

United States Senate  
WASHINGTON, DC 20510

March 14, 2023

**VIA ELECTRONIC TRANSMISSION**

The Honorable Alejandro Mayorkas  
Secretary  
Department of Homeland Security  
301 7<sup>th</sup> Street SW  
Washington, D.C. 20528

**RECEIVED**

**By ESEC at 11:12 am, Mar 14, 2023**

Dear Secretary Mayorkas:

We write to express our opposition to the Department of Homeland Security's (DHS) proposed rule, published on January 4, 2023, titled "U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements." This proposed rule would dramatically increase application fees for employment-based visas and other immigration programs to fund this administration's failed border policies.

Specifically, we are concerned about the impact that these proposed fee increases will have on the agriculture industry throughout the country. The proposed rule would increase the fees for H-2A petitions, which encompass seasonal agricultural workers, from \$460 to \$1,090 for named workers and from \$460 to \$530 for unnamed workers.<sup>1</sup>

These fee increases alone are problematic. More troubling, however, is the new Asylum Program Fee. This proposed rule would charge employers seeking to sponsor immigrants for certain work visas an unprecedented \$600 fee to fund our broken asylum program.<sup>2</sup> To justify this proposal, DHS contends that this cost shifting approach with the Asylum Program Fee will "place greater emphasis on the ability-to-pay principle for determining user fees."<sup>3</sup> In other words, DHS believes small business owners should be forced to finance President Biden's overwhelmed and broken asylum program that is entirely unrelated to the issuance of immigrant work visas.

This proposed rule does not specify how these fee increases would lead to expedited processing times for farmers and business owners. Additionally, Congress appropriated \$275 million in fiscal year 2022 to help with current backlogs, which ultimately did not lead to more efficient processing.<sup>4</sup> Without guardrails in place to increase efficiency and improve service, this proposed

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<sup>1</sup> U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 88 Fed. Reg. 402, 497 (proposed Jan. 4, 2023) (to be codified at 8 C.F.R. 106.2).

<sup>2</sup> *Id.* at 452.

<sup>3</sup> *Id.* at 453.

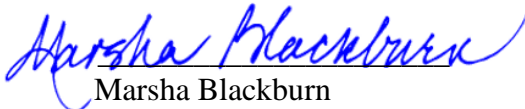
<sup>4</sup> CONSOLIDATED APPROPRIATIONS ACT OF 2022, PUB. L. NO. 117-103, § 136 Stat. 113 (2022).

rule only expands the federal bureaucracy and fills the federal government's coffers with more hard-earned taxpayer dollars.

These fee increases, coupled with the new Asylum Program Fee, will undoubtedly harm small businesses, farms, and nonprofits at a time of record high inflation. As you know, migrant encounters at our southern border soared to historic levels in fiscal year 2022 due to President Biden's refusal to enforce successful policies like the Migrant Protection Protocols, commonly known as Remain in Mexico.<sup>5</sup> Instead of penalizing employers for this administration's manufactured border crisis, DHS should focus its efforts on instituting common sense policies to stem the influx of migrants overwhelming our immigration system.

We are deeply disappointed that the Biden Administration continues to reward illegal entry into this country, especially at the expense of hardworking entrepreneurs and farmers who are operating within the legal parameters of the immigration system. It is time for President Biden to take the crisis at our southern border seriously and support our small businesses and farmers. For all of these reasons, we urge you to withdraw this deeply flawed proposed rule.

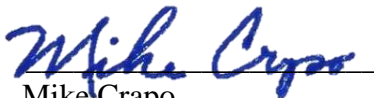
Sincerely,



Marsha Blackburn  
United States Senator



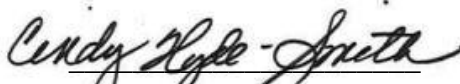
Kevin Cramer  
United States Senator



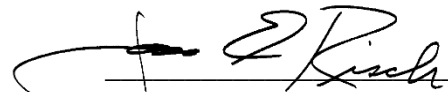
Mike Crapo  
United States Senator




Deb Fischer  
United States Senator



Cindy Hyde-Smith  
United States Senator



James E. Risch  
United States Senator



Thom Tillis  
United States Senator



Roger Wicker  
United States Senator

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<sup>5</sup> U.S. CUSTOMS AND BORDER PROTECTION, CBP ENFORCEMENT STATISTICS FISCAL YEAR 2022, <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters-fy22>.



**U.S. Citizenship  
and Immigration  
Services**

April 24, 2023

The Honorable Marsha Blackburn  
U.S. Senate  
Washington, DC 20515

Dear Senator Blackburn:

Thank you for your March 14, 2023, letter to the Department of Homeland Security (DHS). I am responding on behalf of the Department.

We appreciate your interest in the January 4, 2023, proposed fee rule, including your statements about the economic importance of seasonal agricultural workers and your concerns about the impact of U.S. Citizenship and Immigration Services (USCIS) fees on small business owners and other stakeholders.

As a predominantly fee-funded agency, USCIS allocates all costs to fee-paying applicants and petitioners in an effort to ensure that the agency can fully recover its operating costs. As expressly contemplated by statute, USCIS provides certain services without requiring a fee, primarily immigration benefits for refugees and asylum seekers. USCIS does other work which provides fee waivers and exemptions for economically disadvantaged individuals and other especially vulnerable populations, such as victims and witnesses to crimes. This means that the fees charged for a particular form may include the cost of adjudicating that form plus an additional percentage to cover overhead expenses and the agency's costs to adjudicate fee-exempt, fee-reduced, and fee-waived cases.

The fees proposed in the Fiscal Year (FY) 2022/2023 fee rule include the recovery of the costs for refugee and asylum processing, with the costs to implement the Asylum Processing Interim Final Rule (IFR) covered by a separate fee to be charged specifically to business petitioners. The Asylum Processing IFR allows for protection claims to be adjudicated fairly and expeditiously by transferring the initial responsibility for adjudicating asylum and related protection claims made by noncitizens encountered at or near the border from immigration judges (IJs) to asylum officers in USCIS. Due to existing immigration court backlogs, the process for hearing and deciding asylum cases currently takes several years on average. When fully funded, the IFR will help reduce existing immigration court backlogs and will shorten the process to several months. If USCIS receives alternative funding or resources for the Asylum Processing IFR, such as Congressional appropriations, the fee review budget projections may be reduced accordingly. The President's FY 2024 budget requests appropriated funding to support

the processing of refugee and asylum applications. In the absence of appropriated funding, the Asylum Processing IFR must be funded by the fees that USCIS charges for other immigration benefit requests. USCIS greatly appreciates Congress' support of the International and Refugee Affairs Division in FY 2023, which continues to support a refugee admission ceiling up to 125,000, protection screening for migrants interdicted at sea, and other mission critical activities.

Additionally, The President's FY 2024 budget requests appropriated funding to continue the agency's efforts in reducing the backlog of cases that accrued during the pandemic. As you noted, Congress did provide \$275 million in FY 2022 for this backlog reduction initiative, and the USCIS Fiscal Year 2022 Progress Report<sup>1</sup> explained how these appropriations were crucial in turning the tide on these backlogs and achieving greater efficiencies throughout the agency. For your convenience, please see a copy of our Progress Report attached to this letter.

We appreciate your input regarding H-2A petitions and the Asylum Program Fee. The public comment period for the proposed fee rule ended on March 13, 2023, and USCIS is carefully reviewing all public comments as we draft a final fee rule.

Thank you again for your letter and interest in this important issue. The cosigners of your letter will receive a separate, identical response. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (240) 721-3801.

Respectfully,

A handwritten signature in black ink, appearing to read "Ur M. Jaddou", with a long horizontal flourish extending to the right.

Ur M. Jaddou  
Director

<sup>1</sup> FY 2022 USCIS Progress Report

[https://www.uscis.gov/sites/default/files/document/reports/OPA\\_ProgressReport.pdf](https://www.uscis.gov/sites/default/files/document/reports/OPA_ProgressReport.pdf)