

MEMORANDUM

To: Jay Sekulow
From: Joseph Williams and Miles Terry
Re: Regarding the hundreds of individuals mistakenly granted citizenship, what is the process and procedure like to revoke those? **It's called De-Naturalization.**
Date: September 28, 2016

Question from Caller on radio: Regarding the hundreds of individuals mistakenly granted citizenship, what is the process and procedure like to revoke those?

Background on the Issue¹: Last week, it was reported that the Department of Homeland Security mistakenly granted citizenship to nearly a thousand individuals who were slated for deportation. In a few of these cases, individuals also received special access to the most secure areas of airports. Two of these individuals granted citizenship had earlier been referred to the FBI for links to terrorism. News of this broke on Sept. 19, 2016, when a DHS Inspector General revealed in a report that at least 858 people have been given U.S. citizenship, despite having been ordered to be deported. **These individuals were naturalized using fake names, however DHS was not able to spot the fake names because it could not locate fingerprint records matching those names. Since 2008, DHS has attempted to digitize paper fingerprint records, but has not completed the process.**

According to Inspector General's report²:

- At least 858 people were given U.S. citizenship **despite final orders of deportation;**
- **MAJOR SECURITY THREATS NOW EXIST:**
 - 1 is now a law enforcement officer,
 - 1 was given TWIC, a security credential allowing unescorted access to ports and ships,
 - 2 were given security clearances allowing access to the most sensitive areas in airports, and
 - 2 were referred by ICE to the FBI for links to terrorism.
- An additional 953 people were naturalized despite having final orders of deportation, but it was unclear if the fingerprint records had been digitized before or after naturalization **(meaning the number could be between 858 and 1,811);**
- 148,000 people with final deportation orders still do not have electronic fingerprint records, **meaning the problem may continue if uncorrected;**

¹ <http://www.sasse.senate.gov/public/index.cfm/press-releases?ID=2FDE6C37-6787-45B7-B328-E1993545EA0D>

² <http://www.sasse.senate.gov/public/index.cfm/press-releases?ID=2FDE6C37-6787-45B7-B328-E1993545EA0D>

- To date, ICE has referred only 120 people to DOJ as priorities for possible **denaturalization**.

THE PROCESS OF DE-NATURALIZATION:

The IG Report³ included the following review of how the de-naturalization process is currently working:

Under the INA, a Federal court may revoke naturalization (denaturalize) through a civil or criminal proceeding if the citizenship was obtained through fraud or misrepresentation. However, few of these individuals have been investigated and subsequently denaturalized. As it identified these 1,029 individuals, OPS referred the cases to ICE for investigation. As of March 2015, ICE had closed 90 investigations of these individuals and had 32 open investigations. The Offices of the United States Attorneys (USAO) accepted 2 cases for criminal prosecution, which could lead to denaturalization; the USAO declined 26 cases. ICE transferred two additional cases with fingerprint records linked to terrorism to the FBI's Joint Terrorism Task Force. ICE was scrutinizing another two cases for civil denaturalization. According to ICE, it previously did not pursue investigation and subsequent revocation of citizenship for most of these individuals because the USAO generally did not accept immigration benefit fraud cases for criminal prosecution. ICE staff told us they needed to focus their resources on investigating cases the USAO will prosecute. In late 2015, however, ICE officials told us they discussed with the Department of Justice Office of Immigration Litigation the need to prosecute these types of cases, and that office agreed to prosecute individuals with Transportation Security Administration (TSA) credentials, security clearances, positions of public trust, or criminal histories. To date, and with assistance from OPS and USCIS, ICE has identified and prioritized 120 individuals to refer to the Department of Justice for potential criminal prosecution and denaturalization.

Cases referenced above that were referred for denaturalization but then declined – it is presumed that the citizenships will stand.

Footnote 7 in the report cites these three statutes that outline the process of de-naturalization:

- 8 USC 1451(a),
- 8 USC 1451(e), and
- 18 USC 1425

8 U.S. CODE § 1451 - REVOCATION OF NATURALIZATION⁴:

(a) Concealment of material evidence; refusal to testify

³ www.oig.dhs.gov/assets/Mgmt/2016/OIG-16-130-Sep16.pdf

⁴ <https://www.law.cornell.edu/uscode/text/8/1451>

It shall be the duty of the United States attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any district court of the United States in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground that such order and certificate of naturalization were illegally procured or were procured by concealment of a material fact or by willful misrepresentation, and such revocation and setting aside of the order admitting such person to citizenship and such canceling of certificate of naturalization shall be effective as of the original date of the order and certificate, respectively: Provided, That refusal on the part of a naturalized citizen within a period of ten years following his naturalization to testify as a witness in any proceeding before a congressional committee concerning his subversive activities, in a case where such person has been convicted of contempt for such refusal, shall be held to constitute a ground for revocation of such person's naturalization under this subsection as having been procured by concealment of a material fact or by willful misrepresentation. If the naturalized citizen does not reside in any judicial district in the United States at the time of bringing such suit, the proceedings may be instituted in the United States District Court for the District of Columbia or in the United States district court in the judicial district in which such person last had his residence.

NOTE: Concealment of unknown facts in these cases allowing the naturalization to occur would arguably allow grounds for revocation to occur if referred to the appropriate US Attorneys to handle.

8 U.S. CODE § 1451 - REVOCATION OF NATURALIZATION⁵:

(e) Citizenship unlawfully procured

When a person shall be convicted under section 1425 of title 18 of knowingly procuring naturalization in violation of law, the 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. Jurisdiction is conferred on the courts having jurisdiction of the trial of such offense to make such adjudication.

(f) Cancellation of certificate of naturalization

Whenever an order admitting an alien to citizenship shall be revoked and set aside or a certificate of naturalization shall be canceled, or both, as provided in this section, the court in which such judgment or decree is rendered shall make an order canceling such certificate and shall send a certified copy of such order to the Attorney General. The clerk of court shall transmit a copy of such order and judgment to the Attorney General. A person holding a certificate of naturalization or citizenship which has been canceled as provided by this section shall upon notice by the court by which the decree of cancellation was made, or by the Attorney General, surrender the same to the Attorney General.

⁵ <https://www.law.cornell.edu/uscode/text/8/1451>

NOTE: If any of the applicants here attempted to secure citizenship through fraud that encouraged or facilitated the confusion here that led to approval of naturalization – penalties exist for this:

18 U.S. CODE § 1425 - PROCUREMENT OF CITIZENSHIP OR NATURALIZATION UNLAWFULLY⁶:

(a) Whoever knowingly procures or attempts to procure, contrary to law, the naturalization of any person, or documentary or other evidence of naturalization or of citizenship; or

(b) Whoever, whether for himself or another person not entitled thereto, knowingly issues, procures or obtains or applies for or otherwise attempts to procure or obtain naturalization, or citizenship, or a declaration of intention to become a citizen, or a certificate of arrival or any certificate or evidence of nationalization or citizenship, documentary or otherwise, or duplicates or copies of any of the foregoing—

Shall be fined under this title or imprisoned not more than 25 years (if the offense was committed to facilitate an act of international terrorism (as defined in section 2331 of this title)), 20 years (if the offense was committed to facilitate a drug trafficking crime (as defined in section 929(a) of this title)), 10 years (in the case of the first or second such offense, if the offense was not committed to facilitate such an act of international terrorism or a drug trafficking crime), or 15 years (in the case of any other offense), or both.

(June 25, 1948, ch. 645, 62 Stat. 766; Pub. L. 103–322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 104–208, div. C, title II, § 211(a)(2), Sept. 30, 1996, 110 Stat. 3009–569; Pub. L. 107–273, div. B, title IV, § 4002(a)(3), Nov. 2, 2002, 116 Stat. 1806.)

⁶ <https://www.law.cornell.edu/uscode/text/18/1425>