



July 22, 2020

Colorado Advisory Committee Calls on the U.S. Commission on Civil Rights to Urge the U.S. Citizenship and Immigration Service to Address Naturalization Backlog by Modifying Oath and Allegiance Ceremonies During COVID-19 Crisis

Herein the Colorado Advisory Committee informs the U.S. Commission on Civil Rights about the potential impact of COVID-19 on the backlog in citizenship and naturalization applications that will impede voting rights in the 2020 election. In order to comply with national health guidelines, the U.S. Citizenship and Immigration Service (USCIS) field offices closed for three months and have reduced the number of individuals permitted to attend Oath of Allegiance Ceremonies to a fraction of the pre-pandemic capacity. Consequently, hundreds of thousands of otherwise eligible permanent residents may not naturalize in time to vote in the November 2020 election. This is a serious impediment to the exercise of voting rights. Therefore, the Colorado Advisory Committee encourages the Commission to urge the USCIS to make accommodations for the Oath of Allegiance ceremonies to expedite the naturalization processing.

Specifically, the USCIS should consider the following measures to overcome barriers to naturalization and voting rights leading up to the 2020 election by:

- Employing alternative formats, such as virtual, drive-thru, or outdoor ceremonies;
- Allowing for administrative naturalization and waivers of the ceremony requirement;
- Empowering courts to expand and expedite judicial administrations of the Oath.

Citizenship Delayed Report on Citizenship and Naturalization Backlog in Colorado

From 2017 to 2019, the Colorado State Advisory Committee examined the causes and consequences of naturalization backlogs and their impact on voting rights, civil rights, and the administration of justice.¹ We found that the USCIS' national backlog in naturalization applications was 738,148 at the time of the report, with wait times ranging from 10 months to nearly three years.² We found that in Colorado, the USCIS Denver Field Office backlog in naturalization applications was 9,325 and wait times ranged from 10 to 19.5 months—one of the largest backlogs in the nation at the end of 2018.³ We concluded that the substantial delay to naturalization created by the backlog negatively impacts voting rights, civil rights, and the administration of justice. The right to vote depends on completing the naturalization process, and immigrants, whose eligibility for employment and public benefits hinges on citizenship, may

¹ Colorado State Advisory Commission to the U.S. Commission on Civil Rights, *Citizenship Delayed: Civil Rights and Voting Rights Implications of the Backlog in Citizenship and Naturalization Applications*, 2019, <https://www.usccr.gov/pubs/2019/09-12-Citizenship-Delayed-Colorado-Naturalization-Backlog.pdf>.

² *Ibid.*, p. 5.

³ *Ibid.*

have their civil rights negatively impacted by the backlog. Moreover, there may also be disproportionate impacts borne by certain classes of individuals based on USCIS's policies. 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.

By a majority vote, the Colorado Advisory Committee recommended the Commission encourage the USCIS to prioritize naturalization in the allotment of existing resources. We also encouraged the USCIS to consider changes that would expedite the process of approval. One of our recommendations was to urge the leadership to develop agency processes that use technology and other adjudication procedures to increase effectiveness and provide greater accessibility for applicants.

Status Update on the Citizenship and Naturalization Backlog

The Colorado Advisory Committee commends the U.S. Citizenship and Immigration Service for working to reduce the backlog over the 2019 Fiscal Year. In 2019, 833,000 new citizens were naturalized nationally.⁴ Such efforts resulted in a decrease in the backlog by 12.27% nationally and 36.89% in the Denver Field Office.⁵ However, since September 2019, the backlog has grown again by 7.43% nationally and 17.45% in the Denver Field Office.⁶ The most recent data indicates that 700,885 naturalization applications are still pending nationally, and 6,912 in the Denver Field Office.⁷ The average processing time for the N-400 is 8.3 months nationally,⁸ and

⁴ "USCIS Fiscal Year 2019 Accomplishments," USCIS, <https://www.uscis.gov/about-us/budget-planning-and-performance>.

⁵ Calculated using data from USCIS, *Number of Form N-400, Application for Naturalization By Category of Naturalization, Case Status, and USCIS Field Office Location July 1-September 31, 2018*, https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Naturalization%20Data/N400_performancedata_fy2018_qtr4.pdf and USCIS, *Number of Form N-400, Application for Naturalization By Category of Naturalization, Case Status, and USCIS Field Office Location July 1-September 30, 2019*,

https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Naturalization%20Data/N400_performancedata_fy2019_qtr4.pdf.

⁶ Calculated using data from USCIS, *Number of Form N-400, Application for Naturalization By Category of Naturalization, Case Status, and USCIS Field Office Location July 1-September 30, 2019*,

https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Naturalization%20Data/N400_performancedata_fy2019_qtr4.pdf and USCIS, *Number of Form N-400, Application for Naturalization By Category of Naturalization, Case Status, and USCIS Field Office Location January 1-March 31, 2020*,

https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Naturalization%20Data/N400_performancedata_fy2020_qtr2.pdf.

⁷ National data is current through March 31, 2020. USCIS, *Number of Form N-400, Application for Naturalization By Category of Naturalization, Case Status, and USCIS Field Office Location January 1-March 31, 2020*,

https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Naturalization%20Data/N400_performancedata_fy2020_qtr2.pdf.

⁸ "Historical National Average Processing Time (in Months) for All USCIS Offices for Select Forms By Fiscal Year," USCIS, June 23, 2020, <https://egov.uscis.gov/processing-times/historic-pt>.

12.5-36 months at the Denver Field Office.⁹ These processing times exceed the statutory timeline of six months¹⁰ and impede voting in a presidential election year.¹¹

These backlogs will be exacerbated by the COVID-19 crisis. To limit exposure risks of COVID-19, USCIS offices were closed from March 18th to June 4th of 2020. As a result, Oath of Allegiance ceremonies, the final step in the naturalization process, were postponed. Approximately 126,000 eligible immigrants were unable to naturalize.¹² Upon reopening, the USCIS has commenced in-person oath ceremonies in small groups that only allow for one tenth of the original capacity to conform with social distancing precautions.¹³ The Denver office is resuming administration of the Oath in the office's oath ceremony room, which can only accommodate nine applicants at a time.¹⁴ At this reduced rate, it is likely 189,000 otherwise eligible permanent residents will be unable to vote in November 2020.¹⁵

Recommended Measures to Reduce the Naturalization Backlog

We recommend the Commission encourage the U.S. Citizenship and Immigration Service to take affirmative measures that would expedite the naturalization process. First, we urge the USCIS to consider changes to the oath ceremony. An efficient solution would be to administer the Oath of Allegiance ceremonies remotely using video-conferencing technology. Many government offices have adapted to pandemic conditions by switching to remote formats, including immigration courts conducting deportation hearings and the USCIS interviews with refugees.¹⁶ An outdoor ceremony or drive-through ceremony could expand capacity; for example, the Denver field office naturalized approximately 500 citizens in the parking lot between May and June 2020.¹⁷

Alternatively, the USCIS could permit administrative naturalizations and waive the Oath of Allegiance. Such authority to expedite the naturalization process is granted under 8 U.S.C. §

⁹ "Check Case Processing Times," *Form N-400, Denver Field Office*, USCIS <https://egov.uscis.gov/processing-times/> (last accessed June 25, 2020).

¹⁰ 8 U.S.C. § 1572(1).

¹¹ Pre-election surges are common. Leading up to the 2012 and 2016 presidential elections, the number of N-400 applications received increased by 18.94% and 24.05%, respectively. Such a surge can be expected this year as well.

¹² "Coronavirus Shutdowns Could Put 2020 Voting Out of Reach for Hundreds of Thousands of New Americans," *Boundless*, Apr. 6, 2020, <https://www.boundless.com/blog/coronavirus-shutdowns-delay-naturalization/>.

¹³ Randy Capps and Carlos Echeverria-Estrada, "A Rockier Road to U.S. Citizenship? Findings of a Survey on Changing Naturalization Procedures," *Migration Policy Institute*, July 2020, <https://www.migrationpolicy.org/research/changing-uscis-naturalization-procedures>.

¹⁴ Andrew Lambrecht, statement at the USCIS Denver Field Office Stakeholder Meeting, Jun. 22, 2020.

¹⁵ "Coronavirus Shutdowns Could Put 2020 Voting Out of Reach for Hundreds of Thousands of New Americans," *Boundless*, Apr. 6, 2020, <https://www.boundless.com/blog/coronavirus-shutdowns-delay-naturalization/>.

¹⁶ A bipartisan letter from U.S. Senators seeks virtual ceremonies or enlarged in-person ceremonies. Senators Martin Heinrich and Marco Rubio to Acting Director Kenneth Cuccinelli, USCIS, May 21, 2020., https://www.rubio.senate.gov/public/_cache/files/1ea46b8d-0729-4e7d-ac14-0b25a65e9dcf/8371991C7EBD70132E9D22022FEE90EE.naturalization-ceremonies-final-1-.pdf.

¹⁷ Tresa Baldas, "Citizenship by Drive-Thru? Immigrants Now Take Oath Without Leaving Car," *USA Today*, Jun. 18, 2020, <https://www.usatoday.com/story/news/nation/2020/06/18/immigrants-becoming-citizens-via-drive-thru-ceremonies/3213245001/>. Similar drive-through ceremonies were used in Detroit, San Diego, and Phoenix.

1448(c) upon demonstration of sufficient cause.¹⁸ The COVID-19 pandemic certainly is an unprecedented and exceptional circumstance that most likely meets the “sufficient cause” requirement.

Finally, the U.S. Citizenship and Immigration Service could partner with federal courts in order to empower them to expand and expedite oath ceremonies that can be administered judicially.¹⁹

By taking affirmative steps to reduce the naturalization backlog, the USCIS can fulfill its agency mission “to efficiently and fairly adjudicate requests for immigration benefits”²⁰ and safeguard the fundamental rights that flow from naturalized citizenship. They can also avoid costly litigation.²¹ In light of the USCIS’s anticipated budget shortfall,²² saving on the costs of conducting in-person ceremonies and avoiding unnecessary additional costs would be prudent.

On April 17, 2020, Catherine E. Lhamon, Chair of the U.S. Commission on Civil Rights, said, “The nation’s attention in addressing the coronavirus pandemic must include addressing and guarding against potential civil rights violations to ensure the health and safety of all Americans, regardless of race, national origin, ability status, or any other protected characteristic. There is no time when civil rights violations are acceptable, and our collective survival of this outbreak depends on the federal government upholding our critical civil rights laws.”²³ The Colorado Advisory Committee agrees. It is for this reason we call on the U.S. Commission on Civil Rights to directly address the naturalization backlog and urge the U.S. Citizenship and Immigration Service to modify the administration of Oath and Allegiance ceremonies. Adapting to the COVID-19 crisis is vital to ensuring the administration of justice and protection of civil and voting rights.

¹⁸ 8 U.S.C. § 1448(c). A bipartisan letter from U.S. Representatives seeks administrative waiver. Congressmembers John Katko, J. Luis Correa, and Steve Stivers to the Honorable William P. Barr et al., Jun. 1, 2020, <https://katko.house.gov/sites/katko.house.gov/files/RemoteNaturalizationLetter.pdf>.

¹⁹ 8 U.S.C. § 1421(b). Courts administer the Oath for any approved applicant wishing to make a name change at the time of naturalization. 8 U.S.C. § 1447(e); *see also* 8 C.F.R. § 337.2.

²⁰ “About Us: Mission Statement,” USCIS, <https://www.uscis.gov/about-us>, (last accessed June 25, 2020).

²¹ A proposed class action lawsuit has already been filed in a Pennsylvania federal court to compel the U.S. Citizenship and Immigration Service to address the backlog and fast-track naturalization. *See Campbell Davis v. U.S. Citizenship & Immigration Servs.*, No. 2:20-cv-02770 (E.D. Pa. June 10, 2020), <https://www.nwirp.org/wp-content/uploads/2020/06/Campbell-Davis-v.-USCIS-Complaint-2-20-cv-02770.pdf>.

²² Sarah Pierce and Doris Meissner, “USCIS Budget Implosion Owes to Far More than the Pandemic,” *Migration Policy Institute*, Jun. 19, 2020, <https://www.migrationpolicy.org/news/uscis-severe-budget-shortfall>. [change to USCIS announcement; keep tracking Congressional appropriation bill in July/August 2020]

²³ U.S. Commission on Civil Rights, “U.S. Commission on Civil Rights Urges Federal Agencies to Vigilantly Enforce Civil Rights Laws During and in the Wake of the COVID-19 Crisis,” Apr. 17, 2020, <https://www.usccr.gov/press/2020/04-17-Statement-on-Coronavirus-Federal-Guidance.pdf>.