

Hypothetical for Procedures for Informal Adjudication

- A. 22 U.S.C. § 211a provides that “The Secretary of State may grant and issue passports ... under such rules as the President shall designate and prescribe for and on behalf of the United States.”
- B. By Executive Order, the President delegated rulemaking authority under the statute to the Secretary of State and the Secretary promulgated regulations which provide: “A passport may be refused in any case in which the Secretary of State determines or is informed by competent authority that: ... (4) ... the national's activities abroad are causing or are likely to cause serious damage to the national security or the foreign policy of the United States.” 22 C.F.R. § 51.70(b)(4).
- C. Andrea Jones applied for a passport on January 9, 2017, filling out several forms at the local United States Post Office.
- D. Unfortunately, Chester Douglas, an ex-boyfriend of Andrea happened to work in the Post Office processing passport applications and, when he sent her passport application to the State Department for processing, he included a note with the application. In Chester’s note, he suggested that the State Department employee assigned to review the passport application should check out various websites that he identified. On those websites were videos of Andrea at various protest rallies.
- E. Chester’s note also suggested that Andrea had indicated to him on several occasions that she was very disillusioned with the United States and that she could understand the motivation behind several recent terrorist acts.
- F. The State Department employee reviewing the passport application reviewed the websites that Chester identified, but did not contact Chester directly to discuss his comments further. However, when the State Department employee reviewing the passport application noticed that Andrea, in her application, indicated that she planned to travel to Afghanistan, he decided to deny the passport application. The State Department returned Andrea’s application materials to her with a letter that stated, “The State Department has determined that your activities abroad are likely to cause serious damage to the national security of the United States, so your application is denied.” The letter did not mention any of the information that the agency received from Chester and did not elaborate on the basis for the agency’s determination.
- G. Andrea challenges the State Department’s denial in court, arguing that the agency was required to make formal factual findings to support its denial of her application and that it failed to follow procedures required by law to deny her application. In addition, she argues that the agency acted arbitrarily and capriciously in failing to explain the reasons for denying her application, so she would like the court to order

the agency to have an additional hearing and provide her with an opportunity to respond to information that the agency considered in denying her permit. She does not, however, argue that the agency deprived her of due process. How is the court likely to respond to her challenges?