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Management Directorate  
U.S. Citizenship and Immigration Services (USCIS)  
Department of Homeland Security (DHS)  
5900 Capital Gateway Drive  
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**RE: ILRC Comment in Opposition to Interim Final Rule: Mandatory Electronic Filing (e-Filing) – CIS No. 2853-26; DHS Docket No. USCIS-2026-0232; RIN 1615-AD19 (“IFR”) and to Agency Information Collection Activities: Request for Waiver of E-Filing Requirement, USCIS Form I-936, OMB No. 1615-NEW (“Proposed Form”)**

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”) 1) IFR, CIS No. 2853-26; DHS Docket No. USCIS-2026-0232; RIN 1615-AD19, Mandatory Electronic Filing (e-Filing), published on August 11, 2026; and 2) Proposed Form, OMB No. 1615-NEW Form I-936, Request for Waiver of E-Filing Requirement published on August 11, 2026. This rule, if finalized, will severely restrict immigrant applicants’ longstanding access to immigration benefits.

**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.

More specifically, the ILRC publishes advisories and manuals for legal practitioners in many areas of humanitarian immigration law. Additionally, we support and host legal clinics to assist individuals in their applications for immigration benefits. Through our extensive network with service providers, immigration practitioners, and immigration benefits applicants, we have developed a profound understanding of the barriers faced by low-income immigrants of color seeking immigration benefits by applying on paper or electronically. It is through this lens that we provide this comment on the IFR and Proposed Form.

The ILRC strenuously opposes the IFR and Proposed Forms because they are unlawful, further limit access to immigration benefits, and deeply harmful. As such, the ILRC urges DHS to rescind the IFR and Proposed Form.

### **I. The IFR and Proposed Form Violate the Federal Mandate under Section 504 of the Rehabilitation Act of 1973.**

Under longstanding federal statute, USCIS and all federal agencies are prohibited from discrimination and are required to make their services available to all individuals, including those with disabilities.<sup>1</sup> The IFR and Proposed Form fail to account for this population and are in violation of this mandate.

The IFR claims “DHS believes allowing USCIS to mandate e-filing will not restrict the public’s access to the programs administered by USCIS to a meaningful extent.”<sup>2</sup> USCIS offers no objective evidence to support this “belief”, instead making an assumption that with the general U.S. population, the “consistent result is that internet usage is pervasive and trends show a steady increase over time.”<sup>3</sup> DHS assumes that because there is nation-wide internet that the affected population will be able to e-file through public sources such as libraries.

DHS makes no effort to analyze the population affected, who are not the general public, but rather foreign-born immigrants with disabilities, including some foreign-born persons. According to the Pew Research Center, “Disabled Americans have lower rates of technology adoption for some devices. U.S. adults with a disability are less likely than those without a disability to say they own a desktop or laptop computer (62% vs. 81%) or a smartphone (72% vs. 88%), according to [a Center survey from winter 2021](#).”

The sum total of USCIS’s argument that they have complied with Section 504 in mandating e-filing is a completely conclusory statement, “The USCIS Transition to mandatory e-filing and this rule comply with the requirements of Section 504...”<sup>4</sup> There is no explanation of how it complies with Section 504 and how disabled persons are supposed to access immigration benefits if their disability prevents use of e-filing systems. The disingenuous provision of a “waiver” (described below) for the process in no way creates compliance with Section 504. The

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<sup>1</sup> Section 504 of the Rehabilitation Act of 1973 prohibits discrimination by federal agencies against individuals with disabilities, Public Law 93-112 (87 Stat. 355, codified at 29 U.S.C. § 701 et seq.).

<sup>2</sup> DHS, *Mandatory Electronic Filing* (e-filing), 91 Fed. Reg. 153, 51942 (Aug. 11, 2026).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

“waiver” is at the discretion of the government, has a fee, must be adjudicated on vague criteria of geographical and socioeconomic conditions and access to public resources. Further, a waiver will **not** be granted because of an individual’s unfamiliarity with e-filing or for lacking an online account.<sup>5</sup> This is not what Congress intended in making all services of executive agencies available to the public with no discrimination against individuals who are disabled.

In addition, immigrants generally are on the negative side of the digital divide.<sup>6</sup> The lack of effective internet access by immigrant communities became abundantly clear during the pandemic. As cited in a scholarly article by Migration Policy Institute, “In the United States, 36 percent of native-born, native-language adults were at higher levels of proficiency solving problems in digital environments or using digital tools as of 2015, compared to just 12 percent of U.S. residents who are foreign born and speak a language other than English, according to the Program for the International Assessment of Adult Competencies (PIAAC) study run by the Organization for Economic Cooperation and Development (OECD). The proportion of U.S. adults with no computer experience is also much higher for immigrants who speak a language other than English in the home with only 21 percent of U.S. adults compared to approximately 5 percent for English speakers.”<sup>7</sup> Being on the negative side of the digital divide means that immigrant children suffered when schools went online during the COVID-19 epidemic, that immigrants had fewer employment opportunities and less access to any public programs that required digital access.<sup>8</sup>

## **II. The IFR Violates the Administrative Procedures Act (APA).**

### **a. The IFR did not provide a notice and comment period before the rule took effect and does not fall under the procedural rule exception.**

The APA provides that a “notice of proposed rule making shall be published in the Federal Register,” and the agency “shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments.”<sup>9</sup> “After” considering those written comments, the agency may finalize the rule.<sup>10</sup> Here, DHS did not provide the public with a notice and comment period prior to the rule taking effect claiming the exception under 5 U.S.C. §(b)(A)—that is, the procedural rule exception which is inapplicable to the IFR.

The procedural rule exception found at 5 U.S.C. § 553(b)(A) applies to “rules of agency organization, procedure or practice.”<sup>11</sup> *Procedure* being the key word. “[T]he distinction between substantive and procedural rules is one of degree depending upon whether the substantive effect is sufficiently grave so that notice and comment are needed to safeguard the policies underlying

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<sup>5</sup> *Id.*

<sup>6</sup> Migration Policy Institute, Alexis Cherewka, *The Digital Divide Impacts Immigrant Families Disproportionately during the COVID-19 Pandemic* (Sept. 2020), <https://www.migrationpolicy.org/journal/feature/digital-divide-hits-us-immigrant-households-disproportionately-during-covid-19>.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> 5 U.S.C. § 553(b)-(c).

<sup>10</sup> *Id.*

<sup>11</sup> 5 U.S.C. § 553(b)(A); DHS, *Mandatory Electronic Filing* (e-filing), 91 Fed. Reg. 153, 51937, 51948 (Aug. 11, 2026).

the APA.”<sup>12</sup> It necessarily follows that, “[w]here a rule imposes substantial burdens, encodes a substantive value judgment, trenches on substantial private rights or interests, or otherwise alters the rights or interests of the parties,” then the exception does not apply.<sup>13</sup> The rule at hand is not procedural because it is establishing a required condition for applicants to access the adjudication and consideration of their applications for immigration benefits. If individuals fail to comply with this rule, their application or request will never be considered. Noncitizens have a strong and long-established interest in ensuring their applications are received and adjudicated. As such, the IFR falls outside the procedural exception and violates the notice and comment requirement of the APA.

**b. The IFR is arbitrary and capricious.**

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.<sup>14</sup> Under Supreme Court precedent, DHS is required to engage in “reasoned decisionmaking.”<sup>15</sup> Further, a DHS 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.<sup>16</sup>

Additionally, DHS must assess whether the reliance interests “were significant, and weigh any such interests against competing policy concerns”<sup>17</sup> and consider alternatives.<sup>18</sup>

As explained below, DHS failed to consider any of the above. Notably, 1) the IFR fails to consider the already existing problem; 2) the IFR’s explanation for its purpose of “increase[ing] efficiency, promot[ing] the integrity of the immigration system, and reduc[ing] waste attributable to the submission and maintenance of paper benefit requests”<sup>19</sup> is false; and 3) failed to meaningfully consider alternatives.

*1) The Obstacles Posed by Mandatory Electronic Filing are Radically Underestimated in the IFR and Proposed Form.*

The IFR ignores the sordid history of USCIS’s semi-conversion to e-filing that has been fraught with decades of problems. Despite vast funds spent on the conversion to an electronic environment, the user experiences today are negative. USCIS e-filing is glitchy, time-consuming

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<sup>12</sup> *Elec. Priv. Info. Ctr. V. DHS*, 653 F.3d 1, 5-6 (D.C. Cir. 2011) quotations omitted.

<sup>13</sup> *Am. Fed’n of Lab & Cong. of Indus. Organizations v. Nat’l Lab Rels. Bd.*, 57 F.4<sup>th</sup> 1023 (D.C. Cir. 2023).

<sup>14</sup> *Dep’t of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1905, 207 L. Ed. 2d 353 (2020).

<sup>15</sup> *Id* quoting *Michigan v. EPA*, 576 U.S. 743, 750, 135 S.Ct. 2699, 192 L.Ed.2d 674 (2015).

<sup>16</sup> *Motor Vehicle Mfrs. Ass’n of the U.S., Inc. v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983).

<sup>17</sup> *DHS V. Regents of the Univ. of Calif.*, 591 U.S. 1, 30 (2021).

<sup>18</sup> *Allied Loc. & Reg’l Mfrs. Caucus v. EPA*, 215 F.3d 51, 80 (D.C. Cir. 2000).

<sup>19</sup> 91 Fed. Reg. 153, 51926 (Aug. 11, 2026).

and poorly implemented to date—so much so that even attorneys often prefer to file on paper rather than re-enter all of the information in a ponderous USCIS process of pdf filing as well as actual electronic filing.

There is a long and tortured history of misspent millions invested in this “transformation,” as the program was called beginning in 2006. Billions were spent to change USCIS to an electronic environment, with widely publicized failures as well as cost and schedule overruns.<sup>20</sup>

For example, early efforts to operationalize e-filing of N-400 naturalizations showed poor program management, lack of stakeholder engagement and user support, and general failure to meet critical functionality needed for electronic processing.<sup>21</sup> Problems with USCIS e-filing/pdf-filing have continued to date.<sup>22</sup>

Users of the system report website outages and upload failures, account linking obstacles (between applicant and representative) system rejections of payments at the end of the process, lack of confirmation or receipt(s), endangering compliance with deadlines. In other cases, mistaken denials have been sent out through the system.<sup>23</sup> Users also describe automatic rejections of filings for minor formatting issues that electronic systems automatically reject, where paper-filings can be reviewed and accepted in such circumstances.<sup>24</sup> USCIS has not created a user-friendly e-filing system to date, and has no business mandating filing via this faulty system that will only further prevent public access.

2) *The IFR and Proposed Form are Part of a Consistent Policy by USCIS to Drastically Increase Processing Times and Radically Reduce Public Access to Immigration Benefits.*

The IFR falsely states that its intent is to increase efficiency and public access to the benefits adjudication process.<sup>25</sup> It points out that naturalization (N-400) is likely to be its first benefits application for mandatory e-filing.<sup>26</sup>

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<sup>20</sup> U.S. General Accounting Office, *Testimony Before the Committee on Oversight and Management Efficiency, Committee on Homeland Security, House of Representatives* (March 16, 2017) <https://www.gao.gov/assets/690/683795.pdf>.

<sup>21</sup> DHS, Office of the Inspector General, *USCIS Has Been Unsuccessful in Automating Naturalization Benefits Delivery* (Nov. 30, 2017) OIG-18-23, <https://www.oig.dhs.gov/reports/2018/uscis-has-been-unsuccessful-automating-naturalization-benefits-delivery/oig-18-23-nov17>.

<sup>22</sup> American Immigration Lawyers Association, *Issues with My USCIS online account notifications and delayed receipts for online pdf filing*, AILA Doc. 26071402 (July 14, 2025) describing ongoing lack of notifications from the online system and delays in receipting for pdf filings, <https://www.aila.org/practice-pointers-alerts/practice-alert-issues-with-myuscis-online-account-notifications-and-delayed-receipts-for-online-pdf-upload-filing>

<sup>23</sup> Forbes, *USCIS Mistakenly Denied Over 100 H1B Visa Registrations* (April 2, 2020) describing a glitch in the registration system that mistakenly issued denials <https://www.forbes.com/sites/stuartanderson/2020/04/02/uscis-mistakenly-denied-over-100-h-1b-visa-registrations/>.

<sup>24</sup> Gillman Immigration, *Why the Governments New Electronic Systems are Rejecting DIY Applications* (June 15, 2026) <https://gillmanimmigration.com/why-the-governments-new-electronic-systems-are-rejecting-diy-applications/>.

<sup>25</sup> 91 Fed. Reg. 153, 51937 (Aug. 11, 2026).

<sup>26</sup> *Id.*

USCIS claims that persons filing an immigration application will be advantaged by greater ease in filing, making corrections, and receiving notifications, as well as time savings.<sup>27</sup> This completely ignores the current trend in USCIS actions in the adjudications process, as well as the public's experience with existing e-filing, which is overwhelmingly negative. It also ignores the actions of this administration in 2025 and 2026 which have done everything possible to discourage immigration benefits applicants, by creating long backlogs and multiple legal hurdles to successful adjudication. This IFR is consistent with the hurdles that this administration has already established for benefits applicants and will further reduce the ability of eligible immigrants to apply.

The current experience of applicants filing for naturalization on USCIS form N-400 in 2025-2026 illustrates USCIS's clear intent to stymie access. After examining USCIS's own processing statistics and policy changes, it becomes extremely clear that this administration has every intent to make the benefits application process as difficult as possible by changing adjudication criteria, reducing USCIS staff, increasing fraud investigations, arresting individuals at USCIS offices, increasing backlogs, creating more difficult citizenship tests, and increasing fees and rapidly increasing denial rates. In addition, the government is pursuing already naturalized citizens searching for reasons to denaturalize them. As a result, fewer people are applying and more are being denied.<sup>28</sup>

With this IFR, even fewer people will be able to access naturalization if they are unable to navigate the e-filing system. The "waiver" provided by the IFR will not relieve that inaccessibility and is a disingenuous attempt to make USCIS appear "fair" in its policies.

*3) DHS fails to meaningfully consider alternatives to implementing the IFR.*

Rather than opting for a gradual change to e-filing as DHS itself identified as an option, DHS chose to completely switch the entire immigration benefit adjudication system in place for decades to one that mandates e-filing and without notice to the public. DHS provides that it opted for the latter because a gradual process would have caused "uncertainty" and "ma[de] it more difficult for USCIS to plan internal resources and internal system changes."<sup>29</sup> If USCIS cannot plan for internal resources and system changes via a gradual process, how can the agency be ready for a complete transition to e-filing?

Additionally, the waiver process is a barrier in itself to the very population for whom the waiver exists. Yet, DHS is not allowing applicants to submit a fee and fee waiver along with their application, rather they have to file a waiver and pay a fee for *every* application they submit for *each* individual submitting the application even if one is dependent on the

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<sup>27</sup> 91 Fed. Reg. 153, 51947 indicates that since N-400s have been available for alternative e-filing for more than 180 days they will meet the requirements of this rule to mandate e-filing of all N-400s. (Aug. 11, 2026).

<sup>28</sup> American Immigration Lawyers Association, *Threats to Citizenship and Naturalization* (June 30, 2026), <https://www.aila.org/library/featured-issue-threats-to-citizenship-and-naturalization>; *Denaturalization and the Administration's Targeting of U.S. Citizens* (July 21, 2025), <https://www.aila.org/library/featured-issue-denaturalization>.

<sup>29</sup> 91 Fed. Reg. 153, 51967 (Aug. 11, 2026).

other<sup>30</sup>—demonstrating DHS’s true intent of adding more and more barriers for immigrants to gain legal status in this country. Furthermore, the IFR states that the waiver is entirely within USCIS’ discretion, leaving applicants with no sure path to obtain such a waiver.

### **III. The Proposed Form Violates the Paperwork Reduction Act (PRA).**

The Paperwork Reduction Act (“PRA”) requires that USCIS provide the public notice about proposed information collections to ensure the public can comment on the influence of the collection upon them.<sup>31</sup> Specifically, the PRA provides that “[a]n agency shall not conduct or sponsor the collection of information unless in advance of the adoption or revision of the collection of information—the agency has published a notice in the Federal Register—setting forth—notice that comments may be submitted to the agency and Director.”<sup>32</sup> With respect to the Proposed Form, the agency violated the PRA by failing to provide the public with sufficient notice to provide informed comments on the proposed changes. Rather than providing clear instructions at the beginning of the IFR for comment and allow the public full opportunity to provide input, the Proposed Form was buried at the end of the IFR in what seems to be an attempt to insulate the agency from public comment and scrutiny for the same.

Further, the waiver process provided in the IFR and the Proposed Form are a false pretense at accessibility. As explained above, the Proposed Form is yet another burden on individuals applying for immigration benefits and is not adequately analyzed under the PRA which requires an agency to provide such estimate and take reasonable steps to ensure that it is a collection that is the least burdensome necessary without disproportionate costs or burden on the public.<sup>33</sup>

Here, DHS significantly undercounts the estimated number of people that will fill out the I-936 form as 248,905 and the annual hour burden associated with the Proposed Form as 124,453 (or 2 hours).<sup>34</sup> By their own numbers, DHS is materially understating the individuals burdened by the Proposed Form. Even using the narrowest of samples from the proffered DHS estimates,<sup>35</sup> more than two million applications would be impacted (DHS estimated paper applications without a G-28 filing to be 2,865,715). This number would put the hour burden at least at 5 million. However, even that hour burden is inaccurate as it does not consider the broader process that USCIS is now requiring individuals to undertake to obtain a waiver.

The waiver process requires applicants to explain why they lack internet access by identifying what internet resources are available, determining whether a library or community center provide access at hours available to the applicant, determine whether the facility provides a private or usable space for filing a very personal application, explain why they cannot access internet through friends or family, prepare the written application and potentially gather supporting

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<sup>30</sup> *Id.*

<sup>31</sup> 44 U.S.C.A. § 3507.

<sup>32</sup> 44 U.S.C.A. § 3507(a)(1)(D); *see also* 5 U.S.C.A. § 553(c) (The APA requires agencies “give interested persons an opportunity to participate in the rule making.”).

<sup>33</sup> 5 CFR §1320.5(d).

<sup>34</sup> 91 Fed. Reg. 153, 51970 (Aug. 11, 2026).

<sup>35</sup> 91 Fed. Reg. 153, 51962 (Aug. 11, 2026).

evidence.<sup>36</sup> This process would clearly take more than two hours. And if there are multiple applications or dependents, this time is further multiplied. If the applicants are disabled or have Limited English Proficiency (LEP) or limited tech literacy or do not have legal counsel, the time burden further accrues.

#### **IV. The Pattern of Attacks on the Naturalization Process Demonstrates USCIS's Intent to Reduce Public Access, Consistent with this IFR.**

N-400 naturalization applications are a priority application for USCIS to mandate e-filing.<sup>37</sup> Naturalization eligibility and processing have been repeatedly attacked by the Administration in 2025-2026<sup>38</sup> and this IFR and Proposed Form will further reduce access to naturalization. Current statistics from USCIS demonstrate the following:

1. Application completions have dropped sharply. Monthly approvals and denials combined fell from approximately 80,000 to 20,000 over the past year.
2. Denial rates have increased. The national denial rate began rising in October 2025 and reached 21.5% in August 2026. Some offices had higher increases in denial. For example, Baltimore's denial rate was 35% in the April–June 2026 quarter.
3. The backlog has grown by 54%. Pending cases increased from 528,842 in August 2025 to 813,453 in August 2026.
4. Applications have declined substantially. Following the implementation of the new naturalization test, monthly filings fell by approximately 50% compared with the same months a year earlier. The decline has moderated recently, with filings approximately 30% below prior-year levels over the last three months.
5. USCIS's reported processing time has nearly doubled, from 6.4 months in August 2025 to 12.7 months in August 2026. That figure may not fully capture the growing backlog. At a pace of 20,000 completions per month, clearing the existing 813,453 pending applications alone would take more than 40 months—even without any new applications.

#### **Conclusion:**

The IFR and Proposed Form would harm immigrants, families, and communities. They are legally flawed, impose significant burdens, and only create more inefficiencies in the adjudication of immigration benefit applications.

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<sup>36</sup> USCIS, Form I-946, Request for Waiver of E-Filing Requirement (Aug. 11, 2026).

<sup>37</sup> Statistics are from Department of Homeland Security (DHS), USCIS N-400 Field Office Dashboard, <https://uscisfieldoffices.vercel.app/?form=n400&office=TOTA> .

<sup>38</sup> American Immigration Lawyers Association, *Threats to Citizenship and Naturalization* (June 30, 2026), <https://www.aila.org/library/featured-issue-threats-to-citizenship-and-naturalization>; *Denaturalization and the Administration's Targeting of U.S. Citizens* (July 21, 2025), <https://www.aila.org/library/featured-issue-denaturalization> .

For all of these reasons, the DHS should withdraw the IFR and Proposed Form.

Respectfully submitted,

The Immigrant Legal Resource Center