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USCIS FEE INCREASE RULE

HEARING

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

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USCIS FEE INCREASE RULE

THURSDAY, SEPTEMBER 20, 2007

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP,
REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:01 a.m., in Room 2141, Rayburn House Office Building, the Honorable Zoe Lofgren (Chairwoman of the Subcommittee) presiding.

Present: Representatives Lofgren, Gutierrez, Delahunt, King, and Goodlatte.

Staff present: Ur Mendoza Jaddou, Chief Counsel; R. Blake Chisam, Majority Counsel; George Fishman, Minority Counsel; and Benjamin Staub, Professional Staff Member.

Ms. LOFGREN. Since we have sufficient Members here to begin our hearing, the Subcommittee will come to order.

I would like to welcome the Immigration Subcommittee Members, our witnesses, and members of the public to the Subcommittee's hearing on the immigration fee increase rule and H.J. Res. 47, a resolution that would render the recent immigration fee increase rule by the U.S. Citizenship and Immigration Services null and void and require the Agency to issue a new rule to modify its fees.

Our Subcommittee held its first hearing on the 2007 fee increase rule on February 14, when the rule was initially proposed. At that time, I had many questions about the methodology used to calculate the new fees, including how and if actual costs were accurately calculated, whether those actual costs included financial mistakes made by the Agency, and whether USCIS had properly prepared a plan for technology transformation, a cost that was used to justify the increase in fees.

Every answer I received to questions I had at that time led to even more questions and concerns about the rule. So, for the last 7 months, my staff and I have engaged USCIS and outside experts to understand the rule and its methodology, and I am still concerned. As a result, I have introduced H.J. Res. 47 to render the fee rule null and void and require the Agency to issue a new rule to modify its fees.

The Subcommittee has sought detail on how the technology transformation will work. We have asked the basic question of how to define success and how to measure that success. After 7 months, we have not received information sufficient to ensure that the money spent on technology will result in a system that is sufficient,

scalable, secure, and interoperable. I am hopeful that today we will get some answers.

And I would now recognize our distinguished Ranking minority Member, Steve King, for his opening statement.

[The prepared statement of Ms. Lofgren follows:]

PREPARED STATEMENT OF THE HONORABLE ZOE LOFGREN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA, AND CHAIRWOMAN, SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW

I would like to welcome the Immigration Subcommittee Members, our witnesses, and members of the public to the Subcommittee's hearing on the immigration fee increase rule and House Joint Resolution 47, a resolution that would render the recent immigration fee increase rule by the U.S. Citizenship and Immigration Services null and void and force the agency to issue a new rule to modify its fees.

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The Subcommittee has sought detail on how the technology transformation will work. We've asked the basic question of how they define success and how they will measure that success. After seven months, we have not received information sufficient to assure us that the money spent on technology will result in a system that is efficient, scalable, secure, and interoperable.

I am hopeful that today we will finally have some answers.

Mr. KING. Thank you, Madam Chair. I appreciate this hearing today.

In February, this Committee held a hearing on the USCIS fee increases, and I welcome back Chief Financial Officer Rendell Jones, as well as Associate Director for Domestic Operations Mr. Michael Aytes, who were also helpful in our last hearing in explaining the rationale and need for the fee increases.

Holding a second hearing on the fee increases this session, when the new fee schedule has been in effect for only 1 full month, should certainly allay the concerns of some that fee-reliant USCIS is not subject to sufficient congressional oversight.

The rule we are reviewing today took effect on May 30 after a 60-day public comment period. Thousands of comments were received and fully evaluated prior to publishing the final rule that resulted in several changes to the proposed rule. Those changes included discounted fees for children who are filing adjustments of status applications concurrently with their parents and the expansion of the fee waiver rules for certain applications.

On July 30, the day the new fee rule took effect, Chairwoman Lofgren introduced H.J. Res. calling for the rule to be given no force and effect. I am concerned that this was done without the benefit of a GAO report on the latest USCIS fee study or the resulting fee schedule, especially since the USCIS fee study was conducted as a result of the GAO findings in 2004.

However, Chair Lofgren first requested such a hearing report last week in a letter dated the day before this hearing was noticed.

I, therefore, must conclude that H.J. Res. is a rush to judgment. We should wait for the GAO audit before concluding that the fee calculations are flawed.

Federal law authorizes USCIS to collect fees to cover the full costs of adjudicating all of the applications it receives, including the cost of adjudicating applications for which it does not, for humanitarian reasons, collect fees.

Full cost recovery includes more than the direct cost of providing services. It covers overhead and support costs, such as the cost of personnel, facilities and litigation. Most importantly, it includes the cost of background checks and fraud detection, both of which are critical to ensuring that immigration benefits are granted to those who deserve them and not to those who do us harm.

When the examinations fee account was created, it was intended that USCIS become a predominantly fee-funded Agency. Some disagree with this concept, but I believe that the American taxpayer should not have to foot the bill for granting a highly sought-after benefit to immigrants, and while I certainly agree that our Nation is enriched by legal immigration, given the competing needs for tax dollars, it only makes sense that those who directly receive an individual immigration benefit should pay for it.

The Office of Management and Budget has stated that when the public benefits as a necessary consequence of an Agency's provision of a benefit to an individual, the Agency should seek to recover from the identifiable recipient either the full cost of the Federal Government of providing the special benefit or the market price, whichever applies.

There is no fair market price that can be assigned to the privilege of living and working in this country. The ability to naturalize is the greatest benefit a country can bestow. Indeed, it is priceless. Therefore, USCIS should structure its fees to recover its full costs.

The new fee schedule is based on a comprehensive fee study that was conducted at the recommendation of the GAO in the 2004 report. That was the last report conducted on this issue. Although the increases may be substantial in some categories, they are not necessarily excessive.

Even the new $595 fee for naturalization applications only requires that a prospective citizen save about $10 per month toward the objective during the 5 years of permanent residence needed to apply. The application fees for other benefits remain a minor portion of the overall costs of bringing a relative, a fiance, or an employee to the United States.

USCIS has structured the fee rule so that there will be measurable near-term improvements that will benefit all stakeholders. These include a 2-month decrease in processing time for the four major kinds of applications by the end of fiscal year 2008 and a 20 percent overall reduction for all application types by the end of fiscal year 2009.

Unless GAO finds the fees excessive, the new fee schedule should remain in place to allow USCIS to fund continued service improvements while enhancing its security and fraud-detection capability.

I look forward to hearing from the witnesses.

I thank you, Madam Chair, and I yield back the balance of my time.

Ms. LOFGREN. Thank you.

As neither Chairman Conyers nor Ranking Member Smith are present, we will invite them either to submit their statements for the record or to deliver their statements if they arrive later during the hearing. And mindful of our time constraints, other Members are invited to submit their opening statements in the record.

The prepared statement of Mr. Conyers follows:]

PREPARED STATEMENT OF THE HONORABLE JOHN CONYERS, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN, AND CHAIRMAN, COMMITTEE ON THE JUDICIARY

Today's hearing provides an opportunity for us to obtain answers to some very serious questions regarding the substantial fees charged by the U.S. Citizenship and Immigration Services to immigrants seeking citizenship in the United States.

As many of you will recall, I expressed deep concern about the size and fairness of these fees when we met last February about the agency's proposed fee increases.

Here are just a few questions that I hope will be resolved today.

First, what is the justification for increasing naturalization application fee by *80 percent*? Congress has repeatedly appropriated funds to USCIS so it can address processing backlogs and make long-overdue infrastructure and technology improvements. Yet, the agency apparently needs additional funding and we need to know that it is justified.

Second, what effect do these increased fees have on *legal* immigrants trying to express their patriotism and commitment to this country by applying for citizenship. I am particularly concerned about the equity of charging future applicants for the costs of the agency's past failures.

Third, we need an explanation about why USCIS is using funds from its Premium Processing Fees to fund operating costs beyond those permitted by law. The law specifically states that Premium Processing fees must be used solely to cover the costs of adjudicating Premium Process Service cases and to make information technology infrastructure improvements.

I want to commend Chairwoman Lofgren for her leadership on this issue and for introducing House Joint Resolution 47, which would require the agency to reconsider its cost structure and substantiate the fee increase it really needs.

I am pleased to introduce our first panel this morning. We have two panels of witnesses, and seated on the first panel, I am pleased to welcome back Deputy Director of U.S. Citizenship and Immigration Services, Jonathan Scharfen. Prior to assuming his post at USCIS, Mr. Scharfen served for 25 years in the U.S. Marine Corps, retiring in 2003 at the rank of colonel. Mr. Scharfen is no stranger to the House of Representatives, however, where he served as both Chief Counsel and Deputy Staff Director to the House International Relations Committee following his military service. Mr. Scharfen received his B.A. from the University of Virginia, his J.D. from the University of Notre Dame, and his LL.M. from the University of San Diego.

Next, I am pleased to welcome back Rendell Jones, the chief financial officer of USCIS. Responsible for the budget, accounting and financial planning of the Agency, Mr. Jones became USCIS's first CFO in March of 2006. Prior to his appointment, he served as the Deputy Budget Director of the Department of Homeland Security. His tenure with the Federal Government, however, began at the Department of Justice in 1996 as a Presidential Management Intern. Mr. Jones later worked as the management analyst in the Civil Rights Division and also served as one of the Department's Congressional Appropriations Officers. He earned a bachelor's in finance *cum laude* from Virginia Commonwealth University and a

master's in public administration from North Carolina State University.

And finally, we would like to welcome Michael Aytes back to the Subcommittee. Mr. Aytes is the associate director of Domestic Operations at USCIS. Mr. Aytes began his career with the Federal Government's immigration agencies in 1977, after graduating with a bachelor's degree from the University of Missouri. After then-INS hired him as an immigration inspector in Chicago, he quickly rose through the ranks and, in 1990, became the first Assistant Commissioner for Service Center Operations charged with managing all the INS's service centers. Mr. Aytes played a critical role in the information and Customer Service Division as it transitioned into USCIS in 2003, and he has served as an Associate Director since October of 2005.

As I think you all know, we have 5 minutes for opening statements, and the lights will alert you with the yellow flash when you have 1 minute to go. Your full statements will be submitted as part of the record, and when your time is about to expire, we do ask that you summarize.

And without objection, the Chair will recess the Committee as necessary when we are interrupted by votes.

And we invite you, Mr. Scharfen, to begin.

TESTIMONY OF JONATHAN R. SCHARFEN, DEPUTY DIRECTOR, U.S. CITIZENSHIP AND IMMIGRATION SERVICES; ACCOMPANIED BY MR. RENDELL JONES, CHIEF FINANCIAL OFFICER, U.S. CITIZENSHIP AND IMMIGRATION SERVICES

Mr. SCHARFEN. Thank you very much, Chairwoman Lofgren, Congressman King, Congressman Gutierrez. Thank you for the opportunity to discuss recent changes made to the USCIS fee schedule.

I am accompanied by our Chief Financial Officer, Rendell Jones, and our Associate Director of Domestic Operations, Michael Aytes.

I welcome today's hearing as part of an ongoing dialogue regarding how much we charge for the vital services we provide. We welcome the Congress's constructive advice and critical insight on this matter and look forward to continuing to work closely with Members of the Committee.

As you know, USCIS recently completed a lengthy fee review and rulemaking process culminating with the July 30 implementation of a comprehensive revised fee schedule.

The new fee schedule took into account more than 3,900 comments received after the publication of the proposed rule in February. We received comments from Members of Congress, community-based organizations, refugee and immigrant service and advocacy organizations, public policy groups, State and local government entities, educational institutions, and private corporations, among others.

We held numerous briefings and discussions with the Congress, and the Director testified before this Subcommittee in February.

Based on this valuable input, the final fee schedule incorporated a number of substantive changes to the proposed fee structure to assist families with children applying for immigration benefits and prospective parents trying to finalize their adoptions. The new fee

structure also expands the availability of fee waivers and exemptions for individuals seeking political asylum and special refugee status and continues to provide benefits at no cost for victims of human trafficking and violence.

USCIS made every effort possible to craft a rule and fee schedule that is fair, equitable, and appropriate, given the urgent need to dramatically improve immigration services to our customers, enhance security and integrity, and build a modern and efficient Agency for the long term. Revenue generated from the new fees will be reinvested to improve customer service, accelerate processing, enhance security, expand our offices, hire additional personnel, train those personnel and create new business processes to decrease the time it takes to process applications.

Since the final rule became effective, I have been convening on a monthly basis our Agency's top leadership to monitor progress on the additional hiring, infrastructure enhancements, and other improvements discussed in our rulemaking to ensure the initiatives are on schedule and appropriately coordinated across USCIS.

Continuing to meet our processing goals will be a challenge due to a recent surge in workload. We are presently facing a substantial influx of new workload which we believe was driven by several different factors, including progression of the employment-based visa bulletin and the desire of many applicants to file before the new fee schedule went into effect. We are also seeing an overall sustained increase in filings, perhaps due to anticipation of comprehensive immigration reform and outreach regarding naturalization.

While we are committed to meeting our processing goals, it will take several months, if not more, to analyze the operational impact of this influx of work on our goals. In the meantime, we are developing and implementing operational mitigation strategies to address this recent surge.

With these new challenges on our horizon, preparation is key. So that we may quickly and efficiently tackle a future caseload that is guaranteed to increase, our core challenge is to build a 21st century business infrastructure. Achieving this goal will take time. USCIS and DHS leadership have devoted significant management attention over the last year to develop our business transformation program.

By replacing our outdated paper-driven system, new electronic filing procedures will allow individuals the ability to create an electronic profile and online account with USCIS. These revised processes will help the Agency to meet customer expectations for on-demand information and immediate real-time electronics service over the Internet.

Towards this goal, USCIS has incorporated productivity measures into the fee model to ensure that productivity gains resulting from automated business processes and better technology will be factored into future fee reviews. USCIS plans to review and update fees every 2 years. In comparison to fee reviews conducted during previous Administrations, fee reviews going forward will combine assumptions from recent experiences, incorporate productivity gains resulting from the modernization of operations, and take ac-

count of foreseeable changes in national security measures and procedures.

With this flexible fee schedule, USCIS will obtain the resources it needs to bring about the nature and extent of operational improvements sought by the Members of this Committee and Congress as a whole.

I am familiar with the view expressed that this Agency should be supported to some extent through appropriations instead of fees. In general, however, USCIS was given express authority to cover the full costs of its operations through customer fees. Law and policy have long provided that the costs of providing immigration benefits are borne by those applying for them.

In the past, USCIS has relied on temporary funding sources, such as appropriations. With a more stable and reliable funding source of fee revenue, this Agency can operate more effectively and respond to changing operational needs better.

I want to thank you for your time today, and I look forward to a continuing dialogue with you about the strategic direction in operations of USCIS in achieving our common goals.

Thank you, ma'am.

[The prepared statement of the U.S. Citizenship and Immigration Services follows:]

STATEMENT

OF

JOCK SCHARFEN
DEPUTY DIRECTOR
U.S. CITIZENSHIP AND IMMIGRATION SERVICES (USCIS)
U.S. DEPARTMENT OF HOMELAND SECURITY

REGARDING THE FINAL RULE TO ADJUST THE IMMIGRATION BENEFIT APPLICATION AND PETITION FEE SCHEDULE

BEFORE
THE HOUSE JUDICIARY COMMITTEE
SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW

SEPTEMBER 20, 2007
RAYBURN HOUSE OFFICE BUILDING

Chairwoman Lofgren and Congressman King, Members of the Subcommittee, I want to thank you for the opportunity to appear before you today to discuss the recent U.S. Citizenship and Immigration Services (USCIS) fee schedule changes. I am accompanied by our Chief Financial Officer (CFO), Rendell Jones and our Associate Director of Domestic Operations, Michael Aytes.

I welcome today's hearing as part of an ongoing dialogue regarding our new fee structure. I understand that Chairwoman Lofgren and Appropriations Subcommittee Chairman David Price requested that the General Accounting Office conduct a study of our Fee Account. We welcome the GAO's insight and in the past have worked very closely with them concerning our fee schedule.

As you know, USCIS recently completed a lengthy fee review and rulemaking process, culminating with the July 30th implementation of the comprehensive revised fee schedule. The new fee schedule took into account more than 3,900 comments received after the publication of the proposed rule in February. We reached out to, and visited with, community based organizations and other interested public entities in sessions held across the country. We received comments from Members of Congress, refugee and immigrant service and advocacy organizations, public policy groups, state and local governmental entities, educational institutions, and corporations, among others. We held numerous briefings and discussions with the Congress, and the Director testified before this Subcommittee in February.

Not only did we seek and receive comprehensive input, we made the feedback and review process count. The final rule fee schedule incorporated a number of important improvements to our original proposal. Examples include:

- Reducing by 25 percent the originally-proposed fee for a child who files an Adjustment of Status to Permanent Residence application concurrently with his or her parents;

- Permitting fee waivers for Adjustment of Status to Permanent Residence if eligibility stems from asylum status, victims of human trafficking, certain juvenile immigrants, or self-petitioners under the Violence Against Women Act;

- Providing that no application or biometric fee will be charged for the first update for approval of an Application for Advance Processing of Orphan Petition, so that prospective parents may have an additional 18 month period after the first application to be matched with a child without having to pay additional fees.

- Providing that the first request for extension of the approval of an Application for Advance Processing of Orphan Petition will be accepted without a fee if filed timely and no Petition Classify Orphan as Immediate Relative has been filed.

- Adding "Special Immigrant-Juvenile" as a category of applicants exempt from the $375 filing fee for the Petition for Amerasian, Widow(er), or Special Immigrant;

- Providing that USCIS officials can waive the $80 biometric fee.

USCIS made every effort possible to craft a rule and fee schedule that is fair, equitable, and appropriate given the urgent need to dramatically improve immigration services to our customers, improve security and integrity, and build a modern and efficient agency for the long term.

I cannot emphasize enough how important these objectives are for the future of USCIS. The Director and I are proud of the thousands of dedicated and hard working USCIS employees in this country and abroad. I've seen first hand how our employees perform extremely well each and every day despite huge demand and numerous operational challenges. While it is encouraging to know that under these circumstances we can produce positive results, I also know that positive performance cannot be sustained for the long term without necessary improvements.

Our recent accomplishments should build confidence that USCIS will be able to meet our objectives. We reduced an application backlog of 3.8 million applications to just under 10,000 applications within USCIS control by the end of Fiscal Year (FY) 2006. Substantial improvements in customer service infrastructure have been made, including online filing, case updates, and change of address; the INFOPASS appointment system has been implemented; and USCIS has vastly improved dissemination of information, policies, and procedures to help people understand benefits and eligibility criteria. There are many more significant improvements that must be made, but we are on the right track.

We must use fee revenue not only to improve the services we provide today, but to provide long-term immigration security and service improvement. In some respects, we are no different than a business that invests a portion of today's dollars for the benefit of its future financial health, employee productivity, and value to future customers. Nevertheless, the new fee schedule attempts to minimize the price effect on current customers by financing at least our Business Transformation program through premium processing revenue.

Our investments must be backed up by results and we have committed our organization to working toward a defined set of performance goals. Since the Final Rule became effective, I have been convening on a monthly basis our agency's top leadership to monitor progress on the additional hiring, infrastructure enhancements, and other improvements discussed in our rulemaking to ensure the initiatives are on schedule and appropriately coordinated across USCIS. Over time, applicants and petitioners should see substantially improved service, with a goal of reducing average processing times by an estimated 20 percent by FY 2009. Under the FY 2008 goals, processing times for the I-485 (Adjustment of Status) may be reduced from the current six months to four, and the

N-400 (Naturalization) from seven months to five. The goal includes keeping processing times, overall, consistent nationwide.

While we are working toward meeting our current processing goals, we acknowledge there will be a challenge due to a recent surge in workload. We are presently facing a substantial influx of new workload which we believe was driven by several different factors, including progression of the employment-based Visa Bulletin and the desire of many applicants to file before the new fee schedule went into effect. We are also seeing an overall sustained increase in filings, perhaps due to anticipation of comprehensive immigration reform and outreach regarding naturalization. While we are committed to meeting our processing goals, it will take several months, if not more, to analyze operational impact of this influx of work on our goals. In the meantime, we are developing and implementing operational mitigation strategies to address this recent surge.

Our core challenge is building a 21st Century business infrastructure. Achieving this goal will take time. USCIS and DHS leadership have devoted significant management attention over the last year to ensure our Business Transformation program is developed optimally, so that our procurement effort is a success. Planning efforts have slowed our progress, but the stakes are very high and we clearly must get this effort off to the right start while hitting the ground running. We are very close to finalizing our acquisition strategy, and I anticipate substantial progress in the development of initial capability in our citizenship programs during FY 2008.

I want to assure the Subcommittee that even though this fee schedule is now in place, by no means will our assessment of planned investment and our overall cost structure stop. USCIS plans to review and update fees every two years. In comparison to fee reviews over the last decade, which essentially made retrospective adjustments on a narrowly calculated fee review, future fee reviews will combine assumptions from recent experiences, incorporate productivity gains resulting from the modernization of operations, and take account of prospective activity changes (such as those that may arise from additional security measures).

USCIS continues to seek ways to improve productivity while decreasing costs. We remain firmly committed to seeking new ways of doing business and reengineering processes to contain costs and pass on the savings to customers. Portions of this fee restructuring are designed to bring about greater efficiency and long term cost reduction. Additionally, for the first time, USCIS has incorporated a productivity measure into the fee model to ensure that productivity gains resulting from automated business processes and better technology will be factored into future fee reviews.

I truly believe that with this fee schedule that USCIS will obtain the resources it needs to bring about the nature and extent of operational improvements sought by Members of this Subcommittee, other Members of Congress, the Government Accountability Office, the Inspector General, and the USCIS Ombudsman. I am familiar with the view expressed that this agency should be supported to some extent through

appropriations instead of fees. Appropriations support has thankfully been provided for discrete operational needs in both the past (e.g., backlog elimination) and the present (e.g., Federal Bureau of Investigation (FBI) name check backlog assistance).

In general, however, USCIS was given express authority to recover the full cost of its operations through fee recovery. A full cost recovery system is fair to both USCIS customers and taxpayers. Law and policy have long provided that the costs of providing immigration benefits are borne by those applying for them. In the past, USCIS has relied on temporary funding sources, such as appropriations. With a more stable and reliable funding source of fee revenue, this agency can operate more effectively and respond to changing operational needs.

We must put in place the necessary infrastructure to help facilitate improved administration and enforcement of our immigration laws. We are working actively to address the Administration's August announcement of reforms to strengthen our nation's immigration system within existing law. In addition to improving border security and increasing interior and worksite enforcement, these reforms include streamlining guest worker programs and helping new immigrants assimilate. Getting the improvements sought through our revised fee rule is clearly the primary way USCIS will help. For example, fee rule enhancements will help bring the FBI name check backlog down to reduce wait times for legitimate applicants while helping us to more rapidly identify people who threaten our security. Fraud detection enhancements for staff and infrastructure will help us vastly improve our ability to catch individuals fraudulently attempting to obtain immigration benefits.

In closing, I again want to thank you for inviting me to this hearing. I look forward to a continuing dialogue with you about the strategic direction and operations of USCIS in achieving our common goals.

Ms. LOFGREN. Thank you, Mr. Scharfen.

I think I may have confused matters when I introduced both Mr. Jones and Mr. Aytes and then addressed you in the plural as to testimony, because Mr. Jones and Aytes are here as resources to answer questions and have relied on Mr. Scharfen to make the Agency's testimony.

So we will begin our questioning now, and I would first like, without objection, to put in the record the letter sent by myself and Chairman David Price to the General Accounting Office requesting a review of the methodology that forms the basis of the fee measure.

[The information referred to is available in the Appendix.]

Ms. LOFGREN. I have a number of questions. I guess I would just like to note—and I think other Members may pursue this more—that if you look at 1991, what the fee was for citizenship, for example, and what the fee is today, there has been a 750 percent increase in the fee, and I am hard-pressed to think of anything else in America that has gone up 750 percent in that timeframe. Even health care I do not think has gone up that much.

So, certainly, I do not object to having a fee system. I think that that has served the system and our Nation of immigrants well. The question is whether the magnitude of the increase is justified and whether this generation of fiances is paying for the accumulated neglect of technology for the last several decades, which is really why we have asked the GAO to take a look at this.

This is also an opportunity for us to take a look at what you are doing with the money, and it is of great interest to me, as I think you know. Recently, the General Accountability Office did a report on your transformation program, and among their many findings, there was concern expressed about the enterprise architecture and whether there were sufficient guides and constraints in the transformation plan with that enterprise architecture and alignment process. I am wondering where the Agency is in the development of its enterprise architecture for transformation. How close are we to having this component identified?

And I further have a concern that, you know, you need to have your enterprise architecture in place or else you end up with willy-nilly acquisition of technology that does not work well, does not interoperate, does not serve the mission of the Agency, and I have recently learned that CIS is working on a whole new system, apparently a relatively new one, on fraud detection. For national security, obviously, we want fraud detection, but I am concerned that if that is disintegrated—I do not mean disintegrating—but not an integrated computer architecture plan, it is not going to be interoperable, it will not work well, not only with CIS, but with the other agencies that we must connect with.

So I am wondering, Mr. Scharfen, if you can address these questions or your team?

Mr. SCHARFEN. Yes, ma'am. Thank you very much.

I will start in reverse order, if I may, please, regarding, I believe, the data system that you are referring to, is the FDNS-DS System.

Ms. LOFGREN. That is correct.

Mr. SCHARFEN. I agree that the going forward the transformation system should incorporate all of the different systems—computer

technology systems or business systems—that we have in our organization, and that is our intention, to do that.

In fact, we have met with this Subcommittee's staff and, due in large part to some of that interaction with the Committee staff and with you, ma'am, and some of the professors out on the West Coast with whom we had the benefit of meeting, we have increased our efforts to ensure that our transformation program is all inclusive and does include the type of systems, such as the FDNS-DS System.

Ms. LOFGREN. Could I interrupt just briefly?

And I thank you for that report.

And just for the benefit of the other Members, Stanford University, at my request, did volunteer their Computer Science Department and School of Business as a free advisor to the Agency and minority staff and majority staff and staff from the Agency did go out and get the benefit of their thinking on the computer issues particularly, and we do acknowledge and thank Stanford for that donation.

If you could continue, Mr. Scharfen?

Mr. SCHARFEN. And part of that discussion did cover the Federal enterprise architecture and where we were on that and whether or not we were sufficiently along in identifying the different models that make up that architecture. I guess there are five all together. You have the performance reference model and then the business service data and the technology pieces to that.

We have a relatively new Chief Information Officer who is, I think, expert just on these architecture-type issues. He is also very good and experienced with large contracting issues. And what we have done, in terms of trying to better identify the performance reference models or the performance criteria, is that the CIO has an effort, within the next 4 months, roughly, to better identify some of those performance reference metrics and then be able to feed those in to our ongoing transformation contracting, and we will try to integrate that going forward with that transformation contracting effort.

As to the GAO report, I would point out that we found the report, in general, encouraging, especially on the part of our improved planning that we had received. I guess they looked at nine criteria.

Ms. LOFGREN. I do not disagree, but we always look for needs to improve. We do not need to spend our time patting ourselves on the back.

Mr. SCHARFEN. Fair enough. The performance measures was one of the ones that they said we are falling short on, and so that is what we have done, to answer your question, ma'am. The CIO is pursuing that portion of the performance reference models. And also, on the human capital, we have incorporated the human capital officer more in the transformation planning effort, which is another shortcoming the GAO identified.

Ms. LOFGREN. I can see that my time has expired. Perhaps working with the minority, we can find a time where we can have even a workshop type of meeting with the CIO and delve into more on the computer plans, not limited by the 5-minute rule.

At this point, I would yield to the Ranking Member, Mr. King, for his 5 minutes.

Mr. KING. Thank you, Madam Chair.

Mr. Scharfen, thank you for your testimony.

I look back on the February hearing and Mr. Aytes' testimony from that, that 85 percent of the fee waiver applications were granted, and my question on that is what percentage of the adjudicants are not revenue producing? In other words, of all the applicants that we have, what percentage of them do not produce revenue and what does that do to add to the cost of the fees of those that do produce revenue?

Mr. SCHARFEN. All together—and I will let my CFO chime in here if I do not have the percentages right—as to fee waiver applications, only about 1 percent of applicants apply for a fee waiver. In terms of both the waivers and those applicants that do not have to pay the fee, it covers 6 percent of the applicants. That is including people such as refugees that would not be paying. So that is 6 percent, to answer your question directly, sir.

In terms of the work that is involved, it represents 8 percent of the workload that is not covered by fees.

Mr. KING. Thank you. That gives some clarity to it and a sense of proportion, and I notice Mr. Jones nodding his head to confirm that testimony.

And I also recognize you are working with the FBI on background checks and, when you engage the FBI, does that incur a fee on your part? Do you have to compensate them for their work?

Mr. SCHARFEN. Yes, sir. We have just been working with the FBI on those, and going forward, we will be paying an increased fee for the FBI name checks and fingerprint checks as well.

Mr. KING. And that is calculated into your analysis when you have these fee changes?

Mr. SCHARFEN. That is correct. Yes, sir.

Mr. KING. Then I wanted to express something else here that is maybe a little bit broader question, and that is that the debate that lingers yet—and I think we have come to some sense of consensus on fee based and, of course, all Members of this Committee do not agree on the fee based part—is that some would like to see that borne by the taxpayer, and some would like to see that entirely borne by the applicants, and I am in that category of entirely borne by the applicants because they are the ones that receive the benefit.

I just wanted to comment that it occurs to me that you are in a situation where you are seeking to try to find a proposal here that satisfies a consensus of us. In fact, if we could come to unanimous consensus, that would be the ideal situation. And what strikes me is the idea of the galleon dialectic where you lay everything out on the spectrum, and you say, "Well, taxes are objectionable to this group, so they are off the table. And these fees are objectionable to this group, so they are off the table." That would be the fee waiver component of it.

And so it narrows down those areas where we can find a consensus that we believe fees are appropriate, and the narrower that gets, the higher the fees have to be for those who are paying them, and so, at some point, we need to take a look at this and identify

that maybe 6 to 8 percent of this cost that is added to the balance of them is the fee waiver component. So those folks that do not have the fees waived have a price in that of 6 to 8 percent more.

I do not know if that is the actual number. I know you have given me a percentage analysis. Would you say that is accurate?

Mr. SCHARFEN. Yes. In terms of applicants, 6 percent of the applicants are not paying fees either through a waiver or by the policy decision that the other applicants would be paying for them, such as the refugee or victims against violence applicants.

Mr. KING. And I want to go on record, I do not object to that. I just point out that the narrower that lists get to the people that are paying, the higher the rate gets for those that pay.

Then, also, you have premium processing funds that are part of this?

Mr. SCHARFEN. Yes, sir.

Mr. KING. Can you tell me how those premium processing funds are applied across the balance of your costs?

Mr. SCHARFEN. Right. In the past, the purpose of those is for transformation. In terms of into the new fee rule, those funds will be going toward transformation. And one of the reasons why we are so keen on getting a new fee rule is that, in the past, those funds were not being spent entirely on transformation costs. They were being spent on other operational costs because there were not enough fees to cover the ongoing operations of the Agency, and that is why there was interest in that area.

But the fees were falling so short that we were having backlogs developed because of those shortcomings. But with the new fee, those premium processing fees will end up being spent on transformation, so that there will be over $100 million spent annually on the transformation program, so that we can make some of the improvements that we need to improve the delivery of services to applicants.

Mr. KING. And closed technology infrastructure?

Mr. SCHARFEN. Yes, sir. Improved services, business processes. It involves infrastructure, it involves technology, and it involves transforming all of those to improve the services across the board.

Mr. KING. And the fees that go to fingerprints and background checks the FBI are doing, will that result in more personnel being put on board at FBI to turn this around more quickly?

Mr. SCHARFEN. Yes, sir. We have been working with the FBI and, just recently, we have also had a number of meetings trying to work through this difficult problem of the FBI backlog. Just in terms of cases that are in a backlog at the FBI awaiting background checks, there are 150,000 in that backlog. That is unsustainable, and so we are working with the FBI on two fronts: one, to modify and improve or re-engineer the search criteria, and two is to apply more of resources to the name-check process. The FBI is hiring over 30 individuals to work just on the USCIS's backlog.

Mr. KING. Then if I could just quickly, in conclusion, pose this question, is that once the infrastructure is up in place and there are more FBI personnel, you have to have more to work the backlog of 150,000 down than you will need to sustain the applications after that backlog is worked down. So also into this fee, are we

building infrastructure that will be in excess of our needs once the backlog is resolved?

Mr. SCHARFEN. I would answer that in two ways. First, we would like to bring down the speed, the time it takes to do a background investigation to much less than 6 months. I am reluctant to set out a goal here now. I would like to just first get rid of that FBI backlog. Some of those cases, over 50,000, are over 2 years old, and we would like to first get it down where we get rid of that backlog entirely.

But then we want to work hard to get that below 6 months, and that is what we are doing. In general, if we make improvements and we have overcapacity, in retrospect, as we move forward because of these increases in technology gains, the idea is that every 2 years, you would have a new fee review and you would do a new fee study, a cost analysis, so that you could have adjustments to the fee so that you would not have that overcapacity.

Mr. KING. That is what I needed to know. Thank you, Mr. Scharfen.

Madam Chair?

Ms. LOFGREN. Thank you. I recognize now Mr. Gutierrez for his 5 minutes of questioning.

Mr. GUTIERREZ. Thank you for calling the hearing, Madam Chairwoman.

First of all, I would like to just speak to you so that you understand that there are two differences of opinion on the immigrant community that you serve.

I think it is a false dichotomy that is being made here between permanent residence and the rest of the American population. The fact remains that in order to get any means-tested program in the United States, you have to be a permanent resident for 5 years. So you do pay taxes for services you cannot receive, because the last time I checked, there was not a deduction for the first 5 years.

Everyone that is a permanent resident—and you correct me if I am wrong—is required to register at Selective Service, and, indeed, in the war in Iraq, the first fatality was Lance Corporal Gutierrez, permanent resident, entered the country, interestingly enough, undocumented to the United States and the first casualty.

I mean, when I am on a road, permanent residents paid with their taxes for that road that I traveled. When I get a book at a library, they paid for that. When I call 911, they are helping to pay for the police department and the fire department which I benefit from. As a matter of fact, when I travel to Iowa, which might not have as many people, but roads are just as expensive where there is heavily populated populations, they helped pay for that through their income taxes and Federal taxes and taxes on gasoline.

So it is kind of a false dichotomy that we are making here. Aren't there 80,000 permanent residents serving in the military forces of the United States with much distinction today?

I just wanted to clear that up so that you might have another point of view of how some people look at immigrant community.

I want to ask you a specific question. The proposed fee regulation, was sent by you to OMB on October 26 of 2006. That is the proposed regulation, your request for fee increases, first has to go to OMB. Is that correct?

Mr. SCHARFEN. Yes, sir.

Mr. GUTIERREZ. Okay. And that was done on October 26 for these fee increases of last year. Is that correct?

Mr. SCHARFEN. I——

Mr. GUTIERREZ. You have no qualms with that?

Mr. SCHARFEN. Yes, sir.

Mr. GUTIERREZ. We are under the 5-minute rule. You can go check and correct your testimony later on.

A few days later—that is on November the 3rd—you folks sent to OMB for a regulatory change on the green card. Is that not correct?

Mr. SCHARFEN. I assume it is. Yes, sir.

Mr. GUTIERREZ. Okay. A week later?

Mr. SCHARFEN. Yes, sir.

Mr. GUTIERREZ. Okay. Then in February of this year, February of 2007, you cleared the OMB hurdle for both the fee increases and the green card changes. Is that not correct?

Mr. SCHARFEN. Yes, sir. I assume it is.

Mr. GUTIERREZ. So, basically, you said, "We want to send this to OMB to follow the regulatory process for fee increases, and we want to send a week later to change the green card." Everybody has to change their green card that has an unexpired date. You did both those things basically simultaneously and, indeed, OMB within weeks approved both of those for you. Is that not correct?

Mr. SCHARFEN. Yes, sir.

Mr. GUTIERREZ. All right. Good. Now the final rule on the fee increase was published on May 30, 2007, and took effect on July 30, 2007. Is that not correct?

Mr. SCHARFEN. Yes, sir.

Mr. GUTIERREZ. Okay. Now what was the old fee for changing a green card?

Mr. SCHARFEN. $190, sir.

Mr. GUTIERREZ. Plus $70 biometrics?

Mr. SCHARFEN. Yes, sir.

Mr. GUTIERREZ. And what is the new fee?

Mr. SCHARFEN. $80 for biometrics and $290 for the green card.

Mr. GUTIERREZ. So, although you received from OMB the authority to go ahead and change the green card selection back in February, 7 months ago, you waited until the fee increase went into effect, thereby charging the very people who you want to have a new green card an additional 40 percent. Is that not correct?

Mr. SCHARFEN. Yes, sir.

Mr. GUTIERREZ. Why did you do that? Why did you do that? If you had authority to do both of these things, if you started the process at the same time, if OMB approved them virtually simultaneously, why did you affect a community of people, 750,000 people, who had done nothing wrong?

You issued them a green card without an expiration date. You wanted them to change that green card, but is it not true that you waited until the fee increase went into effect in order to tell them, "We want you to change your green card"? Why did you do that?

Mr. SCHARFEN. Well, I think, if I could answer in a general fashion, that as a general matter, the whole purpose behind the fee rule is that recover our actual costs of——

Mr. GUTIERREZ. That is not my question. My question is, you asked for the green card regulation to be changed simultaneously with the fee increases. You got approval for both of them simultaneously, yet you went ahead with the fee increases and then said, "We want to change the rule on the green card." Is that not true?

Mr. SCHARFEN. That is correct.

Mr. GUTIERREZ. Why did you do that? That is fundamentally unfair to a community of people who have played by the rules, but you want additional dollars. As a matter of fact, you knew that, but you did not put it in your budget, that you were going to get an additional $277 million from green card holders here in the United States of America. Is that not true?

Mr. SCHARFEN. Well, I think one thing I would point out, sir, is that the green card rule is a proposed rule at this point and that——

Mr. GUTIERREZ. Can I just ask for 30 seconds to——

Ms. LOFGREN. Without objection. We have to vote.

Mr. GUTIERREZ. Thank you.

I understand that, but, you see, that is why I tried to be careful.

You went for the rule change to OMB in October. A week later, you went for the green card. OMB approved both of them for you in February of this year. You moved forward on the fee increase, but waited until the green card change, although you had authority at the same time. Why didn't you do it all simultaneously? You suggested in your testimony, you said, "Members of the panel, many people have gone and applied for American citizenship because they saw the fee increase was coming," right.

Why didn't you give the same opportunity to permanent residents that have green cards to go ahead and take care of it before the fee increase? It is fundamentally unfair for us, and it demonstrates the inefficiency of your department and those—and I will end with this—that say, "Just give your department, your Agency all the money it wants," because you guys have some kind of super efficient model of Government.

You are not, and, in this case, I would suggest that you go back, as you are looking at the rule, and say, "You know something? We made a mistake. It was not really fair. We should charge the old fee, not the new fee," and give them the same opportunity because, indeed, the Government worked for them efficiently and in a timely manner.

Ms. LOFGREN. The gentleman's time has expired, and I know Mr. Scharfen wants to answer, but we have a vote. We will recess and come back, and Mr. Scharfen may want to add something in answer to your question after he thinks about it while we are voting.

So we are in recess until after this vote.

[Recess.]

Ms. LOFGREN. Under the rules, we can proceed with two Members, and, ordinarily, we would wait for the Ranking Member, but because we took an hour to vote, I am going to—I am sure Steve is on his way over—at least introduce the next panel and invite Mr. Scharfen to see if there was anything further you wanted to add.

Mr. SCHARFEN. No, ma'am, other than to say to Mr. Gutierrez, I understand your points very well, and as the Marines say, sir, I

hear you loud and clear, and I will take that back and put that into our deliberative process, sir.

Ms. LOFGREN. Thank you.

And I would hope we would have time for a second round, but given how long it has taken, I think we will move to the second panel in hopes that Steve is on his way.

And so thank you very much. We will reserve—Mr. King has arrived—the right to have additional questions submitted in the next 5 legislative days, and we ask if the Committee will forward them to you if we receive them from Members and ask that you respond as promptly as you can in that situation.

Mr. SCHARFEN. Yes, ma'am. Thank you for the opportunity to testify.

Ms. LOFGREN. Thank you very much. Thank you.

We will now ask our second panel to come forward, and we have coming forward Arturo Vargas, the executive director of the National Association of Latino Elected and Appointed Officials, or NALEO, and NALEO's Educational Fund. Before joining NALEO, Mr. Vargas served as the Vice President for community education and public policy at MALDEF, the Mexican American Legal Defense and Education Fund. Mr. Vargas also worked as the Senior Education Policy analyst at the National Council of La Raza prior to his work at MALDEF. He serves on several community boards in his home of Los Angeles, including those of the United Way and Community Technology Foundation of California. He holds both his master's and bachelor's degrees from my alma mater, Stanford University.

Next, I am pleased to welcome Bill Yates, an executive consultant with Border Management Strategies, an immigration and border security consulting firm. Mr. Yates began his career as a special agent with the INS in Newark, New Jersey, and after 31 years of service to the Federal Government's immigration agencies, he retired from USCIS in 2005 as Chief of Domestic Operations. The recipient of several awards from USCIS for his distinguished service, Mr. Yates also received the American Immigration Law Foundation's public service award last year. He earned his bachelor's degree in Asian Studies from Seton Hall University, and I would note that over these many years, Bill was always a source of reliable information to me, and I appreciate his being here today.

And finally, I would like to extend a warm welcome to Rhadames Rivera, the vice president of 1199, the Service Employees International Union's United Health Care East. Mr. Rivera has served as vice president of the union, based in New York City, since 2000. Prior to working with SEIU, Mr. Rivera coordinated housing and organizer networks for the Urban Homesteading Assistance Board in New York; taught as a training director and researcher in several schools in Santa Domingo, Dominican Republic; and worked as a counselor and job development specialist at the Cardinal Cushing Center in Boston. He studied at Cornell University's School of Labor Relations' Leadership Institute, as well as the Northeast Broadcasting School in Boston, and earned his degree in social work from the University of Puerto Rico.

Each of your full statements will be made part of the official record of this hearing, but we would ask you to summarize in 5

minutes your oral testimony, and when that yellow light goes on on the table, it means there is only 1 minute to go, and then we will move on to questions.

And, once again, let me apologize for our lengthy departure. The House took longer than we thought it would to cast three votes, but sometimes that is the nature of the House.

So, if we can begin with you, Mr. Vargas, welcome and thank you.

TESTIMONY OF ARTURO VARGAS, EXECUTIVE DIRECTOR, NALEO EDUCATIONAL FUND

Mr. VARGAS. Thank you, Chairman, and Ranking Member King, and Congressman Gutierrez who has left the room. Thank you for the invitation to appear before you today.

The NALEO Educational Fund is a nonprofit, nonpartisan organization that facilitates the full participation of Latinos in the American political process. In fact, our founder is a past Member of the House of Representatives, the late Congressman Edward Roybal, who served in this chamber for over 30 years.

In January of this year, we launched our *"ya es hora ¡Ciudadania!"* campaign, it's time, citizenship, which is a national year-long effort to inform, education, and assist eligible legal permanent residents from across the United States apply for U.S. citizenship. It was an effort that included more than 400 local and national organizations, including the National Council of La Raza, the SEIU and the We Are America Alliance and our media partners, Univision Communications, Entravision, and impreMedia, who have played a critical role in our public education efforts, and I would say that this campaign is in part responsible for the surge that the USCIS referred to earlier in applications for naturalization.

Nonetheless, the application fee increases implemented by the USCIS are imposing a prohibitive financial burden on countless immigrant families. According to 2000 Census data, more than one out of three of our Nation's noncitizen households have annual incomes of less than $25,000, and data from the Pew Hispanic Center suggests that 25 percent of residents eligible to naturalize have family incomes below the poverty line.

We know that multiple family members often want to apply for naturalization at the same time. With the increase imposed, a family of four would confront a bill amounting to $2,700. Even the cost for one family member of $675 represents, for many newcomer families, the cost of their monthly rent or their mortgage payments.

We believe that the increase in immigration application fees over the past 15 years, as you noted, Chairman, is a result of fundamental flaws in our system for financing immigration services, which have also left the USCIS without the funding for important business process and infrastructure improvements needed to modernize its operation.

This system has primarily resulted from a combination of factors, in our view: the USCIS's misinterpretation of a perceived statutory mandate to fund virtually all Agency costs from application fee revenues, and the lack of congressional action to clarify that the statutory section does not require the Agency to completely fund its op-

erations exclusively through those fees; the Agency's reluctance to seek sufficient appropriated funding to complement fee revenues, which could help keep application costs at a reasonable level; and congressional mandates that require many immigrant applicants to essentially fund services unrelated to their own application.

Our first concern with the USCIS's interpretation of the statute is in the way it determines the cost of providing adjudication and naturalization services, which are covered from fees. Attached to my written testimony are comments we provided to the Agency when it officially proposed the fee increases. These comments contain a more technical analysis of what we believe are some of the more questionable calculations used by the Agency to ascertain how much it will cost to provide services to applicants.

We are particularly concerned that under our current system of financing immigration adjudication, newcomers are being required to shoulder the entire burden of paying for the modernization of the USCIS and major enhancements for immigration operations that benefit the Nation as a whole.

In its rulemaking for the current increase, the USCIS described $524 million in additional resource requirements that involve the cost above the basic resources the Agency claims it needs to reach its missions responsibilities. This half-billion dollars represents one-quarter of the $2 billion budget for the Agency it assigns for fiscal year 2007-2008 application processing activities.

However, a significant number of these resource requirements appear to be fairly expensive, which are unusual and atypical of a normal application processing year, such as the establishment of a second full-service card production facility and upgrades to USCIS's information technology environment. There is no reason why Congress is prevented from appropriating funds for immigration naturalization services, and there are many reasons why the USCIS should actively seek such funding from Congress.

We believe that the Members of the Subcommittee, the leadership of the Agency, and those who work closely with our Nation's newcomers share a common vision for American's immigration system. We want a well-managed immigration system that can make timely and accurate adjudications in an evolving national security involvement. We want to ensure the applicants pay a reasonable fee to receive policy immigration services. However, our current system for financing these services will simply not allow us to achieve these goals.

We believe the USCIS must rescind the current fee increase and work with the Administration and Congress to implement some changes, and my policy recommendations are summarized on pages 10 and 11 of my testimony, and, in essence, what we believe is we just see a partnership between America's newcomers and America because, in fact, the benefit of being a citizen is not a one-way street. America benefits when newcomers become full participants in our democracy and contribute with their lives. I speak here as a son of a naturalized citizen, and I can say that I think this country is stronger today because my mother participates in every single election.

Thanks.

[The prepared statement of Mr. Vargas follows:]

PREPARED STATEMENT OF ARTURO VARGAS

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Executive Director
Mr. Arturo Vargas

Testimony

by

Arturo Vargas, Executive Director
National Association of Latino Elected and Appointed Officials (NALEO) Educational Fund

before

the United States House of Representatives
Committee on the Judiciary
Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law
on the USCIS Fee Increase Rule

Washington, DC
September 20, 2007

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Chairman Lofgren, Ranking member Representative King and members of the Subcommittee: I am Arturo Vargas, Executive Director of the National Association of Latino Elected and Appointed Officials (NALEO) Educational Fund. Thank you for the invitation to appear before you today on behalf of the NALEO Educational Fund to discuss the impact of the United States Citizenship and Immigration Services (USCIS) fee increase rule on the Latino community and all of our nation's newcomers.

The NALEO Educational Fund is a non-profit, non-partisan organization that facilitates full Latino participation in the American political process, from citizenship to public service. Our constituency includes the more than 6,000 Latino elected and appointed officials nationwide. For the last two decades, the NALEO Educational Fund has been on the forefront of national and local efforts to promote U.S. citizenship, and assist eligible legal permanent residents with the naturalization process. Our efforts have included community workshops and other activities to help newcomers submit their application materials. Since 1985, we have operated a toll-free information and resource hotline for callers with questions about the naturalization process – in the last five years alone, we have assisted about 75,000 callers through the hotline. Since 1993, the NALEO Educational Fund has also conducted a comprehensive national public service media campaign to inform newcomers about the opportunities and requirements of U.S. citizenship.

Most recently, in January 2007, we launched our *ya es hora ¡Ciudadanía! (It's time, citizenship!)* campaign, a national year-long effort to effort inform, educate and motivate eligible legal permanent residents across the United States to apply for U.S. citizenship. This campaign brings together over 400 national and regional organizations, including community and faith-based organizations, unions, public and private agencies, law offices and attorneys, elected and appointed officials, and private businesses. Over 20 cities across the country, from San Diego, California, to Boston Massachusetts, conducted activities under the auspices of *ya es hora ¡Ciudadanía!*. Our organizational partners in this campaign include the National Council of La Raza, the Service Employees International Union, and the We Are America Alliance. In addition, our media partners, Univision Communications, Entravision Communications, and *impreMedia*, have played a critical leadership role in the campaign's

public education efforts, by producing programs, public service announcements, and advertisements to reach Latino viewers and readers. Over 60,000 persons have visited the *ya es hora* website, and over 100,000 naturalization guides have been distributed to communities across the nation through the network of over 400 *ya es hora* community centers. We believe that the *ya es hora ¡Ciudadanía!* campaign has played a key role in the dramatic increase of naturalization applicants this fiscal year. We anticipate that by the end of FY 2007, about 1,000,000 newcomers will have applied for U.S. citizenship, the highest number since 1997.

In July 2007, the USCIS implemented a final rule imposing dramatic increases in immigration application fees that have put many immigration services beyond the reach of our nation's newcomers. Given the NALEO Educational Fund's experience in U.S. citizenship promotion, assistance and research, my testimony will focus primarily on the impact of the increase in the fees to initiate the naturalization process. In addition, my testimony will also set forth policy recommendations concerning the need to make fundamental changes in the USCIS' system of financing immigration services, changes which will enable the USCIS to charge reasonable and fair fees for all of its application adjudications.

I. U.S. Citizenship and the Impact of the Fee Hikes on Our Nation's Newcomers

Naturalization is a critical step for our nation's newcomers on their path toward becoming full participants in America's civic life. U.S. citizenship provides immigrants with the opportunity to strengthen our democracy by making their voices heard in the electoral process. Newcomers are eager to demonstrate their commitment to this nation, and they want to help build our neighborhoods and communities. By promoting naturalization, our country assists immigrants in demonstrating this commitment and becoming full members in American society. However, according to estimates prepared by the Pew Hispanic Center in its March 2007 report ("Growing Share of Immigrants Choosing to Naturalize"), there are about 8.5 million legal permanent residents eligible for U.S. citizenship nationwide who have not yet initiated the naturalization process. Of those 8.5 million, about 4.6 million – or over half (55%) – are Latino.

From our extensive research and work with potential naturalization applicants, we believe that the USCIS' fee hike will create an insurmountable barrier for many newcomers who are eager to become full Americans. Because of the increases in the naturalization application fee and the fee for biometric services, the total cost of starting the naturalization process has jumped from $400 to $675, a 69% increase.

The application fee increases implemented by the USCIS will impose a prohibitive financial burden on countless immigrant families. According to 2000 U.S. Census data, about one out of three of our nation's non-citizen households (36%) have annual incomes of less than $25,000. The data in the Pew Hispanic Center report suggests that residents eligible to naturalize - or one out of four – have family incomes below the poverty line. Mexican newcomers eligible to naturalize face even more significant financial challenges: 32%, or nearly one out of three, have family incomes below the poverty line.

Based on our work with Latino newcomers, we know that multiple family members often want to apply for naturalization at the same time. With the increase imposed by the USCIS, a family of four would confront a bill amounting to $2,700. Even the cost for one family member – $675 – represents for many newcomer families the cost of a monthly rent or mortgage payment, their highest household expenditure. According to data from the 2000 Census, 43% of non-citizen households pay at least $700 in rent each month.

Applicants for other immigration services will face similar challenges. One of the other significant fee increases imposed by the USCIS was for the filing of the Form I-485, the legal permanent residency adjustment of status application, which jumped from $325 to $930 for most immigrants. Depending on the ages of its children, a family of four would face adjustment of status application fees (including the biometrics fee) ranging from $3,220 to $4,040.

Applicants for U.S. citizenship and other immigration services already incur substantial costs in completing the adjudication process - they must pay for such costs as application assistance, legal

services, photographs, and English and civics educational services. From our own first-hand discussions with newcomers, we have learned about the challenges presented by naturalization fee hikes to immigrants. In 2005, as part of a "Community Empowerment" civic engagement program, we undertook research on the barriers to naturalization confronted by Latino non-citizens in Houston, Los Angeles, and New York, in order to determine the best possible outreach strategies to increase naturalization rates within these communities. Based on the research (which included focus groups with both U.S. citizens and non-citizens), we learned that newcomers strongly agreed about the importance of U.S. citizenship. However, finding family funds to cover application costs was one of the most significant barriers cited by research participants. Many simply did not see naturalization as affordable, and found that repeated fee hikes made it more difficult to apply. We have frequently heard from applicants about the difficulties involved in having to save money, a little over time, in order to pay for application expenses. All of these concerns were raised before the increase, when the fees were $400. We anticipate that the $675 filing costs will prove to be even a greater challenge for our community and all newcomers.

Finally, USCIS data on trends in U.S. citizenship applications reveal the impact of the last substantial fee hike on naturalization applicants. In FY 1991, the naturalization application fee was $90, and in FY 1994, there was a slight increase to $95. In January 1999, the Immigration and Naturalization Service (the USCIS' predecessor agency) raised the application fee to $225, a 58% increase, which is close to the percentage magnitude of the current increase. According to USCIS data, in the two years prior to the 1999 increase, from January 1997 through December 1998, 2.2 million newcomers applied for naturalization. In the two-year period following the increase, between January 1999 and December 2001, the number of applicants fell to 1.7 million. We are deeply concerned that the current increase will cause a similar decline, as newcomers delay filing applications until they have saved the funds to afford them, or forego filing them entirely.

II. Fundamental Challenges in Our System of Financing Immigration Services

We believe that the dramatic increase in immigration application fees over the last decade and a half is a result of fundamental flaws in our system for financing immigration services, which have also left the USCIS without the funding for important business process and infrastructure improvements needed to modernize its operations. This system has primarily resulted from a combination of factors: 1) The USCIS' misinterpretation of a perceived statutory mandate to fund virtually all agency costs from application fee revenues, and the lack of Congressional action to clarify that the statutory section does not require the agency to completely fund its operations through those fees; 2) the agency's reluctance to seek sufficient appropriated funding to complement fee revenues, which could help keep application costs at a reasonable level; and 3) Congressional mandates which require many immigrant applicants to essentially fund services unrelated to their own applications. I would like to address each of these problems and provide policy recommendations to address them.

A. The USCIS' Determination of the Costs that Must be Covered by Fee Revenue

The USCIS is authorized to charge fees for immigration and naturalization applications under Section 286(m) of the Immigration and Nationality Act (INA), which provides:

> "Notwithstanding any other provisions of law, all adjudication fees as are designated by the Attorney General in regulations shall be deposited as offsetting receipts into a separate account entitled 'Immigration Examinations Fee Account' in the Treasury of the United States, whether collected directly by the Attorney General or through clerks of courts...Provided further, That fees for providing adjudication and naturalization services may be set at a level that will ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants. Such fees may also be set at a level that will recover any additional costs associated with the administration of the fees collected." [When the Homeland Security Act of 2002 was enacted, which abolished the Immigration and Nationality Service (INS) and created the USCIS, the Attorney General's responsibilities under this section were essentially transferred to the Department of Homeland Security.]

Our first concern with the USCIS' interpretation of this statute is in the way it determines the "costs" of providing adjudication and naturalization services which are recovered from fees. Attached to this testimony is a copy of the comments we provided the agency when it officially proposed the fee increases, and those comments contain a more technical analysis of what we believe are some of the more questionable calculations used by the agency to ascertain how much it will cost to provide services to applicants. In summary, our major concerns include:

- Failure to take into account the impact of potential enhancements in productivity and business efficiencies on the ability of the agency to manage increases in its service costs;
- Questionable estimates of the volume of applications that agency anticipates receiving after the imposition of the fee increases, which could skew the agency's cost and revenue projections;
- Lack of clarity about how the agency calculates "indirect costs" – the costs it identifies as ongoing business expenses that cannot be attributed to a particular business operation – and how the agency incorporates those costs when determining specific application fees.
- The questionable inclusion of certain expenses that do not appear to be directly related to application adjudication in the "costs" of providing immigration services. For example, in its latest fee rulemaking, the agency included costs for Internal Security and Investigative Operations for the investigation of misconduct of Federal and contract employees, as well as the costs of processing Freedom of Information Act requests. In the past, the agency has included the annual expenses of litigation settlements in its service costs for the purposes of calculating immigration fees. We believe that other agencies receive appropriated monies to cover many of these costs, and that they should not be borne by immigrant applicants.

Moreover, we are particularly concerned that under our current system of financing immigration adjudications, newcomers are being required to shoulder the entire burden of paying for the modernization of the USCIS and major enhancements to our immigration operations that benefit the nation as a whole. In its rulemaking for the current increase, the USCIS described $524.3 million in "additional resource requirements" which involve costs above the basic resources the agency claims it needs to meet its mission responsibilities. This $524.3 million

represents one-quarter (26%) of the $1.988 billion the agency assigns to FY 2007/2008 application processing activities. However, a significant number of these "resource requirements" appear to be for expenses which are unusual and atypical of a normal application processing year, such as the establishment of a second, full-service card production facility, and upgrades to the USCIS' information technology environment. Similarly, the agency is passing on to applicants expenses involved in increased payments to the FBI for fingerprint, name, and security checks. These expenses stem from our nation's efforts to ensure that our immigration operations adequately protect our national security. As is the case with the agency's business and technology enhancements, these costs essentially represent an "investment" in the future of our immigration system that should not be funded by current immigration and naturalization applicants.

B. The USCIS' Failure to Seek Appropriated Monies to Fund Major Business Enhancements

Our second fundamental concern with the USCIS' interpretation of the statute which governs the financing of immigration services is the agency's reluctance to request appropriated monies on a consistent basis to cover many of the foregoing costs that are now borne by newcomers. The agency maintains that the statute is a mandate to fund virtually all of its operational costs from applicant fee revenue. However, the language of the statute is discretionary, and not mandatory: it provides that fees "may" be set at a level that will ensure that recovery of the full costs of providing immigration services, not that the fees "must" be set at this level. The agency claims that there are other administrative mandates that support its interpretation, but even those mandates allow the head of the agency to make exceptions when warranted by special circumstances.

For most of our country's history, the USCIS, or its predecessor agencies, did not charge for immigration adjudication and naturalization services. In 1968, the INS began charging fees for such services but the fees were deposited in the General Treasury Fund until 1989. During that period, Congress appropriated funds to the USCIS for immigration adjudication and naturalization services. It has only been for the last 18 years that the applications fees have been essentially the "sole source of funding" for immigration adjudication and naturalization services.

There is no reason why Congress is prevented from appropriating funds for immigration and naturalization services, and there are many reasons why the USCIS should pro-actively seek such funding from Congress. In fact, as the USCIS itself acknowledged during its rulemaking on the current fee increase, for the past several years, Congress did appropriate monies as part of a five-year effort to reduce application backlogs, and the agency specifically mentions appropriations in FY 2006 ($115 million), and FY 2007 (about $182 million). Yet for FY 2008, the agency only asked for $30 million in appropriated monies, and does not envision these funds as a significant source of revenue that will allow it to reduce application fees.

We commend the USCIS for its efforts to articulate a comprehensive vision of the infrastructure and process enhancements it believes are necessary to "Build a 21st Century Immigration Service," as it describes in its outreach materials. We agree that many of these enhancements are long overdue, and that they will involve some fundamental changes in how the agency operates its business. But we are bewildered by the agency's reluctance to approach and make its case to Congress to obtain new appropriated funding that the agency needs for an agency overhaul to face the challenges it confronts in a new and evolving national security environment. Congress was willing to appropriate monies when the USCIS faced the extraordinary challenge of reducing application backlogs. The USCIS now appears to face a similar challenge in making fundamental improvements that require a substantial investment, and it should demonstrate the leadership necessary to enable the agency to meet these challenges by requesting Congressional funding to supplement fee revenue.

As we urge the USCIS to seek appropriated monies to supplement fee revenue, we also wish to emphasize that those fees should remain an important component of our system of financing immigration services. Our newcomers come from hardworking, taxpaying families who see the payment of application fees as an important investment in their future and the future of their children. However, the USCIS must pursue appropriated funding so that it can enhance the delivery of its services without having to pass the entire cost on to these newcomers. Our system for financing immigration services should become a partnership where applicants pay a

reasonable fee for quality service, and Congress must appropriate sufficient monies to make that partnership a reality.

C. Congressional Action Required to Eliminate "Surcharges" for Unrelated Operation Costs

Section 286(m) of the INA, the statutory section which governs our system of financing immigration services, does specifically authorize the USCIS to pass along the costs of providing certain services for which fees are not charged to fee-paying applicants. As a result, the application fees paid by newcomers reflect "surcharges" for services unrelated to the processing of their applications. For example, Congress requires the USCIS to use fee revenue to operate the asylum and refugee programs, and to cover the expenses of processing applications for which applicants are provided fee waivers or exemptions. In its recent rulemaking, the USCIS allocated a total of $72 to each application fee for these programs.

We believe it is entirely appropriate to provide services to refugees and asylees at no cost to them. Such service is a part of our foreign policy and enables the United States to be in compliance with various international human rights treaties to which the United States is a signatory. Similarly, we should continue our policy of providing fee waivers or exemptions for certain applicants, such as exemption from the naturalization fee for certain military personnel. However, we believe it is inappropriate for immigrants who are paying for other immigration and naturalization processing services to pay entirely for these unrelated services. Thus, Congress must take action to amend Section 286(m) of the INA to eliminate the requirement that results in the refugee/asylee and waiver/exemption surcharges on immigrant application fees. Congress must also ensure that it appropriates sufficient funding to adequately cover the operational costs related to the surcharges so that we can effectively achieve the humanitarian and foreign policy goals of our immigration system.

III. Policy Recommendations

We believe that the members of this subcommittee, the leadership of the USCIS, and those of us who work closely with our nation's newcomers, share a common vision for America's

immigration system. We want a modern, well-managed immigration agency that can make timely and accurate adjudications in an evolving national security environment. We want to ensure that applicants pay a reasonable fee to receive quality immigration services. However, our current system for financing these services will simply not allow us to achieve these goals. We believe the USCIS must rescind the current fee increase, and work with the Administration and Congress to implement the following:

- The USCIS should re-evaluate its methodology for making productivity and application volume estimates to ensure that it is making sound projections about the future costs of application processing.
- The USCIS should re-evaluate and more clearly articulate its methodology for determining the following costs and incorporating them into its fee calculations:
  - Indirect, ingoing business costs;
  - Costs which do not appear to be directly related to application adjudications; and
  - Costs which represent atypical or one-time expenditures for major business enhancements and infrastructure improvements.

  In conducting this assessment, the USCIS should examine the practices of other federal agencies that charge user fees for their services to determine whether its practices are consistent with the "best practices" in other agencies. The USCIS should provide the President and Congress with a sound estimate of the foregoing costs, and the President should seek appropriated funding to cover these costs in his annual USCIS budget request. In this connection, the USCIS should also provide Congress with more detailed information about its infrastructure modernization efforts, and its plans to improve its delivery of services to applicants.
- Congress must amend Section 286(m) to clarify that appropriated funding should be used to complement fee revenue to cover the costs of immigration services. It should also amend Section 286(m) to eliminate the refugee/asylee and waiver/exemption surcharges. Congress must also appropriate sufficient funding on an annual basis to ensure that the USCIS can operate effectively without imposing unreasonable fee increases.

In this connection, we would like to commend Subcommittee Chair Lofgren for her leadership in introducing H. J. Res. 47, which expresses Congressional disapproval of the USCIS' fee increase and declares that it has no force or effect. We would also like to commend Subcommittee member Luis Gutierrez for introducing H.R. 1379, the Citizenship Promotion Act, which would implement many of the foregoing policy recommendations. We believe that both of these legislative actions are serving as critical catalysts for an unprecedented national discussion of skyrocketing immigration fees, their impact on newcomers, and the policy changes needed to fix our broken system of financing immigration services.

IV. Conclusion

Madam Chair, as our nation looks to its future, the economic, social and civic contributions of immigrants will continue to play a key role in our growth and prosperity. The fees that we charge immigration and naturalization applicants are an important component of our overall immigration policies. However, the USCIS' recent fee increases are a serious obstacle to achieving fair policies, and are a symptom of a fundamentally-flawed system for financing our immigration operations. If we do not make important and critical changes to this system, we are likely to see the price tag for immigration services continue to increase dramatically in the future, and many newcomer families will have to defer or even forego their dream of becoming full Americans. It is in America's best interest to have a well-managed immigration system which safeguards our national security and effectively adjudicates the millions of applications from immigrants who come to this country to join family members, build our communities, add their skills and talents to our nation's labor pool, and enrich the vitality of our democracy. The USCIS, the Administration, and Congress must all demonstrate the leadership required to ensure that we make sound and reasonable assessments of the costs needed to operate this system, and that we create a fair partnership between newcomers and our nation to pay for those costs.

I thank the Chairman, the Ranking Member, and the Subcommittee once again for providing us with the opportunity to share our views today on the USCIS' recent fee increase rule.

ATTACHMENT

Educational Fund *facilitates full Latino participation in the American political process*

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† *deceased*

April 2, 2007

Director, Regulatory Management Division
United States Citizenship and Immigration Services
Department of Homeland Security
111 Massachusetts Ave., NW 3rd Floor
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RE: DHS Docket No. USCIS 2006-0044

Dear Director of Regulatory Management:

The National Association of Latino Elected and Appointed Officials Educational Fund (NALEO) would like to take this opportunity to express our strong opposition to the United States Citizenship and Immigration Services' (USCIS) proposal to increase several immigration and naturalization application fees, including the fees to initiate the naturalization process. The USCIS has proposed to adjust the current Examinations Fee schedule by amending 8 CFR part 103, Section 103.7 (b) (1); notice of the proposal was published in the February 1, 2007 Federal Register, Vol. 72, No. 21, DHS Docket No. USCIS 2006-0044 (hereinafter referred to as the "Federal Register notice").

The NALEO Educational Fund is the leading national non-profit organization that facilitates Latino participation in the American political process, from citizenship to public service. The NALEO Educational Fund's constituency includes the more than 6,000 Latino elected and appointed officials nationwide. For the last two decades, the NALEO Educational Fund has assisted more than 125,000 legal permanent residents take the important step to U.S. citizenship through community-based workshops and other services throughout the country. Since 1985, the Fund has also operated a toll-free information and resource hotline for callers with questions about the naturalization process – in the last five years alone, we have assisted about 75,000 callers through the hotline. Since 1993, the Fund has conducted a comprehensive national public service media campaign to inform newcomers about the opportunities and requirements of U.S. citizenship.

In addition, in 2005, as part of a "Community Empowerment" civic engagement program, we undertook research on the barriers to naturalization confronted by Latino non-citizens in Houston, Los Angeles, and New York, in order to determine the best possible outreach strategies to increase naturalization rates within these communities. Based on the research (which included focus groups with both U.S. citizens and non-citizens), we learned

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that the current cost of initiating the naturalization process ($400) was one of the major obstacles cited, together with the lack of access to reliable information about the naturalization process, and concerns about the level of English proficiency needed to pass the naturalization examination.

Most recently, in February 2007, we launched our *ya es hora ¡Ciudadania! (It's time for citizenship!)* campaign, which has brought together alliances of community and faith based organizations, unions, public and private agencies, law offices and attorneys, elected and appointed officials, and private businesses in Southern California, Houston, New York and Miami. The purpose of this year-long campaign is to educate eligible legal permanent residents about U.S. citizenship and assist them with the naturalization process. We are conducting this campaign together with Univision, the nation's largest Spanish-language television network, and La Opinión, the largest Spanish language newspaper.

These comments are submitted in response to the USCIS Proposed Rule regarding "Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule."

I. Introduction

The NALEO Educational Fund's unparalleled experience in U.S. citizenship promotion, assistance and research compels us to oppose and raise serious questions about the USCIS' fee proposal. We are particularly concerned about the increase in the fee for filing the Form N-400 Application for Naturalization, which would raise the fee from $330 to $575. Together with the proposed increase in the biometrics fee (from $70 to $80), the USCIS' fee hikes would raise the cost of initiating the naturalization process from $400 to $675, a 69% increase. We are deeply concerned that the USCIS has relied on questionable calculations to justify its immigration and naturalization fee hikes. We also believe that the proposed increases do not accurately reflect the cost of services being provided to applicants, and that the USCIS has taken into account costs that should not be charged to applicants. We also do not believe that the proposed increases are justified in light of the current quality of service provided by the agency or its proposed service enhancements. We urge the USCIS to pursue legislative changes and alternative sources of funding which will enable it to cover portions of the costs of its services before raising application fees. Finally, we believe the proposed increase in the fees for naturalization will place a significant burden on legal permanent residents pursuing U.S. citizenship, and is contrary to our national interest in promoting the integration of newcomers.

II. The USCIS Has Relied on Questionable Calculations to Justify the Proposed Fee Increases, and the Increases Do Not Accurately Reflect the Cost of Services Being Provided to Applicants

The USCIS is authorized to charge fees for immigration and naturalization applications under the Section 286(m) of the Immigration and Nationality Act; in describing the legal authority to set

the level of these fees, the USCIS also refers to Office of Management and Budget (OMB) Circular No. A-25, which directs federal agencies to charge the "full cost" of providing services when those services are provided to specific recipients. We are concerned that the USCIS has relied on questionable estimates and calculations in determining the level of its fee increases. We also believe that the increases proposed by the USCIS do not accurately reflect the cost of providing services to immigration and naturalization applicants, and imposes "surcharges" upon those applicants for services unrelated to the adjudication of their applications.

"Completion Rates" May Measure Current Agency Inefficiencies: In determining the full cost of providing services, the USCIS convened its Workload and Fee Projection Group, which conducted a review of the activities of costs of adjudication services funded through the Examinations Fee account. In assessing the cost of "Make Determination" on applications, which the USCIS characterizes as the largest processing activity cost, it appears that the Workload and Fee Projection Group used a modeling convention that essentially took a "snapshot" of the USCIS' practices during September 2005-August 2006. This snapshot included "completion rates" which measure the average adjudicative time needed to perform a particular activity. Thus, in determining the cost of making determinations on applications, the USCIS used the actual time it took the USCIS to perform the various immigration adjudication and naturalization activities, with no analysis of whether the agency could operate its program more efficiently and for a reduced cost to the applicant paying a fee.

The impact of this methodology is of particular concern for applications where significant fee increases are being justified as a result of a "threefold increase in completion rates," as is the case with the Form N-400 (discussed in Section X of the Federal Register notice). The USCIS attributes most of the increases in completion rates to the additional time devoted to the expansion of background checks instituted in July 2002. However, we understand that many of these checks are background checks conducted through the Interagency Border Inspection System (IBIS). The USCIS notes that these checks were instituted nearly 5 years ago – we question why the agency has not found a way to improve its efficiency in making these checks in the past five years, so that it can reduce the adjudicative time spent on them.

Moreover, in determining the amount of any increase, the USCIS should take into account any cost-savings it will realize as a result of increased productivity or efficiencies it intends to realize in the coming fiscal years, such as those which may result from its enhanced staffing model, improved staff training, and upgrades to its technology infrastructure. In Section IV(E)(3) of the Federal Register notice, the USCIS describes an ambitious program of service, security and infrastructure enhancements for which it needs additional funds. We hope that these improvements will result in better management and more efficient use of its resources. We believe that the USCIS should demonstrate that is has taken into account the cost of processing immigration and naturalization applications under its enhanced processing systems in ascertaining the appropriate application fees.

Questionable Estimates of Application Volumes: In addition, we also question the estimates of application volume presented in Table 7, Section V (B) of the Federal Register notice, which the USCIS uses to calculate application unit costs. Generally, the USCIS projects a decrease in the volume of most applications; where increases are projected, the most significant are for the Form N-400 and the Form I-485.

However, based on our own experience with naturalization applicants, and data from the USCIS, we have seen that naturalization applications increase dramatically immediately prior to the imposition of a fee hike, followed by a decline in applications. USCIS data reveal that the number of naturalization applications filed with the agency increased from 602,972 in Fiscal Year 2005 to 730,642 in FY 2006, an increase of 21%. In Los Angeles, in January and February 2007, we saw very significant increases in Form N-400 filings over the previous year. In January 2007, 18,024 From N-400s were filed, compared to 7,334 in January 2006. In February 2007, 15,568 Form N-400's were filed compared to 7,411 in February 2006. As noted earlier, based on our discussions with naturalization applicants, we know that many consider the current $400 application cost to be a serious barrier for naturalization, and based on our past experiences, we believe that there will be a significant decline in applications after the increase takes effect.

We understand that the USCIS believes that after the imposition of fee increases, the number of applications will start to increase again or level off. However, the dollar amount of the proposed increase in the fees to initiate the naturalization process ($275) is the largest ever in USCIS history, and the $675 fee represents for many newcomer families the cost of a monthly rent or mortgage payment, their highest household expenditure. According to data from the 2000 Census, 43% of non-citizen households pay at least $700 in rent each month. Thus, if the propose increase is implemented, it is very likely that many applicants will delay their applications or forego filing them entirely. As is the case with any business that raises prices too steeply beyond what its customers can afford, the USCIS may experience a decline in fee revenue that will make it impossible for the agency to cover its estimated costs.

Concerns About "Indirect Cost" Calculations: We also question the USCIS' calculations with respect to the $924 million in "indirect costs" described in Section VI of the Federal Register notice, which the agency defines as "the ongoing administrative expenses of a business which cannot be attributed to any specific business activity, but are still necessary for the business to function." While identifying the total amount of these costs, it is unclear precisely how the USCIS incorporates them into its direct costs – it appears to make them a fixed percentage of the direct costs of each application, but the amount of this percentage or how it is incorporated seems vague. We believe the USCIS should provide explicit information on the amount of this percentage so that the public can better understand the relationship of indirect and direct costs in the USCIS' calculation of the increase.

"Additional Resource Requirements" Include Atypical Processing Costs: In determining the funding needed for the enhancements described in Section IV(E)(3), the USCIS identified

$524.3 million in "additional resource requirements," which involve costs above the basic resources the agency claims it needs to meet its mission responsibilities. This $524.3 million represents one-quarter (26%) of the $1.988 billion the agency assigns to FY 2007/2008 application processing activities. However, a significant number of these "resource requirements" appear to be for expenses which are unusual and atypical of a normal processing year. These expenses include the establishment of a second, full-service card production facility ($34.3 million), and upgrades to the USCIS' information technology environment ($124.3 million). These infrastructure costs essentially represent an "investment" that should not be funded by current immigration and naturalization applicants and must not be included in the fee calculation. As discussed further below, the USCIS should seek appropriated funding from Congress to pay for these large atypical funding needs, and should remove these costs from the calculation of the naturalization fee. While the list of atypical expenses identified in this paragraph is not exhaustive, those expenses alone total $158.6 million. The USCIS could subtract this amount from its fee calculations and pass the savings on to the customer.

Other FY 2008/2007 Costs Which Should Not Be Covered By Applicant Fees: In addition to its proposed infrastructure investments, the USCIS also includes in the FY 2007/2008 Immigration Examination Fee Account (IEFA) costs expenses which do not just benefit applicants, but which also benefit everyone in the nation. In some cases, these are expenses for which other government agencies receive appropriated funds, or which are simply not the type of expenses which should be paid for by user fees. These expenses include increased payments to the FBI for fingerprint, name, and security checks which benefit national security; and processing of Freedom of Information Act requests, for which every other government agency receives appropriated monies. In addition, the costs for Internal Security and Investigative Operations for the investigation of misconduct of Federal and contract employees should not be borne by immigrant applicants. As is the case with infrastructure enhancement expenses, the USCIS should seek appropriated funding to cover these costs.

USCIS Should Seek Statutory Changes to Eliminate "Surcharges": As a result of USCIS and Congressional actions, the application fees paid by immigrants reflect "surcharges" for services unrelated to the processing of their applications. For example, Congress requires the USCIS to use the IEFA to run the asylum and refugee programs; according to the Federal Register notice announcing the fee increases, these program costs amount to 8% of the FY 2007/2008 IEFA costs. In assigning amounts to various fees to cover these costs, Table 11 in Section VIII of the Federal Register notice indicates that the USCIS has allocated $42 to each application for these programs. The USCIS itself refers to this additional component as a "surcharge" to its application fees.

An additional surcharge to the asylum/refugee costs is the surcharge for cases that qualify for waivers and exemptions. The USCIS estimates that the cost associated with its waivers/exemptions is $150 million, or 6% of the FY 2007/2008 IEFA costs. Table 11 indicates that the USCIS has allocated $30 to each application for these costs.

It is entirely appropriate to provide services to these categories of people at no cost to them. Such service is a part of our foreign policy and enables the United States to be in compliance with various international human rights treaties to which the United States is a signatory. However, it is inappropriate for immigrants who are paying for other immigration and naturalization processing services to pay for these unrelated services. Congress should support the handling of refugee and asylee cases; therefore, we emphasize that under no circumstances should an application fee be charged to applicants for refugee or asylum status.

Although the USCIS does not control Congress, it is the USCIS' responsibility to present a strong case to our nation's legislators as to why the Examinations Fee Account should only be used for services for which it charges fees. The USCIS should make its case to Congress and allow Congress time to act upon it before implementing its proposed fee hikes.

III. The USCIS' Proposed Increases Are Not Justified in Light of the Current Quality of Service Provided by the Agency or its Proposed Enhancements

The fees for initiating the naturalization process have been soaring since 1991, when newcomers paid $90 to apply for U.S. citizenship. While the USCIS has made improvements in the quality of its services, it still needs to make significant progress. The agency has definitely reduced its naturalization backlogs and processing times – in the late 1990's, applicants confronted an average wait of about two years, and the agency now estimates that the average processing time is about seven months. However, there are still a substantial number of naturalization applicants who have been waiting security clearances for years, and the agency has been subject to litigation over some of these cases.

Moreover, in USCIS materials describing the fee increase, one justification offered is that the agency will be able to reduce Form N-400 average processing times from seven to five months. To the extent that reduced processing time is one measure of the quality of service applicants receive, the USCIS is essentially proposing a 69% increase in costs to achieve a 40% increase in service. We do not believe that processing time reduction justifies the enormous burden that the fee increase will impose on naturalization applicants.

IV. The USCIS Should Seek Congressional Appropriations to More Effectively Fund Immigration and Application Naturalization Activities

For most of our country's history, the USCIS did not charge for immigration adjudication and naturalization services. In 1968, the INS began charging fees for such services but the fees were deposited in the General Treasury Fund until 1989. During that period, Congress appropriated funds to the USCIS for immigration adjudication and naturalization services. It has only been for the last 18 years that the fees deposited in the Examinations Fee Account have been essentially the "sole source of funding" for immigration adjudication and naturalization services.

There is no reason why Congress is prevented from appropriating funds for immigration and naturalization services, and there are many reasons why the USCIS should seek such funding from Congress. In fact, as the USCIS itself acknowledges in Section III(C) of the Federal Register notice, for the past several years, Congress did appropriate monies as part of a five-year effort to reduce application backlogs, and the agency specifically mentions appropriations in FY 2006 ($115 million), and FY 2007 (about $182 million). Yet for FY 2008, the agency is now asking for only $30 million in appropriated monies, and does not envision these funds as a significant source of revenue that will allow it to reduce application fees.

We commend the USCIS for its efforts to articulate a comprehensive vision of the infrastructure and process enhancements it believes are necessary to "Build a 21st Century Immigration Service," as described in the press materials disseminated by the agency. We agree that many of these enhancements are long overdue, and that they will involve some fundamental changes in how the agency operates its business. But we are bewildered by the agency's reluctance to approach and make its case to Congress to obtain new appropriated funding for an agency overhaul. Congress was willing to appropriate monies when the USCIS faced the extraordinary challenge of reducing application backlogs. The USCIS now appears to face a similar challenge in making fundamental improvements that require a substantial investment, and it should demonstrate the leadership necessary to enable the agency to meet these challenges by requesting Congressional funding to supplement fee revenue. Additionally, as noted above, the USCIS should seek legislative changes that would enable appropriations to be used to cover the cost of adjudicating refugee and asylee cases, as well as waiver and exemption expenses; such costs should not be covered by "surcharges" to naturalization applicants.

We are particularly concerned about the USCIS' public characterization of the statutory "mandate" that it claims requires it to recover the full costs of application services from fees and prevents it from seeking Congressional appropriations. The USCIS refers to Section 286(m) of the Immigration and Nationality Act to support that claim; however, this section specifically states that application fees "*may* be set at a level that will ensure recovery of the full costs of providing all such services." This language does not require the agency to do so.

The USCIS also makes reference to OMB Circular No. A-25, which establishes federal policies for user fees assessed for government services that convey "special benefits" to recipients beyond those accruing to the general public. This Circular does state a general policy that that user charges must be sufficient to recover the full costs of the services, but in Section 6(c)(2)(b), it also explicitly allows agency heads to make exceptions to the general policy if any condition exists that the agency head believes justifies an exception. First, insofar as this circular is an administrative policy memorandum, it does not have the force of law. Moreover, as discussed in more detail below, we believe that the USCIS would be well-justified in making an exception to the Circular's general policy in light of the significant burden that the fee increase would impose on legal permanent residents who are pursuing U.S. citizenship, and the positive benefits of increased naturalization to our nation.

V. The Proposed Increase in Naturalization Fees Will Place a Significant Burden on Legal Permanent Residents Pursuing U.S. Citizenship, and is Contrary to the Public Interest in Newcomer Integration

The proposed increase will impose a prohibitive financial burden on countless immigrant families. According to 2000 U.S. Census data, about one out of three of our nation's non-citizen households (36%) have annual incomes of less than $25,000. According to a March 2007 report released by the Pew Hispanic Center, "Growing Share of Immigrants Choosing to Naturalize," 24% of legal permanent residents eligible to naturalize - or one out of four – have family incomes below the poverty line. Mexican newcomers eligible to naturalize face even more significant financial challenges: 32%, or nearly one out of three, have family incomes below the poverty line. Based on our work with Latino newcomers, we know that family members often want to pursue U.S. citizenship by applying for naturalization at the same time. With the increase proposed by the USCIS, a family of four would confront a bill amounting to $2,700.

Applicants for U.S. citizenship already incur substantial costs in completing the naturalization process - they must pay for such costs as application assistance, legal services, photographs, and English and civics educational services. Currently, we know that many newcomers simply cannot afford to become U.S. citizens; the proposed fee increase will put naturalization beyond the reach of far more immigrants, including many of the most vulnerable members of our community such as the elderly and the disabled.

The USCIS is proposing to raise the fees to initiate the U.S. citizenship process by 69% at a time when greater naturalization is critical to the future of our nation. Legal permanent residents who embrace U.S. citizenship are motivated by a desire to demonstrate their commitment to this country, and when they gain the right to become full participants in the political process, our democracy becomes stronger and more representative. Greater naturalization also makes a wider group of skilled and talented workers available in our workforce for positions that are barred to non-citizens.

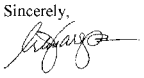
President George W. Bush and the USCIS recognize that the naturalization of legal permanent residents is in the best interests of this country. In his State of the Union address, the President emphasized the value of upholding the nation's tradition that welcomes and "assimilates" new arrivals. In June 2006, by Executive Order, the President established that Task Force on New Americans, in order to strengthen the efforts of the Department of Homeland Security and federal, state, and local agencies to help "legal immigrants…fully become Americans." The Executive Order charges the Task Force with making recommendations to the President on actions that will enhance cooperation between federal agencies and among federal, state and local authorities responsible for the integration of legal permanent residents. However, placing naturalization beyond the reach of many of our nation's newcomers is completely contrary to the spirit of the Administration's civic integration efforts, and will ultimately undermine them. We cannot claim that we are truly committed to encouraging legal permanent residents to embrace American civic values when we simultaneously impose an exorbitant and unfair price tag on the cost of U.S. citizenship.

VI. Conclusion

As our nation looks to its future, the economic, social and civic contributions of immigrants will play a key role in our growth and prosperity. The fees that we charge immigration and naturalization applicants are an important component of our overall immigration policies – policies which should be fair and which should further our nation's interest in a vibrant and vital democracy. However, the USCIS' proposed fee increases are a serious obstacle to achieving these goals. We believe the USCIS has relied upon flawed or questionable calculations in determining the amount of the increases. The magnitude of the fee hikes do not appear to be justified in light of the quality of services received by applicants. The agency has not pursued available alternatives to more effectively fund its activities. The fee increases would impose an unfair burden on newcomer families with limited resources who would have to defer or even forego their dream of U.S. citizenship. In light of the foregoing concerns, we believe that the USCIS cannot justify its increases in immigration and naturalization fees, and we urge the agency to withdraw or reconsider its proposal.

Thank you for considering our Comments. Please do not hesitate to contact Rosalind Gold, Senior Director of Policy, Research and Advocacy, Los Angeles Office, at 213-747-7606, ext. 120 or rgold@naleo.org if you have any questions or if we can be of further assistance during the comment process.

Sincerely,



Arturo Vargas
Executive Director

cc: Latino Members of Congress
The Honorable Edward M. Kennedy, Chair, Senate Subcommittee on Immigration, Refugees and Border Security
The Honorable Zoe Lofgren, Chair, House Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law

Ms. LOFGREN. Thank you very much.
Mr. Yates?

TESTIMONY OF WILLIAM R. (Bill) YATES, EXECUTIVE CONSULTANT, BORDER MANAGEMENT STRATEGIES

Mr. YATES. Madam Chairwoman, Ranking Member King, Representative Gutierrez, good morning and thank you for the opportunity to testify before you today.

My name is Bill Yates. I am an executive consultant of Border Management Strategies and a former INS and USCIS employee with over 31 years in immigration service and enforcement operations. It is a privilege to share with this Subcommittee my professional experience with an insight into the USCIS fee schedule.

No one wants to see fees that are so high that it discourages individuals from filing for naturalization or other benefits. However, we all want and expect USCIS to operate efficiently, serving its customers with timely and accurate information and benefit decisions, while, at the same time, protecting all Americans by ensuring that benefits only go to eligible applicants.

The fee schedule change that went into effect recently is extremely significant because it supports customer service and national security goals while providing USCIS with an opportunity to invest in badly needed business and IT improvements.

USCIS inherited an enormous financial liability from the INS because of the asylum adjustment of status naturalization and immigrant visa petition backlogs. During fiscal year 2001, INS estimated that the value of the backlogs in deferred revenue represented a shortfall in the examinations fee account of $700 million to $800 million.

Prior to the 9/11 terrorist attacks, we believe that a combination of President Bush's commitment to fund the $500 million backlog elimination effort plus savings that could be achieved through business re-engineering efforts could eliminate that deferred revenue funding gap. The plan was to fund the re-engineering efforts through the premium processing fees and use appropriations to help eliminate the backlogs.

Unfortunately, in the post-9/11 environment, those premium processing funds had to be diverted to pay for additional background checks and increased security for Government buildings and employees. During fiscal year 2002, new background checks alone necessitated the re-assignment of 800 adjudicator work years resulting in an even larger backlog. Exacerbating the situation was a decision by the Department of Justice mandating the reassignment of hundreds of INS adjudications officers to conduct National Security Entry Exit Registration System, or NSEERS, interviews.

Then during November 2002, INS learned that it had naturalized an individual who was under investigation for suspicion of being a terrorist. This occurred despite INS having received two negative responses to background checks. As a result, INS returned to the FBI approximately 2.6 million naturalization and adjustment of status name checks to be redone. While that work was underway, those applications were ordered held in abeyance.

The immigration services division of the INS that became USCIS faced huge backlogs and enormous challenges as it became an

Agency under the Department of Homeland Security on March 1 of 2003. However, by March 2004, production increased and backlogs stopped growing. By September 2004, steady progress was being made each and every month at reducing wait times, and by September 30, 2006, USCIS had met most of its backlog reduction targets.

There are limited options for reducing fees for USCIS customers, and most options entail placing additional burdens on taxpayers. I think that there are good arguments for taxpayer funding for military naturalization and for refugee and asylum processing, but I acknowledge that there are also good arguments for continuing the current funding requirements.

I think that the more significant issue is the vulnerability of the current funding system to fluctuations in receipts. A significant portion of the current fees relate to a surcharge that is required to support infrastructure as well as the non-revenue-generating applications.

And, by the way, I just spoke to Rendell Jones, and I believe that surcharge is approximately 50 percent of the entire fee.

For example, a drop in asylum filings would be deemed a financial blessing for CIS, but a significant decrease in naturalization applications could cause serious budget issues given that large surcharge that helps to pay for infrastructure.

If Congress decides to maintain the current funding rules, then lower fees can only come through transformed business practices. I do believe that there are opportunities to succeed in this, but it requires a dramatic change in how USCIS conducts business. Fortunately, I believe it is possible to improve efficiency in operations while also increasing process integrity.

In my written testimony, I offer specific recommendations, and I will be pleased to discuss any of those points.

Thank you, Madam Chairwoman and Members of the Subcommittee. I look forward to answering your questions.

[The prepared statement of Mr. Yates follows:]

PREPARED STATEMENT OF WILLIAM R. (BILL) YATES

INTRODUCTION

Madam Chairwoman, members of this distinguished subcommittee, thank you for the opportunity to testify before you today. My name is Bill Yates and I am an Executive Consultant of Border Management Strategies, a company that provides immigration and border security expertise to both the public and private sectors. Prior to my involvement with Border Management Strategies I spent over 31 years with the Immigration and Naturalization Service and U.S. Citizenship and Immigration Services, serving in a variety of officer and management positions in both enforcement and service disciplines. I began my career as a special agent at Newark, NJ in 1974, and at the time of my retirement, September 29, 2005, I was the senior career official at USCIS. It is a privilege to share with this subcommittee my professional experience with, and insight into, the fee funding process, the reasons for the steep fee increases, the challenges USCIS faces in breaking the backlog cycle, and the need to transform core business practices.

GROWTH IN APPLICATION FEES

The fee schedule change that went into effect last month is extremely significant for USCIS because it is the first time that that the fee schedule will actually recapture the full costs of USCIS operations. I am familiar with the previous fee schedule changes beginning with 1998 and each of those prior fee increases failed to fully recapture the full cost of doing business. In each instance from 1998 through the 2005,

the amended fee schedule reflected the results of compromises, not calculations Since FY 2002 USCIS has relied upon its premium processing fee revenue to meet its base financial obligations. Those funds were intended to be used for business process improvements, but were necessarily diverted to pay for new background checks following the terrorist attacks of September 11, 2001. At one point during the third quarter of FY 2002 we calculated that the new background checks required the redeployment of over 800 adjudication officer work-years, and increased expenditures by over $10 million dollars per month. The fee schedule change in 2004 did include funds needed to pay for background checks, but premium processing revenues continued to be used to pay for other underfunded programs, including a portion of the backlog reduction efforts, and for the infrastructure requirements needed for USCIS to become a stand-alone agency as intended by the Homeland Security Act of 2002.

Certainly, the fee increases beginning with 1998, when fees increased by an average of 76%, have been high, and high fees represent a significant burden to many USCIS customers. The reasons for these steep increases above the standard inflation costs are due predominately to;

- Growth in non-fee and restricted fee application processing costs requiring significant surcharges being placed on fee paying customers to cover those costs.
- Creation of new programs and components, such as the National Records Center (NRC), the National Customer Service Center (NCSC), the Missouri Service Center (MSC), and the Fraud Detection and National Security Office (FDNS)
- Implementation of the Application Support Center contract for fingerprint and more recently biometrics capture
- Implementation of new background checks following the terrorist attacks of September 11, 2001
- Increases in building and personnel security costs due to the threat of terrorism.
- Creation of USCIS as a stand-alone agency within the Department of Homeland Security
- Increased emphasis on eliminating application and petition backlogs
- Operational inefficiencies and maintenance costs for archaic legacy information systems

APPLICATION AND PETITION BACKLOGS

Backlogs at US Citizenship and Immigration Services (USCIS) have developed for a number of reasons, some predictable, and some resulting from unpredictable events. Massive surges in application receipts, poor computer systems, paper-based labor-intensive processes, a flawed funding system, unfunded mandates, inefficient business processes, post September 11, 2001 security check processes, Federal Bureau of Investigation (FBI) background check delays, lack of a scalable workforce, dissolution of the INS, and an immature Department of Homeland Security (DHS) that has struggled with immigration regulatory processes, have either contributed to backlogs or impeded efforts to eliminate them.

Despite the aforementioned USCIS has made dramatic gains in reducing backlogs and wait times for applicants for benefits over the past three fiscal years, and many of the agencies identified above have contributed substantially to that success. Unfortunately, while these achievements are both significant and welcome, the gains are not the result of strategies that will prevent the growth of future backlogs. That is because eliminating the backlog cycles at USCIS requires identification of the chain of responsibility among the USCIS, DHS, Department of Justice (DOJ), FBI, OMB, Office of Personnel Management (OPM), and the United States Congress. As with any chain, ignore any of the links and failure is the likely result.

WHAT HARM IS CAUSED BY BACKLOGS

The consequences of backlogs are varied and often severe; prolonged family separations, lost opportunities for families to migrate to the United States; companies being unable to get the permanent or temporary workers they need when they need them; permanent residents being denied employment opportunities reserved for citizens; and the lives of unattended minors and relatives of refugees and asylees being placed at risk. Academicians and immigration statisticians are hindered in their attempts to provide meaningful analysis of migration trends because backlogs can

lead to incorrect conclusions. The backlog cycle[1] can decrease or increase the numbers of individuals who immigrate, or who become citizens during specific periods of time. Because of this it becomes extremely difficult to draw conclusions or prepare long-term forecasts critical to inform a variety of public policy matters.

Backlogs are self generating. Applicants awaiting decisions on adjustment of status applications may need to file several applications for extensions on temporary stay or for interim benefits including, work authorization or foreign travel authorization. Backlogs also cause severe stress among USCIS employees and their families as employees are routinely required to work overtime during the workweek and often on weekends, as well. Because of a succession of workload surges during the past 10 years forced overtime has become a fact of life for many USCIS employees.

The DHS Ombudsman argues that backlogs create national security vulnerabilities. He notes that significant numbers of applicants for adjustment of status will ultimately be deemed ineligible to adjust their status, but because of backlogs applicants may remain in the United States for long periods of time before a final determination is made. Although USCIS background check procedures ameliorate the risk identified by the Ombudsman, it is true that backlogs create opportunities for ineligible aliens to remain in the United States for extended periods of time. It is also true that permitting ineligible applicants to abuse the system to extend their residence in the United States is not an acceptable condition.

WHY HASN'T USCIS BEEN ABLE TO ELIMINATE ALL BACKLOGS

Backlogs are generally event-driven. The current backlog cycle has its roots in the Immigration Reform and Control Act of 1986 (IRCA). That Act generated waves of application surges that overwhelmed the adjudicative capacity of the INS/USCIS. Ironically, it was not the initial legalization wave that overwhelmed INS records and adjudicative processes, as well as FBI fingerprint clearance processes. Instead, it was secondary wave consisting of lawful permanent residents who began filing for naturalization during the mid to late 1990s in record numbers that exceeded the infrastructure capabilities of the INS. Between 1981 and 1990 INS received 2.4 million applications for naturalization. During the 1991 to 2000 period INS received 7.4 million applications, a 208% increase.[2]

In addition to suffering from its own processing system failures the INS was further hampered by the inability of the FBI to timely process fingerprint check and name check background requests. From the mid 1990s forward immigration application processing would increasingly be negatively impacted by processing delays associated with background checks. The fingerprint check process with the FBI, however, would evolve to become a model process that is better, faster, and more secure. The extremely efficient live scan fingerprint system featuring electronic capture and transmission between USCIS and the FBI achieves response times in minutes or hours as opposed to months for the old paper and ink process it replaced. Unfortunately, name check processes have become even more problematic than during the 1990s because the vulnerabilities are now better understood, but the solutions remain complex and labor intensive.

INS made substantial progress on backlogs during FY 2001, but following the terrorist attacks the FY 2002 focus shifted from backlog reduction to enhanced identity verification efforts. Adjudicators were fearful of approving applications because no one knew which application could contain the next potential terrorist. The Attorney General ordered mandatory Interagency Border Inspection System (IBIS) checks on all applicants for benefits. DOJ also decided to use INS adjudication officers to conduct the National Security Entry-Exit Registration System (NSEERS) interviews. In addition to the hundreds of adjudicators reassigned to conduct background checks, hundreds more were reassigned to conduct NSEERS interviews. Then, in November 2002, INS learned that it naturalized an individual suspected of being a terrorist. Subsequent reviews revealed that INS had received two negative responses from the FBI in response to routine background check inquiries despite the existence of FBI investigative records. INS ordered field offices to halt work on a large volume of adjustment of status and naturalization applications, reviewed the incident with the FBI then returned approximately 2.6 million name checks to the FBI for rework. Unfortunately, the rework resulted in processing delays for hundreds of thousands of customers.

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[1] Backlog cycle refers to a repeating pattern of growing volumes of pending applications with receipts far exceeding completions followed by a period of backlog elimination efforts during which time completions far exceed incoming receipts.

[2] See 2004 Yearbook of Immigration Statistics, Table 31, Petitions for Naturalization Filed . . . Fiscal Years 1907 to 2004

As INS' Immigration Services Division was preparing to become a stand-alone agency in DHS on March 1, 2003, it was still growing backlogs, still dealing with a workforce that feared making a wrong decision, still underfunded, and now lacked an administrative support infrastructure since DHS had assigned all INS administration and IT support programs to ICE. However, by the end of its first year as an agency within DHS, USCIS stopped the growth of backlogs. Within the next six months it was reducing backlogs. By the end of FY 2006 it had met a majority of its goals to reduce processing times to six months or less. During the same period that USCIS reduced backlogs it improved the integrity of its processes. These gains were made possible only through Congressional appropriations as well as premium processing fee funds.

BUILDING INTEGRITY INTO THE ADJUDICATIVE PROCESSES

One new construct that initially caused a fair amount of disagreement within and DHS was the creation of the Fraud Detection and National Security (FDNS) office. Some argued that it represented a USCIS effort to establish its own investigative force in direct competition with ICE, and that it did not belong in a service organization. I strongly disagree. FDNS was established to assist adjudicators make the correct case decisions through evidentiary verification activities. If fraud is identified FDNS will review the record to determine whether the suspected fraudulent application is part of a broader conspiracy or a single party fraud case. Fraud cases are referred to ICE for criminal investigation and prosecution. FDNS may continue to offer support during the investigation and prosecution stages. FDNS enhances ICE's capabilities by eliminating referrals for investigation based upon mere suspicion and by offering expertise in adjudications requirements and case support activities.

FDNS also fills the gap between USCIS responsibilities and ICE responsibilities. When ICE initiates a conspiracy investigation its goals are to stop the criminal enterprise, prosecute the principals, seize assets, and initiate removal proceedings where appropriate. It is not an ICE responsibility to adjudicate the hundreds or thousands of applications that may individually be suspect. That responsibility rests with USCIS and each and every decision to deny must stand on its own review of case facts. It is FDNS' responsibility to bridge that gap by assisting adjudicators to obtain the evidence needed to render the correct decision on each and every application or petition filed. FDNS also assists in resolution of background check hits, and conducts sampling surveys of the various benefit processes to identify high risk processes.

In addition to the obvious benefits described above, the work of FDNS sends a clear message to USCIS employees—that agency leadership cares about the integrity of the adjudicative processes. This is invaluable for the long-term health of USCIS.

HOW CAN THE BACKLOG CYCLE BE BROKEN

USCIS defines a backlog as the volume of pending application work that exceeds the cycle time (stipulated processing time) for that particular adjudication. Since different benefit applications have different evidentiary and processing requirements cycle times necessarily vary by form type.

Backlogs develop when the *load* represented by the volume of applications and petitions (converted to labor hours) filed with the agency exceed its adjudicative *capacity*.

Because application volumes or *loads* can be converted into hours of required adjudicative effort, and because the *capacity* of the USCIS workforce can also be converted into hours of available adjudicative effort, the solution to backlogs is to ensure that the adjudicative *capacity* meets or exceeds the *load* at all times.

Since both the *load* and *capacity* can be accurately calculated the only remaining variable in eliminating backlogs is *utilization.* USCIS must manage or utilize its adjudicative capacity such that it directs sufficient hours within its overall *capacity* against each and every form type so that it effectively meets the *load*. For example, if the total load represented by all of the FY 2007 applications and petitions is 12 million hours of adjudications work, USCIS must possess the capacity and must manage the dedication of 12 million hours to timely complete all FY 2007 filings.

Workload calculations do not present challenges to USCIS. IT possesses the expertise to accurately determine the *load* that any application surge will create. It also possesses the expertise to determine its adjudicative *capacity.* The principal challenges for USCIS include; forecasting surges, creating a scalable workforce to meet increased and decreased load demands, managing its capacity so that it operates as efficiently and as effectively as possible, gaining access to the funding authorization

before a surge hits, eliminating the current practice of paper-based adjudication plus electronic-based adjudication of the same application in favor of a single electronic-based adjudication.[3]

USCIS' backlog elimination efforts to date have been made more difficult because backlogs, employee attrition rates, and filing surges do not occur uniformly throughout its 250+ offices. It may have a capacity surplus in one office and a capacity deficit in another. Statutes, government rules, customer concerns, and paper intensive processes combine to limit its ability to move work from one office to another. Details of employees from offices with greater capacity to ones with less capacity, as well as mandatory overtime, have become routine management tools, however, details are very costly, disruptive to employees' lives, limited by available office space, and may result in lower quality adjudications. Agency managers have reported that overtime and employee details to backlogged offices frequently result in diminishing returns as employee burnout leads to increases in errors. Adjudicative costs can rise steeply due to overtime payments and due to the amount of rework needed on partially-completed cases.[4]

One of the most significant issues confronting USCIS in effectively managing load, capacity, and utilization is application surges.[5] *Surges* are a fact of life for USCIS, and any plan to prevent backlogs *must* have an effective surge response plan. To deal with surges USCIS must have certain elements of its infrastructure scalable[6] as well as a scalable workforce.

IDENTIFYING THE CHAIN OF RESPONSIBILITY

Even if USCIS accurately forecasts the timing and increased workload of a surge, it still may not be able to timely process the new workload without help from its partners.

- DHS, OMB, and Congress must provide the funding authority to expand USCIS' adjudicative capacity,[7] and
- DHS and OMB must facilitate the timely publication of necessary rules and notices in the Federal Register, and
- FBI must have the capacity to process greater volumes of biometric and biographic background checks,[8] and
- USCIS' operating plan must include scalable contracts for mail processing, file creation, data entry, biometric capture, records storage, IT services, and facilities expansion. USCIS must review plans with its contractors to ensure viability and must develop its own plans for a scalable workforce and scalable

[3] The dual adjudication process adopted by the INS and maintained by USCIS is inefficient. When INS introduced the CLAIMS 4 Naturalization electronic processing system agency leadership was promised efficiency gains of 25% or more. Unfortunately, processing times actually increased by approximately that amount because the system efficiencies were more than cancelled out by the requirement that the adjudicating officer continue the full paper adjudication and then adjudicate the case in the system as well.

[4] Partially-completed casework typically involves continuing a case without decision due to an eligibility issue that has been discovered during the interview or case review process. When a detailed officer returns to her home office it is a common occurrence that these partially completed cases will require reassignment to another officer who will then review the entire record again to become familiar with the case facts and to be certain that the first reviewer did not miss any key issues or evidence.

[5] Application surges result from a variety of factors including new legislation, statutory numerical limitations, grants of temporary protected status, reactions to proposed fee changes, modified processing requirements or changes in public policy. The annual commencement of the H-1B filing period on April 1st, is an example of a predictable surge in petitions. A new grant of temporary protected status may be unpredictable.

[6] Creating a scalable infrastructure is particularly difficult for a government entity. However, USCIS developed its Application Support Centers (ASC) as scalable fingerprint and biometric identification centers. The ASCs are contract facilities with contract staff, but each such facility has on-site government oversight. The performance record of these facilities is excellent.

[7] The mere fact that USCIS collects application fees and deposits them in its Examinations Fee Account does not mean that it can access those funds. DHS, OMB and then Congress must approve any effort by USCIS to increase its funding—a process that may be blocked, delayed, or simply ignored at any step.

[8] The FBI conducts both fingerprint checks (biometric) and name checks (biographic) for the USCIS. Fingerprints provide criminal history information. Name checks ascertain whether ineligibility information exists in FBI records or whether the applicant is the subject of an ongoing investigation by the FBI.

facilities or develop a virtual office[9] that can obviate the need for space expansion

THE CURRENT FUNDING SYSTEM IS FLAWED AND CAN LEAD TO BACKLOGS

Fees have long been charged to petitioners and applicants for immigration benefits, but the decision to require that USCIS be totally dependent on fees is relatively new. There isn't anything conceptually wrong with requiring that USCIS recapture the costs of administering the adjudications program, however, USCIS and its customers are vulnerable to the current bureaucratic processes and appropriation policies.

Although USCIS is a fee funded agency it does not have access to fees except through the annual appropriation process, or through the very inefficient and unpredictable reprogramming process. Workload surges because of legislation or special programs such as TPS may generate tens or hundreds of millions of dollars in new fees, but USCIS may not receive Congressional authority to access those funds. This scenario occurred in 2000 when Congress passed the Legal Immigration Family Equity Act (LIFE Act). That Act generated over one million additional applications with fees, but because the legislation did not authorize INS to access the revenue, and because a subsequent reprogramming request was denied by Congress, INS had to hold the applications until such time as it received funds needed to adjudicate the additional caseload. Access to LIFE Act fees deposited in the Examinations Fee Account was not authorized by Congress until the following fiscal year.

THE CURRENT FEE SYSTEM CREATES VULNERABILITIES FOR USCIS

The non-fee, and Congressionally-restricted fee application work of the USCIS now amounts to hundreds of millions of dollars in costs annually. The non-fee applications include all asylum applications, refugee applications, military naturalization applications, and fee-waiver applications. Congress has limited by statute the fee paid by applicants for temporary protected status to $50, covering only a small fraction of the true cost of that adjudication. The financial liability that these non-revenue generating applications create for the USCIS makes it very vulnerable to increases in non-fee applications and/or decreases in fee applications given the significant surcharge placed on each fee application. As USCIS reduced its adjustment of status backlogs during FY 2005 and FY 2006 it realized that it would receive substantially fewer requests for employment authorization. I recall that we estimated a reduction in fee revenue of between $50 to $60 million dollars. The financial ramifications were significant because each of those employment authorization application fees carried a large surcharge that was needed to fund asylum, refugee, military naturalization and other non-revenue generating workloads.

Transforming USCIS business processes and IT systems

The future success of USCIS requires that it transform its business practices so that it ends the current dual-adjudication process (paper and electronic), creates a central view or account that contains complete immigration history information, offers customers multiple channels for accessing information and filing, and develops a robust inventory and case management system.

Although it is frustrating that these capabilities do not exist today we should also recognize the progress that USCIS has made during a very difficult time with severe funding constraints.

Business process improvements that have been initiated include;

- Development of the lock-box initiative with the Treasury Department to deposit fees quickly and to enter application data into a national tracking system
- Case tracking on-line
- Electronic forms distribution
- A web site that provides outstanding information and research capabilities
- Transparency of its operations by providing on-line access to the Adjudicator's Field Manual
- Transformation of the Application Support Centers from fingerprint centers to biometric data capture and identity verification centers.

[9] A virtual office can be created by developing the capability to move an application electronically to an adjudications officer regardless of their physical location. Work-at-home programs and relocating certain applications from offices that lack sufficient capacity to others that possess excess capacity will be enhanced.

- Improved processes for permanent residents who need to replace a lost or expired permanent resident card (green card)
- Development of the Fraud Detection and National Security (FDNS) program to assist adjudicators in evidentiary verification efforts, and to assist ICE by identifying, criminal fraud conspiracies, and individuals who pose public safety and/or national security risks
- Digitization of immigration records supporting both long-term storage needs and simultaneous availability of records to all three immigration agencies
- Development of analytical tools to accurately measure workloads in each and every office for staffing purposes, and zip code analysis of application receipts to ensure that offices are located where customers actually reside.

In addition, USCIS is currently engaged in a number of active pilot projects to test establishment of customer accounts, enumeration and tracking options, records digitization, and revised adjudication procedures.

THE INFORMATION TECHNOLOGY (IT) MYTH—*IT CAN ELIMINATE OR PREVENT THE GROWTH OF BACKLOGS*

USCIS business processes cannot be transformed into efficient, effective, and fraud resistant approaches without dramatic improvements in its IT capabilities. Conversely, building new relational databases and system interfaces will accrue only very modest gains unless business practices are transformed.

USCIS processes remain primarily paper-based, and even its electronic application filing opportunities require the customer to mail supporting evidentiary materials in paper format. Agency rules require business petitioners to file extensive paperwork with each and every petition to prove that it is a legitimate business capable of paying the proffered wages. This wastes the customer's time, increases the customer's preparation costs, increases the length of time the adjudicator spends reviewing evidence, and increases file storage costs as the same corporate reports and financial documents may be stored in thousands of separate petition files.

As the DHS agency responsible for immigration records USCIS also has the responsibility to make those records available to ICE and CBP when needed. This requires not just digitizing records but also creating the business rules and governance rules with respect to maintenance and updating of record information.

USCIS faces a complex set of tasks in its efforts to transform both its business processes as well as its IT systems. Fortunately, it is well-positioned to move forward with that effort now that backlogs have been reduced and the premium processing funds can be reserved to fund transformation efforts.

RECOMMENDATIONS

My first recommendation is that the new fee schedule remain in place. The revenue implications for USCIS would assuredly curtail business transformation efforts with long-term negative implications for all USCIS customers. I do believe that by transforming business and IT processes USCIS can reduce its overall operating costs, and this may support lower fees in the future or at least curtail the rate of fee increases beyond the normal inflation-based increases. USCIS faces a complex set of tasks in its efforts to transform both its business processes as well as its IT systems. Fortunately, it is well-positioned to move forward with that effort now that backlogs have been reduced and the premium processing funds are available to fund long-term improvements.

With the new fee schedule in place USCIS can use the resources generated by the premium processing fees to fund its transformation efforts. Those funds should be protected or reserved for that purpose.

To ensure success of its efforts to break the backlog cycle and to transform its business practices I also recommend that;

- USCIS develop a surge capacity plan and require the same from its contractors
- USCIS continue efforts to eliminate paper, eliminate redundant evidentiary requests, and establish processes for electronic verification of application and petition data
- USCIS implement its transformation efforts in concert with CBP and ICE as all three immigration agencies rely upon USCIS application and petition data, and records systems
- USCIS in concert with the DHS CIO develop IT systems that provide inventory control, case management, case status, and address information, includ-

ing a capability to populate or flag multiple DHS systems with change of address data

- Congress should consider funding new mandates until such time as new fees can be implemented, or in the alternative, develop a process where funds will be appropriated up front, but must be repaid as the revenue is generated through fees
- DHS develop the capability to efficiently review and publish regulations and regulatory notices and this capability should be sufficiently robust that it not break down during leadership changes at the Department
- OPM assist USCIS in developing a more flexible workforce (position classification for temporary or part-time workers) that can expand and contract to deal with workload shifts
- USCIS improve its officer training to achieve its objective of timely and consistently accurate adjudications
- Background check process delays need to be eliminated
- A decision needs to be made concerning how long an application may be held in abeyance for suspicion of ineligibility, and procedures should be published identifying who has authority to suspend an adjudication and for what period of time
- Background check wrap-back functionality needs to be incorporated into the background check systems so that USCIS is automatically notified if potentially disqualifying information is obtained by intelligence or law enforcement agencies subsequent to a USCIS background check request

Thank you, Madam Chair and members of this subcommittee. I look forward to answering your questions.

Ms. LOFGREN. Thank you very much, Mr. Yates.

And finally, Mr. Rivera. Thank you.

TESTIMONY OF RHADMES RIVERA, VICE PRESIDENT OF 1199, SEIU UNITED HEALTH CARE WORKERS EAST

Mr. RIVERA. Good morning, Chairwoman. Good morning, Mr. Gutierrez. Good morning, Mr. King.

On behalf of 1199 SEIU Citizenship Program, we thank you for the opportunity to address this Subcommittee and other distinguished guests that are here today. I will be able to talk about the fee increase and the impact on the health-care workers that we serve.

The 1199 Citizenship Program began in January 2001. The program is administered by our benefit fund and pension fund and training and education fund and provides an array of innovative and comprehensive benefits, including educational and training programs that are designed to accommodate the needs of more than 300,000 union members.

We are the largest health-care workers union in the Nation, representing workers in homecare settings, hospitals, nursing homes, pharmacies, clinics, and other health-care agencies. Our membership reflects the diversity of immigrants to this Nation, particularly in New York City. Our members include health-care workers from continents and countries from around the world, including the Caribbean, South America, Central America, Canada, Africa and Europe, with the majority of members who utilize the program coming from the Caribbean.

The top countries of the top percent are Jamaica, Trinidad, Dominican Republic, and Guyana. We are proud that our membership embodies such rich diversity, and are reminded that our Nation indeed is a land of immigrants.

Our program overview: The benefits of U.S. citizenship are numerous. Citizenship provides our immigrant members with more opportunities and a greater feeling of belonging and a sense of security. They are able to fully integrate themselves into our country. More importantly, through our citizenship, our members gain the right to vote and participate more fully in the democratic process.

We are committed to designing programs that expand the rights and empower our members, who are the health-care workers who keep our hospitals, nursing homes, clinics, and other health-care agencies running.

The Citizenship Program has served more than 7,000 in the process of naturalization and benefits. Yearly, our program averages more than 1,000 member participants. Through the efforts of a dedicated and competent group of professionals, applicants are offered free legal assistance and educational support, including application preparation, review and filing of the form N-400, N-600, I-90, N-565, N-648, AR-11 and others.

The program offers a different class choice for applicants to study U.S. Government and civics while reviewing interview techniques. We have developed an academic curriculum, video, and book highlight program stories that we provide to you.

To date, our office has submitted over 6,178 N-400 applications. We proudly brought up almost 4,677 persons that are naturalized U.S. citizens through the help of our program. Yet hundreds of our applicants are at an advanced stage of naturalization, awaiting interview or having the oath.

We note more than 500 applications that are in backlog waiting adjudication. Some of these applications have not received any information through the form G-28 Notice of Appearance as Attorney or Representative submitted along with the application.

The 1199 SEIU Citizenship Program is accredited and recognized by the Board of Immigration Appeals.

The fee impact: Recently, the fee increased effectively July 30, 2007, is the biggest immigration application fee increase recorded in the history of immigration. The USCIS reported that overall applications and petitions were increased an average of nearly 86 percent. Most agree that the new fees are unprecedented. The fees for naturalization applications have increased five times since 1999, from $225 in 1999, to now the new fee of $675.

Our program is currently experiencing a drop in participation during the weeks since the new fees took effect. The scheduled appointments dropped by 50 percent during the month of August. Many of our members are voicing concerns of the struggle of saving money for the application.

In contrast, during the months leading up to the increase, we serviced double our normal capacity. Our members participated in record high numbers in an effort to get their applications processed before the scheduled increase.

Ms. LOFGREN. Mr. Rivera, your 5 minutes has expired a little bit. I wonder if we could ask you to summarize, and then we can get to our questions. We do appreciate your testimony.

Mr. RIVERA. Okay. Essentially, our main concern is that normal family, normal union members will not be able to pay the increase, knowing that regular workers probably get paid $650 a week, and

the fee for a whole family will be rising over $2,000-something. It is our concern that we need to change this approach and be able to provide working people with the right to become a citizen in this country.

[The prepared statement of Mr. Rivera follows:]

PREPARED STATEMENT OF RHADAMES RIVERA

INTRODUCTION

Good morning Chairwoman, on behalf of the 1199SEIU Citizenship Program, thank you for the opportunity to address the Subcommittee and other distinguished guests on the important topic of USCIS fee increases and the impact on the healthcare workers we serve.

The 1199SEIU Citizenship Program began in January 2001. The program is administrated by our Benefit and Pension and Training and Education Funds. The funds provide an array of innovative and comprehensive benefits including educational and training programs that are designed to accommodate the needs of the more than 300,000 union members of 1199SEIU United Health Care Workers East. We are the largest healthcare workers union in the nation, representing workers in homecare settings, hospitals, nursing homes,, pharmacies, clinics and other healthcare agencies.

Our membership reflects the diversity of immigrants to this nation—particularly to New York City. Our members include healthcare workers from continents and countries from around the world, including the Caribbean, South America, Central America, Canada, Africa and Europe, with the majority of members who utilize the program coming from the Caribbean. The countries in the top percentile are Jamaica, Trinidad, Dominican Republic and Guyana. We are proud that our membership embodies such rich diversity and are reminded that our nation is indeed a land of immigrants.

PROGRAM OVERVIEW

The benefits of U.S. citizenship are numerous. Citizenship provides our immigrant members with more opportunities and a greater feeling of belonging and a sense of security—fully integrating them into our country. Most importantly, through citizenship our members gain the right to vote and participate more fully in the democratic process. We are committed to designing programs that expand rights and empower our members, who are the healthcare workers who keep our hospitals, nursing homes, clinics and other healthcare agencies running.

The Citizenship Program has served more than 7,000 people in the process of naturalization and related benefits. Yearly our program averages more than 1,000 member participants. Through the efforts of a dedicated and competent group of professionals, applicants are offered free legal assistance and educational support. Assistance includes application preparation, reviewing and filing of the forms N–400, N–600, I–90, N–565, N–648, AR–11 and FOIA's.

The Program offers an array of different class choices for applicants to study U.S. Government and Civics while reviewing interview techniques. We have developed an academic curriculum, video and book highlighting immigrant stories.

To date our office has submitted over 6, 178 [N–400] applications. We proudly boast 4,677 persons that are naturalized U.S. citizens through the help of the program. Yet hundreds of our applicants are at advanced stages of naturalization (awaiting interviews and oaths). We note more than 500 applications that are in backlog and waiting adjudication past USCIS established average processing time frames. Some of these applicants have not received any information although the form G–28 Notice of Appearance as Attorney or Representative was submitted along with the applications. The 1199SEIU Citizenship Program is accredited and recognized by the Board of Immigration Appeals.

FEE INCREASE IMPACT

The recently imposed USCIS fee increase, effective July 30, 2007, is the biggest immigration benefit application fee increase recorded in the history of immigration fee changes. USCIS reported that the overall application and petition fees were increased an average of nearly 86%. [USCIS Press Release January 31, 2007] Most agree that the new fees are unprecedented. The fees for naturalization applications have increased five times since 1999 from ($225 in 1999 to now $675 including the biometrics).

Our program is currently experiencing a drop in participation during the weeks since the new fees took effect. Scehduled appointments dropped by 50 percent, during the month of August. Many members are voicing concerns as they struggle to save money for the application. In contrast, during the months leading up to the increase, we serviced double our normal capacity. Our members participated in record high numbers, in an effort to get their applications processed before the scheduled increase. We had such high numbers that we partnered with other community service providers to accommodate the increased participation in our program.

Our union members have good jobs with fair contracts negotiated that include comparable pay and comprehensive benefits. However, they voice that the new fee is a lot of money for working class people to be able to afford. Some are saving up or borrowing money so they can afford to file for citizenship. Still others—even before the latest increase—expressed that they were having difficulties raising the money when the fee was $400.00. We often learn of workers using vacation pay or even tax refunds to pay for naturalization application fees.

Citizenship is a benefit that typically families often want to do together. Husbands and wives often naturalize together with their children over the age of 18. The increase makes it difficult for a working class family to simultaneously apply for citizenship.

A family of three would need $2,025 to file for U.S. citizenship together.

And Home Care and Nursing Home workers—who provide care to some of the most vulnerable members of our society—still earn low wages and are fighting for more equitable earnings. The high naturalization fees are especially hard for these workers.

For too many of the healthcare workers we represent, the cost for naturalization application fees is a grave economic burden and they sometimes must sacrifice basic needs in exchange for a chance to live the American dream.

CONCLUSION

Individuals eligible to naturalize are lawful permanent residents working and paying taxes. They already contribute to the United States economy. Lawful permanent residents share the same tax responsibilities as Untied States citizens. Consequently, they already pay their share for the operation of government services.

We predict that the newly imposed fees will reduce the number of working-class immigrants who can obtain citizenship because they will not be able to afford it. American citizenship is a privilege and financial cost should not deter hard working, lawful, permanent residents from fully participating in this great nation.

The forms N–400, I–90, and N–600 should not be increased by the same percentage as other applications, since these forms are used to provide immigration benefits to the population of immigrants that are already permanent residents. And all of us should work together to support hard-working immigrants, like the healthcare workers who are 1199SEIU members, so that they can live the American dream just like the many generations of immigrants who came before them.

Thank you, Chairwoman Lofren for the opportunity to testify today.

Ms. LOFGREN. We thank you for your testimony, as well as your tremendous service to our country.

I know that Mr. Gutierrez has a competing hearing in Financial Services, so rather than begin the questioning, I am going to start with him and then go to Mr. King.

Mr. GUTIERREZ. I thank you so much. Thank you so much, Madam Chairwoman. I really appreciate it.

Sorry. My glasses broke. I will do the best I can. I am blind here.

But I want to thank Mr. Vargas and Mr. Yates and Mr. Rivera for taking the time to be here this morning and for their wonderful testimony—it is going to be very, very helpful to us—and especially to SEIU in New York City and the NALEO National League for all their endeavors and their citizenship and in defense of immigrants. I want to thank you for that.

I want to just take a moment as we re-examine this just to go back to the immigration examination fee account. This is in the Immigration Nationality Act, page 309, and it says that "fees for pro-

viding adjudication and naturalization services may be set at a level that will ensure recovery of the full cost of providing all such services, including the cost of similar services provided without charge to asylum applicants and other immigrants."

So, you know, we are very careful here about "must," "may," and what kinds of words we use, and, indeed, we have appropriated funds, at least since I have been in the Congress. I arrived here in 1993, and I can remember on several occasions voting for additional funds. So this notion that the immigration naturalization, the citizenship brings to us from the Federal Government that they must is really not true because I just read it from page 309. It says, "may."

Now, of course, I might have a little difficulty because you know English is not my first language, but I had good nuns, and they taught me the use of verbs, and it seems to me that "may" is "may" and "must" is "must," and when they told me I may do something, I might not do it, and, indeed, they do not need to do it.

Would anybody disagree on the panel with that assertion from the Immigration Nationality Act? No. Good.

Ms. LOFGREN. The record will note that all the Members shook their heads no.

Mr. GUTIERREZ. Okay. Because I think it is fundamentally important.

The other thing is it seems to me when Government does infrastructure improvement, for the most part, what it does is it sells bonds. There is a bond issue.

This is rather expensive endeavor, and the citizens affected, whether it is a municipality or a State or whatever locality, just those taxpayers at that particular moment, are not going to benefit from it, so, therefore, you know, future people are going to benefit from that road, that bridge, that school, that infrastructure, whether it is the sewer or water.

I mean, there are huge infrastructure improvements that are being shouldered by one particular group of immigrants, the group of immigrants today that wish to become citizens of the United States, and so I think it would be fair and incumbent upon us to see how the payment of this infrastructure is paid by all of us.

The other thing is we just heard testimony on 6 percent. Mr. Yates, do you know what 6 percent would be of the total? Do you know what the total increase is in terms of dollars?

Mr. YATES. Not off the top of my head, I do not.

Mr. GUTIERREZ. Approximately? Is it $5 billion more? What amount are they looking for?

Mr. YATES. Oh, I believe the figure is closer to $600 million.

Mr. GUTIERREZ. $600 million.

Mr. YATES. Right.

Mr. GUTIERREZ. Okay. So, as we look at this additional $600 million that we are looking for, let me just ask the members of the panel if any of them would object to their tax dollars being used for the citizenship processing fee of a soldier in the armed forces of the United States at this particular time of war.

Mr. Vargas?

Mr. VARGAS. Not only would I not object, I think it would be an honor to be able to help finance that.

Mr. GUTIERREZ. Mr. Yates?

Mr. YATES. I agree. I do not object to that.

Mr. GUTIERREZ. Mr. Rivera?

Mr. RIVERA. I agree.

Mr. GUTIERREZ. I think most Americans would say that those are the armed forces, we should all contribute, and it would be, as Mr. Vargas said, not only the right thing to do, it would be an honor and a privilege to pay for them. And yet we have the immigrant community shouldering and bearing the brunt for those that are on the front lines in defense of this Nation today.

The fact remains that there 35,000 permanent residents of the United States serving in the armed forces. There are an additional 45,000 to 50,000 members of the armed forces that were once permanent residents, today who are naturalized citizens, a huge body of people that are serving in our armed forces, and statistically we see time and time again about their heroics.

I know my time has expired, so I would just simply say, in conclusion, I think we need to look at this in a different way, and I thank Mr. Rivera and Mr. Yates and Mr. Vargas for coming before the Committee and helping us with this dilemma, and I thank the gentlelady so much.

I am going to go see Mr. Bernanke with the prime market and what is going on with their——

Ms. LOFGREN. Help us out there.

Mr. GUTIERREZ. Thank you.

Ms. LOFGREN. The gentleman's time has expired.

The gentleman from Iowa is recognized for 5 minutes.

Mr. KING. Thank you, Madam Chair.

You know, I listen to this dialogue that has taken place here, the gentleman from Illinois, a couple of times on these panels, and I trust each of the witnesses were here to hear the previous testimony in the room, you know, the question of who is shouldering the burden. Now we have a lot more people than that in the military, and then there will be all of those that are shouldering the burden. They all deserve to be equally recognized and honored and revered for that, as well as those who are immigrants.

Something that emerges, as I listen to this testimony, is the constant blending of the term "immigrant," and I want to draw that distinction, and I would ask Mr. Vargas, in our dialogue, "immigrant" is used interchangeably between legal and illegal, and could you draw a distinction between the two for us and tell us when you use the word "immigrant?" Does it mean both legal and illegal, or are you referring and implying that they be legal in your testimony here?

Mr. VARGAS. Mr. King, in my testimony today, my comments have been exclusively limited to legal permanent residents. These are individuals who have entered our country legally, have played by the rules, are taxpayers, and want to be full participants in American society.

Mr. KING. Thank you. I appreciate that answer.

And do you say the same, Mr. Rivera, or do you have a different view?

Mr. RIVERA. No, that is our view.

Mr. KING. Okay. It is just important because of this national dialogue we have had for the last several years. It gets blended and merged between the two.

And then I would go to Mr. Yates, and I would ask you, Mr. Yates, the issue was raised by the gentleman from Illinois in previous testimony, the number that I see is that had the fees for green cards not been increased when the update was requested, that would have made a difference of $82.5 million. Can you tell me what would have been the alternative if those fees had not been increased before the renewal of the green cards?

Mr. YATES. Based upon the Agency's testimony, they would have basically had a deficit. They would have operated at a deficit in adjudicating those applications. So they would have been faced at some point in time with putting a body of work aside that could not adjudicated because they would not have been able to pay their contractors and others to process that work.

Mr. KING. Or could they have, as Mr. Vargas has recommended, come to Congress and asked for an $82.5 million appropriation, or could they have calculated in the rest of the fee structure an increase on the balance of everyone else's fees to make up for that $82.5 million?

Mr. YATES. Those are options. Yes, sir.

Mr. KING. And I understand that it would not necessarily be valid to ask you to speculate on what they are, but I did want those options in the record for the consideration of the Committee and also the public, and I thank you for that analysis.

I want to make sure also that people do not guess where I am, and I believe that U.S. citizenship is precious, and I am hearing discussion here that puts a value on citizenship, and I look at the dollars that are required to go down the path of lawful permanent residence and then naturalization application, and I would ask Mr. Vargas—and you are the one that has advocated that this be a taxpayer-funded endeavor, at least in a significant degree—could you tell me how you come to that conclusion? And do you put a dollar value on citizenship, and if you do not, how do you come to the conclusion that taxpayers should fund it?

Mr. VARGAS. Mr. King, I put a tremendous value on citizenship. I think this country benefits when legal permanent residents become citizens. I think our country is stronger for that. I think you and I benefit when a legal permanent resident becomes a naturalized citizen.

What we are advocating is partnership between the newcomer, the legal permanent resident, and this country. People should pay a fee for a reasonable service, but what we are doing is asking people to pay a fee for a service plus. They are being asked to pay surcharges. They are being asked to pay for one-time modernization improvements that benefit the whole country. So——

Mr. KING. I apologize. But I see your testimony says according to data from the 2000 Census, 43 percent of noncitizen households pay at least $700 in rent each month, and you have numbers at 36 percent that have annual incomes of less than $25,000.

Have you seen the Robert Rector study from the Heritage Foundation that shows that low-skilled households, regardless of their immigration status, are a net burden, high school dropout-headed

households are a net burden on our taxpayers to the net cost of $22,449 a year. This is an economic recommendation you make. Have you evaluated that study, and do you have a response?

Mr. VARGAS. I have not evaluated that study. I would be happy to look at the study, but I do also know that naturalized citizens also over the course of their life in the United States end up having higher incomes, meaning they pay more in taxes.

Mr. KING. You also know they draw down more in services as well at the same time, and so I think we have some clarity on that, and I appreciate your testimony, everyone's, and I yield back the balance of my time.

Ms. LOFGREN. Thank you. The gentleman's time has expired.

Given the time, I am going to be very brief, and I think perhaps I will submit some of my questions in writing.

I would just note that I have been complaining about the lack of technology in this Agency for several decades, and Mr. Yates knows that because he has heard me complain, and actually I complained about it before I was ever a Member of Congress. It has been a tremendous frustration to me. We are still creating paper files in the Agency. It is absurd.

On the other hand, I cannot help but note that over the years we have done a variety of things. We have allocated tax funds to improve the technology, and we never got it. We did a premium processing fee for well-heeled applicants. I mean, they were happy to pay the additional fee, and yet they did not get what they paid for, and I actually think that is illegal.

I mean, you are not allowed to make a profit off of the applicants, and those fees were diverted. I mean, we took their money, and they did not get what they paid for.

And I note on the fee structure, for example, the FBI fee structure right now, the FBI, as I understand it, is charging the Agency an average of $10. For the most extreme case, the cost is $22. But the Agency is charging the applicants $80. So that is a little profit center for the Agency, and I question even the legality of that.

And it is not so much for the well-heeled applicant. I do not have a concern. I mean, if you are earning a good salary and you can pay, you should pay this fee, and the companies certainly that are filing for, you know, scientists and engineers are happy. They are not complaining about it. They are happy to pay the fees.

But for your average working family, this is a very high amount, and we have had hearings in this room where every Member of this Committee has said we want people to become Americans. We have differed sometimes in our approaches on how best to help the immigrant community become thoroughly part of the fabric of the United States, but really there is no disagreement that we want immigrants to become completely part of the fabric of American society, and an important element of that is to help people become American citizens.

We want immigrants to become American citizens, and it just seems to me counterproductive, since we all believe that, to then put a financial barrier for people who are working and not getting a lot of money. And so I guess one question I will ask before we close, maybe to Mr. Rivera and Mr. Vargas, in particular, because

you are doing hands-on work with people in that category and helping them.

We have a fee waiver in place that the Agency expanded a bit after our hearing and further discussions. Is that going to help at all or help enough with the group of people that you are working with filing for citizenship and, if not, what adjustments should be made on that waiver provision so that the person working in the nursing home helping the baby boomer's parent can actually afford to become an American with us? Can I ask you that, of if you do not know now, you could get back to me?

Mr. RIVERA. That is funny. I mean, placing the entire burden on the fee is very difficult——

Ms. LOFGREN. Right.

Mr. RIVERA [continuing]. To sustain the Agency. We think that essentially Congress needs to allocate some money to fund this process.

Ms. LOFGREN. Right.

Mr. RIVERA. And there are a significant amount of services that are provided that are sustained by the fees paid by immigrant workers that should be allocated to something else, the cost of the administration of this Agency to be allocated in something else. There are a tremendous amount of ways that you can be moved out of the fee pay to somebody else.

Ms. LOFGREN. Mr. Vargas?

Mr. VARGAS. If I can reply, I would certainly answer more detail in writing, Chairwoman, but we do know that the applicants largely are unaware of the availability of the fee waiver.

But I would also like to advise you that my organization actually runs a loan fund where we make interest-free loans to individuals so they could help pay for——

Ms. LOFGREN. That is really admirable. That is terrific.

Mr. VARGAS. And our default rate is less than 5 percent.

Ms. LOFGREN. That makes me very proud to be sitting here talking to you.

My time has expired, and all the time has expired. I do thank you for your patience, for you willingness to be here to share your expertise. We will have 5 legislative days to ask additional questions in writing, and if we do that, we would ask that you answer as promptly as you are able to.

And, again, we thank you very much for your participation.

And this hearing is now adjourned.

[Whereupon, at 12:13 p.m., the Subcommittee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

LETTER TO DAVID WALKER, COMPTROLLER GENERAL OF THE GENERAL ACCOUNTING OFFICE (GAO) DATED SEPTEMBER 12, 2007

Congress of the United States
House of Representatives
Washington, DC 20515

September 12, 2007

Mr. David M. Walker
Comptroller General
Government Accountability Office
441 G Street, NW
Washington, D.C. 20548

Dear Mr. Walker:

The Department of Homeland Security's Citizenship and Immigration Service (USCIS) adjudicates immigration and naturalization applications and petitions, charging its immigrant applicant/petitioners user fees for many of its services. Although substantial direct appropriations had been applied over the last decade to specific projects such as USCIS's initiative to reduce its backlog of incomplete cases, a large and increasing proportion of the agency's funding has more recently come from fees. In accordance with applicable law, such fees may be set at a level to ensure recovery of the full cost of providing such services, including the costs of similar services provided without charge to asylum applicants or other immigrants and any additional costs associated with the administration of the fees collected. This year, USCIS has implemented a new fee structure incorporating an average 88 percent increase. The new fees became effective on July 30, 2007, and consequently 99 percent of the agency's proposed $2.6 billion budget for fiscal year 2008 comes from fees.

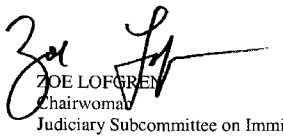
USCIS performs a vital national service. It has significant tasks ahead to maintain and improve the quality of its service, implement new technology to streamline its operations, and reduce its backlog of uncompleted cases. It is critical that USCIS be fully accountable for the fees it collects, including the methods used to allocate costs to be covered by fees, the approach and cost methodology for determining the fees charged, and the use of fee revenue only for authorized purposes. To ensure such accountability, we request that you review USCIS's cost accounting methods, including those used for developing its most current fee schedule, the assumptions underlying the allocation of costs covered by these fees, and the financial controls USCIS has put in place to ensure the appropriate collection and use of the fees.

PRINTED ON RECYCLED PAPER

September 12, 2007
Page Two
David M. Walker

We look forward to receiving your report. Please contact Blake Chisam, general counsel for the Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, at (202) 225-3926 to discuss the details of the upcoming study.

Sincerely,



ZOE LOFGREN
Chairwoman
Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law

DAVID PRICE
Chairman
Appropriations Subcommittee on Homeland Security

Fee Increases Imposed by USCIS Fee Rulemaking for Selected Immigration Applications, Effective July 30, 2007

Form No.	Description	Fee Before Effective Date of Rule	Current Fee	Percent Change
I–90	Application to Replace Permanent Resident Card	$190	$290	53%
I–102	Application for Replacement/Initial Non-immigrant Arrival-Departure Record (I–94)	$160	$320	100%
I–129	Petitions for a Nonimmigrant Worker	$190	$320	68%
I–129F	Petition for Alien Fiance´(e)	$170	$455	168%
I–130	Petition for Alien Relative	$190	$355	87%
I–131	Application for Travel Document	$170	$305	79%
I–140	Immigrant Petition for Alien Worker	$195	$475	144%
I–191	Application for Advance Permission to Return to Unrelinquished Domicile	$265	$545	106%
I–192	Application for Advance Permission to Enter As a Nonimmigrant	$265	$545	106%
I–193	Application for Waiver of Passport and/or Visa	$265	$545	106%
I–212	Application for Permission to Reapply for Admission into the United States After Deportation or Removal	$265	$545	106%
I–360	Petition for Amerasian, Widow(er), or Special Immigrant	$190	$375	97%
I–485	Application to Register Permanent Residence or Adjust Status	$325	$930	186%
I–539	Application to Extend/Change Nonimmigrant Status	$200	$300	50%
I-600/ I-600A	Petition to Classify Orphan as an Immediate Relative/Application for Advance Processing or Orphan Petition.	$545	$670	23%

Form No.	Description	Fee Before Effective Date of Rule	Current Fee	Percent Change
I–601	Application for Waiver of Grounds of Inadmissibility	$265	$545	106%
I–612	Application for Waiver of the Foreign Residence Requirement	$265	$545	106%
I–687	For Filing Application for Status as a Temporary Resident	$255	$710	178%
I–751	Petition to Remove Conditions on Residence	$205	$465	127%
I–765	Application for Employment Authorization	$180	$340	89%
I–824	Application for Action on an Approved Application or Petition	$200	$340	70%
I–881	NACARA—Suspension of Deportation or Application for Special Rule Cancellation of Removal	$285	$285	0%
N–336	Request for Hearing on a Decision in Naturalization Procedures	$265	$605	128%
N–400	Application for Naturalization	$330	$595	80%
N–565	Application for Replacement of Naturalization Citizenship Document	$220	$380	73%
N–600	Application for Certification of Citizenship	$255	$460	80%
N–600K	Application for Citizenship and Issuance of Certificate under Section 322	$255	$460	80%
	Biometric Services	$70	$80	14%

Source: USCIS Final Rule, "Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule," *Federal Register*, Vol. 72, No. 103, May 30, 2007, p. 29845.

Compiled by: NALEO Educational Fund

LETTER TO DR. EMILIO GONZALEZ, DIRECTOR, U.S. CITIZENSHIP AND IMMIGRATION SERVICES DATED FEBRUARY 20, 2007, FROM THE AMERICAN FRIENDS SERVICE COMMITTEE

American Friends Service Committee

1501 Cherry Street · Philadelphia, PA 19102-1403 · 215/241-7000 · www.afsc.org

February 20, 2007

Dr. Emilio T. Gonzalez
Director
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue, NW
Washington, DC 20529

Dear Dr. Gonzalez:

The American Friends Service Committee (AFSC) is a *Quaker organization that includes people of various faiths who are committed to social justice, peace and humanitarian service.* Grounded in the Quaker belief in the inherent dignity and worth of every person, AFSC works with immigrant communities in eighteen communities in fourteen states. AFSC's long and direct experience with community residents, local leaders, and grassroots organizations across the nation leads me to write to you concerning proposed fee increases by the U.S. Citizenship and Immigration Services (USCIS).

I wish to express our strong opposition to the proposed increases. Our analysis and experience tell us that the recently proposed increases are excessive and will create yet another obstacle for individuals seeking to adjust their immigration status.

The proposed fee increases will place too heavy a burden on the backs of immigrants, many of whom cannot shoulder the excessive costs and will be forced to postpone their dreams of becoming American citizens or to remain separated from their families. The size of the proposed fee increases is particularly troubling at a time when the administration has indicated that it wants to help immigrants become citizens of the United States.

We urge USCIS to work with members of Congress to create an alternative and permanent funding stream that will support USCIS operations. At the same time, AFSC will continue to urge Congressional leaders to fund immigration services and policies that benefit families rather than spending millions of dollars to underwrite policies centered on arrests, detention, and deportation, which cause untold family and community hardship.

The administration has made the democratic inclusion of immigrants one of its most prominent public messages. Dropping the proposed fee increases would add credibility to these public statements and also support immigrants in their efforts to contribute to the nation's vibrancy and future.

The economic wall raised by the proposed fee structure will diminish many people's hope to become permanent residents or citizens or to be reunited with their family members. Our field staff are already hearing concerns about the detrimental impact that higher fees will have for low-income and working class individuals and families.

We urge USCIS to adopt measures that do not restrict the opportunity of many families to become equal participants and contributors to the nation's social, cultural, political and economic future and to "do right" by removing restrictive and detrimental fee increases that will deny many immigrants the opportunity to work for and contribute to the nation's betterment.

Thank you for hearing our concerns. We look forward to your taking leadership on this critical matter.

Respectfully yours,

Mary Ellen McNish
General Secretary

Cc: Patrick Leahy, (D-VT) Chair, U.S. Senate Judiciary Committee

Edward Kennedy, (D-MA) Chair, U.S. Senate Judiciary Committee Sub-Committee on Immigration, Border Security and Citizenship

John Conyers, (D-MI) Chair, U.S. House Judiciary Committee

Zoe Lofgren, (D-CA) Chair, U.S. House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security and International Law

AMERICAN FRIENDS SERVICE COMMITTEE RECOMMENDATIONS ON
DHS DOCKET NO. USCIS–2005–0056 OF SEPTEMBER 19, 2007

American Friends Service Committee

1501 Cherry Street · Philadelphia, PA 19102-1403 · 215/241-7000 · www.afsc.org

The Chief, Regulatory Management Division
US Citizenship and Immigration Services
Department of Homeland Security
111 Massachusetts Avenue, NW, 3rd Floor
Washington, DC 20529

Re: Comments to DHS Docket No. USCIS-2005-0056

Dear Dr. Gonzalez:

The American Friends Service Committee (AFSC) is a Quaker organization that includes people of various faiths who are committed to social justice, peace and humanitarian service. Grounded in the Quaker belief in the inherent dignity and worth of every person, AFSC works with immigrant communities in eighteen communities in fourteen states.

Our long and direct experience with community residents, local leaders, and grassroots organizations across the nation leads me to write to you concerning proposed requirements for lawful permanent residents to replace their Permanent Resident Cards (Forms I-551 or "green cards") within a 120 day filing period.

AFSC supports establishing consistency for the cards used by lawful permanent residents. However, the reapplication process as announced, including the short application period and recently implemented higher fee structure, will create hardship, confusion, and possibly loss of proof of permanent resident status for many people, through no fault of their own.

In addition, we are gravely concerned that the USCIS is increasingly focused on and promoting its identity as a national security agency rather than as a benefits-granting agency focused on serving the nation's immigrants. According to the USCIS Strategic Plan published in 2005, the mission of USCIS is to "secure America's promise as a nation of immigrants by providing accurate and useful information to our customers, granting immigration and citizenship benefits, promoting an awareness and understanding of citizenship, and ensuring the integrity of our immigration system." Nonetheless, this new regulation focuses more on security than on the stated mission of the agency.

AFSC, therefore, wishes to provide specific recommendations on **DHS Docket No. USCIS-2005-0056.** We believe that our recommendations will decrease the confusion

and hardship community members are bound to face, while also promoting a sensible and fair reapplication process which will serve the interests of all parties concerned:

USCIS Should Include Individualized Notice Requirement

- This new requirement will create an undue burden on permanent residents who do not receive personalized notification. The USCIS proposes notifying the public through press releases, posting information on its website, distributing flyers at its offices, and conducting informational meetings with community based organizations. However, those individuals affected by the rule and with the most need for the information are unlikely to check the USCIS web site or visit a local USCIS office. In addition, those individuals may not be in contact with community based organizations.
- USCIS must provide individual notice to each individual who is expected to be impacted in order to protect those who are least likely to learn about the process but most likely to need it. **Furthermore, because willful failure to comply with the rule change brings the consequence of criminal sanction it is imperative that individuals receive individual notice (for further discussions on criminal sanctions please see below).**

USCIS Should Extend the Application Filing Period

- The proposed 120 day filing period for the new cards is an unreasonably short period for the estimated 750,000 people to submit their applications.
- Although the proposed regulation indicates that the Form I-90 is a relatively easy form to complete, many people, especially those with limited English proficiency, are not comfortable submitting forms to USCIS without the assistance of an attorney or non-profit Board of Immigration Appeals accredited organization.
- For those individuals who reside in areas with few services it will be challenging to learn about the requirement, locate assistance, and fill out and submit the forms within the required time period.
- For those who reside in areas with many immigrants, we suspect that this requirement will give new opportunities for unscrupulous *notarios* and immigration consultants to further take advantage of immigrants who are attempting to comply with the rules. We believe individuals should be given at a minimum one year to comply with the new requirements.

USCIS Should Implement Fee Waiver Procedure with New Rule

- Because of the short notice and the recent increase in filing fees, it may be difficult for many applicants to pay the $370, which is not an insignificant amount

for many working families. It is of deep concern to AFSC that USCIS has been well aware of this need to update the cards at least since October 2004 and implemented highly-automated filing procedures for Forms I-90 in May 2005, yet waited until the fee increase went into effect to announce the new filing requirement.

- We urge that a clear and separate fee waiver procedure be implemented for these cases in order to ensure fair access for all, and hope that the increased fees are used to increase efficiency of processing.

USCIS Should Reconsider Criminal Consequences of Non-compliance

- We appreciate that USCIS does not anticipate that criminal sanctions will routinely be used against individuals who fail to obtain new forms. However, putting people in the circumstance of even *potential* prosecution and imprisonment by virtue of a changed regulation is unfair, and we are not satisfied that prosecutions will not happen. Prosecuting residents for failure to properly register is an unwise use of resources that should be better put to use advising people of their responsibility to apply for new cards.

The AFSC supports measures that provide immigrants with access to documentation, particularly in the context of increased immigration enforcement measures and profiling. Limiting access to proof of permanent resident status for an entire class of immigrants may result in false arrests, unfair prosecutions, and people who by law are residents but in fact, cannot prove their status.

We strongly urge USCIS to reconsider its proposed regulations and create a plan that recognizes the importance of documentation, notification, and respect for the rights and responsibilities of all immigrants residing in the US.

We thank you for the opportunity offer our recommendations in this important matter and look forward to your favorable consideration of these as future actions. Please do not hesitate to contact me should you have any additional questions or concerns in this matter.

Respectfully Yours,

Joyce D. Miller
Assistant General Secretary

PREPARED STATEMENT OF FRED TSAO, POLICY DIRECTOR, ILLINOIS COALITION FOR IMMIGRANT AND REFUGEE RIGHTS

Statement of Illinois Coalition for Immigrant and Refugee Rights

For the U.S. House of Representatives Committee on the Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law

Hearing on USCIS Fee Increase Rule September 20, 2007

Illinois Coalition for Immigrant and Refugee Rights
55 E. Jackson · Suite 2075 · Chicago IL 60604

U.S. House of Representatives
Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

Greetings:

On behalf of the Illinois Coalition for Immigrant and Refugee Rights (ICIRR), I am submitting the following statement for the record of the September 20, 2007, hearing of the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law on the US Citizenship and Immigration Services (USCIS) Fee Increase Rule.

ICIRR, a coalition of more than 100 member organizations throughout the state of Illinois, advocates on behalf of immigrants and refugees on the state and federal level. This work has included administrative advocacy with USCIS (and before March 2003 with INS) regarding citizenship issues. ICIRR advocated for reduction of processing backlogs, commented on previous proposals to increase fees, and engaged in the process to redesign the naturalization test. In addition, we administer the New Americans Initiative, a three-year pilot program funded by the State of Illinois to fund local partnerships that promote citizenship, conduct outreach, and organize workshops to assist long-term legal immigrants in completing their naturalization applications. We strongly believe that immigrants should have the opportunity to gain legal status and become US citizens.

ICIRR opposed the fee increase that USCIS published on February 1, 2007 (72 Fed. Reg. 4888) and made final on May 30, 2007, effective July 30, 2007 (72 Fed. Reg. 29851). We support Rep. Lofgren's proposed resolution, H.J.Res. 47, to annul the fee increase. ICIRR was also actively involved in developing the Citizenship Promotion Act, S. 795/ H.R. 1379, sponsored by Rep. Luis Gutierrez and Sen. Barack Obama, which among other things would also roll back the increase and require USCIS to recalculate its fee schedule based on fairer accounting principles.

ICIRR contested the increase on several grounds, not the least of which being that it would close off this opportunity for many worthy immigrants. We also questioned USCIS's methodology in determining the fee amounts (much of which seemed to defy logic) and its policy of burdening immigrants with the costs of what should be regarded as a public good that benefits all Americans. ICIRR submitted comments opposing the rule, and encouraged our member organizations and allies to also send their own comments to USCIS. What follows is the substance of our comments to USCIS.

Illinois Coalition for Immigrant and Refugee Rights
55 E. Jackson · Suite 2075 · Chicago IL 60604

The proposed fee levels are excessive, and will create walls that will hinder family reunification and prevent immigrants from gaining legal status and becoming US citizens. Many of the immigrants and refugees we work with already struggle to pay immigration fees. The steep increases proposed by USCIS, which in some cases double the current fee, would put the goals of gaining permanent resident status, reuniting with family members, and ultimately becoming a US citizen farther out of reach.

Raising fees on forms such as the I-130 alien relative petition (up to $355) and the I-129F alien fiancé petition (up to $455) will keep relatives apart longer. Nearly doubling the costs of an I-765 application for employment authorization (from $180 to $340) will create a higher up-front cost for immigrants and non-immigrant visa holders who wish to work legally. And it seems unreasonable to charge $290 to replace a green card or $380 to replace a naturalization or citizenship certificate.

The proposed fee for naturalization is particularly jarring. As recently as 1998, the cost to apply for citizenship was $95. In 2002, after the Bush Administration took office, the costs (including biometric fees) went up from $250 to $310. The total fees are now $400, a fourfold increase in the past eight years. Now USCIS is proposing a further increase of 70%, to $675. An immigrant working at a minimum-wage job would need to work for more than three weeks and save all of his earnings in order to pay this fee. Even higher-earning immigrants find the fees startling: One of my best friends, until recently a lawyer at a mid-size Chicago law firm, found the $390 fee she paid in 2004 already excessive, and was shocked to hear that the fee would being increasing further.

Even more startling is the proposed cost of filing for adjustment of status, which for many immigrants is the first step on the road leading to US citizenship. That application has risen from $130 in 1998 to $325 today, plus $75 for biometrics. Under the proposed rule, the price will rise to $905 plus $80 for biometrics. In other words, it will cost nearly $1,000 for an immigrant to get a green card and start the five-year countdown to citizenship. A minimum-wage immigrant worker would need to save a full month's pay to afford the proposed fee.

USCIS tries to ease this blow by not charging for interim I-765s for employment authorization and I-131s for travel documents. But this "break" only begs the further question of why I-485 filers should be asked to pay higher fees that include the costs of these interim benefits even when they do not need these benefits. Children do not need EADs, and adjustment applicants who are already here working on valid nonimmigrant visas (like H-1(b) visa holders) often will not need new work permits. By USCIS's own admission, only half of all adjustment applicants seek travel documents. Why not simply have applicants apply for the benefits they actually need, rather than trying to create a "one-size-fits-all" application that would overcharge at least half of the applicants? Better yet, why not eliminate the need for adjustment applicants to file the I-765 (which asks for information already provided in the I-485), issue EADs to these applicants as a matter of course (or provide a check box on the I-485 for those who want an EAD), and extend the validity period of EADs (e.g. to two years) to reduce the volume of renewal I-765s?

USCIS's proposed fee waiver policy is too restrictive.
Under current policy, individuals and families who cannot afford filing fees can apply for fee waivers. The proposed rule, however, seeks to restrict the availability of fee waivers to only certain types of applications. In particular, adjustment applicants would no longer be able to seek waivers. USCIS' rationale for this change relies on the public charge ground for inadmissibility. This ground, however, does not apply to asylee adjustment applicants; yet these applicants would not be allowed to seek fee waivers. Nor does the public charge ground apply to adjustment applicants under section 202 of NACARA, HRIFA, or registry. Categorically barring adjustment applicants from seeking fee waivers would in effect deny indigent asylees and others who are exempt from public charge considerations the opportunity to gain adjustment of status.

On the other hand, USCIS proposes to waive fees for all VAWA self-petitions and applications for T visas. At his February 28, 2007, meeting with community organizations in Chicago, Michael Aytes of USCIS asserted that these categorical waivers are justified by the high rates of waiver requests by individual applicants and the cost of adjudicating these requests. If the rates are so high and the costs so significant, we would ask that USCIS provide actual numbers of waiver request rates and adjudication costs so that commenters can evaluate this proposal with full knowledge of the rationale.

Incidentally, under the proposed rule, VAWA self-petitioners would still be required to pay the fee for their adjustment of status, and could not get this fee waived. This is completely at odds with whatever humanitarian concerns may underlie the fee exemption for I-360s filed under VAWA—or reveals that these concerns have nothing to do with the change.

More generally, USCIS should explain in more detail why fee waivers should no longer be available for each specific application for which it proposes to close off waiver availability. Why would waivers no longer be available for I-821 applications for TPS, when the public charge ground may be waived for TPS applicants? What is the justification for closing off fee waivers for I-824s? Again, a more detailed explanation would allow commenters to provide a more informed evaluation of the proposal.

USCIS's methodology, as presented in the proposed rule, is seriously flawed.
Rather than provide sound explanations for the proposed fee levels, the rule raises still more questions.

Starting from FY 2007 budget instead of zero-based budgeting
USCIS starts its cost analysis with the FY 2007 Immigration Examination Fees Account budget, $1.76 billion, then removes nonrecurring costs, adjusts for inflation, and adds "additional resource requirements" to come up with the total amount it needs to recover, $2.329 billion. 72 Fed. Reg. 4898-4902, section IV(E). This methodology stumbles at the very first step: it incorporates the current IEFA budget uncritically, without examining carefully how this money is being spent. It starts with a budget that could involve inefficient expenditures that waste time and money and disserve immigrants and families who have filed applications. For example, the last time USCIS raised fees substantially, in April 2004, its proposed rule mentioned that it

hoped to recover the cost of litigation settlements through that fee increase. 69 Fed. Reg. 5089. (February 3, 2004). If USCIS intends to conduct a truly comprehensive review of its costs, it should have engaged in zero-based budgeting. Only then can we truly know how much USCIS services should cost, and how much the agency can legitimately ask applicants to pay in fees.

Additional resource requirements
USCIS' planned service improvements, as described in section IV(E)(3), are for the most part urgently needed. Too often immigrants are stuck in processing backlogs, including months-long (even years-long) delays caused by security check requirements imposed as an unfunded mandate on an under-resourced FBI. Last October's Government Accountability Office report that the agency had lost track of 110,000 files needed to process citizenship cases highlighted the need for improved file tracking and other infrastructure. And immigrants and their families still have difficulty getting accurate information about their cases. We do not question the need for more resources to make USCIS service faster, more reliable, more secure, and more responsive to applicant needs.

Yet we wonder how USCIS calculated these costs. The proposed rule provides only a description of the additional resource and a bottom-line cost estimate. What assumptions went into these calculations? How closely were these costs scrutinized before being published? Just as USCIS incorporates the FY 2007 IEFA budget uncritically, it appears to include the costs of these improvements just as uncritically.

We also question how quickly USCIS can implement all of these measures. Can the agency really hire all 1,004 new staffers it seeks to "enhance adjudications and support staff" within one year—not to mention all of the other new personnel described elsewhere in section IV(E)(3)? Would USCIS be able to implement the $124.3 million worth of IT improvements described in section IV(E)(3)(d) by the end of FY 2008? For that matter, how much of the costs of these and other improvements be ongoing, and how much would be one-time expense? Would it not make more sense to phase in these initiatives, and phase in the stream of added revenue needed to pay for them?

Finally, we question whether USCIS service will in fact improve with the proposed fee hike. Past fee hikes have come with assurances that the additional revenue would help improve service. Yet service issues, such as those described above, persist. What assurance do immigrants and families have that they will get what they pay for? And who will hold USCIS accountable if USCIS fails?

Overhead v. direct costs
The proposed rule identifies and describes $924 million in indirect costs, which it defines as "ongoing administrative expenses of a business which cannot be attributed to any specific business activity, but are still necessary for the business to function." 72 Fed. Reg. 4905; Section VI(A). Such costs, in other words, are not connected to actually moving an application forward, unlike the "direct costs" associated with processing an application. But after briefly discussing these overhead costs, the agency pulls a sleight-of-hand by incorporating them as an (unstated) fixed percentage of the processing activity unit costs (i.e. the direct costs) for each application. USCIS thus makes these indirect costs disappear as an explicit factor in calculating its fees,

rather than honestly stating how it is making immigrants and families pay for its overhead. USCIS should at very least make clear what fixed percentage it is using to fold its overhead expenses into its unit costs.

"Make determination" cost estimates
How did USCIS calculate the "make determination" cost estimates (72 Fed. Reg. 4908-9, section VII(B), Table 10)? USCIS states that these costs are related to the complexity of the application, but does not explain how this complexity is measured, or what formulas were used to derive the cost estimates from such measures of complexity. One would think that the completion rates set forth in Table 9 (72 Fed. Reg. 4908) are somehow related to these calculations, but USCIS does not explain how. In particular, USCIS does not discuss its assumptions about its personnel costs per unit of touch-time. Indeed, comparing these completion rates with the make determination costs reveal several disparities:

- The total completion rate is 3.21 hours for an I-360 and 3.39 hours for an N-470, yet the make determination cost for an N-470 is only $428, while for an I-360 that cost is $2,268. Why are the make determination costs for two applications with similar touch-times so different?
- The completion rates for an I-539 are 1.32 hours at the local office and .39 hours at the service center. For an I-751, the completion rates are 1.36 hours at the local office and .46 hours at the service center. Yet the make determination cost is $84 for an I-539, but $210 for an I-751. Why the difference of $126 for applications with nearly identical completion rates at each office?

Volume estimates
Even the volume estimates set forth in Table 7 (72 Fed. Reg. 4904-5, section V(B)) are questionable. USCIS assumes that the total annual fee-paying volume of applications will decline by 960,204 for FY 2008/2009. Of this drop, however, 88% is accounted for by decreases in fee-paying volume for the I-131, I-765 and I-90. (While USCIS explains that the fee-paying volume for I-131s and I-765s will fall because it will not charge adjustment applicants for these forms, it never explains why it anticipates a drop of 130,000 (nearly 20%) for I-90s.) USCIS assumes a relatively minimal impact on filing volume for nearly all other applications.

USCIS's own numbers, however, show that applications surge in anticipation of fee increases, then plummet. Such a surge is already happening with citizenship applications: Nationwide, 772,416 immigrants filed N-400s in calendar 2006, up 28% from calendar 2005. N-400s filings rose 37% from October-December 2005 to October-December 2006. In Chicago alone, N-400 filings rose 67% from October-December 2005 to October-December 2006. In December 2006 alone, 4,358 N-400s were filed, compared to 1,773 in December 2005. In Los Angeles, 10,694 N-400s were filed in December 2006, compared to 5,411 in December 2005. If the historical pattern holds true, application rates will drop sharply when the fee increase take effect.

USCIS has argued that historically, even with such surges and plunges, application rates eventually level off after a few months. (Mr. Aytes stated as much in his meeting with Chicago CBOs on February 28.) But this fee increase could have a much more severe impact. Past increases never involved such high baseline fees before the increase, or such large increases by dollar amount. It is not enough to argue, as USCIS does, that past increases were larger than the

current proposal by percentage, because again this time the baseline is much higher, just as 50% of $100 is more than 75% of $50. The large overall fee amounts will surely cause many applicants to delay their applications (especially for those forms for which fee waivers are not available), and cause applications rates to fall accordingly.

If such a drop were to happen, where will USCIS turn to recover its costs? Indeed, if current fees are too low to recover costs, as USCIS argues, USCIS is losing money on each application now being filed in advance of the increase. How will USCIS make up the loss? Indeed, is the proposed fee increase (paradoxically) intended to make up for this loss?

Comprehensive fee study
Most basically, where is USCIS' comprehensive fee study? We would hope that this fee review would provide a more complete, more coherent, and more honest look at USCIS costs. Anyone concerned with those costs, including Congress, advocates, and the American people, needs to see it. USCIS should at very least publish information on how interested parties can access the study, or better yet make the study available on its website..

USCIS is not compelled by law to recover its costs of operation on the backs of immigrants and families.
USCIS also argues that it has no other option than raising fees if it wants to cover its costs. This is patently false. USCIS cites section 286(m) of the Immigration and Nationality Act (8 USC § 1356(m)) to claim that it must recover its full costs through fees. But this section states merely that the agency "*may* be set at a level that will ensure recovery of the full costs of providing all such services." The statute is permissive, not mandatory.

USCIS also cites Circular A-025 issued by the Office of Management and Budget. The circular states as federal policy that the federal government should impose user charges on recipients of "special benefits" that would be sufficient to recover the full cost of providing the benefit. This document, however, is a policy guidance that lacks the force of law. Furthermore, even by its own terms, the circular provides for exceptions to this general policy. Such exceptions can be made when "any other condition exists that, in the opinion of the agency head or his designee, justifies an exception." OMB Circular A-025, section 6(c)(2)(b). In other words, USCIS can make exceptions to the "recovery of full cost" policy *for any reason*. Certainly the burden that the fees would impose on immigrants moving toward citizenship should be reason enough to break with this policy.

Indeed, in the proposed rule itself, USCIS is already setting fees for several forms at levels that would not recover its full costs. The most frequently used of these forms is the I-360 self-petition, which by USCIS calculations has a unit cost of $2,480. 72 Fed. Reg. 4909-10; Section VIII, Table 11. Yet rather than charge the full unit cost, which would increase the fee by 1205%, USCIS decided to increase the fee by only 96%, the average percentage fee increase. 72 Fed. Reg. 4910; Section IX(B). Although USCIS asserts that the costs not recovered through fees for these forms were prorated to other applications, this pro-rating is not obvious from the fee table. It is difficult to believe that simply rounding up the unit cost of each of these other applications to the next higher increment of $5 makes up all these costs.

As a matter of public interest and good business sense, USCIS should pursue Congressional appropriations and other revenue to fund its operations and ease the burden on fee-paying immigrants and families.
A broader public interest more than justifies a fee structure that does not impose excessive fees on immigrants and their families. Immigration and citizenship are public goods that benefit our entire country and that we as a nation should help pay for. Immigrants bring their talent and hard work to our economy. They pay taxes and help revitalize our communities. In becoming citizens, immigrants demonstrate their strong commitment to their new home country by learning English, gaining knowledge about American history and government, and swearing allegiance to the United States. We should be encouraging immigrants to become part of our community by gaining legal status and becoming citizens, not setting up barriers that block their path and keep them out.

USCIS should therefore actively seek Congressional funding to help underwrite its costs. It is far too easy and glib to say that the costs of immigration services should not be imposed on American taxpayers. Such rhetoric ignores the basic fact that immigrants themselves pay taxes, and indeed become more productive as they learn English, develop roots in the US, and ultimately become citizens. Imposing ever-increasing fees on immigrants slights their contributions to their new home country—and indeed may deny them the opportunity to contribute more.

USCIS has in fact requested and received funding for Congress in the recent past, including most recently funding for backlog reduction. The agency could easily do so again. Indeed, in light of the shift in control of Congress to leadership that is more favorably disposed toward immigrants, it is likely that such a funding request would find support.

Yet USCIS stubbornly insists that it must recover all of its costs through fees. Part of USCIS's argument is that it operates like a business, and accordingly must charge enough for its products if it is to remain solvent. But USCIS *does not carry this business analogy far enough*. In the private sector, businesses distinguish between operating costs and capital investments. Rather than relying just on sales revenues and profits to fund infrastructure and other capital improvements, businesses pursue other funding sources: loans, bonds, sales of stock and other equity. And often businesses cover operating costs through other means, such as selling advertising and paraphernalia beyond their usual product lines. Even the US Postal Service no longer relies on just selling postage.

Just as businesses do not rely solely on sales revenue, particularly for infrastructure costs, USCIS should not rely just on fees. There is no reason why USCIS could not seek Congressional funding or other funding to underwrite (at least) the overhead costs it describes in Section Section VI(A). Yet USCIS is not only renouncing Congressional funding, but is also pushing aside another potential funding source: premium processing fees. 72 Fed. Reg. 4893-4; Section III(C)(4). When Congress approved premium processing in 2000, many advocates raised concerns that premium processing would in effect create two tiers of service, one for businesses that pay the premium, and another, worse one for the overwhelming majority of applicants who do not. In implementing premium processing, INS offered assurances that it would use the premium "to hire additional adjudicators, contact representatives, and support personnel to

provide service to *all its customers*" and to fund infrastructure improvements. 66 Fed. Reg. 29683 (June 1, 2001) (*emphasis added*).

Now USCIS proposes to isolate premium processing revenue, and use this revenue to "transform USCIS from a paper-based process to an electronic environment." 72 Fed. Reg. 4894. While this initiative may benefit some applicants, particularly those who have access to the internet, they will be of little or no use to those who do not have such access. These applicants include many who lack formal education or adequate income—indeed, the very immigrants and families who will most likely be delayed or deterred from filing by the fee increase. In other words, significant numbers of immigrants and families will not benefit from, and indeed will be harmed by, USCIS's decision to isolate premium processing revenue. Rather than using the premiums "as envisioned by Congress," USCIS's proposal contradicts this vision. USCIS should reconsider this sequestration and allocate at least part (if not all) of the premium processing revenue to its budget calculations. Factoring this revenue and other sources of funding as well as using honest, closely scrutinized cost figures, USCIS should completely review its fee calculations.

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In addition to the comments above, ICIRR has also submitted comments to USCIS objecting to its proposed rule of August 22, 2007, regarding replacement of I-551s (green cards) without expiration dates (72 Fed. Reg. 46922). We found this rule objectionable in large part because of the financial burden it would impose on long-term legal immigrants, and because USCIS was issuing this rule after it had already increased fees for the I-90 application for replacement green cards. We also note in those comments that the fee increase rule had already set fees based on volume estimates that did not factor in the additional I-90s that would be filed under the proposed replacement program. Because the fee increase rule sought to recover the agency's fixed costs based on a much lower volume of applications, the green card replacement rule would result in a windfall for USCIS. What follows are the relevant sections of our comments.

The proposed rule is a money grab that would impose excessive costs on immigrants and violate the INA and USCIS's own fee setting principles.

Excessive and unfair costs

To pay for the new cards, USCIS would charge immigrants $370: $290 for the I-90 plus $80 for biometrics. This amount equals how much a worker earning the federal minimum wage of $5.85 per hour would earn in 64 hours, or eight eight-hour working days. Of course, given other costs for food, lodging, and other needs, it would take much longer than eight working days for many immigrants to save up for this cost. Assuming (optimistically) that this worker is able to save 5% of her income, it would take 160 working days—more than seven months--to save enough to pay for the new green card. This savings rate is especially optimistic at a time when personal savings rates are at or below zero.

Rather than looking at the impact on minimum wage workers, USCIS uses the Bureau of Labor Statistics figure for the earnings of the average US worker, $19.29 per hour, to determine the costs of complying with the proposed rule. 72 Fed. Reg. 46927. Even using this figure, again

assuming an optimistic savings rate of 5%, it would take more than 47 working days, or two months, to save for this cost.

Imposing this cost is especially galling because USCIS only recently increased fees for replacement green cards and other immigration applications. The fee hike that took effect this past July 30 raised the cost of an I-90 from $190 plus $70 for biometrics, or $260 total. Why did USCIS spring this proposed rule on LPRs after the fees go up, rather than informing these LPRs that they may need to replace their green cards while they could apply under the old fee?

Wrecked fee calculations and an unlawful windfall for USCIS
USCIS may contend that it needed to wait for the new fee schedule so the agency can recover the full cost of processing the I-90s it will receive. But USCIS's own methodology in calculating its new fee schedule demolishes this notion. In publishing the fee rule this past February 1, USCIS determined that its costs would total $2.329 billion, of which $1.988 billion were associated with non-fee exempt services. 72 Fed. Reg. 4902-3. (February 1, 2007.) The agency then assigned these costs to various processing activities. These processing activity costs include not only the costs of making a determination on the application (which vary with each application) but also the costs for other activities and fixed overhead costs that were essentially prorated equally across all applications. 72 Fed. Reg. 4906-7. (February 1, 2007.) USCIS then determined its unit costs for each application by dividing its cost estimates by the volume of fee-paying applications it anticipated for FY 2008/2009. 72 Fed. Reg. 4908-9. (February 1, 2007.)

USCIS's proposed rule would wreck these calculations. USCIS's fee calculations are based on an anticipated *20% drop* in I-90 filings for FY 2008/2009 from FY 2006, and an overall drop in fee-paying volume of 960,000 in all applications. 72 Fed. Reg. 4905. (February 1, 2007.) In the I-551 proposed rule, however, USCIS anticipates that the rule would cause 750,000 additional I-90s to be filed. 72 Fed. Reg. 46927. This added volume would not only double the number of I-90s filed in FY 2006, but *increase the volume for **all** applications by 16%.* The agency would see additional costs associated with processing the additional I-90s, costs that it should recover from the fees. USCIS, however, would also recover from these fees costs that are NOT associated with processing the I-90s and that would not vary with the volume of the I-90s. These costs include the costs of all the service and infrastructure enhancements described at length in the fee increase proposal as well as surcharges going toward asylum processing and fee waivers. Since USCIS is distributing these costs across all fee-paying applications, a higher volume of applications should decrease the share borne by each applicant—which in turn should translate into lower fees.

Looked at another way, since USCIS set its fees, based on its original estimate of application volume, at levels that would already recover its full costs, the agency would receive from the additional I-90 filers fees that would be beyond what it needs to cover its costs. In other words, if USCIS proceeds with the proposed rule without adjusting application fees, it would reap a windfall from the pockets of green card renewal applicants. While section 286(m) of the Immigration and Nationality Act (8 USC §1356(m)) authorizes USCIS to recover its full costs, it does *not* authorize the agency to charge fees beyond what it needs to cover costs. If USCIS proceeds with the proposed rule, fairness—and indeed the INA--would dictate that it should also

recalculate the fee for the I-90 or, better yet, its entire fee structure to factor in the increased application volume that the rule would generate.

Making immigrants pay for a public good
Indeed, charging for replacement green cards under this proposed rule violates federal policy as set forth in OMB Circular A-25. The circular states that the federal government should impose user charges on recipients of "special benefits" that would be sufficient to recover the full cost of providing the benefit. In this case, however, USCIS is not conferring a "special benefit" on the permanent residents whose green cards it wants to replace. The LPRs themselves do not gain anything from this rule; they were, and will remain, permanent residents. To the extent that they benefit at all from having a new replacement card, it is only because the rule itself invalidates their current documents. Instead, the main benefit from the rule is a *public good*: enhanced national security. The costs of such a public good should be borne by us, the American people as a whole. They should not be charged to immigrants who already bear the entire burden imposed by this rule (including completing the paperwork and reporting for biometric data collection), and do not benefit any more than any other Americans.

For these reasons, if USCIS wishes to proceed with the proposed green card replacement, it should either do so at its own expense, or otherwise at a reduced fee in line with the agency's real processing costs.

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We hope that this statement will assist the committee in its consideration of the recent fee increase, and in particular of H.J. Res. 47 and the Citizenship Promotion Act. Thank you for your consideration.

Sincerely

Fred Tsao
Policy director

PREPARED STATEMENT OF MICHAEL A. KNOWLES, PRESIDENT, NATIONAL CITIZENSHIP AND IMMIGRATION COUNCIL (AFGE/AFL-CIO)

Madam Chair and Members of the Subcommittee:

On behalf of the National Citizenship and Immigration Services Council (AFGE/AFL-CIO), we are submitting this testimony for the record of the hearing on September 20, 2007 concerning H. Res. 47, Rep. Zoe Lofgren's legislation to prevent the immigration fee increase from going into effect. The NCISC is the American Federation of Government Employee's Council representing some 7500 employees working at U.S. Citizenship and Immigration Services (USCIS). Our members at USCIS include: Immigration Information Officers, Contact Representatives, Immigration Officers, Adjudications Officers, Asylum Officers, Refugee Officers, Status Verifiers, Information Technology Specialists, Language Specialists, Community Liaison Officers, Training Officers, Program and Management Analysts, Clerks, and Supply Technicians.

Madame Chairman, along with the Consular Officers of the State Department these dedicated civil servants are America's gatekeepers—deciding who can enter our country and who can remain here. To say that these workers are critical to our nation's homeland security efforts would be a gross understatement. Our members work tirelessly to review every application for any immigration benefit to ensure its legitimacy and determine the eligibility of the applicant. But when these obligations come up against long-standing, severe financial problems, outdated technology, inadequate infrastructure and other resource limitations at our Agency, something has to give.

Despite Agency assurances to the Congress that all is well, it is not. In recent years, we the employees have faced multiple unrealistic challenges due to unrealistic assumptions about what USCIS can do and how much it costs to do it. So let's collectively stop fooling the American people into believing that our gates are opening and closing as they should.

USCIS, and its predecessor, the Immigration and Naturalization Service (INS), have been chronically underfunded and therefore ill-equipped to provide its employees with the tools and resources they need to perform the complex mission of the Service. We have a legacy of antiquated computer technology, dilapidated, crowded and in some cases unsafe facilities; poor and inadequate training; little funding for professional development and continuing education; insufficient staff and an over-reliance on temporary or "term" employees and private contractors. This has resulted in backlogs, shoddy work product, enforcement vulnerabilities and an unrelenting push for numbers of applications processed over quality. The result is an increase in undetected fraud, the increased possibility of terrorists entering the country and poor customer service for people seeking legal and legitimate immigration benefits. It also results in a demoralized and stressed-out work force subject to unacceptably high turnover rates and an inability of our Agency to recruit, promote and retain the best qualified and most highly motivated workforce.

We should not discount the contribution this situation has towards the growing problem of illegal immigration. Many who might have preferred to come to the United States of America through an orderly process in a legal status have become frustrated by the inevitable log-jams and turned to unlawful means to realize their dreams.

The deep and abiding frustration felt by USCIS employees can be seen in the attached letter to Director Gonzales and petition that has so far been signed by over 300 Adjudications Officers from District Offices around the country. These men and women are so concerned about the current situation, they have taken the unusual step of signing their names to a petition which states:

"Sir, with due respect, there is a quiet consensus amongst many (District) Adjudications Officers that we are not performing our duties in a way that truly serves our country, the American people and you. There is a clear, and we respectfully believe unreasonable, "push" for reaching quotas for case/interview completions, for "numbers", and for quantity over quality."

Virtually every employee we have spoken with—regardless of their job series—complains of the same problem: too much work to do in too little time, by too few workers. Many feel pressured by productivity requirements to complete their work without compensation, during lunch and break periods and during off-duty hours. Many feel pressured to "cut corners" in the adjudications process in order to make productivity and timeliness requirements. Many complain that they are often unsure of whether a benefit has been properly granted or denied, because of these constraints.

The frustration felt by many USCIS employees is illustrated by the situation at the Dallas District Office, where some of our members describe a program called the

Dallas Office Rapid Adjustment (DORA). The program was designed to ensure that the process of seeking to adjust immigration status as husband and wife was accomplished in as little as 15 minutes. According to one employee in that office, attorneys for immigrants were thanking adjudications officers profusely for the program and readily admitted there was no way to effectively detect marriage fraud under the program.

And the frustration is felt in virtually every District office and Service Center when workers trying desperately to resolve long standing backlogs of applications are suddenly forced to deal with a new phenomena known as "front logs"—a sudden surge in benefits applications (numbering now in the hundreds of thousands) having been submitted to USCIS just prior to the new fee increase going into effect. The surge could have and should have been anticipated, but it was not and now employees are being asked to speed up the assembly line.

To make up for inadequate staffing in the locations that are handling the "front log," the Agency has had to detail employees from other locations and make use of more overtime. The Agency has rightfully commended these employees for their hard work, but we remain concerned that our workforce is operating at a level beyond its current capacity to produce the work that the American public expects us to perform. As a result, quality and accuracy are sacrificed, and our ability to detect fraud and potential terrorist threats is diminished.

WHY WE NEED THE FEE INCREASE:

First, it needs to be said that our support for the USCIS fee increase is based on our understanding of where this money is to be allocated: more employees, improved infrastructure, better training and technology and a generally enhanced ability to perform our jobs effectively. The Agency has assured us that it intends to reclassify position descriptions and consider upgrades for many of our employees. We are pleased to hear that, but have yet to see that plan implemented. At the same time, we have witnessed the increase in numbers of Senior Executive Service positions and an increase in management and supervisory positions at the GS-13, 14 and 15 levels. Absent upgrades for our main work force—the men and women who do the "heavy lifting" of providing the Agency's services—the Union questions whether some of the spending made possible by fee increases is entirely justified. Adjudications Officers and other related occupations have received no grade increase in many years, and recognition of their contribution to the Agency must be equally considered before senior management again rewards themselves for work we have performed.

But the new fee-rule, for all of the problems raised by critics, represents the only viable plan that is presently available to provide the Agency with the revenue it needs to adequately equip and staff its work force to carry out the mission. We wish to recognize and commend USCIS Director Emilio Gonzales for the leadership and vision he has shown by devising this important plan for resourcing our chronically-underfunded organization. He has demonstrated a genuine concern for the morale and effectiveness of our workforce by implementing a number of important new initiatives (all made possible by the fee increase) to upgrade our facilities and build new ones, expand training and career development opportunities, upgrade and integrate our information technology infrastructure and move our business process from a paper to an electronic environment. But the tasks and expectations we have been handed—the lawful and efficient adjudication of millions of benefits, visas and naturalization applications—remain daunting; we are still not sufficiently staffed and equipped to do the job. We believe important progress is being made in that direction, but the Agency's efforts to achieve these improvements—and the Herculean efforts by its employees to do the job—will be seriously jeopardized if HR 47 prevents the fee rule from being fully implemented.

That said, the Union believes that the Agency cannot, in the long run, be adequately and sustainably funded and resourced by fees alone—no matter what the scale of fees. There needs to be a balance between fee-generated resources for operational costs and appropriations to pay for our homeland security responsibilities and special programs, investment in infrastructure, capital costs and work force training, pay and benefits.

Because UCSIS is a fee-funded agency, there is presently no other legal means for the agency to raise the funds it needs to operate. We believe this funding formula must be revisited by Congress as soon as possible. USCIS is a critical federal agency that plays an integral role in the Department of Homeland Security's critical mission of preventing potential terrorists from entering and operating in the United States. Because our role is vitally important to all Americans, all Americans should contribute to the effective performance of that mission. USCIS is not an insular, es-

sentially invisible agency exclusively serving the needs of immigrants. In a post 9/11 world, USCIS must hold up its end of the homeland security safety net. To do so will require more money, perhaps a great deal more money—should a comprehensive immigration reform bill pass—in the future. Fees for immigration benefits cannot and will not pay for it all.

LONGER TERM FUNDING OF CIS:

The NCIS Council strongly supports the inclusion of appropriated funds for specific activities of this agency. While we do not oppose the funding of immigration benefits from fees, we believe that many other activities should come from appropriated funds. While we are not prepared to recommend specific funding methods for each USCIS-provided service, we would welcome the opportunity to work with you on such a project.

Finally, we are deeply concerned about the apparent inability of the Agency to provide you with the information Congress clearly needs to assess the reasonableness of the fee increase. As a union, we have no direct access to this information and can only promise to work in concert with the Committee to pressure the Agency to be more responsive.

We, the employees of UCIS, are fully committed to the accomplishment of our assigned mission: to provide for the security of our Homeland by ensuring that those who immigrate meet all eligibility requirements to be accepted as members of our society. We provide a critical service to the people of the United States of America. Like any good or service, there is a cost involved. It is in the public interest to ensure that our immigration policy establishes a system that is reasonable, safe, and lawful that provides for the security of our homeland and the welfare of the people of the United States of America. Whether this cost is to borne solely by those who are seeking the benefits of our immigration laws, or by the taxpayers, or a combination of the two, is a decision to be made by Congress. But without adequate resources, we, the civil servants who administer and enforce our immigration laws, cannot be expected to accomplish our very important mission.

However, in the end, until such time Congress decides to change the way USCIS is funded, we do believe this fee increase is necessary and should be allowed to go into effect. We ask that you support the Agency's efforts—and in particular the efforts of the working men and women who help keep our country safe—by ensuring that USCIS has the resources it needs to do the job. Thank you.

EXHIBIT A (text of petition by USCIS District Adjudications Officers)

USDHS
Citizenship and Immigration Services
Director Emilio Gonzalez
20 Massachusetts Avenue, NW
Washington, DC 20529

National CIS Council 119
Bridgette Rodriguez POC
12630 NW 22 Court
Miami, FL 33167

Dear Director Gonzalez:

We, the undersigned (District) Adjudications Officers, by electronic signature, hereby sign this in support of our fellow Miami (District) I-485 Adjudications Officers, who (in an April 11, 2007 letter to their DD) expressed concern as to DAO's not being given sufficient time to perform our important duties, and the need to perform Time and Motion studies.

We have stepped up to work for the Department of Homeland Security, Citizenship and Immigration Services in order to provide a public service to our country and to serve the American people.

You have asked us to give, "...the right benefit, to the right person, at the right time."

You have also asked us to perform our jobs with integrity.

It is your words and call to duty, and our own call to duty and integrity, which cause us to sign this and bring some of our serious concerns to your attention.

Sir, with due respect, there is a quiet consensus amongst many (District) Adjudications Officers that we are not performing our duties in a way that truly serves our country, the American people and you. There is a clear, and we respectfully believe unreasonable, "push" for reaching quotas for case/interview completions, for "numbers", and for quantity over quality.

There are also process and procedure issues which are not being addressed as well as they could be.

We can no longer remain quiet, merely complaining to ourselves – for that ultimately undermines both public service and integrity.

We urge you to work with us, our union Council and our union Locals to form agency-union performance workgroups who can best address our concerns and suggestions, and who will be involved in objective time and motion studies at all districts.

Only then will we begin to truly serve and be the best we can be.

We thank you, in advance, for your anticipated review of this letter.

LETTER TO LINDA SWACINA, U.S. CITIZENSHIP AND IMMIGRATION SERVICES DISTRICT DIRECTOR DATED APRIL 11, 2007, FROM CITIZENSHIP AND IMMIGRATION SERVICES ADJUDICATIONS OFFICERS

DHS CIS District Director Linda Swacina
7880 Biscayne Blvd, 11th floor
Miami, FL 33138

4/11/07

Dear Ms. Swacina;

We, the undersigned Adjudications Officers, are addressing this letter to you in hopes that it may shed just *some light* on the many *serious concerns* we have as both Adjudications Officers sworn to uphold and administer our immigration laws, and loyal Americans.

We are being tasked to perform work in a manner that does not reasonably allow us to, "Give the right benefit, to the right person, at the right time." We are not being given sufficient time, per interview/case, to perform our important duties in a way that allows for *true quality* in adjudications, including the exposure and deterrence of fraud.

Therefore, as the Local union did previously, we respectfully invite management to "walk in our shoes" for a week or so and actually serve as an AO conducting interviews and completing (just some of) the follow-up casework. (This is similar to a time and motion (task) study.)

For at least one week – out of the 52 per year we AO's are expected to work, we ask that you have a manager/supervisor sit and do some of what we do -- currently forty-one (41) I-485 interviews a week, plus the cases of absent officers. Only then will management begin to get a true "picture" of what we officers face day in and day out.

Meanwhile, we provide the below as a starting point to express *some* of our more-important concerns:

(1) When scheduling I-485 interviews, the district has been scheduling interview bundles for all interview officers and has not taken into consideration that there is a percentage of officers who will have to be off work on unscheduled/emergency leave, based on past averages.

(2) Due to (a) the lack of adequate interview and down work time given by management during our regular work shifts, (b) overtime being restricted both by number of hours offered and the type of work AO's can perform on overtime, and (c) the agency push for completions, AO's have had no other reasonable option but to work without pay before/after paid work hours and/or on their non-paid lunch break on a recurring bases. (This is not becoming of CIS -- a federal government agency and employer in the great United State of America.)

What are we doing before/after paid duty time and/or on our non-paid lunch breaks? Some primary examples are found below:

- Data input (ATS, ICMS, NFTS)
- IBIS checks due to new names or the prior checks not being conducted properly

(Next page)

(2), continued:

- No show checks (CIS, ARIT, USCIS, ICMS), including printouts for the file
- Resolve problems which arise and cannot be handled during the interview
- Start NOITD. (We need to be very clear here that there is little-to-no time to do this, and this is precisely why many cases are not being referred to FDNS -- we must do the NOITD before referral.) We estimate that between 20% - 40% of the cases require a NOITD.

Some of the above-noted work is clerical in nature and some even redundant, but we, as AO's, are expected to do this.

(3) Our RFE rate is high. We would estimate it is around 40% or higher. Because AO's are not given sufficient time, per case, to complete all the other work that needs to be done at the time of first interview. AO's are forced to do "catch up" work (e.g.: data input, data searches and printouts, and the like) during non-interview time, which impacts our ability to schedule and/or complete follow-up work (including RFE's), marriage interviews and Notices of Intent to Deny (NOITD).

(4) Fraud is high, but we are not successfully addressing it due to the push for numbers and the lack of adequate time and resources. When cases do go up to the FDNS unit, many seem to come right back down to the AO's, since there are not enough FDNS officers to handle the workload. (However, we AO's don't even have enough time to develop our suspect cases and get NOITD's out, so that we can even *refer* cases to the FDNS unit!) Recently, the CU fraud has become even worse.

(5) Cases are being scheduled that are not ready for full adjudication/completion. Some examples: FBI name checks are pending; some have expired checks; family members' files are not together and not scheduled for appointments the same day/time, causing AO's to have to spend time looking for those files, and these unscheduled cases are added on to the total number of interviews for that day.

(6) Cases are scheduled that are already adjudicated. Example: Judge's cases.

(7) There appears to be a lack of training, oversight and consistency in adjudications work. Examples: (a) Some officers are apparently denying cases because applicants do not bring original documents to the interview, but the officer does not articulate a reason why the copy is suspect and the original is required. (b) On some floors, AO's are advised to deny cases on-the-spot if the applicant doesn't bring the requested documents and are represented by attorneys, but this is not the case on other floors.

We suggest management carefully review case completions, case denials and uniformity in procedures.

(Next page)

(8) There is not enough overtime to complete the AO work that needs to be accomplished, and we are restricted as to the overtime we can volunteer to work. Recently, many officers were taken aback to learn we could not work our daily AO casework on overtime, but we could perform "file audit" work on overtime -- work normally performed by contract and support staff.

(9) Foreign language interviews using an interpreter from the public (which is the norm) take twice as long to interview compared to those cases which do not. Often, there are issues associated with CIS allowing the applicant to bring in their own interpreter to their I-485 interview -- such as the interpreter not being certified as proficient in English and the foreign language, being personally involved with the applicant (and perhaps even the vendor in bad cases), etc.

(10) Many AO's have not been trained on how to handle I-485 interviews where interpreters from the public are provided. They have not been issued specific CIS SOP's and information/intelligence as to interpreter "warning flags".

(11) Some I-485 cases are being scheduled so soon after filing, and because some applicants are newly married and generally don't have the "documents" built up by the time of interview to establish the bona fides of their marriage, AO's are now having to spend more time interviewing applicants in order to gain that information.

Director Emilio Gonzalez has asked us to "...give the right benefit, to the right person, at the right time." We contend that in order to do so, CIS management, itself, must step up to the plate and do what many good businesses and credible organizations do as a matter of good business practice -- conduct current and objective time and motion (task) studies. We respectfully request that this be done at each duty station by a workgroup made up of union and management officials, and that a report of the results be given to Director Gonzalez and other agency leadership.

We wish to provide you with our other concerns and our suggestions, and will do so as time permits. Given that many of us are already working through our non-paid lunch time on a recurring basis and gave up our lunch breaks to work on this letter, we hope you understand that it may take some weeks for us to get back with you.

Thank you for your anticipated review of this letter.

Sincerely,

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_____

_____

Kathleen Sheehan
Angela Lewis
Judith Clogg
Sam Law
Wing Ngan

Thank you for your review of this letter.

Sincerely, Jonathan DISSE

Sincerely,

Sincerely,

Richard NAVARRO

Sincerely,

Tracey Bessard

Marcia Rodriguez

Marinda Siana

Madeline Mendez Gonzalez

Geneta Miller

Jacqueline Hernandez

Sincerely,

Maria A. Abreu

Sincerely,

Joseph M. Jude

Patricia J. LaFrance

Ed Reynolds

Harriet C. Stanley

Deb Scott

Maria A. Zambe-Bolon

RESPONSES TO POST-HEARING QUESTIONS FROM JONATHAN R. SCHARFEN, DEPUTY DIRECTOR, U.S. CITIZENSHIP AND IMMIGRATION SERVICES

Question#:	1
Topic:	transformation program
Hearing:	No title
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)

Question: With respect to its transformation program, how does the agency define "success" for the program? How does USCIS measure the "success" it has defined for the program? Please provide a copy of whatever documents the agency has detailing its definition of "success" for its transformation program and the metrics it will use to measure that "success." How is the agency ensuring that its metrics are "outcome oriented, objective, reliable, balanced, limited to the vital few, measurable, and aligned with organizational goals"? If the agency has not defined what "success" means for the transformation program, what steps is the agency taking to define "success" and the metrics it will use to measure that "success"?

Answer: USCIS defines success for the Transformation Program as meeting the strategic objectives delineated in the Transformation Strategic Plan. The Transformation Program Office (TPO) derived and aligned its goals from the Department of Homeland Security (DHS) and U.S. Citizenship and Immigration Services (USCIS) strategic goals. The TPO has three primary goals 1) National Security 2) Customer Service and 3) Operational Efficiency, and within these goals there are eleven specific objectives. From these goals and objectives, the TPO developed its performance measures. The TPO's approach to performance measures is to ensure they are specific, measurable, achievable relevant and timely.

The TPO has developed a Performance Measurement Plan (PMP) describing its approach and high-level measures for the program. The TPO has developed detailed measures for Fiscal Year (FY) 2007 and has begun analyzing and reporting these metrics. The measures will validate the TPO's progress towards achieving the goals. USCIS is currently revising the PMP to reflect additional measures and alignment with the Performance Reference Model. The revised version will be completed later this year.

Currently, the TPO is conducting Post Implementation Reviews of two pilot projects: 1) the Secure Information Management Services and 2) the Enterprise Document Management System. The reviews are expected to be completed in October.

Question#:	2
Topic:	enterprise architecture
Hearing:	No title
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)

Question: Where is the agency in its development of its enterprise architecture for transformation? How close is USCIS to having this vital component identified and ready to implement?

Answer: Enterprise Architecture (EA) development for the TPO Increment 1 is moving forward in conjunction with the broader USCIS EA development initiative. The TPO business process decomposition effort is providing the information for the Federal Enterprise Architecture (FEA) reference models mapping for TPO Increment 1. The current FEA maturity for USCIS EA supporting Transformation is below a Level 1. The FEA EA maturity requirement for TPO alignment is Level 3.

The EA is listed as the controlling constraint in the Solutions Architect RFP, and current EA efforts will achieve Level 3 maturity in early spring 2008. The Solutions Architect will be on board in the summer 2008 and the USCIS EA will be at a sufficient level prior to design / development.

Question#:	3
Topic:	integrating technology
Hearing:	No title
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)

Question: GAO has reported that DHS is lacking in terms of integrating technology for immigration services and systems, as well as human capital considerations. What steps is DHS taking to ensure that all new systems, including transformation and related effects on human capital, will work together and be fully integrated?

Answer: USCIS is developing for implementation in FY 2008 and beyond, a comprehensive and integrated series of strategic human capital management initiatives, which will ensure the needs generated from the transformation program are identified and addressed. These efforts are categorized in five action areas: Recruiting and Hiring, Workforce Development and Succession Management, Training and Continuous Learning, Performance Management, and Human Capital Service Delivery. Together, the initiatives will build the foundation for the future of the USCIS workforce. Improvement in these areas will position USCIS to effectively address the human capital issues associated with implementation of transformed business processes.

As USCIS develops new systems and business processes it will continue to engage and leverage the services of the Chief Human Capital Office (CHCO) to ensure proper staffing, integration and development of new employees. The CHCO is a key member of the Transformation Leadership Team and ensures strategic human capital issues are fully represented and incorporated in transformation discussions and decisions. Additionally, the TPO's Training Branch Chief meets periodically with the Chief Learning Officer or his staff to discuss the skills and knowledge required for implementing the future integrated operational environment.

In addition, the Change Management Division (CMD) within the TPO focuses particularly on the effects of our changes on the USCIS employee population. They are responsible for communicating changes that are made in our office as well as training employees on the usage of the new systems that TPO develops. As the TPO progresses through each stage of the development process, the TPO will collaborate with field and headquarters staff to ensure transformation initiatives meet the needs of USCIS employees and its customers. Throughout the development of the pilots, the TPO is consulting with USCIS users to gain valuable feedback and suggestions for improving the systems and business processes.

Question#:	3
Topic:	integrating technology
Hearing:	No title
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)

Question#:	4
Topic:	FDNS
Hearing:	No title
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)

Question: We have recently learned that CIS is working on a whole new system, or expanding on a relatively new one, for its Fraud Detection National Security (FDNS) unit. Mr. Scharfen, at the hearing, referred to this system as the FDNS DS system. This system appears likely to have significant interoperability problems with the transformation system. What is DHS doing to ensure this system and other systems will interoperate with systems designed for its transformation program?

Answer: DHS and USCIS are developing their Enterprise Architecture (EA) in order to clearly understand and define the future operating environment. A function of the EA is to ensure that new systems and technologies are compatible and can be interoperable. The Fraud Detection National Security - Data System (FDNS-DS) will be part of the total integrated environment for processing immigration information. Depending on the options presented by the Solutions Architect, the FDNS-DS system may be integrated into the new case management system or it may be a service that is used by the case management system and other systems throughout USCIS. Either way, it will be interoperable and an integral part of the transformed business process.

Question#:	5
Topic:	USCIS fees
Hearing:	No title
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)

Question: In his oral testimony, Mr. Bill Yates noted that a significant portion of USCIS' fees "relate to a surcharge that is required to support infrastructures as well as the non revenue generating applications." He continued, "I just spoke to Rendell Jones, and I believe that surcharge is approximately 50 percent of the entire fee." Please describe in detail the surcharge, how it is calculated and what percentage it comprises of USCIS' fees. Please provide any data, documentation or other information describing the surcharge, how it is calculated, and the functions, services, infrastructure or other activities the surcharge funds or supports.

Answer: In general, there are two categories of USCIS surcharge-related elements that affect the cost of benefit applications. One is the total cost of USCIS asylum and refugee operations. Published rule documentation specified the asylum and refugee cost as $191 million, with a resulting per-application surcharge of $40. The $40 surcharge is derived by dividing the $191 million by the total 4.742 million application/petition fee-paying volume.

The second surcharge amount is associated with fee waivers and exempt services for activities which normally would have had a fee charged. Total estimated revenue lost from fee waivers is $150 million. That amount was determined by analyzing projected FY 2008/2009 fee waiver data, taking the difference between the projected application volume received and the projected fee-paying volume received, and multiplying by the proposed fees. The average of $32 is derived by dividing the $150 million by the total 4.742 million application/petition fee-paying volumes.

Consequently, the total surcharge on applications is generally $72 per application type. The percentage of application cost representing this amount would vary depending on the application type.

Question#:	6
Topic:	receipted notice
Hearing:	No title
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)

Question: For how many cases has the agency received but not yet generated a receipted notice? What is the average delay from actual receipt of an application in any USCIS facility to the issuance and mailing of a receipt notice? Does this delay differ significantly depending upon the facility (e.g., Service Center, District Office, Chicago LockBox) or application type? What has been the average delay in the issuance of receipt notices by month and application type during FY2007 and during the past three fiscal years? What would be or have been the effect on the agency's backlog calculations if it was or had been receipting cases immediately upon receipt? In other words, what affect does "frontlogging" cases have on the agency's backlog calculation?

Answer: USCIS experienced a significant increase in application filings this summer. Some of this was an expected result of the fee rule. However, changes in the priority date in the Department of State's July Visa Bulletin resulted in the filing of almost 300,000 applications for adjustment of status and almost 500,000 related applications for ancillary benefits such as employment authorization and advance parole.

Since we expected an increase associated with the fee rule, we expanded our intake capacity, and in July, 2007 receipted 33% more volume than in July, 2006. However, the increase in demand, stemming from the combination of the increase of filings before prices increased and the increase due to the July visa bulletin caused filings to increase far more than expected. This has created a temporary delay in receipting. As of October 1, 2007 we estimate we have 764,554 cases that we have received but for which a receipt has not yet been generated by November 7th this was down to less than 400,000 cases pending actual receipting.. The average delay from actual receipt of an application to issuance and mailing of a receipt varies by case type. The maximum period of time is estimated at 15 weeks and during this situation we have been sharing current information about receipting with customers through our website. Applications for an employment authorization document (EAD) and the applications upon which they are premised are given a priority and are being receipted so the EAD is processed within the 90 days required by regulation. It is projected at this time that all front-logged applications will have been receipted by January, 2008. USCIS has not maintained statistics on the average delays in issuing receipt notices by month and application types during FY 2007 and during the past three fiscal years because

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Committee:	JUDICIARY (HOUSE)

we have not had any sustained delays in receipting during that time. USCIS will ensure that any impact is properly noted when reporting the status of its backlogs.

Question#:	7
Topic:	gross backlog
Hearing:	No title
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)

Question: How many cases are in the agency's gross backlog? What is the agency's plan for dealing with cases in the gross backlog? Of the cases in the gross backlog, how many have security checks? How many cases in the gross backlog require interim benefit filings? Does the USCIS keep track of whether "secondary" backlogs exist related to these interim benefit filings?

Answer: As part of production management USCIS tracks cases that can be worked and those in active production suspense for particular reasons. We calculate any backlog with respect to a particular product in terms of a gross backlog and a net backlog. The 'gross backlog' is the volume of cases pending for any reason that exceed the six month goal processing time. The 'net backlog' is calculated by subtracting cases in production suspense for reasons outside USCIS' direct control. These suspense categories include -

- cases awaiting a response from an applicant or petitioner to a request for initial or additional evidence; or where an applicant for naturalization failed the naturalization test and we are waiting for them to re-take the test;
- cases that we have determined we would approve but can't finalize until a visa number is available to the case, which stems from statutory numerical limits on the annual level of immigration; and visa petitions filed to establish a priority date but for which the beneficiary will not be able to apply for permanent residence for more than a year due to statutory numerical limits on the annual level of immigration;
- cases waiting more than the prescribed month for court scheduling of the naturalization ceremony due to limited court availability; in suspense while an investigation is conducted; or pending the FBI's final response to the name check, which is one of the suite of background checks conducted on cases.

As of August 31, 2007 the gross backlog for all products was 1,263,256; the net backlog was 143,908. We have 1,371,334 cases in active production suspense for the reasons listed above. Some of these cases in active production suspense relate to products where we are ahead of production goals, and thus do not affect the gross backlog calculation. Cases in active production suspense included 166,829 cases awaiting customer responses or re-testing; 848,707 unripe visa petitions and 11,938 adjustment applications awaiting a visa number that is not currently available before they can be approved; and 343,860 cases where we are waiting

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Committee:	JUDICIARY (HOUSE)

for agency, Immigration Court, or District Court most of which are in suspense awaiting the final result of the FBI name check.

We are aggressively pursuing our goal to hire 1,004 new staff authorized in FY 2008 and supported by the new fees. We are also working with the FBI to improve the FBI name check process, and continue to work to help customers understand documentation requirements so that we can reduce the rate at which we must request evidence from them after filing.

Every application in the gross backlog has had at least one security check.

The gross backlog includes 155,975 applications for adjustment of status. Not all of these result in interim benefits since we screen for application completeness at time of filing and place cases in production suspense if we have to issue a request for evidence. USCIS does track backlogs related to applications for ancillary benefits such as employment authorization and advance parole. At present there are no backlogs in employment authorization or advance parole applications.

Question#:	8
Topic:	cost-benefit analysis
Hearing:	No title
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)

Question: Has USCIS performed a cost benefit analysis to determine whether the benefits of placing all of the costs on employer and individual applicants outweigh the costs of limiting access to the immigration system, reduced integration of immigrants into American society, and additional costs to employers seeking to hire necessary workers? If it has conducted such an analysis, please provide a copy of the results of the analysis, including the data supporting the analysis.

Answer: An analysis of the nature described has not been performed. USCIS does not agree with the underlying premise of the question asked that placing the full agency cost on applicants and employers undermines immigration access, integration, and employer hiring. USCIS has no empirical evidence suggesting a long-term reduction in demand for immigration benefits resulting from past fee increases. Any short-term reduction in demand because of price increases is the normal result of an increase in the cost of any service, whether governmental or private. USCIS records suggest that demand increases shortly before the effective date of a fee increase then decreases for a period shortly thereafter within a few months receipt volume returns to normal. The Congressional Research Service (CRS) in its recent report on USCIS fees (see "U.S. Citizenship and Immigration Services' Immigration Fees and Adjudication Costs: The FY 2008 Adjustments and Historical Context", June 12, 2007) supported this position. CRS found that "overall demand for immigration benefits tends to be inelastic" and that "fee increases have little or no effect on demand".

It is also important to note that USCIS performed all of the required statutory and regulatory reviews associated with the rulemaking such as the Regulatory Flexibility Act, the Small Business Regulatory Enforcement Fairness Act, and the Paperwork Reduction Act. Overall, the analyses found that the economic impact of the fee changes on small business should be negligible.

Question#:	9
Topic:	I-90 filings
Hearing:	No title
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)

Question: In the proposed fee rule which came out this February, USCIS stated that it anticipated a 20% drop in I 90 filings for FY 2008 2009. However, the agency was simultaneously working on the replacement green card rule, which would mandate an increase of I 90 filings by 750,000 applications which would have to be filed within 120 days.

Why didn't USCIS take into account the potential increase in I 90 filings that the replacement green card rule would cause in the proposed or final fee increase rule?

Since USCIS didn't take into account the increase in I 90 filings that the replacement green card rule would cause, how does this effect the agency's calculations of the fee increase for I 90s in particular and on other applications in general?

Is USCIS prepared to handle 750,000 I 90 applications and biometric data collection? When can these long term lawful permanent residents expect to receive their new green cards if the agency finalizes its rule?

Answer: One of the primary objectives of the comprehensive fee review conducted by USCIS was to ensure immigration benefit application fees provide sufficient funding to meet on-going operating costs, including immediate national security, customer service, and business modernization needs. This includes eliminating the reliance on premium processing and temporary program revenues to support base operations. For FY 2008 and FY 2009, USCIS projected a continuing funding gap between revenue and expenses in the Immigration Examinations Fee Account. Over the last several years, USCIS had come to rely on a combination of fee funding from temporary programs (*e.g.*, Temporary Protected Status, penalty fees under INA section 245(i), 8 U.S.C. 1255(i)) and appropriated subsidies for temporary programs (*e.g.*, backlog elimination) to close this funding gap. With the termination of these temporary funding sources, fee adjustments are needed to prevent significant service reductions, backlog increases, and reduced investment in infrastructure. In conducting our analysis of ongoing operational costs, temporary increases in workloads were not considered. The recall rule proposal is a temporary program. Therefore it does not effect and should not have effected the agency's calculations of the fee increase for I-90's or other applications in general. Thus, USCIS would not have included the 750,000

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Hearing:	No title
Primary:	The Honorable Zoe Lofgren
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estimate of the I-551 recall program in the calculations of the prices for the ongoing, stable workload.

With respect to preparations to handle the volume of the program, the rule was designed to give applicants an opportunity to apply, and for USCIS to process and issue new cards to those who file timely during that filing period before announcing that current cards would expire. We are currently reviewing the comments received on the proposed rule, and when we proceed to implement this recall program, we plan to time it for when we have worked through current demand peaks to ensure adequate biometric collection and processing capability exists.

Finally, the rule proposes a mechanism for terminating "green cards" without an expiration date. Under the rule, USCIS would be able to terminate permanent resident cards without an expiration date via a notice in the *Federal Register*. After we determine the period of time necessary to process the applications received during this filing period and issue cards to the affected Lawful Permanent Residents, USCIS will set an expiration date based upon the time necessary to complete both of these steps. USCIS would then announce how long affected cards would remain valid with the intent to ensure that each qualified permanent resident filing within the designated filing period is mailed a new card before we would terminate the older cards.

Question#:	10
Topic:	backlog reduction
Hearing:	No title
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)

Question: The agency's testimony cites backlog reduction improvements, and indeed USCIS announced such success in the fall of 2006. However, it seems much of this "success" resulted from re defining the term "backlog" rather than actually adjudicating cases. At around that same time, USCIS also changed its processing time reports such that they no longer reflect the actual date of filing being adjudicated. Can you clarify how many backlogged cases were cleared based on adjudication, and the extent of real processing time improvements?

Answer: USCIS calculates processing times beginning with the date of receipts filed. As stated in the FY 2007 1st Quarter Production Report that was transmitted to Congress, in an effort to better manage our production by allocating our resources in an efficient manner, USCIS further defined the backlog between cases within our control (net) and cases outside of our control (gross). Cases that do not have an available visa or an FBI name check, and cases that are in suspense for other reasons deemed beyond USCIS control have been taken out of the production queue. This allows USCIS to focus its attention on the net backlog cases, those within our control, which are ripe for adjudication. Cases held in suspense (gross) have been discounted from the backlog computation to better reflect the number of cases which are within the agency's control (net). These deductions are based on figures taken from the National File Tracking System (NFTS), RAFACS and other USCIS systems used in implementing and monitoring ACM.

By further breaking out the total backlog number between gross and net, USCIS' intent was to shed more light on the various reasons that an application may become backlogged. At the same time though USCIS continued to report the overall backlog number using the same definition.

During the Backlog Elimination Period (BEP) USCIS reduced its gross backlog from a high of 3,849,555 in January 2004 to less than 945,819 by the end of September 2006. During that same period USCIS adjudicated 18.9 million cases while receiving 15.9 million new cases. The total volume of all pending cases at the end of the backlog reduction effort was significantly below the level of the backlog when the effort started. The more detailed view of the production status, and understanding what cases could be worked when, was critical to improving production management.

Question#:	10
Topic:	backlog reduction
Hearing:	No title
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)

Question#:	11
Topic:	fraud detection
Hearing:	No title
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)

Question: USCIS is receiving significant funding for fraud detection through the fraud detection and prevention fee for H 2Bs, H 1Bs and L 1s. Does USCIS channel its share of such fees to the Fraud Detection & National Security unit? What portion of these fees are committed to Headquarters versus District or Service Center units? If a percentage of these fees are committed to non FDNS units, in what amount and to where? How much total revenue is FDNS receiving? Why is more funding needed through the fee account?

Answer: The statute authorizing funding for H and L fraud detection limits the funding to H and L anti-fraud efforts only. Due to this limited use, additional funding from the exams fee account is needed to support the balance of the FDNS mission. The H&L budget plan for FY 2008 is $31 million. Of this amount, about $7.0 million (22.5%) will be used to fund FDNS positions at the Service Centers. The remaining funds (77.5%) will be used for other FDNS units. No H&L account funding will be used for non-FDNS units. Of the $31 million total, $6.9 million is spent for headquarters activities (primarily contracts and travel). The total budget for FDNS is $98.6 million in FY 2008, which includes both H&L account and other fee funding.

Question#:	12
Topic:	fee rule
Hearing:	No title
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)

Question: The fee rule proposes to use over $31 million of the additional fee revenue to fund an additional 170 staff in the Fraud Detection and National Security Division. Why is this money needed? What will the additional funds be used for? Would it be more appropriate for ICE to assume this function? Would it not be appropriate for ICE, which is statutorily responsible for investigations and immigration enforcement, to seek funding for this purpose? Because one of the primary goals of the Homeland Security Act was to mandate separate agencies for service and enforcement, is it not true that USCIS is duplicating the efforts of those DHS enforcement components? What steps has the USCIS taken to ensure it is not duplicating ICE efforts?

Answer: The increasing level of work associated with national security hits, conducting compliance reviews, and supporting Benefit Fraud Assessments has made it increasingly difficult for USCIS to address the large number of benefit fraud leads in a timely manner. The majority of positions (142) will be placed in the regions, field offices, service centers and overseas USCIS offices. These positions will be specifically dedicated to detecting, combating, and preventing immigration benefit fraud. In headquarters, positions will also be assigned to FDNS' National Security Branch (to process cases with national security concerns) and in Fraud Detection Operations (to support the Administrative Site Visit and Verification Program).

It would not be more appropriate for ICE to assume this function. USCIS has developed and implemented a joint anti-fraud strategy with ICE and created national standard operating procedures for referring suspected fraud leads with the goal of ensuring that efforts to detect and deter immigration benefit fraud are not duplicated between the two agencies. This joint national strategy and operation is consistent with the findings and recommendations of the GAO in its report of January 2002, entitled *IMMIGRATION BENEFIT FRAUD: Focused Approach Is Needed To Address Problems.* A copy of this Report is also attached for your immediate reference.

Further, when USCIS suspects application or benefit fraud, it now suspends the adjudication process and requires the referral of all cases to ICE with articulated cause. If ICE accepts the case for *criminal* investigation, USCIS provides ongoing support (systems checks, link analysis, adjudication-related expertise, testimony, etc.) during the investigation, as well as during prosecution. If ICE declines a Request for Investigation, USCIS shifts the focus from criminal (ICE's

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jurisdiction) to administrative (USCIS' jurisdiction), and initiates an administrative inquiry. USCIS recognizes the resource implications and impracticality of expecting ICE to conduct a criminal investigation on all suspected application and petition benefit fraud referrals, especially those that are unlikely to be accepted for criminal prosecution. ICE has established internal parameters for determining which of these cases will be accepted for criminal investigation, and which will be returned to USCIS for administrative action.

To ensure suspected immigration benefit fraud is promptly addressed, USCIS developed and implemented an Administrative Benefit Fraud Program that engages FDNS officers to conduct a variety of systems checks (open source and internal), interviews, and field administrative inquiries (as opposed to criminal investigations) to verify information contained on the suspect applications, petitions, and supporting documentation; the objective being to obtain the information necessary to render a proper adjudication.

A typical scenario of a proven fraud case consists of the application and/or petition being denied, the alien placed in removal proceedings, key case-related information collected and entered into the FDNS Data System, and a look-out posted in the Interagency Border Inspection System (IBIS) / Treasury Enforcement Communication System (TECS), so that this information is available to Customs and Border Protection (CBP) and other agencies should the alien(s) attempt to enter the U.S. in the future and/or file another application or petition. This administrative benefit fraud process maximizes the resources of USCIS and ICE by ensuring that all suspect cases are pulled out of the adjudication mainstream and examined. This type of discretion allows for a reasonable and cost effective alternative to criminal prosecution, while imposing a "sanction" on those persons committing immigration fraud. This joint strategy and partnership has already resulted in an unprecedented number of suspected fraud cases being detected and addressed.

Question#:	13
Topic:	security checks
Hearing:	No title
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)

Question: The rule will also increase fees to cover security checks. How much does USCIS pay the FBI for each individual fingerprint and each individual name check? In a significant number of cases, unresolved FBI name checks are causing inordinate adjudication delays. Please describe how an FBI name check is initiated and how, if an issue is identified during the course of such a check, it is resolved? What is the average length of time that it takes to resolve a check where a "hit" has occurred? How many cases of all types are currently awaiting such a resolution? What steps have you taken to improve this process? How will the fee rule speed up resolution of name check hits? What changes to the name check system would help reduce name check backlogs and ensure that future backlogs do not develop or worsen?

Answer: Initial responses from FBI name check requests are returned to USCIS within 2 weeks and loaded into the USCIS systems. Approximately 68% of the initial responses are NO RECORD, which means case processing can move forward. Records that require additional investigation ("Pending") typically take 3 - 4 weeks, though approximately 1 to 2% of the cases may take much longer. For example, the total pending FBI name checks as of September 17, 2007, was 282,528: of that 114,016 have been pending longer than 12 months. If there is a positive match resulting in derogatory information, the FBI forwards the report (commonly referred to as Letter Head Memorandum or LHM) to USCIS. The report is reviewed and, depending on the nature of the information, is sent to the respective field office or center to be considered during adjudication, or sends it to the Fraud Detection and National Security Unit (FDNS) for further analysis and review.

Under FBI's interim fee schedule implemented October 1, 2007, most name checks submitted through a batch electronic process will be $1.50 per name. With additional "file review" beyond the batch review, the cost is $29.50. Senior management of the Department and USCIS has been working actively with the FBI to develop and implement a plan to improve processes and procedures to both reduce the current name check backlog and speed processing times of new checks. The Department anticipates implementation of a plan in the near future. In addition, the FBI is expanding its capacity to resolve name check hits. USCIS will help finance this additional capacity.

USCIS pays the FBI $17.25 for each fingerprint submission.

Question#:	13
Topic:	security checks
Hearing:	No title
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)

Question#:	14
Topic:	FBI name checks
Hearing:	No title
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)

Question: It is clear that FBI name checks have effects beyond delays in the processing of the background checks. Has the agency had to divert resources (how many and in what form) from other functions, including adjudicatory functions, to resolve or minimize backlogs related to security checks? How many lawsuits have been filed against the agency that are related to background and name check delays? What resources has the agency devoted to addressing that litigation? Has the agency analyzed the current and projected fiscal effects of the litigation pending against it? If so, please provide those analyses and any data supporting the analyses.

Answer: USCIS allocated fee revenue of $7.5 million in FY 2007 from higher-than-anticipated receipts to help address the FBI Name Check backlog, in addition to $8 million in supplemental, non-fee appropriations provided by the Congress in P.L. 110-28. Therefore, a total of $15.5 million is being used for this purpose.

Litigation issues related to name checks are a concern. In the first quarter of Fiscal Year 2005, USCIS received 123 federal court case filings. By the second quarter of Fiscal Year 2007, USCIS received 1,925 federal court case filings. This represents an increase of 1,465%. Further, in all of Fiscal Year 2005, USCIS faced a total of 682 immigration cases in federal court. By the end of Fiscal Year 2007, USCIS had received no less than 4,139 federal court immigration filings.

USCIS has experienced a significant increase in litigation against the agency in the last two years. The increase between the first Quarter of Fiscal Year 2005 and the Second Quarter of Fiscal Year 2007 is approximately 1170%. Drawing a trend line through the most current data, collected by Office of the Chief Counsel based on monthly court filing receipts, we predict that it is probable that USCIS will receive upwards of 600 lawsuits filed against it by the Second Quarter of Fiscal Year 2008, with the further possibility of filings topping 700 per month by the end of Fiscal Year 2008. Of these filings, approximately 80 % are a result of F.B.I. name check delays.

The increase in litigation has also increased the amount of funds expended in payments for attorneys' fees under the Equal Access to Justice Act (EAJA), or paid in settlement in lieu of litigating the EAJA issues. In FY 2005, USCIS did not pay any EAJA awards related to its litigation, while in FY 2006, payments related to name check litigation totaled $60,000. As of August, 2007, similar payments totaled $165,000.

Question#:	14
Topic:	FBI name checks
Hearing:	No title
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)

USCIS currently has approximately 38 attorney positions whose primary function is to deal with federal litigation. In FY 2008, that number will increase to 64 with additional resources from the new fee rule.

Question#:	15
Topic:	contractors
Hearing:	No title
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)

Question: Significant portions of USCIS activities are conducted by contractors. Mail room intake is one major example. Mr. Yates noted in his testimony the impact of the National Customer Service Center as a factor supporting cost increases. That is another contractor activity. Is contracting the best method for performing these tasks? We hear numerous complaints related to mail room and call center errors. Would it be more cost effective to have these tasks performed in another manner? Would better service be provided through a different approach? What recommendations would you make for improving how these contracts are let and managed? Have you performed any studies or analyses regarding USCIS' use of contractors? If so, please provide those studies or analyses, along with the data support them.

Answer: USCIS is focused on ensuring quality, cost effective services for taxpayers and our customers. As you may know, our contracts for Service Center Operations (which include mail service) and our National Customer Service Center (NCSC) contracts, include performance requirements. The contracts establish clear performance requirements, measurable standards and incentive/disincentives for exceeding or not meeting the established acceptable quality limits. Overall, these are considered "performance based contracts" as defined by Federal Acquisition Regulations.

With respect to the NCSC specifically, USCIS has over the years designed and implemented a triage process permitting callers to first access and obtain general information and case status through a network Interactive Voice Response (IVR) system by using prompts and keypad responses when calling the primary toll-free number (800-375-5283). The caller advances to live assistance if the automated IVR is unable to meet the caller's needs. This process is designed to provide the most cost-effective mix of methods for handling calls, while providing service to the customer that is consistent with the complexity of the caller's information needs.

Over the past 9 months, the NCSC has been consistently reporting wait times of less than 30 seconds for customers to reach live phone assistance. This is a dramatic improvement over the previous year when customers routinely waited more than 30 minutes to speak to a customer service representative. In addition to improving wait times, overall customer satisfaction with the 1-800 experience has reached an all-time high of 85 percent in mid-summer 2007 as measured by an

Question#:	15
Topic:	contractors
Hearing:	No title
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)

independent third-party conducting a recurring survey of NCSC customers to monitor overall customer satisfaction.

Overall, USCIS works closely with its contractors to ensure that problems and issues are effectively addressed in a timely manner. Combining effective management oversight with effective performance-based agreements will facilitate service goals. In addition, Service Center and Call Center contracts were recently awarded to two vendors each, reducing the dependency on any single vendor. USCIS has not conducted a study per se on the use of contractors generally, but does conduct regular analysis of functions and activities under Office of Management and Budget competitive sourcing guidance.

Question#:	16
Topic:	service centers
Hearing:	No title
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)

Question: We understand that the agency is seeking to contract out certain functions, including clerical support at its various Service Centers. Please describe the functions USCIS contracts out and the bases for the decision to use contractors instead of permanent employees. To what extent will the new fee rule reduce the agency's reliance on contractors?

Answer: Under the Federal Activities Inventory Reform Act (FAIR Act), USCIS follows mandated requirements and processes to determine which staff positions meet the definition of Inherently Governmental or, alternatively, Commercial Activity. All positions meeting the definition of Commercial Activity must be placed on an agency plan to be studied within competitive sourcing rules and regulations. These requirements are prescribed by the Office of Management and Budget (OMB) Circular A-76 (Revised), OMB's April 24, 2006 Memorandum for Heads of Executive Departments and Agencies, entitled "Competitive Sourcing under Section 824(A) of Public Law 109-115", and Department of Homeland Security (DHS) Management Directive 0476.

All current USCIS competitions are tentatively scheduled to be competed as streamlined competitions. A streamlined competition process is structured for the competition of the work function, and open only to the impacted personnel as represented by the Most Efficient Organization (MEO). Historical data indicates the percentage of streamlined competitions awarded to the Government's MEO is 90 to 95 percent. The Administrative Support positions (clerical) have been classified as a Commercial Activity on the USCIS FAIR Act Inventory.

The fee rule was not structured to specifically increase, or decrease, the reliance of USCIS on contractors.

Question#:	17
Topic:	green card recall
Hearing:	No title
Primary:	The Honorable Steve King
Committee:	JUDICIARY (HOUSE)

Question: How much would you have had to increase each of the fees charged for other applications in order to make up the lost revenue that would have resulted had you followed Mr. Gutierrez's recommendation to apply the old fees to the green card recall?

Answer: Based on the proposed rule for replacing Forms I-551 without an expiration date, USCIS estimates that 750,000 persons will apply for a replacement Form I-551. To apply, each person must file Form I-90 with a fee of $290 and an additional biometrics capture fee of $80. The total cost would be $370. Using the prior (FY 2007) fee structure in which the I-90 was $190 and the biometrics capture was $70, the total cost would be $260. The total potential lost revenue would be an estimated $82.5 million. The chart below depicts the calculation.

Fees	Volume	I-90	Biometrics	Total	Revenue
Current	750,000	$ 290	$ 80	$ 370	**$ 277,500,000**
FY 2007	750,000	$ 190	$ 70	$ 260	**$ 195,000,000**
				Difference	**$ 82,500,000**

How much each application would have had to increase to make up the difference for this lost revenue would depend on decisions regarding cost distribution. Simply dividing the $82.5 million by USCIS estimated 4.742 million application/petition fee-paying volumes results in a $17.40 amount per fee-paying application.

Question#:	18
Topic:	USCIS fees
Hearing:	No title
Primary:	The Honorable Robert W. Goodlatte
Committee:	JUDICIARY (HOUSE)

Question: In a 2004 GAO report that found that USCIS fees were not sufficient to fund its operations, the report stated that a "fundamental problem is that [US]CIS does not have a system to track the status of each application as it moves through the process. Accordingly, USCIS does not have information on the extent to which work on applications in process remains to be finished."

Is that still the case, and if so, what is USCIS doing to solve this problem? Does USCIS have plans to use technology to track the progress of these applications?

Answer: The systems USCIS currently uses to process benefit applications were not designed to provide detailed applications status information. USCIS has made progress in improving the transparency of an application's status, but such progress is limited by the original technology. As part of the Transformation effort, a new case processing system will be developed which will provide full transparency of an application's status and work flow. The new system will be able to provide information such as the number of cases pending, and for cases in-progress, the percent of work completed. This will allow USCIS to better manage its workflow.

Currently, USCIS is piloting the Secure Information Management System using Commercial Off The Shelf (COTS) software to test electronic workflow and benefits processing for the Adoptions Case type. This pilot will inform the development of the enterprise wide case management system.

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