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## NOTES

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### THE JURISDICTIONAL REQUIREMENT: A QUESTIONABLE OBSTACLE, AMONG MANY, TO NATURALIZATION

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#### INTRODUCTION

United States immigration law has been the source of controversy for a number of years for a number of reasons. Amnesty, the green card process, and paths to citizenship highlight pressing issues and the need for change in our immigration system. The laws that guide the U.S. Citizenship and Immigration Services (hereinafter “USCIS”) and the promulgated regulations that follow are complex and somewhat convoluted at best and contradictory and senseless at worst.

The application of those regulations raises concerns based in common sense. For example, is a landlord who accepts rent from a tenant who is later found to be part of a Tier III terrorist group really providing material support to that group? Should that landlord then be barred on Terrorism-Related Inadmissibility Grounds (hereinafter “TRIG”), so that when he or she applies for federal immigration benefits removal proceedings are a possibility? Moreover, why should pleading guilty to possession of thirty grams of an illicit substance make more sense than pleading guilty to mere simple possession of drug paraphernalia?<sup>1</sup> Finally, does it really matter if a person applying for citizenship has resided within the state where the application is filed for three months preceding the date of the filing if he or she can

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<sup>1</sup> See generally NAT'L ASS'N OF CRIMINAL DEFENSE LAWYERS, IMMIGRATION CONSEQUENCES OF DRUG OFFENSES (2012), [https://www.nacdl.org/uploadedFiles/Content/Legal\\_Education/Live\\_CLE/Live\\_CLE/03\\_Drug\\_Offenses\\_Handout.pdf](https://www.nacdl.org/uploadedFiles/Content/Legal_Education/Live_CLE/Live_CLE/03_Drug_Offenses_Handout.pdf).

move anywhere else in the United States the day after the application has been filed?

The jurisdictional requirement within the eligibility section of the U.S. naturalization statute<sup>2</sup> serves as a common basis for the denial of applications.<sup>3</sup> This is odd considering the other requirements for citizenship, such as good moral character,<sup>4</sup> appear to be the primary concern of lawmakers.<sup>5</sup> This Note examines, in particular, the jurisdictional requirement for eligibility in the naturalization process. It questions the true reasoning behind the requirement and looks for a simple fix to its issues, while providing an overarching comparison to other questionable statutes and regulations that control many other aspects of immigration law.

First, this Note describes naturalization, the statute that governs it, and the problem that results from its current application. Second, it discusses the effects of that problem on immigrants, citizens, and the government and compares them to other problem areas in immigration law. Finally, it attempts to create a simple solution to the problem that falls within the desired confines of general immigration law changes that are currently being debated in Congress, by the president, and by presidential candidates.

## I. NATURALIZATION

“Naturalization is the process by which U.S. citizenship is granted to a foreign citizen or national after he or she fulfills the requirements established by Congress in the Immigration and Nationality Act (INA).”<sup>6</sup> The naturalization of a Lawful Permanent Resident (hereinafter “LPR”)<sup>7</sup> is governed by INA Section 316 (the “Statute”) and 8

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<sup>2</sup> 8 C.F.R. § 316.2(a)(5) (2015).

<sup>3</sup> See *Elgergawi v. Sec’y Dept. Homeland Sec.*, 170 F. App’x 231, 233 (3d Cir. 2006); *Li v. Chertoff*, 490 F. Supp. 2d 130, 131 (D. Mass. 2007); Paris Lee, *9 Reasons Why a Citizenship Application May Be Denied*, LEE & GARASIA IMMIGR. L. (Apr. 17, 2014), <http://www.njimmigrationattorney.com/blog/2014/04/9-reasons-why-a-citizenship-application-may-be-denied.shtml>.

<sup>4</sup> 8 C.F.R. § 316.2(a)(7) (2015).

<sup>5</sup> After all, once the question of citizenship arises, it seems the government would be more concerned with who will be a good, productive, law-abiding citizen, rather than exactly where in the country that person decides to live.

<sup>6</sup> *Citizenship Through Naturalization*, U.S. CITIZENSHIP & IMMIGR. SERVS., <http://www.uscis.gov/us-citizenship/citizenship-through-naturalization> (last visited May 14, 2015).

<sup>7</sup> *Lawful Permanent Resident (LPR)*, U.S. CITIZENSHIP & IMMIGR. SERVS., <http://www.uscis.gov/tools/glossary/lawful-permanent-resident-lpr> (last visited May 14, 2015).

CFR Section 316.2 (the “Regulation”).<sup>8</sup> Because the Statute and the Regulation establish the same criteria, those terms may be used interchangeably to refer to the requirements for naturalization.

Naturalization requires the LPR to meet three baseline criteria, which may be expanded:

(1) [that] immediately preceding the date of filing his application for naturalization has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least five years and during the five years immediately preceding the date of filing his application has been physically present therein for periods totaling at least half of that time, and who has resided within the State or within the district of the Service in the United States in which the applicant filed the application for at least three months, (2) [that the LPR] has resided continuously within the United States from the date of the application up to the time of admission to citizenship, and (3) [that] during all the periods referred to in this subsection has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States.<sup>9</sup>

The Regulation then provides a further explanation of these requirements, including the first element, and adds prerequisites, such as a minimum age requirement of being eighteen years old.<sup>10</sup> Under the Regulation, the fifth criterion is key and will be referred to as “the jurisdictional requirement.” The Regulation explains the first element of the Statute, and it says that an alien must establish that he or she “[i]mmediately preceding the filing of an application, or immediately preceding the examination on the application . . . has resided, as defined under § 316.5, for at least three months in a State or Service district having jurisdiction over the applicant’s actual place of residence,” and in which the alien seeks to file the application.<sup>11</sup> Section 316.5(a) then establishes generally that “an alien’s residence is the same as that alien’s domicile, or principal actual dwelling place, without regard to the alien’s intent, and the duration of an alien’s residence in a particular location is measured from the moment the alien first establishes residence in that location.”<sup>12</sup>

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<sup>8</sup> See U.S. CITIZENSHIP & IMMIGR. SERVS., I AM A PERMANENT RESIDENT . . . HOW DO I APPLY FOR U.S. CITIZENSHIP? (2013), <https://www.uscis.gov/sites/default/files/USCIS/Resources/B3en.pdf>.

<sup>9</sup> Immigration and Nationality Act § 316(a), 8 U.S.C. 1427(a) (2012).

<sup>10</sup> 8 C.F.R. § 316.2 (2015).

<sup>11</sup> 8 C.F.R. § 316.2(a)(5) (2015).

<sup>12</sup> 8 C.F.R. § 316.5(a) (2015).

### A. *The Statute*

As stated previously, federal law governs immigration law, so the laws and regulations originate from Congress and are enforced primarily by the Department of Homeland Security through the USCIS.<sup>13</sup> The regulations promulgated by the agency, which relate to aliens and nationality, are included in Title 8 of the Code of Federal Regulations.<sup>14</sup> These regulations ensure that the agency's daily activities in processing and handling immigration law issues comply with the statutes enacted by Congress.<sup>15</sup> Therefore, it is these statutes and regulations that are the source of the problem in immigration law.

The president, presidential candidates, Congress, and the public may not be able to agree on much about how to address current immigration issues, but they can all agree that the issues need to be addressed.<sup>16</sup> This makes for a hot-tempered and controversial political issue; the two biggest areas within it are border security and the eleven million undocumented immigrants currently living in the country.<sup>17</sup> The president has particularly focused on reform in creating paths to citizenship for these and future immigrants.<sup>18</sup> This has set the general political tone that naturalization is especially important. Therefore, the statutes that govern immigration need to be highly scrutinized to ensure that they are efficiently determining citizenship.

In 2012, USCIS received 899,162 applications for citizenship, of which it approved 757,434 applications, denied 65,874 applications, and left 390,000 applications awaiting a decision.<sup>19</sup> These numbers have been increasing for years and so continue to increase.<sup>20</sup> When dealing with such a high volume of paperwork and information, especially when it concerns the very rights and livelihood of individuals, it is

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<sup>13</sup> See *Title 8, Code of Federal Regulations*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Sept. 9, 2013), <http://www.uscis.gov/laws/8-cfr/title-8-code-federal-regulations>.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> See Danielle Renwick & Brianna Lee, *The U.S. Immigration Debate*, COUNCIL ON FOREIGN REL. (Feb. 26, 2015), <http://www.cfr.org/immigration/us-immigration-debate/p11149>.

<sup>17</sup> *Id.*

<sup>18</sup> *Earned Citizenship*, THE WHITE HOUSE, <https://www.whitehouse.gov/issues/immigration/earned-citizenship> (last visited May 14, 2015).

<sup>19</sup> Gregory Auclair & Jeanne Batalova, *Naturalization Trends in the United States*, MIGRATION POL'Y INST. (Oct. 24, 2013), <http://www.migrationpolicy.org/article/naturalization-trends-united-states>.

<sup>20</sup> *Id.*

necessary to be efficient. It, of course, makes sense that Congress and the agencies would believe that LPRs who want to become citizens should have resided permanently in the United States for an extended period of time and should continue to reside in the United States throughout the application process to demonstrate stability.<sup>21</sup> The United States has desired this since its inception.<sup>22</sup> Thus, the naturalization process has a necessary jurisdictional requirement. The issue arises, however, in the interpretation of the Statute that governs the process and in the realistic consequences of its current application.

### B. *The Problem*

The jurisdictional requirement for eligibility in the Statute is often the reason that applications are denied.<sup>23</sup> The Statute's language is most commonly read to require that aliens reside in the state where they file for citizenship for three months before they file for citizenship.<sup>24</sup> Therefore, an otherwise fully eligible applicant who meets all other eligibility requirements and has good moral character may still be denied citizenship because he or she changed residences within three months of the filing and did not notice the jurisdictional requirement.<sup>25</sup>

Moving around the United States is not uncommon for any citizen, and least of all for immigrants who are trying to create their lives in this country and who must often move to find better housing, better employment, or more supportive communities.<sup>26</sup> The jurisdictional requirement only impedes their ability to become contributing citizens.<sup>27</sup> It also often frustrates their acceptance of government benefits, such as Medicaid, Supplemental Security Income (hereinafter "SSI"), or food

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<sup>21</sup> *Maintaining Permanent Residence*, U.S. CITIZENSHIP & IMMIGR. SERVS., <http://www.uscis.gov/green-card/after-green-card-granted/maintaining-permanent-residence>.

<sup>22</sup> *See Citizenship Through Naturalization*, U.S. CITIZENSHIP & IMMIGR. SERVS., (Jan. 22, 2013), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html> (follow "Volume 12 – Citizenship & Naturalization" hyperlink; then follow "Chapter 1 – Purpose and Background" hyperlink).

<sup>23</sup> *See Elgergawi v. Sec'y Dept. Homeland Sec.*, 170 F. App'x 231, 234 (3d Cir. 2006); *Li v. Chertoff*, 490 F. Supp. 2d 130, 130 (D. Mass. 2007); *Lee*, *supra* note 3.

<sup>24</sup> *Lee*, *supra* note 3.

<sup>25</sup> *Id.*

<sup>26</sup> *See generally Migration/Geographic Mobility*, U.S. CENSUS BUREAU, <https://www.census.gov/hhes/migration/about/cal-mig-exp.html> (last visited May 14, 2015).

<sup>27</sup> *See generally* U.S. CITIZENSHIP & IMMIGR. SERVS., WHAT ARE THE BENEFITS AND RESPONSIBILITIES OF CITIZENSHIP? (2013), <http://www.uscis.gov/sites/default/files/files/article/chapter2.pdf>.

stamps,<sup>28</sup> many of which low-income immigrants depend on to supplement their earnings.<sup>29</sup>

Migrant farmworkers, for example, often do seasonal work on farms in different parts of the United States.<sup>30</sup> When doing this work, they often live on the farms or nearby until their work is complete and then go back to live and work in a different part of the country.<sup>31</sup> Retaining the jurisdictional requirement means that they will face difficulty in meeting that three-month requirement preceding any filing date.<sup>32</sup> However, these would not seem to be the types of people who are undesirable for citizenship. Their constant mobility is not a sign of the inability to live a stable lifestyle or of some lapse of good moral character, but a sign of strong work ethic and survival, which benefit the United States economy.<sup>33</sup>

The case of *Elgergawi v. Secretary Department Homeland Security*<sup>34</sup> is another fine example of the confusion and hardship created by the jurisdictional requirement. In that case, Appellant Elgergawi was denied citizenship when he failed to meet the jurisdictional requirement because even though he was renting a property in Pennsylvania, the state in which he filed, he was living primarily in Dubai at the time of the filing and claimed that he intended to return to live in Pennsylvania.<sup>35</sup> The court determined that “residence” meant the alien’s domicile, which in turn meant his or her “principal actual dwelling place, without regard to the alien’s intent.”<sup>36</sup> Therefore, although Elgergawi could satisfy all of the other naturalization requirements, in-

<sup>28</sup> See *U.S. Naturalization Benefits and Responsibilities*, IMMHELP, <http://www.immihelp.com/citizenship/naturalization-benefits-responsibilities.html> (last visited May 14, 2015).

<sup>29</sup> See generally Susan E. Reed, *Eight Lesser-Known Benefits of U.S. Citizenship*, NEW AM. MEDIA (Mar. 6, 2014), <http://newamericamedia.org/2014/03/the-lesser-known-benefits-of-us-citizenship.php>.

<sup>30</sup> See, e.g., *Sec’y of Labor v. Lauritzen*, 835 F.2d 1529 (7th Cir. 1987); Eduardo Gonzalez, Jr., *Migrant Farm Workers: Our Nation’s Invisible Population*, EXTENSION.ORG (Mar. 4, 2015), <http://www.extension.org/pages/9960/migrant-farm-workers-our-nations-invisible-population#.VVI3vflVhBc>.

<sup>31</sup> Gonzalez, *supra* note 30.

<sup>32</sup> *Farm Labor: Background*, U.S. DEP’T OF AGRIC. ECON. RES. SERV. (Oct. 20, 2015), <http://www.ers.usda.gov/topics/farm-economy/farm-labor/background.aspx>.

<sup>33</sup> Gonzalez, *supra* note 30; PAUL TRUPO, JEFFERY ALWANG & DAVID LAMIE, *THE ECONOMIC IMPACT OF MIGRANT, SEASONAL, AND H-2A FARMWORKERS ON THE VIRGINIA ECONOMY* 10–13 (1998), <http://ageconsearch.umn.edu/bitstream/14836/1/tr980036.pdf>.

<sup>34</sup> 170 F. App’x 231 (3d Cir. 2006).

<sup>35</sup> *Id.* at 232–34.

<sup>36</sup> *Id.*

cluding the broader United States residency requirement,<sup>37</sup> he was still denied citizenship because he did not physically reside in Pennsylvania, despite having a residence there to which he intended to return.<sup>38</sup> It is a reasonable interpretation of the language of the Statute, but it is still a questionable basis of citizenship denial.

In another case, *Li v. Chertoff*,<sup>39</sup> a court reached a different conclusion regarding what “residency” means.<sup>40</sup> In that case, a Chinese LPR applied for citizenship and was denied due to lack of continuity.<sup>41</sup> The LPR maintained a residence in Massachusetts, but she went to study dentistry in Canada for a period of time.<sup>42</sup> Therefore, even though the case dealt with the continuity requirement and not the jurisdictional requirement, the perception into how residency is defined is insightful in this context.

The court conceded that the Statute prevents it from considering intent when determining residency, which is a normal consideration; yet it declined to determine residency solely based on complete and continuous physical presence.<sup>43</sup> Instead, the court inquired into “what is sufficient physical presence.”<sup>44</sup> On that point, the court looked to a different part of the Statute, which considers whether the LPR abandoned his or her residency through various factors, such as (1) termination of employment in the United States; (2) immediate family remaining in the United States; (3) continued access to the abode in the United States; and (4) obtaining employment outside the United States.<sup>45</sup> The court ultimately determined that because the LPR was only going to study in Canada, still had mail delivered to her residence in the United States, still had access to her residence in the United States, and did not obtain employment in Canada, the LPR had sufficient physical presence to meet the continuity requirement.<sup>46</sup>

These two outcomes beg an important question. Namely, if one can have sufficient continuous, physical presence in the United States (which has a longer durational requirement than the state require-

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<sup>37</sup> 8 C.F.R. § 316.2(a)(6) (2015).

<sup>38</sup> *Elgergawi*, 170 F. App'x at 236.

<sup>39</sup> 490 F. Supp. 2d 130, 131-32 (D. Mass. 2007).

<sup>40</sup> *Id.* at 131-32.

<sup>41</sup> *Id.* at 130.

<sup>42</sup> *Id.* at 131.

<sup>43</sup> *Id.* at 132.

<sup>44</sup> *Id.* at 131.

<sup>45</sup> *Id.* at 132.

<sup>46</sup> *Id.* at 133.

ment), how does that not automatically translate into continuous physical presence in the state of application (provided that the LPR truly did not, in fact, recently change his or her residency from one state to another)? As long as the LPRs have their residence in one state and satisfy the continuous United States residency requirement, then it seems implied that they would satisfy the state requirement, regardless of whether they live temporarily in another state or in another country. This is yet another reason why the jurisdictional requirement does not make sense.

One of the benefits of being a citizen in the United States, which most citizens likely take for granted, is the ability to move and live freely within and among any of the fifty states. It is a fundamental right under the Privileges and Immunities Clause of the Constitution and therefore cannot be infringed upon by the states.<sup>47</sup> In fact, there are a variety of cases that prevent certain state regulations which merely seem to temporarily inconvenience citizens from gaining immediate state citizenship, but which do not pose a complete bar.<sup>48</sup> Of course, this would only apply to U.S. citizens, and Congress has plenary power in controlling the intricacies relating to citizenship and immigration.<sup>49</sup> However, that does not change a certain sense of freedom of travel and habitation within the United States.

Additionally, considering that federal law controls immigration issues, why does the state residency of an LPR matter? Indeed, the law treats applicants for citizenship as applicants for future United States citizenship.<sup>50</sup> So, as long as one is a constant resident of the United States, it seems somewhat arbitrary to impose a random state residency requirement for three months prior to filing an application. After all, if one is found not to meet the three-month requirement, one can simply wait and re-apply when he or she meets the requirement, more specifically, in three months.<sup>51</sup> Therefore, this particular requirement seems to be nothing more than a needless headache to individuals who are trying to continue to fully integrate themselves into their new society.

If anything, the problematic result caused by the requirement seems to generate more money for the government from the multiple

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<sup>47</sup> See *Saenz v. Roe*, 526 U.S. 489, 510–11 (1999).

<sup>48</sup> See *id.*; *Slaughter-House Cases*, 83 U.S. 36, 123–24 (1873).

<sup>49</sup> *Kleindienst v. Mandel*, 408 U.S. 753, 769 (1972).

<sup>50</sup> See *Citizenship Through Naturalization*, *supra* note 22.

<sup>51</sup> See 8 C.F.R. § 316.5(c)(3)–(4) (2015).



non-refundable filing fees, which are not a petty amount,<sup>52</sup> especially if additional attorney's fees are tacked on. Moreover, any benefit from this profit scheme, even if unintentional, is surely outweighed by the additional administrative burden it creates to communicate the initial denial based on the technicality and then to restart the process once the LPR re-files.<sup>53</sup>

The problem, which arises from the current Statute, is mostly one of time, labor, and money. Time refers to both the durational requirement, such as residing in the state of filing for three months prior to the filing, as well as the actual time it takes to fill out the required forms and provide supporting documentation. The labor is usually that of an attorney hired to assist in the process, although it could also be the labor of the immigrants if they decide to attempt the filings themselves. The money consists of attorney's fees and filing fees, unless the immigrant is eligible for a fee waiver, as well as any government benefits that may be gained or lost.<sup>54</sup>

The time component is probably the biggest obstacle within the general problem created by the Statute. The jurisdictional requirement of the Statute necessitates that the alien must have resided in the state in which he or she is filing for three months immediately preceding the date of filing.<sup>55</sup> So, despite having already been in the United States for years in order to satisfy the United States durational requirement, the particular state residency requirement must also be satisfied.<sup>56</sup> This technicality is the basis of denial that restarts the entire application process and results in the expenditure of large amounts of time, labor, and money.<sup>57</sup> Failure to meet this residency requirement may be due to relocating for a job or ignorance of the law because common sense would yield the belief that if one is becoming a United States citizen, then only general and continuous residency within the United States would matter. As soon as a person becomes a citizen, he or she can move all across the country whenever and however often he

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<sup>52</sup> See *Forms*, U.S. CITIZENSHIP & IMMIGR. SERVS., [http://www.uscis.gov/forms?topic\\_id=1128&search\\_q=](http://www.uscis.gov/forms?topic_id=1128&search_q=) (last visited May 14, 2015).

<sup>53</sup> For a look at the burden the service faces, look back at the number of applications the service handles per year. See Auclair & Batalova, *supra* note 19.

<sup>54</sup> See *Forms*, *supra* note 52 .

<sup>55</sup> 8 C.F.R. § 316.2(a)(5) (2015).

<sup>56</sup> See 8 C.F.R. § 316.2 (2015).

<sup>57</sup> See *id.*; see also 8 C.F.R. § 316.5(a)(5)(i)–(ii) (2015) (discussing the process of reapplication for a particular state residency).

or she wishes.<sup>58</sup> So, why must one stay within a certain state for three months prior to filing the application?

The labor component is another serious consideration for the government, which deals with an ever-increasing number of applications.<sup>59</sup> The attorneys who are hired may not mind the work, but it is nevertheless extremely frustrating when an application that so much effort has been put into is denied on the basis of a small technical issue. Moreover, the non-citizen applicants often suffer from frustration and uncertainty. Many of them work in low paying jobs and depend on working daily in order to avoid missing any wages or risking the employer terminating them for missing work.<sup>60</sup> So, when the applicant has to meet with the attorney yet again to follow up about their application that has already gone through the process once, it poses a hardship that many people would not commonly face.

Finally, the money component mostly affects non-citizen applicants. The money comes from the filing fees of the numerous applications.<sup>61</sup> Many applicants may be eligible for fee waivers depending on their income or whether they receive valid means-tested benefits, such as food stamps, Medicaid, or SSI.<sup>62</sup> However, there may still be attorney's fees for all of the work done,<sup>63</sup> which are never inexpensive.

Additionally, the more applications the government deals with, the more resources they must expend. The interesting consideration for the government, however, is that when the applications are re-filed and new filing fees are assessed, there is an incentive to make more money by denying more people and forcing them to reapply within three months. Regardless of the reality, the balance of money expen-

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<sup>58</sup> Lawrence Gruner, *Advantages of Becoming a Naturalized U.S. Citizen*, ALLLAW, <http://www.alllaw.com/articles/nolo/us-immigration/advantages-becoming-naturalized-citizen.html> (last visited Jan. 15, 2015).

<sup>59</sup> See Auclair & Batalova, *supra* note 19.

<sup>60</sup> See generally Gretchen Ruethling, *21 Immigrants Fired After Missing Work for Rally*, N.Y. TIMES (Apr. 12, 2006), <http://www.nytimes.com/2006/04/12/us/12detroit.html> (discussing an example of workers who were fired from their jobs at a meatpacking company after missing work).

<sup>61</sup> See *Forms*, *supra* note 52.

<sup>62</sup> *Fee Waiver Guidance*, U.S. CITIZENSHIP & IMMIGR. SERVS., <http://www.uscis.gov/fees> (last updated Sept. 4, 2015).

<sup>63</sup> *I-912, Request for Fee Waiver*, U.S. CITIZENSHIP & IMMIGR. SERVS., <http://www.uscis.gov/i-912> (Sept. 4, 2015); see also Liz Daneu, *Is An Immigration Lawyer Worth The Cost*, ALLLAW (Nov. 4, 2014), <http://www.alllaw.com/articles/nolo/us-immigration/lawyer-worth-cost.html> (discussing the costs associated with hiring an immigration lawyer).

diture by the applicants and by the government is not efficient due to the Statute's requirements.

Because the costs in the form of time, labor, and money should be balanced against the questionable benefits of retaining the jurisdictional requirement for citizenship, there is a strong case against the continuing enforcement of such a requirement. In further support of this conclusion, it is appropriate to look at the state of the law in other areas to gauge the overall efficiency of certain immigration laws and regulations.

## II. A COMPARISON OF AREAS OF IMMIGRATION LAW

Initially, one might assume that if immigration laws as a whole are sound and efficient, then the jurisdictional requirement likely does have some benefit, or is a necessary hurdle in the process. However, a quick look at other areas of immigration law shows that this is not necessarily the case. One of the reasons that there are constant calls for immigration reform is that the laws themselves do not always make sense. They contradict one another and offer illogical outcomes depending on which part of the law one is considering and the benefit that is being sought. The two most notorious examples are the TRIG Bar<sup>64</sup> and "Crimmigration."<sup>65</sup>

### A. *TRIG Conundrums*

The TRIG Bar denies admissibility to "any individual who is a member of a terrorist organization or who has engaged or engages in terrorism-related activity as defined by the Immigration and Nationality Act."<sup>66</sup> Being inadmissible prevents an individual from legally entering the United States and from being eligible for most immigration benefits.<sup>67</sup> On its face, this is a reasonable restriction. No one would deny the need for such restrictions to protect the United States from

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<sup>64</sup> See generally *Terrorism-Related Inadmissibility Grounds (TRIG)*, U.S. CITIZENSHIP & IMMIGR. SERVS., <http://www.uscis.gov/laws/terrorism-related-inadmissibility-grounds/terrorism-related-inadmissibility-grounds-trig> (Nov. 1, 2014) (discussing the possibilities that would classify an individual as inadmissible).

<sup>65</sup> See JoJo Annobil et al., *Crimmigration: Red Flags for Criminal Defense Attorneys Representing Non U.S. Citizens*, A.B.A. 10–11, [http://www.americanbar.org/content/dam/aba/administrative/litigation/materials/sac2013/sac\\_2013/17\\_crimmigration\\_red\\_flags.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/litigation/materials/sac2013/sac_2013/17_crimmigration_red_flags.authcheckdam.pdf).

<sup>66</sup> *TRIG*, *supra* note 64.

<sup>67</sup> *Id.*

terrorist threats. The problem, of course, arises from the scope of the statutes and the effects of their application.

USCIS admits that the definition of terrorism-related activity is broad and can apply to individuals who would not normally be thought to be associated with terrorism.<sup>68</sup> Their solution was to create a statutory exemption provision, which is largely discretionary, in order to exempt individuals from inadmissibility.<sup>69</sup> However, the exemptions primarily only cover two bases: (1) duress; and (2) being a member of certain group that is deemed to not be terrorist-related.<sup>70</sup> This still leaves the inadmissibility grounds very broad and overinclusive.

The prime example of overinclusiveness comes from the “material support” ground for inadmissibility.

The term “material support” includes actions such as providing a safe house, transportation, counterfeit documents, or funds to a terrorist organization or its members. It also includes any action that can assist a terrorist organization or one of its members in any way, such as providing food, helping to set up tents, distributing literature, or making a small monetary contribution.<sup>71</sup>

Typically, in the legal context, “material” means “more or less necessary” or being “substantive.”<sup>72</sup> However, the actions described in the material support definition seem to be anything but “more or less necessary” or “substantive” to terrorist acts. Under this definition, even the most insignificant act could be considered material support.<sup>73</sup> There is no *de minimis* exception, and perhaps more importantly, there is no intent requirement.<sup>74</sup> For example, what if a mother gave five dollars to her son, a member of a Tier I, II, or III terrorist group,<sup>75</sup> to buy food for himself? Under the current definition, it seems that she has provided material support to that terrorist organization,<sup>76</sup> but all she actually did was make sure that her son had something to eat. Likewise, what if a landlord who owns an apartment or a guesthouse

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<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *What is MATERIAL?*, THE LAW DICTIONARY, <http://thelawdictionary.org/material/> (last visited May 14, 2015).

<sup>73</sup> Examples of material support include: setting up tents, providing food, making a small monetary contribution, or “any action that can assist a terrorist organization or one of its members in any way.” *TRIG*, *supra* note 64.

<sup>74</sup> See *TRIG*, *supra* note 64.

<sup>75</sup> See *id.*

<sup>76</sup> *Id.*

rents it out to a person who he or she may or may not know is a member of a terrorist group? Their relationship is strictly business-related because it involves the regular supply of shelter and upkeep for monthly rent. Yet again, under the current definition, the landlord is providing “a safe house.”<sup>77</sup>

Common sense would lead one to realize that the individuals in the above examples are neither providing material support nor engaging in terrorist activity themselves, yet there is no exemption or consideration for them.<sup>78</sup> The Statute is not written to ensure that these individuals will not be inadmissible, despite the fact that they have not acted any differently than other functioning members of society.

The overinclusiveness of this Statute does not seem to lead to quite as arbitrary of results as the jurisdictional requirement. To many, it may even be preferable despite the hardships it causes many people from war-torn countries. But it is still an example of how the application of federal immigration law often does not accomplish the law’s underlying intent.

### B. *Crimmigration Conundrums*

At the intersection of criminal law and immigration, “crimmigration” leads to questionable outcomes for non-citizens who have certain convictions and are trying to gain citizenship.<sup>79</sup>

The pertinent part of the Statute requires that the applicant have good moral character during the statutory period, which is five years.<sup>80</sup> Lack of good moral character will either result in the application being denied or the applicant being put in removal proceedings, depending on the underlying conviction.<sup>81</sup> Therefore, it is necessary to be very careful when navigating the criminal codes of each state and applying them to the federal statute.

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<sup>77</sup> *Id.*

<sup>78</sup> *See id.*

<sup>79</sup> *See generally* Julia Preston, *Perfectly Legal Immigrants, Until They Applied for Citizenship* (Apr. 12, 2008), [http://www.nytimes.com/2008/04/12/us/12naturalize.html?pagewanted=print&\\_r=0](http://www.nytimes.com/2008/04/12/us/12naturalize.html?pagewanted=print&_r=0) (discussing the unknown nature of the outcomes for non-citizens who are trying to obtain citizenship).

<sup>80</sup> 8 C.F.R. § 316.10 (2015).

<sup>81</sup> *See generally* 8 C.F.R. § 316.2 (2015) (showing the result for an applicant with a lack of good moral character); AM. BAR ASS’N, *NATURALIZATION AND CRIMINAL OFFENSES, DETENTION, & REMOVAL: A LEGAL GUIDE FOR IMMIGRANTS AND ADVOCATES* 16 (2004), <http://www.americanbar.org/content/dam/aba/administrative/immigration/natz-crimdetguide.authcheckdam.pdf>.

One reason for such careful consideration in the realm of “crimmigration” is that the result of many acts or convictions showing a lack of good moral character is not logical. For instance, under subsection (iii) of the Statute, if the applicant “violated any law of the United States, any State, or any foreign country relating to a controlled substance, provided that the violation was not a single offense for simple possession of [thirty] grams or less of marijuana[,]” then the applicant has shown a lack of good moral character.<sup>82</sup> Therefore, according to the Statute, during plea negotiations, a defense attorney or the defendant him or herself must know that pleading guilty to possession of thirty grams or less of marijuana is preferable to pleading guilty to possession of drug paraphernalia for the purposes of immigration law.<sup>83</sup> This does not comport with common sense because possession of drug paraphernalia is usually the lesser offense and would result in a lighter penalty.<sup>84</sup> However, for the purposes of immigration benefits, one must be aware that a “worse” conviction and penalty is preferable according to the Statute.

Consider another example under the Statute where any person who is established as a habitual drunkard is found to lack good moral character.<sup>85</sup> The question here becomes how does one establish that a person is a habitual drunkard? Would it be established by showing that a person has multiple convictions for driving while intoxicated? Perhaps, although other sections of the Statute would apply as well.<sup>86</sup> Moreover, one could merely argue that the applicant may not drink often, but when he or she does, he or she always drives. Many people habitually drink once a week or more for social reasons, so are they habitual drunkards? Finally, what about a person who has checked him or herself into rehab for drinking problems? That would be the clearest sign that he or she is a habitual drunkard, yet it is also the clearest sign that he or she does not lack good moral character. After all, they are trying to overcome alcoholism, but the Statute would still punish them.<sup>87</sup>

Quite like the TRIG statute, the Statute in “crimmigration” is over-inclusive. Moreover, in this case, it is extremely illogical. The amount

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<sup>82</sup> 8 C.F.R. § 316.10(b)(2)(iii) (2015).

<sup>83</sup> *Id.*

<sup>84</sup> 21 U.S.C. § 863 (2012).

<sup>85</sup> 8 C.F.R. § 316.10(b)(2)(xii) (2015).

<sup>86</sup> *Id.* at (b)(2)(i).

<sup>87</sup> 8 C.F.R. § 316.10(b)(2)(xii) (2015).

of resources that go into creating the applications, denying or approving the applications, requesting more evidence for the applications, and the subsequent answers or re-applications is enormous.<sup>88</sup> It is primarily the time and labor of the attorneys and the government that create the cost, which is then passed onto the non-citizens in the form of filing fees, loss of status, and loss of benefits.<sup>89</sup>

Considering the conflicting nature and lack of wisdom in these other areas of immigration law, there is more support for the idea that the jurisdictional requirement is in need of reform.

#### CONCLUSION AND RECOMMENDATION

It is easy not to question the validity of the naturalization requirements when considering the fact that the United States is a nation of immigrants. The United States welcomes immigration, and so it should know how best to accomplish it. However, the ever-increasing number of applications, delays, and the current political climate require that we take a closer look at the statutes. Then, one can see that not only are many of the statutes illogical, but they also seem highly arbitrary and often lead to different outcomes than what must have been originally intended.

The three main costs of the jurisdictional requirement, and indeed all of the other areas discussed, are time, labor, and money, with the applicant bearing the majority of the burden. These are costs that the government is always concerned with and should be concerned with here. If the current political goal is overarching immigration reform with an emphasis on improved pathways to citizenship,<sup>90</sup> then the current naturalization statute must change. The best way to remedy the issues with the jurisdictional requirement is to remove it from the Statute altogether.

United States citizens are citizens of the United States. They may also be residents and citizens of a particular state, but it is federal law that controls citizenship, and it should therefore be the federal residency that controls the process. After all, there is already a requirement of continuous residency in the United States in the Statute.<sup>91</sup> As

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<sup>88</sup> See, e.g., 8 C.F.R. § 316.2 (2015); 8 C.F.R. § 316.4 (2015); 8 C.F.R. § 316.14 (2015).

<sup>89</sup> See Juliet P. Stumpf, *Doing Time: Crimmigration Law and the Perils of Haste*, 58 UCLA L. REV. 1705, 1741–42 (2011).

<sup>90</sup> *Earned Citizenship*, *supra* note 18.

<sup>91</sup> 8 C.F.R. § 316.2(a)(3)-(4), (6) (2015).

a result, there are only hardships that result from the additional state residency requirement, with seemingly no benefit for the United States government, or the public in general.