



Carol Cribbs
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Department of Homeland Security
5900 Capital Gateway Drive
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Submitted via www.regulations.gov
DHS Docket ID: USCIS-2021-0010

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

Dear Ms. Cribbs:

I, David Bier, Associate Director of Immigration Studies at the Cato Institute, submit the following comments in connection with the above-referenced Department of Homeland Security (“DHS”) and U.S. Citizenship and Immigration Services (USCIS) Notice of Proposed Rulemaking (NPRM) seeking to amend the USCIS Fee Schedule and make certain other changes to immigration benefit requirements, as published in the Federal Register on January 4, 2023.¹

The Cato Institute is a nonpartisan public policy research organization. For more than four decades, Cato Institute scholars have published original research on immigration policy and proposed policy changes based on its findings that immigrants significantly benefit the United States. USCIS should carry out its statutory duties in a way that focus on clearing away obstacles to legal status and residence in the United States.

Unfortunately, the NPRM focuses on increasing financial revenue for the agency, not streamlining inefficient agency processes that are requiring increased resources. The NPRM proposes massive increases in immigration fees with *zero* guarantees of better service for applicants. The NPRM will substantially burden legal immigration, incentivize illegal immigration, and harm the United States by keeping productive people from accessing the immigration benefits to which the law entitles them. USCIS should completely rethink this misguided rule.

General Comments

The NPRM should be rescinded in its entirety. It is not justified and will harm Americans and immigrants alike.

Massive Fee Increases

Table 1 lists the old and new fees under the NPRM. The average form fee will increase by 103 percent. The median fee will increase by 60 percent under the new approach. Even on a weighted basis, the NPRM would increase fees by at least 40 percent, according to the NPRM, and likely more in reality. USCIS is proposing to double or triple more than a dozen form filing fees.



Table 1

U.S. Citizenship and Immigration Services' Proposed Fees and Current fees

Immigration Benefit Request	New Fee	Old Fee	Change
Medians	\$920.00	\$575.00	60%
Averages	\$2,116.86	\$1,042.88	103%
I-90 Application to Replace Permanent Resident Card	\$455	\$455	0%
I-765 Application for Employment Authorization-Paper	\$650	\$410	59%
I-765 Application for Employment Authorization-Online	\$555	\$410	35%
I-131 Application for Travel Document	\$630	\$575	10%
I-129 H-2A - Unnamed Beneficiaries	\$1,130	\$460	146%
I-612 Application for Waiver of the Foreign Residence Requirement	\$1,100	\$930	18%
I-193 Application for Waiver of Passport and/or Visa	\$695	\$585	19%
I-129 H-2B - Unnamed Beneficiaries	\$1,180	\$460	157%
N-600 Application for Certificate of Citizenship	\$1,385	\$1,170	18%
N-600K Application for Citizenship and Issuance of Certificate Under Section 322	\$1,385	\$1,170	18%
I-485 Application to Register Permanent Residence or Adjust Status (With I-131+I-765) - paper	\$2,820	\$1,140	147%
N-565 Application for Replacement Naturalization/Citizenship Document	\$555	\$555	0%
I-817 Application for Family Unity Benefits	\$875	\$600	46%
I-212 Application for Permission to Reapply for Admission into the U.S. After Removal	\$1,395	\$930	50%
I-956G Regional Center Annual Statement	\$4,470	\$3,035	47%
I-140 Immigrant Petition for Alien Worker	\$1,315	\$700	88%
I-910 Application for Civil Surgeon Designation	\$1,230	\$785	57%
I-539 Application to Extend/Change Nonimmigrant Status - Paper	\$620	\$370	68%
I-129CW, Petition or Application for E, H-3, P, Q, R, or TN Nonimmigrant Worker	\$1,615	\$460	251%
I-102 Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	\$680	\$445	53%
I-129F Petition for Alien Fiancé(e)	\$720	\$535	35%
I-751 Petition to Remove Conditions on Residence	\$1,195	\$595	101%
I-824 Application for Action on an Approved Application or Petition	\$675	\$465	45%
I-192 Application for Advance Permission to Enter as a Nonimmigrant	\$1,100	\$930	18%
I-539 Application to Extend/Change Nonimmigrant Status - Online	\$525	\$370	42%
I-485 Application to Register Permanent Residence or Adjust Status (Normal)	\$1,540	\$1,140	35%
I-130 Petition for Alien Relative - Paper	\$820	\$535	53%
I-129 H-2B - Named Beneficiaries	\$1,680	\$460	265%
I-129 H-2A - Named Beneficiaries	\$1,690	\$460	267%
I-129 O Nonimmigrant Worker	\$1,655	\$460	260%
I-130 Petition for Alien Relative - Online	\$710	\$535	33%
I-829 Petition by Investor to Remove Conditions on Permanent Resident Status	\$9,525	\$3,750	154%
I-131 Refugee Travel Document ⁸⁵	\$165	\$135	22%
I-131A Application for Carrier Documentation	\$575	\$575	0%
I-129 L Nonimmigrant Worker	\$1,985	\$460	332%
I-526/I-526E Immigrant Petition by Standalone/Regional Center Investor	\$11,160	\$3,675	204%
I-290B Notice of Appeal or Motion	\$800	\$675	19%
I-129 H-1B Nonimmigrant Worker or H-1B1 Free Trade Nonimmigrant Worker	\$1,380	\$460	200%
I-601 Application for Waiver of Grounds of Inadmissibility	\$1,050	\$930	13%
N-400 Application for Naturalization	\$760	\$640	19%
I-690 Application for Waiver of Grounds of Inadmissibility	\$985	\$715	38%
I-191 Application for Relief Under Former Section 212(c)	\$930	\$930	0%
I-600A/I-600 Supplement 3 Request for Action on Approved Form I-600A/I-600	\$920	\$775	19%
I-694 Notice of Appeal of Decision	\$1,155	\$890	30%



I-690 Application for Waiver of Grounds of Inadmissibility	\$985	\$715	38%
I-191 Application for Relief Under Former Section 212(c)	\$930	\$930	0%
I-600A/I-600 Supplement 3 Request for Action on Approved Form I-600A/I-600	\$920	\$775	19%
I-694 Notice of Appeal of Decision	\$1,155	\$890	30%
I-956 Application For Regional Center Designation	\$47,695	\$17,795	168%
I-600/600A; I-800/800A Orphan Petitions and Applications	\$920	\$775	19%
I-698 Application to Adjust Status from Temporary to Permanent Resident	\$1,670	\$1,670	0%
I-687 Application for Status as a Temporary Resident	\$1,240	\$1,130	10%
I-601A Provisional Unlawful Presence Waiver	\$1,105	\$630	75%
Request for Certificate of Non-Existence	\$330	\$0	No prior fee
N-300 Application to File Declaration of Intention	\$320	\$270	19%
N-336 Request for a Hearing on Naturalization	\$830	\$700	19%
G-1041A Genealogy Records Request	\$240	\$65	269%
G-1041 Genealogy Index Search Request	\$100	\$65	54%
I-800A Supplement 3 Request for Action on Approved Form I-800A	\$455	\$385	18%
I-360 Petition for Amerasian, Widow(er), or Special Immigrant	\$515	\$435	18%
I-881 Application for Suspension of Deportation or Special Rule Cancellation of Removal	\$340	\$285	19%
I-929 Petition for Qualifying Family Member of a U-1	\$270	\$230	17%
N-470 Application to Preserve Residence for Naturalization purposes	\$425	\$355	20%

Sources: U.S. Citizenship and Immigration Services, "U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements," Federal Register, January 4, 2023.

These astronomical increases are unjustifiable. They are far more than the rate of inflation. As admitted in the NPRM, Consumer Price Index has increased just 19.75 percent since the current fees came into effect. In 2020, USCIS proposed just a 20 percent weighted increase in fees, and now it wants twice as much.²

Like prior fee rules, the NPRM also reports "completion rates," which are the times (in minutes) that it takes an average officer to adjudicate (or completely process) a form. Based on these times, the new fee structure will impose fees ranging from as little as \$105.99 per hour of adjudication time to as much as \$3,033.33 per hour, depending on the type of application.³ The median form charge per hour will increase 58 percent to \$713 per hour of adjudication time. For comparison, many immigration attorneys charge far less for more complicated work. One authority provides a range of \$150 to \$600 per hour.⁴ Of course, USCIS fees cover more than just adjudication times. But private firms also have overhead, accounting, printing costs, advertising, and pro bono work, and they have a much higher cost of labor.⁵

Widespread Inefficiency

USCIS should not increase fees when the widespread inefficiency in its current systems is the cause of the backlogs. Table 2 shows the adjudication time per completion for 2022, 2019, 2016, and 2010 for the forms that USCIS reported in the NPRM and past proposed fee rules. USCIS is spending more money to take longer to adjudicate forms. 2022 was the best year for adjudication time for just nine forms, which are mostly less common forms (with the notable exception of the I-90 form).



Table 2

U.S. Citizenship and Immigration Services' Hours Per Completion to Process Forms

Immigration Benefit Request	% Change From Best Year	2022	2019	2016	2010	Best Time	Best Year	2022 Backlog
I-526/I-526E Immigrant Petition by Standalone/Regional Center Investor	311%	20.69	8.65	6.5	5.03	5.03	2010	13,062
I-956 Application For Regional Center Designation	210%	108.5	34.95	40	37.33	34.95	2019	139
I-129 H-1B Nonimmigrant Worker	200%	1.53	1.1	0.83	0.51	0.51	2010	100,296
I-829 Petition by Investor to Remove Conditions on Permanent Resident Status	188%	15.86	8.15	5.5	5.98	5.5	2016	11,150
I-694 Notice of Appeal of Decision	138%	2.62	1.1	2.1	1.6	1.1	2019	N/A
I-102 Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	133%	0.84	0.77	0.48	0.36	0.36	2010	3,729
I-690 Application for Waiver of Grounds of Inadmissibility	129%	2.04	1.05	0.89	2.59	0.89	2016	N/A
N-470 Application to Preserve Residence for Naturalization purposes	129%	4.01	4.02	1.83	1.75	1.75	2010	10
I-129F Petition for Alien Fiancé(e)	122%	0.91	0.67	0.65	0.41	0.41	2010	55,425
I-698 Application to Adjust Status from Temporary to Permanent Resident	121%	3.91	3.76	3.8	1.77	1.77	2010	N/A
I-539 Application to Extend/Change Nonimmigrant Status	100%	0.7	0.51	0.4	0.35	0.35	2010	224,260
I-751 Petition to Remove Conditions on Residence	100%	1.54	1.3	0.99	0.77	0.77	2010	270,925
N-336 Request for a Hearing on Naturalization	88%	3.01	3.05	2.6	1.6	1.6	2010	4,577
I-800A Supplement 3 Request for Action on Approved Form I-800A	85%	2.03	1.9	1.1	N/A	1.1	2016	426
I-131 Application for Travel Document	81%	0.29	0.25	0.21	0.16	0.16	2010	418,461
I-130 Petition for Alien Relative	79%	1.11	0.86	0.75	0.62	0.62	2010	1,808,240
I-193 Application for Waiver of Passport and/or Visa	73%	0.52	0.3	N/A	N/A	0.3	2019	394
I-485 Application to Register Permanent Residence or Adjust Status	64%	2.08	1.63	1.63	1.27	1.27	2010	775,889
I-129 L Nonimmigrant Worker	60%	3.57	2.23	N/A	N/A	2.23	2019	N/A
I-765 Application for Employment Authorization	57%	0.22	0.2	0.2	0.14	0.14	2010	1,384,302
I-360 Petition for Amerasian, Widow(er), or Special Immigrant	54%	2.54	1.65	1.97	2.39	1.65	2019	88,276
I-129 H-2B - Unnamed Beneficiaries	53%	0.89	0.58	N/A	N/A	0.58	2019	N/A
I-824 Application for Action on an Approved Application or Petition	52%	0.88	0.78	0.59	0.58	0.58	2010	13,300
I-192 Application for Advance Permission to Enter as a Nonimmigrant	51%	1.46	0.97	N/A	N/A	0.97	2019	N/A
N-565 Application for Replacement Naturalization/Citizenship Document	42%	0.51	0.89	0.59	0.36	0.36	2010	32,060
I-129 H-2A - Unnamed Beneficiaries	40%	0.7	0.5	N/A	N/A	0.5	2019	N/A
N-400 Application for Naturalization	40%	1.51	1.57	1.25	1.08	1.08	2010	550,224
I-817 Application for Family Unity Benefits	38%	0.88	0.91	0.92	0.64	0.64	2010	342
I-290B Notice of Appeal or Motion	35%	1.5	1.32	1.22	1.11	1.11	2010	19,582
I-612 Application for Waiver of the Foreign Residence Requirement	30%	0.69	0.53	N/A	N/A	0.53	2019	N/A
N-600 Application for Certificate of Citizenship	29%	1.16	1.08	1	0.9	0.9	2010	55,975
I-140 Immigrant Petition for Alien Worker	25%	1.41	1.46	1.68	1.13	1.13	2010	55,514
I-129 H-2A - Named Beneficiaries	23%	2.36	1.92	N/A	N/A	1.92	2019	N/A
I-589 Application for Asylum and for Withholding of Removal	22%	5.02	4.1	N/A	N/A	4.1	2019	571,628



I-910 Application for Civil Surgeon Designation	22%	1.37	1.81	1.81	1.12	1.12	2010	N/A
I-129 O Nonimmigrant Worker	22%	2.32	1.9	N/A	N/A	1.9	2019	N/A
I-600/600A; I-800/800A Orphan Petitions and Applications	18%	2.14	2.22	2.14	1.81	1.81	2010	469
I-129 H-2B - Named Beneficiaries	17%	2.33	2	N/A	N/A	2	2019	N/A
I-129CW, Petition or Application for E, H-3, P, Q, R, or TN Nonimmigrant Worker	15%	1.87	1.62	N/A	N/A	1.62	2019	N/A
I-131 Refugee Travel Document	8%	0.28	0.26	N/A	N/A	0.26	2019	82,206
I-600A/I-600 Supplement 3 Request for Action on Approved Form I-600A/I-600	7%	2.03	1.9	2.84	N/A	1.9	2019	N/A
I-601A Provisional Unlawful Presence Waiver	5%	2.76	2.64	N/A	N/A	2.64	2019	121,793
I-90 Application to Replace Permanent Resident Card	0%	0.15	0.19	0.21	0.22	0.15	2022	1,032,494
I-131A Application for Carrier Documentation	0%	1.01	1.01	N/A	N/A	1.01	2022	N/A
I-191 Application for Relief Under Former Section 212(c)	0%	1.96	2.1	N/A	N/A	1.96	2022	N/A
I-212 Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal	0%	1.43	2.71	N/A	N/A	1.43	2022	N/A
I-601 Application for Waiver of Grounds of Inadmissibility	0%	2.06	3.29	N/A	N/A	2.06	2022	N/A
I-881 Application for Suspension of Deportation or Special Rule Cancellation of Removal	0%	2	2	N/A	N/A	2	2022	476
I-929 Petition for Qualifying Family Member of a U-1	0%	1.69	2.6	N/A	N/A	1.69	2022	1,892
I-956G Regional Center Annual Statement	0%	4.6	10	5	N/A	4.6	2022	1,813
N-300 Application to File Declaration of Intention	0%	1.1	2.68	1.64	1.84	1.1	2022	0

Sources: 88 FR 402 (2023); 75 FR 33445 (2010); 81 FR 26903 (2016); 84 FR 62280 (2019).

Adjudicators were taking longer than one of the prior years for the other 42 forms (82 percent of the forms), and for 34 forms, adjudicators were taking longer than they were as recently as 2019. The 42 forms that are taking longer account for 86 percent of USCIS’s backlog (for which review times are reported).⁶ The consequence of the longer reviews is that it will take nearly 10 million man-hours to process the existing USCIS backlog—over 3.3 million more man-hours than if USCIS was processing every application as fast as it has in an earlier year. If it were processing forms at the same rate, there would be no need for fee increases.

Limit Form Lengths

One general cause of inefficiency—both in adjudication times and general processing—is the length of immigration forms. USCIS has increased the average immigration form from 3 pages to 10 pages from 2003 to 2022.⁷ Only one form that was in use throughout the entire period of 2003 to 2022 did not increase (the rather unusual form I-687, Application for Status as a Temporary Resident). In other words, 99 percent of USCIS’s forms either grew longer or were created since 2003. Even the forms that were created during this time have grown. Overall, 93 percent of forms have grown longer since their creation. They are not increasing in response to mandates from Congress, but rather because the agency is requesting more information.



The longer forms take longer for the agency to process because it must manually enter and review every question response—no matter how trivial. In August 2021, the Government Accountability Office reported:

According to staff we interviewed from four of eight USCIS field locations, longer forms increased the amount of time it takes for staff to adjudicate applications and petitions, and resulted in longer interviews, since adjudicators were to collect and confirm additional information.... USCIS added questions to the Application to Register Permanent Residence (Form I-485) regarding the applicant's parents, marital history, and past application history. With respect to the Petition for Alien Relative (Form I-130), USCIS added questions related to the petitioner's background, biographical information, parents, current or former spouses, and the petitioner's addresses and employment history for the previous 5 years.⁸

It is not a problem just that forms are getting longer, but also that they are changing more frequently. Every time that a form changes, adjudicators have to update their processes, and applicants need to file the correct form. USCIS is constantly posting reminders to file the right form.⁹ As of March 2023, the median immigration form was just 1 year and 3 months old.¹⁰ If a new form goes out of date, and the applicant files the old form, the application is rejected and sent back, leading to longer processing times and more agency resources.

Rather than increasing fees, USCIS should return forms to their streamlined lengths and stop wasting time collecting unnecessary quantities of information. It should require much more onerous internal procedures to lengthen forms in the future. No form should be increased without a corresponding revenue stream to adjudicate that longer form.



Table 3

USCIS Form Page Length and Page Increases

Form Type	Page Increase	2022-Pages	2016-Pages	2008-Pages	2003-Pages
Total	263%	701	487	274	193
Average	217%	10	7	4	3
G-639 Freedom of Information Act/Privacy Act Request	300%	8	4	4	2
I-102 Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	500%	6	4	2	1
I-129 Petition for a Nonimmigrant Worker	260%	36	36	16	10
I-129F Petition for Alien Fiancé(e)	550%	13	6	3	2
I-129S Nonimmigrant Petition Based on Blanket L Petition	300%	8	4	3	2
I-130 Petition for Alien Relative	500%	12	2	2	2
I-130/I-130A Petition for Alien Spouse	800%	18	2	2	2
I-131 Application for Travel Document	67%	5	5	3	3
I-131A Application for Travel Document (Carrier Documentation)	100%	6	5	3	3
I-134 Affidavit of Support	550%	13	2	2	2
I-140 Immigrant Petition for Alien Worker	200%	9	6	3	3
I-192 Application for Advance Permission to Enter as a Nonimmigrant	1000%	11	2	1	1
I-193 Application for Waiver of Passport and/or Visa	100%	2	2	1	1
I-212 Application for Permission to Reapply for Admission into the United States After Deportation or Removal	1000%	11	8	3	1
I-290B Notice of Appeal or Motion	500%	6	2	2	1
I-360 Petition for Amerasian, Widow(er), or Special Immigrant	375%	19	12	5	4
I-361 Affidavit of Financial Support and Intent to Petition for Legal Custody for Public Law 97-359 Amerasian	300%	8	8	8	2
I-363 Request to Enforce Affidavit of Financial Support and Intent to Petition for Legal Custody for Public Law 97-359 Amerasian	600%	7	1	1	1
I-485 Application to Register Permanent Residence or Adjust Status	400%	20	6	4	4
I-485 Supplement A Supplement A to Form I-485, Adjustment of Status Under Section 245(i)	100%	4	2	2	2
I-485 Supplement J Confirmation of Bona Fide Job Offer or Request for Job Portability Under INA Section 204(j)		7	N/A	N/A	N/A
I-508 Request for Waiver of Certain Rights, Privileges, Exemptions and Immunities	50%	6	5	4	4
I-526 Immigrant Petition by Alien Entrepreneur	433%	16	3	3	3
I-539 Application To Extend/Change Nonimmigrant Status	75%	7	5	5	4
I-589 Application for Asylum and for Withholding of Removal	9%	12	12	12	11
I-600 Petition to Classify Orphan as an Immediate Relative	750%	17	14	2	2
I-600A Application for Advance Processing of an Orphan Petition	650%	15	12	2	2
I-601 Application for Waiver of Grounds of Inadmissibility	333%	13	12	6	3
I-602 Application By Refugee For Waiver of Grounds of Excludability	233%	10	3	3	3
I-612 Application for Waiver of the Foreign Residence Requirement	250%	7	7	2	2
I-687 Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act	0%	9	9	9	9
I-690 Application for Waiver of Grounds of Inadmissibility	300%	8	8	2	2
I-693 Report of Medical Examination and Vaccination Record	180%	14	9	5	5
I-694 Notice of Appeal of Decision Under Sections 245A or 210 of the Immigration and Nationality Act	500%	6	1	1	1



I-698 Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of the INA)	200%	9	9	4	3
I-730 Refugee/Asylee Relative Petition	300%	8	4	4	2
I-751 Petition to Remove Conditions on Residence	450%	11	11	2	2
I-765 Application for Employment Authorization	600%	7	1	1	1
I-800 Petition to Classify Convention Adoptee as an Immediate Relative (exc. Supp)	0%	9	9	9	N/A
I-800A Application for Determination of Suitability to Adopt a Child from a Convention Country	0%	9	9	9	N/A
I-817 Application for Family Unity Benefits	100%	12	12	6	6
I-821 Application for Temporary Protected Status	225%	13	11	4	4
I-824 Application for Action on an Approved Application or Petition	600%	7	7	3	1
I-829 Petition by Entrepreneur to Remove Conditions on Permanent Resident Status	267%	11	11	3	3
I-864 Affidavit of Support Under Section 213A of the INA	67%	10	10	8	6
I-864A Contract Between Sponsor and Household Member	300%	8	8	7	2
I-864EZ Affidavit of Support Under Section 213A of the Act	40%	7	7	5	5
I-864W Request for Exemption for Intending Immigrant's Affidavit of Support	400%	5	5	1	1
I-865 Sponsor's Notice of Change of Address	400%	5	5	2	1
I-881 Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Public Law 105-100 (NACARA))	88%	15	8	8	8
I-9 Employment Eligibility Verification	100%	2	2	1	1
I-90 Application to Replace Permanent Resident Card	250%	7	8	2	2
I-905 Application for Authorization to Issue Certification for Health Care Workers	50%	3	3	2	2
I-907 Request for Premium Processing Service	600%	7	6	1	1
I-912 Request for Fee Waiver	120%	11	5	N/A	N/A
I-914 Application for T Nonimmigrant Status (Exc. Supplements)	200%	12	9	9	4
I-918 Petition for U Nonimmigrant Status (Exc. Supplements)	38%	11	8	8	N/A
I-924/956 Application For Regional Center Designation Under the Immigrant Investor Program	100%	12	6	N/A	N/A
I-924A/956G Annual Certification of Regional Center	100%	14	7	N/A	N/A
I-929 Petition for Qualifying Family Member of a U-1 Nonimmigrant	0%	7	7	7	N/A
I-942 Request for Reduced Fee	29%	9	7	N/A	N/A
N-300 Application to File Declaration of Intention	300%	8	8	3	2
N-336 Request for a Hearing on a Decision in Naturalization Proceedings (Under Section 336 of the INA)	600%	7	3	1	1
N-400 Application for Naturalization	100%	20	21	10	10
N-426 Request for Certification of Military or Naval Service	67%	5	4	4	3
N-470 Application to Preserve Residence for Naturalization Purposes	250%	7	4	2	2
N-565 Application for Replacement Naturalization/Citizenship Document	250%	7	7	2	2
N-600 Application for Certificate of Citizenship	114%	15	9	7	7
N-600K Application for Citizenship and Issuance of Certificate Under Section 322	117%	13	8	7	6
N-644 Application for Posthumous Citizenship	100%	4	4	3	2
N-648 Medical Certification for Disability Exceptions	67%	5	5	3	3

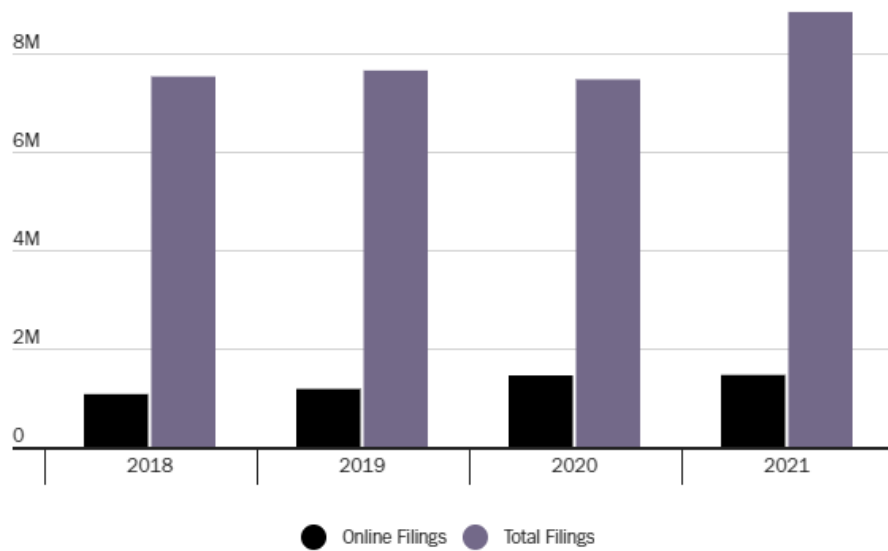
Sources: U.S. Citizenship and Immigration Services, "All Forms," 2022 (archived 2016, 2008, 2003).
 Note: I-129CW, I-508F, I-821D, I-191, I-601A, and I-765V not included.

Create an online filing platform and digitize forms

One of the greatest inefficiencies at USCIS is that it has not digitized all its forms, relying primarily on paper-based filings. USCIS’s digitization effort lags behind the other immigration agencies.¹¹ Only about 16 percent of applications are filed online.¹² Only 17 of the 102 application *types* are available to be filed online at all.¹³ In 2021, the DHS Inspector General found, “USCIS’ continued reliance on manual processing impeded operations during the COVID-19 pandemic.”¹⁴ Although the number of online filings increased during the pandemic, they have not kept up with the total number of filings (Figure).

Figure

The number of online filings has increased but not as much as total filings
 USCIS forms filed online and total filings, 2019–2021



Sources: U.S. Citizenship and Immigration Services, “Annual Statistical Report FY 2021,” 2022.

Because USCIS relies on paper forms, it must hire staff to open mail and scan the paper documents into its electronic system. These wasted resources could be reallocated to hire additional staff and invest in online adjudication. Moreover, mailroom staff can reject filings if the staff believes they are incomplete, which sometimes results in erroneous rejections.¹⁵ The NPRM states, “Every benefit request submitted online instead of on paper provides direct and immediate cost savings and operational efficiencies to both USCIS and filers.”¹⁶ The USCIS Ombudsman also expects that online filing “will speed adjudications as the agency introduces and expands its use of machine processing and artificial intelligence.”¹⁷

Slightly smaller increases in fees for online filing won’t help

The NPRM proposes to give discounts to online filers, but they are insufficient to incentivize use of the system because the system’s problems extend beyond forms not being unavailable online. The system for the existing forms is woefully deficient. According to the USCIS Ombudsman:



Large volume filers depend on third-party vendor case management systems to collect data as well as manage and track the progress of hundreds and even thousands of filings. However, USCIS has yet to create an API to facilitate a direct system-to-system data exchange. Stakeholders see little advantage to online filing given the current lack of systems integration. ... Many high-volume benefit filers will readily make this transition to filing submissions online as soon as the necessary API is in place.¹⁸

USCIS's system cannot save drafts of applications for more than 30 days, making it impossible to rely on it as the primary data entry location for filers given the high risk of losing the data. Moreover, except for the H-1B electronic registration form, the online system generally does not accept USCIS's power of attorney form, which makes it impossible for attorneys to file on behalf of their clients.¹⁹ As a result, even for the forms that USCIS has made available online, applicants filed online only 44 percent of the time as of 2020.²⁰

Ideally, USCIS should have a fully digitized filing platform for every form that is fully compatible with attorney case management systems and capable of accepting attorney-filed forms. USCIS has most recently stated that it hopes to complete its digitization plan by 2026—a mere 20 years after it announced its transition in 2006.²¹ As an intermediary step, USCIS should create a secure filing platform that accepts scanned or uploaded application materials as soon as possible, thereby eliminating USCIS's manual process of opening the paper files and scanning them. It should not increase fees. There is already a dedicated funding stream from premium processing fees that should fix the platform's inefficiencies.

Limit unnecessary requests for evidence

One major cause of adjudication delays arises when USCIS issues a request for further evidence (RFE) from the applicant, requiring a back-and-forth that can add months to the processing time. But RFEs are often overbroad, unnecessary, or issued when the relevant evidence is already submitted or based on a mistaken legal interpretation. For example, USCIS is approving H-1B petitions after issuing an RFE in a staggering 85 percent of cases, meaning that these RFEs are rarely uncovering issues that will result in denials.²² This rate has increased dramatically in recent years (Figure). The NPRM states, "USCIS believes that the growing complexity of case adjudications in past years, including prior increases in the number of interviews required *and request for evidence (RFE) volumes*, has contributed to . . . growing backlogs."²³



Figure

Share of H-1B petitions approved after a request for evidence keeps rising

FY 2018–2022



Sources: USCIS, "Nonimmigrant Worker Petitions by Case Status and Request for Evidence (RFE)," Sept. 2022.

The USCIS Ombudsman, in 2016, lamented “the continued issuance of overly burdensome and unnecessary requests for evidence.”²⁴ The Ombudsman has also noted that USCIS even issues RFEs for evidence already in the file.²⁵

The following measures could help address this problem:

1. Require adjudicators to construe the evidence in the record favorably to the applicant;²⁶
2. Do not issue RFEs for information held by DHS, such as prior entry records;
3. Expand its policy of deferring to prior adjudications involving the same facts and parties by applying it to adjudications by other agencies, not just USCIS, and interpreting as broadly as possible to apply to any issue previously decided by the agency;²⁷
4. Reiterate and enforce the prohibition on the still-widely used broad-brush RFEs, which request all evidence required for approval rather than just the specific missing piece;²⁸
5. Refund processing fees in cases where the RFE rules are violated;
6. Provide adjudicator email addresses with any RFE, denial, or notice of intent to deny so that applicants can quickly contact the adjudicator about evidence that is already in the record, avoiding lengthy mail exchanges; and
7. Publish RFE issuance rates by adjudicator identification number to allow the agency and public to identify rogue or inefficient adjudicators.

These measures would help reduce unnecessary requests for evidence that slow down the process and effectively make applicants reapply twice. USCIS should not increase fees without addressing unnecessary requests for evidence in a thorough manner.



Humanitarian applications don't justify fee increases for others

The main reason that the NPRM provides for increasing fees so substantially is increased humanitarian filings. But as Table 5 shows, the number of humanitarian applications has not significantly increased between 2016, when the last fee rule was made, and 2022. More important is the ratio of non-humanitarian to humanitarian applications. More humanitarian applications are only a problem from a funding standpoint if there are not additional non-humanitarian applicants to pay for them. But as Table 5 shows, the ratio was higher in 2022 than in 2016 and even in 2021 was higher than in 2015.

Table 5
Humanitarian and non-humanitarian filings and ratio by fiscal year

Fiscal Year	Non-Humanitarian	Humanitarian-All	Ratio
2015	6,665,966	984,509	6.8
2016	7,208,989	861,928	8.4
2017	7,683,242	847,480	9.1
2018	6,713,316	814,535	8.2
2019	6,667,471	673,801	9.9
2020	6,925,272	542,567	12.8
2021	7,732,440	1,090,934	7.1
2022	7,815,994	870,977	9.0

Sources: Department of Homeland Security, "Number of Service-wide Forms," 2015-2022.
Notes: Humanitarian include: I-589 Legalization I-730 I-817 I-821 I-821D I-867 I-881 I-899 I-914 I-918 I-929 and humanitarian parole

Table 5 doesn't include the new parole sponsorship programs for Venezuelans, Haitians, Nicaraguans, and Cubans created in fiscal year 2023. But these programs can and should be funded by the sponsors. USCIS should stop exempting them from filing fees. Regardless, these programs do not justify the astounding fee increases here.

Moreover, the agency is increasing fees to pay for increased inefficiency in processing humanitarian applications. Adjudicators in 2022 took 5 hours to adjudicate the I-589 Application for Asylum and for Withholding of Removal—an hour more than they did in 2019. USCIS has added a page to the I-589 since 2003, and it increased the I-730 Refugee/Asylee Relative Petition 300 percent from 2 to 8 pages during that time. The I-918 pages increased 38 percent since 2016. The I-914 pages increased 200 percent from 4 to 12 pages. The NPRM is not increasing efficiency in humanitarian applications. It is subsidizing inefficiency.

Specific Fees

NPRM Proposal: Asylum Program Fee

The NPRM is proposing to implement a \$600 Asylum Program Fee added to the fees for employer petitions for workers. This fee discriminates against categories disfavored by USCIS. The provision violates the intent of Congress that USCIS charge fees based on the cost of



adjudication of the form and distribute overhead costs or costs not related to an individual adjudication across all its fee-paying programs.²⁹

Moreover, the agency is requiring more resources for the asylum process because it is becoming less efficient in processing asylum applications. In 2022, adjudicators took 18 percent longer to process asylum applications than they did in 2019.

In absolute terms, asylum adjudications took an astounding 5 hours to complete in 2022 compared to 2 hours for a green card application. Asylum adjudications are taking so long because the agency has adopted a hostile attitude toward asylum, denying applicants at an astonishing 63 percent rate in 2022.³⁰ Denying an application takes far longer than approving it because of the need to document the reasons and the potential for appeals. Yet immigration courts are approving USCIS-denied asylum applicants for asylum 75 percent of the time in 2023—far more frequently than any other asylum applicants in immigration court.³¹

Despite this incredibly inefficient process, USCIS wants to impose a \$600 Asylum Program Fee on employers to cover it. It is unfair to impose costs on employers and workers that the agency is itself creating and unnecessary since the agency can reduce those costs whenever it wants.

NPRM Proposal: Increasing form I-765 fees

USCIS is proposing to increase the fees for the form I-765 request for an employment authorization document by between 35 and 59 percent, depending on how it is filed. The paper-filed application will increase from \$410 to \$650. This is not justifiable.

- USCIS is planning to charge \$2,954.55 per hour of adjudication time for the I-765.
- USCIS adjudicators are taking 57 percent longer to adjudicate this form than they were in 2010.³²
- USCIS increased the length of the form I-765 600 percent from 1 page to 7 pages from 2019 to 2023.

USCIS should not increase the fee. It should revert to the simpler form, and there are better policies to bring down the backlog of employment authorization documents as detailed below.

USCIS should refund the higher fees if the I-765 is not processed within USCIS's 3-month goal.³³

NPRM Proposal: Increasing form I-131 fees

USCIS is proposing to increase the fees for the form I-131 Application for Travel Document/Advance Parole by 10 percent from \$575 to \$630. This is not justifiable when the agency is causing the increased need for resources:

- USCIS is planning to charge \$1,982.76 per adjudication hour for the I-131.
- USCIS adjudicators are taking 81 percent longer to adjudicate this form than they were in 2010.
- USCIS increased the length of the form 67 percent from 3 pages to 5 pages from 2003 to 2023.



USCIS should not increase the fee. It should revert to the simpler form, and there are better policies to bring down the backlog of employment authorization documents as detailed below.

USCIS should refund the higher fees if the I-131 is not processed within USCIS's 3-month goal.³⁴

NPRM Proposal: Increase Fees for I-485

The NPRM proposes to increase the fees for the I-485 adjustment of status form from between 26 percent to 130 percent, depending on the type. For the standard form, the fee will increase from \$1,140 to \$1,540, or 35 percent. This is not justifiable.

- USCIS is planning to charge \$740.38 per hour of adjudication time for the standard I-485 and \$1,088.80 per hour of adjudication time for a paper-filed form I-485 filed with requests for advance parole and employment authorization.
- USCIS increased the length of the form I-485 600 percent from 4 pages to 20 pages from 2003 to 2023. The form was 6 pages in 2016.
- USCIS adjudicators are taking 35 percent longer to adjudicate the I-485 form than they were in 2010.³⁵

Rather than increase fees, USCIS should revert to the old I-485 form. It can drop an extraordinary number of questions that do not pertain to inadmissibility or eligibility for adjustment of status. It should also eliminate the supplement J form that was added in 2016, which unnecessarily increases the complexity of cases and adds to the adjudication time.

USCIS should refund the higher fees if the I-485 is not processed within USCIS's 3-month goal.³⁶

NPRM Proposal: Charging I-131 and I-765 fees for I-485 filers

USCIS is proposing to charge \$1,280 in fees for the I-131 and I-765 advance parole and employment authorization filed with an I-485 adjustment of status. This is the wrong policy. The I-485 fees were already set at a level sufficient to cover the cost of adjudicating the I-131 and I-765 forms filed with them, and there is no justification for increasing the I-485 fee 35 percent and then imposing these additional fees on top of that. Regardless, as outlined below, USCIS should simply stop requiring advance parole for I-485 filers and allow them to travel either using their existing status or their I-485 receipt. Similarly, USCIS should allow I-485 filers to work using their I-485 receipt.

Stop requiring advance parole to travel with applications pending

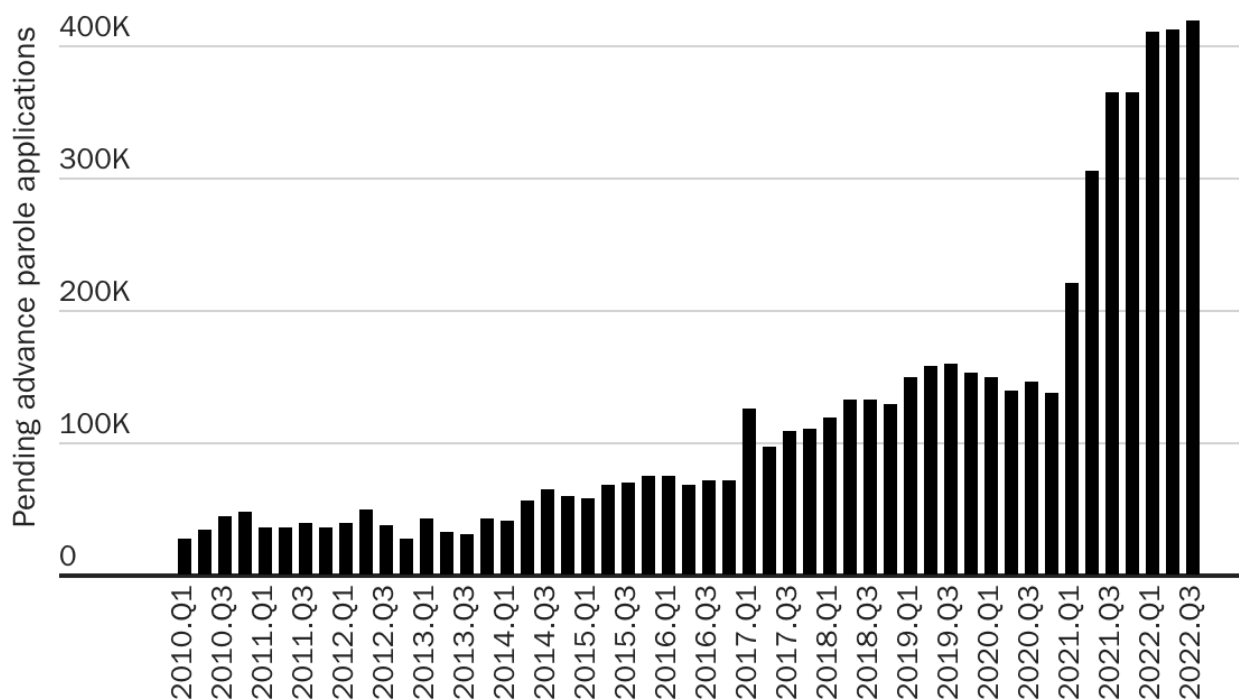
DHS regulations require that applicants for adjustment to legal permanent residence in the United States (green card applicants) apply for an "advance parole" travel document before they leave the country. If they do not, it will consider the adjustment of status application abandoned.³⁷ But there is no statutory or policy reason to deem an application "abandoned" just because the applicant traveled abroad. DHS usually takes well over a year to adjudicate a green card application, and for asylee and refugee applicants (who already have refugee or asylee

status and are now applying for green cards), it can take as long as three years.³⁸ People stuck in the green card backlog who want to travel are forced to seek advance parole and get stuck waiting, creating a backlog within a backlog. The advance parole backlog is now over 400,000 (Figure).

The rule did not exist for nearly the first two decades in which immigration law permitted adjustments of status.³⁹ At that time, the agency had far less work than it does now, and the delays were less significant. But by the 1990s, the rule became such a major problem that in 1999, the immigration service exempted L-1, H-1B, K-3, K-4, and V status holders from the policy.⁴⁰ Even L-1 and H-1B applicants end up applying for advance parole because—although DHS has extended their nonimmigrant status—their visas have expired, so they cannot travel back to the United States without applying for a new visa from State.

Figure

The backlog for requests to travel with an application pending have exploded



Source: U.S. Citizenship and Immigration Services, "Number of Service-Wide Forms," 2022.

The abandonment rule contributes to the backlog of about half a million advance parole applications. USCIS should start by eliminating the abandonment rule, but it should go further and authorize travel based on the receipt of a properly filed adjustment of status if DHS has approved the applicant for status in the United States. If it only went halfway, exempted applicants would still apply for advance parole to avoid the need to request a new visa at a consulate abroad as H-1 and L-1 workers do now. Asylees and refugees do not receive visas, so their only option to travel is with advance parole. These applicants have already undergone vetting to receive their current legal status; USCIS should not subject them to another duplicative review to be able to travel and resume their status.



Authorize employment and travel based on application receipts

Filing of applications for other benefits often triggers employment authorization document and advance parole travel eligibility. For instance, applicants for green cards may simultaneously request an EAD and travel authorization (I-131 advance parole).⁴¹ Yet, because of the long wait time for an EAD, applicants fail to receive these benefits as soon as they are eligible. A better option would be to authorize employment based on the receipt notice issued by the agency in combination with a machine-readable passport to verify identity. In fact, USCIS already approves work based on a receipt notice in certain circumstances, but only using the receipt of filing the EAD renewal, not the application that gave rise to the EAD eligibility.⁴² The validity of the receipt number can easily be checked electronically on USCIS's website.⁴³ This change could reduce the number of EADs by hundreds of thousands and free up more resources for processing other benefits.

NPRM Proposal: Fee increases for I-539

USCIS is also proposing to increase the fees for I-539 extensions of status between 15 and 68 percent depending on how it is filed. The filing fee for a paper-filed extension of status will increase from \$370 to \$620. This is not justified:

- USCIS plans to charge \$885.71 per hour of adjudication time for this form.
- From 2003 to 2023, form I-539 increased from 4 pages to 7 pages.
- In 2023, adjudicators took twice as long to process the average form I-539 as they did in 2010.
- I-539 receipts were 4 percent below the level in FY 2017 when the last rule was implemented.

There are better policies to bring down the extension of status backlog. As detailed further below, USCIS should stop requiring extension of status for dependents, and it should stop requiring extensions of status when not legally required.

USCIS should refund the higher fees if the I-539 is not processed within USCIS's 3-month goal.⁴⁴

Stop requiring extension of status for dependents

USCIS requires that dependent spouses and minor children of H-1B, E, L, O, P, R, and TN long-term temporary workers file extensions of status separate from the worker, contributing to a backlog of about a quarter of a million extension requests.⁴⁵ USCIS is currently granting at least dependent spouses and children of H-1B and L-1 "courtesy" premium processing when the primary applicant pays for expedited processing and files the forms simultaneously.⁴⁶ USCIS recognized that it was more efficient to process the applications together. But because the expedited processing is a courtesy, and therefore not paid for by the applicants, the policy imposes additional unnecessary costs on the agency. Moreover, it does not apply to dependents who file an extension separately for various reasons, subjecting them to a much lengthier wait than the primary applicant.



USCIS should not require extensions of status from nonimmigrant dependents and admit them for as long as the primary applicant remains in status and the qualifying relationship exists (i.e., the marriage continues and the child is under age 21).⁴⁷ If the primary applicant is denied an extension, USCIS can cancel the status of the dependents. Notably, USCIS already knows a child's birthday and can (and does) automatically terminate the status on that date. In addition, if a marriage ends, it can require both parties to notify the government of the change, which is prompter than the current procedure.⁴⁸ There is no reason to burden the agency with hundreds of thousands of additional applications.

Stop requiring extensions of status when not legally required

DHS regulations arbitrarily limit H-1B, L-1A, and L-1B workers to an initial period of status of just three years—significantly less than the periods authorized by the statute: six, seven, and five years, respectively.⁴⁹ H-1B workers are skilled specialty occupation workers in jobs requiring a bachelor's degree. L-1 workers are multinational executives or managers (L-1A) or workers with specialized knowledge relevant to the business (L-1B). To obtain the entire period authorized by the statute, workers and employers must file at least one extension and two extensions in the case of L-1A multinational executives and managers.⁵⁰ DHS rarely denies H-1B and L-1 extensions and denied applicants often receive approvals after refile with corrected information.⁵¹ When employment ends, employers must notify DHS anyway.⁵²

The extension process is a waste of DHS and employer resources.⁵³ DHS has adopted a completely different policy concerning J-1 exchange visitors who are admitted for the whole period of their exchange program—a period that can be as long as ten years or more.⁵⁴ For instance, J-1 postgraduate medical trainees working at U.S. hospitals need not file extensions of status during their seven-year training, which equals the L-1A statutory authorized period and exceeds those for H-1B and L-1B workers. When the agency decided to lengthen the J-1 period of admission from one year to the length of their program in 1985, it stated that the change “will reduce unnecessary reporting requirements” and “will concurrently reduce the paperwork burden on the Service.”⁵⁵ J-1 visa holders were deemed a “low risk in violating their status.”

These comments all hold for H-1B and L-1 workers. When the agency last updated the period of admission for H-1 workers to the current three-year period in 1983, it stated that “extending the initial approval period will greatly benefit the public without causing adverse impact on compliance [because] ... extension requests filed by the vast majority of aliens of distinguished merit and ability are routinely granted.”⁵⁶ Those same facts apply with equal force today, but the agency adopted the three-year initial period before Congress had specified that H-1B workers were entitled to a total six-year period in 1990. It is true that the Department of Labor only approves H-1B labor condition applications—a precondition for H-1B status—in three-year increments, but DOL reduced the period from the statutory six years in 1994 specifically to match the three years of admission.⁵⁷ DOL recognized the “burdens” on employers and workers but decided that DHS's regulation had forced it to shorten the period.

DHS should grant L-1 and H-1B status for the full periods authorized by law to reduce unnecessary paperwork. H-1B researchers cooperating under government-to-government agreements with the Department of Defense already receive an initial period of five years, so



there is no technical reason USCIS cannot implement a more extended period.⁵⁸ Other skilled visa programs—specifically, E, O, and TN—have no statutory limit on status at all, but DHS has adopted a short period of status: two, three, and three years, respectively—with the O visa only renewable in one-year increments.⁵⁹ DHS should increase these periods to match the H-1B visa’s six years. These changes would significantly reduce the number of unnecessary extension requests and streamline USCIS operations.

NPRM Proposal: Maintain a fee for I-90 form

USCIS is proposing to keep the \$455 fee for the form I-90 green card renewals or replacements and increase it for paper-filed green card renewals to \$465. Rather than increase this fee, USCIS should eliminate the requirement to renew a green card, reverting to the pre-1989 policy that issued green cards without renewals. As a result, no one had to renew a green card from 1940 to 1999. This recent policy can be amended without regulation, but the NPRM is the perfect opportunity to adopt this streamlining proposal.

USCIS should refund the higher fees if the I-90 is not processed within USCIS’s 3-month goal.⁶⁰

Stop requiring green card renewals

“Green cards” document a person’s receipt of legal permanent residence (LPR) status. LPR status is permanent, and it cannot be revoked without placing the person in removal proceedings to provide due process before stripping them of that status for certain violations. Even though LPR status is permanent, USCIS issues green cards with a validity period of just ten years.⁶¹ This time limitation is contributing to one of the largest and fastest growing USCIS backlogs for the I-90 form, application for green card replacement or renewal.⁶²

Because it cannot complete renewals in time, USCIS has issued automatic two-year extensions for expired green cards.⁶³ While this temporarily delays handling the most acute problem, a green card renewal still costs \$540, and it is a burden on immigrants and confusing for employers reviewing an expired card.⁶⁴ Employers who reverify the employment eligibility of immigrants whose cards expire have been penalized for discrimination.⁶⁵ Immigrants also face more scrutiny and delays when traveling, and many fear traveling with an expired green card.⁶⁶

Green cards were first issued in 1940, and from 1940 until August 1989—nearly five decades—all green cards had no expiration date, and pre-1989 green cards issued without an expiration date continue in circulation to this day.⁶⁷ Nothing in the statute requires green card renewals.⁶⁸ Indeed, the statute seems to contemplate a one-time registration. In fact, nothing in USCIS’s own regulations require the government to issue a time-limited green card or set the validity period.⁶⁹ The decision to issue time-limited cards was made informally through a policy memorandum without notice and public comment. This 1989 memo contained no justification whatsoever for the change—merely stating that the “card will also contain an expiration date, making the card valid for a period of ten years from the date of issue; the applicant will then be required to obtain a new card.”⁷⁰ This is the only official document requiring a 10-year green card.



In 2007, USCIS published a never-finalized proposed rule to rescind cards without an expiration date and mandate expiration dates on all new green cards. The older cards lacked the security features of new cards, but as to the necessity of mandating expiration dates in general, it merely stated that the “replacement process gives DHS an opportunity to collect updated biometric information, conduct background checks, and issue updated cards.”⁷¹ This explanation might make sense for legal permanent residents who received green cards as children under the age of 14 because they do not submit their fingerprints. A time-limited card is reasonable in those isolated cases, but all other green card recipients supply their fingerprints at the time that they apply. If USCIS wanted to run a background check every ten years on green card holders, it can do so without requiring them to pay \$540, go to Application Support Centers to submit fingerprints, and file an application.

Moreover, unlike in 1989 or 2007, all fingerprints submitted to the FBI at the time of a criminal arrest by federal, state, or local law enforcement are now run past DHS, alerting it to any legal permanent resident’s criminal activity.⁷² This means that DHS does not need to rely on the green card renewal process to obtain real-time updates about new crimes that a green card holder may have committed. Moreover, under the law, legal permanent residence can only be stripped through removal proceedings, so a renewal cannot be denied for criminal activity anyway,⁷³ and an expired card will not prevent a holder outside the United States from returning.⁷⁴ Given the fact that it is already issuing two-year automatic extensions, even DHS does not consider this process crucial for security.

USCIS never finalized the 2007 proposed rule that would have made the expiration date mandatory, meaning that green cards without expiration dates continue in circulation, and USCIS can easily switch back to the pre-1989 system of issuing cards without expirations. This would reduce the burden on immigrants and save the agency resources. In its 2007 proposal, USCIS claimed that it “now has the capability to process a large influx of Forms I-90 over a short period of time.”⁷⁵ This is no longer the case. From 2007 to 2022, the number of pending applications has exploded from fewer than 20,000 to more than 1 million.⁷⁶ It should go back to issuing green cards without requiring renewals, but if the agency refuses to restore this policy, it should at least double the validity period, which it can easily do without even amending its regulation.

NPRM Proposal: Increasing form I-129 H-2 fees

USCIS is proposing to increase the fees for the form I-129 nonimmigrant petition for H-2A workers by between 146 and 267 percent. Accounting for the proposed Asylum Program Fee, the fee will increase from \$460 to \$1,130 for unnamed H-2A seasonal farm workers (that is, workers to be named at the consulate) and from \$460 to \$1,180 for H-2B seasonal nonfarm workers. For named beneficiaries, the fee will increase from \$460 to \$1,690 for H-2A and from \$460 to \$1,680 for H-2B. These fee increases are justifiable:

- USCIS is planning to charge between \$716.10 and \$1,614.29 per hour of adjudication time.
- USCIS increased the length of the form I-129 260 percent from 10 pages to 36 pages from 2010 to 2023.
- Since just 2019, USCIS adjudicators have increased the adjudication time per completion by:



- 23 percent for H-2A named beneficiaries;
- 17 percent for H-2B named beneficiaries;
- 40 percent for H-2A unnamed beneficiaries; and
- 53 percent for H-2B unnamed beneficiaries.⁷⁷

These fees are staggering and will discourage employers from participating in the H-2 programs that USCIS and DHS have repeatedly recognized are important tools for decreasing illegal immigration and illegal employment in the United States.⁷⁸ The NPRM also caps the number of named beneficiaries on these applications at 25, which will require more petitions. This provision is also wrongheaded. Even if it made sense to increase fees, requiring totally separate filings will only increase the risk of mistakes and problems for petitioners, while increasing the workload of the agency. If the agency needs more funds, it should just require a higher fee for petitions involving more than 25 workers on a per-worker basis (as the Department of Labor (DOL) does for H-2A fees).

USCIS should also recognize that a new DOL final rule will also increase the number H-2A petitions by requiring employers to separately file for each type of worker that the employer is seeking.⁷⁹ By itself, the NPRM fee changes will increase costs on H-2 employers by \$30.1 million annually.⁸⁰ The 25 named worker cap and the DOL rule could increase that amount to over \$40 million in costs. These are costs that many of these employers—often small businesses—cannot pass onto customers because of competition from employers that hire illegal labor and consumer preferences.

USCIS should refund the higher fees if the I-129 is not processed within USCIS’s 2-month goal.⁸¹

There are better ways to streamline the H-2A and H-2B process to bring down USCIS’s costs than increasing fees.

NPRM Proposal: Separate fees for unnamed petitions

The NPRM proposal separates the fees for H-2 “unnamed” petitions (petitions whose beneficiaries are named at the consulate) from the fees for named petitions. This is unfair to H-2B users who are requesting returning workers through the H-2B supplemental cap allocation process that USCIS created, which requires naming workers. If USCIS should raise the fees for named workers, it must stop unnecessarily requiring naming in the supplemental process.

USCIS justifies the higher fees for named beneficiaries by stating that it conducts background checks for these individuals, but there is no reason to do that when visa applicants are already subject to background checks at consulates abroad—which is why USCIS has no problem approving unnamed petitions in the first place.

Instead, USCIS should simply automatically approve unnamed petitions *without a fee*, and not raise fees for named beneficiaries.

Automatically Approve H-2 Unnamed Petitions



USCIS should defer to DOL’s determination of whether an H-2A or H-2B job is “temporary” and automatically approve all H-2 petitions without substantive review if the employer plans to name the specific worker only at the consulate abroad.

H-2A agricultural or H-2B nonagricultural employers must receive a temporary labor certification from DOL showing that no qualified U.S. workers are available for the job. As part of its review, DOL first determines whether the job is “temporary” based on employer-provided evidence like payroll and tax documents.⁸² If DOL certifies the job, employers file a petition requesting USCIS grant status to the workers. USCIS has chosen to again conduct a second review to determine whether the job is temporary, sometimes requiring different evidence from DOL.⁸³

USCIS’s second review is burdensome and unnecessary. Even though USCIS approved 99 percent of petitions, it issued requests for evidence (RFEs) to 17 percent of H-2B employers and 10 percent of H-2A employers in 2020.⁸⁴ The USCIS Ombudsman has found numerous cases of USCIS adjudicators issuing RFEs for already-submitted evidence or evidence for issues that are legally irrelevant.⁸⁵ The Ombudsman has said that “delays at any point in the process can have severe economic consequences for U.S. employers” exactly because the work is short-term and time-sensitive.⁸⁶ USCIS should amend its regulations to defer to DOL to determine whether an H-2 job is temporary.

Employers must also attest to USCIS that they did not receive any fees that H-2 workers paid to get the job in prior years (or documenting that it has repaid any such fees).⁸⁷ USCIS should also allow DOL to enforce this requirement at the labor certification stage for unnamed petitions because its regulations also contain the same prohibition on job placement fees.⁸⁸ Employers do not need to list the specific names of the workers they plan to hire on “unnamed” USCIS petitions, so after deferring to DOL on these issues, USCIS has no further need to substantively review the petition.

Thus, once DOL approves an H-2 labor certification, USCIS should automatically approve all unnamed H-2 petitions without any review. USCIS already automatically revokes H-2 petitions when a labor certification is revoked, but a comparable provision in the opposite direction would be a better reform.⁸⁹ DOL should have employers state on the labor certification whether they plan to file an unnamed petition on its labor certification, collect any information necessary for USCIS, and forward any such approved labor certification directly to USCIS. USCIS then can immediately and automatically approve the petition and forward the approval to the consular affairs and the employer.⁹⁰

Automatically approving unnamed H-2 petitions would save employers time and money, preserve agency resources, and reduce the usual H-2 filing fees.

Approve H-2 Jobs for up to Three Years

USCIS should require DOL to certify H-2A and H-2B recurring jobs for up to three years.



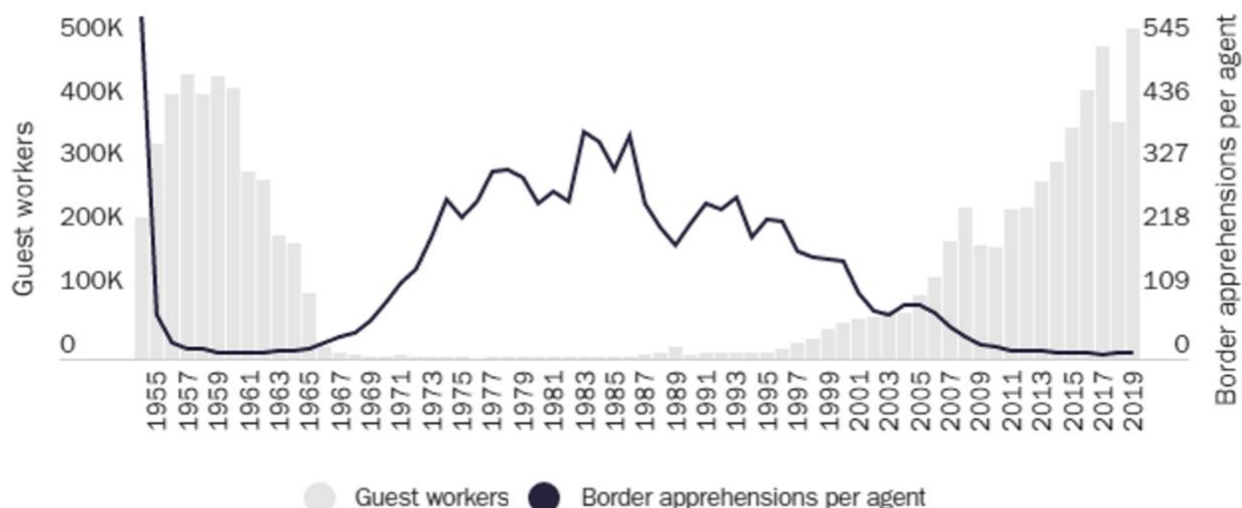
H-2A agricultural and H-2B nonagricultural employers almost always need workers to return annually to perform the same job.⁹¹ Employers hire for a season, and they bring back the same H-2 workers seasonally year after year. To employers, these “returning workers” are just existing employees who have taken a seasonal hiatus.⁹² Yet USCIS and DOL refuse to recognize this basic business reality, so USCIS only permits DOL to certify H-2 recurring jobs for a single season,⁹³ and DOL requires re-advertising the position every year⁹⁴ and has a nonpublic practice of prohibiting advertising the job only to those who commit to return for additional years.⁹⁵ This means repeatedly following a process that costs thousands of dollars, often delays H-2 workers’ entries until after the date of need, and rarely ever turns up any U.S. workers.⁹⁶ Such pointless costs incentivize other employers to hire illegally.

USCIS should amend its regulations (and those created jointly with DOL covering the H-2B program) to allow employers to advertise only to those workers who commit to return each season and certify the recurring job for up to three years. Nothing in the law requires H-2 labor certifications every year. While the employer’s “need” must be “temporary,” the H-2B regulations already recognize that for most employers, “the underlying job is permanent,”⁹⁷ and this is acceptable so long as the employer’s “need” is still temporary, implicitly within a given year.⁹⁸ Moreover, for both H-2A and H-2B programs, DOL requires employers to prove that the employer’s needs recur annually (i.e., are permanent) unless the temporary job is based on a one-time or intermittent need, acknowledging the same fact.⁹⁹

With three-year certifications and petition approvals, Americans would still have a chance to take the job every three years,¹⁰⁰ and the knowledge that the job is more than just for the one season could even induce a few more U.S. workers to apply. Three years would match USCIS’s existing three-year limit on continuous H-2B and H-2A status in the United States¹⁰¹ as well as USCIS and DOL’s (rarely used) limit on H-2B approvals based on a temporary, one-time need of three continuous years.¹⁰² Both limits are not found in the law and are arbitrary, but it is logical to at least harmonize these existing periods with the regularity of DOL’s labor certification requirement.



Mexican guest worker entries and apprehensions of Mexicans per border patrol agent, FY 1954–2019



Sources: Immigration and Naturalization Service, "Yearbook of Immigration Statistics" (Washington: DOJ, 1992); Department of Homeland Security, "Yearbook of Immigration Statistics" (Washington, DHS, 2019); Department of Homeland Security, "Legal Immigration and Status Report Quarterly Data" (Washington: DHS, 2018); "Nonimmigrant Visa Statistics," Department of State; "Total CBP Enforcement Actions," Customs and Border Protection, 2019; Border Patrol, "Nationwide Illegal Alien Apprehensions Fiscal Years 1925–2018" (Washington: DHS, 2019); Border Patrol, "Border Patrol Agent Nationwide Staffing by Fiscal Year" (Washington: DHS, 2018); and "Border Patrol Agents: Southern Versus Northern Border," Transactional Records Access Clearinghouse, 2006.

Notes: Includes Bracero admissions from 1954 to 1965, and H-2A and H-2B admissions thereafter. 1980 interpolated, 1981–1983 based on total H visa admissions.

Beyond the regulatory relief, this action would provide more visas under the H-2B annual cap of 66,000 visas.¹⁰³ Because DOL's labor certification indirectly determines the validity period of the visa under DOS's existing regulations,¹⁰⁴ workers with H-2B recurring positions certified for three years would receive three-year visas, so they would not need a new one each year, freeing up visas for other workers.¹⁰⁵ With more cap space, almost all H-2B jobs would be filled, increasing economic growth. Moreover, few policies have reduced illegal immigration from Mexico more than expanding visas for seasonal Mexican workers (Figure).

NPRM Proposal: Fee increases for I-129 L Visas

The NPRM is also proposing to increase the fees for I-129 petition for an L nonimmigrant worker from \$460 to \$1,985. This increase is unjustifiable when the agency is causing the need for increased resources:

- From 2003 to 2023, the form I-129 increased 260 percent from 10 pages to 36 pages.
- In 2022, adjudicators took 60 percent longer to process a form I-129L as they did in 2019. The increase in efficiency since 2010 is almost certainly much worse but hasn't been reported by USCIS.

USCIS is inexplicably taking over an hour and 20 minutes longer to process an L visa petition in 2022 than in 2019. USCIS has adopted an insane level of scrutiny for L petitions, denying more than a quarter of all L-1B petitions.¹⁰⁶ USCIS should revert to shorter a I-129 form, back off its



heavy-handed approach to L visa petitions, and use the more streamlined adjudications used in 2019.

USCIS should refund the higher fees if the I-129 is not processed within USCIS's 2-month goal.¹⁰⁷

NPRM Proposal: Fee increases for I-129H-1B

The NPRM is also proposing to increase the fees for I-129 petition for an H-1B nonimmigrant worker from \$460 to \$1,380. This staggering increase is unjustifiable when the agency is causing the need for increased resources:

- USCIS plans to charge \$901.96 per hour of adjudication time for this form—a threefold increase from the current rate.
- From 2003 to 2023, the form I-129 increased 260 percent from 10 pages to 36 pages.
- In 2022, adjudicators took 39 percent longer to process a form I-129H-1B as they did in 2019. The overall adjudication time for I-129 (of which H-1B petitions were by far the largest portion) was just half an hour in 2010. The H-1B adjudications in 2023 were taking over an hour and a half.

USCIS is over-analyzing straightforward H-1B petitions. The best evidence for this is the fact that when it issues a request for evidence, it ends up approving the petition 85 percent of the time. USCIS should revert to the simpler forms and instruct adjudicators to process more quickly as they have in the past.

USCIS should refund the higher fees if the I-129 is not processed within USCIS's 2-month goal.¹⁰⁸

NPRM Proposal: Fee increases for I-192

The NPRM is proposing to increase the fees for the I-192 application for advance permission to enter as a nonimmigrant of between 18 percent if filed with USCIS and 88 percent if filed with CBP. These increases are unjustifiable when the agency is causing the need for increased resources:

- From 2003 to 2023, the form I-192 increased 1000 percent from 1 page to 11 pages.
- In 2022, adjudicators took 51 percent longer to process a form I-129L as they did in 2019.¹⁰⁹

USCIS should not be preventing people from fixing their statuses when it is the cause of the need for more resources. USCIS should revert to the old I-192, adopt the faster processing used in earlier years, and not increase fees.

NPRM Proposal: Fee increases for I-360

The NPRM is proposing to increase the fee for the Petition for Amerasian I-360 Widow(er) or Special Immigrant by 18 percent. This increase is unjustifiable when the agency is causing the need for increased resources:

- From 2003 to 2023, the form I-360 increased 375 percent from 4 pages to 19 pages.



- In 2022, adjudicators took 54 percent longer to process the form I-360 as they did in 2019.

Simply processing at the same rate as in the past would eliminate the need for this increase, and reducing the number of pages and questions would lend itself to a rate decrease. USCIS should revert to the old I-360, adopt the faster processing used in earlier years, and not increase fees.

USCIS should refund the higher fees if the I-360 is not processed within USCIS's 3-month goal.¹¹⁰

NPRM Proposal: Fee increases for I-751

The NPRM is proposing to increase the fee for the I-751 Petition to Remove Conditions on Residence by 101 percent—doubling the fee for U.S. citizen who marry immigrants from \$595 to \$1,195. This increase is completely unjustified when it is the agency that is causing the need for more resources:

- USCIS is planning to charge \$775.97 per hour of adjudication time for the I-751.
- Adjudicators took fully twice as long to adjudicate an I-751 in 2022 (1.54 hours) as they did in 2010 (0.77 hours). It was taking them 18 percent longer than just 2019.
- From 2003 to 2023, the form I-751 increased 450 percent from 2 pages to 11 pages.

USCIS should revert to the old I-751, adopt the faster processing used in earlier years, and not increase fees.

NPRM Proposal: Fee increases for the I-129F

The NPRM is proposing to increase the fee for the I-129F for fiancé(e)s of U.S. citizens by 35 percent to \$720 from \$535. These fees are not justified when it is the agency causing the need for increased resources:

- USCIS is planning to charge \$791.21 per hour of adjudication time for the I-129F.
- Adjudicators took 122 percent longer to process a form I-129F in 2022 than in 2010—an increase of a half an hour of adjudicator's time. It was taking them 36 percent longer than just 2019.
- From 2003 to 2023, the form I-129F increased 550 percent from 2 pages to 13 pages.

This fee comes on top of the increases for the I-485 and I-751, making the fiancé visa path exorbitantly expensive. USCIS should revert to the old I-129F, adopt the faster processing used in earlier years, and not increase fees.

USCIS should refund the higher fees if the I-129F is not processed within USCIS's 3-month goal.¹¹¹

NPRM Proposal: Fee increases for the I-130

The NPRM is proposing to increase the fee for the I-130 petition for noncitizen relative by between 35 and 55 percent depending on how it is filed. For the paper-based I-130, the fee will increase from \$535 to \$820. This increase is not justified when it is the agency causing the need for increased resources:



- Adjudicators took 79 percent longer to process a form I-130 in 2022 than in 2010—an increase of a half an hour of adjudicator’s time.
- From 2016 to 2023, the form I-130 increased 500 percent from 2 pages to 12 pages. Factoring in the I-130A for a spouse, the increase is 800 percent from 2 pages to 18 pages.

USCIS should revert to the old I-130, adopt the faster processing used in earlier years, and not increase fees.

USCIS should refund the higher fees if the I-130 is not processed within USCIS’s 3-month goal.¹¹²

NPRM Proposal: Fee increases for the I-102

The NPRM is proposing to increase the fee for the I-102 Application for Replacement/Initial Nonimmigrant Arrival-Departure Document by 53 percent from \$445 to \$680. This increase is not justified when it is the agency causing the need for increased resources:

- USCIS plans to charge \$809.52 per hour of adjudication time for the I-102.
- Adjudicators are taking 133 percent longer to adjudicate the I-102 in 2022 than in 2010.
- USCIS has increased the length of the I-102 500 percent from one page to 6 pages from 2003 to 2023.

USCIS should revert to the old I-102, adopt the faster processing used in earlier years, and not increase fees.

USCIS should refund the higher fees if the I-102 is not processed within USCIS’s 3-month goal.¹¹³

NPRM Proposal: Fee increases for the I-956

The NPRM is proposing to increase the fee for the I-956 EB-5 application for regional center designation by 168 percent from \$17,795 to \$47,695. This increase is not justified when it is the agency causing the need for increased resources:

- Adjudicators took 210 percent longer to adjudicate the I-956 as they did to process the earlier version (I-924) in 2019 (an increase of nearly 74 hours).
- USCIS has doubled the length of the form from 6 pages to 12 pages.

USCIS should revert to the shorter form, adopt the faster processing used in earlier years, and not increase fees.

NPRM Proposal: Fee increases for the I-526

The NPRM is proposing to increase the fee for the I-526/526E EB-5 Immigrant Petition by Investor by 204 percent from \$3,675 to \$11,160. This increase is not justified when it is the agency causing the need for increased resources:

- Adjudicators were taking 311 percent longer to adjudicate the form I-526 than they were in 2010, and they were taking 139 percent longer than in 2019.
- USCIS increased the page length of the form by 433 percent from 3 pages to 16 pages from 2016 to 2023.



USCIS should revert to the shorter form, adopt the faster processing used in earlier years, and not increase fees.

USCIS should refund the higher fees if the I-526 is not processed within USCIS's 3-month goal.¹¹⁴

NPRM Proposal: Fee increases for the I-829

The NPRM is proposing to increase the fee for the I-829 investor petition to remove conditions on resident status by 154 percent from \$3,750 to \$9,525. This increase is not justified when it is the agency causing the need for increased resources:

- Adjudicators were taking 188 percent longer to adjudicate the form I-829 than they were in 2010, and they were taking 95 percent longer than in 2019.
- USCIS increased the page length of the form by 267 percent from 2008 to 2023.

USCIS should revert to the shorter form, adopt the faster processing used in earlier years, and not increase fees.

NPRM Proposal: Fee increases for the I-690

The NPRM is proposing to increase the fee for the I-690 Application for Waiver of Grounds of Inadmissibility by 38 percent from \$715 to \$985. This increase is not justified when it is the agency causing the need for increased resources:

- Adjudicators were taking 129 percent longer to adjudicate the form I-690 than they were in 2016, and they were taking 94 percent longer than in 2019.
- USCIS increased the page length of the form by 300 percent from 2008 to 2023.

USCIS should revert to the shorter form, adopt the faster processing used in earlier years, and not increase fees.

NPRM Proposal: Fee increases for the N-400

The NPRM is proposing to increase the fee for the N-400 naturalization application by 19 percent from \$640 to \$760. This increase is not justified when it is the agency causing the need for increased resources:

- Adjudicators were taking 40 percent longer to adjudicate the form N-400 than they were in 2010.
- USCIS doubled the page length of the form from 2008 to 2023 from 10 to 20 pages.

USCIS should revert to the shorter form, adopt the faster processing used in earlier years, and not increase fees. It should also seek greater efficiencies throughout the citizenship process, particularly by using remote interviews as outlined below. USCIS should refund the higher fees if the N-400 is not processed within USCIS's 3-month goal.¹¹⁵

Despite increasing the fee, the NPRM asserts that the naturalization fee is being set "at an amount less than its estimated costs," arguing that "shifting those costs to other fee payers was appropriate in order to promote naturalization and immigrant integration." This stance gets the principle of immigrant integration backward. Given that a green card is a prerequisite to naturalization, and a nonimmigrant visa is often a de facto prerequisite for a green card in many



cases, raising fees for these categories prevents immigrant integration. USCIS should prioritize getting immigrants in a position where they are eligible to naturalize if it cares about integration.

Other applicants should not have to bear the cost of naturalization when it is more pressing for them to receive green cards or other statuses in the United States.

Use remote video interviews for naturalization, oaths, and green cards

The USCIS backlog for naturalization applicants now exceeds half a million. Wait times are long and vary widely across the country. In January 2023, field offices reported completing 80 percent of cases in between 12 and 24.5 months, depending on location.¹¹⁶ This variation results from the decentralized processing of applications, which occur at 89 field offices nationwide in 44 states, three territories, and Washington, D.C.¹¹⁷ To harmonize wait times and reduce inefficiencies, USCIS should introduce remote video interviews for naturalization interviews and online naturalization oath ceremonies.

In-person interviews are not a statutory requirement. USCIS can meet the requirement that oath ceremonies be conducted in “public” by hosting the virtual ceremonies with multiple participants and leaving the links open to the public. Since December 2020, USCIS has used remote video interviews for thousands of naturalization and oath ceremonies for applicants in the U.S. military stationed abroad.¹¹⁸ Every USCIS field office has also used video technology to conduct video interviews that occur onsite, but they have failed to deploy them more widely to conduct remote video interviews for non-U.S. military personnel.¹¹⁹ Removing the in-person requirement would mean that applicants could be processed from anywhere on a first-come, first-served basis without wasting time in a physical office.

Oath ceremonies are almost like a second in-person interview, causing further delay and difficulties for applicants and more expense for the agency. Although some applicants prefer in-person ceremonies, USCIS should adopt the Canadian government’s practice of offering a remote option.¹²⁰ Remote interviews would also greatly help the processing of interview-required green cards, which can take anywhere from a few months to over three years, depending on the location and type of application. Such significant disparities in outcomes are both a cause and symptom of an inefficient processing system.

NPRM Proposal: Fee increases for the I-129O

The NPRM is proposing to increase the fee for the I-129 petition for O nonimmigrant worker from \$460 to \$1,655—a 260-percent increase. This increase is not justified when it is the agency causing the need for increased resources:

- Adjudicators were taking 22 percent longer to adjudicate the form I-129O than they were in 2019.
- From 2003 to 2023, the form I-129 increased 260 percent from 10 pages to 36 pages.

USCIS should revert to the shorter form, adopt the faster processing used in earlier years, and not increase fees.

NPRM Proposal: Fee increases for the I-140



The NPRM is proposing to increase the fee for the I-140 Petition for an Immigrant Worker from \$700 to \$715. This increase is not justified when it is the agency causing the need for increased resources:

- Adjudicators were taking 25 percent longer to adjudicate the form I-140 than they were in 2010.
- From 2003 to 2023, the form I-140 increased 200 percent from 3 pages to 9 pages.

USCIS should revert to the shorter form, adopt the faster processing used in earlier years, and not increase fees.

USCIS should refund the higher fees if the I-140 is not processed within USCIS's 3-month goal.¹²¹

NPRM Proposal: Fee increases for the N-600

The NPRM is proposing to increase the fee for the N-600 Application for Certificate of Citizenship 18 percent from the already unusually high \$1,170 to \$1,385. This increase is not justified when it is the agency causing the need for increased resources:

- Adjudicators were taking 29 percent longer to adjudicate the N-600 form in 2022 than in 2010.
- From 2003 to 2023, USCIS increased the length of the form 114 percent from 7 to 15 pages.

USCIS should revert to the shorter form, adopt the faster processing used in earlier years, and not increase fees.

NPRM Proposal: Fee increases for the I-612

The NPRM is proposing to increase the fee for the I-612 Application for Waiver of the Foreign Residence Requirement 18 percent from \$930 to \$1,100. This increase is not justified when it is the agency causing the need for increased resources:

- Adjudicators were taking 30 percent longer to adjudicate the form in 2022 than in 2010.
- From 2003 to 2023, USCIS increased the length of the form 250 percent from 2 to 7 pages.

USCIS should revert to the shorter form, adopt the faster processing used in earlier years, and not increase fees.

NPRM Proposal: Fee increases for the I-824

The NPRM is proposing to increase the fee for the I-824 Application for Action on an Approved Application or Petition 45 percent from \$465 to \$675. This increase is not justified when it is the agency causing the need for increased resources:

- Adjudicators were taking 52 percent longer to adjudicate the form in 2022 than in 2010.
- From 2003 to 2023, USCIS increased the length of the form 600 percent from 1 to 6 pages.

USCIS should revert to the shorter form, adopt the faster processing used in earlier years, and not increase fees.



USCIS should refund the higher fees if the I-824 is not processed within USCIS's 3-month goal.¹²²

NPRM Proposal: Fee increases for the I-800A

The NPRM is proposing to increase the fee for the I-800A Application for Determination of Suitability to Adopt a Child from a Convention Country from \$775 to \$920 and for Supplement 3 form for a Request for Action on an I-800A from \$385 to \$455. These fee increases are unjustifiable when it is the agency that is causing the increased need for resources:

- Adjudicators were taking 18 percent longer to adjudicate an I-800A in 2022 than in 2010.
- Adjudicators were taking 85 percent longer to adjudicate a Supplement 3 in 2022 than in 2016.

USCIS should adopt the faster processing used in earlier years and not increase fees.

USCIS should refund the higher fees if the I-800A is not processed within USCIS's 3-month goal.¹²³

NPRM Proposal: Fee increases for the I-193

The NPRM is proposing to increase the fee for the I-193 Application for Waiver of Passport and/or Visa from \$585 to \$695. This increase is not justified when it is the agency causing the need for increased resources:

- Adjudicators were taking 73 percent longer to adjudicate an I-193 in 2022 than in 2019.
- From 2008 to 2023, USCIS doubled the form length.

USCIS should revert to the shorter form, adopt the faster processing used in earlier years, and not increase fees.

NPRM Proposal: Maintain the same fee for the I-565

The NPRM is proposing to maintain the fee for the N-565 Application for Replacement Naturalization/Citizenship Document at \$555. USCIS could lower this fee if it adopted the faster processing in earlier years:

- Adjudicators were taking 42 percent longer to adjudicate an I-565 in 2022 than in 2010.
- USCIS increased the form length by 250 percent from 2 pages to 7 pages from 2008 to 2023.

USCIS should revert to the shorter form, adopt the faster processing used in earlier years, and lower, not increase, the fees.

NPRM Proposal: Fee increases for the I-290B

The NPRM is proposing to increase the fee for I-290B Notice of Appeal or Motion from \$675 to \$800. This increase is not justified when it is the agency causing the need for increased resources:

- Adjudicators are taking 38 percent longer to complete the I-290B in 2022 than they were in 2010.



- USCIS increased the length of the form from 1 page to 6 pages from 2003 to 2022. USCIS should revert to the shorter form, adopt the faster processing used in earlier years, and not increase the fees. This particular fee increase is worse than some of the others because increasing the fees for appeals reduces accountability in the agency, which leads to more inefficiencies and inaccurate adjudication.

USCIS should refund the higher fees if the I-290B is not processed within USCIS’s 3-month goal.¹²⁴

NPRM Proposal: Fee increase for H-1B registration

The NPRM is proposing to increase the fee for the H-1B electronic registration from \$10 to \$215—2,050 percent. The NPRM provides no justification for this increase whatsoever. The H-1B registration process was created as a cost-saving measure for the agency. The H-1B petition lottery—the precursor to the electronic registration—was already covered by the H-1B I-129 fee. The number of I-129s for H-1B workers has dramatically increased from 420,559 to 474,296 from 2019 to 2022, so USCIS has more funds than ever for the H-1B program.¹²⁵

USCIS is proposing to increase the revenue from the H-1B selection process from \$4 million to \$100 million with absolutely no transparency on what will happen to these funds. For context, USCIS plans to run the entire H-2 program (including the H-2B lottery) on less than half of what it plans to charge just to run just the automated selection process in the H-1B program. USCIS claims that it needs the funds for two activities: “Inform the Public” and “Management and Oversight.” Informing the public is done online at effectively zero cost, and management and oversight is minimal and only occurs during a short period of the year.

No fee is required at all for this activity because H-1B program is fully funded by the I-129 fee, which—setting aside the Asylum Program Fee—is increasing by 70 percent. Even if there were fees required, the fees should drop when the number of registrations increases. Since it is an automated process, the marginal cost of an additional registrant is effectively \$0, so if the number of registrants doubled as it did from 2019 to 2022, the fee should drop proportionally. Instead, USCIS wants to increase the fee by 2,050. The fee is not justified and should be rescinded.

NPRM Proposal: Fees to pay for FDNS

USCIS is proposing to spend more than \$200 million in user fees on the Fraud Detection and National Security Directorate (FDNS)—an increase of 91.4 million since 2016.¹²⁶ These increases are happening even though the Government Accountability Office has found that in two decades, FDNS has “has not developed an antifraud strategy.”¹²⁷ The FDNS is illegal under the Homeland Security Act (HSA) that created USCIS.¹²⁸ As the NPRM acknowledges, Immigration and Nationality Act § 286(m) provides that IEFA funds are earmarked “for expenses in providing immigration *adjudication* and naturalization *services*.”¹²⁹ The HSA, the foundational statute that created DHS and its component immigration agencies, similarly refers to USCIS’s duties as solely immigration-related “[a]djudications.”¹³⁰ The HSA reserves “intelligence” and “investigations” – to Immigration and Customs Enforcement (ICE).¹³¹



Congress has never enacted any statute that overturns the prohibition on USCIS engaging in law enforcement, investigations, and intelligence gathering.¹³² The HSA expressly prohibits any reorganization of agency functions by the Executive.¹³³ The only citations that the NPRM provides is to a comment in a conference committee report *from 2004* that 1) not even relevant to current appropriations and fees and 2) does not even expressly authorize FDNS’s current activities nor does it overturn the HSA’s limitations on USCIS’s authorized adjudicative *activities*. Congress cannot appropriate funds for activities prohibited by earlier action.¹³⁴

Regardless of whether FDNS’s activities are illegal under the HSA, there is no reason for the Department of Homeland Security through USCIS to require fee-payers to cover its activities when there is another agency – ICE – with express legal authority and capacity to carry out investigative and intelligence-gathering activities utilizing \$8 billion in congressional appropriations..¹³⁵ DHS and USCIS should follow the HSA, transfer all investigations to ICE, and cease the unlawful diversion of IEFA funds to FDNS.¹³⁶

NPRM Proposal: More Fees, No Accountability

The NPRM will result in an increase in fees amounting to billions of dollars over the next decade, but the NPRM provides no accountability measures for how that money will be spent or anything to prevent a further deterioration in competition rates (adjudications times). The NPRM states, “USCIS does not have the resources that it needs to meet its goals,” yet USCIS is not conditioning the fee increases to the processing time goals—even to those goals that *it is setting for itself*. In other words, USCIS is not willing to stand by any goal whatsoever, and it wants to set fees at extremely high levels without any corresponding increase in accountability.

By contrast, USCIS is legally obligated to refund premium processing fees if it does not process the application in the required timeframe. This is the level of accountability that should be applied to the fee increases under the NPRM. USCIS should only charge the current lower fees if it fails to process an application within the earlier of: 1) the goal set by USCIS or 2) the 180-day goal that Congress established.¹³⁷ This would provide a stronger incentive for the agency to meet its own goals and use the increased fees responsibly.

The fees should also come with greater transparency. If applicants pay the higher fee, they should be given the name and email of their adjudicator—just as applicants in immigration court are given the name and contact of their immigration judge. This would improve accountability, but also ease communication between the applicant and the adjudicator, avoiding lengthy mail exchanges over easy-to-resolve issues.

Notes

¹ 88 Fed. Reg. 402 (January 4, 2023), hereinafter referenced as “NPRM.”

² 81 Fed. Reg. 73292 (2016).

³ David J. Bier, “USCIS Will Charge \$3,000/Hour To Process Work Authorization under New Rule”, Cato Institute, January 2023, <https://www.cato.org/blog/uscis-will-charge-3000-hour-process-work-authorization-under-new-rule#:~:text=USCIS%20Will%20Charge%20%243%2C000%2FHour,Rule%20%7C%20Cato%20at%20Liberty%20Blog>

⁴ Ilona Bray, “How Expensive Is an Immigration Lawyer?”, NOLO, March 2023, “<https://www.nolo.com/legal-encyclopedia/free-books/fiance-marriage-visa-book/chapter17-13.html>

⁵ For example:

“Immigration Attorney Salary in Los Angeles, California”, Salary.com, March 2023, <https://web.archive.org/web/20230310170519/https://www.salary.com/research/salary/posting/immigration-attorney-salary/los-angeles-ca>

“Immigration Services Officer”, USAJOBS, March 2023, <http://web.archive.org/web/20230310170348/https://www.usajobs.gov/job/711086300>

⁶ David J. Bier, “USCIS Adjudicators Have Grown Less Efficient For 82% of Forms”, Cato Institute, January 2023 <https://www.cato.org/blog/uscis-adjudicators-grew-less-efficient-82-forms>

⁷ David J. Bier, “USCIS Has Added 500 Pages to Its Immigration Forms Since 2003”, Cato Institute, December 2022, <https://www.cato.org/blog/uscis-has-added-500-pages-its-immigration-forms-2003>

⁸ “U.S. CITIZENSHIP AND IMMIGRATION SERVICES Actions Needed to Address Pending Caseload”, Government Accountability Office, August 2021. <https://www.gao.gov/assets/gao-21-529.pdf>

⁹ USCIS, “If you choose to mail your form, we want to ensure you avoid any delays & send us the correct version”, Twitter, March 2023, <https://twitter.com/USCIS/status/1634181591521009665>

¹⁰ “All Forms”, USCIS, March 2003, <https://www.uscis.gov/forms/all-forms>

¹¹ Greg Siskind, “Digitize USCIS Immigration Forms,” in “Deregulating Legal Immigration: A Blueprint for Agency Action”, David J. Bier, December 2020, <https://www.cato.org/publications/study/deregulating-legal-immigration-blueprint-agency-action#digitize-uscis-immigration-forms>

¹² USCIS, “Impact of the Homeland Security Act on Immigration Functions Transferred to the Department of Homeland Security - Fiscal Year 2021 - Report to Congress,” November 2021, https://www.uscis.gov/sites/default/files/document/reports/OLA_signed_IHSAIFTDHS_FY21_2.22.22.pdf
https://www.uscis.gov/sites/default/files/document/data/Quarterly_All_Forms_FY2021Q4.pdf

¹³ Department of Homeland Security, “Continued Reliance on Manual Processing Slowed USCIS’ Benefits Delivery during the COVID-19 Pandemic,” December 2021, <https://www.oig.dhs.gov/sites/default/files/assets/2022-01/OIG-22-12-Dec21.pdf>

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¹³⁰ 6 U.S.C. § 271(b).

¹³¹ 6 U.S.C. §§ 251(3) and 251(4), as amended



¹³² Furthermore, although the EB-5 Reform and Integrity Act, P.L. 117-103, Div. BB, provides for a limited consultative role for FDNS and USCIS in connection with any decision by the Secretary of Homeland Security whether to waive an interview when adjudicating a petition to remove conditions on residency, see 8 U.S.C. § 1186b(d)(3)(B), this statute does not expressly override the HSA's prohibitions on USCIS's engagement in unlawful investigative and intelligence-gathering activities nor does it authorize the diversion of IEFA funds for costly FDNS's non-adjudicative, extramural investigations. See 8 U.S.C. § 1186b(c)(1)(C) (authorizing solely the Secretary of the Department of Homeland Security (DHS) to perform a site visit at the corporate office or business location of an EB-5 regional center).

¹³³ 6 U.S.C. § 291(b).

¹³⁴ Bill Heniff, Jr., "Overview of the Authorization [/] Appropriations Process," *Congressional Research Service*, November 26, 2012 (No. RS20371): <https://www.senate.gov/CRSPubs/d2b1dc6f-4ed2-46ae-83ae-1e13b3e24150.pdf>. James V. Saturno and Brian T. Yeh, "Authorization of Appropriations: Procedural and Legal Issues," November 30, 2016 (No. R42098) <https://fas.org/sgp/crs/misc/R42098.pdf>.

¹³⁵ DHS, "Budget Overview", March 2023, https://www.dhs.gov/sites/default/files/2022-03/U.S.%20Immigration%20and%20Customs%20Enforcement_Remediated.pdf

¹³⁶ Angelo A. Paparelli coauthored this section. Angelo Paparelli is a partner in Seyfarth Shaw LLP, a member of the firm's Business Immigration Group and its Government Relations and Policy Group, a Certified Immigration Law Specialist (California), and a Fellow in the College of Labor and Employment Lawyers with experience in a wide array of subspecialties of U.S. immigration law.

¹³⁷ 8 U.S.C. §1571