EXECUTIVE DIRECTOR
Eric Cohen

San Francisco

Washington, D.C.

San Antonio

Houston

ilrc@ilrc.org
www.ilrc.org

Submitted via www.regulations.gov

July 2, 2026

Principal Legal Advisor
Regulatory Affairs Unit
U.S. Immigration and Customs Enforcement
Department of Homeland Security
500 12th Street SW
Washington, DC 20536-5901

RE: ILRC Comment in Opposition to "Fee Adjustment for U.S. Immigration and Customs Enforcement Form I-246 Application for a Stay of Deportation or Removal - ICEB-2020-0005; RIN 1653-AA82

Dear Principal Legal Advisor,

The Immigrant Legal Resource Center (ILRC) submits this comment in strong opposition to the Department of Homeland Security ("DHS") U.S. Immigration and Customs Enforcement ("ICE") proposed fee adjustment for the application for a stay of deportation or removal published on May 7, 2026, ICEB-2020-0005; RIN 1653-AA82. The ILRC opposes the substantial fee increase for the Form I-246, Application for a Stay of Deportation or Removal—yet another tool to advance this administration's cruel enforcement agenda. The proposed fee increase is unreasonable and based on a flawed analysis, thereby running afoul of the Administrative Procedure Act (APA).

The ILRC is a national non-profit organization that provides legal trainings, educational materials, and advocacy to advance immigrant rights. The ILRC's mission is to work with and educate immigrants, community organizations, and the legal sector to continue to build a democratic society that values diversity and the rights of all people. Since its inception in 1979, the ILRC has provided technical assistance on hundreds of thousands of immigration law issues, trained thousands of advocates and pro bono attorneys annually on immigration law and emerging issues, distributed thousands of practitioner guides, provided expertise to immigrant-led advocacy efforts across the country, and supported hundreds of immigration legal non-profit organizations supporting in building their capacity to support immigrants and their families.

The ILRC is also a leader in interpreting immigration law as well as immigration relief for families, survivors, and youth, producing trusted legal resources including webinars, trainings, manuals, and practice advisories such as Removal Defense Updates, Motions to Reopen before EOIR, Immigration Relief Toolkits, Civil Penalties and Fines, HR1 Fees at USCIS and EOIR, Reopening Removal Proceedings Based on the Ineffective Assistance of Prior Counsel, Inadmissibility and Deportability, and many more. Through our extensive network with service providers, immigration practitioners, and immigration benefits applicants, we have developed a profound understanding of the barriers faced by vulnerable immigrant and low-income communities of color – including children and young people, and survivors of domestic violence, sexual violence, human trafficking, or other forms of trauma. It is through this lens that we provide comment on the proposed fee increase to the Form I-246, Application for a Stay of Deportation or Removal.

As explained below, DHS's proposed increase to the fee imposed on individuals applying for a stay of deportation or removal raises significant legal concerns. The proposal lacks a reasoned explanation for the magnitude and structure of the increase and fails to adequately consider the practical and legal consequences for affected individuals.

The ILRC strongly opposes the proposed fee increase for the reasons detailed below.

I. The Proposed Fee Increase is Arbitrary and Capricious under the Administrative Procedure Act ("APA").

The Administrative Procedure Act ("APA") establishes the procedures by which federal agencies are held accountable to the public and subjects their actions to judicial review.[1] Under Supreme Court precedent, the agency is required to engage in "reasoned decisionmaking."[2] Further, an agency action is found to be arbitrary and capricious if:

> the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or it is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.[3]

DHS's proposed fee increase is arbitrary and capricious in the following ways. First, it fails to consider important aspects related to applying for a stay of deportation or removal. These aspects include the dramatic change from past practice, the failure to offer a reasonable justification for

---

[1] *Dep't of Homeland Sec. v. Regents of the Univ. of California,* 140 S. Ct. 1891, 1905, 207 L. Ed. 2d 353 (2020).
[2] *Id* quoting *Michigan* v. *EPA*, 576 U.S. 743, 750, 135 S.Ct. 2699, 192 L.Ed.2d 674 (2015).
[3] *Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. State Farm Mut. Auto Ins. Co.,* 463 U.S. 29, 43 (1983).

the substantial fee increase[4], and the failure to consider "significant reliance interests"[5] of immigrants and their families and children who depend on access to the stay of removal process.

DHS proposes increasing the fee for the Application for a Stay of Deportation or Removal from $155 to $755, a 387% increase.[6] DHS is raising the fee by $600 for Fiscal Year 2026, citing an "inflation" increase from 1989, but as DHS admits—such an increase would be lower and using the U.S. Bureau of Labor Statistics CPI Inflation Calculator it would be $428 *not* $755.[7] DHS now asserts that the fee is "not sufficient to recover ICE's full cost, including labor costs to adjudicate each stay request." DHS further provides that the proposed fee increase would "support ICE efforts to maintain the current level of service, and better distribute the costs for adjudication to those receiving the direct services."[8] Additionally, in attempting to justify the increase, DHS adopts an arbitrary estimate that does not explain how the agency came to opt for a fee of $755. DHS also advances a range of claims about recouping costs—despite having just received an additional $70 billion for enforcement.[9]

Further, DHS fails to grapple with the reality that immigrants are frequently unrepresented because there is no right to government-appointed counsel in immigration proceedings. As a result, many individuals do not receive adequate notice or lack the assistance necessary to navigate complex proceedings and could require a stay of deportation or removal. A study by the American Immigration Council found that "83% of all nondetained immigrants with completed or pending removal cases from Fiscal Years (FY) 2008 through 2018 attended all their court hearings."[10] The study further found that represented individuals attended 96% of all their court hearings and 15% of those ordered removed in absentia "successfully reopened their cases and had their removal orders rescinded."[11] These facts expose the proposed fee increase as a blunt instrument that will penalize individuals for systemic failures DHS refuses to address.

---

[4] *FCC v. Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009) (a "reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy."); *FCC v. Prometheus Radio Project,* 592 U.S. 414, 423 (2021) ("The APA's arbitrary-and-capricious standard requires that agency action be reasonable and reasonably explained.")

[5] *Encino Motorcars, LLC* v. *Navarro*, 579 U.S. ——, ——, 136 S.Ct. 2117, 2126, 195 L.Ed.2d 382 (2016) quoting *Fox Television*, 556 U.S. at 515, 129 S.Ct. 1800; *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.,* 591 U.S. 1, 33 (2020) (agencies are "required to assess whether there were reliance interests, determine whether they were significant, and weigh any such interests against competing policy concerns.")

[6] 91 Fed. Reg. 24,739 (May 7, 2026).

[7] 91 Fed. Reg. 24,739, at 24,742 (May 7, 2026); *see* U.S. Bureau of Labor Statistics, *CPI Inflation Calculator,* https://www.bls.gov/data/inflation_calculator.htm (last visited June 30, 2026).

[8] 91 Fed. Reg. 24,739, at 24,742 (May 7, 2026).

[9] Ximena Bustillo & Sam Gringlas, *House Passes Bill to Fund ICE and Border Patrol Through the Remainder of Trump's Term,* NPR (June 9, 2026), https://www.npr.org/2026/06/09/nx-s1-5851664/house-reconciliation-vote-immigration-enforcement-ice-border-patrol.

[10] *Measuring in Absentia Removal in Immigration Court,* Am. Immigr. Council (Jan. 27, 2021), https://www.americanimmigrationcouncil.org/report/measuring-absentia-removal-immigration-court/.

[11] *Id.*

Compounding these failures, DOJ recently introduced a change to the EOIR-33 form that eliminates the "in care of" field,[12] further obstructing notice for individuals who have moved, or whose attorney or caretaker would otherwise receive it. These cumulative policies, taken together with the fact that the Justice Department is also "drastically accelerating" hearings, some of which were scheduled a year or more from now, by consolidating them into "mega masters" calendars—in which 100 or more individuals are processed simultaneously—reveal a coordinated strategy to increase deportation orders while stripping away every meaningful avenue to challenge them.[13] Reports indicate that individuals have been arrested "directly from federal or immigration courtrooms in order to meet quotas set by the administration."[14] Such policies discourage individuals from appearing for proceedings and undermine any confidence in attending a hearing that will result in an arrest.

Moreover, DHS also fails to consider that the fee increase effectively conditions access to a potentially life-saving form of relief on an individual's ability to pay. While DHS points to the existence of a fee waiver process, that process does not mitigate the harms created by the proposed increase because fee waivers for applications for a stay of deportation or removal are entirely discretionary. Applicants have no entitlement to a waiver, no guarantee that a waiver request will be granted, and no meaningful standards ensuring consistent adjudication. The existence of a discretionary waiver process cannot justify imposing a prohibitive filing fee on individuals facing imminent removal, particularly where the consequences may include family separation, or return to dangerous conditions or deportation from the United States. Nor does DHS analyze how many applicants are likely to qualify for waivers, how frequently waivers are granted, whether waiver requests can be adjudicated in time-sensitive stay proceedings, or how the substantial fee increase will affect access to relief for low-income individuals. By failing to consider these issues, DHS entirely ignores a critical aspect of the problem.

To exacerbate matters, the Board of Immigration Appeals (BIA) has held that where a noncitizen files a motion to reopen removal proceedings, before seeking a stay of removal from the BIA, they must first seek a stay from DHS.[15] The fee to file a motion to reopen with the BIA is now $1030.00 – up from $110.00.[16] Any noncitizen seeking a motion to reopen their case before the BIA and a discretionary stay of removal from DHS must now pay $1,758.00 before their case will be considered. Previously, there was no requirement that a noncitizen seeking a stay of removal from the BIA first file a stay of removal with DHS. The total filing cost for these forms of relief was $110.00. Now it is $1758.00, an outrageous and shocking 1498% increase - particularly so as this increase is without any plausible basis.

---

[12] 91 Fed. Reg. 10,829 (Mar. 5, 2026)

[13] Ximena Bustillo, *Immigration courts are using a new tactic to speed up deportations,* NPR, (May 26, 2026) https://www.npr.org/2026/05/26/nx-s1-5830474/trump-immigration-courts-mega-masters.

[14] Ximena Bustillo & Rahul Mukherjee, *NPR analysis shows skyrocketing number of 'no-shows' in immigration court,* (Dec. 22, 2025) https://www.mynspr.org/npr-news/2025-12-22/npr-analysis-shows-skyrocketing-number-of-no-shows-in-immigration-court.

[15] *Matter of Herrera-Nunez*, 29 I&N Dec. 691 (BIA 2026).

[16] https://www.justice.gov/eoir/types-appeals-motions-and-required-fees.

Indeed, the discretionary nature of the waiver process amplifies, rather than cures, the arbitrary effects of the proposed rule. Individuals seeking a stay of removal often face urgent deadlines measured in days or hours. Requiring such individuals to either pay a $755 fee or seek a wholly discretionary waiver creates additional uncertainty and barriers at the precise moment when access to relief is most critical. DHS offers no evidence that it considered these consequences or weighed them against the purported benefits of the fee increase. DHS's failure to consider these important issues is not a minor procedural deficiency—it is a fundamental flaw that renders the proposal arbitrary and capricious.

For all these reasons, DHS should withdraw the proposed fee increase.

Respectfully submitted,

The Immigrant Legal Resource Center