



Testimony on Congressional Oversight of U.S. Citizenship and
Immigration Service
to the Subcommittee on Immigration and Citizenship
of the U.S. House of Representatives' Committee on the Judiciary
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Thank you for the opportunity to submit this testimony concerning Congressional oversight of U.S. Citizenship and Immigration Services (USCIS), on behalf of the National Association of Latino Elected and Appointed Officials (NALEO) Educational Fund.

NALEO Educational Fund is the nation's leading nonprofit organization that facilitates the full participation of Latinos in the American political process, from citizenship to public service. Our Board members and constituency encompass the nation's more than 6,800 Latino elected and appointed officials, and include Republicans, Democrats and Independents. Recognized nationally as a civic engagement pioneer with more than 30 years of experience, NALEO Educational Fund has guided hundreds of thousands of eligible lawful permanent residents (LPRs) through the naturalization process, and translated its expertise into proven capacity-building efforts among local community-based organizations. We have also successfully advocated for policies that make naturalization more accessible, such as creation of a partial fee waiver for qualified LPRs seeking citizenship.

NALEO Educational Fund urges Members of the Committee on the Judiciary to support legislation that ensures that our nation's immigration system continues to provide the timely service upon which American families and businesses depend, while its managers eliminate burdensome administrative procedures that have bloated USCIS's budget and produced alarming backlogs of pending applications.

During the first half of 2020, USCIS has signaled that budget shortfalls would soon prevent it from sustaining its current staffing and service commitments, and has threatened to furlough more than half of its staff. As American Federation of Government Employees President Everett Kelley wrote in a letter to Congress, "With a loss of nearly 11,000 employees, work and visitor visa petitions, asylum and citizenship/naturalization applications, green cards, and refugee applications will not be processed." The suspension of any significant portion of USCIS's activities would further injure our weakened economy and national morale at the worst possible time. While it is imperative that Congress provide the agency with necessary resources, it is equally critical that lawmakers hold USCIS accountable for decisions that have led to this point, and demand the implementation of more efficient procedures.

USCIS's Processing of Applications for Immigration Benefits and Naturalization Is Critically Important to the Nation

The United States cannot maintain its place as a leader in the world economy, a driver of scientific and technological advances, and an influential voice in resolving international disputes and in securing cooperation on transnational issues without a smoothly-functioning USCIS. To fully participate in a world in which the consequences of human activity reverberate across the globe in a matter of seconds, the United States must

maintain a principled and effective system for vetting and approving visa requests, identifying foreign workers who bring needed skills and knowledge to our shores, and for welcoming new Americans whose patriotism makes us a stronger, more secure, and more resilient nation. Our embrace of talented immigrants who share our values is a uniquely American trait that has defined our country from its inception and made its success possible.

We are particularly cognizant of the enormous value of USCIS's role in conferring U.S. citizenship to qualified LPRs. As a leader of local and national efforts to integrate new Americans, we have decades of experience observing firsthand how communities benefit when immigrants become full participants in America's civic life. Immigrants who learn English to prepare for naturalization earn exponentially more, and generate more public revenue through tax payments and other economic activity, than their counterparts who are not yet fully fluent in English. Upon naturalization, new Americans' rates of home ownership and enrollment in higher education also increase. The stability and greatly expanded civic and economic opportunities that citizenship affords inspire naturalized citizens to invest in starting businesses, to run for office, and to pursue myriad other activities that benefit all Americans. In short, citizenship is a tide that lifts every boat in the nation.

Unfortunately, there already exist extraordinarily large backlogs of applications for citizenship, immigrant status, and temporary visas that are awaiting adjudication. The average wait for resolution of an application is, in many or most cases, exponentially longer than it was when USCIS last examined whether its fee structure met its budgetary needs, during calendar year 2016. Additional widespread layoffs of USCIS employees would greatly exacerbate these troubling situations.

Without intervention, the negative consequences of USCIS's inability to keep up with its workload will be unacceptably consequential and widespread. For example, American families and businesses directly pay at least 45 percent of the approximately \$4 billion in application fees that USCIS now receives in a typical year. These customers cannot afford to endure even longer waits for essential workers and family reunification. In addition, among the noncitizens who pay application fees are legions of individuals whose presence is crucially important to our national well-being, including aspiring new Americans, medical care providers and researchers, investors, and religious workers. Congress must not acquiesce to the provision of unprecedentedly poor service to stakeholders who have already paid substantial costs.

Congress Must Demand Accountability and Ensure Against Harm as It Reviews USCIS Funding and Operations

In light of the importance of the uninterrupted operation of our system for administering immigration and naturalization benefits, we urge Members of this Committee to support provision of any discretionary funds necessary to ensure continuation of USCIS's application adjudication work. Funding measures must also require the agency to eliminate unnecessary administrative procedures that have increased costs exponentially in the three and a half years since it last implemented a round of application fee increases. Most importantly, USCIS's shifting, and apparently precarious, financial fortunes illustrate the extreme economic change that the COVID-19 pandemic has caused in the months intervening since the agency published the Notice of Proposed Rulemaking on its fee

schedule in November 2019, and submitted its FY21 budget request to Congress in February 2020. Congress must require that USCIS adjust its proposed revision of fees set forth at 8 CFR § 103.7(b) and (c), taking into more faithful account its directives that the agency keep naturalization affordable, maintain fee waivers for qualified applicants, and not transfer benefit application fees to Immigration and Customs Enforcement (ICE).

USCIS Must Reduce Its Costs by Eliminating Red Tape

Congress must ensure that USCIS achieves the greater efficiency it has long promised and lawmakers have repeatedly demanded. In spite of its progress away from paper and toward electronic filing, closure of some offices, reformation of the InfoPass process, and other modernizing initiatives, USCIS has seen its average case processing rates slow over the past five years. According to an April 2019 letter from then-Director Cissna to U.S. Representative Jesus Garcia (D-IL), the average number of cases completed each hour declined from 0.95 in FY14 for employment-based green card applications to 0.57 in FY18, and from .069 in FY14 to 0.62 in FY18 for applications for naturalization. Applications for replacement certificates of naturalization or citizenship were being processed at about half their FY14 rate by FY18.

USCIS need not spend more to accomplish far less in FY20 and subsequent years. Congress must hold the agency's leadership accountable for justifying administrative complications that slow its workers, and for eliminating unnecessary activities and programs not proven to produce returns commensurate with their costs. For example, in 2019 USCIS adopted a policy of collecting and screening applicants' social media user handles, in spite of analyses of its similar pilot programs that questioned their scalability and reliability. Conducting such scans on majorities of the tens of millions of people who submit applications each year to USCIS will require an extremely large investment of resources, but the exercise has yet to be proven effective in any equivalent context of which we are aware. Another one of USCIS's many policy changes that does not seem justified by its costs is its October 2017 rescission of guidance to adjudicators to defer to prior approvals of temporary benefits when processing requests to extend those benefits, absent error or a material change in relevant circumstances. We do not know of any persistent problems with extension requests, nor of any trend of reversal of previous decision making in such cases, but the policy change obligates adjudicators to review many more applications de novo, and appears to introduce greater risk of inconsistent adjudication, needlessly duplicate efforts, and squander resources.

To ensure that USCIS conducts a comprehensive and critical review of its programs and adjudication policies and makes meaningful progress toward greater efficiency, Congress should adopt both specific and general remedies in any legislation that addresses USCIS's budget deficit. Members should prohibit the use of funds for current initiatives and the implementation of policies presently in effect that result in duplicative work, including but not limited to the elimination of deference to previous adjudication of temporary work visas, the denial of applications based on technicalities such as omission of "N/A" in response to questions that do not apply or failure to submit a particular piece of evidence, and the operation of a USCIS Tip Form to solicit anonymous, unsubstantiated reports from the public. At the same time, Congress should require USCIS to conduct regular reviews of how policy changes have affected average case processing rates. This should also include a mandate that the agency report via dedicated, live hearings on the results of these reviews. Legislation should set a benchmark – for example, the average time to process each type of

application over the most recent decade – and require in binding language that whenever case processing rates exceed benchmarks, USCIS must provide Congress with a detailed list of policy and procedural changes it has adopted to achieve internal efficiency commensurate with the agency's historical performance.

USCIS Must Rework Its Outdated, Illogical 2019 Proposed Fee Rule

NALEO Educational Fund very strongly opposes implementation of the proposed fee rule USCIS published for comment in November 2019, and the rapidly-changing landscape for the agency's fee collections and budget make it all the more urgently necessary that it redo its proposal. Even before the pandemic occurred and imposed severe limitations on customers' capacity to submit new applications and USCIS's ability to process them, the proposed rule operated on disproven assumptions such as the assertion that extreme price increases would not result in any change in new application volume; it also miscalculated costs and benefits and ignored strong Congressional advocacy of policies including maintenance and expansion of fee waiver eligibility. Its adoption in the face of heightened logistical challenges would only further impoverish the agency and exacerbate its budget woes by dissuading legions of American families and businesses from applying for benefits. We urge Members of this Committee to ensure that any final fee rule implemented in 2020 and beyond reflects current realities, and avoids excessive and disruptive increases to the fees required with particular application types.

Congress should adopt legislative safeguards to ensure that no fee rule is implemented that does not accurately reflect both Congressional direction and foreseeable circumstances that will affect revenue collection over the course of its effective period. Congress should amend 8 U.S.C. § 1356(m) to require that adjudication fees be set at levels that officials find, based on rationale in the public record, will best maximize economic and social benefits to the nation associated with extension of various immigration and naturalization benefits to qualified applicants while also ensuring recovery of the costs of processing applications. To further protect against the harmful adoption of extreme fee increases already proposed in 2019, Congress should enact an upper limit that is immediately effective on the percentage by which any particular fee may increase from one fee study to the next.

In addition, Congress should amend 8 U.S.C. § 1356 to prohibit implementation of any adjustments to fees that would occur while any temporary prohibitions are in effect that bar new applicants or admissions for particular visa categories or citizenship. Such pronouncements – including the Executive Order dated April 22, 2020, which barred entry of certain intending immigrants for at least 60 days – fundamentally change the calculations of workload and revenue upon which proposed changes to fees are based. Thus, these calculations are no longer effective for the intended purpose of ensuring that fee collections pay for USCIS's operating expenses, but do not function as an undue barrier to the granting of immigration and naturalization benefits to qualified individuals. At minimum, any such prohibitions or moratoria on aspects of the legal immigration system must prompt reconsideration of plans that balance likely future receipts against likely future operating costs.

Congress Must Preserve Fee Waivers

Fee waivers are a central feature of the immigration system that has fueled our nation's success. They are only available in cases where the applicant's income is inapposite to

qualification for benefits, because the program in question operationalizes our firmly-held opposition to torture, authoritarian restrictions on freedom of speech and movement, and other abuses; carries out our belief in family unity; or furthers our economic interests. In these cases, safeguarding access for all not only proves our integrity, but also expands opportunity for every American.

Because fee-waiver-eligible programs that confer citizenship to long-term residents, and protective status to vulnerable individuals, are so closely associated with increased stability and self-sufficiency, it is especially beneficial when lower-income people access them. However, if USCIS eliminates most fee waivers as it proposed to do in its November 2019 Notice of Proposed Rulemaking concerning 8 CFR § 103.7, as many as hundreds of thousands of people each year will forego application, and all Americans will lose as a result. Extensive surveying and social experimentation have demonstrated that increased costs dissuade individuals – particularly those with lower incomes – from applying for citizenship and other benefits.

Eliminating fee waivers would not increase USCIS's revenues appreciably, as many or most potential recipients would opt not to apply for benefits at all. Instead, fee waiver elimination would cause the unconscionable loss of financial and social opportunities for individual American families, communities, and the national economy as a whole. It is critical that Congress act to preserve them as it addresses USCIS's budget shortfall, by codifying permission for the applicants described in current 8 CFR § 103.7(c)(3-4) to request and receive fee waivers upon presenting proof of inability to pay standard fees.

Conclusion

NALEO Educational Fund appreciates this Committee's attention to USCIS's important work, and hopes to support Members in ensuring that no disruptions occur to the timely and fair adjudication of applications for immigration and naturalization benefits. Demanding that the agency eliminate unnecessarily burdensome procedures is an indispensable aspect of this work. Members must pursue sustainable solutions to the financial instability USCIS has experienced in recent years, and prevent the agency from overcharging its domestic and foreign customers. Extreme fees increases would untenably threaten the critical social and economic benefits that the nation reaps from its embrace of talented students, workers, and residents. To protect against them, Congress must demand that USCIS revise its proposed fee schedule and generate revenue-raising ideas that are feasible within the constraints imposed by pandemic conditions.

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