

Statement of
Asian Americans Advancing Justice | AAJC

Hearing Titled

“Policy Changes and Processing Delays at U.S. Citizenship and Immigration Services”

House Judiciary Committee

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Asian Americans Advancing Justice | AAJC advocates for an America in which all Americans can benefit equally from, and contribute to, the American dream. Advancing Justice | AAJC’s mission is to advance the civil and human rights for Asian Americans and to build and promote a fair and equitable society for all. We write to express our strong concern over the increasing processing delays at the Department of Homeland Security’s U.S. Citizenship and Immigration Services (USCIS) and our opposition to policies which turn USCIS into an enforcement agency.

Immigration and naturalization services are a very important to Asian American and Pacific Islander (APIs) communities. 92% of Asian Americans are immigrants or the children of immigrants, and the Asian American and Pacific Islander population includes the highest proportion of immigrants of other racial and ethnic groups in the U.S.

When Congress passed the Homeland Security Act of 2002, it established USCIS as a service-oriented immigration benefits agency separate and apart from the immigration enforcements arms of the Department of Homeland Security. The intention was to separate the service and benefits arm from the enforcement arms of the agency, efficiently processing applications intended USCIS to function as a service-oriented immigration benefits agency that efficiently processes cases. Reflecting Congress’s emphasis on timely USCIS case processing, the Act expressly references the elimination and prevention of case backlogs.

Severe and increasing USCIS case processing delays demonstrate the agency's failure to fulfill its statutory mission. USCIS's overall average case processing time surged by 46 percent from FY 2016 to FY 2018 and by 91 percent from FY 2014 to FY 2018.¹ USCIS processed 94 percent of its form types—from applications for employment authorization to petitions for humanitarian protection for human trafficking victims—more slowly in FY 2018 than in FY 2014.² USCIS's overall backlog of delayed cases exceeded 5.69 million in FY 2018, a 69 percent increase over FY 2014.³ The magnitude of USCIS's case backlog and associated delays highlights the agency's failure to meet Congress's mandate to efficiently administer our legal immigration system.

These delays are not accidental but rather part of a cohesive plan rooted in white nationalism that seeks to reduce and slow the number of people of color who immigrate to the U.S., acquire status or naturalize. These changes are not coincidental but rather part of a cohesive set of policy changes that include but are not limited to the Muslim and refugee ban, asylum law changes, mass incarceration and separation of families at our border, immigration raids and mass prosecution of immigrants that we are witnessing throughout our immigration system.

Under the Trump Administration, the agency has been moving towards an enforcement agency, taking resources away from the processing of immigration benefits applications and increasing processing times and backlogs.⁴ The inefficient policies specific to USCIS's are key drivers of these delays. Indeed, USCIS has publicly acknowledged its policies' contribution to the case backlog.⁵ Inefficient policies and practices that drive delays include:

- Sweeping and unnecessary in-person interview requirements implemented in October 2017 for all individuals seeking green cards

¹ AILA Policy Brief, "USCIS Processing Delays Have Reached Crisis Levels Under the Trump Administration" (Jan. 30, 2019); <https://www.aila.org/infonet/aila-policy-brief-uscis-processing-delays>.

² *Id.*

³ "USCIS Responds to Letter from 86 House Members Regarding Case Processing Delays" (Apr. 5, 2019); <https://www.aila.org/advo-media/whats-happening-in-congress/congressional-updates/uscis-responds-to-letter-from-86-house-members>.

⁴ AILA Policy Brief, "Seven Ways USCIS is Defying the Will of Congress," (Feb. 25, 2019); <https://www.aila.org/advo-media/aila-policy-briefs/seven-ways-uscis-is-defying-the-will-of-congress>.

⁵ E.g., in an April 5, 2019 response to a letter from 86 House Members, USCIS acknowledged that its 2017 in-person interview requirement contributes to the agency's case backlog. "USCIS Responds to Letter from 86 House Members Regarding Case Processing Delays" (Apr. 5, 2019); <https://www.aila.org/advo-media/whats-happening-in-congress/congressional-updates/uscis-responds-to-letter-from-86-house-members>.

through their employers and for certain relatives seeking family reunification with asylees and refugees;

- An October 2017 policy that requires USCIS officers to effectively re-adjudicate previously approved petitions for temporary status when processing requests for status extension even when the facts of the case remain unchanged;
- Spikes in unnecessary “Requests for Evidence,” often seeking irrelevant or previously provided information, that freeze case processing;
- The institution of “extreme vetting” of immigration cases beginning in 2017, though USCIS has failed to meaningfully demonstrate that prior vetting procedures were inadequate;
- The suspension of “premium processing” of certain USCIS applications and petitions for record-long periods of time and without adequate justification;
- Expanding the circumstances in which adjudicators issue “Notices to Appear” that initiate deportation proceedings for certain denied applicants and petitioners; and
- The investment in a denaturalization task force.

Moreover, USCIS has proposed various additional policy changes that would further exacerbate processing delays, such as a public charge “wealth test” that would impose a massive administrative burden on the agency, sapping adjudicative resources.

As proof that USCIS has no concern over processing delays, in its FY 2020 budget request USCIS seeks to transfer over \$200 million in applicant and petitioner fees *out of* USCIS into Immigration and Customs Enforcement (ICE) to support the hiring of over 700 ICE enforcement officers—calling into question USCIS’s resource utilization and commitment to efficient adjudications.⁶

These delays in processing have contributed to existing backlogs which lead to several severe consequences for AAPI immigrants which are detailed below.

⁶ ICE, “Budget Overview: Fiscal Year 2020 Congressional Justification;” https://www.dhs.gov/sites/default/files/publications/19_0318_MGMT_CBJ-Immigration-Customs-Enforcement_0.pdf.

Lengthy Processing Times Prolong Family Separation

Families are the cornerstone of our communities and help our country thrive. Individuals sponsor their relatives to immigrate because family members provide support to adjust and settle down, help to run family businesses, care for children and elderly family members, pool money for investment into homes, cars and businesses, and generally provide a safety net for each other. Of the 424,743 green cards that were granted to Asian immigrants in FY 2017, 156,133 (36.8%) were given to immediate relatives of U.S. citizens, and 95,788 (22.6%) were given to family-sponsored waiting list registrants. The Trump administration has been unrelenting in its attack on immigrant familial unity. Examples of this are the Muslim Ban, the termination of DACA, the public charge rule which is aimed at increasing green card denials, and the efforts to slash family immigration categories and reduce green cards by half.

Immediate relatives – the spouses of US citizens, unmarried child under 21 years of age of a U.S. citizen and the parent of a U.S. citizen - have no quota or cap and therefore receive their status as soon as they are processed. Over the last five years, the time taken by USCIS to process an application of an “immediate relative” has been increasing steadily.

FY 2015	6.1 months
FY 2016	6 months
FY 2017	7.7 months
FY 2018	9.7 months
FY 2019	10.3 months

While the average time in 2019 is shown to be 10.3 months, there are certain states and processing centers that take much longer than this time. An example of this is Nebraska where processing time as per July 2019 is between 11 and 14.5 months.

While the immediate relative categories are historically quicker to process than the “family preference category”, centers have been taking very long to process visas in this category. For example, as of November 2018 in California, the time taken to process an

F2-B application by a LPR for an unmarried son or daughter over 21 was between 39.5 and 51 months⁷. The percentage increase in the average time taken by the California center to process an F2B application has increased by 19.33% only in the last eight months.

These wait times are clearly untenable and create social and emotional burdens on families. Family members often put their lives on hold in their country of origin and put off marriage or the purchase of a home. These prolonged visa processing times also come after certain individuals get out of long waiting lines to be eligible for a visa. The State Department reported that the worldwide total of aspiring immigrants waiting in line for family-based preference visas in FY 2019 is 3,671,442. Over 40% of the people stuck in the family backlogs are from Asia and six of the top ten countries to file applications are in Asia. Therefore, for members of the AAPI community who have been stuck in the backlogs and waited for so long, this additional delay at the processing stage can be additionally harmful.

Adjustment of status applications have also been taking longer. In FY2015 and FY2016 respectively, the average processing time for applications was 6.6 and 6.8 months respectively whereas it has almost doubled to 11.1 months in FY2018 and 11.7 months in the first half of FY2019.

A center by center disparity also exists for processing of adjustment of status applications. For example: the processing time for a case in Baltimore is between 9.5-29.5 months. Similarly, the processing time for family-based adjustment in Houston goes up to 28.5 months and the time in New York is between 20.5-36 months.

Long Processing Times Stall the Naturalization and Integration of Aspiring U.S. Citizens

Asian immigrants naturalize at high rates and about 58% of Asian American immigrants are naturalized citizens. In 2017, 36% of individuals who naturalized were immigrants from Asia. Over the last few years, the time taken to process naturalization

⁷ <https://www.usavisanow.com/i-130-uscis-processing-times-as-of-11-12-2018/>

applications has been increasing. The time taken to process naturalization applications since 2015 has almost doubled.

As of June 2019, processing times for naturalization vary according to the processing center. To illustrate this, one can note that the processing time Dallas the waiting time is between 13.5 and 22.5 months. In Miami, the processing time may extend to 26 months. While processing time at an average is high, certain centers show alarmingly slow processing applications and outcomes may differ vastly if two applicants apply at the same time to two centers which indicates how arbitrary the process is.

Backlogs and long processing delays are often referred to as the second wall the Trump administration has installed to prevent legal immigrants from becoming U.S. voting citizens. Many immigrants may rely on processing timelines to be 6-9 months and will be too late to apply to naturalize and complete the process in time to meet voter registration deadlines. The window to begin the naturalization application process so as to be able to vote in 2020 is rapidly closing, which will shut many prospective immigrant voters out of an election that is still over a year away. This hampers their integration as American citizens and will leave them without a voice in the democratic process.

The Threat of Denaturalization

The current Administration's harsh stance toward immigrants has been extended to naturalized U.S. citizens. As noted above, naturalization is seen – and often celebrated – as the final step in the immigration process. U.S. citizenship has conveyed a sense of finality, assurance that one's immigration status would no longer be in jeopardy and that one had gained all of the rights and privileges of U.S. citizenship *permanently*. Denaturalization, the process by which one is stripped of citizenship, has typically been deployed only in extreme cases of fraud or treason, including Nazis and other war criminals seeking to evade prosecution. From 2004 to 2016, an average of 46 denaturalization cases were filed each year. In each of the last two years, prosecutors filed nearly twice that many cases. Further, the Trump administration has signaled that it will be reviewing 700,000 files of U.S. citizens for evidence of fraudulent

naturalization, and announced the creation of a Denaturalization Task Force in June 2018.

Individuals facing denaturalization in the criminal justice system have the right to counsel and a jury trial. Further, the prosecution must demonstrate beyond a reasonable doubt that the accused knowingly procured or attempted to procure naturalization in an unlawful manner. There is a 10 year statute of limitations on criminal naturalization. In contrast, the grounds for denaturalization in civil proceedings are broader and there is no requirement of intent; the standard of proof is clear, convincing, and unequivocal evidence; and there is no right to counsel, no right to a jury trial, and no statute of limitations.

Mass-scale denaturalizations threaten the meaning of citizenship and equality for immigrants. As Seth Freed Wessler wrote in the New York Times Magazine, the administration “has cast naturalized citizens as suspects for fraud, and the legal immigration process itself in need of urgent course-correction to prevent that abuse.” Mae Ngai, a Columbia University historian who writes on citizenship and immigration, has compared the denaturalization campaign to the conservative campaign against voter fraud, where scarce examples of fraudulent voting are used to justify imposing greater voter restrictions on communities of color even though there is no evidence of a widespread problem. “It’s trying to make a crisis out of an issue that is not by any measure a crisis,’ Ngai says, ‘an attempt to call the larger systems into question.”

Conclusion

It is imperative that both USCIS and Congress take measures to reduce delays and realign the agency with its statutory mandate. USCIS should rescind misguided policies that needlessly delay adjudications and divert finite resources away from the agency’s core function of service-oriented adjudications. USCIS should also establish more rigorous processes for forecasting the impact of proposed policies and practices, and measuring the impact of existing ones, on case processing efficiency and the case backlog. Congress should pass legislation that strengthens transparency and accountability around USCIS’s case backlog. Among other provisions, such legislation would require ongoing, comprehensive reporting from USCIS on the status of the backlog, the impacts of agency policies and practices on the backlog and case processing

efficiency, existing and planned agency efforts to eliminate the backlog, the relationship of agency budget/resource allocations to backlog reduction, and relevant operational statistics. It would also require regular reporting from GAO on the impact of USCIS policies and practices on the backlog and case processing efficiency, the assessed effectiveness of USCIS efforts to reduce the backlog, and recommended measures for more efficient case processing.