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Office of the Chief Financial Officer
U.S. Citizenship and Immigration Services
Department of Homeland Security
5900 Capital Gateway Drive
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**RE: ILRC Comment in Opposition to Proposed Rule: Fee for Certain H-1B
Petitions– CIS No. 2861-26; DHS Docket No. USCIS-2026-0298; RIN 1615-
AD20:**

Dear USCIS,

The Immigrant Legal Resource Center (ILRC) submits this comment in strong opposition to the Department of Homeland Security (“DHS”) United States Citizenship and Immigration Services (“USCIS”) Proposed Rule, CIS No. 2861-26; DHS Docket No. USCIS-2026-0298; RIN 1615-AD20, Fee for Certain H-1B Petitions, published on August 25, 2026.

I. Introduction

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 builds the capacity of immigration advocates to assist immigrants in their immigration cases to provide more immigrants with a meaningful chance

at justice. We support immigration legal service providers nationwide, serving hundreds of organizations and practitioners that work with immigrants. The ILRC provides technical assistance on immigration matters through our webinars and our Attorney of the Day service, in which we work with advocates on their specific cases and questions. It is through this lens that we provide comment on this proposed rule.

While the agency frames this adjustment as a necessary measure for comprehensive cost recovery across government, the underlying legal authority and policy implications of this novel reinterpretation of a long-established policy is highly problematic. In particular, the proposed funding scheme incorrectly uses the underlying statutory language supporting operations of USCIS to improperly redirect funds to other agencies.

II. The proposed rule would use the USCIS funding authority to fund activities conducted by other Congressionally appropriated agencies.

The proposed rule includes a brief analysis of cross-government costs associated with the H-1B program, proposing that USCIS raise its petition user fees to subsidize activities borne by other agencies. Specifically, the proposal seeks to cover costs incurred by Immigration and Customs Enforcement (ICE), Customs and Border Protection (CBP), the Department of Labor (DOL), and the Department of State (DOS). However, the immigration-related activities conducted by these agencies are already explicitly funded by Congress through annual appropriated dollars.

By utilizing fee-generated revenue from USCIS to fund the operations of entirely separate, independently funded departments, DHS is effectively usurping the role of Congress. The administration is attempting to augment the resources of Congressionally appropriated agencies via a specialized funding mechanism that Congress did not intend. USCIS receives small, restricted funding from Congress and instead relies on application fees as the main and majority source of its revenue. By declining to appropriate general funding to USCIS and electing to appropriate funds to the other agencies, it is clear that Congress intended that the fees collected through the application process to fund USCIS only. It is an inappropriate reading of the statute to use a USCIS fee to fund activities that Congress has already decided to support through public tax dollars.

Additionally, by proposing this fee and its usage for other agencies, USCIS ignores the reality of those with immigration applications pending who are subject to growing backlogs and processing times due to the agency re-directing resources and engaging in needless, draconian “vetting.” Across the board, the agency is completing far fewer applications despite a drop in applications received.¹ Yet, without engaging in a holistic assessment of the agency’s actual revenues and needs (buoyed in part by legislation imposing new fees and raising existing fees for some applications), and without addressing the processing issues that are apparent in the agency’s own data, USCIS has put forward multiple one-off fee increases, including the one at

¹ See, Niskanen Center, *Legal Immigration in Numbers: August 2026 Status Update*, (Aug. 31, 2026), available at <https://www.niskanencenter.org/immigrationdata/#uscis>.

hand, claiming the fees are necessary without actually substantiating the reasoning. USCIS must put forward an actual and accurate picture of the agency's financial situation before seeking to impose exorbitant, proscriptive fees.

III. Building a wall against immigration programs via implementing cost-prohibitive user fees is usurping Congressional Authority to set immigration policy.

This proposal continues a pattern of cost-prohibitive user fees being introduced by this administration. When considering the multiple H-1B related fee proposals, significant proposed naturalization fee hikes, the elimination of naturalization fee waivers and reduced fees, and the implementation of asylum fees and asylum-related employment-authorization fees, the cumulative financial barriers to immigration benefits have grown significantly since 2021. Rather than reflecting an earnest effort to set a user fee schedule that will fund the agency to timely respond to the requests made to it, this fee increase most realistically reflects this administration's continuous rhetoric of limiting immigration overall, including limiting the specific immigration paths set forth by Congress.

As evidence of this, the administration has failed to provide the rigorous, standard analysis required to demonstrate that these specific fee hikes comply with the cost-recovery provisions of the statute. Nor has the administration detailed how this fee proposal fits with its other fee increase proposals and/or the entire host of USCIS application and petition user fees in a manner to fully recover the agency's costs and avoid the generation of excess funds. On their face, these costs would at a minimum represent a double count for the government, as Congress has already funded the non-USCIS agencies activities that would be funded (again) by this rule.

IV. Conclusion

DHS has failed to establish how it is able to use USCIS user fees to fund Congressionally-appropriated activities. Moreover, by not showing a direct, transparent relationship between the proposed fee amounts and the actual statutory requirements for cost recovery, these increases cannot be viewed merely as administrative adjustments. Instead, they are more accurately characterized as an unlawful attempt to dictate U.S. immigration policy and drastically limit legal immigration to the United States—subverting another exclusive prerogative of Congress.

For these reasons, we urge DHS to withdraw the proposal to fund cross-government activities through H-1B user fees and restrict any future fee adjustments strictly to the demonstrated, direct statutory cost-recovery needs of USCIS.

Sincerely,

The Immigrant Legal Resource Center