a footnote, asserting that “USCIS’ broad authority to inquire
19 and to develop procedures” for naturalization “refute[s]” Plaintiffs’ extra-statutory eligibility
20 requirements argument, and that 8 C.F.R. § 103.3(a)(1)(i) (requiring that USCIS “explain in
21 writing the specific reasons for denial”) does not “abrogate the administrative law principle that
22 an agency need not state all its reasons for a decision so long as the stated reasons are lawful.” Dkt.
23 No. 665-6 at 67 n.11. For the reasons discussed below, the Court grants summary judgment to
24 Defendants and denies summary judgment to Plaintiffs on this aspect of Plaintiffs’ APA claim.

1 (i) Extra-Statutory Eligibility Requirements

2 Plaintiffs maintain that “[t]he undisputed facts show that CARRP is squarely at odds with
3 the INA.” Dkt. No. 665 at 37. In their view, “‘NS concern’ is a USCIS-invented designation” that
4 “has no basis in the INA or implementing regulations”; “[n]o law determines what amount of
5 evidence is necessary to establish an NS concern.” *Id.* at 18; *see also id.* at 40 (“[W]ith CARRP,
6 USCIS created an extra-statutory impediment to the approval of an immigration benefit,” violating
7 “USCIS’s compulsory duties to approve eligible naturalization . . . applications.”); Dkt. No. 665-
8 5 at 21. Plaintiffs emphasize that USCIS has admitted in deposition and in training materials that
9 the criteria triggering the “NS concern” designation is not the same as criteria for naturalization
10 eligibility. Dkt. No. 641 at 39 (citing, *inter alia*, Dkt. No. 645-33 at 23; Dkt. No. 472-1 at 559;
11 Dkt. No. 666-7 at 18–19; Dkt. No. 666-8 at 3). According to Plaintiffs, this legally impermissible
12 disparity is further highlighted by the fact that certain of CARRP’s “indicators” of an NS concern
13 have no relationship to statutory eligibility. *Id.* Plaintiffs argue that because the definition of “NS
14 concern” and such “indicators” sweep more broadly than any statutory eligibility criteria for
15 naturalization, CARRP “operates wholly outside th[e] statutory framework” in contravention of
16 USCIS’s mandate to grant applications that comply with the eligibility criteria for naturalization.
17 *Id.* at 38–39 (citing 8 C.F.R. § 335.3(a) (“The [] officer shall grant the application if the applicant
18 has complied with all requirements for naturalization[.]”); 8 C.F.R. § 209.1(e) (“If the applicant is
19 found to be admissible for permanent residence . . . [USCIS] will approve the application and
20 admit the applicant for lawful permanent residence.”)).

21 Defendants respond that CARRP does not actually alter the eligibility requirements for
22 naturalization, and that as an investigative process, it is within USCIS’s statutory authority and
23 assignment of duties. Dkt. No. 665-6 at 67 n.11; Dkt. No. 665-14 at 13–14; *see also* Dkt. No. 665-
24 6 at 34–35; *id.* at 58 (“Congress conferred broad inquiry authority on USCIS, enabling the agency

1 to ask a wide variety of questions and to pursue the answers when assessing an adjustment or
2 naturalization application.”); Tr. at 23 (“CARRP . . . is simply a different investigative loop for
3 determining whether someone . . . lacks good moral character, . . . mean[s] harm to the United
4 States,” or “violated the TRIG factors[.]”).

5 Based on the Court’s review of the record and the relevant statutory scheme, and for the
6 reasons below, the Court concludes that Plaintiffs have not established a dispute of material fact
7 as to whether CARRP’s adjudication processing track exceeds USCIS’s statutory authority for
8 investigating naturalization eligibility.

9 First, with respect to Plaintiffs’ claim that “being labeled an unresolved NS concern in
10 CARRP is *highly determinative* of the adjudicative result,” Dkt. No. 665-5 at 25 (emphasis added);
11 *see also* Dkt. No. 665 at 40, 58, the Court finds that the record does not support such an assertion.²²
12 In particular, Plaintiffs have not produced evidence showing that the increased denials under
13 CARRP were not based on valid statutory grounds. And while the Court is sympathetic to
14 Plaintiffs’ assertion that Defendants withheld discovery tending to show whether such CARRP-
15 caused denials exist, *see* Dkt. No. 665-5 at 47–48, it cannot find CARRP to be unlawful based on
16 correlation alone.

17 Second, with respect to the scope and statutory basis for CARRP’s vetting requirements,
18 the Court finds that although nothing in the INA explicitly permits or requires USCIS to subject
19 naturalization applications to the adjudicatory track created by CARRP, *see* Dkt. No. 665 at 40;
20 Dkt. No. 665-5 at 22, CARRP does not violate the INA. Congress granted USCIS broad authority
21 to investigate applicants seeking to naturalize. *See* 8 U.S.C. § 1446(a); 8 C.F.R. §§ 335.1, 335.2(b);
22

23 ²² The Court notes that the Naturalization Class is not limited to those applicants who have an unresolved NS concern
24 under CARRP; instead, the class includes all applicants whose application (1) is subject to CARRP and (2) has not
been, or will not be, adjudicated within six months of having been filed. Dkt. No. 69 at 8, 31.

1 *see also* 8 U.S.C. § 1103(a)(1) (charging USCIS with administration and enforcement of laws
2 relating to naturalization); *Mestanek*, 93 F.4th at 172 (“In allocating USCIS a set of nonexhaustive
3 functions, Congress did not intend to hamstring USCIS’s ability to fulfill the statutory mandate to
4 investigate cases before adjudicating them.”). As Defendants contend, this includes assessing
5 whether the applicant was lawfully admitted, *see* 8 U.S.C. §§ 1427(a), 1429; 8 C.F.R.
6 § 316.2(a)(2), and whether the applicant is “of good moral character, attached to the principles of
7 the Constitution of the United States, and well disposed to the good order and happiness of the
8 United States,” 8 U.S.C. §§ 1427(a), 1101(f); 8 C.F.R. §§ 316.2(a)(7); 316.10, 316.11. Dkt. No.
9 665-6 at 35; *see also Nio v. U.S. Dep’t of Homeland Sec.*, 270 F. Supp. 3d 49, 63–64 (D.D.C.
10 2017).

11 During oral argument, Plaintiffs asserted that they are not “contest[ing] the government’s
12 authority to investigate what it considers national security concerns or to share information
13 between agencies.” Tr. at 5; *see also id.* 6 (“We don’t dispute that power that the government
14 has.”). They contend, however, that the government’s exercise of that authority has to be based on
15 the TRIG national security ineligibilities. *Id.* at 6. Defendants argue that “Congress amended
16 several of the INA’s national security removal grounds in response to 9/11, and CARRP is keyed
17 to” the inadmissibility grounds legislated under TRIG. Dkt. No. 665-6 at 57 (citing Dkt. No. 286-
18 3 at 1 n.1). They add that “potential inadmissibility on terrorism-related grounds implicates the
19 good moral character and attachment requirements for naturalization.” Dkt. No. 665-14 at 13 n.9;
20 *see also* Dkt. No. 665-6 at 57–58.

21 Plaintiffs have not shown that CARRP’s “indicators” are divorced from, or in excess of,
22 the grounds for ineligibility in the INA. These ineligibilities encompass broadly defined “security
23 and related grounds,” 8 U.S.C. §§ 1227(a)(4), 1182(a)(3), including any noncitizen who:

- 24 • the Government “knows, or has reasonable ground to believe, seeks to enter the United

1 States to engage solely, principally, or incidentally in (i) any activity (I) to violate any
2 law of the United States relating to espionage or sabotage or (II) to violate or evade any
3 law prohibiting the export from the United States of goods, technology, or sensitive
4 information, (ii) any other unlawful activity, or (iii) any activity a purpose of which is
5 the opposition to, or the control or overthrow of, the Government of the United States
6 by force, violence, or other unlawful means, is inadmissible,” *id.* § 1182(a)(3)(A);

- 7 • “endorses or espouses terrorist activity or persuades others to endorse or espouse
8 terrorist activity or support a terrorist organization,” *id.* § 1182(B)(i)(VII);
- 9 • is “associated with a terrorist organization and intends while in the United States to
10 engage solely, principally, or incidentally in activities that could endanger the welfare,
11 safety, or security of the United States,” *id.* § 1182(F); or
- 12 • “has engaged, is engaged, or at any time after admission engages in (i) any activity to
13 violate any law of the United States relating to espionage or sabotage or to violate or
14 evade any law prohibiting the export from the United States of goods, technology, or
15 sensitive information, (ii) any other criminal activity which endangers public safety or
16 national security, or (iii) any activity a purpose of which is the opposition to, or the
17 control or overthrow of, the Government of the United States by force, violence, or
18 other unlawful means,” *id.* § 1227(a)(4)(A).

19 The administrative record and the record before the Court reflect that CARRP is principally aimed
20 at the grounds specified in Sections 212(a)(3)(A), (B), and (F) and 237(a)(4)(A) and (B) of the
21 INA. *See, e.g.*, Dkt. No. 287-3 at 4, 9, 11, 46, 119, 192–94, 230, 260, 262, 272; Dkt. No. 287-4 at
22 26 n.1; Dkt. No. 287-5 at 19–20, 173–74; Dkt. No. 287-6 at 228–29; Dkt. No. 287-9 at 179, 181;
23 Dkt. No. 287-10 at 17; Dkt. No. 287-11 at 22, 25; Dkt. No. 286-3 at 1 n.1, 4–5, 29–31; *see also* 8
24 U.S.C. §§ 1182(a)(3)(A)–(B), (F), 1227(a)(4)(A)–(B). Taken together with USCIS’s broad

1 mandate to investigate naturalization applicants set forth the above-described statutory scheme,
2 the INA permits USCIS to investigate and process applications for naturalization as broadly as
3 CARRP directs. Dkt. No. 665-6 at 67 n.11; Dkt. No. 665-14 at 13–14. The information and sources
4 of information Plaintiffs characterize as extra-statutory, Dkt. No. 665 at 21–24 (citing, *inter alia*,
5 Dkt. No. 645-54 at 4–5; Dkt. No. 665-19 at 150–54, 157–58, 179; Dkt. No. 664-2 at 151–54; Dkt.
6 No. 645-55 at 151; Dkt. No. 472-5 at 544–45, 623–24, 670; Dkt. No. 645-53 at 6; Dkt. No. 646-
7 31 at 6; Dkt. No. 645-41 at 186–87; Dkt. No. 646-22 at 186–87; Dkt. No. 666-1 at 38, 45, 55; Dkt.
8 No. 664-10 at 45, 55; Dkt. No. 666-2 at 123–24, 135–37; Dkt. No. 664-11 at 123–24, 135–37; Dkt.
9 No. 472-2 at 680, 689; Dkt. No. 666-3 at 90, 93; Dkt. No. 645-46 at 18; Dkt. No. 646-27 at 18;
10 Dkt. No. 665-20 at 60–61; Dkt. No. 664-3 at 60–61; Dkt. No. 666-4 at 47–50; Dkt. No. 645-62 at
11 33–34; Dkt. No. 666-5 at 48–52; Dkt. No. 645-64 at 2; Dkt. No. 666-9 at 11–12, 65; Dkt. No. 472-
12 1 at 661, 775–76; Dkt. No. 645-27 at 9; Dkt. No. 645-44 at 35–36; Dkt. No. 646-25 at 35–36; Dkt.
13 No. 645-45 at 42; Dkt. No. 665-18 at 87, 93, 104; Dkt. No. 664-1 at 87, 93, 104; Dkt. No. 666-10
14 at 5), are instead reasonably tied to INA ineligibilities.²³

15 Accordingly, the Court concludes that Defendants are entitled to summary judgment on
16 Plaintiffs’ claims that CARRP exceeds USCIS’s statutory authority to administer immigration
17 laws and investigate applicants’ eligibility for naturalization, and that CARRP is otherwise not in
18 accordance with the INA based on alleged extra-statutory eligibility criteria.²⁴

19 (ii) Right to Know About and Respond to Alleged NS Concerns

20 Plaintiffs’ second argument is that CARRP violates 8 C.F.R. § 103.2(b)(16)(i)–(ii) because

21
22 ²³ Plaintiffs also argue that Congress’s decision not to enact proposed legislation along similar lines as CARRP
23 supports their contrary-to-law claim. *See* Dkt. No. 665-5 at 22–23; Dkt. No. 545 at 10–65; Dkt. No. 645-30 at 32 &
24 n.33. But a bill’s failure to pass “might merely reflect disagreement . . . or an assumption that the proposal was not
needed,” and does not necessarily provide “support for the hypothesis that both Houses of Congress silently endorsed”
a certain position. *United States v. Est. of Romani*, 523 U.S. 517, 533–34 (1998).

²⁴ This encompasses claims seven and ten as they relate to the naturalization class. Dkt. No. 47 at 48–50.

1 USCIS does not disclose to naturalization applicants that it has labeled them as an NS concern or
2 provide them with a meaningful opportunity to respond. *See* Dkt. No. 665 at 42–43; Dkt. No. 665-
3 5 at 27–30. In advance of oral argument, the Court asked the parties to address whether 8 C.F.R.
4 § 103.2(b)(16) applies to the Naturalization Class’s claims, considering the class composition. Dkt.
5 No. 671. That section provides as follows:

6 (16) Inspection of evidence. An applicant . . . shall be permitted to inspect the
7 record of proceeding which constitutes the basis for the decision, except as provided
8 in the following paragraphs.

8 (i) Derogatory information unknown to . . . applicant. If the decision will be
9 adverse to the applicant . . . and is based on derogatory information
10 considered by the Service and of which the applicant . . . is unaware, he/she
11 shall be advised of this fact and offered an opportunity to rebut the
12 information and present information in his/her own behalf before the
13 decision is rendered, except as provided in paragraphs (b)(16)(ii), (iii), and
14 (iv) of this section. Any explanation, rebuttal, or information presented by
15 or [o]n behalf of the applicant . . . shall be included in the record of
16 proceeding.

13 (ii) Determination of statutory eligibility. A determination of statutory
14 eligibility shall be based only on information contained in the record of
15 proceeding which is disclosed to the applicant . . . , except as provided in
16 paragraph (b)(16)(iv) of this section. . . .

16 (iv) Classified information. An applicant . . . shall not be provided any
17 information contained in the record or outside the record which is classified
18 under Executive Order No. 12356 (47 FR 14874; April 6, 1982) as requiring
19 protection from unauthorized disclosure in the interest of national security,
20 unless the classifying authority has agreed in writing to such disclosure.
21 Whenever he/she believes he/she can do so consistently with safeguarding
22 both the information and its source, the USCIS Director or his or her
23 designee should direct that the applicant . . . be given notice of the general
24 nature of the information and an opportunity to offer opposing evidence.
The USCIS Director’s or his or her designee’s authorization to use such
classified information shall be made a part of the record. A decision based
in whole or in part on such classified information shall state that the
information is material to the decision.

22 8 C.F.R. § 103.2(b)(16)(i)–(ii), (iv).

23 At the hearing, Plaintiffs argued that Section 103.2(b)(16) applies when there will be an
24 “adverse action,” and that subjecting applicants to CARRP qualifies as such an action. Tr. at 6–7,

1 17. In response, Defendants argued that only subsection 103.2(b)(16)(i)—and not
2 103.2(b)(16)(ii)—could apply to a class member’s claims, and even then, it does not apply until a
3 naturalization applicant has been interviewed by USCIS. *Id.* at 23, 35.

4 Here, the Court agrees with Defendants that the Naturalization Class does not fall within
5 the ambit of subsection 103.2(b)(16)(ii). On its face, this subsection applies where there will be a
6 “*determination of statutory eligibility.*” *See* 8 C.F.R. § 103.2(b)(16)(ii) (emphasis added). The
7 Naturalization Class, however, is comprised of individuals who have not yet received a
8 determination of statutory eligibility. Dkt. No. 69 at 8, 31; *see also* Dkt. No. 47 at 3, 41. And even
9 if subsection 103.2(b)(16)(ii) could apply here, Plaintiffs have failed to show that the
10 “*determination of statutory eligibility*” in CARRP cases is based on anything other than the record
11 of proceeding.

12 A similar problem exists with respect to subsection 103.2(b)(16)(i), which requires that
13 “the decision will be adverse to the applicant or petitioner and . . . based on derogatory
14 information[.]” It is not a foregone conclusion that class members’ applications will be denied, let
15 alone based on derogatory information. Indeed, 81.69 percent of naturalization applicants
16 subjected to CARRP between 2013 and 2019 were ultimately approved. Dkt. No. 645-5 at 51; Dkt.
17 No. 645-13 at 5, 16, 36–37. The Court cannot surmise how many of the Naturalization Class’s
18 applications will ultimately be denied. And once a naturalization interview or denial takes place,
19 judicial review can become available under 8 U.S.C. §§ 1421(c) and/or 1447(b). Dkt. No. 665-14
20 at 15 n.12. At that juncture, the APA would arguably no longer apply because the applicant would
21 possess another adequate remedy. *See* 5 U.S.C. § 704; *cf.* Dkt. No. 661 at 9–10, 15–16.

22 Accordingly, the Court grants summary judgment to Defendants and denies summary
23 judgment to Plaintiffs on this element of Plaintiffs’ contrary-to-law claims.

1 (b) *Whether CARRP is Arbitrary and Capricious*

2 Plaintiffs further contend that CARRP violates the APA because it is arbitrary and
3 capricious. Dkt. No. 665 at 46–53; *see* 5 U. S. C. § 706(2)(A). Specifically, they aver that USCIS
4 failed to articulate any reasoned explanation for adopting CARRP and ignored crucial
5 considerations before doing so. Dkt. No. 665 at 46–53; Dkt. No. 665-5 at 33–37; *see also id.* at 35
6 (“Isolated references to efficiency, consistency, or national security do not explain how CARRP
7 would facilitate such concepts, assess whether it would improve on the status quo ante, analyze
8 potential alternatives, parse relevant data, or otherwise demonstrate that CARRP was ‘founded on
9 a reasoned evaluation of the relevant factors.’” (quoting *Locke*, 776 F.3d at 995)). Plaintiffs
10 emphasize that “CARRP adds lengthy and unnecessary delays to immigration benefits processing,
11 sometimes stopping the process altogether,” despite that “delaying adjudication for individuals
12 already residing in the country bears ‘no connection’ to protecting national security and makes no
13 sense.” Dkt. No. 665 at 45; *see also id.* at 48 (“Significant delay is an obvious outcome of a policy
14 that . . . subjects applications to onerous, multi-stage vetting and review processes, numerous
15 systems checks, ongoing consultation with outside agencies, and detailed documentation.”).

16 “[T]he touchstone of arbitrary and capricious review under the APA is reasoned
17 decisionmaking.” *Altera Corp. & Subsidiaries v. Comm’r of Internal Revenue*, 926 F.3d 1061,
18 1080 (9th Cir. 2019) (quotation marks and citation omitted); *see also Judulang v. Holder*, 565 U.S.
19 42, 45 (2011) (“When an administrative agency sets policy, it must provide a reasoned explanation
20 for its action.”). “Under this narrow standard of review, a court is not to substitute its judgment for
21 that of the agency, but instead to assess only whether the decision was based on a consideration of
22 the relevant factors and whether there has been a clear error of judgment.” *Dep’t of Homeland Sec.*
23 *v. Regents of the Univ. of Cal.*, 591 U.S. 1, 16 (2020) (citations and quotation marks omitted); *see*
24 *also Fraihat v. U.S. Immigr. & Customs Enf’t*, 16 F.4th 613, 643 (9th Cir. 2021) (“The Supreme

1 Court has recognized that ‘judicial deference to the Executive Branch is especially appropriate in
2 the immigration context.’” (quoting *INS v. Aguirre-Aguirre*, 526 U.S. 415, 425 (1999))). Normally,
3 an agency rule or policy will be considered arbitrary and capricious (1) if the agency has relied on
4 factors which Congress has not intended it to consider, (2) entirely failed to consider an important
5 aspect of the problem, (3) offered an explanation for its decision that runs counter to the evidence
6 before the agency, or (4) is so implausible that it could not be ascribed to a difference in view or
7 the product of agency expertise. *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto.*
8 *Ins. Co.*, 463 U.S. 29, 43 (1983); accord *E. Bay Sanctuary Covenant v. Garland*, 994 F.3d 962,
9 981–82 (9th Cir. 2020). “The reviewing court should not attempt itself to make up for such
10 deficiencies,” *Motor Vehicle Mfrs. Ass’n*, 463 U.S. at 43; accord *Innova Sols., Inc. v. Baran*, 983
11 F.3d 428, 431 (9th Cir. 2020), nor should it “consider reasons for agency action which were not
12 before the agency,” *Beno v. Shalala*, 30 F.3d 1057, 1073 (9th Cir. 1994). Although a court may
13 “uphold a decision of less than ideal clarity if the agency’s path may reasonably be discerned,” it
14 “cannot infer an agency’s reasoning from mere silence[.]” *Id.* (citations omitted). And “while
15 formal findings are not required, the record must be sufficient to support the agency action, show
16 that the agency has considered the relevant factors, and enable the court to review the agency’s
17 decision.” *Id.* at 1074.

18 Defendants contend that USCIS’s adoption of CARRP was not arbitrary and capricious
19 because the series of memoranda in the administrative record adequately explain the agency’s
20 rationale. Dkt. No. 665-6 at 65–67.²⁵ For example, the stated purpose in USCIS’s April 11, 2008
21 memo establishing CARRP is to “outline[] USCIS policy for identifying and processing cases with
22

23 ²⁵ As Plaintiffs note, Defendants appear to cite to sources outside the record in support of their contention that CARRP
24 represents reasoned agency decisionmaking. *See id.* at 65 (cross-referencing “pt.V.A.3,” *id.* at 49–55). Nevertheless,
the Court need not look beyond the administrative record to decide this aspect of Plaintiffs’ APA claim.

1 national security (NS) concerns, and rescind[] existing policy memoranda pertaining to reporting
2 and resolving NS concerns.” Dkt. No. 286-3 at 1 (footnote omitted). Under “Policy Guidance,”
3 the memo states that “[t]his policy, in conjunction with Operational Guidance, provides direction
4 to identify and process cases containing NS concerns in the most efficient manner. The process
5 allows sufficient flexibility to manage the variety of cases encountered by USCIS.” *Id.* at 3.

6 Similarly, the April 24, 2008 interoffice memorandum from USCIS leadership states that:

7 A central mission of [USCIS] is to protect the integrity of the U.S. immigration
8 system and preserve the safety of our homeland. National security (NS) matters are
9 a primary consideration in USCIS adjudications and measures must be adopted to
10 ensure a consistent approach in resolving these concerns. In order to efficiently
11 process cases with NS issues and mitigate potential risks to national security,
12 USCIS is delegating decision-making authority to the field. This authority includes
13 the responsibility for vetting and adjudication of applications and petitions
14 involving national security concerns.

15 *Id.* at 8; *see id.* at 8–9 (“This new policy establishes [CARRP], which consists of a four-step
16 process of evaluating national security concerns.”). Separate guidance explains that “USCIS seeks
17 to ensure that immigration benefits are not granted to individuals and organizations that pose a
18 threat to national security. It is important, therefore, that officers be able to identify certain
19 indicators of a National Security (NS) concern.” *Id.* at 29.

20 The Court begins with the legal framework. Again, the law imposes a mandatory,
21 nondiscretionary duty on USCIS to adjudicate naturalization applications in accordance with
22 statutory naturalization criteria within a reasonable time. 5 U.S.C. § 555(b); 8 U.S.C.
23 §§ 1182(a)(3)(A)–(B), (F), 1227(a)(4)(A)–(B); 1446(d); 8 C.F.R. § 316.14(b)(1); 8 C.F.R.
24 § 335.3(a). Although the administrative record reflects what CARRP is and how it is intended to
function, it reveals far less about why CARRP was created or what factors or evidence USCIS
considered before deciding to select this approach for adjudicating immigration applications
presenting national security concerns. Furthermore, despite the requirement that USCIS adjudicate

1 naturalization applications within a reasonable time, the administrative record does not
2 demonstrate that USCIS considered the practical effects of evaluating naturalization applications
3 using “multi-stage vetting and review processes, numerous systems checks, ongoing consultation
4 with outside agencies, and detailed documentation.” Dkt. No. 665 at 48 (citing Dkt. No. 645-49 at
5 2–27).

6 Defendants do not cite to any portion of the administrative record showing what
7 information or types of information USCIS utilized as its basis for adopting CARRP, or whether
8 it balanced the additional administrative burdens of processing naturalization applications in this
9 fashion against the national security benefits. *See, e.g., Motor Vehicle Mfrs. Ass’n*, 463 U.S. at 43
10 (“[T]he agency must examine the relevant data and articulate a satisfactory explanation for its
11 action including a ‘rational connection between the facts found and the choice made.’” (quoting
12 *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962))). And Defendants do not
13 dispute that as a result of the additional vetting CARRP requires, the policy often stalls the
14 adjudication of naturalization applications, and in some cases, leaves applicants in limbo for many
15 years. *See, e.g.,* Dkt. No. 645-33 at 61; Dkt. No. 665 at 26–27; Dkt. No. 645-50 at 2.

16 With respect to timeliness of adjudications, CARRP states only that “[o]fficers should
17 make every effort to complete NS cases within a reasonable amount of time, by taking into
18 consideration the nature of the concern and the facts contained in each individual case.” Dkt. No.
19 286-3 at 7. But nowhere in the administrative record is there any indication of what constitutes a
20 “reasonable amount of time,” what happens when officers fail to “make every effort to complete
21 NS cases” in a timely manner, or how officers can otherwise ensure they comply with this statutory
22 mandate. *See generally* Dkt. Nos. 287-2–287-12. This is especially striking in light of CARRP’s
23 purpose of “efficiently process[ing] cases with NS issues and mitigat[ing] potential risks to
24 national security.” Dkt. No. 645-91 at 2; *see also* Dkt. No. 645-36 at 4 (“This policy, in conjunction

1 with Operational Guidance, provides direction to identify and process cases containing NS
2 concerns in the most efficient manner.”). Considering that applicants are not processed through
3 CARRP without first presenting some indicia of a national security concern, it is a significant
4 problem—and one USCIS apparently did not consider—that there is no mechanism to ensure that
5 applications presenting such concerns are being processed through CARRP in a timely manner.

6 This is true despite USCIS’s apparent anticipation of delays relating to interagency
7 communication. The administrative record contains guidance directing officers to contact “the
8 appropriate local JTTF [Joint Terrorism Task Force] office” for assistance in external vetting “[i]n
9 the event there is no response to the initial contact within ten (10) business days,” and “[i]f the
10 local JTTF office is not responsive,” the officer “may request vetting assistance from HQFDNS
11 (BCAU)[.]” Dkt. No. 287-3 at 21; Dkt. No. 645-49 at 22; *see also* Dkt. No. 287-3 at 27, 78, 267;
12 Dkt. No. 287-7 at 177–80; Dkt. No. 287-12 at 33. The guidance does not indicate how long an
13 officer should wait for JTTF to respond before deeming it “not responsive.” Another part of the
14 administrative record instructs officers that “[i]f a response from the FDNS-NSB mailbox is not
15 received within 4 working days, the officer should email the head of Operations Support Services
16 (OSS) within the NSB,” but “[o]nce a case has been assigned and the requesting officer has been
17 notified, the requesting officer must allow *at least* 30 days before inquiring about the status of
18 his/her request.” Dkt. No. 287-3 at 269 (emphasis added); Dkt. No. 666-24 at 16. The guidance
19 does not provide a ceiling on the amount of time an officer should wait on FDNS, nor does it
20 otherwise indicate how officers should ensure that they are complying with CARRP’s directive to
21 process NS cases within a reasonable amount of time. Although the guidance adheres to
22 regulations requiring intermittent analysis and approvals in connection with holding an application
23 in abeyance due to ongoing investigations under 8 C.F.R. § 103.2(b)(18), *see, e.g.*, Dkt. No. 287-
24 4 at 12–13; Dkt. No. 287-5 at 126, it contains no similar checks or controls for other applications

1 undergoing long delays, *see generally* Dkt. Nos. 287-2–287-12.

2 Worse still, USCIS expressly acknowledges in the guidance that “[a] delay in an
3 adjudication of an adjustment or naturalization application may expose the agency to legal actions
4 to compel the agency to complete the adjudication,” Dkt. No. 287-4 at 14; Dkt. No. 645-86 at 9;
5 *see also* Dkt. No. 287-4 at 15; Dkt. No. 645-86 at 10 (“Close monitoring and timely action in
6 naturalization cases is essential to ensure proper handling and minimize litigation risk.”), but its
7 solution is to instruct officers to front-load the delay-laden vetting procedures to *before* the
8 naturalization interview due to the applicant’s ability to file suit if no decision is issued within 120
9 days of the interview. “Special [c]onsiderations” for N-400 applications include the following:

10 It is important to remember that in naturalization proceedings, the interview triggers
11 the clock for USCIS to issue a decision on the naturalization application. If USCIS
12 does not issue a decision within 120 days of the naturalization interview, the
13 naturalization applicant can file suit in federal court seeking to obtain a decision on
14 naturalization. See INA § 336(b) [8 U.S.C. § 1447(b)]. Therefore, it is important for
15 the officer to have as much information as possible about the individual and the NS
concern before the naturalization interview occurs to ensure that the naturalization
interview explores all statutory and regulatory grounds of eligibility along with
potential grounds of ineligibility. **The Field is strongly encouraged to identify all
potential grounds of ineligibility prior to scheduling an N-400 interview.** In
some instance[s], External Vetting may be necessary prior to an interview.

16 Dkt. No. 287-3 at 44 (emphasis added); Dkt. No. 645-49 at 45; *see also* Dkt. No. 287-7 at 139;
17 Dkt. No. 666-14 at 75 (a “CAUTION” for N-400 applications that “[y]ou may want to consult
18 with local counsel because once a naturalization interview takes place, USCIS is mandated by
19 statute to complete adjudication of the N-400 within 120-days of the interview. **So be careful of
20 starting a clock on the adjudication[.]**” (emphasis added)).

21 It is apparent that consistency, flexibility, efficiency, and national security comprise parts
22 of USCIS’s calculus in implementing CARRP, *see* Dkt. No. 286-3 at 3, 8, and the Court does not
23 question the wisdom of such considerations. But APA review “involves more than a court
24 rubberstamping action based on bare declarations from the agency amounting to ‘trust us, we had

1 good national security reasons for what we did.” *Kirwa v. U.S. Dep’t of Def.*, 285 F. Supp. 3d
2 257, 270 (D.D.C. 2018). And here, CARRP’s goals of efficiency and improved national security
3 are compromised by its failure to institute any internal controls to ensure USCIS satisfies its
4 timeliness mandate. This problem is compounded by CARRP’s avoidance of *external* controls
5 over the timeliness of this process—in the form of litigants’ ability to sue under 8 U.S.C.
6 § 1447(b)—by directing officers to “be careful of starting [the] clock on the adjudication” by
7 conducting an interview. Dkt. No. 287-7 at 139; Dkt. No. 666-14 at 75. This does not amount to
8 reasoned decisionmaking. Specifically, in failing to address or implement controls to ensure that
9 USCIS complies with its timeliness mandate, USCIS entirely failed to consider an important aspect
10 of its statutory responsibilities and its own goals of efficiency and improved national security.

11 In sum, because USCIS failed to (1) explain its basis for implementing this policy,
12 (2) indicate what data, evidence, or factors the agency considered before doing so, and (3) consider
13 an important aspect of the problem, i.e., USCIS’s statutory mandate to adjudicate naturalization
14 applications within a reasonable time, the Court concludes that, pursuant to Section 706(2)(A),
15 CARRP was adopted in an arbitrary and capricious manner. Accordingly, the Court grants
16 summary judgment to Plaintiffs and denies summary judgment to Defendants on this portion of
17 the Naturalization Class’s APA claim.

18 *(c) Whether CARRP Unlawfully Withholds or Unreasonably Delays Agency Action*

19 Plaintiffs next claim that CARRP results in unlawfully withheld and unreasonably delayed
20 adjudication of naturalization applications. Dkt. No. 665 at 43–45; Dkt. No. 665-5 at 31–32; *see*
21 *id.* at 32 (“Plaintiffs do not challenge the government’s failure to act in any individual case; rather,
22 Plaintiffs challenge the systemic delays resulting from the CARRP policy as whole. *CARRP policy*
23 is reviewable as a final agency action that the Court can and should ‘hold unlawful and set aside,’
24 while compelling the agency to act on applications it has ‘unlawfully withheld and unreasonably

1 delayed' due to CARRP.” (quoting 5 U.S.C. §§ 706(1)–(2))).

2 As discussed above, USCIS has a mandatory, nondiscretionary duty to adjudicate
3 naturalization applications. 8 U.S.C. § 1446(d) (providing that the examiner “shall make a
4 determination as to whether the application should be granted or denied, with reasons therefor”);
5 *see also* 8 C.F.R. § 316.14(b)(1) (“Subject to supervisory review, the employee of [USCIS] who
6 conducts the examination [on an application for naturalization] shall determine whether to grant
7 or deny the application[.]”); 8 C.F.R. § 335.3(a) (“USCIS shall grant the application if the
8 applicant has complied with all requirements for naturalization[.]”). It also has a mandatory,
9 nondiscretionary duty to do a background investigation and examination of the applicant. 8 U.S.C.
10 § 1446(a)–(b); 8 C.F.R. §§ 335.1, -335.2(a). Because these duties are mandatory, USCIS must
11 complete them “within a reasonable time.” 5 U.S.C. § 555(b); *Hamandi v. Chertoff*, 550 F. Supp.
12 2d 46, 49 (D.D.C. 2008); *see also Oniwon v. U.S. Citizenship & Immigr. Servs.*, No. CV H-19-
13 3519, 2020 WL 1940879, at *3 (S.D. Tex. Apr. 6, 2020), *report and recommendation adopted*,
14 2020 WL 1939686 (S.D. Tex. Apr. 22, 2020).

15 Although a district court may “compel agency action unlawfully withheld or unreasonably
16 delayed” under 5 U.S.C. § 706(1), “a claim under § 706(1) can proceed only where a plaintiff
17 asserts that an agency failed to take a *discrete* agency action that it is *required to take*.” *S. Utah*
18 *Wilderness All.*, 542 U.S. at 62, 64; *see also id.* at 63 & n.1. “Absent such an assertion, a Section
19 706(1) claim may be dismissed for lack of jurisdiction.” *Alvarado v. Table Mountain Rancheria*,
20 509 F.3d 1008, 1019–20 (9th Cir. 2007).

21 Here, the Court agrees with Defendants that even assuming without deciding that Plaintiffs
22 have adequately pleaded a Section 706(1) unreasonable delay claim, “[t]he discreteness limitation”
23 under Section 706(1) precludes classwide relief. Dkt. No. 665-6 at 68–70; Dkt. No. 665-14 at 15–
24 16. Even if the Court were to find that delays of more than two years are presumptively

1 unreasonable, *see* Dkt. No. 665 at 26 (indicating that 1,348 class members faced a delay of more
2 than two years); *Yea Ji Sea v. U.S. Dep't of Homeland Sec.*, No. CV-18-6267-MWF (ASX), 2018
3 WL 6177236, at *5 (C.D. Cal. Aug. 15, 2018) (citing cases); *Daraji v. Monica*, No. CV 07-1749,
4 2008 WL 183643, at *5 (E.D. Pa. Jan. 18, 2008) (same); *see also Reddy v. Mueller*, 551 F. Supp.
5 2d 952, 954 (N.D. Cal. 2008), the Naturalization Class is much broader, consisting of individuals
6 with applications that have “not been or will not be adjudicated by USCIS within six months of
7 having been filed,” Dkt. No. 69 at 8, and Plaintiffs have not established that all such applicants
8 will be subject to delays of over two years. Plaintiffs do not contest that 81.69 percent of
9 naturalization applicants subjected to CARRP between 2013 and 2019 were ultimately approved,
10 Dkt. No. 645-5 at 51; Dkt. No. 645-13 at 5, 16, 36–37, and naturalization applications submitted
11 and adjudicated within that time frame spent an average of roughly 1.7 years awaiting adjudication,
12 Dkt. No. 645-13 at 19–20, 36–37. Furthermore, Plaintiffs note in their motion that the average
13 delay for *non*-CARRP cases “pending as of September 2019 was one year (371 days),” Dkt. No.
14 665 at 44, and they acknowledged during oral argument that prolonged delays affecting certain
15 class members could be lawful under the relevant abeyance regulation, 8 C.F.R. § 103.2(b)(18);
16 *see* Tr. at 12–14. The Court cannot conclude as a matter of law that anyone subjected to CARRP
17 whose application has not been adjudicated within six months or more has suffered an
18 unreasonable delay. *See Mashpee Wampanoag Tribal Council, Inc. v. Norton*, 336 F.3d 1094, 1100
19 (D.C. Cir. 2003) (“Resolution of a claim of unreasonable delay is ordinarily a complicated and
20 nuanced task requiring consideration of the particular facts and circumstances before the court.”);
21 *Casa Libre/Freedom House v. Mayorkas*, No. 2:22-cv-01510-ODW (JPRx), 2023 WL 3649589,
22 at *14 (C.D. Cal. May 25, 2023) (“Unreasonable delay . . . is determined by applying the *TRAC*
23 factors. Given that the *TRAC* factors are a complex set of factors that must be balanced in a given
24 case, there is no way a court could issue a classwide injunction or declaration that would provide

1 meaningful relief for the class.”).

2 Thus, the Court grants Defendants’ motion for summary judgment and denies Plaintiffs’
3 motion for summary judgment on this element of Plaintiffs’ APA claim.

4 *(d) Whether CARRP Required Notice and Comment Rulemaking*

5 Plaintiffs next claim that CARRP violates the APA because USCIS failed to engage in
6 requisite notice and comment rulemaking. Dkt. No. 665 at 45–46; Dkt. No. 665-5 at 33. Under the
7 APA, a rule is “the whole or a part of an agency statement of general or particular applicability
8 and future effect designed to implement, interpret, or prescribe law or policy or describing the
9 organization, procedure, or practice requirements of an agency[.]” 5 U.S.C. § 551(4). In addition,
10 the APA mandates that, subject to limited exceptions, agencies must comply with certain
11 procedures prior to issuing a rule, such as publishing a general notice of proposed rulemaking in
12 the Federal Register and providing an opportunity for comment. *See id.* § 553(a)–(c); *Perez v.*
13 *Mortg. Bankers Ass’n*, 575 U.S. 92, 96 (2015). “[T]he notice and comment requirements . . . are
14 designed to ensure public participation in rulemaking[.]” *Riverbend Farms, Inc. v. Madigan*, 958
15 F.2d 1479, 1485 (9th Cir. 1992). Importantly, though, “interpretative rules, general statements of
16 policy, or rules of agency organization, procedure, or practice” are not subject to a pre-
17 promulgation notice-and-comment period, and neither are rules where “the agency for good cause
18 finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued)
19 that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public
20 interest.” 5 U.S.C. § 553(b)(A)–(B); *see Hemp Indus. Ass’n v. Drug Enf’t Admin.*, 333 F.3d 1082,
21 1087 (9th Cir. 2003).

22 “While substantive or ‘legislative-type’ rules and interpretative rules are not
23 distinguishable with bright-line clarity in every case,” substantive rules “are those which effect a
24 change in existing law or policy,” and interpretative rules “are those which merely clarify or

1 explain existing law or regulations.” *Alcaraz v. Block*, 746 F.2d 593, 613 (9th Cir. 1984) (citations
2 omitted); *see also Hemp Indus. Ass’n*, 333 F.3d at 1087. A rule will have “the ‘force of law’:
3 (1) when, in the absence of the rule, there would not be an adequate legislative basis for
4 enforcement action; (2) when the agency has explicitly invoked its general legislative authority;
5 or (3) when the rule effectively amends a prior legislative rule.” *Hemp Indus. Ass’n*, 333 F.3d at
6 1087 (footnote and citation omitted). The Court is not required to accept the agency’s
7 characterization of its rule as legislative or interpretive at face value. *Gunderson v. Hood*, 268 F.3d
8 1149, 1154 n.27 (9th Cir. 2001).²⁶

9 It is undisputed that CARRP was adopted without notice and comment rulemaking. Dkt.
10 No. 645-32 at 13–14. And Defendants concede that CARRP qualifies as a “rule” as defined under
11 Section 551(4) of the APA. *See* Dkt. No. 665-6 at 66. Therefore, the dispositive question is whether
12 CARRP was exempt from the notice-and-comment requirements under Section 553(b). *See, e.g.,*
13 *W.C. v. Bowen*, 807 F.2d 1502, 1504 (9th Cir. 1987), *opinion amended on denial of reh’g*, 819
14 F.2d 237 (9th Cir. 1987). Plaintiffs argue that it was not exempt because (1) “there is no legislative
15 basis to deny or refuse to approve immigration benefits for reasons unrelated to eligibility,” and
16 “CARRP authorizes—even requires—exactly that,” and (2) “CARRP effectively amends the INA,
17 adding substantive eligibility criteria that do not otherwise exist.” Dkt. No. 665 at 46; *see also* Dkt.
18 No. 665-5 at 33.

19 The Court rejects Plaintiffs’ arguments for the reasons the Court laid out in Section
20 II.C.3(a) above. CARRP is a nonlegislative rule of agency procedure that “do[es] not [it]sel[f] alter
21 the rights or interests of parties[.]” *JEM Broad. Co. v. F.C.C.*, 22 F.3d 320, 326 (D.C. Cir. 1994)

22
23 ²⁶ The Court notes that the analysis regarding whether CARRP is a final agency action is distinct from the test for
24 whether it is a legislative rule. *Cal. Cmty. Against Toxics v. Env’t Prot. Agency*, 934 F.3d 627, 635 (D.C. Cir. 2019).
Although a legislative rule is necessarily final, a final rule is not necessarily legislative. *Id.* The different standard for
finality “permits courts to review nonlegislative rules and thus safeguards against agencies evading both judicial
review and notice and comment by acting via nonlegislative rules.” *Id.* at 636.

1 (quoting *Batterton v. Marshall*, 648 F.2d 694, 707 (D.C. Cir. 1980)); *see also Ahmadi v. Chertoff*,
2 No. C-07-03455-WHA, 2007 WL 3022573, at *9 (N.D. Cal. Oct. 15, 2007) (although expanded
3 name check policy created significant delays, it did not “add a new requirement in the
4 naturalization process”; “agencies have long been required to conduct an investigation into an
5 applicants’ background before adjudicating an application,” and the expanded policy “merely
6 enlarged the scope of that investigation”); *Wang v. U.S. Citizenship & Immigr. Servs.*, 375 F. Supp.
7 3d 22, 40 (D.D.C. 2019); *Makransky v. Johnson*, 176 F. Supp. 3d 217, 229 (E.D.N.Y. 2016).

8 Accordingly, the Court denies summary judgment to Plaintiffs and grants summary
9 judgment to Defendants on this aspect of Plaintiffs’ APA claim.

10 **D. Defendants Are Entitled to Summary Judgment on the Naturalization Class’s**
11 **Procedural Due Process Claim**

12 Plaintiffs also move for summary judgment on their claim that CARRP violates the
13 procedural due process rights of the Naturalization Class because it does not provide individuals
14 with notice or an opportunity to respond to their applications being subjected to CARRP. Dkt. No.
15 665 at 53–58; Dkt. No. 665-5 at 37–40. Defendants cross-move for summary judgment on this
16 claim. Dkt. No. 665-6 at 70–74.

17 The Fifth Amendment’s Due Process Clause provides that no person shall “be deprived of
18 life, liberty, or property, without due process of law.” U.S. Const. amend. V. “Procedural due
19 process imposes constraints on governmental decisions which deprive individuals of ‘liberty’ or
20 ‘property’ interests within the meaning of the Due Process Clause of the Fifth or Fourteenth
21 Amendment”; its “fundamental requirement . . . is the opportunity to be heard ‘at a meaningful
22 time and in a meaningful manner.’” *Mathews v. Eldridge*, 424 U.S. 319, 332–33 (1976) (quoting
23 *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). A procedural due process claim must demonstrate
24 a substantial infringement of liberty or property in order to proceed. *Bd. of Regents of State Colls.*

1 v. *Roth*, 408 U.S. 564, 569–70 (1972) (“[T]he range of interests protected by procedural due
2 process is not infinite.”). No process is due otherwise. *Swarthout v. Cooke*, 562 U.S. 216, 219
3 (2011) (per curiam).

4 Procedural due process claims “hinge[] on proof of two elements: (1) a protectible liberty
5 or property interest in obtaining the [benefit]; and (2) a denial of adequate procedural protections.”
6 *Foss v. Nat’l Marine Fisheries Serv.*, 161 F.3d 584, 588 (9th Cir. 1998) (citing *Bd. of Regents*, 408
7 U.S. at 569–71; *Mathews*, 424 U.S. at 335). The Court first examines what property interest is at
8 stake before turning to what process is due to protect that interest. *See Wilkinson v. Austin*, 545
9 U.S. 209, 224–25 (2005).

10 1. Constitutionally Protected Property Interest

11 “[T]he first question in any case in which a violation of procedural due process is alleged
12 is whether the plaintiffs have a protected property or liberty interest and, if so, the extent or scope
13 of that interest.” *Nozzi v. Hous. Auth. of City of Los Angeles*, 806 F.3d 1178, 1190–91 (9th Cir.
14 2015). “To have a property interest in a benefit, a person clearly must have more than an abstract
15 need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have
16 a legitimate claim of entitlement to it.” *Bd. of Regents*, 408 U.S. at 577. Here, Plaintiffs aver that
17 the Naturalization Class has an “interest in the timely, lawful adjudication of their applications.”
18 Dkt. No. 665 at 55; *see also* Dkt. No. 665-5 at 40 (“Plaintiffs seek not a grant of citizenship but a
19 constitutional process.”). Defendants do not dispute that Plaintiffs have a constitutionally protected
20 property interest in the “lawful adjudication of naturalization applications,” but argue that
21 “Plaintiffs cannot show that CARRP creates non-statutory eligibility criteria for naturalization,”
22 and that “timeliness is not part of the constitutionally protected interest[.]” *See* Dkt. No. 665-6 at
23
24

1 72–73; *see also* Dkt. No. 665-14 at 17–18.²⁷

2 In its order denying Defendants’ motion to dismiss, the Court observed that “[t]he Ninth
3 Circuit, and other courts, have held that naturalization applicants have a property interest in seeing
4 their applications adjudicated lawfully.” Dkt. No. 69 at 16. For instance, the Ninth Circuit has held
5 that a plaintiff has a “protected interest in being able to apply for citizenship,” *Brown*, 763 F.3d at
6 1147, and that where an applicant for a nondiscretionary immigration benefit meets the statutory
7 and regulatory requirements for eligibility, they have a property interest “entitled to the protections
8 of due process,” *Ching v. Mayorkas*, 725 F.3d 1149, 1156 (9th Cir. 2013); *see also* 8 C.F.R.
9 § 335.3(a).

10 As for the timeliness of adjudications, though, Plaintiffs did not plead this as part of their
11 due process claim. Dkt. No. 47 at 47; *see also* Dkt. No. 69 at 17. And even if they had, “procedural
12 delays . . . do not deprive [non-citizens] of a substantive liberty or property interest unless the [non-
13 citizens] have a legitimate claim of entitlement to have their applications adjudicated within a
14 specified time[.]” *Mendez-Garcia v. Lynch*, 840 F.3d 655, 666 (9th Cir. 2016) ((cleaned up)). The
15 APA’s requirement to adjudicate applications within a “reasonable time” does not provide a
16 specified timeframe, and the 120-day requirement under 8 U.S.C. § 1447(b) has not yet been
17 triggered for most class members. Furthermore, even if a right to adjudication within a “reasonable
18 time” were contained within the Naturalization Class’s property interest, Plaintiffs have not
19

20 ²⁷ Defendants also argue that Plaintiffs’ due process claim must fail because they cannot show that USCIS was
21 “motivated by animus or malicious intent,” that the agency “arbitrarily and intentionally obstructed” naturalization
22 applications, or was “deliberately indifferent to whether . . . application[s] w[ere] processed.” Dkt. No. 665-6 at 71
23 (quoting *Brown v. Holder*, 763 F.3d 1141, 1149–50 (9th Cir. 2014)); *see also Dent v. Sessions*, 900 F.3d 1075, 1083
24 (9th Cir. 2018). Plaintiffs do not argue that that USCIS was motivated by animus or malicious intent, arbitrarily and
intentionally obstructed naturalization applications, or was deliberately indifferent to whether applications were
processed. To the extent they do, their argument fails. Plaintiffs have not shown that all Naturalization Class members
whose applications are not adjudicated within six months or more have been subjected to such treatment. The Court
further observes that Plaintiffs do not dispute that 81.69 percent of naturalization applicants subjected to CARRP
between 2013 and 2019 were ultimately approved, Dkt. No. 645-5 at 51; Dkt. No. 645-13 at 5, 16, 36–37, and they
have not shown that any applicant was wrongly denied naturalization.

1 introduced evidence showing that all or even most class members—again, made up of individuals
2 whose applications will not be decided in as little as six months or more—have been deprived of
3 this right. *Elhady*, 993 F.3d at 221 (finding that deprivation did not rise to the level of a
4 constitutional concern where “the record does not support plaintiffs’ assertions that they were all
5 routinely subject to” atypical delays in airport travel).

6 The Court accordingly does not disturb its prior conclusion that the Naturalization Class
7 has a constitutionally protected property interest in the lawful adjudication of their applications,
8 but that timeliness is not part of the equation. Dkt. No. 69 at 17.

9 2. Mathews Balancing

10 Because Plaintiffs have a constitutionally protected interest in the lawful adjudication of
11 their naturalization applications, the Court must determine what process is due. *See Zerezghi v.*
12 *U.S. Citizenship & Immigr. Servs.*, 955 F.3d 802, 810 (9th Cir. 2020); *Ching*, 725 F.3d at 1157.
13 For the reasons discussed in Section II.C.3(a), the Court agrees with Defendants that “Plaintiffs
14 fail to show the necessary elements of a violation [of their right to lawful adjudication] as to all
15 class members.” Dkt. No. 665-14 at 17.

16 Furthermore, as discussed below, the *Mathews* balancing factors favor Defendants. Those
17 factors are as follows:

18 First, the private interest that will be affected by the official action; second, the risk
19 of an erroneous deprivation of such interest through the procedures used, and the
20 probable value, if any, of additional or substitute procedural safeguards; and finally,
21 the Government’s interest, including the function involved and the fiscal and
22 administrative burdens that the additional or substitute procedural requirement
23 would entail.

24 *Mathews*, 424 U.S. at 335. In balancing the *Mathews* factors, the Court is mindful that “due process
is flexible and calls for such procedural protections as the particular situation demands.” *Morrissey*
v. Brewer, 408 U.S. 471, 481 (1972).

1 (a) *Private Interest*

2 Plaintiffs argue that the “timely and lawful” adjudication of one’s naturalization application
3 implicates significant private interests. Dkt. No. 665 at 54. Specifically, “[d]elayed and denied
4 applicants” may “lose their social security benefits,” and they are unable to vote or serve on juries,
5 unable to travel abroad “without fear of being denied re-entry into the United States,” unable to
6 petition for immediate relatives abroad, and ineligible for certain jobs. *Id.* at 54–55; *see also* Dkt.
7 No. 665-5 at 38. However, these are interests in timeliness, which again plays no role here, and in
8 *successful* applications—an interest Plaintiffs have repeatedly disclaimed. *See, e.g.*, Dkt. No. 634
9 at 3 (class members seek to prevent USCIS from applying CARRP to the processing and
10 adjudication of their applications, “*not* to establish their eligibility for the benefit or to have their
11 applications decided by the Court”). With respect to the latter, the interests Plaintiffs advance
12 depend on the assumption that any denials of their applications are based on undisclosed, non-
13 statutory information obtained in CARRP review, such that being notified of and permitted to
14 respond to such information would result in approval. But as explained in Section II.C.3(a)(i)–(ii)
15 above, CARRP is not in excess of USCIS’s statutory authority under the INA, and Plaintiffs have
16 failed to show that the determination of statutory eligibility in CARRP cases is based on anything
17 other than the record of proceeding. Accordingly, Plaintiffs cannot show that providing individuals
18 with notice or an opportunity to respond to their applications being subjected to CARRP would
19 avoid the harms listed above. For these reasons, Plaintiffs have not shown—and cannot show—
20 that any private interest at stake here is more than “relatively modest in scope and importance.”
21 *Ariz. Farmworkers Union v. Buhl*, 747 F.2d 1269, 1272 (9th Cir. 1984). Therefore, this factor
22 weighs in favor of Defendants.

1 (b) *Risk of Erroneous Deprivation and the Probable Value of Additional or Substitute*
2 *Procedural Safeguards*

3 When considering the risk of erroneous deprivation, the Court considers both the
4 substantive standard that the government uses to make its decision as well as the procedural
5 processes in place. *See Santosky v. Kramer*, 455 U.S. 745, 761–64 (1982). Plaintiffs argue that
6 there is “an enormous risk of erroneous deprivation of Naturalization Class members’ interest in
7 the timely, lawful adjudication of their applications” because (1) “the substantive standard for
8 referral to CARRP that causes unreasonable delays and pretextual denials—the identification of
9 an NS concern—is extraordinarily broad and imprecise,” and (2) the “lack of notice or any
10 meaningful opportunity to respond to the information that prompts referral to CARRP further
11 elevates the risk of error.” Dkt. No. 665 at 55–56. Defendants respond that timeliness is not part
12 of the due process analysis, and that Plaintiffs have not shown that “unreasonable delays and
13 pretextual denials” automatically result from referral to CARRP, which is “only a pre-decisional
14 process involving no seizure of vested rights.” Dkt. No. 665-6 at 73.

15 As to the latter point, there is an important distinction between pre-*adjudication* and pre-
16 *deprivation* process. *See Zerezghi*, 955 F.3d at 809; *cf. Goldberg v. Kelly*, 397 U.S. 254, 260
17 (1970). “[P]rocedural due process does not require that the notice and opportunity to be heard
18 occur before the deprivation.” *Buckingham v. Sec’y of U.S. Dep’t of Agric.*, 603 F.3d 1073, 1082
19 (9th Cir. 2010). Indeed, in support of their procedural due process claim, Plaintiffs cite only to
20 post-adjudication cases where the harm, or alleged deprivation, has definitively occurred. *See, e.g.*,
21 Dkt. No. 665 at 56 (citing *Zerezghi*, 955 F.3d at 804; *Al Haramain Islamic Found.*, 686 F.3d at
22 986; *Kaur v. Holder*, 561 F.3d 957, 962 (9th Cir. 2009)).

23 The Court finds that Plaintiffs have failed to establish a genuine dispute that subjecting the
24 Naturalization Class’s applications to CARRP review constitutes a high risk of an erroneous

1 deprivation of the *lawful adjudication* of their applications. *See* Dkt. No. 665 at 55–56; Dkt. No.
2 665-5 at 38–39.²⁸ As with the first factor under *Mathews*, Plaintiffs have failed to show that the
3 determination of statutory eligibility in CARRP cases is based on anything other than the record
4 of proceeding. Again, CARRP is not contrary to law, and the Court finds that having one’s
5 application subjected to CARRP does not per se preclude a lawful adjudication. For this reason,
6 Plaintiffs cannot demonstrate that lack of notice or opportunity to respond to the information that
7 prompts referral to CARRP elevates any risk of error.

8 Therefore, the Court finds that this factor weighs in favor of Defendants.

9 (c) *Governmental Interest*

10 The third *Mathews* factor is “the Government’s interest, including the function involved
11 and the fiscal and administrative burdens that the additional or substitute procedural requirement
12 would entail.” *Mathews*, 424 U.S. at 335. Plaintiffs argue that “[a]ny purported law enforcement
13 interest . . . has no merit,” and that the additional burdens of providing notice and an opportunity
14 to respond to CARRP review are low. Dkt. No. 665 at 57–58; Dkt. No. 665-5 at 39. Defendants
15 assert that “[n]otice-and-opportunity regarding CARRP prior to the completion of USCIS’
16 adjudication is untenable” and that the Government’s interests in “assessing the extent to which
17 NS concerns affect applicants’ statutory eligibility for naturalization . . . , as well as avoiding
18 interference with other law enforcement investigations,” are “of the utmost importance.” Dkt. No.
19 665-6 at 74.

20 “The government interest in immigration enforcement in general is surely substantial.”
21 *Zerezghi*, 955 F.3d at 810; *accord Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1208 (9th Cir. 2022).

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²⁸ Again, timeliness is not part of the property interest. Even if it were, Plaintiffs have not shown that every application that undergoes CARRP review and has not been adjudicated within six months has been unreasonably delayed or denied.

1 Notably, the existing regulatory scheme—which Plaintiffs do not challenge—reflects this interest.
2 Although an applicant normally must “be permitted to inspect the record of proceeding which
3 constitutes the basis for the decision,” including derogatory information considered by USCIS,
4 and although “[a] determination of statutory eligibility shall be based only on information
5 contained in the record of proceeding which is disclosed to the applicant,” the applicant “shall not
6 be provided any information contained in the record or outside the record which is classified under
7 Executive Order No. 12356 (47 FR 14874; April 6, 1982) as requiring protection from
8 unauthorized disclosure in the interest of national security, unless the classifying authority has
9 agreed in writing to such disclosure[.]” 8 C.F.R. § 103.2(b)(16)(i)–(ii), (iv). Ultimately, applicants
10 whose applications are denied are provided with a statutory basis for the denial, even though they
11 are not provided with the basis for their referral to CARRP, and Plaintiffs have not established that
12 any applicant was wrongly denied naturalization. Plaintiffs’ conclusory assertion that the
13 additional burdens of providing notice and an opportunity to respond to CARRP review are low is
14 not sufficient to establish a dispute of material fact regarding this factor.

15 In light of the significant government interests at stake, the Court finds that this factor
16 weighs in favor of Defendants.

17 *(d) Weighing the Factors*

18 Weighing the factors above, the Court finds that USCIS’s failure to provide the
19 Naturalization Class with notice and an opportunity to respond to their applications’ review under
20 CARRP does not constitute a violation of procedural due process under the Fifth Amendment.
21 Accordingly, the Court grants Defendants’ motion for summary judgment on this claim and denies
22 Plaintiffs’ corresponding cross-motion.

23 **E. Defendants Are Entitled to Summary Judgment on Plaintiffs’ Equal Protection Claim**

24 Finally, Plaintiffs argue they are entitled to summary judgment on their claim that CARRP

1 denies equal protection to Naturalization Class members because they are singled out based on
2 national origin or religion and suffer adverse effects as a result. Dkt. No. 665 at 58–60; Dkt. No.
3 665-5 at 41–46. Defendants commit the bulk of their opposition and cross-motion briefing to this
4 claim. Dkt. No. 665-6 at 43–59; Dkt. No. 665-14 at 8–11. For the reasons set forth below, the
5 Court finds that Defendants are entitled to summary judgment on this claim.

6 1. Applicable Standard

7 The Fourteenth Amendment commands that no state shall “deny to any person within its
8 jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1. The equal protection
9 component of the Fifth Amendment’s Due Process Clause imposes a similar obligation on the
10 federal government. *See Bolling v. Sharpe*, 347 U.S. 497, 499–500 (1954). The Equal Protection
11 Clause amounts to a directive that all persons who are similarly situated should be treated alike.
12 *See Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992); *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S.
13 432, 439 (1985).

14 As an initial matter, Defendants claim that “CARRP is entitled to the same deferential
15 review applied in *Trump v. Hawaii*[, 585 U.S. 667 (2018)]”: it need only be “facially legitimate
16 and bona fide.” Dkt. No. 665-6 at 56–57. Plaintiffs counter that “[w]here, as here, a plaintiff
17 challenges a facially neutral law or policy on equal-protection grounds, the court must decide
18 whether the evidence, including circumstantial evidence, shows that intent to discriminate was ‘a
19 motivating factor’ behind the law or policy.” Dkt No. 665-5 at 41 (quoting *Vill. of Arlington*
20 *Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977)); *see also id.* at 41, 45–46 (arguing
21 that because discriminatory intent was a motivating factor behind CARRP, the program is subject
22 to strict scrutiny review).

23 Assuming without deciding that the deferential standard articulated in *Trump v. Hawaii*
24 does not apply, Plaintiffs still fail to “raise a plausible inference that an ‘invidious discriminatory

1 purpose was a motivating factor’ in the relevant decision.” *Regents of the Univ. of Cal.*, 591 U.S.
2 at 34 (quoting *Arlington Heights*, 429 U.S. at 266); accord *City of Cuyahoga Falls v. Buckeye*
3 *Cnty. Hope Found.*, 538 U.S. 188, 194 (2003). Possible evidence that a discriminatory purpose
4 was a motivating factor “includes disparate impact on a particular group, ‘[d]epartures from the
5 normal procedural sequence,’ and ‘contemporary statements by members of the decisionmaking
6 body.’” *Regents of the Univ. of Cal.*, 591 U.S. at 34 (quoting *Arlington Heights*, 429 U.S. at 266–
7 68). A discriminatory purpose “implies more than intent as volition or intent as awareness of
8 consequences”; it implies that the decisionmaker “selected or reaffirmed a particular course of
9 action at least in part because of, not merely in spite of, its adverse effects upon an identifiable
10 group.” *Pers. Adm’r of Massachusetts v. Feeney*, 442 U.S. 256, 279 (1979) (cleaned up).

11 Plaintiffs characterize CARRP as “facially neutral,” but contend that “[t]he undisputed
12 facts establish that discrimination based on national origin, religion, or both were motivating
13 factors in CARRP’s design and implementation.” Dkt. No. 665-5 at 41. Between fiscal year 2013
14 and 2019, USCIS received more than 10.6 million applications for adjustment of status and
15 naturalization. Dkt. No. 645-5 at 3, 33–34, 131–32. USCIS identified 0.3 percent of those
16 applications as potential national security concerns requiring further CARRP processing. *Id.* at 33–
17 34. Those referrals reflect a 1.46 percent CARRP referral rate for naturalization applications from
18 applicants from majority Muslim countries, and a 0.12 percent CARRP referral rate for
19 naturalization applications from applicants from other countries. *Id.* at 133; Dkt. No. 645-14 at 26.
20 Plaintiffs thus assert that “USCIS refers class members from Muslim-majority countries to
21 CARRP at ten to twelve times the rate of applicants from other countries.” Dkt. No. 665-5 at 42;
22 *see also* Dkt. No. 665 at 58–59; Dkt. No. 645-14 at 25–26, 56–57. Plaintiffs argue that this
23 disparate impact on class members from Muslim-majority countries is “enough alone to establish
24 that discriminatory intent was a motivating factor in CARRP’s design and implementation.” Dkt.

1 No. 665-5 at 42 (citing *Comm. Concerning Cmty. Improvement v. City of Modesto* (“CCCP”), 583
2 F.3d 690, 703 (9th Cir. 2009)); *Reno v. Bossier Par. Sch. Bd.*, 520 U.S. 471, 489 (1997)).
3 Defendants respond that to the extent CARRP’s referral rate is higher for applicants from majority-
4 Muslim countries, that variance can be “explained by the higher level of terrorist events in the
5 applicants’ countries of origin.” Dkt. No. 665-6 at 45–46; *see* Dkt. No. 645-5 at 73. Further,
6 Defendants maintain “[t]here is no statistically significant difference in approval rates for CARRP-
7 referred . . . naturalization applications when comparing applicants from majority Muslim and
8 non-majority Muslim countries.” Dkt. No. 665-6 at 47 (citing Dkt. No. 645-5 at 98–99).

9 Even assuming that “applicants from Muslim-majority countries” constitute a suspect
10 class, the Court is unable to conclude that a genuine issue for trial exists as to whether this group
11 is being singled out *because of* either their religion or nationality.²⁹ First, being a national of a
12 Muslim-majority country does not necessarily mean that an applicant is in fact Muslim or is being
13 targeted on that basis. *See* Dkt. No. 645-5 at 22 (“The data supplied does not identify the religion
14 of any applicant[.]”). Significantly, Plaintiffs do not dispute Defendants’ assertion that applicants
15 from Muslim-majority countries are approved at approximately the same rate, within
16 approximately the same time, as other applicants. Dkt. No. 665-5 at 43; *see also* Dkt. No. 645-5 at
17 29–30. And because Plaintiffs have not established that “CARRP is harmful to *everyone* subjected
18 to it,” Dkt. No. 665-5 at 43, mere disproportionate placement in CARRP is insufficient to
19 demonstrate a discriminatory purpose (i.e., causation), rather than mere correlation. Second, it is
20 undisputed that for over 90 percent of CARRP referrals, the first or only information source for
21 referring the application to CARRP is a third agency that provides information to USCIS, rather
22 than USCIS information, undermining the contention that USCIS’s discriminatory animus fuels

23 _____
24 ²⁹ In their amended complaint, Plaintiffs allege that Defendants harm them “on the basis of their country of origin”
and “on the basis of religion.” Dkt. No. 47 at 48.

1 CARRP referrals of applicants from Muslim-majority countries. *Id.*; Dkt. No. 665-6 at 48–49; Dkt.
2 No. 645-5 at 30.

3 Plaintiffs next argue that (1) USCIS’s prior use of a list of 34 “Special Interest Countries”
4 in referring applications to CARRP review is evidence that the program “was designed to have a
5 discriminatory impact” based on national origin; (2) CARRP’s “emerg[ence] from the same
6 historical milieu as other post-9/11 programs, like NSEERS [the National Security Entry-Exit
7 Registration System],” indicates discriminatory intent; and (3) CARRP’s promotion of
8 impermissible religious scrutiny of applicants’ religious practices “is further evidence that the
9 intent of CARRP was to apply different rules and standards to Muslim applicants.” Dkt. No. 665-
10 5 at 43–45; *see also* Dkt. No. 665 at 59–60. None of these factors, even taken together with the
11 disparate impact analysis above, permit Plaintiffs’ equal protection claim to survive summary
12 judgment. First, the record does not delineate which Muslim-majority countries are specifically
13 being impacted by CARRP relative to others.³⁰ Plaintiffs do not account for other factors that could
14 explain inclusion on the list (such as the level of terrorism in the countries), nor do they explain
15 why—if the Muslim religion or national origin were the reason for inclusion—certain Muslim-
16 majority countries were excluded from the list. Second, simply labeling CARRP as “post-9/11”
17 does not provide a historical background sufficient to support an equal protection claim on
18 summary judgment absent additional evidence to that effect. The record evidence indicates that
19 USCIS adopted and implemented CARRP in 2008 following a multi-year effort to incorporate
20 interagency information sharing practices into USCIS’s vetting procedures following September
21

22 ³⁰ At oral argument, the Court requested that the parties file a joint submission addressing “whether the record includes
23 a listing of which Muslim-majority countries are allegedly disproportionately represented among CARRP referrals[.]”
24 Dkt. No. 673. In their response, the parties clarified that “Mr. Kruskol’s expert reports do not specifically address
country-specific rates of referral to CARRP,” and that, “[t]o the extent the Court [sought] country-specific referral
rates for each Muslim-majority country in the world, this information does not exist in the record.” Dkt. No. 674 at 1–
2.

1 11, 2001, but the Court cannot infer a genuine dispute as to anti-Muslim animus solely from this
2 historical context. Dkt. No. 517 at 3, 5–11; *see generally* Dkt. No. 286-3 at 1–7. And third, while
3 the record evidence shows that adjudicators inquire about activities connected with religion—
4 without specifying any religion in particular—*see, e.g.*, Dkt. No. 472-2 at 680, 689; Dkt. No. 645-
5 11 at 30, that does not create a genuine dispute that CARRP targets Muslim applicants *because*
6 they are Muslim.

7 In sum, the Court finds that Plaintiffs have failed to raise a genuine issue that Defendants
8 implemented CARRP “at least in part because of, not merely in spite of, its adverse effects upon
9 an identifiable group.” *Feeney*, 442 U.S. at 279 (cleaned up); *see also Celotex*, 477 U.S. at 322. In
10 light of the statutory authority USCIS possesses to investigate naturalization applicants and the
11 national security rationale underlying CARRP, the Court finds that the policy is rationally related
12 to the legitimate government interest of investigating and adjudicating naturalization applications.
13 *See Mendiola-Martinez v. Arpaio*, 836 F.3d 1239, 1261 (9th Cir. 2016) (citation omitted); *see also,*
14 *e.g.*, Dkt. No. 665-14 at 10–11.

15 Accordingly, the Court grants summary judgment in favor of Defendants on this claim and
16 denies summary judgment to Plaintiffs.

17 III. CONCLUSION

18 For the reasons discussed herein, the Court GRANTS IN PART AND DENIES IN PART
19 the parties’ cross-motions for summary judgment, Dkt. Nos. 665, 665-6:

- 20 • Plaintiffs’ motion for summary judgment is granted in part and denied in part on the
21 Naturalization Class’s claims that CARRP is arbitrary and capricious, contrary to law,
22 unreasonably withholds or delays agency action, and required USCIS to engage in notice
23 and comment rulemaking (claims 7, 8, 9, and 10). Defendants’ cross-motion is granted in
24 part and denied in part as to these claims.

- 1 • Plaintiffs’ motion for summary judgment is denied as to the Naturalization Class’s claims
2 that CARRP violates the procedural due process element and the equal protection
3 component of the Fifth Amendment (claims 4 and 6), and Defendants’ cross-motion is
4 granted as to these claims.
- 5 • Plaintiffs’ claims based on since-repealed Executive Orders 13769 and 13780 (Claims 1,
6 2, and 3) are moot. Accordingly, as to those claims, Defendants’ cross-motion is granted.

7 The Court further ORDERS the parties to meet and confer in good faith and, within 30
8 days of the date of this Order, submit to the Court a joint status report setting forth (1) either a joint
9 proposal regarding vacatur and remand to USCIS following the Court’s finding that CARRP is
10 arbitrary and capricious or a proposed supplemental briefing schedule regarding this subject
11 matter; and (2) a proposal regarding disposition of the remaining claims in this case.

12 Dated this 17th day of January, 2025.

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14 _____
15 Lauren King
16 United States District Judge
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