

THE HONORABLE RICHARD A. JONES

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ABDIQAFAR WAGAFE, *et al.*, on behalf
of themselves and others similarly situated,

Plaintiffs,

v.

JOESEPH R. BIDEN, President of the
United States, *et al.*,

Defendants.

No. 2:17-cv-00094-RAJ

**SECOND DECLARATION OF
JENNIFER PASQUARELLA IN
SUPPORT OF PLAINTIFFS' MOTION
FOR SUMMARY JUDGMENT**

**FILED UNDER SEAL:
EXHIBITS 104, 105, 106, 108, 109, 110**

I, Jennifer Pasquarella, hereby declare:

1. I have personal knowledge of the facts stated below and am competent to testify regarding the same. I am one of the attorneys for Plaintiffs in this matter, *Wagafe v. Biden*, No. 17-cv-00094 RAJ.

2. Attached as **Exhibit 101** is a true and correct copy of a document produced in this case with a Bates range of CAR000008-09.

3. Attached as **Exhibit 102** is a true and correct copy of a document produced in this case with a Bates range of CAR000056-57.

4. Attached as **Exhibit 103** are true and correct copies of excerpts from 11 bills introduced in the United States Congress but never enacted.

5. Attached as **Exhibit 104** are true and correct copies of excerpts from the September 2, 2020 FRCP 30(b)(6) deposition of USCIS.

EXHIBIT 101

FOR OFFICIAL USE ONLY (FOUO) – LAW ENFORCEMENT SENSITIVE


U.S. Department of Homeland Security
20 Massachusetts Ave NW
Washington, D.C. 20529



U.S. Citizenship
and Immigration
Services

HQ 70/28.1

Interoffice Memorandum

TO: FIELD LEADERSHIP
FROM: 
Don Neufeld
Acting Associate Director, Domestic Operations

DATE: **APR 24 2008**

RE: Operational Guidance for Vetting and Adjudicating Cases with National Security Concerns

Introduction

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

Purpose

This memorandum and attached operational guidance provides instruction to USCIS Field Offices **for vetting and adjudicating cases with national security concerns**. Issuance of this memorandum implements the recently distributed policy memorandum entitled, "*Policy for Vetting and Adjudicating Cases with National Security Concerns*." This

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CAR000008

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new policy establishes the Controlled Application Review and Resolution Program (CARRP), which consists of a four-step process of evaluating national security concerns.

Effective immediately, all Field Offices are directed to comply with the attached operational guidance and instructions when adjudicating applications or petitions with national security concerns.

Training

A train the trainer session has been scheduled from May 5-9 in Washington, DC for identified field officers. These new trainers, along with FDNS personnel, will then be deployed to provide training to additional staff from May 12-23.

The additional field officers who will be identified to receive this training will attend a one week training session during the week of May 12 or May 19. Training sites during the week of May 12 will be at the National Benefits Center, Texas Service Center, California Service Center and a location to be determined in the New York City area. Training sites during the week of May 19 will be at the 3 aforementioned centers.

Coordination of this training is being handled by Headquarters, Regional Office and Service Center representatives.

Contact

USCIS personnel with questions regarding this memorandum should raise them through the appropriate channels to the Office of Field Operations and Service Center Operations.

Distribution List: Regional Directors
 District Directors
 Field Office Directors
 Service Center Directors

Attachments: CARRP Policy Memorandum
 Operational Guidance
 KST Flowchart
 Non-KST Flowchart

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EXHIBIT 102

U.S. Department of Homeland Security
Washington, DC 20528



U.S. Citizenship
and Immigration
Services

Interoffice Memorandum

To: All Refugee Affairs Division Personnel

From: Barbara L. Strack *B. Strack*
Chief, Refugee Affairs Division

Date: May 14, 2008

Re: Operational Guidance for Vetting and Adjudicating Refugee Cases with National Security Concerns

On April 11, 2008, USCIS Deputy Director Scharfen issued the memorandum "Policy for Vetting and Adjudicating Cases with National Security Concerns." This policy, known as the Controlled Application Review and Resolution Program (CARRP), provides USCIS adjudicators instructions for identifying, vetting, and adjudicating cases with national security concerns. The policy outlines a four-step process for adjudicators to follow when analyzing and vetting national security information and assessing eligibility for cases when national security information is identified. This memorandum defines headquarters and field responsibilities and establishes the Fraud Detection and National Security-Data System (FDNS-DS) as the primary system for recording activities.

With the issuance of this memorandum, Refugee Affairs Division (RAD) is establishing procedures for all refugee status adjudications involving an applicant for whom national security information is identified. The attached operational guidance outlines the responsibilities at RAD headquarters and field level in identifying, vetting, and adjudicating refugee cases containing national security concerns. This guidance assigns to Headquarters RAD (HQRAD) Integrity Unit the responsibility for external vetting efforts (for non-Known or Suspected Terrorist (non-KST) cases), deconfliction activities, and coordination/communication with Headquarters FDNS (HQFDNS).

The guidance instructs the field to document identified national security information and adjudicator analysis of this information in the Refugee Application Assessment. It further describes the requirement for completion of the Background Check and Adjudicative Assessment (BCAA) and the case entry into FDNS-DS for 1) All KST cases; 2) cases where a national security concern has been confirmed and the application is

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Operational Guidance for Vetting and Adjudicating Refugee Cases with National Security Concerns
Page 2

recommended for approval; and 3) cases determined to present a tangible/imminent threat/risk to the US, even cases resulting in denial.

This operational guidance requires all refugee cases containing national security concerns to undergo supervisory review. Additional review and concurrence by HQRAD is required for the approval of any case containing an unresolved national security concern.

Questions

Questions related to this memorandum may be directed to Mary Margaret Stone, RAD Policy and Analysis Section.

- Attachments:
- 1) USCIS memorandum of April 11, 2008, "Policy for Vetting and Adjudicating Cases with National Security Concerns"
 - 2) Refugee Adjudication Standard Operating Procedures: Cases Involving National Security Concerns

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EXHIBIT 103

EXHIBIT 103.A
H.R. 3938 (2005)

1 **SEC. 120. COMPLETION OF BACKGROUND AND SECURITY**

2 **CHECKS.**

3 Section 103 of the Immigration and Nationality Act
4 (8 U.S.C. 1103) is amended by adding at the end the fol-
5 lowing:

6 “(i) Notwithstanding any other provision of law, the
7 Secretary of Homeland Security, the Attorney General, or
8 any court may not—

9 “(1) grant or order the grant of adjustment of
10 status to that of an alien lawfully admitted for per-
11 manent residence;

12 “(2) grant or order the grant of any other sta-
13 tus, relief, protection from removal, or other benefit
14 under the immigration laws; or

15 “(3) issue any documentation evidencing or re-
16 lated to such grant by the Attorney General, the
17 Secretary, or any court,

18 until such background and security checks as the Sec-
19 retary may in his discretion require have been completed
20 to the satisfaction of the Secretary.”.

21 **SEC. 121. DENIAL OF BENEFITS TO TERRORISTS AND**

22 **CRIMINALS.**

23 Chapter 4 of title III of the Immigration and Nation-
24 ality Act (8 U.S.C. 1501 et seq.) is amended by adding
25 at the end the following:

1 “CONSTRUCTION

2 “SEC. 362. (a) Nothing in this Act or any other pro-
3 vision of law shall be construed to require the Secretary
4 of Homeland Security, the Attorney General, the Sec-
5 retary of State, the Secretary of Labor, or any other au-
6 thorized head of any agency to grant any application, ap-
7 prove any petition, or grant or continue any status or ben-
8 efit under the immigration laws by, to, or on behalf of—

9 “(1) any alien described in subparagraphs
10 (A)(i), (A)(iii), (B), or (F) of sections 212(a)(3) or
11 subparagraphs (A)(i), (A)(iii), or (B) of section
12 237(a)(4);

13 “(2) any alien with respect to whom a criminal
14 or other investigation or case is pending that is ma-
15 terial to the alien’s inadmissibility, deportability, or
16 eligibility for the status or benefit sought; or

17 “(3) any alien for whom all law enforcement
18 checks, as deemed appropriate by such authorized
19 official, have not been conducted and resolved.

20 “(b) An official described in subsection (a) may deny
21 or withhold (with respect to an alien described in sub-
22 section (a)(1)) or withhold pending resolution of the inves-
23 tigation, case, or law enforcement checks (with respect to
24 an alien described in paragraph (2) or (3) of subsection

1 (a) any such application, petition, status or benefit on
2 such basis.”.

3 **SEC. 122. REINSTATEMENT OF PREVIOUS REMOVAL OR-**
4 **DERS.**

5 (a) IN GENERAL.—Section 241(a)(5) of the Immi-
6 gration and Nationality Act (8 U.S.C. 1231(a)(5)) is
7 amended to read as follows:

8 “(5) REINSTATEMENT OF PREVIOUS REMOVAL
9 ORDERS.—

10 “(A) REMOVAL.—The Secretary of Home-
11 land Security shall remove an alien who is an
12 applicant for admission (other than an admis-
13 sible alien presenting himself or herself for in-
14 spection at a port of entry or an alien paroled
15 into the United States under section
16 212(d)(5)), after having been, on or after Sep-
17 tember 30, 1996, excluded, deported, or re-
18 moved, or having departed voluntarily under an
19 order of exclusion, deportation, or removal.

20 “(B) JUDICIAL REVIEW.—The removal de-
21 scribed in subparagraph (A) shall not require
22 any proceeding before an immigration judge,
23 and shall be under the prior order of exclusion,
24 deportation, or removal, which is not subject to
25 reopening or review. The alien is not eligible

EXHIBIT 103.B
H.R. 4313 (2005)

1 under section 244 of the Immigration and Nation-
2 ality Act (8 U.S.C. 1254a), or having such a des-
3 ignation extended, before the date of the enactment
4 of this Act, an alien who is a national of such state
5 (or in the case of an alien having no nationality, is
6 a person who last habitually resided in such state),
7 and was unlawfully present in the United States on
8 the date of such designation or extension, shall be
9 subject to paragraph (2).

10 (2) ALIENS INELIGIBLE.—An alien described in
11 paragraph (1) shall not be considered eligible for
12 temporary protected status under section 244 pursu-
13 ant to any initial or succeeding extension of a des-
14 ignation described in such paragraph that takes ef-
15 fect after the date of the enactment of this Act, un-
16 less a law to the contrary is enacted before such ef-
17 fective date, except that if the Congress is adjourned
18 sine die on such effective date, the alien may be
19 granted temporary protected status for a period of
20 not more than 4 months.

21 **SEC. 324. COMPLETION OF BACKGROUND AND SECURITY**

22 **CHECKS.**

23 Section 103 of the Immigration and Nationality Act
24 (8 U.S.C. 1103) is amended by adding at the end the fol-
25 lowing new subsection:

1 “(i) Notwithstanding any other provision of law, the
2 Secretary of Homeland Security, the Attorney General, or
3 any court shall not—

4 “(1) grant or order the grant of adjustment of
5 status to that of an alien lawfully admitted for per-
6 manent residence;

7 “(2) grant or order the grant of any other sta-
8 tus, relief, protection from removal, or other benefit
9 under the immigration laws; or

10 “(3) issue any documentation evidencing or re-
11 lated to such grant by the Attorney General, the
12 Secretary, or any court,
13 until such background and security checks as the Sec-
14 retary may in his discretion require have been completed
15 to the satisfaction of the Secretary.”.

16 **SEC. 325. DENIAL OF BENEFITS TO TERRORISTS AND**
17 **CRIMINALS.**

18 Chapter 4 of title III of the Immigration and Nation-
19 ality Act (8 U.S.C. 1501 et seq.) is amended by adding
20 at the end the following new section:

21 “CONSTRUCTION

22 “SEC. 362. (a) Nothing in this Act or any other pro-
23 vision of law shall be construed to require the Secretary
24 of Homeland Security, the Attorney General, the Sec-
25 retary of State, the Secretary of Labor, or any other au-
26 thorized head of any agency to grant any application, ap-

1 prove any petition, or grant or continue any status or ben-
2 efit under the immigration laws by, to, or on behalf of—

3 “(1) any alien described in subparagraphs
4 (A)(i), (A)(iii), (B), or (F) of sections 212(a)(3) or
5 subparagraphs (A)(i), (A)(iii), or (B) of section
6 237(a)(4);

7 “(2) any alien with respect to whom a criminal
8 or other investigation or case is pending that is ma-
9 terial to the alien’s inadmissibility, deportability, or
10 eligibility for the status or benefit sought; or

11 “(3) any alien for whom all law enforcement
12 checks, as deemed appropriate by such authorized
13 official, have not been conducted and resolved.

14 “(b) An official described in subsection (a) may—

15 “(1) with respect to an alien described in sub-
16 section (a)(1), deny or withhold any such applica-
17 tion, petition, status, or benefit on such basis; or

18 “(2) with respect to an alien described in para-
19 graph (2) or (3) of subsection (a), withhold pending
20 resolution of the investigation, case, or law enforce-
21 ment checks any such application, petition, status,
22 or benefit on such basis.”.

23 **SEC. 326. REPEAL OF SECTION 245(I).**

24 Section 245(i) of the Immigration and Nationality
25 Act (8 U.S.C. 1255(i)) is repealed.

EXHIBIT 103.C
S. 2611 (2006)

1 nocent third parties from the threats posed by armed
 2 criminals. The Secretary shall ensure that the policies of
 3 the Department authorize all agents to carry weapons that
 4 are suited to the potential threats that they face.

5 (c) UNIFORMS.—The Secretary shall ensure that all
 6 agents are provided with all necessary uniform items, in-
 7 cluding outerwear suited to the climate, footwear, belts,
 8 holsters, and personal protective equipment, at no cost to
 9 such agents. Such items shall be replaced at no cost to
 10 such agents as they become worn, unserviceable, or no
 11 longer fit properly.

12 **SEC. 165. AUTHORIZATION OF APPROPRIATIONS.**

13 There are authorized to be appropriated to the Sec-
 14 retary such sums as may be necessary for each of the fis-
 15 cal years 2007 through 2011 to carry out this subtitle.

16 **TITLE II—INTERIOR**
 17 **ENFORCEMENT**

18 **SEC. 201. REMOVAL AND DENIAL OF BENEFITS TO TER-**
 19 **RORIST ALIENS.**

20 (a) ASYLUM.—Section 208(b)(2)(A)(v) (8 U.S.C.
 21 1158(b)(2)(A)(v)) is amended by striking “or (VI)” and
 22 inserting “(V), (VI), (VII), or (VIII)”.

23 (b) CANCELLATION OF REMOVAL.—Section
 24 240A(c)(4) (8 U.S.C. 1229b(c)(4)) is amended—

1 (1) by striking “inadmissible under” and insert-
2 ing “described in”; and

3 (2) by striking “deportable under” and insert-
4 ing “described in”.

5 (c) VOLUNTARY DEPARTURE.—Section
6 240B(b)(1)(C) (8 U.S.C. 1229c(b)(1)(C)) is amended by
7 striking “deportable under section 237(a)(2)(A)(iii) or
8 section 237(a)(4)” and inserting “described in paragraph
9 (2)(A)(iii) or (4) of section 237(a)”.

10 (d) RESTRICTION ON REMOVAL.—Section
11 241(b)(3)(B) (8 U.S.C. 1231(b)(3)(B)) is amended—

12 (1) in clause (iii), by striking “or” at the end;

13 (2) in clause (iv) by striking the period at the
14 end and inserting “; or”;

15 (3) by inserting after clause (iv) the following:

16 “(v) the alien is described in section
17 237(a)(4)(B) (other than an alien de-
18 scribed in section 212(a)(3)(B)(i)(IV) if
19 the Secretary of Homeland Security deter-
20 mines that there are not reasonable
21 grounds for regarding the alien as a dan-
22 ger to the security of the United States).”;

23 and

24 (4) in the undesignated paragraph, by striking
25 “For purposes of clause (iv), an alien who is de-

1 scribed in section 237(a)(4)(B) shall be considered
2 to be an alien with respect to whom there are rea-
3 sonable grounds for regarding as a danger to the se-
4 curity of the United States.”.

5 (e) RECORD OF ADMISSION.—Section 249 (8 U.S.C.
6 1259) is amended to read as follows:

7 **“SEC. 249. RECORD OF ADMISSION FOR PERMANENT RESI-**
8 **DENCE IN THE CASE OF CERTAIN ALIENS**
9 **WHO ENTERED THE UNITED STATES PRIOR**
10 **TO JANUARY 1, 1972.**

11 “A record of lawful admission for permanent resi-
12 dence may be made, in the discretion of the Secretary of
13 Homeland Security and under such regulations as the Sec-
14 retary may prescribe, for any alien, as of the date of the
15 approval of the alien’s application or, if entry occurred be-
16 fore July 1, 1924, as of the date of such entry if no such
17 record is otherwise available, if the alien establishes that
18 the alien—

19 “(1) is not described in section 212(a)(3)(E) or
20 in section 212(a) (insofar as it relates to criminals,
21 procurers, other immoral persons, subversives, viola-
22 tors of the narcotics laws, or smugglers of aliens);

23 “(2) entered the United States before January
24 1, 1972;

EXHIBIT 103.D
S. 2612 (2006)

1 (f) SUPPLEMENT NOT SUPPLANT.—Amounts appro-
 2 priated for grants under this section shall be used to sup-
 3 plement and not supplant other State and local public
 4 funds obligated for the purposes provided under this title.

5 **SEC. 154. ENFORCEMENT OF FEDERAL IMMIGRATION LAW.**

6 Nothing in this subtitle shall be construed to author-
 7 ize State or local law enforcement agencies or their officers
 8 to exercise Federal immigration law enforcement author-
 9 ity.

10 **TITLE II—INTERIOR**
 11 **ENFORCEMENT**

12 **SEC. 201. REMOVAL AND DENIAL OF BENEFITS TO TER-**
 13 **RORIST ALIENS.**

14 (a) ASYLUM.—Section 208(b)(2)(A)(v) (8 U.S.C.
 15 1158(b)(2)(A)(v)) is amended by striking “or (VI)” and
 16 inserting “(V), (VI), (VII), or (VIII)”.

17 (b) CANCELLATION OF REMOVAL.—Section
 18 240A(c)(4) (8 U.S.C. 1229b(c)(4)) is amended—

19 (1) by striking “inadmissible under” and insert-
 20 ing “described in”; and

21 (2) by striking “deportable under” and insert-
 22 ing “described in”.

23 (c) VOLUNTARY DEPARTURE.—Section
 24 240B(b)(1)(C) (8 U.S.C. 1229c(b)(1)(C)) is amended by
 25 striking “deportable under section 237(a)(2)(A)(iii) or

1 section 237(a)(4)” and inserting “described in paragraph
2 (2)(A)(iii) or (4) of section 237(a)”.

3 (d) RESTRICTION ON REMOVAL.—Section
4 241(b)(3)(B) (8 U.S.C. 1231(b)(3)(B)) is amended—

5 (1) in clause (iii), by striking “or” at the end;

6 (2) in clause (iv) by striking the period at the
7 end and inserting “; or”;

8 (3) by inserting after clause (iv) the following:

9 “(v) the alien is described in section
10 237(a)(4)(B) (other than an alien de-
11 scribed in section 212(a)(3)(B)(i)(IV) if
12 the Secretary of Homeland Security deter-
13 mines that there are not reasonable
14 grounds for regarding the alien as a dan-
15 ger to the security of the United States).”;

16 and

17 (4) in the undesignated paragraph, by striking
18 “For purposes of clause (iv), an alien who is de-
19 scribed in section 237(a)(4)(B) shall be considered
20 to be an alien with respect to whom there are rea-
21 sonable grounds for regarding as a danger to the se-
22 curity of the United States.”.

23 (e) RECORD OF ADMISSION.—Section 249 (8 U.S.C.
24 1259) is amended to read as follows:

1 **“SEC. 249. RECORD OF ADMISSION FOR PERMANENT RESI-**
2 **DENCE IN THE CASE OF CERTAIN ALIENS**
3 **WHO ENTERED THE UNITED STATES PRIOR**
4 **TO JANUARY 1, 1972.**

5 “A record of lawful admission for permanent resi-
6 dence may be made, in the discretion of the Secretary of
7 Homeland Security and under such regulations as the Sec-
8 retary may prescribe, for any alien, as of the date of the
9 approval of the alien’s application or, if entry occurred be-
10 fore July 1, 1924, as of the date of such entry if no such
11 record is otherwise available, if the alien establishes that
12 the alien—

13 “(1) is not described in section 212(a)(3)(E) or
14 in section 212(a) (insofar as it relates to criminals,
15 procurers, other immoral persons, subversives, viola-
16 tors of the narcotics laws, or smugglers of aliens);

17 “(2) entered the United States before January
18 1, 1972;

19 “(3) has resided in the United States continu-
20 ously since such entry;

21 “(4) is a person of good moral character;

22 “(5) is not ineligible for citizenship; and

23 “(6) is not described in section 237(a)(4)(B).”.

24 (f) **EFFECTIVE DATE AND APPLICATION.**—The
25 amendments made by this section shall—

1 (1) take effect on the date of the enactment of
2 this Act; and

3 (2) apply to any act or condition constituting a
4 ground for inadmissibility, excludability, or removal
5 occurring or existing on or after the date of the en-
6 actment of this Act.

EXHIBIT 103.E
S. 2454 (2006)

1 partment, there are authorized to be appropriated to the
2 Office, to enable the Office to carry out this section—

3 (1) for fiscal year 2007, not less than 5 percent
4 of the overall budget of the Office for such fiscal
5 year;

6 (2) for fiscal year 2008, not less than 6 percent
7 of the overall budget of the Office for such fiscal
8 year; and

9 (3) for fiscal year 2009, not less than 7 percent
10 of the overall budget of the Office for such fiscal
11 year.

12 **TITLE II—INTERIOR** 13 **ENFORCEMENT**

14 **SEC. 201. REMOVAL AND DENIAL OF BENEFITS TO TER-**

15 **RORIST ALIENS.**

16 (a) ASYLUM.—Section 208(b)(2)(A)(v) (8 U.S.C.
17 1158(b)(2)(A)(v)) is amended by striking “or (VI)” and
18 inserting “(V), (VI), (VII), or (VIII)”.

19 (b) CANCELLATION OF REMOVAL.—Section
20 240A(c)(4) (8 U.S.C. 1229b(c)(4)) is amended—

21 (1) by striking “inadmissible under” and insert-
22 ing “described in”; and

23 (2) by striking “deportable under” and insert-
24 ing “described in”.

1 (c) VOLUNTARY DEPARTURE.—Section
2 240B(b)(1)(C) (8 U.S.C. 1229c(b)(1)(C)) is amended by
3 striking “deportable under section 237(a)(2)(A)(iii) or
4 section 237(a)(4)” and inserting “described in paragraph
5 (2)(A)(iii) or (4) of section 237(a)”.

6 (d) RESTRICTION ON REMOVAL.—Section
7 241(b)(3)(B) (8 U.S.C. 1231(b)(3)(B)) is amended—

8 (1) in clause (iii), by striking “or” at the end;

9 (2) in clause (iv) by striking the period at the
10 end and inserting “; or”;

11 (3) by inserting after clause (iv) the following:

12 “(v) the alien is described in section
13 237(a)(4)(B) (other than an alien de-
14 scribed in section 212(a)(3)(B)(i)(IV) if
15 the Secretary of Homeland Security deter-
16 mines that there are not reasonable
17 grounds for regarding the alien as a dan-
18 ger to the security of the United States).”;

19 and

20 (4) in the undesignated paragraph, by striking
21 “For purposes of clause (iv), an alien who is de-
22 scribed in section 237(a)(4)(B) shall be considered
23 to be an alien with respect to whom there are rea-
24 sonable grounds for regarding as a danger to the se-
25 curity of the United States.”.

1 (e) RECORD OF ADMISSION.—Section 249 (8 U.S.C.
2 1259) is amended to read as follows:

3 **“SEC. 249. RECORD OF ADMISSION FOR PERMANENT RESI-**
4 **DENCE IN THE CASE OF CERTAIN ALIENS**
5 **WHO ENTERED THE UNITED STATES PRIOR**
6 **TO JANUARY 1, 1972.**

7 “A record of lawful admission for permanent resi-
8 dence may be made, in the discretion of the Secretary of
9 Homeland Security and under such regulations as the Sec-
10 retary may prescribe, for any alien, as of the date of the
11 approval of the alien’s application or, if entry occurred be-
12 fore July 1, 1924, as of the date of such entry if no such
13 record is otherwise available, if the alien establishes that
14 the alien—

15 “(1) is not described in section 212(a)(3)(E) or
16 in section 212(a) (insofar as it relates to criminals,
17 procurers, other immoral persons, subversives, viola-
18 tors of the narcotics laws, or smugglers of aliens);

19 “(2) entered the United States before January
20 1, 1972;

21 “(3) has resided in the United States continu-
22 ously since such entry;

23 “(4) is a person of good moral character;

24 “(5) is not ineligible for citizenship; and

25 “(6) is not described in section 237(a)(4)(B).”.

1 (f) EFFECTIVE DATE AND APPLICATION.—The
2 amendments made by this section shall—

3 (1) take effect on the date of the enactment of
4 this Act; and

5 (2) apply to—

6 (A) any aliens in a removal, deportation,
7 or exclusion proceeding pending on or after the
8 date of the enactment of this Act; and

9 (B) any act or condition constituting a
10 ground for inadmissibility, excludability, or re-
11 moval occurring or existing before, on, or after
12 the date of the enactment of this Act.

13 **SEC. 202. DETENTION AND REMOVAL OF ALIENS ORDERED**
14 **REMOVED.**

15 (a) IN GENERAL.—

16 (1) AMENDMENTS.—Section 241(a) (8 U.S.C.
17 1231(a)) is amended—

18 (A) by striking “Attorney General” the
19 first place it appears and inserting “Secretary
20 of Homeland Security”;

21 (B) by striking “Attorney General” any
22 other place it appears and inserting “Sec-
23 retary”;

24 (C) in paragraph (1)—

1 “(3) issue any documentation evidencing or re-
2 lated to such grant by the Secretary, the Attorney
3 General, or any court.”.

4 (b) EFFECTIVE DATE.—The amendment made by
5 subsection (a)(1) shall take effect on the date that is 90
6 days after the date of the enactment of this Act.

7 **SEC. 217. DENIAL OF BENEFITS TO TERRORISTS AND**
8 **CRIMINALS.**

9 (a) IN GENERAL.—Chapter 4 of title III (8 U.S.C.
10 1501 et seq.) is amended by adding at the end the fol-
11 lowing:

12 **“SEC. 362. CONSTRUCTION.**

13 “(a) IN GENERAL.—Nothing in this Act or in any
14 other provision of law shall be construed to require the
15 Secretary of Homeland Security, the Attorney General,
16 the Secretary of State, the Secretary of Labor, or any
17 other authorized head of any Federal agency to grant any
18 application, approve any petition, or grant or continue any
19 status or benefit under the immigration laws by, to, or
20 on behalf of—

21 “(1) any alien described in subparagraph (A)(i),
22 (A)(iii), (B), or (F) of section 212(a)(3) or subpara-
23 graph (A)(i), (A)(iii), or (B) of section 237(a)(4);

24 “(2) any alien with respect to whom a criminal
25 or other investigation or case is pending that is ma-

1 terial to the alien’s inadmissibility, deportability, or
2 eligibility for the status or benefit sought; or

3 “(3) any alien for whom all law enforcement
4 checks, as deemed appropriate by such authorized
5 official, have not been conducted and resolved.

6 “(b) DENIAL; WITHHOLDING.—An official described
7 in subsection (a) may deny or withhold (with respect to
8 an alien described in subsection (a)(1)) or withhold pend-
9 ing resolution of the investigation, case, or law enforce-
10 ment checks (with respect to an alien described in para-
11 graph (2) or (3) of subsection (a)) any such application,
12 petition, status, or benefit on such basis.”.

13 (b) CLERICAL AMENDMENT.—The table of contents
14 is amended by inserting after the item relating to section
15 361 the following:

 “Sec. 362. Construction.”.

16 **SEC. 218. STATE CRIMINAL ALIEN ASSISTANCE PROGRAM.**

17 (a) REIMBURSEMENT FOR COSTS ASSOCIATED WITH
18 PROCESSING CRIMINAL ILLEGAL ALIENS.—The Secretary
19 of Homeland Security shall reimburse States and units of
20 local government for costs associated with processing un-
21 documented criminal aliens through the criminal justice
22 system, including—

- 23 (1) indigent defense;
- 24 (2) criminal prosecution;
- 25 (3) autopsies;

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S. 2368 (2006)

1 (c) PROCEDURE FOR GRANTING IMMIGRANT STA-
2 TUS.—Section 204 of such Act (8 U.S.C. 1154) is amend-
3 ed—

4 (1) by striking subsection (a)(1)(I); and

5 (2) in subsection (e), by striking “(a), (b), or
6 (c)” and inserting “(a) or (b)”.

7 (d) EFFECTIVE DATE.—The amendments made by
8 this section shall take effect on October 1, 2006.

9 **SEC. 304. COMPLETION OF BACKGROUND AND SECURITY**

10 **CHECKS.**

11 Section 103 of the Immigration and Nationality Act
12 (8 U.S.C. 1103) is amended by adding at the end the fol-
13 lowing new subsection:

14 “(i) Notwithstanding any other provision of law, the
15 Secretary of Homeland Security, the Attorney General, or
16 any court shall not—

17 “(1) grant or order the grant of adjustment of
18 status to that of an alien lawfully admitted for per-
19 manent residence;

20 “(2) grant or order the grant of any other sta-
21 tus, relief, protection from removal, or other benefit
22 under the immigration laws; or

23 “(3) issue any documentation evidencing or re-
24 lated to such grant by the Attorney General, the
25 Secretary, or any court,

1 until such background and security checks as the Sec-
2 retary may in his discretion require have been completed
3 to the satisfaction of the Secretary.”.

4 **SEC. 305. NATURALIZATION AND GOOD MORAL CHAR-**
5 **ACTER.**

6 (a) NATURALIZATION REFORM.—

7 (1) BARRING TERRORISTS FROM NATURALIZA-
8 TION.—Section 316 of the Immigration and Nation-
9 ality Act (8 U.S.C. 1427) is amended by adding at
10 the end the following new subsection:

11 “(g) No person shall be naturalized who the Sec-
12 retary of Homeland Security determines, in the Sec-
13 retary’s discretion, to have been at any time an alien de-
14 scribed in section 212(a)(3) or 237(a)(4). Such determina-
15 tion may be based upon any relevant information or evi-
16 dence, including classified, sensitive, or national security
17 information, and shall be binding upon, and unreviewable
18 by, any court exercising jurisdiction under the immigra-
19 tion laws over any application for naturalization, regard-
20 less whether such jurisdiction to review a decision or ac-
21 tion of the Secretary is de novo or otherwise.”.

22 (2) CONCURRENT NATURALIZATION AND RE-
23 MOVAL PROCEEDINGS.—The last sentence of section
24 318 of such Act (8 U.S.C. 1429) is amended—

1 ing “inserting after paragraph (8) and before the
2 undesignated paragraph at the end”.

3 (4) EFFECTIVE DATES.—

4 (A) IN GENERAL.—The amendments made
5 by paragraphs (1) and (2) shall take effect on
6 the date of the enactment of this Act, shall
7 apply to any act that occurred before, on, or
8 after such date, and shall apply to any applica-
9 tion for naturalization or any other benefit or
10 relief or any other case or matter under the im-
11 migration laws pending on, or filed on or after,
12 such date; or

13 (B) INTELLIGENCE REFORM AND TER-
14 RORISM PREVENTION ACT OF 2004.—The
15 amendments made by paragraph (3) shall take
16 effect as if included in the enactment of the In-
17 telligence Reform and Terrorism Prevention Act
18 of 2004 (Public Law 108–458; 118 Stat.
19 3638).

20 **SEC. 306. DENIAL OF BENEFITS TO TERRORISTS AND**
21 **CRIMINALS.**

22 (a) IN GENERAL.—Chapter 2 of title II of the Immi-
23 gration and Nationality Act (8 U.S.C. 1181 et seq.) is
24 amended by adding at the end the following new section:

1 **“SEC. 219A. PROHIBITION ON PROVIDING IMMIGRATION**
2 **BENEFITS TO CERTAIN ALIENS.**

3 “Nothing in this Act or any other provision of law
4 shall permit the Secretary of Homeland Security, the At-
5 torney General, the Secretary of State, the Secretary of
6 Labor, or any other authorized head of any agency to
7 grant any application, approve any petition, or grant or
8 continue any status or benefit under the immigration laws
9 by, to, or on behalf of—

10 “(1) any alien described in subparagraphs
11 (A)(i), (A)(iii), (B), or (F) of sections 212(a)(3) or
12 subparagraphs (A)(i), (A)(iii), or (B) of section
13 237(a)(4);

14 “(2) any alien with respect to whom a criminal
15 or other investigation or case is pending that is ma-
16 terial to the alien’s inadmissibility, deportability, or
17 eligibility for the status or benefit sought; or

18 “(3) any alien for whom all law enforcement
19 checks, as deemed appropriate by such authorized
20 official, have not been conducted and resolved.”.

21 (b) INADMISSIBILITY ON SECURITY AND RELATED
22 GROUNDS.—Section 212(a)(3)(B)(ii)(I) of the Immigra-
23 tion and Nationality Act (8 U.S.C. 1182(a)(3)(B)(ii)(I))
24 is amended by inserting “is able to demonstrate, by clear
25 and convincing evidence, that such spouse or child” after
26 “who”.

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S. 2377 (2006)

1 (c) PROCEDURE FOR GRANTING IMMIGRANT STA-
2 TUS.—Section 204 of such Act (8 U.S.C. 1154) is amend-
3 ed—

4 (1) by striking subsection (a)(1)(I); and

5 (2) in subsection (e), by striking “(a), (b), or
6 (c)” and inserting “(a) or (b)”.

7 (d) EFFECTIVE DATE.—The amendments made by
8 this section shall take effect on October 1, 2006.

9 **SEC. 304. COMPLETION OF BACKGROUND AND SECURITY**

10 **CHECKS.**

11 Section 103 of the Immigration and Nationality Act
12 (8 U.S.C. 1103) is amended by adding at the end the fol-
13 lowing new subsection:

14 “(i) Notwithstanding any other provision of law, the
15 Secretary of Homeland Security, the Attorney General, or
16 any court shall not—

17 “(1) grant or order the grant of adjustment of
18 status to that of an alien lawfully admitted for per-
19 manent residence;

20 “(2) grant or order the grant of any other sta-
21 tus, relief, protection from removal, or other benefit
22 under the immigration laws; or

23 “(3) issue any documentation evidencing or re-
24 lated to such grant by the Attorney General, the
25 Secretary, or any court,

1 until such background and security checks as the Sec-
2 retary may in his discretion require have been completed
3 to the satisfaction of the Secretary.”.

4 **SEC. 305. NATURALIZATION AND GOOD MORAL CHAR-**
5 **ACTER.**

6 (a) NATURALIZATION REFORM.—

7 (1) BARRING TERRORISTS FROM NATURALIZA-
8 TION.—Section 316 of the Immigration and Nation-
9 ality Act (8 U.S.C. 1427) is amended by adding at
10 the end the following new subsection:

11 “(g) No person shall be naturalized who the Sec-
12 retary of Homeland Security determines, in the Sec-
13 retary’s discretion, to have been at any time an alien de-
14 scribed in section 212(a)(3) or 237(a)(4). Such determina-
15 tion may be based upon any relevant information or evi-
16 dence, including classified, sensitive, or national security
17 information, and shall be binding upon, and unreviewable
18 by, any court exercising jurisdiction under the immigra-
19 tion laws over any application for naturalization, regard-
20 less whether such jurisdiction to review a decision or ac-
21 tion of the Secretary is de novo or otherwise.”.

22 (2) CONCURRENT NATURALIZATION AND RE-
23 MOVAL PROCEEDINGS.—The last sentence of section
24 318 of such Act (8 U.S.C. 1429) is amended—

1 ing “inserting after paragraph (8) and before the
2 undesignated paragraph at the end”.

3 (4) EFFECTIVE DATES.—

4 (A) IN GENERAL.—The amendments made
5 by paragraphs (1) and (2) shall take effect on
6 the date of the enactment of this Act, shall
7 apply to any act that occurred before, on, or
8 after such date, and shall apply to any applica-
9 tion for naturalization or any other benefit or
10 relief or any other case or matter under the im-
11 migration laws pending on, or filed on or after,
12 such date; or

13 (B) INTELLIGENCE REFORM AND TER-
14 RORISM PREVENTION ACT OF 2004.—The
15 amendments made by paragraph (3) shall take
16 effect as if included in the enactment of the In-
17 telligence Reform and Terrorism Prevention Act
18 of 2004 (Public Law 108–458; 118 Stat.
19 3638).

20 **SEC. 306. DENIAL OF BENEFITS TO TERRORISTS AND**
21 **CRIMINALS.**

22 (a) IN GENERAL.—Chapter 2 of title II of the Immi-
23 gration and Nationality Act (8 U.S.C. 1181 et seq.) is
24 amended by adding at the end the following new section:

1 **“SEC. 219A. PROHIBITION ON PROVIDING IMMIGRATION**
2 **BENEFITS TO CERTAIN ALIENS.**

3 “Nothing in this Act or any other provision of law
4 shall permit the Secretary of Homeland Security, the At-
5 torney General, the Secretary of State, the Secretary of
6 Labor, or any other authorized head of any agency to
7 grant any application, approve any petition, or grant or
8 continue any status or benefit under the immigration laws
9 by, to, or on behalf of—

10 “(1) any alien described in subparagraphs
11 (A)(i), (A)(iii), (B), or (F) of sections 212(a)(3) or
12 subparagraphs (A)(i), (A)(iii), or (B) of section
13 237(a)(4);

14 “(2) any alien with respect to whom a criminal
15 or other investigation or case is pending that is ma-
16 terial to the alien’s inadmissibility, deportability, or
17 eligibility for the status or benefit sought; or

18 “(3) any alien for whom all law enforcement
19 checks, as deemed appropriate by such authorized
20 official, have not been conducted and resolved.”.

21 (b) INADMISSIBILITY ON SECURITY AND RELATED
22 GROUNDS.—Section 212(a)(3)(B)(ii)(I) of the Immigra-
23 tion and Nationality Act (8 U.S.C. 1182(a)(3)(B)(ii)(I))
24 is amended by inserting “is able to demonstrate, by clear
25 and convincing evidence, that such spouse or child” after
26 “who”.

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1 such agents as they become worn, unserviceable, or no
2 longer fit properly.

3 **SEC. 155. AUTHORIZATION OF APPROPRIATIONS.**

4 There are authorized to be appropriated to the Sec-
5 retary such sums as may be necessary for each of the fis-
6 cal years 2008 through 2012 to carry out this subtitle.

7 **TITLE II—INTERIOR**
8 **ENFORCEMENT**

9 **SEC. 201. REMOVAL AND DENIAL OF BENEFITS TO TER-**
10 **RORIST ALIENS.**

11 (a) ASYLUM.—Section 208(b)(2)(A)(v) (8 U.S.C.
12 1158(b)(2)(A)(v)) is amended by striking “or (VI)” and
13 inserting “(V), (VI), (VII), or (VIII)”.

14 (b) CANCELLATION OF REMOVAL.—Section
15 240A(c)(4) (8 U.S.C. 1229b(c)(4)) is amended—

16 (1) by striking “inadmissible under” and insert-
17 ing “described in”; and

18 (2) by striking “deportable under” and insert-
19 ing “described in”.

20 (c) VOLUNTARY DEPARTURE.—Section
21 240B(b)(1)(C) (8 U.S.C. 1229c(b)(1)(C)) is amended by
22 striking “deportable under section 237(a)(2)(A)(iii) or
23 section 237(a)(4)” and inserting “described in paragraph
24 (2)(A)(iii) or (4) of section 237(a)”.

1 (d) RESTRICTION ON REMOVAL.—Section
2 241(b)(3)(B) (8 U.S.C. 1231(b)(3)(B)) is amended—

3 (1) in clause (iii), by striking “or” at the end;

4 (2) in clause (iv) by striking the period at the
5 end and inserting “; or”;

6 (3) by inserting after clause (iv) the following:

7 “(v) the alien is described in section
8 237(a)(4)(B) (other than an alien de-
9 scribed in section 212(a)(3)(B)(i)(IV) if
10 the Secretary of Homeland Security deter-
11 mines that there are not reasonable
12 grounds for regarding the alien as a dan-
13 ger to the security of the United States).”;
14 and

15 (4) in the undesignated paragraph, by striking
16 “For purposes of clause (iv), an alien who is de-
17 scribed in section 237(a)(4)(B) shall be considered
18 to be an alien with respect to whom there are rea-
19 sonable grounds for regarding as a danger to the se-
20 curity of the United States.”.

21 (e) RECORD OF ADMISSION.—Section 249 (8 U.S.C.
22 1259) is amended to read as follows:

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S. 1348 (2007)

1 **SEC. 155. AUTHORIZATION OF APPROPRIATIONS.**

2 There are authorized to be appropriated to the Sec-
 3 retary such sums as may be necessary for each of the fis-
 4 cal years 2008 through 2012 to carry out this subtitle.

5 **TITLE II—INTERIOR**
 6 **ENFORCEMENT**

7 **SEC. 201. REMOVAL AND DENIAL OF BENEFITS TO TER-**
 8 **RORIST ALIENS.**

9 (a) ASYLUM.—Section 208(b)(2)(A)(v) (8 U.S.C.
 10 1158(b)(2)(A)(v)) is amended by striking “or (VI)” and
 11 inserting “(V), (VI), (VII), or (VIII)”.

12 (b) CANCELLATION OF REMOVAL.—Section
 13 240A(c)(4) (8 U.S.C. 1229b(c)(4)) is amended—

14 (1) by striking “inadmissible under” and insert-
 15 ing “described in”; and

16 (2) by striking “deportable under” and insert-
 17 ing “described in”.

18 (c) VOLUNTARY DEPARTURE.—Section
 19 240B(b)(1)(C) (8 U.S.C. 1229c(b)(1)(C)) is amended by
 20 striking “deportable under section 237(a)(2)(A)(iii) or
 21 section 237(a)(4)” and inserting “described in paragraph
 22 (2)(A)(iii) or (4) of section 237(a)”.

23 (d) RESTRICTION ON REMOVAL.—Section
 24 241(b)(3)(B) (8 U.S.C. 1231(b)(3)(B)) is amended—

25 (1) in clause (iii), by striking “or” at the end;

1 (2) in clause (iv) by striking the period at the
2 end and inserting “; or”;

3 (3) by inserting after clause (iv) the following:

4 “(v) the alien is described in section
5 237(a)(4)(B) (other than an alien de-
6 scribed in section 212(a)(3)(B)(i)(IV) if
7 the Secretary of Homeland Security deter-
8 mines that there are not reasonable
9 grounds for regarding the alien as a dan-
10 ger to the security of the United States).”;

11 and

12 (4) in the undesignated paragraph, by striking
13 “For purposes of clause (iv), an alien who is de-
14 scribed in section 237(a)(4)(B) shall be considered
15 to be an alien with respect to whom there are rea-
16 sonable grounds for regarding as a danger to the se-
17 curity of the United States.”.

18 (e) RECORD OF ADMISSION.—Section 249 (8 U.S.C.
19 1259) is amended to read as follows:

20 **“SEC. 249. RECORD OF ADMISSION FOR PERMANENT RESI-
21 DENCE IN THE CASE OF CERTAIN ALIENS
22 WHO ENTERED THE UNITED STATES PRIOR
23 TO JANUARY 1, 1972.**

24 “A record of lawful admission for permanent resi-
25 dence may be made, in the discretion of the Secretary of

1 Homeland Security and under such regulations as the Sec-
2 retary may prescribe, for any alien, as of the date of the
3 approval of the alien's application or, if entry occurred be-
4 fore July 1, 1924, as of the date of such entry if no such
5 record is otherwise available, if the alien establishes that
6 the alien—

7 “(1) is not described in section 212(a)(3)(E) or
8 in section 212(a) (insofar as it relates to criminals,
9 procurers, other immoral persons, subversives, viola-
10 tors of the narcotics laws, or smugglers of aliens);

11 “(2) entered the United States before January
12 1, 1972;

13 “(3) has resided in the United States continu-
14 ously since such entry;

15 “(4) is a person of good moral character;

16 “(5) is not ineligible for citizenship; and

17 “(6) is not described in section 237(a)(4)(B).”.

18 (f) EFFECTIVE DATE AND APPLICATION.—The
19 amendments made by this section shall—

20 (1) take effect on the date of the enactment of
21 this Act; and

22 (2) apply to any act or condition constituting a
23 ground for inadmissibility, excludability, or removal
24 occurring or existing on or after the date of the en-
25 actment of this Act.

1 (d) ADMINISTRATIVE APPEALS.—Motions to recon-
2 sider, and administrative appeals of, a denial of a perma-
3 nent labor certification application, shall be decided by the
4 Secretary of Labor not later than 60 days after the date
5 of the filing of such motion or such appeal.

6 (e) APPLICATIONS UNDER PREVIOUS SYSTEM.—Not
7 later than 180 days after the date of the enactment of
8 this Act, the Secretary of Labor shall process and issue
9 decisions on all applications for permanent alien labor cer-
10 tification that were filed prior to March 28, 2005.

11 (f) EFFECTIVE DATE.—The provisions of this section
12 shall take effect 90 days after the date of enactment of
13 this Act, whether or not the Secretary of Labor has
14 amended the regulations at part 656 of title 20, Code of
15 Federal Regulation to implement such changes.

16 **SEC. 531. COMPLETION OF BACKGROUND AND SECURITY**

17 **CHECKS.**

18 Section 103 (8 U.S.C. 1103) is amended by adding
19 at the end the following:

20 “(i) REQUIREMENT FOR BACKGROUND CHECKS.—
21 Notwithstanding any other provision of law, until appro-
22 priate background and security checks, as determined by
23 the Secretary of Homeland Security, have been completed,
24 and the information provided to and assessed by the offi-
25 cial with jurisdiction to grant or issue the benefit or docu-

1 mentation, on an in camera basis as may be necessary
2 with respect to classified, law enforcement, or other infor-
3 mation that cannot be disclosed publicly, the Secretary of
4 Homeland Security, the Attorney General, or any court
5 may not—

6 “(1) grant or order the grant of adjustment of
7 status of an alien to that of an alien lawfully admit-
8 ted for permanent residence;

9 “(2) grant or order the grant of any other sta-
10 tus, relief, protection from removal, or other benefit
11 under the immigration laws; or

12 “(3) issue any documentation evidencing or re-
13 lated to such grant by the Secretary, the Attorney
14 General, or any court.

15 “(j) REQUIREMENT TO RESOLVE FRAUD ALLEGA-
16 TIONS.—Notwithstanding any other provision of law, until
17 any suspected or alleged fraud relating to the granting of
18 any status (including the granting of adjustment of sta-
19 tus), relief, protection from removal, or other benefit
20 under this Act has been investigated and resolved, the Sec-
21 retary of Homeland Security and the Attorney General
22 may not be required to—

23 “(1) grant or order the grant of adjustment of
24 status of an alien to that of an alien lawfully admit-
25 ted for permanent residence;

1 “(2) grant or order the grant of any other sta-
2 tus, relief, protection from removal, or other benefit
3 under the immigration laws; or

4 “(3) issue any documentation evidencing or re-
5 lated to such grant by the Secretary, the Attorney
6 General, or any court.

7 “(k) PROHIBITION OF JUDICIAL ENFORCEMENT.—
8 Notwithstanding any other provision of law, no court may
9 require any act described in subsection (i) or (j) to be com-
10 pleted by a certain time or award any relief for the failure
11 to complete such acts.”.

12 **SEC. 532. VISA REVALIDATION.**

13 (a) IN GENERAL.—Section 222 (8 U.S.C. 1202) is
14 amended by adding at the end the following:

15 “(i) The Secretary of State shall permit an alien
16 granted a nonimmigrant visa under subparagraph E, H,
17 I, L, O, or P of section 101(a)(15) to apply for a renewal
18 of such visa within the United States if—

19 “(1) such visa expired during the 12-month pe-
20 riod ending on the date of such application;

21 “(2) the alien is seeking a nonimmigrant visa
22 under the same subparagraph under which the alien
23 had previously received a visa; and

24 “(3) the alien has complied with the immigra-
25 tion laws and regulations of the United States.”.

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1 (1) any act that occurred before, or, or after
2 the date of the enactment of this Act;

3 (2) all aliens who are required to establish ad-
4 missibility on or after such date; and

5 (3) all removal, deportation, or exclusion pro-
6 ceedings that are filed, pending, or reopened, on or
7 after such date.

8 **SEC. 233. REMOVAL AND DENIAL OF BENEFITS TO TER-**
9 **RORIST ALIENS.**

10 (a) ASYLUM.—Section 208(b)(2)(A) (8 U.S.C.
11 1158(b)(2)(A)) is amended—

12 (1) by inserting “or the Secretary of Homeland
13 Security” after “if the Attorney General”; and

14 (2) by amending clause (v) to read as follows:

15 “(v) the alien is described in subpara-
16 graph (B)(i) or (F) of section 212(a)(3),
17 unless the alien is described in section
18 212(a)(3)(B)(i)(IX) and the Attorney Gen-
19 eral or the Secretary of Homeland Security
20 determines that there are not reasonable
21 grounds for regarding the alien as a dan-
22 ger to the security of the United States;
23 or”.

24 (b) CONFORMING AMENDMENT.—Section
25 212(a)(3)(B)(ii) (8 U.S.C. 1182(a)(3)(B)(ii)) is amended

1 by striking “(VII) of clause (i) does” and inserting “(IX)
2 of clause (i) shall”.

3 (c) CANCELLATION OF REMOVAL.—Section
4 240A(c)(4) (8 U.S.C. 1229b(c)(4)) is amended—

5 (1) by striking “inadmissible under” and insert-
6 ing “described in”; and

7 (2) by striking “deportable under” and insert-
8 ing “described in”.

9 (d) VOLUNTARY DEPARTURE.—Section
10 240B(b)(1)(C) (8 U.S.C. 1229c(b)(1)(C)) is amended by
11 striking “deportable under section 237(a)(2)(A)(iii) or
12 section 237(a)(4)” and inserting “described in paragraph
13 (2)(A)(iii) or (4) of section 237(a)”.

14 (e) RESTRICTION ON REMOVAL.—Section
15 241(b)(3)(B) (8 U.S.C. 1231(b)(3)(B)) is amended—

16 (1) by inserting “or the Secretary of Homeland
17 Security” after “Attorney General” each place such
18 term appears;

19 (2) in clause (iii), by striking “or” at the end;

20 (3) in clause (iv), by striking the period at the
21 end and inserting “; or”;

22 (4) by inserting after clause (iv) the following:

23 “(v) the alien is described in subpara-
24 graph (B)(i) or (F) of section 212(a)(3),
25 unless, in the case of an alien described in

1 section 212(a)(3)(B)(i)(IX), the Secretary
2 of Homeland Security or the Attorney
3 General determines that there are not rea-
4 sonable grounds for regarding the alien as
5 a danger to the security of the United
6 States.”; and

7 (5) in the undesignated matter at the end, by
8 striking “For purposes of clause (iv), an alien who
9 is described in section 237(a)(4)(B) shall be consid-
10 ered to be an alien with respect to whom there are
11 reasonable grounds for regarding as a danger to the
12 security of the United States.”.

13 **SEC. 234. USE OF 1986 IRCA LEGALIZATION INFORMATION**
14 **FOR NATIONAL SECURITY PURPOSES.**

15 (a) SPECIAL AGRICULTURAL WORKERS.—Section
16 210(b)(6) (8 U.S.C. 1160(b)(6)) is amended—

17 (1) by striking “Attorney General” each place
18 such term appears and inserting “Secretary of
19 Homeland Security”;

20 (2) in subparagraph (A), by striking “Justice”
21 and inserting “Homeland Security”;

22 (3) by redesignating subparagraphs (C) and
23 (D) as subparagraphs (D) and (E), respectively;

24 (4) by inserting after subparagraph (B) the fol-
25 lowing:

EXHIBIT 103.K
S. 1984 (2007)

1 (1) any act that occurred before, or, or after
2 the date of the enactment of this Act;

3 (2) all aliens who are required to establish ad-
4 missibility on or after such date; and

5 (3) all removal, deportation, or exclusion pro-
6 ceedings that are filed, pending, or reopened, on or
7 after such date.

8 **SEC. 233. REMOVAL AND DENIAL OF BENEFITS TO TER-**
9 **RORIST ALIENS.**

10 (a) ASYLUM.—Section 208(b)(2)(A) (8 U.S.C.
11 1158(b)(2)(A)) is amended—

12 (1) by inserting “or the Secretary of Homeland
13 Security” after “if the Attorney General”; and

14 (2) by amending clause (v) to read as follows:

15 “(v) the alien is described in subpara-
16 graph (B)(i) or (F) of section 212(a)(3),
17 unless the alien is described in section
18 212(a)(3)(B)(i)(IX) and the Attorney Gen-
19 eral or the Secretary of Homeland Security
20 determines that there are not reasonable
21 grounds for regarding the alien as a dan-
22 ger to the security of the United States;
23 or”.

24 (b) CONFORMING AMENDMENT.—Section
25 212(a)(3)(B)(ii) (8 U.S.C. 1182(a)(3)(B)(ii)) is amended

1 by striking “(VII) of clause (i) does” and inserting “(IX)
2 of clause (i) shall”.

3 (c) CANCELLATION OF REMOVAL.—Section
4 240A(c)(4) (8 U.S.C. 1229b(c)(4)) is amended—

5 (1) by striking “inadmissible under” and insert-
6 ing “described in”; and

7 (2) by striking “deportable under” and insert-
8 ing “described in”.

9 (d) VOLUNTARY DEPARTURE.—Section
10 240B(b)(1)(C) (8 U.S.C. 1229c(b)(1)(C)) is amended by
11 striking “deportable under section 237(a)(2)(A)(iii) or
12 section 237(a)(4)” and inserting “described in paragraph
13 (2)(A)(iii) or (4) of section 237(a)”.

14 (e) RESTRICTION ON REMOVAL.—Section
15 241(b)(3)(B) (8 U.S.C. 1231(b)(3)(B)) is amended—

16 (1) by inserting “or the Secretary of Homeland
17 Security” after “Attorney General” each place such
18 term appears;

19 (2) in clause (iii), by striking “or” at the end;

20 (3) in clause (iv), by striking the period at the
21 end and inserting “; or”;

22 (4) by inserting after clause (iv) the following:

23 “(v) the alien is described in subpara-
24 graph (B)(i) or (F) of section 212(a)(3),
25 unless, in the case of an alien described in

1 section 212(a)(3)(B)(i)(IX), the Secretary
2 of Homeland Security or the Attorney
3 General determines that there are not rea-
4 sonable grounds for regarding the alien as
5 a danger to the security of the United
6 States.”; and

7 (5) in the undesignated matter at the end, by
8 striking “For purposes of clause (iv), an alien who
9 is described in section 237(a)(4)(B) shall be consid-
10 ered to be an alien with respect to whom there are
11 reasonable grounds for regarding as a danger to the
12 security of the United States.”.

13 **SEC. 234. USE OF 1986 IRCA LEGALIZATION INFORMATION**
14 **FOR NATIONAL SECURITY PURPOSES.**

15 (a) SPECIAL AGRICULTURAL WORKERS.—Section
16 210(b)(6) (8 U.S.C. 1160(b)(6)) is amended—

17 (1) by striking “Attorney General” each place
18 such term appears and inserting “Secretary of
19 Homeland Security”;

20 (2) in subparagraph (A), by striking “Justice”
21 and inserting “Homeland Security”;

22 (3) by redesignating subparagraphs (C) and
23 (D) as subparagraphs (D) and (E), respectively;

24 (4) by inserting after subparagraph (B) the fol-
25 lowing:

EXHIBIT 104
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EXHIBIT 105
FILED UNDER SEAL

EXHIBIT 106
FILED UNDER SEAL

EXHIBIT 107

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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

TAREK HAMDI,)
)
Plaintiff,)
)
vs.) Case No.
) ED CV 10-00894
UNITED STATES CITIZENSHIP AND) VAP (DTBx)
IMMIGRATION SERVICE, et al.,)
)
Defendants.)
_____)

Deposition of ROBERTO OSUNA, taken on behalf of the
Plaintiff, at 2140 West Chapman Avenue, Suite 209, Orange,
California, commencing at 9:29 a.m., Friday, September 23,
2011, before Cheryl Sletta, Registered Professional
Reporter, Certified Shorthand Reporter No. 7354.

1 APPEARANCES:

2 FOR PLAINTIFF:

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24 ALSO PRESENT:

25 JENNIFER F. CHIN

CLAUDIA GONZALEZ

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I N D E X

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* * * * *

INSTRUCTION NOT TO ANSWER

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* * * * *

INFORMATION REQUESTED

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1 ORANGE, CALIFORNIA; FRIDAY, SEPTEMBER 23, 2011

2 9:29 A.M.

3

4 ROBERTO OSUNA,

5 called as a witness on behalf of the Plaintiff, having

6 been first duly placed under oath, was examined and

7 testified as follows:

8

9

EXAMINATION

10 BY MS. HELZER:

11 Q Good morning, Mr. Osuna.

12 A Good morning.

13 Q My name is Belinda Escobosa Helzer, and I'm an
14 attorney that represents the plaintiff in this case,
15 Tarek Hamdi.

16 I know you've had your deposition taken before
17 in this case, particularly back on April 13th, and my
18 co-counsel in that case at the beginning of the
19 deposition gave you some ground rules on how the
20 deposition would work.

21 Are you familiar with those ground rules
22 still, or would you like me to go over them?

23 A No, I'm familiar.

24 Q Okay. If you have any questions about it
25 throughout the deposition, please let me know. Okay?

1 Now, in Mr. Caputo's declaration, there was a
2 statement about the inability to confirm -- strike that.
3 Let me get the actual language.

4 In Mr. Caputo's declaration that was in the
5 file relating to Mr. Hamdi, there was an indication
6 there that he was unable to rule out the possibility
7 that Mr. Hamdi may be a threat to the security of the
8 United States.

9 Do you remember seeing that?

10 A Yes.

11 Q Is that still true?

12 A I believe so. I didn't speak to Mr. Caputo,
13 but -- but it was, yes. At the time that I adjudicated
14 the case, that was still true.

15 Q Okay. And how does that statement, if it
16 does, affect whether Mr. Hamdi is eligible for
17 naturalization?

18 A Well, it -- it doesn't make him statutorily
19 ineligible, but because he is a -- he still has a
20 national security concern, it affects whether or not we
21 can approve him, and it's going to require more
22 investigating, which is what we -- what we did.

23 Q Okay. And why does it affect whether or not
24 you can approve him?

25 A Because he's -- because there's still a

1 national security concern.

2 Q And although that doesn't make him ineligible
3 statutorily, how does it make him ineligible otherwise?

4 A Well, until -- until that national security
5 concern is -- is resolved, he won't get approved.

6 Q And how -- does that come from a body of law
7 or policy?

8 A Well, it comes from -- yes, it does.

9 Q What body of law or policy does that come
10 from?

11 A That comes in the CARRP policy.

12 Q Okay. Let me give you another exhibit, sir.
13 This is Exhibit 82.

14 (The document was marked as
15 Exhibit 82 for identification.)

16 MS. HELZER: And for the record, I've handed
17 the witness a document, multi-page document, and it's
18 entitled "U.S. Citizenship and Immigration Services
19 CARRP Officer Training, National Security Handouts,"
20 dated April 2009.

21 Q And Mr. Osuna, have you seen this document
22 before?

23 A Yes.

24 Q And I believe there's -- there's more to the
25 CARRP officer training than what's in Exhibit 82,

1 of the testimony given by the witness. (Fed. R. Civ. P.
2 30(f)(1)).

3 Before completion of the deposition, review of
4 the transcript [XX] was [] was not requested. If
5 requested, any changes made by the deponent (and
6 provided to the reporter) during the period allowed, are
7 appended hereto. (Fed. R. Civ. P. 30(e)).

8

9 Dated: October 7, 2011,

10

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EXHIBIT 108
FILED UNDER SEAL

EXHIBIT 109
FILED UNDER SEAL

EXHIBIT 110
Publicly Filed
Redacted Version

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

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

** CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER **
VIDEOTAPED DEPOSITION
of
NADIA R. DAUD

OCTOBER 8, 2020

MAGNA LEGAL SERVICES
(866) 624-6221
www.MagnaLS.com
File No. 641652

REPORTED REMOTELY BY: Karen M. Grant, WA CCR No. 2155



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APPEARANCES

(All parties appearing remotely via Zoom videoconference)

For the Plaintiffs:

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Also Present:

Caitlin Miller - U.S. CIS and U.S. DHS
Matt Adams - Northwest Immigrant Rights
Project
Jessica Schau Nelson - U.S. CIS
Drew Brinkman - U.S. DOJ
Leon B. Taranto - U.S. DOJ
Brendon Moore

Videographer:

Daniel Katz - Magna Legal Services

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--oOo--

EXHIBIT INDEX

NO: MARKED: DESCRIPTION:



1 EXHIBIT INDEX (Continuing)

2

NO: MARKED: DESCRIPTION:



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1 BE IT REMEMBERED that on Thursday, October 8,
2 2020, at 8:12 a.m., before Karen M. Grant, CCR 2155,
3 appeared Nadia R. Daud, the witness herein;

4 WHEREUPON, the following proceedings were had,
5 to wit:

6 --oOo--

7
8 VIDEOGRAPHER: We are now on the record. This
9 begins Video 1 in the deposition of Nadia R. Daud in the
10 matter of "Abdiqafar Wagafe, et al., vs. Donald Trump,
11 President of the United States, et al.," in the United
12 States District Court, Western District of Washington at
13 Seattle.

14 Today is Thursday, October 8th, 2020. Time is
15 8:12 a.m. This deposition is being taken remotely at the
16 request of Perkins Coie, LLP.

17 The videographer is Daniel Katz, the court
18 reporter is Karen Grant, both of Magna Legal Services. All
19 counsel and parties present will be noted on the
20 stenographic record.

21 Will the court reporter please swear in the
22 witness.

23 ///

24 ///

25 ///

1 NADIA R. DAUD,
2 witness herein, having been first duly sworn on oath,
3 was examined and testified as follows:
4

5 EXAMINATION

6 BY MS. WHIDBEE:

7 Q. Good morning. My name is Paige Whidbee, and I
8 represent the plaintiff. Thank you for taking the time to
9 meet with us today.

10 Have you ever been deposed before?

11 A. No.

12 Q. Okay. So just to start, I wanted to go over some
13 general instructions for the deposition today.

14 First off, the court reporter is writing down
15 everything that we're saying today, so it's important that
16 we try to avoid talking over each other. So I'll do my best
17 to wait until you're done answering a question to start
18 asking my next question, and in return I'll ask that you
19 please wait until I'm done asking my question to give your
20 answer. Does that sound fair?

21 A. Yes.

22 Q. Great.

23 And for the same reason, it's really important
24 that we give our answers verbally. So instead of nodding
25 for "Yes" or shaking your head for "No," just say "Yes" or

1 A. Oh, they would be on everything. And I was so
2 new, I couldn't -- I was new and I was dealing with my mom,
3 that I couldn't -- I just didn't even care, to be honest. I
4 didn't care.

5 Q. And have you received any nondetermination
6 training as a part of your job at USCIS in the Seattle
7 office?

8 A. I want to say we get like a yearly computer -- I
9 feel like we get one of those yearly computer ones that we
10 all do that we just, you know, push the button on, but at
11 the moment I can't think which one of those that is, and I'm
12 sure I just did it recently.

13 If we're talking all time at USCIS, I'm -- I'm
14 fairly certain USC-- or Refugee Affairs Division did a few
15 things separate, and I know Department of State did before
16 going to Baghdad.

17 Q. Okay --

18 A. (Inaudible.)

19 Q. Oh, pardon me. Go ahead.

20 A. That's all I can think of, but I -- nothing.

21 Q. The yearly computer training you were just
22 mentioning that you take in your current position, is that
23 training mandatory?

24 A. Yes. But I also can't remember it, which is not
25 very good.

1 Q. And is it mandatory in all offices or just in the
2 Seattle office?

3 MS. BRAGA: Objection; foundation.

4 A. They're all -- whatever we're taking is probably
5 mandatory in all offices. But the only one that I can
6 remember is sexual harassment and trafficking, and I can't
7 remember any of the rest of them.

8 Q. (By Ms. Whidbee) Okay. And can you remember the
9 key take-aways from that yearly anti-discrimination training
10 that you were describing on the computer?

11 A. No, not at all.

12 Q. Do you recall receiving something called cultural
13 sensitivity training?

14 A. No.

15 MS. WHIDBEE: Okay. I'm going to share my
16 screen here. I'm going to share some images with you that
17 were -- are screen shots of training materials that
18 Defendants produced in discovery.

19 For the court reporter, I'll ask that we mark this
20 as Exhibit 1.

21 (Plaintiffs' Exhibit 1 marked.)

22 Q. (By Ms. Whidbee) Do you recognize this training?

23 A. I don't, actually.

24 Q. Okay. So this was not the computer training that
25 you were discussing previously?

1 A. No, unless I just wasn't paying attention.

2 Q. Okay. I'm going to pull up one more site to see

3 if you recognize it. Do you recognize this slide discussing

4 the differences between high- and low-context cultures?

5 A. I don't.

6 Q. Okay. I will stop sharing the screen.

7 As a part of your job in the Seattle office, have
8 you received any training on different country conditions,
9 organizations, groups, cultural practices and religion in
10 other countries?

11 A. In Seattle?

12 Q. Mm-hm.

13 A. So I've arranged trainings in Seattle for the
14 office, and I'm trying to think if any were done outside of
15 that. I heard that I missed one for Eritrea, but -- and I
16 arranged one for Iran and Iraq. No, not -- I don't think
17 besides that, though.

18 Q. Okay. And you mentioned that you gave a training
19 about Iran; is that right?

20 A. I arranged for somebody else to give it.

21 Q. Do you remember when that was?

22 A. Yes. October 2019.

23 Q. And to who was that -- to whom was that training
24 given?

25 A. It was offered to the whole office and FDNS, but I

1 don't know if everybody was there, though.

2 Q. Okay. So it was not mandatory, then?

3 A. I mean --

4 MS. BRAGA: Sorry. Objection; foundation.

5 A. It was mandatory, but people weren't -- you know,
6 people were on leave, people had leave, so -- because after
7 it, I had many people contact me to see if they could get --
8 get it again, because they wanted it, but I couldn't arrange
9 it again.

10 Q. (By Ms. Whidbee) Okay. And did you also say you
11 arranged for training on Iraq?

12 A. So Iraqi, I've just done, in smaller groups, more
13 impromptu. And it wasn't like in a massive "for the whole
14 office," more as-needed.

15 Q. Okay. And how often have you arranged those
16 meetings?

17 A. Seems like every time an Iraqi case comes up.

18 Q. And do officers request those kinds of trainings,
19 or are they just given on a regular basis?

20 A. They want it. They want it.

21 Q. And are you able to arrange a training each time
22 an officer requests such a training?

23 A. Yeah. And sometimes it's easier to do the
24 one-on-ones, because then I can help with that particular
25 case better.

8 Q. Okay. Shifting gears a little, have you ever
9 heard any of your colleagues at USCIA - S, pardon me - make
10 disparaging statements about applications for immigration
11 benefits?

12 A. About --

13 MS. BRAGA: Sorry. Objection; form, vague.

14 A. What do you mean by "about application"?

15 Q. (By Ms. Whidbee) Pardon me. I meant about
16 applicants' immigration benefits.

17 A. Yeah.

18 Q. What kind of statements?

19 A. I mean, I've worked in there a long time, so I
20 don't know at what point you want me to --

21 Q. Sure. So in your work in the Seattle office, have
22 you heard disparaging statements about applicants for
23 immigration benefits?

24 A. Yeah. We had one officer recently get in trouble.
25 I can't remember his exact words, but he came to me with a

1 question, and he referred to his applicant in a derogatory
2 term.

3 Q. What derogatory term would that be?

4 A. I can't even remember how he referred to the
5 applicant. The applicant was Mexican. And he said it twice
6 in two different ways, and I reported him immediately. I
7 would have to look at my phone to even remember, because I
8 wrote it down. But I don't remember it.

9 Q. Who did you report the statements to?

10 A. My supervisor.

11 Q. And do you know if anything was done as a
12 consequence of the report?

13 A. Yeah --

14 MS. BRAGA: Objection --

15 THE WITNESS: Oh, go ahead.

16 MS. BRAGA: Sorry.

17 Objection; foundation.

18 A. I don't know everything that was discussed with
19 him, but I know that it was addressed with him immediately.

20 I also know he had to apologize to the other
21 co-worker that was next to me, who was Latina. He claims he
22 apologized to me too, but he never did. He just avoided me
23 forever.

24 And I don't know what went on his record or
25 anything. I have no idea.

1 Q. (By Ms. Whidbee) And is he still working at
2 USCIS?

3 A. Nope. He's with ICE.

4 Q. Do you know if he had to leave USCIS as a
5 consequence of your report?

6 MS. BRAGA: Objection; foundation.

7 A. No, I don't. I don't know what happened.

8 Q. (By Ms. Whidbee) Okay. Have you heard any other
9 disparaging statements about applicants for immigration
10 benefits while at your job in the Seattle office?

11 A. We had one officer recently, and I couldn't tell
12 if he was purposely saying this wrong or trying to be funny
13 or being derogatory, so I did not report him. I just asked
14 him to knock it off. He kept referring to his applicants
15 very loudly in the hall as "Arab" instead of -- well, (a),
16 he didn't need to refer to their race at all. But . . . I
17 don't really know how to explain how he was doing it, but it
18 was extremely annoying. I'm Arab American myself, so it was
19 almost like a dagger every time he said it.

20 So I probably should have said something higher
21 up, but I really couldn't tell if he -- I couldn't tell why
22 he was doing it, so I just made it uncomfortable for him,
23 and he stopped.

24 Q. And can you recall any other disparaging
25 statements you've heard for applicants for immigration

1 benefits while in your current position in Seattle?

2 A. In Seattle, no, not about applicants.

3 Q. Okay. Have you heard -- and do you recall ever

4 hearing disparaging statements about applicants for

5 immigration benefits in your previous careers at USCIS?

6 A. D.C. was good. There was nothing there, ever.

7 And I don't know if it was the job, the location, but there

8 was never, ever anything.

9 San Francisco, I started right after 9/11,

10 directly after 9/11, so the January after 9/11. That was a

11 terrible time in Immigration. It was a terrible time

12 everywhere, but it was a terrible time in Immigration and a

13 terrible time to be an Arab American in Immigration. I was

14 one of very few. I didn't see any other Arab American names

15 in our email boxes, ever. So the sentiment was pretty harsh

16 at that time.

17 So I know you asked if I heard anything about

18 applicants. It was so common that I don't know how to,

19 like, narrow that down. It was a time of NSEERS, which is

20 when they were registering people from certain countries,

21 which usually tended to be Arabs and Muslims, which they

22 later canceled out. So that was happening, along with

23 protesters outside the building because of NSEERS, and it

24 was like hostile on kind of like both ends.

25 I think it was the first two weeks of work, and

1 they asked me to -- I was working in the Oakland office, and
2 they asked me to go to the San Francisco office to -- at
3 that time, I think they were like -- I don't know if it was
4 like nationally they weren't doing this or -- I don't even
5 know -- I wasn't part of like the bigger picture at that
6 time.

7 But I know people were afraid to proceed with
8 Middle Eastern cases, so they asked me to go to the basement
9 and go through all these boxes of cases and pull out -- at
10 the time, they -- the actual quote was "Arabic-sounding
11 names." Like, I don't even know -- I feel like they were
12 I-130s, but at the time I didn't know documents. And there
13 were other people through, and they did not know who I was,
14 because I was brand-new. So people were definitely saying
15 derogatory things that entire -- I think we were there for
16 several days doing that, so anything said in those days were
17 horrendous. That's just an example.

18 Q. And what about after that? Did you continue to
19 hear disparaging statements about applicants after that as
20 well?

21 A. I would say the first year, year and a half was
22 bad. It got better. It got better.

23 Q. Did you continue to hear disparaging statements
24 about applicants for immigration benefits even after it got
25 better?

1 A. I'm sure -- let me think. I mean, things would be
2 said in trainings. I mean, it could go on for a while. I'm
3 not thinking of exact examples. I'm -- it's more the --
4 well, pardon me. I was thinking of examples.

5 It took some time. By -- I will say this. By the
6 time I left, they allowed me to have a speaker come in to --
7 to train the office on their cultural background and
8 interviewing Arab applicants by the time I left, so
9 San Francisco did get a training.

10 Q. And why --

11 MS. BRAGA: Sorry. Can I just interrupt for
12 one second? Before you ask the next question, we're coming
13 up to 90 minutes pretty soon, so (inaudible) a good place to
14 stop for our first break?

15 MS. WHIDBEE: Sure. I'll get to a stopping
16 point in just a couple minutes.

17 MS. BRAGA: Okay. Thank you.

18 Q. (By Ms. Whidbee) Why did you want to bring in
19 that speaker that you just referenced to talk to the SF
20 office?

21 A. Just I -- it wasn't -- for me, it wasn't just
22 INS/USCIS that I had problems with. With my own background,
23 I also had problems with Department of State. So -- and my
24 mom knew this, and she kept saying, "You can leave and
25 everything will stay the same, or you can stay and make a

1 difference." So I kept thinking: If I stay, I have to make
2 a difference.

3 So I, with San Francisco, I joined their, we call
4 it -- in the USCIS, we call it Special Emphasis Program
5 Manager, which is like the people that do Women History
6 Month and Black History Month, and, you know, there's no
7 Arab History Month, but I forced one on them. And I was in
8 charge of Women History Month, and so I snuck in -- on top
9 of Women History Month, I snuck in the Arab training, partly
10 because we had a very large Arab caseload in San Francisco,
11 and so I thought --

12 Because towards -- towards the end of me leaving,
13 I started being the person that everybody was coming to to
14 say: "Is this normal in a, like, an Arab marriage? Is this
15 normal with, in Islam, to have this in a marriage? Is this
16 normal?" So I started being the person everybody was asking
17 those cultural norms. I'm not necessarily an expert on all
18 those things, but I was the closest thing they had, so I
19 thought maybe we should get an expert.

20 Q. And could you describe a little bit the problems
21 you mentioned you had with INS, USCIS, and DOS?

22 A. Well, starting with DOS, it was security clearance
23 issues. I think any Arab in government would say: That's
24 where we start with our problems, is security clearance
25 issues, and DHS being the same. We just get checked a lot

1 more than anybody else, and our questions are different than
2 anybody else's. Where some people get checked every five
3 years, we get looked at more like yearly, which is fine.
4 There's nothing to look at.

5 As for work, as I was seeing with the protesters,
6 simple things. Like the protesters of NSEERS, that had
7 nothing to do with me, but the head of the office would
8 publicly accuse them of being my friends, multiple times in
9 meetings and over cubicle walls.

10 What else. I mean, even my welcome to Seattle
11 was an officer, who is clearly not my friend, showed up in
12 my office and -- and I still don't understand what the point
13 of this was. I think he knew my previous job was Refugee
14 Affairs Division, and he -- I don't know if he was attacking
15 that or attacking that I was Arab. I don't know which one
16 it was, but -- and he was saying that all we brought was
17 Muslim refugees, and we needed to stop doing that, and that
18 we weren't bringing the Christians, and we should be
19 bringing the Christian refugees. And then he left my
20 office.

21 And then the next day, he shows up again, doing
22 the same thing. So then I said -- oh. And the second day,
23 he said -- he referred to them as Syrians, and I said:
24 "Well, actually, I'm Syrian Christian. And my family's
25 still there, and they actually don't want to leave." So I

1 don't remember how that all happened, but that was the
2 welcome to the office.

3 And then not too long after that, that same guy,
4 in front of an entire training, pulled up pictures to prove
5 that I wasn't Syrian. He pulled up pictures of refugees on
6 boats and running from Syria to say that I didn't look
7 Syrian, so I couldn't be Syrian. So unnecessary, but in
8 front of a whole training. It was ridiculous.

9 So there's some weird stuff in different areas,
10 and I don't know why. But none of that ever happened in
11 D.C. That's a highlight.

12 Q. And did you report any of that person's statements
13 that you were just talking about?

14 A. Yeah, I did. Not -- not what he did in the
15 beginning, because it was like my first few days. I didn't
16 even know who he was. But the -- in front of the training,
17 yes, I did report it.

18 Q. And do you know if anything was done as a
19 consequence of you reporting what happened?

20 MS. BRAGA: Objection; foundation.

21 A. I don't know. I just know that I never had to do
22 a training with him again.

23 Q. (By Ms. Whidbee) And is that person still working
24 at USCIS?

25 A. Yes.

1 MS. WHIDBEE: Okay. Okay. I think we're good
2 to go off the record and take a break.

3 MS. BRAGA: Okay. Thank you.

4 VIDEOGRAPHER: The time is 9:45 a.m. We're
5 off the record.

6 (Deposition at recess.)

7 VIDEOGRAPHER: 10:01 a.m., we're back on the
8 record.

9 Q. (By Ms. Whidbee) Okay. I wanted to ask you a
10 couple of follow-up questions about what we were just
11 discussing. You were talking about the person who kind of
12 greeted you when you first got to the Seattle office and
13 gave that training that you reported him about. What is
14 that person's position at USCIS?

15 A. He's with FDNS.

16 Q. And who is that person? What is their name?

17

18 Q. Okay. And you also mentioned NSEERS. Could you
19 describe a little bit what NSEERS is, or was?

20 MS. BRAGA: Objection. To the extent that the
21 response will call for third-agency law enforcement
22 privileged information, I direct the witness not to answer.
23 Otherwise, she can answer. Also foundation.

24 A. Well, NSEERS is a system or database or something
25 that they use to get bio-- basically, at that time, they

1 asked to register any -- people from certain countries.
2 This was after 9/11, so at first it was people from certain
3 countries. They would list out these certain countries that
4 were not Green Card holders or citizens, that were in the
5 U.S., and they asked them to come and get registered, and
6 then they extended that list out. By registering, I believe
7 they were fingerprinting and taking their photos.

8 One of the additional -- I wasn't allowed to work
9 NSEERS, so I don't know all the details.

10 Q. And do you know why you weren't allowed to work
11 NSEERS?

12 A. I was told it was because I was Arab.

13 MS. BRAGA: Sorry. Let me get my objections
14 in.

15 THE WITNESS: Okay.

16 MS. BRAGA: Objection (inaudible).

17 COURT REPORTER: I didn't hear the objection.

18 MS. BRAGA: Sorry. Foundation.

19 COURT REPORTER: Thank you.

20 Q. (By Ms. Whidbee) And when you were working in, I
21 think you said it was SF at the time, did you see that
22 NSEERS had -- did it have any impact on immigration benefits
23 that you were working on, applications for immigration
24 benefits?

25 MS. BRAGA: Objection; foundation.

1 A. I really don't know.

2 Q. (By Ms. Whidbee) Okay. And based on your
3 knowledge of NSEERS, did you think it was productive or
4 helpful for USCIS?

5 MS. BRAGA: Objection; form, vague, also
6 foundation.

7 A. Did I think it -- the question was: Did I think
8 it was productive?

9 Q. (By Ms. Whidbee) Yes.

10 A. I don't really know enough on the real reasons for
11 it.

12 Q. Okay. I want to ask you a little bit more too
13 about -- you were talking about when you -- shortly after
14 you first arrived in SF, and they had you go and looking at
15 boxes; is that correct?

16 A. Yeah.

17 Q. And could you tell me a little bit more about what
18 they told you you should be doing while you were doing that?

19 A. It was a long time ago, so I don't remember. This
20 would be 2002. I don't remember everything. They just said
21 I would be looking for Arab names and pulling those
22 documents out, and they were applications.

23 Q. Do you know what happened to an application after
24 you pulled it out for that reason?

25 A. No, I --

1 MS. BRAGA: Objection; foundation.

2 Q. (By Ms. Whidbee) Were you supposed to give those
3 applications to somebody?

4 A. They were piled up.

5 Q. Okay. And do you know what happened to them after
6 they were piled up?

7 MS. BRAGA: Objection; foundation.

8 A. I don't know.

9 Q. (By Ms. Whidbee) Okay. You also mentioned that,
10 shortly before you left SF, you managed to arrange a
11 training there. Could you tell me who did that training?

12 A. Without looking up her name, I wouldn't be able
13 to. Her first name was Myah or Mia. Maya, I think. And
14 El Ghazi or -- E-L -- I can't remember. It's G-H or G-A
15 something.

16 Q. And do you know what their background was?

17 MS. BRAGA: Objection; foundation.

18 A. I can't remember how I found her. I was connected
19 to the Arab American, in a community down there, so I found
20 her somehow through that. And she gave trainings to
21 offices. That's kind of what she did.

22 Q. (By Ms. Whidbee) And what was the focus of the
23 training that she gave in SF?

24 A. It was like -- it was cultural sensitivity
25 post-9/11, I believe. I think it was all -- and I want --

1 Q. Do you remember --

2 Oh. Go ahead.

3 A. It's okay. Go ahead.

4 Q. Okay. Do you remember what some of the kind of
5 key take-aways of that training were?

6 A. I wish I did. I really don't.

7 MS. WHIDBEE: Bless you.

8 MS. BRAGA: Thank you.

9 Q. (By Ms. Whidbee) Did you think that the training
10 made any difference in the office?

11 A. I heard that it did, from officers.

12 Q. What did you hear about it?

13 A. I had heard that they were glad to get it and that
14 they wished they got training like that for other areas.

15 Q. What other areas would they -- did they say they
16 would like to get training on?

17 A. San Francisco -- San Francisco population is
18 primarily, like, Asian caseload, so that's what they would
19 want.

20 Q. Okay. Did you get any negative feedback to the
21 training at all?

22 A. I don't remember that, no.

23 Q. Okay.

24 Okay. You mentioned earlier that you received a
25 federal law enforcement training when you were -- I believe

1 you said it was when -- for one of your previous jobs; is
2 that correct?

3 A. Mm-hm.

4 Q. Have you received any law enforcement-related
5 training for your current position?

6 A. No. That original law enforcement training covers
7 my current -- that first -- they now call it basic. Back
8 then, they called it something else. It's the same
9 training.

10 Q. Okay.

11 A. So they --

12 Q. (Inaudible.)

13 A. -- send me back for basic.

14 COURT REPORTER: Can you repeat that?

15 THE WITNESS: So they didn't send me -- so for
16 my current position, what I would have needed was basic
17 training, called basic. And what I had before is the
18 equivalent of basic, so they did not send me back for the
19 same training I already had.

20 Q. (By Ms. Whidbee) And aside from trainings, can
21 you describe any experience in law enforcement
22 investigations you've had?

23 A. I mean, the five years doing marriage-fraud
24 interviews and working somewhat with ICE, somewhat, is some
25 experience.

1 C E R T I F I C A T E

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STATE OF WASHINGTON)
) ss
COUNTY OF PIERCE)

I, the undersigned certified court reporter, hereby certify that the foregoing deposition of NADIA R. DAUD was taken before me on OCTOBER 8, 2020, and thereafter transcribed under my direction; that the transcript of the deposition contains the full, true, and complete testimony of said witness, including all questions, answers, objections, motions, and exceptions of counsel;

That the witness, before examination, was by me duly sworn to testify the truth, the whole truth, and nothing but the truth, and that the witness RESERVED the right of signature;

That I am neither attorney for, nor a relative or employee of, any of the parties to the action; further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested in the said action or the outcome thereof;

IN WITNESS WHEREOF, I have hereunto set my signature this 16th day of October, 2020.

KAREN M. GRANT
Certified Court Reporter No. 2155
(Certification expires 04/19/2021)



1 -----
ERRATA
2 -----

3

4	PAGE	LINE	CHANGE FROM	CHANGE TO	REASON
5	2	2	zoom videoconference	WebEx	correction
6	9	3	I had my home computer. It didn't	I had, but my computer at home didn't	correction
7	13	20	Then I worked in our records	I worked in the records	correction
8	14	18	Security with USCIS	Security, USCIS	correction
9	14	24	an officer for	a Refugee officer for	word missing
10	14	25	Refugee officer interviews.	conducting refugee interviews around the world.	correction
11	15	4	I was the Middle	I was with the Middle	correction
12	15	8	on -- I'm still supervising.	on refugee circuit rides as an acting supervisor.	correction
13	18	9	vetting.	vetting, after we applied for each other's positions	correction
14	19	11	happened, Turkey	happened, as it did in Turkey	correction



16	29	16	touch a CARRP case.	touch a CARRP case in Seattle.	correction
17	30	5	nondetermination	nondiscrimination	correction
18	34	6-7	and Istars	and applicants from various "-istan" countries	correction
19	38	15	as "Arab" instead	as "A-rab" instead	correction
20	53	10	been (inaudible) years.	been one year.	correction



23	73	17	were on a CARRP team	were not on a CARRP team	correction
24	81	18	in other countries	in other offices	correction

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Seven Penn Center
1635 Market Street – 8th Floor
Philadelphia, PA 19103

[Handwritten Signature]
11/23/2020

1 ACKNOWLEDGMENT OF DEPONENT

2

I, Nadia Daud, do
3 hereby certify that I have read the
4 foregoing pages, 1 - PGS, and that the
5 same is a correct transcription of the
6 answers given by me to the questions
7 therein propounded, except for the
8 corrections or changes in form or
9 substance, if any, noted in the attached
10 Errata Sheet.

7

8 W. J. [Signature] 11/23/2020
WITNESS NAME DATE

9

10

Subscribed and sworn
11 to before me this
12 _____ day of _____, 20 ____.

12

My commission expires: _____

13

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Notary Public

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EXHIBIT 111

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ABDIQAFAR WAGAFE, et al., on behalf
of themselves and others similarly
situated,

Plaintiffs,

vs.

DONALD TRUMP, President of the United
States, et al.,
Defendants.

VIDEOTAPED DEPOSITION OF
ANTHONY NEGRUT-CALINESCU

Taken on Behalf of the Plaintiffs

DATE TAKEN: September 30, 2020
TIME: 9:12 AM - 5:34 PM
PLACE: VIA ZOOM

MAGNA LEGAL SERVICES
(866) 624-6221
www.magnaLS.com

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-and-

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10 Counsel for Plaintiffs

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17 Also present: Daniel Katz, Magna videographer

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1 (DISCLAIMER: Words that are not fully spoken,
2 words that are stuttered, words that are lost or cut
3 off by technological difficulties, or words that are
4 spoken over other words, may not be reflected in this
5 written transcript, but may be captured on the
6 videotaped portion of this record.)

7 THE VIDEOGRAPHER: We are now on the
8 record. This begins video one in the deposition of
9 Anthony Negrut-Calinescu in the matter of Abdiqafar
10 Wagafe et al versus Donald Trump, president of the
11 United States et al in the United States District
12 Court Western District of Washington at Seattle.
13 Today is Wednesday, September 30, 2020. The time
14 is 9:12 a.m. The deposition is being take remotely
15 at the request of the ACLU.

16 The videographer is Daniel Katz, and the
17 court reporter is Michele Anzivino, both of Magna
18 Legal Services.

19 Would counsel and all parties present state
20 their appearances and whom they represent.

21 MR. HOGLE: All right. My name is Charlie
22 Hogle, and I represent the plaintiffs.

23 MR. HANDEYSIDE: Hugh Handeyside. I
24 represent the plaintiffs.

25 MR. MOORE: Brendan Moore. I represent the

1 defendants.

2 MS. BRAGA: Victoria Braga, represent the
3 defendants.

4 MR. HOGLE: Okay. Great. And I think that
5 is the universe of people who are potentially
6 participating in today's deposition aside obviously
7 from the star witness, Mr. Negrut-Calinescu. Am I
8 stating that right?

9 THE WITNESS: Yes. It's Anthony
10 Negrut-Calinescu.

11 MR. MOORE: So why don't we get started.

12 THE VIDEOGRAPHER: Will the court reporter
13 please swear in the witness.

14 Thereupon,

15 ANTHONY NEGRUT-CALINESCU,
16 having been duly sworn or affirmed, was examined and
17 testified as follows:

18 THE WITNESS: Yes, I swear.

19 DIRECT EXAMINATION BY MR. HOGLE:

20 Q. Okay. Thank you for that. And so as I said,
21 Charlie Hogle. I represent the plaintiffs. I
22 definitely want to thank you for taking the time to
23 meet with us today. And also I know it's early for
24 some people on this call so, you know, thanks for
25 making it out or making it into this video room.

1 share my screen. All right. All right. And can you
2 see --

3 A. Yes, I can see it.

4 BY MR. HOGLE:

5 Q. Okay. Great. So for the reporter, let's
6 just mark that as Exhibit 1.

7 (Exhibit No. 1 marked for identification.)

8 BY MR. HOGLE:

9 Q. So I guess I want to let you know he that
10 first of all these images here are screenshots. That
11 are from training materials that defendants produced in
12 discovery. And I'm wondering if this looks familiar to
13 you.

14 A. I don't think it looks familiar to me.

15 Q. Okay. I'm going to scroll a little bit
16 farther down a bit. I apologize if this is going too
17 fast, but I am going to pull up a particular page here.
18 This is a page of the same training.

19 Does this look familiar to you at all?

20 A. You know, I don't know. I may have -- maybe
21 we have these trainings that we have to do on a regular
22 basis called PALMS courses. I may have taken one of
23 these trainings, but I don't remember.

24 Q. Okay. Does the content of the slide look
25 familiar to you?

1 A. I don't think so.

2 Q. Okay. All right. I'm going to stop sharing
3 my screen now. Look at that.

4 Now, you mentioned a PALMS course. Is that
5 an acronym?

6 A. Yes. It's another acronym, but I don't know
7 what that one stands for.

8 Q. Okay. Could you spell out the acronym so we
9 have it on the record?

10 A. It's P-A-L-M-S.

11 Q. Okay. Perfect. Great. And can you just
12 describe what a PALMS training is?

13 A. There's many different types of training we
14 received through this. It applies to all sorts of
15 aspects of our job, but it's pretty general. For
16 example, there was an active shooter training. What we
17 should do if there's an active shooter. There's file
18 management training. There's many different types of
19 trainings.

20 Q. Okay. And did PALMS training include
21 anything specific to processing applications for
22 immigration benefits?

23 A. No. I don't believe so. The -- I think the
24 closest to that was just being aware of confidentiality
25 provisions of asylum applications.

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF BROWARD)

I, Michele Anzivino, Court Reporter, do hereby certify that I was authorized to and did stenographically report the deposition of ANTHONY NEGRUT-CALINESCU, that a review of the transcript was not requested; and that the foregoing transcript, pages 1 through 246, is a true and correct record of my stenographic notes.

I FURTHER CERTIFY that I am not a relative, employee, or attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED this 2nd day of October, 2020.

MICHELE ANZIVINO, Court Reporter
Notary Public - State of Florida
My Commission Expires: 02/23/2023
My Commission No.: GG-304081



1 ACKNOWLEDGMENT OF DEPONENT

2

I, Anthony Negrut, do
3 hereby certify that I have read the
foregoing pages, 1 - PGS, and that the
4 same is a correct transcription of the
answers given by me to the questions
5 therein propounded, except for the
corrections or changes in form or
6 substance, if any, noted in the attached
Errata Sheet.

7

8 [Signature] 11/19/2020
WITNESS NAME DATE

9

10 Subscribed and sworn
11 to before me this
_____ day of _____, 20____.

12 My commission expires: _____

13

14 _____
Notary Public

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[Signature]
11/19/2020

EXHIBIT 112

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

ABDIQAFAR WAGAFE, et al., on)
behalf of themselves and)
others similarly situated,)
)

Plaintiffs,)

)CASE NO.

)17-cv-00094 RAJ

vs.)

DONALD TRUMP, President of)
the United States, et al.,)
)

Defendants.)

_____)

VIDEO-RECORDED REMOTE DEPOSITION
OF KELLEY COSTELLO
TUSTIN, CALIFORNIA
WEDNESDAY, SEPTEMBER 23, 2020

STENOGRAPHICALLY REPORTED BY:

Valerie C. Rodriguez
CSR No. 12871 (orig 6980)

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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

ABDIQAFAR WAGAFE, et al., on)
behalf of themselves and)
others similarly situated,)
))
Plaintiffs,) CASE NO.
) 17-cv-00094 RAJ

vs.)
))

DONALD TRUMP, President of)
the United States, et al.,)
))
Defendants.)
_____)

VIDEO-RECORDED REMOTE DEPOSITION OF KELLEY COSTELLO,
TAKEN ON BEHALF OF THE PLAINTIFF, IN TUSTIN,
CALIFORNIA, COMMENCING AT 7:13 a.m. AND ENDING AT
4:07 p.m. PACIFIC TIME, ON WEDNESDAY,
SEPTEMBER 23, 2020, BEFORE VALERIE C. RODRIGUEZ,
CERTIFIED SHORTHAND REPORTER NO. 12871
(ORIGINALLY 6980).

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2

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VIA WEBEX

10

11

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12

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VIA WEBEX

18

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19

20

21

22

23

24

(APPEARANCES CONTINUED)

25

1 APPEARANCES CONTINUED

2

3 FOR DEFENDANT DONALD TRUMP, PRESIDENT
4 OF THE UNITED STATES, ET AL.

5 (CONTINUED):

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18

19 ALSO PRESENT:

20 JOSEPH NEW, VIDEOGRAPHER
21 YLIANA JOHANSEN-MENDEZ
22
23
24
25

1 INDEX TO DEPOSITION OF KELLEY COSTELLO
 2 SEPTEMBER 23, 2020

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15	Exhibit 3	Expert report of Yliana Johansen-Mendez	183
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24 (CONTINUED)

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INFORMATION REQUESTED: (None)

DIRECTIONS NOT TO ANSWER:

Can you describe that pre-screening program?	55
Can you describe the pre-screening program without divulging any privileged information?	55
What does an LHM look like?	103
So I will ask one more time what you spoke about with defendants' counsel during the break.	128

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1 TUSTIN, CALIFORNIA, WEDNESDAY, SEPTEMBER 23, 2020

2 ~~~7:13 A.M. PACIFIC TIME~~~

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THE VIDEOGRAPHER: We are now on the
8 record. This begins the video deposition of Kelley
9 Costello in the matter of Abdiqafar Wagafe v. Donald
10 Trump, President of the United States, et al., in
11 the United States District Court, Western District
12 of Washington at Seattle, Case number
13 17-CV-00094 RAJ.

14 Today is Wednesday, September 23rd, 2020.
15 And the time is 7:13 a.m.

16 This deposition is being taken remotely
17 at the request of the ACLU of Southern California.
18 The videographer is Joseph New and the court
19 reporter is Valerie Rodriguez of Magna Legal
20 Services.

21 Will counsel and all parties present
22 state their appearances and whom they represent.

23 MS. CHO: My name is Michelle (Minju) Cho
24 from ACLU of Southern California for the plaintiff.

25 THE STENOGRAPHIC REPORTER: Ms. Braga, it

1 looks like you may be on mute.

2 MS. BRAGA: Victoria Braga, the
3 Department of Justice for defendants.

4 THE STENOGRAPHIC REPORTER: Ms. Cho,
5 would you like all the other parties on the line to
6 state their appearances?

7 MS. CHO: Yes, please.

8 MS. CHARETTE: Kaitlyn Charette, Counsel
9 for the defendants, but I will not be speaking
10 today.

11 THE VIDEOGRAPHER: Any more, Department
12 of Justice, for defendants?

13 MS. MURPHY: Lindsay Murphy, Department
14 of Justice, just observing today.

15 MS. NELSON: Jessica Schau-Nelson, United
16 States Citizenship and Immigration Services for
17 defendants and I'll just be observing today as well.

18 MS. MILLER: Caitlin Miller, agency
19 counsel for USCIS.

20 THE VIDEOGRAPHER: Is that everyone?

21 MS. CHO: Not quite yet.

22 MS. DONOHUE: This is Anne Donohue with
23 the Department of Justice for the defendants, but I
24 am observing only today.

25 MS. CHO: Also, I will announce that my

1 co-counsel, Jennifer Pasquarella, ACLU of Southern
2 California, is also on the line, but she is having
3 some audio issues with the platform. So the unmute
4 button doesn't seem to be working.

5 Is that everyone?

6 THE STENOGRAPHIC REPORTER: I believe
7 that is. We'll just have the read-on continue.

8 Go ahead, Joseph.

9 THE VIDEOGRAPHER: Will the court
10 reporter please swear in the witness.

11

12 (Pursuant to Rule 11 of the April 6, 2020
13 Emergency Order issued by the California Judicial
14 Council, the stenographic reporter requests
15 introductions of all parties present and agreement
16 by all parties for remote reporting of proceedings
17 and remote swearing of the witness.)

18

19 THE STENOGRAPHIC REPORTER: Ms. Cho and
20 Ms. Braga, would you both agree and stipulate that I
21 may swear the witness in remotely?

22 MS. CHO: Yes.

23 MS. BRAGA: Yes.

24 ///

25 ///

1 KELLEY COSTELLO,
2 having been first duly sworn remotely,
3 was examined and testified as follows:

4

5

EXAMINATION

6

-o0o-

7

BY MS. CHO:

8

Q Good morning, Ms. Costello. My name is

9

Minju Cho and I represent plaintiff in this case.

10

Thank you for taking the time to meet with us today.

11

Have you ever been deposed before?

12

A No, I have not.

13

Q I'm going to go over some preliminary

14

instructions just to make sure we are both on the

15

same page. If at any point, if you have any

16

questions, please interrupt me.

17

The court reporter will write down

18

everything we say, so it's important we do our best

19

to avoid talking over each other. I'll try to wait

20

until you have finished your answer before asking my

21

next question and I also ask that you try to wait

22

until I've asked my question before starting your

23

answer.

24

Is that okay?

25

A Yes.

1 I mentioned, it comes up when we're doing trainings
2 about eliciting testimony, trainings about
3 credibility. We also have a -- fairly frequently,
4 you know, if the US has declared Hispanic Heritage
5 Month or Native American Heritage Month or various
6 other heritage months, we'll occasionally have
7 speakers come into our office who also provide some
8 cultural awareness training.

9 So it's hard to give an exact number on
10 how many times I've had cultural awareness training.

11 Q Okay.

12 MS. CHO: I'm going to introduce a new
13 exhibit, this is Exhibit 6. I will represent to you
14 that these are screenshots I've taken and compiled
15 from a training that defendants' counsel shared with
16 plaintiffs' counsel as part of the discovery in this
17 case.

18 (K. Costello Exhibit 6 was marked for
19 identification.)

20 MS. CHO: I will also represent to you
21 that despite my best effort, there were, I believe,
22 one or two slides that I was not able to access. So
23 I will scroll through this so you can just take a
24 look at the screenshots.

25 (Document review.)

1 MS. CHO: Sorry, I'm going fairly
2 quickly.

3 BY MS. CHO:

4 Q Based on what you see, are these
5 screenshots that you recognize?

6 A No, none of the images that I'm looking
7 at seem familiar. So I don't think this is a
8 training that I personally have received.

9 Q Okay. Thank you. Have you ever
10 received --

11 MS. CHO: I'll take this down.

12 BY MS. CHO:

13 Q Have you ever received
14 anti-discrimination training?

15 A I mean, yes. There is annual training
16 required to do about discrimination in the
17 workplace. So I've received anti-discrimination
18 training.

19 Q Have you received training on racial
20 profiling?

21 A I believe it may have come up in other
22 trainings, but I don't -- I don't remember having a
23 specific training about racial profiling.

24 Q Have you received trainings on religious
25 profilings?

1 A I mean, during our training, we are, you
2 know, worrying about religious claims and take care
3 to note that just because you're not familiar with a
4 religion doesn't mean that it's not a valid religion
5 and you should accept people's religious beliefs.
6 So if that's the sort of thing you're referring
7 to...

8 Q Is there anything else, any other
9 training you've received that you can think of that
10 you would characterize as religious profiling,
11 training on religious profiling?

12 A Not that falls into those -- that term,
13 no.

14 Q Have you ever received training on Islams
15 specifically?

16 A You mean trainings about tenants of Islam
17 or what do you mean?

18 Q Trainings regarding Islam as it relates
19 to your work.

20 A Not specifically related to Islam that I
21 can remember.

22 Q Have you received training on
23 Islamophobia?

24 A To the extent that we've, you know,
25 covered making (audio dropout) biases and making

1 I, KELLEY COSTELLO, do hereby declare
2 under penalty of perjury that I have read the
3 foregoing transcript; that I have made any
4 corrections as noted in ink, initialed by me; that
5 my testimony as contained herein, as corrected, is
6 true and correct.

7

8 EXECUTED this 5th day of November,
9 2020, at Tustin, CA.

(City)

(State)

10

11

KELLEY L
COSTELLO

Digitally signed by KELLEY L
COSTELLO
Date: 2020.11.05 08:31:56
-08'00'

12

KELLEY COSTELLO

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1 CERTIFIED STENOGRAPHIC REPORTER'S CERTIFICATION

2 I, Valerie C. Rodriguez, a Certified
3 Shorthand Reporter for the State of California, do
4 hereby certify:

5 That said proceedings were taken before
6 me at the time and place set forth herein and was
7 stenographically reported by me in shorthand, and I
8 hereby certify that said proceedings are a full,
9 true, and correct transcript of my shorthand notes
10 so taken; that the dismantling, unsealing, or
11 unbinding of the original transcript will render the
12 reporter's certificate null and void.

13 Further, that if the foregoing pertains
14 to the original transcript of a deposition in a
15 federal case, pursuant to F.R.C.P. 30(e)(2) before
16 completion of the proceedings, review of the
17 transcript was not requested.

18 I further certify that I am neither
19 counsel for, nor related to any party to said
20 action, nor in any way interested in the outcome
21 thereof. IN WITNESS WHEREOF, I have subscribed my
22 name this 10th day of October, 2020.

23

24

VALERIE C. RODRIGUEZ
CSR No. 12871 (orig. 6980)

25

EXHIBIT 113



CARRP

Deconfliction, Internal and External Vetting and Adjudication of NS Concerns



U.S. Citizenship
and Immigration
Services

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EXHIBIT 83

Witness: R. Osuna
C Sletta CSR 7354 9-23-11

Deconfliction

- Preparing for RFE, Interview or Site Visit
 - Also provides record owner with opportunity to submit questions
 - Must be material to benefit sought
- Following receipt of additional information/evidence
 - Also provides record owner with the opportunity to consider additional information that may inform further action or investigation of the case
- Preparing for Decision
 - Also provides record owner with the opportunity to comment on decision



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Deconfliction - Guidance

Request by Law Enforcement Agency for Abeyance or Expedited Processing during Deconfliction -

- Designated officers in receipt of LEA requests to grant, deny or place in abeyance the issuance of immigration benefits must refer the request to the USCIS chain of command.
- Request must be in writing, in accordance with the Operational Guidance.
- Designated officer must prepare a written recommendation to Field Director requesting to place the case in abeyance or for expedited processing.
- On a case-by-case basis, the Field Director will determine whether the request comports with the requirements for abeyance (8 CFR 103.2(b)(18)) or warrants expedited processing.



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