

Background

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Better, Faster, Cheaper Border Security Requires Better Immigration Services

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The recent announcement by the U.S. Citizenship and Immigration Services (USCIS) agency that it intends to implement a sharp increase in fees for its services has engendered an equally sharp debate. The Administration argues that the hikes are essential for keeping the agency solvent and improving services. Critics contend that the increases will put these services out of reach of those who need them most, many of whom are already poorly served by the USCIS.¹

The debate misses the point. While the USCIS is seriously trying to improve customer service by increasing fees, more fundamental reforms are required to make the agency an efficient and effective partner in providing the immigration services and enforcement that the nation needs to remain safe, free, and prosperous. Three fundamental reforms are needed:

1. A different funding model for the USCIS,
2. A comprehensive overhaul of the agency's service support enterprise, and
3. Much better integration of USCIS programs with immigration enforcement and border control efforts.

A Nation of Immigrants

More than any other nation in history, the United States and its system of equal justice and economic freedom beckon not only to the downtrodden and the persecuted—all those “yearning to breathe free”—but also to those who seek opportunity and a better

Talking Points

- Having the USCIS provide fast, responsive, and accurate services is critical to an effective strategy for enhancing border security, particularly on the U.S.–Mexican border, which accounts for most of those who enter the United States illegally.
- Currently, the majority of USCIS operations are funded by user fees. This method of funding for the USCIS is unfair and inefficient. Instead, Congress should appropriate funds to pay for the programs that do not charge a fee.
- The USCIS still has not managed to overcome outdated practices, inefficiencies, and inadequate technology. The result is an unprecedented backlog of applications and petitions. The process needs to be modernized to ensure that the USCIS can provide security and adequate customer service.
- The USCIS needs to integrate its activities with those of many other federal agencies so that it can conduct interagency operations essential for providing both better services and better security.

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future for themselves and their posterity. Immigration is an important part of the U.S. economy and civil society. Through U.S. immigration law, Americans invite individuals from other countries to join them as visitors, workers, students, residents, and/or fellow citizens. The federal government's job is to administer these laws by processing visa petitions, naturalization petitions, and asylum and refugee applications and by performing other immigration-related activities.²

Before 9/11, the Immigration and Naturalization Service (INS) provided these services and conducted enforcement. In the wake of the attacks on New York and Washington, Congress established the Department of Homeland Security (DHS) and assigned immigration enforcement functions to two DHS agencies: Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE).³ The USCIS was established as the entity primarily responsible for administering immigration and naturalization adjudication functions and establishing immigration services policies.

As daunting as the agency's workload is today, demands for services will only increase in the future. In his most recent State of the Union address, President George W. Bush again called for a temporary worker program and noted the need "to resolve the status of the illegal immigrants who are already in our country without animosity and without amnesty."⁴ None of this can be done without building an agency far more capable than the current USCIS.

Putting Security First

Improving immigration services directly affects national security. In fact, having a USCIS that provides fast, responsive, and accurate services is a critical component of any effective strategy for enhancing border security, particularly on the U.S.–Mexican border, which accounts for most of those who enter this country illegally. Better immigration services could significantly affect south–north migration flows.

The more than 500,000 individuals that it is estimated enter the United States annually between the U.S. ports of entry strain federal, state, and local enforcement, preventing them from focusing their resources on the most serious criminal and national security risks. Indeed, simply increasing security at the border has not dramatically decreased illegal border crossings.⁵

A strategy to gain operational control of the U.S. southern border should focus on building up the means to limit illegal crossings between the land points of entry, to interdict smuggling by air and sea, to discourage unlawful presence inside the country, and to provide adequate legal alternatives to support south–north migration flows.⁶ Immigration services can serve this strategy in two ways.

First, fast and efficient services will act as incentive for those who wish to come here to opt for legal migration over illegal entry.

Second, an effective immigration service will be better able to screen for criminal or national security threats that attempt to infiltrate through America's legal points of entry.

1. For example, see Lesley Clark and Alfonso Chardy, "Fee Hike Would Hurt Immigrants, Critics of Plan Say," *Miami Herald*, February 1, 2007, p. A1, at www.miami.com/mld/miamiherald/news/16593053.htm (February 21, 2007).
2. Edwin Meese III and Matthew Spalding, "The Principles of Immigration," Heritage Foundation *Backgrounder* No. 1807, October 19, 2004, at www.heritage.org/Research/GovernmentReform/upload/70696_1.pdf.
3. For recommendations on coordinating activities between these agencies, see James Jay Carafano, Ph.D., "Integrating Immigration, Customs, and Border Enforcement Should Be a Priority," Heritage Foundation *Executive Memorandum* No. 1006, July 21, 2006, at www.heritage.org/Research/HomelandDefense/upload/em_1006.pdf.
4. George W. Bush, "State of the Union," January 23, 2007, at www.whitehouse.gov/news/releases/2007/01/20070123-2.html (February 21, 2007).
5. David B. Muhlhausen, Ph.D., "Building a Better Border: What the Experts Say," Heritage Foundation *Backgrounder* No. 1952, July 17, 2006, at www.heritage.org/Research/Immigration/upload/bg_1952.pdf.
6. James Jay Carafano, Ph.D., Brian W. Walsh, David B. Muhlhausen, Ph.D., Laura P. Keith, and David D. Gentilli, "Better, Faster, and Cheaper Border Security," Heritage Foundation *Backgrounder* No. 1967, September 6, 2006, at www.heritage.org/Research/Immigration/upload/bg_1967.pdf.

Putting Services Right

The USCIS needs to provide both better services and better security. The right funding model, organizational processes, and interagency operations are key to ensuring that the agency can do both of these jobs well.

Fixing Funding. By law, Congress requires that most USCIS operations be funded by user fees. While this requirement seems fair and appropriate—those who avail themselves of the agency's services should pay for them—in practice, Congress has created a system that serves neither its customers nor the nation well.

In the DHS appropriation for fiscal year (FY) 2007, Congress provided the USCIS with just under \$182 million, which represents a small fraction of its annual budget.⁷ The remaining funds will come from fees charged for the agency's services. On January 31, 2007, the USCIS announced a proposed fee adjustment as part of its plan to build an immigration service for the future. In the announcement, the USCIS proposed raising the fee on an I-485 (Adjustment of Status to Permanent Resident) from \$325 to \$905, an increase of almost 300 percent. The significantly higher fee is based on eliminating the additional fees (\$475) that applicants must pay as a result of processing delays—delays caused by the USCIS's inability to process applications in a timely fashion.

Using elimination of the existing add-on fees to make the fee increase more palatable is somewhat disingenuous. USCIS processing delays created the original need for the add-on fees. In addition, some applicants make it through the system without having to pay the additional process delay fees. For those applicants, the increase would represent an unjustified substantial increase in their fees. In effect, they would be paying more for the same service.

Moreover, because of the time delays associated with the regular application process, the current USCIS fee model creates incentives for legal immigrants to pay a premium fee to expedite the processing of their applications. The USCIS collected \$202 million in premium fees and \$64 million in regular fees in FY 2004 and \$139 million in premium fees and \$69 million in regular fees in FY 2005.⁸ The substantially higher revenue from premium fees is a disincentive to transforming normal processing to meet the six-month goal articulated by President Bush in 2001.⁹ If the USCIS met President Bush's goal, it would lose the revenue from premium fees because there would be less need to expedite processing if normal processing time were shorter.

This loss would directly affect the asylum, refugee, and military naturalization programs, which currently do not charge fees for services. Because the USCIS does not collect any fees in these programs, it must subsidize them by charging higher fees in other programs.¹⁰ It is unclear whether the proposed fee increase contemplates the loss of the premium fee program funds or the USCIS is also proposing to raise the premium fee. If the proposed fee increase does not include the cost of losing the premium fee program, then the USCIS will be forced to raise fees again or maintain an inefficient system that will ensure a supply of applicants willing to pay a premium fee for expedited processing.

The pay-as-you-go model that Congress has imposed on the USCIS is not working because not everyone is paying and those that are paying are not contributing in an equitable manner. Simply raising fees perpetuates an unfair and inefficient system. Instead, Congress should:

- **Establish a national trust fund to cover the programs for which the USCIS cannot charge**

7. Public Law 109-295.

8. See U.S. Department of Homeland Security, Citizenship and Immigration Services Ombudsman, *Annual Report 2006*, June 29, 2006, p. 48, at www.dhs.gov/xlibrary/assets/CISOmbudsman_AnnualReport_2006.pdf (February 21, 2007).

9. See George W. Bush, "Remarks by the President at INS Naturalization Ceremony," July 10, 2001, at www.whitehouse.gov/news/releases/2001/07/print/20010710-1.html (February 21, 2007).

10. U.S. Department of Homeland Security, Citizenship and Immigration Services Ombudsman, *Annual Report 2006*, p. 2.

a fee (e.g., amnesty applications and naturalization of military personnel). It makes no sense for Congress to require the USCIS to process applications or petitions of immigrants without providing the funds to cover the costs of those activities. More critically, it is fundamentally unfair for Congress to place the burden of those costs on the backs of other immigrants seeking entry into America, many of whom can barely afford to pay for their own costs.

- **Use the fees to support the main purpose for which they are collected.** Rather than being used to fund the majority of USCIS operations, fees should be used to support services like legal immigration, naturalization, and assimilation, thereby strengthening the naturalization process.
- **Critically examine calls to increase fees.** At a time when the United States is making a concerted effort to encourage those who wish to come to this country to use legal means, substantially raising fees might achieve the unintended consequence of deterring individuals from complying with U.S. immigration laws.

Improving Processes. Despite five years of effort and over \$500 million, the USCIS still has not managed to overcome outdated practices, inefficiencies, and inadequate technology. The result is an unprecedented backlog of applications and petitions.¹¹ Similarly, for security purposes, the USCIS must eliminate such processes as mailing green cards without receipt verification so that multiple green cards are not used for fraudulent or criminal activity.

In terms of the backlog, regardless of how the USCIS continues to reclassify or redefine the problem, a substantial number of applications

and petitions remain that are well beyond the six-month goal set by President Bush. This must change. Part of the problem is due to the inherited backlog that has never been properly addressed. Another aspect of the problem is the USCIS's failure to modernize effectively beyond such legacy systems as the Computer Linked Application Information Management System.

In July 2005, Secretary Michael Chertoff identified these and other problems with USCIS processes, noting that “[r]estructuring this process to enhance security and improve customer service will be an important part of our upcoming agenda.”¹² Regrettably, while much has been done to secure the border and to enhance interior enforcement, not enough has been done to transform the USCIS.¹³

Nor has the USCIS been effective at adapting commercial off-the-shelf technologies available in the private sector that could enable the agency to process applications far more efficiently and effectively. At his confirmation hearing in October 2005, USCIS head Emilio Gonzalez told the Senate Judiciary Committee that the USCIS “wouldn’t be able to handle [a temporary worker program].”¹⁴ Later, Gonzalez criticized the Senate bill on illegal immigration, stating that the USCIS would need up to one year just to register the existing illegal aliens already in the United States.¹⁵

In the FY 2008 DHS budget, the USCIS has proposed spending \$139 million to modernize business infrastructure, an increase of \$39 million over the FY 2007 level. Although the \$39 million increase is vital to reforming the USCIS into an efficient and effective office, it should not be funded by fees.¹⁶ Congress should require the USCIS to:

11. *Ibid.*, p. 44.

12. Michael Chertoff, “Second State Review Remarks,” U.S. Department of Homeland Security, July 13, 2005, at www.dhs.gov/xnews/speeches/speech_0255.shtm (February 21, 2007).

13. U.S. Department of Homeland Security, Office of Inspector General, “U.S. Citizenship and Immigration Services’ Progress in Modernizing Information Technology,” OIG-07-11, November 2006, at www.dhs.gov/xoig/assets/mgmtrpts/OIG_07-11_Nov06.pdf (February 21, 2007).

14. See CNN, *Lou Dobbs Tonight*, transcript, February 6, 2006, at <http://transcripts.cnn.com/TRANSCRIPTS/0602/06/ldt.01.html> (February 21, 2007).

15. Stephen Dinan, “Immigration Agency Head Slams Senate’s Alien Bill,” *The Washington Times*, June 1, 2006, p. A1, at www.washtimes.com/national/20060601-121820-5787r.htm (February 21, 2007).

- Fund its FY 2008 initiatives through appropriations rather than the revenue of increased fees, and Congress should appropriate the necessary funding.
- Deliver a comprehensive and realistic plan for upgrading its services and information technology and fund the program through annual appropriations.
- Produce a detailed procurement timeline so that this program does not fall behind due to a still-maturing procurement capability at the DHS.¹⁷

Enhancing Interagency Cooperation. To do its job effectively, the USCIS must integrate its activities with many federal agencies including ICE, CBP, the Department of State, the Department of Justice, the Federal Bureau of Investigation, the Department of Labor, and the Social Security Administration (SSA). Building the capacity to conduct interagency operations well is essential to providing both better services and security.

Whether receiving digital transmission of employer “no-match” letters from the SSA to ICE for follow-up investigations or electronically verifying immigration documents for the SSA when an immigrant applies for a Social Security card, the USCIS must have the legal authority, resources, and workforce to ensure that federal agencies are working together, not at cross purposes.¹⁸ Congress can accelerate this process by eliminating impediments that keep federal agencies from cooperating by:

- Permitting information to flow freely among federal agencies, such as sharing of Social Security no-match data.¹⁹

Time for Action

Fixing America’s broken borders will require a comprehensive solution that includes immigration reforms to enforce U.S. laws and create greater incentives for legal migration. Neither of those goals can be achieved without an effective and efficient USCIS. If the USCIS fails once again to meet the challenge, the laws of supply and demand will overtake U.S. immigration laws, and illegal aliens and employers will continue to avoid an overly burdensome, costly, and time-consuming legal process.

The USCIS of tomorrow must be efficient, fair, and flexible, not only to meet the challenges of comprehensive immigration reform, but also to compete globally for immigration talent that developed countries will need to stay competitive in a global economy and to minimize the graying of their workforces. For that to happen, Congress must act to establish a better model to pay for immigration services, to fund the transformation of the USCIS capabilities, and to enable the USCIS to work more effectively as part of an interagency team. The longer Congress waits to address these issues, the longer it will take to deliver the border and immigration security that America needs and deserves.

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16. U.S. Department of Homeland Security, *Budget in Brief: FY 2008*, February 5, 2007, p. 75.

17. For further information on addressing systemic challenges in government information technology programs, see James Jay Carafano, Ph.D., “Homeland Security Spending for the Long War,” Heritage Foundation *Lecture* No. 989, February 2, 2007, at www.heritage.org/Research/HomelandDefense/upload/hl_989.pdf.

18. For recommendations on improving interagency operations in the DHS, see James Jay Carafano, Ph.D., “Missing Pieces in Homeland Security: Interagency Education, Assignments, and Professional Accreditation,” Heritage Foundation *Executive Memorandum* No. 1013, October 16, 2006, at www.heritage.org/Research/HomelandDefense/upload/em_1013.pdf.

19. For example, see James Jay Carafano, Ph.D., “Workplace Enforcement to Combat Illegal Migration: Sensible Strategy and Practical Options,” Heritage Foundation *Lecture* No. 957, August 7, 2006, at www.heritage.org/Research/NationalSecurity/upload/hl_957.pdf.