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To the U.S. House of Representatives, Committee on the Judiciary
Sub-committee on Immigration and Citizenship

For A Hearing Titled:
"Policy Changes and Processing Delays at USCIS"

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Thank you, Chairman Lofgren and Ranking Member Buck, for the opportunity to testify today.

U.S. Citizenship and Immigration Services (USCIS), like all other government agencies that dispense benefits, has the challenge of balancing the imperative to correctly and fairly adjudicate applications with the expectation for the applications to be adjudicated within a reasonable time frame. Further, the immigration agencies are constantly subject to pressure from special interest groups, such as employers that sponsor foreign workers and attorneys in certain kinds of practices, who badger the agency to adopt certain policies or practices that they believe favor their business or clients. Too often, USCIS leadership has over-emphasized swift processing at the expense of correct and fair adjudication, with disastrous results for American workers and others who suffered harm because of rushed decisions or questionable prioritization of cases.

Adding to the challenge, USCIS must follow a cumbersome procedure for setting and collecting fees that are commensurate with the actual cost of adjudicating applications. This leads to chronic under-staffing, which hinders productivity. The problem was exacerbated by President Obama's creation of the Deferred Action for Childhood Arrivals (DACA) program, which was set up so that recipients can get the benefit without paying the full cost of processing, which strains the agency to this day.

The Trump administration has taken numerous steps to re-balance priorities at USCIS and improve productivity within the confines of current resources. Under Trump, USCIS has implemented changes that emphasize fidelity to the law, help maintain the integrity of our immigration system, and address problems of rampant fraud in certain categories. These changes have led to emotional and sometimes vicious and/or nonsensical allegations that the Trump administration is trying to shut off legal immigration, or build an "invisible wall."[1] Critics have pointed to the increase in processing times as evidence of this alleged plot against immigrants.

While it is true that some categories now have longer processing times than before, this has less to do with the policy changes, and more to do with the increased workload and lag in fee collection. For instance, some of the changes that have drawn the most complaints from advocates are those affecting applicants for employment-based visas – but according to the USCIS case tracking reports, processing times for those categories have not changed much. In fact, processing times have actually decreased in one employment category (petitions for temporary workers filed without a premium processing fee).[2]

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[1] Jessica M. Vaughan, "The Truth about Cissna's 'Invisible Wall,'" Center for Immigration Studies, September 24, 2018, https://cis.org/Vaughan/Truth-about-Cissnas-Invisible-Wall.
[2] USCIS, "Historical National Average Processing Time for All USCIS Offices," https://egov.uscis.gov/processing-times/historic-pt.

In any event, despite the alleged processing delays, in 2018 USCIS still managed to adjudicate significantly more cases in 2018. According to the agency's annual report, officers completed more than eight million benefit requests, which is a seven percent increase over the previous year and a 28 percent increase over the past five years.[3] The completed cases included many more naturalizations of new American citizens, more in-country adjustments to green cards, and many more asylum applications.

In my opinion it does take too long to adjudicate some immigration benefits, and I know this is frustrating to many who are navigating this system. For example, it now takes more than 10 months for a petition for an immediate family member to be adjudicated, more than 10 months for a naturalization application, and more than 16 months for the second stage of a marriage-based green card.

This is unacceptable, and it is appropriate for Congress to seek answers and propose reforms. But if this committee is looking for ways to improve the situation, you must first understand the real cause of the problem, and secondly, refrain from implementing changes that will make matters worse and/or compromise the integrity of the system, just to speed up the processing of applications. While most applications involve neither fraud nor terrorists, there are still far too many examples – including the San Bernardino terror attack and recent cases of egregious employment visa fraud[4] – where haste in adjudication creates harm for Americans.

USCIS Had Reputation for Rubber-stamping and Tolerating Fraud

Over time and successive administrations, the adjudications culture at USCIS has evolved gradually but steadily toward a mindset that aims to appease special interests, like employers that sponsor large numbers of foreign workers and immigrant advocacy groups, with an emphasis on facilitating immigration rather than ensuring that only qualified applicants are approved. One illustration of this evolution can be seen in the name of the division of the immigration agency that does this work; just in the span of my career in immigration policy, the name of what is now USCIS has gone from "Examinations" to "Adjudications" to "Benefits" to "Services," reflecting a transformation from viewing immigration status as more of an entitlement than something that an applicant must demonstrate eligibility for. This mindset has persisted despite the requirement in immigration law that aliens have the burden of proving their eligibility for benefits to the satisfaction of the government.[5]

The inclination toward approvals, together with a crushing workload and antiquated technology, enables many applicants to get away with fraud and misrepresentation. Fraud assessment initiatives that were launched by USCIS in the years after 9/11 revealed that some types of benefits, especially marriage-based, temporary workers, and asylum applications had alarmingly high rates of fraud.[6]

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[3] US Citizenship and Immigration Services, "2018 USCIS Statistical Annual Report," https://www.uscis.gov/sites/default/files/USCIS/statistics/2018_USCIS_Statistical_Annual_Report_Final_-_OPQ_5.28.19_EXA.pdf.

[4] "Edison man among 4 charged with visa fraud," https://www.mycentraljersey.com/story/news/crime/2019/07/02/edison-man-among-4-charged-visa-fraud/1633339001/.

[5] 8 USC 1361: http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1361&num=0&edition=prelim.

[6] See Jessica M. Vaughan and Bryan Griffith, "An Interview with FDNS Architect Don Crocetti," Center for Immigration Studies, https://cis.org/Immigration-Policy-Interview/Interview-FDNS-Architect-Don-Crocetti, https://cis.org/Immigration-Policy-Interview/Interview-FDNS-Architect-Don-Crocetti. The original USCIS fraud reports were published by the House Judiciary Committee after a hearing in February, 2014, referenced here:

Obama administration appointees to USCIS imposed a strict "get to yes" policy of rubber-stamping approval of applications. According to career managers in one large field office, then-director Alexander Mayorkas "foster[ed] an environment that pressures employees to approve as many applications as possible and condones retaliation against those who dissent," while discouraging fraud investigations.[7]

The consequences of inadequate screening of benefits applications can be grave. For example, a number of reviews have concluded that USCIS missed several problems with the fiancée visa application of Tashfeen Malik, who together with Sayed Rezwan Farook, her husband and green card sponsor, killed 14 Americans and wounded 22 others in a terrorist attack in San Bernardino, California in December, 2015.[8] My colleague David North reported:

> *"The [then] chairman of the House Judiciary Committee, Robert Goodlatte (R-Va.), has obtained and examined Tashfeen Malik's immigration file. A major problem was identified – it was not clear from the application that Malik and her husband-to-be had actually met each other in the prior two years, which is one of the requirements of K-1 visas, a provision designed to discourage the marriage of two strangers.*
> *What's worse, the problem had been noted by an [immigration] official but the visa was issued anyway.*
> *Other, earlier reports said that she had lied about her residence address.*
> *Malik perhaps could have overcome both problems, but she did not have to do so. Perhaps her visa would have been denied if the officer ... had persisted."*

Trump Administration Implements Policies to Hew to Law and Curb Fraud

The Trump administration has sought to curb the influence of special interest groups and address fraud through a series of new regulations and policies. These policies, which aim to restore the integrity of our legal immigration system, have been mischaracterized by critics as back door attempts to cut immigration, or mean-spirited attempts to make life more difficult for immigrants. The following is a list of some of the policies in question:

1. Mandatory Interviews for certain applicants – Prior to the summer of 2017, the only benefits applicants who were interviewed as a matter of policy (as opposed to one-off situations with unique concerns) were marriage-based family green card cases. These cases represented about one-third of all green card admissions that USCIS handled in 2017. This means that the other two-thirds of USCIS cases had no recent contact with a USCIS officer before receiving their green card. Yet interviews are a critical part of immigration screening. Much as a doctor needs to see and speak with a patient to treat them, interviews enable immigration officers to evaluate the eligibility and credibility of applicants, and their statements, and obtain information that is not on the forms they fill out or in databases that they check. Following the January, 2017 presidential directive to improve the screening of applications, USCIS began interviewing all applicants seeking to adjust status to an employment green card (about 165,000 cases) and

https://cis.org/Vaughan/House-Hearing-Asylum-Reveals-Rampant-Fraud-More-Abuse-Executive-Discretion. The web link is no longer active but the documents should be part of the official hearing record.

[7] Jessica M. Vaughan, "Mayorkas to USCIS Staff: Just Say Yes – Or Else!," https://cis.org/Vaughan/Mayorkas-USCIS-Staff-Just-Say-Yes-Or-Else.

[8] See David North, "San Bernardino Puts Focus on Immigration-Through-Marriage, or Should," https://cis.org/North/San-Bernardino-Puts-Focus-ImmigrationThroughMarriage-or-Should and Jessica Vaughan, "Major Screening Gap: Sponsors of Immigrants Not Fully Vetted Under Current Policy," https://cis.org/Vaughan/Major-Screening-Gap-Sponsors-Immigrants-Not-Fully-Vetted-Under-Current-Policy.

applicants who claim to be family members of asylees and refugees (both historically high-fraud categories). What USCIS has found since implementing this directive is that while the interview requirement has added slightly to the time it takes to process the cases, the officers are now able to detect considerably more fraud and other problems, especially with the employment-based cases. **Bottom line - this policy change has produced dramatically better adjudications with a modest increase in processing times for about one-third of the USCIS caseload.**

2. Rescinding "deference" to prior approvals – This policy, adopted by memorandum in October 2017, rescinds prior guidance dating back to 2004 and 2015, which instructed officers that when adjudicating an application for renewal or extension of certain temporary visas for employment, they should near-automatically approve the application if the circumstances were substantially the same. This was problematic for two reasons. First, it meant that if an applicant got away with fraud on the original application, they essentially were home free and largely shielded from review on the renewal or extension application. Secondly, and paradoxically, the "deference" policy required extra adjudication time, because it shifted the burden of proof from the applicant to the officer, meaning that the officer was required to re-open the case and investigate if the circumstances of the application were the same, which involves retrieving the original file from the USCIS archives and reviewing it, instead of simply looking at the renewal or extension as a new case with fresh eyes. **Bottom line - This policy change has speeded adjudications, not slowed them, and provided USCIS officers with the ability to correct mistakes made in the initial application, which likely faced a more lenient standards of review.**

3. Updating definitions for computer programmers- This memo rescinded guidance dating back 17 years that allowed adjudicators to assume that all computer programmers automatically qualified for H1-B visas, which are for jobs requiring at least a bachelor's degree. The agency noted that nowadays some computer programmer positions require only an associate's degree, and are therefore not appropriate for this visa category. In addition, the guidance directed officers to evaluate whether the wages offered for the foreign worker credibly corresponded to what would be paid to a skilled, college-educated worker in that field. Employers seeking permission to bring in foreign workers now had to provide more detail on how their arrangements conformed to the law. As a result, there was a temporary spike in Requests for Evidence (RFE) issued by USCIS officers. However, as employers, attorneys and applicants have come to understand what is expected, they have adjusted their applications accordingly, and in recent months the number of applications requiring RFEs has since declined to more typical levels.[9] Equally important, USCIS officers have told senior managers that they believe that fewer unqualified applications are being submitted because they know that they are less likely to be approved. **Bottom line – The processing delays caused by this policy change were temporary and appear to be leveling out, and the quality of applicants has improved.**

4. Issuance of Notices to Appear (NTA) – This guidance was issued to rescind Obama-era restrictions on when USCIS officers should exercise their authority to issue a NTA, or charging document. Officers are now directed to initiate deportation proceedings in cases where an applicant is deportable due to committing fraud or other crimes, or is unqualified for the immigration benefit and is illegally present in the United States. Unqualified applicants who are in the country illegally should not be ignored, especially if they have filed fraudulent applications in a bid to say, or committed other crimes. This is common sense. **Bottom line – This policy**

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[9] See USCIS report on H-1B Receipts, Completions, and Requests for Evidence: FY2015-2019, https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/BAHA/H-1B_RFE_Completions_Data_-_FY2015-FY2019Q2.pdf.

change has helped ensure that only qualified applicants get to stay in the United States, and has no effect on processing times for other immigration benefits.

5. <u>Prompt denial of skeletal or frivolous applications</u> – Under Obama administration policies, in cases where applications were filed that were missing critical evidence of eligibility for a benefit, USCIS officers were directed to keep the case open and ask the applicant to submit the evidence, sometimes repeatedly. This provided an incentive for aliens facing deportation, or who want to create a pseudo-legal status for themselves, to file frivolous or "skeletal" applications simply to try to buy time in the United States. This gaming of the system clogs the system with bogus applications. The new Trump administration guidance states that officers now may deny an application without issuing RFEs if it lacks evidence of meeting the most basic requirements of eligibility, instead of keeping the case open and wasting time on sending RFEs to people who have no intention nor ability to respond appropriately. **Bottom line – this policy helps reduce the backlog and speed processing for all by ejecting frivolous cases from the queue.**

USCIS Says Growth in Workload is Biggest Reason for Processing Delays

If these new policies have not caused processing times to increase, then what is the reason for the increasing delays that special interests attribute to the Trump policies? According to USCIS, the problem has been a significant increase in applications without an increase in resources to process them.

This problem is not unique to the Trump administration, but top USCIS officials have repeatedly explained the situation to members of Congress. Two months ago, Acting Deputy Director Tracy Renaud testified two months ago before the House Homeland Security Committee on the Trump administration's budget request:

> "The agency derives nearly all its revenue from fees for services—a fact of which we are very mindful. As the stewards of these funds, we continually seek greater efficiencies, while also striving for the highest degree of integrity and security. One thing remains constant—the workload USCIS faces each year is staggering.… USCIS anticipates workloads and resource needs based on events and historic trends. Occasionally, however, workloads do not conform to the models that have served us so well, and we have to adjust priorities, processes, and resources. Since 2016, there has been a period of unexpected high demand for immigration benefits."[10]

Former director Francis L. Cissna went into more detail in a letter to U.S. Rep. Jesus G. Garcia and 85 other members of the House[11], identifying a number of other factors that have been exacerbating processing delays: unexpectedly high increases in applications (especially naturalization applications, which is typical in a presidential election year); a very slow hiring and training process to get new adjudicators on the cases; a shortage of office space; the under-funded DACA processing mandate; new interview requirements and expanded security checks following numerous incidents of screening lapses (such as the San Bernardino terrorist attack); implementation of new technology; and dispensing with unreasonable production quotas for adjudicators as a way to empower officers to not feel pressured to rubber-stamp approvals.

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[10] Testimony of USCIS Acting Deputy Director Tracy Renaud before the House Homeland Security Committee on May 9, 2019, https://www.uscis.gov/tools/resources/hearing-a-review-fy-2020-budget-request-us-customs-and-border-protection-us-immigration-and-customs-enforcement-and-us-citizenship-and-immigration-services-may-9-2019-acting-deputy-director-tracy-renaud.

[11] Letter from L. Francis Cissna to Rep. Jesus G. Garcia et al: https://www.uscis.gov/sites/default/files/files/nativedocuments/Processing_Delays_-_Representative_Garcia.pdf.

A second letter sent by Cissna to 38 U.S. Senators further discussed additional causes for the processing delays, including a flurry of litigation that especially has affected adjudication of DACA, TPS, and asylum cases.[12] Among the problems Cissna noted:

> *"Due to the surge of asylum applications over the last several years, we cannot keep pace with the regulatory requirement to adjudicate employment authorization requests within 30 days. As a result of the injunction, we have been forced to move adjudicators off other caseloads to comply with the order and expedite processing of employment authorization documents for those who seek asylum."*

The Elephant in the Room: DACA

Critics of the Trump administration are quick to complain about the many new policies that were been implemented to address serious weaknesses the system that led to fraud or security problems, but have been silent on the effects of one big program that has greatly strained USCIS resources and contributed to the problem at hand – DACA.

The DACA program, created a benefit that brought in more than 2.4 million applications to be adjudicated, counting both initial applications and renewals for the approximately 824,000 beneficiaries.[13] USCIS began accepting applications in August, 2012 (also an election year, which typically generates a spike in naturalization applications).

The DACA applications were a shock to the system. USCIS had to adjust, and had to make decisions on which categories of cases would be considered priorities for adjudication. According to internal documents later made public by the Senate Judiciary Committee, Obama administration officials chose to make the following categories priorities: Employers sponsoring temporary or permanent workers from abroad, travel document applicants, U.S. parents adopting children from overseas; all applicants for work permits (which covered all DACA applicants), and military naturalization applicants.[14]

The following categories were consigned to the slow lane: all family-based immigrant petitions and applications, refugee and asylee green cards, relatives of refugees and asylees, applicants for temporary protected status, victims of human trafficking, crime victims, immigrants seeking to naturalize, and anyone needing a replacement document.

The de-prioritization of the family cases resulted in much longer waiting times for these applicants. Waiting times for U.S. citizens seeking to sponsor a spouse stretched to 15 months in some parts of the country in 2013, nearly three times the waiting time that USCIS claimed was its goal (five months).

During this time USCIS struggled to balance its immense pre-existing workload of applicants with its emphasis on processing the DACA applicants in particular. In early 2012, they moved to centralize processing of immediate family petitions, then de-centralized processing, then finally partially

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[12] Letter from L. Francis Cissna to Sen. Thom Tillis et al:
https://www.uscis.gov/sites/default/files/files/nativedocuments/Processing_Delays_-_Senator_Tillis.pdf.
[13] USCIS statistics on DACA applications:
https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%2
0Data/All%20Form%20Types/DACA/DACA_FY19_Q2_FEB_FINAL_Update.pdf.
[14] Jessica M. Vaughan, "USCIS Favors Illegal Alien Applicants over Americans and Legal Immigrants,"
https://cis.org/Vaughan/USCIS-Favors-Illegal-Alien-Applicants-over-Americans-and-Legal-Immigrants.

centralized these cases by the fall of 2013. At one point, when USCIS tried to centralize processing at the National Benefits Center in Missouri, it experienced "hiring difficulties" that it attributed to "general deficiencies within the local employment market". But no DACA nor other adjudicators were diverted to take up this workload. Instead, the petitions for spouses and parents of U.S. citizens were simply allowed to pile up. By the end of June 2013, USCIS reported that there were 853,737 family petitions stacked up awaiting adjudication.

Meanwhile, the DACA program was chugging along, approving approximately 40,000 applications per month, with typical waiting times of two to four months. In 2013 alone USCIS processed more than 480,000 DACA applications. To meet processing goals, USCIS leaders directed the field offices to perform what were called "lean & lite" background checks that skipped certain steps including running a full through the main DHS security database (TECS).[15] In part due to this lax screening, more than 2,000 criminals and gang members were able to obtain DACA.[16]

The delays for hundreds of thousands of family-based legal immigrants and other types of applicants caused by DACA were severely disruptive to some lives. For family-based applicants, their lives were on hold while waiting for USCIS to get to their cases. For naturalization applicants, it could have meant losing out on the opportunity to vote.

In one case of a delay caused by DACA, a man from Alabama, Kevin Morgan, became so frustrated at the slow service in processing his wife's simple renewal of her green card that he made a YouTube video about their Kafkaesque experience.[17] Because of the delays, she was unable to take a job at a nearby military base, causing financial harm to the family. In another case, an American engineer named Jimmy Gugliotta, who was living in Chile had to set up a GoFundMe page to raise money to support his family after delays in processing his application for his Argentinian wife to join him in Texas drained his livelihood.[18]

My organization calculated that the implementation of the DACA program was responsible for two-thirds of the increase in the processing backlog that occurred beginning in 2012.[19]

To make matters worse, according to USCIS documents, DACA applicants received their benefits at less than the full cost of processing them. This is because DACA applicants paid only for the work permit adjudication and the fingerprint collection fee; they did not pay for the adjudication of the I-821D, which established eligibility for DACA. According to USCIS records, the actual cost of processing that benefit should have been more than $1,000 – on top of the work permit and fingerprint collection fee.[20]

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[15] USCIS Documents obtained by Judicial Watch, "Documents Reveal DHS Abandoned Illegal Alien Background Checks to Meet Amnesty Requests Following Obama's DACA," https://www.judicialwatch.org/press-room/press-releases/homeland-security-documents-reveal-dhs-abandoned-required-illegal-alien-background-checks-to-meet-flood-of-amnesty-requests-following-obamas-deferred-action-for-childhood-arrivals-directive/.

[16] USCIS, "New Data Shows Criminal Arrest Histories of DACA Requestors," https://www.uscis.gov/news/new-data-shows-criminal-arrest-histories-daca-requestors.

[17] Vaughan, "USCIS Favors Illegal Alien Applicants...".

[18] Neil Munro, "Obama Keeps Americans in Exile but Welcomes Illegals," *The Daily Caller,* March 27, 2015, https://dailycaller.com/2015/03/27/obama-keeps-americans-in-exile-but-welcome-illegals/.

[19] David North, "New USCIS Data Show How DACA Delays Decisions in Other Programs," December 6, 2012, https://cis.org/North/New-USCIS-Data-Show-How-DACA-Delays-Decisions-Other-Programs.

[20] See Jessica M. Vaughan, "Blue Light Special on Naturalization to Help Fund Obama's Amnesty," November 20, 2014, https://cis.org/Vaughan/Blue-Light-Special-Naturalization-Help-Fund-Obamas-Amnesty, and "Senate Hearing Exposes Billion-Dollar Amnesty Slush Fund and Other USCIS Improprieties," March 6, 2015,

Options to Avoid Further Erosion of Processing Times

If members of this committee are concerned about the processing backlogs at USCIS, and they should be, the answer most certainly is not to reverse policies that prevent fraud and enable unqualified applicants to receive benefits or clog up the system with frivolous claims. We cannot compromise security and the integrity of our immigration system to please special interests.

The first consideration must be to avoid further increases in USCIS workload without sufficient funding to pay for the staff and other needs to process them without affecting processing times. No amnesty program should be funded by family and employment immigrants and their sponsors.

In addition, other funding options must be considered:

- Imposing a temporary surcharge on some applications to enable USCIS to do a hiring surge to work on the most backlogged categories of cases;
- Immediately establish a higher renewal fee for DACA applications to help recoup the costs of the initial applications;
- Create a new, streamlined and accelerated process for USCIS to assess fees, implement increases, and hire staff;
- Appropriate funds that are earmarked for infrastructure and technology improvements that will speed processing.

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https://cis.org/Vaughan/Senate-Hearing-Exposes-BillionDollar-Amnesty-Slush-Fund-and-Other-USCIS-Improprieties.