



REMOTE NATURALIZATION OATHS ARE LEGALLY PERMISSIBLE

By Ethan Nasr and Peggy Gleason

I. Introduction

The United States has a long and rich history of welcoming immigrants from around the world and the desire to undertake the naturalization process has steadily increased over time.¹ U.S. Citizenship & Immigration Services (USCIS) naturalized more than 7.2 million residents in the last decade.² From 2010-2020, naturalizations have ranged from 620,000 to 780,000 per year.³

For the hundreds of thousands of Lawful Permanent Residents seeking to become U.S. citizens each year, the Oath of Allegiance – typically administered during regularly scheduled citizenship ceremonies – is the last step to becoming a U.S. citizen.⁴ Naturalization applicants do not become U.S. citizens until they have taken the Oath of Allegiance.⁵

On March 18, 2020, USCIS suspended operations involving in-person contact temporarily due to COVID-19, including administering naturalization oath ceremonies. While a gradual reopening began on June 4, 2020, opening was delayed in areas that continued to be heavily impacted by the virus.⁶ Even reopened offices have limited operations due to the demands of social distancing. In addition, offices that have reopened will be facing return waves of the pandemic in the near future, necessitating closure once again.

Before the pandemic, approximately 63,000 applicants took the oath of allegiance each month.⁷ During the USCIS closure in the first half of 2020, 126,000 individuals who had been approved to naturalize found themselves stymied in the process as they awaited the administration of the oath of allegiance.⁸ This final - essentially ceremonial - step is the only formality standing in the way of accessing all of the rights and privileges that are fundamental to U.S. citizenship.⁹

USCIS has prioritized rescheduling oath ceremonies in those offices that are reopened and is employing creative workarounds such as the drive-through oath ceremony in some USCIS offices.¹⁰ However, the limited numbers and social distancing guidelines have hampered the rescheduling process.¹¹ With more than 132,000 deaths from COVID-19 in the United States, and at least five states showing a recent alarming spike in numbers of COVID cases, the pandemic will affect operations indefinitely; that is true whatever USCIS announces in terms of its intentions to reopen and reschedule.¹²

In addition, USCIS operations, including naturalization, could cease all together because USCIS has announced that the agency is running out of money and will need to furlough 70 percent of its staff nationwide.¹³ USCIS claimed that its financial woes are a result of the COVID-19 pandemic and a corresponding decline in applications. However, numerous experts, including many former USCIS officials, have explained that the agency's negligent enforcement-minded policy shifts have bankrupted USCIS and discouraged people from applying.¹⁴ It is disingenuous for the agency to claim that they need revenue when they rejected customers through repeated immigration bans and harsh, restrictive policies.

II. Naturalization Processing Delays

The average processing time for citizenship applications – the time that it takes to complete the application process from filing to final adjudication – is currently reported by the vast majority of USCIS offices as ranging between one to three years, with some outliers such as Chicago USCIS reporting up to more than four years for completion of naturalization.¹⁵ This is an unacceptable delay in naturalization processing. As recently as a few years ago, naturalization applicants were able to become new citizens within an average of four to six months from the time they applied. For example, in 2015, USCIS had a processing goal of five months in naturalization cases, and that goal was met nation-wide.¹⁶

One of the central rights of being a U.S. citizen is the ability to vote in federal elections. By not providing an adequate mechanism to take the Oath of Allegiance, USCIS is potentially disenfranchising hundreds of thousands of new voters ahead of the presidential election.¹⁷ Other critical rights only reserved for citizens include eligibility for federal jobs, obtaining citizenship for children born abroad, serving on a jury, receiving priority when petitioning to bring family members permanently to this country, travelling with a U.S. passport, and becoming an elected official in many government offices. Given USCIS's already troubling backlog of pending cases – including an estimated 650,000 citizenship applications still pending in the first quarter of the 2020 fiscal year – there is a need to think more critically about how to reduce the naturalization backlog, particularly for those individuals who already have been approved to naturalize.¹⁸

III. Purpose of the Oath

The oath is a solemn, but celebratory, aspect of the ceremony and is the culmination of the naturalization process. The oath elevates “the importance of the naturalization ceremony as a venue to recognize the rights, responsibilities, and importance of citizenship.”¹⁹ The ceremonial elements of the event contribute to a positive and memorable moment for the participants

Administering the Oath of Allegiance remotely is one way to naturalize individuals fairly and efficiently.²⁰ Conducting the oath telephonically or virtually through videoconference or waiving it altogether are ways to address the growing backlog of tens of thousands of individuals. In addition, naturalization applicants who are immune-compromised, elderly, or otherwise vulnerable during the pandemic also require systemic remote access to oaths to complete the naturalization process. The remote oath would allow those who have already been approved to naturalize to finish the process without appearing in-person before USCIS.²¹ As discussed below, there is sufficient legal authority for USCIS to make appropriate accommodations for remote oath ceremonies, and existing agency practices demonstrate that logistical concerns can be easily addressed. Notably, the Citizenship and Immigration Services Ombudsman has recently recommended employment of remote oath ceremonies to reduce the naturalization backlog.²²

IV. Background and History

The history of the Oath of Allegiance reflects a dynamic process that has evolved over time. “Since the first naturalization law in 1790, applicants for naturalization have taken an oath to support the Constitution of the United States.”²³ However, until 1906 “naturalization courts had little or no guidance on how to apply or administer the law.” The law did not include an exact text for the oath and each U.S. naturalization court could develop its own procedures for administering the oath.²⁴ An official standard text for the oath of allegiance did not appear in the regulations until 1929.²⁵

Congress has made several dramatic, and not always consistent, changes to the naturalization procedures over the past many years. Prior to 1990, naturalization was a judicial process, and all naturalized citizens took the oath of allegiance in front of a judge. The Immigration Act of 1990 entirely restructured the naturalization process to make it an administrative process conducted exclusively by USCIS. However, the Technical Corrections Act of December 12, 1991, further changed the process, creating a procedure that gives both the courts and USCIS the power to conduct naturalization ceremonies and administer the oath of allegiance. Additionally, since July 24, 1995, immigration judges have been allowed to administer the oath of allegiance.²⁶

Currently, depending on the jurisdiction, oaths are administered either by USCIS or by federal courts.²⁷

V. Authority and Requirements for Oath Ceremony

A. Minimum Threshold Requirements

The statutory requirements for the Oath of Allegiance under the Immigration and Naturalization Act (INA) Section 337 state that before being admitted to citizenship, a person shall take an oath in a public ceremony to support and defend the U.S. Constitution, bear allegiance to the United States, renounce foreign allegiances, serve in the U.S. Armed Forces and perform noncombatant or civilian service for the United States, if needed.²⁸ There is a statutory requirement that oaths be conducted frequently and at regular intervals.²⁹

The corresponding regulations fill out the statutory language in terms of jurisdiction and administration of the oath but do not add further requirements beyond stating that ceremonies be public and that applicants must remain eligible until the oath is administered.³⁰

B. Public Ceremony Requirement

The Trump administration has argued that remote oath ceremonies are not permitted because under relevant regulations, applicants must appear in person public ceremonies.³¹ However, the statutory language does not specifically require that the applicant appear in person, only that “the administration of the oaths of allegiance under this section are public.”³² The “in person” requirement comes from the corresponding regulation, noting that an applicant “must appear in person in a public ceremony, unless such appearance is specifically excused.”³³ There are multiple reasons why the administration’s insistence that remote oath ceremonies are not possible because of the “in person” requirement is unfounded.

Since “in person” administration of the oath ceremony is not required by statute, USCIS is not prohibited from administering remote oaths. The agency is capable of interpreting its own regulations in a manner that would allow for remote oath ceremonies to comply with or waive the in-person requirement it created. Most plainly,

there is no need to read the “in person” language as requiring the individual to be physically present. Moreover, there is already existing precedent in current agency practices of using videoconferencing for far more complex interviews and adjudications, such as asylum officers who conduct credible fear interviews telephonically or by videoconference. Additionally, USCIS has begun adopting videoconferencing for other situations that were traditionally conducted in person.³⁴ Similarly, regulations allow an Immigration Judge to conduct hearings through video conference even though the respondent is required to appear “in person.”³⁵

Furthermore, the regulatory language cited as a limitation for remote oath ceremonies also provides that “in person” appearances can be specifically excused—a reflection that this requirement can be waived under certain circumstances.³⁶ More importantly, this same regulatory language requires that “[n]aturalization ceremonies will be conducted at regular intervals as frequently as necessary to ensure timely naturalization, but in all events at least once monthly where it is required to minimize unreasonable delays.”³⁷ As noted in a recent citizenship report by Boundless Immigration, “as of March 18 when oath ceremonies were shut down, there was a waiting list of about 126,000 people (60 previous days x 2,100 approvals per day) who have been approved for naturalization but can’t take the oath.”³⁸

The agency’s ancillary argument that remote oath ceremonies are not possible because the ceremonies must be public rests on even weaker logic. Even if ceremonies were to be conducted telephonically or by videoconference, there is nothing preventing the agency from also making such remote oath ceremonies available for the general public to access. Moreover, the public nature of the ceremonies is statutorily waivable for individuals with special circumstances, such as in instances where the individual is physically incapable of attending a public ceremony.³⁹ As in the case of individuals with physical or medical limitations, waiving the public ceremony requirement makes sense for individuals eligible for naturalization given the heightened risk of attending a large gathering during the current pandemic.

C. Verifying Continued Eligibility Until Oath Ceremony

The other main counter-argument USCIS has put forward for not attempting remote oath ceremonies is that it is operationally impracticable based on the regulatory language stating that each applicant must complete a questionnaire immediately prior to being administered the oath of allegiance, which affirms the applicant remains eligible for naturalization.⁴⁰ The normal practice has been for USCIS to mail a Form N-445, *Notice of Naturalization Oath Ceremony*, to each applicant in advance of the naturalization ceremony to complete and hand back to USCIS representatives on the day of the ceremony. This is an operational challenge, not a legal one, as there are a myriad of examples of far more complex forms that USCIS accepts online, including optional submission online of Form N-400, *Application for Naturalization* and Form N-600, *Application for Certificate of Citizenship*.⁴¹ Adding same-day submission of Form N-445 is well within the agency’s ability.

In fact, the President’s Office of Management and Budget (OMB) recently issued a memo directing all federal agencies to “use the breadth of available technology capabilities to fulfill service gaps and deliver mission outcomes.”⁴² The OMB memo goes on to emphasize that agencies are encouraged to leverage digital methods to meet mission needs, to include leveraging digital forms and electronic signatures to the fullest extent practicable. Accordingly, if USCIS is truly seeking to comply with this directive, the agency would start embracing submission via online forms, use of digital signatures, or another alternative method of uploading the Form N-445 to ELIS or some other pre-existing USCIS platform.

The good news is that USCIS already has available funding which is dedicated to technological improvements. The agency raises hundreds of millions of dollars yearly in fees for premium (expedited) application processing that the Agency is required by statute to spend on “infrastructure improvements in the adjudications and customer-service processes.”⁴³ Consequently, developing the technical capacity to accept the Form N-445 digitally would not require any additional discretionary funding to USCIS.

D. Surrender of Green Card

A corollary argument USCIS has put forward is that because no “Certificate of Naturalization will be delivered in any case in which the naturalized person has not surrendered his or her Permanent Resident Card to USCIS,” lawful permanent residents would be without their green cards - and thus without documentation of legal status - for an interim period between surrender of their Permanent Resident Card and the receipt by mail of their Certificate of Naturalization.⁴⁴ The regulation only requires that the applicant surrender their green card before receiving their Certificate of Naturalization, not that the exchange be simultaneous.⁴⁵ Moreover, the agency has not pointed to any legal requirement preventing such an exchange by mail nor why individuals could not perform such an exchange at their local field office shortly after becoming citizens. In fact, the very regulatory language on this exchange requirement explains that “upon a finding that the card is destroyed or otherwise unavailable, USCIS may waive the surrender of the card and the Certificate of Naturalization shall then be delivered to the naturalized person” (emphasis added).⁴⁶

More critically, applicants are legally considered citizens after reciting the oath of allegiance; the Certificate of Naturalization is merely proof of that fact. The argument that individuals could be without adequate documentation of their status for a period of days during such exchange speaks to USCIS’s lack of will and commitment to adapt procedures rather than truly insurmountable hurdles to adapting the existing process. By contrast, Canada, which has similar oath requirements, is already moving forward with scheduling virtual ceremonies.⁴⁷

VI. Adapting to Circumstances – Waivers and Accommodations

An examination of USCIS’s Oath of Allegiance policies regarding waivers, modifications, and accommodations further illustrates the agency’s discretionary power to adapt to novel circumstances and the agency’s capacity to conduct remote oath ceremonies.

A. Waiver of the Oath

As explained in the USCIS Policy Manual, “USCIS may waive the Oath of Allegiance for an applicant who is unable to understand or to communicate an understanding of its meaning because of a physical or developmental disability or mental impairment.”⁴⁸ Waivers generally occur when the individual naturalizing is a child, or when the person has a physical or developmental disability or mental Impairment. The basis for such waiver comes from the statute itself, which states in relevant part, “[t]he Attorney General may waive the taking of the oath by a person if in the opinion of the Attorney General the person is unable to understand, or to communicate an understanding of, its meaning because of a physical or developmental disability or mental impairment.”⁴⁹

Unlike the waiver requirements for the medical exception to the English and civics requirements for naturalization, which requires an applicant to submit a medical exception form, (Form N-648, *Medical Disability Exception*), USCIS has not created a special form to request an oath waiver.⁵⁰

B. Accommodations

Accommodations modify the manner in which an applicant meets the oath requirement. USCIS may provide accommodations such as simplifying the language of the oath, expediting the scheduling for an oath, and administering the oath off-site.⁵¹ As noted in the USCIS Policy Manual, “[t]he lists of accommodations in this chapter are not exhaustive. USCIS determines and provides accommodations on a case-by-case basis.”⁵²

Taken together, the agency’s authority for a waiver, coupled with the lack of a specific form to request an oath waiver, and the ability to administer the oath off-site, further demonstrate USCIS’s broad authority to adapt the requirements of the oath of allegiance as changing circumstances warrant.⁵³

C. Expedited Oath Ceremonies

An applicant may be granted an expedited oath administration ceremony by either the court or USCIS upon demonstrating sufficient cause, particularly with respect to special circumstances of a compelling or humanitarian nature.⁵⁴ These special circumstances include, *but are not limited to*: (1) serious illness of the applicant or family member (2) permanent disability which prevents personal appearance at a scheduled ceremony, (3) developmental disabilities or advanced age, and (4) urgent or compelling circumstances related to travel or employment as to warrant special consideration.⁵⁵ These examples are a non-exhaustive list generally centered around some form of incapacity but the final example demonstrates that “urgent or compelling circumstances” may be “sufficiently meritorious.”

The COVID-19 pandemic of 2020 constitutes an urgent and compelling circumstance that warrant expedited oath administration. The pandemic drastically impacts travel and employment, as public health measures of “stay at home” were in effect in most states from March-June, 2020 and are likely to return given recent upticks in COVID cases in many parts of the country.⁵⁶

More critically, subsection (c) of the regulation notes that USCIS may “exercise the discretionary authority to grant the relief sought”; thus, affirming that USCIS has broad latitude in determining what constitutes qualifying circumstances.

VII. Secondary Benefits of Offering Remote Ceremonies

In addition to furthering compliance with the statutory requirement that oath ceremonies be “conducted frequently and a regular intervals”⁵⁷ and the regulatory language requiring at least monthly ceremonies to minimize unreasonable delays, USCIS’s shift toward providing remote oath ceremonies would have several ancillary benefits to the agency and the public.

The capability to conduct remote oath ceremonies, virtually or telephonically, would provide long-term flexibility to the agency far beyond the duration of the pandemic to swear in special populations such as military service members deployed abroad or people with immune-compromising conditions or disabilities, for whom travel to a large group ceremony location may be difficult or life-threatening.

The ability to complete the naturalization process would allow tens of thousands of new citizens to register to vote in time for upcoming elections and would allow some constituents access to necessary medical and financial assistance to weather this or a subsequent disruptive and devastating pandemic.

Moreover, remote oath ceremonies would yield recurrent savings to USCIS by lessening necessary expenditures of renting venues for large-scale ceremonies and the corresponding personnel time to prepare for and staff those ceremonies.

VIII. Conclusion

There is ample legal authority for USCIS to make appropriate accommodations for remote oath ceremonies. In fact, the need for regular, monthly ceremonies require a new approach, particularly in light of the backlog of approved applicants who are awaiting an opportunity to take the oath of allegiance. The naturalization backlog was already at crisis levels before the pandemic⁵⁸ when office closures through spring and summer 2020 exacerbated the situation. USCIS reopening of some offices in June 2020 was necessarily limited by changes dictated by the continued public health crisis. The anticipated furlough of 13,400 USCIS employees in August 2020 is a 70 percent staff reduction that would further delay naturalizations. Remote oath ceremonies are a logical way to reduce these obstacles to naturalization. Current agency utilization of videoconferencing and online form submission demonstrate that logistical concerns can be easily addressed.

Finally, it is worth remembering that naturalization is a collective good. Naturalization is associated with higher rates of employment and higher rates of home ownership. Naturalized citizens earn more than their immigrant counterparts. The average annual income of employed naturalized citizens is about 44 percent higher than the average annual income of working noncitizens.⁵⁹ As well, immigrants who improve their English language skills - often part of the preparation for the English portion of the naturalization examination - can triple their earnings, or better. On average, foreign-born workers who cannot speak English earn about \$22,000 a year, while foreign-born workers who speak English very well earn an average of about \$59,000 a year.⁶⁰ These increased earnings contribute to the overall improvement of the entire U.S. economy.

End Notes

¹ Naturalization is the process by which U.S. citizenship is granted to a foreign citizen or national after they fulfill the requirements established by Congress in the Immigration and Nationality Act (INA).

² USCIS, *Naturalization Fact Sheet* (08/28/2019) <https://www.uscis.gov/news/fact-sheets/naturalization-fact-sheet#:~:text=During%20the%20last%20decade%2C%20U.S.,milestone%20in%20an%20immigrant's%20life>.

³ USCIS, Office of Immigration Statistics, *U.S. Naturalizations: Annual Flow Reports*, <https://www.dhs.gov/immigration-statistics/naturalizations>; See data analysis in New Americans Campaign, *The GAO Will Investigate the Delay in Immigration Cases* (June 2020) <https://www.newamericanscampaign.org/the-gao-will-investigate-the-delays-in-immigration-cases/>.

⁴ The text of the oath of allegiance is found in 8 C.F.R. § 337.1(a) and reads as follows:

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will bear arms on behalf of the United States when required by the law; that I will perform noncombatant service in the Armed Forces of the United States when required by the law; that I will perform work of national importance under civilian direction when required by law; and that I take this obligation freely, without any mental reservation or purpose of evasion; so help me God.

⁵ See 8 CFR § 337.9(a) - Effective date of naturalization ("An applicant for naturalization shall be deemed a citizen of the United States as of the date on which the applicant takes the prescribed oath of allegiance").

⁶ Major USCIS offices such as Miami remained closed as of June 29, 2020, as were Application Support Centers where biometrics for naturalization are taken. Many field offices in hard-hit areas such as Georgia, South Carolina, and Oklahoma remained entirely closed as of June 29, 2020. See USCIS, *USCIS Office Closures* (updated June 29, 2020) <https://www.uscis.gov/about-us/uscis-office-closings>. By July 9, 2020, USCIS projected that most Application Support Centers would reopen by July 27, 2020. While most USCIS field offices reopened by July, new closures took place at USCIS offices in Fort Benning, Georgia, Fort Jackson, South Carolina, and Fort Sill, Oklahoma. The information on office closures changes rapidly, as USCIS acknowledges on its website (updated July 9, 2020) <https://www.uscis.gov/about-us/uscis-office-closings>.

⁷ Miriam Jordan, *Trump Administration Faces Bipartisan Calls to End Citizenship Delays*, New York Times (July 17, 2020) <https://www.nytimes.com/2020/06/17/us/coronavirus-naturalization-citizenship-voting.html>.

⁸ Boundless, *Coronavirus Shutdowns Could Put 2020 Voting Out of Reach For Hundreds of Thousands of New Americans* (April 6, 2020) <https://www.boundless.com/blog/coronavirus-shutdowns-delay-naturalization/>.

⁹ The USCIS Policy Manual (USCIS-PM) describes administrative naturalization ceremonies in greater detail in terms of the material distributed to participants, ceremony program, nature of guest speakers, etc. See 12 USCIS-PM J.(5).

¹⁰ Associated Press, *Drive-Through Citizenship Eases Backlog, but New Threat Looms*, New York Times (June 30, 2020) <https://www.nytimes.com/aponline/2020/06/30/us/politics/ap-us-citizenship-agency-woes.html>.

¹¹ USCIS, *USCIS Response to COVID-19, Naturalization Ceremonies* (June 29, 2020) <https://www.uscis.gov/about-us/uscis-response-covid-19>.

¹² New York Times, *Coronavirus in the U.S: Latest Map and Case Count* (July 9, 2020) <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html>.

¹³ Zolan Kanno-Youngs and Emily Cochrane, *Immigration Officers Face Furloughs as Applications Plunge*, New York Times (July 3, 2020) <https://www.nytimes.com/2020/07/03/us/politics/immigration-furloughs-coronavirus.html>.

¹⁴ Geneva Sands and Priscilla Alvarez, CNN, *\$1 billion Shortfall, Furloughs Could Bring U.S. Immigration System to a Halt* (July 2, 2020) <https://www.cnn.com/2020/07/02/politics/uscis-mass-furloughs-pandemic/index.html>; Camilo Montoya-Galvez, *Standoff Over Emergency Funding Leaves 13, 400 Workers Facing Furlough* (July 6, 2020) <https://www.cbsnews.com/news/uscis-funding-13400-immigration-workers-furlough-coronavirus/>.

¹⁵ USCIS, *Processing Times N-400s by Field Office* (June 29, 2020) <https://egov.uscis.gov/processing-times/>. While USCIS reports the national average of N-400 processing to be 8 months, this does not concur with the processing times published by the offices that actually perform the adjudications. See USCIS, *Historical National Average Processing Time (in Months) for All USCIS Offices for Select Forms By Fiscal Year*, USCIS website <https://egov.uscis.gov/processing-times/historic-pt>.

¹⁶ See U.S. Department of Homeland Security (DHS), Citizenship and Immigration Services Ombudsman, *Annual Report 2016*, p.66 (June 29, 2016) https://www.dhs.gov/sites/default/files/publications/cisomb/cisomb_2016-annual-report-to-congress.pdf.

¹⁷ Stuart Anderson, *Trump Policies Delay Citizenship For Immigrants Before Election*, Forbes (May 14, 2020) <https://www.forbes.com/sites/stuartanderson/2020/05/14/report-trump-policies-delay-citizenship-for-immigrants-before-election/>. Many states set voter registration deadlines a month before election day, further increasing the potential for disenfranchisement for those otherwise eligible to register in time but for delays in administering the oath of allegiance. See <https://www.usvotefoundation.org/vote/state-elections/state-election-dates-deadlines.htm#>.

¹⁸ Miriam Jordan, *Trump Administration Faces Bipartisan Calls to End Citizenship Delays*, New York Times (July 17, 2020) <https://www.nytimes.com/2020/06/17/us/coronavirus-naturalization-citizenship-voting.html>.

¹⁹ See 12 USCIS-PM J.(5).

²⁰ See U.S. Representative Katko, *Representative Katko Leads Bipartisan Effort Urging USCIS to Remotely Administer Naturalization Services Amid COVID-19 Pandemic* (June 3, 2020) <https://katko.house.gov/media-center/press-releases/rep-katko-leads-bipartisan-effort-urging-uscis-remotely-administer>.

²¹ See, e.g. Philip Marcelo, *Thousands Wait to Take US Citizenship Oath Amid Virus Delays*, AP (May 24, 2020) <https://apnews.com/b70243d31c9355a486be762970ffa49>; Editorial Board, *Would-be Americans are Being Kept from Becoming Citizens – and from voting in the fall*, Washington Post (May 21, 2020) https://www.washingtonpost.com/opinions/would-be-americans-are-being-kept-from-becoming-citizens-and-voting-in-the-fall/2020/05/21/136dba44-99ff-11ea-a282-386f56d579e6_story.html.

²² DHS, Citizenship and Immigration Services Ombudsman, *Annual Report 2020* (June 30, 2020), p. 22 <https://www.dhs.gov/topic/prior-annual-reports>.

²³ USCIS, *History of the Oath of Allegiance*, USCIS website <https://www.uscis.gov/us-citizenship/naturalization-test/history-oath-allegiance>.

²⁴ *Id.*

²⁵ *Id.*

²⁶ Immigrant Legal Resource Center, *Naturalization and U.S. Citizenship, The Essential Legal Guide*, 15th Edition (2018), p.603.

²⁷ See 12 USCIS-PM J.(5) and (6).

²⁸ INA § 337.

²⁹ INA § 337(d).

³⁰ There is also a body of caselaw affirming that the oath should be taken publicly. See generally *Duran-Picardo v. U.S.*, 695 F.3d 282, 285 (3d Cir. 2012) (determining that

the public oath of allegiance is a condition of naturalization, and the failure to take it means that a person is not a citizen despite fulfillment of the other requirements for naturalization); *Abiodun v Gonzales*, 461 F.3d 1210, 1215-16 (10th Cir. 2006) (affirming that applicant's signing an oath of allegiance during his naturalization interview is insufficient to make him a citizen of the United States because an oath must occur during a public ceremony and Abiodun's did not); *Tovar-Alvarez v A.G.*, 427 F.3d 1350, 1352-53 (11th Cir 2005) (explaining that applicant's failure to show that he has taken the oath of allegiance during a public ceremony meant he had not satisfied the statutory prerequisites of citizenship).

³¹ Miriam Jordan, *Trump Administration Faces Bipartisan Calls to End Citizenship Delays*, New York Times (July 17, 2020) <https://www.nytimes.com/2020/06/17/us/coronavirus-naturalization-citizenship-voting.html>.

³² INA 337(d); see also 8 C.F.R. §337.1 ("[A]n applicant for naturalization shall, before being admitted to citizenship, take in a public ceremony held within the United States the following oath of allegiance")

³³ 8 C.F.R. §337.2(a).

³⁴ USCIS Response to COVID-19 ("In accordance with social distancing guidelines, and due to the length of asylum interviews, asylum offices expect to conduct video-facilitated asylum interviews, where the applicants sit in one room and the interviewing officer sits in another room.") <https://www.uscis.gov/about-us/uscis-response-covid-19>.

Note that given the heightened likelihood of technical connection issues when first implementing virtual oath ceremonies, any legislative bill to facilitate remote oath ceremonies should clarify that failure to "appear" virtually for a remote oath ceremony shall not constitute abandonment of the request for naturalization as set forth in 8 CFR § 337.10.

³⁵ See 8 CFR § 1003.25(c) - Telephonic or video hearings ("An Immigration Judge may conduct hearings through video conference to the same extent as he or she may conduct hearings in person. An Immigration Judge may also conduct a hearing through a telephone conference, but an evidentiary hearing on the merits may only be conducted through a telephone conference with the consent of the alien involved after the alien has been advised of the right to proceed in person or, where available, through a video conference, except that credible fear determinations may be reviewed by the Immigration Judge through a telephone conference without the consent of the alien."); INA § 240(b)(2)(A)(iii) (allowing proceedings to be conducted via videoconferencing); see generally EOIR's Video Teleconferencing Initiative (March 13, 2009) <https://www.justice.gov/eoir/videoconferencingfactsheetmarch2009>.

³⁶ 8 C.F.R. §337.2(a).

³⁷ See 12 USCIS-PM J.(4) (“USCIS field offices conduct administrative ceremonies at regular intervals as frequently as is necessary.”); See also *Kim v. USCIS*, 551 F. Supp. 2d 1258, 1264-65 (D. Colo. 2008) (under Mandamus Act and APA where there is no deadline to adjudicate, agency has a non-discretionary duty to adjudicate within a reasonable time).

³⁸ Boundless, *Coronavirus Shutdowns Could Put 2020 Voting Out of Reach For Hundreds of Thousands of New Americans* (April 6, 2020) <https://www.boundless.com/blog/coronavirus-shutdowns-delay-naturalization/>.

³⁹ See INA § 334(e) - Substitute filing place and administering oath other than before Attorney General: (“A person may file an application for naturalization other than in the office of the Attorney General, and an oath of allegiance administered other than in a public ceremony before the Attorney General or a court, if the Attorney General determines that the person has an illness or other disability which -

(1) is of a permanent nature and is sufficiently serious to prevent the person's personal appearance, or

(2) is of a nature which so incapacitates the person as to prevent him from personally appearing.”)

⁴⁰ 8 C.F.R. § 337.2(c) - Execution of questionnaire (“Immediately prior to being administered the oath of allegiance, each applicant must complete the questionnaire on the form designated by USCIS. USCIS will review each completed questionnaire and may further question the applicant regarding the responses provided. If derogatory information is revealed, USCIS will remove the applicant's name from the list of eligible persons as provided in 8 CFR 335.5 and he or she will not be administered the oath.”)

⁴¹ USCIS currently allows for online submission of the following forms: (1) AR-11, *Alien's Change of Address Card*; (2) G-639, *Freedom of Information/Privacy Act and Online FOIA Request*; (3) I-90, *Application to Replace Permanent Resident Card*; (4) I-130, *Petition for Alien Relative*; (5) I-131A, *Application for Travel Document (Carrier Documentation)*; (6) I-539, *Application To Extend/Change Nonimmigrant Status*; (7) N-336, *Request for a Hearing on a Decision in Naturalization Proceedings (Under Section 336 of the INA)*; (8) N-400, *Application for Naturalization*; (9) N-565, *Application for Replacement Naturalization/Citizenship Document*; (10) N-600, *Application for Certificate of Citizenship*; (11) N-600K, *Application for Citizenship and Issuance of Certificate Under Section 322*. See USCIS Forms, available at <https://www.uscis.gov/forms>.

⁴² OMB, *Harnessing Technology to Support Mission Continuity* (March 22, 2020)

<https://www.whitehouse.gov/wp-content/uploads/2020/03/M-20-19.pdf>.

⁴³ 8 U.S.C. §1356(u).

⁴⁴ 8 C.F.R. § 338.3.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Taking the oath of citizenship is the final legal requirement that applicants older than 14 years old must meet to become Canadian citizens. Kathleen Harris, *Virtual Citizenship Ceremonies Coming for New Canadians Whose Dreams Were Crushed by COVID-19*, CBC (June 4, 2020), <https://www.cbc.ca/news/politics/citizenship-ceremonies-virtual-ircc-1.5595253>.

⁴⁸ See 12 USCIS-PM J.(3) See also Public Law 106-448, which authorized the Attorney General to waive the oath requirement for any individual who has a developmental or physical

disability or mental impairment that makes him or her unable to understand, or communicate an understanding of, the meaning of the oath. PL 106-448 was enacted to remove any further obstacles in the naturalization process for applicants with disabilities; see also Bureau of Citizenship and Immigration Services, Memorandum from William R. Yates, Acting Associate Director, Bureau of Citizenship and Immigration Services: *Procedures for Implementing the Waiving of the Oath of Renunciation and Allegiance for the Naturalization of Aliens having Certain Disabilities* (June 30, 2003).

⁴⁹ INA § 337(a).

⁵⁰ 12 USCIS-PM J.(3) fn. 13.

⁵¹ 12 USCIS-PM C.(3).

⁵² *Id.* fn. 1.

⁵³ A related example of adapting circumstances is embodied in USCIS's policy on modifications to the oath. Applicants may request modifications - or changes - to the language of the oath of allegiance when they do not subscribe to certain aspects of the oath. An applicant may request to modify the oath requirement based on religious grounds or moral convictions. The most common parts of the oath that some applicants wish to modify are: “I will bear arms” and “so help me God.” Immigrant Legal Resource Center, *Naturalization and U.S. Citizenship: The Essential Legal Guide*, 15th Edition (2018), p.597.

⁵⁴ 8 CFR § 337.3.

⁵⁵ *Id.*

⁵⁶ New York Times, *Coronavirus in the U.S: Latest Map and Case Count* (July 9, 2020)

<https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html>.

⁵⁷ INA § 337(d).

⁵⁸ See American Immigration Lawyers Association (AILA), *Bipartisan Group of 38 Senators Calls USCIS to Account for Crisis-Level Processing Delays* (May 14, 2019) <https://www.aila.org/advo-media/press-releases/2019/bipartisan-group-of-36-senators-calls-uscis>.

⁵⁹ National Association of Latino Elected and Appointed Officials, *America Thrives When Immigrants Integrate and Naturalize* (Sept. 5, 2019) https://naleo.org/PRA/Natz%20Fee%20Action%20Alert%2011-2019/9_5_19%20-%20Naturalization%20Fact%20Sheet%20-%203%20-%202.pdf.

⁶⁰ *Id.*



San Francisco
1458 Howard Street
San Francisco, CA 94103
t: 415.255.9499
f: 415.255.9792
ilrc@ilrc.org www.ilrc.org

Washington D.C.
1015 15th Street, NW
Suite 600
Washington, DC 20005
t: 202.777.8999
f: 202.293.2849

Austin
6633 East Hwy 290
Suite 102
Austin, TX 78723
t: 512.879.1616

San Antonio
500 6th Street
Suite 204
San Antonio, TX 78215
t: 210.760.7368

About the Immigrant Legal Resource Center

The Immigrant Legal Resource Center (ILRC) works with immigrants, community organizations, legal professionals, law enforcement, and policy makers to build a democratic society that values diversity and the rights of all people. Through community education programs, legal training and technical assistance, and policy development and advocacy, the ILRC's mission is to protect and defend the fundamental rights of immigrant families and communities.