

Realizing a Dream: Expedited Paths to Citizenship for Servicemembers

Major Kurt M. Rowland*

*United States citizenship is a unique bond that unites people around civic ideals and a belief in the rights and freedoms guaranteed by the U.S. Constitution. The promise of citizenship is grounded in the fundamental value that all persons are created equal and serves as a unifying identity to allow persons of all backgrounds, whether native or foreign-born, to have an equal stake in the future of the United States.*¹

I. Introduction

The legal assistance office is packed with Soldiers seeking your office's legal assistance expertise on this fine, fall day in 2015. The client card you pick up indicates that the Soldier, Private First Class (PFC) Juan Mojica-Corrales, has questions about expedited paths to naturalization through military service. Panic sets in because the one takeaway you remember from your Judge Advocate Officer Basic Course is that immigration law is second only to tax law in its complexity.² However, you also know that providing legal assistance in the area of immigration is within the scope of your duties.³ You call PFC Mojica-Corrales back to your office where the two of you sit down. Private First Class Mojica-Corrales wants to know if he is eligible for expedited naturalization through his military service, the legal issues involved, any advantages or disadvantages of pursuing this type of naturalization, and what forms or documents are required.

Private First Class Mojica-Corrales tells you that he is twenty years-old. He has lived in the United States for the

past two years, and he is a lawful permanent resident (LPR)⁴ of the United States. He has never been in trouble with the law, civilian or military—not even a parking ticket, non-judicial punishment, or an administrative reprimand. He also tells you that his active duty, honorable service exceeds one year. Private First Class Mojica-Corrales asks if he may set up a follow-on meeting with you to wrap up his questions because he must meet with First Sergeant Hernandez in fifteen minutes. You agree because this will give you time to research the issue.

Qualifying members of the U.S. Armed Forces may be eligible for citizenship through the expedited naturalization provisions of sections 328 and 329 of the Immigration and Naturalization Act (INA).⁵ While there are commonalities to both sections, they differ in multiple respects. Understanding the differences and how they apply to servicemembers is critical to providing them with sound legal advice.

This article will discuss the expedited paths to citizenship under sections 328 and 329 of the INA, their commonalities, the unique requirements specific to each section, the key legal

* Judge Advocate, United States Army. Presently assigned as Chief, Administrative and Civil Law, 2D Infantry Division/Republic of Korea-United States Combined Division, Camp Red Cloud, Republic of Korea. LL.M., 2016, The Judge Advocate General's School, United States Army, Charlottesville, Virginia; J.D., 2003, Gonzaga University School of Law; B.A., 1994, Western Washington University. Previous assignments include Deputy Group Judge Advocate, Deputy Command Judge Advocate, Battalion Judge Advocate, 7th Special Forces Group, Eglin Air Force Base, Florida, and Kandahar and Bagram, Afghanistan, 2012-2015; Trial Defense Counsel, Katterbach, Germany, 2010-2012; Trial Counsel/Brigade Judge Advocate, 2d Combat Aviation Brigade, Camp Humphreys, Korea, 2009-2010; Administrative Law Attorney, Detainee Operations Attorney, Legal Assistance Attorney, 4th Infantry Division, Fort Hood, Texas, and Baghdad, Iraq, 2007-2009. Member of the bars of Washington State, the Eastern District of Washington and Idaho, and the Ninth Circuit Court of Appeals. This article was submitted in partial completion of the Master of Laws requirements of the 64th Judge Advocate Officer Graduate Course.

¹ USCIS Policy Manual, Volume 12 – Citizenship & Naturalization, Part A – Citizenship and Naturalization Policies and Procedures, Chapter 1 – Purpose and Background, U.S. CITIZENSHIP & IMMIGR. SERVS., <http://www.uscis.gov/policymanual/HTML/PolicyManual-Volume12-PartA-Chapter1.html> (last visited May 19, 2016) [hereinafter *Policy Manual*, Vol. 12, Pt. A, Ch. 1].

² Joshua Daley Paulin, *Immigration Law 101*, GPSOLO (Sept./Oct. 2013), http://www.americanbar.org/publications/gp_solo/2013/september_october/immigration_law_101.html.

³ U.S. DEP'T OF ARMY, REG. 27-3, THE ARMY LEGAL ASSISTANCE PROGRAM para. 3-6f (21 Feb. 1996) (RAR 13 Sept. 2011) [hereinafter AR 27-3].

⁴ *Tools and Resources, Glossary, Lawful Permanent Resident (LPR)*, U.S. CITIZENSHIP & IMMIGR. SERVS.,

https://www.uscis.gov/tools/glossary?topic_id=#alpha-listing (last visited May 19, 2016) [hereinafter *Lawful Permanent Resident*]. A lawful permanent resident (LPR), is any "person not a citizen of the United States who is residing in the United States under legally recognized and lawfully recorded permanent residence as an immigrant." *Id.* A LPR is also known as a "Permanent Resident Alien," a "Resident Alien Permit Holder," and a "Green Card Holder." *Id.*; see also INA § 101(a)(20), 8 U.S.C. § 1101(a)(20) (2012) (defining what it means to be "lawfully admitted for permanent residence"). There are also "conditional permanent residents (CPR)." 8 C.F.R. § 216.1 (2015). A CPR receives a green card that is only valid for two years; the CPR must petition to remove the conditional status during the ninety days before the card expires. *Green Card, Conditional Permanent Residence*, U.S. CITIZENSHIP & IMMIGR. SERVS., <http://www.uscis.gov/green-card/after-green-card-granted/conditional-permanent-residence> (last visited May 19, 2016). Generally speaking, for purposes of enlisting in all branches of the military, conditional lawful permanent residents "are legally equivalent to other LPRs, with the exception that their status can be terminated if they fail to meet the conditions on their status or to obtain a waiver." MARGARET D. STOCK, *IMMIGRATION LAW & THE MILITARY* 14 (2d ed. 2015). See 8 C.F.R. § 216.1 (discussing CPR status).

⁵ INA § 328, 8 U.S.C. § 1439 (2012); INA § 329, 8 U.S.C. § 1440 (2012). Before the creation of the Immigration and Nationality Act (INA) in 1952, the statutes governing immigration law were not organized in one location. *Laws, Immigration and Nationality Act*, U.S. CITIZENSHIP & IMMIGR. SERVS., <http://www.uscis.gov/laws/immigration-and-nationality-act> (last visited May 19, 2016). Subsequent to the establishment of the INA, it was codified in the United States Code (U.S.C.) under Title 8, "Aliens and Nationality." *Id.* While it is common to see both the INA and U.S. Code referenced in citations, the INA citation is more commonly used. *Id.* For example section 328 of the INA is cited as INA § 328, 8 U.S.C. § 1439. This article will parallel cite to both.

issues a judge advocate must understand, and the forms and documents required to apply for expedited naturalization under these sections. Finally, this article will provide resources and guidance for those immigration issues falling beyond the scope of a legal assistance office.

This article is an issue-spotting guide meant to assist in identifying legal issues a client may face when applying for expedited naturalization pursuant to sections 328 and 329, rather than a research paper into the complexities of immigration law. Some clients will present very straightforward factual cases with no legal issues; others will require consultation with a senior attorney in your legal assistance office; and, still others will require referral of the client to a private attorney because the complexity of their case is beyond the expertise of your legal assistance office.⁶

II. Background of Expedited Naturalization Provisions for U.S. Servicemembers

Special naturalization provisions benefitting non-citizens serving in the U. S. Armed Forces date back to at least the Civil War.⁷ Since that time, during major conflicts, special enactments were made.⁸ Post-September 11, 2001 (9/11), was no exception.⁹ After 9/11, Congress and the President expressed a continued interest in legislation that expanded the citizenship benefits for non-U.S. citizens serving in the military.¹⁰

The foundation for the currently enacted versions of the

INA that provide expedited naturalization opportunities for servicemembers dates back to the Immigration and Nationality Act of 1952.¹¹ In 1952, Congress significantly broadened the class of persons eligible for naturalization through military service when it repealed the Nationality Act of 1940, as amended, and replaced it with the Immigration and Nationality Act (INA) of 1952.¹² The Act of 1952 replaced the provisions relating to the naturalization of alien veterans with the more encompassing sections 328 and 329.¹³ This expanded the naturalization options for military servicemembers.¹⁴ It also provided the underpinnings of the currently enacted versions of sections 328 and 329.¹⁵

III. Expedited Naturalization for Servicemembers under Sections 328 and 329

Under the currently enacted versions of sections 328 and 329, servicemembers may be eligible for expedited naturalization through their qualifying military service.¹⁶ In general, service in the U.S. Army, Navy, Air Force, Marine Corps, Coast Guard, and certain components of the National Guard and the Selected Reserve of the Ready Reserve is considered qualifying military service for eligibility purposes under sections 328 and 329.¹⁷

The first of the two expedited paths to citizenship that servicemembers may be eligible for is section 328. Section 328 deals with naturalization during periods of no declared hostilities.¹⁸ This section is often referred to as the “peacetime” statute.¹⁹ The other expedited naturalization

⁶ AR 27-3, *supra* note 3, para. 3-5a. “Attorneys providing legal assistance will not assist clients on matters outside the scope of the legal assistance program” *Id.* Whenever “legal assistance cannot be rendered, every effort will be made to refer clients (in accordance with para 3-7h) to attorneys who can assist them.” *Id.* para. 3-5c(2). A client should not be referred to an outside attorney “unless the referral is in the best interest of the client.” *Id.* para. 3-7h(2). One of the critical factors a legal assistance attorney should consider when making this determination is the attorney’s expertise in the area of immigration law. *Id.* para. 3-7h(3)(b).

⁷ Act of July 17, 1862, ch. 200, § 21, 12 Stat. 594, 597 (extending naturalization benefits to those who served with the armies of the United States); *USCIS Policy Manual, Volume 12 – Citizenship & Naturalization, Part I – Military Members and Their Families, Chapter 1 – Purpose and Background*, U.S. CITIZENSHIP & IMMIGR. SERVS., <http://www.uscis.gov/policymanual/HTML/PolicyManual-Volume12-PartI-Chapter1.html> (last visited May 19, 2016) [hereinafter *Policy Manual*, Vol. 12, Pt. I, Ch. 1].

⁸ MARGARET MIKYUNG LEE & RUTH ELLEN WASEM, CONG. RES. SERV., RL31884, EXPEDITED CITIZENSHIP THROUGH MILITARY SERVICE: CURRENT LAW, POL’Y, AND ISSUES 3 (2009). This includes the period up to, and including, the Vietnam War. *Id.* For a good discussion of the various military naturalization statutes and their legislative history, see Darlene C. Goring, *In Service to America: Naturalization of Undocumented Alien Veterans*, 31 SETON HALL L. REV. 400, 408-30 (2000).

⁹ *Policy Manual*, Vol. 12, Pt. I, Ch. 1, *supra* note 7.

¹⁰ *Id.* Legislation benefitting servicemembers and their families increased considerably since 2003. *Id.*

¹¹ Goring, *supra* note 8, at 423-24.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* From a practical standpoint, “naturalized immigrants gain important benefits, including the right to vote, security from deportation in most cases, access to certain public-sector jobs, and the ability to travel with a U.S. passport.” WILLIAM A. KANDEL, CONG. RES. SERV., R43366, U.S. NATURALIZATION POL’Y 1 (2014). An additional benefit of naturalization for servicemembers is the ability to obtain a security clearance. U.S. DEP’T OF ARMY, REG. 380-67, PERSONAL SECURITY PROGRAM para. 3-22a (24 Jan. 2014). While there are exceptions to this rule, absent a compelling reason justifying a security clearance for a non-citizen, one will not be granted. *Id.* Obtaining a security clearance opens up greater employment opportunities within the military for those servicemembers. See STOCK, *supra* note 4, at 37. For example, intelligence operations and special-forces require both U.S. citizenship and a security clearance. LEE & WASEM, *supra* note 8.

¹⁵ Goring, *supra* note 8, at 423-24.

¹⁶ INA §§ 328, 329, 8 U.S.C. §§ 1439, 1440 (2012); *Military, Citizenship for Military Members*, U.S. CITIZENSHIP & IMMIGR. SERVS., <http://www.uscis.gov/military/citizenship-military-personnel-family-members/citizenship-military-members> (last visited May 19, 2016) [hereinafter *Citizenship for Military Members*].

¹⁷ *Citizenship for Military Members*, *supra* note 16.

¹⁸ INA § 328, 8 U.S.C. § 1439; *Citizenship for Military Members*, *supra* note 16.

¹⁹ *Citizenship for Military Members*, *supra* note 16.

avenue available for eligible servicemembers is section 329. This section covers naturalization during designated “periods of hostilities.”²⁰ Section 329 is often referred to as the “wartime” statute.²¹

Sections 328 and 329 are not mutually exclusive; a servicemember may be eligible for expedited naturalization under one or both sections.²² Accordingly, understanding the requirements and differences between sections 328 and 329 will help assist clients in identifying their eligibility to naturalize, potential legal issues, the benefits and drawbacks to naturalization under these sections, and the forms and documents required to apply.

A. Requirements Common to Sections 328 and 329 of The Immigration and Naturalization Act

Applicants seeking expedited naturalization through sections 328 and 329 must meet many of the same requirements applicable to all other naturalization

applicants.²³ Generally, there are four common requirements applicable to all naturalization applicants.²⁴ First, the servicemember must exhibit their understanding of the English language.²⁵ This includes the “ability to read, write, and speak words in ordinary usage in the English language.”²⁶ Next, the servicemember must demonstrate a knowledge and understanding of the fundamentals of U.S. history and government (i.e., civics).²⁷ A servicemember’s English language comprehension and civics knowledge is tested during the naturalization interview with a U.S. Citizenship and Immigration Services (USCIS) officer.²⁸ Third, the servicemember must be attached to the principles of the Constitution of the United States, and “be well disposed to the good order and happiness of the United States.”²⁹ The servicemember declares their attachment to the Constitution when they take an Oath of Allegiance during their naturalization ceremony.³⁰ Fourth, the servicemember must establish they were, and continue to be, a person of good moral character during the applicable statutory period.³¹

²⁰ INA § 329; 8 U.S.C. § 1440; *Citizenship for Military Members*, *supra* note 16.

²¹ STOCK, *supra* note 4, at 37. Wartime service refers to a period in which the Armed Forces of the United States are or were engaged in military operations involving armed conflict with a hostile foreign force. INA § 329(a), 8 U.S.C. § 1440(a). Section 329 of the Immigration and Nationality Act also deals with posthumous naturalization. That is beyond the scope of this article.

²² INA §§ 328, 329, 8 U.S.C. §§ 1439, 1440; *Citizenship for Military Members*, *supra* note 16. It is critical to note that sections 328 and 329 do not automatically grant citizenship to an applicant because they are serving in the military. See *Millan-Garcia v. Immigration and Naturalization Service*, 343 F.2d 825, 830 (9th Cir. 1965). Instead, what they do is extend eligibility to those servicemembers that meet their requirements. *Id.*

²³ STOCK, *supra* note 4, at 38.

²⁴ *Citizenship for Military Members*, *supra* note 16.

²⁵ INA § 312(a)(1); 8 U.S.C. § 1423(a)(1) (2012); 8 C.F.R. § 312.1(a) (2015); *USCIS Policy Manual, Volume 12 – Citizenship & Naturalization, Part E – English and Civics Testing and Exceptions, Chapter 1 – Purpose and Background*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume12-PartE-Chapter1.html> (last visited May 19, 2016) [hereinafter *Policy Manual*, Vol. 12, Pt. E, Ch. 1]. This is done during the naturalization exam. *Id.*

²⁶ INA § 312(a)(1); 8 U.S.C. § 1423(a)(1); 8 C.F.R. § 312.1(a); *Policy Manual*, Vol. 12, Pt. E, Ch. 1, *supra* note 25. “Ordinary usage means comprehensible and pertinent communication through simple vocabulary and grammar, which may include noticeable errors in pronouncing, constructing, spelling, and understanding completely certain words, phrases, and sentences.” *USCIS Policy Manual, Volume 12 – Citizenship & Naturalization, Part E – English and Civics Testing and Exceptions, Chapter 2 – English and Civics Testing*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume12-PartE-Chapter2.html> (last visited May 19, 2016) [hereinafter *Policy Manual*, Vol. 12, Pt. E, Ch. 2].

²⁷ INA § 312(a)(2), 8 U.S.C. § 1423(a)(2); 8 C.F.R. § 312.2(a); *Policy Manual*, Vol. 12, Pt. E, Ch. 2, *supra* note 26. This, too, is tested on the naturalization exam. *Policy Manual*, Vol. 12, Pt. E, Ch.2, *supra* note 26.

²⁸ *Policy Manual*, Vol. 12, Pt. E, Ch. 2, *supra* note 26; *Thinking About Applying for Naturalization?*, U.S. CITIZENSHIP & IMMIGR. SERVS.,

<http://www.uscis.gov/sites/default/files/USCIS/Office%20of%20Citizenship/Citizenship%20Resource%20Center%20Site/Publications/PDFs/G-1151.pdf> (last visited May 19, 2016) [hereafter *Thinking About Applying*]. The naturalization test is composed of two parts: 1) an English language proficiency component that tests the applicant’s ability to read, write, speak, and understand English; and, 2) knowledge of U.S. history and government, which is ascertained on a civics test. *Policy Manual*, Vol. 12, Pt. E, Ch. 2, *supra* note 26. An applicant has two chances to pass the English and civics tests. *Id.* The first chance is during the naturalization interview with the U.S. Citizenship and Immigration Services (USCIS) officer. *Id.* The second chance is during the re-examination interview. *Id.* One of the reasons applicants fail their naturalization test is because they cannot answer the interview questions in English. *Id.* Servicemembers interested in finding English or citizenship classes where they live can visit www.literacydirectory.org or they can contact their local community college or adult education program. *Id.*; see *infra* Part V for information on study materials and resources available to servicemembers.

²⁹ INA § 316(a)(3); 8 U.S.C. § 1427(a)(3) (2012); 8 C.F.R. § 316.11 (2015); *Policy Manual, Volume 12 – Citizenship & Naturalization, Part D – General Naturalization Requirements, Chapter 7 – Attachment to the Constitution*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume12-PartD-Chapter7.html> (last visited May 19, 2016) [hereinafter *Policy Manual*, Vol. 12, Pt. D, Ch. 1]. “Attachment implies a depth of conviction which would lead to active support of the Constitution.” 8 C.F.R. § 316.11(a). “Attachment includes both an understanding and a mental attitude including willingness to be attached to the principles of the Constitution.” *Policy Manual*, Vol. 12, Pt. D, Ch. 1.

³⁰ INA § 337(a)(1)-(4), 8 U.S.C. § 1448(a)(1)-(4) (2012); *Thinking About Applying*, *supra* note 28.

³¹ INA § 316(a)(3) & (d), 8 U.S.C. § 1427(a)(3) & (d); 8 C.F.R. § 316.2(a)(7) (2015); 8 C.F.R. § 316.10 (2015); *Citizenship for Military Members*, *supra* note 16. The naturalization provision under which the servicemember files for naturalization (e.g., INA section 328 or 329) will determine the statutory period during which the servicemember must demonstrate good moral character. *USCIS Policy Manual, Volume 12 – Citizenship & Naturalization, Part F – Good Moral Character, Chapter 1 – Purpose and Background*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume12-PartF-Chapter1.html> (last visited May 19, 2016) [hereinafter *Policy Manual*, Vol. 12, Pt. F, Ch. 1]. See *infra* Parts III B and C for the required statutory periods under section 328 and section 329 respectively. Whether an applicant meets the good moral character requirement is determined by a USCIS officer’s assessment of the applicant’s record, statements provided

Although not likely to be an issue with most servicemember-applicants, the good moral character analysis can be complex if the servicemember was ever in trouble with civil or military authorities.³² Military authorities include not only court-martial convictions, but also administrative and non-judicial punishment and discharges.³³ It is important to know that the USCIS is not limited to periods set forth in the statute when making a good moral character determination.³⁴ If the situation warrants, the USCIS may take into consideration conduct of the servicemember prior to the required statutory period.³⁵ This includes looking into the history of a servicemember prior to their qualifying military service.³⁶ Accordingly, if the servicemember-client was in trouble with the authorities, the good moral character determination should involve the assistance of a seasoned immigration attorney.³⁷ A checklist of questions to ask servicemember-clients regarding their military service is included in Appendix A.

In addition to the above, another advantage common to sections 328 and 329 is exemption from the continuous residence and physical presence requirement prior to applying for naturalization.³⁸ In order to satisfy the continuous residence and physical presence requirements, most LPRs are required to wait three to five years before applying for U.S. citizenship.³⁹ However, for qualifying servicemembers, the requirement for continuous residence and physical presence

in the United States is waived or reduced, as are the state residence requirements.⁴⁰

While sections 328 and 329 provide expedited paths to naturalization for qualified servicemembers, they also contain a significant disadvantage that applicants must be aware of. Specifically, servicemembers that naturalized pursuant to section 328 or 329 after November 24, 2003, may have their citizenship revoked.⁴¹ Sections 328 and 329 require servicemembers naturalized under their sections to serve honorably for a period or periods aggregating five years.⁴² If the servicemember is separated under other than honorable conditions before honorably serving for the requisite time, they may have their citizenship revoked.⁴³ Thus, servicemembers need to understand that post-naturalization misbehavior may negatively impact their citizenship.⁴⁴

Despite the common requirements of sections 328 and 329, there are significant differences that will impact under which section a servicemember is eligible to naturalize. Understanding these distinctions is necessary to providing sound legal advice to a servicemember-client.

B. Requirements of the Peacetime Statute, INA Section 328

The peacetime naturalization statute is available to

in the naturalization application, and oral testimony given during the interview. *Policy Manual*, Vol. 12, Pt. F, Ch. 1, *supra*. Good moral character is defined in the negative under the INA. INA § 101(f), 8 U.S.C. § 1101(f) (2012). Generally, good moral character means “character which measures up to the standards of average citizens of the community in which the applicant resides.” *Policy Manual*, Vol. 12, Pt. F, Ch. 1, *supra*; INA § 101(f) (providing a non-exhaustive list of criminal acts that constitute a statutory bar to showing good moral character); 8 U.S.C. § 1101(f). Examples of statutory bars to establishing good moral character include a conviction for murder or an aggravated felony. *USCIS Policy Manual, Volume 12 – Citizenship & Naturalization, Part F – Good Moral Character, Chapter 4 – Permanent Bars to GMC*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume12-PartF-Chapter4.html> (last visited May 19, 2016). Even if a servicemember is not statutorily barred from showing good moral character, they may still be denied naturalization if their conduct, in total, during the statutory period, shows a lack of good moral character. STOCK, *supra* note 4, at 42.

³² STOCK, *supra* note 4, at 42.

³³ *Id.* at 71.

³⁴ INA § 316(e), 8 U.S.C. § 1427; 8 C.F.R. § 316.10(a)(2); IRA J. KURZBAN, *KURZBAN’S IMMIGRATION LAW SOURCEBOOK* 1803, 1810 (14th ed. 2014); *Policy Manual*, Vol. 12, Pt. F, Ch. 1, *supra* note 31.

³⁵ INA § 316(e), 8 U.S.C. § 1427; 8 C.F.R. § 316.10(a)(2); *Policy Manual*, Vol. 12, Pt. F, Ch. 1, *supra* note 31.

³⁶ INA § 316(e), 8 U.S.C. § 1427; 8 C.F.R. § 316.10(a)(2); *Policy Manual*, Vol. 12, Pt. F, Ch. 1, *supra* note 31.

³⁷ STOCK, *supra* note 4, at 42.

³⁸ *News, Naturalization Through Military Service: Fact Sheet*, U.S. CITIZENSHIP & IMMIGR. SERVS., <http://www.uscis.gov/news/fact->

[sheets/naturalization-through-military-service-fact-sheet](#) (last visited May 19, 2016) [hereinafter *Military Service Naturalization Fact Sheet*].

³⁹ STOCK, *supra* note 4, at 37. Generally, a civilian LPR must establish that they have resided continuously in the United States for a period of at least five years before becoming eligible for naturalization. 8 C.F.R. § 316.2(a); *see also* 8 C.F.R. § 316.5 (providing detailed guidance on what constitutes “residence” for naturalization applicants).

⁴⁰ INA § 328, 8 U.S.C. § 1439 (2012); INA § 329, 8 U.S.C. § 1440 (2012); STOCK, *supra* note 4, at 40; *U.S. Citizenship, Continuous Residence and Physical Presence Requirements for Naturalization*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/us-citizenship/citizenship-through-naturalization/continuous-residence-and-physical-presence-requirements-naturalization> (last visited May 19, 2016); *Military Service Naturalization Fact Sheet*, *supra* note 38; *Citizenship for Military Members*, *supra* note 16.

⁴¹ STOCK, *supra* note 4, at 37.

⁴² INA § 328(f), 8 U.S.C. § 1439(f); INA § 329(c), 8 U.S.C. § 1440(c). According to the USCIS, both ‘Honorable’ and ‘General-Under Honorable Conditions’ “discharge types qualify as honorable service for immigration purposes. Other discharge types, such as ‘Other Than Honorable,’ do not qualify as honorable service.” *USCIS Policy Manual, Volume 12 – Citizenship & Naturalization, Part I – Military Members and Their Families, Chapter 2 – One Year of Military Service During Peacetime (INA 328)*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume12-PartI-Chapter2.html> (last visited May 19, 2016) [hereinafter *Policy Manual*, Vol. 12, Pt. I, Ch. 2].

⁴³ INA §§ 328(f), 329(c), 8 U.S.C. §§ 1439(f), 1440(c).

⁴⁴ STOCK, *supra* note 4, at 38-39. For a good discussion of the immigration consequences of military adverse actions, *see* Major Takashi Kagawa, *The Judge Advocate’s Guide to Immigration Consequences for Military Adverse Action*, ARMY LAW., Oct. 2014, at 6 (discussing the adverse immigration consequences of military adverse action on servicemembers).

qualified servicemembers at all times;⁴⁵ it does not require an executive order to come into effect.⁴⁶ To be eligible to apply under this section, the servicemember must meet a number of requirements. First, the servicemember must have served honorably in the service for a period or periods aggregating one year.⁴⁷ Additionally, if the servicemember separated from the service, that separation must have been honorable.⁴⁸ For immigration purposes, both honorable and general, under honorable conditions, discharges qualify as honorable service.⁴⁹ An other than honorable discharge does not qualify as honorable service.⁵⁰

Second, the servicemember must be eighteen years old or older.⁵¹ Third, the servicemember must have LPR status at the time of the examination on the application with the USCIS officer.⁵² Fourth, the servicemember must show five years of good moral character.⁵³

The fifth requirement pertains to the continuous residence and physical presence element of the statute.⁵⁴ Normally, an applicant for naturalization must show they have continuously resided in the United States for at least five years preceding the date of filing their application.⁵⁵ They must also show that they were physically present in the United States for at least thirty months out of the five years immediately preceding the date of filing the application.⁵⁶ However, servicemember-applicants under the peacetime statute are exempt from the continuous residence and physical presence requirements if they do one of two things.⁵⁷ The servicemember must either file their application while still in the service, or do so within six months of separating from the

service with an honorable discharge.⁵⁸

Section 328 of the INA applies to active duty servicemembers, and any of the reserve components, to include the Individual Ready Reserve or the inactive National Guard.⁵⁹ However, the caveat for National Guard service is that service must be during a period of time when the National Guard unit is “federally recognized as a Reserve component unit.”⁶⁰

Looking through your notes from the meeting with PFC Mojica-Corrales, you see that he is eligible to file an application for expedited naturalization under section 328. He is an LPR and is over eighteen years old. His active duty time exceeds one year and he is still in the service. Good moral character does not appear to be an issue because he was never in trouble with the law. If he files his application while still on active duty, or does so within six months of separating from the service (assuming his service is characterized as honorable), he will be exempt from the continuous residence and physical presence requirements, too. Despite PFC Mojica-Corrales’ eligibility for expedited naturalization under the peacetime statute, you note that he may be eligible for naturalization through the wartime statute, too.

C. Requirements of the Wartime Statute, INA Section 329

Unlike the peacetime statute, the wartime statute is only available during specified statutory periods, or when a presidential executive order invokes section 329 of the INA.⁶¹

⁴⁵ INA § 328; 8 U.S.C. § 1439; STOCK, *supra* note 4, at 43.

⁴⁶ *Id.* “Executive Orders (EOs) are legally binding orders given by the President, acting as the head of the Executive Branch, to Federal Administrative Agencies.” *What is an Executive Order*, THIS NATION <http://www.thisnation.com/question/040.html> (last visited May 19, 2016). Generally, they are used to direct federal agencies and officials in their execution of congressionally established laws or policies. *Id.* An EO does not require Congressional approval to take effect, but they have the same legal weight as laws passed by Congress. *Id.* The President’s source of authority to issue EOs is found in Article II, Section 1 of the Constitution, which grants to the President the “executive Power.” *Id.*

⁴⁷ INA § 328, 8 U.S.C. § 1439.

⁴⁸ *Id.*

⁴⁹ *Policy Manual*, Vol. 12, Pt. I, Ch. 2, *supra* note 42.

⁵⁰ *Id.*

⁵¹ *Citizenship for Military Members*, *supra* note 16; STOCK, *supra* note 4, at 43; *see also* 8 U.S.C. § 328.2(e) (2015); 8 C.F.R. § 316.2(a)(1) (2015).

⁵² 8 C.F.R. § 328.2 (2015); *Citizenship for Military Members*, *supra* note 16; STOCK, *supra* note 4, at 43.

⁵³ 8 C.F.R. § 328.2(d); Specifically, the “applicant must demonstrate good moral character for five years prior to filing for naturalization, and during the period leading up to the administration of the Oath of Allegiance.” *USCIS Policy Manual: Volume 12 – Citizenship & Naturalization, Part D – General Naturalization Requirements, Chapter 1, Purpose and Background*, U.S. CITIZENSHIP & IMMIGR. SERVS.,

<https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume12-PartD-Chapter1.html> (last visited May 19, 2016).

⁵⁴ INA § 328, 8 U.S.C. § 1439; *Citizenship for Military Members*, *supra* note 16.

⁵⁵ INA § 328, 8 U.S.C. § 1439; *Citizenship for Military Members*, *supra* note 16.

⁵⁶ *Citizenship for Military Members*, *supra* note 16.

⁵⁷ INA § 328, 8 U.S.C. § 1439; *Citizenship for Military Members*, *supra* note 16. The residence and physical presence requirements are waived for time spent abroad in the military service. KURZBAN, *supra* note 34, at 1797.

⁵⁸ INA § 328; 8 U.S.C. § 1439; *Citizenship for Military Members*, *supra* note 16; STOCK, *supra* note 4, at 43. As Stock notes in her treatise, a veteran may still apply for naturalization under INA section 328 after six months from being discharged from the service, but they will be subject to the continuous physical presence and residency requirements that were originally waived. *Id.* at 43 n.31. Accordingly, other than not paying the filing fee, there is little to be gained from filing under INA section 328 if the veteran was discharged more than six months prior. *Id.*

⁵⁹ *United States v. Rosner*, 249 F.2d 49 (1st Cir. 1957); STOCK, *supra* note 4, at 44.

⁶⁰ STOCK, *supra* note 4, at 44.

⁶¹ INA § 329; 8 U.S.C. § 1440 (2012); 8 C.F.R. § 329.2 (2015); *Citizenship for Military Members*, *supra* note 16; STOCK, *supra* note 4, at 44. Past designated periods of hostilities include: World War I (April 6, 1917, to November 11, 1918); September 1, 1939, to December 31, 1946; June 25, 1950, to July 1, 1955; February 28, 1961, to October 15, 1978;

On July 3, 2002, President George W. Bush issued an executive order invoking section 329 and designating the period beginning on September 11, 2001, as a “period of hostilities.”⁶² This period of hostilities remains in effect until terminated by a future executive order.⁶³ Because we are currently in a period of designated hostilities, qualified servicemembers may apply for expedited naturalization under the wartime statute.⁶⁴

In general, like the peacetime statute, a servicemember-applicant under the wartime statute must satisfy a number of specific requirements.⁶⁵ First, unlike the peacetime statute, a servicemember is eligible to apply for naturalization after serving only one day of honorable service.⁶⁶ As such, they do not have to wait one year before applying for naturalization under the wartime statute; they may apply immediately.⁶⁷ This also means that servicemember-applicants are exempt from the general conditional residence and physical presence requirements common to most civilian naturalization statutes.⁶⁸ Second, the wartime statute requires honorable service in an active-duty status, or in the Selected Reserve of the Ready Reserve, during a designated period of hostilities.⁶⁹ This is distinct from the peacetime statute, which does not require any specific type of service.⁷⁰ Additionally, if the servicemember was separated from the service, then they must have been separated under honorable conditions.⁷¹ As with the peacetime statute, for immigration purposes, both an honorable and general, under honorable conditions, discharge qualifies as honorable service.⁷² An other than honorable

discharge does not qualify as honorable service.⁷³

Third, a servicemember does not have to be a LPR to be eligible to apply for naturalization under this statute.⁷⁴ However, they must have been present in the United States or certain territories at the time of their enlistment or induction.⁷⁵ Fourth, there is no minimum age requirement for an applicant under the wartime statute.⁷⁶ Finally, as with the peacetime statute, the servicemember must establish good moral character.⁷⁷ The period of good moral character under the wartime statute is one year.⁷⁸

Referring back to your notes from the meeting with PFC Mojica-Corrales, you notice that he is eligible for naturalization under the wartime statute, too. Assuming that his current term of active duty service is honorable, he is eligible to file an application for naturalization immediately without having to wait a year. Moreover, under the wartime statute, he is exempt from the residence and physical presence requirements applicable to most other applicants for naturalization. Because he has never been in trouble with the law, it appears there would be no issues with his good moral character determination. His age is not an issue because age is not a factor under the wartime statute. Finally, although not required to apply under this statute, he is an LPR. Having determined that PFC Mojica-Corrales is eligible for naturalization under both the peacetime and wartime statutes, you turn to the forms and application requirements necessary to apply under both statutes.

and, August 2, 1990, to April 11, 1991. *Citizenship for Military Members*, *supra* note 16.

⁶² Exec. Order No. 13269, 67 Fed. Reg. 45287 (July 8, 2002); *Citizenship for Military Members*, *supra* note 16.

⁶³ Exec. Order No. 13269, 67 Fed. Reg. 45287.

⁶⁴ *Id.* Interestingly, while this executive order remains in effect, a LPR servicemember may be eligible for naturalization under both INA sections 328 and 329. STOCK, *supra* note 4, at 38. However, servicemembers who are not LPRs or U.S. nationals may only naturalize under INA section 329. *Id.*

⁶⁵ *Citizenship for Military Members*, *supra* note 16.

⁶⁶ INA § 329, 8 U.S.C. § 1440 (2012).

⁶⁷ *Military Service Naturalization Fact Sheet*, *supra* note 38; *Policy Manual, Volume 12 – Citizenship & Naturalization, Part I – Military Members and Their Families, Chapter 3 – Military Service During Hostilities (INA 329)*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume12-PartI-Chapter3.html> (last visited May 19, 2016) [hereinafter *Policy Manual*, Vol. 12, Pt. I, Ch. 3].

⁶⁸ STOCK, *supra* note 4, at 40.

⁶⁹ INA § 329, 8 U.S.C. § 1440; *Citizenship for Military Members*, *supra* note 16. “Active duty” is defined as “full-time duty in the active military service of the United States.” 10 U.S.C. § 101(d) (2016). This includes “full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned.” *Id.* However, the term does not include full-time National Guard duty. *Id.*

⁷⁰ STOCK, *supra* note 4, at 47.

⁷¹ INA § 329, 8 U.S.C. § 1440; 8 C.F.R. § 329.2 (2015).

⁷² *Policy Manual*, Vol. 12, Pt. I, Ch. 3, *supra* note 67.

⁷³ *Id.*

⁷⁴ INA § 329, 8 U.S.C. § 1440; 8 C.F.R. § 329.2; *Citizenship for Military Members*, *supra* note 16; STOCK, *supra* note 4, at 44. It is worth noting that under INA section 329 and 8 U.S.C. § 1440(a), “Where person honorably served in time of war or declared hostilities during a period designated by Presidential Executive Order, LPR status is *not* required and applicant may, therefore, be undocumented and obtain citizenship.” KURZBAN, *supra* note 34, at 1795.

⁷⁵ INA § 329, 8 U.S.C. § 1440; *Citizenship for Military Members*, *supra* note 16. Specifically, the servicemember must have been in the “United States, the Canal Zone, American Samoa, or Swain Island, or on board a public vessel owned or operated by the United States for noncommercial service.” INA § 329, 8 U.S.C. § 1440.

⁷⁶ Compare INA § 329(b)(1), 8 U.S.C. § 1440(b)(1), and 8 C.F.R. § 329.2(e) (an applicant may be naturalized regardless of age), with INA § 328, 8 U.S.C. § 1439 (2012), and 8 C.F.R. § 328.2(e), and 8 C.F.R. § 316.2(a)(1) (an applicant must be at least 18 years of age); *Citizenship for Military Members*, *supra* note 16.

⁷⁷ *Citizenship for Military Members*, *supra* note 16.

⁷⁸ STOCK, *supra* note 4, at 40. Although 8 C.F.R. § 329.2(d) sets out a one-year good moral character requirement, the “one-year good moral character requirement under INA § 329 is not statutory, but rests on a regulation and an agency interpretation that has been upheld by the courts.” *Id.* at 40 n.18; KURZBAN, *supra* note 34, at 1803.

IV. Forms, Fingerprints, and Fees

There are two USCIS forms required to complete an application packet for naturalization under sections 328 and 329 of the INA.⁷⁹ First, the servicemember will need to obtain USCIS Form N-400, Application for Naturalization.⁸⁰ This form, along with instructions on how to fill it out, is available on the USCIS webpage.⁸¹ On the form, servicemembers will need to indicate that they are applying based on their qualifying military service.⁸² For servicemembers applying for expedited naturalization under section 328, the earliest they are eligible to file is after they have obtained status as an LPR and after completing one year of honorable military service.⁸³ For those applying pursuant to section 329, the earliest they are eligible to file is after completing one day of honorable service on active duty, or in the Selected Reserve or Ready Reserve.⁸⁴

The second form required when applying for naturalization under sections 328 or 329 is USCIS Form N-426, Request for Certification of Military or Naval Service.⁸⁵ This form is critical because it establishes the periods of honorable service of your client.⁸⁶ The characterization of

service is determined by the servicemember's branch of service.⁸⁷ An honorable or general, under honorable conditions, characterization of service, or discharge type, qualifies as honorable service for immigration purposes.⁸⁸ For those servicemembers on active duty at the time of their naturalization application, the form must be certified by their commanding officer, or other individual authorized to certify the form (usually the S-1).⁸⁹ It is critical to note that recruiters are not authorized to certify Form N-426.⁹⁰ As with the N-400, the N-426 and instructions on how to fill it out are available for download on the USCIS webpage.⁹¹ Ensure your client uses the most current edition of each form; information regarding the proper edition of Forms N-400 and N-426 is available on that form's page within the USCIS webpage.⁹²

In addition to the forms required by the USCIS, servicemembers must also submit a copy of their fingerprints with their naturalization application.⁹³ Servicemembers have a number of options available to have their fingerprints taken depending on where they are located.⁹⁴ One option is for the servicemember to travel to a domestic USCIS application support center (ASC) for fingerprinting.⁹⁵ For those planning

⁷⁹ *Citizenship for Military Members*, *supra* note 16. The USCIS forms are provided free of charge through the USCIS web site. *Forms: Forms*, U.S. CITIZENSHIP & IMMIGR. SERVS., <http://www.uscis.gov/forms> (last visited on May 19, 2016). Forms may also be ordered by mail, but require the applicant to fill out a web-based form on the USCIS web site. *Id.* Forms are also available by calling 1-800-870-3676. *Id.* All aspects of the naturalization process are available to military members overseas, too. 8 U.S.C. § 1443a (2012); *Military Service Naturalization Fact Sheet*, *supra* note 38. However, it is only available to those currently serving in the U.S. Military; veterans must naturalize within the United States even if they are eligible for naturalization pursuant to INA sections 328 or 329. STOCK, *supra* note 4, at 40 n.15. More information on overseas processing is available at *Citizenship for Military Members*, *supra* note 16. Although the processing requirements may have changed since 2005, for a general overview of the naturalization process for servicemembers in a deployed environment, see Major Marc Defreyn & First Lieutenant Darrell Baughn, *Immigration and Naturalization Issues in the Deployed Environment*, ARMY LAW., Oct. 2005, at 47.

⁸⁰ *Citizenship for Military Members*, *supra* note 16.

⁸¹ *Forms, N-400, Application for Naturalization*, U.S. CITIZENSHIP & IMMIGRATION SERVS., <http://www.uscis.gov/n-400> (last visited May 19, 2016) [hereinafter *N-400, Application for Naturalization*].

⁸² *USCIS Policy Manual, Volume 12 – Citizenship & Naturalization, Part I – Military Members and Their Families, Chapter 5 – Application and Filing for Service Members (INA 328 and 329)*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume12-PartI-Chapter5.html> (last visited May 19, 2016) [hereinafter *Policy Manual, Vol. 12, Pt. I, Ch. 5*].

⁸³ STOCK, *supra* note 4, at 51.

⁸⁴ *Id.*

⁸⁵ *Citizenship for Military Members*, *supra* note 16.

⁸⁶ *Id.*; STOCK, *supra* note 4, at 51.

⁸⁷ STOCK, *supra* note 4, at 51.

⁸⁸ *Policy Manual, Vol. 12, Pt. I, Ch. 2*, *supra* note 42; *Policy Manual, Vol. 12, Pt. I, Ch. 3*, *supra* note 67.

⁸⁹ *Forms, N-426, Request for Certification of Military or Naval Service*, U.S. CITIZENSHIP & IMMIGRATION SERVS., <http://www.uscis.gov/n-426> (last visited May 19, 2016) [hereinafter *N-426, Request for Certification of Military or Naval Service*]; see STOCK, *supra* note 4, at 51 n.75. If the servicemember previously served in the military, then the Form N-426 need not be certified if it is accompanied by a DD 214 (Certificate of Release or Discharge from Active Duty) or NGB 22 (National Guard Report of Separation and Record of Service) that covers all applicable periods of service and lists the type of separation and character of service. *N-426, Request for Certification of Military or Naval Service*, *supra*; See STOCK, *supra* note 4, at 51 n.75.

⁹⁰ *N-426, Request for Certification of Military or Naval Service*, *supra* note 89.

⁹¹ *Id.*

⁹² See, e.g., *N-400, Application for Naturalization*, *supra* note 81. These form can be downloaded in Portable Document Format (.pdf) from the USCIS web page. See *id.*; *N-426, Request for Certification of Military or Naval Service*, *supra* note 89. In addition to the current "edition date" being listed on the USCIS forms' web page, each paper form, as well as the form's instructions, will also list its current edition date on the bottom of the page. *N-426, Request for Certification of Military or Naval Service*, *supra* note 89. At the time of this writing, the current edition date for the N-400 is March 26, 2016. *N-400, Application for Naturalization*, *supra* note 81. However, according to the USCIS web page, starting on August 9, 2016, the USCIS will only accept the March 26, 2016 edition. *Id.* Until that time, customers may file using the September 13, 2013 edition. *Id.* Similarly, at the time of this writing, the current edition date for the N-426 is August 4, 2015. *N-426, Request for Certification of Military or Naval Service*, *supra* note 89.

⁹³ *Citizenship for Military Members*, *supra* note 16.

⁹⁴ STOCK, *supra* note 4, at 61.

⁹⁵ *Id.* A servicemember may visit any domestic USCIS Application Support Center (ASC) to have this done, even if they have not filed their application for naturalization yet. *Id.* To be fingerprinted and avoid the fee,

on naturalizing during basic training, traveling to an ASC and having their fingerprints taken before reporting to basic training is also an option.⁹⁶ While servicemembers may be tempted to utilize their enlistment fingerprints to fulfill this requirement, the process of transferring them between the military (Department of Defense) and the U.S. Department of Homeland Security, which the USCIS falls under,⁹⁷ is often slow.⁹⁸ Being fingerprinted at an ASC is often more timely and efficient for purposes of the servicemember's application.⁹⁹ Another option available to servicemembers is to have their fingerprints taken by USCIS personnel at certain military installations in the United States via mobile fingerprinting equipment.¹⁰⁰ For servicemembers stationed overseas, they "may have their fingerprints taken manually at U.S. military installations or U.S. embassies and consulates using the FD-258 fingerprint card."¹⁰¹

By law, servicemembers are exempt from the application fee associated with filing Form N-400, Application for Naturalization, pursuant to sections 328 or 329.¹⁰² Similarly, the biometric fee associated with filing for naturalization under sections 328 or 329 is also waived for servicemembers.¹⁰³ For servicemembers, this amounts to a total cost savings of \$680 dollars.¹⁰⁴ There is no fee for filing Form N-426.¹⁰⁵

Based on your research, PFC Mojica-Corrales needs to fill out the N-400 and N-426 in order to apply for expedited naturalization under section 328 or 329. Additionally,

the servicemember will need to show their military identification or other proof of service. *Id.*

⁹⁶ *Id.* This is generally the more efficient avenue of approach for those seeking to naturalize during basic training. *Id.* For noncitizen enlistees planning on naturalizing upon graduation from basic training under the USCIS "Naturalization at Basic Training Initiative," the USCIS conducts the fingerprinting on that basic training installation. *Military Service Naturalization Fact Sheet*, *supra* note 38.

⁹⁷ U.S. CITIZENSHIP & IMMIGR. SERVS., <http://www.uscis.gov> (last visited May 19, 2016).

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ STOCK, *supra* note 4, at 61. Stock lists a number of other options available to servicemembers, although one of the options may be less efficient than going to the ASC for a biometrics capture. *Id.* at 47.

¹⁰² INA § 328(b)(4), 8 U.S.C. § 1439(b)(4) (2012); INA § 329(b)(4), 8 U.S.C. § 1440(b)(4) (2012); National Defense Authorization Act for Fiscal Year 2004, Pub. L. No. 108-136, 117 Stat. 1392 (2003).

¹⁰³ *Policy Manual*, Vol. 12, Pt. I, Ch. 5, *supra* note 82.

¹⁰⁴ *N-400, Application for Naturalization*, *supra* note 81. The fee associated with the N-400 is \$595, and the fee for the biometrics is \$85. *Id.*

¹⁰⁵ *N-426, Request for Certification of Military or Naval Service*, *supra* note 89.

¹⁰⁶ U.S. CITIZENSHIP & IMMIGR. SERVS., *supra* note 97.

regarding fingerprints, you determined there are multiple options available to PFC Mojica-Corrales, some of which are more expedient than others. Finally, you nailed down the question of fees associated with applying for expedited naturalization under section 328 or 329. Prudently, you now turn your attention to researching additional resources available to legal assistance attorneys and servicemembers.

V. Resources Available to Legal Assistance Attorneys and Their Clients

There are multiple resources, both general and attorney-specific, available to legal assistance attorneys and their clients that provide information on expedited naturalization for servicemembers. One such resource is the USCIS website.¹⁰⁶ Within the USCIS website are webpages with information, both general and specific, pertaining to expedited naturalization under sections 328 and 329.¹⁰⁷ The USCIS provides information on the naturalization test, study materials for the civics and English portions of the naturalization examination, and a citizenship resource center.¹⁰⁸ This includes links to downloadable flash cards.¹⁰⁹ Another USCIS web-based resource is the availability of an email address specifically designed to assist servicemembers.¹¹⁰ The USCIS also maintains a toll-free military customer service hotline that servicemembers may utilize.¹¹¹

¹⁰⁷ See, e.g., *Naturalization Information for Military Personnel*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/sites/default/files/files/form/m-599.pdf> (last visited May 19, 2016) (providing general naturalization information to military personnel); *Citizenship for Military Members*, *supra* note 16 (providing military-specific naturalization information); *Military Service Naturalization Fact Sheet*, *supra* note 38 (same); *USCIS Policy Manual: Volume 12 – Citizenship & Naturalization, Part I – Military Members and Their Families*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume12-PartI.html> (last visited May 19, 2016) (providing detailed information on almost all aspects of military naturalization).

¹⁰⁸ *U.S. Citizenship: The Naturalization Test*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/us-citizenship/naturalization-test> (last visited May 19, 2016).

¹⁰⁹ *Id.*

¹¹⁰ *Military Service Naturalization Fact Sheet*, *supra* note 38. The email address available to servicemembers is: militaryinfo.nsc@dhs.gov. *Id.*

¹¹¹ *Military: Military Help Line*, U.S. CITIZENSHIP & IMMIGR. SERVS., <http://www.uscis.gov/military/military-help-line> (last visited May 19, 2016). The toll-free military help line is 1-877-CIS-4MIL (1-877-247-4645). *Id.* Excluding federal holidays, the call center's hours of operation are Monday through Friday from 0800 until 1630 (CST). *Id.* Servicemembers stationed in the United States or overseas can access the toll-free number through their base telephone operator or by using the Defense Switched Network (DSN). *Id.* As noted by immigration attorney, Margaret D. Stock, a word of caution is in order regarding the advice received from these hotlines—due to the complex nature of U.S. immigration laws, unless the source of the information is an expert, the advice may not be accurate. Margaret D. Stock, *Hidden Immigration Benefits for Military Personnel*, GPSOLO (Sept./Oct. 2013), http://www.americanbar.org/publications/gp_solo/2013/september_october/hidden_immigration_benefits_military_personnel.html. Similarly,

In addition to the USCIS resources, there are pro bono legal services that work with legal assistance attorneys for the benefit of their servicemember-clients.¹¹² One immigration resource is the American Immigration Lawyers Association's (AILA) "Military Assistance Program" (MAP).¹¹³ The AILA's MAP is a collaborative effort between the attorneys of the AILA and the U.S. military services Legal Assistance Offices (LAO) of the Judge Advocate General's (JAG) Corps.¹¹⁴ The program provides resources and knowledgeable pro bono legal counsel on immigration issues when the needs of the client exceed the expertise of the legal assistance attorney.¹¹⁵ Another informational resource for servicemembers is the webpage maintained by The Adjutant General Directorate (TAGD) of the U.S. Army.¹¹⁶ Available on TAGD's webpage is the useful nuts and bolts guide entitled, "The Soldier's Guide to Citizenship Application."¹¹⁷

Having completed your research, you review your case notes from the meeting with PFC Mojica-Corrales one more time. You determine that you can now address each of his questions when he comes back to your office for the follow-up meeting. He is eligible for expedited naturalization under sections 328 and 329. Based on the information he provided, it does not appear that there will be any legal issues with his case. The advantages of expedited naturalization are that he can obtain his citizenship sooner than if he applied under a civilian statutes, and the filing fees for servicemembers are waived. The big disadvantage of naturalizing under sections 328 or 329 is that PFC Mojica-Corrales' citizenship can be revoked if he fails to honorably serve for the requisite five years. Finally, the forms and procedures associated with his application appear to be straight forward.

VI. Conclusion

Expedited naturalization under sections 328 and 329 of the INA is a complex area of immigration law that requires specialized knowledge to effectively assist servicemember-applicants.¹¹⁸ Understanding the commonalities of sections

328 and 329, their specific requirements and exemptions, the key legal issues associated with each, and the forms and documents necessary to apply for expedited naturalization is critical for a judge advocate when advising and assisting a client.

Immigration law is an area in which you are able to advise clients.¹¹⁹ This article provides you with a baseline knowledge of the legal issues and requirements associated with applications for expedited naturalization under sections 328 and 329 of the INA. With this information you should be able to competently advise and assist clients. Should a client's case prove to be beyond the scope of your legal assistance office, you are now armed with information to assist them in finding a specialist in immigration law.

information listed on websites and forms programs should only be relied on when their accuracy is confirmed by an expert. *Id.*

¹¹² See, e.g., Major Tricia LeRoux Birdsell, *A Few Minutes of Your Time Can Save Your Client's Dime: Obtaining Pro Bono Assistance for Legal Assistance Clients*, ARMY LAW., June 2015, at 14 (discussing multiple pro bono resources available to legal assistance attorneys, to include immigration-specific information about the American Immigration Lawyers Association (AILA) Military Assistance Program (MAP)).

¹¹³ *AILA Military Assistance Program*, AM. IMMIGR. LAW. ASS'N, <http://www.aila.org/practice/pro-bono/find-your-opportunity/military-assistance-program> (last visited May 19, 2016). For more information on AILA's Military Assistance Program, contact the AILA's Practice and Professionalism Center (PPC) department at ppc@aila.org. *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Guide to Citizenship for Soldiers*, UNITED STATES ARMY HUMAN RESOURCES COMMAND, THE ADJUTANT GENERAL DIRECTORATE, <https://www.hrc.army.mil/tagd/guide%20to%20citizenship%20for%20soldiers> (last visited May 19, 2016).

¹¹⁷ *The Soldier's Guide to Citizenship Application*, UNITED STATES ARMY HUMAN RESOURCES COMMAND, <https://www.hrc.army.mil/site/ASSETS/PDF/SoldierGuideCit.pdf> (last visited May 19, 2016).

¹¹⁸ STOCK, *supra* note 4, at 42.

¹¹⁹ AR 27-3, *supra* note 3, para. 3-6f.

1. Have you complied with the Selective Service laws? If not, why not?
2. Have you ever served in the U.S. Armed Forces (Army, Navy, Air Force, Marines, Coast Guard, Army Reserve, Navy Reserve, Air Force Reserve, Marine Corps Reserve, Coast Guard Reserve, Army National Guard, or Air National Guard)?
3. If you have served in the U.S. Armed Forces, what were your dates of active duty and Selected Reserve service? What was the date when you were released from any and all military obligations, including inactive service in, for example, the Individual Ready Reserve?
4. Did you naturalize through military service (If yes, counsel should explore whether post-naturalization misconduct may lead to a denaturalization proceeding. See Chapter Seven of MARGARET D. STOCK, *IMMIGRATION LAW & THE MILITARY* (2d ed. 2015) for further discussion of this issue.)
5. Have you ever been the subject of a military investigation of any sort, or ever been “titled” in a military criminal investigation?
6. Have you ever received a Form DD-214 or a Form NGB-22 (National Guard only)? (If the answer is yes, the attorney should obtain a copy and review the dates of service, the characterization of service, and the reasons for discharge.)
7. If you were discharged, what was the characterization of your service when you were discharged?
8. If you were discharged, why were you discharged?
9. Have you ever claimed conscientious objector status?
10. Have you ever sought a discharge on the grounds that you were an alien (foreigner)? Even if you did not seek an alienage discharge on your own initiative, did the military discharge you on account of alienage?
11. Have you ever been the subject of any adverse administrative action while serving in the military (example: letter of reprimand, reduction in pay, reduction in rank, etc.)?
12. While you were in the military, did anyone ever “read you your rights” or investigate you for any reason?
13. Have you ever received an “Article 15” or “captain’s mast” or “mast” or “office hours” [these are all terms for non-judicial punishment under the Uniform Code of Military Justice (UCMJ)]? If so, what were the circumstances?
14. Have you ever appeared before a military administrative discharge board? If so, what was the reason for the board, and what was the result?
15. While serving in the U.S. Armed Forces, did you ever undergo any court-martial proceedings? If so, what was the level of the court-martial (summary, special, general)? What was the result of the court-martial? What was the result of any appeal?
16. Have you ever sought to have a military discharge upgraded?
17. Have you ever spoken to a judge advocate general (JAG) attorney or military legal assistance attorney about any matter?
18. Have you ever been apprehended by the military police for any reason?
19. Have you ever been confined in a military detention facility?
20. Have you ever been denied a security clearance, or had a security clearance revoked?

¹²⁰ STOCK, *supra* note 4, at 71.