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"Oversight of U.S. Citizenship and Immigration Services"

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**Introduction**

Chairwoman Lofgren, Ranking Member Buck, and members of the subcommittee, thank you for the opportunity to speak with you today about the need for oversight, accountability and transparency into the U.S. Citizenship and Immigration Services (USCIS), particularly in light of the assertions USCIS has made that furloughs of more than 13,000 USCIS employees may be necessary due to a budget crisis. If furloughs occur, the U.S. immigration system will come to a grinding halt causing tremendous harm to the customers of the agency, American families and businesses, and our nation's economy and welfare.

My name is Sharvari (Shev) Dalal-Dheini, and I serve as the Director of Government Relations of the American Immigration Lawyers Association (AILA). Established in 1946, AILA is a voluntary, nonpartisan bar association of more than 15,000 attorneys and law professors who practice, research, and teach in the field of immigration law. As part of its mission, AILA strives to advance this body of law and facilitate fairness and justice in the field. I am honored to testify on behalf of our members and the countless families, individuals, vulnerable populations, and businesses they represent. Our members regularly represent clients before USCIS on virtually every immigration benefit type, spanning business immigration, family-based immigration, student visas, humanitarian protection, naturalization, and more. This combined expertise gives AILA uniquely comprehensive insight into the state of the agency and the services it provides.

In addition, as an individual who spent the majority of her career as an immigration attorney at USCIS headquarters, I not only understand the perspective of the individuals who come before USCIS, but I also bring rare, comprehensive insight into the operations of the agency. I began my service in the Office of Chief Counsel at USCIS headquarters in 2008, serving under three different Administrations. For 11 years, I served alongside many of the individuals who have received furlough notices at USCIS and whose livelihoods are now being used as a bargaining chip. During my service at USCIS, I counseled various directorates on adjudications issues, handled legal challenges, and was responsible for coordinating legal review of various policy and regulatory initiatives, particularly those related to employment-based immigration adjudication matters. This role gave me a unique understanding of how the agency has rolled out new policies and initiatives

and where things have gone severely wrong in recent years, resulting in skyrocketing processing times, deliberate processes put into place designed to slow down the immigration process, a divergence from USCIS's mission of improving "the efficiency of national immigration services by exclusively focusing on the administration of benefit applications"<sup>1</sup> and transformation into a "vetting agency".<sup>2</sup>

### **Request for Additional Funding**

USCIS's increasing emphasis on vetting has resulted in a significant shortfall in resources for the agency. An agency that once had a significant budget surplus,<sup>3</sup> based primarily on fees paid by its customers, USCIS has now come to Congress to request approximately \$1.2 billion in supplemental funding to keep its doors open and its workers employed through the first quarter for Fiscal Year (FY) 2021.<sup>4</sup> USCIS claims the budget shortfall is a result of decreased receipts due to the coronavirus.<sup>5</sup> Although the agency experienced a temporary decrease in receipts in the initial months of the pandemic, it was well aware of its financial straits well before the pandemic hit.<sup>6</sup>

The primary cause of its financial woes is fiscal mismanagement, as well as the agency's adoption and implementation of various policies and processes that are negatively impacting its own revenue and efficiency. This includes an irresponsible drawdown of a significant agency surplus early in the Trump administration; the excessive hiring of additional staff to search for fraud; and the addition of unreasonably cumbersome, time-consuming layers to the decision-making process of USCIS adjudicators, significantly slowing adjudications. Ill-advised policies such as the public charge "wealth test" and duplicative requirements for in-person interviews, even when not necessary for determining eligibility, have compounded the problem.

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<sup>1</sup> See *Our History*, U.S. CITIZENSHIP & IMMIGRATION SERV., <https://www.uscis.gov/about-us/our-history> (last updated Dec. 11, 2019). See Pub. L. No. 107-296, 116 Stat. 2135, Sec. 451 (Nov. 25, 2002).

<sup>2</sup> Louise Radnofsky, *Ken Cuccinelli Takes Reins of Immigration Agency With Focus on Migrant Vetting*, THE WALL STREET JOURNAL, July 6, 2019, available at <https://www.wsj.com/articles/ken-cuccinelli-takes-reins-of-immigration-agency-with-focus-on-migrant-vetting-11>.

<sup>3</sup> *USCIS Budget Implosion Owes to Far More than the Pandemic*, MIGRATION POLICY INSTITUTE (June 2020), <https://www.migrationpolicy.org/news/uscis-severe-budget-shortfall>.

<sup>4</sup> *Deputy Director for Policy Statement on USCIS' Fiscal Outlook*, U.S. CITIZENSHIP & IMMIGRATION SERV., <https://www.uscis.gov/news/news-releases/deputy-director-for-policy-statement-on-uscis-fiscal-outlook> (last updated June 25, 2020). See also Michelle Hackman, *USCIS Seeks Surcharge to Immigration Applications*, THE WALL STREET JOURNAL, May 19, 2020, available at <https://www.wsj.com/articles/uscis-to-add-surcharge-to-immigration-applications-11589707800>.

<sup>5</sup> See *Deputy Director for Policy Statement on USCIS' Fiscal Outlook*, U.S. CITIZENSHIP & IMMIGRATION SERV., <https://www.uscis.gov/news/news-releases/deputy-director-for-policy-statement-on-uscis-fiscal-outlook> (last updated June 25, 2020).

<sup>6</sup> U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 84 Fed. Reg. 62280 (Nov. 14, 2019).

Since its initial request for emergency funding in May 2020, USCIS revenue has increased to such an extent that it now may have a surplus at the end of the fiscal year.<sup>7</sup> Nonetheless for unexplained reasons, USCIS has not revised its demand for over one billion dollars and continues its plans to furlough more than 13,000 public servants, though the agency has recently agreed to postpone its scheduled furloughs through August 31, 2020.<sup>8</sup> At the same time, the Administration just concluded review of a final fee rule that could increase certain fees by more than 80 percent, such as naturalization fees, that will price its paying customers out of the system.<sup>9</sup> USCIS has the money, is asking for more money, and is raising its fees all at once, yet it refuses to do its job and keep its employees working and the immigration system operable.

Clearly, transparency into USCIS's financial situation is critical, not only for its employees whose financial security depends on remaining employed, but also for the millions of applicants and petitioners relying on USCIS to keep its doors open to be lawfully present and employed. Rather than staying open to keep revenue flowing in, USCIS is choosing a path that will certainly push the agency into financial and operational destruction. With literally millions of applications and petitions for employment-based, family-based and humanitarian cases at stake, a collapse of USCIS would be disastrous for the many American families and businesses that rely upon an efficient, fair, and functional immigration system. The agency bears the responsibility for correcting its systemic problems, and Congress must hold it accountable.

### **Turning Back the Clock on USCIS Inefficiencies**

I was hired in April 2008 by USCIS during an effort to beef up staff in response to significant case processing delays. In FY 2008, Congress appropriated USCIS an additional \$20 million specifically for it to eliminate the naturalization case backlog.<sup>10</sup> By June 2009, USCIS had announced that the backlog had been eliminated through a concerted effort by staff to ensure an efficient and timely process.<sup>11</sup> Throughout most of my career at USCIS, any time new policies and procedures were being discussed, there was an informal, but almost automatic reflex to sincerely consider the operational impact it would have on adjudications and the overall effect it would have on the budget. USCIS is a large bureaucracy, with many departments, but most

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<sup>7</sup> See *With a Projected USCIS Surplus, Leahy & Tester Call on the Agency to Postpone its Planned Furloughs*, U.S. SENATE COMMITTEE ON APPROPRIATIONS (July 21, 2020), <https://www.appropriations.senate.gov/news/minority/with-a-projected-uscis-surplus-leahy-and-tester-call-on-the-agency-to-postpone-its-planned-furloughs>.

<sup>8</sup> *Leahy Announces That USCIS is Postponing Furloughs of 13,000 Public Servants, Including 1,109 in Vermont*, U.S. SENATE COMMITTEE ON APPROPRIATIONS (July 24, 2020), <https://www.leahy.senate.gov/press/leahy-announces-that-uscis-is-postponing-furloughs-of-13000-public-servants-including-1109-in-vermont>.

<sup>9</sup> See *OIRA Conclusion of EO 12866 Regulatory Review*, OFFICE OF INFORMATION & REGULATORY AFFAIRS, OFFICE OF MANAGEMENT & BUDGET, <https://www.reginfo.gov/public/do/eoDetails?rrid=130597> (last visited July 26, 2020); see also U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 84 Fed. Reg. 62280, Nov. 14, 2019.

<sup>10</sup> Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, Dec. 26, 2007, available at <https://www.govinfo.gov/content/pkg/PLAW-110publ161/pdf/PLAW-110publ161.pdf>.

<sup>11</sup> *USCIS, FBI Eliminate National Name Check Backlog*, U.S. CITIZENSHIP & IMMIGRATION SERV. (June 22, 2009), available at <https://www.aila.org/infonet/uscis-announces-elimination-fbi-namecheck-backlog>.

department leaders had seats at the table when policies and procedures were being considered. Often from the outside, this deliberation was viewed as slow and inefficient, with the government taking too long to get necessary policies implemented. However, necessary time was given to all the voices at the table to ensure that policies were rolled out in the least burdensome way.

### ***The Trump administration's political leadership erected an invisible wall to immigration***

Things changed in 2017 when a new group of political leadership took the reins and were eager to get out new policies at any cost. As new policy measures were being discussed, we were told that “operational concerns don’t matter.” It became clear that operational, legal, and financial concerns were no longer co-equal voices at the table, but rather policy goals and vetting took the favored child status. This is not “inside” information, it is written into the policies and procedures that have erected an invisible wall over the past few years that has purposefully made it more complicated, longer, and harder to get an immigration benefit, including:

- **Elimination of a decades-long policy to give deference to prior adjudications that were materially the same.** In October 2017, USCIS rescinded longstanding guidance under which USCIS adjudicators deferred to prior approvals of temporary immigration benefits when processing requests to extend those benefits absent error or a material change in circumstances.<sup>12</sup> Under the agency’s new guidance, USCIS personnel must re-adjudicate previously approved petitions despite no change in employer, job, or duties. This needless duplication of efforts squanders resources, drives delays, and creates inconsistency in adjudications. USCIS should rescind its 2017 policy and reinstitute its 2004 deference policy
- **Mandating in-person interviews for all employment-based adjustment and refugee/asylee relative petitions, even when eligibility was not in question.** In October 2017, USCIS implemented a mandatory in-person interview requirement for all individuals seeking lawful permanent residence (LPR) status through their U.S. employer, as well as certain relatives seeking family reunification with asylees and refugees.<sup>13</sup> Under prior policy, USCIS officers had discretion to require such interviews on a case-by-case basis when needed, where, for example, applications presented fraud or national security concerns. The new policy mandates those interviews indiscriminately, eliminating adjudicator discretion to determine when an

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<sup>12</sup> U.S. CITIZENSHIP & IMMIGRATION SERV., U.S. DEPT. OF HOMELAND SECURITY, PM-602-0151, RESCISSION OF GUIDANCE REGARDING DEFERENCE TO PRIOR DETERMINATIONS OF ELIGIBILITY IN THE ADJUDICATION OF Petitions for Extension of Nonimmigrant Status (Oct. 23, 2017), *available at* <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2017/2017-10-23-Rescission-of-Deference-PM602-0151.pdf>.

<sup>13</sup> USCIS to Expand In-Person Interview Requirements for Certain Permanent Residency Applicants, U.S. CITIZENSHIP & IMMIGRATION SERV., <https://www.uscis.gov/news/news-releases/uscis-expand-person-interview-requirements-certain-permanent-residency-applicants> (last updated Aug. 28, 2017).

interview would be necessary to determine eligibility. Unneeded, time-intensive interviews drain agency resources and have significantly increased the agency's processing times for applications which require in-person interview (i.e., Form I-485 and Form I-730).<sup>14</sup> USCIS should eliminate its in-person interview requirement for routine cases that present no fraud or national security concerns.

- **Unprecedented issuance of duplicative and irrelevant requests for evidence and improper denials being overturned in litigation**. In recent years, USCIS has been issuing Requests for Evidence (RFEs) and Notices of Intent to Deny (NOIDs) at an unprecedented high rate, which wastes limited staff resources and increases the overall time it takes for USCIS to adjudicate applications and petitions. For example, for H-1B petitions, USCIS data reveals the percentage of completed cases with RFEs increased from 22.3 percent in FY2015 to 40.2 percent in FY2019.<sup>15</sup> The RFE rate reached 60 percent during the first quarter of FY2019, and was 47.2 percent during the first quarter of FY2020.<sup>16</sup> Frequently, RFEs and NOIDs are issued seeking evidence that has already been provided or that is unnecessary to establish eligibility or contrary to the plain language of the law. Even when the RFEs and NOIDs ultimately result in approvals, the unnecessary delay caused by their issuance effectively means that USCIS reviews each application or petition twice – once upon initial review and again in response to what is often a needless RFE or NOID – thus leading to twice the amount of resources actually needed to complete the adjudication.

When these RFEs and NOIDs result in improper denials, U.S. employers and individuals are forced to turn to the federal courts to seek relief. Frequently, when a legal challenge is brought, the agency is forced to reopen and approve the case because the decision is contrary to law. Most recently, litigation resulted in USCIS being forced to overturn H-1B policy memoranda that were deemed to contravene

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<sup>14</sup> The significant increase in work for each case correlates with a skyrocketing average processing time for employment-based Form I-485 applications and Form I-730, Refugee/Asylee Relative petitions. Based on AILA's analysis of USCIS's data, two years after the policy was implemented (the beginning of FY 2018 to the end of FY 2019) average processing times on I-485 applications rose 58 percent during that time period, including 15 percent just in FY 2019 alone. The same is shown by the jump in overall average processing times for the Form I-730, which also rose 58 percent during the two fiscal years, including 37 percent just in FY 2019. Since FY 2014, processing times for I-485 and Form I-730 have risen 184 percent and 167 percent, respectively. New data recently provided by USCIS through May 31, 2020 shows that the processing times for employment-based Form I-485 applications and Form I-730 petitions have only continued to grow in FY 2020. See *AILA Policy Brief: Crisis Level USCIS Processing Delays and Inefficiencies Continue to Grow*, AM. IMMIGRATION LAWYERS ASS'N (Feb. 26, 2020) (analyzing *Historical National Average Processing Times for All USCIS Offices*, U.S. CITIZENSHIP & IMMIGRATION SERV., <https://egov.uscis.gov/processing-times/historic-pt>, (last accessed Feb. 21, 2020)).

<sup>15</sup> *H-1B Approved Petitions and Denial Rates for FY 2019*, NAT'L FOUND. FOR AM. POLICY (Feb. 2020), <https://nfap.com/wp-content/uploads/2020/02/H-1B-Denial-Rates-Analysis-of-FY-2019-Numbers.NFAP-Policy-Brief.February-2020-1.pdf>.

<sup>16</sup> *Id.*

the Immigration and Nationality Act.<sup>17</sup> Issuing improper denials, resulting in the time and money spent defending unlawful decisions unnecessarily, drain agency resources that could be better used in eliminating case backlogs.<sup>18</sup>

- **Publication of overly burdensome and complex regulations, such as the public charge rule.** DHS recently implemented a convoluted and inefficient new framework that radically heightens the standard for determining whether an applicant for admission to the U.S. may become a “public charge.” As implemented, the DHS public charge rule penalizes people for even the modest use of an array of public benefits that they are legally permitted to use. The new framework forces USCIS adjudicators to engage in an analysis that is significantly more complex and time consuming than before, forcing adjudicators to spend considerably more time in processing individual applications.<sup>19</sup> Moreover, the new public charge rule has imposed a heightened burden of proof on applicants, increasing the time and documentary evidence required to prepare their applications, which has in turn slowed, and in some cases even deterred applicants from submitting their applications to USCIS.<sup>20</sup> Given the burden the public charge rule has placed on USCIS adjudicators and the regulated public, case processing times will likely soar even further and the overall number of applications and related fees that USCIS will receive will likely decrease.
- **Rejection of applications and petitions from the most vulnerable populations for leaving immaterial spaces on the form blank or using terminology other than “N/A”.** USCIS has recently begun implementing a policy in which the agency is rejecting, and in some cases denying, applications and petitions for alleged incompleteness for failure to complete certain sections of the form. This includes rejecting forms for failure to write “N/A” in boxes that are clearly inapplicable; for example, failing to write “N/A” in the “apartment number” box for an applicant who lives in a house. In some cases, USCIS has even rejected applications where an

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<sup>17</sup> See Stuart Anderson, *USCIS-ITServe Settlement Overturns 10 Years Of H-1B Visa Policies*, FORBES, May 21, 2020, available at <https://www.forbes.com/sites/stuartanderson/2020/05/21/uscis-itserv-settlement-overturns-10-years-of-h-1b-visa-policies/#3f3c189e5bf4>.

<sup>18</sup> USCIS data reveals that the denial rate for H-1B petitions has increased substantially in recent years. The denial rate for H-1B petitions for initial employment was 6% in FY 2015 and as low as 5% in FY 2012, compared to 24% in FY 2018 and 21% in FY 2019. In both FY 2018 and FY 2019, USCIS adjudicators denied 12% of H-1B petitions for “continuing” employment (primarily for existing employees), compared to denying only 3% of H-1B petitions for continuing employment in FY 2015 (and at 5% as recently as FY 2017). See *H-1B Approved Petitions and Denial Rates for FY 2019*, NAT’L FOUND. FOR AM. POLICY (Feb. 2020), <https://nfap.com/wp-content/uploads/2020/02/H-1B-Denial-Rates-Analysis-of-FY-2019-Numbers.NFAP-Policy-Brief.February-2020-1.pdf>.

<sup>19</sup> See Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41292 (Aug. 14, 2019), available at <https://www.federalregister.gov/documents/2019/08/14/2019-17142/inadmissibility-on-public-charge-grounds>; see also USCIS Policy Manual, Volume 8 – Admissibility, Part G – Public Charge Grounds of Inadmissibility, <https://www.uscis.gov/policy-manual/volume-8-part-g>.

<sup>20</sup> See *Khudheyer v. Cuccinelli*, No. 20-cv-1882 (D.D.C. July 13, 2020).

applicant or petitioner indicates “not applicable,” “na,” or “none” instead of “N/A”, consistent with form instructions.<sup>21</sup> Requiring officers to review for the lack of non-material information and expend resources to return petitions and fees is an inefficient use of agency resources and creates an unnecessary barrier to accepting applications and petitions, especially for unrepresented applicants. USCIS must refrain from rejecting applications and petitions on this basis.

- **Frequent suspension of premium processing services.** USCIS generates substantial revenue from its premium processing service, which allows for certain petitions to be processed within 15-calendar days for an additional filing fee of \$1,440. As of the end of FY2019, USCIS had \$648 million in its premium processing account.<sup>22</sup> However, USCIS has suspended premium processing a number of times over the past few years, including most recently in March 2020, when USCIS announced a temporary suspension of premium processing services for all Form I-129, Petition for Nonimmigrant Worker, and Form I-140, Petition for Immigrant Worker. Although USCIS has resumed premium processing services recently to help generate receipt revenue, AILA members report that the corresponding service has not been provided as premium processing units are not issuing requests for evidence by fax or email, further delaying the final adjudication of those cases. USCIS must keep premium processing services available to as many form types as possible and use that money to cover its expenses, while ensuring that services to non-premium form types are not sacrificed.
- **Refusal to receipt in and adjudicate initial DACA applications, despite Supreme Court order.** On June 18, 2020, the Supreme Court blocked the government’s attempt to terminate the Deferred Action for Childhood Arrivals (DACA) program.<sup>23</sup> Subsequently, a Maryland District Court judge entered an order in *Casa de Maryland, et. al., v. DHS, et. al.* in response to the Supreme Court decision, vacating the DACA rescission and restoring the program to its pre-September 5, 2017 status.<sup>24</sup> Despite

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<sup>21</sup> See *USCIS Accountability: An Examination of “Blank Spaces” Rejections*, AM. IMMIGRATION LAWYERS ASS’N (July 24, 2020), <https://www.aila.org/infonet/an-examination-of-blank-space-rejections-> (analyzing the results of AILA’s review of a number of Form I-589 and Form I-918 rejections for alleged incompleteness reported by members between November 25, 2019, and May 1, 2020. Of the 189 rejected applications analyzed, 28 were rejected for not having a middle name, 20 for no other names used, 64 for not having a passport or travel document (I-94) number, 46 for incomplete family information, and 51 for not writing their name in their native language, even though in many instances their native language used the same alphabet as English).

<sup>22</sup> U.S. CITIZENSHIP & IMMIGRATION SERV., U.S. DEPT. OF HOMELAND SECURITY, BUDGET OVERVIEW, FISCAL YEAR 2021 CONGRESSIONAL JUSTIFICATION, [https://www.dhs.gov/sites/default/files/publications/united\\_states\\_citizenship\\_and\\_immigration\\_services.pdf](https://www.dhs.gov/sites/default/files/publications/united_states_citizenship_and_immigration_services.pdf).

<sup>23</sup> *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1913 (2020), available at [https://www.supremecourt.gov/opinions/19pdf/18-587\\_5ifl.pdf](https://www.supremecourt.gov/opinions/19pdf/18-587_5ifl.pdf).

<sup>24</sup> *Casa De Maryland v. Dep’t of Homeland Security*, No. 8:17-cv-02942-PWG (D. Md. July 17, 2020), available at <https://www.courtlistener.com/recap/gov.uscourts.mdd.403497/gov.uscourts.mdd.403497.97.0.pdf>.

these decisions, DHS has refused to comply with these judicial orders, claiming that the Supreme Court’s decision is “affront to the rule of law”<sup>25</sup> and has yet to issue guidance on accepting initial DACA applications or related advance parole applications, which would generate additional revenue for the cash-strapped agency.

These are just a few of the myriad of policies that have deterred individuals and businesses from applying for immigration benefits from USCIS and that have mired the system.<sup>26</sup> The result is skyrocketing case processing times,<sup>27</sup> despite an overall decrease in receipts,<sup>28</sup> and an increase in personnel. When I began working for USCIS in 2008, it was already a behemoth of an organization with more than 16,000 employees across the country. By fiscal year 2020, that number had ballooned to over 20,000 with a continued projection to exceed more than 21,000 employees in FY 2021.<sup>29</sup> Clearly this business model does not work— if you hire more people, who have fewer cases to adjudicate, processing times would be in check - unless of course complying with its statutory mission has become secondary to vetting.

This shift away from its statutory responsibilities became evident to me in my final years at USCIS. The Homeland Security Act established USCIS in 2003 to focus *exclusively on the administration of immigration benefit applications* and established Immigrations and Customs Enforcement (ICE) and Customs and Border Protection (CBP) to handle immigration enforcement and border security functions. Yet, the current leader of USCIS and DHS, Kenneth Cuccinelli claims that “we are not a benefit agency, we are a vetting agency.”<sup>30</sup> So, as the agency collects money paid by its customers for the adjudication of applications, rather than doing its statutorily mandated work, I saw firsthand prioritization on adding layers of screening, such as social media vetting, hiring more fraud detection personnel, unnecessary interviews, as well as USCIS personnel being detailed to other agencies and spending more time on enforcement priorities. Yet, now USCIS leadership simply gets to put its hand out and ask for more than \$1 billion of tax payer money, while at the same time passing off the costs of its own inefficiencies

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<sup>25</sup> *DHS Statement on Supreme Court Decision on DACA*, U.S. DEP’T OF HOMELAND SECURITY (June 18, 2020), <https://www.dhs.gov/news/2020/06/18/dhs-statement-supreme-court-decision-daca>.

<sup>26</sup> See *AILA Report: Deconstructing the Invisible Wall*, AM. IMMIGRATION LAWYERS ASS’N (Apr. 24, 2018), <https://www.aila.org/infonet/aila-report-deconstructing-the-invisible-wall>; see also *Immigration Policy Tracking Project*, <https://immpolicytracking.org/> (cataloging every immigration policy change adopted or announced since 2017 with a link to the source document and any prior policy).

<sup>27</sup> *AILA Policy Brief: Crisis Level USCIS Processing Delays and Inefficiencies Continue to Grow*, AM. IMMIGRATION LAWYERS ASS’N (Feb. 26, 2020), <https://www.aila.org/advo-media/aila-policy-briefs/crisis-level-uscis-processing-delays-grow>.

<sup>28</sup> See *Number of Service-wide Forms Fiscal Year to Date, by Quarter, and Form Status Fiscal Year 2019*, U.S. CITIZENSHIP & IMMIGRATION SERV., [https://www.uscis.gov/sites/default/files/document/data/Quarterly\\_All\\_Forms\\_FY19Q4.pdf](https://www.uscis.gov/sites/default/files/document/data/Quarterly_All_Forms_FY19Q4.pdf).

<sup>29</sup> U.S. CITIZENSHIP & IMMIGRATION SERV., DEP’T OF HOMELAND SECURITY, BUDGET OVERVIEW, FISCAL YEAR 2021 CONGRESSIONAL JUSTIFICATION, [https://www.uscis.gov/sites/default/files/document/reports/USCIS\\_FY\\_2021\\_Budget\\_Overview.pdf](https://www.uscis.gov/sites/default/files/document/reports/USCIS_FY_2021_Budget_Overview.pdf).

<sup>30</sup> Louise Radnofsky, *Ken Cuccinelli Takes Reins of Immigration Agency With Focus on Migrant Vetting*, THE WALL STREET JOURNAL, July 6, 2019, available at <https://www.wsj.com/articles/ken-cuccinelli-takes-reins-of-immigration-agency-with-focus-on-migrant-vetting-11562410802>.

to its customers by proposing to significantly increase fees and adding a 10 percent surcharge on top of that to pay back its bailout and furloughing hard working Americans.

### **Congress Must Ensure USCIS Fiscal Responsibility, Accountability and Transparency**

USCIS's request for funding presents a unique opportunity for Congress to exercise its constitutional oversight authority in demanding a far greater level of fiscal responsibility for the agency. Congress must condition any additional funding on increased transparency, accountability, and cost-saving measures that will enable the agency to pull itself out of this crisis by its own bootstraps. Without meaningful oversight, the fiscal mismanagement and inefficiencies within the agency are likely to continue, and American taxpayers should be deeply concerned that the agency may ask for additional bailouts in the future.

### ***USCIS Became Less Efficient Even as Its Expenditures Increased***

Data made available by the U.S. Department of Homeland Security (DHS) indicates that USCIS has significantly expanded its staff across the country, and therefore considerably increased its day-to-day expenses, at a time when its productivity has largely plateaued. From Fiscal Years 2014 through 2019, the average processing time increased by 101%, while the agency's net backlog of delayed cases grew from about 544,000 to over 2.5 million as of April 2020.<sup>31</sup> According to USCIS's own figures, processing times have surged by 25% between FY 17 and FY 19, despite a 10% decrease in overall receipts.<sup>32</sup> This disparate level of growth in personnel without corollary improvement in service appears unjustified and unsustainable. The agency has therefore significantly increased its day-to-day costs at a time when its revenue from filing fees has decreased, while also taking significantly longer to meet its processing goals.

USCIS is now asking American taxpayers for a bailout, while millions of people and employers continue paying considerable filing fees for a decreasing level of service, without any clear plan for improvement. The agency is asking Congress for permission to add a 10 percent surcharge on almost all applications and petitions to pay back the bailout, while at the same time racing towards finalizing a fee rule that would increase filing fees significantly, which could deter individuals from filing immigration benefit requests. This is an unworkable business model. In order to set the

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<sup>31</sup> See DEP'T OF HOMELAND SECURITY, ANNUAL REPORT ON THE IMPACT OF THE HOMELAND SECURITY ACT ON IMMIGRATION FUNCTIONS TRANSFERRED TO THE DEPARTMENT OF HOMELAND SECURITY (April 29, 2020), page 3, available at <https://www.uscis.gov/sites/default/files/document/reports/Annual-Report-on-the-Impact-of-the-Homeland-Security-Act-on-Immigration-Functions-Transferred-to-the-DHS-FY19-Signed-Dated-4.29.20.pdf>

<sup>32</sup> See *Historical National Average Processing Time for All USCIS Offices*, U.S. CITIZENSHIP & IMMIGRATION SERV., <https://egov.uscis.gov/processing-times/historic-pt>; see also *AILA Policy Brief: USCIS Processing Delays Have Reached Crisis Levels Under the Trump Administration*, AM. IMMIGRATION LAWYERS ASS'N (Jan. 30, 2019), <https://www.aila.org/advo-media/aila-policy-briefs/aila-policy-brief-uscis-processing-delays>; *AILA Policy Brief: Crisis Level USCIS Processing Delays and Inefficiencies Continue to Grow*, AM. IMMIGRATION LAWYERS ASS'N (Feb. 26, 2020), <https://www.aila.org/advo-media/aila-policy-briefs/crisis-level-uscis-processing-delays-grow>.

agency back on the right course, Congress must ensure that USCIS is transparent and responsible regarding its fiscal management and efficiency in operations by passing common-sense reforms such as the Case Backlog and Transparency Act of 2020 (H.R. 5971).

### ***The USCIS Crisis Could Hurt Thousands of U.S. Workers, American Families and Business***

Congress cannot let more than 13,000 US workers lose their jobs, as they are held hostage by the Administration that has the means and method to keep them employed. The examples below are actual USCIS employees who are on the verge of being furloughed, with real financial and family responsibilities, including:

- A single mother of a toddler working as an administrative assistant who recently purchased a home.
- A recent master's degree graduate who just secured a position as an asylum officer and is dependent on health care insurance to cover chronic health care conditions.
- A dedicated employee who has worked for the agency for more than 20 years and is nearing retirement.
- An experienced professional with two young children whose spouse has already been laid off due to the COVID-19 pandemic.

If nearly 70 percent of USCIS is shut down, there will also be devastating economic and social impacts on American families, businesses, and students. For example:

- Due to budget shortfalls, USCIS has been severely delayed in printing and mailing employment authorization documents (EAD) and green cards for approved individuals.<sup>33</sup> As a result, an F-1 graduate student who recently moved to Chicago with his toddler to begin a job with a large academic medical center risks losing his job and home because he has not yet received the EAD.
- The spouse of a U.S. citizen who is in the process of becoming an LPR will be unable to get an advance parole document to get permission to travel to see her father in Scotland who is dying of cancer. If she chooses to go see her father before he dies without waiting for her advance parole document to be issued, she will abandon her chance to become an LPR.
- A 25-year old Cuban individual who is statutorily eligible to become an LPR, but without a decision on his adjustment of status application by mid-August, he will be unable to afford necessary medications and receive critical psychological treatment.
- If USCIS operations are reduced, a 27-year old man from the nation of Georgia who has earned a U.S. bachelors and master's degree in STEM fields may lose his chance to become

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<sup>33</sup> See Catherine Rampell, *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](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).

a contributing permanent resident because USCIS must finish processing his Diversity Visa (DV) adjustment application by September 30, 2020. The outcome of his DV green card application will impact “the course of his entire life.”

- Fifteen mentally disabled refugees must be naturalized by the end of the year to continue receiving Social Security Income (SSI) that provides critical support they need to pay for rent and other necessities. Otherwise they will become ineligible to receive SSI in the future.
- Several Community Health Centers based in Massachusetts that treat patients from Health Professional Shortage Areas (HPSA) would be significantly impacted by reduced USCIS operations, particularly as they treat patients with high rates of COVID-19. Doctors treating patients may not be able to obtain the timely approval of an initial H-1B petition or renewal of their H-1B status, and support staff awaiting EADs may not be able to work. Delays in employment start dates or being forced to stop working will impact broader staffing and scheduling of these Community Health Centers, and this will have a cascading effect on their federal funding, grant applications, etc.

## **Recommendations**

AILA urges Congress to impose stringent conditions on any additional funding it may appropriate to USCIS during this purported fiscal crisis. AILA also urges Congress to press the pause button to verify whether emergency appropriations and furloughs are even needed at this time given the growing reports that the agency now has a budget surplus through the end of the current fiscal year.

### ***Actions Congress Must Take to Ensure USCIS Accountability and Fiscal Responsibility***

- Reject USCIS’s proposal to pass off its own efficiencies by imposing a 10% surcharge on fees and finalizing a fee rule that significantly increases fees and prices out applicants.
- Impose stringent reporting requirements to ensure USCIS is fiscally responsible and efficient, such as the reporting requirements set forth in the bipartisan H.R. 5971, Case Backlog and Transparency Act of 2020, described below.
- Require USCIS to implement cost-efficient measures for adjudicating immigration applications and petitions, such as reinstating the agency’s 2004 “deference” policy, giving adjudicators discretion of when to require in-person interviews, and reusing previously captured biometrics for all form types.
- Ensure that USCIS remains focused on its service-oriented statutory mission, and specifically prohibit transfer of fund to ICE or other enforcement agencies.
- Demand that USCIS implement measures to generate new revenue, while simultaneously improving customer service, such as by expanding premium process to other form types.
- Require implementation of practices to increase the filing of applications and petitions, such as by improving USCIS customer-facing tools and resources and expanding the agency’s engagement with the stakeholder community.

- Compel USCIS to suspend all deadlines and extend all nonimmigrant statuses for at least 90 days beyond the duration of the COVID-19 national emergency and permit naturalization oaths to be taken through video.
- Mandate reasonable processing times by statute in accordance with the sense of Congress outlined in section 202 of the American Competitiveness in the 21<sup>st</sup> Century Act, (Pub. L. 106-313 Oct. 17, 2000) that the processing of all immigrant benefit applications should be completed within 180 days of the initial filing, except for petitions under Section 214(c) of the Act (relating to H, L, O and P nonimmigrants) which should be adjudicated within 30 days.

### ***Enact Authorizing Legislation to Increase Accountability and Oversight of USCIS***

Clearly, accountability and oversight into USCIS's operations are imperative. Congress must enact reporting requirements that give elected officials and the public regular updates as to the status of the backlog, analyze the factors contributing to the backlog and provide a plan to eliminate the backlog, such as those included in H.R. 5971, the Case Backlog and Transparency Act of 2020. This will ensure that USCIS goes back to being an agency that can clear out backlogs and considers operational efficiency as critical factor in policy determinations.

### **Conclusion**

Given that the White House has not made an official request for funding for the immigration benefits agency and continues to push out policies that actively prevents foreign nationals from coming to the United States, such as the latest travel bans suspending entry of immigrants and nonimmigrants, it is uncertain whether some in this administration care if USCIS meets its demise. Congress cannot let this Administration forsake its responsibility in administering the Immigration and Nationality Act and honoring the heritage of this great nation. The need to have a fully open agency is equally as important as having a fully efficient agency that honors its statutory mission of fairly and efficiently adjudicating immigration benefits in a timely manner. Clearly Congress must act, but it must do so without authorizing a blank check that allows an agency to repeat its mistakes and pass its burden on to its customers and employees.