

NATURALIZATION ROULETTE: HOW THE LACK OF
TRANSPARENCY IN THE UNITED STATES NATURALIZATION
PROCESS IS FAILING REFUGEES AND IMMIGRANTS

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INTRODUCTION

The refugee process can inflict an immense amount of trauma on individuals.¹ The refugee experience has commonly been divided into three categories: pre-migration, in transit, and post-migration.² The pre-migration stage, occurring when the refugee is still in their original country, may introduce the individual to “physical or psychological trauma, including the death of a loved one, inability to live daily life, and denial of basic necessities.”³ This trauma can be compounded by exposure to war and ethnic and domestic violence. The in-transit phase occurs in the transition between the refugee’s home country and the safer country, often taking place in a refugee camp.⁴ While these camps are seen to be safe escapes for the individuals, they “are often as dangerous and may have higher mortality rates than countries of origin due to ‘interethnic strife, sexual violence, and disease epidemics.’”⁵ During this time of uncertainty, many families are separated.⁶ Refugees do not feel safe as they live in fear that they will not survive their travels or that they will be sent back to their original country.⁷ The final stage, the post-migration process, begins as the refugee enters the new country,

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¹ Whitney Keltner Wessels, *The Refugee Experience: Involving Pre-migration, In Transit, and Post Migration Issues in Social Services* (May 2015) (Master of Social Work Clinical research paper, St. Catherine University) (on file with SOPHIA, St. Catherine University), https://sophia.stkate.edu/msw_papers/409/ [<https://perma.cc/23UA-9DJA>].

² Dinesh Bhugra & Peter Jones, *Migration and Mental Illness*, 7 *ADVANCES IN PSYCHIATRIC TREATMENT* 216 (2001); Emily F. Keyes & Catherine F. Kane, *Belonging and Adapting: Mental Health of Bosnian Refugees Living in the United States*, 25 *ISSUES IN MENTAL HEALTH NURSING* 809 (2004); Nigar G. Khawaja et al., *Difficulties and Coping Strategies of Sudanese Refugees: A Qualitative Approach*, 45 *TRANSCULTURAL PSYCHIATRY* 489 (2008); Kenneth E. Miller et al., *Bosnian Refugees and the Stressors of Exile: A Narrative Study*, 72(3) *AM. J. OF ORTHOPSYCHIATRY* 341 (2002); *see id.*

³ Wessels, *supra* note 1, at 11; *see* Khawaja et al., *supra* note 2.

⁴ Wessels, *supra* note 1, at 11; *see* Bhugra & Jones, *supra* note 2.

⁵ Wessels, *supra* note 1, at 11; *see* Kristin M. Adams et al., *Healthcare Challenges from the Developing World: Post-Immigration Refugee Medicine*, 328 *BRIT. MED. J.* 1548, 1548 (2004).

⁶ *See* Bhugra & Jones, *supra* note 2; *see also* Miller et al., *supra* note 2, at 346.

⁷ Wessels, *supra* note 1; *see* Khawaja et al., *supra* note 2.

seeking asylum.⁸ This stage is particularly traumatic for refugees in that it can inflict “social isolation, identity confusion, loss of cultural community and family members, the loss of important life projects, a lack of environmental mastery, poverty and resource accumulation, and the loss of valued societal roles.”⁹

Ultimately, each stage of a refugee’s experience in the migration to a new country can cause distress to the individual, affecting their mental health conditions.¹⁰ Literature concerning refugees shows an “unusually high prevalence of mental illness in refugee populations [as they] are at a particularly elevated risk for psychiatric disorders like depression, substance use, post-traumatic stress, and psychosis which are often directly related to the physical and psychological torture they experienced.”¹¹ Throughout refugees’ migration to the United States, many individuals suffer through a myriad of brain-altering experiences such as torture, assault, and violence which could inflict prolonged adverse health effects on the refugees.¹² From PTSD to depression to anxiety to traumatic brain injuries, refugees suffer through horrifying experiences that permanently alter their brain activity.¹³ This ultimately can impact their ability to acquire new languages, therefore posing a bar to their ability to naturalize.¹⁴

The current naturalization law requirements include age restrictions, lawful permanent resident (LPR) status, continuous residence, physical presence, good moral character, attachment to Constitution principles, and most relevant to this Note, “[t]he . . . ab[ility] to read, write, and speak and understand English and have knowledge and an understanding of U.S. history and government.”¹⁵ The wide variety of approaches toward immigration policy within the last two presidential administrations has caused major shifts

⁸ Khawaja et al., *supra* note 2.

⁹ Wessels, *supra* note 1, at 12; Khawaja et al., *supra* note 2; Miller et al., *supra* note 2; see Keyes & Kane, *supra* note 2.

¹⁰ Wessels, *supra* note 1.

¹¹ *Id.* at 13; Caroline Gorst-Unsworth, *Adaptation After Torture: Some Thoughts on the Long-Term Effects of Surviving a Repressive Regime*, 8(3) *MED. & WAR* 164, 167–68 (1992); J. David Kinzie et al., *The Prevalence of Posttraumatic Stress Disorder and its Clinical Significance Among Southeast Asian Refugees*, 147(7) *AM. J. PSYCHIATRY* 913, 915–17 (1990); Kamaldeep Bhui et al., *Traumatic Events, Migration Characteristics and Psychiatric Symptoms Among Somali Refugees*, 38(1) *SOC. PSYCHIATRY & PSYCHIATRIC EPIDEMIOLOGY* 35, 41–42 (2003); see Marie Norredam, et al., *Risk of Mental Disorders in Refugees and Native Danes: A Register-Based Retrospective Cohort Study*, 44(12) *SOC. PSYCH. & PSYCHIATRIC EPIDEMIOLOGY* 1023, 1029 (2009).

¹² Emily Benson Chatzky, *Almost Citizens: How the Medical Exception Continues to Limit Refugee Naturalization*, 12 *ELON L. REV.* 137, 141–46 (2020).

¹³ *Id.*

¹⁴ *Id.* at 144 (“Effects of torture include, but are not limited to, headaches, musculoskeletal pains, hearing loss, visual problems, neurological damage, difficulty concentrating, insomnia, and memory loss.”).

¹⁵ *Chapter 1 - Purpose and Background*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Feb. 28, 2024), <https://www.uscis.gov/policy-manual/volume-12-part-d-chapter-1> [<https://perma.cc/EU92-LH25>].

in the naturalization laws.¹⁶ This dramatic fluctuation in how the United States government views and handles naturalization has caused harm to many individuals going through the immigration process due to the inability to foresee how the law will be altered while they are in the process of applying.

One primary avenue for this lack of consistency can be seen in the functioning of the United States Citizenship and Immigration Services (USCIS) administrative agency. This Note argues that the lack of transparency between the USCIS and its applicants and their advocate groups has caused a lack of consistency in the implementation of the naturalization laws regarding the exceptions to some requirements for those with medical disabilities.

This Note uses the term refugee with respect to all migrants fleeing trauma, regardless of their initial immigration status. Whether they arrived as asylum seekers or through some visa process, the physical and psychological effects can play the same role in the naturalization process. The foundational issues and hardships addressed in this Note are reflective of both refugees and immigrants whose disabilities the naturalization process does not properly support.

The background of this Note provides an overview of the origins of immigration and naturalization law within the United States.¹⁷ This section identifies the legislation that introduced the language requirement and the civics requirement that is still active in the current regulations, which is particularly challenging for refugees struggling with mental illness. Additionally, it explores the harmful intentions of the creators of this legislation and why they introduced the requirements in the first place. This section further chronicles the beginning of the implementation of the exceptions for the language and civics requirements for those with medical disabilities.

Part I of this Note analyzes the shifts in naturalization regulations between former President Donald J. Trump's and President Joe Biden's administrations. Section I.A analyzes the circumstances behind changes in the mission statement for the USCIS and how both the public and the agency's employees perceived those changes. Next, this section chronicles the alterations of the policies and procedures used by the officers of the

¹⁶ See *infra* Section II.

¹⁷ See *Glossary*, U.S. DEP'T OF HOMELAND SEC. (Feb. 5, 2024), <https://www.dhs.gov/ohss/about-data/glossary#8> [<https://perma.cc/XA68-CYLB>] (An immigrant is defined by the U.S. Department of Homeland Security as “[a]ny person lawfully in the United States who is not a U.S. citizen, U.S. national, or person admitted under a nonimmigrant category as defined by the Immigration and Nationality Act (INA) section 101(a)(15).”); see also *Citizenship and Naturalization*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Feb. 28, 2024), <https://www.uscis.gov/citizenship/learn-about-citizenship/citizenship-and-naturalization> [<https://perma.cc/2ZRN-GLRT>] (Under the USCIS, naturalization is defined as “the process by which U.S. citizenship is granted to a lawful permanent resident after meeting the requirements established by Congress in the Immigration and Nationality Act (INA).”).

USCIS and criticisms of those changes. Further, it identifies how these fluctuations affected the implementation of the laws, ultimately harming refugees' ability to gain lawful entry into the United States. Section I.B identifies potential sources of the inconsistent execution of these laws. This section explores the psychological ideologies of those who work within the bureaucracy and why their actions and decisions may lead to biased or flawed results.

Part II of this Note presents resolutions to help promote consistency within the rules and regulations of naturalization laws. Section II.A highlights the importance of transparency between the USCIS agency and its stakeholders. Section II.B emphasizes the importance of more rigorous training within the USCIS and readily available resources for stakeholders in order to promote more efficiency within the naturalization process. By increasing training and self-regulation on the side of the USCIS, the process could improve consistency across the board. Further, providing stakeholders with transparency about naturalization data regarding disabled refugees could increase the efficiency of the USCIS and help support the refugees going through the process of naturalization.

This Note concludes by underlining the importance of creating a consistent, efficient naturalization process for individuals who are often in a very vulnerable position. In 2022, 781,075 individuals applied for naturalization, and the USCIS denied 111,637 the right to citizenship.¹⁸ Making the naturalization process more consistent and transparent would help make the process more efficient for every party involved. The overall goal of this Note, therefore, is to analyze the current legislation surrounding naturalization and the consistency of its enforcement to pinpoint areas to make the process more equitable for refugees and immigrants.

I. BACKGROUND: NATURALIZATION THROUGH TIME

In order to understand the current landscape of immigration law in the United States, it is imperative to know its origins. The recent changes within the policies and regulations are only a tiny fraction of the ever-changing history surrounding this area of law. First, this background will discuss the beginning of immigration laws within the United States to show the intent held by the framers of the statutes—including eugenic beliefs—with a particular focus on creating the English literacy requirement. Then, the background analyzes the introduction of the N-648 medical waiver for naturalization applicants and the requirements of the form. Lastly, the

¹⁸ U.S. Dep't of Homeland Sec., *Naturalizations Annual Flow Report*, OFF. HOMELAND SEC. STAT. (Feb. 26, 2024), <https://www.dhs.gov/ohss/topics/immigration/naturalizations-AFR> [https://perma.cc/R2UE-A88S].

background will conclude with the concern for discretionary inconsistency in how the USCIS officers accept or deny waiver forms based upon reports from refugee advocates.

A. Origins of Immigration Statutes in the United States and the English Literacy Requirement

The origins of statutes and regulations on immigration date back to the founding of the United States.¹⁹ From the beginning of immigration law within the country, the prejudice and lack of support for mentally disabled citizenship applicants is prominent, and “it reflects a history of discrimination against disabled immigrants that has unfortunately characterized American immigration law since its inception.”²⁰ The Naturalization Act of 1790 was the first act to define citizenship within the new country, which effectively limited the right to only white male property owners, excluding all women, indentured servants, and people of color.²¹

However, the Naturalization Act of 1790 was short-lived, as Congress repealed the statute merely five years later to raise the bar for citizenship.²² The Naturalization Act of 1795 extended the residence requirement from two to five years. It required that the individual make a declaration of intention to seek citizenship at least three years before their naturalization.²³ The addition of the declaration of intent to the naturalization laws caused much confusion and controversy. “Many immigrants mistakenly believed making a declaration made them U.S. citizens. The special rights and obligations of declarants undoubtedly contributed to the confusion. For example, declarants could be conscripted into the U.S. Armed Services[,] and nine states even allowed declarants to vote.”²⁴ Congress set into place multiple acts that

¹⁹ See U.S. CONST. art. I, § 8, cl. 4 (“[The Congress shall have Power . . .] [t]o establish a uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States; . . .”); see also *Chirac v. Lessee of Chirac*, 15 U.S. (2 Wheat.) 259 (1817) (courts have held “[t]hat the power of naturalization is exclusively in [C]ongress does not seem to be, and certainly ought not to be, controverted.”).

²⁰ Joren Lyons, *Mentally Disabled Citizenship Applicants and the Meaningful Oath Requirement for Naturalization*, 87 CALIF. L. REV. 1017, 1022 (1999).

²¹ Antony John Kunnan, *Politics and Legislation in Citizenship Testing in the United States*, 29 ANN. REV. APPLIED LINGUISTICS 37 (2009); Naturalization Act of 1790, 1 Stat. 103, 1 Cong. Ch. 3 (repealed 1795) (defined the eligibility of citizenship as: “that any alien, being a free white person, who shall have resided within the limits and under the jurisdiction of the United States for the term of two years, may be admitted to become a citizen thereof, on application to any common law court of record, in any one of the States wherein he shall have resided for the term of one year at least, and making proof to the satisfaction of such court, that he is a person of good character, and taking the oath or affirmation prescribed by law, to support the Constitution of the United States.”).

²² Naturalization Act of 1795, 1 Stat. 414, 3 Cong. Ch. 20 (repealed 1795).

²³ *Id.*

²⁴ *History of the Declaration of Intention (1795-1956)*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Jan. 6, 2020), <https://www.uscis.gov/about-us/our-history/stories-from-the-archives/history-of-the-declaration-of-intention-1795-1956> [<https://perma.cc/C4Y2-QHDU>].

continued to hinder immigrants' ability to gain citizenship, including requirements for "good moral character[,] allegiance to the Constitution[,] and the exclusion of criminals and prostitutes from admission."²⁵

While Congress passed the Thirteenth and Fourteenth Amendments in 1865 and 1868, respectively, recognizing African Americans as citizens and ensuring due process for all, Congress passed the Chinese Exclusion Act of 1882.²⁶ This highly restrictive immigration policy specifically attacked the Chinese population in the United States by suspending the immigration of laborers from the country for ten years, prohibiting their ability to become citizens through the naturalization process.²⁷ In 1891, Congress created the first Office of Immigration within the federal treasury department.²⁸

During the eighteenth and nineteenth centuries, immigration was open, encouraged, and rarely questioned.²⁹ 1880 to 1924 is recognized as one of the periods of heaviest immigration in the history of the United States.³⁰ Prior to 1883, 95 percent of immigrants that embarked to the United States originated from Northern and Western European countries, including "England, Ireland, Scotland, Wales, Belgium, Denmark, France, Germany, Norway, Sweden, the Netherlands, and Switzerland."³¹ This concentration of immigrants from Northern and Western Europe shifted from 1883 to 1907 as there was a rise in immigration from countries within Southern and Eastern Europe.³² During this time of the immigrants migrating from Europe, 81 percent originated from "Austria-Hungary, Bulgaria, Greece, Italy, Montenegro, Poland, Portugal, Romania, Russia, Serbia, Spain, Syria, and Turkey."³³ More than a "mere geographic shift," the new group of immigrants was seen to differ "much more radically in type from the earlier American residents than did the old immigration, and that in consequence the problem of assimilation has become much more difficult."³⁴

Before 1896, no language requirements existed in United States immigration laws for naturalized citizens to understand, speak, or write English.³⁵ The House of Representatives first introduced these criteria in a

²⁵ Kunnan, *supra* note 21, at 39.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Our History*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/about-us/our-history> [<https://perma.cc/X5QZ-WSG7>].

²⁹ *Early American Immigration Policies*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/about-us/our-history/explore-agency-history/overview-of-agency-history/early-american-immigration-policies> [<https://perma.cc/9QTL-QLKL>].

³⁰ Charles Jaret, *Troubled by Newcomers: Anti-Immigrant Attitudes and Action During Two Eras of Mass Immigration to the United States*, 18(3) J. AM. ETHIC HIST. 9, 9 (1999).

³¹ *Id.* at 11.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ Jeanne Petit, *Breeders, Workers, and Mothers: Gender and the Congressional Literacy Test Debate*, 3(1) J. GILDED AGE & PROGRESSIVE ERA 35, 35 (2004).

proposed bill “which required all male immigrants between ages of sixteen and sixty to prove they were literate in either English or some other language.”³⁶ Led by Richard Barthodlt, a German immigrant from Missouri, the bill was “as much about improving the United States citizenry racially as intellectually.”³⁷ When introducing this bill, Barthodlt clearly stated his intentions with this bill as it would not affect “the immigration from Great Britain, Germany, Scandinavia, and other countries of Northern Europe, which countries as a rule send us the most desirable classes of immigrants, while under it the immigration from [S]outhern Europe, now looked upon as more or less undesirable, will be considerably restricted.”³⁸ The test in the bill was written to require applicants for naturalization or immigration to read at least forty words in any language.³⁹ Later arguing in favor of the bill, Barthodlt plainly stated, “[C]all it race prejudice or any other name, but there is no denying the fact that the Anglo-Saxon feels an aversion against the Latin races.”⁴⁰ However, President Grover Cleveland vetoed the literacy test bill when he stated, “[A] careful examination of this bill has convinced me that for the reasons given and others not specifically stated, its provisions are unnecessarily harsh and oppressive, and that its defects in construction would cause vexation and its operation would result in harm to our citizens.”⁴¹ It is evident by the language of the proposed statute and the creator’s ideology that Congress proposed these laws to exclude potential citizens based on the government’s idea of intelligence. This proposed law “reflect[s] American society’s embrace of eugenic ideals and its growing obsession with Darwinian concepts of fitness.”⁴²

Given Congress’s association between English literacy and ethnicity, this veto did not diminish the motivation of members of Congress from continuing to enact legislation that limited immigration on the grounds of literacy. In 1906, Congress reformed the immigration pathway and created the Bureau of Immigration.⁴³ The Bureau of Immigration examiners, overlooking the immigration process, began to ask potential citizens questions regarding their understanding of the United States Constitution.⁴⁴ Additionally, the Naturalization Act of 1906 denied naturalization to those potential citizens who could not speak English.⁴⁵ Congressmen reintroduced the literacy test bill multiple times until it passed over former President

³⁶ *Id.*; H.R. 7864, 54th Cong. (1896).

³⁷ Petit, *supra* note 35, at 35.

³⁸ *Id.* at 36.

³⁹ Kunnan, *supra* note 21, at 40.

⁴⁰ Petit, *supra* note 35, at 36.

⁴¹ *Id.* at 56.

⁴² Lyons, *supra* note 20, at 1023.

⁴³ U.S. CITIZENSHIP & IMMIGR. SERVS., *supra* note 28.

⁴⁴ Kunnan, *supra* note 21, at 40.

⁴⁵ Naturalization Act of 1906, 59 P.L. 338, 34 Stat. 596, 59 Cong. Ch. 3592.

Woodrow Wilson's veto in the Immigration Act of 1917.⁴⁶ This 1917 Act required potential citizens over the age of sixteen to read at least thirty to forty words in ordinary use in any language.⁴⁷ Additionally, the 1917 Act expressly excluded "persons . . . who are found to be and are certified by the examining surgeon as being mentally or physically defective, such physical defect being of a nature which may affect the ability of such alien to earn a living."⁴⁸ In 1933, former President Franklin Delano Roosevelt consolidated the federal programs running immigration and naturalization functions into the Immigration and Naturalization Service (INS).⁴⁹ This requirement was furthered under the Nationality Act of 1940 as it defined the language requirement as verbal English language proficiency, placing a significant barrier on immigrants seeking naturalization.⁵⁰

These subsequent actions culminated with the Immigration and Nationality Act of 1952, which, along with upholding the federal quota system, combined the English language requirement and the knowledge of history and government requirements.⁵¹ The Act required a potential citizen to demonstrate "an understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language . . . [and] a knowledge and understanding of the fundamentals of the history, and of the principles and form of government, of the United States."⁵² This Act "contained the same broad bans on immigration of individuals who were illiterate, 'feeble-minded,' and those likely to become a public charge."⁵³ Although the Immigration and Nationality Act of 1965 removed the federal quota system that restricted the number of immigrants from outside Western Europe eligible for citizenship, it ultimately retained the literacy provisions of the 1952 Act.⁵⁴ In 1990, Congress narrowed this criterion by prohibiting "only the immigration of those with mental disorders resulting in behavior that may cause harm to themselves or others."⁵⁵ While there have been amendments to some provisions, the 1965 Act still presides over modern immigration law in the United States.⁵⁶

B. Introduction of the Medical Waiver to the Naturalization Process

⁴⁶ Petit, *supra* note 35, at 56.

⁴⁷ Immigration Act of 1917, 64 P.L. 301, 39 Stat. 874, 64 Cong. Ch. 29.

⁴⁸ *Id.*

⁴⁹ U.S. CITIZENSHIP & IMMIGR. SERVS., *supra* note 28.

⁵⁰ Immigration Act of 1917, 64 P.L. 301, 39 Stat. 874, 64 Cong. Ch. 29 (1917).

⁵¹ Immigration and Nationality Act of 1952, 82 P.L. 414, 66 Stat. 163, 82 Cong. Ch. 477 (1952).

⁵² *Id.*

⁵³ Chatzky, *supra* note 12, at 149.

⁵⁴ Immigration and Nationality Act of 1965, 89 P.L. 236, 79 Stat. 911, 89 Cong. (1965).

⁵⁵ Chatzky, *supra* note 12, at 149.

⁵⁶ *Id.*

Throughout the history of immigration and naturalization statutes and regulations mentioned above, Congress has provided a narrow exemption to the language requirement. Starting with the Naturalization Act of 1906, Congress waived the English requirement for those “physically unable to comply” due to “deafness or blindness.”⁵⁷ Congress eventually applied this exception to the literacy requirement as well.⁵⁸

Congress later expanded this exemption more inclusively in the Immigration and Nationality Technical Corrections Act of 1994 (INTCA), which added Section 312(b) to the Immigration and Nationality Act.⁵⁹ This was a critical point in time for immigration law as this was the first time that “an English and civics exception was made available to individuals with disabilities, not just those applicants who were deaf or blind.”⁶⁰ Section 312(b) states, “The requirements of subsection (a) shall not apply to any person who is unable because of physical or developmental disability or mental impairment to comply therewith.”⁶¹

While this exemption was a significant step for inclusivity in immigration policy as a whole, the INS did not implement the new law throughout the naturalization process as officers frequently denied citizenship to applicants with disabilities due to their inability to meet the English and civics requirements.⁶² “[A] preliminary guidance memorandum was distributed internally in the INS ‘directing officers to waive the English fluency and U.S. history/civics requirements for disabled applicants, but to maintain all other requirements.’”⁶³ The INS did not submit this information to the Federal Register; therefore, there was no public notice.⁶⁴ Typically, official changes within agency rules are published for the public to be aware of how the officers handle cases that they work on.⁶⁵ Public notice is essential to the administrative agency system within the United States in order to hold the agencies and their officers accountable for their actions.⁶⁶ This lack of notice ensured that the “details of the waiver policy were kept within the agency” itself.⁶⁷

Before 1996, potential citizens who could not learn English or civics due to disabilities were not greatly incentivized to apply for naturalization.⁶⁸ This

⁵⁷ Lyons, *supra* note 20, at 1028.

⁵⁸ Immigration and Naturalization Act of 1952.

⁵⁹ 8 U.S.C.S. § 1423.

⁶⁰ Chatzky, *supra* note 12, at 153.

⁶¹ 8 U.S.C.S. § 1423.

⁶² Chatzky, *supra* note 12, at 153–54.

⁶³ *Id.* at 154.

⁶⁴ *Id.*

⁶⁵ Lyons, *supra* note 20, at 1040.

⁶⁶ Donald J. Kochan, *The Commenting Power: Agency Accountability Through Public Participation*, 20 OKLA. L. REV. 601 (2017–18).

⁶⁷ Lyons, *supra* note 20, at 1040.

⁶⁸ Chatzky, *supra* note 12, at 154.

is because these citizens still had access to many federal programs and were only barred from accessing a few rights, including “the right to vote, to serve on a jury, and to be qualified for certain government jobs.”⁶⁹ However, Congress passed the Personal Responsibility and Work Opportunity Reconciliation of 1996, which placed restrictions on permanent residents from the federal programs they did have access to, such as Supplemental Security Income (SSI).⁷⁰ Under this program, the government permitted immigrants access to SSI for only seven years unless they applied for naturalization to retain those benefits.⁷¹ This caused many potential citizens with disabilities to apply for citizenship, or they would lose their ability to access these critical benefits.⁷²

In response to the lack of cooperation with the INTCA, a group of advocate attorneys in the San Francisco Bay Area filed suit in 1996 “to force the INS to adopt official rules implementing the 1994 amendments and to make its waiver policy public.”⁷³ This lawsuit sparked the formal policy in 1997 that introduced Form N-648 Medical Certification for Disability Exceptions.⁷⁴ The N-648 is a form that a naturalization applicant fills out alongside their N-400 Application for Naturalization in order to be excused from certain portions of the application process due to a disability that prevents them from completing that part of the application, such as the English and civics requirement.⁷⁵

The Federal Register publication of the Exceptions to the Educational Requirements for Naturalization for Certain Applicants created Form N-648 to “allow the licensed medical professionals to state simply, via reference to the instructional guidelines, how the applicant’s disability prevents the applicant from learning the information needed to fulfill the requirements of § 312.”⁷⁶ Under the Code of Federal Regulations Title 8, Aliens and Nationality, § 312 states that the requirements of English literacy and knowledge of history and government of the United States shall “not apply to any person who is unable, because of a medically determinable physical or mental impairment or combination of impairments which has lasted or is expected to last at least 12 months, to demonstrate an understanding of the English language as noted in paragraph (a) of this section.”⁷⁷ Section 312

⁶⁹ *Id.*

⁷⁰ Personal Responsibility and Work Opportunity Reconciliation Act, H.R.3734, 104th Cong. (1996).

⁷¹ *Id.*

⁷² Chatzky, *supra* note 12, at 154–55.

⁷³ Lyons, *supra* note 20, at 1041; *see* Low v. Meissner, No. C-96-2422 SI (N.D. Cal. filed July 3, 1996), decided sub nom. Chow v. Meissner, 1997 WL 285066.

⁷⁴ Chatzky, *supra* note 12, at 155.

⁷⁵ N-648, *Medical Certification for Disability Exceptions*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/n-648> [<https://perma.cc/YWG7-PZUD>].

⁷⁶ Exceptions to the Educational Requirements for Naturalization for Certain Applicants, 62 Fed. Reg. 12915 (Mar. 19, 1997).

⁷⁷ 8 C.F.R. §§ 312.1–312.2.

further defines “medically determinable” as:

an impairment that results from anatomical, physiological, or psychological abnormalities which can be shown by *medically acceptable clinical or laboratory diagnosis techniques* to have resulted in functioning so impaired as to render an individual to be *unable to demonstrate the knowledge required* by this section or that renders the individuals *unable to participate in the testing procedures for naturalization*, even with reasonable modifications.⁷⁸

An officer of the USCIS completes the determination of the impairment.⁷⁹ Officers use the USCIS Policy Manual to determine the legitimacy of the qualifications for Form N-648.⁸⁰

C. Potential for Discretionary Inconsistency in the Application of Waiver

Instead of listing specific circumstances that would qualify someone for the exception, under the USCIS Policy Manual, the officer reviews Form N-648 to find the “nexus” requirement, which is the link between the disability and the inability to complete either the literacy requirement or the knowledge of history and government of the United States requirement of § 312.⁸¹ The applicant has to prove this connection “by a preponderance of the evidence.”⁸² Officers may find the request for the exemption sufficient if they are provided with the following information: (1) “Clinical diagnosis of the applicant’s physical or developmental disability or mental impairment;” (2) “Indication as to whether the physical or developmental disability or mental impairment has lasted, or is expected to last, at least 12 months;” (3) “Statement that the physical or developmental disability or mental impairment is not the result of the illegal use of drugs;” (4) “Description of the clinical methods used to diagnose the physical or developmental disability or mental impairment;” (5) “Date that the medical professional last examined the applicant for the physical or developmental disability or mental impairment; and” (6) “A sufficient explanation of how the applicant’s physical or developmental disability or mental impairment prevents the applicant from meeting the English requirement, the civics requirement, or both requirements.”⁸³

⁷⁸ 8 C.F.R. §§ 312.1–312.2 (emphasis added).

⁷⁹ *Chapter 3 - Medical Disability Exception (Form N-648)*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/policy-manual/volume-12-part-e-chapter-3> [<https://perma.cc/W9SK-HUUY>].

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

The policy manual states that the USCIS generally “accepts the medical professional’s diagnosis,” but if there are any indications of “significant discrepancies, misrepresentation, or fraud,” the officer can deem the application insufficient.⁸⁴ As discussed in Part II, the vague instructions on instances that an officer can deny an application leave the door open for discretionary inconsistency in the adjudication of the forms.⁸⁵ Many refugee advocates have reported issues in how USCIS officers deny the forms, such as not providing valid reasoning for denial or discriminating against applications completed by certain medical professionals.⁸⁶ These specific concerns will be discussed further.⁸⁷ Before the officer denies the application, they must allow the applicant to “address any specific discrepancies or inconsistencies during the interview.”⁸⁸ If the officer finds that the form does not contain all information that is required and that the deficiencies cannot be explained at the interview, then the USCIS proceeds with the initial examination, reexamination, or hearing on a denial “as if the applicant had not submitted” the form.⁸⁹ The applicant may update any information found to be insufficient, but it must be re-signed and dated by the same medical professional who signed the original form.⁹⁰

Ultimately, “[a]n applicant whose naturalization application was denied may file a Request for a Hearing on a Decision in Naturalization Proceedings Under § 336 (Form N-336) within 30 calendar days of receiving the adverse decision.”⁹¹ This *de novo* hearing must be conducted before any other actions can be taken regarding the naturalization process.⁹²

Since 1994, the process surrounding Form N-648 Medical Certification for Disability Exceptions has been altered many times to fit the ideals of the administration in charge of the federal government at the time.⁹³ As an example, under former President George W. Bush’s administration, Congress passed the Homeland Security Act of 2002, creating the USCIS, which assumed the duties for the immigration service functions of the federal government.⁹⁴ The intent behind forming this agency was to “enhance the security and efficiency of national immigration services by focusing exclusively on the administration of benefit applications.”⁹⁵ Most recently, the naturalization process had a drastic change from former President

⁸⁴ *Id.*

⁸⁵ *See infra* Section II.A-2.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ U.S. CITIZENSHIP & IMMIGR. SERVS., *supra* note 75.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *De Dandrade v. U.S. Dep’t of Homeland Sec.*, 367 F. Supp. 3d 174, 184 (S.D.N.Y. 2019).

⁹³ *Chatzky*, *supra* note 12.

⁹⁴ U.S. CITIZENSHIP & IMMIGR. SERVS., *supra* note 28.

⁹⁵ *Id.*

Trump's administration to President Biden's administration.⁹⁶ As discussed below, the whiplash between the three presidential outlooks on immigration has caused a lot of anger, happiness, and utter confusion on where the law will be heading next. Ultimately, advocates for many marginalized groups fighting for immigration rights have fought to see change for those they represent, but they are having difficulty seeing these changes in action.

II. ANALYSIS: HOW POLITICAL POLARIZATION AND BUREAUCRATIC INEFFICIENCY CONTINUE TO HARM VULNERABLE REFUGEES

With the drastic polarization of the United States' political atmosphere, it is unsurprising that former President Trump and President Biden have utilized the country's immigration system as a significant platform to enforce their party's ideologies. Former President Trump first ran for the presidency in 2016 with a campaign striving for "an unwavering, hard-line position on immigration, complete with mass deportations, a temporary ban on Muslim immigration[,] and a border wall paid for by Mexico."⁹⁷ In 2020, former President Trump stuck with this narrative, basing his immigration platform on the "promises he says he kept and warning that his Democratic challenger Joe Biden will roll them back."⁹⁸ President Biden promised to do precisely that and followed through with that promise on many fronts.⁹⁹ For example, on his first day in office, President Biden showed his commitment to "restor[ing] humanity and American values to our immigration system" by submitting the U.S. Citizenship Act to Congress.¹⁰⁰ The two presidents implemented these polarizing ideologies throughout the USCIS while in office.

Section II.A of this analysis will compare the Trump and Biden administrations' changes to the immigration system's policies and forms to fit within their platforms. Section II.B of this analysis examines the potential psychological ideologies behind the concerns of biased or inconsistent

⁹⁶ Chatzky, *supra* note 12, at 143.

⁹⁷ Nick Corasaniti, *A Look at Trump's Immigration Plan, Then and Now*, N.Y. TIMES (Aug. 31, 2016), <https://www.nytimes.com/interactive/2016/08/31/us/politics/donald-trump-immigration-changes.html> [<https://perma.cc/9HZ7-HYW8>].

⁹⁸ Mimi Dwyer, *Factbox: How Trump Followed Through on His Immigration Campaign Promises*, REUTERS (Aug. 14, 2020), <https://www.reuters.com/article/idUSKCN25A18U/> [<https://perma.cc/XLC6-PHB9>].

⁹⁹ Amna Nawaz & Saher Khan, *Biden Vowed to Fix America's Immigration System. Here's What He Achieved in His First Year*, PBS (Jan. 20, 2022), <https://www.pbs.org/newshour/show/biden-vowed-to-fix-americas-immigration-system-heres-what-he-achieved-in-his-first-year> [<https://perma.cc/CG9W-F5KE>].

¹⁰⁰ *Fact Sheet: President Biden Sends Immigration Bill to Congress as Part of His Commitment to Modernize our Immigration System*, WHITE HOUSE (Jan. 20, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-president-biden-sends-immigration-bill-to-congress-as-part-of-his-commitment-to-modernize-our-immigration-system/> [<https://perma.cc/5ULF-886C>].

implementation of the USCIS policies and procedures highlighted by immigration advocates.

A. A Comparison of Former President Trump's and President Biden's Administration Immigration Policies

With strong views on how the government should handle immigration within the United States, former President Trump and President Biden quickly implemented changes to the immigration system when they entered office. These alterations included administrative changes to the USCIS and how it functions.¹⁰¹ Two examples of these changes included the alterations to the agency's mission statement and the Form N-648 Medical Certification for Disability Exceptions.¹⁰²

Section II.A-1 analyzes the changes in the USCIS mission statement to highlight the drastic alterations implemented to conform the agency's purpose to the president's agenda. It also highlights the implications of these alterations and the public and employees' opinions of them. Section II.A-2 chronicles the changes to Form N-648 Medical Certification for Disability Exceptions to the English and civics requirement of the naturalization application.

1. USCIS Mission Statement

An organizational mission statement is a written proclamation that conveys a corporation's, business's, or association's purpose.¹⁰³ The mission statement is an essential guiding point for the employees on how to function and for the recipients of the work on what to expect from the group.¹⁰⁴ The words chosen to represent the purpose of the organization act as the "cultural glue" holding the organization together to allow the group to work together as a "collective unity."¹⁰⁵ Ultimately, for the employees of the organization, the mission statement combines the "robust norms and values that impact on the way in which people perform in order to achieve the purpose of the company."¹⁰⁶ Research has shown a strong positive relationship between the use of mission statements and organizational performance.¹⁰⁷ Further, these statements have been proven to serve as "an essential communication tool

¹⁰¹ See generally Dwyer, *supra* note 98; see generally *id.*

¹⁰² See *infra* Sections II.A-1–2.

¹⁰³ See generally Seong-Yuen Toh et. al, *Mission Statement Effectiveness: Investigating Managers' Sensemaking Role*, 27(2) CORP. COMM'N: INT'L J. 329 (2022).

¹⁰⁴ *Id.*

¹⁰⁵ Inés Alegre et. al, *The Real Mission of the Mission Statement: A Systematic Review of the Literature*, 24(4) J. MGMT. & ORG. 456, 464 (2018).

¹⁰⁶ *Id.*

¹⁰⁷ Toh, *supra* note 103, at 330.

for internal and external stakeholders.”¹⁰⁸ Internal and external stakeholders for an organization may include “employees, customers, shareholders, the community and the country and its government.”¹⁰⁹ In the context of the USCIS, “[t]he USCIS mission statements provided insight into how the organization makes sense of its mission within a changing political and social context.”¹¹⁰ External stakeholders within the USCIS may include individuals and groups such as doctors, lawyers, and non-profit entities.¹¹¹

Since the formation of the USCIS in 2003, the organization changed its mission statement only three times before former President Trump entered office, each instance distinguished by significant political or cultural events.¹¹² Created in the wake of the aftermath of the tragedy on September 11, 2001, the USCIS adopted a mission statement that “emphasized protecting the United States and improving the experience of those using the service.”¹¹³ The later three changes in 2008, March 2009, and September 2009 were marked by two different presidential administrations and the economic recession.¹¹⁴ Former President George W. Bush’s administration altered the mission statement to focus more on the adjudicative functions of the agency, replacing the references to national security and protection.¹¹⁵ Former President Barack Obama’s administration made two changes to the mission statement in 2009.¹¹⁶ Both statements were very similar, but the second revision brought in significant components that emphasized “a promise of opportunity that it will secure.”¹¹⁷ The mission statement of the USCIS in September of 2009 read, “USCIS secures *America’s promise as a nation of immigrants* by providing accurate and useful information to *our customers*, granting immigration and citizenship benefits, promoting an awareness and understanding of citizenship, and ensuring the integrity of our immigration system.”¹¹⁸ The mission statement remained the same for almost a decade until the USCIS altered it in 2018.¹¹⁹

¹⁰⁸ *Id.* at 330.

¹⁰⁹ *Id.*

¹¹⁰ Katie Witt, *Why We Serve: Public Service Motivation and What the USCIS Mission Means to its Workforce* (Mar. 2021) (M.A. thesis, Naval Postgraduate School) (on file with the Homeland Security Digital Library).

¹¹¹ Toh, *supra* note 103, 329.

¹¹² Witt, *supra* note 110, at 71.

¹¹³ *Id.* at 34.

¹¹⁴ *Id.* at 35–37.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.* (two coveted phrases in the USCIS mission statement that remained for almost a decade were implemented under Former President Barack Obama’s administration. The March 2009 mission statement introduced the term describing the United States “as a nation of immigrants.” Further, the September 2009 highlighted the agency’s mission to serve “our customers.”).

¹¹⁸ *Id.* (emphasis added).

¹¹⁹ *Id.*

In 2018, USCIS Director, L. Francis Cissna, released a statement on the modification of the mission statement to fit their administration's goals.¹²⁰ The new mission statement read, "U.S. Citizenship and Immigration Services 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."¹²¹ Cissna stated he believed that the new statement was a "simple, straightforward statement [that] clearly defines the agency's role in our country's lawful immigration system and the commitment we have to the American people."¹²²

Cissna purposefully altered two key phrases in the previous mission statement and added a potentially harmful one in their place.¹²³ The two deleted phrases included the term "customers," which referred to those applying for citizenship and identifying the United States of America as a "nation of immigrants."¹²⁴ In their place, the purpose of the USCIS was defined under the idea of "protecting Americans, securing the homeland, and honoring our values."¹²⁵ In defense of the new statement, Cissna argued that using the term "customers" when regarding such important work "as a mere production line or even described in business or commercial . . . 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."¹²⁶ He believed that using that term would lead "to the erroneous belief that applicants and petitioners, rather than the American people, are whom we ultimately serve . . . All applicants and petitioners should, of course, always be treated with the greatest respect and courtesy, but we can[no]t forget that we serve the American people."¹²⁷

However, many immigration activists, groups, and individuals were enraged by the alterations, questioning the motivation behind the changes. León Rodríguez, USCIS Director from 2014 to 2017, disapproved of the

¹²⁰ USCIS Director L. Francis Cissna Issues Statement on the New Agency Mission, AM. IMMIGR. LAWS. ASS'N (Feb. 22, 2018), <https://www.aila.org/library/uscis-statement-the-new-agency-mission-statement> [https://perma.cc/Z3TS-CE7H]; Toh, *supra* note 88.

¹²¹ AM. IMMIGR. LAWS. ASS'N, *supra* note 120 (emphasis added).

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ Ryan Devereaux, *U.S. Citizenship and Immigration Services Will Remove "Nation of Immigrants" from Mission Statement*, INTERCEPT (Feb. 22, 2018), <https://theintercept.com/2018/02/22/u-s-citizenship-and-immigration-services-will-remove-nation-of-immigrants-from-mission-statement/> [https://perma.cc/9UT3-N2MU].

change.¹²⁸ Rodríguez stated that this change of mission statement was an accurate “articulation of the Trump administration’s policies grounded in the view that immigrants, with a few carefully defined exceptions, are a threat and burden to the United States, rather than the very essence of what has made our country a beacon and an example to the rest of the world.”¹²⁹

According to an interview with Intercept, an anonymous United States immigration official stated, “While it does[n]o]t expressly say it, it means that they are[n]o]t customers, but aliens.”¹³⁰ As stated previously, initially, the services provided by the USCIS were performed by the Immigration and Naturalization Service instead; the change was “in an effort ‘to move away from that image where people were afraid of us. We wanted people to feel comfortable with coming to us and know that they could get a fair hearing — that we were different from ICE [U.S. Immigration and Customs Enforcement] and CBP [Customs and Border Protection].’”¹³¹ The official stated that he was not surprised by the alterations to “a phrase many consider to be a bedrock principle of the country” made under this administration, but was instead “disappointed” and saw it as a “step backwards.”¹³²

Many see this alteration as a “mission creep” to not only change the primary point of service from immigrants to U.S. citizens—all in the “alleged interest of the U.S. worker”—but also to effectively “usurp” the role of the Department of Labor by protecting the working force primarily.¹³³ Sandra Feist, partner at Grell Feist PLC, said, from her 16 years of experience, “as someone who has worked in the field of immigration law since the inception of USCIS in 2003, I have never seen USCIS so systematically and purposefully abandon its customer service-oriented mission like I have seen recently.”¹³⁴ Further, she explains that the damage done by this revision “will urge the next generation of immigrants to stay away” due to the “obfuscation, confusion, endless delays and the unpredictability of our current system.”¹³⁵

Similarly, the American Immigration Lawyers Association (AILA) released a statement in response to the changes made to the mission statement, expressing their disappointment specifically regarding the

¹²⁸ León Rodríguez, *I Ran USCIS. This is a Nation of Immigrants, No Matter What Mission Statements Say*, WASH. POST (Feb. 26, 2018), <https://www.washingtonpost.com/news/posteverything/wp/2018/02/26/i-ran-uscis-this-is-a-nation-of-immigrants-no-matter-what-mission-statements-say/> [https://perma.cc/CYL2-CNUS].

¹²⁹ *Id.*

¹³⁰ Devereaux, *supra* note 127.

¹³¹ *Id.*

¹³² *Id.*

¹³³ Sandra Feist, *Mission Mis-Statements*, AM. IMMIGR. LAWS. ASS’N (Feb. 21, 2018), <https://thinkimmigration.org/blog/2018/02/21/mission-mis-statements/> [https://perma.cc/V9AN-2YV8].

¹³⁴ *Id.*

¹³⁵ *Id.*

removal of the phrase “a nation of immigrants.”¹³⁶ Benjamin Johnson, AILA Executive Director, highlighted that this deletion is a continuance of former President Trump’s administration’s goal of “turning [the] USCIS away from its core mission, and the core values that guide that mission. It is sad to see this attempt to rewrite that history and close our doors to the world. We will not let this change go unnoticed or ignored.”¹³⁷ Annaluisa Padilla, AILA President, immigrant, and immigration attorney, noted, “Removing words in the USCIS mission statement cannot change the proud history of our country whose success is owed to the immigrants who have contributed immensely to our society and have made America home.”¹³⁸ The mission statement implemented in 2018 remained in place until 2022 when President Biden’s administration released a statement announcing a new alteration.¹³⁹

In 2022, USCIS Director Ur M. Jaddou announced that the agency had rewritten a new mission statement for the department.¹⁴⁰ To reflect the director’s vision for an “inclusive and accessible agency,” the leadership collected ideas from their employees of words that they “felt best illustrated the agency’s work.”¹⁴¹ The agency combined the feedback received with the priorities of President Biden’s administration to create the new statement: “USCIS upholds America’s promise as a nation of welcome and possibility with fairness, integrity, and respect for all we serve.”¹⁴² The director held that this change was to ensure that the immigration system the country offers is “accessible and humane,” reflecting the “inclusive character of both our country and this agency.”¹⁴³ Jaddou promised that under his administration,

USCIS will continue to serve the public with respect and fairness, and lead with integrity to reflect America’s promise as a nation of welcome and possibility today and for generations to come . . . [because] [a]t its core, USCIS is about delivering decisions to families, businesses, workers, and those seeking refuge in our country on their applications, petitions, requests, and appeals.¹⁴⁴

¹³⁶ George Tzamaras & Belle Woods, *Rewrite of USCIS Mission Statement Cannot Change America’s Identity as a Nation of Immigrants*, AM. IMMIGR. LAWS. ASS’N (Feb. 23, 2018), <https://www.aila.org/library/rewrite-of-uscis-mission-statement-cannot-change> [<https://perma.cc/CE3R-LJMK>].

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *USCIS Announces New Agency Mission Statement*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Feb. 9, 2022), <https://www.uscis.gov/newsroom/news-releases/uscis-announces-new-agency-mission-statement> [<https://perma.cc/7ZLE-W9QD>].

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

This alteration was “applauded” by many immigration advocate groups as it “signal[ed] a more welcoming and respectful attitude towards immigrants and recognition of the importance of immigration to America’s success.”¹⁴⁵ Expertly stated, AILA President Allen Orr expressed his gratitude for the rewrite: “Words are important. In this case, the words in the new USCIS mission statement make clear that our nation acknowledges what is owed to the immigrants who have contributed immensely to our society and have made America home.”¹⁴⁶ In comparison to the previous mission statement under former President Trump’s administration, “which undermined and devalued immigrants,” these advocates gladly welcomed the changes being enforced.¹⁴⁷ Benjamin Johnson, AILA Executive Director, noted that, under the previous administration, the advocate groups had “seen the backlogs grow and the bureaucratic hurdles pile up as the agency’s attention was turned away from its core purpose.”¹⁴⁸ He described the core statutory purpose of the USCIS as being “to adjudicate immigration benefit applications for those seeking citizenship, temporary status, work authorization, and humanitarian protection efficiently, fairly and timely.”¹⁴⁹ Johnson stated that this purpose had been lost under the Trump administration but hoped that this change in mission statement “signals a return to a welcoming, service-driven USCIS.”¹⁵⁰

While the 2022 mission statement rewrite showed significant improvement, there is still a substantial difference in the language of the mission statement that governed the USCIS for almost a decade from 2009 to 2018.¹⁵¹ The September 2009 mission statement “interlinked purpose and responsibility of the three key players in the immigration system: those who are seeking immigration benefits, those who are performing the work of USCIS, and the United States as a whole.”¹⁵² The new mission statement improves the 2018 version as it reminds the USCIS of the promise of welcomeness and possibility, but it fails to address the redaction of the phrases “a nation of immigrants” and “customers.”¹⁵³ As stated previously, the mission statement of an organization is imperative in motivating the group to work in unity for their stakeholders, communities, and customers.¹⁵⁴

¹⁴⁵ *AILA: USCIS Needs to Give Meaning to the Words of its New Mission Statement*, AM. IMMIGR. LAWS. ASS’N (Feb. 9, 2022), <https://www.aila.org/library/uscis-needs-to-give-meaning-to-the-words> [<https://perma.cc/E9WQ-97BV>].

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ Witt, *supra* note 110, at 37.

¹⁵² Witt, *supra* note 110, at 38.

¹⁵³ Witt, *supra* note 110, at 37; U.S. CITIZENSHIP & IMMIGR. SERVS., *supra* note 139.

¹⁵⁴ Alegre, *supra* note 105, at 471.

Tying the mission statement back to the idea of working for the immigrants as customers and acknowledging the United States as a nation founded on immigration would promote a positive purpose for the USCIS to best serve those entering the country through the organization. Research has shown that “without a common goal or purpose (mission statement), all groups are subject to unconscious behavior[al] tendencies.”¹⁵⁵ While this concept will be further explored in Section II.B, it is essential to note that employee behavior stems from the purpose of the organization.¹⁵⁶ Scholars have shown “that once the mission statement is well stabili[z]ed, individuals accept it as their values and goals until the point that their behavior changes.”¹⁵⁷ Creating the most precise, impactful mission statement for the USCIS—one that goes further than the 2022 version—is imperative for the fair treatment of customers of the agency.

2. Form N-648 Medical Certification for Disability Exceptions

This section analyzes the alterations made to the Form N-648 Medical Certification for Disability Exceptions to the English and civics requirement of the naturalization application throughout former President Trump’s and President Biden’s administrations. The first change that will be analyzed was made under former President Trump’s administration, which ultimately made the application of the form a much longer, grueling process. When President Biden entered office, the USCIS quickly made a few changes to Form N-648 and sent the proposal for public comment.¹⁵⁸ The public comments to President Biden’s proposal highlight not only the issues with the changes to the actual form made under the former President Trump administration but also the implementation of the policies and procedures of the USCIS by their officers.¹⁵⁹ In response to these comments, the USCIS, under President Biden’s administration, made critical changes to the form, but it did not go far enough to answer all of the concerns raised by immigration advocates.¹⁶⁰

Under former President Trump’s administration, the USCIS released a Policy Alert on December 12, 2018 to “update and clarify filing procedures and adjudications on the Medical Certification for Disability Exceptions”

¹⁵⁵ *Id.* at 464.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ Naturalization Working Grp., Comment Letter on Proposed Revision to Medical Certification for Disability Exceptions (June 21, 2021), https://www.ilrc.org/sites/default/files/resources/final_n-648_joint_public_comment.pdf [<https://perma.cc/C7NP-CS42>].

¹⁵⁹ *Id.*

¹⁶⁰ Naturalization Working Grp., Comment Letter on Proposed Revision to Medical Certification for Disability Exceptions (Nov. 5, 2021), https://www.ilrc.org/sites/default/files/resources/final_n-648_nwg_letter_re_docket_id_uscis-2008-0021.pdf [<https://perma.cc/6MWS-PA4C>].

implemented into Volume 12 of the USCIS Policy Manual set to become effective on February 12, 2019.¹⁶¹ The policy changes to the manual included many drastic changes, including making applicants turn in their N-400 Application for Naturalization at the same time as their Form N-648 Medical Certification for Disability Exceptions; requiring a physician-patient relationship with the doctor who completes the application; requiring a description on how their medical condition affects the applicant's "daily life;" deleting the mandatory Request for Evidence which addresses the issue with the medical disability form; and presenting an "extremely long list of factors that may give rise to credible doubt, and lead to finding the Form N-648 insufficient."¹⁶² The deadline for comments to be submitted for these substantial changes to the policy manual was a mere fifteen days.¹⁶³

Frustrated by this quick turnaround for the ability to raise questions and comments on such a significant alteration of the Policy Manual, the Catholic Legal Immigration Network, Inc. (CLINIC), along with forty-three other organizations, requested an extension to be able to respond to the changes.¹⁶⁴ The USCIS denied this request.¹⁶⁵ However, the agency allowed the advocates to submit a late entry, as the groups were advised that their comments would be "reviewed and considered by USCIS."¹⁶⁶ Thus, the groups submitted their response promptly on January 16, 2019, before the policy's effective date on February 12, 2019.¹⁶⁷ The comments raised concerns for the new guidance as it would produce "a gauntlet for highly vulnerable applicants to run in which simple mistakes and misunderstandings of a complex process are automatically viewed as indicators of fraud [and] . . . an undue burden for disabled applicants to meet and will be a barrier preventing many eligible disabled applicants from naturalizing."¹⁶⁸ The changes that were proposed were backed by "no evidence that the changes were necessary or beneficial" which "contradicted the purpose and intent of the law, arbitrarily preventing applicants with disabilities from

¹⁶¹ *Policy Alert: Sufficiency of Medical Certification for Disability Exceptions (Form N-648)*, AM. IMMIGR. LAWS. ASS'N (Dec. 12, 2018), <https://www.aila.org/aila-files/9B7F144A-259C-4ECD-97E8-9A10799C17DE/18121234.pdf?1697590030> [<https://perma.cc/S57M-PMAL>].

¹⁶² Jeanne M. Atkinson, Cath. Immigr. Network, Inc., Comment Letter on Proposed Revision to Medical Certification for Disability Exceptions (Jan. 16, 2019), <https://www.cliniclegal.org/sites/default/files/2020-11/Policy%20Revisions%20Affecting%20Naturalization%20Disability%20Waiver%20Applicants%20P-A-2018-12.pdf> [<https://perma.cc/2SGH-NUL3>].

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* at 2.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

naturalizing.”¹⁶⁹ Despite the experts’ pleas for reversal of this policy change, the USCIS implemented the guidance.¹⁷⁰

On April 26, 2019, after the implementation of the new Policy Manual guidance, the USCIS released a 60-day notice and request for comments on new proposed changes to Form N-648 to align it with the new changes.¹⁷¹ The proposed alterations would prove to make the process of filing Form N-648 much more difficult.¹⁷² The proposed form expanded the list of questions on the form from twelve questions to twenty-three questions, lengthening the form from six pages to nine.¹⁷³ With the help of his students, Lucas Guttentag, a law professor at Stanford and Yale, created a database of all changes that former President Trump made to the United States immigration system forming an “online road map to the land mines that Mr. Biden will have to find and defuse if he wants to reverse the anti-immigrant agenda that Mr. Trump campaigned on in 2016 and that was executed when he was president.”¹⁷⁴ Significant changes to the N-648 that Guttentag noted were:

new questions regarding the date that each disability/impairment began; the date of diagnosis; the *severity* of each disability/impairment; how each disability/impairment *affects the applicant’s daily life activities*; why each disability/impairment is expected to last over 12 months; which disability/impairments are the result of illegal drug use; the frequency of treatment; and if the medical professional questioned the interpreter about his/her fluency in English and accuracy/completeness in interpretation.¹⁷⁵

Many immigration advocate groups submitted comments to the proposed alterations, highlighting the many concerns they had foreseen with the new policy.¹⁷⁶ One of these groups was Bronx Legal Services, which assists lawful permanent residents in applying for naturalization, including the

¹⁶⁹ Naturalization Working Grp., *supra* note 160.

¹⁷⁰ *Id.* at 6.

¹⁷¹ Lucas Guttentag, *USCIS proposes revisions to N-648, Medical Certification for Disability Exceptions*, IMMIGR. POL’Y TRACKING PROJECT, <https://immpolicytracking.org/policies/uscis-proposes-revisions-n-648-medical-certification-disability-exceptions/#/tab-policy-overview> [<https://perma.cc/3PLU-BJQU>].

¹⁷² Naturalization Working Grp., *supra* note 158, at 3.

¹⁷³ Guttentag, *supra* note 171.

¹⁷⁴ Michael D. Shear & Miriam Jordan, *Undoing Trump’s Anti-Immigrant Policies Will Mean Looking at the Fine Print*, N.Y. TIMES (Feb. 10, 2021), <https://www.nytimes.com/2021/02/10/us/politics/trump-biden-us-immigration-system.html> [<https://perma.cc/FXF8-DAJ9>]; *see id.*

¹⁷⁵ Guttentag, *supra* note 171 (emphasis added).

¹⁷⁶ Naturalization Working Grp., *supra* note 158.

preparation of Forms N-400 and N-648.¹⁷⁷ The group explained how getting doctors to complete the previous six-page form for naturalization applicants was already “impossible.”¹⁷⁸ Doctors had a difficult time understanding how “some of the questions they are asked are relevant to whether their patients can learn English and civics . . . and [were] doubly frustrated when they learn that their patients’ N-648 forms have been rejected by USCIS for reasons that seem trivial or inscrutable to them.”¹⁷⁹ Christopher D. Lamb, Director of Litigation at Bronx Legal Services, explained how, due to the reluctance of doctors to fill out these forms because of their unnecessary complexity, the USCIS should design Form N-648 “in a way that obtains the information it needs to fulfill the mandate of 8 U.S.C § 1423(b)(1).”¹⁸⁰ Lamb recommended changing the form where it would provide waivers “to eligible applicants without unnecessarily wasting doctors’ time or causing them unwarranted frustration which may lead them to decline to fill out the forms for qualified naturalization applicants, thus frustrating the purpose of Section 1423(b)(1).”¹⁸¹

Further, Lamb described how the USCIS has an obligation under the Paperwork Reduction Act of 1995 to limit the information collected so that it is not “‘unnecessarily duplicative of information otherwise reasonably accessible to the agency’ and to ‘reduce[] to the extent practicable and appropriate the burden on persons’ who provide information to the agency.”¹⁸² Lamb explains how the proposed updates of Form N-648 failed to meet the Paperwork Reduction Act test due to the unnecessary amount of information needed for the application.¹⁸³

CLINIC also published a comment on this proposed revision, raising their concerns about the updates.¹⁸⁴ Along with comments on specific issues within the proposed form, Jill Marie Bussey, Esq., Advocacy Director at CLINIC, highlighted overarching issues that the new Form N-648 would cause.¹⁸⁵ Bussey explains how, under the current application at the time, the “USCIS already unnecessarily rejects many forms on the auspices of lack of sufficient detail, which delays access to naturalization and create[s]

¹⁷⁷ See generally Christopher D. Lamb, Bronx Legal Services, Comment Letter on Proposed Revision to Medical Certification for Disability Exceptions (June 25, 2019), <https://www.regulations.gov/comment/USCIS-2008-0021-0045> [https://perma.cc/69LV-YA5V].

¹⁷⁸ *Id.* at 1.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.* (describing the requirements to understand the English language, history, principles and form of government of the United States.).

¹⁸¹ *Id.* at 1–2.

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ See generally Jill Marie Bussey, Catholic Legal Immigration Network Inc., Comment Letter on Proposed Revisions to Medical Certification for Disability Exceptions (June 25, 2019), <https://www.regulations.gov/comment/USCIS-2008-0021-0046> [https://perma.cc/98DF-HFN9].

¹⁸⁵ *Id.*

additional inefficiencies for the agency, thus contributing to its burgeoning backlog of cases,” and the updated form would result in “a longer and more onerous form that would only exacerbate this issue and frustrate the intent of the waiver.”¹⁸⁶ The group thought that these updates would be the opposite of what was needed for the efficiency of the immigration system, and instead, “the USCIS [should] lessen burden on doctors, by making the form shorter, easier, and simpler to complete.”¹⁸⁷ Despite the concerns from the many experts, USCIS approved the new Form N-648 on July 23, 2020, and it took effect on October 13, 2020, “nearly identical to the proposed version that [the experts] strongly opposed.”¹⁸⁸ This form stayed in effect throughout the rest of former President Trump’s presidency.¹⁸⁹

At the beginning of President Biden’s administration, on April 21, 2021, the USCIS released a proposed revision of the N-648 for comment just six months after former President Trump’s revision took effect at the end of 2020.¹⁹⁰ While the USCIS made several corrections, immigration advocate groups noted that the “content [was] virtually the same and fail[ed] to address [their] fundamental concerns about the length and complexity of the form.”¹⁹¹ Many groups opposed this revision and further called for the USCIS to rescind the July 2020 version of the form entirely. As the Naturalization Working Group highlighted, “the need to correct so many errors so soon after implementation points to a flawed process by the prior administration.”¹⁹² The group explained how the disability waiver adjudications in the past were “managed . . . successfully for many years with a shorter, less burdensome form.”¹⁹³ In comparison, the January 2006 edition of the waiver was only three pages, encompassing eight questions.¹⁹⁴ The increase in the number of questions and pages has caused immigration advocacy groups to be unable to meet the needs of their clients efficiently.¹⁹⁵ As described by the immigration non-profit organization Project Citizenship, “[O]ur staff and clients must expend considerably more time and resources in requesting additional information [from] them. We now assist many fewer disabled individuals in application for naturalization, as a direct result of the 2020 form change.”¹⁹⁶

¹⁸⁶ *Id.* at 5.

¹⁸⁷ *Id.*

¹⁸⁸ Naturalization Working Grp., *supra* note 158, at 3.

¹⁸⁹ Guttentag, *supra* note 171.

¹⁹⁰ Naturalization Working Grp., *supra* note 158, at 3.

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ See Mitra Shavarini, Project Citizenship, Comment Letter on Proposed Revisions for Medical Certification to Disability Exceptions (June 21, 2021), <https://www.regulations.gov/comment/USCIS-2008-0021-0094> [<https://perma.cc/6ABG-GQ9D>].

¹⁹⁶ *Id.* at 1.

Legal Services NYC commented on many issues with the newly proposed Form N-648 and the previously enacted version.¹⁹⁷ Among the list included requiring redundant and burdensome information that would discourage medical professionals from completing the form. The group argued that many of the questions on the forms required the medical professional to gather information that seemed unrelated to the waiver's objective.¹⁹⁸ They discussed how the forms required medical professionals to "speculate or investigate details that are irrelevant to the professional's assessment."¹⁹⁹ They further highlighted the seemingly irrelevant question of describing "why the patient chose to reach out to him or her rather than the patient's regularly treating medical professional," which they explained "is speculative and prejudicial."²⁰⁰

A further concern addressed by Legal Services NYC, which will be discussed further in Section II.B, "goes beyond the exact language on the N-648: USCIS officers use the information on the form."²⁰¹ The group outlined various examples of improper behaviors by the officers who review the waiver applications.²⁰² One of the substantial issues that they witnessed was the "second-guessing and overruling [of] the medical professional's assessments . . . [with] their own unprofessional opinions."²⁰³ One example of this issue that the group highlighted was that officers would "[a]ssum[e] that an applicant [wa]s not disabled if they [could] perform certain activities."²⁰⁴ Additionally, they recognized that officers would apply "improper standards and improper unofficial policies," which also led to the officers arbitrarily denying requests without providing a rationale for their decision.²⁰⁵ The group also highlighted that the officers would create "superficial, improper reasons to deny the application," which often was due to the confusing redundant questions leading to contradicting responses.²⁰⁶

World Relief noted this same inconsistency when raising their concerns about the revised waiver.²⁰⁷ For example, this group had received reports that, against the rules set forth in the USCIS Policy Manual, "applicants and their

¹⁹⁷ See generally Rex Chen, Legal Services NYC, Comment Letter on Proposed Revisions for Medical Certification to Disability Exceptions (June 21, 2021), <https://www.regulations.gov/comment/USCIS-2008-0021-0092> [<https://perma.cc/YAA2-KV6L>].

¹⁹⁸ *Id.*

¹⁹⁹ *Id.* at 7.

²⁰⁰ *Id.*

²⁰¹ *Id.* at 8.

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ Hannah Vickner Hough, World Relief, Comment Letter on Proposed Revisions to Medical Certification for Disability Exceptions (June 21, 2021), <https://www.regulations.gov/comment/USCIS-2008-0021-0093> [<https://perma.cc/ZJH2-A3V8>].

representatives are informed that their N-648 is denied for being inconsistent with prior medical records.”²⁰⁸ These applicants are not being informed of what, specifically, is inconsistent on their applications or what prior medical documentation is being considered against it.²⁰⁹ Highlighted by World Relief, “This unclear and inconsistent adjudication leaves applicants and their representatives uncertain about how to communicate the deficiencies in the form to the medical provider, what information is missing, or what further connections are necessary to demonstrate the applicant’s eligibility for a waiver.”²¹⁰ Further, the notice and opportunity to respond to the claims of insufficiency in the N-648 forms are reportedly limited.²¹¹ According to practitioners, applicants receive “boiler plate” language in response to the denial of their forms, which leaves the medical practitioners with little to no detail on where the original form went wrong and how to correct it in order to recomplete the form.²¹²

The inconsistent adjudication of naturalization applicant’s forms, including N-648 and N-400, has been reported by various attorneys and accredited representatives from around the country, according to World Relief.²¹³ These legal representatives have reported that “USCIS officers created a hostile or accusatory environment in the questioning of the N-648 application which is confusing, stressful and unduly burdensome to an already vulnerable applicant population namely disabled immigrants.”²¹⁴ Additionally, blatantly against USCIS policy, USCIS officers are reported to “doubt and second-guess the medical diagnosis of the medical professional who signed the N-648.”²¹⁵

Further, it is reported that USCIS officers will cast suspicion upon medical practitioners who treat large volumes of applicants, “such as a refugee health practitioner. . . simply because of the nature of his or her practice.”²¹⁶ In consideration of previous reports of the high complexity of these forms, it is contradictory that medical professionals who understand how to complete these forms at a price point that applicants can afford would automatically be placed under suspicion due to their high immigrant client population.²¹⁷ These situations can place such high stress on these applicants as many receive Social Security benefits, which expire for refugees who have not

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² *Id.*

²¹³ *Id.* at 4.

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ Lamb, *supra* note 177, at 2–3.

become naturalized citizens within seven years.²¹⁸ As described by Hannah Vickner Hough, Esq., the director of the National Immigration Programs at World Relief, “USCIS officers needlessly scrutinizing a medical professional’s diagnosis of an applicant’s disability is an unnecessary additional burden to an already stressful situation.”²¹⁹

After reviewing the open comments on former President Trump’s administration’s changes to Form N-648 and President Biden’s administration’s proposed changes—which included criticisms on the additional requirements of the form as well as the USCIS’s problematic implementation of such changes that led to a dramatic increase in denials of the form—the USCIS revised the N-648 form and instructions and the Policy Manual²²⁰ in coordination with President Biden’s Executive Order 14012²²¹ and Executive Order 13985.²²²

On August 19, 2022, USCIS released the revised Form N-648 and instructions.²²³ This new version redacted many of former President Trump’s 2020 updates that had been criticized in the public comments, including: “dates of diagnosis and when the disability or impairment began; description of severity of each disability or impairment; effects on the applicant’s daily life; and doctor-patient relationship.”²²⁴ From the previous version, which had been nine pages, the USCIS shortened the new version to just over four pages, making it more efficient for doctors to complete as they were not burdened with excessive, redundant, and unnecessary questions.²²⁵ This was a significant improvement as many immigration advocates argued that the excessive length of the 2020 version of the form turned doctors away from helping the applicants.²²⁶ Additionally, a new section was added, entitled the Ability to Understand Oath of Allegiance, which “asked if the applicant is able to understand and communicate an understanding of the oath.”²²⁷ The

²¹⁸ Hough, *supra* note 207, at 4.

²¹⁹ *Id.*

²²⁰ *USCIS Form and Policy Updates Remove Barriers to Naturalization for Applicants with Disabilities*, U.S. CITIZENSHIP AND IMMIGR. SERVS. (Oct. 19, 2022), <https://www.uscis.gov/newsroom/news-releases/uscis-form-and-policy-updates-remove-barriers-to-naturalization-for-applicants-with-disabilities> [<https://perma.cc/JZ8K-JGSZ>].

²²¹ Exec. Order No. 14,012, 86 Fed. Reg. 8277 (Feb. 5, 2021) (Titled “Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans,” this Executive Order was issued to remove barriers for naturalization applicants and medical professionals).

²²² Exec. Order 13,985, 86 Fed. Reg. 7009 (Jan. 15, 2021) (Titled “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,” this Executive Order was issued in order to remove barriers for underserved populations).

²²³ Guttentag, *supra* note 171.

²²⁴ *Policy Alert: Revision of Medical Certification for Disability Exceptions (Form N-648)*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Oct. 19, 2022), <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20221019-N-648MedicalCertification.pdf> [<https://perma.cc/4TMV-DS39>].

²²⁵ Guttentag, *supra* note 171.

²²⁶ Chen, *supra* note 197, at 5.

²²⁷ Guttentag, *supra* note 171.

lack of a waiver to the Oath of Allegiance had been an issue in the past, highlighted by prior legal scholars, as Form N-648 did not automatically waive the requirement to complete that section of naturalization which proved to be a significant issue for those who required disability exceptions.²²⁸

On October 19, 2022, the USCIS announced the updated policy guidance in the Policy Manual to “clarify and conform with the revision of Form N-648, Medical Certification for Disability Exceptions.”²²⁹ The announcement noted that the alterations were based upon comments that they received from the public from the April 2021 publications in the Federal Register as they focused revisions upon “reduc[ing] burdens on applicants and the agency by eliminating questions and language that no longer have practical utility or were redundant.”²³⁰ USCIS Director Ur M. Jaddou explained, “This is a wonderful example of how USCIS is listening to the public it serves in order to better address their needs, while fulfilling our responsibilities as an agency.”²³¹

The changes made to Form N-648 and the USCIS Policy Manual show the willingness of President Biden’s administration to listen to the concerns of immigration advocates across the country. Making the form more concise and redacting arbitrary questions addressed the issues related to the difficulty of filling out the form. While the updated revisions to the policy manual were necessary and a step in the right direction, they did not completely address the inconsistency concerns of Legal Services NYC, World Relief, and many other independent immigration advocates. More transparency between the officers’ decisions in evaluating the forms and the stakeholders helping applicants apply for naturalization must be implemented to ensure that the officers consistently follow the policy manual. A policy manual was in place during former President Trump’s administration, yet stakeholders reported that the officers still arbitrarily followed the policy manual. To combat this issue of capriciousness, the psychological ideology behind the officer’s inconsistencies must be evaluated. The solution to the inconsistencies goes beyond merely updating the manual.

B. Bureaucratic Psychological Ideology of Arbitrarily Denying Requests

Administrative agencies of the United States government are held to the standard of their respective policies and procedures. For example, the USCIS holds its employees to the rules and regulations of its policy manual, which,

²²⁸ Chatzky, *supra* note 12, at 151–52.

²²⁹ U.S. CITIZENSHIP & IMMIGR. SERVS., *supra* note 224.

²³⁰ *Id.*

²³¹ *Id.*

as described previously, has had many alterations over the past administrations.²³² When officers of administrative agencies fail to comply with changes to the agency’s policies or fail to follow the policy overall, these failures or omissions can be analyzed under the ideas of bureaucratic violence and bureaucratic error. Regardless of the presidential administration, the psychological ideology behind working within a governmental agency can lead to arbitrary and capricious decision-making, harming those individuals their work impacts. The inefficiencies within the USCIS can be analyzed in these ideologies to determine the best solution to combat the inconsistencies.

1. Bureaucratic Violence

Bureaucratic violence is a form of legal violence that focuses on “the ways that it is not always the law itself that causes harm but rather the enactment of law via bureaucracy.”²³³ This theory enforces the idea that the “enactment of policies can generate exclusion,” even if the laws themselves are not exclusionary.²³⁴ With the ability for administrative agencies to act virtually independently alongside the rest of the government, “changing bureaucratic procedures does not necessarily require a change in law,” and ambiguities within the law “allow for multiple interpretations.”²³⁵ As described by Carina Heckert, Assistant Professor of Anthropology in the Department of Sociology and Anthropology at the University of Texas at El Paso, “For example, recent bureaucratic procedures related to denying immigrant applications based on the ‘likely public charge’ rule did not require congressional approval, although multiple states and nonprofits have filed lawsuits challenging the new policy.”²³⁶ This recent change that Heckert is referring to was a change under former President Trump’s administration that “[t]he likely public charge rule can be used to deny immigration petitions on the grounds that the applicant would likely use publicly funded programs,” including Medicaid and nutrition programs which had not been a rule previously.²³⁷ This action created much confusion and concern for pregnant women who use the Children’s Health Insurance Program (CHIP) Perinatal and the Women, Infants and Children Program (WIC), who would have been excluded from the previous rule as if this exclusion still protected them.²³⁸ As Heckert described, “the mere threat of bureaucratic changes was enough

²³² See *supra* Section II.A-2.

²³³ Carina Heckert, *The Bureaucratic Violence of the Health Care System for Pregnant Immigrants on the United States-Mexico Border*, 79(1) HUM. ORG. 33, 35 (2020).

²³⁴ *Id.*

²³⁵ *Id.* at 36.

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ *Id.*

to generate harm,” and these bureaucratic guidelines “can change with little notice, which can create anxiety over using publicly-funded resources.”²³⁹

Bureaucratic violence, overall, “can subvert the goals of social programs and perpetuate inequalities that programs claim to address, reinforcing structural violence.”²⁴⁰ There are many reasons why this violence happens within bureaucracies. Among these include “ideas of deservingness . . . social disconnect . . . [and] a ‘social production of indifference.’”²⁴¹ All of these factors surmount a dehumanization of those harmed by the whims of the bureaucracy.²⁴² This idea can be tied back to the intent of those passing the foundational immigration legislation, as the implementation of the language requirement was tied to the congressmen’s bias against certain immigrants and their eugenic, racist beliefs when determining one’s “fitness” for citizenship.²⁴³ Bureaucrats may internally “create a hierarchy,” which leads them to “treat recipients of free public services with indifference.”²⁴⁴ Even “well-intentioned bureaucrats can get influenced by the inhumane nature of the work[,] leading to completing their tasks with “neglect and a lack of compassion.”²⁴⁵

When analyzing this phenomenon within the aspect of the USCIS, many of the comments made by immigration advocates make sense in the context of bureaucratic violence. The threat of changing policies and forms from each shift of executive administration leaves applicants in a vulnerable position with their hope for naturalization. Referring to this idea as “weaponized bureaucratic inefficiency,” Sandra Feist, immigration partner at Grell Feist PLC, explained how the USCIS has been utilizing bureaucratic violence within their administration.²⁴⁶ Feist offers the following as examples:

Since the installation of the new administration . . . [r]equests for additional evidence—the ubiquitous RFE—are on the rise, forcing applicants to pile more and more paper documentation into each benefits request. Processing delays are getting worse, with critical benefits such as Employment Authorization Documents (EADs) taking six months or longer to adjudicate. Cumbersome, confusing interviews are now required for certain benefits, such as employment-based green cards, where they have not been required previously. And technical

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ Lyons, *supra* note 20, at 1023.

²⁴⁴ Heckert, *supra* note 233, at 36.

²⁴⁵ *Id.*

²⁴⁶ Feist, *supra* note 133.

glitches plague online tools making it difficult for individuals to get an accurate check on the status of their case.²⁴⁷

Combined with the concerns highlighted by immigration advocates stated previously,²⁴⁸ many experts have brought attention to the bureaucratic violence plaguing the USCIS, despite seemingly positive updates in policies. As the missions, policies, and forms for the USCIS shift drastically with each new executive administration, applicants are left vulnerable as the longer it takes to review their application or the more times they are required to resubmit based on arbitrary reasons, the more likely it will be that the rules and regulations change within the agency.²⁴⁹ Further, the longer the process takes for the applicants, the more likely they become to lose their Social Security benefits, which many rely on for reasons such as they are unable to work due to their disabilities.²⁵⁰

2. Bureaucratic Error

At the same time bureaucrats may, intentionally or unintentionally, utilize bureaucratic violence, bureaucratic error can simultaneously harm those they are serving.²⁵¹ A bureaucratic error is “any deviation from an intended outcome that is mandated by either law or organizational rules.”²⁵² As it can be remarked within this Note, due to the lack of data, most literature pertaining to public administration has not used “bureaucratic errors as performance measures.”²⁵³ Sangyub Ryu, Jeffrey B. Wenger, and Vicky M. Wilkins completed an analysis of the Unemployment Insurance (U.I.) Program within the United States Department of Labor on the performance of the employer, employee, and agency error, because, unlike most programs, this program “has systematically collected performance data and has independently audited those data to determine error responsibility.”²⁵⁴ Some of their significant findings in this analysis showed that “previous UI office error rate is a good predictor of current error rates, demonstrating that poorly performing offices remain poor performers. In addition, local offices with high error rates account for a disproportionate percentage of the errors, indicating a need to examine agency management.”²⁵⁵ These findings show

²⁴⁷ *Id.*

²⁴⁸ *See supra* Section II.A.

²⁴⁹ *Id.*

²⁵⁰ Hough, *supra* note 207, at 4.

²⁵¹ Sangyub Ryu et al., *When Claimant Characteristics and Prior Performance Predict Bureaucratic Error*, 42(6) AM. REV. PUB. ADMIN. 695, 698 (2012).

²⁵² Justin B. Bullock, *Theory of Bureaucratic Error*, 2014(1) ACAD. MGMT. PROC. 17,469 (2014).

²⁵³ Ryu et al., *supra* note 251, at 695.

²⁵⁴ *Id.*

²⁵⁵ *Id.*

that the ability to track the error rate over time is pertinent in monitoring an agency's rate of error. This research showed that offices that previously had high rates of poor performance and errors were likely to perform at the same level and make the same errors.²⁵⁶ If the head of the agency can predict these low-performance rates, they would have a higher chance to mitigate these issues to increase performance and accuracy.²⁵⁷ The group found that the development of "training efforts and performance targets . . . with these systematic error effects in mind" would better serve their clients.²⁵⁸ Tracking this data allows for the opportunity to mitigate harm through training. While the USCIS broadly tracks and reports data regarding naturalization, it is unclear whether the agency tracks its office's data regarding the acceptance or denial of Form N-648. Regardless, the USCIS does not release this data to the public or the stakeholders.

The research group theorized that the findings in their analysis were based upon the idea that "decision[-]makers are unable to make flawless decisions due to cognitive constraints and the uncertainty of information."²⁵⁹ One reason that these errors occur, especially in times when they are overloaded with cases and information, is that they end up using "'rules of thumb' or heuristics when making decisions. It may be the case that these shortcuts are the manifestations of psychological biases held by the bureaucrat."²⁶⁰ These shortcuts can be further exasperated by the mere complexity of the program that the employee is attempting to administer.²⁶¹ As the three describe, "The size and composition of the workload influences a bureaucrat's ability to collect and process the necessary information to properly evaluate cases. Bureaucrats with large caseloads will have less time and resources to commit to each case, which may increase the probability of an error being made."²⁶²

Another factor that the group theorized related to the likelihood of bureaucratic error was the organizational culture and environment.²⁶³ "The way we do things here" is a general expression of the culture of organizations.²⁶⁴ Organizations whose culture resulted in errors in the past include "NASA . . . the aviation industry. . . healthcare outcomes in hospitals . . . on performance in medical group practices . . . and at the Chernobyl nuclear plant."²⁶⁵ Organizational culture and environment show an insight into attitudes and policies regarding the "openness between

²⁵⁶ *Id.*

²⁵⁷ *Id.*

²⁵⁸ *Id.*

²⁵⁹ *Id.* at 697.

²⁶⁰ *Id.*

²⁶¹ *Id.*

²⁶² *Id.* at 699.

²⁶³ *Id.*

²⁶⁴ *Id.* at 697.

²⁶⁵ *Id.* at 698.

management and frontline,” along with the “norms regarding adherence to regulations and procedures.”²⁶⁶ In bureaucracies that allow mistakes to “go unnoticed or unaddressed, where training is not used to improve accuracy, where employees are unwilling to report problems, or where there is poor communication between managers and the frontlines, [bureaucrats] are more likely to make errors when processing cases.”²⁶⁷ The acceptance of error making in an agency is ultimately “linked to the mission and function of the agency, specifically who is harmed by the error and who pays the cost for an error.”²⁶⁸ The group discovered that these findings are more applicable to social service agencies as “bureaucrats working in social service agencies the cost of overpayment is shifted to the taxpayer, while wrongful denial errors fall on the claimant directly.”²⁶⁹ Organizational culture can be rooted within the mission statements of the agency.²⁷⁰ As stated previously, research has shown “that without a common goal or purpose (mission statement), all groups are subject to unconscious behavior[sic]ral tendencies.”²⁷¹ The lack of a solid organizational environment founded in a joint mission statement may lead agency employees to wrongful errors.²⁷²

Katie Witt, a former USCIS Refugee, Asylum, and International Operations (RAIO) employee, conducted a study on the changes in the USCIS mission statement from its inception and the implications of the organizational values on its employees.²⁷³ Witt notes that the fluctuating environment of an organization, such as the USCIS, “requires comprehensive training to remain aligned with organizational values and consistent messaging of the why behind those changes and how it relates to the agency’s larger mission and purpose.”²⁷⁴ Further, she analyzes that “[w]ithout training and communication, this may leave the employee feeling disenfranchised and display inconsistency in the work product or leave.”²⁷⁵ Throughout this study, Witt compiled USCIS employee responses to surveys regarding their motivation to work at USCIS.²⁷⁶ One point in analysis that Witt highlighted was the employee’s comments regarding their motivation after the changes in the mission statement in 2018, which removed much of the positive language towards immigrants.²⁷⁷ One employee stated, “Anti-immigrant and

²⁶⁶ *Id.*

²⁶⁷ *Id.*

²⁶⁸ *Id.*

²⁶⁹ *Id.*

²⁷⁰ Alegre, *supra* note 105, at 464.

²⁷¹ *Id.* at 464.

²⁷² *Id.*

²⁷³ Witt, *supra* note 110.

²⁷⁴ *Id.* at 63.

²⁷⁵ *Id.*

²⁷⁶ *Id.*

²⁷⁷ *Id.*

racist policies being applied to our adjudications makes immigrant and minority employees feel unwelcome in the organization.”²⁷⁸ Another employee described “hearing stories from employees that continue to say how great USCIS used to be and how much it has changed (negatively). I am disappointed to hear that because USCIS can do better.”²⁷⁹ These quotes from employees within the organization show the impact that culture can have on employee motivation. The exceptional fluctuation that has plagued the USCIS within the last decade shows a need for prominent communication to avoid bureaucratic error.²⁸⁰

The final factor Ryu, Wenger, and Wilkins studied was the information asymmetry created by the private information of a “coproduction of a claim determination.”²⁸¹ The group explains that even though resolving the asymmetry is fundamental to the interactions between bureaucrats and clients, “[i]mplementation is difficult when policies are technically complex or require costly information to execute, and these difficulties are likely to increase bureaucratic errors.”²⁸² While bureaucrats are “discouraged from developing or using their own judgment,” their “personal experiences and biases may pervert the administrative process.”²⁸³ The perceptions that the bureaucrats form around their clients may include judging their “attire, appearance, weight, use of language, and confidence.”²⁸⁴ Ultimately, the researchers argue that “bureaucrats first assess who their clients are and then find and apply rules or procedures that fit the clients” and their “personal bias toward a particular group of claimants may introduce error in cases when the bureaucrat relies on shortcuts, fueled by bias, to process the claim.”²⁸⁵

These factors can be compared to the concerns voiced against the officers of the USCIS regarding their application of Form N-648. As described by Legal Services NYC and other immigration advocate groups, many officers overruled medical professionals’ assessments and diagnoses to replace them with their own opinions and arbitrarily denied applications in contradiction to the policy manual.²⁸⁶ As mentioned previously, “USCIS officers created a hostile or accusatory environment in the questioning of the N-648 application which is confusing, stressful and unduly burdensome to an already vulnerable applicant population namely disabled immigrants.”²⁸⁷ Further, the officers are reported not to explain their reasoning for denying applications,

²⁷⁸ *Id.* at 68.

²⁷⁹ *Id.*

²⁸⁰ *Id.*

²⁸¹ Ryu et al., *supra* note 251, at 698.

²⁸² *Id.* at 699.

²⁸³ *Id.*

²⁸⁴ *Id.*

²⁸⁵ *Id.*

²⁸⁶ Chen, *supra* note 197.

²⁸⁷ Hough, *supra* note 207, at 4.

“leav[ing] applicants and their representatives uncertain about how to communicate the deficiencies in the form to the medical provider, what information is missing, or what further connections are necessary to demonstrate the applicant’s eligibility for a waiver.”²⁸⁸ The errors they are making can be linked to the overwhelming workload that the USCIS takes, the shifting mission statements per administration, and the vulnerable positions the applicants are in to obtain naturalization.²⁸⁹

The constant rotation of immigration policies as presidential administrations change makes the system within the United States unreliable for refugees trying to gain citizenship through naturalization. From mission statements to policies to forms, without consistency in the administration of the immigration system, refugees and those helping them apply for naturalization cannot rely on how the USCIS will receive their applications. The bureaucratic violence and error reported against the agency further prolong this process and increase the chance of a potential change in policy or procedure. These inconsistencies leave refugees in a very vulnerable state as they struggle to find medical professionals to complete their applications and to predict how the officers will react to their exemption applications.

III. RESOLUTION

As the ever-changing political landscape of the United States consistently threatens the ability of disabled refugees and immigrants to gain naturalization,²⁹⁰ this Note advocates for solutions focused on repairing the lack of transparency and consistency within the USCIS itself. As seen in the analysis above, both the USCIS mission statement and the forms used by the officers are dependent upon the president currently in office.²⁹¹ With the highly polarized political environment that the United States is currently experiencing, these administrative missions and materials will likely change again with a change of presidency. As former USCIS Director León Rodríguez stated, “Mission statements will be written, replaced[,] and rewritten. History, on the other hand, is cumulative.”²⁹² With the lack of control over those factors, this Note focuses on increasing the transparency within the actions of the USCIS and increasing accountability for the officer’s decisions. As discussed previously, bureaucratic violence and error have been shown to plague the USCIS, harming the applicants they serve. In order to combat those issues, this Note offers a resolution (1) to break down

²⁸⁸ *Id.* at 3.

²⁸⁹ *Id.*

²⁹⁰ *See supra* Part II.

²⁹¹ *See supra* Part II.

²⁹² Rodríguez, *supra* note 128, at 3.

the barriers of communication between the USCIS and stakeholders to enhance the efficiency of Form N-648 submissions and denials and (2) to increase of training to improve consistency between presidential administrations with different approaches to immigration policy.²⁹³

A. Breaking Down Barriers Between the USCIS and Stakeholders

Currently, the public transparency from the USCIS regarding Form N-648 is minimal. While the organization releases data statistics regarding naturalization broadly, there is no data available for the acceptance rate compared to the denial rate of Form N-648 or the reasons for their denial.²⁹⁴ Increasing this communication to the public will be effective for many reasons.²⁹⁵

Releasing this information to stakeholders—like doctors, lawyers, non-profit entities, and others who may assist applicants with naturalization documents—would increase the efficiency of completing the documents and the officer’s analysis of the applications. This data should be implemented in two different “open lines of communication[,]” as argued by the Naturalization Working Group.²⁹⁶ In the past, a regular stakeholder working group was utilized to bring together the USCIS and their external stakeholders. According to the Naturalization Working Group, these groups met regularly over several years “to provide input on policy guidance and forms related to disabled applicants.”²⁹⁷ Re-establishing this group and organizing at least annual meetings would open the communication between these two groups to ensure that both sides are best meeting the needs of the disabled applicants. Additionally, another line of communication that needs to be implemented is to provide both fiscal year and quarterly data analyzing the number of Form N-648s received and whether they are accepted or denied. Further, that information should include data for the reasons for denial. As the stakeholders would know precisely what the USCIS is looking for, this data should decrease the number of applications denied as they would be aware of common mistakes that cause the documents to be sent back.²⁹⁸ This would also speed up the process for the USCIS as it would lessen the number of resubmissions that apply due to simple mistakes.²⁹⁹

²⁹³ 2021 Annual Report to Congress iii–v, U.S. DEP’T HOMELAND SEC. (July 20, 2021), https://www.dhs.gov/sites/default/files/publications/dhs_2021_ombudsman_report_med_508_compliant.pdf [<https://perma.cc/WE7Y-NUR3>].

²⁹⁴ U.S. DEP’T HOMELAND SEC., *supra* note 18.

²⁹⁵ Naturalization Working Grp., *supra* note 160.

²⁹⁶ *Id.* at 8.

²⁹⁷ *Id.*

²⁹⁸ *Id.*

²⁹⁹ *Id.*

Additionally, increasing the transparency between the stakeholders and the USCIS through access to data on Form N-648 application denials will help combat bureaucratic error and violence, as the stakeholders could hold the officers accountable for their application decisions. The stakeholders could monitor the officers' actions to ensure that they are accurately reviewing the applications, potentially decreasing the likelihood of the officers being able to implement their own bias or error into the forms.

Further, the data should be tracked internally at each field office to track the decisions being made by each branch, which the USCIS can then monitor overall. This monitoring would help the administrative agency keep track of their local branches to improve consistency across the nation. As mentioned previously, bureaucratic error can be monitored through tracking data over a period of time.³⁰⁰ By observing this data internally over time, the USCIS can analyze the performances of their branches all across the country to find where the inconsistencies are occurring. Additionally, if the officers were aware that the agency was monitoring them and the agency was consistent in enforcing its policies and procedures, that would likely lower the rate of bureaucratic violence that plagues the USCIS. The officers would have to be more formalistic in reviewing the applications and provide more explicit reasons for denial to fit within USCIS protocol.

B. Implementing Training and Resources for USCIS and Stakeholders

As stated previously, many refugee advocates noted the bureaucratic violence of officers using their own judgment in place of the medical professionals and denying applications with little explanation for their decision.³⁰¹ Medical providers have begun to deny applicants' requests to fill out Form N-648 due to the confusing questions and the high likelihood that it will be denied arbitrarily with no productive feedback.³⁰² The officers have no requirement for medical backgrounds and, therefore, have little to no understanding of the complexities that surround the N-648.³⁰³ This lack of understanding makes what they seek in the applications inconsistent.

While it would be unrealistic to advocate for a requirement that all USCIS officers have medical licenses, simply “[p]rovid[ing] training and informational resources on the revised Form N-648 for medical professionals and legal advocates who are assisting disabled applicants” could alleviate much of the confusion and inconsistency for officers and stakeholders.³⁰⁴

³⁰⁰ Ryu et al., *supra* note 251, at 700–01.

³⁰¹ *Id.*

³⁰² Naturalization Working Grp., *supra* note 160.

³⁰³ *Id.*

³⁰⁴ *Id.*

There needs to be both an increase in training for officers and more resources for those filling out the forms. Therefore, increasing training for USCIS officers and resources for applicants filling out the forms would help make the N-648 application process much more effective.

This expansion in training could increase the process's effectiveness and decrease the risk of bureaucratic error and violence. Uniform training throughout the United States could increase consistency among the different branches across the country by helping lessen errors made by officers reviewing the applications. Further, by enforcing this training, the USCIS could cultivate a culture within their agency in which the officers are expected to follow the exact protocol of the group instead of turning a blind eye to the biases of individual employees.

As refugees have limited time to gain naturalization before their benefits expire, it is imperative to introduce solutions to increase the efficiency of the Form N-648 application. While these proposed solutions may initially place a financial and time burden on the USCIS, the increase in transparency and training would increase the efficiency of the naturalization process over time. By increasing the transparency between the stakeholders and the USCIS and providing the officers with the necessary resources, bureaucratic violence and error can be decreased within the USCIS. This increases accuracy when applicants fill out applications and officers review the forms.

CONCLUSION

The laws surrounding immigration and naturalization have been ever-changing since their implementation. This fluctuation has led to much confusion for applicants, lawyers, non-profit employees, and doctors who are subject to these regulations before the USCIS alters them again. While exceptions for those with disabilities are a relatively new concept, they are a vital resource for so many individuals immigrating to the United States. Comparing President Biden's and former President Trump's strategies for immigration regulation showcases the vast juxtaposition within the United States and highlights how quickly the rules and regulations can change for those going through the process. Along with the uncertainty of changing immigration laws, bureaucratic violence and bureaucratic errors persist in impacting the livelihoods of those utilizing the USCIS. With the presidential election forthcoming, it is imperative to enforce transparency and accountability within the agency before the administration changes. President Biden's administration has shown to be more receptive to the concerns presented by immigration and refugee advocates. Implementing remedies to make the process fairer and more efficient is crucial to giving refugees the significant benefits of United States citizenship, which many

deserve but are denied. The journey to a new country can cause an immense amount of trauma on its own; the process of becoming naturalized should not add more on top of that.