



Statement of
Asian Americans Advancing Justice | AAJC
For the Record of the
Hearing Titled
“Oversight of U.S. Citizenship and Immigration Services”

House Judiciary Committee
Subcommittee on Immigration and Citizenship

July 29, 2020

Contact: Megan Essaheb, Director of Immigration Advocacy, Asian Americans Advancing Justice | AAJC at messaheb@advancingjustice-aajc.org

Asian Americans Advancing Justice | AAJC advocates for an America in which all Americans can benefit equally from, and contribute to, the American dream. Advancing Justice | AAJC's mission is to advance the civil and human rights for Asian Americans and to build and promote a fair and equitable society for all. Immigration and naturalization services are very important to Asian American and Pacific Islander (AAPIs) communities. 92% of Asian Americans are immigrants or the children of immigrants, and the Asian American and Pacific Islander population includes the highest proportion of immigrants of other racial and ethnic groups in the U.S. We appreciate this opportunity to submit a statement for the record of today's House Judiciary Subcommittee on Immigration and Citizenship, "Oversight Hearing on US Citizenship and Immigration Services."

We write to express our strong concern over many of the activities of the Department of Homeland Security's U.S. Citizenship and Immigration Services (USCIS), in particular, the slowdown of processing of adjustment of status applications and naturalization applications; the shift in activities related to immigration enforcement and the misuse of funding resulting in its budget shortfall.

Taken collectively, USCIS's delays in processing green card and naturalization applications and its effort to instead focus on immigration enforcement through denials, referrals to ICE and denaturalization are part of a plan by this administration rooted in white nationalism that seeks to reduce and slow the number of people of color who immigrate to the U.S., acquire status or naturalize. These changes are not coincidental but rather part of a cohesive set of policy changes that include but are not limited to the Muslim, African and refugee and eventual full immigration ban, devastation of our asylum legal system, mass incarceration and the brutal separation of children from their parents families at our border, immigration raids and mass prosecution of immigrants that we are witnessing throughout our immigration system.

Long Processing Times Stall Family Reunification, Naturalization and Integration of Aspiring U.S. Citizens

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

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

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

² *Id.*

FY 2014.³ The magnitude of USCIS's case backlog and associated delays highlights the agency's failure to meet Congress's mandate to efficiently administer our legal immigration system.

Between FY2015 – FY2019, the processing times for “immediate relative” applications increased steadily from 6.1 months to 10.3 months. While the average time in 2019 is shown to be 10.3 months, there are certain processing centers that take much longer than this time. An example of this is Nebraska where processing time as per July 2019 is between 11 and 14.5 months. Family preference category green cards take even longer. For example, as of November 2018, the California service center processing times for F2-B green cards for unmarried sons or daughters of U.S. citizens over 21 was between 39.5 and 51 months.⁴

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

Delays in naturalization have important implications for our democracy and the ability of aspiring Americans to access the full benefits of citizenship, most notably the right to vote. Asian immigrants naturalize at high rates and about 58% of Asian American immigrants are naturalized citizens. In 2017, 36% of individuals who naturalized were immigrants from Asia. Over the last few years, the time taken to process naturalization applications has been increasing. The time taken to process naturalization applications since 2015 has almost doubled.

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

⁴ <https://www.usavisanow.com/i-130-uscis-processing-times-as-of-11-12-2018/>

The COVID-19 pandemic (“the Pandemic”) has exacerbated these delays in naturalization. In March at the start of the Pandemic there were 700,000 applicants in line to naturalize. Recent reporting indicates that people who applied to naturalize a year before the November elections may not become citizens in time.⁵ While the agency had to shut down for health reasons, had there not been backlogs to start with, the delays due to the shut down would have been more manageable. Additionally, USCIS could have done more to accommodate virtual services such as offering virtual swearing in ceremonies to those who had passed their naturalization interviews but not officially become citizens.

Perhaps most disturbing of all were reports that USCIS stopped adjudicating adjustment of status applications referring to the Presidential Memorandum that banned most visa processing for people outside the country.⁶ Staff reported being given confusing and sometimes conflicting information at different times and as early as April.

USCIS is Directing Resources to Enforcement

One cause of the increased delays is undoubtedly the agency’s policy changes moving USCIS away from its benefits services mission and into another immigration enforcement agency, taking resources away from the processing of immigration benefits applications and increasing processing times and backlogs.⁷ The inefficient policies specific to USCIS are key drivers of these delays. Indeed, USCIS has publicly acknowledged its policies’ contributions to the case backlogs.⁸ Inefficient policies and practices that drive delays include:

- Sweeping and unnecessary in-person interview requirements implemented in October 2017 for all individuals seeking green cards through their employers and for certain relatives seeking family reunification with asylees and refugees;

⁵ Farida Jhabvala Romero, “Citizenship Backlog Could Prevent Hundreds of Thousands From Voting” KQED (July 28, 2020) <https://www.kqed.org/news/11830733/citizenship-backlog-could-prevent-hundreds-of-thousands-from-voting>.

⁶ “Immigration agency resumes processing US-based green cards” CQ Rollcall (June 17, 2020) <https://www.rollcall.com/2020/06/17/immigration-agency-resumes-processing-u-s-based-green-cards/>

⁷ AILA Policy Brief, “Seven Ways USCIS is Defying the Will of Congress,” (Feb. 25, 2019); <https://www.aila.org/advo-media/aila-policy-briefs/seven-ways-uscis-is-defying-the-will-of-congress>.

⁸ E.g., in an April 5, 2019 response to a letter from 86 House Members, USCIS acknowledged that its 2017 in-person interview requirement contributes to the agency’s case backlog. “USCIS Responds to Letter from 86 House Members Regarding Case Processing Delays” (Apr. 5, 2019); <https://www.aila.org/advo-media/whats-happening-in-congress/congressional-updates/uscis-responds-to-letter-from-86-house-members>.

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

In addition to using its fee generated funds towards enforcement efforts such as the public charge rule and denaturalization, in 2019, the agency *transferred* \$207.6 million to Immigration and Customs Enforcement (“ICE”) to hire 300 agents and more support staff for “Law Enforcement Fraud Investigations.”⁹

The Threat of Denaturalization

The current Administration’s harsh stance toward immigrants has been extended to naturalized U.S. citizens. As noted above, naturalization is seen – and often celebrated – as the final step in the immigration process. U.S. citizenship has conveyed a

⁹ Department of Homeland Security United States Citizenship and Immigration Services Budget Overview: FY2019 Congressional Justification, <https://www.dhs.gov/sites/default/files/publications/U.%20S.%20Citizenship%20and%20Immigration%20Services.pdf>

sense of finality, assurance that one's immigration status would no longer be in jeopardy and that one had gained the rights and privileges of U.S. citizenship *permanently*. Denaturalization, the process by which one is stripped of citizenship, has typically been deployed only in extreme cases of fraud or treason, including Nazis and other war criminals seeking to evade prosecution. From 2004 to 2016, an average of 46 denaturalization cases were filed each year. In each of the last two years, prosecutors filed nearly twice that many cases. Further, in 2018 the Trump administration has signaled that it would be reviewing 700,000 files of U.S. citizens for evidence of fraudulent naturalization and announced the creation of a Denaturalization Task Force.

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

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

Congress Should Ensure that USCIS Does not Furlough Employees By Providing Guardrails and Timely Processing of Applications

Advancing Justice – AAJC remains very concerned about the deterioration of the functioning of USCIS as an agency whose mission is to fairly and efficiently serve

Americans in reuniting with their family members and aspiring Americans in accessing visas, green cards and citizenship along with the many temporary visitors and workers who use their services. The reported impending furloughs of USCIS employees would greatly increase backlogs and processing delays. However, Congress should not throw money at an agency that is failing to properly fulfill its mission and handing funds over to ICE or other agencies.

Congress must step in and shed light on the situation and require that proper guardrails be included in any funding that Congress may offer the agency. Foremost among those requirements are 1) a prohibition on any fee generated revenue or Congressionally appropriated money being transferred out of USCIS to enforcement agencies or otherwise and 2) language rolling over any unused family-based visas, diversity visas and employment-based visas in FY2020 to FY 2021 and beyond to ensure that the visa backlogs do not grow due to the pandemic or the administrations' processing stoppages and delays. Additionally, USCIS should rescind misguided policies that needlessly delay adjudications and divert finite resources away from the agency's core function of service-oriented adjudications. USCIS should also establish more rigorous processes for forecasting the impact of proposed policies and practices, and measuring the impact of existing ones, on case processing efficiency and the case backlog. Congress require increased transparency and accountability around USCIS's case backlog. Among other provisions, it should require ongoing, comprehensive reporting from USCIS on the status of the backlog, the impacts of agency policies and practices on the backlog and case processing efficiency, existing and planned agency efforts to eliminate the backlog, the relationship of agency budget/resource allocations to backlog reduction, and relevant operational statistics. Congress should also require regular reporting from GAO on the impact of USCIS policies and practices on the backlog and case processing efficiency, the assessed effectiveness of USCIS efforts to reduce the backlog, and recommended measures for more efficient case processing.

