EXHIBIT 89

~~Filed Pursuant to General Order No. 03-21~~

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ABDIQAFAR WAGAFE, *et al.*, on behalf of themselves and others similarly situated, Plaintiffs, v. DONALD TRUMP, President of the United States, *et al.*, Defendants.	No. 2:17-cv-00094-RAJ

Expert Report of Thomas K. Ragland

I, Thomas K. Ragland, hereby declare:

1. I make this declaration based on my own personal knowledge and if called to testify I could and would do so competently as follows:

2. I provide this report in support of the Plaintiffs in this matter.

Qualifications

3. I am Member in Charge of the Washington, DC office of Clark Hill PLC, a multidisciplinary, international law firm, where I practice immigration law. I specialize in complex immigration matters, including federal litigation, removal defense, citizenship and permanent residence, waivers of inadmissibility, complex consular matters, and terrorism- and security-related bars to admission. Prior to joining Clark Hill, I was a named partner at a Washington, D.C.-based immigration firm, Benach Ragland LLP. I have practiced immigration law for more than 25 years.

4. I served in the U.S. Department of Justice (DOJ) for 10 years, from October 1994 to October 2004. I entered DOJ through the Attorney General's

Honor Program immediately following my graduation from law school. At DOJ, I represented the government in Immigration Court, the Board of Immigration Appeals (BIA), and the Civil Division's Office of Immigration Litigation (OIL). During my tenure at DOJ, I received multiple Outstanding Performance Awards and Special Achievement Awards. At one time I was granted Top Secret security clearance in relation to a specific case that I was handling. As a Senior Attorney Advisor at the BIA, I supervised a team of staff attorneys and, along with my other duties, was responsible for preparing BIA precedent opinions for publication.

5. I received a B.A. in Philosophy, with honors, from the University of Virginia in Charlottesville, Virginia, in 1988, and a J.D. *cum laude* from Boston College Law School in Newton, Massachusetts, in 1994.

6. I have previously served as an Adjunct Associate Professor of Law at the American University's Washington College of Law, where I taught Advanced Topics in Immigration Law. I am active in the American Immigration Lawyers Association and have served on the Advisory Board of the Muslim Legal Fund of America, a nonprofit legal fund dedicated to defending Muslims' civil rights and liberties in the American legal system.

7. I have been recognized by *The Washington Post* as one of "Washington, D.C.'s Best Lawyers" and by *Washingtonian Magazine* as one of "Washington's Top Lawyers." I am ranked in *Chambers USA*, and am listed in *Best Lawyers in America*, *Super Lawyers*, and *The International Who's Who of Corporate Immigration Lawyers*. In 2013, I was awarded the American Immigration Lawyers Association's highest honor, the Edith Lowenstein Award for Excellence in Advancing the Practice of Immigration Law.

8. I have practiced immigration law for more than 25 years, from October 1994 through the present. My practice has focused exclusively on

immigration law or topics related to immigration law.

9. I frequently speak on topics of immigration law and have taught continuing legal education (CLE) courses on immigration topics, such as litigation in federal court, the immigration consequences of criminal activity, complex naturalization matters, terrorism-related inadmissibility grounds, and effective removal defense.

10. In the past ten years, I have authored the following publications:

Chapter 105: Immigration, *Business and Commercial Litigation in Federal Courts, 4th ed.* (Thomson West 2016)

"How to Deal with 'Impossible' Visa Denials and Cancellations," Practice Advisory for 2016 AILA Annual Conference (co-author).

Contributing Editor, *AILA's Asylum Primer: A Practical Guide to U.S. Asylum Law and Procedure, Seventh Edition* by Dree Collopy (2015).

"The Petition for Review," Practice Advisory for 2014 AILA Fall Topics CLE Conference.

"The 212(h) Aggravated Felony Bar: The BIA Versus the Courts," for 2014 AILA South Florida Chapter CLE Conference.

"The Top 10 Things to Remember: Petitions for Rehearing," Practice Advisory for 2013 AILA Annual Conference.

"Waivers and Litigation" Practice Advisory for 2012 AILA Fall Topics CLE Conference (co-author).

"Litigating Immigration Cases in Federal Court," book chapter, *What Every Lawyer Needs to Know About Immigration Law* (American Bar Association 2012) (co-author).

"Terrorism-Related Inadmissibility Grounds: Litigation Strategies in the U.S. and Canada," Law & Society Association, 2010 (co-author).

"U.S. Supreme Court's Sixth-Amendment Ruling Requires Defense Counsel to Inform Immigrant When Plea May Lead to Deportation," *Duane Morris Alert*, April 7, 2010 (co-author).

"What did Compean Accomplish? The Uncertain Right to Effective Assistance of Counsel in Immigration Proceedings," American Bar Association Section of Litigation, June 2009.

"E-Verify Requirement for Federal Contractors Delayed Again," Duane Morris Alert, June 2, 2009.

"Nken v. Holder: Impact on Stays of Removal and Beyond," American Bar Association Section of Litigation, May 2009.

"Supreme Court Strikes Down Long-Standing BIA Interpretation of 'Persecutor Bar'," American Bar Association Section of Litigation, March 2009.

Contributing Editor, *Kurzban's Immigration Law Sourcebook*, 11th & 12th eds., 2008, 2010.

"Supreme Court Rules for Thousands Deported: State Felony Drug Possession Offense That Would be Classified as a Misdemeanor Under Federal Law Is Not an 'Aggravated Felony,'" *Bender's Immigration Bulletin*, December 18, 2006.

11. In my legal practice, I am frequently called on by other immigration lawyers to provide technical assistance in cases involving federal court litigation, the immigration consequences of crimes, and terrorism- or security-related bars to admission. I am also frequently called on to serve as an expert.

12. During the past four years, I have testified as an expert either at trial or by deposition in the following cases:

- *United States v. Lopez-Collazo*, 105 F. Supp. 3d 497 (D. Md. 2015) (testified)
- *Commonwealth v. Rose Sanchez-Canete* (Fairfax Co. Dist. Ct. 2018) (testified)
- *Boulter v. Boulter* (Fairfax Co. Dist. Ct. 2018) (testified)

In addition, I have served as an expert and provided a written opinion to the court in the following cases:

- *United States v. Miranda-Rivera*, 206 F. Supp. 3d 1066 (D. Md. 2016)
- *United States v. Llanos Martinez*, No. 1:18-cr-216 (E.D. Va. 2018)
- *United States v. Ordonez*, No. 8:17-cr-304-PWG (D. Md. 2018)

13. I am not receiving any compensation for my services as an expert in this matter. I have agreed to serve as an expert on a pro bono basis for all work in this matter. I am subject to reimbursement for all reasonable expenses incurred in the course of my work on this case, if any, such as travel expenses, including the actual costs of transportation, meals, and lodging.

14. A copy of my current CV is attached as Exhibit A.

CARRP-Related Experience

15. Over the course of my career, I have represented numerous individuals in their applications for adjustment of status and naturalization. My best estimate is that I've represented 300+ people in their adjustment of status applications (both before USCIS and immigration court) and 200+ in their naturalization applications.

16. I first learned about CARRP around 2012 or 2013, when my clients experienced unusual delays and pretextual denials of their applications for immigration benefits. Having represented many clients suspected of terrorism- or security-related concerns, I was familiar with the targeting of certain groups and nationalities for heightened scrutiny. Clients subjected to CARRP fit a familiar pattern and profile.

17. Since then, I have developed an expertise in CARRP because I handle a large volume of cases from clients who are Muslim or from Muslim-majority countries. Handling CARRP cases was a natural extension of the broad experience

I have representing clients – in particular Muslims or individuals from Muslim-majority countries – suspected of terrorism- or security-related concerns. As it happened, I became one of only a handful of immigration practitioners who developed expertise in representing individuals subject to the terrorism-related inadmissibility grounds (TRIG) at 8 U.S.C. 1182(a)(3)(B). I was part of a TRIG Working Group that met regularly with USCIS Headquarters personnel, I spoke frequently at conferences on TRIG issues, I wrote about TRIG, and I was referred many cases involving TRIG issues. CARRP impacted many of the same communities as TRIG.

18. Over the years, I estimate I have handled more than 50 cases that I suspect were subject to CARRP. Because CARRP is much less apparent than TRIG, the number of my clients subjected to CARRP could certainly be higher.

19. In my experience, even though USCIS never informs me or my clients that they are subject to CARRP, it is often apparent when one of my cases is subject to CARRP.

20. Often the first sign in an adjustment of status or naturalization case is the long delay before an interview is scheduled. In my CARRP adjustment of status and naturalization cases, the delay between the time of filing and the interview always exceeds the agency's average processing time, and can be anywhere from 1 to 5 years, or longer. In normal naturalization cases (i.e., those not subject to CARRP), the time between filing and interview is generally 6-9 months, and 9-12 months in adjustment of status cases. Admittedly, however, average processing times for adjudication of immigration benefit applications have increased across the board under the current administration.

21. Another tell-tale sign that a case is subject to CARRP is that the interview will initially be scheduled, and then it will be descheduled shortly before

the interview date. I believe the reason this happens in CARRP cases is because when an application moves from the National Benefits Center to a Field Office, it is automatically placed in queue to be scheduled for an interview. It is my understanding that in a CARRP case, once it reaches the Field Office, the Field Confirmation, Eligibility Assessment, and/or Internal/External Vetting stages of CARRP take place before the interview can occur. I estimate that at least one-third of my CARRP naturalization and adjustment of status cases are descheduled once their interview is initially scheduled. Sometimes it can take as long as a year or more before the interview is scheduled again. I rarely see descheduling of interviews in cases that are not CARRP or not involving Muslim applicants or applicants from Muslim-majority countries.

22. Other tell-tale signs include agents of the Federal Bureau of Investigation (FBI) showing up at my clients' homes or workplaces asking to speak with them. In these situations, often the agents will tell the client that they understand they recently filed an application with USCIS. This has happened in a number of my CARRP naturalization and adjustment of status cases. I can think of several instances where my clients reported to me that the FBI agents told them that the FBI could assist with moving their applications through the system, or even getting their applications approved, if they were willing to cooperate with the FBI.

23. Further signs that a case is subject to CARRP include: when a client is subject to unusual questioning in their interview, such as numerous or especially detailed questions about groups or organizations they belong to, countries to which they've traveled, mosques or places of worship they attend, academic subjects they may have studied, individuals with whom they associate, or particular friends or family members; if there are two officers present (rather than the usual one

officer); if the client is called in for multiple interviews; if the client receives Requests for Evidence (RFEs) that appear to be fishing expeditions or seek information that would not normally be requested of an applicant, such as religious affiliations or travel to certain countries.

24. Notices of Intent to Deny (NOID) Letters and denial letters, denying the applicant the requested benefit, can also make apparent that a person is subject to CARRP. Because CARRP instructs officers to find a way to deny a benefit, so long as the person is considered a national security concern, officers have to find a pretextual reason to deny the benefit because they will not tell the applicant the benefit is being denied due to the unresolved national security concern. As a result, NOID and denial letters, on their face, often reveal the agency's attempt to invent a reason to deny where the person is otherwise eligible. Very often the denial will be based on an insignificant issue that would not normally be the basis for a denial in a naturalization or adjustment of status case. For example, in my cases, I frequently see USCIS cite trivial inconsistencies, lack of detail about non-dispositive matters, insufficient documentation of tangential issues, or corrections the client has made to his or her application in the course of an interview or the adjudication process as the reason for the denial.

25. In addition to watching for signs that USCIS has put my clients' applications in CARRP, I also screen my clients at the outset to determine how likely it is that they will be subject to CARRP and advise them accordingly.

26. For example, I always ask my clients about their travel experiences. If a person sees the code SSSS on their boarding passes—a code that I understand to mean "Secondary Security Screening Selectee"—or if they are routinely subject to secondary inspection when they return to the United States from overseas travel, I suspect they are on the Terrorist Screening Database's (TSDB) Selectee List and

thus considered a KST who will automatically be subject to CARRP.

27. I also ask my clients if they have had any prior encounters with the FBI. For example, I ask them if the FBI has ever interviewed them, as many Muslim immigrants at different points in time since 9/11 have been visited by the FBI, often not in connection with any particular investigation. If a client tells me they have given an interview to the FBI, and that interview likely was conducted by an agent assigned to counterterrorism matters, then I know that they likely will have a positive hit on the FBI Name Check and result in my client being put in CARRP.

28. I also generally ask my clients about their travel histories; their affiliations with civic organizations, charitable organizations, and Islamic organizations; their professional backgrounds; countries to which they have traveled; and what subjects they may have studied in university, because I know that these can all be indicators that USCIS looks at to determine whether to put someone in CARRP.

29. At the outset of a case, if I believe my client may be subject to CARRP I will generally warn them that their applications may be subject to CARRP. I tell my clients that if that happens, they should expect their application to be unreasonably delayed, sometimes requiring federal litigation to compel the agency to adjudicate the application. I often advise my clients that the FBI may contact them after their application is filed. I advise them that these interviews are completely voluntary, and they should not speak with agents without me present, because anything they say to the FBI will be shared with USCIS and can easily be misconstrued. I have represented numerous clients in voluntary interviews with the FBI. In a number of cases, the FBI was seeking to recruit my client as an asset or source of information about other individuals or group. In other cases, the agents

were seeking information about a family member or acquaintance who may have been a person of concern. The agents typically did not reveal whether their interest was related to an open investigation. In a few cases, clients elected not to speak with the FBI. In others, they had initial discussions with them but later decided not to continue, for example if they were asked to inform on others. I believe a number of my clients who were contacted by the FBI were also subject to CARRP in their immigration applications.

30. In addition to my practice handling CARRP cases, I also have significant expertise in TRIG cases. I estimate I have handled more than 50 cases involving TRIG. As TRIG does not apply to naturalization, the cases I've handled involving TRIG issues were in the context of adjustment of status (Form I-485), immigrant visas, nonimmigrant visas, employment authorization, and defense against charges of removability in Immigration Court. I suspect that many of these cases are also subject to CARRP. I also have significant experience working on issues related to national security and immigration law in other contexts. For example, I've represented clients accused of importation of sensitive technology; acting as an unregistered agent of a foreign government; plotting actions contrary to the security of the United States; and contributing to organizations that support anti-American principles or ideologies.

31. The Plaintiffs have asked me to provide my opinions about USCIS's CARRP program as applied to naturalization and adjustment of status applicants, including whether CARRP leads to unreasonable delays, whether it leads the agency to deny applications in spite of applicants' eligibility, whether it treats applicants unfairly because they are not told that they are considered a possible national security concern nor given a chance to confront the allegation, and whether CARRP has the effect of discriminating against Muslim applicants or

applicants from Muslim-majority countries. The Plaintiffs have also asked me to provide my opinion about the impact of CARRP on individual applicants' lives and to offer suggestions for how to improve or reform CARRP, if at all.

Basis of Opinion

32. My opinions are based on my significant expertise practicing immigration law and particularly in national security-related issues in immigration law, my experience representing numerous clients over the years who I believe were subject to CARRP, and my long-standing familiarity with the CARRP program, policy guidance, training materials, and other USCIS documents.

33. I have also reviewed documents, statistics and testimony from discovery in this litigation that counsel for the Plaintiffs have provided to me. A list of the documents I have reviewed is attached as Exhibit B.

Eligibility for Naturalization (Form N-400)

34. Naturalization is the process by which a person can apply to become a U.S. citizen. Under the U.S. Constitution and the Immigration and Nationality Act (INA), there are three ways a person can be a U.S. citizen: through acquisition at birth, derivation after birth, or naturalization. Acquisition and derivation of U.S. citizenship happen automatically by operation of law and require no application. Naturalization, on the other hand, requires an application, interview, adjudication, and an oath ceremony.

35. Naturalization is not a discretionary immigration benefit. Rather, it is mandatory that USCIS grant the application if the applicant meets the statutory requirements. 8 C.F.R. § 335.3(a) (USCIS "*shall* grant the application if the applicant has complied with all requirements for naturalization . . . .") (emphasis added).

36. The requirements for naturalization are contained in Title III of the

Immigration and Nationality Act of 1952 (INA), § 310 et seq, codified at 8 U.S.C. § 1421 et seq. Generally, the criteria for eligibility to naturalize include: having lawful permanent resident status for at least 5 years (or 3 years if based on marriage to a U.S. citizen); demonstrating continuous residence in the U.S. for at least 5 years immediately preceding the date of filing the application for naturalization; showing the ability to read, write, and speak basic English; having a basic understanding of U.S. history and government; and being a person of "good moral character" and attached to the principles and ideals of the U.S. Constitution during the five years preceding the date of the application. 8 U.S.C. § 1427; 8 C.F.R. § 316.2(a)(7).

37. "Good moral character" under the statute, 8 U.S.C. § 1101(f), is defined by reference to what "good moral character" is not. An applicant is presumed to possess the requisite good moral character for naturalization unless, during the five years preceding the date of the application, they are found to be one of the following:

(1) A habitual drunkard;

(2) [Repealed]

(3) A member of one or more of the classes of persons, whether inadmissible or not, described in paragraphs (2)(D) [regarding prostitution], (6)(E) [regarding smugglers of illegal aliens], and (9)(A) [regarding aliens previously removed] of 8 U.S.C. § 1182(a); or subparagraphs (A) and (B) of 8 U.S.C. § 1182(a)(2) and subparagraph (C) thereof of such section (except as such paragraph relates to a single offense of simple possession of 30 grams or less of marihuana), if the offense described therein, for which such person was convicted or of which he admits the commission, was committed during such period;

(4) One whose income is derived principally from illegal gambling activities;

(5) One who has been convicted of two or more gambling offenses committed during such period;

(6) One who has given false testimony for the purpose of obtaining any benefits;

(7) One who during such period has been confined, as a result of conviction, to a penal institution for an aggregate period of one hundred and eighty days or more, regardless of whether the offense, or offenses, for which he has been confined were committed within or without such period;

(8) One who at any time has been convicted of an aggravated felony (defined in 8 U.S.C. § 1101(a)(43)); or

(9) Has engaged in conduct such as aiding Nazi persecution or participating in genocide, torture, or extrajudicial killings.

38. Importantly, being a national security concern based on a suspicion or unproven allegation (rather than a criminal conviction) is not a reason for finding that a person is not of "good moral character."

39. An applicant is barred from naturalizing for national security-related reasons in circumstances limited to those codified in 8 U.S.C. § 1424, including if, at any time within a period of ten years immediately preceding the filing of the application for naturalization or after such filing and before taking the final oath of citizenship, the applicant has advocated, is affiliated with any organization that advocates, or writes or distributes information that advocates "the overthrow by force or violence or other unconstitutional means of the Government of the United States," the "duty, necessity, or propriety of the unlawful assaulting or killing of any officer. . . of the Government of the United States," or "the unlawful damage, injury, or destruction of property."

40. The requirements to become a U.S. citizen are not onerous, nor are they intended to be. Indeed, "we do not require perfection in our new citizens."

Klig v. U.S., 296 F.2d 343, 346 (2nd Cir. 1961). Rather, the law allows for the opposite, requiring only that a person have "good moral character" in the five years preceding filing their application.

41. The only life-time bar to demonstrating "good moral character" is for individuals who have convictions considered "aggravated felonies" as defined in 8 U.S.C § 1101(a)(43). This bar was added to the statute on November 29, 1990 and is only applicable to convictions obtained on or after that point. 8 C.F.R. § 316.10(b)(1)(ii).

42. Courts have long recognized and acknowledged that people who have done objectively terrible things are not beyond redemption and can prove good moral character for naturalization – that is, the standard is not who a person *was* at some point in the past, but who they are today. *See* 8 C.F.R. § 316.10(a)(2). For example, in *Lawson v. U.S. Citizenship and Immigration Service*, 795 F.Supp.2d 283 (S.D.N.Y. 2011), the Court held that a man had good moral character and was eligible to naturalize, despite having killed his wife in the late 1980s and been convicted of manslaughter in the first degree.

43. Generally, by the time a person is eligible to apply for naturalization, he or she has lived in the United States for some time, as a lawful permanent resident and often in another status before that. In my experience, many people become lawful permanent residents after they have already lived in the United States in some other form of non-immigrant status.

44. The application for naturalization is often referred to as Form N-400, or simply N-400. After filing the N-400, a person must provide biometrics, complete a naturalization interview, and—if successful—take the oath of allegiance to become a U.S. citizen. The INA imposes a statutory time limit for adjudication of naturalization applications. Generally, Forms N-400 must be

adjudicated within 120 days after a naturalization examination has been conducted. 8 C.F.R. § 335.3(a). If there is no adjudication within 120 days, a naturalization applicant may apply for relief from a United States district court. 8 U.S.C. § 1447(b).

Eligibility for Adjustment of Status to Lawful Permanent Resident (Form I-485)

45. The requirements to become a lawful permanent resident (LPR) vary depending upon the category under which a person applies. For instance, an individual can become an LPR through sponsorship by a family member; through employer sponsorship; after being granted asylum or refugee status; as a Special Immigrant; as a victim of crime, human trafficking, or abuse; or through another eligibility category. Each category has its own eligibility requirements.

46. For adjustment of status applications based on marriage to a U.S. citizen, the requirements are:

- Applicant must be inspected and admitted or paroled into the United States;
- Applicant must be the beneficiary of an approved immediate relative visa petition (Form I-130) filed by U.S. citizen spouse;
- Must demonstrate that marriage to U.S. citizen spouse is bona fide and was not entered into solely for the purpose of obtaining an immigration benefit;
- Applicant must be otherwise admissible – i.e., not inadmissible under any of the grounds enumerated in section 212 of the INA, 8 U.S.C. §1182 – unless granted a waiver of such inadmissibility;
- Must merit adjustment of status in the exercise of discretion.

47. In general, the first step is to file an immigrant petition. Often a person (the petitioner) files the immigrant petition for the noncitizen applicant (the beneficiary); in some cases, however, the beneficiary can file the immigrant petition for him or herself. If USCIS approves the immigrant petition, and a visa is available in the beneficiary's eligibility category, the beneficiary must file an adjustment of status application with USCIS or an immigrant visa application with the Department of State. The green card applicant must then go to a biometrics appointment, complete an interview, and await a decision on his or her application. The relevant application is called Form I-485, or simply I-485, and the process of applying for a green card from within the United States is often referred to as adjustment of status.

48. Congress has instructed that "the processing of an immigration benefit application," such as an I-485, "should be completed not later than 180 days after the initial filing of the application." 8 U.S.C. § 1871(b). However, the 180-day limit is not mandatory.

49. Most, but not all, adjustment of status applications are subject to an exercise of discretion by the Attorney General or Secretary of Homeland Security. *See* 8 U.S.C. § 1255(a). Green card applications that require a favorable exercise of discretion include adjustment through family and employer sponsorship; the Diversity Visa program; adjustment as a human trafficking victim, crime victim, or battered spouse or child; applications under the Cuban Adjustment Act; Lautenberg parolees; and diplomats or high-ranking officials unable to return to their home countries. If an officer determines that an applicant meets the eligibility requirements for LPR status, the officer must then determine whether the application should be granted as a matter of discretion. However, the U.S.

government has held the position that absent compelling negative factors, an officer should exercise favorable discretion over an application that satisfies all eligibility requirements and approve the application. *See Matter of Lam*, 16 I&N Dec. 432 (BIA 1978); *Matter of Arai*, 13 I&N Dec. 494 (BIA 1970).

50. Adjustment of status applications that are not subject to an exercise of discretion by the Attorney General, and are thus mandatory, include adjustment of status for refugees and asylees. 8 U.S.C. § 1159; 8 C.F.R. § 209.1(e) ("USCIS will approve the application, admit the applicant for lawful permanent residence as of the date of the alien's arrival in the United States, and issue proof of such status.")

51. A person may be ineligible for adjustment of status for reasons related to national security. Any individual who has sought to enter the United States to engage in espionage or sabotage of the United States is inadmissible. 8 U.S.C. § 1182(a)(3)(A). Further, any individual who is a member of a terrorist organization or who has engaged or engages in terrorism-related activity is inadmissible. *See* 8 U.S.C. § 1182(a)(3)(B). The terrorism-related bars to admission are commonly referred to as the Terrorism-Related Inadmissibility Grounds, or TRIG. The TRIG inadmissibility grounds are also grounds for deportability. *See* 8 U.S.C. § 1227(a)(4)(B).

52. However, the Secretary of State and Secretary of Homeland Security can and do grant exemptions from the TRIG grounds, either as a group-based exemption or in an individual person's case. *See* 8 U.S.C. § 1182(d)(3)(b). For example, the government has granted situational exemptions from TRIG where an applicant provided material support to a terrorist group only under duress or where they provided medical care to a member of a terrorist organization. Certain groups and organizations have been granted blanket exemptions from the TRIG inadmissibility grounds, as well.

TRIG vs. CARRP

53. There are a number of significant differences between TRIG and CARRP. TRIG is a statutory inadmissibility established by Congress in the INA. TRIG necessarily is only relevant to the adjudication of immigration benefits for which a determination of admissibility is made. By contrast, CARRP is a secretive executive branch program, created with no approval or direction from Congress and no oversight. It applies agency-wide to the adjudication of a wide variety of immigration benefits, including those for which admissibility is not determined.

54. An October 2015 training for USCIS's Refugee, Asylum, and International Operations Directorate (RAIO) officers, explains that while "TRIG is a legal **inadmissibility**," CARRP is "an internal USCIS policy and operation guidance." DEF-00231014 (emphasis in original).

55. CARRP's broad standards applies to far more applicants than does TRIG. For instance, under the TRIG statute, an individual who "did not know, and should not reasonably have known," that he or she was providing "material support" to a "terrorist organization" or that the recipient planned to commit a terrorist activity is neither inadmissible nor removable. 8 U.S.C. § 1182(a)(3)(B)(iv)(VI)(dd). But CARRP orders officers to look far beyond the TRIG statute for indicators of national security concerns, and specifically instructs that "the facts of the case do not need to satisfy the legal standard used in determining admissibility or removability" to constitute a national security concern. CAR000084.

56. The government's own training materials show that CARRP sweeps more broadly than TRIG. The October 2015 presentation referenced earlier explains, "All TRIG cases are CARRP cases but not all CARRP involves TRIG." The slide accompanying this text displays three concentric circles. "CARRP" is

the largest circle. Contained fully inside it is a smaller circle labeled "TRIG." Contained fully inside that smaller circle is the smallest circle, labeled "TRIG Exemption." DEF-00231014. A packet from RAIO officer training affirms this characterization: "[A]ll cases in which the [TRIG] INA § 212(a)(3)(B) grounds apply are national security concerns under CARRP . . . ." DEF-00230848. In sum, CARRP covers a much broader swath of facts than TRIG.

57. CARRP allows USCIS to deny immigration benefit applications on national security grounds based on subjective hunches, without the sort of definitive proof needed for a TRIG determination. A document produced by the government comparing TRIG and CARRP states that while "TRIG is a straight up application of the law," "CARRP is a subjective assessment that the individual is a threat." DEF-00045893. The same document has a short "Question and Example" section which asks, "Why is CARRP subjective and TRIG exact if they use the same section of the law?" The response states in part, "CARRP derives what is a National Security activity from the TRIG sections of law, *but CARRP is not law and does not have the weight of law*." DEF-00045893 (emphasis added). Thus, a large swath of immigration benefit applications that do not trigger the statutory inadmissibility grounds under TRIG may nevertheless get caught in CARRP processing due to an officer's "subjective" and uncorroborated belief. CARRP therefore imposes substantive criteria—unmoored from statutes—onto the adjudication of certain immigration benefit applications.

58. TRIG is more transparent than CARRP. When an immigration benefit is denied on the basis of TRIG, USCIS is required by law to disclose to the applicant that the denial was due to TRIG, as well as the basis for that finding. 8 C.F.R. § 103.2(b)(16)(i)–(ii). This requirement includes disclosing facts to the applicant and affording the applicant "an opportunity to rebut the information and

present information in his/her own behalf before the decision is rendered." *Id.* at § 103.2(b)(16)(i). In CARRP, the agency does not disclose to applicants that USCIS has flagged them as a "national security concern," nor does the agency provide them an opportunity to respond.

59. To illustrate with some examples from my own cases, when USCIS has declared an intent to deny my clients requested benefits due to TRIG, its letters have explained that TRIG is the basis for the intended denial. Normally USCIS will issue a Request for Evidence (RFE) or Notice of Intent to Deny (NOID) informing the applicant of the TRIG concern and provide the applicant an opportunity to submit documents or other evidence in response to the concern. We will then typically provide a sworn affidavit from the client explaining his or her activities, associations, or involvement with a particular organization that may have been flagged as a reason for concern.

60. To provide but a few examples, I have successfully represented clients who were initially found inadmissible or deportable under TRIG for their involvement with groups including the Kurdish Democratic Party (KDP) (Iraq); the Oromo Liberation Front (OLF) (Ethiopia); the Ethiopian Peoples Revolutionary Party (EPRP) (Ethiopia); the Sudanese Peoples Liberation Movement (SPLM) (Sudan); the Democratic Unionist Party (DUP) (Sudan); the Umma Party (Sudan); Jamaat-e-Islami (Pakistan); the Rwandan Patriotic Front (RPF) (Rwanda); the All Burma Students Democratic Front (ABSDF) (Burma); the Communist Party of Nepal-Maoist (CPN-M) (Nepal); and Mohajedin-e Khalq (MEK) (Iran). Typically, clients will provide a detailed sworn affidavit that describes their involvement with a particular group, along with any available corroborating evidence such as statements from others or country condition reports, to meaningfully respond to the government's TRIG concerns and

demonstrate that they did not engage in activities that make them subject to TRIG. Alternatively, clients will present evidence to establish that they qualify for one of the group-based exemptions to TRIG, as promulgated by the Secretary of Homeland Security.

61. By contrast, in CARRP cases the denial letters, NOIDs, and RFEs are entirely pretextual, usually citing concerns that are insubstantial or trivial and have nothing to do with national security, as described in greater detail below.

62. The requirements in 8 C.F.R. § 103.2(b)(16)(i)–(ii), requiring the agency to provide the grounds for a denial in TRIG cases, make a significant difference to clients' ability to clarify national security concerns and challenge their validity. As noted, once an applicant has been afforded the opportunity to fully explain his or her activities or involvement with a particular group, and respond specifically to the government's articulated TRIG concerns, in my experience many applicants are then cleared and found not subject to TRIG. Alternatively, they are found eligible for a discretionary exemption and ultimately granted the requested benefit. The initial TRIG concern will often arise based on a previous statement made by the applicant, such as in an asylum application, or on open source information about a group with which the applicant may have had only an insignificant affiliation – or no affiliation at all. Once permitted to fully explain and present relevant facts and evidence, applicants subject to TRIG concerns often are able to assuage the government's national security concerns and be found eligible to receive the sought-after immigration benefit.

63. In TRIG cases, where the agency has provided a notice of intent to deny or a denial letter, we have succeeded in reversing the agency's finding of inadmissibility by responding to agency misunderstandings and clarifying a client's activities that may have led to an initial finding of inadmissibility. In those

cases, had the agency not disclosed the basis for its findings, we would not have been able to correct the misunderstanding and help the agency come to a correct decision based on accurate information. For example, a Rwandan client of mine, who was a survivor of the Rwandan genocide, had been granted asylum based on her experiences. She later applied for adjustment of status and experienced lengthy delays. Eventually, USCIS issued a NOID that accused her of being inadmissible under TRIG owing to her alleged support for the Rwandan Patriotic Front (RPF) during the time of the genocide. We submitted a detailed affidavit in response to the NOID, along with other corroborating evidence, which demonstrated that the client had not actually been a member or meaningfully associated with the RPF. Rather, she had sheltered an RPF member from attack because he was a neighbor and acquaintance, but not arising from any political motivation or affiliation with the group. My client was ultimately found not to be inadmissible under TRIG and was granted permanent residence. She is now a U.S. citizen.

64. In another example, a Pakistani client was accused of being deportable under TRIG for having paid a "jagga tax" – essentially, extortion at gunpoint – to Jamaat-e-Islami, a Pakistani political organization. The government alleged that Jamaat-e-Islami was a subgroup of Hizb-ul-Muhahedin, a violent extremist group active in the Indian state of Jammu and Kashmir. Through evidence and expert testimony, we successfully proved that Jamaat-e-Islami did not meet the "subgroup" definition under the INA, and thus could not be deemed a qualifying "terrorist organization." My client was ultimately found not deportable on TRIG grounds and was granted lawful permanent residence. These are but two of numerous examples in which we were able to overcome alleged TRIG inadmissibility and obtain the requested immigration benefit for a client.

65. The reverse is true with CARRP. Without ever having the information

the agency is relying on to label the applicant a national security concern, and without the agency ever informing the applicant of the reason or reasons for the denial, it is impossible to respond and explain any misunderstandings or to correct the record.

66. The differences between TRIG and CARRP I have summarized above inform my opinion that CARRP exceeds the statutory basis for national security- and terrorism-related inadmissibility grounds provided in 8 U.S.C. § 1182(a)(3)(B). In effect, CARRP creates criteria for earning an immigration benefit that do not exist in any statute or regulation, but only in a secret internal USCIS policy about which applicants are never given notice. CARRP represents an attempt by USCIS to circumvent Congress's intent, which has already enacted security- and terrorism-related bars to admission that it has determined are sufficient to protect the national security.

Pretextual Denials

67. In CARRP, so long as USCIS considers an applicant a national security concern (even if the concern is based only on an "indicator" and cannot be confirmed to have an "articulable link"), the policy instructs officers to find a way to deny the application, even if the applicant is statutorily eligible for the benefit sought. USCIS officers are not permitted to base a decision to deny an application on the national security concern that put the application in CARRP, nor are they permitted to reveal that there is a national security concern or that the applicant is subject to CARRP. The officer must identify "*statutory* grounds of ineligibility that can be cited in a decision." DEF-00231026. *See* DEF-00063685. Unlike TRIG, a "national security concern" in CARRP is just a USCIS-invented concept, it is not a statutory ground of ineligibility. In fact, it is not related to the person's eligibility for the benefit it all. CAR 000611 (the definition of a CARRP national security

concern "is not eligibility related"). Accordingly, USCIS instructs officers processing and adjudicating CARRP cases to come up with statutory grounds for denial, even where the person is statutorily eligible – meaning, officers are instructed to find pretextual, non-national security reasons to deny the applications.

68. USCIS instructs officers that so long as a case is still in CARRP – because there is a national security concern that is not resolved through vetting – the end goal is to deny the application.

69. The training modules for the FDNS CARRP weeklong training describe this process in detail. One module states that if you have an individual who is no longer a national security concern, there is one "easy outcome = approval (if they're otherwise eligible)." But if the concern remains, "either a senior leader (at the field level if it's a non-KST, or at the D2 level if it's a KST) signs off on approving. . . or we have to find a way to not have to approve." Vetting, it says, can be used "towards the specific end of not approving an NS concern." DEF-00063663.

70. Another set of slides describes how "[t]he challenge comes when the individual seems eligible, but we've done enough vetting to know that we're probably not going to be able to resolve the concern. . . So what do we do?" CAR001273. It then goes on to describe a shift in vetting, from vetting focused on establishing or resolving the concern, to vetting focused on establishing a basis to deny the application. CAR-001275. [redacted] *Id.* The purpose, the training instructs, is to "[r]esolve the concern, or deny the case."

71. This same training then goes on to describe a separate form of vetting called "lead vetting," described as "the act of building a separate evidentiary basis for a decision." CAR001291. The instruction then explains "we know we have a person . . . that we would like to not approve [ ] because they are an unresolved NS concern . . . [a]nd we know that whatever facts lay in between [from vetting] – we probably can't use in a decision. . . So we use parallel construction to build a new path from the starting point (our person) to the ending point (we need to deny them) . . . We'[ve] already tried to attack the first part of this and demonstrate that the concern can be resolved. . . Now we're going to try to find a way to deny [ ] using only facts that we can disclose/leverage in a decision . . . In other words, we're going to end up in the same place, but we're going to blaze a new trail to do it." *Id.*

72. Another training slide instructs that when a CARRP case makes it to the adjudication stage and an individual is eligible for the benefit but it still considered a national security concern, because an officer hasn't found evidence to resolve the national security concern and the officer hasn't found evidence to "kick[] up indicators [of a concern] to an articulable link . . . What if we get to adjudication and haven't found any evidence either way? Nothing to disprove the indicators we initially referred on, but also nothing to substantiate an articulable link? . . . what do we do?" DEF-00063669. The training then instructs officers to look for statutory grounds to deny and to think about "lead vetting." DEF-00063686. "Must be statutory, but . . . CARRP gives you additional latitude . . . Are we normally going to deny for failure to notify of a change of address, returning to one's country of claimed persecution, or lack of attachment? . . . Not normally – but in CARRP, we don't take anything off the table." The training goes on, "So what kind of ineligibility are we talking about? . . . Probably NOT the INA

NS grounds . . . Must be something that we can cite to . . . This is where your lead vetting yields results. We must be able to substantiate our ineligibility." *Id.*

73. CARRP's path to a pretextual denial and the way officers are instructed to get there, including through "lead vetting" and "tak[ing] nothing off the table," is entirely consistent with the CARRP denials I've seen in my clients' cases.

74. Perhaps no case better exemplifies the human toll the CARRP program can take on an innocent family than the case of my clients, [redacted] The CARRP program is the reason they are currently in removal proceedings and not yet U.S. citizens. But for the CARRP program, it is highly likely they would be U.S. citizens by now, because they meet the eligibility criteria for both adjustment of status and naturalization. CARRP has cost them tens of thousands of dollars in legal fees, depression, humiliation, stress and anxiety associated with being in removal proceedings, lost income, loss of health insurance (which was particularly costly, because [redacted] son, a U.S. citizen, suffers from congenital heart defects and requires highly specialized care), and the inescapable feeling that the U.S. government does not want them here, even though they have done nothing wrong and are, by all accounts and in all respects, exemplary members of American society.

75. [redacted] from Pakistan. [redacted] U.S. citizen children. They live in [redacted].

76. [redacted] is a highly respected physician. [redacted]. He completed his residency at [redacted]

[redacted].

77. I recently read patient reviews about [redacted] and was not surprised to learn that his patients describe him as a "wonderful man" who is "kind and informative." They say that he provides "excellent" care, delivered with "compassion." His understanding bedside manner is likely the result of his own experience [redacted].

78. Many of [redacted] cancer patients come from low-income families. One of the hospitals where he treats his patients is located in an area designated by the U.S. Department of Health and Human Services as a Health Professional Shortage Area. Among [redacted] patients are a substantial number of veterans.

79. [redacted] first entered the United States in [redacted] in H-1B nonimmigrant status. At the time, [redacted]; in any case, he was not subjected to CARRP until after he filed to adjust his status to that of lawful permanent resident, which he did in [redacted].

80. [redacted] received H-1B nonimmigrant status—also known as a "specialty occupation" visa—to practice internal medicine at [redacted]. He worked for that hospital for approximately [redacted], returning to Pakistan in [redacted]. During this [redacted] continuously maintained valid nonimmigrant status.

81. [redacted] returned to the United States in [redacted] again on an H-1B visa, to pursue [redacted]. He maintained valid H-1B nonimmigrant status until [redacted], by which point he was an applicant for adjustment of status and therefore deemed lawfully present.

[redacted] has continuously resided in the United States since [redacted].

82. In [redacted] self-filed Form I-140 Immigrant Petition for Alien Worker under 8 U.S.C. §1153(b)(2), which makes visas available to certain foreign nationals who are members of the professions holding advanced degrees or foreign nationals of exceptional ability.

83. Ordinarily, for a foreign national to obtain permanent resident status through employment, the foreign national's *employer* must file the I-140 petition on the foreign national's behalf. However, Congress has authorized certain individuals to self-file and waive altogether the permanent labor certification process—by which the Department of Labor must certify, among other things, that there are no qualified U.S. workers willing and able to perform the desired labor—when it would be in the national interest to do so. 8 U.S.C. §1153(b)(2)(B). USCIS may grant a so-called "national interest waiver" if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that he or she is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the job offer and labor certification requirements. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

84. [redacted] Form I-140, Immigrant Petition for Alien Worker, and National Interest Waiver (NIW) were approved by USCIS in [redacted]

85. In [redacted] filed a Form I-485 Application to Register Permanent Residence or Adjust Status with USCIS. Because [redacted] applied for adjustment of status while they were in lawful H-1B status, they were not considered unlawfully present for the period during which his application was pending. *See* USCIS Adjudicator's Field Manual, Ch. 40.9.2(b)(3)(A).

86. At some point after the [redacted] applied for adjustment of status, their applications became subject to the CARRP program. To be clear, the U.S. government has never directly represented to me or the [redacted] that their applications were "CARRP'ed". But I am convinced they now fall under the CARRP program for several reasons. First, whenever [redacted] travels by plane, his boarding passes—which he cannot obtain at a kiosk like other passengers—include the Secondary Security Screening Selectee List notation, "SSSS." Second, [redacted] applications for adjustment of status, as noted below, were pending for an extraordinarily long time. Third, [redacted] received a clearly pretextual denial of his adjustment of status application.

87. The [redacted] do not know why USCIS considers them "national security concerns" within the meaning of the CARRP policy. They have certainly never done anything that endangers U.S. national security or public safety. I suspect the reason his applications were CARRP'ed relates to his generous financial support for an Islamic religious school in [redacted] But, to my knowledge, nothing that poses a national security concern has ever occurred at the school.

88. [redacted] retained my law firm in [redacted] to file a petition for a writ of mandamus to compel adjudication of his and his wife's then long-pending applications for adjustment of status. We filed our petition in [redacted] in U.S. District Court for the Southern District of [redacted]. At that point, the [redacted] applications had been pending for over three and a half years in total. At the time we filed our complaint, the USCIS [redacted] Field Office averaged five months to adjudicate adjustment of status applications, thus the [redacted] applications were pending for more than three years beyond normal processing times.

89. Following initiation of the lawsuit, USCIS scheduled the [redacted] for

an interview on their adjustment of status applications. I attended that interview with them at the USCIS [redacted] Field office.

90. At the conclusion of the interview, the [redacted] were issued a Request for Evidence (RFE), seeking a copy of [redacted] original birth certificate, tax transcripts from [redacted], documents related to the [redacted] residence at a rent-subsidized apartment complex, and vehicle registration records. The [redacted] filed a timely and comprehensive response to the RFE.

91. In [redacted], USCIS issued a Notice of Intent to Deny (NOID) [redacted] adjustment of status application. The NOID stated, among other things, that [redacted] had failed to submit proper documentation related to his birth, that [redacted] application should be denied because he had failed to file change of address forms with USCIS, and that he did not merit a favorable exercise of discretion. Again, we filed a timely and comprehensive response.

92. In [redacted], USCIS denied [redacted] application for two stated reasons: (i) [redacted] had failed to establish his identity; and (ii) he did not merit a favorable exercise of discretion. As [redacted] eligibility for adjustment of status derived from her husband's, her application was likewise denied. These reasons appeared to me to be clearly pretextual.

93. To begin, the notion that USCIS has concerns about [redacted] identity is belied by the fact that it *repeatedly* granted him H-1B nonimmigrant status. To be granted H-1B nonimmigrant status or, for that matter, adjustment of status, an applicant must undergo background checks and submit voluminous evidence in support of his or her eligibility. *See* USCIS Form I-539 Instructions, Application to Extend/Change Nonimmigrant Status; *see also* USCIS Form I-485 Instructions, Application to Register Permanent Residence or Adjust Status. It simply strains credulity that the real reason USCIS denied his adjustment of status

application related to concerns regarding his identity. After all, a Freedom of Information Act (FOIA) request revealed that USCIS had in [redacted] Alien File over 1,500 pages of records pertaining to him.

94. The claim that [redacted] did not merit a favorable exercise of discretion is likewise difficult to take seriously. In *Matter of Arai*, 13 I&N Dec. 494, 495-96 (BIA 1970), the Board of Immigration Appeals (BIA) clarified that absent compelling negative factors, USCIS should favorably exercise discretion over an application for adjustment of status. *See also* USCIS Policy Manual Vol. 7, Part A, Ch. 9, §B.2. In [redacted] case, there were (and are) no compelling negative factors that would justify an adverse discretionary determination. [redacted] has no criminal history. He has not committed fraud. He has not failed to pay child support or alimony. He has not been previously deported, nor had he worked without authorization or accrued any unlawful presence at the time his application was decided. He has not falsely represented himself as a U.S. citizen. He has not provided material support to a terrorist organization. Indeed, he has engaged in *none* of the behavior that could support a discretionary denial of adjustment of status.

95. To justify its position, the NOID pointed to nothing but a handful of trivial examples of [redacted] failure to adhere to our byzantine immigration law, like his oversight in not filing a change of address form, which is something noncitizens routinely fail to do without consequence. In fact, our NOID response contained sworn declarations from three experienced immigration lawyers—one based in Tennessee, one in Idaho, and one in Washington—all of whom stated that they had represented countless individuals who had failed to file change of address forms, and not one of their clients was ever denied adjustment of status on that basis.

96. Not only were there no negative factors in his case, the positive factors were manifold. First, [redacted] was (and remains) eligible for adjustment of status. Second, he has always complied with U.S. immigration law. Third, he is the loving father of three U.S. citizen children. Fourth, [redacted] children, especially his son, [redacted], who suffers from health problems, would endure extreme hardship if the family were not permitted to reside lawfully in the United States, because he requires specialized medical care that is not available in Pakistan. Fifth, at the time USCIS adjudicated his adjustment of status application, [redacted] had resided in the United States for roughly a decade and had just recently completed the purchase of his home. Sixth, [redacted] was (and remains) a highly accomplished oncologist who has treated hundreds of cancer patients. Seventh, [redacted] was (and remains) well-respected in his community where he is known for his charitable nature, giving both his money and his time and expertise to make his community a better place to live.

97. In [redacted], shortly after USCIS denied the [redacted] applications, I sent a letter to the Field Office Director of the USCIS [redacted] Field Office respectfully requesting that [redacted] be issued a Notice to Appear (NTA) for removal proceedings. I wanted [redacted] to be able to renew his application for adjustment of status before a U.S. Immigration Judge (IJ) with the Executive Office for Immigration Review (EOIR), where the law—not CARRP—would control. *See* 8 C.F.R. §245.2(a)(5)(ii) (noting that an applicant for adjustment of status whose application is denied by USCIS "retains the right to renew his or her application in [removal] proceedings…."). I noted in my letter that issuance of NTAs to [redacted] was required by a recently promulgated USCIS Policy Memorandum, because the [redacted] underlying H-1B status had expired several years prior. *See* USCIS Policy Memorandum 602-0050.1, Updated

Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens (June 28, 2018). Under the policy, "USCIS *will issue* an NTA where, upon issuance of an unfavorable decision on an application, petition, or benefit request, the alien is not lawfully present in the United States." *See id*. at 7 (emphasis added). It was a modest ask – all my clients wanted was what the regulations plainly contemplate: a chance to make their case before an IJ.

98. Instead of adhering to its own policy and issuing NTAs to the [redacted], which would have given them a chance to renew their applications before an IJ and reacquire employment authorization, USCIS left the family in limbo. [redacted] lost his employment authorization—which was previously issued to him based on his pending application for adjustment of status, 8 C.F.R. § 274a.12(c)(9)—and had to quit his job, resulting in substantial financial loss. He also lost his health insurance, which required him to pay significant out-of-pocket expenses for his son, who, during that time, required multiple appointments with his treating specialists, pediatric cardiologists who work in the Boston area. [redacted] lost her driver's license, which compounded the depression she was then enduring as a result, at least in part, of the stress brought about by the family's immigration troubles and by her related inability to travel abroad to attend her sister's wedding in Pakistan or the birth of her nieces. Moreover, during that time, [redacted] cancer patients suffered because of the acute and unexpected shortage of oncological expertise in the hospitals where he had admitting privileges.

99. Thus, following USCIS's denial of the [redacted] adjustment of status applications and the agency's refusal to place them into removal proceedings, the [redacted] were left with no choice but to file another lawsuit, again in the U.S.

District Court for the Southern District of [redacted]. This action was filed in [redacted] The injury the [redacted] were enduring as a result of USCIS's pretextual denial were on full display in exhibits we filed with our motion for a preliminary injunction, which documented much of the harm noted in the preceding paragraph. Nevertheless, rather than issuing NTAs, the government vigorously fought that lawsuit, arguing for a maximalist interpretation of various jurisdiction-stripping provisions in the Immigration and Nationality Act. The aggressive litigation posture of the government entailed additional legal fees at a time when [redacted] was not receiving a salary. It was not until the presiding judge issued a decision denying a motion to dismiss filed by the government that DHS finally yielded and did what their policy required them to do all along – place the [redacted] into removal proceedings.

100. The NTAs issued to the [redacted] were filed with the Chicago Immigration Court in [redacted]. Once the NTAs were filed, the [redacted] were finally able to file to renew their adjustment of status applications before the IJ. Their final hearing is scheduled for [redacted]. If their applications are granted by the IJ at their final hearing—and, we have every reason to believe they will be, because the [redacted] meet the statutory criteria for adjustment of status and plainly merit a favorable exercise of discretion—it will be just over a decade from when they initially applied for adjustment of status.

101. The case of another of my clients, [redacted], is likewise one that, in my judgment, highlights how wrongheaded the CARRP policy is. [redacted] is an Iraqi-born dentist who resides in Northern Virginia. He filed Form N-400, Application for Naturalization, with USCIS in [redacted]. Over the course of the next two years, [redacted] inquired countless times with USCIS regarding the status of his case. Nevertheless, USCIS failed to schedule him for an interview.

It was not until my office sent a letter indicating we would file a mandamus action absent prompt scheduling of an interview that [redacted] was finally scheduled for his interview.

102. [redacted] was interviewed in [redacted] at the USCIS Washington Field Office. My colleague accompanied [redacted] to his interview and shared with me that the bulk of the officer's questions concerned a relative of [redacted] wife who had apparently—and unbeknownst to [redacted]—listed [redacted] and his wife as a point of contact on a nonimmigrant visa application he had filed. At the conclusion of the interview, following [redacted] credible testimony that he was unaware of the filing of the nonimmigrant visa application, the officer indicated that he was inclined to rule in [redacted] favor and grant the N-400 naturalization application.

103. The point of relaying [redacted] story is to highlight how nonsensical the CARRP program is. Where USCIS has concerns about an individual, it should raise and lawfully address those concerns, rather than leaving benefits applicants in a state of purgatory.

Unreasonable Delays

104. As I mentioned above, unreasonably long delays in USCIS's processing and adjudication of immigration benefit applications is a hallmark of CARRP cases.

105. I have reviewed the statistical information in the initial disclosure produced by Defendants to Plaintiffs in the document titled "2020-06_Wagafe_Internal_Data_FY2013-2019_(Confidential_Pursuant_to_Protective_Order).xlsx." The data reveal that, after this litigation was filed, the number of CARRP'd I-485 or N-400 applications that were adjudicated per year more than doubled when compared to prior to this

litigation. For instance, from FY 2013 through FY 2016, USCIS adjudicated a total of 2,629 CARRP'd I-485 applications (about 657 applications per year), while from FY 2017 through FY 2019, USCIS adjudicated a total of 4,687 CARRP'd I-485 applications (about 1,562 applications per year). Thus, the mean number of I-485 applications in CARRP that were adjudicated per year more than doubled after this lawsuit was filed. Similarly, from FY 2013 through FY 2016, USCIS adjudicated a total of 5,905 CARRP'd N-400 applications (about 1,476 applications per year), while from FY 2017 through FY 2019, USCIS adjudicated a total of 9,173 CARRP'd N-400 applications (about 3,058 applications per year). Thus, the mean number of N-400 applications in CARRP that were adjudicated per year more than doubled after this lawsuit was filed.

106. The significant differential in these adjudication rates before and after Plaintiffs filed this lawsuit help show why, prior to this lawsuit, so many individuals had to resort to mandamus litigation to get USCIS to adjudicate applications stuck in CARRP.

107. I am aware that after Plaintiffs filed this lawsuit there was an effort by USCIS Headquarters to review and decide "adjudication ready" CARRP applications that were simply not being acted on, and that, according to the deposition testimony of Daniel Renaud, USCIS adjudicated approximately 6,000 of those cases in a two year period since the filing of the lawsuit. Renaud Dep. 125:19-20; 121:20-125:15.

108. This effort appears to be reflected in USCIS's data. As explained, the mean numbers of I-485 and N-400 applications in CARRP that are adjudicated per year have more than doubled since this lawsuit was filed. As an illustrative example, in FY 2016 USCIS adjudicated 835 CARRP'd I-485 applications, but in FY 2019, USCIS adjudicated 2,008 such applications—a 140% increase in the

number of applications adjudicated per year.

109. These low adjudication rates in CARRP naturalization and adjustment of status cases, particularly before this lawsuit was filed, are consistent with my own experience. Very often CARRP cases require federal mandamus litigation to force USCIS to make a decision. Absent this, it is my experience that CARRP cases will simply remain undecided indefinitely. I have had clients who waited between 3 and 16 years for a decision on their application before I ultimately sued on their behalf to compel the agency to render a decision.

110. In the vast majority of my CARRP naturalization and adjustment of status cases, I have had to file federal court mandamus litigation in order to force the agency to adjudicate the client's application.

111. Very often clients come to me to help them file mandamus litigation, because most immigration lawyers do not practice regularly in federal court.

112. Federal mandamus litigation is expensive and only clients with significant financial resources can afford to pursue this sort of remedy. As a result, I believe that far too many people who are subject to CARRP simply remain in backlogs that, for some people, are indefinite without any avenue to force a decision, because they cannot afford to bring federal litigation.

113. Especially prior to this lawsuit, but continuing today, many CARRP cases never get adjudicated without federal litigation to compel a decision, because CARRP makes it very difficult, and in some cases impossible, for a USCIS officer to approve any case where there is an "unresolved" national security concern. Not only does the policy (and implementing guidance and training) make clear that officers are to find a way to deny a CARRP case if they cannot resolve the national security concern, but CARRP cases may not be approved unless by Headquarters (if concerning a KST) or by the District Director in the Field (if concerning a non-

KST).

114. I have reviewed deposition testimony in this case that indicated only a handful of KST cases have been reviewed by Headquarters (through the Senior Leadership Review Board (SLRB)) process since it was begun. Clearly, for KSTs, it is virtually impossible for their applications to be granted, even if they are eligible, unless they are removed from the watchlist. Given this significant impediment to approval, in cases where the individual is eligible and an officer has not found a way to generate a pretextual denial through "lead vetting" or otherwise, they will simply remain unadjudicated.

115. For non-KSTs, impediments to approval are significant as well. Where a non-KST concern cannot be resolved, there is little incentive for an officer to push a case through to approval. CARRP bakes in institutional bias against an officer wanting to sign their name to the approval of a case where there is an unresolved national security concern, however attenuated or unsubstantiated that indicator or concern might be. CARRP trainings emphasize this point, teaching officers that "[t]here's no such thing as zero risk" and asking them to apply the "New York Times Test" to "consider your actions and how they would be perceived if they were documented on the cover of the New York Times." DEF-00145418-19. Even where an officer decides to fight for the approval of a non-KST, it is ultimately not their choice, as the District Director has to concur in the officer's recommendation. As a result, like KST applicants, there is little incentive for USCIS officers to adjudicate CARRP cases favorably, leading cases that are eligible for the benefit to sit in prolonged periods of delay without adjudication.

Deconfliction, the FBI Name Check, and Withholding of Adjudication

116. "Deconfliction" in CARRP is described as the "[t]he coordination between USCIS and another governmental agency owners of NS information

(record owners)." "The goal is to ensure that planned adjudicative activities do not compromise or impede an ongoing investigation or other record owner interest." CAR000640. In plain words, deconfliction is what FDNS officers do when they see that a law enforcement agency has information in one of its systems about an applicant. They call or email that "record owner" to let them know that a person has applied for an immigration benefit, ask for more information about the person, and provide the record owner an opportunity to tell USCIS whether or not adjudicating the application will impact an investigation.

117. In circumstances where a law enforcement agency asserts that adjudication will impact their investigation, the regulation at 8 C.F.R. § 103.2(b)(18) permits the agency to formally request that USCIS hold the case in abeyance (withholding of adjudication) *only if* USCIS determines that an "investigation has been undertaken involving a matter relating to eligibility or the exercise of discretion, where applicable, in connection with the benefit request."

118. It is my experience that often the deconfliction and abeyance process is misused. I have had many clients who have been approached by FBI agents sometime after they filed their immigration benefit applications. The agents typically tell them that they understand they have a pending immigration benefit application and that they can help them get their applications adjudicated favorably if they will agree to work with them as an informant. I have had two cases where the FBI agents gave the client a burner phone, instructing them to provide information to the agents using that phone. In another case, the FBI agent asked for regular meetings with the client to ask about certain individuals and their activities.

119. In these cases, none of my clients were under investigation by the FBI. Instead, the FBI was using their pending immigration applications as leverage to solicit their help in gathering information on their community or family

members, often without any apparent nexus to a targeted investigation. These were not situations involving investigations that related to the eligibility of my clients for their requested immigration benefits. Rather, they can best be described as generalized fishing expeditions to gather information about other individuals.

120. In my experience, it is also very common for Muslim immigrants in the United States to have been visited by the FBI, not because they are the subject or target of an investigation, but because of the nature of FBI counterterrorism investigations post-9/11. With any FBI voluntary interview, the FBI creates an FBI report, known as a 302, which then gets stored in FBI records systems. When the FBI name check is run, as part of USCIS's background checks on applicants for immigration benefits, it will show a positive hit. As I understand the process, a Letterhead Memorandum (LHM) will be produced describing that person's encounter with the FBI. I am aware that often these LHMs are misinterpreted by USCIS in the process of reviewing them and making determinations about immigration benefits.

121. For example, I once represented an individual who had talked to the FBI on one occasion because agents had questions about a family relative. After the individual left the United States and sought to return on a visa, but the visa was refused by the U.S. consulate, he retained me to figure out why the visa had been denied. I contacted the FBI agent who had interviewed him and talked to him about the issue. The agent told me that my client had been cleared and was not a suspect or target or person of concern. I explained the visa problem and the agent offered to issue an interagency notice that the individual was not a person of concern to the FBI. After the agent issued the interagency notice, the issue was resolved, my client's visa was approved, and he was able to return to the United States.

122. The discovery in this case indicates that there have been significant

problems with the quality and utility of information contained in the FBI Letterhead Memorandums—problems USCIS itself has identified. That fact, combined with the fact that it is USCIS officers who are reviewing LHMs to determine whether a national security concern exists in CARRP, using overbroad CARRP criteria, makes USCIS's reliance on LHMs deeply concerning. I am aware that at least as of 2015 LHMs accounted for approximately 25 percent of non-KST national security concerns for all immigration benefit applicants, not just naturalization and adjustment applicants. DEF-0094979. It is also my understanding from the discovery and my own experience that very often when [redacted] It is my understanding from the testimony in this case that USCIS often does not know whether there is, in fact, an investigation of an applicant, what the nature of that investigation is, or whether the FBI's activities relate to the applicant's eligibility for the benefit when it approves FBI requests to hold cases in abeyance.

123. In the case of [redacted], whose case is discussed further below, it is my understanding that an [redacted]

Harm to Applicants

124. My clients have suffered significantly due to CARRP.

125. Many of my clients feel that they are unfairly targeted due to their religion or national origin. Many feel that they are overly scrutinized and ultimately misunderstood because of Islamophobia or overt or inherent bias against Muslim immigrants.

126. I have witnessed USCIS officers ask inappropriate, irrelevant, or harassing questions about my clients' religion, religious backgrounds, mosques they attend, or their charitable activities or donations.

127. I have also observed on numerous occasions that USCIS misinterprets cultural or religious practices of my clients that are perfectly common and lawful behaviors as indicators of national security concerns. For example, financial donations to charitable organizations – known as "zakat" – can trigger such concerns, even where the recipient of the donation is a reputable group that has been registered and recognized by the U.S. government as a qualifying 501(c)(3) charitable organization.

128. My clients also have suffered significantly due to the often interminable waiting involved in CARRP cases. The endless waiting can result in loss of employment, loss of social security benefits, loss of professional opportunities, separation from spouses/children, inability to sponsor family members for immigration benefits, inability to vote or participate in other civic activities, anxiety, stress, paranoia, and a persistent sense of frustration.

129. Overall, given my significant work with the Muslim immigrant community in Washington, D.C. and at the national level, I am acutely aware of the ways in which this community feels unduly targeted and unfairly treated by USCIS in the process of applying for immigration benefits, including naturalization and adjustment of status.

Overbreadth of National Security Concerns in CARRP

130. It is my opinion that the overwhelming majority of people who are subject to CARRP have done nothing wrong, but they are swept up in the program and branded a "national security concern" based on criteria that are exceedingly overbroad and that misuse and misunderstand information in law enforcement

databases.

131. It is my opinion that CARRP has more to do with protecting the reputation of USCIS, which may be unreasonably fearful of approving the application of a person who will later commit a terrorist act, than with actually protecting national security. Indeed, whether a person already in the United States obtains naturalization or adjustment of status is not going to impact their ability to engage in unlawful or violent behavior. A person who is denied naturalization remains a lawful permanent resident free to continue residing in the U.S., unless he or she is put in removal proceedings and ultimately deported. Similarly, a person who is denied adjustment of status may remain in the U.S. as an undocumented person, unless he or she is put in removal proceedings and deported.

132. In my experience, USCIS rarely (if ever) puts a person who is denied naturalization due to CARRP in removal proceedings, because the government would have to assert statutory grounds to do so, which they do not typically have when an applicant is subject to CARRP. That is because the information that informs the CARRP national security concern is typically based on mere unarticulated suspicions, inferences, and innuendo, or "national security indicators" that identify characteristics of people (such as profession, travel patterns, languages spoken), rather than any actually threatening behavior. As a result, CARRP suspicions generally will not satisfy the government's burden of proof in immigration court—clear and convincing evidence—to support a removal charge based on INA § 237(a)(4)(B) (terrorism grounds of deportability). Therefore, applicants denied naturalization due to CARRP, for the most part, go on living in the United States as lawful permanent residents. Denying them naturalization serves no apparent national security purpose, and instead serves to unlawfully and unfairly exclude eligible applicants, primarily from the Muslim

world, from U.S. citizenship.

133. The same is true of adjustment of status applicants. In my experience, when a person is denied adjustment of status due to CARRP, the government generally takes no steps to remove them, even when the person loses immigration status upon their application being denied. USCIS is aware that if they initiate removal proceedings, a person would then be able to renew their application for adjustment of status and have it adjudicated by an Immigration Judge, who is not bound by CARRP, but rather is bound only by the law. And in a CARRP case where their denial is purely pretextual, USCIS is aware that the Immigration Judge may (rightly) conclude the person is eligible for the benefit and grant it. The case of [redacted], described in detail above, is a prime example of this phenomenon. Following the denial of [redacted] I-485 by USCIS, we had to file a federal lawsuit to compel DHS to issue a Notice to Appear referring the case to removal proceedings. We did so in order to allow [redacted] to renew his I-485 application before an Immigration Judge.

134. Denying applicants adjustment of status based on CARRP serves no apparent national security purpose, and instead serves only to unlawfully and unfairly exclude eligible applicants, primarily from the Muslim world, from lawful permanent residency.

135. I have reviewed the deposition testimony of Matthew Emrich, Christopher Heffron, and Kevin Quinn, which further indicate that law enforcement officials were not involved in the creation of CARRP or in the formulation of the definition of a national security concern and the indicators and methods used to determine a "national security concern" in CARRP. This fact further supports my opinion that the program is serving USCIS's reputational interest, but not a valid law enforcement purpose.

136. I am aware that the majority of CARRP cases are non-KST cases. I am further aware from the statistics produced in this case that the majority of non-KST cases are "not confirmed" concerns, meaning that USCIS was not able to establish an articulable link, and only able to identify "indicators" of a concern. I am aware that even where a non-KST concern cannot be confirmed by USCIS, that USCIS nonetheless processes that application under CARRP and there are no set limitations on how long a case can be considered a non-KST not-confirmed concern. Further, I am aware that the statistics produced by Defendants in this case indicate significant increases over time in the number of N-400 cases that were put into CARRP up until 2017, when this lawsuit was filed.

Application of [redacted]

137. I have reviewed the A-file and T-files for [redacted] as well as the deposition testimony of Amy Lang. Based on this review, it is my opinion that [redacted] was unreasonably and unlawfully denied adjustment of status.

138. The facts of his case demonstrate that he was statutorily eligible for adjustment, and that rather than resolve the national security concern, USCIS in fact upgraded it from "not confirmed" to "confirmed." Although the documents demonstrate that Mr. Ostadhassan was initially considered to be a non-KST not confirmed, it is unclear whether he became a "confirmed" NS concern because he was put on the watchlist (and thus made a KST) or remained a non-KST. That distinction matters because, as I've explained, it is nearly impossible for a KST to be approved under the current SLRB structure, and it is very difficult for a non-KST to be approved so long as the concern is not "resolved." This litigation compelled USCIS to make a decision in [redacted] case and, I believe, led USCIS to arrive at a pretextual and unlawful decision to deny his application given

the "confirmed" concern. Attached hereto as Exhibit C is a timeline of relevant events in the adjudication of [redacted] adjustment of status application.

139. [redacted] denial bears all of the signs of a pretextual denial and is also unsupported by immigration law. Had the government placed [redacted] in removal proceedings, allowing him the opportunity to present a renewed adjustment application to an Immigration Judge, I believe he would have been granted due to his clear eligibility for the benefit sought.

140. First, the decision appears to follow the path of CARRP denials and the instructions given to USCIS officers in conducting "lead vetting" – the process for finding a way to deny a case by looking at inconsistencies, among other things, and "taking nothing off the table," however trivial. Here, [redacted] was statutorily eligible and so USCIS denied the application as a matter of discretion. In doing so, it cited "inconsistencies" in testimony. The cited inconsistencies are insignificant, having no bearing on his eligibility for the requested benefit. Def-00427013-23.

141. Second, the decision is incompatible with the INA and governing case law regarding discretionary denials in adjustment of status context. As noted, in *Matter of Arai*, 13 I&N Dec. 494, 495-96 (BIA 1970), the BIA clarified that absent compelling negative factors, USCIS should favorably exercise discretion over an application for adjustment of status. *See also* USCIS Policy Manual Vol. 7, Part A, Ch. 9, §B.2. In my 25 years of practice, it has been a rare occurrence that a client applying for adjustment of status, who was otherwise statutorily eligible, was denied in the exercise of discretion. One of my clients was denied adjustment as a matter of discretion owing to dozens of unpaid parking tickets and speeding violations. We challenged the decision in an administrative motion to reconsider and prevailed. In my experience, a denial of adjustment for discretionary reasons

alone typically indicates that the application is subject to CARRP.[1]

142. Third, all of the stated inconsistencies are based on [redacted] own statements, which were voluntarily made in an effort to be as complete and truthful as possible. He should not be faulted for revising his answers based on prior misunderstandings of the question and what it was asking, nor for making an effort to be complete and forthcoming. Indeed, immigration law explicitly acknowledges that a person should not be faulted for lapses in memory or for unintentionally leaving out information, but only for fraud or willful misrepresentations with the explicit intent of obtaining an immigration benefit.

143. Under long-standing precedent, "fraud" involves a false representation of a material fact with knowledge of its falsity and the intent to deceive. *Matter of G*, 7 I&N Dec. 161 (BIA 1956). The fraudulent representation must be believed and acted upon. *Id.* By contrast, "willful misrepresentation" must be willful, but does not require an intent to deceive or evidence that the officer believed or acted upon the false representation. *Matter of S & B-C-*, 9 I&N Dec. 435 (AG 1961). A misrepresentation is only "willful" if it was deliberate and voluntary. *Matter of D-R-*, 25 I&N Dec. 445 (BIA 2011). Importantly, the courts have recognized that innocent mistake, negligence, or inadvertence cannot support a finding of willfulness. *See, e.g., Emokah v. Mukasey*, 523 F.3d 110, 117 (2d Cir. 2008). And a timely retraction serves to purge a misrepresentation and remove it from further consideration. *Matter of R-R-*, 3 I&N Dec. 823 (BIA 1949).

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[1] It is worth noting that a recent FDNS CARRP training module actively instructs officers to use discretion unlawfully. For example, in a series of slide encouraging officers to ask themselves whether they really want to be responsible for approving "a bad guy," a slide instructs on the "Theory of Discretion" explaining "*Discretion is effective when it's efficient*," suggesting discretion should not be applied according to the law, but when it's an efficient way to arrive at a denial. DEF-00145418.

144. Taken on its face, if USCIS applied the same rationale as it did to [redacted] to applicants generally, it would have the effect of discouraging applicants from ever offering additional information, amending answers, or generally being forthcoming, for fear that doing so would lead USCIS to conclude that a person made inconsistent statements sufficient to deny their benefit as a matter of discretion. Clearly, and because immigration law is designed to encourage candor rather than to foreclose it, USCIS does not take that approach in general. It only did so here because it needed to come up with a pretextual reason to deny [redacted] application.

Opinions

145. In my opinion, CARRP is an unlawful, secretive, discriminatory program that directs USCIS officers to identify, delay, and in many cases deny otherwise qualified applicants for immigrant benefits, including adjustment of status to lawful permanent residence and naturalization. CARRP is not the result of legislation passed by Congress or of regulations promulgated by the agency, but instead is unspoken USCIS policy designed to prevent individuals flagged as national security concerns from ever obtaining the immigration benefits for which they qualify under the law. Perhaps most troubling, persons subject to CARRP are never informed of the agency's concerns or afforded an opportunity to respond to or rebut those concerns. Such individuals thus face interminable delays and, if they press USCIS for a decision, pretextual denials of their immigration applications.

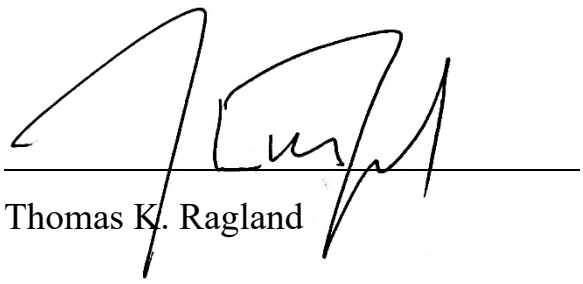
146. The program disproportionately impacts applicants who are Muslim or are from Muslim-majority countries, because in the post-9/11 atmosphere in which CARRP was promulgated, these individuals have the greatest likelihood of being identified as national security concerns.

147. The impacts of CARRP can be devastating, leaving deserving

applicants in immigration limbo or forcing them to leave the United States altogether. The impacts of CARPP can include loss of immigration status, loss of employment, loss of professional or educational opportunities, inability to sponsor family members, separation from loved ones, and the inability to travel internationally, not to mention substantial legal fees, stress and paranoia, and persistent anxiety owing to a perception of being unwelcome in the United States.

148. My suggestion for how to reform CARRP is to eliminate the program altogether. As an attorney, I regard the program as an affront to our system of laws and constitutional protections. CARRP serves no legitimate law enforcement purpose, does not make us safer or do anything to protect the homeland, and is among the worst features of our byzantine and discriminatory immigration system. CARRP should be abolished in its entirety.

I declare under penalty of perjury of the laws of Washington, D.C. and the United States that the foregoing is true and correct. Executed this 30th day of June, 2020 in Washington, D.C.



Thomas K. Ragland

Exhibit A

Thomas K. Ragland

Member in Charge

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Thomas K. Ragland is Member in Charge of Clark Hill's Washington, D.C. office, and is a Member of the firm's Immigration Business Unit. Thomas has practiced immigration law for 25 years. Prior to joining private practice, Thomas worked for 10 years in the U.S. Department of Justice, joining directly after graduating from law school through the Attorney General's Honor Program. At DOJ, Thomas represented the government in the Boston Immigration Court, the Board of Immigration Appeals, and the Civil Division's Office of Immigration Litigation. Since leaving the government in 2004, Thomas has devoted himself to guiding individuals and companies through the complex, often overwhelming U.S. immigration system. He brings an unwavering commitment to help his clients and a genuine desire to help them achieve their goals and dreams – whether it be obtaining U.S. citizenship or permanent residence, avoiding deportation, obtaining visas for employees or family members, or challenging agency decisions in federal court. Having worked on both sides of the system, Thomas brings wide-ranging experience and a deep understanding of this country's immigration laws. He is highly regarded as a top litigator, a creative legal thinker, and a tireless advocate for his clients.

In June 2013, Thomas was awarded the American Immigration Lawyers Association's highest honor, the Edith Lowenstein Award for Excellence in Advancing the Practice of Immigration Law. He is also author of the chapter on Immigration in the leading treatise *Business and Commercial Litigation in Federal Courts, 4th ed.* (Thomson West 2016). Thomas currently serves as Vice Chair of the Administrative Litigation Task Force, American Immigration Lawyers Association (AILA) and is a Member of the Editorial Board of *AILA Law Journal.*

Thomas focuses his practice on litigation before the federal courts, immigration courts, and Board of Immigration Appeals as well as representation of clients before the Department of Homeland Security and U.S. consulates abroad. He is a seasoned litigator known for handling complex matters for both individual and corporate clients. He has specific experience in appellate litigation, defense against removal, immigration consequences of criminal convictions, asylum, waivers of inadmissibility, citizenship and permanent residence, complex consular matters, and defense against terrorism- and security-related bars to admission.

Thomas is ranked in *Chambers USA* as a leader in the field of immigration law. He has been recognized by *The Washington Post* as one of "Washington, D.C.'s Best Lawyers" and is regularly named by *Washingtonian Magazine* as one of "Washington's Top Lawyers." He is also listed in *Best Lawyers*, *Super Lawyers*, and *The International Who's Who of Corporate Immigration Lawyers.*

Thomas has served as an Adjunct Associate Professor of Law at the American University's Washington College of Law. He is the former Chair of AILA's Federal Court Litigation Section and has served on many other national committees within AILA. He has been recognized as an expert on immigration matters and has testified in both federal and state courts. He is a frequent writer and speaker on immigration issues.

Thomas is a 1994 *cum laude* graduate of Boston College Law School, where he was Editor in Chief of the *Boston College Third World Law Journal*, and a graduate, with honors, of the University of Virginia.

Professional Activities:

- Maryland State Bar Association
- Bar of the District of Columbia
  - Co-Chair, International Law Section, Committee on Immigration & Human Rights, 2010-2011
- American Immigration Lawyers Association, 2004 -present
  - Vice-Chair, Administrative Litigation Task Force, 2018-present
  - Chair, Federal Court Litigation Section, 2011-2013
  - Member, Access to Counsel Committee, 2013-2014
  - Chair, Litigation Committee, D.C. Chapter, 2007-2012
- *AILA Law Journal*
  - Member, Editorial Board, 2018-present
- American Immigration Council, Legal Action Committee
  - Member, Board of Advisors, 2011-2013
- National Lawyer's Guild, National Immigration Project
- American Bar Association, Section of Litigation, Immigration Litigation Subcommittee
- Muslim Legal Fund of America (MLFA)
  - Member, Advisory Board, 2012
- Adjunct Professor, American University Washington College of Law

Admissions:

- U.S. Supreme Court
- District of Columbia
- Maryland
- U.S. Court of Appeals for the District of Columbia Circuit
- U.S. Court of Appeals for the First Circuit
- U.S. Court of Appeals for the Second Circuit
- U.S. Court of Appeals for the Fourth Circuit
- U.S. Court of Appeals for the Fifth Circuit
- U.S. Court of Appeals for the Seventh Circuit
- U.S. Court of Appeals for the Ninth Circuit
- U.S. Court of Appeals for the Tenth Circuit
- U.S. Court of Appeals for the Eleventh Circuit
- U.S. District Court for the District of Columbia
- U.S. District Court for the District of Maryland
- U.S. District Court for the Western District of Michigan
- Court of Appeals of Maryland

Education:

- Boston College Law School, J.D., *cum laude*, 1994
  - Editor in Chief, *Boston College Third World Law Journal*, 1993-1994
- University of Virginia, B.A. in philosophy, with honors, 1988

Experience:

- Clark Hill PLC
  - Member in Charge, Washington, D.C., 2019-present
  - Member, 2016-present

- Benach Ragland LLP
  - Founding Partner, 2012-2016
- Duane Morris LLP
  - Partner, 2008-2012
- Maggio & Kattar, PC
  - Shareholder and Senior Attorney, 2006-2008
- Elliot & Mayock LLP
  - Associate Attorney, 2004-2006
- U.S. Department of Justice
  - Office of Immigration Litigation, Civil Division
    - Appellate Attorney, 2003-2004
  - Board of Immigration Appeals
    - Senior Attorney Manager, 2002-2003
    - Attorney Advisor, 1995-2002
  - U.S. Immigration Court, Boston
    - Judicial Law Clerk, 1994-1995

Civic and Charitable Activities:

- Capital Area Immigrants' Rights (CAIR) Coalition
- Immigrant's List
- Catholic Legal Immigration Network (CLINIC)
  - BIA Pro Bono Project, 2005-2007

Honors and Awards:

- Edith Lowenstein Award for Excellence in Advancing the Practice of Immigration Law, American Immigration Lawyers Association (AILA), 2013
- Ranked in *Chambers USA* as a Leader in the Field of Immigration Law
- Listed in *Best Lawyers in America*, 2010-2018
- Listed in *The Washingtonian* as one of the top lawyers in Washington, D.C., 2009-2018
- Listed in *Super Lawyers*
- Listed in *The International Who's Who of Corporate Immigration Lawyers*
- Board of Immigration Appeals Outstanding Performance Awards, 1997-2003
- Board of Immigration Appeals Special Achievement Awards, 1998 and 1999

Representative Matters - Federal Court:

U.S. Supreme Court:

- ***Morris v. Virginia, No. 10-1498 (filed June 10, 2011), cert. denied, Oct 2, 2011.***
  Issues presented: (1) Whether *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010), is retroactively applicable to ineffective assistance of counsel claims raised in collateral review. (2) Whether Virginia fails to provide the constitutionally required adequate post-conviction remedy where, through a combination of strict time limits on collateral review and in-custody requirements, Petitioner and others similarly situated are precluded from vindicating violations of the right to effective assistance of counsel under *Padilla*.

  Selected by SCOTUSblog as "Petition of the Day" and as "Petition We're Watching."

- ***Bazuaye v. United States, No. 12-425 (filed Oct. 4, 2012), cert denied, Apr. 1, 2013.***

  Issues presented: (1) Whether pursuant to the procedures followed by the United States Court of Appeals for the Second Circuit, it may dismiss an appeal as without merit, *sua sponte* and without any briefing or input from the appellant, which violates the Federal Rules of Appellate Procedure and Due Process of Law guaranteed by the Fifth Amendment Due Process Clause of the United States Constitution, and is contrary to the procedures followed by other Courts of Appeals, which hold that such a procedure can only be followed in a case where an appellant seeks to

perfect the appeal in forma pauperis. (2) Whether the Second Circuit's procedure in this regard, set forth in its opinion in *Pillay v. INS,* 45 F.3d 14, 17 (2d Cir. 1995), conflicts with the procedures outlined in decisions in other Circuits, collected in *Stafford v. United States,* 208 F.3d 1177, 1179 n.4 (10th Cir. 2000), holding that *sua sponte* dismissal is inappropriate where the Appellant is represented by private counsel. (3) Whether the claim that prior appellate counsel was ineffective for failing to raise a 17 day exclusion from speedy trial time claim on direct appeal, which would have resulted in a reversal, is not frivolous. (4) Whether a motion for rehearing may be referred to an entirely different panel.

U.S. Court of Appeals:

- **United States v. Akinsade, No. 686 F.3d 248 (4th Cir. 2012)** - Held: District Court denial of writ of error *coram nobis* reversed, Appellant granted *coram nobis* relief and conviction vacated. Successfully challenged district court's ruling that a trial court's general warning during Rule 11 plea hearing concerning potential immigration consequences was sufficient to cure the prejudice caused by attorney's affirmative misadvice under "prong two" of the test articulated in *Strickland v. Washington*, 466 U.S. 688 (1984).
- **Akinsade v. Holder, 678 F.3d 138 (2d Cir. 2012)** – Held: Noncitizen's conviction for embezzlement by bank employee in violation of 18 U.S.C. § 656 does not qualify as an aggravated felony "offense involving fraud or deceit" under INA § 101(a)(43)(M)(i). Order of removal vacated, removal proceedings terminated.
- **Waheed v. Holder, No. 11-1095 (4th Cir.) (argued Sept. 21, 2011)** – Whether noncitizen's Maryland conviction for simple misdemeanor assault qualifies as a "crime involving moral turpitude" under Step Three of *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008). Companion case to *Prudencio v. Holder*, 2012 U.S. App. LEXIS 1693 (4th Cir. Jan. 30, 2012) (rejecting *Silva-Trevino* as not entitled to *Chevron* deference because statutory language "convicted of crime involving moral turpitude" is plain and unambiguous). Succeeded in obtaining client's release from ICE custody, vacating removal order, and reinstating client's lawful permanent resident status.
- **Shrestha v. Holder, No. 10-73627 (9th Cir. Oct. 21, 2011)** (with Maxine Bayley) – Court ordered case remanded to Board of Immigration Appeals (BIA) to provide client an opportunity to challenge prior asylum denial on the merits and for entry of a new decision. BIA had erroneously dismissed client's appeal as untimely, incorrectly holding that it lacked jurisdiction to review late-filed appeal. Successful challenge to *Matter of Liadov*, 23 I&N Dec. 990 (BIA 2006).
- **Malilia v. Holder, 632 F.3d 598 (9th Cir. 2011)** – Held: Immigration Judge abused his discretion by denying noncitizen's request for a continuance based on pending I-130 visa petition filed by his U.S. citizen wife. Remanded to Immigration Court to allow client to apply for adjustment of status to lawful permanent resident, based on approved I-130 petition and despite federal firearms conviction under 18 U.S.C. § 922(e).
- **Salama v. Holder, No. 10-1460 (4th Cir. Dec. 15, 2010)** (with Anjum Gupta) – Applicants sought asylum from Egypt after being targeted for their religious beliefs. Following briefing in Court of Appeals, the Department of Justice moved to remand case because neither BIA nor Immigration Judge considered lead applicant's religious conversion claim. BIA remanded to Immigration Court for further proceedings and Immigration Judge ultimately granted asylum to entire family.
- **Soliman v. Gonzales, 419 F.3d 296 (4th Cir. 2005)** (with Thomas A. Elliot) – Held: Noncitizen's Virginia conviction for credit card fraud did not qualify as aggravated felony "theft offense" under INA § 101(a)(43)(G). Succeeded in obtaining client's release from ICE custody, vacating removal order, and reinstating client's lawful permanent resident status.

Selected Publications:

- Author of Chapter 105: Immigration in *Business and Commercial Litigation in Federal Courts*, 4th ed. (Thomson West 2016)
- Author (with Jennifer D. Cook) of "Litigating Immigration Cases in Federal Court," book chapter, *What Every Lawyer Needs to Know About Immigration Law* (American Bar Association 2012)
- Co-author, "Terrorism-Related Inadmissibility Grounds: Litigation Strategies in the U.S. and Canada," Law & Society Association, 2010.
- Quoted in "Why are U.S.-allied refugees still branded as 'terrorists?'" by Marisa Taylor, *McClatchy Newspapers*, July 26, 2009.
- "What did *Compean* Accomplish? The Uncertain Right to Effective Assistance of Counsel in Immigration Proceedings," *American Bar Association Section of Litigation*, June 2009.
- "*Nken v. Holder*: Impact on Stays of Removal and Beyond," *American Bar Association Section of Litigation*, May 2009.

- "Supreme Court Strikes Down Long-Standing BIA Interpretation of 'Persecutor Bar'," *American Bar Association Section of Litigation*, March 2009.
- Quoted in "U.S. allies losing asylum bids over definition of 'terrorist'" by Marisa Taylor, *McClatchy Newspapers*, May 2, 2009.
- Contributing Editor, *Kurzban's Immigration Law Sourcebook*, 11th & 12th eds., 2008, 2010.
- Quoted in "Stalwart Service for U.S. in Iraq Is Not Enough to Gain Green Card" by Karen DeYoung, *Washington Post*, March 23, 2008.
- "Supreme Court Rules for Thousands Deported: State Felony Drug Possession Offense That Would be Classified as a Misdemeanor Under Federal Law Is Not an 'Aggravated Felony,'" *Bender's Immigration Bulletin*, December 18, 2006.
- "Burma's Rohingyas in Crisis: Protection of 'Humanitarian' Refugees under International Law," *Boston College Third World Law Journal 301*, Summer 1994.
- "Presumed Incredible: A View from the Dissent," *75 Interpreter Releases 1541*, November 9, 1998.

Exhibit B

List of Documents Reviewed

1. Plfs' Second Amended Complaint
2. Exhs A-I to Plfs' Second Amended Complaint
3. 2020-06_Wagafe_Internal_Data_FY2013-2019_(Confidential_Pursuant_to_Protective_Order).xlsx
4. Depo. Transcript of Jaime Benavides
5. Depo. Transcript of Christopher Heffron
6. Depo. Transcript of Matthew Emrich
7. Depo. Transcript of Daniel Renaud
8. Depo. Transcript of Cherie Lombardi
9. Depo. Transcript of Amy Lang
10. Depo. Transcript of Kevin Quinn
11. Depo. Transcript of Alexander Cook
12. CAR000001
13. CAR000008
14. CAR000010
15. CAR000056
16. CAR000058
17. CAR000075
18. CAR000084
19. CAR000093
20. CAR000095
21. CAR000104
22. CAR000303
23. CAR000345
24. CAR000349
25. CAR000354
26. CAR000366
27. CAR000396
28. CAR000414
29. CAR000438
30. CAR000463
31. CAR000491
32. CAR000556
33. CAR000595
34. CAR000735
35. CAR000751
36. CAR000926
37. CAR001140
38. CAR001337
39. CAR001536
40. CAR001614
41. CAR001674
42. CAR001751
43. CAR001767

44. CAR001789
45. CAR001857
46. CAR001963
47. CAR002075
48. CAR002118
49. DEF-00000018
50. DEF-00008104
51. DEF-00010821
52. DEF-00024823
53. DEF-00026308
54. DEF-00037134
55. DEF-00038557
56. DEF-00045893
57. DEF-00049884
58. DEF-00049888
59. DEF-00049889
60. DEF-00061729
61. DEF-00063447
62. DEF-00163516
63. DEF-00419977
64. DEF-00420731
65. DEF-00421322
66. DEF-00422120
67. DEF-00422653
68. DEF-00422948
69. DEF-00425860
70. DEF-00426154
71. DEF-00426670
72. DEF-00427012
73. DEF-00000018
74. DEF-00045893
75. DEF-0080071
76. DEF-0085891
77. DEF-0088994
78. DEF-0089001
79. DEF-0090745
80. DEF-00095286
81. DEF-00112637
82. DEF-00119808
83. DEF-00134868
84. DEF-00134869
85. DEF-00134973
86. DEF-00135556
87. DEF-00138573
88. DEF-00138577
89. DEF-00145393

90. DEF-00158858
91. DEF-00163516
92. DEF-00164380
93. DEF-00225900
94. DEF-00230826
95. DEF-00230963
96. DEF-00259908
97. DEF-00358660
98. DEF-00370080
99. DEF-00372555
100. DEF-00399236
101. DEF-00399244
102. DEF-00399247
103. DEF-00399255
104. DEF-00399258
105. DEF-00399264
106. DEF-00399405
107. DEF-00419977
108. DEF-00420731
109. DEF-00421322
110. DEF-00422120
111. DEF-00422653
112. DEF-00422948
113. DEF-00425768
114. DEF-00425770
115. DEF-00425772
116. DEF-00425775
117. DEF-00425778
118. DEF-00425780
119. DEF-00425781
120. DEF-00425782
121. DEF-00425783
122. DEF-00425860
123. DEF-00426154
124. DEF-00426670
125. DEF-00427012
126. Plf's FOIA000496

Exhibit C

Timeline of Adjudication of Forms I-485, Applications to Adjust Status, of [redacted]

Date	Event	Documentation
[redacted]	Nonimmigrant visa application signed (supplementary information dated [redacted]	DEF-00422560-65
[redacted]	F-1 visa issued	DEF-00422556
[redacted]	Admitted to the United States	DEF-00427014
[redacted]	First Form I-485, Application to Adjust Status, and Form I-130, Petition for Alien Relative, submitted (signed [redacted])	DEF-00422281-87; DEF-00422442; DEF-00422419-21; DEF-00422378
[redacted]	USCIS received first Form I-485	DEF-00427189
[redacted]	USCIS completed FBI fingerprint and name checks (processed by FBI [redacted]	DEF-00422616
[redacted]	USCIS indicated case "Marked for Schedule Ready"	DEF-00422608
[redacted]	USCIS issued Request for Applicant to Appear for Initial Interview on [redacted] for first Form I-485	DEF-00422615
[redacted]	USCIS created "Memorandum to File IMPORTANT NOTICE" (redacted)	DEF-00422494
[redacted]	USCIS issued Notice of Interview Cancellation regarding [redacted] interview for first Form I-485	DEF-00422614
[redacted]	USCIS began Background Check and Adjudicative Assessment (BCAA) process	DEF-00422591-92
[redacted]	"CARRP required checks" conducted; appears that "NS concern" was identified Indicates: "Significant Factors: None"	DEF-00422547-48; DEF-00422591-92 DEF-00422641
[redacted]	"Hold" from NBC FDNS Unit, noting that "DS record sub-status remains unchanged as 'NS Not Confirmed'"	DEF-00422591-92
[redacted]	Intake conducted	DEF-00422590
[redacted]	Request to withhold adjudication submitted by [redacted] (FDNS); request for Withholding of Adjudication (WOA) approved by District Director from [redacted]	DEF-00422515; DEF-00422643
[redacted]	FBI agent contacted [redacted], requested meeting to discuss recent travel to Iran to visit his family	
1[redacted]	Additional "internal vetting systems checks" conducted; internal vetting completed; case "[d]etermined to be NS confirmed"	DEF-00422523-25; DEF-00427206
[redacted]	CARRP Case Survey signed and reviewed, noting that Form "I-485 is unremarkable for any statutory	DEF-00422649-50

	ineligibility" and that "[t]here are no overriding ineligibilities for this subject"	
	[redacted] sent email, subject: Withholding	DEF-00422520
	IO/SPM [redacted] made second withholding of adjudication request, seeking WOA from [redacted] request approved to [redacted]	DEF-00422644-48
	District Director, D15, David Douglas created memo regarding [redacted] case (redacted)	DEF-00422519
	IO/SPM [redacted] created memo to A-file on results of external vetting	DEF-00422518
	Case "move[d] to CARRP ADJ"	DEF-00422515
	USCIS issued notice for interview on [redacted] for first Form I-485	DEF-00422394
	Notice of Entry of Appearance as Attorney or Accredited Representative for [redacted] submitted	DEF-00422277-80
	Interview for first Form I-485 conducted by USCIS Officer [redacted]	DEF-00358660; DEF-00422393
	First Form I-485 amended	DEF-00422288-90
	Interviewing Officer [redacted] issued notice stating that a decision cannot yet be made of the first Form I-485	DEF-00422266
	TECS - Persons Inquiry initiated	DEF-00422488-91
	USCIS CARRP Statement of Findings (SOF)	DEF-00422497-504
	USCIS issued two Requests for Evidence regarding Form I-130	DEF-00422376-77; DEF-00422381
	Additional evidence submitted in response to Requests for Evidence	DEF-00422382-91
	USCIS issued Notice of Intent to Deny Form I-130	DEF-00422409-11
	Response to Notice of Intent to Deny Form I-130 submitted	DEF-00422408-15
	USCIS updated I-485 Adjudication Processing Worksheet with note to email [redacted] because "likely we will have to approve I-130"	DEF-00422483-84
	Wagafe v. Trump, No. 2:17-cv-00094 (W.D. Wash.) filed	
	USCIS approved I-130, Petition for Alien Relative	DEF-00422419
	ISO [redacted] created memo to A-file on TECS Hit Resolution for Applicant (redacted); SISO verification and concurrence included	DEF-00422486
	Acting FOD Luis Borges concurred with undated memo from ISO SPM [redacted] recommending approving I-130, indicating that there may be "remaining NS concerns" in the case	DEF-00422639-40
	USCIS issued Notice of Intent to Deny Form I-485	DEF-00422251-54

	Response to Notice of Intent to Deny Form I-485 submitted	DEF-00422129-81
	Response to Notice of Intent to Deny Form I-485 received by USCIS	DEF-00422123
	ISO [redacted] created memo to A-file on TECS Hit Resolution for Applicant (redacted); SISO verification and concurrence included	DEF-00422485
	First Form I-485 stamped as denied	DEF-00422281
	USCIS issued denial of first Form I-485	DEF-00422121-28
	Second Form I-485, Application to Adjust Status (signed [redacted] submitted	DEF-00427030-50; DEF-00427173
	Second Form I-485 received by USCIS	DEF-00427017
	"Hold" from NBC FDNS Unit, noting that "DS record sub-status remains unchanged as 'NS Not Confirmed'"	DEF-00427208
	"Hold" continues, noting that Officer [redacted] "[r]ecommended confirming concern [redacted]" and "[r]ecommneded phase change to Internal Vetting." Supervisory Officer Tammie Grassel "[c]oncur[red] with confirming the concern and changing phase to internal vetting"	DEF-00427208-09
	USCIS issued denial of second Form I-485	DEF-00427013-26
	Second Form I-485 stamped as denied	DEF-00427030; DEF-00427203