



U.S. Citizenship  
and Immigration  
Services

## Decision Memorandum

TO: L. Francis Cissna  
Director

FROM: Daniel M. Renaud  
Chair, Executive Coordination Council

SUBJECT: **Settlement Process for Historical Fingerprint Enrollment Denaturalization Cases**

**Purpose:** To obtain a decision on the establishment of a panel, which will be composed of USCIS senior executives, who will review and respond to settlement offers that implicate USCIS interests in denaturalization cases. It should be noted that this issue is not limited to Historical Fingerprint Enrollment (HFE) cases, but HFE cases are the most numerous.

**Background:** A DHS Office of Inspector General (OIG) report dated September 8, 2016, *Potentially Ineligible Individuals Have Been Granted U.S. Citizenship Because Of Incomplete Fingerprint Records*, recommended that the U.S. Immigration and Customs Enforcement (ICE) agency complete the review of 148,000 alien files (A-files) and upload into the IDENT system any fingerprint cards of aliens who had final deportation/removal orders or criminal histories, and also those who were fugitives. Secondly, OIG recommended that USCIS establish a plan for evaluating the eligibility of each naturalized citizen whose fingerprint record reveals a deportation/removal order under a different identity.

USCIS manually reviewed approximately 2,000 naturalization cases, which were identified after the fingerprints were uploaded into IDENT, where the individual who naturalized had previously been ordered removed under a different identity. The vast majority of the cases, approximately 1,600, involved individuals who concealed information and obtained naturalization unlawfully. In those instances, where the individual is found to have obtained naturalization unlawfully, the Field Operations Directorate (FOD) HFE Unit in Los Angeles (hereinafter referred to as HFE Unit) and the Office of the Chief Counsel (OCC) are presenting the cases to the U.S. Department of Justice (DOJ) for civil denaturalization. FOD and OCC are working towards preparing these cases for denaturalization. The HFE Unit will present the factual analysis and recommendation to the panel for its consideration of the HFE population, which may include input from ICE Office of the Principal Legal Advisor (OPLA). Additional consideration by the HFE Unit of other non-HFE denaturalization cases will need to be considered and defined. In addition to the HFE cases, USCIS encounters a number of cases each year that are amenable to denaturalization. The volume of cases, which now

include the HFE workload, requires USCIS to implement an efficient process that will ensure the timely and consistent review of settlement offers.

**Discussion:** As of May 2, 2018, USCIS has referred 89 cases to DOJ for possible denaturalization. Pursuant to an Executive Order 12988 – Civil Justice Reform, prior to filing a complaint, with very few exceptions, DOJ must contact the subject of the denaturalization case to determine if settlement can be reached prior to the filing of the case. Although DOJ can unilaterally accept a consent judgment, where the defendant simply admits to the allegations in the complaint and accepts the order of denaturalization, if the defendant seeks to obtain concessions by the United States in exchange for an order of denaturalization, USCIS or DHS may need to agree to the terms in order to accept such an offer. The most typical demand, which would require USCIS consent, would be a decision not to initiate Cancellation of Certificate (under INA 342) proceedings against derivative children of the defendant. Moreover, although USCIS may opine on issues of non-removability, any formal agreement not to remove an individual may only be obtained with the consent of OPLA. Accordingly, while USCIS may have authority to reject a proposed settlement in these cases, and it may also have authority to agree to certain settlement terms, USCIS does not have unilateral authority to agree to non-removal as part of a settlement agreement without ICE’s concurrence.

Currently, USCIS is reviewing a case involving a subject who has indicated he would agree to denaturalization if, (1) he reverts back to Lawful Permanent Residence (LPR) status and no further adverse action, such as removal, is taken against him, and (2) the status of his naturalized wife and child would not be affected. Both spouse and child obtained their LPR status through the subject, and there is no indication that the spouse was aware of or participated in the fraudulent activity. If USCIS decides to decline the offer and continue with litigation, the Office of Immigration Litigation (OIL) and OCC are in agreement that USCIS has a strong legal case for denaturalization.

**Key Considerations:**

- Beginning in the next few months, USCIS is expecting to receive a large number of denaturalization settlement offers. Resolving these cases, short of full-scale litigation, is in the best interests of USCIS, in that it permits the efficient use of limited USCIS and DOJ resources, while also securing denaturalization in a large number of cases.
- USCIS has not had to consider settlement in a large number of individual cases involving denaturalization. To facilitate consistency in resolving these cases, USCIS should adopt general guidelines and a process for considering offers of settlement in denaturalization cases.
- Determine if removal of the subject is a priority or if denaturalization is sufficient.
  - Removal would generally be within the enforcement priorities, where the subject is denaturalized with an admission or judicial finding of fraud. Currently, a Notice to Appear (NTA) would be necessary to place the subject in removal proceedings. The authority to consent to non-removal, which is limited to exceptional circumstances, resides with the Principal Legal Advisor within ICE/OPLA has typically been cases involving.

- Determine if the subject’s spouse and/or child should be permitted to retain their derived or acquired naturalization and residence status.
  - Case-by-case determinations, based on an analysis of aggravating and mitigating factors, will shape the desirability and terms of any settlement and the basis sought for denaturalization. While there are two grounds for denaturalization: 1) illegal procurement of naturalization and 2) procurement by concealment of a material fact or by willful misrepresentation of a material fact, illegal procurement alone allows for a child to keep his or her citizenship status rather than automatically losing it under INA 340(d). Even where a derivative beneficiary may be determined to be outside the enforcement priorities, additional restrictions can be worked into the settlement offer to enhance enforcement or deterrent value, considering the subject’s fraud provided the opportunity for the beneficiary’s status.

**Recommendation:** The Executive Coordination Council (ECC), the Office of Policy & Strategy (OP&S), and OCC recommend the development of a settlement process that will provide general guidelines to be considered in responding to settlement offers in denaturalization cases. To better inform the agency in developing such guidelines, ECC, OP&S, and OCC recommend establishing a panel of senior executives to review settlement terms proposed in such cases. The panel will initially be made up of Associate Directors and/or Deputy Associate Directors from the Refugee, Asylum and International Operations Directorate (RAIO), the Fraud Detection and National Security Directorate (FDNS), FOD, and OP&S.

The panel will review an initial set of cases to obtain baseline knowledge and determine general guidelines for settlement terms. Mitigating and aggravating factors will be considered by the panel when reviewing settlement offers, as well as the relative strength of the DOJ case for denaturalization. If consensus cannot be reached, the case will be escalated to the USCIS Deputy Director for a final decision. Considering the anticipated large volume of individuals who have unlawfully obtained naturalization, and their family members, who have consequently derived or acquired additional benefits, the availability of practical settlement options will be vital in USCIS’ ability to successfully manage the HFE population and other non-HFE denaturalization cases. Once a sufficient body of data/experience is developed, the panel may propose further processes for consideration.

*The panel shall send the Director + Deputy Director a report on a quarterly basis describing the outcome of cases handled (settlement offers, whether such offers were accepted, whether the alien was removed, etc.)*

Approve/date 2 FNC 5/10/18

Disapprove/date \_\_\_\_\_

Modify/date \_\_\_\_\_

Needs discussion/date \_\_\_\_\_

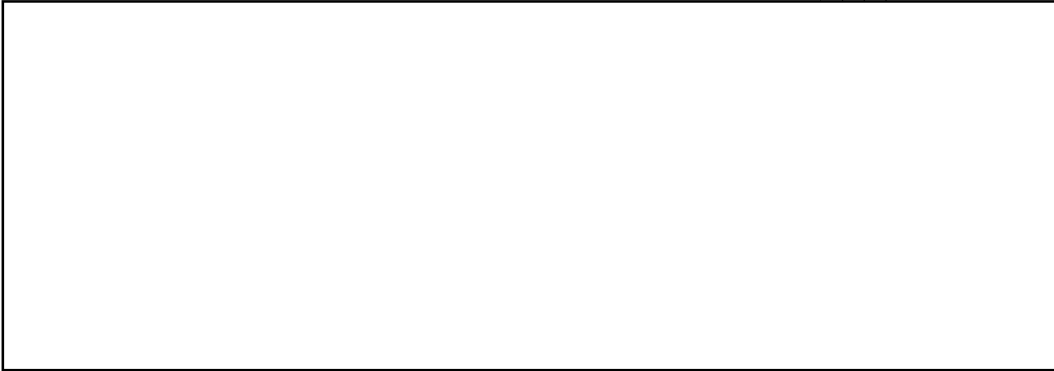
cc: Matthew D. Emrich, Associate Director, Fraud Detection and National Security  
 Jennifer B. Higgins, Associate Director, Refugee, Asylum, and International Operations

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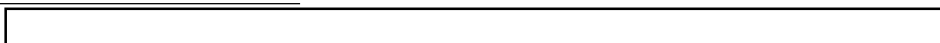
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
*Office of the Director (MS-2000)*  
Washington, DC 20529-2000



U.S. Citizenship  
and Immigration  
Services

PM-602-####

## Policy Memorandum

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SUBJECT: Guidance for Prioritizing IDENT Derogatory Information Related to Historical Fingerprint Enrollment Records

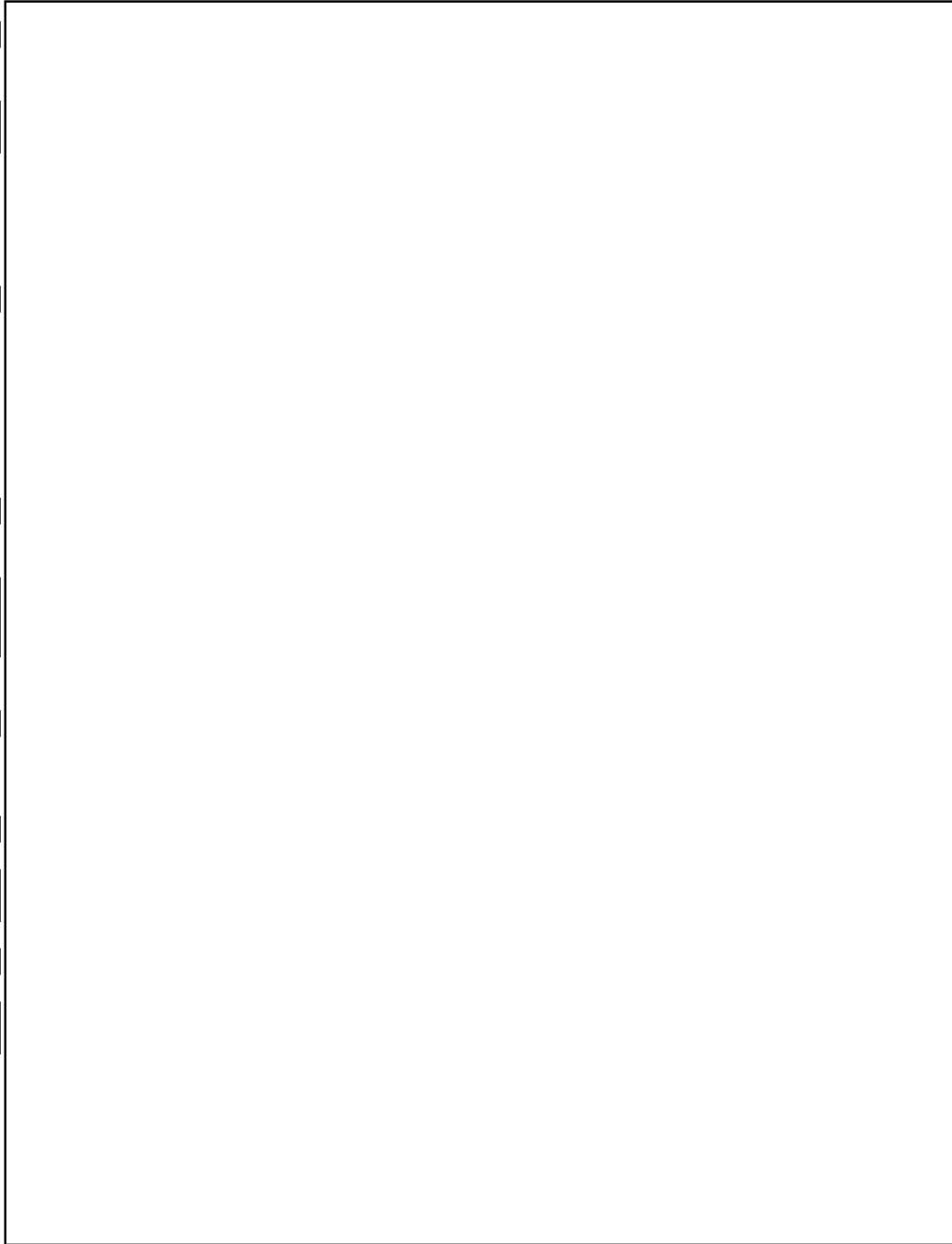
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[www.uscis.gov](http://www.uscis.gov)

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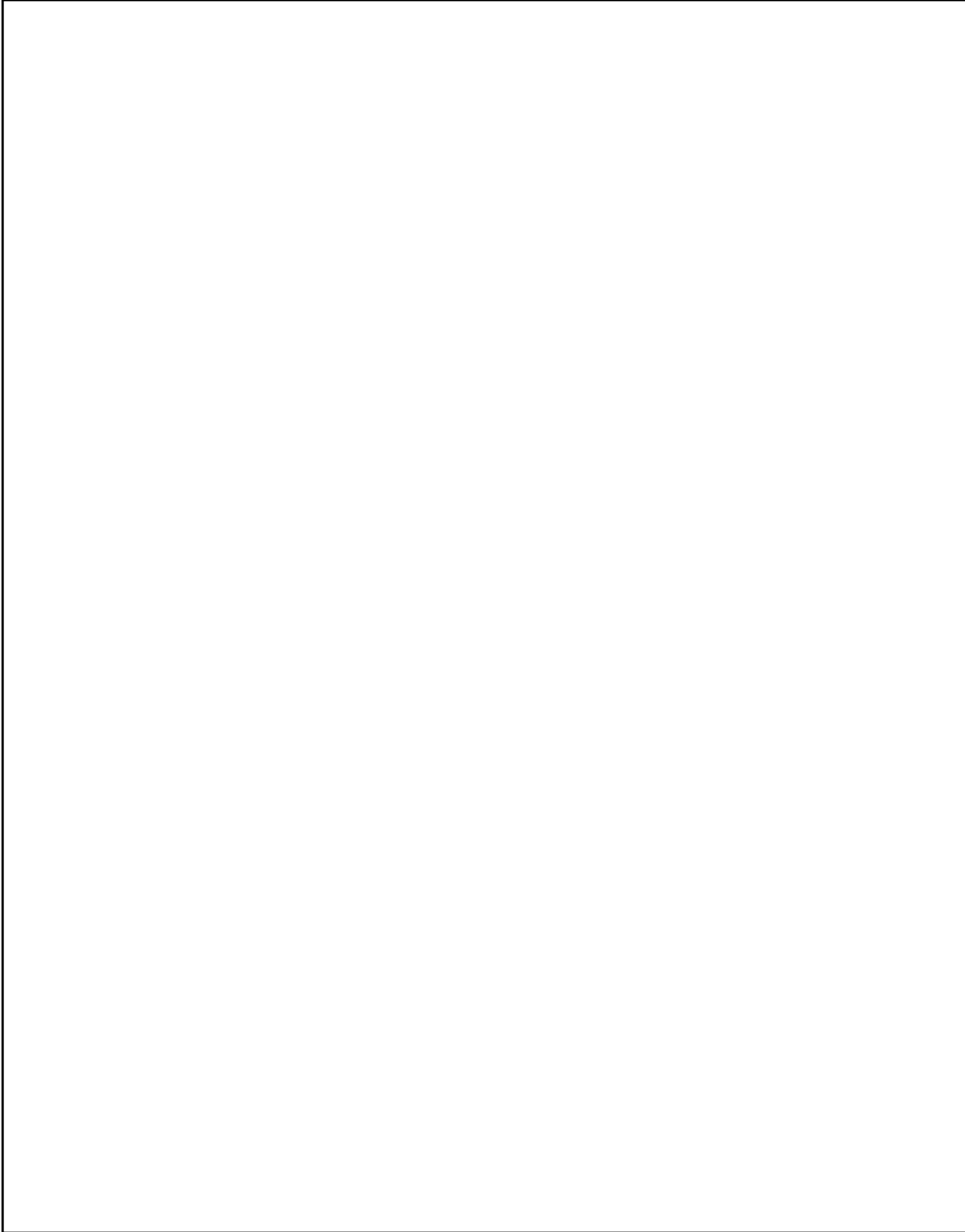
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Volume 12: CITIZENSHIP & NATURALIZATION  
Part L: REVOCATION OF NATURALIZATION AND RENUNCIATION OF CITIZENSHIP  
Chapter 2: Referral for Revocation of Naturalization

(b)(5) (b)(6)

Suggest adding a Section A under the above Volume/Part/Chapter:



Leadership. **DISCUSSION POINT** -

