

Testimony of Jessica M. Vaughan  
Director of Policy Studies  
Center for Immigration Studies

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

“Oversight of U.S. Citizenship and Immigration Services”  
July 29, 2020, at 9:30am

Thank you for the opportunity to testify today on matters regarding U.S. Citizenship and Immigration Services (USCIS) that urgently require Congressional attention. The Trump administration has implemented many sound policies and regulations to restore fidelity to the immigration laws passed by Congress and improve the integrity of our legal immigration system. Our legal immigration system is now administered in a way that aligns more closely with our national interests, better protects U.S. workers, and makes it harder for special interests and bad actors to game the system. In the last year, even as the workload has continued to grow, processing times have improved for the majority of application types, processing backlogs have been significantly reduced, and the agency approved the highest number of new citizens in 11 years. Nevertheless, a variety of chronic problems, aggravated by external pressures including the coronavirus pandemic, continue to challenge the agency. Besides the crushing workload and rampant fraud, USCIS operates under an obsolete funding process that includes too many benefits programs, like DACA, U visas, and asylum applications, that are a fiscal drag on the agency. Congress should endorse the Trump administration’s new fee proposal in the short term, but to ensure the agency’s sustainability, it should also reduce the number of fee-exempt programs and reform the fee collection and appropriations process to give Congress more oversight over how USCIS uses its revenue.

### **USCIS Must Balance Prompt Adjudication with Correct Adjudication, Within Resources**

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 immigration and legal aid attorneys, who badger the agency to adopt certain policies or practices that they believe will favor their clients or their practices. As a result, for too long USCIS leadership over-emphasized swift processing and low fees at the expense of correct and fair adjudication. The results have been unsatisfactory for the nation and especially for those in the U.S. workforce who have suffered harm because of rushed decisions, dubious loopholes, or questionable prioritization of cases.

Over time and successive administrations, the adjudications culture at USCIS evolved gradually but steadily toward a mindset that aimed 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 agency; 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 that they qualify 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.<sup>1</sup>

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.<sup>2</sup>

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.<sup>3</sup>

Advocates for those who benefited under the prior system of leniency, lax standards and loopholes have pushed back on many of the Trump reforms with lawsuits and by characterizing every reform as motivated by animus toward immigrants. In reality, they are seeking to perpetuate process flaws that serve their interests and the interests of those who do not qualify under the legal immigration system that Congress has created. They would prefer that taxpayers and legal immigrants subsidize these unqualified applicants. They prefer the chaos that is created when USCIS is overwhelmed with applications, no matter how frivolous or fraudulent. This is not pro-immigrant, and is an insult to the law and to all those who support or want to participate in legal immigration.

The consequences of inadequate screening of benefits applications can be grave, as illustrated in the following examples:

- 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.<sup>4</sup>
- The Trump administration has prosecuted and denaturalized dozens of terrorists, war criminals, human rights violators, and other serious criminals who lied, used false documents, or otherwise fraudulently obtained immigration benefits. The number of immigration fraud-related prosecutions announced by the Department of Justice from 2018-2020 (to date) was more than double the number announced from 2015-2017.<sup>5</sup>

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<sup>1</sup> 8 USC 1361: <http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1361&num=0&edition=prelim>.

<sup>2</sup> 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: <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.

<sup>3</sup> Jessica M. Vaughan, “Mayorkas to USCIS Staff: Just Say Yes – Or Else!,” October 20, 2010, <https://cis.org/Vaughan/Mayorkas-USCIS-Staff-Just-Say-Yes-Or-Else>.

<sup>4</sup> See David North, “San Bernardino Puts Focus on Immigration-Through-Marriage, or Should,” December 21, 2015, <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,” December 15, 2015, <https://cis.org/Vaughan/Major-Screening-Gap-Sponsors-Immigrants-Not-Fully-Vetted-Under-Current-Policy>.

<sup>5</sup> See the News Releases section of the Department of Justice at <https://www.justice.gov/news>.

- Two days ago, the Department of Justice announced a settlement deal with ASTA CRS, Inc., a Virginia-based staffing company that discriminated against U.S. workers in hiring. ASTA's clients include Anthem, Barclays, FedEx, Capital One and CVS. They have filed petitions for hundreds of foreign workers in the last several years, and sponsored workers from Nepal, India and Bangladesh for green cards, while deliberately shunning U.S. workers.<sup>6</sup>
- Last November, a federal grand jury indicted two South Korean nationals for submitting 117 bogus petitions for alien workers, enabling 125 foreign nationals to live in the United States after paying fees of \$30,000-70,000. The defendants put fraudulent tax and other corporate documents in their clients' applications to deceive USCIS adjudicators, and falsely claimed that their business clients could not find suitable U.S. workers.<sup>7</sup>

### **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 have helped 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. Critics also maintain that these policies have only slowed the processing of applications, implying that applicants are getting worse "service" for the fees they pay.

In fact, USCIS statistics on historical average processing times through March 31, 2020 show that processing times for FY2020 were the same or better for 16 out of 50 forms that the agency processes. Processing times did increase for many types of applications – but the 16 forms that were processed faster in 2020 than in 2019 represent about 60 percent of all the applications received and approved, meaning that the majority of applicants had their forms processed faster in 2020 than in 2019. The application types that experienced the same or faster processing include: Fiance (K) visas, Petitions for Immediate Relatives, Family-based Adjustments of Status, certain work permits, and certain naturalization applications.<sup>8</sup>

The following is a list of some of the new policies that have been opposed by advocates:

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 that enable immigration

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<sup>6</sup> "Justice Department Settles Claim Against Virginia-Based Staffing Company for Improperly Favoring Temporary Visa Workers Over U.S. Workers," U.S. Department of Justice, July 27, 2020, <https://www.justice.gov/opa/pr/justice-department-settles-claim-against-virginia-based-staffing-company-improperly-favoring> and the MyVisaJobs website: <http://www.myvisajobs.com/Visa-Sponsor/Asta-CRS/49907.htm>.

<sup>7</sup> USCIS Assists in Case Where Federal Grand Jury Indicts Lawyer and Accountant in Visa Fraud Scheme to Obtain LPR Status for South Korean Nationals, November 6, 2019, <https://www.uscis.gov/news/news-releases/uscis-assists-in-case-where-federal-grand-jury-indicts-lawyer-and-accountant-in-visa-fraud-scheme-to>.

<sup>8</sup> See "Historical National Average Processing Time (in Months) for All USCIS Offices for Select Forms By Fiscal Year," USCIS, <https://egov.uscis.gov/processing-times/historic-pt>.

officers to evaluate the eligibility and credibility of applicants and obtain information that is not on the forms they fill out or in databases that they check. USCIS now interviews all applicants seeking to adjust status to an employment green card (about 165,000 cases) and applicants who claim to be family members of asylees and refugees (both historically high-fraud categories). USCIS has found 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 instructing 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 required the officer to retrieve and review the original file from the USCIS archives to determine if circumstances were the same, 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, even though 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 have to provide more detail on how their arrangements conformed to the law. **Bottom line – The initial processing delays caused by this policy change were temporary and appear to have leveled 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. This is common sense. **Bottom line – This policy 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. New Public Charge Inadmissibility Rules – On February 24, USCIS implemented new guidelines for officers to evaluate the admissibility of visa and benefits applicants based on their ability to be self-sufficient. This principle, that most categories of new immigrants should not be dependent on public assistance, has been a feature of U.S. immigration law since 1882. The new guidance updates the types of public assistance that might be considered relevant and standardizes how officers will evaluate admissibility. **Bottom line – It is too early to determine how this rule will affect application processing times, either for individuals or in the aggregate. Regardless, like the improvements to vetting, this is a necessary reform that will improve**

**the integrity of the system and bring improvements that may be worth the additional processing time, if it occurs.**

6. Reducing the volume of unqualified applicants – The Trump administration has implemented numerous policy changes to deter unqualified, frivolous, and downright fraudulent applications. Officers now may quickly deny applications that lack evidence of the most basic requirements of eligibility. New rules for asylum seekers have been adopted to remove incentives for people to be smuggled across the border illegally, claim a fear of return, and be released to pursue an asylum claim that will take years to complete. The threshold for qualifying investments in the EB-5 program has been raised. **Bottom line – All of these changes have and will continue to decrease the workload for USCIS, enabling the agency to prioritize the legitimate applications.**

### **USCIS Funding Shortfall is the Result of an Outdated and Inadequate Funding Process**

USCIS is now facing the prospect of having to shut down all benefits processing due to the collapse of its fee receipts in the wake of the coronavirus pandemic. International travel has been severely curtailed, and like other countries, the United States has greatly restricted the entry of travelers and closed most consulates abroad. In addition, several temporary work visa programs have been suspended due to business shutdowns and a major spike in unemployment of Americans.

USCIS officials have asked Congress for a one-time infusion of funds that will be paid back by a temporary surcharge on application fees. This, together with some borrowing and other creative measures, is a reasonable plan to get through this current crisis.

In addition, USCIS is preparing to implement a new set of fees in the very near future that will greatly help the agency's financial situation. While advocates (predictably) have criticized the fee proposal as another alleged attack on immigrants, in fact the new fee structure will reduce some of the subsidies that most legal immigrants have to pay to support the processing of applications who do not have to pay, or who pay an artificially low fee.

But it will not be enough. USCIS operates under an outdated and inadequate funding process that will prevent the agency from ever keeping up with its workload while maintaining secure, appropriate standards of adjudication. Among the problems:

1. **The fee-setting reviews take too long to complete.** USCIS is only now about to implement the latest adjustments to the fees, based on a review process that was initiated in 2018. The processing costs on which the new fees were based will be out of date nearly as soon as they go into effect.
2. **Too many of the application fees are set artificially low, meaning that legal immigrants and their sponsors have to subsidize these applications.** This is an especially serious problem when the subsidized applications make up a large number of the total applications. Subsidized applications include DACA, various forms associated with asylum claims, U visas for crime victims, and even naturalization forms. According to USCIS data, in recent years the growth in receipts from non-fee bearing applications has exceeded the growth in receipts from the fee-bearing applications. That is a major fiscal drag on the agency and virtually guarantees processing delays, increased subsidies paid by other immigrants and, eventually, insolvency. The new fee regulation takes some steps to begin to correct this problem, for example by imposing a token \$50 fee for asylum applications (to help offset the direct processing cost of \$366, not counting other, larger, indirect costs, which would bring the full cost to about \$1,800).

3. **Issuance of fee waivers increased dramatically in the last several years**, in part due to an easier application process implemented by the Obama administration. USCIS rarely discloses statistics on fee waivers, but recently revealed that the fee waivers in 2018 were valued at \$368 million (an increase of \$23.6 million from 2017). The waivers were granted to approximately 350,000 applicants, and worth an average of \$1,051 apiece. Applicants for work permits, adjustment to green cards, Temporary Protected Status, naturalization, and crime victims are potentially eligible for the waivers. To avoid escalating costs for legal immigrant applicants, the fee waivers should be granted more rarely, especially for benefit awards that offer an alien relief from deportation or inadmissibilities, or when the benefit will enable the alien to earn a higher income.
4. **USCIS should charge higher fees on applications that should be disincentivized as a matter of policy.** Congress has provided the agency with the authority to deviate from setting fees that represent the exact cost of the benefit in order to serve policy goals. For example, the government wants to encourage immigrants to become citizens, so the fees for naturalization have been set artificially low to encourage eligible aliens to become citizens, or at least to avoid having a high fee be a deterrent to naturalization. Past experience has shown that the prospect of a fee increase does motivate immigrants to take the step of naturalizing. USCIS should make more use of this authority to impose higher fees on applications that should not be easy to get as a matter of policy, such as waivers of excludability, waivers of unlawful presence, and waivers of inadmissibility. These are the types of applicants that should be subsidizing others, not the other way around.

### **DACA: A Case Study of How Artificially Low Fees Disadvantage Other Applicants**

Critics of the Trump administration have complained vociferously about the alleged slow down in processing, but raised no such objections about 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.<sup>9</sup> 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 how to adjust processing of all cases to manage the work. 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.<sup>10</sup>

The following categories were shifted 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.

<sup>9</sup> USCIS statistics on DACA applications:

[https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/DACA\\_FY19\\_Q2\\_FEB\\_FINAL\\_Update.pdf](https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/DACA_FY19_Q2_FEB_FINAL_Update.pdf).

<sup>10</sup> 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>.

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 five-month waiting time that USCIS claimed was its goal.

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 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 simply were 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).<sup>11</sup> In part due to this lax screening, more than 2,000 criminals and gang members were able to obtain DACA.<sup>12</sup>

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.<sup>13</sup> 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 the application for his Argentinian wife to join him in Texas cost him his livelihood and drained his assets.<sup>14</sup>

My organization calculated that DACA was responsible for two-thirds of the increase in the processing backlog that began in 2012.<sup>15</sup>

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<sup>11</sup> 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/>.

<sup>12</sup> USCIS, "New Data Shows Criminal Arrest Histories of DACA Requestors," <https://www.uscis.gov/news/new-data-shows-criminal-arrest-histories-daca-requestors>.

<sup>13</sup> Vaughan, "USCIS Favors Illegal Alien Applicants...".

<sup>14</sup> 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/>.

<sup>15</sup> 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>.



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.<sup>16</sup>

### **Options to Shore Up Financial Stability of USCIS**

If the members of this committee are concerned about the financial stability of USCIS, and they should be, the answer is not to push for a reversal of policies that prevent fraud and enable unqualified applicants to receive benefits or clog up the system with frivolous claims. We cannot compromise security and integrity of our immigration system to please special interests. Instead, lawmakers should focus attention on the way the agency is funded.

First, do no harm. Further increases in USCIS workload from fee-exempt or reduced-fee applications must be avoided. Second, Congress should work with USCIS to create a new, streamlined and accelerated process for the agency to assess and adjust fees as needed.

Finally, while taxpayers should not have to pay for the administration of our legal immigration system (especially considering that the current system already imposes so many other costs), Congress should seriously consider creating an appropriations process for the fees that USCIS collects. In addition to providing more stability for USCIS funding, such a system would offer the added benefit of greater opportunity for oversight over how the fees are used and how applications are prioritized.

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<sup>16</sup> 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, <https://cis.org/Vaughan/Senate-Hearing-Exposes-BillionDollar-Amnesty-Slush-Fund-and-Other-USCIS-Improprieties>.