



Statement for the Record

from Todd Schulte

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**Submitted to the House Judiciary Subcommittee on
Immigration and Citizenship**
regarding “Policy Changes and Processing Delays at U.S.
Citizenship and Immigration Services”

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FWD.us is a bipartisan advocacy organization founded by key leaders in the technology and business communities. We represent a community of tens of thousands of entrepreneurs, technologists, industry experts, community leaders, and grassroots advocates who believe America's families, communities, and economy thrive when more individuals are able to achieve their full potential. Our mission is to promote policies that keep the United States competitive in the global economy, beginning with immigration and criminal justice reform.

We are writing to express our concerns with the dramatic increase in processing times and delays at the United States Citizenship and Immigration Services (USCIS), and to urge this committee to exercise its oversight authority, seek answers and direct the agency to reverse onerous policies that have increased processing times and compounded case backlogs. These delays create substantial challenges for individuals applying for immigration benefits, as well as for their family members and employers. At best, the delays are an undue inconvenience and expense for those attempting to navigate the legal immigration system, including intending immigrants, American employers, and vulnerable populations seeking protection. At worst, the consequences of the changes in policy and processing delays are much more severe, and can endanger the legal status, safety, and livelihoods of those affected.

Data provided by American Immigration Lawyers Association (AILA) paint a disturbing picture of increasing delays and compounding backlogs under the Trump Administration.¹ Average case processing times have surged by 46% from FY2016 to FY2018, with 79% of form types seeing increased processing times in this period. Processing times for employment-based immigration petitions have increased 37% since 2017, while processing applications for work authorization is taking twice as long. Domestic abuse survivors are waiting 181% longer for processing. And the overall backlog of delayed cases *doubled* from FY2016 to 2017, despite only a 4% increase in total receipts, with the backlog now exceeding 5.69 million.

USCIS has directly contributed to these delays by implementing policies, often without Congressional oversight or public comment, and sometimes in disregard of congressional intent, where the primary effect is a slow down in processing without clear benefits. For example, USCIS has ended the policy of "deference" for employment-based renewal petitions, requiring officers to completely re-adjudicate petitions for employers who have established their bona fides time and again, even though the underlying case has not changed.² USCIS now also requires all employment-based green card applicants to appear for in-person interviews.³ While we recognize that in an effort to minimize wait times, USCIS is scheduling such interviews at USCIS offices outside of the standard jurisdiction of where the applicant resides, it comes at a cost of both time and money to all

parties involved. Meanwhile, trends in adjudication (acknowledged by USCIS but not reflected in official policy guidance) have led to bureaucratic slowdowns, including a massive spike in the rates of Requests for Evidence (RFE) issued,⁴ often demanding information that is irrelevant to the case or has already been submitted.

The agency has also taken steps to restrict access to immigration benefits,⁵ such as former Director L. Francis Cissna's instruction to close USCIS field offices abroad⁶, or the record-long suspensions of premium processing services⁷ which have made it impossible for employers to fill positions and put nonimmigrant visa holders at risk of falling out of status. Some changes have been more targeted, like the recently reported termination⁸ of the Parole-in-Place program to protect family members of U.S. military personnel from deportation, or the re-defining of "unlawful presence" so it could be applied to international students unknowingly and retroactively, potentially barring them for up to a decade from re-entering the country.⁹

In all these cases, the red-tape is not just an inconvenience, but can lead directly to an individual losing his or her legal status, even if they have followed all guidance and directions. That risk is compounded by the agency's new policies of automatically issuing notices to appear when benefit requests are denied,¹⁰ or limiting when RFEs are issued to solicit information to resolve concerns of adjudications officers for often otherwise approvable filings.¹¹ Noncitizens trying to navigate the legal immigration process may now find themselves forced into deportation proceedings and facing long lasting immigration consequences impacting themselves and often family members and U.S. employers.

These excessive delays and backlogs reflect a stark departure from USCIS' intended purpose. Congress established USCIS to be a service-oriented agency, responsible for adjudicating requests and administering immigration benefits. In the Homeland Security Act of 2002, Congress explicitly identified elimination of backlogs as a central focus for USCIS, and went so far as to create an Ombudsman's office to ensure that in addition to congressional oversight, administrative review by DHS would also help keep processing on track and timely.¹² In recent years, however, agency leadership has increasingly shifted focus to enforcement of immigration law while downplaying the responsibility the agency has to processing immigration filings of immigrants and sponsors. These shifts are alarming because they clearly diverge from the intention of Congress in creating the agency; they also direct limited resources away from USCIS' core functions, exacerbating the excessive delays and backlogs.¹³

As 38 bipartisan United States Senators noted in a letter¹⁴ to the agency earlier this year, these shifts have serious consequences for our communities and our economy. Processing delays

leave vulnerable populations, many with longstanding ties to the United States, at risk of falling out of status, jeopardizing their futures in America and exposing their families to risk of deportation or separation. For some, such as domestic violence survivors, these delays can keep them trapped in dangerous situations while they wait.¹⁵ These delays also prevent families from being able to provide for themselves and contribute fully to their communities. Businesses struggle to plan and innovate when visa processing for their workforce is unpredictable and indefinitely delayed, making it impossible to fill critical roles and driving them to shift work outside of the U.S.¹⁶ Our already broken immigration system is straining under the weight of the increased backlogs and slowdowns, and these challenges will only compound if USCIS continues on its current course.

We acknowledge and commend the difficult work career civil servants at USCIS do every day to provide fair and timely adjudication and administration of immigration benefits, made all the more difficult by a broken and outdated immigration system. However, we are concerned that recent policies and actions are moving the agency in the wrong direction. While we recognize that USCIS must not only address the present issues facing the agency within a budget, and also must be forward-looking to ensure the long-term health of the agency, we believe that, especially if-- as the agency maintains-- filings are increasing and there would thus be a presumed increase of fee revenue, the agency need not drastically increase filing fees or eliminate fee waiver options. We strongly encourage those making policy decisions within DHS and USCIS, and those conducting oversight on this committee, to ensure that during current biennial fee reviews and other times in reviewing the agency's budget, whatever increases in fees are considered, they be necessary and reasonable, and not create an additional barrier to immigrants lawfully pursuing their immigration paths in the U.S.

We urge this committee to press for explanations for these dramatic spikes in delays, and to exercise its oversight authority to hold USCIS accountable, to direct the agency to commit to real solutions to reduce the backlog, lower barriers to access for immigration services, and carry out its intended mission of ensuring that immigrants and vulnerable populations are prioritized in the agency's work.

¹ “AILA Policy Brief: USCIS Processing Delays Have Reached Crisis Levels Under the Trump Administration,” *American Immigration Lawyers Association*, January 31, 2019, available at <https://www.aila.org/infonet/aila-policy-brief-uscis-processing-delays>.

² “Rescission of Guidance Regarding Deference to Prior Determinations of Eligibility in the Adjudication of Petitions for Extension of Nonimmigrant Status,” *United States Citizenship and Immigration Services*, October 23, 2019, available at <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2017/2017-10-23Rescission-of-Deference-PM6020151.pdf>.

³ “USCIS to Expand In-Person Interview Requirements for Certain Permanent Residency Applicants,” *United States Citizenship and Immigration Services*, August 28, 2017, available at <https://www.uscis.gov/news/news-releases/uscis-to-expand-in-person-interview-requirements-for-certain-permanent-residency-applicants>.

⁴ “H-1B Denials and Requests for Evidence Increase Under the Trump Administration,” *National Foundation for American Policy*, July 2018, available at <https://nfap.com/wp-content/uploads/2018/07/H-1B-Denial-and-RFE-Increase.NFAP-Policy-Brief.July-2018.pdf>.

⁵ The Administration’s proposed rule re-defining “public charge” is another example of a policy that would restrict access to immigration benefits. If the rule were implemented, individuals seeking green cards or temporary visas could be denied if they have, or possibly could in the future, access public benefits, even those to which they are legally entitled. FWD.us submitted a public comment on this rule, explaining that “would cost the United States in the long run by imposing arbitrary and unfair restrictions on legal immigration, damaging the health of our communities and our economy.” The full comment can be read at <https://www.regulations.gov/contentStreamer?documentId=USCIS-2010-0012-36532&attachmentNumber=1&contentType=pdf>.

⁶ Romo, Vanessa, “Trump Administration Seeks To Close International Immigration Offices,” *NPR*, March 12, 2019, available at <https://www.npr.org/2019/03/12/702807908/trump-administration-seeks-to-close-international-immigration-offices>.

⁷ “USCIS Extends and Expands Suspension of Premium Processing for H-1B Petitions to Reduce Delays,” *United States Citizenship and Immigration Services*, August 28, 2018, available at <https://www.uscis.gov/news/uscis-extends-and-expands-suspension-premium-processing-h-1b-petitions-reduce-delays>.

⁸ Myers, Meghan, “New Trump policies could end in deportations for some active duty troops,” *Military Times*, June 28, 2019, available at <https://www.militarytimes.com/news/your-military/2019/06/28/new-trump-policies-could-end-in-deportations-for-some-active-duty-troops>.

⁹ “Accrual of Unlawful Presence and F, J, and M Nonimmigrants,” *United States Citizenship and Immigration Services*, August 9, 2018, available at <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2018/2018-08-09-PM-602-1060.1-Accrual-of-Unlawful-Presence-and-F-J-and-M-Nonimmigrants.pdf>.

¹⁰ “Updated Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens,” *United States Citizenship and Immigration Services*, June 28, 2018, available at <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2018/2018-06-28-PM-602-0050.1-Guidance-for-Referral-of-Cases-and-Issuance-of-NTA.pdf>.

¹¹ “Issuance of Certain RFEs and NOIDs,” *United States Citizenship and Immigration Services*, July 13, 2018, available at https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/AFM_10_Standards_for_RFEs_and_NOIDs_FINAL2.pdf.

¹² “Homeland Security Act of 2002,” *Department of Homeland Security*, available at https://www.dhs.gov/sites/default/files/publications/hr_5005_enr.pdf.

¹³ Department of Homeland Security United States Citizenship and Immigration Services Budget Overview, Fiscal Year 2020 Congressional Justification, at pg. 56. See also https://www.dhs.gov/sites/default/files/publications/19_0318_MGMT_CBJ-Citizenship-Immigration-Services_0.pdf. “As was the case in the FY 2019 President’s Budget, the FY 2020 President’s Budget proposed that the IEFA budget include anticipates [sic] a \$207.6M transfer of USCIS IEFA fee funding expended from USCIS Operations and Support (O&S), to Immigration and Customs Enforcement (ICE) Operations and Support (O&S) for law enforcement fraud investigations.”

¹⁴ Available at [https://www.uscis.gov/sites/default/files/files/nativedocuments/Processing_Delays - Senator Tillis.pdf](https://www.uscis.gov/sites/default/files/files/nativedocuments/Processing_Delays_-_Senator_Tillis.pdf)

¹⁵ Lavelle, Moira, “Immigrant Women in Abusive Relationships Face Long Delays for Green Cards—and Possible Deportation,” *Rewire News*, November 19, 2018, available at <https://rewire.news/article/2018/11/19/immigrant-women-in-abusive-relationships-face-long-delays-for-green-cards-and-possible-deportation/>.

¹⁶ Anderson, Stuart, “USCIS Immigration Delays Grow Longer And Longer”, *Forbes*, January 31, 2019, available at <https://www.forbes.com/sites/stuartanderson/2019/01/31/uscis-immigration-delays-grow-longer-and-longer/#2cc2ec2b2254>.