

MAKING AMERICANS: ADMINISTRATIVE DISCRETION AND AMERICANIZATION

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Naturalization, the process by which immigrants formally become U.S. citizens, has been an important component of our nation's political history. In the Declaration of Independence, the colonists charged that King George "endeavored to prevent the population of these States; for that purpose obstructing the laws for naturalization of foreigners . . ." After a failed experiment with state-granted citizenship under the Articles of Confederation, the Constitution granted the federal government the sole authority to naturalize.¹ Among the first acts of Congress was the passage of a national naturalization law.² This legislation encouraged immigration and population growth by offering U.S. citizenship after two years of residence in the United States and the demonstration of good moral character. Congress soon extended the period of residency required for U.S. citizenship to five years³ and, in the 20th century, supplemented it with requirements that the applicant have basic knowledge of the English language⁴ and of U.S. civics.⁵ However, the basic criteria for naturalization to U.S. citizenship have remained nearly constant for the past two hundred years.

Congress and the Courts have also steadily expanded the right of naturalization. Originally limited to free white persons⁶, natural-

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1. U.S. CONST. art. I, § 8.

2. 1 Stat. 103 (enacted March 26, 1790).

3. 1 Stat. 414 (enacted January 29, 1795). Although Congress extended the residency requirement to 14 years as part of the hysteria surrounding the XYZ Affair that led to the Alien and Sedition Acts, the five year residence period before naturalization resumed in 1802 and continues through today.

4. 34 Stat. 596, enacted June 29, 1906, established a requirement that the applicant sign the application in his/her own handwriting and speak English. Congress modified this requirement in 1940 for applicants who were physically unable to speak 54 Stat. 1140. However, in 1950, Congress added reading and writing English to the spoken English requirements from the turn of the century 64 Stat. 987 (enacted September 23, 1950).

5. 64 Stat. 1018 (enacted September 23, 1950).

6. Act of March 26, 1790, 1 Stat. 103. Although the statute extended the right of naturalization to "free white persons," the naturalization status of women followed that of their husbands until 1922. Act of Sept. 22, 42 Stat. 1021.

ization excluded Blacks, single adult women, Asians, and in some states and territories, Mexicans. Congress added African-Americans to naturalization through statute in 1866⁷ and with the ratification of the 14th Amendment in 1868.⁸ In 1897, the Courts guaranteed access to naturalization to the Mexican American population.⁹ Congress granted women the right to naturalize separate from their husbands and to maintain their U.S. citizenship after marrying a foreign national in 1922.¹⁰ Finally, Congress granted Asians, informally excluded from citizenship before 1882 and statutorily excluded after 1882¹¹, the right to naturalize in 1952.¹²

Currently, naturalization increases the U.S. citizen population by 200,000 to 300,000 annually (see Table One). If trends continue, the number of newly naturalized Americans each year will exceed 500,000 by the turn of the century. Naturalization will account for 7.5% of this nation's new citizens each year (the remaining 92.5% of U.S. citizens will obtain their citizenship status through birth).¹³ In addition, the Immigration Reform and Control Act (IRCA) has enabled a pool of 3,000,000 formerly undocumented immigrants to become eligible for U.S. citizenship beginning in 1993.¹⁴ The future pool of eligible immigrants may soon face growth as well. In 1991, for example, the ceiling on new immigration will increase by 200,000.¹⁵ As a result, naturalization will be of continuing importance into the next century.

Although the courts retain final statutory authority to natural-

7. 14 Stat. 27 (1868) states: "[A]ll persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States; and such citizens of every race and color, without regard to any previous condition of slavery or servitude . . . shall enjoy the same right . . . as is enjoyed by white citizens. . . ."

8. 16 Stat. 256 (enacted July 14, 1870).

9. *In re Rodriguez*, 81 F. 337 (W.D. Tex. 1897). The court took an expansive approach to the naturalization law. It noted "that, whatever may be the status of the applicant viewed sole from the standpoint of the ethnologist, he is embraced within the spirit and intent of our laws upon naturalization, and his application should be granted if he is shown by the testimony to be a man attached to the principles of the constitution, and well disposed to the good order and happiness of the same." *Id.* at 354-355.

10. 42 Stat. 1021 (enacted September 22, 1922).

11. 22 Stat. 61 (enacted May 6, 1882). The Bureau of Naturalization extended the Chinese naturalization exclusion to East Asians in 1911. The courts ratified this administrative decision in a case involving a Japanese immigrant in 1922. *Ozawa v. U.S.*, 260 U.S. 178 (1922). Immigrants from Asia faced informal exclusions before these rulings.

12. Immigration and Nationality Act of 1952, 66 Stat. 163 (enacted December 24, 1952).

13. Authors' extrapolations based on U.S. DEP'T OF JUSTICE, 1989 STATISTICAL YEARBOOK OF THE IMMIGRATION AND NATURALIZATION SERVICE at Tables 1 and 2 (1990), and BUREAU OF THE CENSUS, UNITED STATES DEP'T OF COMMERCE, CURRENT POPULATION REPORTS, POPULATION ESTIMATES AND PROJECTIONS, series P-25, No. 922, Nov. 1986.

14. Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359.

15. Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978.

TABLE ONE
IMMIGRATION AND NATURALIZATION: 1907-1988

	IMMIGRANTS ADMITTED	NATURALIZATIONS AWARDED
1907-1910	3,861,575	111,738
1911-1920	5,735,811	1,128,972
1921-1930	4,107,209	1,173,185
1931-1940	528,431	1,518,464
1941-1950	1,035,039	1,987,028
1951-1960	2,515,479	1,189,946
1961-1970	3,321,677	1,120,263
1971-1980	4,493,314	1,464,772
1981-1988	4,710,655	1,914,192

Source: U.S. DEP'T OF JUSTICE, 1988 STATISTICAL YEARBOOK OF THE IMMIGRATION AND NATURALIZATION SERVICE (1989) (Data on naturalization was not collected by the federal government prior to 1907).

ize¹⁶, Congress has entrusted the Immigration and Naturalization Service with steadily increasing administrative responsibilities to process applications, to review applicants' qualifications, and soon, to award citizenship in many cases.¹⁷ This article analyzes the historical and contemporary issues surrounding the Immigration and Naturalization Service's (INS) administration of naturalization as revealed by the literature and contemporary administrative and survey research data on naturalization.

AN OVERVIEW OF THE NATURALIZATION PROCESS

Despite the growing numbers of naturalized citizens, little research has focused on the administrative component of the naturalization process.¹⁸ Only two contemporary administrative studies of

16. The 1990 Immigration Act established a procedure for administrative naturalization. Applicants awarded naturalization at the administrative level received the option of an administrative award of naturalization by INS staff. However, in 1991, under pressure from the federal judiciary, Congress returned exclusive authority to naturalize to the federal (and some state) courts that had controlled the award of naturalization prior to the enactment of the 1990 reform. The 1991 amendments granted the courts exclusive authority for the first 45 days after the Attorney General certifies to the court that the applicant is eligible for naturalization. Under the 1991 amendments, the courts have the option of waiving this period of exclusive jurisdiction.

17. The Immigration Act of 1990 establishes provisions for "administrative naturalization." This procedure allows a naturalization applicant to be sworn in as a U.S. citizen and receive the naturalization certificate from an INS official and not a judge as previously required. As we write this article, INS is drafting the rules for this provision. Preliminary INS discussion suggests that it the Service is trying to use this procedure to limit applicants' access to the courts for review of administrative denials of U.S. citizenship. INS authority to naturalize is limited during the first 45 days after the certification of the applicants eligibility for naturalization.

18. Louis DeSipio, *Social Science Literature and the Naturalization Process*, THE INTERNATIONAL MIGRATION REVIEW, Summer 1987 at 390-405.

naturalization exist.¹⁹ The major finding of these studies, as well as those of a few administrative studies from the 1920's and 1930's, is that naturalization — as administered by INS — is highly decentralized and offers the applicant an often confusing introduction to the American governmental system. Before we examine these studies, we present a historical overview of naturalization.

A. *Administrative History of Naturalization*

The first century of U.S. naturalization processing featured state and local-level administration.²⁰ Although noted as early as 1845²¹, the decentralization that resulted from state-level authority to administer naturalization became a matter of political and legislative concern around the turn of the century. Oversight of the program by clerks in state and federal courts had been effective in times of low immigration. However, with the expansion of the immigrant flow and the shift in its national-origin composition after the Civil War, state and local-level administration of U.S. citizenship became perceived as corrupt in the Eastern seaboard cities. Political machines, such as Tammany Hall, used naturalization as a tool for increasing the numbers of voters. In his study of Irish political machines in the United States, Steven Erie²² offers the example of Tammany Hall before a particularly crucial election printing 105,000 blank naturalization applications and 69,000 certificates of naturalization: "Immigrants fresh off the boat," he finds, "were given red tickets, allowing them to get their citizenship papers free. Tammany paid the required court fees and provided false witnesses to testify that the immigrants had been in the country for the necessary five years."²³ Thus, at the turn of the century, lack of uniformity among the courts, poor or non-existent record keeping, and different standards for proving such questions as length of residence characterized the administration of naturalization.

President Theodore Roosevelt appointed an inter-agency com-

19. NALEO EDUCATIONAL FUND, *THE LONG GREY WELCOME* (1985); United States Senate, Committee on Appropriations, *Senate Report 100-182* (1987).

20. For several good studies of the development of American naturalization law in the 19th century. see FRANK G. FRANKLIN, *THE LEGISLATIVE HISTORY OF NATURALIZATION IN THE UNITED STATES FROM THE REVOLUTIONARY WAR TO 1861* (1906); JOHN PALMER GAVIT, *AMERICANS BY CHOICE* (1922); and JAMES H. KETTNER, *THE DEVELOPMENT OF AMERICAN CITIZENSHIP, 1607-1870* (1978).

Studies of the formation of the current administrative structure of the U.S. naturalization program include: DARRELL HEVENOR SMITH, *THE BUREAU OF NATURALIZATION, ITS HISTORY, ACTIVITIES AND ORGANIZATION* (1922); LUELLE GETTYS, *THE LAW OF CITIZENSHIP IN THE UNITED STATES* (1934); and CONG. RESEARCH SERVICE, *THE HISTORY OF THE IMMIGRATION AND NATURALIZATION SERVICE* (1980).

21. REED UEDA, *Naturalization and Citizenship*, in *HARVARD ENCYCLOPEDIA OF AMERICAN ETHNIC GROUPS* (Stephen Thernstrom ed. 1980).

22. STEVEN P. ERIE, *RAINBOW'S END* 51 (1990).

23. *Id.*

mission in 1905 to examine these concerns. The Commission formulated the broad outline of our present naturalization system by seeking uniformity in administration a primary feature. Courts continued to have final power to award naturalization, but Congress required judicial clerks to file standardized forms with a newly created Bureau of Naturalization (formed in 1913²⁴). U.S. Attorneys conducted the applicant investigations that had fallen on municipal court clerks under the old system. To "depoliticize" naturalization, federal courts received sole jurisdiction to naturalize in cities with populations of more than 100,000.²⁵ The concentration of authority to naturalize with the federal courts did not prevent individual judges from establishing different standards. Congress addressed this discrepancy by giving the INS (formed in 1933) the authority to review all applicants before judicial processing.²⁶ While the courts retained the final authority to award naturalization, the INS recommendations for award or denial became the final word for most applicants.²⁷

This brief historical overview of the administration of the U.S. naturalization program suggests two themes. First, although Congress added statutory requirements over the years, U.S. naturalization requirements, in comparison to those of other nations, have consistently been minimal. Although the law denied access to naturalization through much of U.S. history to immigrants from many parts of the world, the statutory requirements have remained few. For example, the required period of residence has remained at five years for two centuries requirements less burdensome than those in much of Western Europe and other countries.²⁸ Second, a concomitant, and much less publicized issue, has been a recurring legislative concern about inconsistency and lack of uniformity in the administration of naturalization.

24. 37 Stat. 736.

25. CONG. RESEARCH SERV., THE HISTORY OF THE IMMIGRATION AND NATURALIZATION SERVICE 14-15 (1980).

26. *Id.* at 41-42.

27. Throughout this period, the courts expanded and contracted the right to naturalize. We presented an example of the expansive view in our discussion of *In re Rodriguez*. See *supra* note 9. Other courts, however, limited access to U.S. citizenship. In a series of cases in the 1920s through the 1940's, the courts prevented INS from releasing older applicants with long periods of residence in the United States from the English speaking requirement. *Petition of Katz*, 21 F.2d. 867 (1927); *In re Swenson* 61 F. Supp. 373 (1945).

Before the enactment of the civics requirement, several courts denied naturalization to applicants without this knowledge. They justified these denials based on the requirement that new citizens have good moral character and that implicitly included knowledge of American custom.

28. William Rogers Brubaker, IMMIGRATION AND THE POLITICS OF CITIZENSHIP IN EUROPE AND NORTH AMERICA (1989).

B. *Recent Administrative Analysis of Naturalization*

The lack of uniformity in naturalization activities and its impact on the legal immigrant community has been the subject of two recent studies. The first of these studies, *The Long Grey Welcome*,²⁹ paints a picture of INS as a decentralized agency that processes ever-increasing numbers of U.S. citizenship applicants with overall fairness and equity, but lacks effective administrative controls to assure that applicants receive equal treatment. Further, the study finds that many immigrants interested in U.S. citizenship who apply for naturalization disappear in the INS administrative process and fail to obtain U.S. citizenship.

By tracing a typical naturalization applicant through the process, the program's problems with uniformity are apparent. The naturalization process has three steps: application, examination, and award (see Table Two). INS conducts the first two steps. Upon submission, INS clerks review the naturalization application for completeness and statutory eligibility. If the applicant meets the statutory requirements, she can expect to wait from four to six months for the next step — the interview. INS examiners conduct

TABLE TWO
THE ADMINISTRATIVE PATH TO U.S. CITIZENSHIP

STEP	ADMINISTRATIVE AND JUDICIAL PROCESS
1.	File Application with INS & review of application by INS.
2.	Examination of applicant by an INS adjudicator which tests: <ul style="list-style-type: none"> ○ U.S. history and government ○ Spoken English ○ Accuracy and completeness of the application ○ Written English <p>Failure to satisfy the reviewer of the completeness of the application or the examiner of each of the examined components results in a recommendation that the applicant withdraw the application. The applicant may, but rarely does, request that the court review the application.</p>
3.	Final hearing by the court on the application and the judicial swearing-in ceremony. <p>The INS must formally petition the courts to approve all applications deemed to have passed its administrative review. The courts virtually always follow INS recommendations for approvals. The courts have final jurisdiction over all applications that have completed INS review, including those administratively denied.</p>

29. NALEO EDUCATIONAL FUND, *THE LONG GREY WELCOME* (1985). See also *supra* note 19 and accompanying text.

this interview to review the information presented in the application and assess the applicant's knowledge of written and spoken English and U.S. history and civics. The courts conduct the final step, the award, with the cooperation of the INS. The role of the courts is largely *pro-forma*. Only when the INS has recommended a denial does the judge take a substantive role. Under the recently passed legislation, applicants will have the option of award by either the INS or the judiciary after a 45 day period of exclusive judicial authority.

Beyond providing an otherwise unavailable administrative description of the naturalization process, *The Long Grey Welcome* uncovered a significant administrative weakness in naturalization administration. Naturalization advocates reported that naturalization requirements were difficult for many immigrants to meet.³⁰ Yet, INS naturalization statistics suggest that these claims were invalid. In the 81 years for which naturalization data have been available (1907-1989), just 532,338 of the 13,076,535 applications for naturalization filed have resulted in the denial of U.S. citizenship—a denial rate of 4.1%. The 1980s have seen a decline in the percentage of naturalization applications that result in denials, with just 1.9% of applications between 1981 and 1989 resulting in a judicial denial of citizenship.³¹

ADMINISTRATIVE REJECTIONS AND THE DENIAL OF CITIZENSHIP

Administrative processing of naturalization is less *pro-forma* than the official statistics suggest. INS administrative records clarify this contradiction between immigrant advocates' perceptions of the process and the judicial approval rate. Data from 1988³² suggest that INS personnel rejected 10.4% of naturalization applications based on the applicant's failure to properly complete the materials (labeled "returns" by the INS). In addition, at the examination level, INS examiners denied 13.2% of naturalization applicants. In these cases, INS examiners convinced applicants that they should withdraw their applications to avoid being denied (labeled "non-files" by the INS). In other words, rejections at the administrative level equalled 23.6% of all naturalization applications.

INS does not report the returned and non-filed applications in

30. Harry Pachon and Louis DeSipio, *The Attitudes of Citizenship Service Providers Toward Low Rates of Citizenship in the Hispanic Community* (Paper presented at the meetings of the Western Political Science Association in Eugene, OR, March, 1986).

31. U.S. DEP'T OF JUSTICE, 1989 STATISTICAL YEARBOOK OF IMMIGRATION AND NATURALIZATION SERVICE at Table 48 (1990).

32. United States Senate, Committee on Appropriations. *Senate Report 100-182* (1987) (revised 1988 based on requests for clarification from the committee) and U.S. DEP'T OF JUSTICE, G22.3 REPORTS FOR 1988 (1989).

its published data.³³ By including these withdrawals of applications, the non-approval rate for naturalization applicants soars from 2% to 25%. In other words, if present trends continue, the INS will administratively deny U.S. citizenship to one million applicants during the 1990's.³⁴

C. *INS Decentralization and Naturalization Denials: Administrative Issues in the Naturalization Process*

The contradiction between the published denial rate and the actual levels of administrative denial confirmed the perception by immigration advocates that INS's administration of the naturalization process is not as straight-forward as the published data suggested. This previously obscured contradiction between formal and *de facto* denial rates raised two related questions concerning INS's administration of naturalization. How does the decentralized nature affect denial rates?³⁵ Secondly, what impact does level of administrative discretion have on denial rates?³⁶

Data necessary to examine the validity of the first of these questions is provided by another major data source on current INS naturalization operations. One Senate Report³⁷ examined the disposition of all naturalization applications received in a three-month period (December 1, 1986 to February 28, 1987). The data set monitored administratively denied applications from this pool until January 13, 1988 to assess reapplication levels. This data set allows analysis of two key questions. First, it assesses variation in administrative denials among INS offices. Second, it evaluates the impact of administrative denials on different national origin groups.

Analysis of the U.S. Senate data set reveals that some INS offices are administratively denying far higher percentages of applicants than others. In the period under study, the national average for returns and non-files was 16.0%. Several INS offices in the study reported denial rates 75% higher than the national average

33. Beginning with the 1988 STATISTICAL YEARBOOK, the service reported that applicants had the option of non-filing. However, the INS does not publish the number of applicants who non-file.

34. Authors' estimates based on 1988 STATISTICAL YEARBOOK OF THE IMMIGRATION AND NATURALIZATION SERVICE at Table 51 (1989) and U.S. DEP'T OF JUSTICE, G22.3 REPORTS FOR 1988 (1989).

35. The INS and the Department of Justice have come to recognize the administrative problems inherent in the Service's decentralization. See, for example, "Remarks of Commissioner Gene McNary Before the National Association of Latino Elected Officials National U.S. Citizenship Conference." Washington DC. September 28, 1990 and "Report of the Department of Justice, Office of the Inspector General." July 26, 1989. See also, Dick Kirschten, *Mix-Up at the INS*, NATIONAL JOURNAL, January 5, 1991.

36. M. LIPSKY, STREET LEVEL BUREAUCRACY (1980); J.M. PROTTAS, PEOPLE PROCESSING: THE STREET LEVEL BUREAUCRAT IN PUBLIC SERVICE (1979).

37. United States Senate, Committee on Appropriations. *Senate Report 100-182* (1987).

TABLE THREE
INITIAL REJECTION, REAPPLICATION AND
REAPPLICATION SUCCESS RATES FOR
SELECTED INS DISTRICT OFFICES

	ADMINISTRATIVE REJECTION RATE	REAPPLICATION RATE	SUCCESS RATE ON REAPPLICATION
NATIONWIDE	16.0%	37.0%	75.7%
CHICAGO	17.9%	46.5%	73.6%
DALLAS	11.3%	19.4%	66.6%
DENVER	3.1%	32.0%	62.5%
HOUSTON	8.5%	42.2%	71.2%
LOS ANGELES	9.6%	13.7%	72.9%
MIAMI	27.2%	68.0%	76.2%
NEW YORK	18.4%	18.0%	63.9%
NEWARK	27.0%	71.1%	88.0%
SAN ANTONIO	22.7%	44.5%	64.9%
SAN FRANCISCO	19.3%	62.3%	84.0%
SAN JOSE	24.5%	42.6%	53.3%

Source: INS, REPORT ON RETURNS, NONFILES AND OTHER UNADJUDICATED NATURALIZATION APPLICATIONS (1988).

(Newark at 27.0% and Miami at 27.2%). The Denver INS District Office on the other hand, shows a denial rate of only 3.1% (see Table Three).

Naturalization applicants from Africa and the Spanish-speaking areas of Latin America and the Caribbean, in particular, are more likely than applicants from other regions of the world to be denied administratively (see Table Four). The INS denied sixteen percent of the applications in the data set. However, applicants from Africa faced a 19.8% administrative denial rate and applicants from Spanish-speaking Latin America and the Caribbean faced a 19.1% denial rate.³⁸

High rates of administrative naturalization denial among immigrants from the Spanish-speaking regions of Latin America and the Caribbean raised important questions for the Latino immigrant community in particular. Before the availability of the Senate Report, raw INS and Census Bureau data suggested that Latino immigrants were slower to naturalize than other recent immigrant groups, but there was no data to suggest why this was so. *The Long Grey Welcome* and the U.S. Senate Report offer a partial explanation: differential rejection rates for immigrants from different regions of the world.

38. The authors' calculations based on United States Senate, Committee on Appropriations. *Senate Report 100-182* (1987). For a more complete analysis of the Senate Report see NALEO EDUCATIONAL FUND, *NEW CITIZENS IN LIMBO: ONE IN THREE APPLICANTS FOR CITIZENSHIP NEITHER PASS NOR FAIL* (1988).

TABLE FOUR
 PERCENTAGE REJECTIONS AND REAPPLICATIONS BY
 REGION OF ORIGIN FOR THE NATION AS A
 WHOLE AND THE TWO LARGEST
 INS DISTRICT OFFICES

REGION OF ORIGIN	NATIONWIDE	LOS ANGELES	NEW YORK
AFRICA			
Admin. Denial Rate	19.8%	9.9%	16.2%
Reapplication Rate	34.0%	17.1%	20.4%
ASIA			
Admin. Denial Rate	13.8%	8.0%	15.0%
Reapplication Rate	40.7%	18.7%	20.1%
EUROPE			
Admin. Denial Rate	15.7%	8.25	18.2%
Reapplication Rate	36.1%	16.8%	20.1%
SPANISH SPEAKING LATIN AMERICA AND THE CARIBBEAN			
Admin. Denial Rate	19.1%	12.5%	23.8%
Reapplication Rate	33.0%	7.7%	13.9%

Source: INS, REPORT ON RETURNS, NONFILES AND OTHER UNADJUDICATED NATURALIZATION APPLICATIONS (1988).

ADMINISTRATIVE DISCRETION AND NATURALIZATION DENIALS: THE CLIENT'S PERSPECTIVE

The recently completed National Latino Immigrant Survey (NLIS)³⁹, a national probability sample of the Latino foreign born eligible for U.S. citizenship (adults with five years legal residence),⁴⁰ offers another data set through which this question can be explored. Since Latino immigrants have one of the highest rates of noncitizenship among recent immigrants, it can be posited that this group faces the greatest difficulties completing the administrative steps to naturalization.⁴¹ Thus, the attitudes and experiences of Latino immigrants *vis-a-vis* the INS can shed light on the INS naturalization process as a whole.

When the authors began the research and demonstration project that generated the NLIS, scholars understood naturalization as a dichotomous variable. Immigrants either completed the process and became U.S. citizens, or remained as permanent residents. Discussions with immigrants and immigrant advocates soon revealed that naturalization is a multi-step process with immigrants coming

39. For a discussion of the methodology of the NLIS, see NALEO EDUCATIONAL FUND, NATIONAL LATINO IMMIGRANT SURVEY (1989).

40. Three years if married to a United States citizen.

41. The pool of Latino non-citizens eligible for naturalization is growing steadily. Without accounting for recentness of immigration or eligibility for naturalization, approximately 37% of all Latino adults nationwide are *not* U.S. citizens. The comparable non-citizenship rate for the population as a whole is 5.4%. Moreover, Latino immigrants as a group wait twice as long to naturalize as other immigrants.

to view themselves as part of the American political system well before they had formally sworn their allegiance before a judge.⁴² Therefore, the NLIS examines each step in the formal application process to assess its impact on immigrants who had expressed a desire to naturalize. The NLIS reveals the value of this reconceptualization of naturalization. For example, 55.8% of respondents have made concrete efforts to naturalize. Yet, only 33.7% of the respondents to the NLIS are U.S. citizens.

The gap between Latino immigrant efforts at U.S. citizenship and successful naturalization is somewhat greater than the data would initially suggest. Approximately 25% of the naturalized U.S. citizen respondents obtained U.S. citizenship through the naturalization of their parents.⁴³ INS classifies these respondents as "derivative" citizens.⁴⁴ Since their parents completed the formalities, these respondents did not have to complete the application and, in most cases, the examination phases of the process. When the derivative citizen respondents are factored out, the NLIS finds that only 26.8% of NLIS respondents have become U.S. citizens through their own efforts while 33.8% of the respondents who have begun the naturalization process in some concrete manner have not yet succeeded. The pool of Latino immigrants who are eligible for naturalization and have made contacts with INS to get U.S. citizenship, but have not succeeded, are the focus of this analysis to assess administrative discretion. Of the NLIS respondents, 46.3% have tried to get the naturalization forms.

For these potential citizens, obstacles appear in both the application and examination stages. Of the 46.3% who tried to get the naturalization application form, most succeeded (93.5%). Yet, once obtained, the form apparently proves daunting for many. Nearly a quarter of the potential applicants who obtain a form are unable to file it, leaving just 32.1% of respondents on the path to U.S. citizenship.

The difficulties identified by these applicants in obtaining and filing the naturalization application reduce the pool of potential citizens from 55.8% of NLIS respondents to 32.1%. Since INS databases do not begin to record applicants until their applications are filed, INS administrative records miss the 57% of all Latino immigrants who make efforts to become U.S. citizens, but fail to file the application (See Table Five). Although this pool of more than 50% of respondents who have initiated the naturalization process

42. Robert Alvarez makes this point particularly well in *A Profile of the Citizenship Process Among Hispanics in the United States*, THE INTERNATIONAL MIGRATION REVIEW, Summer 1987 at 327-351.

43. The 25% of the naturalized U.S. citizen respondents equal 9.0% of all NLIS respondents.

44. 8 C.F.R. 322.1.

has not yet reached the stage of filing their applications, over 70% of them plan to file in the future.

Among the respondents who have filed their applications, 77% have taken the naturalization exam. The INS asked a small group of applicants (8.1%) to refile the application (filed "returns" by the INS management information system). Of these applicants, 71.7% did refile. Interestingly, only one respondent of the 46 had to refile for lack of statutory eligibility. In other words, almost all requested refiles were the result of clerical errors on the applicants' parts. The NLIS data suggest that among those applicants asked to resubmit their applications as many as 30% disappear as future applicants.

Of the NLIS respondents who have taken the exam, most report it to be a surprisingly easy process with 92% passing on their first try and 5% passing on subsequent interviews. Specifically, 48.0% reported that the exam was very easy and 27.2% found it to be somewhat easy. Only 22.6% found it to be very hard or hard. Some variation exists, however, among major INS district offices. Naturalization applicants who took the exam in Miami were more than twice as likely to report that the exam was very hard than are applicants from any other district office. Applicants in Chicago, on the other hand, universally reported the exam to be somewhat or very easy.

Of respondents who took the exam, 79.8% found the examiner to be helpful. Only 9.2% of respondents found the examiner to be rude. With one exception, there was little variation in reported levels of examiner rudeness among district offices. Considering the often poor reputation of the INS in the Latino immigrant community, this finding is all the more startling. Oddly, although citizenship applicants in Chicago found the exam to be easy, they also found the examiners twice as likely to be rude as the national average.

INS examiners asked the average applicant nine questions. However, the NLIS documented the wide range in the number of questions asked that would be expected based on the findings of decentralization and examiner discretion (see Table Six). Forty four percent of the respondents who took the citizenship exam reported receiving five or fewer questions and 14% received fifteen or more questions. Some examiners asked as many as 50 questions! Despite

45. As we write this article, the Immigration and Naturalization Service has proposed regulations to allow naturalization applicants to take a standardized test to meet four naturalization requirements — reading English, writing English, and U.S. Government and civics knowledge. The standardized exam would consist of twenty questions on U.S. history and civics based on the Federal Textbooks on Citizenship (to be administered orally) and two English language sentences for translation. To pass, an applicant would have to answer at least 12 of the history and civics questions correctly and translate one sentence to standards dictated by the Service.

The traditional INS administered would remain as an option for applicants.

TABLE FIVE
DISPOSITION OF NLIS RESPONDENTS WHO HAVE
UNDERTAKEN A BEHAVIORAL ACT TO
NATURALIZE AS U.S. CITIZENS

Among Applications Who Have Begun the Naturalization Process . . .
 (n = 988)

Discouraged Applicants & Applicants in Process	437	44.2%
Naturalized	404	40.1%
Naturalized through Parents	147	14.9%

Source: NALEO EDUCATIONAL FUND, NATIONAL LATINO IMMIGRANT SURVEY (1989).

variation in exam experiences, almost all applicants who took the exam (94.1%) thought the questions were fair.⁴⁵

Respondents in Miami face the most questions during the nat-

TABLE SIX
AVERAGE NUMBER OF QUESTIONS ASKED IN THE
NATURALIZATION EXAM: VARIATION
AMONG KEY INS DISTRICT
OFFICES

NUMBER OF QUESTIONS ASKED	DISTRICT OFFICE								
	Nation- wide	Miami	New York	Los Angeles	N.J. Offices	Chic- ago	Hous- ton	San Fran.	Other
1 to 9	59.7%	51.1%	63.2%	57.5%	50.9%	66.7%	71.9%	25.4%	65.2%
10 to 19	33.9%	36.6%	33.1%	38.0%	47.4%	16.7%	28.1%	66.9%	26.0%
20 or more	6.4%	12.3%	3.7%	4.5%	1.7%	16.7%	—	7.8%	8.7%

Source: NALEO EDUCATIONAL FUND, NATIONAL LATINO IMMIGRANT SURVEY (1989).

uralization interview. Almost half of applicants nationwide who received twenty or more questions took the exam in the Miami District Office. Yet, only 20% of the NLIS respondents who had examination experience lived in Miami. In other offices, the number of questions asked ranged between one and twenty. Many applicants (22.1% of those who have filed applications) had not yet had the chance to take the citizenship exam. Applicants who have reached the stage of being interviewed for U.S. citizenship have a more complete view of the naturalization bureaucracy at the immigration service. However, the larger pool of NLIS respondents who have not yet applied for citizenship echo these perceptions of INS. Among all NLIS respondents, slightly more than 12% answer that the INS treats citizenship applicants unhelpfully. In Los Angeles and Miami, respondents regarding INS as unhelpful exceed 22% and 21% respectively. Respondents in Houston, where the District Director has actively promoted naturalization, universally perceive the INS to be helpful (see Table Seven).

TABLE SEVEN
 RESPONDENT PERCEPTION OF INS HELPFULNESS TO
 CITIZENSHIP APPLICANTS: VARIATION
 AMONG KEY DISTRICT OFFICES

PERCEIVED INS TREATMENT OF CITIZENSHIP APPLICANTS	DISTRICT OFFICE								
	Nation- wide	Miami	New York	Los Angeles	N.J. Offices	Chic- ago	Hous- ton	San Fran.	Other
Helpful	75.5%	70.0%	72.1%	62.5%	92.6%	82.6%	100%	80.1%	76.6%
Unhelpful	12.6%	21.0%	5.7%	22.6%	5.6%	17.4%	—	4.4%	9.7%
Neither	11.8%	8.5%	22.1%	14.9%	1.3%	—	—	15.5%	13.7%

Source: NALEO EDUCATIONAL FUND, NATIONAL LATINO IMMIGRANT SURVEY (1989).

On the two questions posed at the beginning of this analysis, the NLIS offers some interesting insights. Among NLIS respondents, the effect of INS decentralization and administrative variation in implementation of naturalization is evident. Regional variations concerning the perceived difficulty of the exam, the number of questions asked and, in one case, the perception of helpfulness of INS personnel demonstrate inter-office variation. Yet, among NLIS respondents who complete the naturalization process, INS examiners are perceived by most respondents to be helpful and the naturalization to be "fair." The uniformity of responses on these issues — regardless of office location — suggests that individual administrative discretion is not being abused, except perhaps by a small minority of INS examiners. An alternative explanation may be that regional and individual office administrative "cultures" exist that set informal standards on naturalization process that vary by location.

Going beyond these two questions, however, the picture painted of Latino immigrant experience with naturalization is one in which more than half of the potential applicants do not become U.S. citizens. Approximately one-third of eligible Latino immigrants have not formally begun to prepare themselves for naturalization. However, among the two-thirds who have, only half have become U.S. citizens. The steps that prove most daunting for many of the applicants come early in the process. Completing and filing the application form eliminates 14% of respondents. Scheduling the exam after filing the application eliminates another 7%. As a result, slightly less than a quarter of respondents (all of whom are eligible for citizenship) succeed in negotiating the naturalization process.

CONCLUSION

As the population of citizenship-eligible immigrants increases,

the INS will be faced with an ever-increasing case load of legal immigrants who wish to become Americans by choice. The loss of half of interested Latino immigrants and of an indeterminate number of immigrants of other nationalities to this process raises some serious questions both for the nation and for policymakers. Should the level of decentralization and concomitant administrative variation in naturalization that INS evidences at present continue to exist? Should INS change its management information systems to better monitor immigrants who become discouraged in the application process? What administrative reviews should be instituted to allow oversight of individual administrative abuse that apparently continues to occur in a small number of cases?

Naturalization has been a key to the political integration of millions of immigrants who have come to this country. This was true at the close of the 19th century and continues to be true in the last decade of the 20th century. The administrative process that results in hundreds of thousands of immigrants annually becoming new Americans merits renewed attention.