

1 Stacy Tolchin (CA SBN #217431)
2 Law Offices of Stacy Tolchin
3 634 S. Spring St., Suite 714
4 Los Angeles, CA 90014
5 Telephone: (213) 622-7450
6 Facsimile: (213) 622-7233
7 Email: Stacy@Tolchinimmigration.com

8 *continued on next page*

9 UNITED STATES DISTRICT COURT FOR THE
10 EASTERN DISTRICT OF CALIFORNIA

11 Samir Abdallah Ben HASSINE,

12 Petitioner,
13 v.

14 Janet NAPOLITANO, in her Official Capacity,
15 Secretary, U.S. Department of Homeland Security; and
16 Alejandro MAYORKAS, in his Official Capacity,
17 Director, U.S. Citizenship and Immigration Services.

18 Respondents.
19
20
21
22
23
24
25
26
27
28

Case No. _____

**Petition for De Novo
Naturalization Hearing
Pursuant to 8 U.S.C. §
1447(b)**

Immigration Case
Agency No. A078 466 094

1 Trina Realmuto (CA SBN #201088)
2 National Immigration Project
3 of the National Lawyers Guild
4 14 Beacon St., Suite 602
5 Boston, MA 02108
6 Telephone: (617) 227-9727 ext. 8
7 Facsimile: (617) 227-5495
8 Email: trina@nipnlg.org

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
Counsel for Petitioner
Samir Abdallah Ben HASSINE

INTRODUCTION

1
2 1. Petitioner Samir Abdallah Ben HASSINE (Petitioner) petitions this Court for
3 a de novo naturalization hearing on his application for naturalization, which has been
4 pending with Respondents for nearly two and a half years, since February 3, 2011.

5 2. Pursuant to 8 U.S.C. § 1447(b), this Court has jurisdiction to conduct a
6 hearing and make a determination on a naturalization application in the first instance
7 when the agency fails to make a determination within 120 days following a naturalization
8 interview.

9
10 3. Petitioner appeared for a naturalization interview with the U.S. Citizenship
11 and Immigration Services (USCIS) on September 28, 2011. On that date, the
12 interviewing officer informed him that he had passed the required English and civics
13 portions of the examination, but USCIS did not issue a decision on his application within
14 120 days of that decision; i.e., by January 26, 2012. Indeed, to date, no decision has been
15 issued. Because more than 120 days have elapsed since the interview, this Court has
16 jurisdiction to conduct a hearing and make a determination on his application in the first
17 instance.

18
19 4. Under § 1447(b), this Court may either: 1) conduct a hearing and adjudicate
20 the naturalization application, or 2) “remand the matter, with appropriate instructions, to
21 the Service to determine.” Petitioner asks this Court to conduct a hearing and adjudicate
22 his application, rather than remanding it to the USCIS. The agency already has withheld
23 adjudication for nearly two and a half years (since February 3, 2011) and may continue to
24 withhold adjudication indefinitely. See 8 C.F.R. § 103.2(b)(18).

25
26 5. In particular, the Court should not remand this matter to USCIS because, upon
27
28

1 information and belief, Petitioner’s naturalization application is subject to additional
2 lengthy delays associated with the Controlled Application Review and Resolution
3 Program (CARRP).

4 6. The CARRP program instructs USCIS to delay applications of individuals the
5 agency believes may raise a national security concern pending further, prolonged
6 investigations by additional internal and external agencies. Memorandum from Jonathan
7 R. Scharfen, Former Deputy Director of USCIS, to USCIS Field Leadership, April 11,
8 2008 (2008 CARRP Memo).¹ This lengthy vetting process occurs in spite of the fact that
9 the Immigration and Nationality Act, 8 U.S.C. § 1101 et. seq. does not contain a statutory
10 basis for denying naturalization based on a national security “concern.” See 8 U.S.C. §§
11 1427, 1430 (listing relevant naturalization requirements).
12

13 7. Specifically, the 2008 CARRP Memo states that a national security “concern”
14 exists whenever there is an “articulable link” between a person and an activity,
15 individual, or organization described in 8 U.S.C. §§ 1182(a)(3)(A),(B) or (F) or
16 1227(a)(4)(A) or (B).² Based on USCIS’ policy and practice, USCIS will consider a
17 person to be a national security “concern” if he or she has provided information to the
18 Federal Bureau of Investigation (FBI) in connection with a counter-terrorism
19
20

21 _____
22 ¹ Available at <https://www.aclu-sc.org/wp-content/uploads/2013/01/CARRP-Policy-for-Vetting-and-Adjudicating-Cases-w-NS-Concerns-Apr.-11-2008.pdf>.

23 ² Subsequent agency memoranda and guidance have revised the CARRP policy. *See*
24 CARRP Policy documents, available at <http://www.aclu-sc.org/issues/immigrant-rights/carrp/>.
25 Although some portions of the documents have been redacted, they do not appear to alter the
26 definition of a national security concern set forth in the 2008 CARRP Memo and a January 2012
27 CARRP Course Power Point references the 2008 CARPP Memo as establishing the current
28 policy. See CARRP Course Power Point, National Security Division, FDNS, version 2.3.1,
updated January 2102, at page 7, available at <https://www.aclu-sc.org/wp-content/uploads/2013/01/CARRP-Course-Powperpoint-Natl-Sec.-Division-FDNS-v.2.3.1-Jan.-2012.pdf>.

1 investigation, has been the subject of FBI surveillance in connection with a counter-
2 terrorism investigation, or has any possible association with other individuals suspected
3 of being involved in terrorist activity.

4 8. Petitioner does not present any threat to national security whatsoever.

5
6 9. However, upon information and belief, USCIS considers Petitioner a national
7 security “concern” because he was previously investigated by the FBI in connection with
8 a counter-terrorism investigation in 2008 and 2009. In addition, on November 5, 2009,
9 the FBI did not allow Petitioner to board a commercial aircraft for an international flight.
10 Furthermore, USCIS videotaped Petitioner’s naturalization interview in accordance with
11 CARRP adjudication protocol.³

12 10. Because USCIS has delayed adjudication of Petitioner’s naturalization
13 application for nearly two years since his naturalization interview, the Court should
14 adjudicate his application rather than remanding it.

15
16 11. Petitioner is statutorily eligible for naturalization. Accordingly, pursuant to 8
17 U.S.C. § 1447(b), Petitioner requests that this Court adjudicate and grant his application
18 and administer the naturalization oath or order that Respondent administer the
19 naturalization oath.

20
21 **JURISDICTION AND VENUE**

22 12. This Court has jurisdiction over the present action, including Petitioner’s
23 naturalization application, pursuant to 8 U.S.C. § 1447(b) (de novo naturalization
24 hearing). The Court’s jurisdiction over the naturalization application is “exclusive”; i.e.,

25
26 ³ See CARRP Course Power Point, National Security Division, FDNS, version 2.3.1,
27 updated January 2102, at page 59, *available at* [https://www.aclu-sc.org/wp-](https://www.aclu-sc.org/wp-content/uploads/2013/01/CARRP-Course-Powperpoint-Natl-Sec.-Division-FDNS-v.2.3.1-Jan.-2012.pdf)
28 [content/uploads/2013/01/CARRP-Course-Powperpoint-Natl-Sec.-Division-FDNS-v.2.3.1-Jan.-2012.pdf](https://www.aclu-sc.org/wp-content/uploads/2013/01/CARRP-Course-Powperpoint-Natl-Sec.-Division-FDNS-v.2.3.1-Jan.-2012.pdf).

1 USCIS lacks jurisdiction to adjudicate the application while this case is ongoing. U.S. v.
2 Hovsepian, 359 F.3d 1144, 1160 (9th Cir. 2004) (en banc).

3 13. Venue is properly with this Court pursuant to 28 U.S.C. § 1391(e) because
4 this is a civil action in which Respondents are employees or officers of the United States,
5 acting in their official capacity; because a substantial part of the events or omissions
6 giving rise to the claim occurred in Fresno, California, in the Eastern District of
7 California; and because Petitioner resides in Bakersfield, California, which is located
8 within the Eastern District of California, and there is no real property involved in this
9 action.
10

11 **PARTIES**

12 14. Petitioner Samir Abdallah Ben HASSINE is a citizen and national of Tunisia
13 who resides in Bakersfield, California. Petitioner is and has been a lawful permanent
14 resident of the United States since November 6, 2007.
15

16 15. Janet NAPOLITANO is sued in her official capacity as the Secretary of the
17 U.S. Department of Homeland Security. In this capacity, she has responsibility for the
18 administration and enforcement of the immigration and naturalization laws. See 8
19 U.S.C. § 1103(a); see also § 402 of the Homeland Security Act of 2002, 107 Pub. L. No.
20 296, 116 Stat. 2135 (Nov. 25, 2002).
21

22 16. Alejandro MAYORKAS is sued in his official capacity as the Director of the
23 U.S. Citizenship and Immigration Services, a component agency within the U.S.
24 Department of Homeland Security. USCIS is the agency responsible for the adjudication
25 of applications for naturalization.

26 //
27
28

FACTUAL ALLEGATIONS

1
2 17. Petitioner is a native and citizen of Tunisia who resides in Bakersfield,
3 California with his United States citizen wife and their two United States citizen children.

4 18. Petitioner became a lawful permanent resident on November 6, 2007, based
5 on his marriage to his United States citizen wife.
6

7 19. On February 20, 2008, the FBI interviewed Petitioner at his home, then in
8 Daly City, California. See accompanying Declaration of Stacy Tolchin (Tolchin Dec.)
9 Exhibit F. He was questioned regarding his attendance at local mosques, his immigration
10 status, and whether he expressed “anti-American/West” sentiment at his mosque. He
11 responded that he attended a local mosque to pray, his immigration status was that of a
12 lawful permanent resident, and he did not communicate any “anti-American” or “anti-
13 West” sentiments at his mosque or elsewhere.
14

15 20. On November 5, 2009, Petitioner attempted to board a commercial aircraft to
16 France and Tunisia with his family. Two FBI agents met him at the Air France ticket
17 counter and informed him that he was not permitted to fly on a commercial aircraft at that
18 time. Tolchin Dec. Exhibit G. (Petitioner has since flown internationally without
19 incident, see ¶ 23, infra).
20

21 21. On February 3, 2011, Petitioner, through undersigned counsel Stacy Tolchin,
22 applied for naturalization pursuant to 8 U.S.C. § 1430. Tolchin Dec. Exhibit A. This
23 section allows the spouse of a United States citizen to apply for naturalization after
24 having been a lawful permanent resident for two years and nine months.

25 22. Attached to that application was Form G-28, Notice of Entry of Appearance,
26 which requires USCIS to serve all immigration-related correspondence on his attorney of
27
28

1 record. 8 C.F.R. § 292.5(a). Tolchin Dec. Exhibit A. On February 7, 2011, the USCIS
2 issued a receipt for the naturalization application, and also mailed a copy to Ms. Tolchin.
3 Tolchin Dec. Exhibit B. The agency also subsequently issued a notice of a “biometrics”
4 appointment on February 14, 2011, and again mailed a copy of the notice to Ms. Tolchin.
5 Tolchin Dec. Exhibit C. Petitioner appeared for his “biometrics” appointment on March
6 2, 2011, where a photograph and fingerprints were taken at the Application Support
7 Center in Bakersfield, California.
8

9 23. The following month, on April 13, 2011, Petitioner boarded and flew on a
10 commercial aircraft to Tunisia. He returned to the United States on July 4, 2011, without
11 incident.
12

13 24. On July 27, 2011, Ms. Tolchin inquired to USCIS about scheduling a date for
14 Petitioner’s naturalization interview. On July 29, 2011, USCIS sent Ms. Tolchin a notice
15 acknowledging this inquiry. Tolchin Dec. Exhibit D.
16

17 25. On September 27, 2011, Petitioner received a notice in the mail that USCIS
18 had scheduled his naturalization interview for the following day, September 28, 2011, in
19 Fresno, California. Notably, USCIS did not send Ms. Tolchin any notice of the
20 interview, although such notice is expressly required by regulation. 8 C.F.R. § 292.5(a).
21

22 26. Under USCIS regulations, a naturalization interview is not set until criminal
23 background checks are complete. 8 C.F.R. § 335.2(b). Such checks specifically include
24 a review of any record before the Federal Bureau of Investigation. Id.
25

26 27. Petitioner appeared for a naturalization interview at the Fresno USCIS office
27 the following day, September 28, 2011. Due to the short notice, Ms. Tolchin was not
28 able to rearrange previously scheduled commitments in order to appear with Petitioner at
29

1 the interview. Tolchin Dec. ¶ 6.

2 28. USCIS videotaped the naturalization interview, during which the interviewing
3 officer questioned Petitioner about issues beyond the scope of the statutory requirements
4 for naturalization, including his finances and telephone calls abroad.

5 29. Following the interview, the officer notified Petitioner that he had passed the
6 required civics and English portions of the examination. Tolchin Dec. Exhibit E.

7 30. By regulation, USCIS was required to issue a decision on Petitioner's
8 naturalization application, or schedule a second interview, within 120 days after the
9 September 28, 2011 interview; i.e., on or before January 26, 2012. 8 C.F.R. §§ 335.3(a);
10 336.1(a).

11 31. USCIS did not schedule issue a decision, or schedule a second interview, on
12 or before January 26, 2012. In fact, almost two years have elapsed, and USCIS still has
13 not issued a decision.
14

15 32. The delay of Petitioner's naturalization application has caused him and his
16 family great emotional distress and anxiety.
17

18 **CAUSE OF ACTION**

19 **COUNT ONE**

20 **(PETITION FOR DE NOVO NATURALIZATION HEARING, 8 U.S.C. § 1447(b))**

21 33. Petitioner incorporates the allegations in the paragraphs above as though fully set
22 forth here. The Immigration and Nationality Act at 8 U.S.C. § 1447(b) provides as follows:
23

24 Request for hearing before district court. If there is a failure to make a determination
25 under section 335 [8 U.S.C. § 1446] of this title before the end of the 120-day period after
26 the date on which the examination is conducted under such section, the applicant may
27 apply to the United States district court for the district in which the applicant resides for a
28 hearing on the matter. Such court has jurisdiction over the matter and may either
determine the matter or remand the matter, with appropriate instructions, to the Service to

1 determine the matter.

2 See also 8 C.F.R. §§ 335.3(a); 336.1(a).

3 34. More than 120 days have elapsed since USCIS interviewed Petitioner on September
4 28, 2011. To date, USCIS has failed to make a determination on Petitioner's naturalization
5 application. This Court has the authority to conduct a de novo hearing on a naturalization
6 application when more than 120 days have elapsed since the naturalization interview. 8 U.S.C. §
7 1447(b).
8

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Petitioner prays that this Court grant the following relief:

- 11
- 12 (1) Assume jurisdiction over this matter;
 - 13 (2) Conduct a de novo hearing on Petitioner's application for naturalization;
 - 14 (3) Grant Petitioner's application for naturalization;
 - 15 (4) Administer the oath of allegiance or order Respondent to administer this
16 oath;
 - 17 (5) Award reasonable costs and attorneys' fees; and
 - 18 (6) Grant such further relief as the Court deems just and proper.
19
20
21
22
23
24
25
26
27
28

1 Dated: July 24, 2013

2 Respectfully submitted,

3 By: /s/ Stacy Tolchin

4 Stacy Tolchin (CA SBN #217431)

5 Law Offices of Stacy Tolchin

6 634 S. Spring St., Suite 714

7 Los Angeles, CA 90014

8 Telephone: (213) 622-7450

9 Facsimile: (213) 622-7233

10 Email:

11 Stacy@Tolchinimmigration.com

Trina Realmuto (CA SBN #201088)

National Immigration Project

of the National Lawyers Guild

14 Beacon St., Suite 602

Boston, MA 02108

Telephone: (617) 227-9727 ext. 8

Facsimile: (617) 227-5495

Email: trina@nipnlg.org

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
Counsel for Petitioner
Samir Abdallah Ben HASSINE