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CLINIC Transition Paper: Preserving Access to Naturalization for the Most Vulnerable Applicants: The Citizenship Test and Disability-Based Waiver

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The Catholic Legal Immigration Network, Inc., CLINIC, promotes the dignity and protects the rights of immigrants in partnership with our network of immigration legal services providers. Visit us at cliniclegal.org/transition.

Citizenship with all of its rights and responsibilities must be available to all people, not only the elite, well-educated and able-bodied, in a free and democratic society.

— Jeff Chenoweth, Director of Capacity Building at CLINIC

At all stages, the citizenship test redesign process must be transparent and open to input from stakeholders, particularly from organizations that provide citizenship services. While keeping the process open to public scrutiny, USCIS must guard it from political interference.

— [A More Perfect Union: A National Citizenship Plan](#), January 2007

Our mission and our identity as a Catholic organization compels our continued advocacy on behalf of all vulnerable immigrants and refugees, including disabled permanent residents. When we acknowledge the inherent dignity and unique gifts that disabled individuals have to offer and commit to addressing the need for their fuller integration and participation in our society, we all benefit.

— [CLINIC comments](#) to USCIS on proposed changes to Form N-648, June 25, 2019

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Why access to naturalization matters

The United States is a nation of immigrants united by a common creed and shared values. Citizenship is a significant marker of immigrant integration and a pre-condition to full membership in our constitutional democracy. Citizenship, with all of its rights and responsibilities, must be available to *all* people, not only the elite, well-educated and able-bodied, in a free and democratic society. The citizenship test and disability-based waiver of the test must not create an undue burden or barrier for the most vulnerable applicants seeking to naturalize. CLINIC approaches this issue from the perspective of Catholic Social Teaching, which emphasizes a preferential option for the poor and vulnerable. “The prime purpose of this special commitment to the poor is to enable them to become active participants in the life of society. It is to enable *all* persons to share in and contribute to the common good.”¹

Number of people impacted

In Fiscal Year 2019, 843,000 people became naturalized citizens.² One of the requirements for naturalization is to pass a test on English, history and civics.³ Applicants who have a disability or impairment that prevents them from learning the material for the test can apply for an exemption from the test by submitting Form N-648 (Medical Certification for Disability Exceptions) completed by their doctor. CLINIC does not have current data on how many people receive a disability waiver each year, but historical data suggests that disability waivers represent about 1.4 percent to 2.6 percent of naturalization cases approved each year.⁴

Previous administration’s policy and the human consequences

On Nov. 13, 2020, USCIS announced the release of a new version of the citizenship test that is significantly longer and more difficult than the previous version, which had been in place since 2008.⁵ It was the culmination of a very rushed and secretive test revision process that began in December 2018, when USCIS formed an internal working group with members from across the agency to review the civics questions and consider changes to the English-speaking portion of the test. The revision process was not announced to the public for another seven months. On July 19, 2019, USCIS issued a public announcement giving an implementation date of December 2020 or early 2021.⁶

Despite its enormous implications for the future of citizenship, the test revision process continued in secrecy after the public announcement, with no opportunity offered for stakeholder engagement or input.

Organizations that USCIS recruited to participate in pilots of the new test were required to sign a disclaimer and keep all the information strictly confidential.⁷ Similarly, an advisory group of ESL experts was created by a USCIS contractor, TESOL, but its members and activities were not disclosed to the public, despite advocates’ efforts to learn who was selected for the group and the agenda for their meetings. Instead, advocates were

told that TESOL staff and advisers were unable to discuss any details of their work due to the confidential nature of the test development. USCIS' plans to pilot the revised test questions were seriously delayed by the pandemic-related shutdown, although the full impact of the pandemic on the pilot is still unknown, since these details were never shared with stakeholders.⁸

USCIS has now released a new citizenship test that could be in place for a decade or more and affect millions of people seeking to naturalize. The new test is significantly more difficult and could prevent tens of thousands of people from naturalizing each year by causing their applications to be denied.⁹ A side-by-side comparison of the new test with the previous version shows that only 40 of the old questions were retained, while the rest (88 questions) are either new or re-phrased.¹⁰ The number of study questions has increased from 100 to 128 and the number of questions asked on the test has doubled, from 10 to 20. Some of the questions are blatantly political in nature.¹¹ It is unclear why such major revisions are necessary, when so much time and effort went into the previous test revision process over a six year period, with a great deal of input from subject matter experts, including the National Academy of Sciences.¹²

At the same time that USCIS was working to create a new and more difficult citizenship test, it was also making naturalization harder for applicants with disabilities. On Dec. 12, 2018, USCIS announced major changes to the policy guidance on disability waivers, with an effective date of Feb. 12, 2019.¹³ In response, CLINIC submitted comments recommending USCIS withdraw the proposed changes in their entirety.¹⁴ CLINIC raised concerns that the new guidance created a gauntlet for highly vulnerable applicants to run, in which simple mistakes and misunderstandings of a complex process were automatically viewed as indicators of fraud.¹⁵ The guidance would contradict the purpose and intent of the law by arbitrarily preventing applicants with disabilities from naturalizing. USCIS provided no evidence that the changes were necessary or beneficial. Despite objections, USCIS implemented the guidance on schedule with only two minor changes that appeared to be based on CLINIC's comments.

Two months later, on April 26, 2019, USCIS published an announcement in the Federal Register regarding major changes to the disability waiver application — Form N-648 — that would align it with the policy guidance.¹⁶ In response, CLINIC submitted a public comment in opposition and noted that the proposed form was much longer and more onerous than the previous version.¹⁷ Extensive and burdensome questions were added regarding the date that each disability or impairment began; the date of diagnosis; the severity of each disability or impairment; how each disability or impairment affects the applicant's daily life activities; which disabilities/impairments are expected to last over 12 months and why; the frequency of treatment and other matters. The new Form N-648 took effect on Oct. 13, 2020.

CLINIC and other experts conclude that without swift action from the Biden administration, the new form — together with the new policy guidance — will prevent many eligible persons with disabilities from naturalizing.

In order to ensure that the promise of citizenship remains accessible for the most vulnerable applicants, the Biden administration should do the following in the first 100 days:

Recommendation 1

Halt Implementation of the New Citizenship Test Until USCIS Engages in Outreach and Consultation With Stakeholders.¹⁸ USCIS Must Provide Detailed Information To Stakeholders on the Rationale, Process, Methodology and Pilot Results To Date.¹⁹ Furthermore, USCIS Must Ensure That Any New Test Will Not Extend Processing Times, Exacerbate Backlogs or Pose a Barrier To Naturalization by Increasing the Failure Rate.

USCIS has announced that those who apply for naturalization on or after Dec. 1, 2020, will take the new test.²⁰ Given the barriers to accessibility that the new test poses as explained above, the Biden administration should announce immediately that implementation will be delayed and applicants will continue to take the previous test until USCIS fully engages with stakeholders and provides detailed information on the test revision process. In 2005, the Director of the Office of Citizenship, the USCIS office leading the test revisions, assured stakeholders that the new test would not be more difficult than the current one. Indeed, USCIS kept its promise and was able to verify this with a records study of pass rates before and after the new test was implemented. The final records study that USCIS released in July 2011 showed an overall pass rate of 96 percent.²¹ CLINIC calls on USCIS to make the same pledge for the new test. The citizenship test should not reinforce the world's educational inequities, particularly for those who were denied a basic education in their native country.

Recommendation 2

Review Internal Guidance To USCIS Adjudicators on How To Administer the English Speaking Portion of the Citizenship Test and Make Any Necessary Changes to Ensure That it Comports With the Law.²²

CLINIC understands that USCIS' internal test revision working group considered changes to internal guidance in December 2018. CLINIC's network of affiliate legal service providers has reported that USCIS has already implemented stricter standards for the English speaking test in some districts.²³ Affiliates reported that adjudicators are aggressively questioning applicants on the vocabulary terms on the N-400 (i.e. What does genocide mean?). One affiliate reported a major drop in their students' pass rates, from 89 percent to 66 percent. Their teachers created a lengthy study sheet to try to prepare their students. This sheet far exceeds the study guides²⁴ provided on the USCIS website to help applicants prepare for the interview questions.

Recommendation 3

Provide Detailed Information To Stakeholders on Current Pass Rates for the English Portion and the History/Civics Portion of the Citizenship Test

The USCIS website provides only the cumulative pass rate for applicants who took both the English and civics components of the test since it was fully implemented on Oct. 1, 2009.²⁵ According to the website, the cumulative pass rate in September 2020 was 91 percent. A records study completed by USCIS in 2011 found an overall pass rate of 96 percent for applicants who took the citizenship test in FY 2010, after the new test was implemented.²⁶ Given that the pass rate of 91 percent is cumulative, it is very concerning that pass rates under the Trump Administration appear to be far below the historical figure of 96 percent indicated in the records study. If so, USCIS must provide new guidance to its adjudicators to ensure they are correctly administering the citizenship test as intended when it was developed.

Recommendation 4

Rescind the N-648 Policy Guidance That USCIS Issued on Dec. 12, 2018 and That Took Effect on Feb. 12, 2019.

USCIS should revert to the previous version of the policy guidance on Form N-648. The new guidance greatly expanded the grounds for denying an N-648 application and made it more difficult for disabled applicants seeking to naturalize. In the longer term, USCIS should revisit the previous version of the guidance and make revisions to ensure that it balances USCIS' need to uphold the integrity of the program with disabled applicants' rights to obtain the benefits of citizenship and full participation in our democratic system.

Recommendation 5

Allow Applicants to use the Earlier (Unexpired) Edition of the Form N-648 Dated May 23, 2019

The new edition of the Form N-648 is much longer and more onerous than the previous version. It places unreasonable burdens on busy medical professionals and arbitrarily prevents applicants with disabilities from qualifying for naturalization. Both the form and the policy guidance contradict the purpose and intent of the underlying statute and regulations that created a means for applicants with disabilities to naturalize. In the longer term, USCIS should simplify the May 23, 2019 edition of the Form N-648 by reducing the number of questions and making it shorter and easier for doctors to complete.

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To learn more about CLINIC's Administrative Advocacy Priorities, please visit: cliniclegal.org/advocacy.

Endnotes:

¹ United States Catholic Bishops, Economic Justice for All, no. 88 (1986).

² John Teke, *DHS Office of Immigration Statistics, Annual Flow Report, U.S. Naturalizations: 2019* (August 2020), dhs.gov/sites/default/files/publications/immigrationstatistics/yearbook/2019/naturalizations_2019.pdf.

³ INA § 312, 8 C.F.R. § 312.1 and 312.2.

⁴ Historical data obtained from USCIS by CLINIC for Fiscal Year 2001 to 2005 showed 8,000 to 14,000 disability waivers granted each year. CLINIC compared this data against the total number of naturalizations for those years, as indicated in the DHS Yearbook of Immigration Statistics.

⁵ USCIS Announces a Revised Naturalization Civics Test, USCIS (Nov. 13, 2020), uscis.gov/news/news-releases/uscis-announces-a-revised-naturalization-civics-test.

⁶ USCIS Announces Plan to Improve the Naturalization Test, USCIS (July 19, 2019), uscis.gov/news/news-releases/uscis-announces-a-revised-naturalization-civics-test.

⁷ The previous test was piloted to 5,000 applicants. Preliminary information gathered by CLINIC suggests that the new test was piloted to only 200 applicants in 2020.

⁸ The pilot that was initially planned for spring 2020 was delayed until July 2020. It ran for approximately five weeks, until August 13, 2020. CLINIC learned that USCIS had planned to send staff to the pilot sites to administer the test questions in person, but had to change to a remote model due to the pandemic, and administer the questions by phone. Despite the delays and changes related to pandemic shutdowns, USCIS managed to release the new test well ahead of its initial timeframe of December 2020 to early 2021.

⁹ The current, cumulative pass rate for the citizenship test is 91 percent. In Fiscal Year 2019, USCIS received 830,560 naturalization applications. If the pass rate had decreased by just 5 percent, from 91 percent to 86 percent in FY 2019, it would have caused over 40,000 people to be denied.

¹⁰ Some questions have been re-phrased to be more difficult. For example, the previous test asks the applicant to name *three* of the original 13 states, while the new test asks the applicant to name *five*.

¹¹ For example, on the question, "Who does a U.S. senator represent?" the answer has been changed from "all the people of their state" to "citizens of their state."

¹² See Chapter 6 of CLINIC's 2007 report, *A More Perfect Union*, for a history of the test revision process that culminated with a new test in 2008, cliniclegal.org/resources/citizenship-and-naturalization/more-perfect-union-national-citizenship-plan.

¹³ Policy Alert, Sufficiency of Medical Certification for Disability Exceptions (Form N-648), USCIS (Dec. 12, 2018), uscis.gov/sites/default/files/document/policy-manual-updates/20181212-N648MedicalCertification.pdf.

¹⁴ CLINIC Comment on Policy Changes Affecting Naturalization Disability Waiver Applicants (Jan. 16, 2019),

cliniclegal.org/resources/federal-administrative-advocacy/clinic-comment-policy-changes-affecting-naturalization.

¹⁵ The guidance, available at uscis.gov/policy-manual/volume-12-part-e-chapter-3 greatly expanded the grounds for denying an N-648. Part 5 lists 14 factors that may give rise to “credible doubt,” including: the medical professional did not provide sufficient detail about the diagnostic techniques used or the doctor-patient relationship; the applicant or medical professional failed to justify a late filing of the N-648; and “any other articulable grounds that are supported by the record.”

¹⁶ 84 Fed. Ref. 17870 (April 26, 2020), federalregister.gov/documents/2019/04/26/2019-08384/agency-information-collection-activities-revision-of-a-currently-approved-collection-medical.

¹⁷ CLINIC Comment on Proposed Form N-648, (June 25, 2019) cliniclegal.org/resources/federal-administrative-advocacy/clinic-comment-proposed-changes-form-n-648.

¹⁸ Stakeholders are defined as national, state and local nonprofits that fund and provide naturalization application and citizenship test preparation services.

¹⁹ Some questions for USCIS include: Why is new content being added to the test? How did USCIS determine what new content to add? Who wrote the new and revised questions? Have the new/revised questions been analyzed by ESL professionals for level of difficulty, and how do they compare in difficulty to the current questions? How many students participated in both pilots? Were there enough students for a valid sample?

²⁰ uscis.gov/news/news-releases/uscis-announces-a-revised-naturalization-civics-test

²¹ The records study found that the overall pass rate for the new test released in 2008 was higher than the pass rate on the old test: 96 percent vs. 94 percent.

²² INA § 312 (a) (1) states that a naturalization applicant must demonstrate “an understanding of the English language, including an ability to read, write, and speak words in *ordinary usage* in the English language” and “the requirements of this paragraph relating to an ability to read and write shall be met if the applicant can read or write *simple words and phrases* to the end that a reasonable test of his literacy shall be made and that *no extraordinary or unreasonable condition* shall be imposed upon the applicant.” Regarding the literacy test of verbal skills, § 312.1 (c) states, “The ability of an applicant to speak English will be determined by a designated immigration officer from the applicant’s answers to questions normally asked in the course of the examination.”

²³ Affiliates located in the Boston and Tampa USCIS Districts reported stricter standards for the English speaking test.

²⁴ Guide to the USCIS Practice Test “Vocabulary for the Naturalization Interview: Self-Test 2,” uscis.gov/sites/default/files/document/guides/Teacher_Guide_Vocabulary_Self-Test2.pdf, (last visited Nov. 17, 2020); Guide to the USCIS Practice Test “Vocabulary for the Naturalization Interview: Self-Test 1,” uscis.gov/sites/default/files/document/guides/Teacher_Guide_Vocabulary_Self-Test1.pdf, (last visited Nov. 17, 2020); Guide to the USCIS Practice Test “Understanding Commands for the Naturalization Interview,” uscis.gov/sites/default/files/document/guides/Teacher_Guide_UnderstandingCommands.pdf, (last visited Nov. 17, 2020).

²⁵ Applicant Performance on the 2008 Naturalization Test, uscis.gov/citizenship/learn-about-citizenship/the-naturalization-interview-and-test/applicant-performance-on-the-naturalization-test, (last visited Nov. 17, 2020).

²⁶ ICF International, U.S. Citizenship and Immigration Services’ Records Study on Pass/Fail Rates for Naturalization Applicants, July 30, 2011.