

## Upholding the Value of Our Citizenship National Security Threats Should Be Denaturalized

By W.D. Reasoner

### Executive Summary

This paper examines the surprising number of naturalized citizens who have been charged and convicted of serious national security crimes — including terrorism, espionage, and theft of sensitive information and technology — in the last several years. It compares the relative ease with which aliens naturalize with the extreme difficulty in stripping them of citizenship, even when they prove to be national security threats who have gamed the system.

It also discusses the fact that the federal government, and the Department of Homeland Security in particular, have no systematic method of examining such cases to establish a baseline of “lessons learned” to attempt to weed out future threats, nor make any significant effort to denaturalize individuals even after they have committed serious national security offenses of the type described. It recommends that if the government will not or cannot take better care to prevent the admission of individuals who are serious threats to our safety, then it must move more aggressively to reverse its mistakes and strip citizenship from those who commit national security crimes against our nation.

Key findings include:

- In the past decade, dozens of naturalized U.S. citizens have been arrested and charged with a variety of serious national security-related offenses involving terrorism, spying, and theft of sensitive information and technology.
- The federal government almost never revokes the citizenship of these naturalized citizens, even when it is clear that they concealed material facts regarding their extreme ideas or associations with terrorist groups or foreign intelligence organizations at the time they naturalized.
- There is no central government repository of information about naturalized citizens who engage in serious national-security offenses.
- The Department of Homeland Security (DHS) has no systematic method for collecting the information nor efforts in place to review such cases, either for the purpose of instituting denaturalization or in order to discern whether there are steps it can and should take to better vet applicants during the naturalization process.
- Administrative naturalization continues unabated with hundreds of thousands being granted citizenship each year (over 6.5 million in the last decade).
- The consequence of these actions is to place all Americans at greater risk, as shown by the kinds of crimes for which many naturalized citizens have already been arrested, charged, convicted, and sentenced.

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# Center for Immigration Studies

- The now-defunct INS, a predecessor agency to DHS's U.S. Citizenship & Immigration Services (USCIS), had created a parallel regulatory structure to administratively denaturalize individuals when facts came to light revealing that an applicant had been ineligible at the time of naturalization.
- In July 2000, the federal Ninth Circuit Court of Appeals ruled that the regulation exceeded the INS's authority and issued an injunction against its use.
- As a result of the Ninth Circuit decision, presently the only way naturalized citizens can be stripped of citizenship is through criminal prosecution or civil suits in the already overburdened federal district courts.
- Congress has within its power the ability to pass legislation re-instituting the capability to administratively denaturalize individuals granted citizenship in error or as a result of misrepresentations, concealment of material facts, or other forms of fraud. Doing so would help protect the American people and enable the government to better ensure the integrity of the administrative naturalization process.

An appendix at the end of this document lists dozens of recent examples of naturalized citizens who have been charged with serious national security offenses.

## Prologue: Thinking About What American Citizenship Means

I spend a fair amount of time thinking about our citizenship, which Americans seem to undervalue. Not in a grand way, but trivially instead, rather like a used-up object that no longer has significance; more like a cigarette butt discarded by the side of the road.

Deep down, I worry that this may ultimately be our undoing. As Pogo memorably said, "We have met the enemy and he is us." There is no super elixir or magical incantation that can cure our indifference. But I keep holding the notion of citizenship up to the light, turning it this way and that, contemplating its many facets trying to figure out if there's something inside sufficiently bright and shiny to garner enough attention to once again make people treasure it as they ought.

In March of 2011 I previously wrote that I do not believe children born in the United States of nonimmigrant visitors (or illegal aliens either, for that matter) should be deemed United States citizens at birth.<sup>1</sup> I don't believe they meet the constitutional mandate of "subject to the jurisdiction [of the United States]" and I do believe that an act of Congress, signed into law by the president, is all that is necessary to remove the burden of a presumptive-citizenship policy that has given us the likes of radical cleric and terrorist Anwar al Awlaki (now deceased as the result of a U.S. drone strike in Yemen, after he was put onto a presidentially-authorized "kill list" by the Obama administration).

If you are under the impression that Congress can't legislate citizenship, you would be wrong.<sup>2</sup> For example, it is precisely an act of Congress, signed into law by the president, that resulted in the bestowal of United States citizenship on persons born in the U.S. territory of Puerto Rico.<sup>3</sup> (A majority of Puerto Rican voters recently opted in a plebiscite to seek statehood, but the referendum was nonbinding, so at this juncture, the final status of the territory remains unresolved.<sup>4</sup>)

Another one of the results of my pondering on the nature of citizenship was the more recent *Backgrounder* published by the Center in September 2012 regarding citizenship and voting, in which I opined that more, not less, scrutiny and vetting should routinely attend to lists of registered voters in order to ensure that only United States citizens are able to exercise this singularly important right accorded by our Constitution and laws.<sup>5</sup>

## Depriving Traitors of Their Citizenship

Lately, I've been contemplating a kind of mirror-image way of upholding the value of American citizenship: through depriving individuals of their status as citizens — primarily, although not exclusively, through denaturalization of individuals who previously possessed some other nationality.

It is worth noting that native-born citizens can also be stripped of their citizenship under certain circumstances. I do not wish to dwell long on stripping the native-born of their United States citizenship, because it isn't the focus of this paper. I will observe in passing, though, that our Constitution and laws provide for such action in extreme cases; for instance against traitors. Article Three, Section 3 of the Constitution states in pertinent part, "Treason against the United States, shall consist only in levying War against them, *or in adhering to their Enemies, giving them Aid and Comfort*". (Emphasis added.)

Section 349 of the Immigration and Nationality Act (INA), codified at 8 U.S.C. §1481, further provides that:

*(a) A person who is a national of the United States whether by birth or naturalization, shall lose his nationality by voluntarily performing any of the following acts with the intention of relinquishing United States nationality. . .*  
*(7) committing any act of treason against, or attempting by force to overthrow, or bearing arms against, the United States, violating or conspiring to violate any of the provisions of section 2383 of title 18, United States Code, or willfully performing any act in violation of section 2385 of title 18, United States Code, or violating section 2384 of said title by engaging in a conspiracy to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, if and when he is convicted thereof by a court martial or by a court of competent jurisdiction.*<sup>6</sup> (Emphasis added.)

Astute readers will note the troublesome phrase, "with the intention of relinquishing United States nationality" embedded within the statute. In my view, it can be fairly argued that nearly any act of treason carries within it the intent to sever oneself from the American body politic, even if there is nothing so visible as a thought bubble above the perpetrator's head saying, "by this act, I intend to relinquish my nationality." Such an act (for instance, by bearing arms against U.S. soldiers on foreign battlefields; or by plotting to use weapons of mass destruction to inflict wholesale death and destruction against fellow citizens) inevitably encompasses the intent. Still, it is a needless potential sticking point that must be confronted in each such civil prosecution. In today's post-9/11 world, to render it harder to remove citizenship from those who would kill us makes little sense. Congress should eliminate the phrase through statutory amendment.

But to return to the main thread of thought here, there are some notable individuals who appear to meet every reasonable standard of having committed treason, and who should be, or should have been, subject to such a penalty. One example is that of John Walker Lindh, born in Washington, D.C., the American Taliban member captured by U.S. personnel in Afghanistan toward the beginning of that war.<sup>7</sup> Another is Alabama-born Omar Hammami, who goes by the *nom de guerre* Abu Mansoor al Amriki ("Abu Mansoor the American") and who has been considered by many knowledgeable observers to be the American face and voice of al Qaeda on the Internet<sup>8</sup> — strangely, given his long and loathsome history, it was only recently that al Amriki was placed on the FBI's top-10 fugitive list.

There are in fact a few relatively recent examples of individuals in similar terrorism-support-related circumstances having been charged or convicted on treason-related grounds, so certainly the institutional knowledge exists.<sup>9</sup> What I have not seen, though, is the collateral effort to strip them of their citizenship using INA Section 349. Some may argue that it is superfluous to do so, because likely no other country would accept them — assuming, that is, that they are paroled from prison within their lifetimes. Perhaps. On the other hand, why accord them the privilege of the citizenship they spurned and trampled? If after prison they live the remainder of their meager lives in the United States, but stateless, then that is simple justice. Actions beget consequences.

# Center for Immigration Studies

It is also worth noting that a number of treasonous U.S. citizens are dual nationals because the country of their parents' birth recognizes them as citizens (such was the situation with al Awlaki). In these cases, if and when the individuals are released from incarceration, we would be within our rights as a nation not only to revoke their citizenship, but then to place them into deportation proceedings and thereafter remove them to the alternate country of nationality. Even if the other country refuses to accept them and they remain in the United States, as in the scenario described above for the stateless native-born, then by stripping them of both citizenship, and even the resident alien status that they formerly occupied, we have eliminated their right under the law to confer benefits to other family members through chain migration. Nor will they then possess even the remote possibility of traveling abroad using a U.S. passport. Why should they be permitted to avail themselves of such privileges?

But getting back to the primary subject of this paper — denaturalization of former aliens — one can find literally dozens of cases in the past decade of individuals who have been convicted of a whole host of serious national security-related offenses falling into two main areas, espionage and sensitive technology theft-related violations on one hand and international terrorism and support violations on the other. And yet I have found only a couple of instances of anyone being stripped of his citizenship as a consequence.<sup>10</sup> If there are others, they are few and far between.

Not only does the United States government not put a priority on relieving these national security threats of their status as American citizens, it doesn't even appear to be an afterthought. This disconnect gnaws at me: If our own government doesn't value citizenship enough to strip it from spies and terrorists, how can we expect the everyday American to esteem his or her citizenship?

## Naturalizing — What's Involved?

It may help the reader to have a basic understanding of the naturalization process, by way of lead-in to the concept of *de*-naturalizing individuals.

Article I, Section 8 of the Constitution provides that Congress is authorized to determine which aliens may become citizens by “establish[ing] a uniform Rule of Naturalization”. Once Congress has established the rule(s), though, authority passes to the executive branch to administer the rules and determine who meets the established criteria. In our current government the executive branch authority rests with the Department of Homeland Security and, specifically within DHS, the subordinate agency known as U.S. Citizenship and Immigration Services (USCIS). USCIS is the granter and denier (overwhelmingly the granter) of all immigration- and naturalization-related benefits to aliens, with the exception of the visa-issuing functions exercised by the State Department at U.S. embassies and consulates abroad.

A quick-and-dirty listing of the requirements an alien must exhibit (or do) in order to naturalize includes:

- Basic knowledge of the English language and of American history;
- Good moral character;<sup>11</sup>
- Continuous physical presence in the United States for a requisite period of time;
- Lawful permanent residence in the United States for a specified timeframe, which varies by circumstance (five years generally, three years if one is the spouse of a U.S. citizen, and pretty much immediately if serving actively in the armed forces, etc.); and,
- Taking of an oath vowing to uphold and defend the Constitution and laws of the United States and swearing you are doing so with no mental reservations.

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This last item is not simply a legal technicality; it is a substantive undertaking, whether or not the oath-taker chooses to treat it as such, and can figure in any later examinations as to the legitimacy of his or her intent when the oath was taken. See, for example, the April 2004 congressional testimony of Alfonso Aguilar, USCIS Chief of Citizenship.<sup>12</sup>

Aliens wishing to naturalize file a form N-400 Application for Naturalization (available in English and Spanish) with USCIS along with photographs, copies of their fingerprints with which to run criminal history checks, and a few other forms. Although for many years the courts had final authority on whether or not to grant naturalization to an alien and administer the oath of citizenship, things changed in 1990 when administrative authority was granted to the Attorney General and his/her designees in the Immigration and Naturalization Service (INS) to fully adjudicate the applications, and administer the oath.<sup>13</sup>

This authority was subsequently transferred to the Secretary of Homeland Security and his/her designees in USCIS with the abolition of INS and the creation of DHS in 2002.<sup>14</sup> The reason for the change was because the naturalization burden on U.S. District Court judges, given their other caseload responsibilities, was heavy, and resulted in substantial backlogs and wait times for those whose naturalization was pending. One of the few positive, albeit unintended, consequences of the cooling-off period imposed by the backlogs was to provide the government a second chance to scrutinize applicants when the regulatory timeframe for the original background checks expired and had to be done over again, as often happened due to inordinate wait times. The courts themselves appeared to have been divided on the desirability of giving up responsibility for final naturalization decisions and administration of oaths of citizenship.

There were many who expressed doubts about the ability of the bureaucracy to competently handle its new responsibilities, although of course there was a built-in cheering section in favor of the procedure from a variety of immigrant-oriented interest groups, and the American Immigration Lawyers Association (AILA) — hardly, it must be admitted, an impartial organization given its legal and financial stake in ensuring a steady flow of clientele seeking assistance in applying for naturalization.

Although in the end, the decision was to permit administrative naturalization by the bureaucracy, many of the doubts appear to have been well-founded, as explained by Rosemary Jenks, then at the Center for Immigration Studies, in her March 1998 congressional testimony, in which she described the thousands of ineligible aliens naturalized as the result of a controversial program called “Citizenship U.S.A.,” which had as its goal the naturalization of at least a million aliens (and which some observers believed had partisan political overtones).<sup>15</sup>

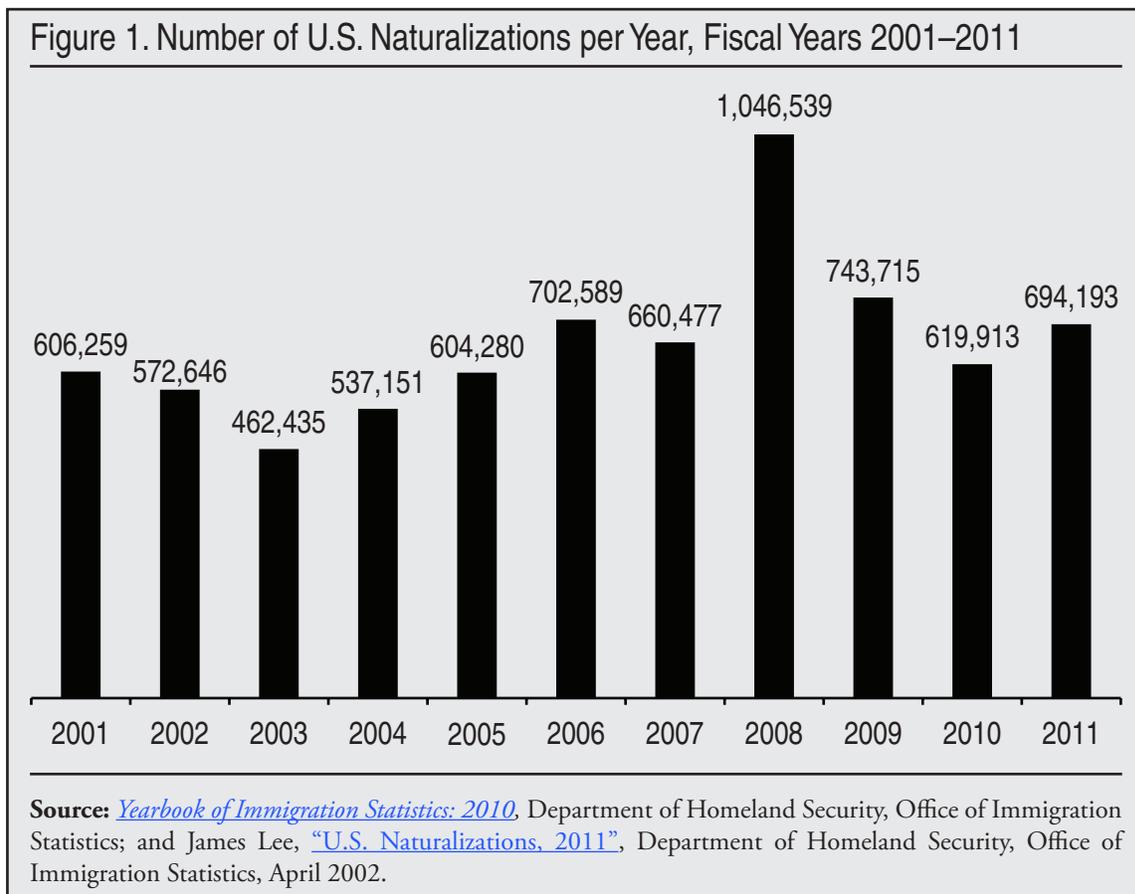
As a legal principle, the burden rests with the alien to prove that he or she is entitled to naturalization. As a practical matter, that principle is significantly muddled — not only by past court decisions, for instance, about what constitutes “continuous physical presence” and what constitutes a “material” fact when aliens are accused of withholding information about their past from officials examining their naturalization papers<sup>16</sup> — but also by the philosophy prevalent within the administration in power, which gets to choose the heads and senior staff of its various departments and bureaus, including of course DHS and USCIS.

## The Potential Scope of the Problem

There is no doubt that detecting terrorists and spies among the population of naturalized American citizens is daunting task. It is a needle-in-the-haystack proposition, and trying to do so indiscriminately and without foundation could easily give rise to the worst excesses of McCarthyism — something to be avoided at all costs.

This is a key reason why it is important to conduct thorough and intelligible vetting of applicants before they naturalize, and why it is equally important to deal with those naturalized citizens who come to the attention of our intelligence and law enforcement communities by promptly taking effective action to strip them of their ill-gotten citizenship status.

Unfortunately, the larger the haystack, the harder it is to find the needle. In our country's case, it is huge. In the decade from federal fiscal years 2001 to 2011, over 6.5 million aliens were naturalized, as shown in Figure 1.



## DHS Still Failing to Connect the Dots

The philosophical temperament of administration leaders about immigration and borders is significant beyond measure because it influences in a direct and immediate way the administration's quantitative and qualitative reaction to denial of benefits of any sort by the bureaucrats who daily make such decisions. Under the Obama administration, denials are abysmally low in any of the benefits adjudication processes and there have been allegations by USCIS adjudicators that they are subject to substantial politically motivated pressure to avoid denials under any circumstances.<sup>17</sup>

The same don't-even-think-about-it attitude holds true for rescinding or revoking inappropriately granted benefits, including citizenship. This appears to be because the Obama administration and its cabinet and agency leaders do not truly believe that there is a link between national security matters on the one hand and immigration and citizenship matters on the other. They see no nexus. This is in no small way ironic, in that immigration and citizenship functions were transferred to the newly created Department of Homeland Security in the aftermath of the 9/11 attacks because of congressional recognition of the policy and process failures that had permitted the alien attackers to obtain visas, enter and remain in the country — points made clear by the findings and reports of the National Commission on Terrorist Attacks Upon the United States, commonly referred to as the 9/11 Commission.

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We have now come full circle, and once again open borders advocates agitate in favor of more benefits, fewer denials, “comprehensive” amnesty for millions, and a steadfast refusal to accept even common sense proposals for controls in our migration and naturalization policies, such as expulsion of alien criminals, let alone any acknowledgement that large-scale immigration invites abuse of the process by spies and terrorists — after all, to do so blunts the narrative that immigration, legal or illegal, is good, and amnesty is better.

I offer the following snippets by way of illustrating just a few of the cases of inappropriately naturalized [former] aliens that I have found:

- April 7, 2009, Shu Quan-Sheng, a *naturalized U.S. citizen* and Ph.D. physicist originally from China, was sentenced to 51 months in prison for illegally exporting space launch technical data and defense services to the People’s Republic of China.
- May 4, 2010, Faisal Shazad, a *naturalized U.S. citizen* originally from Pakistan, is arrested and charged with an attempted bombing in New York City’s Times Square.
- July 16, 2010, Jirair Avanesian, aka Jerry Avanes, a *naturalized U.S. citizen* originally from Iran, pled guilty to exporting to Iran in violation of law, vacuum pumps and pump-related equipment required for uranium enrichment.
- October 5, 2010, Faisal Shahzad, a *naturalized U.S. citizen* originally from Pakistan, was sentenced to life in prison after pleading guilty to an attempted bombing in New York City’s Times Square.
- June 22, 2011, Hamid “Hank” Seifi, a *naturalized U.S. citizen* originally from Iran, was sentenced to 56 months in federal prison for conspiring to export parts for attack helicopters and fighter jets to Iran.
- July 11, 2011, Boniface Ibe, a *naturalized U.S. citizen* originally from Nigeria, was sentenced to prison for exporting arms and ammunition to Nigeria without a license.
- October 11, 2011, Manssor Arbabsiar, a *naturalized U.S. citizen* originally from Iran, is arrested with an Iranian co-conspirator and charged with plotting to assassinate the Saudi Arabian ambassador to the United States, a plot allegedly masterminded by the Iranian government.
- October 3, 2012, Alexander Fishenko, a *naturalized U.S. citizen* originally from Kazakhstan, is arrested with 11 other subjects after being federally indicted for stealing American military secrets on behalf of Russia over a period of several years.

See a pattern developing here? I do, too.

I’ve compiled a longer list of 51 names that is attached as an appendix to the end of this document. But I want to emphasize that the cases in the appendix are by no means all of those fitting the profile of individuals who have hidden themselves in our midst through misuse of the naturalization process. They don’t even scratch the surface. I simply arbitrarily cut off my searching after that because there is no one place to look and although the cases are plentiful, finding them became laborious. I felt like a chicken pecking seeds in the barnyard.

The examples were simply put together on an ad hoc basis from a compendium of various government, media, and public interest sources. Note that they only cover (and sparsely) the last decade, and therefore don’t even include some of the most notorious national security cases involving naturalized citizens, like that of Ali Abdul Saoud Mohamad, former Egyptian intelligence officer, U.S. Army green beret, and FBI informant who was acting as a double-agent for al Qaeda.<sup>18</sup> And please keep in mind that this list is limited to naturalized citizens — no attempt has been made to include the names of resident or nonresident aliens, asylees and refugees, or illegal aliens who have been arrested for significant terrorism or other national security offenses, of whom there are also a plethora.

## Center for Immigration Studies

When you think about it, it's deeply disturbing that the federal government has made no effort to establish a system for collecting information about naturalized citizens who engage in national security offenses. Without this, how in the world can any sober judgments be made about the soundness of naturalization adjudication processes?

Unless things change, there are likely to be myriad more such cases in the future. How long do we think our luck can last in relying on the FBI or metropolitan police departments to ferret out all the terrorists and spies before something catastrophic happens? Prior to September 2001, we seemed to think our lives were charmed and nothing could possibly happen to us domestically. In light of what happened that day, shouldn't this cavalier attitude be relegated to the waste bin of history, to use the notable Marxist turn of phrase?

Shouldn't officials in the federal government — specifically, DHS — take enough interest in, and show enough concern about, this trend to pull together and carefully maintain such a list and conduct exhaustive post-mortems of the individuals' alien files (“A-files”) leading up to, and including all naturalization paperwork, to try to figure out what went wrong in their decision-making? Or, failing that, at least use the information to undertake the steps needed to undo these grants of naturalization by any and all available legal means?

After all, DHS Secretary Napolitano speaks frequently of the need for her department to engage in strategic and tactical “risk management” as an important method of maintaining the *homeland security* of our nation.<sup>19</sup> How can the department charged with this task possibly do its job if it is not up to speed on how well its handling of the immigration and nationality laws is working out — when, as we have seen, its naturalization processes and procedures may in fact be working against the homeland security because they are subject to gross abuse by aliens who would harm us?

Instead, DHS has taken the path of least resistance and (in a classic instance of misdirection and shaping public opinion through modern public relations techniques) has begun to refer to the acts and crimes of these naturalized individuals, particularly where radical Islamist terror is involved, as instances of “domestic” or “homegrown” terrorism.<sup>20</sup>

Why is this attempt at redefinition and repackaging taking place? I suspect there are two reasons:

- First, admitting that naturalized United States citizens engage in terrorism- or espionage-related activities disrupts the narrative put forward by the administration and its open borders allies that unrestricted immigration — even mass, unlawful immigration — is, overall, a benign thing and that immigration and naturalization processes have little or nothing to do with our nation's security interests.
- Second, to do so is also to admit that our alien residency- and citizenship-granting processes are still fundamentally flawed more than a decade after the terrorist attacks of September 11, 2001.

But really. Domestic? Homegrown? If we import French wine in bulk, and bottle it in the United States, does that make it “American” wine? No, absolutely not — not by any intellectually honest standard anyway.

It is probably appropriate to describe most of the first-generation native-born Americans who radicalize and take the wayward path toward radical Islam as “domestic” terrorists once they cross the line from sympathy into overt acts — perhaps the term is even appropriate for some of the immigrants who came here as very young children and received citizenship concurrent with their parents' naturalization. However, that description would almost never reasonably fit most aliens who naturalize.

It's a pretty sure bet that the number of former aliens who radicalize or only decide to turn to terrorism, espionage, or other national security offenses *after* having lived here for years and taken the extraordinary step to naturalize is pitifully few.

# Center for Immigration Studies

It is much more likely that, in the overwhelmingly majority of cases, they carried their radical views and sympathies, or their hostile intelligence-gathering aims, with them from their original homelands, and came with the preconceived intent to embed themselves in our society through permanent residence and, ultimately, naturalization. What better way to achieve camouflage in our open, multi-cultural society?

And, in the case of first-generation Americans, we must ask ourselves two fundamental questions: 1) What kind of household influences were they subject to? In other words, did they adopt the radical views of a parent or parents, but carry them the critical step further from thoughts into actions? If so, then just as surely as in the case of naturalized citizens who materially support terrorism, we must ask whether the screening processes that provided their parent(s) lawful status to live in the United States are substantially flawed. 2) If they did not pick up their radical ideas at home, where did they get them, and what must we do as a society to better assure assimilation and avoid such fatal alienation of these youths? This merits a serious examination by an interdisciplinary group that can make recommendations to government at all levels, because radicalization affects not just the federal government, but communities large and small throughout the country. One wonders how the Homeland Security Advisory Council is spending its time.<sup>21</sup>

Miscasting cases involving naturalized citizens under the broad brush of domestic or homegrown terrorism not only makes the nation less secure, but it permits our government to sidestep a key collateral responsibility of ongoing large-scale immigration and citizenship programs (ours are the largest of any nation on the globe, and larger than many combined), which is to establish competent mechanisms to facilitate assimilation of immigrant families into the national fabric in a manner consistent with our societal norms and principles. If the government cannot do so, then it should in all honesty admit it, step back, and take a time-out on our current senseless more-is-always-better immigration and citizenship path until they have things figured out.

## How Can I Denaturalize Thee? Let Me Count the Ways

At present, there are two ways in which an individual can be denaturalized:

- By criminal prosecution; or
- By civil suit in U.S. District Court.

**Criminal Prosecution.** The relevant statute provides in pertinent part that whoever knowingly procures or attempts to procure naturalization, contrary to law, or who procures or obtains or applies for or otherwise attempts to procure or obtain naturalization for himself or another person, knowing him/them to be ineligible, may be imprisoned for a term anywhere from 10 to 25 years depending on the underlying basis (e.g., to facilitate drug-trafficking, terrorism, etc.).<sup>22</sup>

Once a conviction has occurred, then the provisions of Section 340(e) of the INA kick in: “[T]he court in which such conviction is had shall thereupon revoke, set aside, and declare void the final order admitting such person to citizenship, and shall declare the certificate of naturalization of such person to be canceled.”<sup>23</sup>

**Civil Suit.** Even without a criminal conviction, Section 340 of the INA, mentioned above, permits the government to file a civil suit in United States District Court seeking to have a prior naturalization revoked and set aside, and the certificate of naturalization canceled. The bases for doing so include:

- Concealment of material facts;
- Willful misrepresentations;

## Center for Immigration Studies

- Refusal to testify, within 10 years of naturalization, before congressional committees investigating subversion provided that the individual is also convicted of contempt of Congress; and
- Membership in anarchist, communist, or totalitarian organizations; or advocacy of, or publication or distribution of materials advocating, acts and ideas proscribed by Section 313 of the INA (violence, sabotage, murder, or unlawful destruction of property to overthrow the United States, or any other organized government).<sup>24</sup>

There is potentially a third method of denaturalization — administratively, by USCIS or other designated entities within DHS. In fact, this method was briefly authorized by regulation while the now-defunct INS still existed. To allay the concerns expressed by members of Congress and others about the likelihood of inappropriate administrative naturalizations as described earlier in this paper, concurrent with establishing rules for administrative naturalization, in 1990 the Justice Department and INS promulgated a rule in the Code of Federal Regulations providing for administrative denaturalization.

As one might have expected, AILA and other advocates of administrative naturalization did not wax nearly so enthusiastic over this mirror-image rule for *de*-naturalization. In fact, it promptly resulted in litigation in the courts, culminating in a case that was brought before a three-judge panel of the Ninth Circuit Court of Appeals — the most liberal federal appellate court in the United States — during the Clinton administration, when Janet Reno was Attorney General. Much to the surprise of partisans on either side of the argument, the panel upheld the right of the federal executive to administratively denaturalize individuals.

The plaintiffs, all individuals who had been naturalized administratively and found thereafter by INS to have been ineligible, requested a rehearing. The Circuit Court, sitting *en banc*, reversed the panel's decision, issuing a decision in July of 2000 that held that although Congress had statutorily authorized administrative naturalization, it had not specifically done so with administrative denaturalization, thus the agency had exceeded its regulatory authority.<sup>25</sup>

Writing for the Court, Judge Kleinfeld stated, "Because the power to denaturalize is so important, and because it differs as a practical matter from the power to naturalize, we conclude that this silent and subtle implication is too weak to support this argument."

One senses that the Circuit Court has assigned a tier of importance to the two actions, naturalization and denaturalization, giving primacy to the former. This is difficult for me to rationalize, because the Ninth Circuit's opinion effectively guts the ability of federal officers to administratively revoke an individual's citizenship, no matter how egregious a mistake they may have made in naturalizing administratively in the first place. And given the pressure to grant benefits, avoid backlogs, and the huge volume of naturalization applicants they are dealing with, mistakes will be both inevitable and recurring.

It seems reasonable to me to create parallel administrative paths — with appropriate procedural safeguards and reviews — for both the granting and rescinding processes.

Be that as it may, the court has spoken. So unless and until Congress passes, and the president signs into law, a statutory basis for administrative denaturalization, any attempts to revoke a former alien's citizenship will be forced through the narrow bottleneck of criminal or civil actions in the United States District Courts, all of which already operate at maximum capacity.

Curiously, it was not until the end of August 2011 that DHS quietly and without fanfare rescinded the regulation. (The rescission was buried in a publication of the *Federal Register* containing 44 long pages of mostly technical amendments and changes to the INA.)<sup>26</sup> The USCIS "Adjudicator's Manual" was also quietly amended. The pertinent part now states simply, "Denaturalization, or revocation of naturalization, is one of the more complex and time-consuming actions provided for under the INA. In addition, unlike most other proceedings conducted under the INA which are handled in administrative settings, denaturalization actions must be filed in federal district court."<sup>27</sup>

## Rethinking Ideological Debarment Grounds in the INA

Given the elimination of administrative denaturalization as an option, what realistic means are left for federal officials to use, assuming they take their responsibility to revoke citizenship as seriously as they are profligate in handing it out?

In a 2005 Center for Immigration Studies *Background*, James Edwards argued persuasively for updating the ideological grounds of exclusion and deportation of aliens contained within the Immigration and Nationality Act.<sup>28</sup> I agree with Mr. Edwards that they are needed. The discussion is relevant to naturalization, because as a general proposition, aliens who were excludable or deportable were ineligible to obtain permanent resident status. If they nonetheless managed to procure it, the strong likelihood is that they did so through misrepresentations or concealment of facts. This also renders their later naturalization unlawful.

There are those who object to the notion of ideological exclusions on general principles, arguing that immigration authorities should not act as America's thought police. Others object that they are impractical because it is nearly impossible to discern a man's mind or intent with any certitude. I have no truck with the kind of feel-good moral relativism of the first argument. *Of course* we should attempt to exclude from any immigration or citizenship benefits whatsoever those who advocate murder, genocide, totalitarianism, terrorism, or any of the other egregious ills afflicting mankind today. The second argument fails on somewhat more nuanced grounds. We may not know a man's mal-intent until after he has derived a benefit, but by virtue of having put him on notice that certain grounds render(ed) him ineligible for that benefit, he cannot say he did not know. In essence, then, we are forcing him to make the moral choice to hide or lie about his past, his affiliations, his beliefs, his intentions. We can then justly take from him that to which he was not entitled, if and when we catch him in the lie or concealment.

But even lacking revisions in the INA of the type Mr. Edwards discussed, there seem to me to still be grounds on which to strip citizenship from national security threats who abuse the naturalization process. First of all, terrorists and spies have almost assuredly had to conceal material facts and make intentional misrepresentations in order to have obtained naturalization at all. What is more, the existing ideological proscriptions against affiliation with totalitarian groups, or engaging in or advocating violence to overthrow governments seem particularly apt where radical Islamist terrorism is concerned.

Why totalitarianism? Because under radical strains of Islam, such as Salafism, it is impossible to reconcile separation of church and state. All civil authority bows to the wisdom of religious clerics in a theocracy. The best existing example (if one can use that descriptor loosely) of such a theocracy in action is the Islamic Republic of Iran. The worst example in recent memory is the Taliban when it ruled Afghanistan. Can one doubt that both examples point clearly to a totalitarian form of government in which no form of peaceful dissension or religious liberty is tolerated? In fact, dissension and religious differences are dealt with brutally.

What is more, taking the oath of citizenship must have been insincere for individuals who subscribe to such views; they had to have mental reservations in swearing to defend the Constitution and laws of the United States.

Dinesh D'Souza speaks persuasively about this phenomenon and about the need to fully understand the underpinnings of radical Islamist philosophy in the first chapter of his book, *What's So Great About America*.<sup>29</sup> Discussing the writings and thought of Islamist theoretician Sayyid Qutb, one of the founders of the Muslim Brotherhood, he has this to say:

*In short, Islam provides the whole framework for Muslim life, and in this sense it is impossible to "practice" Islam within a secular framework.*

*This is especially so when, as Qutb insists, the institutions of the West are antithetical to Islam. The West is a society based on freedom whereas Islam is a society based on virtue. Moreover, in Qutb's view, Western institutions*

## Center for Immigration Studies

*are fundamentally atheistic: they are based on a clear rejection of divine authority. When democrats say that sovereignty and political authority are ultimately derived from the people, this means that the people — not God — are the rulers. So democracy is a form of idol worship. Similarly capitalism is based on the premise that the market, not God, makes final decisions of worth. Capitalism, too, is a form of idolatry or market worship. Qutb contends that since the West and Islam are based on radically different principles, there is no way that Islamic society can compromise or meet the West halfway. Either the West will prevail or Islam will prevail. What is needed, Qutb concludes, is for true-believing Muslims to recognize this and stand up for Islam against the Western infidel and those apostate Muslims who have sold out to the West for money and power. And once the critique is accepted by Muslims, the solution presents itself almost automatically. Kill the apostates. Kill the infidels.*

Some readers might object that the vast majority of Muslims do not advocate violence or hatred. That's true, but irrelevant. It's like saying that most Caucasians are not dangerous white supremacists. Let us agree for purposes of denaturalization that we are speaking about a narrow, but extremely virulent, slice of radical Islamists whose views of Islam are significantly different than the mainstream.

But let us also be honest in acknowledging that even among mainstream Muslims there is an undercurrent of sympathy and tacit support for at least some of the views and aims of the extremists. For instance, ask the Muslim man on the street whether or not he supports the notion of sharia (Islamic religious law) as a basis for justice in civil society. You may find overwhelming support for that proposition, even though it flies in the face of American, and Western, notions about the importance of separating church and state.

Readers may additionally note that a few dozen spies or terrorists, compared with 6.5 million naturalizations, isn't even a statistically observable event. Also true, and also irrelevant. As I have observed before in other contexts: first, this isn't a numbers game; second, all it took was 19 men bent on destruction to change our entire way of life. Think in terms not only of money, but of the personal liberties, wars, and lives that they have cost us.

## Where to Now?

It is impossible to say whether changing the ideological grounds would have any real impact on the number and quality of naturalizations taking place because, as explained, that is a very real function of the kind of influence (or pressure) that leaders at the top of the bureaucratic pyramid exert on their staff. Right now, that is not very reassuring.

But one and all should be looking carefully at a system that permits the kind of abuse reflected by the table in the appendix, which lists some recent examples of naturalized U.S. citizens charged with serious national security offenses: it speaks, loudly, for itself. And, if no better care is to be afforded the adjudicative process in advance of granting naturalization then, at minimum, all the stops should be pulled out when naturalized individuals float to the surface after the fact, in order to send the clear message that abuse of our naturalization processes will not be tolerated.

When recently naturalized citizens (say, within five years of naturalization) are criminally charged with national security offenses, it should be a near-reflexive action for United States Attorneys' Offices to work with the investigating agency and the relevant DHS agencies to tack on an additional criminal charge alleging unlawful procurement of naturalization in violation of 18 U.S.C. § 1425. As often as not the investigating agency is the FBI, although ironically, when the investigating agency is Immigration and Customs Enforcement (ICE), it is abundantly clear that ICE's Office of Investigations has neither the protocols in place, nor apparently the interest, to look beyond the immediate criminal charge to determine whether a denaturalization investigation is appropriate. ICE headquarters, which has been prolific in providing field offices guidance on how and when to exercise "prosecutorial discretion" not to take enforcement actions, should show equal interest in establishing a national priority to aggressively move against naturalized terrorists and spies. Further, DHS should work closely with the Department of Justice to ensure that such cases investigated by agencies other than ICE receive the same follow-up scrutiny.<sup>30</sup>

But even if the offenders were naturalized outside of the five-year window, then at minimum, as a matter of routine, a preliminary inquiry should still be opened. After all, both international terrorist and foreign espionage organizations share some commonalities in terms of tradecraft, and embedding of sleepers who take years to achieve their goals. Consider the remarkable case of Chinese-born Chi Mak, engineer for a U.S. naval contractor, arrested for spying on behalf of the People's Republic of China and sentenced in April 2008 to nearly 25 years in prison. Prosecutors described him as a sleeper agent who waited over 20 years to begin his espionage mission, so that he had access to highly classified materials relating to the design and specifications of naval warships.<sup>31</sup>

When naturalized individuals are discovered who, for a variety of reasons, may not or cannot be charged criminally, but in circumstances that provide an articulable basis to question their attachment to the Constitution and laws, or their ideological beliefs, or their membership in or affiliation with groups — even religious groups — if those groups harbor extremist or totalitarian views, or espouse violence and murder to achieve governmental overthrow, then the government should make every effort to investigate and develop a case that provides the grounds to denaturalize using the civil provisions of 18 U.S.C. § 1451. This can be done using, among other things, expert witnesses to testify about the kind of tradecraft used by foreign spy and intelligence organizations; and, similarly, about the violent and totalitarian philosophical underpinnings of radical Islamist strains.

### A Final Note

Some commentators have observed that this administration has found it more expedient to assassinate terrorists, as opposed to having to face the political consequences and public backlash involved in a decision to capture and try them in a court of law.

For instance, Steve Coll, writing in the *New York Times Review of Books*, states, “[T]he nuances obscure an obvious conclusion: the Obama administration’s terrorist targeting and detention system is heavily biased toward killing, inconsonant with constitutional and democratic principles, and unsustainable. The president has become personally invested in a system of targeted killing of dozens of suspected militants annually by drone strikes and Special Forces raids where the legal standards employed to designate targets for lethal action or to review periodic reports of mistakes are entirely secret.”<sup>32</sup>

The argument is both persuasive and ironic, given the moral hectoring that candidate Obama unleashed on the strategies and tactics employed in the war on terror by George Bush. It is doubly ironic in that this president may be the first to have placed American citizens on “kill lists” — a notable example being the previously mentioned Anwar al Awlaki, killed by a drone strike in Yemen on September 30, 2011.<sup>33</sup> Another American quite possibly on such a list (although still among the living, at least for the moment) is the previously mentioned Omar Hammami, the man allied with al Qaeda and, more recently, the Somali radical Islamic terrorist organization al Shabaab.

I have no qualms with the killing of such men, who have adopted hate, brutalizing violence, and murder as their own creed. But there is a bizarre, down-the-rabbit-hole quality to the kind of logic that can embrace placing them on a presidentially authorized assassination list yet quibble over whether we have the legal right to strip them of their U.S. citizenship.

No one says that prosecuting denaturalization cases, criminally or civilly, is easy. And, it was made harder over the years by a number of pre-9/11 court decisions. But times have changed. We live in a world of asymmetrical warfare, much of which relies on international terrorism and non-state actors like al Qaeda. We are still engaged in the longest-running war in American history — in Afghanistan, which was a direct result of the September 11, 2001 attacks — and as of the end of 2012 Defense Department statistics show that 4,488 American servicemen and women have lost their lives in Iraq and another 32,220 were wounded; 2,156 have lost their lives in Afghanistan, an additional 18,109 have been wounded, and the death and injury toll continues to rise daily.

## Center for Immigration Studies

It is a puzzle to me how our government can be so profligate with the lives and limbs of our sons and daughters abroad, yet exhibit such paralysis about doing what needs done on the home front, out of a sense of dubious moral relativism. How can we demand such sacrifices from the members of our Armed Forces and not show the resolve domestically to rid ourselves of the vipers we have sent them to foreign lands to fight?

If the United States government, writ large, were serious about the growing terrorism and national security threats from within, it would establish a standing mechanism through the National Security Council or Domestic Security Council to examine the problem and develop sound solutions. And the Department of Homeland Security, were it truly serious about, and competent to establish, the “risk management” strategies it so frequently touts — usually, in my view, as a way to ensure a sufficiently docile public rather than for substantive reasons — then it would likewise sponsor a multi-departmental, cross-disciplinary group to conduct post-mortems of these cases in order to determine both causality and key indicia that might be used to chart a path of future prevention and deterrence.

Another point to be made is this: If we as a society decide that we are unwilling, as a part of the naturalization application process, to administer ideological litmus tests for suitability in advance, is it not then even more incumbent on us to exhibit our willingness and determination, after the fact, to correct our mistakes through denaturalization, and in so doing, protect the commonweal?

It is, or should be, clear, in our post-9/11 nation, that immigration and citizenship processes constitute the soft underbelly of our national security. As Supreme Court Justice Robert H. Jackson noted in his dissenting opinion in *Terminiello v. Chicago*, the Constitution is not a suicide pact. Neither it nor our laws should be so liberally construed as to prevent us from combating those who would misuse our naturalization processes, with the intent to cause us harm. Taking such a stand does not dishonor our country’s proud melting pot heritage; to the contrary, it validates it, and shows that we value our own citizenship enough to safeguard it from those who would use it as both shield and sword against us.

For a very long time after 9/11, everywhere around us, we heard the solemn words, “We will never forget.” But the truth is, the process of forgetting has already begun — how else to explain the federal government’s failure to act, and its attempt to recast the national narrative to describe naturalized terrorists and spies as “homegrown”? And you know what they say about those who forget their history.

## Center for Immigration Studies

### Naturalized U.S. Citizens Charged with Serious National Security-Related Offences

Name	Country of Origin	Significant Date	Case Circumstances
Ahmed, Farooque	Pakistan	April 2011	Pled guilty to plotting to blow up Metro subway stations around Washington, D.C.; sentenced to 23 years in prison
Ahmed, Shirwa	Somalia	October 2008	Deceased: a suicide bomber for al Shabaab terrorist organization who drove a car loaded with explosives into a government compound in Puntland, Somalia
al Rahimi, Mohamad	Yemen	January 2007	Indicted for conspiracy to act as an illegal agent of a foreign government, to possess stolen government property, and to unlawfully export defense materials
al-Hanooti, Muthanna	Iraq	June 2010	Former official of Council on American Islamic Relations (CAIR) pled guilty to violating U.S. sanctions against Iraq by receiving rights to two million barrels of oil in exchange for helping Saddam Hussein's government
Ali, Amen Ahmed, aka Ali Amin Alrowhani,	Yemen	January 2011	Sentenced to five years in prison for conspiracy to act as an illegal agent of a foreign government, to possess stolen government property, and to unlawfully export defense materials
Amirnazmi, Ali	Iran	January 2010	Sentenced to prison for violating U.S. embargo on Iran, making false statements, and bank fraud; he was allegedly personally recruited by Iranian president Ahmadinejad
Arbabsiar, Manssor	Iran	October 2011	Arrested with an Iranian co-conspirator and charged with plotting to assassinate the Saudi Arabian ambassador to the United States, a plot allegedly masterminded by the Iranian government
Avanessian, Jirair, aka Jerry Avanes	Iran	July 2010	Pled guilty to exporting vacuum pumps and pump-related equipment required for uranium enrichment to Iran in violation of the law
Babar, Mohammed Junaid	Pakistan	June 2004	Pled guilty to five counts of providing, and conspiring to provide, money and supplies to al Qaeda terrorists fighting in Afghanistan against U.S. and international forces
Bagegni, Ali Mohamed	Libya	March 2007	Illegal transfer of funds to Iraq via the Islamic American Relief Agency (IARA) , laundering money, stealing federal funds, obstructing tax laws, falsely denying that a procurement agent of Osama bin Laden had been an employee of the charity

## Center for Immigration Studies

### Naturalized U.S. Citizens Charged with Serious National Security-Related Offences

Name	Country of Origin	Significant Date	Case Circumstances
Banki, Mahmoud Reza	Iran	August 2010	Sentenced to 30 months in prison for violating the Iran trade embargo, operating an unlicensed money transmittal business between the U.S. and Iran, false statements, and conspiracy
Bujduveanu, Traian	Romania	June 2009	Sentenced to prison for conspiracy to export military aircraft parts to Iran
Chandia, Ali Asad	Pakistan	June 2006	Convicted with 10 other citizens and aliens of conspiracy to train for and participate in a violent jihad overseas; material support of terrorist group Lashka-E-Taiba; and federal weapons violations
Chang, York Yuan aka "David"	China	October 2010	Arrested for conspiring to export restricted electronics technology to the People's Republic of China without a license and making false statements
Chen, Dongfan "Greg"	China	February 2010	Sentenced to 15 years in prison for stealing NASA space shuttle information he planned to share with China
Chi Mak	China	March 2008	Former engineer at a U.S. naval contractor was sentenced to 24 1/2 years in prison for conspiring to export warship technology to China; acting as an unregistered foreign agent of China
Elbaneh, Jaber	Yemen	May 2008	Imprisoned in Yemen on a 10-year sentence for terrorism; U.S. indictment for conspiracy and material support of terrorism remains pending
El-Siddiq, Abdel Azim	Sudan	March 2007	Illegal transfer of funds to Iraq via the Islamic American Relief Agency (IARA), laundering money, stealing federal funds, obstructing tax laws, falsely denying that a procurement agent of Osama bin Laden had been an employee of the charity
Fermanova, Anna	Latvia	January 2011	An ethnic Russian who pled guilty after being caught departing the U.S. while attempting to smuggle sensitive military technology to Moscow
Fishenko, Alexander	Kazakhstan	October 2012	An ethnic Russian arrested with 11 other subjects after being federally indicted for stealing American military secrets on behalf of Russia over a period of several years
Hamed, Mubarak	Sudan	March 2007	Illegal transfer of funds to Iraq via the Islamic American Relief Agency (IARA), laundering money, stealing federal funds, obstructing tax laws, falsely denying that a procurement agent of Osama bin Laden had been an employee of the charity

## Center for Immigration Studies

### Naturalized U.S. Citizens Charged with Serious National Security-Related Offences

Name	Country of Origin	Significant Date	Case Circumstances
Hasan, Khwaja Mahmood	Pakistan	June 2003	Indicted with 10 other citizens and aliens of conspiracy to train for and participate in a violent jihad overseas; material support of terrorist group Lashka-E-Taiba; and federal weapons violations
Hawash, Maher "Mike"	Palestine	December 2003	A software engineer for Intel who joined others to form a terrorist cell; sentenced to seven years imprisonment for material support of terrorism
Ibe, Boniface	Nigeria	July 2011	Sentenced to federal prison for exporting arms and ammunition to Nigeria without a license
Jin, Hanjuan	China	August 2012	Sentenced to four years in federal prison for attempting to steal sensitive communications technology from Motorola on behalf of the Chinese government. She had worked as an engineer for Motorola for nine years and was intercepted at a U.S. airport departing for China
Keshari, Hassan	Iran	May 2009	Sentenced to prison for conspiracy to export military aircraft parts to Iran
Khalil, Omar Rashid, aka Abu Mohammad	Palestinian origin	October 2012	Convicted by an Iraqi court of terrorism and support of al Qaida-in-Iraq, and sentenced to life in prison
Kwon, Yong Ki	South Korea	June 2003	Indicted with 10 other citizens and aliens on conspiracy to train for and participate in a violent jihad overseas; material support of terrorist group Lashka-E-Taiba; and federal weapons violations
Lee, Ching Sheng, aka Sam	China	May 2010	Pled guilty to conspiracy for illegally exporting national security-controlled thermal imaging cameras to China
Mamdouh, Mohamed	Morocco	May 2011	Arrested with Algerian co-conspirator Ahmed Ferhani and charged with conspiring to blow up a synagogue
Modanlo, Nader	Iran	June 2010	Indicted by a federal grand jury for money laundering and conspiring to illegally provide satellite hardware and technology to Iran
Mohamud, Mohamed Osman	Somalia	November 2010	Arrested in Portland, Ore., for plotting to bomb a crowded Christmas tree-lighting ceremony
Mustafa, Jaime Radi	Libya	March 2010	Pled guilty to violating U.S. sanctions against the Libyan regime of former strongman Moamar Qadafi
Noshir Gowadia	India	August 2010	Convicted of selling stealth bomber technology to China

## Center for Immigration Studies

### Naturalized U.S. Citizens Charged with Serious National Security-Related Offences

Name	Country of Origin	Significant Date	Case Circumstances
Omer, Ibrahim	Yemen	January 2007	Indicted for conspiracy to act as an illegal agent of a foreign government, to possess stolen government property, and to unlawfully export defense materials
Payen, Laguerre, aka "Amin," "Almondo"	Haiti	September 2011	Convicted with three African-American Muslims of plotting to blow up synagogues in the Bronx and an Air National Guard base; sentenced to 25 years in prison
Qazi, Raees Alam	Pakistan	November 2012	Arrested with his brother by the FBI and charged with plotting to commit a terrorist act using a weapon of mass destruction
Qazi, Sheheryar Alam	Pakistan	November 2012	Arrested with his brother by the FBI and charged with plotting to commit a terrorist act using a weapon of mass destruction
Qi, Nina Yaming, aka Nina Yaming Hanson	China	February 2010	Sentenced to jail for illegally exporting miniature unmanned aerial vehicle (UAV) autopilots controlled for national security reasons to China
Rauf, Mohammad, aka Lyman Faris	Pakistan	May 2003	Pled guilty to providing material support and resources to Al Qaeda and conspiracy for plotting to blow up the Brooklyn Bridge and other possible U.S. targets
Sehweil, Nureddin Shariff, aka Dean Sehweil	Libya	March 2010	Pled guilty to violating U.S. sanctions against the Libyan regime of former strongman Moamar Qadafi
Seifi, Hamid "Hank"	Iran	June 2011	Sentenced to 56 months in federal prison for conspiring to export parts for attack helicopters and fighter jets to Iran
Shahzad, Faisal	Pakistan	October 2010	Sentenced to life imprisonment for attempting to blow up Times Square in New York City
Shih, Jeng "Jay"	China	October 2011	Pled guilty to conspiracy to illegally export computers from the United States to Iran
Shnewer, Mohamad Ibrahim	Jordan	April 2009	Sentenced to life in prison for conspiring to kill U.S. Army soldiers at Fort Dix, N.J.
Shu Quan-Sheng	China	April 2009	A PhD physicist, sentenced to 51 months in prison for illegally exporting space launch technical data and defense services to the People's Republic of China
Singh, Vikramiditya	India	November 2010	Pled guilty to illegal export of digital microwave radios to Iran

## Center for Immigration Studies

### Naturalized U.S. Citizens Charged with Serious National Security-Related Offences

Name	Country of Origin	Significant Date	Case Circumstances
Telemi, Andro	Iran	May 2011	Pled guilty to conspiracy to illegally export technology and defense items, including TOW missile components and radio test sets to Iran
Wei, Yufeng	China	January 2011	Sentenced to 36 months in prison for conspiring over 10 years to export military components and sensitive electronics to the People's Republic of China
Yang, Chunlai	China	September 2012	Pled guilty in federal court to attempted theft of trade secrets after stealing sensitive proprietary computer code used in electronic stock trading platforms
Yun, Juwhan	South Korea	May 2010	Pled guilty to attempting to illegally export defense articles to South Korea, including components for a 20 mm gun, a Russian fighter jet, and several rocket propulsion systems

## End Notes

<sup>1</sup> See W.D. Reasoner, [“Birthright Citizenship for the Children of Visitors: A National Security Problem in the Making?”](#) Center for Immigration Studies *Backgrounders*, March 2011.

<sup>2</sup> For those interested, a précis of Congressional powers in the field of citizenship, naturalization and loss of citizenship can be found online. See [“Expatriation: Loss of Citizenship”](#).

<sup>3</sup> United States citizenship was collectively accorded to Puerto Ricans via the Jones-Shafroth Act, Pub.L. 64-368, 39 Stat. 951, signed into law on March 2, 1917.

<sup>4</sup> See, [“Puerto Rico votes for U.S. statehood in non-binding referendum”](#), Associated Press/CBS News, November 7, 2012, and other similar media articles.

<sup>5</sup> W.D. Reasoner, [“Non-Citizen Voters: Diluting the Rights and Privileges of Citizenship”](#), Center for Immigration Studies *Backgrounders*, September 2012.

<sup>6</sup> Federal treason and treason-related criminal offenses may be found in Title 18 of the United States Code, in Sections 2381 through 2390.

<sup>7</sup> Lindh is in fact serving a long prison sentence for his crimes, but they did not include treason. See Josh Tyrangiel, [“The Taliban Next Door”](#), *Time Magazine* U.S., December 9, 2001 and [“‘American Taliban’ John Walker Lindh testifies for right to group prayer in prison”](#), NBCNews.com, August 27, 2012.

<sup>8</sup> See, for instance, Bill Roggio, [“Omar Hammami calls for establishment of global caliphate”](#), *The Long War Journal*, May 27, 2012; and Sudarsan Raghavan, [“American jihadist struggles inside Somali militia”](#), *The Washington Post*, October 8, 2012.

<sup>9</sup> One is Adam Yahiyeh Gadahn (born Adam Pearlman, September 1, 1978, in Oregon), known as “Azzam the American” in multiple al Qaeda videos, who was indicted for treason October 11, 2006, but remains at large and is possibly deceased. Another is Ali al-Timimi, who on July 13, 2005, was sentenced to life in prison for soliciting treason, inducing others to wage war against the United States, and to use firearms and explosives in furtherance of those offenses. A third and fourth are Jeffrey Leon Battle and Patrice Lumumba Ford, a.k.a. Larry Jackson, members of the “Portland Seven” terrorist cell, both of whom on December 2, 2003, pled guilty to seditious conspiracy and waging war on the United States and received 18-year prison sentences.

<sup>10</sup> One was Fadi Alameh. See [United States v. Alameh](#), 341 F.3d 167 (2d Cir. August 22, 2003). The other was Seyed Mahmood Mousavi, a former interrogator for the Islamic Revolutionary Court in Iran (one wonders how in the world this man was granted permission to enter the United States, let alone become a permanent resident and citizen thereafter). See [Payvand Iran News](#), citing the *Iran Times*, [“Former Revolutionary Court Interrogator Convicted in California”](#), October 25, 2008; and U.S. Justice Department Fact Sheet, [“Major U.S. Export Enforcement Prosecutions During the Past Two Years”](#), October 28, 2008.

<sup>11</sup> Good moral character (“GMC”) is defined within the INA at Section 101(f), and in supplementary regulations at 8 CFR 316.10. Excluded from a finding of GMC are habitual drunkards, illicit gamblers, those who have committed fraud to obtain immigration benefits, and persons convicted of certain kinds of offenses such as murder, aggravated felonies, or crimes involving moral turpitude. There are other forms of conduct that also preclude a finding of GMC. For a more complete listing, see the Immigration and Nationality Act [definitions](#) and [Sec. 316.10 “Good moral character”](#).

## Center for Immigration Studies

<sup>12</sup> Alfonso Aguilar, Chief of Citizenship, U.S. Citizenship and Immigration Services, Department of Homeland Security, [“Statement Regarding a Hearing on H.R. 3191, Oath of Renunciation and Allegiance before the Subcommittee on Immigration, Border Security and Claims, Committee on the Judiciary, House of Representatives”](#), April 1, 2004.

<sup>13</sup> Administrative naturalization was established by the Immigration Act of 1990, Pub.L. No. 101-649, § 401, 104 Stat. 4978, which amended the INA at Section 310(a), 8 U.S.C. § 1421(a).

<sup>14</sup> See the Homeland Security Act of 2002, [Pub.L. No. 107-296](#), November 25, 2002.

<sup>15</sup> Rosemary Jenks [“Statement on H.R. 2837 The Naturalization Reform Act of 1998 before the Subcommittee on Immigration, Border Security and Claims, Committee on the Judiciary, House of Representatives”](#), March 5, 1998.

<sup>16</sup> For one discussion of “material” misrepresentations and concealment in immigration and naturalization matters, see the online article, [“‘Material Misrepresentation’ for Immigration and Naturalization Purposes”](#), by Global Partners

<sup>17</sup> See, for instance, the Center for Immigration Studies publications [“USCIS Staff Pushed to OK Questionable Cases – Unpublished IG Report”](#), January 2012; [“What Does the USCIS Ombudsman Do, and Not Do?”](#), August 2012; [“How USCIS Has Tilted DACA Decision-Making”](#), October 2012; and [“No Coyote Needed: U.S. Visas Still an Easy Ticket in Developing Countries”](#), March 2008.

<sup>18</sup> See, for instance, the article in *Democracy Now!* online, [“Triple Cross: Journalist Peter Lance on How Bin Laden’s Master Spy Penetrated the CIA, the Green Berets and the FBI – And Why Patrick Fitzgerald Failed to Stop Him”](#), November 29, 2006.

<sup>19</sup> I have previously expressed my concern about the department’s failure to seriously undertake risk management. Refer to my September 19, 2012, blog entitled, [“On the Notion of Risk Management at DHS”](#).

<sup>20</sup> Use of the phrase “domestic terrorism” when referring to naturalized citizens has even started to take hold in the media, as well as arenas of research and academia. See, for instance, Brian M. Jenkins, [“Would-Be Warriors: Incidents of Jihadist Terrorist Radicalization in the United States Since September 11, 2001”](#), The Rand Corporation, 2010. Most recently, ABC senior justice correspondent Pierre Thomas used the phrase “homegrown” to describe the terror plotting of two brothers, naturalized citizens of Pakistani origin who were arrested on November 30, 2012. See my blog, [“‘Homegrown’ Terror and the Importance of Words”](#), December 2012.

<sup>21</sup> For more on this advisory body overseen by, and responsible to, the Secretary of Homeland Security, see the [DHS website](#).

<sup>22</sup> See [18 U.S.C. § 1450](#).

<sup>23</sup> Section 340(e) of the INA is codified at [8 U.S.C. §1451\(e\)](#).

<sup>24</sup> Section 313 of the INA is codified at [8 U.S.C. §1424](#).

<sup>25</sup> See [Irina Gorbach v. Janet Reno](#), 219 F.3d 1087 (9th Cir. 2000).

<sup>26</sup> See [8 CFR 340.1](#) and the [Federal Register](#), Vol. 6, No. 167, at p.42, August 29, 2011.

<sup>27</sup> U.S. Citizenship and Immigration Services, [Adjudicator’s Field Manual – Redacted Public Version](#), Chapter 76, Denaturalization, Section 76.1 General.

## Center for Immigration Studies

<sup>28</sup> James R. Edwards, [“Keeping Extremists Out: The History of Ideological Exclusion and the Need for Its Revival”](#), Center for Immigration Studies *Background*, September 2005.

<sup>29</sup> Dinesh D’Souza, “Why They Hate Us” (pp. 3–35), in [What’s So Great About America](#), New York: Penguin Books, 2003.

<sup>30</sup> A few ICE field offices have occasionally pursued denaturalization cases against criminals, for instance drug dealers who concealed their participation in trafficking conspiracies when filling out naturalization applications. If this is done for criminal offenders, it should be done on the basis of disqualifying ideological and national security activities as well. But such initiatives are too important to leave to the decision-making of field offices alone.

<sup>31</sup> Joby Warrick and Carrie Johnson, [“Chinese Spy ‘Slept’ In U.S. for 2 Decades: Espionage Network Said to Be Growing”](#), *The Washington Post*, April 3, 2008, p. A1.

<sup>32</sup> Steve Coll, “Dead or Alive”, the *New York Review of Books*, October 25, 2012, p. 8. In the article, Mr. Coll reviews the book, [No Easy Day: the Firsthand Account of the Mission That Killed Osama bin Laden](#), by former Navy Seal Mark Owen and co-author Kevin Maurer. That book, too, is remarkable in that it disputes the administration’s account of the way in which bin Laden died at the hands of Navy Seals — just as the administration’s first account of the attack of the American consulate in Benghazi, Libya, as the spontaneous outgrowth of an initially peaceful demonstration was quickly discredited.

<sup>33</sup> American-born Kamal Derwish, a.k.a. Ahmed Hijazi, was killed in Yemen on November 5, 2002, by use of a drone-fired missile, which destroyed the vehicle he and several other extremists were riding in at the time, but U.S. officials have asserted that the target of the attack was Abu Ali al-Harithi, one of the conspirators in the attack on the USS Cole; Derwish was collateral damage and not specifically targeted.