



Congress Should Fund the USCIS Shortfall While Ensuring Accountability

Background: U.S. Citizenship and Immigration Services (USCIS) is currently running a shortfall in its annual operating budget of an estimated \$1.2 billion. Officials with the fee-funded agency have blamed the shortfall on the COVID-19 pandemic. In fact, a number of factors have resulted in USCIS's weak financial position, including the agency's deviation from its primary statutory mandate: to function as a service-oriented immigration benefits agency that effectively facilitates immigration to the United States.¹ In recent years, USCIS has implemented policies that restrict rather than facilitate immigration, making it difficult—and in some circumstances impossible—for unaccompanied children and other individuals who legally qualify for immigration benefits to obtain them.² Well prior to the pandemic, these measures resulted in significant lost revenue by deterring or precluding fee-generating applications and petitions.

Provide Funding With Conditions: KIND supports supplemental appropriations for USCIS, including bill and report language to ensure USCIS policies and operations are aligned with its service-oriented mandate. KIND opposes any effort to withhold funds from USCIS, as this would exacerbate case processing delays and leave unaccompanied children and other applicants and petitioners without meaningful immigration benefits services.

To ensure that unaccompanied children have access to essential immigration benefits and that the agency adjudicates these children's cases fairly and efficiently, KIND supports the following conditions:

- **Prohibit fees for seeking asylum and for asylum seekers' initial requests for employment authorization.** In November 2019, USCIS proposed the unprecedented requirement of a filing fee for Form I-589, *Application for Asylum and for Withholding of Removal*, as well as for a first-time I-765, *Application for Employment Authorization*, filed by an asylum seeker.³ These fees would preclude some unaccompanied children from requesting potentially life-saving relief, while pricing out many other unaccompanied children from the employment authorization necessary not only to work, but also to obtain federal identification often needed to access housing, medical care, and educational opportunities while their asylum cases are pending.
- **Prohibit USCIS's planned 10 percent application fee surcharge and proposed fee hikes for adjustment of status, employment authorization, and naturalization applications.** The 10 percent fee surcharge reportedly planned by USCIS, as well as the substantial fee hikes—in some instances higher than 80 percent—proposed in November 2019 for Forms I-485, *Application to Register Permanent Residence or Adjust Status*, I-765, and N-400, *Application for Naturalization*, would constrict legal immigration and prevent many unaccompanied children from obtaining employment, acquiring permanent legal residence, and becoming citizens—in all, blocking them from self-sufficiency and successful integration into the United States.
- **Ensure robust access to fee waivers for humanitarian applications, including for individuals receiving means-tested benefits.** USCIS has sought to implement measures limiting vulnerable applicants and petitioners' access to fee waivers, including by moving to eliminate the receipt of means-tested public benefits as a fee waiver

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

² See, e.g., "Policy Changes and Processing Delays at USCIS" before the Immigration and Citizenship Subcommittee of the House Judiciary Committee, 116th Cong. 1st Sess. (2019) (statement of AILA President Marketa Lindt); <https://docs.house.gov/meetings/JU/JU01/20190716/109787/HHRG-116-JU01-Wstate-LindtM-20190716.pdf>.

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

qualification.⁴ These restrictions would all but shut out many low-income noncitizens, including unaccompanied children, from the nation’s legal immigration system.

- **Require USCIS to adjudicate Special Immigrant Juvenile petitions within 180 days and to provide Congress with detailed quarterly reports on the agency’s efforts to reduce its overall case backlog while ensuring fair and accurate adjudications.** From FYs 2016 to 2019, USCIS’s average processing time for Form I-360, *Petition for Amerasian, Widow(er), or Special Immigrant*—the petition filed by unaccompanied children seeking Special Immigrant Juvenile humanitarian protection—increased from 4.8 months to 16.8 months, a more than 300 percent increase which defies congressional intent that the agency adjudicate SIJ cases within 180 days. This also leaves affected children at heightened risk of harm.⁵ During that same period, the average overall USCIS case processing time rose by more than 50 percent, with broadly adverse consequences throughout the nation for noncitizens and citizens alike.⁶ The agency’s own actions—including its imposition of unnecessary bureaucratic hurdles in the adjudication process—constitute key drivers of these delays.⁷
- **Mandate auto-extension of the validity period of employment authorization documents until at least 90 days after President Trump’s emergency proclamation ends.** Already from FYs 2016 to 2019, USCIS’s average processing time for employment authorization applications surged by nearly 75%.⁸ The agency’s financial crisis, combined with health and safety risks that impede some renewal filings, now pose additional obstacles to USCIS’s timely renewal of employment authorization documents that are often essential to unaccompanied children’s access to housing, medical care, and educational opportunities. Auto-extending the documents’ validity period would bring vital relief to these children while conserving limited agency resources.
- **Ensure that unaccompanied children receive non-adversarial hearings before an asylum officer.** USCIS has sought to bar from non-adversarial asylum interviews those children who turn 18 before filing their asylum applications.⁹ If this policy goes into effect, it would contravene congressional intent by depriving unaccompanied children of the opportunity to pursue their asylum claims in a non-adversarial setting before a specially trained asylum officer.

Proposed Report Language: The Committee recommends \$1.2 billion in support of ongoing operational requirements of USCIS. The Committee is concerned by recent attempts by USCIS to increase fees for asylum seekers, including those requesting employment authorization as well as surcharges and fees for adjustment of status, employment authorization and naturalization applications. The Committee includes bill language prohibiting USCIS from moving forward with proposed fee adjustments. Additionally, the Committee directs USCIS to ensure there is robust access to fee waivers for humanitarian applications and that unaccompanied children receive non-adversarial hearings before asylum officers. Finally, the USIS is directed to adjudicate Special Immigrant Juvenile petitions within 180 days, to auto-extend the validity periods of employment authorization documents until at least 90 days after the emergency proclamation ends, and to provide Congress with quarterly reports on the agency’s efforts to reduce its overall case backlog while ensuring fair and accurate adjudications.

⁴ See, e.g., USCIS, “USCIS Updates Fee Waiver Requirements” (Oct. 25, 2019); <https://www.uscis.gov/news/news-releases/uscis-updates-fee-waiver-requirements>.

⁵ See USCIS, “Historical National Average Processing Time (in Months) for All USCIS Offices for Select Forms By Fiscal Year,” <https://egov.uscis.gov/processing-times/historic-pt>.

⁶ See AILA, “Policy Brief: Crisis Level USCIS Processing Delays and Inefficiencies Continue to Grow;” (Feb. 26, 2020); <https://www.aila.org/advo-media/aila-policy-briefs/crisis-level-uscis-processing-delays-grow>.

⁷ See *id.*

⁸ See USCIS, “Historical National Average Processing Time (in Months) for All USCIS Offices for Select Forms By Fiscal Year,” <https://egov.uscis.gov/processing-times/historic-pt>.

⁹ See KIND, “A Timeline of How the Trump Administration is Rolling Back Protections for Unaccompanied Children;” https://supportkind.org/wp-content/uploads/2019/06/Timeline-How-the-Trump-Administration-is-Rolling-Back-Protections-for-Children_updated-June-4-2019.pdf.