PROPOSED IMMIGRATION FEE INCREASE

HEARING

BEFORE THE

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

OF THE

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CONTENTS

FEBRUARY 14, 2007

OPENING STATEMENT

Page

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 1

The Honorable Steve King, a Representative in Congress from the State of Iowa, and Ranking Member, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law 3

The Honorable John Conyers, Jr., a Representative in Congress from the State of Michigan, and Chairman, Committee on the Judiciary 6

The Honorable Lamar Smith, a Representative in Congress from the State of Texas, and Ranking Member, Committee on the Judiciary 7

WITNESSES

The Honorable Emilio T. Gonzalez, Ph.D., Director, U.S. Citizenship and Immigration Services, Department of Homeland Security

Oral Testimony 10

Prepared Statement 13

LETTERS, STATEMENTS, ETC., SUBMITTED FOR THE HEARING

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 3

Prepared Statement of the Honorable Steve King, a Representative in Congress from the State of Iowa, and Ranking Member, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law 5

Prepared Statement of the Honorable John Conyers, Jr., a Representative in Congress from the State of Michigan, and Chairman, Committee on the Judiciary 7

Prepared Statement of the Honorable Luis V. Gutierrez, a Representative in Congress from the State of Illinois 8

Prepared Statement of the Honorable Sheila Jackson Lee, a Representative in Congress from the State of Texas 9

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

Prepared Statement of the Honorable Barney Frank, a Representative in Congress from the State of Massachusetts 47

Letter to the Honorable Zoe Lofgren from the Honorable Joe Baca, a Representative in Congress from the State of California, and Chair, Congressional Hispanic Caucus 48

Letter to the Honorable Luis Gutierrez from the Honorable Emilio Gonzalez, Director, United States Citizenship and Immigration Services, Department of Homeland Security 50

Page

Chart outlining the Proposed Fee Increases of Employment Based v. Family Based fees, submitted by the Honorable Emilio Gonzalez, Director, United States Citizenship and Immigration Services, Department of Homeland Security 52

United States Citizenship and Immigration Services Responses to Post-Hearing Questions posed by Chairwoman Zoe Lofgren and the Honorable Keith Ellison 53

PROPOSED IMMIGRATION FEE INCREASE

WEDNESDAY, FEBRUARY 14, 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 2:20 p.m., in Room 2141, Rayburn House Office Building, the Honorable Zoe Lofgren (Chairwoman of the Subcommittee) presiding.

Present: Representatives Lofgren, Gutierrez, Berman, Jackson Lee, Waters, Delahunt, Davis, Ellison, Conyers, King, Lungren, Gohmert, and Smith.

Ms. LOFGREN. Good afternoon. This first hearing of the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law will come to order.

I would just like to note a few housekeeping items here at the beginning of our meeting, which is that we will proceed in our order of questioning by seniority, making accommodation on an *ad hoc* basis for Members who have conflicts.

I will make an opening statement, and I am so pleased that our Ranking Member, Mr. King, will make an opening statement.

Certainly, we will accommodate the Chair of our full Committee and the Ranking Member of the full Committee to make opening statements. We will ask other Members to submit their opening statements for the record.

I would like to welcome everyone to this very first hearing of the Immigration Subcommittee in the 110th Congress. I would like to welcome Mr. King and the Members of the Subcommittee, as well as USCIS Director Gonzalez and the members of the public and press who have joined us here today.

I appreciate that Mr. King and I share a commitment to reforming the nation's immigration laws. Together, this Subcommittee will find a new way forward on some of the most important issues of our day.

Our immigration services need to move ahead. They must transform themselves into 21st-century organizations, fully automated, paperless, able to communicate among themselves, and able to track not only the status of the cases they process but the entries and exits of those who come to the United States.

Our security interests demand these things. America's immigration services must be able to adjudicate cases in ways that ensure the safety and security of America and Americans. The immigration services must have the resources to do that. They must have

the people, the technologies and the business processes to do their job.

As the 9/11 Commission indicated in its report, the services our immigration authorities provide to their customers is just as important to our security. America's immigration authorities are in many ways, as the 9/11 Commission recognized, our face to the world. When the good people of the world try to come to America to visit, to work, to live, our immigration authorities, by their actions and by their lack of action, make a statement about America and Americans. Excessive delays, backlogs, arbitrary decisions—they all send negative messages. Those messages, as the 9/11 Commission recognized, can harm our national security.

As the agency charged with adjudicating applications and petitions for naturalization and immigration benefits, the U.S. Citizenship and Immigration Service is often the first point of contact many people have with America.

It is imperative that the CIS provide the best possible service. CIS, by its own admission, is not yet a 21st-century organization. It has not yet implemented the technologies and business processes that it requires to adjudicate its cases effectively.

Over the past several years, Congress has appropriated hundreds of millions of dollars to CIS to help it reduce its backlog, fund its operations, and transform itself into a 21st-century organization. And yet, as we gather here today, the Administration has requested a precipitous drop in directly appropriated funds.

In place of those funds, CIS has proposed to significantly raise its fees, by an average of 96 percent. In return, CIS promises to decrease its average processing time by 20 percent. We need to ask whether that return on investment is sufficient.

Some of the proposed fee increases seem quite large. The fee for naturalization applications would rise by 80 percent. The fee for an adjustment of status applications would rise by over 178 percent. We need to ask questions about the need for such large increases.

It is also important for this Subcommittee to gain an understanding of how the agency has been spending the money it has received, both from fees and from direct appropriations, over the past few years. Only by understanding how the agency has previously invested its resources can we fairly judge the promises it makes in its proposed fee regulation.

We must get answers to questions about the agency's future plans. We must ask that the agency provide us with its plans to transform its technology and business processes. We must begin to explore the best means by which CIS ought to be funded. We know that the Immigration and Nationality Act permits, but does not require, the agency to fund its costs through user fees. Only by understanding the nature of the agency's operations can we make informed judgments about the best available means to ensure the agency has the funding it needs to perform its critical mission.

I look forward to hearing from the witness, Dr. Emilio Gonzalez, Director of CIS, today. I look forward to gaining a fuller understanding of the agency's current practices, its future plans, and how it made its decision to raise the fees.

At this point, I would like to call on the Ranking Member to make his opening statement. Mr. King?

[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 everyone to the first hearing of the Immigration Subcommittee in the 110th Congress. I especially welcome the Subcommittee's Ranking Member, Mr. King, the members of the Subcommittee, USCIS Director Gonzalez and the members of the public and press who have joined us here today.

I appreciate that Mr. King and I share a commitment to reforming the Nation's immigration laws. Together this Subcommittee will find a new way forward on some of the most important issues of our day.

Our immigration services need to move ahead. They must transform themselves into 21st Century organizations, fully automated, paperless, able to communicate amongst themselves and able to track not only the status of the cases they process, but the entries and exits of those who come to the United States.

Our security interests demand these things. America's immigration services must be able to adjudicate cases in ways that ensure the safety and security of America and Americans. The immigration services must have the resources to do that. They must have the people, the technologies and the business processes to do their job.

As the 9-11 Commission indicated in its report, the services our immigration authorities provide to their customers is just as important to our security. America's immigration authorities are, in many ways, as the 9-11 Commission recognized, our face to the world. When the good people of the world try to come to America, to visit, to work, to live, our immigration authorities, by their actions and by their lack of action, make a statement about America and Americans.

Excessive delays, backlogs, arbitrary decisions, all send negative messages. Those messages, as the 9-11 Commission recognized, can harm our national security.

As the agency charged with adjudicating applications and petitions for naturalization and immigration benefits, the U.S. Citizenship and Immigration Services is often the first point of contact many people have with America. It is imperative that CIS provide the best possible service.

CIS, by its own admission, is not a 21st Century organization. It has failed to implement the technologies and business processes that it requires to adjudicate its cases effectively.

Over the past several years, Congress has appropriated hundreds of millions of dollars to CIS to help it reduce its backlog, fund its operations and transform itself into a 21st Century organization. And, yet, as we gather here today, the Administration has requested a precipitous drop in directly appropriated funds.

In place of those funds, CIS has proposed to significantly raise its fees—by an average of 96%. In return, CIS promises to decrease its average processing times by 20%. It is appropriate to ask whether that return on investment is sufficient.

Some of the proposed fee increases seem quite large. The fee for naturalization applications would rise by 80%. The fee for an adjustment of status applications would rise over 178%. We must ask questions about the need for such large increases.

It is also important for this Subcommittee to gain an understanding of how the agency has been spending the monies it has received, both from fees and from direct appropriations, over the past few years. Only by understanding how the agency has previously invested its resources can we fairly judge the promises it makes in its proposed fee regulation.

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I look forward to hearing from the witness, Dr. Emilio Gonzalez, Director of CIS, today. I look forward to gaining a fuller understanding of the agency's current practices, its future plans and how it made its decision to raise the fees.

Mr. KING. Thank you, Madam Chair. I want to congratulate you for receiving the gavel and starting off this, our first hearing of the

Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law. I promise to memorize that title before this is over. [Laughter.]

I am looking forward to this process, and I very much appreciate the tone and the professionalism that you bring.

I am also looking forward to the hearing here today to discuss the proposed rules and for the fee increases with Director Gonzalez.

Federal law requires that U.S. Citizenship and Immigration Services operate as a fee-based agency. The Chief Financial Officers Act of 1990 also requires that USCIS review its fee schedule every 2 years to ensure that it reflects the costs incurred by the agency. I would go above and beyond this by encouraging timely cost projections every year.

USCIS conducted its last comprehensive fee review in 1998, so the current fees are based on 1998 cost projections, with some adjustments. Agency operating costs have risen significantly since 1998, and while USCIS raised some fees in recent years, those increases were not nearly enough to cover today's operating costs, which will be about $1.752 billion for fiscal year 2007.

USCIS recently conducted its first comprehensive fee review since 1998. The rule proposed by USCIS on February 1 is a result of that review.

I commend Director Gonzalez for trying to ensure that American taxpayers are not forced to pay the costs of foreign nationals getting immigration benefits such as an adjustment of immigration status, employment authorization or replacement of a green card.

The proposed increases do not seem excessive. For instance, under the new fee structure, it would cost a person $595 to apply for naturalization, or $320 to petition for a non-immigrant worker. These fees are small in contrast to the benefits of American citizenship or legal work status in the United States. If I might quote the Ranking Member of the full Committee, "American citizenship is priceless."

The fees take into account those immigrants who are least likely to be able to pay. For instance, victims of persecution will not have to pay fees to apply for asylum, and victims of trafficking will not have to pay fees to apply for T-visas.

USCIS experts will receive 4.7 million immigrant benefit applications anticipated for 2008 and 2009. It will cost the agency $2.329 billion to have the staff to adjudicate the petitions, conduct background checks on applicants, and pay the other costs to process all of those applications.

Some of the proposed new fees will pay for the enhanced security and integrity of the immigration system. It is an especially important goal. I am pleased to see that these fees will fund 170 additional fraud detection and national security agents to oversee fraud investigations and the processing of applications that have national security concerns.

It is not unprecedented for criminals and terrorists to try and enter the United States through legal channels. Mahmoud Abu Halima, a terrorist who blew up the World Trade Center in 1993, received amnesty through the 1986 immigration bill. Furthermore, 9/11 hijackers came into the United States on student and visitor

visas. As we have tragically learned, thorough background checks are especially critical to immigration processing.

The balance of the money will go toward modernizing the technology and business structure of USCIS and improving the delivery of services, including a 20 percent average decrease in the time for application processing by the end of fiscal year 2009.

These are laudable goals, but only if the national security goal is met first. I emphasize that: only if the national security goal is met first. I know that some have condemned the proposed fee increase and called it unfair to the immigrants who have to pay the fees. Some of you have called on the Administration to find other ways to fund the changes needed at USCIS. But unfortunately, these groups fail to acknowledge that it is right for the people who receive the benefits to pay for them.

In other words, the immigrants who will enjoy the priceless benefits of living and working in America should have to pay for the costs of coming here. After all, the fees are less than the average costs of being illegally smuggled into the United States—roughly $2,500. American taxpayers should not be burdened with paying other people's immigration costs.

The agency responsible for processing the benefit applications should charge the amount required to recoup its costs, so taxpayers are not let footing the bill. If the proposed fees do do that, then they are justified.

Dr. Gonzalez, I look forward to hearing your testimony.

Thank you, Madam Chair, and I yield back.

[The prepared statement of Mr. King follows:]

PREPARED STATEMENT OF THE HONORABLE STEVE KING, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA, AND RANKING MEMBER, SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW

I thank the Chairwoman for holding this hearing. I am pleased for the opportunity to discuss the proposed rule for fee increases with Director Gonzalez. This is the first of what I hope will be many insightful hearings in the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law. I am looking forward to working with Chairwoman Lofgren.

Federal law requires that U.S. Citizenship and Immigration Services (USCIS) operate as a fee-based agency.

The Chief Financial Officers Act of 1990 also requires that USCIS review its fee schedule every two years to ensure that it reflects the costs incurred by the agency. (31 U.S.C. 901–03). I would go above and beyond this by encouraging timely cost projections every year.

USCIS conducted its last comprehensive fee review in 1998, so the current fees are based on 1998 costs projections. Agency operating costs have risen significantly since 1998. While USCIS raised some fees in recent years, those increases were not nearly enough to cover today's operating costs, which will be $1.752 billion for FY 2007. USCIS recently conducted its first comprehensive fee review since 1998. The rule proposed by USCIS on February 1st is the result of that review.

I commend Director Gonzalez for trying to ensure that American taxpayers are not forced to pay the costs of foreign nationals getting immigration benefits, such as adjustment of immigration status, employment authorization or a replacement green card.

The proposed increases do not seem excessive. For instance, under the new fee structure, it will cost a person $595 to apply for naturalization or $320 to petition for a nonimmigrant worker. These fees are small in contrast to the benefits of American citizenship or legal work status in the United States.

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USCIS expects to receive 4.7 million immigration benefit applications in FY 2008–2009. It will cost the agency $2.329 billion to have the staff to adjudicate the petitions, conduct background checks on applicants and pay the other costs to process all of those applications.

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Unfortunately, those groups fail to acknowledge that it is right for the people who receive the benefits to pay for them. In other words, the immigrants who will enjoy the priceless benefits of living and working in America, should have to pay for the costs of coming here. After all, the fees are less than the costs of being illegally smuggled into the United States: $2,500. American taxpayers should not be burdened with paying other people's immigration costs.

The agency responsible for processing the benefit applications should charge the amount required to recoup its costs so taxpayers aren't left footing the bill. If the proposed fees do that, then they are justified.

Director Gonzalez, I look forward to your testimony.

Ms. LOFGREN. Thank you, Mr. King.

At this point, we are honored to have both the Chairman and Ranking Member of the full Committee. So I would like to ask Mr. Conyers if he would like to make an opening statement.

Mr. CONYERS. Madam Chairman, I would like to make a few comments that will not take 5 minutes. I thank you, and of course congratulate you as you become Chair, after spending a considerable number of years on the Committee and outstanding work on at least several Committees. I am very pleased to join you and the Ranking Member and the new Members to the Judiciary Committee who are joining you on the Subcommittee.

I only wanted to commend you for cautioning us to be on our best behavior at your first hearing.

So, Dr. Gonzalez, you will be amazed at the courtesy and politeness to which you will be treated in this first hearing.

The idea that an 80 percent increase in the application fees is reasonable and necessary is, to me, comparable to the incredible factor of massive tax reductions for the most fortunate in our society. What is being done in terms of the discussion of fees with reference to immigration is determining what we should charge and how much more we should charge for some of the poorest among us to become citizens.

Many in the immigrant community see the increase for what it is: increasing the costs of the American dream; telling those least fortunate among us that they probably need not apply.

John Trasviña, the head of the Mexican American Legal Defense Fund, MALDEF, said that "the Administration's proposed fee increases will only erect a barrier to the American dream of citizen-

ship." We have other comments, particularly from the Asian American Justice Center.

But to me, Members of the Committee, I will be waiting carefully to find the evidence that the immigrant community citizens and applicants are receiving fair value for their money. Fees have been going up across the years. Services have not been substantially improving.

So this is an excellent way for this very important Committee of the Judiciary to begin its considerations of these and other related immigration topics in the course of the 110th Congress.

I thank you, Madam Chairman.

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

I thank the Director for being here today to answer questions we have about the substantial proposed immigration fee increase.

I am particularly concerned about the effect this has on *legal* immigrants trying to express their patriotism and commitment to this country by applying for citizenship.

I have reviewed the fee increase for naturalization applications—an 80% increase, rising from $330 to $595. The total cost of filing a naturalization application would be $675 after including the $80 biometric fee.

I have always thought this Congress was interested in legal immigration and integration of immigrants by becoming full members of American society through citizenship. This substantial fee increase belies that goal.

The President of the Mexican American Legal Defense Fund has noted, "The Administration's proposed fee increases will only erect a barrier to the American dream of citizenship. . . ."

I also understand that Congress has repeatedly appropriated discretionary funds to the US Citizenship and Immigration Services (CIS) to specifically deal with backlogs and infrastructure and technology improvements, problems that are again addressed in the justification for this fee increase. Congress has also gone along with various increases in the past, all premised on the CIS or legacy INS theory that such monies were necessary to solve persistent and long-enduring problems at the agency.

Yet, with this substantial fee increase, we are being told again that this money is necessary to solve the same problems that were supposed to be solved with previous monies.

The Asian American Justice Center has rightly observed that "the naturalization fee has gone from $90 to $400 in the last 15 years and will increase yet again to $675 under today's proposal. At the same time, immigrants and their families have faced continuing backlogs and delays in the processing of their applications and diminishing customer service."

Furthermore, CIS concedes that it has been using funds from the 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 for information technology infrastructure improvements. Perhaps if the agency had used those funds as required by law we wouldn't have the existing problems at CIS.

Given past failures of the agency to correct serious problems that should have been fixed years ago, I am quite concerned about the equity of charging future CIS customers for mistakes made by the agency in the last decade.

With such a history, how is this Congress supposed to believe the latest justification for another fee increase?

Ms. LOFGREN. Thank you, Chairman Conyers.

And now I would like to recognize the Ranking Member of the full Committee, Mr. Smith.

Mr. SMITH. Thank you, Madam Chair.

First of all, I would like to congratulate you on chairing your first hearing as Chairman of the Immigration Subcommittee. That

is a great distinction, and you are an able Chairman, given your background and expertise. I know that this hearing, as well as all future hearings, are going to be very productive.

I would also like to thank Director Gonzalez for testifying today, and say to Director Gonzalez, while I have to leave shortly and will not be able to stay for the questions, I did read your testimony and do appreciate your perspective.

Madam Chair, I would also like to say that in thinking about the proposed fee to become a legal permanent resident or get your green card, I have to say my perspective is that that has to be the best deal in America. To think that for a few hundred dollars, one can become a legal permanent resident and then, 5 years later, a citizen has to be one of the greatest values in the world.

I subscribe to the feeling that the greatest honor our country can bestow on anyone is that of U.S. citizen. Years ago, Teddy Roosevelt, when he was president, said, "The highest office anybody could ever hold was citizen." That is the kind of deference I give that particular office and that particular status.

So it is an honor. It comes with many benefits. It comes with many responsibilities. But again, for a few hundred dollars to have those opportunities and to have those benefits is truly a great value.

I also think it is appropriate that an individual pay for the cost of processing the benefits and the title and the status that they are getting. Rather than burden the taxpayer with those costs, it is appropriate that those who receive the benefits pay those costs. I don't think we are going to have too many complaints about the funds involved.

There are, in fact, millions of people around the world who would dearly love to come to the United States legally, who would love to become legal, permanent residents, and subsequently citizens. There are millions of people around the world who would pay thousands of dollars just for that opportunity.

So again, I want to put in perspective and keep in perspective the money that we are talking about, the costs of the application that we are talking about, because truly, the cost is small compared to the priceless honor that one acquires when one is in this country as a legal permanent resident or a citizen.

Madam Chair, thank you for the opportunity to make some brief opening statements, and congratulations again to you on chairing this hearing.

Ms. LOFGREN. Thank you, Mr. Smith.

In the interest of proceeding to our witness and mindful of our busy schedules, I would ask that other Members submit their statements for the record. Since we are in recess next week, I would ask that Members submit any opening statement by the close of business next Wednesday.

Without objection, all opening statements will be placed in the record.

[The prepared statement of Mr. Gutierrez follows:]

PREPARED STATEMENT OF THE HONORABLE LUIS V. GUTIERREZ, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Chairwoman Lofgren and Ranking Member King, thank you for calling this hearing on an issue that is of utmost importance and concern to me and my constituents.

I would also like to thank our witness, Dr. Gonzalez, for his time and willingness to share with us further information on U.S. Citizenship and Immigration Services' (USCIS) proposal to increase fees for immigration petitions.

As a member of Congress who provides extensive district services to assist immigrants and prospective citizens to navigate the complex process of legal immigration, I fear that an average 66% increase in immigration fees will price good, hard working, legal immigrants out of their opportunity to obtain benefits for which they qualify and have earned. Citizenship should not be auctioned for sale to the highest bidder, and it should not be bestowed on someone based on his or her income.

Immigrants are prepared to pay the cost of processing the applications they submit to USCIS and for courteous, timely and efficient services. However, the cost must be a fair price, and not burden the applicants of the future with budget shortfalls and agency inefficiencies of the past.

Clearly, the USCIS proposal would require petitioners to pay costs above and beyond those of processing their actual applications. It is unacceptable to charge immigrants additional fees for expenses unrelated to application processing, such as litigation costs, reducing the backlog of previous applications, or rolling out new technologies that USCIS should have implemented long ago. We must find an alternative solution to the agency's funding shortfalls and future needs, and Congress can and must help.

Section 286(m) of the Immigration and Nationality Act permits USCIS to recover the full costs of processing applications. The statute also allows USCIS to request appropriations of Congress. I am perplexed as to why the Administration is requesting a mere $30 million for Fiscal Year 2008, when USCIS received approximately $180 million in Fiscal Year 2007, $115 million in 2006, $160 million in 2005 and $236 million in 2004. Given that USCIS has requested and received appropriations in the past, why not engage us, the Congress, in trying to find the right balance between fees and appropriations that will not place insurmountable financial hurdles in the path of tax-paying immigrants and prospective citizens?

I hope this hearing sheds some light on these questions and provides us with an opportunity to explore alternative solutions to secure funding for USCIS. I look forward to the witness' testimony. Thank you, Madam Chairwoman.

[The prepared statement of Ms. Jackson Lee follows:]

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

This subject of this hearing is the U.S. Citizenship and Immigration Services' (USCIS) proposal to raise immigration benefit application fees. On January 31, US Citizenship and Immigration Services (USCIS) proposed increased fees for immigration benefits. Under the proposed increase, the cost for naturalization would rise 80 percent from $330 to $595 for adult applicants and from $255 to $460 for children, the fee for lawful permanent residence would rise 178 percent from $325 to $905, and the fee for fingerprinting would rise 14 percent from $70 to $80. The public has until April 2, 2007, to file written comments. The changes will take effect in June 2007, at the earliest.

In 1988, Congress authorized the establishment of a benefit applications user fee account to facilitate the use of application fees to fund benefit processing operations, which resulted in a shift of the burden for funding benefit processing operations onto the applicants. This includes the agency's overhead and law enforcement activities such as investigations and security checks. The applicants also bear the cost of processing the applications of other applicants who do not have to pay an application fee.

USCIS waives application fees for various classes of applicants, such as applicants who cannot afford the fee, applicants filing for asylum, and members of the United States Armed Forces filing for naturalization. USCIS's proposal would add waivers for applications filed by victims of human trafficking and applicants seeking an immigrant classification under the Violence Against Women Act.

According to USCIS, the increased fee revenues would be used for improving processing times and for completing the transition from paper to electronic processes. USCIS projects that with the increased fees, it would be able to reduce average processing times by 20 percent by the end of FY 2009. It also plans to use the increased fees to more effectively address national security concerns, better prevent and detect fraud, and invest in technology that transforms processing methods, thereby increasing the agency's efficiency and effectiveness.

Immigration benefits have great value. It is not inherently unreasonable to require applicants to bear the cost of processing their applications. I think it is unrea-

sonable, however, to require them to pay for the processing of applications filed by other applicants as well. I also think it is unreasonable to require them to pay for the costs of modernizing the system for processing benefits applications

Under this system, USCIS has to collect fees at a level that will ensure recovery of the full costs of processing the benefits applications. The fees also must cover the cost of the infrastructure that USCIS must develop and maintain to support case processing and the administration of the nation's immigration laws.

This fee-based funding system affects every facet of USCIS operations, including the ability to implement new program and processing initiatives; begin information technology and other modernization efforts; and plan for the future. USCIS must calculate its budget by multiplying current fees by projected application volume and then conform the budget to those numbers. This results in a budget that is based on projected revenues rather than consideration of anticipated needs and costs.

The USCIS Ombudsman, Prakash Khatri, has been working on alternative funding systems, and he has made some good suggestions. For instance, he has suggested that Congress consider a revolving fund account or other appropriated funding source for USCIS. A revolving fund could be used to defray current costs and be replenished from future fees.

We will need such a funding system to make it possible for USCIS to cover the start up costs of a legalization program that could involve 10 or more million applications. To be able to process such a large increase in applications, USCIS will have to hire and train additional personnel, buy or rent additional office equipment, and lease additional office space.

Ms. LOFGREN. Without objection, the Chair will be authorized to declare a recess of the hearing at any point.

We have a distinguished witness, Dr. Emilio Gonzalez, with us this afternoon to help us consider this important issue.

Before we proceed any further, I want to make an inquiry.

Dr. Gonzalez, you have a distinguished career in our military, so do you prefer to be called "Colonel" or "Doctor" Gonzalez?

Mr. GONZALEZ. You can call me anything you want. [Laughter.]

Ms. LOFGREN. Well, since it says "Dr. Gonzalez" on your name tag, I will introduce you as Dr. Gonzalez, Director of the U.S. Citizenship and Immigration Services.

Prior to his confirmation as Director in December of 2005, Dr. Gonzalez served as the Director of Western Hemispheric Affairs at the National Security Council and completed a distinguished 26-year service in the U.S. Army.

Dr. Gonzalez earned his bachelor's degree from the University of South Florida in Tampa and got his master's degrees from Tulane and the U.S. Naval War College and a doctorate in international relations from the University of Miami.

Dr. Gonzalez, your written statement will be made part of the record in its entirety. I would ask that you now summarize your testimony in 5 minutes or less. To help you stay within the time, there is a timing light at your table. When 1 minute remains, the light will switch from green to yellow, and then red when the 5 minutes are up.

Dr. Gonzalez, we welcome you. Please begin.

TESTIMONY OF THE HONORABLE EMILIO T. GONZALEZ, Ph.D., DIRECTOR, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, DEPARTMENT OF HOMELAND SECURITY

Mr. GONZALEZ. Thank you. And good afternoon, Madam Chair, Ranking Member King, Members of the Committee. My name is Emilio Gonzalez, and I am the Director of United States Citizenship and Immigration Services.

I am accompanied today by USCIS's Chief Financial Officer, Mr. Rendell Jones, and our Associate Director for Domestic Operations, Mr. Michael Aytes.

I appreciate the opportunity to testify today regarding USCIS's proposal to adjust the immigration benefit application and petition fee schedule.

I believe that we all share the same interest when it comes to the future of our immigration service. We all want a quick and secure flow of legal labor across our borders. We all want an easy way to verify the status of workers. We prefer the speed and convenience of an electronic and Internet application processing system, as opposed to filing paper-based applications through the mail.

We don't want application backlogs, and we want to avoid the unnecessary red tape and redundancies that slow down our systems. That is why we have proactively taken steps today to make sure that we will have the personnel and procedures in place for the potential operational realities of tomorrow.

Consistent with the President's fiscal year 2007 budget and a 2004 GAO report on the existing fee structure, USCIS has completed a new, comprehensive fee review that will adjust application and petition fees to guarantee full cost recovery and allow USCIS to strengthen the security and integrity of our immigration service, provide customer service and modernize business operations for the 21st century.

Specifically, the new fee structure will enable USCIS to improve the integrity of our immigration system by increasing fraud prevention and detection efforts and expanding national security enhancements; by reducing the processing times by 20 percent by the end of fiscal year 2009; by addressing performance gaps identified by the Government Accountability Office, the DHS Inspector General, and the USCIS Ombudsman; to upgrade facilities and provide better training to ensure a skilled workforce; to automate business operations, modernize information technology infrastructure and reduce unacceptable paper-based processes.

While these initiatives are characterized as enhancements to our current resources and operations, they are also critical investments necessary to meet our current mission requirements. We are adjusting our application process to ensure that USCIS not only makes up for lost revenue, but so that we can also build an immigration service for the 21st century. The new fees represent the comprehensive cost of what it takes to keep this agency not only afloat but moving forward.

It is important to note that this fee increase is necessary regardless of whether comprehensive immigration legislation is passed. Law and policy have long called for the costs of providing immigration benefits to be borne by those applying for them, and for the most part, should not be funded by the U.S. taxpayer. The increased revenue generated by this rule will support enhanced security and refine USCIS business processes to strengthen our ability to perform our mission and continue to deliver a quality product to every applicant.

I understand that these fees will have human consequences. Since becoming USCIS Director, I quickly learned that everything

we do in this agency affects people, which is one of the main reasons that I so enjoy being its Director, because the work that we do at USCIS can make a positive impact on the daily lives of countless individuals. What we do every single day is concrete, far-reaching and, by no means, abstract.

As a naturalized American myself, I naturally view the fee proposal through the prism of an immigrant. At the same time, as Director, I am mindful of my sworn duty to maintain the integrity of our immigration service. Therefore, my goal and heartfelt obligation is to make sure that USCIS has the resources required to provide immigrants with the high quality professional assistance they expect and deserve.

We recognize that the proposed fees will increase costs for those seeking to become citizens or sponsor workers. However, the USCIS isn't trying to make money or turn a profit. Instead, we are trying to create a fair way to make sure we cover our costs from those who utilize our services and not to pass the bill on to the American taxpayer.

These new application prices are necessary to enhance and improve our service, making it easier and quicker to process applications, all without compromising national security. In a short time, immigrants will see a more vibrant, technologically savvy, transparent and professional and speedy immigration agency.

I look forward to your questions this afternoon, and thank you.

Madam Chair, with your approval and before the questioning process, I would like to invite my colleagues, Mr. Michael Aytes, Associate Director for Domestic Operations, and Mr. Rendell Jones, the USCIS Chief Financial Officer, to join me.

Ms. LOFGREN. We would welcome them as resources to you in answering questions that the Committee may have.

Mr. GONZALEZ. Thank you, Madam Chair.

[The prepared statement of Mr. Gonzalez follows:]

PREPARED STATEMENT OF THE HONORABLE EMILIO T. GONZALEZ

U.S. Citizenship and Immigration Services

STATEMENT

OF

EMILIO T. GONZALEZ

DIRECTOR

U.S. CITIZENSHIP AND IMMIGRATION SERVICES (USCIS)

U.S. DEPARTMENT OF HOMELAND SECURITY

REGARDING A PROPOSAL 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

FEBRUARY 14, 2007 at 2:15 PM

2141 RAYBURN HOUSE OFFICE BUILDING

Good afternoon Chair Lofgren, Ranking Member King, and Members of the Subcommittee. My name is Emilio Gonzalez, and I am the Director of United States Citizenship and Immigration Services (USCIS). I am accompanied today by the USCIS Chief Financial Officer (CFO), Rendell Jones, and Associate Director for Domestic Operations, Michael Aytes. I appreciate the opportunity to testify today regarding USCIS' proposal to adjust the immigration benefit application and petition fee schedule.

In his FY 2007 Budget request, the President called for USCIS to reform its fee structure - in line with Federal fee guidelines[1] - to ensure the recovery of operational costs. This followed a January 2004 Government Accountability Office (GAO) report[2] to the House and Senate Judiciary Committees that indicated that USCIS' fees were insufficient to fund our operations. As a result, the GAO recommended that USCIS "perform a comprehensive fee study to determine the costs to process new immigration applications." Consistent with that direction, USCIS undertook a careful and comprehensive fee review to revise its application and petition fees to ensure it recovers its full business costs. The proposed rule, published in the Federal Register[3] on February 1st, reflects the application of that review to the current fee schedule.

The proposed fee structure will allow USCIS to strengthen the security and integrity of our immigration system, improve customer service, and modernize business operations for the 21st century. Specifically, the new fee structure will enable USCIS to:

1) Improve the integrity of our immigration system by increasing fraud prevention and detection efforts and expanding national security enhancements;
2) Reduce processing times for all immigration applications by an average of 20 percent by the end of FY 2009;
3) Address performance gaps identified by the Government Accountability Office, DHS Inspector General, and the USCIS Ombudsman;
4) Upgrade facilities and provide better training to ensure a skilled workforce; and
5) Automate USCIS business operations and modernize information technology (IT) infrastructure, reducing unacceptable paper-based processes.

While these initiatives are characterized as enhancements when compared to our current resources and operations, they are critical investments necessary to meet our current mission requirements.

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[1] Office of Management and Budget (OMB) Circular No. A-25 ("User Charges") directs federal agencies to charge the "full cost" of providing special benefits to a recipient when calculating fees. "Full cost" is defined as "all direct and indirect costs to any part of the Federal Government of providing a good, resource or service."

[2] See GAO, Immigration Application Fees: Current Fees are Not Sufficient to Fund U.S. Citizenship and Immigration Services' Operations (GAO-04—309R, Jan. 5, 2004).

[3] Department of Homeland Security, U.S. Citizenship and Immigration Services, 8 CRF Part 103, Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule, Proposed Rule, 72 Fed. Reg. 4887 (Feb 1, 2007).

With regard to reducing processing times, the proposed fee increase, if implemented in full this summer, will enable a 20 percent reduction in average application processing times by the end of fiscal year 2009, and will cut processing times by the end of fiscal year 2008 for four key application types that represent a third of all applications filed. These application types are the I-90 (Renew / Replace Permanent Resident Card), I-140 (Immigration Petition for Alien Worker) and I-485 (Adjustment of Status to Permanent Resident), which will improve from six to four months processing time, and the N-400 (Naturalization), which will improve from seven to five months processing time.

At the outset, I want to emphasize that USCIS published the regulation as a proposed rule with a public comment period of 60 days. This means that no fee changes will go into effect until USCIS receives and analyzes comments and suggestions from the public, and I can assure you that USCIS is actively seeking feedback to the proposal. After analysis of those comments, USCIS will draft and publish a final rule reflecting the public input and will provide an additional 60 days before implementation of any new fee schedule. While USCIS loses $3 million every day under the current fee schedule, it is important that the public have an opportunity to weigh in on the proposal before any changes are made.

I also want to clarify that USCIS' current procedure of exempting refugee and asylum applicants from paying the fee for certain immigration benefit applications and petitions, and waiving fees for various classes of applicants, such as those filing for military naturalization, will continue. Moreover, the rule proposes other improvements to the fee waiver process. For example, it would exempt certain particularly vulnerable applicant groups from paying a fee, such as Victims of Human Trafficking (T non-immigrant visa) and applicants who self-petition under the Violence Against Women Act.

Another common sense improvement to the fee waiver process is to limit fee waivers to specific situations where one's inability to pay is consistent with the requirements for the benefit sought. For instance, if someone is sponsoring a relative to immigrate to this country and files an affidavit of support attesting that the beneficiary will not become a public charge, then it is counterintuitive that the same petitioner cannot afford the filing fee. Similarly, a business that attests to the ability to pay prevailing wages should not be able to file a fee waiver. Where fee waivers are applicable, USCIS will consider all factors, circumstances, and evidence supplied by the applicant including age, disability, household income, and qualification within the past 180 days for a federal means tested benefit.

I recognize that this proposed fee structure will increase costs for many legally seeking immigration benefits, including those seeking to become citizens. The proposal reflects an average weighted increase for application and petition fees of approximately 86 percent. However, the proposed rule will re-package the adjustment of status application to include interim benefits, specifically work authorization and advanced parole, without separate fees, at no additional cost. Taking this modification into

account, the actual average increase in costs to applicants and petitioners will be 66 percent.

The alternative – asking USCIS to continue to charge fees that do not cover operational costs – would have disastrous consequences resulting in a less secure and more inefficient immigration system. In addition, it would seriously degrade service delivery and cause applicants to wait longer for benefits that are crucial to their lives and livelihood. And changes to the USCIS fee structure are long overdue. The last comprehensive fee adjustment based on a comprehensive fee study occurred in 1998 when fees were increased by an average of 76 percent. USCIS has periodically adjusted fees since this time, but these adjustments never fully recovered or kept up with costs. As mentioned above, GAO found that our fees were insufficient to recoup our operating expenses and that remains true today despite a fee increase in April 2004 and an inflationary increase in October 2005.

The immigration benefits that USCIS confers are extremely valuable, and it is appropriate that prospective immigrants bear the full costs of the services provided. Law and policy have therefore long dictated that the costs of providing immigration benefits be borne by those applying for them. Part of the funding problem USCIS has faced recently has been a reliance on temporary funding sources, including appropriated funding. This new fee schedule will establish a more stable source of funding. Therefore, as the number of applications increase, USCIS will be able to respond to workload changes and will no longer have to sacrifice customer service or rely on unreliable funding sources.

USCIS has demonstrated that it is capable of putting the increased revenue to good use and that the public and USCIS's customers will see concrete benefits from the new fee structure. I am pleased to report to the Subcommittee that, with the infusion of $460 million in appropriated resources over the past 5 years, USCIS was able to achieve the President's goal of a six-month or better processing time for nearly all immigration applications. By the end of FY 2006, the backlog had fallen from a high of 3.8 million cases in January 2004 to less than 10,000. The proposed fee rule will allow USCIS to build on this success and further reduce processing times allowing us to better serve our customers.

USCIS has made other customer service improvements over that time as well, including establishing online filing, online case updates, INFOPASS appointments, change of address online, as well as the introduction of a broad range of fact sheets to help people understand various benefits, eligibility criteria and USCIS procedures so they can better choose their way ahead. These improvements demonstrate what USCIS can do, and with the proposed new fees we can deliver far more significant improvements.

The improvement to our nation's immigration system resulting from the increased revenue generated by this rule will support increased security and fundamentally overhaul and automate USCIS business operations, all of which will greatly strengthen USCIS' ability to perform its mission and put the agency in a better position to support

possible future legislative reforms. However, this fee rule is designed to close performance and security gaps that exist today and does not assume passage of legislation.

USCIS is required by law to update its fees at least once every two years and has established a dedicated staff in the Office of the Chief Financial Officer to ensure that all future updates are made through a comprehensive analysis. We are also firmly committed to seeking new ways of doing business and reengineering processes in order to contain costs and pass on the savings to all of our customers, and the new fee structure will enable USCIS to make improvements that will ultimately help reduce agency costs. Productivity enhancements which affect hours per completion calculations produce lower cost per unit. Process improvements implemented over the past several years, as well as projected productivity increases, were taken into account in the current fee study, keeping fees lower than they might otherwise have been. Specifically, this proposed fee increase reflects our commitment to a projected 4% increase in productivity for adjustment of status cases, and a 2% increase in productivity for all other products. USCIS will remain accountable for these projected productivity increases in order for fees to support operations as intended.

I am aware that a few vocal opponents have suggested that the proposed fee schedule represents a government-imposed obstacle to legal immigration or citizenship. I respectfully disagree and can assure you that this proposal is being made only after diligent consideration of the results of a comprehensive fee review launched early in 2006. By recovering the full costs of doing business, this rule will enable USCIS to reduce processing times and improve customer service and, in the long run, make the legal immigration process more secure, efficient and welcoming to all immigrants.

The Administration is dedicated to comprehensive reform of America's immigration laws by increasing border security, while maintaining the Nation's tradition of welcoming immigrants who enter the country legally. For immigration reform to succeed, it must be based on five pillars: 1) strengthening security at the borders; 2) substantially increasing enforcement in the interior to remove those who are here illegally, and to prevent employers from deliberately or inadvertently hiring illegal immigrants; 3) implementing a Temporary Worker Program to provide a legal channel for employers to hire foreign workers to do jobs Americans are unwilling to do; 4) addressing the millions of illegal immigrants already in the country; and 5) helping new immigrants assimilate into American society. The Administration's plan will deter and apprehend migrants attempting to enter the country illegally and decrease crime rates along the border. The plan also will serve the needs of the economy by allowing employers to hire legal foreign workers on a temporary basis when no American is willing to take the job, bring illegal immigrants out of the shadows without providing amnesty, and restore public confidence in the Federal Government's ability to enforce immigration laws.

I am pleased to take any questions you may have at this time.

Current versus Proposed Fees

Form No.	Description	Current Fees	Proposed Fees
I-90	Application to Replace Permanent Resident Card	$190	$290
I-102	Application for Replacement/Initial Nonimmigrant Arrival--Departure Document	$160	$320
I-129	Petition for a Nonimmigrant Worker	$190	$320
I-129F	Petition for Alien Fiancé(e)	$170	$455
I-130	Petition for Alien Relative	$190	$355
I-131	Application for Travel Document	$170	$305
I-140	Immigrant Petition for Alien Worker	$195	$475
I-191	Application for Advance Permission to Return to Unrelinquished Domicile	$265	$545
I-192	Application for Advance Permission to Enter as Nonimmigrant	$265	$545
I-193	Application for Waiver of Passport and/or Visa	$265	$545
I-212	Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal	$265	$545
I-290B / Motions	Appeal for any decision other than BIA; Motion to reopen or reconsider decision other than BIA	$385	$585
I-360	Petition for Amerasian, Widow(er), or Special Immigrant	$190	$375
I-485	Application to Register Permanent Residence or Adjust Status	$325	$905*
I-526	Immigrant Petition by Alien Entrepreneur	$480	$1,435
I-539	Application to Extend/Change Nonimmigrant Status	$200	$300
I-600/600A	Petition to Classify Orphan as an Immediate Relative/Application for Advance Processing of Orphan Petition	$545	$670
I-601	Application for Waiver on Grounds of Excludability	$265	$545
I-612	Application for Waiver of the Foreign Residence Requirement	$265	$545
I-687	For Filing Application for Status as a Temporary Resident	$255	$710
I-690	Application for Waiver of Excludability	$95	$185
I-694	Notice of Appeal of Decision	$110	$545
I-695	Application for Replacement Employment Authorization or Temporary Residence Card	$65	$130
I-698	Application to Adjust Status from Temporary to Permanent Resident	$180	$1,370
I-751	Petition to Remove the Conditions on Residence	$205	$465
I-765	Application for Employment Authorization	$180	$340
I-817	Application for Family Unity Benefits	$200	$440
I-821	Application for Temporary Protected Status	$50	$50
I-824	Application for Action on an Approved Application or Petition	$200	$340
I-829	Petition by Entrepreneur to Remove Conditions	$475	$2,850
I-881	Application for Suspension of Deportation or Special Rule Cancellation of Removal (pursuant to section 203 of Pub.L. 105-100 (NACARA)	$285	$285
I-905	Application for Authorization to Issue Certification for Health Care Workers	$230	$230
I-914	Application for T Nonimmigrant Status	$270	$0
N-300	Application to File Declaration of Intention	$120	$235
N-336	Request for Hearing on a Decision in Naturalization Procedures	$265	$605
N-400	Application for Naturalization	$330	$595
N-470	Application to Preserve Residence for Naturalization Purposes	$155	$305
N-565	Application for Replacement Naturalization/Citizenship Document	$220	$380
N-600/600K	Application for Certification of Citizenship/ Application for Citizenship and Issuance of Certificate under Section 322	$255	$460
Biometrics	Capturing and Processing Biometric Information	$70	$80

*Consolidates fees for Advance Parole and Employment Authorization at no additional cost

Actual Proposed Fee Schedule

Ms. LOFGREN. As we ask our questions of Dr. Gonzalez, I will recognize Members in the order of their seniority on the Subcommittee, alternating between majority and minority, provided that the Member is present when his or her turn arrives. Members who are not present when their turn begins, will be recognized before a new round of questioning would begin. I will reserve the right to accommodate Members who are unavoidably late or in a conflict situation with another obligation.

I will begin by recognizing myself for 5 minutes.

Dr. Gonzalez, under the proposed fee schedule, the preamble to the rule says, "Premium processing revenues will be fully isolated from other revenues and devoted to the extra services provided to premium processing customers and to broader investments in a new technology and business process platform."

It looks to me, from the rule, that USCIS has identified a new technology and business process platform, but I don't have a report on this. I haven't asked for one yet, but I wonder, do you have a concept or plan to transform your technology and business process platform? If so, can you tell us what that would be? And can you provide us with a copy?

Mr. GONZALEZ. Thank you, Madam Chair.

We do have a business process plan. In fact, we have even established a transformation office within USCIS because, as we looked across the board, we realized that we need enhancements everywhere. We need enhancements in I.T. We need enhancements in security and fraud detection, enhancements in infrastructure and training and personnel.

We can get you what it is specifically that you are looking for, whether it is our spend plan, whether it is our concept of operations, our transformation. I am not sure——

Ms. LOFGREN. I am interested, I mean broadly, where are you going to spend the money, whether it comes from fees or as appropriations, as it has for the past two Congresses. What is the plan to improve business processes? What is the technology plan?

I would like to review that in some detail with you, and perhaps even bring in some of our friends from the academic community to advise not just the Committee but also the department and critique it and make sure that it is the best possible plan.

Mr. GONZALEZ. Since I brought with me my subject-matter experts on the entire fee structure, I would defer to Mr. Aytes, my Associate Director for Domestic Operations.

Mr. AYTES. Madam Chair, we would welcome that. In fact, the GAO is now looking at that issue with us. They have been doing some interviews. We have been working closely with the Department in developing the technology.

Ms. LOFGREN. Very good. Then we will look forward to getting those details.

Let me ask, a new fee for an adjustment-of-status application would be $985 for each applicant 14 years of age or older and $805 for each applicant under age 14. So for a family of four with a 15-year-old and an 11-year-old, the total filing fee for adjustment of status would be $3,760.

For a family with a primary wage-earner making approximately $12.41 an hour—and I choose that because it puts them at 125 per-

cent of poverty, which allows them to be sponsored and issued an affidavit of support—it would take approximately 303 hours or 7.6 weeks of work to earn the fee for the family to adjust their status.

That seems, to me, awfully high. I am wondering if you have considered the impact that a fee at that level would have on a normal hard-working family and whether it would be really too burdensome.

I know in 1998, there was a fee schedule looked at, and not the full fee was imposed because of the impact on working immigrants. Did you look at that?

Mr. GONZALEZ. Madam Chair, this is why this is part of the dialogue that we have not only with Members of Congress but also with all our stakeholders and our constituents in the field.

I would say that the $905 figure deserves some explanation. Although from $300 to $900 looks like it is an exorbitant increase, one of the things that we factored into this new price was the interim benefits that were being charged separately before.

In our study—which I might add, our fee review took 8 months to complete—we found that an average applicant came into one of our offices for additional work authorizations at least twice, and that they came in also to ask for other interim benefits such as travel documentation.

Currently, we are charging an average applicant about $800. So the net increase is really from $800 to $905.

Ms. LOFGREN. But, if I could—and I am going to live by the rules on the time—but not every applicant has an extension, and not every applicant—you know, the 15-year-old doesn't need a work issue. With the biometric fee, it is $985, not just $905. So as I understand the rule, this family that I have described would also not be eligible for a waiver.

I just want to raise this issue. I know that you care about this, but we are dealing with the rule and how we might make this work for the Government, as well as the immigrant.

Mr. GONZALEZ. Yes, ma'am. I care about it deeply, which is one of the reasons that I mentioned in my opening statement that I so enjoy my job. I am not only the head of immigration, but I also see myself as an advocate for our immigrant communities. I understand that everything has a cost and that everything has an effect.

Our goal is not, by any means, to create a situation where an immigrant simply cannot afford to apply. But at the same time, I want that person to expect and deserve the very best level of service, so that when you do have to pay an increase, you can go into a facility, not have the waits, not have the long lines, not have the shoddy buildings.

There is a tit-for-tat here. It isn't as though we are increasing our fees and that the person paying them will see nothing in return.

But I recognize your comment, and yes, ma'am, this is part of our comment period. We have been getting many comments. We are going to review them and make adjustments as necessary before we move out.

Ms. LOFGREN. Thank you very much.

My time has expired. I would now like to recognize the Ranking Member, Mr. King.

Mr. KING. Thank you, Madam Chair.

Director Gonzalez, I thank you for your testimony.

As I look over the fee schedule, the first question I want to ask is, are there fees out there that you are asking on this adjustment that are actually lower than your cost to produce those benefits?

Mr. GONZALEZ. There are some benefits that we are actually not charging for and continuing not to charge for, and there are some benefits that we charge for now that we have zeroed out. We don't charge a fee for asylum-seekers. We don't charge a fee for refugees. That is a matter of management. That is a decision I made to continue that.

We also don't charge to naturalize our U.S. men and women in uniform. We have naturalized, under the President's executive order, about 28,000 men and women in uniform around the world, and we don't charge for those services.

We have also zeroed out under this fee rule the T-visa, which is for victims of people who have been trafficked, and we have also zeroed out the Violence Against Women Act beneficiaries.

So, yes, we have actually taken some steps to zero out some fees.

Mr. KING. Okay. I see a fee here, I have a list of costs that I think you have produced. I am looking at Form I–360 that shows a proposed fee of $375 and a cost of $2,408. Would someone want to speak to that particular fee?

Mr. GONZALEZ. The increase?

Mr. KING. Well, the cost being so much greater than the proposed fee. The published cost is $2,408, and the proposed fee is $375, moving it up from $190.

Mr. GONZALEZ. Rendell?

Mr. JONES. Congressman King, the I–360 is one of the forms. There are a couple of exceptions that we talk about at the end of the rule.

The basic premise is, the more time it takes to adjudicate an application, the more it costs. The more our costs, the more applicants have to pay.

But for the forms like the I–360, and a couple of others—there are about four or five of them—where the volumes are pretty low——

Mr. KING. Could you define the I–360, please?

Mr. JONES. I am reading from the form list here. The I–360 is a petition for Amerasian widow, widower or special immigrant.

Mr. KING. Okay.

Mr. JONES. There are a couple of those, and the estimated volume for those is a little less than 5,000 a year. So it is pretty small compared to our overall fee-paying volume of 4.7 million.

But what we have done in those few exceptions, is we have held the increase to what the average increase is. So you are correct that what we show as the cost is higher than what we are doing as to average increase, but there are about four or five exceptions.

Mr. KING. Thank you.

Then I direct my follow-up question to the Director, then. Keeping that in mind, is that a reflection of compassion on a classification of applicant that might be significantly hardshipped by the higher fee?

Mr. GONZALEZ. Correct. And also the volume is low enough so that we could afford to do that without necessarily skewing any further the total fee structure.

Mr. KING. If there were going to be an initiative to rearrange some of these fees and still produce the funding stream that you need to meet the goals that you have laid out in your testimony, do you see much room to maneuver that? How difficult was it to lay this out?

Mr. GONZALEZ. Sir, the maneuver room, it is hard because you have to have critical mass, so that if you start adjusting fees on some benefit categories, and it just so happens that the numbers of filings are maybe minuscule compared to the total filings. You know, you could charge some people $10,000 for a benefit, but the number of filings are so low that it won't affect the bottom line of what we need to take this agency to where we want it to be.

Mr. KING. Thank you.

As I look down through this list of fee schedules, I identified four that the cost is greater than the fee. The balance of them appear that the listed cost is less than the proposed fee. It is what I would expect, but also I would think if we would do the math on this sheet, we would come up with the increase that you have testified to.

Can you tell me what will happen with the margin that is above your cost to produce the benefits? What will happen to that capital?

Mr. GONZALEZ. Go ahead.

Mr. JONES. It is shifted to the other applicants. So if it is costing us more for the I–360 than we are charging, then other applicants are bearing that marginal cost for each additional unit.

Mr. KING. Would it be true if I were to put the costs and the proposed fees on a spread sheet and multiply the numbers of the projected applicants across there, does that balance sheet come out to zero? Or does it produce some capital for, say, infrastructure improvement and technology improvement?

Mr. JONES. You mean over and above what we say our costs are?

Mr. KING. Correct.

Mr. JONES. It equals our costs.

Mr. KING. It equals your costs?

Mr. JONES. Yes.

Mr. KING. Then where will you get the resources to upgrade your technology?

Mr. JONES. There are a couple of things. Implicit in the price for those applications are resources to help with our existing technology, but we have also, as the Chairwoman has mentioned in her statement, isolated the premium processing revenue to be able to devote that to our business transformation program.

Mr. KING. Thank you.

I yield back.

Ms. LOFGREN. Thank you.

I would like to recognize now the Chairman of the full Committee, Mr. Conyers.

Mr. CONYERS. Thank you, ma'am.

What we are saying now is that the Statue of Liberty lifts her lamp beside the golden door, to welcome those who would love to

come here. And with the other, she roots around in the immigrants pockets, while plucking out bills. Not an appealing image.

I am trying to find out, Madam Chair, whether this agency is distinctive in the Federal system for being dependent on the fees it collects to do business.

Because the worst-case scenario—and this is my question: What if you don't get this increase, gentlemen?

To be honest with you—and you have been working this area longer than me, but it doesn't look like there is going to be an eager rush to support these massive increases. What do you do then?

Mr. GONZALEZ. Sir, Mr. Chairman, I will be honest with you. If we don't get this fee increase, if we don't get this revenue, we are simply not going to be able to keep up with our workload.

Mr. CONYERS. But you are not already. I mean, look, we know—and I am not blaming you, because I have been warned by the Subcommittee Chair, it is not your fault. This thing has been in disarray for years, sir.

So if that is all that is going to happen, you mean things will stay the same as they are.

Mr. GONZALEZ. Sir, with all due respect, we have made some, I think, sincere, genuine and very positive improvements over the last several years.

Right up front, we eliminated a backlog that stood at nearly 4 million files. We have increased our processing. We have new business models. We have stood up national security infrastructure. We are a more secure and we are a more customer-savvy organization than we were years ago.

I will grant you that this is not the agency that I would like to see. This is an agency that is in transition. This is an agency that needs to be better than it is now. We have addressed the past deficiencies with the limited resources that were allocated to us under old cost models.

My point is that immigration, quite frankly, is a growth industry. You are right. Our applications are increasing, but you know what? Our organization is static. Our personnel is static. We have increasing demands on our budget.

If we do not get the revenue that we seek—and I will be very honest with you, sir—if we don't get all of the revenue that we seek, we won't be able to keep up our workload. We are going to see humongous backlogs. We are going to be suffering, from a national security perspective. And we are going to be back to where we were 5 or 10 years ago.

My proposal, our proposal as an agency, is to be able to take this agency to where it needs to be prospectively. We are trying to address the gaps that everybody knows are out there.

Mr. CONYERS. Okay. I just left the Chairman of the Budget Committee and Appropriations Committee. We don't do the appropriations authorizations here. We just listen to the case and make recommendations that go to the Committees.

But you would be one of the few people that come to the Congress to say, if you don't get what you demand, you are out of business, and that you have to get it all. I want to be the first to send my condolences to you, because in the state that we are in fiscally,

it is hard for me to imagine anybody that is going to get what they want.

We have Katrina victims out there. We have the public education system billions short. We have a budget recommendation where there have been cuts, and programs not just cut but eliminated.

So if you are here to tell us it has to be all or nothing at all, I will be the first to send you whatever kind of cards they sell in a drugstore for this kind of activity—not a Valentine's Day card. [Laughter.]

Mr. GONZALEZ. If I may, it isn't an all-or-nothing approach, but it is incumbent upon me, as the Director of the agency, to put forward what our resource requirements are.

To answer the first part of your question, we are 99 percent fee-based. As a result, we have to generate the income to keep the agency not only afloat but moving forward.

It isn't my coming here to say I have to have everything or else, but I do need to be honest with you and sensitize you to the fact that, as an agency that has not been the most efficient in the past, those inefficiencies could very well come back to us sooner rather than later if we are not afforded the opportunity to recover the full cost of doing business.

Ms. LOFGREN. Thank you.

I would now recognize the gentleman from California, Mr. Lungren, for 5 minutes.

Mr. LUNGREN. Thank you very much, Madam Chairman.

Thank you, Dr. Gonzalez, for appearing before us and for the work that you do and for your volunteering to take on a tough task.

I might just say, the comments of the gentleman from Michigan, the Chairman, made your case. He suggested that you are not going to get any money anywhere else. He suggested that the budget is so tight, you can't look for another dollar going to your agency. So it sounds to me like you have come up with the proposal to make your operation work.

I started on the Subcommittee in 1979, and recall—well, let me just ask you. In the 1980's, as I recall, when you went to one of the INS offices for service, you were directed to people who had their files in shoeboxes. Do you still have that filing system?

Mr. GONZALEZ. Sir, I hope not, but, no, we do not. Nevertheless, we are still a paper-based agency, by and large.

Mr. LUNGREN. But in the 1980's, I recall particularly—I used to represent a district in southern California—people had to show up starting at 4 in the morning to try and get in line, and the line would go around the Federal office building in Los Angeles at least once, if not twice.

Is that still the case?

Mr. GONZALEZ. No, sir. Those lines are gone. We have gone to something called InfoPass, where people can actually go online and request an appointment at a certain hour, and they are seen. So the lines have virtually disappeared.

But we also accommodate folks that need to come in, that don't have an appointment, as walk-ins. It may take a little longer to be seen, but we don't have those wrap-around-the-corner lines.

Mr. LUNGREN. In the 1980's, as part of the delegation from southern California, we were informed by the INS that we got 1

day that they would look at the cases for our constituents, and that was the 1 day they worked on cases from anybody from our district.

Is that still the way that you operate?

Mr. GONZALEZ. Sir, our district officers work any number of cases, usually 12 to 15 cases a day. So it is a full workload.

Mr. LUNGREN. For most of at least the last quarter of the last century, if not the last half of the last century, you folks were considered the backwater, that is the INS, of service within the Federal agencies and departments. Are you still considered that?

Mr. GONZALEZ. Sir, I would hope not. I consider us to be in the forefront, quite frankly, of the Department of Homeland Security.

We have a role to play in Homeland Security, and there is a reason why USCIS is in Homeland Security. We not only have a service mission, but we also have a national security mission.

A lot of the things that we are asking for in our fee review reflect that fact, and we want to expand on that to make sure that we are equal partners, not only within the Department of Homeland Security, but throughout the U.S. Government, in national security.

Mr. LUNGREN. Have the improvements since the 1980's cost money?

Mr. GONZALEZ. Yes, sir.

Mr. LUNGREN. Are you where you need to be?

Mr. GONZALEZ. Negative, sir.

Mr. LUNGREN. Is your technology where it needs to be?

Mr. GONZALEZ. Not at all, sir.

Mr. LUNGREN. Are you going to be able to handle the increases that we are talking about in terms of workload, even without any changes in the law?

Mr. GONZALEZ. Sir, we are seeing those increases now, and we are handling them but not without difficulty.

Mr. LUNGREN. What if we were to have a temporary worker program or program that did some kind of adjustment for people who have been here for a substantial period of time, which many people are talking about in terms of immigration reform? Can you handle that with the budget that you have? Or is the budget that you have based on the fees that you charge at the present time?

Mr. GONZALEZ. The budget that we have now is for the work that we have now. The budget that we are requesting is for the work that we are continuing to see increase. Any kind of a guest worker program, if enacted by Congress, would be funded separately from user fees.

Mr. LUNGREN. Based on the fees that you have now, could you operate with the fees that you have now with the workload that you are anticipating?

Mr. GONZALEZ. No, sir.

Mr. LUNGREN. I just hope Members of the Committee will recall the dire straits that the predecessor agency, the dire straits they were in for many, many years, and the terrible, terrible service given to people who were in this country on a legal basis, attempting to adjust their status, and all the interim benefits or services they would have. It was a disgrace. It was an absolute disgrace.

So we may promise the promise at no cost, but we never made good on the promise. It didn't matter how many Members of Con-

gress, Democrat and Republican—it didn't matter whether it was a Democrat or a Republican administration, we never got the kind of service that we wanted for our constituents. I would hope that, as we reflect on this, we reflect on how we get the kinds of monies into this system that are necessary.

Maybe I am old-fashioned, but I do believe one of the marks of responsibility is having people pay for what they get. In this particular area, I think we have to do it.

It reminds me of when we had the legalization program under Simpson-Mazzoli. I was the Republican co-sponsor of that. We thought that most of the people who were going to partake in that could never trust the INS, and the INS wouldn't be involved in the program, and the fees were going to be too high and so forth. And it ended up we had the most successful legalization program in history.

So we have good people in your operation, but I hope that we will give you the money that is necessary, and I hope we would understand the tremendous benefits that you give to people when you can actually do it, as opposed to a promise that is never kept.

Thank you.

Ms. LOFGREN. Thank you, Mr. Lungren.

Now, I would turn to our newest Member of the Committee, Mr. Gutierrez of Illinois, for 5 minutes.

Mr. GUTIERREZ. Thank you very much. I want to say how delighted I am to join you, Madam Chairwoman, in the Subcommittee. I would like to thank you and Mr. Conyers for the help in securing the seat. I have been here 14 years in this Congress, and I can't be happier or more delighted than to join you here this afternoon.

Welcome, Mr. Gonzalez.

Mr. GONZALEZ. Thank you, sir.

Mr. GUTIERREZ. I would like to deal with two specific areas with you, in my 5 minutes.

Dr. Gonzalez, on page 4894 of the proposed rule in the preamble, the agency states, "Congressional requirement that your agency be self-funded from fees exists."

Are you required by law to recover all of the costs of the agency through fees? Or does it have the authority and discretion to develop a budget based on a sensible, fair and realistic balance of fees and appropriations?

Mr. GONZALEZ. Sir, I will answer that, and then I will pass it to my CFO.

Mr. GUTIERREZ. I only have 5 minutes. I would really just like your answer.

Mr. GONZALEZ. We have received appropriations in the past. Those appropriations have been targeted for specific projects and programs. The most recent large appropriation we got expired in September. We are authorized to recover the costs.

Mr. GUTIERREZ. I am sorry, because I only have 5 minutes, isn't it true that you are not required by law to have a fully fee-based operating agency and that you indeed may come to the Congress of the United States, and that you have in the past come to the Congress of the United States, to ask for money in order to operate your agency?

Mr. GONZALEZ. I believe the INA states that we are authorized to recover the full cost of doing——

Mr. GUTIERREZ. Let me go to, then, section 286 of the Immigration Nationality Act, section M. It says, "The fees for providing adjudication in naturalization service may be set at a level that will ensure recovery. Such fees may also be set at a level that will recover any additional costs associated with the administration of fees collected."

I have been here only 14 years, but one thing about this Congress, it understands the difference between "must" and "may."

Indeed, Mr. Gonzalez, isn't it true that in 1999, you received in funds from the Congress of the United States $552 million; in 2000, $535 million; 2002, $632 million; 2003, $709 million? As a matter of fact, last year you received $182 million.

Yet this year when you come before us, when you have these unprecedented fee increases, you are only asking for $30 million, when indeed, over the last 10 years, you have received over $4 billion.

So I guess you can ask for funds. Indeed, you have asked for funds in the past. Is that not true?

Mr. GONZALEZ. This agency has received appropriations. Since I have been here, I have not asked for an appropriation.

Mr. GUTIERREZ. Okay, since you have been there, but you have during the last 10 years received over $4 billion, and you are asking for $30 million this year. Is that not true?

Mr. GONZALEZ. Yes.

Mr. GUTIERREZ. You are asking. So you see, I just want to be absolutely clear, because I think it is extremely helpful to all of us to understand that you are not exclusively a fee-based agency, that, indeed, you can come here.

You said earlier that "pass the bill on to the American taxpayers."

Mr. Gonzalez, how many legal permanent residents of the United States are there?

Mr. GONZALEZ. I believe the number is approximately 8 million.

Mr. GUTIERREZ. Approximately 8 million. Are all of them eligible to become citizens today?

Mr. GONZALEZ. Yes, sir.

Mr. GUTIERREZ. Eight million. Do you consider them American taxpayers?

Mr. GONZALEZ. Yes, sir.

Mr. GUTIERREZ. Okay. That is my point. They are American taxpayers. We are trying to distinguish between American taxpayers, all of us here, and all of the millions and millions of people that you have under your jurisdiction that are going to apply for American citizenship. Indeed, they are American taxpayers. So the distinction is that there is no distinction between them.

I would just like to ask you, you know, I will share with you, as an American taxpayer, I bet that I represent the feelings and the views of the Members of this Committee on both sides of the aisle when I say the following.

When a Cuban refugee arrives here, an asylee arrives here in the United States, I am happy to use my tax dollars when he flees a

communistic society to come to the land of freedom. I am ready to pay tax dollars for that.

Those 28,000 men in our armed forces? I am happy to use American tax dollars so that they don't have to, because they are in harm's way defending our freedom.

Dr. Gonzalez, I think it is a good idea, and that these immigrants, many of them poor, not be burdened. Let's share it. Let's share it, because, indeed, they have no responsibility over that one issue.

Thank you. I am sorry.

Ms. LOFGREN. That is all right.

The gentleman's time has expired. I don't have a heavy hand on the gavel, but we would ask people to stay within their 5 minutes.

I would now recognize Mr. Gohmert of Texas for 5 minutes.

Mr. GOHMERT. Thank you, Madam Chair. I do appreciate the Chair having this hearing, and hopefully it will be the start of many more.

With regard to the fees, I don't know what everybody else has been hearing here on the panel, but, Dr. Gonzalez, thanks for being here, but there is just so much frustration in the application process.

The feeling that so many have is that they have to hire an attorney, they have to hire somebody to help them because it is just too cumbersome and, gee, it takes so long as it is, maybe if they pay $1,000 or $3,000 to a lawyer, maybe it will help them get through the process quicker.

So I am having people that are trying to help family members come in, people that are trying to change their status who are here legally, all these folks contacting me in my office. And they are saying, "Look, we wouldn't mind paying a higher fee, but we would like some action. We would rather pay that money to CIS than to have to pay a lawyer or somebody that is practicing law without a license," which is happening a great deal, or others acting like they are helping, some that don't know what they are doing other than taking people's money who feel desperate.

So I am not as concerned about the amount of the increase if it could preclude the need to go hire additional help.

I am also quite concerned, my office tells me that they have been advised by the Dallas CIS office that they have decided to cut the hours that they will accept calls from Members of Congress or their staffs, which is a little bit interesting for me. I guess we are getting pretty arrogant when we get to that point.

And also, I don't have trouble making the fees high enough to where this agency self-funds, with the exception of those who come in that absolutely cannot help themselves, but we do want to help. So I am not as concerned with the fees as I am with what happens once the fees are there in place.

My friend, the Chairman of the Committee, has pointed out that we are already not keeping up, and this is a concern I have. What does happen with the money if we give you all of these increases? And some of them, on a percentage basis, are pretty dramatic. Going from $200 to $440 is not all that much in the scheme of things if you are paying $1,000 to $3,000 to a lawyer. But what happens to that money?

Anecdotally, I have one family that notified me—and I got involved last month—they have been trying to have their brother get into this country legally since, I believe, it is 1996. After years of trying to push, he was finally notified in late 2001 that his application had been lost and he needed to reapply.

He reapplied, and now that has been transferred from the Texas office to California. California says, "Good news. We are working faster than the Texas office"—this was last month—"and we are now up to processing applications from June of 2001. So gosh, we may get to you in the next year."

That is not good news. I would hope that certainly we could do better.

I am one of those that has been pushing for border security, but that has to go hand-in-hand with an immigration service that works, that processes these things.

I was delighted to hear that we have made great improvements with regard to the security aspect. I know previously we have had problems with adjudicators who did not have the proper security clearance. Hopefully, money will go to help those adjudicate more quickly and access the files they need to access.

But I would be curious to know what is going to happen with this money if you get everything that you are requesting? What assurance do we have that these applications are going to be handled quicker than 6 years?

Mr. GONZALEZ. Thank you, sir, for your questions. I will answer them all, not necessarily in order.

With regards to the hours being cut in Dallas——

Mr. GOHMERT. We will deal with that, but I am more curious about——

Mr. GONZALEZ. I have my legislative director right behind me, so I am sure we will deal with that by the end of the day today.

With regard to the issue of people having to hire attorneys and so forth, what we have included in this fee proposal are manageable metrics where we lay out what we are going to do with the money, how it will actually be seen by the applicant, how the processing times will improve not just in 2009, where we expect at least a 20 percent improvement across the board, but also some improvements in 2008, where we expect also quicker processing times for about one-third of our applications.

This fee increase is targeted at those areas that are going to make us be able to do just what you just said: process things faster; process things in an I.T.-centric way; process them with efficiency, transparency, so people don't feel like they have waited for so long that they have to spend $3,000, $4,000, $5,000 on an attorney for an application that only cost $100.

We took that into account because, quite frankly, those are some of the comments that we have heard.

I will be honest with you, sir, I travel a lot. And every chance I go somewhere, I meet with not only members of the immigration lawyer communities but I also meet with immigrant advocates and NGOs and CBOs. A lot of them tell me, quite frankly—and I was surprised, to be honest—"We don't mind paying higher fees as long as we know where our application is, as long as we know it will

be done in a predictable amount of time, and as long as we can get information about the status of it anytime we want."

Ms. LOFGREN. Dr. Gonzalez?

Mr. GONZALEZ. Yes, ma'am?

Ms. LOFGREN. The time has expired. We are going to have a second round, I hope.

Mr. GOHMERT. I have to shoot out, but, Madam Chair, thank you for having the hearing. I would encourage us to raise the fees, but then, as I think you are going to be willing to do, have lots of oversight to make sure it gets spent wisely. Thank you.

Ms. LOFGREN. Thank you.

I would now like to recognize the gentlelady from Texas, Ms. Jackson Lee, for 5 minutes.

Ms. JACKSON LEE. Thank you very much. I thank the Chairperson and the Ranking Member for this hearing.

Dr. Gonzalez, as you well know, this Committee is about to venture on to a journey of reviewing and, I hope, overhauling the immigration system of America, with the idea of comprehensive immigration reform.

It is my understanding that the Administration is supportive or interested in a comprehensive immigration reform approach to the system.

Mr. GONZALEZ. If I understand the question, are you saying that does the Administration approve our fee increase?

Ms. JACKSON LEE. I didn't use the word "fee" at all. I said, is the Administration interested in comprehensive immigration reform?

Mr. GONZALEZ. Absolutely.

Ms. JACKSON LEE. So as I look at the fees, the Administration is looking forward or forward-thinking as it relates to the potential increase, possibly, in applications and processes that may be put in place that may expand the types of individuals that will be able to apply for legalization or the expanded legal process, for example, more children, more families of individuals who have been waiting in line.

The Administration is sort of looking forward that this may happen?

Mr. GONZALEZ. The Administration is exploring options to work with Congress on comprehensive reform, yes.

Ms. JACKSON LEE. But they are expecting the potential of an explosion in business?

Mr. GONZALEZ. Well, "explosion," I think, would be a stretch. We see an increase and surge in business today, without comprehensive immigration reform.

Ms. JACKSON LEE. Well, then with comprehensive immigration reform, the term is accurate, "explosion," a surge, then. Do you expect a surge?

Mr. GONZALEZ. Yes, ma'am.

Ms. JACKSON LEE. With that in mind, has the Administration then thought of the necessity of a revenue stream for a system that has the potential to grow? A revenue stream that would come from an appropriations process versus a fee process?

Mr. GONZALEZ. For the type of business that we do, I am still convinced that the best model for us is a fee-based process. A fee-

based process allows us to adjust our workload, depending on these surges that you and I just talked about.

My concern would be that any type of an appropriation would be a static amount which would not address the surges that we are seeing now. We want to be able to surge resource-wise as we surge with applicants.

Ms. JACKSON LEE. Let me give you an example of, I think, the challenges that we face with a total fee-based process. Just simply for individuals that are trying to status their children, and they are in the legal process, it moves from $255 to $460. Typically, someone might have more than one child. So in essence, it is almost half, a 50 percent increase. It is not exactly a 50 percent increase.

And so, the question becomes whether or not the actual system itself can handle an exponential increase in fees, because what this tends to mean is every series of years we will increase the fees—50 percent, 75 percent, 100 percent.

So my question to you, would it not be feasible to assess how much additional money you would need to get ready for processing the millions of individuals that are already in the legal system as we speak, or possibly that you might be able to respond to the surge?

Could you predict readily the kind of dollars you might need? In your argument, you would rather base it on the fee base, but the fee-based system may be uneven. It might not even meet your needs because you don't have an assessment of how many.

Do you think this is the most accurate? Or do you think you could predict or project what kind of money you would need?

Mr. GONZALEZ. With the fee-based model, what it would do is it would give us the resources right as the application is coming in. So if our intake grows by 15 percent, we are going to be resourced for that, as opposed to if we have static funding or we make projections that maybe don't come to fruition, then we are looking at backlogs and inefficiencies and so forth.

But with the fee-base that we propose, and which I still think works as the best model for an organization which essentially does services——

Ms. JACKSON LEE. If I may, Dr. Gonzalez, because my time is short. It does not take into consideration, however—your fee-based system only takes into consideration the needs of the Government. It does not take into consideration the needs of the individuals applying nor the resources that you need to pre-train personnel to get them prepared to respond to this surge.

So maybe it should be a combination of fees and revenue. I would like very much for you to consider that.

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

Ms. JACKSON LEE. Thank you.

Ms. LOFGREN. Thank you.

I would now turn to my colleague from California, Ms. Waters.

Ms. WATERS. Thank you very much, Madam Chairwoman.

I am pleased to be on this Subcommittee and intend to spend a lot of time here. I am from California, and I have two individuals in my office who are dedicated to immigration problems, requests and assistance full-time.

We know a lot about your agency. I am afraid I don't share the same description of your agency that you have put forth here today. We find that we are constantly trying to straighten out problems that were caused by the agency, by people who are processing who do not appear to know the law.

And so, I am anxious, too, for some improvement in this agency.

However, Madam Chair, I would like to just say that, along the thinking of Congresswoman Jackson Lee, I am simply not prepared to entertain any increase in fees unless and until we do comprehensive immigration reform. And then I think it makes good sense, better sense, to understand where we are.

But since I know that you are going to continue to pursue this idea of having all of the services paid for through fees, have you considered that a large part of immigration reform may be a guest worker program?

What about the employers who benefit from the immigrants who will be performing the work? Have you thought about asking them to share in this cost in any way?

Mr. GONZALEZ. Yes, ma'am. I would like to differentiate between a guest worker program, which for us would be another program that we would be doing, as opposed to what we are asking for today, which is to make our agency whole.

Whether we have a guest worker program or not, what we are asking for today is to make our agency whole and to make it a professional agency so that you don't have the problems that you just told me about.

Ms. WATERS. Excuse me, but you do do employment authorization today?

Mr. GONZALEZ. We do, ma'am.

Ms. WATERS. And you do advance parole—two things that you said will benefit the applicant if you increase the fees. Is that right?

Mr. GONZALEZ. What we are saying is we will roll in the fee.

Ms. WATERS. I know what you are saying, but you talk about the benefit to the applicant——

Mr. GONZALEZ. Yes, ma'am.

Ms. WATERS [continuing]. If you increase the fees. I, kind of, beg to differ with you. I have worked on too many problems of people who are subject to the 3-to-10-year bar, prevented from re-entering the United States, despite the fact they have this advance parole approval. You don't even tell them, and you give them the approval, and then they can't get back in.

So let me just put a pin in that, because I want to see how you respond to the idea that perhaps the beneficiaries of those who come to work somehow share in the costs in some way.

Mr. GONZALEZ. If I understand your question correctly, you are saying we should pass some of these increases to the businesses that benefit from the workers. Is that correct?

Ms. WATERS. I haven't said that you should. I am asking you have you thought about it.

Mr. GONZALEZ. Yes, ma'am, we have.

Ms. WATERS. And what have you done about it?

Mr. GONZALEZ. What we have concluded—and I will ask my colleague, Mr. Jones, to expand on it—quite frankly, the revenue is

not there. Even if we increase those business-based petitions exponentially, it would not give us the revenue that we would need to move forward in the way we would want.

Ms. WATERS. Would a combination of that and some lesser increase give you the revenue that you would need? Of course it could. I mean, this is rhetorical. It is just a matter of how you assign additional fees to each. I mean, of course it could be.

But go ahead. I want to hear what you have to say.

Mr. JONES. It certainly could be something we would look at, but businesses now who petition for workers to come into the country also pay fees.

Ms. WATERS. Are you asking for an increase? Because the people who are now applicants also pay fees. You are asking them for an increase.

Mr. JONES. Yes, ma'am.

Ms. WATERS. So you are asking for an increase on the business side?

Mr. JONES. Yes, ma'am.

Ms. WATERS. How much?

Mr. JONES. It varies by form type.

Mr. GONZALEZ. In fact, one of the most substantial increases is a business-related one. Do you have it there?

Mr. AYTES. There are two primary forms that are used by the employer community. That is the I–129, which will be changed from $190 to $320; and the immigrant petition for an alien worker, which is an I–140. That will increase from $195 to $475. Those are where the employer is sponsoring the importation of the worker.

Ms. WATERS. So would you tell me what the mix is? What number are you trying to achieve? How much total increase to support your agency? I want to understand the balance between the request for increase, both on the applicant and on the business community.

Mr. AYTES. In a very general sense, we are trying to charge each applicant, whether they be an employer or an individual, the cost of processing that application, not transfer in costs from one party to another, as a matter of equity, with the limited exception that the Director spoke of of fee waivers and a few applications where we have limited the increase.

Ms. WATERS. May I stop you for a second? Exactly how much money are you trying to raise in order to have a completely supported agency by fees?

Mr. JONES. The change in prices results in $1.079 billion change in fees.

Ms. WATERS. And how much of that is assigned to the applicant and how much is assigned to the business community?

Mr. JONES. I don't have it broken that way, but I could get that for you.

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

If you could provide that information to the Committee, I hope we will have a second round.

Thank you, Ms. Waters.

Mr. Delahunt of Massachusetts is recognized for 5 minutes.

Mr. DELAHUNT. Yes, thank you, Madam Chair.

Has there ever been a study in terms of the benefit of expeditious processing, what it would translate into savings to the American taxpayer?

Mr. GONZALEZ. I am not aware of that, sir, no.

Mr. DELAHUNT. Okay. It is kind of a cost-benefit analysis. In other words, a change in adjustment providing more employment opportunities, et cetera. You know, what does that really mean?

In other words, there is a credit side and a debit side, I presume. Has there ever been any kind of a calculus trying to come up with a figure? In other words, well, I think that speaks for itself.

I just want to note that the Ombudsman has done that study. Are you familiar with that?

Mr. AYTES. We are familiar with the Ombudsman's study and his work, sir.

Mr. DELAHUNT. Okay. Is there a number associated with that?

Mr. AYTES. I don't have that number in front of me. His calculations talk about the extent to which processing could be modified and accelerated in a way, with some offsetting processing costs, not the impact on the general economy as a result of processing being done faster. He suggested some alternative models for how we could handle certain types of applications more quickly.

Mr. DELAHUNT. Okay. Also, I think it was you—I don't know whether it was Mr. Jones or Mr. Gonzalez that talked about that this is being done in an effort now, despite the fact we just learned through the questioning of our colleague, Mr. Gutierrez, that over a period of time, I forget how many years, there was a $4 billion appropriation by Congress.

In terms of equity—I forget which one of you used that—to recoup the cost of the processing, has there ever been any consideration given to another equitable formula which would be predicated on an ability to pay?

I think there is data showing that some 36 percent of applicants have a household income of less than $25,000.

Mr. GONZALEZ. Sir, those who are unable to pay can apply for a waiver. In fact, last year we issued about 56,000 waivers of individuals that could show need.

Mr. DELAHUNT. Out of how many requests?

Mr. AYTES. We approved about 85 percent of the requests that we received.

Mr. DELAHUNT. I am sorry?

Mr. AYTES. We approved about 85 percent of the requests received.

Mr. DELAHUNT. Out of the total pool, what does that represent, in terms of the number of applicants?

Mr. AYTES. Far less than one-tenth of 1 percent.

Mr. DELAHUNT. See, that is my problem. If you have 36 percent of applicants that have household income of less than $25,000, we are talking numbers that are beyond their capacity to pay.

I guess what I am suggesting is, has there been any consideration given to a fee system predicated on ability to pay? A sliding scale, if you will?

Mr. JONES. When we first published the rule, we had members of the press, and we also talked to the CBOs, and both of those groups have raised that. We have talked about it internally. What

we discussed, some of the operational challenges of that, it is basically then you are adjudicating twice on every application.

You are going to have to adjudicate and determine whether or not this person, who is making this application, is in fact eligible for this reduction in price, because they provided you evidence that their income is what they say it is. And then you are going to have to adjudicate the underlying application or petition.

Mr. DELAHUNT. Is it that much of an obstacle in terms of if somebody filed an income tax return, for example, okay? You know, and predicated on that, you have numbers to deal with.

I mean, maybe there is something there that I am not factoring into the equation, but it doesn't sound like you used the term "adjudication," I don't see somebody coming in with robes on and listening to testimony and issuing interlocutory decrees and orders. This is a computer spitting out a determination predicated on presumably a valid 1040.

Mr. JONES. I apologize for being——

Mr. DELAHUNT. No, I don't mean, you know——

Mr. JONES. But in essence, part of the issue you would have is also the incidence of fraud and is the return that they provided you in fact a valid filed return.

Mr. DELAHUNT. I understand, but, you know, when we are talking about fraud, we have a lot more serious problems than just misstating income on a 1040. My point is, somebody is earning a salary, who is the CEO of a German subsidiary, and has a net income of $2 million a year, I don't mind whacking him. I mean, we could beef that up pretty well if they—I yield to the Chairman.

Ms. LOFGREN. The gentleman's time has expired. We thank you for that.

Mr. GONZALEZ. Sir, your point is well-taken, and we will take it into account in our comments. I understand what you are asking.

Ms. LOFGREN. Thank you, Dr. Gonzalez.

Now I would yield to the gentleman from Alabama, Mr. Davis, for 5 minutes.

Mr. DAVIS. Thank you, Madam Chairwoman.

I guess this is, kind of, a little bit perplexing to me, Dr. Gonzalez, gentlemen, about this whole line of questions is most of the points that Mr. Delahunt made are very good points. They are also, frankly, obvious points that you all do not seem to have thought a whole lot about until he questioned you about that. That is a little bit of a concern to me.

Obviously, some people who apply for citizenship are very well-heeled economically. Some of them are dirt poor and are trying to find a country where they can feed their family. It doesn't take a genius to figure that out.

So I would just start with the observation that I frankly don't understand why the agency seems to struggle to deal with the policy ramifications of a hardship exception.

And then let me try to pin this to numbers a little bit. If I am reading this data from the Committee, the total filing fee for a family of four is around $3,760. Is that right?

Mr. AYTES. For which application, sir?

Mr. DAVIS. For a family of four, two parents, a 15-year-old, an 11-year-old, filing fee for applications is around $3,760. Is that about right?

Mr. AYTES. For certain applications, it may well be.

Mr. DAVIS. What is the median income of people who make these applications?

Mr. AYTES. Again, it varies by type of application.

Mr. DAVIS. Well, somewhere, someone threw out the number $25,000. Where did that number come from?

Well, let me take someone who is earning $25,000 a year—$3,760 is a big chunk of money, frankly, to put this in very real terms. Most of us, I think, make $165,000 a year. If you asked any of us on this Committee to cut you a check for $3,760, I think we would think it was a pretty big chunk of money. So once again, there seems to be some disconnect here.

What do you consider to be wage eligibility? You say you make a determination whether someone is able to pay. What amount of money do you consider someone to be making to be able to pay this fee?

Mr. AYTES. Again, it varies by application. It really becomes a general public policy question of do you charge different individuals——

Mr. DAVIS. No, that is not the question. The question is, if someone files a waiver, what is the income cutoff?

Mr. AYTES. We usually look at the poverty level, 125 percent above, if I recall correctly.

Mr. DAVIS. Which is what number?

Mr. AYTES. I don't have that number in front of me, sir.

Mr. DAVIS. The poverty level, I guess, for a family of four today is around $25,000, isn't it?

Mr. AYTES. It may well be.

Mr. DAVIS. Let me ask you a fairly basic question. Most of the people who engage this immigration argument, most of the people on this Committee who like to argue about these things, they usually like to say immigration is a good thing; it is illegal immigration that we worry about. And a lot of the people who engage this issue like to say we want to do everything we can to get people incentives to play by the rules.

Proposition one: If you have a very low-income family that is interested in finding a country where they have a better chance to feed their family, they are very, very poor folks. And you charge them a fee of around $3,760, are you not giving them an incentive to break the rules and to use the illegal route?

Mr. AYTES. We don't believe so.

Mr. DAVIS. Really?

Mr. AYTES. Indeed, we do not, because the issue is if we do not fully recover the cost of the application, the charge, what it means is we create backlogs.

Mr. DAVIS. Wait a minute. You are giving me an administrative reason that explains why you want the fees. I get all the bureaucratic reasons why you want more money. What I am trying to get at is, when you charge very poor people a fee, don't you provide them an incentive to do an end-around and to try to come here illegally?

I don't think I am that smart. I don't think that that is that tough a question.

Mr. AYTES. I think some people might reach that conclusion.

Mr. DAVIS. And is that a good thing to do? I mean, shouldn't we be trying to fashion a system that doesn't create those kinds of incentives? Because legal immigration is a good thing. You all agree with that, right?

Mr. GONZALEZ. We only deal in legal——

Mr. DAVIS. You only deal in legal immigration, and it is a good thing, right? Very poor people trying to come here for economic improvement, who are playing by the rules and filling out an application, that is a good thing, right? Yes or no

And you all nod your head "yes." If it is a good thing, shouldn't we be incentivizing them to play by the rules by carving out a hardship exception?

Because I know it may be news to you gentlemen, but a very poor family that is trying to make choices about how they are going to feed their little children may not always make the same ethical calculus that you and I would make.

So again, I would yield back my time, but it is just amazing to me that we are having an argument about whether or not there should be a hardship exception, when a lot of the people we are talking about who are applying are very poor people, and we are a country that is loaded with waivers of fees and hardship exceptions. You get a fee waiver if you fill out a gym application.

Mr. GONZALEZ. Sir, our rule allows for fee waivers, and we will entertain fee waives, and we fully expect that they will be larger——

Mr. DAVIS. But not for very many people, apparently, Dr. Gonzalez.

Mr. GONZALEZ. Sir, that is an issue of an individual filing for that waiver. We expect——

Mr. DAVIS. You said most of them who file don't get it, and you said that the income threshold apparently is one where a lot of poor people still don't get it.

Mr. GONZALEZ. Eighty-five percent of them who file do receive a waiver.

Mr. DAVIS. Do receive them.

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

I now would like to recognize a new member of our Committee, Mr. Ellison of Minnesota, for 5 minutes.

Mr. ELLISON. Thank you, Madam Chair.

One of the good things about going last is that most people will ask your questions. [Laughter.]

Just to be clear, as I understood your point earlier, Dr. Gonzalez, about 56,000 people apply for a waiver. Is that right?

Mr. GONZALEZ. Yes, sir, last year, are the figures that we have.

Mr. ELLISON. And about 85 percent of those received a waiver?

Mr. GONZALEZ. Yes, sir.

Mr. ELLISON. Was that a complete waiver or just a partial waiver?

Mr. AYTES. That was a full waiver of the fees that they charge, in addition to the waivers that we give on a class basis by not charging for an application, like asylum.

Mr. ELLISON. Okay. So that 85 percent includes asylum applicants?

Mr. AYTES. No, that is where they have applied on an individual basis, asking "waive my fee when you charge others for the same service."

Mr. ELLISON. All right. What percentage does that 56,000 represent of the total number of applications?

Mr. AYTES. Far less than one-tenth of 1 percent.

Mr. ELLISON. One-tenth of 1 percent.

Mr. AYTES. It is relative to 4.7 million applications that we project we will receive next year.

Mr. ELLISON. Okay. Now, I have a list here of fees. It is a schedule. Is this familiar to you gentlemen?

I am assuming that every family member has to pay the fee. It is not one fee for a whole family. It is one fee per person. Am I right?

Mr. AYTES. Typically, there are some applications where family members are included.

Mr. ELLISON. So, for example, what is the average application fee when you total up for a family? I mean, do you have a number as to how much average expenditure is for a family who is applying to come in under one of our——

Mr. AYTES. It really varies by the service that they are requesting, sir.

Mr. ELLISON. Yes, but, I mean, you have an average. You could average these fees up and come up with what the average fee is.

Mr. AYTES. Well, the fee to sponsor a relative is going to be $355. If that relative is overseas, they will have to apply for an immigrant visa, and they will have the cost of relocating their family to the United States. So this is one part of that total cost to them of immigrating.

Mr. ELLISON. When I say "expenditure," what I mean is fee expenditure, not total cost to the family.

Mr. AYTES. The fee on the relative, if the relative is overseas, would be $355 for our processing of their sponsorship petition.

Mr. ELLISON. How big are families that typically have to immigrate? Do you have an idea about how big the families are? Do they tend to be three family members or four?

Mr. AYTES. They vary in size, sir.

Mr. ELLISON. Of course they do, but, I mean, you must know how big the average family is.

Mr. AYTES. Off the top of my head, I couldn't tell you. It varies widely, based on family relationships.

Mr. ELLISON. So you don't know whether——

Mr. AYTES. We have——

Mr. ELLISON [continuing]. Members of the family, you don't know that?

Mr. AYTES. Not off the top of my head, sir, no.

Mr. ELLISON. Dr. Gonzalez?

Mr. GONZALEZ. No, sir.

Mr. ELLISON. All right. I guess what I am trying to get is what sort of financial impact are families that are trying to immigrate legally, what are they really going to be faced with? How are the fee increases really going to impact them?

Let me ask this: Could you describe the application for a fee waiver? What sort of standards are applied in that case?

Mr. AYTES. We are usually looking at things like poverty level and their income. We are also looking at fee waivers at whether or not prospectively in this rule that whether or not it is consistent with the service that they are applying for. If a father is filing to petition for his wife and his children, under the law he has to sign an affidavit of support committing to support them financially, if the need arises.

And so a fee waiver, arguing that he is unable to pay the fee for a petition, brings into question his ability to support them financially once they arrive.

Mr. ELLISON. So application for a fee waiver could actually have a negative impact on their application to immigrate?

Mr. AYTES. No, it would usually just be a question of the fee waiver itself, prospectively under this rule.

Mr. ELLISON. Okay. That is interesting. So what impact on your immigration application would saying that you are indigent have? Would it diminish your changes to have your application granted?

Mr. GONZALEZ. Since 85 percent or 86 percent are approved, so I would argue no.

Mr. ELLISON. Right. But I am going back to the gentleman's point about if you say that you are indigent, that might reflect poorly on your application. Is that right?

Mr. AYTES. No, that is not correct. We would look at your request for a fee waiver in that light. We do not look at your economic situation with respect to the petition itself.

Mr. GONZALEZ. There would be an inconsistency. If you have to verify that you can support a family, why would you then want a waiver on the fee?

Ms. LOFGREN. The gentleman's time has expired. But we will have a second round of questions.

Mr. ELLISON. Could I at least get the last question?

Ms. LOFGREN. Since you are the newest member, yes.

Mr. ELLISON. Thank you. [Laughter.]

So, for example, I am still not clear on the point you are making. You could have a job you expect to get to support your family, but don't have the money now to pay the fee. So I am trying to understand what you mean.

Mr. GONZALEZ. You have to file an affidavit which states that if you are bringing in a family member, that they will not be a public charge; that you will be able to provide for them. So it would be inconsistent if you file that affidavit, and at the same time ask for a waiver because you can't afford the application itself. That is what we are trying to address.

Ms. LOFGREN. I think this has been a very helpful exchange for me. As I was listening here, right now, if you have an income that is 125 percent of poverty, you can issue an affidavit of support.

But the fee waiver really, that 125 percent threshold for a fee waiver is related to a much lower fee. So we may want to take a look at what is the threshold for the waiver with greatly increased fees as part of this whole issue.

I want to talk also about something that has not been discussed, which is—and the other thing, if I understand it, the I–485 does

not have a waiver provision at all under this new rule. I think that is something we might consider—since that is a very high fee for a family of four. I mean, it could go for a family of four, it would be $5,000, with the biometrics. That is a chunk out of anybody's monthly budget. It would be out of mine, and we Members of Congress earn more than 125 percent of poverty.

So I think when we need a waiver, that shouldn't be excluded.

Mr. GONZALEZ. That is a good point, Madam Chair, and we will certainly consider that.

Ms. LOFGREN. I want to talk about citizenship as well, because if you are a legal permanent resident, you don't have to become a citizen.

Mr. GONZALEZ. No, ma'am.

Ms. LOFGREN. But if you want to become a citizen and you want to become fully American, we want you to do that. That is the beauty and the genius of America, is that people come from other countries to become Americans with us.

The doubling of that fee does concern me in that it might deter some, especially people who are working people, who are going to be just as good Americans as entrepreneurs, from taking that step that they might want to do.

So I really think we need to take a hard look at the impact of deterring what we want, which is assimilation of people who want to be patriotic Americans with us.

I want to also—and I have gotten some feedback. People are very interested in how the money is going to be spent. I will tell you, I want the agency to modernize. I know that you do, as well. We want to create an efficient system.

I am trying to figure out the budget issues. The premium processing fee, which is $1,000, if memory serves me right, was to be used to provide premium process services to business customers and also "to make infrastructure improvements in the adjudication and customer service processes under the INA."

Now, in the rule you say that the premium processing monies for regular operations has been used for regular operations, not connected to either of the things in the statue. And I am not being pejorative about this; I am just quoting the rule.

So I am trying to figure, we had an appropriation of $115 million in 2006, basically for infrastructure improvement and backlog reduction; $182 million in 2007 for that same purpose. And now we have requested $30 million, which I think is primarily for a Basic Pilot.

The question is, if we had to use the premium processing funds just for basic operations and we still have this need for the infrastructure upgrade and maybe even backlog reduction, are we out of the woods on what Congress wanted to do with these special appropriations? Or don't we just need to do—maybe we need to do some of these fees.

I am not saying otherwise, but don't we need to look at the national interest, as we did in the last two Congresses, to achieve what Congress wanted to do. What happened to the money? I am not even saying it was the wrong thing, but how did this happen so that we ended up in this situation?

Mr. JONES. There are couple of things I would say in response to your questions.

First, the statute does read as you say it did for premium processing and the use of those funds. We have used them for some improvements. But the distinction we are making in this rule is we have used them for some improvements to our existing systems.

I will give you an example. Right now, the main system we use to track our cases, is called Claims III, you would think is some big national system that you can look at.

Ms. LOFGREN. I don't.

Mr. JONES. Well, some people might, but it is not. It is a series of about seven regional systems that sort of feeds into——

Ms. LOFGREN. So you just messed with your antiquated system. You haven't upgraded to a new system.

Mr. JONES [continuing]. As opposed to totally revamping what some people call the "forklift" approach, reach in, take out the old stuff, throw that away and replace it with a new infrastructure. We haven't been able to do that because of a problem in the base price structure.

The second thing about the appropriations that we have gotten. In 2006, for example, most of the resources were for backlog reduction. We did have a small piece of appropriated resource for what we call our digitization program, which is digitizing alien files, A-files. In 2007, most of the resources are really for the expanded basic pilot.

Ms. LOFGREN. So it wasn't for the——

Mr. JONES. Correct. It is not for sort of ongoing operations. That is what the $30 million in 2008 is for.

Ms. LOFGREN. My time has expired, but I think, based on comments—and unfortunately the Ranking Member had a meeting with a Cabinet Secretary that he couldn't skip, so certainly we understand that.

But I think there is some interest in understanding on the part of the whole Committee where the money is going and where we are, and what mix of appropriations and fees would be appropriate to get us where we need to go.

At this point, I would recognize Mr. Gutierrez for 5 minutes.

Mr. GUTIERREZ. Thank you very much.

I would like to just go a little bit into another part.

Dr. Gonzalez, is it not true that by statute, anybody that is in the backlog are those who have made application to your department, that have not been acted on successfully after 6 months?

Mr. GONZALEZ. That is what we consider a backlog, correct.

Mr. GUTIERREZ. So how many applications are there in the backlog, considering that definition? Because I read another definition that you and your staff put together, that is different than the Federal statute on backlogs.

Mr. GONZALEZ. The backlog that we own right now, that is, it is ours and we can actually do something about it. I have a corrected number. I believe it was 65,000.

Mr. GUTIERREZ. So there aren't a million applications over in your department that have not been acted on past the 6 months?

Mr. GONZALEZ. There are other applications that have not been acted on, but for reasons external to our department.

Mr. GUTIERREZ. Okay. I guess, just following my line of questioning before, because you came before us and said, "We are a fee-driven agency," and yet we found $4 billion your agency has received through authorizations of the Congress of the United States during the last 10 years.

Mr. GONZALEZ. For specific projects, correct.

Mr. GUTIERREZ. Okay, for specific projects. And indeed, this year you are asking for $30 million in excess. So you are asking for money to run your agency that is not fee-driven.

So now that we have cleared up that part, because I think it is very important if we are going to do our work and we are going to help you, because I know that the members of this Committee want you to be successful, and for your agency to be successful, we need to clear that up.

I want to just clear up the backlog. Using the definition of those that have applied for a service, and that have not received a successful completion after 6 months, we have agree that that is basically the statute, how many people have made an application to your agency that are in the backlog? Notwithstanding the exclusions that you make subsequent, but using that statute.

Mr. GONZALEZ. That is a fair question.

Mr. AYTES. It is a fair question. If you count those folks where we have gone back to them and asked for more information, or where a statute says that they will not be able to immigrate for some years into the future, we would have 1.1 million, according to that calculation.

Mr. GUTIERREZ. Okay. And that would be the calculation using the statute, as defined by Federal statute, by the Congress of the United States, that 6 months or more.

And the reason I think I believe, Dr. Gonzalez, that it is valid for you to explain why the way we have federally described what is a backlog might be different than what you want to come before the Committee in terms of a backlog. I really do understand that.

But I think if we hear it is 65,000, when indeed it is over one million, then we need to know that, because that really gives us the true scope of the issue that you are confronting.

Let me just put it to you this way, if you are having trouble with the FBI—that is, you do not control the FBI fingerprinting check; it is outside, externally, so you exclude them from your backlog—I think we need to know that so that we can deal with the FBI.

Mr. GONZALEZ. Just to give you some categories—and, by the way, the 6 months is not statutory. It is what the President has asked us to do and is what we have imposed on ourselves.

But as far as what you called the "gross" backlog—and that is a fair question—there are immigrant petitions for countries that are over-subscribed. So if you are from a particular country, you could be waiting 10, 15, 16 years to immigrate to the United States.

Mr. GUTIERREZ. And because my time is running out, I just want to suggest to you, if you could give us—as the President of the United States who you work for, has described the backlog as being anything after 6 months—if you could just give us, I think it would be extremely good for our Committee to know how many people have made a petition for a relative in a country where visas do not

exist. I would like to know that, because those are part of the backlog, according to the President of the United States.

[The material requested by Mr. Gutierrez was provided but is not reprinted here. The material is on file and available at the Subcommittee.]

Mr. GUTIERREZ. I want to know FBI fingerprinting, where the delay is there so that we can address that. Names, I know that names, because I don't know if you have, but I have showed up at the airport and I have to show extra I.D.s because of my name.

Mr. GONZALEZ. Me, too.

Mr. GUTIERREZ. You, too. So we get into this name thing. I would like to know who those people are so that we could address that.

And lastly, I just want to close with this. Earlier it was said that this is a good deal because a coyote charges $2,500 and you guys only charge less than $1,000. Right? It is a good deal relative to what a coyote charges.

I just want to say, Mr. Gonzalez, and maybe you could respond if you wish, that those kinds of analogies are just, A, not relevant and really do a disservice. Because I am a Member of the Financial Services Committee, and if a constituent of mine came and said, "The bank charged me this extraordinary exorbitant interest," I wouldn't say back to them, "Well, you know, a loan shark from the mob would have charged you more." I don't think that would have been an excuse.

So if you could just comment on coyote versus what you charge. Do you really want to be compared to coyotes?

Mr. GONZALEZ. Sir, I will get to your first point. We provide Congress with quarterly reports on all of those categories that you mentioned. I will make sure that you get a full list of all the packets we have provided.

I don't know any coyotes and I don't know what they charge, so I would be remiss if——

Ms. LOFGREN. We don't either.

Mr. GUTIERREZ. We don't either, but the gentleman from Iowa seems to know. [Laughter.]

Mr. GONZALEZ. But I will tell you, sir—and again, I am sorry if I am over my time, but I do meet with people in the communities, and I have been heartened by the fact that even people that don't like the size of the fee increase will come up to me and say, "I understand why you are doing it. We understand. What we want is service. What we want is transparency. We want somebody to answer the phone and talk to me about the status of my application."

So in that regard, I do think that what we provide is of great value.

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

Mr. GONZALEZ. Pardon me, ma'am.

Ms. LOFGREN. That is all right. We have a second round.

Mr. Davis of Alabama for 5 minutes.

Mr. DAVIS. Two points, Dr. Gonzalez. I hadn't planned to make the first one, but your comments led me there.

Yes, I understand your point that people say, "I am willing to pay more to get better service." Most Government agencies, we kind of assume that good service is a function of what they do and

not a function of what we pay. So I am not sure that is a good analogy either.

But I want to go back to this point again, because there is something about your numbers that does not add up to me. Did you represent earlier that only one-tenth of 1 percent of the applicants receive a hardship waiver?

Mr. GONZALEZ. No.

Mr. DAVIS. Okay. Tell me what the one-tenth of 1 percent represents?

Mr. GONZALEZ. The total number of waivers submitted, as opposed to the total number of application benefits submitted.

Mr. DAVIS. All right. What is not adding up to me, if your threshold level for a waiver if 125 percent of poverty, are you representing that that small a fraction of people who apply are in the 125 percent of poverty category?

Mr. AYTES. What we are representing is that is the number of applications that we receive for a fee waiver.

Mr. DAVIS. This is what that suggests to me, that there are probably a large pool of applicants who are eligible for a fee waiver, who are never making the application. Does that sound reasonable to you? Otherwise, you have an incredibly well-heeled group of people who are seeking to come to this country, and I don't think that is the case.

Mr. GONZALEZ. Sir, our waiver policies are very public. People know about them.

Mr. DAVIS. But do you get my point, Dr. Gonzalez?

Mr. GONZALEZ. I get your point completely, and we are prepared for an increase in waiver requests under our new fee structure.

Mr. DAVIS. Again, this is the point that I am making to you. If I am understanding you correctly, and tell me if I am not understanding you, a very small number of people make an application for a hardship waiver. Is that accurate?

Mr. GONZALEZ. That would be accurate, yes.

Mr. DAVIS. And that is around what percentage again, who even make the application?

Mr. GONZALEZ. Less than one-tenth——

Mr. DAVIS. Less than one-tenth. And the application threshold is 125 percent of poverty. Is that right?

Mr. GONZALEZ. Correct.

Mr. DAVIS. Surely you are not representing to me that only one-tenth of 1 percent of the 1 million-plus people are in that zone of 125 percent of poverty? You are not suggesting that this is that well-heeled a group. It couldn't be.

Mr. GONZALEZ. That is not our intention, no.

Mr. DAVIS. Of course not. So there obviously is a significant problem with people who are eligible for hardships, not knowing about it.

And that takes us back to Mr. Gutierrez's point and the point of others. If you have a fee-based system, it is requiring some people to pay who can't do it. It also appears it is requiring some people to pay who are hardship-eligible but simply don't take advantage of it.

So given that those kinds of inequities appear to be woven into the system, that appears to be a very powerful public policy argu-

ment for moving away from a fee-based system. That is the point that a lot of us are making.

The second point, and this is the last point that I will make today, is Mr. Delahunt's point is eminently sensible. Any fee-based system ought to be based on how much money you are making. If you are well-heeled, you ought to be paying a good fee. If you are not, you shouldn't be.

And it shouldn't be a function of whether you filled out a hardship waiver. You know, that would be like saying that, "Well, we are going to tax very poor people, but we will give them a big deduction." No, you don't tax them in the first place most of the time. So there is a basic equity issue.

And once again, that we are having an argument about this seems a little bit counterintuitive, given the emphasis that the President places on the value of legal immigration. Mr. Conyers touched on this earlier.

It would be a wonderful point for the President to say, "We value people who play by the rules so much that if they are hard-working and struggling and not making a lot of money, we are not going to charge them anything. We will treat that as a service that their Government provides, because that is a value in its own right."

And I yield back my time.

Ms. LOFGREN. The gentleman from Minnesota, Mr. Ellison, for 5 minutes.

Mr. ELLISON. Dr. Gonzalez, could you talk about the availability of (o-m)?

Mr. GONZALEZ. I can't talk about the availability for every applicant, but a large universe of our application pool goes through CBOs, NGOs. We provide information on waivers. I mean, the waiver information is out there.

Now, are we making public service announcements? No. But the information is there. And, again, we fully expect a greater number of people to avail themselves to that waiver policy.

Mr. ELLISON. Because I am so limited in time (o-m)?

Mr. GONZALEZ. Yes, sir. Yes, it is.

Mr. ELLISON. (o-m)?

Mr. GONZALEZ. Our Web site right now is in English. We are in the process right now of updating our Web site in multiple languages. We just launched a new Web site this past October which is much better than our old one, and we are slowly building into it, but we expect to have different language fairly soon.

Mr. ELLISON. Okay. And also, you know, Congressman Gutierrez made an excellent point about the coyotes phenomenon, but you would agree, I mean, coyotes, they subject people to danger. We don't want to incentivize people to go to that illegal route, because it is dangerous. The people are exploited. It is against the law.

Could you talk about how where you are, that it would be a bad idea to sort of create incentives so that people would not go through an illegal system?

Mr. GONZALEZ. Sir, as I mentioned before, this agency only deals with legal immigrations. We don't deal with coyotes. We don't have a border security function. It is clearly an issue for other agencies to address. But I will tell you that anecdotally and empirically, we have looked back at previous fee increases.

What we have found is that there really isn't a major change. That is to say, you know, there might be a dip once that increase takes up, but then as it goes on, there is not a significant decrease in filings across the board when we have had this in the past.

Mr. ELLISON. That is a good point, Doctor. Let me ask you this: Have you ever had an increase this big before? I mean, I think the average is like a 66 percent increase across all the fee levels.

Mr. GONZALEZ. Back in the 1990's, the increase was actually higher than this.

Mr. ELLISON. I think your assistant knows more, Mr. Gonzalez.

Mr. JONES. It was 76 percent, the last time there was a major fee study done for these activities, in 1998 by INS.

Mr. ELLISON. Thank you.

Ms. LOFGREN. Does the gentleman yield back?

Mr. ELLISON. Yes.

Ms. LOFGREN. I would like to thank you, Dr. Gonzalez, and your team for your testimony and for answering our many questions. Members may have additional questions for you, which we will forward and ask that you answer as promptly as you can, to be made part of the record.

Given the upcoming recess and, without objection, the hearing record will remain open until the close of business next Wednesday, February 21, for submission of any additional materials.

I think our hearing today has illuminated some of the potential problems with such large increases in immigration fees. We intend to give this proposal a careful look before it goes forward.

I also think we have an opportunity to collaborate, to make sure that we have the resources necessary so that the agency can improve, as we all want, and yet we avoid unnecessary damage in ways that we don't want.

So I am pleased that you spent so much time with us. I look forward to working with you as a partner in making sure that this whole function of immigration works well. I am confident that we will be successful in that effort.

So thank you, Dr. Gonzalez.

Mr. GONZALEZ. Madam Chair, thank you very much.

Just as our comment period, our ongoing dialogue with our stakeholders and applicants, we look forward to an ongoing dialogue with you and this Committee so that we can achieve what we all want, which is an Immigration Service that we can all be proud of.

Thank you very much.

Ms. LOFGREN. Thank you very much.

The hearing is adjourned.

[Whereupon, at 4:12 p.m., the Subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE BARNEY FRANK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

The recently proposed rule change at the Department of Homeland Security's Citizenship and Immigration Services (USCIS) should be rejected. Particularly unjustifiable is the fee increase for the I-485, the Application to Register or Adjust Status. The current fee of $325 dollars will, under the Proposed Rule, be increased to $905.00, bringing the total fee for this form to $985.00 after inclusion of fingerprinting costs, which are borne by the applicant.

The I-485 increase according to USCIS is justified to eliminate the interim benefits forms (I-765 employment and I-131 parole). USCIS claims that on average due to delays applicants apply for two employment cards, which cost $180 each, and an advance parole document, which costs $170 while an applicant waits for the processing of the I-485. In my district this is rarely the case. Advanced parole is rarely applied for because most applicants have already accrued more than six months of illegal presence in the United States so that if they leave, even with advanced parole, they would trigger the bar to reentry for at least three years if not ten. Additionally the second employment card in the Boston region is only necessary for the I-485 applications that are stuck in the name/date of birth clearance with the FBI. Otherwise, the I-485 adjustments are taking on average less than six months for the Boston office. The second employment card processing time is taking more time than the immigrant visa interview.

The proposed fee increases push the total cost of permanent residency—excluding the often unavoidable expense of attorney's fees—to nearly $2,000. This places an undue burden on those immigrants seeking permanent status, who are often already in difficult financial circumstances.

The justification given by the USCIS for this proposed increase is that the additional revenue is necessary to reduce processing delays, strengthen security and fraud prevention and investigation efforts, and to clear the extensive backlog of applications. This rationale, however, contains very serious flaws.

In September of 2006, the USCIS announced the elimination of its backlog in naturalization applications. Although these efforts on the part of the USCIS are admirable, they only tell part of the story. The USCIS determines its backlog by counting only those applications that are ready for USCIS adjudication. However, all permanent resident and naturalization applications are subject to FBI review. Because those applications awaiting this review are not yet ready for adjudication, they are determined by the USCIS to be out of its control, and therefore are not reflected in its estimation of backlogged cases. Cases such as these are in no way rare. It would seem, therefore, somewhat disingenuous to call for a fee increase to support the elimination of a backlog which is largely—and by its own admission—out of the control of the USCIS.

Furthermore, in 2006, the USCIS received appropriated funds to address and eliminate its backlog. USCIS should spend these funds efficiently and not put very difficult financial obstacles in the way of immigrants who are complying with the law. Immigrants seeking to become fully legal members of our society are not undesirables and we should not be discouraging them from doing so.

LETTER TO THE HONORABLE ZOE LOFGREN FROM THE HONORABLE JOE BACA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA, AND CHAIR, CONGRESSIONAL HISPANIC CAUCUS

Congress of the United States
Washington, DC 20515

February 21, 2007

The Honorable Zoe Lofgren
Chair
Subcommittee on Immigration, Citizenship,
Refugees, Border Security, and International Law
517 Cannon House Office Building
Washington, DC 20515

Dear Chairwoman Lofgren:

The Congressional Hispanic Caucus (CHC) has long defended the needs of immigrants, who come here to improve our nation, their own lives, and the lives of their families. In addition to this commitment, the CHC aims to highlight the vital contributions immigrants make to our communities and our economy. As such, we are concerned about the fee increases proposed by the United States Citizenship and Immigration Services (USCIS).

To an individual or family hoping for a better life in our country, an average increase of 66% is extremely steep. It would be cost prohibitive for a family who wants to come here legally, play by the rules and contribute, and such an increase may have the perverse result of inhibiting people from immigrating legally. This proposed increase is effectively pricing potential legal immigrants out of benefits for which they are eligible.

We understand that it is important to review the costs of processing immigration applications and the need for the agency to have the funds it needs to provide quality services in an efficient manner. However, also important is gauging the real rationale and impact of potential cost increases. As presented, the proposed fee increase appears to burden future legal immigrants with budget shortfalls and mismanagement of the past. This is wrong. Moreover, we understand that, initially, the cost increase will not necessarily be accompanied by service increases as USCIS works to implement improvements. Customer service and processing backlogs have not improved enough to justify such a steep fee increase. Predicting better service on the backs of the next wave of immigrants we want to help strikes us not only as unfair, but also as a questionable way to do business.

PRINTED ON RECYCLED PAPER

USCIS is tasked with a critical job that is vitally important to us, our constituents, and this Congress. There are many elements of the fee increase that we trust you will closely consider. The proposed fee increase includes costs directly associated with processing applications, as well as indirect costs, such as infrastructure improvements, automating A files, and USCIS administrative headquarters. However, rather than burden applicants with these costs, USCIS should have engaged Congress to cooperatively work to identify how to more appropriately cover those costs with appropriations or other means.

We commend you for your leadership on USCIS fee increases, for your leadership on so many other critical issues, and for holding this hearing. We are ready to work with you further to ensure that our country's proud history of welcoming immigrants is permitted to continue, not just in theory, but also in practice. We look forward to continuing to work with you on this and other issues of importance to the Hispanic community.

Sincerely,

Joe Baca

Joe Baca
Chair
Congressional Hispanic Caucus

LETTER TO THE HONORABLE LUIS GUTIERREZ FROM THE HONORABLE EMILIO GONZALEZ, DIRECTOR, UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, DEPARTMENT OF HOMELAND SECURITY

U. S. Department of Homeland Security
Washington, DC 20529

U.S. Citizenship and Immigration Services

CO 703.1967

MAR 13 2007

The Honorable Luis Gutierrez
U. S. House of Representatives
Washington, DC 20515

Dear Representative Gutierrez:

This letter is to provide you with additional information concerning the budget figures you quoted at the hearing on February 14, 2007, of the House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security and International Law concerning proposed adjustments to U.S. Citizenship and Immigration Services' (USCIS) fee schedule. At this hearing you stated, "Indeed, Mr. Gonzalez, isn't it true that in 1999, you received in funds from the Congress of the United States, $552 million; in 2000, $535 million; 2002, $632 million; 2003, $709 million? As a matter of fact, last year you received $182 million. Yet this year when you come before us, when you have these unprecedented fee increases, you are only asking for $30 million, when indeed over the last 10 years, you have received over $4 billion."

I feel it is important to clarify this information as you raised it as a relevant point in the debate about the history of appropriations versus fee funding for USCIS and the benefit-related immigration mission of the legacy Immigration and Naturalization Service (INS).

My staff has conducted extensive research on USCIS' budget history, reaching back to legacy INS, and has found that the budget numbers you quoted grossly overstated the appropriated funds associated with USCIS' budget. Our research of publicly available information and USCIS historical records suggests the estimate is approximately $1.1 billion. We have separately relayed this information to your staff and the staff of the Congressional Research Service.

The dollar figures quoted in your statements represent the budget amounts from one of the appropriated funded legacy INS accounts entitled "Citizenship and Benefits, Immigration Support and Program Direction." This account, while having "Citizenship" in its title, was only partially associated with what is now USCIS' budget. In fact, this account funded the Training, Data and Communications, Information and Records Management, Construction and Engineering, Legal Proceedings, and Management and Administration programs that served not only what is now USCIS, but also the immigration related functions of U.S. Immigrations and Customs Enforcement and U.S. Customs and Border Protection.

I appreciate the opportunity to provide you with this clarifying statement and look forward to working with you in the future.

Sincerely,

Emilio T. Gonzalez
Director

CHART OUTLINING THE PROPOSED FEE INCREASES OF EMPLOYMENT BASED V. FAMILY BASED FEES, SUBMITTED BY THE HONORABLE EMILIO GONZALEZ, DIRECTOR, UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, DEPARTMENT OF HOMELAND SECURITY

Applications Petitions	Receipts	Fee-Paying Receipts	Current Fees	Revised Fee	Difference	Percentage Difference	Fee Waiver Amount	Revenues with Revised Fees	Revenues with Rounded Revised Fees
I-102 Application for Replacement/Initial Nonimmigrant Arrival/Departure Record	24,035	22,382	$160	$320	$160	100%	$525,870	$7,135,706	$7,162,399
I-129 Petition for a Nonimmigrant worker (Non-premium)	240,000	239,757	$190	$320	$130	68%	$77,179	$76,297,184	$76,722,391
I-129 Petition for a Nonimmigrant worker (Premium)	160,000	160,000	$190	$320	$130	68%	$0	$51,038,912	$51,200,000
I-129F Petition for Alien Fiance(e)	66,177	44,731	$170	$455	$285	168%	$9,743,037	$20,322,164	$20,352,807
I-130 Petition for Alien Relative	743,823	740,552	$190	$355	$165	87%	$1,166,752	$264,183,563	$262,896,099
I-131 Application for Travel Document	139,000	132,168	$170	$305	$135	79%	$2,083,782	$40,311,718	$40,311,243
I-140 Immigrant Petition for Alien Worker	135,000	129,743	$195	$475	$280	144%	$2,503,257	$61,777,246	$61,627,798
I-290B/Motions	47,645	47,645	$385	$585	$200	52%	$0	$27,962,742	$27,872,270
I-360 Petition for Amerasian Widow(er) or Special Immigrant	16,000	4,772	$190	$375	$185	97%	$4,191,519	$1,781,578	$1,789,602
I-485 Application to Register Permanent Status or Adjust Status	613,400	555,010	$325	$905	$580	178%	$52,867,884	$502,520,348	$502,283,983
I-526 Immigrant Petition by Alien Entrepreneur	600	600	$480	$1,435	$955	199%	$0	$859,177	$860,552
I-539 Application to Extend/Change Status Nonimmigrant Status	220,000	215,629	$200	$300	$100	50%	$1,305,676	$64,418,100	$64,688,837
I-600/600A Petition to classify orphan as an immediate relative	29,601	29,260	$545	$670	$125	23%	$228,409	$19,577,828	$19,603,956
I-687 For Filing Application for Status as a Temporary Resident	500	500	$255	$710	$455	178%	$0	$355,719	$355,000
I-690 Application for Waiver of Excludability	3,293	3,293	$95	$185	$90	95%	$0	$614,738	$609,273
I-694 Notice of Appeal of Decision	3,696	3,696	$110	$545	$435	395%	$0	$2,015,682	$2,014,220
I-695 Application for Replacement Employment Authorization or Temporary Residence Card	56	52	$65	$130	$65	100%	$511	$6,641	$6,760
I-696 Application to Adjust Status From Temporary to Permanent Resident	494	331	$180	$1,370	$1,190	661%	$222,513	$453,695	$454,079
I-751 Petition to Remove the Conditions on Residence	143,000	130,169	$205	$465	$260	127%	$5,982,290	$60,687,257	$60,528,372
I-765 Application for Employment Authorization	983,000	859,543	$180	$340	$160	89%	$41,848,931	$291,363,134	$292,244,480
I-817 Application for Family Unity Benefits	5,762	5,762	$200	$440	$240	120%	$0	$2,526,573	$2,535,448
I-824 Application for Action on Approved Application or Petition	40,785	40,231	$200	$340	$140	70%	$188,600	$13,694,223	$13,678,517
I-829 Petition by Entrepreneur to Remove Conditions	88	45	$475	$2,850	$2,375	500%	$122,726	$127,943	$128,010
I-90 Application to Replace Permanent Resident Card	552,025	510,405	$190	$290	$100	53%	$12,046,099	$147,728,296	$148,017,564
I-914 Application for T Nonimmigrant Status	400	0	$270	$0	($270)	-100%	$0	$0	$0
N-300 Application to File Declaration of Intention	100	92	$120	$235	$115	96%	$1,935	$21,643	$21,571
N-336 Request for Hearing on a Decision in Naturalization Procedures	14,000	13,948	$265	$605	$340	128%	$31,515	$8,464,376	$8,436,581
N-400 Application for Naturalization	734,716	710,461	$330	$595	$265	80%	$14,407,225	$421,998,791	$422,724,035
N-470 Application to Preserve Residence for Naturalization Purposes	669	669	$155	$305	$150	97%	$0	$203,635	$203,937
N-565 Application for Replacement Naturalization Citizenship Document	32,000	30,741	$220	$380	$160	73%	$480,299	$11,725,200	$11,681,492
N-600/N-600K Application for Certification of Citizenship	64,711	64,711	$255	$460	$205	80%	$0	$29,778,341	$29,767,166
Waiver Forms (I-191, I-192, I-193, I-212, I-601, I-612)	45,459	45,459	$265	$545	$280	106%	$0	$24,853,075	$24,774,996
I-905 Application for Authorization to Issue Certification for Health Care Workers	10	10	$230	$230	$0	N/A	$0	$2,300	$2,300
Total Weighted Average	5,060,045	4,742,368	$251	$455	$223	97	$150,026,009	$2,154,007,529	$2,155,357,725
Biometric Fee	3,154,330	2,195,812	$70	$80	$10	14%		$174,203,624	$175,664,989
Grand Totals	8,214,375	6,938,180	$204	$482	$228	86	$150,026,009	$2,329,011,153	$2,331,222,725

N-960, I-690, I-695, N-300 and N-470 Fee increases reallocated to other applications due to skewed results from low volumes (10,000 Fee-Paying Receipts and Below) resulting in increases greater than 300%

Applications Petitions	Receipts	Fee-Paying Receipts	Current Fees (Weighted)	Revised Fee (Weighted)	Difference	Percentage Difference	Fee Waiver Amount	Revenues with Revised Fees	Revenues with Rounded Revised Fees
Employment	535,688	530,145	$192	$359	$168	88%	2,703,182	190,100,462	190,538,750
Individuals/Families	4,524,347	4,212,213	$236	$467	$230	97%	147,322,847	1,964,704,764	1,965,016,685

UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES RESPONSES TO POST-HEARING QUESTIONS POSED BY CHAIRWOMAN ZOE LOFGREN AND THE HONORABLE KEITH ELLISON

Question#:	1
Topic:	USCIS transformation and spend plan
Hearing:	FY '08 USCIS Budget and Policy
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)
Question:	At the hearing, you testified that U.S. Citizenship and Immigration Services (USCIS) has developed a specific plan to transform its technology and business practices. You told me that you would provide the Subcommittee with USCIS' transformation plan. You also referenced USCIS' spend plan, which you said the Government Accountability Office (GAO) is currently reviewing. I look forward to receiving both USCIS' transformation plan and its spend plan as soon as possible. Because I am most interested in gaining a fuller understanding of the agency's plans regarding technology and business practices transformation, I would ask that the agency provide those materials, even if they are under review by GAO or any other agency.

Response: USCIS has developed draft materials and they are currently undergoing Departmental review and clearance. In the interim, we have provided the Committee Staff materials on USCIS' FY 2006 Spend Plan and prior reports on the transformation program published by the Department of Homeland Security Office of the Inspector General, and have also briefed the staff on March 15, 2007, on the transformation program, progress to date and future plans. Once the materials are cleared for transmission, we will provide the final materials.

Question#:	2
Topic:	Background Checks
Hearing:	FY '08 USCIS Budget and Policy
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)
Question:	I understand that background and other security checks continue to pose a problem for the agency and that those checks constitute a drag on processing times. This increases your load of pending cases and leads to other issues, such as federal court litigation. I would ask that you provide me with answers to the following questions concerning these issues: Please describe, in detail, the process by which the agency conducts biometric and name checks, as well as any other background checks.

Response: USCIS conducts FBI background checks on all applicants applying for adjustment of status and naturalization benefits and USCIS conducts an IBIS name check on all applicants and petitioners applying for any benefit offered by USCIS; thus, approximately 28-30 million IBIS checks are conducted each year. These background checks include:

FBI Fingerprint Check - Applicants are scheduled at one of the USCIS Application Support Centers (ASC) where full, 10-print fingerprints are taken and electronically forwarded to the FBI. The response to the FBI fingerprint check is usually returned within 24 to 72 hours after the fingerprints are taken. In fiscal year 2007, USCIS expects to request more than 2.6 million fingerprint checks from the FBI. There are 129 ASCs nationwide; 48 are co-located within a USCIS district or sub-office and 81 are stand-alone facilities.

FBI Name Check - This check, based on the applicant's name and date of birth as provided by USCIS, is conducted to determine whether the FBI has information related to the applicant. FBI records are searched to determine whether an individual has been encountered by the FBI in connection with an investigation of criminal, security, or other activities that might render him or her ineligible for benefits. The FBI provides USCIS with factual information and does not participate in the adjudicative process. Such information may have an impact on the final adjudication of the case. Approximately 68 percent of the name check requests are resolved within 48 hours as "No Records" with an additional 22 percent returned within 30 to 60 days with a final result.

Question#:	2
Topic:	Background Checks
Hearing:	FY '08 USCIS Budget and Policy
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)
Question:	I understand that background and other security checks continue to pose a problem for the agency and that those checks constitute a drag on processing times. This increases your load of pending cases and leads to other issues, such as federal court litigation. I would ask that you provide me with answers to the following questions concerning these issues: Please describe, in detail, the process by which the agency conducts biometric and name checks, as well as any other background checks.

Interagency Border Inspection System (IBIS) Name Check - IBIS resides on the Treasury Enforcement Communication System (TECS) and is operated by U.S. Customs and Border Protection (CBP). IBIS is a multi-agency system that includes information relating to national security, narcotics trafficking, other law enforcement violations, and persons who may be of interest to the government or local law enforcement agencies. An IBIS name check is conducted on all applicants and petitioners applying for any benefit offered by USCIS; thus, approximately 28-30 million checks are conducted each year.

Question#:	3
Topic:	Outstanding fingerprint and name checks
Hearing:	FY '08 USCIS Budget and Policy
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)
Question:	How many fingerprint checks are outstanding? How many name checks are outstanding?

Response: The response to the FBI fingerprint check is usually returned within 24 to 72 hours from when the fingerprints are taken.

Response: As of April 4, 2007, 339,415 name checks are pending with the FBI. Of that number, 162,394 are older than 6 months.

Question#:	4
Topic:	Costs associated with background checks
Hearing:	FY '08 USCIS Budget and Policy
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)
Question:	What are the projected costs for FY 2008 to conduct all necessary immigration-related background checks, including USCIS biometric and name checks? What is the projected volume for FY 2008 for such checks? How much does USCIS project that it will reimburse DOJ/FBI during FY 2008 for such checks, and at what rates? Does the budget include any request for monies (whether in appropriations or by way of reimbursement from DHS/USCIS) to help relieve any backlogs in the performance of such checks? Please provide figures from FY 2007 and FY 2006, relating to items above, for comparison purposes.

Response: The total cost, as outlined in the proposed fee rule, is $174 million for USCIS to capture biometrics and for the FBI to conduct background checks. This includes the higher fees FBI plans to charge for both fingerprint and name checks. In FY 2006 and FY 2007, the cost is $157.1 million.

Response: Given that multiple security checks are required on adjustment of status and naturalizations applications and petitions (including security checks on all petitioners, applicants and beneficiaries), USCIS projects that between 28 million and 30 million IBIS name checks will be completed during FY 2008. Based on the volume of filings anticipated for FY 2008, USCIS expects to request approximately 2.6 million fingerprint checks and about 1.4 million FBI name checks. The FY 2006 and FY 2007 fee-paying volume is 2.359 million.

Response: The total FY 2008 projected costs to reimburse the FBI is $63.1 million. This includes $12.4M of additional increased costs for background checks projected by the FBI. The actual costs for FY 2006 were $54.3 million; FY 2007 costs were estimated to be $59.4 million, however due to the increase in filings in this fiscal year we expect actual reimbursement to the FBI in FY 2008 to increase proportionately. USCIS

Question#:	4
Topic:	Costs associated with background checks
Hearing:	FY '08 USCIS Budget and Policy
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)
Question:	What are the projected costs for FY 2008 to conduct all necessary immigration-related background checks, including USCIS biometric and name checks? What is the projected volume for FY 2008 for such checks? How much does USCIS project that it will reimburse DOJ/FBI during FY 2008 for such checks, and at what rates? Does the budget include any request for monies (whether in appropriations or by way of reimbursement from DHS/USCIS) to help relieve any backlogs in the performance of such checks? Please provide figures from FY 2007 and FY 2006, relating to items above, for comparison purposes.

estimates the FY 2008 average rates for background checks are projected as: $18 to conduct a fingerprint check, and $9 to conduct a name check. The FY 2006 and FY 2007 average rates are: $16 to conduct a fingerprint check, and an average of $3.65 to conduct a name check.

Response: No, there is no additional budget to compensate processing of the backlogs.

Question#:	5
Topic:	Cost due to delays
Hearing:	FY '08 USCIS Budget and Policy
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)
Question:	Does USCIS anticipate any expenses, costs or other expenditures relating to litigation in connection with delays in the performance of immigration-related background checks, including USCIS biometric and name checks? Please provide figures from FY 2007 and FY 2006, relating to above item, for comparison purposes.

Response: Traditionally, USCIS incurs approximately $500,000 in litigation costs each year. Due to the significant increase in federal court litigation, the majority of which is driven by delays in the background check process (see answer to question 10), USCIS anticipates that costs related to litigation will increase proportionally. Because the volume of litigation has increased so quickly within the past 12 months, and appears to be increasing each month, USCIS is unable to predict at this time what those costs or expenditures will be in the upcoming year.

Response: In FY 2006, USCIS received approximately 220 new litigation cases per month, with a steady increase throughout the year. Approximately 40 to 50 percent of those cases involved complaints about a delay in the completion of the background checks. In 2006, USCIS operational staff and attorneys worked with Department of Justice attorneys on approximately 100 federal district court cases per month related to background check delays. USCIS paid approximately $60,000 in fees to opposing counsel from awards under the Equal Access to Justice Act (EAJA) or in settlement made in lieu of litigating the EAJA issue in these cases.

In the first quarter of FY 2007, USCIS continued to see a significant increase in federal court litigation, with the average monthly case filings increasing from 220 to approximately 440 monthly. Of these 440 monthly cases, at least 60 percent were filed, in part, citing delays due to background checks. USCIS operational staff and attorneys are now working with Department of Justice attorneys on more than 250 federal district court cases per month related to background check delays. Also, since the beginning of FY 2007, USCIS has paid approximately $75,000 in fees to opposing counsel from

Question#:	5
Topic:	Cost due to delays
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Question#:	6
Topic:	CIS and FBI interface
Hearing:	FY '08 USCIS Budget and Policy
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)
Question:	What is the average time it takes for the Federal Bureau of Investigation (FBI) to conduct name checks? What is the average time it takes for the FBI to conduct fingerprint checks? What are the oldest fingerprint and name check cases that remain outstanding? Once the FBI determines that there is a "hit" and returns the results of such a hit to USCIS, what is the average length of time it takes for USCIS to review and resolve that hit? How many people does USCIS have working on conduction and resolving name check hits? How does USCIS' proposed fee increase rule provide for increased funding, both to USCIS and in payments to FBI, for biometric, name checks and other security checks?

Response: To date, CIS has submitted more than 9 million name-check requests to the FBI, of which approximately 96 percent have received a final response. The FBI, in a declaration submitted in Federal District Court in September 2006, represented that approximately 68 percent of name checks were returned to CIS with no record within 48 hours. Within 30-60 days, another 22 percent of the name checks were concluded.

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Response: The FBI fingerprint check response is usually returned within 24 to 72 hours from when the fingerprints are taken.

Response: In December 2002, as part of an effort to improve the integrity of the FBI background check process, USCIS resubmitted 2.6 million records to the FBI for an updated background security check. The initial response for approximately 2 million requests was "no record" while 440,000 name-checks resulted in an initial response of "pending." Currently, there are fewer than 9,000 records that remain pending from December 2002.

Response: Some FBI "hits" are forwarded to USCIS through a Letter Head Memorandum (LHM). For those responses the time it takes to review and resolve the name check response varies depending upon the nature of the information summarized in the LHM, which generally contains investigative information collected by the FBI during the course of its duties. Variables that affect the length of time for USCIS to process these responses include:

1) the completeness of the summary,
2) whether the investigation is open or closed,
3) whether the investigation is a matter of public record or known to the applicant,
4) the relationship of the applicant to the investigation,

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5) the availability of the FBI to work with USCIS on the case
6) the availability of other information about the subject of concern, and
7) whether the investigation requires that applicant to submit additional evidence prior to adjudication of the case.
8) at least 5 percent of the positive responses point USCIS to a third agency.

Response: During the last year, USCIS has had between 2 and 10 headquarters employees dedicated to receiving name check responses and routing them to the appropriate office in the field. In the case of responses that involve national security issues, the responses are routed to an office in headquarters. Our adjudicator corps, both at headquarters and in the field, is responsible for processing name check responses.

Response: The additional funding will improve the timeliness of background checks by expanding current name check resolution capacity, establishing co-located name check resolution capacity, and funding the new FBI fees for background checks.

Question#:	7
Topic:	Employment Eligibility Program
Hearing:	FY '08 USCIS Budget and Policy
Primary:	The Honorable Zoe Lofgren
Committee:	JUDICIARY (HOUSE)
Question:	In addition, USCIS has requested for FY 2008 $30 million in appropriated funds for its Employment Eligibility Program (EEP), which I believe is also known as the Basic Pilot Program. To what extent, if any, do other components of the Department of Homeland Security (DHS) or other government entities, including the governments of the various States, Territories and Possessions of the United States, use or require those entities or employers to use the data or other information collected and maintained in the EEP? Do the other components of DHS or any other entities reimburse or pay a fee to USCIS for the use or maintenance of the EEP's data or systems?

Response: The Employment Eligibility Verification Program (EEVP) allows participating employers and organizations (defined as those who have signed an MOU with DHS & SSA to use the program) to verify the employment eligibility of all newly hired employees. As such, only participants in the program have access to the data responses from the program, and these data responses are limited to only information on the employment eligibility of an individual. The program currently includes both Department of Homeland Security (DHS) and other government entity participation.

Within DHS, the following entities are currently enrolled in the program: the U.S. Coast Guard personnel center, the Federal Protective Service and USCIS Headquarters. Other federal agencies that are currently signed up as users of the system include U.S. Army Recruiting, the Marine Corps, the 42nd Security Forces Squadron of the Air Force, and both the Senate and the House.

There are 392 state and local government agencies (including District of Columbia and the Virgin Islands) representing 35 states that participate in EEVP. There are 403 federal agencies that participate in EEVP (most Congressional offices are represented in this number, which is why it may appear high). To date, there are over 15,000 participants (including employers and government agencies) enrolled in EEVP. Only North Carolina currently has a law requiring that its state agencies enroll.

States that have state and local government agencies enrolled in EEVP: Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois,

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Kansas, Massachusetts, Maryland, Michigan, Minnesota, Missouri, Montana, New Hampshire, New Jersey, New Mexico, Nevada, New York, North Carolina, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin, and Wyoming.

No participants currently pay a fee. By statute EEVP is a voluntary program and fees may not be collected to cover the operational costs of the program.

Question#:	8
Topic:	Hardship Waivers
Hearing:	FY '08 USCIS Budget and Policy
Primary:	The Honorable Keith Ellison
Committee:	JUDICIARY (HOUSE)
Question:	Many legal immigrants fear that if they become a "public charge," they risk denial of permanent resident status, denial of a visa or re-entry to the country, or even deportation. Some research points to a "chilling effect" of public charge concerns that has kept many legal immigrants from accessing services or benefits for which they are eligible. Given that less than one-tenth of one percent of citizenship applicants apply for a hardship waiver through CIS, it seems this "chilling effect" might be very real. How can you assure that with the fee increases, fears of "public charge" will not further reduce hardship waivers, despite the ostensible increased need? Is there or has there ever been a statutory, regulatory or procedural bias against admitting those immigrants who have applied with (through) a hardship waiver?

Response: USCIS administers two different kinds of fee waivers.

- The first type of waiver is a "group waiver" which is applied to a designated class of applicants automatically and does not require an individual to apply for the waiver affirmatively. For example, fees for certain applications are automatically waived for individuals who were admitted as refugees or granted asylum.
- The second type of waiver is an "individual waiver" which allows a petitioner or applicant to request that the fee be waived for him or her individually based on his or her unique circumstances. In such cases, the applicant must demonstrate why a fee waiver is warranted.

A fee waiver request has no effect on a determination of eligibility. However, the basis of eligibility, affidavits of support, and similar materials submitted to demonstrate eligibility, give context to a fee waiver request, and may bring into question the claimed basis for an individual fee waiver.

One reason why only about 1 percent of individual applicants and petitioners file an individual fee waiver is because USCIS waives fees for certain categories of applicants without the individual having to request a waiver. Between individual fee waivers and fees waived for categories of applicants, USCIS does not collect fees on over 6 percent of the total volume of applications and petitions filed annually. Since a significant number of fee waivers are in the area of asylum and refugee operations, where average per case

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processing costs are significantly higher than the norm, on a workload basis as opposed to simple numbers of applications, USCIS does not collect a fee on well over 8 percent of its workload.

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