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Two Transformations In, USCIS Confronts Further Change in Post-Pandemic Future

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Abstract

The Covid-19 pandemic both upended the day-to-day workings of U.S. Citizenship & Immigration Services (USCIS) and presented an opportunity to reexamine where policy and practice impede future productivity. The agency has already undertaken two transformations in the first two decades of this century, to varying success: its reestablishment as an administrative non-enforcement agency after 9/11 helped make it nimble in enacting sudden operational change, but the incomplete modernization (specifically, digitizing documents and records) remains a weakness for shifting workloads in a shelter-in-place environment. Ongoing disruption from the pandemic, including both an unanticipated breakdown in its funding model and a prolonged reduction of in-office productive capacity, requires rethinking how the agency meets its mission post-pandemic. The adoption of “virtual” or distanced interaction with applicants is emerging as a potentially necessary third major transformation.

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Introduction

The need to balance innovation and systemic integrity is challenging in the best of times. Under the global instability wrought by the novel coronavirus, the disruptions have been near-seismic for U.S. Citizenship & Immigration Services (USCIS), the administrative agency for the processing of immigration benefit applications and the naturalization of new American citizens. Prior to the advent of the pandemic, USCIS was already in the midst of its second major transformation of the past 20 years. The previous overhaul (reestablishment) helped make it a leader in the government; the current one (modernization) is overdue but slowly marching toward completion. The advent of Covid-19 brought new challenges to the fore, indicating a third transformation (virtualization) may be needed to ensure the agency’s continued functioning.

The first transformation was its establishment as a stand-alone agency when the Immigration and Naturalization Service, or INS, was abolished in 2003 as part of the Homeland Security Act. Due to chronic issues with delays in application processing times and a widespread sense that the INS—being both a benefits-granting and a law-enforcement agency—was muddled in its mission, Congress determined that the lawful immigration system would be more efficient and focused as a separate administrative agency within DHS.¹ USCIS succeeded in that regard, attracting a high-caliber workforce and consistently ranking in the top quartile of all federal agency subcomponents in the Partnership for Public Service’s “Best Places to Work in the Federal Government” surveys.² Its efficiency likewise improved: into the 2010s, USCIS was able to meet its goals for processing most applications in under six months on average.³

The second transformation is ongoing. This effort is primarily concerned with moving immigration documentation online. Historically the complete record of an individual’s

immigration journey, from visa petition to certificate of citizenship and including all relevant security-check documentation, has been kept in a massive sheaf of paper called an A-File.⁴ Even though the steps in the adjudicative process are recorded in electronic systems of records, and regardless of whether an officer conducts an in-person interview with the applicant, most application decisions necessitate having the physical A-File present for the officer to review.⁵ Since the process of receiving forms, recording data, vetting information, interviewing applicants, and (ultimately) storing physical records is decentralized, this means that the A-Files must be shipped around the country from office to office to get to the adjudicator who eventually makes the decision to approve or deny an immigrant's application. The effort to digitize all this information has been lengthy and has made great strides—including the deployment of an end-to-end electronic system for some application and adjudication types—but is far from complete.

The Pandemic

Covid-19 interrupted the public-facing workings of the agency in multiple ways.⁶

- Offices closed to the public in mid-March, first in accord with local shelter-in-place orders and then nationwide; this meant that thousands of in-office interviews had to be “descheduled” and postponed—some with only a day's notice.⁷
- Candidates for naturalization, who had already passed all vetting and interview requirements, were required to wait at least an extra three months before plans could be devised allowing them to be safely scheduled in groups for in-person ceremonies to take the oath of citizenship.⁸
- Staff remained on-the-clock as the agency remained closed-to-the-public but open-for-business. Field offices had to devise ways of delivering workable A-Files to officers who were now working full-time from home.

Despite the scramble to implement operational responses, those challenges could at least be predicted, accounted for, and addressed. On the whole, the field operations of the agency were virtually paused for three months. Beginning in June, field offices began to reopen with requirements for masks, procedures for social distancing, enhanced disinfection procedures, newly-installed equipment including Plexiglas barriers and one-way corridor signage, and stricter office-occupancy limits.⁹ When field offices reopened, the need to observe hygiene protocols required limiting the permissible number of staff and applicants in some offices to roughly 25% of building capacity, then ramping up slowly. Field offices have prioritized completing naturalizations via small-group and outdoor oath ceremonies, but in-office services are still bottlenecked.¹⁰ The number of interview appointments from June onward has been nowhere near as high the number of applicants waiting for them.¹¹ The backlogs that the agency and its predecessor had battled for decades are ballooning again.

While these changes to operational protocols could be handled within the agency itself, no one was prepared for a near-total freeze on international movement and a precipitous fall in applications for U.S. immigration processes. This is a problem for a few intersecting reasons.

USCIS is a fee-funded agency, meaning that 97 percent of its budget is collected from the money applicants pay for the processing of their cases and deposited in a fund called the Immigration Examinations Fee Account (IEFA).¹² To account for the balance of revenues to agency costs, a Volume Projection Committee keeps very close account of the applications the agency has received and is expected to receive; this is then used to populate a dynamic Staffing Allocation Model (personified as SAM). From those figures, USCIS determines how many employees are needed—for shipping documents, processing data, reviewing legal concerns, investigating fraud, holding citizenship ceremonies, maintaining contact with community groups and Congress, keeping track of resources and internal activities, and managing the agency itself—as well as the various ancillary costs of physical plant and other needs. Every few years, USCIS evaluates how costs match revenues and develops a Fee Rule to provide adjustments, which requires going through the regulatory process to account for changing trends in applications and legal requirements.¹³

Under normal circumstances, this system is roughly in fiscal balance and USCIS would be generating the revenue to pay for its more than 19,000 employees across the country. Rising uncertainty, new restrictions on entry into the country, the throttling of the agency's activity for public health needs, and the ongoing devastation of covid-19 combined to cut the number of applications for green cards and naturalization to half of what was expected in March, April, and May.¹⁴ In economic terms this is simultaneously a "supply shock" (in that USCIS is suddenly not able to provide the service that was advertised to people who previously applied) and a "demand shock" (as a large number of expected applicants suddenly decide they don't want to request our services), both largely being effects of the same underlying cause.¹⁵

This caused a precipitous drop in the funds available for the agency's operations; on May 15, USCIS leadership announced to the union that it would soon have to furlough nearly three quarters of its staff—over 13,000 employees—in the coming months to avoid running out of resources altogether.¹⁶ This would have effectively paused the reopening process, leaving only a skeleton crew of staff to process a trickle of applications while many intending immigrants who submitted their paperwork in 2019 or earlier continue to wait in limbo for the security of an adjudicative decision. By some estimates, naturalization applicants in heavily-impacted areas may end up waiting as many as three or four years for their cases to be completed.¹⁷

The agency immediately turned to belt-tightening measures. Planned training was canceled, new hiring was suspended, and contracts were ended to save funds and stretch the start of the anticipated furlough to August. Both USCIS's leadership and the leadership of its designated union, the American Federation of Government Employees (AFGE), marshalled resources to ask Congress for a temporary, repayable appropriation of \$1.2 billion dollars—roughly equivalent to a quarter of its normal annual budget—to stave off this furlough and provide carryover funding to meet expenses for the new fiscal year.¹⁸ Unlike most federal agencies, USCIS has no real precedent for obtaining funds through the political process and has skated through past government shutdowns largely unaffected; the challenge of a market-based funding shortfall is thoroughly alien. Legislation was introduced in the House specifically to provide this remedy, but it was not brought forward until after the agency spent nearly two months gearing up for a furlough. In a bitter irony, despite the consternation wrought within the agency by this shortfall, on a government-wide scale it is miniscule. The requested funding would have been less than the

\$1.4 billion in individual Covid-19 stimulus funds accidentally sent to deceased citizens this spring.¹⁹ Despite the risk of a near-collapse of America's immigration services, Congress did not succeed in passing a bill; the agency instead restructured funds on hand, canceling contracts and other "nonessential" expenditures, to avert the furlough with less than a week to spare.²⁰

The Upshot

USCIS's two transformations are a handy if simple way to evaluate its lessons learned around the Covid-19 experience. In short, the strengths of the agency's response can be seen as a positive outcome of the reestablishment effort. In contrast, the ongoing challenges presented by the pandemic invite us to not only point out the vital need for modernization efforts to be completed, but also to reconsider policies and practices that could benefit the agency's performance during future crises.

First, a look back at the fruits of establishing USCIS as a single-purpose agency. It was not possible to prepare fully for such a major disruption as immediately closing all offices to the public; however, the ability to focus solely on benefits administration allows local management the ability to concentrate their decision-making efforts on expediting adjudicative processes regardless. In areas where local field offices could take discretionary action, they acted nimbly to overhaul their operations with little warning.²¹ Staff contacted and rescheduled tens of thousands of applicants for interviews and oaths, set up new protocols for how (and how many) people could enter and move about each office, and created new logistics systems on the fly to ensure chains of custody for adjudicators who needed to get A-Files from urban offices to their far-flung homes where needed.

Turning to the modernization, the disruptions from the pandemic not only reinforce the need for completion of current document-digitization efforts but suggest the agency should think bigger about which aspects of its administrative activity can be done online. Some needed changes are all too clear. The requirement to consult paper A-Files carries with it not only an expense related to delivery and logistics, but the burden of the physical item itself: getting it to the correct adjudicator, securing it from unauthorized view, and not taking up too much space within the office. The digitization efforts already underway will eventually obviate these concerns, but the road there has been slow. Ancillary needs continue to emerge: in some cases, employees working from home had to rely on colleagues with access to printers to create required paper copies of documents for them.

USCIS is a highly metrics-driven agency; concerns about production (e.g., *what proportion* of applications are decided within what timespan, *how often* cases linger past a certain threshold, and *how many* decisions are appealed for reasons of agency error) are frequent topics of discussion from field to headquarters.²² Stakeholders outside the agency—from trade and industrial groups that serve or rely on immigrants to watchful members of Congress to an independent ombudsman's office housed separately in the Department of Homeland Security—are often keenly invested in the big picture painted by agency decisions large and small. Production has plummeted in recent months as interviews and oath ceremonies were canceled and most employees have been required to work from home closing out older cases or

completing non-adjudicative tasks. Officers are allowed in some cases to waive interviews—particularly for employment-based green card applications—but this only goes so far toward reckoning with the agency’s heavily attenuated capacity for completing face-to-face services.²³ Whether from a renewed threat of furlough or the ongoing public-health uncertainty, there will continue to be challenges for keeping up with timely processing of applications.

A third transformation is in its nascent stages, in the form of a rethinking of the need for applicants to appear in-person for so much of the process; we can call it virtualization.²⁴ External stakeholders have been quick to point out that the requirements that interviews and oaths of citizenship be conducted in-person often delay the delivery of benefits.²⁵ These requirements are often regulatory, not statutory, meaning they can be adjusted under USCIS’s own auspices.²⁶ The agency is tentatively moving in this direction by piloting video interviews in which the applicant and adjudicating officer are not in the same physical office.²⁷ Further, some recent emergency adjustments, such as allowing copied documents in place of “wet ink” signatures or allowing previously-submitted biometrics for identity verification, indicate there can be some flexibility in rules that were previously considered hard-and-fast while still maintaining systemic integrity.²⁸ If America truly wants to be a center of innovation, USCIS must continue to develop and pursue opportunities for “virtual” engagement with those who have proven they meet our requirements for entry.

With any hope, this crisis does not presage any long-term downturn in legal immigration. America has long welcomed a stream of people who want to make their lives here, and there are both humanitarian and economic reasons for continuing to receive them even in a time of great uncertainty. Humanitarian stature is not only a matter of moral righteousness, but of soft power—that is, securing our well-being at home by bolstering our reputation overseas. For our robust and diverse economy, immigration drives growth and innovation. Indeed, if we are serious about stanching U.S. job losses from the pandemic, it is wise to acknowledge a historically robust source of job creation: half of Fortune 500 company founders are immigrants or their children.²⁹ USCIS is struggling to excel under truly fraught circumstances. The agency has made great strides internally to change with its dynamic environment. It falls upon our leadership, both legislative and executive, to recognize this and to continue to help secure America’s promise as a nation of immigrants.

About the Author

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Disclaimer: All the views expressed in this article are those of the author, Michael Locke, and do not represent those of U.S. Citizenship and Immigration Services, the United States Department of Homeland Security, or the Federal Government.

Endnotes

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