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U.S. Citizenship and Immigration Services
Department of Homeland Security

Re: U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements

On behalf of Americans for Prosperity Foundation¹ and The LIBRE Institute,² I write in response to the Department of Homeland Security (“DHS”) proposed rule regarding the adjustment of immigration and naturalization benefit request fees.³ The effects of the proposed rule will add to the numerous existing barriers against those seeking to legally immigrate to the United States. Any revenue shortfall at U.S. Citizenship and Immigration Services (“USCIS”) should first be addressed by rescinding inefficient policies and practices that are unnecessarily prolonging processing times and driving up costs.

Furthermore, USCIS has not yet fully specified which expenses the proposed fee increases will cover. The rule also proposes to transfer revenue from USCIS to fund Immigration and Customs Enforcement (“ICE”) activities, despite lacking statutory authority to do so. Because exorbitant fee increases impose additional burdens on countless individuals, families, businesses, and others who rely on the U.S. immigration system, raising application fees should be an option of last resort. If raising fees is necessary after having addressed the various inefficiencies, then the revenue raised should be limited strictly to USCIS functions.

I. USCIS Failed to Consider the Harm of the Proposed Rule

In December 2016, USCIS increased the weighted average for filing fees by 21 percent,⁴ the first increase since 2010.⁵ The announcement of the final rule included an acknowledgement that increasing fees would impact the customers USCIS serves every day: “We are mindful of the

¹ See AMERICANS FOR PROSPERITY FOUNDATION, <https://americansforprosperityfoundation.org/>.

² See THE LIBRE INSTITUTE *About*, <https://thelibreinstitute.org/about-libre-institute/>.

³ Department of Homeland Security, U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 84 Fed. Reg. 62,280 (Nov. 14, 2019).

⁴ Department of Homeland Security, U.S. Citizenship and Immigration Services Fee Schedule, 81 Fed. Reg. 73,292 (Oct. 24, 2016).

⁵ In 2010 USCIS raised the weighted average for filing fees by 10 percent. See Department of Homeland Security, U.S. Citizenship and Immigration Services Fee Schedule, 75 Fed. Reg. 58,961 (adopted Nov. 23, 2010).

effect fee increases have on many of the customers we serve. That's why we decided against raising fees as recommended after the fiscal year 2012 and 2014 fee reviews."⁶ The current proposed rule and accompanying press release, however, do not mention the impact the changes would have on Americans, lawful residents, and potential immigrants.⁷ By contrast, the USCIS website emphasizes how its work changes the lives of these customers. In just a single day, USCIS affects the lives of thousands, including spouses and relatives seeking to reunite with their families, those seeking asylum and fleeing persecution, and men and women serving in the U.S. military, among others. A page titled "A Day in the Life of USCIS" on the agency website, highlights USCIS's reach, stating that "on an average day":⁸

- We process 3,700 applications to sponsor relatives and future spouses.
- We process 200 refugee applications around the world and grant asylum to 45 individuals already in the United States.
- We screen 146 people for protection based on a credible fear of persecution if they return home.
- We welcome nearly 2,000 new citizens at naturalization ceremonies. Typically, 36 of these new citizens are members of the U.S. armed forces.

Considering the agency's enormous and far-reaching impact, it's imperative that USCIS consider the potentially harmful human effects of raising fees – let alone the estimated \$11.4 Billion cost of the proposed rule.⁹

II. Raising Fees is Not the Answer to the Policy Choices and Misuse of Funds That Created the USCIS Revenue Shortfall

The proposed rule's significant fee increase, along with other significant fee increases in the past 12 years, together imply that USCIS's budget shortfall is not simply a fee revenue problem, but a spending and mismanagement problem. Since 1985, fees for green cards and naturalization have risen at eight times the rate of inflation:¹⁰

⁶ United States Citizenship and Immigration Service, *USCIS Announces Final Rule Adjusting Immigration Benefit Application and Petition Fees*, (Oct. 24, 2016), <https://www.uscis.gov/archive/archive-news/uscis-announces-final-rule-adjusting-immigration-benefit-application-and-petition-fees>.

⁷ United States Citizenship and Immigration Service, *USCIS Proposes to Adjust Fees to Meet Operational Needs*, (Nov 8, 2019), <https://www.uscis.gov/news/news-releases/uscis-proposes-adjust-fees-meet-operational-needs>.

⁸ United States Citizenship and Immigration Service, *A Day in the Life of USCIS*, (April 20, 2018), <https://www.uscis.gov/about-us/a-day-life-uscis>.

⁹ American Action Forum, *The Rules that Will Drive the FY 2020 Regulatory Budget*, (December 17, 2019) <https://www.americanactionforum.org/insight/the-rules-that-will-drive-the-fy-2020-regulatory-budget/#ixzz68Nzcvr3y>

¹⁰ Boundless, *Marriage Green Card and Citizenship Application Fees: Then and Now*, (Nov. 19, 2019), <https://www.boundless.com/blog/uscis-fees-increase-comparison/>.

In 1985, the application fee for citizenship was \$35, and the fee for a green card was \$85. If those figures had risen with inflation, fees would now be \$85 for citizenship, and \$207 for a green card.

Instead, as of 2019, we've already seen fees for green cards and naturalization increase at almost 8 times the rate of inflation. Under USCIS's new proposals, the fees for both residence and naturalization would jump still higher, to a total level almost 14 times the rate of inflation.

Despite generating more revenue from the weighted fee increase in 2016 and experiencing only a four-percent uptick in case receipts, the USCIS net backlog doubled to more than 2.3 million at the end of 2017, the highest number of delayed cases on record.¹¹ USCIS acknowledged in a 2018 report that new policy changes have contributed to the decline in the per hour completion rate of cases.¹² The American Immigration Lawyers Association ("AILA") specifically cite the new in-person interviews for employment based green card applicants and their spouses, which affect hundreds of thousands of individuals who have already been cleared through rigorous background checks and interviews, as a redundant and unnecessary use of resources.¹³ AILA also pointed to a reversal of a long-standing policy that gave deference to applications for non-immigrant employment visa extensions that had no change in job position or employer, forcing adjudicators to re-examine the same cases.¹⁴

USCIS has also encouraged its workforce to spend their time working for a different component of DHS. In July 2019, USCIS emailed staffers asking employees to perform ICE administrative work despite the escalating processing times for immigration benefits.¹⁵ While USCIS admits these policy choices are harmful to those it serves, the agency has not yet addressed these concerns.

Furthermore, DHS has stated that it will take several years before backlogs are measurably reduced, even if the proposed fee increase were to go into effect.¹⁶ Meanwhile, DHS has not yet

¹¹ American Immigration Lawyers Association, *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>.

¹² See <https://www.uscis.gov/sites/default/files/reports-studies/Annual-Report-on-the-Impact-of-the-Homeland-Security-Act-on-Immigration-Functions-Transferred-to-the-DHS.pdf>

¹³ *Id* at 10.

¹⁴ *Id* at 10.

¹⁵ Hamed Aleaziz, *Civil Servants Who Process Immigration Applications Are Being Asked To Help ICE Instead*, BuzzFeed News (July 17, 2019) <https://www.buzzfeednews.com/article/hamedaleaziz/uscis-immigration-applications-backlog-ice>.

¹⁶ *Id* at 3.

explained how it plans to use approximately \$668 million of the \$1.3 billion it anticipates receiving as a result of the fee increase, leaving 57 percent of its additional revenue unaccounted for.¹⁷

Americans for Prosperity Foundation and the LIBRE Institute believe that the proposed rule should be rejected, as it does not address the drivers of USCIS's disproportionately rising costs. If the proposed rule is implemented, USCIS would not be precluded from asking for yet another fee increase two years from now without having remedied the root causes of the agency's rising costs – inefficient policies that contribute to financial mismanagement.

III. USCIS Lacks the Authority to Transfer \$112.2 million to ICE for Purposes Not Related to Immigration and Naturalization Adjudication Services

To the extent that DHS's proposed rule sets fees at a rate higher than necessary to recover the full costs of "providing adjudication and naturalization services" for the purpose of funding additional purported law enforcement activities, Section 286(m) of the Immigration and Nationality Act ("INA") unambiguously forecloses DHS's proposed construction. DHS lacks statutory authority to set the fees higher than needed to recover costs associated with the provision of adjudication and naturalization services.

The supplemental filing published on December 9, 2019 attempts to clarify how DHS has the authority to transfer the Immigration Examinations Fee Account ("IEFA") funds to ICE:¹⁸

ICE Homeland Security Investigations (HSI) would use funds transferred from the IEFA to support investigations of immigration benefit fraud via Document and Benefit Fraud Task Forces (DBFTFs), Operation Janus, the HSI National Lead Development Center, and other immigration adjudication and naturalization activities. Under INA section 286(m) and (n), 8 U.S.C. 1356(m) and (n), adjudication and naturalization services include all costs for work related to determining whether applicants may receive the benefit of such services. The cost of the services provided includes the cost of any investigatory work necessary to adjudicate applications or provide services, including investigations of fraud. (emphasis added)

INA section 286(m) and (n), 8 U.S.C. 1356(m) and (n) do not include any language that suggests the investigatory work that would be undertaken by ICE would qualify as "immigration adjudication and naturalization services."

¹⁷ Boundless, *USCIS Fee Hike: How Immigrants Are Affected*, (Dec. 11, 2019), <https://www.boundless.com/immigration-resources/uscis-fee-hike-immigrants-affected/>.

¹⁸ Department of Homeland Security, U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 84 Fed. Reg. 62,243 (Dec. 9, 2019).

Even if, hypothetically, DHS did have the statutory authority to use the funds from the IEFA for ICE enforcement activities, the language in the original proposed rule is ambiguous on whether the funds will go towards these services:¹⁹

DHS believes that ICE investigations of potential immigration fraud perpetrated by individuals and entities who have sought immigration benefits before USCIS and efforts to enforce applicable immigration law and regulations with regard to such individuals and entities constitute direct support of immigration adjudication and naturalization services . . . ICE HSI **could use funds** transferred from the IEFA to support investigations of immigration benefit fraud[.] (emphasis added)

The only assurance that the transferred funds will be used for the identified purpose is on the “belief” of DHS and a single clause that ICE HSI “could use funds” for that purpose. DHS cannot take this action without first establishing explicit statutory authority followed by implementing language in the rule that tightly ties the funds to their statutory purpose. If DHS wants an estimated \$112.3 million for ICE investigations, it should ask Congress to appropriate the money rather than transferring money meant to ensure USCIS is able to cover the cost of its operations.

We stand ready to work with anyone to improve our immigration system and ensure it is focused on promoting opportunities for individuals to participate fully and contribute to our great nation. If you have any questions about this comment, please contact me by e-mail at Kevin.Schmidt@causeofaction.org. Thank you for your attention to this matter.

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¹⁹ *Id* at 3.