



STATEMENT OF THE AMERICAN IMMIGRATION COUNCIL

SUBMITTED TO THE HOUSE COMMITTEE ON THE JUDICIARY SUBCOMMITTEE ON IMMIGRATION
AND CITIZENSHIP

OVERSIGHT OF U.S. CITIZENSHIP AND IMMIGRATION SERVICES

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The American Immigration Council (“Council”) is a non-profit organization that has worked to increase public understanding of immigration law and policy—and the role of immigration in American society—for over 30 years. We write to thank the Subcommittee for scheduling this hearing to discuss the necessary oversight of U.S. Citizenship and Immigration Services (USCIS).

USCIS Funding

USCIS requested approximately \$1.2 billion in supplemental funding from Congress in May to address a significant shortfall in resources that threatens the agency’s day-to-day operations and the financial wellbeing of thousands of employees who face potential furloughs.¹ The Council believes that the agency plays a vital role in administering our legal immigration system and that its career personnel works tirelessly in pursuit of its mission. Nevertheless, we also believe that the agency is experiencing these funding challenges in large part due to its own fiscal mismanagement, as well as the agency’s adoption and implementation of policies and processes that negatively impact its own revenue and efficiency.

The agency’s request presents a unique opportunity for Congress to exercise its constitutional oversight authority in demanding a far greater level of fiscal responsibility for the agency, and we believe that any additional funding must be conditioned on increased transparency, accountability, and cost-saving measures. Without meaningful oversight, the fiscal mismanagement and inefficiencies within the agency are likely to continue, and we fear that the American taxpayer may be asked to provide additional bailouts to the agency in the future.

¹ Michelle Hackman, “USCIS Seeks Surcharge to Immigration Applications,” *The Wall Street Journal*, May 19, 2020, <https://www.wsj.com/articles/uscis-to-add-surcharge-to-immigration-applications-11589707800>.

Congress must ensure USCIS transparency, fiscal responsibility, and efficiency

Data made available by the U.S. Department of Homeland Security (DHS) indicates that USCIS has significantly expanded its staff across the country, and therefore considerably increased its day-to-day expenses, at a time when its productivity has largely plateaued. Specifically, DHS data indicates that USCIS's personnel grew by approximately 24 percent between 2015 and 2018.² During this same period, however, the total number of immigration petitions and applications that the agency processed only increased by approximately 5 percent.³ Moreover, the total volume of cases *filed* with USCIS actually fell from 8,530,722 in Fiscal Year (FY) 2017 to 7,650,127 in FY 2019—a drop of more than 10 percent.⁴ Given that the agency is fee-funded, this disparate level of growth in personnel appears unjustified and unsustainable. Moreover, its decline in overall productivity is indefensible.

Average case processing times—the time it takes USCIS to adjudicate the various petitions and applications that it receives, including applications for naturalization and permanent residency—surged 46 percent between 2017 and 2019.⁵ USCIS has therefore significantly increased its day-to-day costs at a time when its revenue from filing fees has decreased, while also taking significantly longer to meet its processing goals. This is indefensible, and Congress must impose common-sense reforms to ensure that USCIS meets its mission while being more transparent and responsible regarding its fiscal management.

USCIS should adopt cost-efficient measures for adjudicating immigration applications and petitions

In recent years, USCIS has adopted a series of policies and practices that have created inefficiencies in its operations—increasing the agency's overall cost of adjudicating immigration applications and petitions—while at the same time resulting in a reduction in the overall number of applications and petitions that the agency receives. USCIS should take the following measures to reduce the cost of adjudicating immigration applications and petitions:

- **USCIS should eliminate its in-person interview requirement for routine cases.** In October 2017, USCIS began implementing its in-person interview requirement for all individuals seeking lawful permanent residency through their U.S. employer, as well as certain relatives seeking family

² See U.S. Dept. of Homeland Security, *FY 2015 Budget in Brief*, U.S. Citizenship and Immigration Services, At a Glance, Page 133, <https://www.dhs.gov/sites/default/files/publications/FY15-BIB.pdf>. See also, U.S. Dept. of Homeland Security, *FY 2018 Budget in Brief*, U.S. Citizenship and Immigration Services, At a Glance, Page 67, <https://www.dhs.gov/sites/default/files/publications/DHS%20FY18%20BIB%20Final.pdf>.

³ See U.S. Dept. of Homeland Security, *FY 2017 Budget in Brief*, U.S. Citizenship and Immigration Services, Page 70, https://www.dhs.gov/sites/default/files/publications/FY2017_BIB-MASTER.pdf. See also, U.S. Dept. of Homeland Security, *FY 2020 Budget in Brief*, U.S. Citizenship and Immigration Services, Page 58, https://www.dhs.gov/sites/default/files/publications/fy_2020_dhs_bib.pdf.

⁴ See U.S. Citizenship and Immigration Services, “All USCIS Application and Petition Form Types (Fiscal Year 2017),” https://www.uscis.gov/sites/default/files/document/data/Quarterly_All_Forms_FY17Q4.pdf. See also U.S. Citizenship and Immigration Services, “All USCIS Application and Petition Form Types (Fiscal Year 2019),” https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/Quarterly_All_Forms_FY19Q4.pdf.

⁵ American Immigration Lawyers Association, *AILA Policy Brief: USCIS Processing Delays Have Reached Crisis Levels Under the Trump Administration*, January 30, 2019, <https://www.aila.org/advo-media/aila-policy-briefs/aila-policy-brief-uscis-processing-delays>.

reunification with asylees and refugees.⁶ Under prior policy, USCIS officers had discretion to require such interviews on a case-by-case basis, where, for example, applications presented fraud or national security concerns. The new policy mandates those interviews indiscriminately, despite no meaningful evidence of this requirement's utility. These unnecessary and time-intensive interviews drain agency resources. USCIS should eliminate its in-person interview requirement for routine cases that present no fraud or national security concerns.

- **USCIS should reinstitute the agency's 2004 "deference" policy.** In October 2017, USCIS rescinded longstanding guidance under which USCIS adjudicators deferred to prior approvals of temporary immigration benefits when processing requests to extend those benefits, absent error or a material change in circumstances.⁷ Under the agency's new guidance, USCIS personnel must now effectively re-adjudicate many previously approved petitions despite no change in the terms and conditions. This needless duplication of efforts squanders resources, drives delays, and creates inconsistency in adjudications. To more cost-effectively adjudicate petitions, USCIS should rescind its 2017 policy and reinstitute its 2004 deference policy.
- **USCIS should reuse biometrics and waive the biometrics requirement for certain groups.** USCIS should exercise its discretion pursuant to 8 CFR 103.2(b)(9) to limit when biometrics need to be captured. In order to save personnel and processing costs, USCIS should reuse all biometrics that have been captured within the past five years for any form type and waive the biometrics requirement for individuals under the age of 14 or above the age of 65, as well as for applicants who have been previously vetted—such as Form I-539, Application to Extend/Change Nonimmigrant Status, and naturalization applicants.
- **USCIS should stop rejecting applications and petitions due to alleged incompleteness or blank spaces.** USCIS has recently begun implementing a policy in which the agency is rejecting, and in some cases denying, applications and petitions for alleged incompleteness for failure to complete certain sections of the form. This includes rejecting forms for failure to write "N/A" in boxes that are clearly inapplicable.⁸ Requiring officers to review for non-material spaces and expend resources to return petitions and fees is an inefficient use of agency resources and creates an unnecessary barrier to accepting applications and petitions, especially for applicants who are

⁶ U.S. Citizenship and Immigration Services, "USCIS to Expand In-Person Interview Requirements for Certain Permanent Residency Applicants," August 28, 2017, <https://www.uscis.gov/news/news-releases/uscis-to-expand-in-person-interview-requirements-for-certain-permanent-residency-applicants>.

⁷ U.S. Dept. of Homeland Security, U.S. Citizenship and Immigration Services, *Policy Memorandum PM-602-0151, Rescission of Guidance Regarding Deference to Prior Determinations of Eligibility in the Adjudication of Petitions for Extension of Nonimmigrant Status*, October 23, 2017, <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2017/2017-10-23-Rescission-of-Deference-PM602-0151.pdf>.

⁸ See, e.g., failing to write "N/A" in the "apartment number" box for an applicant who lives in a house. In some cases, USCIS has even rejected applications where an applicant or petitioner indicates "not applicable," "na," or "none" instead of "N/A" in a particular section of the form.

not represented by attorneys. USCIS should refrain from rejecting applications and petitions on this basis.

- **Issue RFEs and NOIDS more judiciously.** In recent years, USCIS has been issuing Requests for Evidence (RFEs) and Notices of Intent to Deny (NOIDs) at an unprecedented rate, which wastes limited staff resources and increases the overall time it takes for USCIS to adjudicate applications and petitions. For example, for H-1B petitions, USCIS data reveals the percentage of completed cases with RFEs increased from 22.3 percent in FY 2015 to 40.2 percent in FY 2019.⁹ The RFE rate reached 60 percent during the first quarter of FY 2019 and was 47.2 percent during the first quarter of FY 2020.¹⁰ Frequently, RFEs and NOIDs are issued seeking evidence that has already been provided or that is unnecessary to establish eligibility. The agency should take steps to issue RFEs and NOIDs more judiciously to spare agency resources.
- **DHS should immediately suspend its public charge rule.** DHS recently implemented a convoluted and inefficient new framework that radically heightens the standard for determining whether an applicant for admission to the United States may become a “public charge.” As implemented, the DHS public charge rule penalizes people for even the modest use of an array of public benefits that they are legally permitted to use. The new framework forces USCIS adjudicators to engage in an analysis that is significantly more complex and time consuming than before.¹¹ The public charge rule created a significant operational burden for USCIS, forcing adjudicators to spend considerably more time processing individual applications. Moreover, given the public charge rule’s heightened standard, it is likely to reduce the overall number of applications and related fees that USCIS will receive. The rule has also led to considerable fear and confusion surrounding the use of medical care, creating a chilling effect that has even led some immigrants to avoid hospitals during the COVID-19 pandemic.¹²

Congress must ensure that USCIS remains focused on its service-oriented statutory mission

- **Congress should prohibit the transfer of USCIS funds to other federal agencies.** In its proposed fee rule, USCIS has sought to transfer over \$200 million from the agency’s fee account to U.S. Immigration and Customs Enforcement (ICE) to be used for enforcement purposes. In light of the USCIS’s own fiscal challenges, Congress must ensure that the agency is prohibited from transferring any funds from the fee account to ICE through binding language restricting its transfer authority.

⁹ National Foundation for American Policy, *H-1B Approved Petitions and Denial Rates for FY 2019*, February 2020, <https://nfap.com/wp-content/uploads/2020/02/H-1B-Denial-Rates-Analysis-of-FY-2019-Numbers.NFAP-Policy-Brief.February-2020-1.pdf>.

¹⁰ *Id.*

¹¹ See Inadmissibility on Public Charge Grounds, 84 FR 41292, Aug. 14, 2019, <https://www.federalregister.gov/documents/2019/08/14/2019-17142/inadmissibility-on-public-charge-grounds>.

¹² Amir Khafagy, “Some Immigrants Avoid New York Hospitals Because of the Public Charge Rule,” *Documented NY*, May 21, 2020, <https://documentedny.com/2020/05/21/some-immigrants-avoid-new-york-hospitals-because-of-the-public-charge-rule/>.

- **Congress must ensure USCIS remains service oriented.** Congress must ensure that USCIS refocuses on the adjudicatory mission Congress gave the agency upon the creation of DHS.¹³ USCIS is not primarily a vetting agency. It is an agency designed to adjudicate immigration benefits, and it must focus its resources on that purpose rather than on immigration enforcement. Despite this clear purpose, USCIS has in recent years spent extensive resources on a large expansion of its fraud directorate, required duplicative in-person interviews which increased adjudicatory costs, and expended considerable resources assisting denaturalization efforts run by the Department of Justice.

USCIS should adopt measures to generate new revenue

- **USCIS should expand its premium processing service.** USCIS generates substantial revenue from its premium processing service, which allows for certain petitions to be processed within 15 calendar days for an additional filing fee of \$1,440. As of the end of FY 2019, USCIS had \$648 million in its premium processing account.¹⁴ However, USCIS suspended premium processing a number of times over the past few years—including most recently in March 2020, when USCIS announced a temporary suspension of premium processing services for Form I-129, Petition for Nonimmigrant Worker, and Form I-140, Petition for Immigrant Worker. While the agency announced on May 29 that it planned to begin phasing in premium processing starting June 1 for Form I-140 and Form I-129¹⁵ in order to increase its revenue, USCIS should expand premium processing services to other form types used for the benefit of "business customers,"¹⁶ such as Form I-539,; Form I-485, Application to Register Permanent Residence or Adjust Status; and Form I-765, Application for Employment Authorization. USCIS should also be permitted to use the funds temporarily in its premium processing account for general expenses, including payroll needs.
- **USCIS should adopt measures that would increase the filing of applications and petitions.** The immigration filing system is particularly cumbersome as it is primarily paper based. These difficulties have been further exacerbated during the COVID-19 pandemic, making it more difficult for individuals to file applications and petitions, which likely contributed to USCIS's significant decrease in receipts for April 2020. In order to increase filings of applications and petitions, USCIS should adopt the following measures:

¹³ See Section 451(b), Homeland Security Act of 2002, Public Law 107-296 (Nov. 25, 2002), transferring five specific functions from INS to the newly created Bureau of Citizenship and Immigration Services: "(1) Adjudications of immigrant visa petitions; (2) Adjudications of naturalization petitions; (3) Adjudications of asylum and refugee applications; (4) Adjudications performed at service centers; (5) All other adjudications performed by [INS] immediately before the effective date..."

¹⁴ Department of Homeland Security, U.S. Citizenship and Immigration Services, *Budget Overview: Fiscal Year 2021 Congressional Justification*,

https://www.dhs.gov/sites/default/files/publications/united_states_citizenship_and_immigration_services.pdf.

¹⁵ U.S. Citizenship and Immigration Services, "USCIS Resumes Premium Processing for Certain Petitions," May 29, 2020, <https://www.uscis.gov/news/alerts/uscis-resumes-premium-processing-certain-petitions>.

¹⁶ See 8 U.S.C. 1356, INA 286(u).

- **Allow for digital signatures.** Although USCIS had provided stakeholders with some signature flexibility when filing applications and petitions with USCIS,¹⁷ due to “stay at home” orders and social distancing protocols, stakeholders may not have the appropriate equipment at home that allows them to print, copy, or scan signed documents. USCIS should therefore allow for digital signatures and clarify its guidance that signatures ‘handwritten’ through electronic means—such as by using a finger to trace the signature through applications such as Adobe Fill & Sign or CamScanner—are acceptable.
- **Allow for electronic payment for all application types.** The requirement that all petitions and applications submitted to a USCIS Service Center must include a physical check for payment of the filing fee is proving to be problematic for many petitioners and representatives who are working from home in light of the COVID-19 pandemic. USCIS should allow all applicants and petitioners, regardless of whether they are filing at a USCIS Lockbox or a Service Center, to make electronic payment from a bank account, credit card, or debit card.
- **Recapture unused green cards.** Congress can promote revenue generation at USCIS by supporting the recapture of unused immigrant visas—including at least 176,000 unused immigrant visas, which could be recaptured through legislation.¹⁸ This measure would prompt an immediate surge of revenue-generating visa petitions and adjustment-of-status filings, which could generate hundreds of millions of dollars of revenue. Congress has utilized visa recapture in the past.¹⁹ Visa recapture represents a unique opportunity to simultaneously cut immigrant visa backlogs and ensure revenue generation.

USCIS should implement policies to address challenges created by the COVID-19 pandemic

The COVID-19 pandemic has significantly impacted day-to-day operations within USCIS. While the pandemic has almost certainly had a negative impact on the agency’s budget by reducing the revenue that USCIS receives through filing fees, it has also created significant challenges for the stakeholders that USCIS is supposed to serve.

Many of USCIS’s stakeholders have experienced challenges in obtaining or maintaining lawful status in the United States during the pandemic. While the agency has taken incremental steps to address some of the processing issues created by the pandemic, it has failed to implement the policy changes necessary to allow stakeholders to seek or maintain lawful status in the United States during the extended period of social distancing that was mandated in most parts of the country. USCIS should adopt and implement the following measures:

¹⁷ U.S. Citizenship and Immigration Services, “USCIS Announces Flexibility in Submitting Required Signatures During COVID-19 National Emergency,” May 1, 2020, <https://www.uscis.gov/news/alerts/uscis-announces-flexibility-submitting-required-signatures-during-covid-19-national-emergency>.

¹⁸ Jeremy L. Neufeld, “Congress Can Tap Unused Visas To Bring Nurses and Physicians To Help Fight COVID-19” *Niskanen Center*, April 29, 2020, <https://www.niskanencenter.org/emergency-nurses-unused-visas/>.

¹⁹ See Sec. 502 of the Emergency Defense Supplemental bill of 2005, H.R. 1268.

- USCIS should suspend all deadlines and extend all nonimmigrant statuses for at least 90 days beyond the duration of the COVID-19 national emergency and avoid denying applications or petitions where individuals do not attend interviews, appointments, or naturalization oath ceremonies during the pandemic.
- USCIS should waive in-person interviews when legally authorized and permit naturalization oaths to be taken through video.
- USCIS should excuse any late filings of extension or change-of-status requests for up to 90 days after the end of the national emergency and provide an automatic grant of deferred action for the duration of the national emergency for individuals whose status has expired and cannot be extended or changed.

Considering the foregoing facts, we urge the Subcommittee to exercise its oversight authority to ensure that USCIS becomes a more transparent, efficient, and fiscally responsible government agency. We thank you for the opportunity to submit this statement, and for the Subcommittee's efforts to engage in a thoughtful conversation.