



Statement of the National Immigration Law Center

House Immigration and Citizenship Subcommittee of the Judiciary Committee

Oversight of U.S. Citizenship and Immigration Services Hearing

July 29, 2020 at 10:00 AM

Dear Members of the House Judiciary Subcommittee on Immigration and Citizenship:

The National Immigration Law Center (“NILC”) is pleased to submit this statement to the U.S. House Subcommittee on Immigration and Citizenship of the Committee on the Judiciary for the July 29, 2020 “Oversight of U.S. Citizenship and Immigration Services” hearing.

Founded in 1979, NILC is an organization exclusively dedicated to defending and advancing the rights and opportunities of low-income immigrants and their families. We believe that all people should have the opportunity to achieve their full human potential – regardless of their race, gender, immigration, and/or economic status. For over 40 years, NILC has won landmark legal decisions protecting fundamental human and civil rights and advocating for policies that reinforce our nation’s values of equality and justice for all. Furthermore, we engage in policy analysis and advocacy, strategic communications, and provide technical assistance to partner organizations across the country. We commend the Committee for conducting this oversight hearing to ensure that the U.S. Citizenship and Immigration Services (“USCIS”) fulfills its statutory mission¹ of adjudicating immigration benefits petitions and applications in the most efficient and fair manner as possible.

USCIS is the component of the Department of Homeland Security (DHS) in charge of processing immigration filings, which results in the reunification of families, humanitarian relief for those in need, and allows U.S. employers to sustain and grow their businesses with employees who have the skill sets they need. NILC is disappointed by recent USCIS policy and operational changes that have further complicated our immigration system. We encourage this Committee, and others, to

¹ Homeland Security Act 2002, Public Law 107-296. See https://www.dhs.gov/sites/default/files/publications/hr_5005_enr.pdf

further explore and investigate the matters of particular concern to NILC that are addressed in this letter.

USCIS' financial situation. USCIS has asked Congress for a \$1.2 billion bailout and has threatened to furlough over half of its employees by the end of August, despite USCIS projecting a surplus through the end of the fiscal year.² We expect this will significantly delay processing times. Their decision to proceed with furloughs despite the surplus puts into question the management and use of funds if Congress were to give them additional funding. Even without furloughs, we have already seen the fiscal mismanagement and policy decisions delay the issuance of employment authorization documents to those who have already paid for and been approved the benefit.³ While we want USCIS to remain operational and to process immigration relief requests efficiently, we recommend that any Congressional funding for USCIS be paired with accountability measures that ensure that the funds are applied to reduce processing times and prohibit USCIS from transferring those funds outside of USCIS, such as to U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE).

NILC is firmly opposed to the 10% surcharge that USCIS proposes to apply across immigration programs with which to pay back the U.S. Department of Treasury.⁴ A 10 percent surcharge, in addition to the concerning USCIS proposed fee schedule regulation- expected to be published as final imminently- that would hike fees by as much as 70 percent and create unprecedented fees for humanitarian-based filings,⁵ would significantly increase the cost of applying for immigration benefits, thereby making it prohibitively expensive and resulting in fewer filings, and less revenue.

NILC encourages this Committee to investigate USCIS and DHS policy and operational changes, that, if reversed, could result in more people applying for immigration benefits and increased revenue for USCIS. Policies such as the gross expansion of public charge⁶, recent changes to the USCIS Policy Manual⁷ that would expand an officer's discretion to deny an immigration benefit

²See Nick Miroff, "The U.S. Immigration Agency Needs a \$1.2 Billion Bailout, and Negotiations Have Put Democrats in a Bind," *The Washington Post*, July 1, 2020, *available at*: https://www.washingtonpost.com/immigration/immigration-agency-bailout-furlough/2020/06/30/93ee2a3a-ba45-11ea-86d5-3b9b3863273b_story.html?outputType=amp

³ See Catherine Rampbell, "How the Trump Administration is Turning Legal Immigrants into Undocumented Ones," *The Washington Post*, July 9, 2020, *available at*: https://www.washingtonpost.com/opinions/how-the-trump-administration-is-turning-legal-immigrants-into-undocumented-ones/2020/07/09/15c1cbf6-c203-11ea-9fdd-b7ac6b051dc8_story.html

⁴ See DHS letter, at https://www.uscis.gov/sites/default/files/document/notices/DHS_letter.pdf and Office of Management and Budget letter, at https://www.uscis.gov/sites/default/files/USCIS/files/OMB_letter.pdf, to Senate Appropriations Committee Chairman in support of 10 percent surcharge.

⁵ See OIRA Conclusion of EO 12866 Regulatory Review of the U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements *available at* <https://www.reginfo.gov/public/do/eoDetails?rrid=130597>

⁶ See USCIS's Public Charge webpage *available at*: <https://www.uscis.gov/green-card/green-card-processes-and-procedures/public-charge>

⁷ See USCIS Policy Manual *available at*: <https://www.uscis.gov/policy-manual>

such as work authorization and the Notice to Appear policy memorandum⁸ of June 28, 2018, which places immigrants into removal proceedings upon denial of a benefit, all strongly discourage immigrants, their family, and their employers, from pursuing an immigration filing with USCIS.

Applying Discretion in USCIS Adjudications. On July 15th, USCIS published changes to its USCIS Policy Manual, requiring officers to heighten their discretionary review of an expanded pool of immigration filings based on expanded criteria, with written justification of their decision.⁹ People seeking immigration relief such as Temporary Protected Status (TPS) and asylum, or benefits such as adjustment of status, employment visas, and work authorization must show, under the new policy, that they not only meet the eligibility requirements for the benefit, but that they also merit a favorable exercise of discretion based on the expanded discretion-based criteria. The policy manual provides an extensive list of arbitrary factors that officers should consider on a case-by-case basis to make their discretionary determination, asking them to balance positive and negative factors before approving a benefit filing, but with little to no guidance on how much weight to place on each factor. NILC is concerned that such a nebulous policy will lead to arbitrary immigration denials and even longer processing times. NILC is also concerned that because employment authorization application denials are not subject to administrative appeal,¹⁰ that the policy change is a de facto way to make employment authorization more difficult to obtain for immigrants. For those immigration filings that are subject to administrative appeal, NILC is concerned that the required discretionary analysis for each and every filing will increase the number of appeals filed, while simultaneously making the appellate process less just, since denials based on discretionary findings, rather than eligibility, are more challenging to overturn.

USCIS will not be accepting initial DACA requests and ancillary advance parole requests despite the June 18th U.S. Supreme Court decision. The U.S. Supreme Court, followed by the District Court of Maryland¹¹ requires that USCIS restore the Deferred Action for Childhood Arrivals (“DACA”) program that the Trump Administration attempted to terminate, permitting USCIS to again process initial DACA requests and advance parole applications. However, on July 28, over a month after the decision, DHS issued a new memorandum limiting the DACA program.¹² The memorandum requires USCIS to reject all initial DACA requests, reject advance parole requests from DACA recipients unless they’re for exceptional circumstances, and to continue processing DACA renewal requests but to grant DACA and work authorization for a

⁸ USCIS Policy Memorandum PM-602-0050.1, “Updated Guidance for the Referral of Cases and Issuances of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens,” June 28, 2018. <https://www.uscis.gov/sites/default/files/document/memos/2018-06-28-PM-602-0050.1-Guidance-for-Referral-of-Cases-and-Issuance-of-NTA.pdf>

⁹ USCIS Policy Alert PA-2020-10, “Applying Discretion in USCIS Adjudications,” July 15, 2020. <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20200715-Discretion.pdf>

¹⁰ 8 CFR 274a.13(c).

¹¹ See *CASA de Maryland, et al. v. U.S. Department of Homeland Security, et al.* order, July 17, 2020, available at: <https://www.courtlistener.com/recap/gov.uscourts.mdd.403497/gov.uscourts.mdd.403497.97.0.pdf>

¹² Chad F. Wolf, Dep’t of Homeland Security, Memorandum Letter on Reconsideration of the “Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children,” July 28, 2020. https://www.dhs.gov/sites/default/files/publications/20_0728_s1_daca-reconsideration-memo.pdf

year, rather than two years. NILC is greatly disappointed by DHS's actions affecting hundreds of thousands of immigrant youth. Not only are many immigrant youth deprived of the ability to apply for DACA and in most cases advance parole, but those who have received DACA and relied on its protection will have to pay \$495 to only receive one year of protection rather than two. Ability to pay DACA-related fees has long been an obstacle for many DACA recipients, and at a time when many are facing unprecedented financial hardship, this additional yearly fee could hinder eligible individuals from applying in a timely manner that would allow them to maintain continued work authorization. This abrupt change to a program in existence for over 8 years during an economic and health crisis is cruel and unjustified. As the Committee charged with overseeing USCIS, we respectfully request that you investigate the rationale and process for this decision, including if any alternatives to these changes were considered.

NILC looks forward to working with members of this Committee to ensure USCIS' actions are in line with our values of fairness, equality, and justice by continuing to highlight USCIS policy and operational changes and to identify further areas requiring oversight.

Sincerely,
The National Immigration Law Center