

March 1, 2021

Tracy Renaud
Senior Official Performing the Duties of the Director
U.S. Citizenship and Immigration Services
20 Massachusetts Ave., NW
Washington, DC 20529

Re: Implementation of the Emergency Stopgap USCIS Stabilization Act provisions included in H.R. 8337: Continuing Appropriations Act, 2021 and Other Extensions Act

Dear Ms. Renaud:

On behalf of the undersigned organizations, we urge USCIS to take measures to swiftly implement the provisions of the Emergency Stopgap USCIS Stabilization Act which were included in H.R. 8337: Continuing Appropriations Act, 2021 and Other Extensions Act, provisions which authorize USCIS to expand premium processing to additional form types. USCIS generates substantial revenue from its premium processing service, which allows for certain petitions to be processed within 15 calendar days for an additional filing fee of \$2,500. As of the end of FY2019, USCIS had \$648 million in its premium processing account.¹ Estimates indicate that USCIS could raise an additional \$385–\$626 million in annual revenue by expanding premium processing to the forms authorized for immediate eligibility by Congress.² We believe that this legislation, if properly implemented, will bolster USCIS’s revenues and allow it to lift its hiring freeze, while also allowing the agency to become much more efficient and effective in its adjudication of immigration benefits applications and petitions, in turn promoting greater access to the legal immigration system, a priority of the Biden Administration.³ To that end, the undersigned organizations offer recommendations on how USCIS could implement the legislation to ensure the agency remains solvent while efficiently and effectively adjudicating all immigration benefit applications and petitions.

¹ DEP’T OF HOMELAND SECURITY, U.S. CITIZENSHIP & IMMIGRATION SERV., BUDGET OVERVIEW: FISCAL YEAR 2021 CONGRESSIONAL JUSTIFICATION,

https://www.dhs.gov/sites/default/files/publications/united_states_citizenship_and_immigration_services.pdf.

² See Doug Rand & Lindsay Milliken, *Congress Just Authorized USCIS to Raise Over \$1 Billion Fees from Business Users*, FEDERATION OF AM. SCIENTISTS (Oct. 22, 2020), <https://fas.org/wp-content/uploads/2020/10/USCIS-1B-fees.pdf>.

³ See Executive Order 14012, Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans 86 Fed. Reg. 8277 (Feb. 5, 2021) (ordering the Secretary of State, the Attorney General, and the Secretary of Homeland Security to “identify any agency actions that fail to promote access to the legal immigration system — such as the final rule entitled, “U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements,” 85 Fed. Reg. 46788 (Aug. 3, 2020), in light of the Emergency Stopgap USCIS Stabilization Act (title I of division D of Public Law 116-159) — and recommend steps, as appropriate and consistent with applicable law, to revise or rescind those agency actions.”).

BACKGROUND

On October 1, 2020, H.R. 8337: Continuing Appropriations Act, 2021 and Other Extensions Act was signed into law.⁴ This bill includes provisions of the Emergency Stopgap USCIS Stabilization Act. The Emergency Stopgap USCIS Stabilization Act provides measures to address USCIS's fiscal challenges, which were made public in May 2020 when USCIS informally notified Congress of a massive projected budget shortfall threatening the agency's operations and the financial wellbeing of thousands of USCIS employees and requested \$1.2 billion in emergency funding.⁵ In particular, this legislation provides the agency immediate access to existing premium processing funds that were dedicated to infrastructure improvements to cover operating expenses. The legislation also provides measures to increase USCIS's revenue by raising existing premium processing fees for most form types and expanding premium processing to additional form types.⁶

On October 19, 2020, USCIS increased the premium processing fee for Forms I-140 and I-129 to \$2,500 from \$1,400.⁷ Most recently, on February 24, 2021, USCIS announced the expansion of premium processing to E-3 petitioners.⁸ The undersigned organizations urge USCIS to continue to take measures to implement the provisions of the Emergency Stopgap USCIS Stabilization Act as quickly as possible, including continuing to expand premium processing to additional form types.

RECOMMENDATIONS FOR IMPLEMENTING H.R. 8337

The undersigned organizations acknowledge there are several factors currently impacting the agency's operations and resources, including the ongoing COVID-19 pandemic and a hiring freeze. We believe that this legislation, if properly implemented, can bolster USCIS revenue to support its operations, while ensuring that the agency becomes much more efficient in its processing of immigration benefits applications and petitions. To that end, the undersigned organizations offer the following recommendations on how USCIS can implement this legislation to ensure the agency remains solvent while efficiently adjudicating immigration benefit applications and petitions:

- **USCIS Should Prioritize the Allocation of the Premium Processing Fees It Receives to Address Its Crisis Level Processing Delays.** USCIS continues to experience crisis-level delays in the adjudication of applications, petitions and other requests. From fiscal year (FY) 2014 through FY2019, overall average case processing times have risen by 101

⁴ Continuing Appropriations Act, 2021 and Other Extensions Act, October 1, 2020, Pub. L. 116-159.

⁵ See *USCIS Deputy Director Releases Statement on USCIS's Fiscal Outlook*, AM. IMMIGRATION LAWYERS ASS'N (June 25, 2020), <https://www.aila.org/infonet/uscis-statement-fiscal-outlook>.

⁶ See *How Do I Request Premium Processing?* U.S. CITIZENSHIP & IMMIGRATION SERV., <https://www.uscis.gov/forms/all-forms/how-do-i-request-premium-processing>.

⁷ *Premium Processing Fee Increase Effective Oct. 19, 2020*, U.S. CITIZENSHIP & IMMIGRATION SERV. (Oct. 16, 2020), <https://www.uscis.gov/news/pvbpremium-processing-fee-increase-effective-oct-19-2020>.

⁸ *USCIS Expands Premium Processing Service to E-3 Petitioners*, U.S. CITIZENSHIP & IMMIGRATION SERV. (Feb. 24, 2021), <https://www.uscis.gov/news/alerts/uscis-expands-premium-processing-service-to-e-3-petitioners>.

percent.⁹ USCIS should prioritize allocating some of the fees collected through its premium processing service to help address the agency's case processing delays, in particular for applications and petitions that are not currently eligible for premium processing. H.R. 8337 permits this type of allocation, stating that fees collected may be used to “respond to adjudication demands, including by reducing the number of pending immigration and naturalization benefit requests.”¹⁰ USCIS should prioritize this type of allocation and provide transparency to the public regarding which applications and petitions the agency is prioritizing to receive the premium processing funds.

- **USCIS Should Ensure that Processing Times for Regular Processed Applications and Petitions are not Negatively Impacted by the Expansion of Premium Processing.** The undersigned organizations are concerned that the expansion of premium processing to other form types could increase the processing times of non-premium immigration benefit requests. As USCIS expands premium processing to other form types, USCIS should ensure that regular processed applications and petitions are not negatively impacted by closely monitoring case processing times and ensuring that non-premium immigration benefit requests continue to receive adequate staffing and resources to ensure timely and efficient adjudication of such benefit requests, develop processes for monitoring the impact of any expansion of premium processing on other benefit types and relay that information to Congress and stakeholders, and develop procedures to surge staffing for benefits request types in the event that a negative impact occurs. USCIS should also allocate some of the funds it collects from its premium processing service to improve the adjudications infrastructure and process for applications and petitions that are filed under regular process.
- **USCIS Should Expand Premium Processing to Additional Form Types In a Thoughtful and Strategic Manner.** USCIS currently offers the premium processing service for certain Form I-129, Petition for Nonimmigrant Worker, and Form I-140, Immigrant Petition for Foreign Worker. H.R. 8377 permits USCIS to expand premium processing to additional form types. In particular, H.R. 8377 authorizes premium processing services to be provided specifically to employment-based nonimmigrant petitions and associated applications for dependents; Form I-140 petitions; Form I-539; Form I-765; and “any other immigration benefit type that the Secretary deems appropriate for premium processing.”¹¹ As USCIS develops plans to implement the expansion of premium processing to other form types, USCIS should consider prioritizing the expansion of premium processing in the following manner:
 - **Expand Premium Processing to the Form Types Specifically Authorized by H.R. 8377.** USCIS should start by expanding premium processing to the forms that are specifically authorized by statute, which can be done without requiring

⁹ *AILA Policy Brief: Crisis Level USCIS Processing Delays and Inefficiencies Continue to Grow*, AM. IMMIGRATION LAWYERS ASS'N (Feb. 26, 2020) <https://www.aila.org/advo-media/aila-policy-briefs/crisis-level-uscis-processing-delays-grow>.

¹⁰ Continuing Appropriations Act, 2021 and Other Extensions Act, October 1, 2020, Pub. L. 116-159 at 31.

¹¹ *Id.*

new regulations to be issued. Such an expansion should include the following form types specifically authorized by H.R. 8377:

- **Applications for Employment Authorization (Form I-765).** USCIS is currently reporting significant processing times of up to 6 - 12 months for some Form I-765 applications¹², resulting in unacceptably lengthy time frames for U.S. employers to onboard new employees and gaps in work authorization for individuals applying for an extension of their work authorization. USCIS should prioritize the expansion of premium processing to Form I-765, in particular for initial Form I-765 applications and work authorization renewal request for beneficiaries who are not eligible for an automatic 180-day extension of their expiring EAD, such as H-4, L-2, J-2 and E-3 derivative beneficiaries. Such a prioritization will ensure that foreign nationals applying for work permits will be able to lawfully support themselves and contribute to our economy in a timely manner and that those seeking to renew their work authorization will be able to remain lawfully employed and avoid gaps in their work authorization.
- **Applications to Extend/Change Status (I-539).** Currently, USCIS adjudicates the applications of derivative beneficiaries separately from the principal applicant, even if the applications are filed together. In order to maintain family unity, USCIS should prioritize extending premium processing to I-539 applications filed by the family members of a principal applicant (i.e., derivative beneficiaries) so that family units can receive their immigration benefits all together at the same time. In particular, USCIS should prioritize providing the premium processing service when Form I-539 for derivative beneficiaries is filed concurrently with the principal applicant, as this will allow for efficient adjudication by having the entire family unit's applications and petitions adjudicated by the same officer at the same time. Relatedly, given that the EAD for the derivative beneficiary cannot be adjudicated until the Form I-539 extension or change of status is approved, expanding premium processing to the Form I-539 will ensure that the derivative beneficiary's EAD application can be adjudicated timely. In order to effectuate this expansion of premium processing, USCIS should rescind its inefficient policy of requiring biometrics from all I-539 applicants, a policy that was adopted by USCIS in March 2019¹³ despite a failure by the agency to justify the need for biometrics from all I-539 applicants.

¹² See *Check Case Processing Times*, U.S. CITIZENSHIP & IMMIGRATION SERV., <https://egov.uscis.gov/processing-times/> (reporting for example 6 – 11 months processing time for I-765 applications for an H-4 spouse of an H-1B nonimmigrant (filed with I-539 H4) [(c)(26)] and up to 12 months for an I-765 based on an approved, concurrently filed, I-821D [(c)(33)]).

¹³ *USCIS to Publish Revised Form I-539 and new Form I-539*, AM. IMMIGRATION LAWYERS ASS'N (Feb. 11, 2019), www.aila.org/infonet/uscis-to-publish-revised-form-i-539-and-new-form.

- **Immigrant Petitions for Foreign Worker (I-140).** USCIS should prioritize expanding premium processing to applications and petitions that will help bolster our economy and protect our national interest. To that end, USCIS should expand premium processing to I-140 petitions for applicants applying for a National Interest Waiver (EB-2 NIW) or as a Multinational Manager or Executive (EB1(c)).
- **H-1B1 Nonimmigrants Working in Specialty Occupations (Form I-129).** USCIS should prioritize expanding premium processing to Form I-129 for H-1B1 nonimmigrant visa applicants. The Form I-129 petition for H-1B1 applicants filed via USCIS closely mirrors the H-1B petition, which is already eligible for premium processing, thus the expansion of premium processing to H-1B1 petitioners should require minimal staff training and changes to internal processes and procedures relative to other form types.

RECOMMENDATIONS FOR IMPROVING EFFICIENCY & MINIMIZING FINANCIAL CHALLENGES

As USCIS takes measures to implement H.R. 8377, the undersigned organization urge USCIS to adopt the following policies to enhance the agency's efficiency and effectiveness as well as to minimize its financial challenges going forward:

- **USCIS should adopt cost-efficient measures for adjudicating immigration applications and petitions.** In recent years, USCIS has adopted a series of policies and practices that have created inefficiencies in its operations – increasing the agency's overall cost of adjudicating immigration applications and petitions – while at the same time resulting in a reduction in the overall number of applications and petitions that the agency receives. USCIS should take the following measures to reduce the cost of adjudicating immigration applications and petitions and increase its efficiency:
 - **USCIS should eliminate its in-person interview requirement for routine cases.**
 - **USCIS should reinstitute the agency's 2004 "deference" policy.**
 - **USCIS should reuse biometrics and waive the biometrics requirement for certain groups.** USCIS should exercise its discretion pursuant to 8 CFR 103.2(b)(9) to limit when biometrics need to be captured. In order to save personnel and processing costs, USCIS should reuse all biometrics that have been captured within the past five years for any form type and waive the biometrics requirement for individuals under the age of 14 or above the age of 65, as well as for applicants who have been previously vetted, such as Form I-539 and naturalization applicants.
 - **USCIS should stop rejecting applications and petitions due to alleged incompleteness or blank spaces,** a policy which is inefficient and costly to the agency to mail back applications and petitions that are rejected on this basis.
 - **USCIS should issue RFEs and NOIDs more judiciously.** In recent years, USCIS has been issuing Requests for Evidence (RFEs) and Notices of Intent to Deny (NOIDs) at an unprecedented high rate, which wastes limited staff resources

and increases the overall time it takes from USCIS to adjudicate applications and petitions. Frequently, RFEs and NOIDs are issued seeking evidence that has already been provided or that is unnecessary to establish eligibility. The agency should take steps to issue RFEs and NOIDs more judiciously to spare agency resources.

- **Timely Intake Applications and Petitions Filed with USCIS, including Cashing Filing Fees.** USCIS recently announced delays in the intake of applications and petitions at USCIS Lockbox facilities.¹⁴ The failure to timely cash filing fees for applications and petitions negatively impacts the agency’s overall revenue by delaying for weeks, and in some cases months, the agency’s ability to generate revenue for its operations and adjudications. Moreover, inordinate delay in intake results in checks expiring and possible rejection of properly filed petitions and applications. USCIS should prioritize the adoption of processes and procedures to ensure timely intake of all applications and petitions, including during surge filing periods, including expanding the online filing option to more immigration benefits.
- **Adopt and Maintain a High Level of Customer Service Across All Premium Processing Units.** As USCIS expands premium processing to additional form types, it is critical that USCIS comply with the terms of premium processing, including the customer service components of its premium processing service. In particular, USCIS should ensure that it maintains a high level of customer service through its dedicated premium processing email and phone lines and that the agency modernizes its communication methods, such as replacing faxed communications with internet-based communications. USCIS should also ensure that its premium processing units utilize the self-addressed prepaid courier envelopes submitted by stakeholders to return the results of the adjudication, a practice that is currently implemented inconsistently across premium processing units.¹⁵
- **Expand Online Filing to More Form Types.** Currently only eight USCIS forms are eligible for online filing¹⁶ yet USCIS has acknowledged that online filing makes the agency “more effective and efficient.”¹⁷ To continue to increase the agency’s efficiency and effectiveness, USCIS should expand the number of forms that are eligible for online filing as quickly as possible. Online filing is beneficial to USCIS’s revenue streams as it allows USCIS to process filing fees more expeditiously, rather than encountering the long delays that currently plague the USCIS Lockbox facilities. As USCIS expands the forms

¹⁴ *USCIS Lockbox Updates*, U.S. CITIZENSHIP & IMMIGRATION SERV. (Jan. 8, 2021), <https://www.uscis.gov/news/alerts/uscis-lockbox-updates>.

¹⁵ *See How Do I Request Premium Processing?* U.S. CITIZENSHIP & IMMIGRATION SERV. (Jan. 22, 2021), <https://www.uscis.gov/forms/all-forms/how-do-i-request-premium-processing> (providing that stakeholders may include a postage paid and self-addressed courier delivery slip when filing Form I-907 and USCIS will use it to return the results of the adjudication.).

¹⁶ *USCIS Makes Another Form Available for Online Filing*, U.S. CITIZENSHIP & IMMIGRATION SERV. (Oct. 30, 2019), <https://www.uscis.gov/news/news-releases/uscis-makes-another-form-available-for-online-filing>.

¹⁷ *Id.*

that are eligible for online filing, the agency should ensure the ability for the online form to be prepared by an attorney or accredited representative.

- **USCIS should refrain from publishing new editions of forms.** In recent months, USCIS has proposed substantive changes to a vast array of USCIS forms, including Form I-485, I-134, I-821D, I-914, and N-400 among others through the Paperwork Reduction Act process. Among the changes proposed to the forms include expanding USCIS's no-blanks policy to more form types, an inefficient and costly policy. Implementing new editions of forms takes away time and resources from an already resource-strapped agency as USCIS intake staff and adjudicators must be trained on the new content of the forms. In order to minimize inefficiencies, USCIS should refrain from issuing new editions of forms and instead extend without change the current edition of all forms that are currently undergoing review at the Office of Management and Budget (OMB) unless comments have been submitted by the public supporting the need for changes to the current edition of the forms.

CONCLUSION

We thank you for your consideration of this matter. If you require any additional information or clarification, or would be available to meet with the undersigned organizations to discuss the agency's plans for implementing this legislation, please contact Sharvari (Shev) Dalal-Dheini at (202) 507-7621 or by email at sdalaldheini@aila.org or Diane Rish at (202) 507-7642 or by email at drish@aila.org.

Sincerely,

American Immigration Council
American Immigration Lawyers Association
America's Voice
Association of American Universities
Catholic Legal Immigration Network, Inc.
Church World Service
Compete America
FWD.us
Immigration Hub
Information Technology Industry Council (ITI)
International Refugee Assistance Project
Internet Association
NAFSA: Association of International Educators
NALEO Educational Fund
National Partnership for New Americans
Niskanen Center
TechNet

cc: Felicia Escobar Carrillo, Chief of Staff, Office of the Director
Connie Nolan, Acting Associate Director, Service Center Operations Directorate
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