

Citizenship Delayed: Civil Rights and Voting Rights Implications of the Backlog in Citizenship and Naturalization Applications



Colorado State Advisory Committee to the U.S.
Commission on Civil Rights

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State Advisory Committees to the U.S. Commission on Civil Rights

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Letter of Transmittal

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The Colorado Advisory Committee, as part of its responsibility to advise the Commission on civil rights issues within the state, submits this report, "Citizenship Delayed: Civil and Voting Rights Implications of the Backlog in Citizenship and Naturalization Applications." This report was adopted by a vote of 6 to 2 with one member recusing. The dissenting members were provided an opportunity to prepare a dissenting statement, which is appended to the report.

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Executive Summary

Every year, hundreds of thousands of people apply for citizenship in the United States. Their pursuit of citizenship is premised on a right to naturalize created by the Constitution and codified by federal law. The U.S. Citizenship and Immigration Service is the agency within the U.S. Department of Homeland Security that processes immigration benefits, including naturalization applications. Processing times that exceed the six-month statutory mandate compromise these individuals' path to naturalization and the other rights that citizenship provides. The Colorado State Advisory Committee to the U.S. Commission on Civil Rights voted to study the civil rights implications of the U.S. Citizenship and Immigration Service's naturalization backlog in Colorado and hosted a hearing on February 22, 2019, which consisted of three panel discussions and a community forum to hear testimony from various stakeholders.

Based on the testimony from the public hearing, written statements, and additional research in the public record, the resulting report finds that the U.S. Citizenship and Immigration Service's national backlog in naturalization applications is 738,148 and the U.S. Citizenship and Immigration Service's national average wait times range from 10 months to nearly three years. In Colorado, the U.S. Citizenship and Immigration Service – Denver Field Office backlog in naturalization applications is 9,325 and wait times range from 10 to 19.5 months. The U.S. Citizenship and Immigration Service – Denver Field Office backlog persists despite the number of applications received by the U.S. Citizenship and Immigration Service returning to pre-election levels and increases made to staffing and other the resources at the U.S. Citizenship and Immigration Service's disposal.

The substantial delay to naturalization created by the backlog negatively impacts voting rights, civil rights, and the administration of justice. The effect on voting rights is obvious; the right to vote depends on completing the naturalization process. By the time this report is released, applications in the queue for citizenship will not be processed in time for applicants to participate in the 2020 presidential elections. Immigrants, whose eligibility for employment and public benefits hinges on citizenship, may have their civil rights negatively impacted by the backlog. There may also be disproportionate impacts borne by certain classes of individuals based on U.S. Citizenship and Immigration Service's policies, but more information is needed about applicants' race, national origin, and religious background in order to make that determination. The existence of such a substantial backlog of naturalization applications and wait times raises concerns about the administration of justice and whether immigrants' due process rights are being violated.

Eliminating the U.S. Citizenship and Immigration Service's naturalization backlog and addressing the associated civil rights consequences will take a concerted effort from all stakeholders. Affected individuals should pursue relief through the judicial system, while attempting to work with the other two branches to advance their case. The U.S. Citizenship and Immigration Service should evaluate policies and procedures impacting operational efficiency of benefits adjudication. Balancing service with accuracy in naturalization adjudication is particularly important with regard to intensified vetting relating to fraud detection and national security. Allocation of resources and use of technologies and processes to streamline U.S. Citizenship and Immigration Service operations should be implemented and evaluated for their impact on the backlog. In addition, the U.S. Citizenship and Immigration Service should bolster transparency and the community service

orientation toward its institutional mission and Congressional mandate. Congress should hold the U.S. Citizenship and Immigration Service accountable to meet statutory benchmarks for processing and ensure that policy changes are lawful and effective. Congress should provide temporary funding for backlog reduction through normal appropriations and ensure user fees are used in accordance with the agency’s mission of adjudicating benefits. State, local, and non-governmental organizations will also play a crucial role in supporting naturalization.

Introduction

On September 30, 2018, the Colorado State Advisory Committee to the U.S. Commission on Civil Rights (“Committee”) voted to study the civil rights implications of the citizenship and naturalization backlog in Colorado. On February 22, 2019, the Committee hosted a full day hearing consisting of three panel discussions and a community forum to hear testimony from immigrant communities, immigrant advocates, academic experts and government officials with expertise on the backlog and its effects. This report begins with a brief overview of the citizenship process and the civil rights concerns implicated by application processing delays. It then presents findings based on the hearing, written testimony, and additional research in the public record. It concludes with recommendations for reducing the backlog and addressing related concerns.

I. Background

The U.S. Commission on Civil Rights is charged with collecting information and making appraisals of the laws and policies of the Federal Government with respect to discrimination in the administration of justice, or denials of voting rights or equal protection of the laws under the Constitution of the United States because of color, race, religion, sex, age, disability, or national origin.¹ Individuals who successfully complete the naturalization process gain citizenship, which provides the right to vote and guarantees various other civil rights related to employment, housing, and personal security.² When the citizenship process functions efficiently, applicants file their application with the associated fee and proceed through the interview process in a timely manner. However, when circumstances create a pattern where the number of applications submitted consistently exceeds the number adjudicated, a backlog accumulates.³

a. How Does the Citizenship Process Work?

The U.S. Constitution provides two primary ways for an individual to become a citizen: by birth on U.S. soil or by naturalization.⁴ Naturalization is the process by which a person not born in the

¹ 42 U.S.C. § 1975a.

² “Citizenship Through Naturalization,” USCIS, Apr. 17, 2019, <https://www.uscis.gov/us-citizenship/citizenship-through-naturalization>; “Citizenship Rights and Responsibilities,” USCIS, <https://www.uscis.gov/citizenship/learners/citizenship-rights-and-responsibilities> (last accessed July 24, 2019).

³ USCIS, *Backlog Elimination Plan Fiscal Year 2006, 3rd Quarter Update*, Dec. 11, 2006, p. 1,

https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/backlog_FY06Q3.pdf.

⁴ U.S. Const. amend. XIV, § 1 (“All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside.”); *see also* U.S. Const. art. I, § 8 (“The Congress shall have power . . . To establish a uniform Rule of Naturalization. . .”). Another means by which a person may be considered a citizen is when U.S. citizens sojourning abroad have children born outside the United States.

United States voluntarily becomes a U.S citizen. Its requirements are detailed in the Immigration and Nationality Act (“INA”).⁵ The naturalization process requires the applicant to meet certain criteria before applying. First, the eligible applicant must be a Lawful Permanent Resident.⁶ Lawful Permanent Residence is most commonly acquired through marriage to a U.S. citizen, family or employer sponsorship, with additional avenues available for military service, asylum, and diversity visas.⁷

Generally, applicants must also prove five years of continuous residence in the U.S., including physical presence for half of the five years, that they are at least 18 years of age at the time of filing, that they have a basic understanding of U.S. history and government, that they have maintained good moral character, and that they demonstrate the ability to read, write, and speak basic English.⁸ Additionally, modified statutory requirements apply to certain individuals. For instance, an applicant age 55 or older who has lived in the U.S. for at least 15 years can be exempt from the English language requirement.⁹ Special provisions apply to immigrants who obtain a green card through refugee status, service in the military, or marriage. Green cards obtained through marriage require applicants to have lived in marital union for at least three years preceding the date of filing. Military personnel must have served honorably, during a period of peacetime, for at least one year, or must have served during specified periods of hostility.¹⁰

The U.S. Citizenship and Immigration Service is the agency within the Department of Homeland Security that processes immigration benefits, including naturalization applications. The U.S. Citizenship and Immigration Service was formed after the September 11, 2001, attacks and the passage of the Homeland Security Act of 2002, which dismantled the Immigration and Naturalization Service into three components within the Department of Homeland Security.¹¹ On March 1, 2003, the U.S. Citizenship and Immigration Service assumed responsibility for the immigration service functions of the federal government.¹² U.S. Citizenship and Immigration Service field offices conduct interviews and provide other applicant services related to

Congress may also naturalize an individual by a specific act pertaining to that individual. *E.g.*, 77 Stat. 5 (1963) (declaring Winston Churchill an “honorary citizen of the United States”) or for residents of an annexed territory or state. *Boyd v. Nebraska*, 143 U.S. 135, 164, 168-69 (1892) (noting citizenship provisions for persons living in areas covered by the Louisiana Purchase, purchase of Florida, Texas annexation, and treaty with Mexico for cession of southwestern territories).

⁵ 8 U.S.C. § 1427.

⁶ 8 U.S.C § 1101(a)(20); 8 U.S.C. § 1427(a).

⁷ “Green Card Eligibility Categories,” USCIS, June 20, 2018, <https://www.uscis.gov/greencard/eligibility-categories>.

⁸ 8 U.S.C. § 1427(a) (physical presence); 8 U.S.C. § 1445(b) (age); 8 U.S.C § 1423 (understanding of English and history); 8 U.S.C. § 1427(c) (physical presence); 8 U.S.C. § 1427(d) (good moral character).

⁹ “Exceptions & Accommodations,” USCIS, Apr. 17, 2019, <https://www.uscis.gov/us-citizenship/citizenship-through-naturalization/exceptions-accommodations>.

¹⁰ 8 U.S.C. § 1439; “Naturalization Through Military Service,” USCIS, Nov. 5, 2018, <https://www.uscis.gov/military/naturalization-through-military-service>.

¹¹ The Homeland Security Act of 2002, 6 U.S.C. § 101; Pub. L. No. 107–296, 116 Stat. 2135.

¹² “Our History,” USCIS, May 25, 2011, <https://www.uscis.gov/about-us/our-history>.

adjudication.¹³ The Denver Field Office covers applicants from both Colorado and Wyoming, but a large majority of applicants live in Colorado.¹⁴

The U.S. Citizenship and Immigration Service’s naturalization process entails preparing and filing the Form N-400, paying a \$725 government filing fee, and completing a biometrics appointment. During the process, if the U.S. Citizenship and Immigration Service requires any more information from the applicant, they will send a Request for Evidence.¹⁵ If the applicant does not respond to the Request for Evidence within 30 days, the U.S. Citizenship and Immigration Service may adjudicate the application on the merits.¹⁶ Once the U.S. Citizenship and Immigration Service has the required materials, the applicant is then asked to attend an interview at the U.S. Citizenship and Immigration Service local field office where the officer will review the N-400 application and the applicant will complete the reading, writing, and civics portion of the naturalization exam.¹⁷ From the date of the interview, U.S. Citizenship and Immigration Service has 120 days to render a decision; when it fails to do so, the law allows an applicant to file a Writ of Mandamus.¹⁸ A Writ of Mandamus is an order from a federal district court that can compel the U.S. Citizenship and Immigration Service to make a decision on the application.¹⁹ If the naturalization application is denied, the applicant can use the form N-336 to request a hearing before an immigration officer to reconsider their application.²⁰ If the application is approved, the resident must then attend an oath ceremony.²¹ U.S. citizenship then provides various benefits such as the right to vote, public benefits and freedom of travel. It also incurs certain obligations, such as jury duty and military service. Once a person gains U.S. citizenship, the individual may register to vote or apply for a U.S. passport, and must update records with the Social Security Administration and serve jury duty when summoned.²²

¹³ “Field Offices,” USCIS, Apr. 18, 2018, <https://www.uscis.gov/about-us/find-uscis-office/field-offices>.

¹⁴ Kristi Goldinger, testimony, *Briefing Before the U.S. Commission on Civil Rights*, Boulder, CO, Feb. 22, 2019, transcript, p. 136 (hereafter cited as Briefing Transcript).

¹⁵ USCIS, *Chapter 10.5 Requesting Additional Information*, Adjudicator’s Field Manual – Redacted Public Version, Sept. 11, 2018, <https://www.uscis.gov/ilink/docView/AFM/HTML/AFM/0-0-0-1/0-0-0-1067/0-0-0-1318.html>.

¹⁶ [8 CFR 335.7](#); USCIS, *Chapter 4- Results of the Naturalization Examination*, USCIS Policy Manual, May 10, 2019, <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume12-PartB-Chapter4.html>.

¹⁷ “Naturalization: What to expect,” USCIS, https://my.uscis.gov/citizenship/what_to_expect (last accessed July 25, 2019).

¹⁸ 8 U.S.C. § 1447(b).

¹⁹ 28 U.S.C. § 1361.

²⁰ [8 CFR 336.2](#); USCIS, “N-336, Request for a Hearing on a Decision in Naturalization Proceedings (Under Section 3336 of the INA),” May 23, 2019, <https://www.uscis.gov/n-336>.

²¹ 8 C.F.R 337; USCIS, *Chapter 2 – The Oath of Allegiance*, USCIS Policy Manual, June 6, 2019, <https://www.uscis.gov/policy-manual/volume-12-part-j-chapter-2>; USCIS, *Chapter 4- Results of the Naturalization Examination*, USCIS Policy Manual, May 10, 2019, <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume12-PartB-Chapter4.html>.

²² “Citizenship Rights and Responsibilities,” USCIS, <https://www.uscis.gov/citizenship/learners/citizenship-rights-and-responsibilities> (last accessed July 24, 2019).

b. What is a Backlog?

A backlog is generally defined as the “number of pending applications that exceed acceptable or target pending levels for each case type.”²³ According to this definition, the U.S. Citizenship and Immigration Service has a long-standing history of backlogs for immigration benefits, spanning over multiple administrations, which it has formally acknowledged since 2004.²⁴ The average number of persons naturalizing per year has been steadily increasing; in the 1980s there were about 210,000 applications per year and that number increased to over 500,000 in the 1990s.²⁵ This gradual increase in applications recently surged with over 986,000 applications in 2017,²⁶ but recently decreased to 804,000 while the backlog continued to grow.²⁷ The July 2018 quarter closed with 215,307 received applications and 738,148 applications still pending.²⁸ The surge leading up to the 2016 presidential election, and the subsequent decrease post-election, is not uncommon.²⁹ However, the persistence of a backlog amid these fluctuations requires attention and redress.

Since 2016, processing time for citizenship applications has almost doubled, increasing from 5.6 months to 10.1 months as of March 31st, 2019.³⁰ This increase in processing time does not occur uniformly across agencies.³¹ For example, from October 1, 2017 to December 31, 2017, “Florida saw a 5 percent decrease in its citizenship application backlog while its neighboring state of Alabama saw its own backlog increase by over 213 percent.”³² During that same time period, the citizenship application backlog in Colorado increased by roughly 37 percent.³³ The differential accumulation of the backlog across district offices results in arbitrary differences in processing time based on an applicant’s place of residence.

²³ USCIS, *Backlog Elimination Plan Fiscal Year 2006, 3rd Quarter Update*, Dec. 11, 2006, p. 1, https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/backlog_FY06Q3.pdf.

²⁴ *Ibid.*, 9.

²⁵ John Teke, “U.S. Naturalizations: 2017,” August 2018, p. 1, https://www.dhs.gov/sites/default/files/publications/Naturalizations_2017.pdf.

²⁶ “Table 20. Petitions for Naturalization Filed, Persons Naturalized, and Petitions for Naturalization Denied: Fiscal Years 1907 to 2017,” *Immigration Statistics Yearbook*, DHS, Oct. 2, 2018, <https://www.dhs.gov/immigration-statistics/yearbook/2017/table20>.

²⁷ USCIS, *Number of Form N-400, Application for Naturalization, by Category of Naturalization, Case Status, and USCIS Field Office Location July 1 - September 30, 2018*, October 2018, https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Naturalization%20Data/N400_performancedata_fy2018_qtr4.pdf.

²⁸ *Ibid.*

²⁹ Goldinger Testimony, *Briefing Transcript*, p. 135; Preuhs Testimony, *Briefing Transcript*, p. 128.

³⁰ “Historical National Average Processing Time for All USCIS Offices,” USCIS, March 2019, <https://egov.uscis.gov/processing-times/historic-pt>.

³¹ Iñiguez-López, Diego. “Tearing Down the Second Wall: Ending USCIS’s Backlog of Citizenship Applications and Expanding Access to Naturalization for Immigrants,” National Partnership for New Americans, July 2, 2019, p. 3. https://drive.google.com/file/d/0B82AwIa7WIa_RmtxM3BUZEtOcV9vdVdwVU85U2hwbHd1QmVj/view.

³² *Ibid.*; see also “Data Set: Form N-400 Application for Naturalization,” USCIS, May 1, 2018, <https://www.uscis.gov/tools/reports-studies/immigration-forms-data/data-set-form-n-400-application-naturalization> (underlying data used to calculate percentage increases).

³³ Iñiguez-López, Diego. “Tearing Down the Second Wall,” p. ii.

Colorado was among the states with the largest backlog near the end of 2018, which stood at 9,325 pending applications and 2,384 submitted.³⁴ The Golda Meir Center, at Metro State University in Denver, published a report showing a 132 percent increase in the backlog in Colorado between 2013 and 2018.³⁵ Due to the accumulation of the backlog, estimated processing time for citizenship applications at the Denver field office ranges from 8.5 to 15.5 months in July 2019.³⁶ The state experienced a spike in the backlog that coincided with the national surge in naturalization applications, but unlike the national trend, applications in Colorado regressed to normal levels post-election.³⁷ Further breakdowns of delays by national origin show that in fiscal year 2017 there were, 1785 Asian applicants, 1726 Mexican applicants, 839 European applicants, 838 African applicants, 431 applicants from other North American countries, 324 South American applicants, and 2 applicants from unknown regions.³⁸

Additionally, the average Colorado processing time has doubled; at the time of this report, the current average wait time being between 9.5 and 20 months.³⁹ According to a survey conducted by the American Immigration Lawyers Association, 45.5 percent of applicants in the Denver Field Office experienced processing times greater than the published times.⁴⁰ Moreover, 63.6 percent of survey respondents were still waiting on a U.S. Citizenship and Immigration Service decision 120 days after their client's interview.⁴¹ Lastly, 77.3 percent of respondents confirmed an increased rate of Requests for Evidence following the N-400 interview.⁴²

Currently, the U.S. Citizenship and Immigration Service calculates processing times based on the previous month's completion, with the low end reflecting the time needed to complete 50 percent of cases and the high end showing the time it took to complete 93 percent of cases.⁴³ Another way to assess the impact of agency policies on the backlog is through a metric called "administrative effort" meaning, pending case completion rate as compared to overall caseloads.⁴⁴ It can be calculated as the ratio of completions in the current quarter to the overall caseload of the previous

³⁴ "Number of Form N-400, Application for Naturalization, by Category of Naturalization, Case Status, and USCIS Field Office Location July 1 - September 30, 2018," USCIS, October 2018, https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Naturalization%20Data/N400_performancedata_fy2018_qtr4.pdf.

³⁵ Preuhs, Robert R. "The Political Participation of Immigrants and the Naturalization Backlog in Colorado," Metropolitan State University of Denver, Mar. 2019, p. 4, <https://red.msudenver.edu/media/red/2019/february/ThePoliticalParticipationofImmigrantsandtheNaturalizationBackloginColoradoMarch12019.pdf>.

³⁶ "Check Case Processing Times," USCIS, <https://egov.uscis.gov/processing-times/> (last accessed July 29, 2019).

³⁷ Preuhs Testimony, *Briefing Transcript*, p. 128; see also Kristi Goldinger, USCIS, Written Statement for the Briefing before the U.S. Commission on Civil Rights, March 22, 2019 (hereinafter Goldinger Statement) (stating that USCIS has not performed specific analysis of the election spike issue).

³⁸ USCIS, "Book of Immigration Statistics 2017- Naturalizations 2017 Supplementary Tables," Mar. 13, 2019, <https://www.dhs.gov/immigration-statistics/yearbook/2017>.

³⁹ "Check Case Processing Times," USCIS, <https://egov.uscis.gov/processing-times/> (last accessed May 30, 2019).

⁴⁰ American Immigration Lawyers Association, "N-400 Delays at the Denver Field Office," Feb. 13, 2019, <https://www.surveymonkey.com/results/SM-7SC9QCKSV/> (last accessed May 31, 2019).

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ "USCIS Updates Webpage to Share More Accurate Processing Times," USCIS, Mar. 22, 2018, <https://www.uscis.gov/news/news-releases/uscis-updates-webpage-share-more-accurate-processing-times>

⁴⁴ Preuhs, "Political Participation," p. 9.

quarter.⁴⁵ A ratio of 1.0 indicates that all applications in the previous quarter were completed, while a ratio of 0.0 indicates none. In comparison to previous administrations, the Trump administration has had a significantly lower pending case completion ratio. For instance, the ratio of 0.14 in the second quarter of fiscal year 2017 was significantly lower than the ratio of 0.30 in the second quarter of fiscal year 2014.⁴⁶ This decrease in the pending case completion occurred despite completions per quarter remaining relatively static during the Trump administration.⁴⁷ At this rate, it would take almost 25 years to get back down to the previous administration's backlog level of 380,639 applications in 2015.⁴⁸ Although the U.S. Citizenship and Immigration Service reached a five-year high in the number of N-400 applications processed in fiscal year 2018,⁴⁹ application numbers have risen to such an extent that a backlog still accumulates.

Regarding military applicants, in the fourth quarter of fiscal year 2018, Colorado received only 15 military naturalization applications, but still had 69 pending.⁵⁰ Several recent policy changes have made it more difficult to complete the naturalization process.⁵¹ For example, government forms verifying that an enlistee served honorably now must include original signatures obtained from officers at colonel rank or above.⁵² The termination of programs aimed at facilitating military naturalizations, heightened background check requirements, and the increase of the service requirement to 180 days all contributed to a decline in the number of service members approved for naturalization.⁵³ These procedural changes create new burdens leading to decreased applications,⁵⁴ long wait times, and more denials from immigrants who served the armed forces.⁵⁵

⁴⁵ Ibid.

⁴⁶ Ibid., 10.

⁴⁷ Ibid.

⁴⁸ Iñiguez-López, Diego. "Tearing Down the Second Wall," p. 1.

⁴⁹ USCIS, *2018 USCIS Statistical Annual Report*, May 31, 2019, p. 2,

https://www.uscis.gov/sites/default/files/USCIS/statistics/2018_USCIS_Statistical_Annual_Report_Final_-_OPQ_5.28.19_EXA.pdf.

⁵⁰ USCIS, *Number of Form N-400, Application for Naturalization, by Category of Naturalization, Case Status, and USCIS Field Office Location July 1 - September 30, 2018*, October 2018,

https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Naturalization%20Data/N400_performancedata_fy2018_qtr4.pdf.

⁵¹ Weiner Testimony, *Briefing Transcript*, pp. 29-32.

⁵² Ibid., 30; U.S. Dep't of Defense, "DoD Announces Policy Changes to Lawful Permanent Residents and the Military Accessions Vital to the National Interest (MAVNI) Pilot Program," Oct. 13, 2017,

<https://dod.defense.gov/News/News-Releases/News-Release-View/Article/1342317/dod-announces-policy-changes-to-lawful-permanent-residents-and-the-military-acc/>.

⁵³ U.S. Gov't Accountability Off., GAO-19-416, *Immigration Enforcement: Actions Needed to Better Handle, Identify, and Track Cases Involving Veterans*, June 2019, pp. 18.

⁵⁴ Copp, Tara. "Naturalizations drop 65 percent for service members seeking citizenship after Mattis memo," *Military Times*, May 3, 2018, <https://www.militarytimes.com/news/your-military/2018/05/03/naturalizations-drop-65-percent-for-service-members-seeking-citizenship-after-mattis-memo/>.

⁵⁵ Copp, Tara. "Immigrant soldiers now denied US citizenship at higher rate than civilians," *Miami Herald*, May 16, 2019, <https://www.miamiherald.com/news/nation-world/national/article230269884.html>.

II. Summary of Panel Testimony

The purpose of the panel was to elicit testimony about the backlog of naturalization applications in Colorado.⁵⁶ Panel One featured speakers from national and local immigrant advocacy groups. In Panel Two, legal experts and political scientists identified possible causes of the backlog and illuminated the consequences for voting rights, civil rights, and administration of justice. During Panel Three, representatives from the government and private practice discussed the various remedies that can be implemented at the federal, state, and local levels to address the backlog. Finally, several individuals shared the thoughts of immigrant communities regarding the backlog during an open session following the three panels.

a. Panel One

The first panel was comprised of differing perspectives from both national and local community advocates including Diego Iñiguez-López from the National Partnership for New Americans (“NPNA”), Nicole Melaku from Colorado Immigrant Rights Coalition (“CIRC”), and Travis Weiner from Veterans for New Americans (“VNA”).

At the hearing, these organizations expressed their concerns about the negative impact of the U.S. Citizenship and Immigration Service naturalization backlog within the Colorado community.⁵⁷ Specifically, Diego Iñiguez-López from National Partnership for New Americans explained how the backlog is impacting immigrants’ ability to obtain citizenship and the attendant rights, such as fair and equal treatment by public institutions and the ability to maintain family unity.⁵⁸ He expressed particular concern that the backlog constitutes a “second wall” that is limiting civic engagement by directly suppressing voting for the 2020 presidential election and called for political accountability, including a detailed plan from the U.S. Citizenship and Immigration Service to substantially reduce the backlog.⁵⁹ Mr. Iniguez-López stated that March 2019 is the projected cutoff to vote in the 2020 presidential election in Denver and other heavily impacted locations once voter mail-in deadlines are considered; this means current delays in naturalization may already prevent registration and voting rights.⁶⁰ He expressed concerns that changes to fee waiver and language exemptions negatively impact poor people, elderly people, and the disabled.⁶¹

Nicole Melaku from the Colorado Immigrant Rights Coalition, a U.S. Citizenship and Immigration Service grantee for citizenship workshops based in Colorado, emphasized similar concerns about civic engagement.⁶² She voiced the concerns of immigrants feeling unwanted and deterred from pursuing naturalization.⁶³ Ms. Melaku specifically pointed to sentiments from some individuals in

⁵⁶ Earnhart Testimony, *Briefing Transcript*, p. 5.

⁵⁷ Iñiguez-López Testimony, *Briefing Transcript*, p. 9.

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*, 10-13.

⁶⁰ Melaku Testimony, *Briefing Transcript*, p. 21; Iñiguez-López, National Partnership for New Americans, Written Statement for the Briefing before the U.S. Commission on Civil Rights, March 22, 2019 (hereinafter Iñiguez-López Statement).

⁶¹ Iñiguez-López Testimony, *Briefing Transcript*, p. 6.

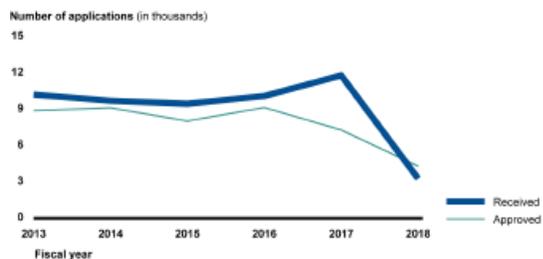
⁶² Melaku Testimony, *Briefing Transcript*, p. 24.

⁶³ *Ibid.*, 24-25.

the Muslim community stating that many are skeptical of the double scrutiny of the process and struggle to apply for naturalization.⁶⁴ Additionally, Ms. Melaku expressed concerns that the backlog is unduly preventing people from pursuing higher paying jobs.⁶⁵ By estimates from their own work assisting more than 1,500 individuals since 2016, the wait time for applications processed at the U.S. Citizenship and Immigration Service – Denver Field Office has increased from six months to eighteen months and the backlog hovers around 90,000 pending applications.⁶⁶ As a result, any applicant who would like to vote in the 2020 election would need to have submitted their application by March 2019.⁶⁷

Travis Weiner from Veterans for New Americans discussed troubling changes to the fundamental American ideal of naturalization through military service.⁶⁸ In October 2017, the Defense Department implemented two key policy changes to the expedited naturalization process for military members.⁶⁹ The first change establishes additional background screening requirements that often results in longer waiting periods for approval that often extend beyond the duration of the applicant’s legal status visa period.⁷⁰ The second change requires completion of 180 consecutive days of service and the personal signature from the secretary of the relevant military branch, but there is currently no procedure in place to obtain that signature.⁷¹ After the implementation of these policy changes, military naturalization dropped almost 65 percent in the first quarter of fiscal year 2018 compared to the fourth quarter of fiscal year 2017.⁷²

Military Naturalization Applications U.S. Citizenship and Immigration Services (USCIS) Received and Approved, Fiscal Years 2013 through 2018



Source: GAO analysis of U.S. Citizenship and Immigration Services (USCIS) data. | GAO-19-416

During that same time period, the denial rate of military naturalizations increased from 10 percent to 25 percent.⁷³ This pattern continued for the entire first 6 months of 2018 and appears unlikely

⁶⁴ Ibid., 55.

⁶⁵ Ibid., 23.

⁶⁶ Ibid., 22-24.

⁶⁷ Ibid., 21.

⁶⁸ Weiner Testimony, *Briefing Transcript*, p. 26.

⁶⁹ Ibid., 28-29.

⁷⁰ Ibid., 29.

⁷¹ Ibid., 30.

⁷² Ibid., 32; see also U.S. Government Accountability Office, *Immigration Enforcement: Actions Needed to Better Handle, Identify, and Track Cases Involving Veterans*, June 2019, p. 20, <https://www.gao.gov/assets/700/699549.pdf>.

⁷³ Weiner Testimony, *Briefing Transcript*, p. 32.

to abate.⁷⁴ These changes have led to an effective end to the military's expedited track to citizenship under the Immigration and Nationality Act.

b. Panel Two

The second panel consisted of a private immigration attorney and two professors who analyzed backlog trends to identify possible causes and to illuminate the consequences for voting rights, civil rights, and administration of justice.

Jennifer Kain-Rios, an immigration attorney and former liaison to the U.S. Citizenship and Immigration Service on behalf of the American Immigration Lawyers Association, began by providing an overview of the naturalization process and noting that there have been cycles of concern about the U.S. Citizenship and Immigration Service naturalization backlog since 1990.⁷⁵ Ms. Kain-Rios explained that applicants who did not receive an adjudication decision within 120 days of the interview are able to pursue relief in federal court.⁷⁶ However, nothing in immigration law, other than resource intensive mandamus review, allows for oversight of the period between an applicant's biometrics appointment and the first interview.⁷⁷ Ms. Kain Rios also presented results from an American Immigration Lawyers Association Colorado survey that shows variation in how naturalization applications are processed. Survey results showed a processing time range of 11-17 months depending on location and type of application, which far exceeds the previous typical processing time of about three months.⁷⁸

Ms. Kain-Rios went on to state that more transparency into the processing time is required to determine the cause of the backlog, especially during the stage between biometrics and the first interview.⁷⁹ Because this period falls outside the statutory and regulatory timelines, delays at this stage result in limited avenues for inquiry about the progress of the application. Ms. Kain-Rios cited the reduction of avenues for communication between immigration attorneys and the U.S. Citizenship and Immigration Service district office as one cause of the lack of transparency.⁸⁰ The liaison committee that Ms. Kain-Rios formerly participated in also previously had access to information about U.S. Citizenship and Immigration Service officers and what role they were working in.⁸¹ This functionality would have provided clarity on the reassignment of adjudicating officers to serve in Fraud Detection and National Security ("FDNS") Positions within the U.S. Citizenship and Immigration Service.⁸² Regarding potential causes of the backlog, Ms. Kain-Rios suggested that the scheduling of additional second interviews for applicants who cannot pass the

⁷⁴ Ibid., 32-33.

⁷⁵ Kain-Rios Testimony, *Briefing Transcript*, pp. 83-85.

⁷⁶ Ibid., 85; *see also* 8 U.S.C. 1447(b) (allowing the district court with jurisdiction to either determine the matter or remand the matter, with appropriate instructions to USCIS).

⁷⁷ Kain-Rios Testimony, *Briefing Transcript*, p. 85.

⁷⁸ Ibid., 92.

⁷⁹ Ibid., 92-93.

⁸⁰ Ibid., 93.

⁸¹ Ibid., 96.

⁸² Ibid., 97; *see also* "Fraud Detection and National Security Directorate," USCIS, July 14, 2015, <https://www.uscis.gov/about-us/directorates-and-program-offices/fraud-detection-and-national-security/fraud-detection-and-national-security-directorate> (stating that the directorate's primary mission is to investigate those who pose a threat to national security, public safety, or the integrity of the nation's legal immigration system).

verbal portion of the literacy test in the first interview could be contributing to the backlog, including for persons with disabilities who are eligible for waivers from the language requirement.⁸³ Ms. Kain-Rios also emphasized that the statute does not provide for discretion in deciding a naturalization application, yet variation in the amount of documentation required to demonstrate good moral character can contribute to an increase in Requests for Evidence.⁸⁴

Dr. John Eastman, a professor of law from Chapman University Fowler School of Law and a senior fellow at the Claremont Institute, emphasized the importance of focusing on data and taking a nonpartisan approach to addressing the naturalization backlog.⁸⁵ He suggested looking at long-term trends and found that the backlog in U.S. Citizenship and Immigration Service naturalization applications and other immigration benefits predates the Trump administration.⁸⁶ He said the backlog could be from normal bureaucratic delays associated with increased numbers of applicants or increased levels of scrutiny without additional resources.⁸⁷ Dr. Eastman discounted the increasing size of the forms as unlikely to be a substantial contributor to the backlog.⁸⁸ To the extent that more information is being requested of applicants, he advised checking to see if the changes were statutorily driven or a matter of adjudicators enforcing already-present statutory criteria.⁸⁹

Dr. Robert Preuhs, a professor of political science and Director of the Golda Meier Center, addressed the potential effects of the U.S. Citizenship and Immigration Service naturalization backlog in Colorado on the ability for immigrants awaiting adjudication to participate in the electoral process in Colorado.⁹⁰ Dr. Preuhs explained that there has been a downward trend in the ratio of completions to the total number of applications in the U.S. Citizenship and Immigration Service backlog, but that this trend predates the current administration and there is little evidence of a reduction in completions across the past two administrations.⁹¹ Still, based on the escalation of the backlog in Colorado, he argued that there is currently a lack of administrative effort to reduce it despite the number of applications returning to pre-election levels in Colorado.⁹² According to Dr. Preuhs, the current administration seems to be at best indifferent to the current U.S. Citizenship and Immigration Service backlog situation.⁹³ Based on the small share of newly-naturalized voters and the lesser propensity to vote, he said the impact on election outcomes of delaying the right to vote is marginal even though there may be repercussions to individual rights.⁹⁴

⁸³ Kain-Rios Testimony, *Briefing Transcript*, pp.86-91.

⁸⁴ *Ibid.*, 110-12.

⁸⁵ Eastman Testimony, *Briefing Transcript*, pp. 74-78.

⁸⁶ *Ibid.*, 75.

⁸⁷ *Ibid.*, 78.

⁸⁸ *Ibid.*, 76-77.

⁸⁹ *Ibid.*, 78-82.

⁹⁰ Preuhs Testimony, *Briefing Transcript*, p. 98.

⁹¹ *Ibid.*, 101.

⁹² *Ibid.*, 128.

⁹³ *Ibid.*, 101.

⁹⁴ *Ibid.*, 105.

c. Panel Three

The third panel featured representatives from U.S. Citizenship and Immigration Service, local government, and private immigration practice, and the discussion focused on the various remedies that can be implemented at the federal, state, and local levels.

Kristi Goldinger, U.S. Citizenship and Immigration Service District Director, explained that the number of applications received in fiscal year 2017 exceeded U.S. Citizenship and Immigration Service projections by 13.5 percent, which marked a change from the typical pattern of application receipts declining in the year following a presidential election.⁹⁵ Ms. Goldinger went on to note that the U.S. Citizenship and Immigration Service has increased N-400 application completion levels since fiscal year 2016.⁹⁶ However, as of December 2018, Denver's processing time remained over 10 months.⁹⁷ This decrease in processing cycle times has been accomplished through a roughly 30 percent increase in staffing and improved process efficiency.⁹⁸ The reduction occurred despite renewed adherence to a policy that now requires adjudicators to ask every question on the N-400 form.⁹⁹ The impact of these changes is measured and assessed by the Denver Field Office on a monthly basis.¹⁰⁰ The Denver Field Office also relocated certain immigrant benefit applications to other U.S. Citizenship and Immigration Service field offices, leading to an increase in officer productivity regarding naturalization applications.¹⁰¹ Ms. Goldinger stated that this progress in naturalization processing times has not come at the expense of other U.S. Citizenship and Immigration Service functions.¹⁰² Ms. Goldinger reaffirmed the goal of the U.S. Citizenship and Immigration Service to meet the six month processing goal and set a target for five-month processing.¹⁰³ Based on the number of completions for the first quarter of fiscal year 2019, Ms. Goldinger stated that the Denver Field Office would be on track to meet the six month goal by the end of this fiscal year.¹⁰⁴ The Denver Field Office is also within 5 percent of the projected N-400 receipts for fiscal year 2019.¹⁰⁵

Jamie Torres, the Director of Denver's Office of Immigration and Refugee Affairs, explained that, based on her experience with the 30,000 noncitizens eligible for citizenship in the City and County of Denver, the number one reason noncitizens are deterred from naturalizing is because they do not feel welcome to become citizens.¹⁰⁶ Ms. Torres pointed out the disparity in completion rates for applications at different offices across the country and inquired to what degree the offices coordinated efforts.¹⁰⁷ Ms. Torres noted that the U.S. Citizenship and Immigration Service provided quarterly updates on the progress of backlog reduction when the U.S. Citizenship and

⁹⁵ Goldinger Testimony, *Briefing Transcript*, pp. 134-35.

⁹⁶ *Ibid.*, 135.

⁹⁷ *Ibid.*, 136.

⁹⁸ *Ibid.*, 136-37.

⁹⁹ *Ibid.*, 165.

¹⁰⁰ *Ibid.*, 154-55.

¹⁰¹ *Ibid.*, 138.

¹⁰² *Ibid.*

¹⁰³ *Ibid.*, 135.

¹⁰⁴ *Ibid.*, 136.

¹⁰⁵ *Ibid.*, 170.

¹⁰⁶ Torres Testimony, *Briefing Transcript*, pp. 148-49.

¹⁰⁷ *Ibid.*, 151.

Immigration Service previously eliminated the backlog in 2006.¹⁰⁸ She considers her office a willing partner available to the U.S. Citizenship and Immigration Service in implementing changes that would bolster naturalization.¹⁰⁹

Bryce Downer, a Colorado immigration attorney, confirmed the delays in the naturalization process amongst his clients.¹¹⁰ Mr. Downer described the existing remedies available to individuals as “entirely insufficient to really address the nature of the backlog.”¹¹¹ Mr. Downer explained that individuals can submit a service request, but that is only useful if outside the average processing time of 17.5 months.¹¹² InfoPass appointments previously provided a way for applicants to discuss issues with an immigration officer face-to-face, but that program was discontinued as of October 2018.¹¹³ Mr. Downer noted that applicants who have attended their first interview may pursue relief in federal district court, but that is not an option for applicants still waiting to be scheduled for an interview.¹¹⁴ Mr. Downer also explained that “creative” mandamus actions can potentially lead to a federal district judge ordering the U.S. Citizenship and Immigration Service to render a decision, but these actions are often rendered moot after intervention by the Attorney General's office.¹¹⁵ Mr. Downer added that the backlog may implicate due process and statutory violations, especially because noncitizens have paid for applications and the Administrative Procedure Act imposes an obligation on agencies to adjudicate within a reasonable time.¹¹⁶ According to Mr. Downer, a federal statute suggests a general intent that processing times exceeding 180 days from initial filing are unreasonable, but federal courts have not considered that to be a strict, binding standard.¹¹⁷ Mr. Downer concluded by noting that he has been filing Freedom of Information Act (“FOIA”) requests regarding the cause of the backlog and allocation of user fees, but has not received any response to his requests as of this writing of this report.¹¹⁸

d. Open Session

The post-hearing open session revealed increased fear in the Denver immigrant community. Claudia Castillo from Colorado Immigrant Rights Coalition noted that 50 percent of eligible applicants fear applying, while the other half feel that they need to apply because they no longer trust the government.¹¹⁹ She stated that immigrants in the community no longer feel as though being a permanent resident offers enough protection and that delays can cause harm to the immigrants in an enforcement-heavy climate.¹²⁰

¹⁰⁸ Ibid., 152.

¹⁰⁹ Ibid., 153.

¹¹⁰ Downer Testimony, *Briefing Transcript*, p. 140.

¹¹¹ Ibid.

¹¹² Ibid., 140-41.

¹¹³ Ibid., 141.

¹¹⁴ Ibid., 143; 8 U.S.C. § 1447(b).

¹¹⁵ Downer Testimony, *Briefing Transcript*, p. 144.

¹¹⁶ Ibid., 145; 5 U.S.C. § 555(b).

¹¹⁷ Downer Testimony, *Briefing Transcript*, p. 146; 8 U.S.C. § 1571(b).

¹¹⁸ Downer Testimony, *Briefing Transcript*, p. 147.

¹¹⁹ Castillo Testimony, *Briefing Transcript*, pp. 191-92.

¹²⁰ Ibid., 192.

Anastasia Del Carpio, an immigration attorney from Lutheran Family Services, reported trends for refugees seeking citizenship for the years since she joined the organization in 2015.¹²¹ She works with an array of refugees from Burma, Congo, Sudan, Afghanistan, Eritrea, Ethiopia, Mexico, and Central and South America.¹²² Based on her experiences, she reported an increase in processing time starting in late summer of 2016, which resulted in average processing times between 12 and 14 months during 2017, and more recently, in 2018-2019, a drop to roughly 10 months.¹²³

III. Findings

The Colorado State Advisory Committee to the USCCR finds that the size and extent of the naturalization backlog, and the shifting policies and practices that have led to them, implicate voting rights, civil rights, and the administration of justice.

a. Size and Extent of the Backlog

The Committee finds a significant U.S. Citizenship and Immigration Service backlog of naturalization applications, both by the six month definition used by the U.S. Citizenship and Immigration Service¹²⁴ and by the same six month statutory definition supplied by Congress.¹²⁵ In December 2018, the U.S. Citizenship and Immigration Service – Denver Field Office that services Colorado and Wyoming had an average processing time of more than 10 months.¹²⁶ That processing time is better than the national average of almost 18 months, but even if it is improving, the current backlog is longer than the statutory expectation of six months.¹²⁷ This backlog in Colorado persists despite an increase in resources at the U.S. Citizenship and Immigration Service – Denver Field Office and the return of application numbers to pre-November 2016 levels.¹²⁸ One panelist, Jennifer Kain-Rios, testified that earlier in her career as an immigration attorney, processing times for a complete naturalization ranged from 90 to 120 days in the Denver Field

¹²¹ Del Carpio Testimony, *Briefing Transcript*, p. 187.

¹²² *Ibid.*, 188.

¹²³ *Ibid.*

¹²⁴ USCIS defines a “backlog,” generally, as the number of pending applications that exceed acceptable or target pending levels for each case type. Acceptable pending levels are determined for each distinct case type by totaling the number of applications received during a specific target cycle-time period (usually six months). See USCIS, *Backlog Elimination Plan Fiscal Year 2006, 3rd Quarter Update*, Dec. 11, 2006, https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/backlog_FY06Q3.pdf.

¹²⁵ 8 U.S.C. § 1572(1) (“The term ‘backlog’ means, with respect to an immigration benefit application, the period of time in excess of 180 days that such application has been pending before the Immigration and Naturalization Service.”).

¹²⁶ Goldinger Testimony, *Briefing Transcript*, pp. 136, 155.

¹²⁷ Preuhs, Preuhs, “Political Participation,” p. 9. (As of September 2018, USCIS estimated that 93% of naturalization applications would be fully processed within 17.5 months).

¹²⁸ Preuhs Testimony, *Briefing Transcript*, p. 128; see also Goldinger Statement (stating that USCIS has not performed specific analysis of the election spike issue).

Office.¹²⁹ The current backlog far exceeds these processing times and is approaching what some experts call “crisis levels.”¹³⁰

Despite the recent increase in the backlog, the Committee recognizes that backlogs are not a new phenomenon and that the present backlog began prior to the Trump administration. Indeed, backlogs have been a concern for the U.S. Citizenship and Immigration Service since its inception in 2002.¹³¹ The Immigration Services and Infrastructure Improvements Act of 2000¹³² authorized the Attorney General to take such measures as may be necessary to “reduce the backlog of the processing of immigration benefit applications, with the objective of the total elimination of the backlog 1 year after November 25, 2002.”¹³³ That obligation was transferred to the U.S. Citizenship and Immigration Service after the dissolution of the Immigration and Naturalization Service and the creation of the Department of Homeland Security.¹³⁴ The U.S. Citizenship and Immigration Service then spent several years attempting to resolve backlog issues, which included the creation of several “backlog elimination plans” in 2006 for the purpose of streamlining the way immigration benefits were delivered.¹³⁵ These plans put the agency on track to eliminate the previous backlog for all immigration benefits by 2010.¹³⁶ More impressively, on September 15, 2006, the U.S. Citizenship and Immigration Service announced the elimination of the naturalization backlog based on the reduction of average processing time for N-400 applications to approximately five months.¹³⁷ Although these efforts were successful, a new backlog in naturalization applications has accumulated.

In addition, the Committee recognizes that rising numbers of applications for naturalization impact the workload of the U.S. Citizenship and Immigration Service. Typically, the U.S. Citizenship and Immigration Service anticipates an increase in naturalization application receipts prior to any presidential election and a correlated increase in user fees.¹³⁸ Both occurred in 2016; however, the agency's projections and actions taken in preparation for the surge proved inadequate to prevent

¹²⁹ Kain-Rios Testimony, *Briefing Transcript*, p. 83.

¹³⁰ Boyd, Jason. “AILA Analysis Reveals Crisis-Level Delays in USCIS Case Processing,” *Think Immigration*, Jan. 30, 2019, <https://thinkimmigration.org/blog/2019/01/30/aila-analysis-reveals-crisis-level-delays-in-uscis-case-processing/>.

¹³¹ 6 U.S.C. § 271(a)(5). (implementing pilot initiatives to address backlogs).

¹³² 8 U.S.C. § 1571.

¹³³ 8 U.S.C. § 1573(a)(1).

¹³⁴ 6 U.S.C. § 271(b); 6 U.S.C. § 291.

¹³⁵ See generally USCIS, *Backlog Elimination*, Mar. 4, 2010, <https://www.uscis.gov/tools/reports-studies/backlog-elimination> (archive of four Backlog Elimination Updates).

¹³⁶ Congressional Research Service, *U.S. Citizenship and Immigration Services' Immigration fees and Adjudication Costs: Proposed Adjustments and Historical Context*, by William A. Kandel and Chad C. Haddal (Washington, DC: Government Printing Office, 2010), p. 24 (hereafter cited as CRS, *Proposed Adjustments and Historical Context*). The backlog plans included temporary appropriations earmarked for reduction of the backlog, a redefinition of backlog to not count cases outside the agency's control, and automatic among other items.

¹³⁷ USCIS, “News Release: USCIS Announces Elimination of Naturalization Application Backlog,” Sept. 15, 2006, <https://www.uscis.gov/sites/default/files/files/pressrelease/N400Bklg091506NR.pdf>; see also USCIS, *Backlog Elimination Plan, Fiscal Year 2006, 3rd Quarter Update*, December 11, 2006, p. 4 https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/backlog_FY06Q3.pdf (stating that the N-400 processing time was less than six months as of the third quarter of fiscal year 2006).

¹³⁸ Goldinger Testimony, *Briefing Transcript*, p. 176.

the further accumulation of a backlog.¹³⁹ These projections are an important factor in addressing the backlog due to their use in staffing decisions.¹⁴⁰

Published data lacks sufficient detail to determine what stage of the adjudicatory process contributes most to the backlog. Panelist Jennifer Kain-Rios testified to various stages in the naturalization process that have reduced statutory and regulatory requirements for limiting processing times, specifically the period between an applicant's biometrics appointment and first interview.¹⁴¹ The significance of these early stage delays is that they do not permit applicants to request assistance from the U.S. Citizenship and Immigration Service or Congress or allow them to pursue other means of recourse for compelling adjudication.¹⁴² In order to more fully understand the causes of the backlog, the consequences of the backlog, and potential remedies for the backlog, the Committee would need more detailed data related to the stage of the adjudication process at which the applications are most frequently delayed.

The data reviewed by the experts who presented to the Committee is insufficiently detailed to determine whether the naturalization backlog has a greater impact on those individuals who obtained lawful permanent residence through family sponsorship, through employment, through refugee eligibility, or through military eligibility. This is pertinent to understanding the nature of delay and its consequences. Different types of applications have different requirements and hence invite additional scrutiny. For example, policies flowing from the Hire America executive order subject employment-based applicants for naturalization to interview requirements when adjusting from certain visas, and the addition of interviews is now impacting processing times in that category.¹⁴³ Pursuant to an executive order suspending travel of refugees into the U.S. and a review of the U.S. Refugee Admissions program, enhanced security vetting procedures were implemented that a U.S. Citizenship and Immigration Service headquarters letter to Congress acknowledges “has lengthened processing times for some cases and slowed admissions in FY 2018.”¹⁴⁴ While the military pathway is meant to be expedited over civilian applications given Congress’ streamlining of their application process into a single-step, from noncitizen to citizen without needing a green card in the interim,¹⁴⁵ increased vetting and more stringent procedural requirements have increased delay and reduced applications. Substantial delays in naturalization for each group impacts public benefits, employment, and other rights of citizenship.

b. Consequences of the Backlog for Voting Rights

Voting rights are directly implicated by the naturalization backlog because the right to vote depends on completing the naturalization process.¹⁴⁶ As time passes, an increasingly large number

¹³⁹ Ibid., 174-75.

¹⁴⁰ Ibid., 170. The Denver district office projections for 2019 appear to more closely match applications.

¹⁴¹ Kain-Rios Testimony, *Briefing Transcript*, p. 85.

¹⁴² Ibid.

¹⁴³ Goldinger Testimony, *Briefing Transcript*, pp. 165-66.

¹⁴⁴ USCIS, “USCIS Response to Rep. Garcia’s February 12, 2019 Letter,” <https://www.aila.org/File/DownloadEmbeddedFile/79990> (last accessed May 31, 2019).

¹⁴⁵ 8 U.S.C. § 1439(a).

¹⁴⁶ “Citizenship Rights and Responsibilities,” USCIS, <https://www.uscis.gov/citizenship/learners/citizenship-rights-and-responsibilities> (last accessed July 24, 2019).

of otherwise eligible voters will find themselves disenfranchised and unable to participate in the political process.¹⁴⁷ This means that individual voting rights are suppressed when legal permanent residents are caught in the naturalization backlog. Panelists testified that at the present processing times, there are individuals in some parts of the country who would otherwise be able to vote that will not be naturalized in time to vote in local elections in November 2019 or the presidential elections in November 2020.¹⁴⁸ Based on the 10.7 month average processing time of the Denver Field Office in December 2018, applicants would need to apply for naturalization before January 2020 to have any chance of exercising their right to vote in the next presidential election.¹⁴⁹ However, as of September 30, 2018, applicants in Colorado were subject to processing delays ranging from 10 to 19.5 months.¹⁵⁰ This completion rate would mean that March 2019 is the cut-off date after which naturalization applicants in Colorado and the other heavily impacted areas of the country risk being prevented from naturalizing and registering to vote in time for the upcoming national elections.¹⁵¹

Despite the impact of the naturalization backlog on individual rights, it is unlikely to impact the outcome of local and national elections. As Dr. Preuhs' report states, the voters in the naturalization backlog would have a “marginal impact” on election results in Colorado given the size of the immigrant community and the lower propensity of newly naturalized citizens to vote.¹⁵² But voting rights violations are not measured in the aggregate. For the individuals who would vote, their individual rights are violated when they are deprived of the opportunity to vote by agency practices that delay their naturalization.

c. Consequences of the Backlog for Civil Rights

Citizenship carries many civil rights, such as eligibility for employment, housing, and other public benefits. These rights are impeded by delay in acquiring citizenship. Available data is insufficient to determine whether specific populations of applicants are disproportionately impacted by the backlog.¹⁵³ The apparent extent of the backlog in every group suggests that civil rights are being impinged upon for each subgroup, including protected subgroups such as race, religion, and national origin. The backlog assuredly has significant impacts on national origin and race since the largest number of those naturalized come from Latin American and Asian countries.¹⁵⁴ By the raw number of people naturalized, the top sending countries were, in order, Mexico, India, China, the Philippines, the Dominican Republic, Cuba, and Vietnam.¹⁵⁵ Data published by the U.S. Citizenship and Immigration Service regarding naturalization application receipts does not provide the number of applications received by country of origin, or the number of completed

¹⁴⁷ Iñiguez-López Testimony, *Briefing Transcript*, p. 42.

¹⁴⁸ *Ibid.*, 12.

¹⁴⁹ Goldinger Testimony, *Briefing Transcript*, p. 155.

¹⁵⁰ Iñiguez-López Testimony, *Briefing Transcript*, p. 4.

¹⁵¹ *Ibid.*

¹⁵² Preuhs, “Political Participation,” p. 6..

¹⁵³ Iñiguez-López Testimony and Weiner Testimony, *Briefing Transcript*, pp. 58-59.

¹⁵⁴ “Table 21. Persons Naturalized by Region and Country of Birth: Fiscal Years 2015 to 2017,” *Immigration Statistics Yearbook*, DHS, Oct. 2, 2018, <https://www.dhs.gov/immigration-statistics/yearbook/2017/table21>.

¹⁵⁵ *Ibid.*

naturalizations by country of origin.¹⁵⁶ The populations of individuals with these national origins within the United States can be estimated from census data by the American Community Survey.¹⁵⁷ However, in order to better understand the civil rights implications, the Committee requires data showing more refined breakdowns of naturalization applicants' backgrounds.

It appears there is insufficient factual basis to support a finding of intentional discrimination or disparate impact. However, the heightened emphasis on national security raises concerns related to religion and national origin to the extent that Muslim applicants or applicants from Muslim-majority countries are flagged for review.¹⁵⁸ Programs like the Controlled Application Review and Resolution Program, utilize criteria to screen out certain applications and set them on a separate delayed track for processing.¹⁵⁹ Among the factors that the U.S. Citizenship and Immigration Service looks to in determining whether individuals would be subject to heightened screening under the Controlled Application Review and Resolution Program are their employment, training, government affiliations, their family members and close associates, and "other suspicious activities."¹⁶⁰ "Other suspicious activities" include behaviors that implicate national security, such as criminal activities including the smuggling of persons or drugs, or travel to identified terrorist hotspots; the latter factor has the greatest impact on individuals who are Muslim or are from Middle Eastern countries.¹⁶¹ These include "[u]nusual travel patterns and travel through or residence in areas of known terrorist activities."¹⁶² According to immigration attorneys, the U.S. Citizenship and Immigration Service looks for reasons to deny an application subject to the Controlled Application Review and Resolution Program, including what would otherwise be considered minor omissions, such as failing to disclose routine stops for secondary inspections at airports.¹⁶³ Indeed, U.S. Citizenship and Immigration Service officers are not permitted to approve an application subject to the Controlled Application Review and Resolution Program without supervisory approval and the concurrence of a senior level official.¹⁶⁴ While the U.S. Citizenship

¹⁵⁶ USCIS, *Form N-400, Application for Naturalization, by Category of Naturalization, Case Status, and USCIS Field Office Location (Fiscal Year 2019, 2nd Quarter, Jan. 1-Mar. 31, 2019)*, June 26, 2019, https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Naturalization%20Data/N400_performancedata_fy2019_qtr2.pdf.

¹⁵⁷ The raw numbers of foreign-born individuals from each of these countries in the United States are as follows: Mexico, 11,513,528; India, 2,348,687; People's Republic of China, 2,034,383; the Philippines, 1,945,345; the Dominican Republic, 1,057,439; Cuba, 1,227,031; Vietnam, 1,314,927. "Place of Birth for the Foreign-Born Population in the United States," 2013-2017 American Community Survey 5-Year Estimates, United States Census Bureau, https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_17_5YR_B05006&prodType=table (last accessed May 31, 2019).

¹⁵⁸ Melaku Testimony, *Briefing Transcript*, p. 55.

¹⁵⁹ USCIS, *Policy for Vetting and Adjudicating Cases with National Security Concerns*, Apr. 11, 2008, p. 11, https://www.uscis.gov/sites/default/files/USCIS/About%20Us/Electronic%20Reading%20Room/Policies_and_Manuals/CARRP_Guidance.pdf.

¹⁶⁰ *Ibid.*, 157-58.

¹⁶¹ *Ibid.*, 158.

¹⁶² *Ibid.*

¹⁶³ American Civil Liberties Union of Southern California, *Practice Advisory: USCIS's Controlled Application Review and Resolution Program*, Jan. 3 2017, p. 12, https://www.nationalimmigrationproject.org/PDFs/practitioners/our_lit/impact_litigation/2017_03Jan-ACLU-CARRP-advisory.pdf.

¹⁶⁴ USCIS, "CARRP Policy for Vetting and Adjudicating Cases with National Security Concerns," Apr. 11, 2008, p. 7,

and Immigration Service does not publish data related to the Controlled Application Review and Resolution Program applications, the clear implication is that those who are from Muslim majority and Middle Eastern countries where there is known terrorist activity will be subject to greater scrutiny and higher denial rates than those who are not.

Civic organizations such as the National Partnership for New Americans and the Colorado Immigrant Rights Coalition refer to naturalization as a gateway to civic engagement, as a way for an individual to become vested with the rights and obligations of citizenship, including the right to vote, jury duty and potential military service.¹⁶⁵ Employment opportunities and eligibility for public benefits may also be impacted.¹⁶⁶ The existence of a large naturalization backlog negatively impacts these rights for individuals with pending applications who would otherwise complete the process and acquire citizenship.¹⁶⁷

d. Consequences of the Backlog for Administration of Justice

The naturalization backlog gives rise to other concerns about discrimination in the administration of justice related to violations of the statutory or due process rights of applicants. Naturalization by eligible persons is a statutory right; it is not subject to agency discretion.¹⁶⁸ If an individual meets the eligibility requirements, they have the right to be naturalized within a reasonable time frame, which was defined by Congress and the U.S. Citizenship and Immigration Service to be six months.¹⁶⁹ Concern about the immigration benefit backlog in the early 2000s led Congress to mandate that the Attorney General create a backlog elimination plan and submit annual reports to Congress relaying the progress that the agency had made on eliminating the backlog.¹⁷⁰ While the U.S. Citizenship and Immigration Service was successful in reducing that backlog,¹⁷¹ it has increased once again.

https://www.uscis.gov/sites/default/files/USCIS/About%20Us/Electronic%20Reading%20Room/Policies_and_Manuals/CARRP_Guidance.pdf.

¹⁶⁵ Iñiguez-López Testimony, *Briefing Transcript*, p. 13; Melaku Testimony, *Briefing Transcript*, p. 21.

¹⁶⁶ Iñiguez-López Testimony, *Briefing Transcript*, p. 13.

¹⁶⁷ *Ibid.*

¹⁶⁸ Kain-Rios Testimony, *Briefing Transcript*, p. 110 (“[T]here’s nothing in the statute for naturalization that provides for discretion in deciding a naturalization application. Either someone is eligible or they’re not.”; *see also*, 8 U.S.C. § 1422 (“The *right of a person to become a naturalized citizen of the United States* shall not be denied or abridged because of race or sex or because such person is married.”) (emphasis added).

¹⁶⁹ 8 U.S.C. § 1572.

¹⁷⁰ 8 U.S.C. § 1574.

¹⁷¹ USCIS, “News Release: USCIS Announces Elimination of Naturalization Application Backlog,” Sept. 15, 2006, <https://www.uscis.gov/archive/archive-news/uscis-announces-elimination-naturalization-application-backlog>; *see also* USCIS, *Backlog Elimination Plan, Fiscal Year 2006, 3rd Quarter Update*, December 11, 2006, p. 4, https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/backlog_FY06Q3.pdf (stating that the N-400 processing time was less than six months as of the third quarter of fiscal year 2006).

i. Unreasonable Delay Violates the Administrative Procedure Act

There is a statutory obligation under the Administrative Procedure Act (“APA”) to resolve adjudications within a reasonable time frame.¹⁷² While “reasonable” is not clearly defined, statutory definitions and other factors give guidance to courts when determining such reasonability.¹⁷³ By statute, naturalization applications should be adjudicated within six months.¹⁷⁴ With the median adjudication time in Colorado currently nearly double the statutory goal, questions of whether the U.S. Citizenship and Immigration Service is in compliance with the Administrative Procedure Act standards arise.

ii. Institutional Neglect Fosters an Unwelcoming Climate for Immigrants

One concern about discrimination in the administration of justice by the U.S. Citizenship and Immigration Service arises from the agency's shift away from a mission focused on customer service. In changing the mission statement and removing the reference to agency applicants as “customers,” then U.S. Citizenship and Immigration Service director Francis Cissna stated that:

[R]eferring to applicants and petitioners for immigration benefits, and the beneficiaries of such applications and petitions, as “customers” promotes an institutional culture that emphasizes the ultimate satisfaction of applicants and petitioners, rather than the correct adjudication of such applications and petitions according to the law. Use of the term leads to the erroneous belief that applicants and petitioners, rather than the American people, are whom we ultimately serve.¹⁷⁵

Following this mission statement change, the U.S. Citizenship and Immigration Service revised the policy manual to replace the term “customer” with terms such as “applicant” or “petitioner.”¹⁷⁶ The first section of the agency's “General Policies and Procedures” was previously dedicated to customer service, but now the first section refers only to “Public Services.”¹⁷⁷ The U.S. Citizenship and Immigration Service previously stated that its purposes were to: (1) achieve excellent customer service each time the U.S. Citizenship and Immigration Service interacts with its customers; (2) ensure the delivery of accurate, useful, and timely information to U.S. Citizenship and Immigration Service customers; (3) identify issues and provide solutions to enhance consistency and to increase customer confidence; and (4) provide U.S. Citizenship and Immigration Service employees and contractors with clear and concise customer service guidance and standards.¹⁷⁸ Now, the purpose

¹⁷² 5 U.S.C. § 706(1) (“the reviewing court shall (1) compel agency action unlawfully withheld or unreasonably delayed”).

¹⁷³ *Telecomm. Research & Action Center (TRAC) v. FCC*, 750 F.2d 70, 80 (D.C. Cir. 1984).

¹⁷⁴ 8 U.S.C. § 1571.

¹⁷⁵ Gonzales, Richard. “America No longer A ‘Nation Of Immigrants,’ USCIS Says,” *NPR*, Feb. 22, 2018, <https://www.npr.org/sections/thetwo-way/2018/02/22/588097749/america-no-longer-a-nation-of-immigrants-uscis-says>.

¹⁷⁶ USCIS, “Policy Alert, Subject: USCIS Public Services,” May 10, 2019, <https://www.uscis.gov/sites/default/files/policymanual/updates/20190510-PublicServices.pdf>.

¹⁷⁷ USCIS, *USCIS Policy Manual, Vol. 1, Part A – Customer Service*, Dec. 12, 2018; USCIS, *USCIS Policy Manual, Vol. 1, Part A – Public Services*, May 10, 2019, <https://www.uscis.gov/policy-manual/volume-1-part-a>.

¹⁷⁸ USCIS, *USCIS Policy Manual, Vol. 1, Part A – Customer Service*, Dec. 12, 2018; USCIS, *USCIS Policy Manual, Vol. 1, Part A – Public Services*, May 10, 2019, <https://www.uscis.gov/policy-manual/volume-1-part-a>; see also USCIS, “Policy Alert, Subject: Customer Service,” August 26, 2014,

of the agency is listed as: (1) administering lawful immigration; (2) ensuring its employees have the knowledge and tools needed to administer the lawful immigration system with professionalism; and (3) providing accessible, reliable, and accurate guidance and information about its public services.¹⁷⁹ This change is not only semantic. It reflects a broad shift in agency priorities away from serving the interests of fee-paying applicants that has programmatic implications.

Beyond the efficacy of agency operations at the U.S. Citizenship and Immigration Service, the shift away from a customer-service mindset regarding naturalizing immigrants permits institutional neglect, at best, and fosters an unwelcoming climate at worst. Studies show that the “context of reception” matters critically to interest in naturalizing and capacity for successfully completing the process.¹⁸⁰ A lack of institutional support or unwelcoming climate can lessen interest in naturalizing and pose barriers to naturalizing.¹⁸¹ Such barriers range from difficulty learning English to mistrust of the agency. Members of Congress recently sent a letter to the U.S. Citizenship and Immigration Service Ombudsman inquiring into a potential abrogation of duties, citing her failure to perform primary functions required under the Homeland Security Act such as to assist individuals in resolving problems with the U.S. Citizenship and Immigration Service, to identify areas in which individuals and employers have problems in dealing with the U.S. Citizenship and Immigration Service, and to propose changes in the administrative practices of the U.S. Citizenship and Immigration Service to mitigate such problems.¹⁸² A perceived lack of institutional support and an unwelcoming climate can manifest itself in other ways as well, such as defensive citizenship wherein immigrants naturalize not for traditional reasons, but rather for reasons of self-protection from an increasingly enforcement-based climate.¹⁸³

iii. Immigrants in the Backlog have Insufficient Avenues of Legal Recourse

Other major shifts in agency policy reflect a concerning trend towards becoming less transparent. “InfoPass,” the in-person interview system by which attorneys or applicants could speak to a U.S. Citizenship and Immigration Service officer to discuss their case status, or to receive information about a particular adjudication, is being phased out in favor of a computerized system through the “information modernization process.”¹⁸⁴ The Colorado chapter of the American Immigration Lawyers Association no longer has a dedicated liaison with the agency, leaving the only direct

<https://www.uscis.gov/sites/default/files/policymanual/updates/20140826-CustomerService.pdf> (issuing policy guidance on its standards in customer service).

¹⁷⁹ USCIS, *USCIS Policy Manual, Vol.1, Part A, Chapter 1 – Purpose and Background*, May 10, 2019, <https://www.uscis.gov/policy-manual/volume-1-part-a-chapter-1>.

¹⁸⁰ See, e.g., Alejandro Portes & Jozsef Borocz, “Contemporary Immigration: Theoretical Perspectives on its Determinants and Modes of Incorporation,” 23 *Intl. Migr. Rev.* 606, 606 (1989); Thai V. Le et al, “Paths to Citizenship: Using Data to Understand and Promote Naturalization,” Center for the Study of Immigrant Integration, January 2019, https://dornsife.usc.edu/assets/sites/731/docs/PathsToCitizenship_Full_Report_CSII.pdf; Uyen H. Hawes, “What Can be Done to Increase the Number of Naturalized Citizens in the City of Denver,” CU Denver School of Public Affairs, Fall 2015, unpublished paper recommendation #4.

¹⁸¹ Torres Testimony, *Briefing Transcript*, pp. 149.

¹⁸² Elijah Cummings, U.S. Representative, to Julie Kirchner, Citizenship and Immigration Services Ombudsman, Feb. 6, 2019, <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2019-02-06.EEC%20to%20Kirchner%20re.%20CIS%20Ombudsman.pdf> (hereafter cited as Letter to Ombudsman).

¹⁸³ Torres Testimony, *Briefing Transcript*, p. 158.

¹⁸⁴ Downer Testimony, *Briefing Transcript*, p. 141.

communication with the agency the normal stakeholder meetings, which do not allow for the same level of communication that the liaison position allowed.¹⁸⁵ Panelists testified to a lack of responses to Freedom of Information Act requests, and the Department of Homeland Security reports both record numbers of Freedom of Information Act requests in 2017 and a corresponding spike in litigation and appeals surrounding these requests.¹⁸⁶

As will be further discussed in the remedies section, individuals who are in the process of naturalizing and are caught in the backlog have insufficient remedies available to them. In the course of pursuing naturalization, there is often a lack of transparency about how the application is progressing. There are also insufficient opportunities to communicate with the agency about the application and insufficient avenues to rectify problems when an application is hitting roadblocks.¹⁸⁷ While inquiries may be made after there has been an interview, and statute specifies appropriate time periods post-interview for processing and allow lawsuits to compel adjudication in instances of delay, in the time after submission of an application and prior to an interview there is no such mandate for relief.¹⁸⁸ Once an application has been submitted and biometrics have been taken there are no statutory or regulatory requirements determining when an interview must be scheduled.¹⁸⁹ Individuals may then be caught in a legal limbo where the only option available to them is expensive federal litigation compelling the agency to schedule an interview.¹⁹⁰

Legally, an individual naturalization applicant can file a mandamus action in federal court to compel the U.S. Citizenship and Immigration Service to adjudicate his/her application.¹⁹¹ However, in practice, attorneys are finding this form of relief too resource intensive to be a practical option for their clients.¹⁹² Additionally, many applicants have concerns, real or imagined, that legal claims against the U.S. Citizenship and Immigration Service could result in retaliation by the agency.¹⁹³ In addition, applicants cannot obtain judicial review of a negative adjudication unless they complete the U.S. Citizenship and Immigration Service hearing process first.¹⁹⁴ Costs to the applicant and concerns related to suing the government create obstacles which make legal remedies for those in the backlog insufficient.

There is also weak Congressional oversight and political accountability for naturalization delays. The structure of the U.S. Citizenship and Immigration Service, which is largely dependent on user fees, means that agency planning and performance is not annually reviewed as part of the appropriations process.¹⁹⁵ Also, the inability of immigrants to vote limits the effectiveness of appealing to Congressmen about unsatisfactory experiences if those representatives do not see

¹⁸⁵ Ibid., 142.

¹⁸⁶ Downer Testimony, *Briefing Transcript*, p. 147; DHS, *2017 Freedom of Information Act Report to the Attorney General of the United States and the Director of the Office of Government Information Services*, February 2018, <https://www.dhs.gov/sites/default/files/publications/FY%202017%20DHS%20FOIA%20Annual%20Report.pdf>.

¹⁸⁷ Kain-Rios Testimony, *Briefing Transcript*, p. 93.

¹⁸⁸ Ibid., 85.

¹⁸⁹ Ibid.

¹⁹⁰ Downer Testimony, *Briefing Transcript*, p. 144.

¹⁹¹ 8 U.S.C. § 1447(b).

¹⁹² Kain-Rios Testimony, *Briefing Transcript*, p. 131.

¹⁹³ Downer Testimony, *Briefing Transcript*, p. 144.

¹⁹⁴ USCIS, *Chapter 6 – USCIS Hearing and Judicial Review*, Policy Manual, May 10, 2019, <https://www.uscis.gov/policy-manual/volume-12-part-b-chapter-6>.

¹⁹⁵ "Budget, Planning & Performance," USCIS, Mar. 22, 2019, <https://www.uscis.gov/about-us/budget-planning-performance>.

nonvoters as their constituents. Immigrants caught in the naturalization backlog cannot fix their own situations because they have insufficient avenues for legal recourse.

e. Causes of the Naturalization Backlog

The Committee recognizes that the causes of the national and Colorado backlog are complex and likely multi-factored. For purposes of the briefing, the Committee proposed the following hypothesized explanations for the backlog: (1) policies and practices increasing scrutiny of N-400 applications, (2) insufficient response to fluctuations in receipts, (3) inefficient agency operations, and (4) inadequate resources and funding allocation. Findings are made about each of these hypothesized causes, to the extent possible with existing information.

i. Policies and Practices Increasing Scrutiny of N-400 Applications

Both substantive and procedural policy changes may have contributed to increases in processing times. Panel testimony from Kristi Goldinger and a U.S. Citizenship and Immigration Service headquarters letter to Congress lists several agency policies contributing to the backlog.¹⁹⁶ The use of intensified screening as required by Executive Order 13,768,¹⁹⁷ has lengthened processing times for some cases.¹⁹⁸ The U.S. Citizenship and Immigration Service's new in-person interview requirement for relatives of asylees and refugees and individuals seeking employment-based green cards is reducing completions per hour and contributing to the backlog.¹⁹⁹ Reassignment of officers, or initial assignment of new hires, to fraud detection or enforcement-minded operations allocates resources in a way that negatively impacts the completion rate.²⁰⁰ Panelists noted that fraud detection is a legitimate part of the adjudication process, but a lack of transparency into relative resource allocation raises questions about whether the U.S. Citizenship and Immigration Service is operating consistent with its statutory mandate.²⁰¹ In 2003, when the Department of Homeland Security was created, Congress purposefully separated the enforcement functions and the service functions of the dissolved the Immigration and Naturalization Service in response to concerns that the enforcement functions negatively impacted the agency's ability to provide services.²⁰² Specifically, the U.S. Citizenship and Immigration Service originally focused on adjudication of immigration benefits and customer service, while U.S. Immigration and Customs Enforcement ("ICE") and U.S. Customs and Border Protection System ("CBP") were supposed to serve as the agencies in charge of border and interior enforcement.²⁰³

¹⁹⁶ USCIS, "USCIS Response to Rep. Garcia's February 12, 2019 Letter," Apr. 25, 2019, p. 2, <https://www.aila.org/File/DownloadEmbeddedFile/79990> (hereafter cited as USCIS Response Letter); Goldinger Testimony, *Briefing Transcript*, p. 166.

¹⁹⁷ Exec. Order No. 13,768, 82 Fed. Reg. 8,799 (Jan. 30, 2017).

¹⁹⁸ USCIS Response Letter, p. 2.

¹⁹⁹ *Ibid.*

²⁰⁰ Kain-Rios Testimony, *Briefing Transcript*, p. 97.

²⁰¹ Goldinger Testimony, *Briefing Transcript*, pp. 178-80; Downer Testimony, *Briefing Transcript*, pp. 179-80; Kain-Rios Testimony, *Briefing Transcript*, p. 95.

²⁰² 6 U.S.C. § 251 (Immigration Enforcement Functions transferred to Under Secretary for Border and Transportation Security); 6 U.S.C. § 271 (Establishment of the Bureau of Citizenship and Immigration Services).

²⁰³ American Immigration Lawyers Association, "Deconstructing the Invisible Wall," March 19, 2019, p. 20. <file:///C:/Users/pmclaughlin/Downloads/18031933.pdf>.

Although the statutory mandate of the U.S. Citizenship and Immigration Service did not change, on February 22, 2018, the official U.S. Citizenship and Immigration Service mission statement removed references to customer service and added greater emphasis on the protection of Americans and securing the homeland.²⁰⁴ In accordance with these mission changes, there has been an increased level of scrutiny and extensive review of each application. A concrete manifestation of the changed presumption is the rescission of a 2004 “Deference Policy,” which has led to an increase in Requests for Evidence and an overall increase in the volume of application submissions.²⁰⁵ Before the policy rescission, U.S. Citizenship and Immigration Service officers were permitted to give weight to applicant’s previous approvals by the government for the same position.²⁰⁶ A Request for Evidence is issued by the U.S. Citizenship and Immigration Service to petitioners when there is missing or additional evidence needed for their application.²⁰⁷ Now, the new policy states that U.S. Citizenship and Immigration Service officers should not feel constrained in issuing Requests for Evidence, therefore, extending the process and waiting times for many applications, including the N-400 naturalization application.²⁰⁸ While the U.S. Citizenship and Immigration Service has the authority to issue Requests for Evidence and the burden of proof is on the applicant, some immigration practitioners believe the lack of deference to prior agency decisions amounts to “double screening” and that this form of intensified vetting is a significant cause in delays for applicants.²⁰⁹

Indeed, in a survey of immigration lawyers in Colorado by the American Immigration Lawyers Association, 17 of the 22 attorneys who submitted responses noted increases in the number of Requests for Evidence that their clients had been receiving in the last two years.²¹⁰ The most common reasons that were given for these new Requests for Evidence related to initial eligibility for the applicant’s underlying legal permanent resident status and more strict reviews of criminal conduct as it relates to the “good moral character” requirement.²¹¹ Some reported Requests for Evidence being issued for information that did not or should not have a bearing on eligibility, including marriage certificates and information about criminal conduct that fell outside of the

²⁰⁴ USCIS, “Policy Alert, Subject: USCIS Public Services,” May 10, 2019, <https://www.uscis.gov/sites/default/files/policymanual/updates/20190510-PublicServices.pdf>; see also USCIS, *USCIS Policy Manual, Vol. I, Part A – Public Services*, May 10, 2019, <https://www.uscis.gov/policy-manual/volume-1-part-a> (“USCIS administers the nation’s lawful immigration system, safeguarding its integrity and promise by efficiently and fairly adjudicating requests for immigration benefits while protecting Americans, securing the homeland, and honoring our values.”).

²⁰⁵ American Immigration Lawyers Association, “Deconstructing,” p. 17.

²⁰⁶ Goldinger Testimony, *Briefing Transcript*, p.166 (“[Y]es, that was a definite policy change that all applicants for permanent residence through employment be interviewed.”); American Immigration Lawyers Association, “Deconstructing,” p. 17-18.

²⁰⁷ “Requesting Additional Information,” USCIS, September 11, 2018, <https://www.uscis.gov/ilink/docView/AFM/HTML/AFM/0-0-0-1/0-0-0-1067/0-0-0-1318.html>.

²⁰⁸ USCIS, *Policy Memorandum: Rescission of Guidance Regarding Deference to Prior Determinations of Eligibility in the Adjudication of Petitions for Extension of Nonimmigrant Status*, Oct. 23, 2017, <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2017/2017-10-23Rescission-of-Deference-PM6020151.pdf>.

²⁰⁹ Melaku Testimony, *Briefing Transcript*, p. 21.

²¹⁰ American Immigration Lawyers Association, “N-400 Delays at the Denver Field Office,” Feb. 13, 2019, <https://www.surveymonkey.com/results/SM-7SC9QCKSV/> (last accessed May 31, 2019).

²¹¹ *Ibid.*

statutory five-year period.²¹² Practitioners are noting that that waiver requests for the English language requirement are more stringently reviewed.²¹³ In particular, N-648 Disability waivers for the English and civics requirements are being more stringently reviewed, an issue that has come under judicial scrutiny.²¹⁴ These higher standards have a discouraging effect on applicants pursuing naturalization and likely contribute to an increase in processing times once an application has been filed. Some attorneys report that cases that are relatively more difficult are not being adjudicated, leading some applicants to have processing times far exceeding the posted 11-17 months.²¹⁵

As another example of intensified vetting for difficult cases, the agency has allocated increased resources within the U.S. Citizenship and Immigration Service from adjudications to Fraud Detection and National Security and to the Controlled Application Review and Resolution Program.²¹⁶ Fraud Detection aims to strengthen the U.S. Citizenship and Immigration Service's efforts to ensure immigration benefits are not granted to individuals who seek to defraud our immigration system.²¹⁷ It has been part of the adjudication process since 2004, but it appears to be assuming heightened and more widespread importance throughout the agency.²¹⁸ Since fiscal year 2016, the Denver Field Office has increased the number of Fraud Detection and National Security officers to five.²¹⁹ The Controlled Application Review and Resolution Program creates a separate pipeline of adjudications for applicants who have been flagged as potential national security risks.²²⁰ This process involves extensive background checks, redundant layers of adjudication,

²¹² Ibid.

²¹³ Ibid.

²¹⁴ INS was sued in 1998 over arbitrary and idiosyncratically capricious adjudications of N-648 disability waivers. See *Campos v I.N.S.*, 32 F. Supp. 2d 1337 (S.D. Fla. 1998). The case was voluntarily settled by INS issuing a policy memorandum stating that “an individual with a disease or disability that is related to, associated with, or caused by old age (e.g. Alzheimer's, Parkinson's disease, senile dementia, etc.) can qualify for a disability exception.” Further, “depression” would be treated like other diseases or disabilities. No. 98–2231, 1999 WL 1044233 (S.D. Fla., Aug. 6, 1999). A more recent case challenging policies on disability waivers was dismissed because plaintiffs had failed to exhaust administrative remedies. *De Dandrade v. United States Department of Homeland Security*, 267 F.Supp.3d 174 (S.D.N.Y 2019). The case had been brought by Wilmer Hale on behalf of Project Citizenship. “Federal Lawsuit on Behalf of Permanent Residents Denied the Opportunity to become US Citizens Because of Disabilities,” Dec. 28, 2017, <https://www.wilmerhale.com/en/insights/news/2017-12-28-federal-lawsuit-on-behalf-of-permanent-residents-denied-the-opportunity-to-become-u-s-citizens-because-of-disabilities>.

²¹⁵ American Immigration Lawyers Association, “N-400 Delays at the Denver Field Office.”

²¹⁶ DHS, Annual Report 2018: Citizenship and Immigration Services Ombudsman, June 28, 2018, p. 10 (hereafter DHS, Annual Report 2018)

<https://www.dhs.gov/sites/default/files/publications/DHS%20Annual%20Report%202018.pdf>.

²¹⁷ DHS, *Privacy Impact for the Fraud Detection and National Security Directorate*, December 16, 2014, p. 1, https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis-fdns-november2016_0.pdf.

²¹⁸ Ibid.; Downer Testimony, *Briefing Transcript*, p. 179.; Goldinger Testimony, *Briefing Transcript*, p. 180.

²¹⁹ Goldinger Testimony, *Briefing Transcript*, p. 180.

²²⁰ Jonathan Scharfen, USCIS Deputy Director, Memorandum to Field Offices, *Policy for Vetting and Adjudicating Cases with National Security Concerns*, April 11, 2008 (defining national security criteria and noting, “the facts of the case do not need to satisfy the legal standard used in determining admissibility or removability” under those provisions of the INA to give rise to a “national security concern.”)

https://www.uscis.gov/sites/default/files/USCIS/About%20Us/Electronic%20Reading%20Room/Policies_and_Manuals/CARRP_Guidance.pdf. The memo explains that unique rules and procedures apply once a file is designated a Controlled Application Review and Resolution Program-defined national security concern, leading to substantially delayed interviews, multiple interviews, cancelled interviews; overbroad RFEs and NOIDs; interview requests seeking information beyond the requirements for the benefit sought; excessive or abnormal FDNS investigations;

and lengthy delays.²²¹ Any approval requires the concurrence of a supervisor and the approval of a senior official and, according to immigration attorneys, many cases are never resolved and often denied.²²² The U.S. Citizenship and Immigration Service’s institutional shift toward prioritizing enforcement functions over their original purpose of service does not per se violate the statute,²²³ but it contributes to longer processing times and may raise budgetary questions if the resources for the more vigorous investigations are funded primarily by user fees.

Despite these acknowledged and alleged changes to U.S. Citizenship and Immigration Service policy, N-400 approval rates have not been impacted. Panelist Kristi Goldinger stated that the approval rate has remained at either 84 or 85 percent for the past three fiscal years.²²⁴ This consistency suggests that the additional vetting and fraud detection functions implemented by the U.S. Citizenship and Immigration Service could be causing unnecessary delays.

Additionally, policies heightening immigration enforcement can further account for increases in the number of pending applications. A Presidential Memorandum establishing a new National Vetting Center²²⁵ and a series of measures undertaken by the U.S. Citizenship and Immigration Service to implement President Trump’s “Buy American Hire America” executive order may further increase the backlog in employer-based naturalization applications.²²⁶ According to Department of Homeland Security, the total increase of 143 positions, 136 full-time equivalents,

and withdrawn decisions. USCIS might refuse to move forward while other agencies (FBI Joint Terrorism Task Force and Homeland Security Investigations) investigate under a theory of “deconfliction.” Applicants are frequently not informed that their case is subject to CARRP and USCIS has revealed only limited information about the program in response to FOIA requests.

[An AILA Practice Pointer from 2016 provides an example of a CARRP letter:](#) “Based on your inquiry, we have reviewed the status of your case and found that it remains under active examination. This office acknowledges the completion of your case being outside normal processing times and realizes the inconvenience it may cause. The delay has been necessary in order to ensure the thorough processing of your case and provide you with the best possible service. USCIS will notify you as soon as possible if any further information is needed from you or when a decision has been made.”

²²¹ Ibid.

²²² Ibid.

²²³ USCIS was created by 6 U.S.C. § 271 (“Establishment of Bureau of Citizenship and Immigration Services”). The Bureau’s pertinent statutory duties are 1. to create pilot programs to reduce the backlog in processing immigration benefits and prevent the backlog from recurring (a)(5), and 2. “Adjudications of naturalization petitions.” (b)(2). The statute gives discretion to USCIS about allocation of personnel among various adjudicatory duties. *See* 8 U.S.C. §§ 1103(a)(4), 1357(b) (allowing the DHS secretary to delegate enforcement authorities and designate employees to take and consider evidence for the purpose of enforcement); *see also* 8 C.F.R. § 287.5(a)(2) (authorizing immigration officers “to take and consider evidence,” if it relates to an alien’s privilege to enter, reenter, pass through or reside in the United States, as well as any other matter which is “material or relevant” to the enforcement and administration of the INA); *see also* U.S. Dep’t of Homeland Security, *Delegation Number 0150.1*, June 5, 2003, p. 2, <https://www.hsdl.org/?abstract&did=234775> (delegating authority to USCIS to investigate civil and criminal violations of immigration laws, including, but not limited to, alleged fraud with respect to applications or determinations within USCIS and to make recommendations for prosecutions, or other appropriate action when deemed advisable).

²²⁴ Goldinger Testimony, *Briefing Transcript*, p. 165.

²²⁵ American Immigration Lawyers Association, “*Deconstructing*,” p. 8.

²²⁶ Francis Cissna, former Director of U.S. Citizenship and Immigration Services, letter to Charles E. Grassley, U.S. Senator, April 4, 2018, <https://www.judiciary.senate.gov/imo/media/doc/2018-04-04%20USCIS%20to%20CEG%20-%20Buy%20America,%20Hire%20America%20update.pdf>.

and more than \$43 million for changes in operations are directly attributable to the Executive Orders on border security and immigration enforcement.²²⁷ These policies coupled with underlying factors negatively impact processing times for naturalization applications.

Within the testimony presented and evidence submitted, panelists contested whether the backlog is intentional or politically motivated.²²⁸ We found no direct evidence of intent or motive presented; further information of intent and motive might be obtained pursuant to the National Partnership for New Americans' Freedom of Information Act requests and lawsuits for internal administration communications.²²⁹ Panelists spoke of "contextual evidence" of intentionality such as lack of effort to prepare for a rise in N-400 applications leading up to the 2016 presidential election and a lack of emphasis on customer service.²³⁰ When asked to what extent some of the policy changes regarding longer and more numerous interviews for adjudicators impacted the backlog, Kristi Goldinger denied the implementation of "any substantial changes to [the agency's] policies in naturalization."²³¹ Ms. Goldinger did cite a renewed adherence to established policy of asking all of the questions on the N-400 application during the interview.²³² However, when prompted, Ms. Goldinger also acknowledged a policy change requiring all employment-based applicant and refugees to go through the interview process.²³³ Regardless of the intent, many of the policy changes that demand higher scrutiny for naturalization applicants contribute to the backlog.

ii. Insufficient Response to Fluctuations in Receipts

The substantial increase in application receipts prior to presidential elections contributes to the backlog. Panelists suggested that this cyclical increase in applications is driven by the desire of applicants to participate in the upcoming presidential election.²³⁴ Historically, this surge in pre-election years has been followed by a decline in receipts.²³⁵ While this trend did not hold true following the 2016 election for the U.S. Citizenship and Immigration Service as a whole, there was some debate among the panelists whether election receipts returned to normal levels in Colorado.²³⁶ Despite knowledge of this trend within the U.S. Citizenship and Immigration

²²⁷ USCIS, *United States Citizenship and Immigration Services Budget Overview: Fiscal Year 2018 Congressional Justification*, <https://www.dhs.gov/sites/default/files/publications/USCIS%20FY18%20Budget.pdf> (last accessed May 31, 2019).

²²⁸ Iñiguez-López Testimony, *Briefing Transcript*, p. 10 (stating "that the backlogs indicate malevolence [or] incompetence by USCIS leadership designed to disenfranchise aspiring U.S. citizens."); Weiner Testimony, *Briefing Transcript*, p. 59 (stating, "I don't think there are as many smoking guns as we would like, but I think more are coming out with regards to litigation every day."); Goldinger Testimony, *Briefing Transcript*, p. 155 (stating "[Y]es, we do have a backlog. Is that backlog politically motivated? No.").

²²⁹ Iñiguez-López Testimony, *Briefing Transcript*, pp. 17, 42. The Freedom of Information Act lawsuit is *Coal. of Humane Immigrant Rights v. United States*, No. 2:18-CV-08034, filed in the C.D. Cal. (As of the time this report was written, there has been no ruling on the merits of the case).

²³⁰ *Ibid.*, 41-42, 58; Melaku Testimony, *Briefing Transcript*, pp. 42-43.

²³¹ Goldinger Testimony, *Briefing Transcript*, pp. 165-166.

²³² *Ibid.*, 165.

²³³ *Ibid.*, 166.

²³⁴ Eastman Testimony, *Briefing Transcript*, p. 127; Melaku Testimony, *Briefing Transcript*, p. 42.

²³⁵ Goldinger Testimony, *Briefing Transcript*, p. 135.

²³⁶ *Ibid.*; Preuhs Testimony, *Briefing Transcript*, p. 128; *see also* Goldinger Statement (stating that USCIS has not performed specific analysis of the election spike issue).

Service, agency projections have consistently underprojected the number of applicants in the past several years, leading to inadequate staffing.²³⁷ Kristi Goldinger acknowledged this projection error, and as of the hearing, the Denver Field Office was within 5 percent of its projections for fiscal year 2019.²³⁸ Accurately predicting and responding to projected increases in receipts is important because associated staffing deficiencies can contribute to the naturalization backlog.

iii. Inefficient Agency Operations

While the backlog in naturalization applications has long existed, the Committee finds that the U.S. Citizenship and Immigration Service has taken insufficient steps to resolve the backlog, whether measured over the last fifteen years or since the start of the Trump administration. As one of the reports submitted by panelist Dr. Robert Preuhs notes, from the Obama administration in 2014 to the Trump administration in 2018 there has been an average increase of 3.1 percent in submitted applications in Colorado.²³⁹ At the same time, there has been a staggering 83.8 percent increase in the number of pending applications across comparable time periods in Colorado.²⁴⁰ Dr. Preuhs attributes this increase in part to a worsening of “administrative effort,” or the pending completion rate as compared to overall caseloads.²⁴¹ Whereas an ideal completion rate of 1.0 indicates that all applications in the previous quarter, both newly received and pending, were completed in a given quarter, during the Obama administration, the average completion rate was 0.31, with a decline in the Trump administration to an average effort completion rate of 0.19.²⁴² This decline in the completion rate began in the Obama administration, which started a steady decline from 0.40 in the second quarter of fiscal year 2016, and which ended in a low of 0.14 at the beginning of the Trump administration in the second quarter of fiscal year 2017, a number that was returned to in the first quarter of fiscal year 2018.²⁴³ There have been some slight improvements in the completion rate during the Trump administration, and indeed recently the numbers show an increasing completion rate over the previous fiscal year from the low of 0.14 to 0.26, as of the most recent published data from the fourth quarter of fiscal year 2018.²⁴⁴ This recent improvement may be attributable to changes in the flow of cases and “increased corporatization” resulting from decentralization of operations,²⁴⁵ and “information modernization” resulting from use of new technologies that may be more efficient than a single adjudicator.²⁴⁶ Still inefficient agency operations contribute to the accumulation of the backlog, and more data is required to determine which policies result in an improved “administrative effort” ratio and at what cost.

²³⁷ Goldinger Testimony, *Briefing Transcript*, p. 169.

²³⁸ *Ibid.*, 170.

²³⁹ Preuhs, “*Political Participation*,” at 8.

²⁴⁰ *Ibid.*

²⁴¹ *Ibid.*, 9-10.

²⁴² *Ibid.*, 10.

²⁴³ *Ibid.*

²⁴⁴ *Ibid.*

²⁴⁵ See Goldinger Statement (stating that corporatization utilizes a segmented approach to the adjudication process that increases interview capacity for in Colorado).

²⁴⁶ Goldinger Testimony, *Briefing Transcript*, p. 166.

Currently, the U.S. Citizenship and Immigration Service is working to eliminate the backlog by adding staff and focusing on efficiency.²⁴⁷ The plan to increase efficiency includes: (1) transitioning more non-adjudicative work out of the hands of officers empowered to interview applicants, (2) centralizing delivery of information services through the U.S. Citizenship and Immigration Service Contact Center, (3) reintroducing performance metrics, (4) redefining the publicly stated processing time goals, and (5) leveraging electronic processing and automation.²⁴⁸ Streamlining adjudicating officers' responsibilities and centralizing information requests through the U.S. Citizenship and Immigration Service Contact Center will likely help reduce the backlog, but these changes may come at the expense of the transparency formerly provided by InfoPass appointments. The reintroduction of performance metrics may contribute to a backlog reduction if agency leadership implements them well. Redefining the processing time goals could substantially impact the existence of a backlog but changing agency definitions will not mitigate the civil rights concerns of those individuals still forced to endure processing times greater than six months. Leveraging electronic processing and automation will likely improve agency efficiency eventually, but adoption of new technology often creates delays.

Changes in practices meant to increase efficiencies may be having collateral consequences that negatively impact the backlog. Such consequences include the elimination of long-established channels of communication between attorneys and the agency through American Immigration Lawyers Association liaison meetings and closure of in-person channels of communication between applicants and the agency through an InfoPass appointment.²⁴⁹ According to Kristi Goldinger, the American Immigration Lawyers Association liaison position was terminated to provide the same access to the agency for represented and unrepresented applicants and to let the agency stay focused on adjudicatory work over other functions.²⁵⁰ InfoPass appointments were eliminated as part of an agency-wide policy shift toward centralization of those requests.²⁵¹ Nonetheless, Colorado immigration attorney panelists lamented the loss of communication and transparency that those services provided.²⁵² Without data on how changed procedures such as the “information modernization” program are affecting processing times and processing accuracy, the Committee cannot make a finding regarding the precise effect on the backlog except to note that both U.S. Citizenship and Immigration Service and immigration attorneys feel it has an impact.

iv. Inadequate Resources and Funding Allocations

The U.S. Citizenship and Immigration Service’s inadequate level of resources, staffing decisions, and coordination problems may contribute to the current backlog. The agency’s funding primarily

²⁴⁷ USCIS Response Letter, p. 8; *see also* Goldinger Statement (stating that the Denver field office is currently on track to meet a six-month processing time goal by the end of September 2019 and to further reduce that to five months within the first quarter of FY 2020).

²⁴⁸ *Ibid.*

²⁴⁹ Downer Testimony, *Briefing Transcript*, pp. 141-42; USCIS, “USCIS to Expand Information Services Modernization Program to Key Locations,” Oct. 30, 2018, <https://www.uscis.gov/news/news-releases/uscis-expand-information-services-modernization-program-key-locations> (“The Information Services Modernization Program ends self-scheduling of InfoPass appointments”).

²⁵⁰ Goldinger Testimony, *Briefing Transcript*, pp. 181-82.

²⁵¹ USCIS Response Letter, p. 8.

²⁵² Kain-Rios Testimony, *Briefing Transcript*, p. 96; Downer Testimony, *Briefing Transcript*, pp. 141-42.

comes from user fees held in the Immigration Examinations Fee Account, and the budget is supplemented by Congress' annual appropriations process.²⁵³ In fiscal year 2018, the U.S. Citizenship and Immigration Service's requested a budget with \$4,310,526,000 from user fees and an appropriation of \$131,513,000 from the Department of Homeland Security.²⁵⁴ This represents an overall increase in funding from user fee increases in 2016, and authorization for additional staffing, yet the backlog persists.²⁵⁵ The U.S. Citizenship and Immigration Service has said that increased staffing is now sufficient, but the lag time between staff authorization, hiring new employees, and onboarding new employees does not translate into immediately increased productivity.²⁵⁶

The mismatch of increased funding and a persisting backlog suggests that a more substantial increase in governmental funding is not enough by itself. Allocations of funding within the agency could impact adjudication efficiency as well. Two allocations are of particular concern. Panelists pointed out that staff assignments within the U.S. Citizenship and Immigration Service to Fraud Detection and National Security positions have increased, as compared to general benefits adjudicators.²⁵⁷ Additional investigations focusing on criminal enterprises that attempt document and benefit fraud to compromise the immigration system and investigations into mistakes requiring denaturalization to rectify, Operation Janus and Operation Second Look, also divert from basic adjudication.²⁵⁸ Additionally, the White House requested transfer of funds from the U.S. Citizenship and Immigration Service to Immigration and Customs Enforcement "to support immigration investigation and enforcement."²⁵⁹ While this request was not approved or implemented by Congress, it represents a lack of commitment to using available funding to maximum effect on the benefit adjudications front. Additional funding for the U.S. Citizenship and Immigration Service would help the agency adequately staff adjudication positions, but a multifaceted solution is required to address a naturalization backlog with many causes.

IV. Recommendations

The U.S. Citizenship and Immigration Service backlog can potentially be reduced in a number of ways. Individuals affected by the backlog need avenues to pursue administrative and judicial remedies. Congress should increase funding for the agency through regular appropriations, while maintaining oversight to ensure that resources are used effectively. Agency leadership should

²⁵³ DHS, USCIS, "Budget, Planning & Performance," Mar. 22, 2019, <https://www.uscis.gov/about-us/budget-planning-performance> (last accessed July 21, 2019).

²⁵⁴ DHS, USCIS, *United States Citizenship and Immigration Services Budget Overview: Fiscal Year 2018 Congressional Justification*, FY 2018, p. 11. <https://www.dhs.gov/sites/default/files/publications/USCIS%20FY18%20Budget.pdf>.

²⁵⁵ "Our Fees," DHS, Apr. 20, 2018, <https://www.uscis.gov/forms/our-fees> (last accessed July 21, 2019). (User fees for Form N-400 increased 8%, from \$595 to \$640 in 2016).

²⁵⁶ Goldinger Testimony, *Briefing Transcript*, p. 136-137.

²⁵⁷ Kain-Rios Testimony, *Briefing Transcript*, p. 97.

²⁵⁸ See generally Office of Inspector General, *Potentially Ineligible Individuals Have Been Granted U.S. Citizenship Because of Incomplete Fingerprint Records*, Sept. 8, 2016, <https://www.oig.dhs.gov/assets/Mgmt/2016/OIG-16-130-Sep16.pdf> (discussing Operation Janus); Matthew Hoppock, "Operation Janus and Operation Second Look: Denaturalization of Citizens With Removal Orders," Mar. 4, 2018, <https://www.hoppocklawfirm.com/operation-janus-operation-second-look-denaturalization-citizens-removal-orders/>.

²⁵⁹ DHS, *Budget-in-Brief: Fiscal Year 2019*, p. 71 <https://www.dhs.gov/sites/default/files/publications/DHS%20BIB%202019.pdf>.

develop agency processes that use technology and other adjudication procedures to increase effectiveness and provide greater accessibility for applicants. The U.S. Citizenship and Immigration Service should examine the efficacy of fraud detection programs and generally operate with greater transparency through publicly available performance metrics. Community engagement by State, local, and non-governmental organizations can also help reduce the backlog by ensuring that applicant's file complete applications and are well-prepared for the naturalization process.

a. Recommended Action for Affected Individuals

Individuals with naturalization applications pending in the backlog may be able to obtain relief through the judicial system. The Administrative Procedure Act directs agencies to conclude matters presented to them “within a reasonable time,”²⁶⁰ and stipulates that a reviewing court shall compel agency action unlawfully withheld or unreasonably delayed.²⁶¹ In order for the court to assess whether agency delay is “so egregious as to warrant mandamus” the court laid out a six-part standard:²⁶² (1) the time agencies take must be governed by a rule of reason; (2) where Congress has provided a timetable or other indication of the speed with which it expects the agency to proceed in the enabling statute, that statutory scheme may supply content for this rule of reason;²⁶³ (3) delays that might be reasonable in the sphere of economic regulation are less tolerable when human health and welfare are at stake; (4) the effect of expediting delayed action on agency activities of a higher or competing priority; (5) the nature and extent of the interests prejudiced by delay; (6) no requirement for impropriety in order to hold that agency action is unreasonably delayed.²⁶⁴ Individuals with applications that have been pending in the backlog for far past the recommended processing time of six months may merit *mandamus* relief, which would compel agency action.²⁶⁵

Mandamus relief allows the court to compel agency action on an individual application, but the process has several drawbacks. Filing federal lawsuits is very resource intensive.²⁶⁶ Even if the lawsuit enters federal district court, it is not uncommon for the Attorney General's office to intervene and facilitate the adjudication of the application prior to judicial resolution.²⁶⁷ Additionally, some applicants fear that their application would be denied in retaliation for the filing of a lawsuit.²⁶⁸ Despite the complex nature of litigation in federal court, affected individuals could obtain an adjudication of their petition based on an Administrative Procedure Act cause of action.

²⁶⁰ 5 U.S.C. § 555(b).

²⁶¹ 5 U.S.C. § 706(1).

²⁶² *Telecomm. Research & Action Center v. FCC*, 750 F.2d 70, 80 (D.C. Cir. 1984).

²⁶³ 8 U.S.C. § 1571(b) (states that “the processing of an immigration benefit application should be completed not later than 180 days after the initial filing of the application.”).

²⁶⁴ *Id.*

²⁶⁵ In the Tenth Circuit, when an agency fails to act by a “statutorily imposed absolute deadline,” the action has been “unlawfully withheld” and the court has no choice but to compel the agency to act. *Forrest Guardians v. Babbitt*, 174 F.3d 1178 (10th Cir. 1999).

²⁶⁶ Kain-Rios Testimony, *Briefing Transcript*, p. 131.

²⁶⁷ Downer Testimony, *Briefing Transcript*, p. 144.

²⁶⁸ *Ibid.*

Due to the lack of other remedies available to individuals caught in the backlog, U.S. Attorneys should increasingly be willing to either settle or adjudicate *mandamus* actions at an expedited speed. As individuals are increasingly turning to *mandamus* actions to compel the adjudication of their petitions, trainings for U.S. attorneys on the issue, as well as on how to expedite the process and mediate settlements will drastically cut the prohibitive costs of suing in federal court. Furthermore, by having additional knowledge of the issue and mediating settlements in *mandamus* actions, U.S. attorneys may be well-placed to serve as a conduit for the agency to private parties at a time when the agency itself is becoming less transparent.

Applicants caught in the backlog could also potentially obtain assistance through the Office of the U.S. Citizenship and Immigration Service Ombudsman. The U.S. Citizenship and Immigration Service Ombudsman is empowered to assist individuals in resolving problems with immigration benefit applications and propose changes to administrative practices to mitigate recurring problems.²⁶⁹ This avenue of recourse has been popular for those affected by processing time delays and has accounted for the majority of the Ombudsman's case work in FY 2017.²⁷⁰ Where a case is pending for six months or more past the U.S. Citizenship and Immigration Service's processing times, the Ombudsman will identify the case and follow up with the U.S. Citizenship and Immigration Service headquarters regularly.²⁷¹ Although the Ombudsman cannot implement the large-scale changes required to eliminate the backlog, intervention by the office can help affected individuals receive adjudications.

Lastly, although applicants caught in the backlog do not yet have the right to vote, appeals to Congressional representatives may prove effective. Political pressure on Congress and other aspects of the government can drive the implementation of the recommendations discussed above. Affected individuals will need to take a holistic approach to advocate for an elimination of the backlog while protecting their individual rights through litigation.

b. Recommended Action for the Executive Branch.

The U.S. Citizenship and Immigration Service is in the position to make the most immediate changes that could impact the naturalization backlog. Assessments of applicants' eligibility for naturalization could be administered in ways that increase adjudication completion rates. Broader changes to U.S. Citizenship and Immigration Service operations could also reduce the naturalization backlog over the long term and help prevent future accumulation. Ultimately, U.S. Citizenship and Immigration Service is under executive branch authority, so changes initiated by White House, Department of Homeland Security, and U.S. Citizenship and Immigration Service agency leadership would be impactful.

i. Streamlining the Adjudications Process

As a starting point, U.S. Citizenship and Immigration Service officers should ensure that adjudications are consistent with statutory and regulatory guidelines, including those that benefit

²⁶⁹ 6 U.S.C. § 272.

²⁷⁰ DHS, Annual Report 2018, p. iv,

<https://www.dhs.gov/sites/default/files/publications/DHS%20Annual%20Report%202018.pdf>.

²⁷¹ *Ibid*, 6.

the applicant. Although most applicants are required to demonstrate English literacy, the majority of the naturalization interview may be conducted in the applicant's native language with the assistance of an interpreter if the applicant has satisfied the English literacy requirement, but the officer conducting the examination determines that an inaccurate or incomplete record of the examination would result if the examination on technical or complex issues were conducted in English.²⁷² Accommodations like this should be offered by the adjudicator if an interviewee has demonstrated the requisite level of English literacy, but seems to be struggling with the more legalistic questions present in the latter part of the N-400 application. An overall tone of facilitation can be struck by adjudicators while maintaining neutrality and representing the interests of the public.

The application process itself may be streamlined for certain individuals to simplify the application and adjudication. Doing so would reduce the strain on applicants to acquire documentation and would reduce the amount of evidence that adjudicators must process on an issue that is not likely to be a reason for denial.

Directives focusing on national security and fraud should be examined for efficiency and for necessity. Programs that divert resources from benefit adjudications to fraud detection should be carefully studied with results made publicly available. Agency leadership should place special focus on the statutory basis for new policies, the costs and benefits of policy changes, and ensure that addition and termination of programs is compliant with Administrative Procedure Act standards. The U.S. Citizenship and Immigration Service should carefully evaluate policy changes known to contribute to the backlog, such as increased vetting and additional interview requirements.²⁷³ The U.S. Citizenship and Immigration Service states that it does not yet have data on the impacts on processing times resulting from a new policy that removes the previously given deference to adjudications, but the impact should be assessed once data become available.²⁷⁴ Consistent with its statutory creation as a separate agency from the immigration enforcement apparatus, the U.S. Citizenship and Immigration Service should adhere to its unique function as adjudicators of immigration benefits²⁷⁵

²⁷² 8 U.S.C. 1423; 8 C.F.R. § 312.2(c)(ii); Kain-Rios, *Briefing Transcript*, p. 90.

²⁷³ USCIS Response Letter, p. 2.

²⁷⁴ *Ibid*; see also Goldinger Statement (stating that consistent approval and denial rates over the past three fiscal years rebut the allegation that more intensive review is occurring).

²⁷⁵ 6 U.S.C. § 271 (In 1980, an OMB budget examiner told a study team of the House Government Operations Committee that “some of the INS’s problems in handling resources result from a long-standing conflict between enforcement and service responsibilities” and complained that “the agency put too much emphasis on enforcement and too little on service.”); Milton Morris, *Immigration—The Beleaguered Bureaucracy* (Washington, DC: Brookings Inst. Pr.1985), p. 121. Congress created a commission to study the issue in Immigration Act of 1990, Pub. L. No. 101-649. The U.S. Commission on Immigration Reform released a final report in 1997 recommending a major structural overhaul of immigration because INS could not be both a benefits agency and an enforcement agency and perform both functions effectively. The Immigration Reform and Improvements Act of 1998, H.R. 3904, 105th Cong. (1998) (proposing division of INS responsibilities into an enforcement arm housed within the Department of Justice and a benefits agency housed within the State Department); Border Security and Enforcement Act of 1997, H.R. 2588, 105th Cong. (1997) (proposing removal of enforcement from the INS and placing it into a new sub agency of the Department of Justice);. The creation of the DHS in the Homeland Security Act of 2002, H.R. 5005, 107th Cong. (2002), 6 U.S.C. §101, DHS Pub. L. 107-296 (2002), retained the separation of immigration courts in the Department of Justice but kept both ICE and USCIS within DHS.

ii. Department of Homeland Security and U.S. Citizenship and Immigration Service Policy Changes Needed to Reduce the Naturalization Backlog

The Homeland Security Act of 2002, which created the U.S. Citizenship and Immigration Service, authorizes the U.S. Citizenship and Immigration Service Director to implement initiatives to eliminate backlogs in the processing of immigration benefit application.²⁷⁶ The statute recommends measures such as “increasing personnel, transferring personnel to focus on area with the largest potential for backlog, and streamlining paperwork.”²⁷⁷ Increased “corporatization” of the adjudication process may help streamline operations overall, but the U.S. Citizenship and Immigration Service should ensure that adjudicators are trained to transfer between positions when applications surge.

One important way to streamline operations and ensure proper staffing is through the use of accurate models to project application receipts. In both testimony at the hearing, and in a written letter to Congress, the U.S. Citizenship and Immigration Service identified inaccurate projections as a key factor behind increased backlogs.²⁷⁸ Models should be re-evaluated for accuracy given consistent under projecting. In order to prevent inaccurate projections that have hindered the U.S. Citizenship and Immigration Service in the past, models should be assessed and potentially redesigned. Contingency plans must be put in place in case models do not accurately project actual receipts. In addition, interagency reallocation of resources from over projected areas to under projected areas should be a greater priority, especially where evidence shows decreasing numbers of certain benefit applications in recent fiscal quarters. U.S. Citizenship and Immigration Service’s Staffing Allocation Model has been shown to be ineffective at dealing with backlogs where affordability and speed of hiring create staffing shortages. Upgrading and implementing agency technology should not be done at the expense of processing time and should balance efficiency with transparency. Agency leadership should request additional funding from Congress specifically designated for improving U.S. Citizenship and Immigration Service projections. Implementations of new technology should be done with care, as experience with the new case processing system has shown that poorly implemented technology increases processing times and costs to beneficiaries, and further reduces interactions between U.S. Citizenship and Immigration Service staff and immigrants, which impedes transparency and customer service.

The Department of Homeland Security Office of the Inspector General (“OIG”) and other agency watchdogs should initiate investigations into causes of the backlog. The Office of the Inspector General recently found that the U.S. Citizenship and Immigration Service ineffectively used its electronic records system.²⁷⁹ Other investigations by the Office of the Inspector General could reveal the extent to which certain agency policies contribute to the backlog. The Office of the Inspector General would then provide detailed recommendations on improving the logistics of U.S. Citizenship and Immigration Service naturalization operations. The U.S. Citizenship and Immigration Service annual reports can be used to present plans for the elimination of the backlog.

²⁷⁶ 6 U.S.C. § 271(a)(5).

²⁷⁷ *Id.*

²⁷⁸ Downer Testimony, *Briefing Transcript*, pp. 156-57; USCIS Response Letter, p. 1.

²⁷⁹ Office of Inspector General, *Data Quality Improvements Needed to Track Adjudicative Decisions*, May 14, 2019, p. 6, <https://www.oig.dhs.gov/sites/default/files/assets/2019-05/OIG-19-40-May19.pdf>.

As a benefit-conferring government agency, the U.S. Citizenship and Immigration Service should aim for more transparency, not less. Allowing easier access to information for applicants and their attorneys will allow for collaborative solutions to be found. Already a lack of data in many areas related to the backlog stymie efforts to identify potential causes and consequences. Performance metrics should be implemented and made publicly available for each U.S. Citizenship and Immigration Service office. To ensure adherence to statutory benchmarks for naturalization amid high levels of applications, agency metrics should be explained in greater detail and made easily available to immigrants tracking the process of their benefit applications. These benchmarks should be specific, clearly identifying the time an application takes from the time of submission of an application, to the time of a biometrics appointment, and then to the time of an initial interview. Explanations should accompany backlogs to ensure that the quality of adjudications does not suffer as individual adjudicators strive to meet metrics.

Other policy changes that reduce transparency, including a lack of response to Freedom of Information Act requests, the elimination of liaison programs with local chapters of the American Immigration Lawyers Association, and the removal of face-to-face information gathering programs such as InfoPass make it harder for the U.S. Citizenship and Immigration Service, applicants, or advocates for the applicant to identify and remedy issues as they arise. Speed should not take priority over transparency and efficiency in any measures adopted by the U.S. Citizenship and Immigration Service to address the backlog. Individual adjudicators should strive to address the questions and concerns of applicants while remaining impartial.

c. Recommended Action for Congress

Congress should exercise oversight to ensure timely reduction of the backlog and appropriate additional funding to the U.S. Citizenship and Immigration Service with the express purpose of backlog elimination.

i. Increase Oversight of U.S. Citizenship and Immigration Service Operations

Beyond direct supervision, Congress should continue exercising its oversight powers to investigate these issues. More frequent communication between Congress and the U.S. Citizenship and Immigration Service Ombudsman can help identify areas of concern, such as delays in processing time.²⁸⁰ Direct Congressional inquiries and requests of the U.S. Citizenship and Immigration Service Director should be utilized to gain knowledge of the agency's practices and perspective on the backlog. A February 12, 2019, letter led to then-Director Francis Cissna identifying various contributing factors and possible solutions to the backlog.²⁸¹ The House Judiciary subcommittee on Immigration and Citizenship held hearings about policy changes and processing delays at U.S. Citizenship and Immigration Service on July 26, 2019.²⁸² Continuing correspondence between Congress and the new U.S. Citizenship and Immigration Service Director, during confirmation

²⁸⁰ DHS, Annual Report 2018, pp. 25-26.

²⁸¹ *See generally* USCIS Response Letter.

²⁸² U.S. Congress, House, Subcommittee on Immigration and Citizenship of the House Committee on the Judiciary, *Policy Changes and Processing Delays at USCIS*, 116th Cong., 1st sess., 2019, <https://judiciary.house.gov/subcommittees/immigration-and-border-security-116th-congress>.

hearings and once appointed, can ensure that elimination of the naturalization backlog remains a priority for the agency.

Congress should also utilize independent government agencies to ensure the U.S. Citizenship and Immigration Service is operating efficiently. Congress should continue to work with the Government Accountability Office (“GAO”) in the production of the recently requested report regarding the U.S. Citizenship and Immigration Service naturalization processing times.²⁸³ These reports provide Congress with timely, objective, and nonpartisan information to help improve the performance of the federal government.²⁸⁴ Given the important effect of the naturalization backlog on voting rights and administration of justice, all inquiries should be bipartisan efforts. Bipartisan support would ensure fair and efficient follow-up to hearings and information-gathering.

Progress toward the six-month processing time goal of the U.S. Citizenship and Immigration Service should be documented and publicly available. Congress should also require that the U.S. Citizenship and Immigration Service remit annual reports similar to the “Backlog Elimination Plans” prepared by the U.S. Citizenship and Immigration Service in 2006 during a prior attempt to reduce U.S. Citizenship and Immigration Service processing times.²⁸⁵ Where the agency falls behind benchmarks, performance plans should be required by Congress.²⁸⁶ Adherence to statutorily prescribed benchmarks gives those applying for benefits clarity on appropriate processing times and allows judges to assess agency practices and the reasonableness of any delays under the Administrative Procedure Act.

Congress may also consider amending the Immigration and Naturalization Act or regulations to insert timelines for the U.S. Citizenship and Immigration Service to process applications during the period between an applicant’s biometrics appointment and the first interview.

ii. Temporary Appropriation to Address Backlog

Congress should also appropriate funding to the U.S. Citizenship and Immigration Service to eliminate the backlog. Although Congressional appropriations currently only account for 5 percent of the U.S. Citizenship and Immigration Service budget,²⁸⁷ this direct approach succeeded in eliminating the backlog of the previous decade. Between 2002 and 2010, Congress appropriated approximately \$574 million to reduce the accumulated backlog, but no funds have been appropriated for that purpose since June 2010.²⁸⁸ According to the U.S. Citizenship and Immigration Service, those additional funds put the agency on track to eliminate the previous

²⁸³ Hauslohner, Abigail. “Democrats Ask Federal Watchdog to Examine Unprecedented Immigration Backlog,” *Washington Post*, May 10, 2019, https://www.washingtonpost.com/immigration/democrats-ask-federal-watchdog-to-examine-unprecedented-immigration-backlog/2019/05/10/bad98bfa-7368-11e9-9f06-5fc2ee80027a_story.html?noredirect=on&utm_term=.7461e0818e6d.

²⁸⁴ “About GAO,” U.S. Government Accountability Office, <https://www.gao.gov/about/what-gao-is/> (last accessed July 21, 2019).

²⁸⁵ See generally USCIS, *Backlog Elimination*, Mar. 4, 2010, <https://www.uscis.gov/tools/reports-studies/backlog-elimination> (archive of four Backlog Elimination Updates).

²⁸⁶ USCIS Response Letter, p. 8 (stating that USCIS will be reinstating performance metrics as a way to reduce the backlog).

²⁸⁷ Congressional Research Service, *U.S. Citizenship and Immigration Services (USCIS) Functions and Funding*, by William A. Kandel, May 15, 2015 p. 1 (hereafter cited as CRS, *USCIS Functions and Funding*).

²⁸⁸ *Ibid.*, 13.

backlog by the end of fiscal year 2010.²⁸⁹ Similar funds should be appropriated to the U.S. Citizenship and Immigration Service to reduce the backlog once again. The appropriation should be earmarked specifically for the adjudication of N-400 applications and associated costs. With the additional funding, the U.S. Citizenship and Immigration Service could hire additional adjudicators and execute a smoother transition to the planned technological improvements.

iii. Ensure User Fees are Spent on Adjudications

User fees should be used only for adjudications. Congress should afford more resources to the U.S. Citizenship and Immigration Service and assert increased control over the spending of those resources. The U.S. Citizenship and Immigration Service currently funds roughly 95 percent of its budget by charging user fees for its services.²⁹⁰ These funds flow into the Immigration Examinations Fee Account, which is not subject to annual congressional approval.²⁹¹ By making the use of fee funds subject to congressional approval, Congress could exercise greater control over the appropriation of funds within the U.S. Citizenship and Immigration Service and by extension could reduce the backlog. Congress could also take a less substantial step by appropriating annual funds earmarked for Fraud Detection and National Security rather than relying on user fees, similar to the current funding scheme for E-Verify.²⁹² Additional Congressional funding may be especially warranted where the U.S. Citizenship and Immigration Service has identified affordability as one of the key factors behind staffing shortages that are leading to backlogs across benefit applications. However, any additional funding for staff should be appropriated with express guidelines for how that money will be spent – whether on adjudicators to assist with the backlog, support staff, or those on more enforcement projects such as the denaturalization taskforce.

d. Recommended Action for State, Local, and Non-governmental organizations

State and local governments should strive to develop a collaborative relationship with immigrants, service providers, immigration attorneys, and the U.S. Citizenship and Immigration Service. Local governments across the state can help reduce the backlog by establishing an Office of Immigrant Affairs, similar to those in Aurora and Denver.²⁹³ Colorado could also establish a statewide Office of Immigrant Services, similar to that of Illinois.²⁹⁴ Offices like the ones in Denver, Aurora, and Illinois promote integration of immigrants by partnering with stakeholders in the community. Community partnerships that facilitate naturalization will help screen for and reduce difficult cases. Educational outreach programs will assist those seeking to naturalize and the adjudicators who must ultimately judge the civic and English language knowledge of applicants. Cities can

²⁸⁹ CRS, *Proposed Adjustments and Historical Context*, p. 24.

²⁹⁰ CRS, *USCIS Functions and Funding*, p. 1.

²⁹¹ *Ibid.*, 6.

²⁹² E-Verify is a system that electronically confirms individuals work authorization.

²⁹³ "International & Immigrant Affairs," City of Aurora, https://www.auroragov.org/city_hall/international_immigrant_affairs (last accessed June 4, 2019); "Office of Immigrant & Refugee Affairs," City and County of Denver, <https://www.denvergov.org/content/denvergov/en/human-rights-and-community-partnerships/our-offices/immigrant-and-refugee-affairs.html> (last accessed June 4, 2019).

²⁹⁴ "Refugee & Immigrant Services," Illinois Department of Human Services, <https://www.dhs.state.il.us/page.aspx?item=30363> (last accessed June 4, 2019).

organize naturalization workshops with volunteer attorneys to facilitate accurate completion of N-400 applications and reduce the need for Requests for Evidence. Support from state and local offices for immigrant and refugee affairs and cooperation with non-governmental organizations can help immigrants navigate the naturalization process and improve initial passage rates at the interview stage, which will reduce the need for subsequent interviews or applications and reduce the backlog.

Although testimony received by the Committee demonstrated that newly naturalized individuals had a lower rate of voter registration and lower propensity to vote than long-time naturalized or U.S.-born voters, the entirety of the situation revolves around civic engagement. As more individuals are denied their rights to civic engagement, larger constitutional violations are threatened, and pressure – both public and from within the government itself – will increase. Non-governmental organizations can play an essential role in educating prospective citizens about the benefits of naturalization to increase civic engagement. Those in the backlog must recognize their situation and the political enfranchisement of those eligible to naturalize must be a priority.

Dissent by David Kopel and Helen Raleigh

We support the report's useful information and many constructive suggestions regarding the naturalization backlog. We dissent for the following reasons:

The report accuses USCIS of "institutional neglect, at best."²⁹⁵ We do not agree that the record supports this charge.

An Obama administration policy, begun in 2013 and continuing today, requires extra vetting for applicants who come from or travel to known terrorist hotspots, such as the Balochistan province in Pakistan. The report criticizes the Controlled Application Review and Resolution Program for being "redundant."²⁹⁶ No evidence in our Committee's record supports the claim.

By statute, USCIS may grant citizenship only to persons of "good moral character." The report criticizes USCIS for inquiring about an applicant's criminal activity from more than five years ago, which the report calls "information that did not or should not have a bearing on eligibility."²⁹⁷ (p.27). However, according to statute, crimes perpetrated more than five years ago are relevant to a person's moral character: "In determining whether the applicant has sustained the burden of establishing good moral character and the other qualifications for citizenship specified in subsection (a) of this section, the Attorney General shall not be limited to the applicant's conduct during the five years preceding the filing of the application, but may take into consideration as a basis for such determination the applicant's conduct and acts at any time prior to that period."²⁹⁸ USCIS is likewise criticized for requesting marriage certificates. Fraudulent claims of marriage are also relevant to moral character.

To protect the integrity of the naturalization process, USCIS investigators work to uncover criminal organizations selling counterfeit immigration documents. USCIS also revokes naturalizations that were obtained by fraud. Contrary to the repeated assertions in the report, USCIS's diligence in detecting and rejecting unqualified applications is fully consistent with the letter and spirit of USCIS's governing statutes. As the adjudicator of immigration benefits, USCIS has a duty not to grant benefits to unqualified persons and to correct previous errors. Moreover, proactive efforts to prevent the filing of fraudulent documents may well speed up the naturalization process for legitimate applicants, since examiners will be less burdened by having to process and detect unqualified applicants using phony documents.

Before an applicant sues USCIS in federal court, the applicant must complete the appeals process within USCIS. Although this is the standard rule of federal administrative procedure, the report describes it as evidence that "Immigrants in the Backlog have Insufficient Avenues of Legal Recourse."²⁹⁹ We do not agree that requiring naturalization applicants to follow the same rules that all Americans must follow in dealing with federal administrative agencies is "insufficient."

²⁹⁵ *Supra* p. 24.

²⁹⁶ *Supra* p. 26.

²⁹⁷ *Supra* p. 27.

²⁹⁸ 8 U.S.C. § 1427(e) (Westlaw through P.L. 116-56).

²⁹⁹ *Supra* p. 22.

If USCIS has not made a decision on an application by the statutory deadline, the applicant may file a federal court lawsuit for a writ of mandamus—a court order for a government official to perform a non-discretionary duty (e.g., for USCIS to make a decision on an application). When mandamus suits are filed, the Department of Justice will often “intervene and facilitate the adjudication of the application prior to judicial resolution.”³⁰⁰ (p. 34). Rather than being cited as proof of “insufficient avenues of legal recourse,” the DOJ’s interventions should have been praised for fixing problems by giving applicants the relief they have requested.

³⁰⁰ *Supra* p. 34.

Colorado Advisory Committee

Briefing on the Backlog in Citizenship and Naturalization Applications in the U.S. Citizenship & Immigration Services

University of Colorado Law School, Wolf Law Building, Wittemeyer Court Room

2450 Kittredge Loop Drive, Boulder, CO 80309

Agenda

Friday, February 22, 2019

10:00 a.m. – 6:00 p.m.

Opening: Welcome and Introductions	10:00 – 10:15 a.m.
Panel 1: Understanding the Naturalization Backlog	10:15 – 11:30 a.m.
<ul style="list-style-type: none">• Diego Iñiguez-López, Policy and Communications Ass., National Partnership for New Americans• Nicole Melaku, Executive Director, Colorado Immigrant Rights Coalition• Travis Weiner, Colo. Chapter Lead, Veterans For American Ideals & Veterans for New Americans	
Panel 2: Understanding the Naturalization Backlog	11:45 a.m. – 1:00p.m.
<ul style="list-style-type: none">• John Eastman, Professor of Law and Community Service, Chapman University Fowler School of Law• Jennifer Kain-Rios, Immigration Attorney, KainRios Immigration, LLC• Robert Preuhs, Professor of Political Science, Metropolitan State University of Denver	
Lunch Break	
Panel 3: Remedies for the Backlog	2:00 – 3:15 p.m.
<ul style="list-style-type: none">• Kristi Goldinger, District Director, US Citizenship and Immigration Service• Bryce Downer and Danielle Jefferis, Immigration Attorneys, Novo Legal Group• Jamie Torres, Director, Denver Office of Immigration and Refugee Affairs	
Open Session	3:15 p.m. –
6:00 p.m.	

NOTICE - Written statements and documents related to this briefing, including, but not limited to, articles, reports, and studies, or written submissions related to the naturalization backlog in Colorado must be submitted no later than Friday, March 22, 2019:

By email to: ebohor@usccr.gov
By mail to: **Rocky Mountain Regional Office**
U.S. Commission on Civil Right
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Denver, CO 80294