Northwest IMMIGRANT RIGHTS Project

Western Washington Office
615 Second Avenue
Suite 400
Seattle, Washington 98104

PHONE: 206-587-4009 TOLL-FREE: 800-445-5771 FAX: 206-587-4025 WEB: WWW.NWIRP.ORG

December 30, 2019

Ms. Samantha Deshommes, Chief
Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Ave. NW
Washington, DC 20529

Re: U.S. Citizenship and Immigration Services Fee Schedule, DHS Docket No. USCIS-2019-0010; RIN 1615-AC18

Submitted VIA www.regulations.gov

Dear Chief Deshommes,

I am writing on behalf of Northwest Immigrant Rights Project (NWIRP) to submit this comment regarding the Notice of Proposed Rule-Making (NPRM) on a proposed U.S. Citizenship and Immigration Services (USCIS) Fee Schedule (the "fee schedule" or "proposed rule"), published on November 14, 2019. We are concerned about a number of the fee and policy proposals in the proposed rule, and request that USCIS withdraw all provisions that make immigration benefits less accessible to low-income and other historically marginalized immigrants. We also raise below serious procedural concerns about the inadequacy of the notice-and-comment period for the proposed rule and urge USCIS to, at the very least, re-publish the proposal.

Interest in Proposed Rule

Northwest Immigrant Rights Project (NWIRP) is a nationally-recognized legal services organization founded in 1984. Each year, NWIRP provides direct legal representation and consultations in immigration matters to low-income people from over 160 countries, speaking over 70 different languages. NWIRP also strives to achieve systemic change to policies and practices affecting immigrants through impact litigation, public policy work, and community education. NWIRP serves the community from four offices in Washington State in Seattle, Granger, Tacoma, and Wenatchee.

NWIRP has particular expertise in the topic of the proposed rule. NWIRP has been providing immigration legal services for 35 years and is currently the largest nonprofit organization focused exclusively in providing immigration legal services in the Western United States. As explained below, NWIRP is deeply concerned about the impact the proposed rule will have on the client communities NWIRP serves as well

as immigrant communities around the country. NWIRP is particularly concerned about the impact that the proposed rule will have on survivors of human trafficking, domestic violence, sexual assault, and other crimes. NWIRP provides legal assistance to hundreds of survivors of violence each year and, as outlined below, the proposed rule will deprive many of them of the opportunity to secure critically-needed humanitarian protections.

Opposition to the Proposed Rule

A. General Comments

The proposed USCIS fee schedule disproportionately increases fees and eliminates fee waivers for the benefit categories most commonly used by low-income immigrants, leaving essential immigration benefits accessible primarily to the affluent. These unwarranted changes would result in financial hardship for immigrant and mixed-status families, immigrants delaying or losing immigration status due to financial considerations, increased dependence on debt to finance applications, and decreased involvement of qualified legal assistance resulting in difficult and inefficient USCIS processing and adjudication, among many other problems.

NWIRP opposes USCIS' attempt to place the burden of its own mismanagement on the backs of hard-working immigrant families. Since 2010, USCIS has increased filing fees by weighted averages of 10 percent and another 21 percent, but has not achieved any associated improvement in processing times, backlogs, or customer service. During that same period, USCIS' backlog has increased by more than 6,000 percent, the overall average case processing time had increased 91 percent between 2014 and 2018, and USCIS has removed language from its resources that stated any commitment to customer service. USCIS' purported shortfalls are a problem that is a result of its own poor policy and organizational choices. Notably, USCIS failed to justify in the NPRM why alternatives that would have far less harmful impacts—such as pursuing additional appropriations or achieving operational efficiencies—would not be possible. Instead, USCIS has chosen a path that would have profound negative consequences for the people it is intended to serve.

We describe below how some of these changes will impact our organization and our clients, and the reasons for our opposition. Omission of any proposed change from this comment should not be interpreted as tacit approval. We oppose all aspects of the proposed fee schedule and particularly those that would act as a barrier between low-income immigrants and the immigration benefits for which they qualify.

For the reasons outlined here, USCIS should promptly withdraw the provisions of its proposed fee schedule that would make immigration benefits less accessible to hard-working families and vulnerable people. USCIS has not used the filing fees applicants have already paid to USCIS efficiently, and they must not be expected to bear a significant increase in fees without improvement in processing times, backlogs, and customer service.

B. Specific Concerns Regarding the Proposed Rule

1. USCIS' Proposal to Limit Payment Types Would Disadvantage Low-Income Immigrants

USCIS proposes to make the method of fee payment changeable form-by-form through a designation in the form instructions. This would allow USCIS to prohibit the use of certain types of payment, like cashier's checks or money orders, for certain applications or petitions in favor of other methods of payment such as online payments. This proposed limitation would cause hardship to low-income applicants and petitioners and recent arrivals to the United States, as reliable internet access, U.S. bank accounts, and well-established credit scores are assets that may only be available to more wealthy immigrants or those who have been residing in the United States for longer periods of time. As representatives of hard-working immigrant families, we request that USCIS accept personal checks, certified checks, cashier's checks, and money orders, among others, as methods of payment for all applications and petitions.

More specifically, USCIS should not adopt the portions of proposed 8 C.F.R. §§ 106.1(a), (b), that USCIS intends as authority to restrict the payment mechanisms and devices that individuals can use, through some future notification, but without a separate rulemaking.[1] In order to make benefits reasonably accessible to all eligible individuals, USCIS should expand, not narrow, the payment mechanisms and devices that it accepts. Moreover, if USCIS seeks to restrict its acceptance of established payment mechanisms and devices, it should use a separate notice-and-comment rulemaking for any proposed restriction, because such restrictions can limit individuals' ability to pay for—and thus seek—important benefits.[2]

Relatedly, USCIS should publish any restriction in the Federal Register, as well as make it available on its website and form instructions. The proposal suggests that USCIS would notify individuals of payment-device restrictions only in a bill, invoice, or appointment confirmation.[3] Such notice could be too late. If someone needs to open a credit card or bank account to pay a USCIS fee, for example, they may not be able to do so quickly enough (or at all).

USCIS's examples illustrate why USCIS should not restrict its acceptance of established payment devices and mechanisms. First, USCIS suggests it might require individuals to pay on a certain website.[4] But any such restriction could harm immigrants who cannot easily access the internet or payment devices that can be used online. For these individuals, a requirement to pay online could make applications unnecessarily difficult—or out of reach.

Accessing or using a government website could be particularly challenging for individuals in unstable living circumstances, without internet access in their home, with limited English proficiency, or without

[1] *See* 84 Fed. Reg. at 62295. Although the preamble cites only proposed 8 C.F.R. § 106.1(b), the relevant provisions appear to include both the second sentence of proposed § 106.1(b) and a portion of the first sentence of proposed § 106.1(a), beginning with "and remitted in the manner prescribed… ."
[2] *See generally Mendoza v. Perez*, 754 F.3d 1002, 1023-24 (D.C. Cir. 2014).
[3] *See* 84 Fed. Reg. at 62295.
[4] *See* 84 Fed. Reg. at 62295.

certain types of financial accounts. For instance, the current Pay.gov website is only available in English. Further, individuals with lower incomes, with lower levels of formal education, or living in rural areas tend to use the internet at lower rates than their peers.[5] Moreover, non-citizens are less likely than others to have credit cards or bank accounts—payment mechanisms commonly used online.[6] Particularly immigrants who have only been in the United States for a short period of time may be unable to obtain credit cards because they do not have enough credit history to establish credit scores or they have credit scores that are inaccurately low.[7] Immigrants can also face a number of challenges in opening bank accounts, including bank fees, banks' requirements for particular types of identification, a lack of information about banking availability, and language barriers.[8] NWIRP is also concerned that other, specific populations it serves would be negatively impacted by this requirement: NWIRP serves significant numbers of individuals in immigration custody or who are homeless and for whom it would be impractical if not impossible to pay through the mechanisms USCIS is considering.

Equally concerning is USCIS's suggestion that it might later prohibit immigrants' use of money orders, cashier's checks, cash, or checks to pay USCIS fees.[9] Rejecting such established payment devices could severely restrict access to benefits applications for some, while unnecessarily adding to the burden of applying for others.

Money orders, cashier's checks, and checks are important payment options for several reasons. First, cashier's checks and money orders are guaranteed forms of payment that limit the risks to USCIS and to applicants of rejected payments.[10] Second, money orders are widely available. Money orders, for

---

[5] *See* Pew Research Center, *Internet/Broadband Fact Sheet* (June 12, 2019), https://www.pewresearch.org/internet/fact-sheet/internet-broadband/ (at "who uses the internet").

[6] *See* FDIC, *2017 FDIC National Survey of Unbanked and Underbanked Households* 50 (2018), https://www.fdic.gov/householdsurvey/2017/2017report.pdf; FDIC, *2017 FDIC National Survey of Unbanked and Underbanked Households, Appendix Tables* 1-2 (2018), https://www.fdic.gov/householdsurvey/2017/2017 appendix.pdf.

[7] *See* Consumer Financial Protection Bureau, *Report on Remittance Transfers* at 2, 28, 31-32 (2011) (including sources cited), https://files.consumerfinance.gov/f/2011/07/Report_20110720_RemittanceTransfers.pdf; Board of Governors of the Federal Reserve System, *Report to the Congress on Credit Scoring and Its Effects on the Availability and Affordability of Credit*, at S-2, S-4 through S-5, O-21, 28 (Aug. 2007) https://www.federalreserve.gov/boarddocs/rptcongress/creditscore/creditscore.pdf; *see generally* Consumer Financial Protection Bureau, *Who Are the Credit Invisibles* 8 (2016), https://files.consumerfinance.gov/f/documents/201612_cfpb_credit_invisible_policy_report.pdf (explaining that individuals with "limited or nonexistent credit history face greater hurdles in getting credit" due to how credit scores are calculated and used).

[8] *See* New York City Dep't of Consumer Affairs, *Immigrant Financial Services Study* 9, 39 (2013), https://www1.nyc.gov/assets/dca/downloads/pdf/partners/Research-ImmigrantFinancialStudy-FullReport.pdf; National Council of La Raza, *Latino Financial Access and Inclusion in California* 15, 18, 22 (2013), http://publications.unidosus.org/bitstream/handle/123456789/1123/CA_Latino_Financial_Access_ReportWeb.pdf; Anna Paulson, *et al.*, Federal Reserve Bank of Chicago and The Brookings Institution, *Financial Access for Immigrants* 6, 16-22 (2006), *at* https://www.chicagofed.org/region/community-development/financial-access-for-immigrants; *cf.* Rob Wile, *He's Been Studying in the U.S. Legally for 7 years. Bank of America Froze His Account Anyway*, Miami Herald (Aug. 20, 2018), https://www.miamiherald.com/news/business/article217095125.html.

[9] *See* 84 Fed. Reg. at 62295.

[10] *See* Alice Holbrook, *Cashier's Check: When You Need One, How to Get It*, (Nov. 30, 2018), https://www.nerdwallet.com/blog/banking/how-do-i-get-cashiers-check/; U.S. Postal Service, *Domestic Money Orders*, https://www.usps.com/shop/money-orders.htm.

example, do not require a checking account, a credit report, or any other particular financial circumstances.[11] Third, personal checks are generally free to the applicant.

A mix of all of these characteristics is important to enable individuals in a variety of circumstances to have reasonable access to the benefits for which they are eligible. As described above, a significant portion of non-citizens lack credit cards or bank accounts, and the two situations often go hand in hand.[12] Moreover, because under the current rule, bounced checks can lead to individuals losing their filing dates, it is vital that USCIS retain individuals' ability to use payment devices, such as cash, money orders, cashier's checks, and certified checks, that avoid the risk of bounced checks (and that, in the case of money orders and cash, are available to virtually anyone).

USCIS's generic and hypothetical references to saving time and reducing errors do not justify the relevant portions of proposed § 106.1(a), (b). USCIS has provided no data about the time or errors involved with certain payment devices or mechanisms. And without any specific limitation proposed, neither USCIS nor commenters can evaluate the extent to which any time will be saved or errors reduced.

Moreover, it is not fair or equitable to cut off eligible individuals' reasonable access to immigration benefits simply to save time or reduce errors, particularly when there are less harmful ways to save time or reduce errors. To reduce the burden of processing payments or reduce errors, USCIS could examine and refine its internal processes, clarify payment instructions, or consider instances in which more individuals should be exempted from fees, instead of limiting individuals' ability to access life-changing benefits by restricting permissible payment devices.

2. USCIS Should Give Applicants a Chance to Correct Any Payment Error

USCIS should revise proposed 8 C.F.R. § 106.1(c), under which a bank or financial institution's refusal to honor a payment request would result in a benefit request losing its receipt date or USCIS revoking (upon notice) a previously approved benefit request. The rule should require USCIS to give an applicant a chance to address any payment problem, before any such consequences accrue. Specifically: If a payment request is not honored, USCIS should notify the applicant and allow 14 days, after notice, to send a new payment.[13]

This change is necessary because USCIS's benefits are so important, as outlined in more detail throughout this comment. Gaining or maintain work authorization, citizenship, or asylum can be life-changing. Moreover, if a deadline passes, losing a receipt date, like revocation, can mean losing access

[11] *See generally* U.S. Postal Service, *Domestic Money Orders*, https://www.usps.com/shop/money-orders.htm.
[12] *See 2017 FDIC National Survey of Unbanked and Underbanked Households*, at 7, 50 (showing that low percent of unbanked households use prepaid cards or credit cards).
[13] We understand that USCIS has previously expressed a concern that such a 14-day waiting period could be unfair in that it could hypothetically be used to "get ahead" of other applicants even without a valid payment. However, this is unlikely to occur in most immigration applications and exceptions could be made for situations where there is a realistic chance of this occurring and there is demonstrated evidence of such circumstances.

to a benefit altogether. It makes no sense for individuals to lose access to benefits, simply because of a correctable payment problem.

Importantly, if USCIS cannot process a payment, the problem may be out of the applicant's control. USCIS could make a mistake. Banks may wrongfully deny access to funds.[14] And though USCIS's allowance that it will retry *some* rejected payments a second time may avoid some human or network errors, it will not eliminate all the circumstances in which payments fail to go through, for reasons outside account-holders' control.

3. USCIS Should Accept Financial Instruments Regardless of Their Age

USCIS should not adopt the portion of proposed 8 C.F.R § 103.2(a)(7)(ii)(D) that would permit USCIS to reject a check or other financial instrument dated more than one year before the request was received. USCIS should also halt the policy that this proposal reflects.[15]

USCIS refers to a Uniform Commercial Code (UCC) provision that allows account holders' banks to limit the cashing of checks of a certain age, and a rule that allows the Department of Treasury to refuse to cash checks written *by* the government if they are older than a certain date.[16] But neither provides authority to the federal government to reject a check written *to* it. Further, the cited UCC provision applies only to checks, other than certified checks. USCIS' proposed provision sweeps more broadly, without explanation, including certified checks, money orders (which can be valid indefinitely), and others.[17]

The proposal also does not match USCIS's stated goal of seeking to "minimize the likelihood of a payment being dishonored."[18] Because the number of payments at issue is a miniscule fraction of the payments that USCIS receives every year,[19] the proposed rule would not make *any* meaningful difference in *the agency*'s operations. For individuals, however, the proposal, increases, rather than decreases, the risk of a payment rejection by providing a new reason for USCIS to refuse a payment.

USCIS's proposed rule states that it will retain "the authority to waive the check date requirement in exigent circumstances."[20] But no "exigent circumstances" standard is stated in the proposed regulatory text, and even if it were, it would provide little comfort, due to its vagueness.

USCIS should instead codify that it will attempt to process any payment that it receives; if a payment cannot be processed for any reason, as described above, USCIS should notify the applicant and provide

[14] *See generally* Randy R Koenders, Annotation, *What Constitutes Wrongful Dishonor of Check Rendering Payor Bank Liable to Drawer Under UCC § 4-402*, 88 A.L.R. 4th 568.
[15] *See* 84 Fed. Reg. at 62295.
[16] *See id.* (citing UCC 4-404 and 31 C.F.R. § 245.3).
[17] *See* U.S. Postal Service, *Domestic Mail Manual*, ch. 509, § 3.3.1, https://pe.usps.com/text/dmm300/509.htm#ep1124357.
[18] 84 Fed. Reg. at 62295.
[19] Regulatory Impact Analysis at 22 (stating that in the first 11 months of fiscal year 2019, USCIS received only "216 stale dated returns dated more than 365 days before the filing receipt date").
[20] 84 Fed. Reg. at 62295.

an opportunity to provide a new payment. If USCIS is concerned about the risk that a financial institution will reject a payment instrument of a certain age, it should include a warning to applicants on its forms about the risk but make clear that USCIS will attempt to process any payment it receives.

4. USCIS's Proposal to Transfer Applicant Fees to ICE Is Improper

In the proposed rule, USCIS seeks over two years to transfer hundreds of millions of dollars in applicant fees held in the Immigration Examinations Fee Account, or IEFA, to Immigration and Customs Enforcement, or ICE, for enforcement purposes. The exact amount of the transfer is unclear since USCIS originally estimated it to be over $200 million in the original proposed rule and later revised it to over $112 million in the "supplemental information" it provided when the comment period was extended slightly. In any event, regardless of the final amount of the transfer, NWIRP vehemently opposes this misuse of applicant fees.

Congress codified in the Immigration and Nationality Act, or INA, that the applicant-funded IEFA is USCIS's "primary funding source" used "to fund the cost of processing immigration benefit applications and petitions"—that is, "to adjudicate applications and petitions for benefits under the Immigration and Nationality Act and to provide necessary support to adjudications and naturalization programs." Despite this clear statutory instruction, however, USCIS seeks to transfer those funds to serve another purpose. By unnecessarily and wrongfully transferring funds from IEFA to ICE, USCIS is betraying not only its own mission but also Congress's clear statutory intent. We find it wholly improper to accept payments from immigrants intended for adjudication of their immigration benefits, and to redirect those funds to be used for enforcement against their communities.

5. Adjustment of Status Applications Should Remain Bundled and Affordable

USCIS proposes separate fees for concurrently filed Forms I-485, I-765, and I-131. Most applicants for adjustment of status who will file Form I-485 will also request employment authorization (form I-765) and many will request advance parole travel authorization (form I-131). Due to immigrant visa backlogs, applicants for adjustment often face long waits before their permanent residency is granted. They rely on employment authorization so that they can continue to live and work in the United States while their application is pending and they often need advance parole to be able to visit family members or for work or education reasons. These applicants will see a 79 percent increase in the total cost of filing Forms I-485, I-765, and I-131. The steep increase, from $1,225 to $2,195, and the elimination of fee waivers for those who would otherwise be eligible will make adjustment of status unattainable. For many low-income and working-class people who are immigrating through a U.S. citizen or lawful permanent resident relative, the additional financial burden incurred throughout the process of obtaining lawful permanent residence would be even higher A worker earning the federal minimum wage, who is likely already living paycheck-to-paycheck, would have to work an extra 134 hours just to cover the increase in the application fees. Increasing the overall cost of adjustment of status would prevent many low-income individuals from becoming permanent residents and undermine family unity.

Over the past three years, NWIRP has provided assistance to over 900 individuals who have pursued adjustment of status applications before USCIS. We have found that affording even the current

applications fees has been a struggle for many of our clients and we are confident that the proposed significant increases will lead to future applicants needing to at the very least delay their applications. This will have profound negative consequences for the client community we serve. Even now, the required fee for the I-485 adjustment of status form is among the highest for immigration applications. NWIRP clients often wait months or years to save the sufficient amount to cover the application fees. Where more than one family member is pursuing adjustment of status, this would mean that families would have to wait longer periods of time to become lawful permanent residents as it would become almost impossible to afford the process for all family members at the same time.

6. The Petition to Remove Conditions on Residence Should Remain Accessible, Especially for Survivors of Domestic Violence

USCIS proposes a 28 percent increase to the current fee for filing Form I-751 Petition to Remove Conditions on Residence, from $595 to $760. Conditional permanent residents are required to use form I-751 if they want to maintain and make permanent their lawful resident status and not become subject to removal (deportation) proceedings. The proposed substantial fee increase and the elimination of the fee waiver make it more difficult for low-income families to file timely. Late filing can have severe consequences, including the conditional resident's loss of lawful status and the risk of being placed into removal proceedings. Furthermore, those filing Petitions to Remove Conditions are often eligible to file for naturalization very shortly afterward. Due to the fee increases in both of these categories, applicants for both benefits would go from paying $1,235 in filing fees to $1,930—a 56 percent increase in payment during that short period of time.

NWIRP is particularly concerned about the impact that this increased fee will have for survivors of domestic violence who are applying for the removal of the conditional status of their residence status on the basis of their having been subjected to physical abuse or extreme cruelty. Over the past three years, NWIRP has assisted 100 individuals with I-751 petitions and the majority of them have involved cases under the battery/extreme cruelty exception. While we understand that applicants under this category would remain able to apply for a fee waiver under the proposed changes, this is not sufficient to address our concerns as the proposal also limits the criteria under which an individual may qualify for a fee waiver. As outlined more thoroughly below, the combination of the higher fee and the reduced ability to pursue a fee waiver has the potential to deprive immigrant survivors of their opportunity to pursue immigration protections that Congress has specifically provided for them.

7. USCIS Should Withdraw the Fee Increase for the Provisional Waiver

The creation of the provisional waiver was intended to encourage eligible individuals to complete the immigrant visa process abroad, promote family unity, and improve administrative efficiency. Having an approved provisional waiver helps facilitate immigrant visa issuance at the Department of State (DOS), streamlines both the waiver and the immigrant visa processes, and reduces the time that applicants are separated from their U.S. citizen or lawful permanent resident family members, thus promoting family unity.[21]

[21] 81 Fed. Reg. 50244.

Under the proposed rule, the filing fee for the Form I-601A Provisional Unlawful Presence Waiver would increase 52 percent from the current cost of $630 to $960. This steep increase—especially because the I-601A form is already not eligible for a fee waiver—would discourage individuals from consular processing and undermine the purpose of the provisional waiver. Over the past three years, NWIRP has assisted over 85 individuals in pursuing provisional waivers and we know based on this work that at least some of our clients will be forced to delay and, in some cases, forgo pursuing this process if the proposed increase goes into effect. This will mean that many of our clients will remain without lawful status and subject to deportation even when they actually qualify for permanent residence. The impact will be not only on the clients but their families and others. For these reasons, NWIRP strongly opposes this increase.

8. USCIS Should Not Impose a Renewal Fee for the DACA Program

The current total fee for Deferred Action for Childhood Arrivals (DACA) renewals is $495. USCIS proposes to establish a new, additional $275 fee for Form I-821D, which would raise the new total cost for DACA renewal to $765. This 55 percent increase would create a significant barrier to accessing the protection from deportation and work authorization young immigrants need for their stability.

Most DACA requesters are, by definition, young people who often struggle to afford the existing DACA request fee. Of the approximately 660,880 total active DACA recipients reported on June 30, 2019, approximately 544,180 are age 30 or below, and 112,160 of that number are fifteen to twenty years old. In a 2015 survey of DACA recipients, nearly 70 percent of respondents indicated that they struggled to pay their monthly bills and expenses with their current incomes. However, 80.6 percent of respondents indicated that they were employed, and 80.1 percent believed that DACA would help them achieve their professional goals.

Maintaining current fee levels for the I-821D form allows these young people to continue on their educational paths and to participate in the American economy. Increasing the fee for DACA renewal requests not only hinders current DACA recipients' abilities to earn a living for themselves and their families, but it also harms the U.S. economy by increasing the financial burden on its participants.

Since the DACA program was established, NWIRP has provided assistance to thousands of DACA recipients. We know that one of the biggest challenges for DACA recipients to complete the process has been the barrier that even the current fee represents. We are therefore deeply concerned that the steep increase envisioned in this proposal will only mean that more recipients have to delay or forgo renewals of DACA, causing disruptions not only to them but also to their families and employers. NWIRP urges USCIS to reject this increase.

9. USCIS Should Not Impose a Fee to File for Asylum or for Asylum Seekers to Obtain a Work Permit

USCIS plans to impose a $50 fee for those filing for affirmative asylum. The U.S. has a moral imperative to accept asylum seekers as well as obligations under domestic and international laws. As a signatory to

the 1967 Protocol of the 1951 Convention Relating to the Status of Refugees, the U.S. has an obligation to accept asylum seekers who seek protection.

Refusing asylum applicants for the inability to pay would effectively cause the U.S. to break its treaty obligations and flies in the face of the basic intent of the 1980 Refugee Act. In fact, the vast majority of countries who are signatories to the 1951 Convention or 1967 Protocol do not charge a fee for an asylum application.[22] The United States has long been a world leader in refugee protection. If the United States imposes a filing fee for asylum, other countries may begin to do the same. This could have disastrous effects on refugee resettlement when the number of refugees and displaced people are at historic highs. The U.S. should adhere to its international and domestic obligations and not refuse asylum seekers their chance to seek protection simply for the inability to pay.

Over the past three years, NWIRP has provided direct representation to over 750 individuals pursuing asylum applications and hundreds more asylum seekers who received pro se assistance with their applications. From this experience, we know that even what may be perceived as a small application fee can represent a significant obstacle for individuals who recently arrived in the U.S. and who do not have authorization to work. It is also likely that the fee may result in a number of asylum applicants missing the one-year asylum filing deadline because of their inability to pay. We urge USCIS to reject this proposal.

Moreover, many of the arguments that USCIS has put forth in support of this proposal do not justify the unprecedented step of charging asylum seekers an application fee. Much of the increased backlog and estimated increased costs in processing are due to the Department of Homeland Security's (DHS) own policies and practices. Inefficiency and mismanagement within the agency, including failure to timely hire and train already budgeted staff and failure to implement the recommendations of the DHS Ombudsman's Report, play a significant role in the increased costs associated with benefits application adjudication. The agency should first follow its own recommendations to improve efficiency and implement other cost saving measures before increasing fees that unduly burden vulnerable and indigent applicants for immigration benefits.

For many of the same reasons, NWIRP urges USCIS to reject its proposal to charge asylum seekers a significant fee to obtain work authorization while their cases are pending. The fee will create a substantial burden for asylum applicants -- many come to the U.S. without resources and expend substantial amounts of money to get here, cannot afford this fee, and have no other means to work. The fee will create a catch-22 that requires asylum applicants to pay a substantial sum of money before they are legally authorized to earn income in the United states (the fee will be $490 – tantamount to 68 hours of work at the federal minimum wage of $7.25 an hour).

The negative impact of this new fee will be exacerbated by the fact that asylum seekers will not be able to seek a fee waiver for the work authorization form. This will create a burden for those most in need of

[22] *See* Zolan Kanno-Youngs and Miriam Jordan, *New Trump Administration Proposal Would Charge Asylum Seekers an Application Fee*, N.Y. TIMES, Nov. 8, 2019, https://www.nytimes.com/2019/11/08/us/politics/immigration-fees-trump.html (Noting that the United States would be only the fourth country in the world to charge a fee for asylum).

work authorization to support themselves. The combination of the fee and the lack of a fee waiver will force additional asylum applicants into unauthorized work and will place them at greater risk of exploitation.

10. Naturalization Fees Should Be Affordable

The proposed fee schedule would increase the filing fee for naturalization from $640 to $1,170, an 83 percent increase. This substantial increase would make naturalization less accessible for low-income lawful permanent residents. The benefits of naturalization to individuals and U.S. society cannot be overstated and the application must be affordable in order to avoid suppressing access to the benefits. "Citizenship can serve as a catalyst for immigrants to become more: dedicated to democratic principles; informed about the Constitution; engaged in political elections; represented in the political system; proficient in the English language; unified as families; employable in higher paying jobs; and integrated within a wider circle of people and institutions."[23] With approximately 9 million lawful permanent residents, or LPRs, eligible to naturalize who have not yet filed,[24] and the significant benefits that immigrant integration brings to the United States, it is in the country's best interests to incentivize naturalization by maintaining a low application fee.

In combination with the elimination of the fee waiver, the fee increase for naturalization would make citizenship unattainable for low-income immigrants. Congress has called on USCIS to keep the pathway to citizenship affordable and accessible.[25] Pursuant to this expectation, USCIS has historically redistributed a portion of the cost of naturalization applications among other application fee types to subsidize affordable naturalization and encourage immigrant integration.[26] This proposed fee rule would abandon that historic practice and charge the actual cost of naturalization to applicants, disregarding the agency's previous concern for incentivizing and ensuring the affordability of naturalization. The proposed fee increase is contrary to Congressional intent, and contrary to the interests of the United States society and economy.

Over the past three years, NWIRP has assisted over 300 individuals to pursue naturalization applications, with over a third of them requesting fee waivers. We are certain that the combination of the increased fee and the lack of a fee waiver option will result in a dramatic reduction in the number of LPRs who pursue naturalization. This will of course have the negative impact of preventing all of these LPRs from gaining access to the benefits of citizenship such as voting but will also have even more drastic consequences for some of our clients. For instance, NWIRP regularly works with clients who were admitted to the U.S. as refugees and who have a physical or mental disability that makes them eligible for the Supplemental Security Income (SSI) program. However, SSI benefits are not available for individuals admitted as refugees after 7 years of entry unless they become U.S. citizens. NWIRP regularly

[23] JEFF CHENOWETH AND LAURA BURDICK, CATHOLIC LEGAL IMMIGRATION NETWORK, A MORE PERFECT UNION: A NATIONAL CITIZENSHIP PLAN, at vii, https://cliniclegal.org/resources/guides-reports-publications/more-perfect-union-national-citizenship-plan.
[24] Robert Warren and Donald Kerwin, *The US Eligible-to-Naturalize Population: Detailed Social and Economic Characteristics*, 3 J. Migration & Hum. Security 306, 306 (2015).
[25] H. Rep. No. 115-948 accompanying H.R. 6776, the Department of Homeland Security Appropriations Act (2019).
[26] *See, e.g.*, U.S. Citizenship and Immigration Services Fee Schedule, 75 Fed. Reg. 58,975, www.govinfo.gov/content/pkg/FR-2010-09-24/pdf/2010-23725.pdf.

works with these individuals to help them apply for citizenship so they may be able to maintain their SSI benefits, which are a vital source of support to them for basic necessities. We are deeply concerned that the combined impact of an increased naturalization fee and the fact that fee waivers for this form will not be available under the proposed rule will have a devastating impact on this population. For them, even a short delay in obtaining naturalization will mean they will lose their primary source of income. We urge USCIS to take into account such harsh impacts on a particularly vulnerable population.

Finally, we want to emphasize that the impact of the proposed rule would be compounded by other policies USCIS is implementing at the local level that are already serving as barriers to naturalization. For instance, in June 2019, the local USCIS field office in Seattle announced that due to an increase in processing times and higher number of form N-400s received, they would begin shifting caseloads between other field offices, requiring some applicants to travel to Portland (349 miles roundtrip) or to Yakima (285 miles roundtrip) field offices for interviews. This is already causing unnecessary additional expenses for some applicants and there is no end in sight. Increasing naturalization fees is not a policy that the U.S. should be pursuing. It should instead be focusing on removing barriers to U.S. citizenship.

11. USCIS Should Maintain Fee Waivers for All Current Categories

The proposed rule would eliminate applicants' ability to file fee waivers for all categories of immigration applications except those for which such waivers are statutorily required. This proposal would make essential benefits such as citizenship, green card renewal, and employment authorization inaccessible for low-income immigrants. Fee waivers help families to improve their stability, financially support themselves, and fully integrate into their communities. These immigration benefits have the power to lift up and transform families, communities, and the country as a whole. Because of the benefits of naturalization—one of the form types most frequently associated with fee waiver requests[27]—Congress has called on USCIS to keep the pathway to citizenship affordable and accessible.[28] A recent Congressional Committee report states, "USCIS is expected to continue the use of fee waivers for applicants who can demonstrate an inability to pay the naturalization fee."[29] USCIS' proposed elimination of filing fee waivers would severely undermine Congressional intent, and is also a flawed and shortsighted policy. It will result in considerable harm to new American families and the nation's democracy as a whole.

Beyond just naturalization applications, eliminating the ability of individuals to seek the waiver of fees that they are unable to pay in a wide range of immigration applications is in tension with the intent of Congress. After all, Congress did not impose an across-the-board requirement that would condition the receipt of immigration benefits on individuals' financial circumstances at the moment the application is filed. This is the case even though particular aspects of financial circumstances may have relevance to certain discrete immigration decisions.

[27] USCIS Fee Waiver Policies and Data, Fiscal Year 2017 Report to Congress, USCIS (Sept. 17, 2017), www.dhs.gov/sites/default/files/publications/USCIS%20-%20Fee%20Waiver%20Policies%20and%20Data.pdf.
[28] H. Rep. No. 115-948 accompanying H.R. 6776, the Department of Homeland Security Appropriations Act (2019).
[29] Id. [Emphasis added].

NWIRP is confident that if the changes to fee-waiver eligibility contemplated in the proposed rule are implemented, a substantial number of people would delay or forgo applying for immigration benefits. Over the past 35 years, NWIRP has assisted tens of thousands of applicants with immigration applications before USCIS and its predecessor, and, in the past three years alone, we have helped clients file over 880 applications for fee waivers. We know from that experience that, if they had to pay the required fee—even under the 2016 fee schedule--many of our clients would have been forced to abandon the prospect of securing immigration status or would have, at the very least, taken more time to file their applications as they saved enough money to afford the fee.

The proposal also raises serious due process and equal protection concerns because, for most cases, it creates a wealth test for immigration benefits applications, rather than allowing waivers of fees for individuals unable to afford them.[30] For indigent individuals, the consequences of not being able to pay—and thus apply for—benefits can be severe. Delaying or losing access to benefits can mean staying longer in immigration detention; being unable to preserve legal status; losing eligibility for Supplemental Security Income, due to the failure to apply for naturalization by a particular date;[31] or being forced into legal jeopardy, as it can be a crime for a legal permanent resident to not carry a valid permanent resident card.[32]

For all of these reasons, NWIRP urges USCIS to reject the proposed reduction in the categories of immigration applications that will be eligible for a fee waiver request.

12. Fee Waivers Should be Available to Those Subject to the Affidavit of Support

USCIS proposes making fee waivers unavailable to applicants who are subject to the public charge ground of inadmissibility; those who are subject to an affidavit of support; and those who are already sponsored immigrants. The USCIS Director would also be barred from granting a discretionary fee waiver to anyone in the former categories. This proposal would disproportionately harm low- and moderate-income families.

Most family-sponsored immigrants are subject to the public charge ground of inadmissibility and are required to have an affidavit of support regardless of income.[33] Moreover, the affidavit of support contract terminates only after specific criteria are met.[34] The end result is that an immigrant would likely be barred from fee waiver eligibility for years, without regard to their actual need. This would create an

[30] *See generally Bearden v. Georgia*, 461 U.S. 660, 664-68 (1983); *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 20-22 (1973); *Griffin v. Illinois*, 351 U.S. 12 (1956); *Hernandez v. Sessions*, 872 F.3d 976, 990-94 (9th Cir. 2017).
[31] *See generally* 8 U.S.C. § 1612(a)(2)(A); Soc. Sec. Admin., *Spotlight on SSI Benefits for Aliens—2019 Edition*, https://www.ssa.gov/ssi/spotlights/spot-non-citizens.htm (last visited Nov. 26, 2019).
[32] *See* 8 U.S.C. § 1304(e); 81 Fed. Reg. at 73304 (explaining this provision).
[33] INA 212(a)(4)(C); 8 CFR 213a.2(b)(1).
[34] "The liability of the sponsor executing the affidavit of support terminates only when the sponsored immigrant becomes a U.S. citizen, earns or is credited with a total of 40 qualifying quarters as defined by social security law; dies; loses or abandons LPR status and departs the U.S.; or is ordered removed but readjusts status in immigration proceedings." *See* 8 CFR § 213a.2(e)(2)(i).

additional barrier for low-income immigrants who seek immigration benefits that they would otherwise be eligible for, including naturalization.

13. USCIS Should Retain an Applicant's Inability to Pay as the Criteria for Fee Waivers

In addition to other problematic revisions, USCIS proposes to change the criteria for granting fee waivers from the current standard—the applicant being "unable to pay the prescribed fee"—to a standard based on 125% of the federal poverty guidelines for the household. NWIRP opposes this change and urges USCIS to maintain the current "inability to pay" criteria, which beginning in 2011, USCIS implemented by assessing whether individuals received means-tested benefits, had household incomes at or below 150 percent of the federal poverty guidelines or were experiencing hardship.[35]

Requiring fees to be paid by individuals who cannot afford to pay them will inevitably mean that individuals will forgo or delay benefits applications or choose between immigration fees and other necessities such as food or medicine. USCIS has repeatedly recognized this dynamic. In 2010, when setting fees lower than the current ones, USCIS explained that it allowed fee waivers and certain fee exemptions "so that certain populations do not choose to not request benefits to which they may be entitled because of the fee."[36] When it adopted the current fee schedule in 2016, USCIS again explained that it offered fee waivers and limited the increase of certain immigration fees because it recognized "the potential impact of fee increases on low-income individuals."[37] These dynamics remain true, especially given the substantial increases in fees that USCIS now proposes. Indeed, in this proposal, USCIS recognizes that restrictions on fee-waivers "may adversely affect some applicants' ability to apply for immigration benefits."[38]

Forcing qualified individuals to choose between immigration benefits and necessities is not a legitimate government goal, especially for applications in which "[a] waiver based on inability to pay is consistent with the status or benefit sought."[39] Deterring applications from qualified individuals contradicts, rather than complements, the goals of our immigration system.

While there are strong reasons to maintain the current "inability to pay" standard for fee waivers, USCIS has failed to provide an adequate justification for narrowing the criteria as outlined in the proposal. For instance:

---

[35] *See Fee Waiver Guidelines as Established by the Final Rule of the USCIS Fee Schedule; Revisions to Adjudicator's Field Manual (AFM) Chapter 10.9, AFM Update AD11-26,* https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2011/March/FeeWaiverGuidelines_Established_by_the_Final%20Rule_USCISFeeSchedule.pdf. The U.S. District Court for the Northern District of California has enjoined USCIS's attempt to replace the 2011 memorandum with a new standard expressed in a form-revision and new guidance. *See* USCIS, *I-912, Request for Fee Waiver*, https://www.uscis.gov/i-912; USCIS, *Policy Manual-Chapter 4-Fee Waivers*, https://www.uscis.gov/policy-manual/volume-1-part-b-chapter-4.

[36] USCIS Fee Schedule, 75 Fed. Reg. 58962, 58972 (Sept. 24, 2010).

[37] USCIS Fee Schedule, 81 Fed. Reg. 73292, 73297 (Oct. 24, 2016). *See generally id.* at 73294-95 (showing increases in fees, from 2010 schedule).

[38] 84 Fed. Reg. at 62333.

[39] 8 C.F.R. § 103.7(c)(1)(ii).

- USCIS recognizes that restrictions on fee-waivers "may adversely affect some applicants' ability to apply for immigration benefits"[40] but provides no reason that such a result would be in the public interest.
- USCIS states that its proposal will make the fee schedule "more equitable,"[41] but fails to recognize that it would advance equity for USCIS to provide exemptions and waivers for individuals in vulnerable circumstances or who are unable to pay fees. A truly equitable approach would help ensure that all applicants have access to immigration benefits for which they qualify. By contrast, it is inequitable to prevent applicants from obtaining those benefits simply because they cannot afford the application fee.
- USCIS' reference to a "beneficiary-pays principle"[42] does not justify the proposed restrictions on fee waivers. Already, USCIS's fee-based system reflects a focus on applicants paying their own fees. A "beneficiary pays" system can include the use of general revenues, as well as user fees, and incorporate reduced or waived fees to "advanc[e] a public policy goal."[43] Thus, recognition of this theoretical principle does not explain why USCIS seeks to drastically narrow the fee-waiver eligibility standard and ignores alternatives, such as relying on appropriations, that would lead to lower fees.
- USCIS states that "the number and dollar volume of fee waiver requests has trended upward during periods of economic improvement."[44] It provides no data to support this assertion. The limited figures that USCIS has made available do not show a current upward trend in fee waivers (and do not make any attempt to address *why* fee waiver volumes may change in any given year). Material that USCIS submitted to OMB in October 2019 to support its fee-waiver form-change shows that USCIS's estimated dollar volume of fees waived amounted to $293.5 million in FY 2018, which was less than the $367.9 million of fees waived in FY 2017 (during which the current fee schedule was in place for most of the year) and the $344.3 million waived in FY 2016 (during which the old fee schedule was in place). Further, the *number* of granted fee waiver applications fell from 2016 to 2017, the latest year for which USCIS has made available such figures.[45]
- Moreover, USCIS has no basis for suggesting "that, should the economy worsen, the number of fee waiver requests will increase to a level that could threaten the ability of USCIS to deliver programs without disruption."[46] Predicting the relationship between some macroeconomic indicator and fee-waiver volume would require complex mathematical analysis, to control for other effects, to determine whether a particular macroeconomic variable even correlates with the volume of fee-waiver requests—let alone how significantly and whether there's a causal relationship—and then to predict what would happen if the economy "worsen[s]" by some measure. USCIS does not indicate that it conducted such analysis or provide any other reason to believe that some change in the economy will increase fee waivers to the point that USCIS can

[40] 84 Fed. Reg. at 62333.
[41] 84 Fed. Reg. at 62300.
[42] *See* 84 Fed. Reg. at 62298.
[43] *See* GAO, *Federal User Fees: A Design Guide* 7-10 (May 2008) (GAO-08-386SP).
[44] *See* 84 Fed. Reg. at 62300.
[45] Regulatory Impact Analysis at 31. In general, figures from before December 23, 2016 are of limited relevance, as USCIS implemented its current fee schedule and other regulatory changes at that time, and those changes could have changed fee-waiver application dynamics (as well as the dollar value of any particular fee waived).
[46] 84 Fed. Reg. at 62300.

no longer function. And that extreme hypothetical ignores that if USCIS is faced with unexpected short-falls, the agency can adjust its own operations and/or work with Congress, to address any such problem at the time.

- USCIS states that the new criteria it proposes would "be more consistent with the consideration that applicants should … not depend on the government or others."[47] It also states that a Senate Committee "expressed concern that those unable to pay fees are less likely to live in the United States independent of government assistance."[48] The cited Senate Committee statement says little, since between 2011 and December 2019, based on its March 2011 memorandum, USCIS allowed individuals to establish their inability to pay USCIS fees by showing they received means-tested benefits. Furthermore, USCIS has no role in policing the receipt of government assistance. It is inappropriate for USCIS to use the grant or denial of fee waivers to try to regulate, address, or punish individuals' receipt of "government assistance" or "dependen[ce] on the government or others." The power to regulate such benefits rests with Congress, state legislatures, and the state and federal agencies that administer the benefits.

14. USCIS Should Retain the 2011 Memorandum and Not Require Specific Forms of Evidence of Inability to Pay and Should Consider Comments Submitted by NWIRP and Others Opposing Earlier Proposals to Modify the Fee Waiver Form

USCIS should allow applicants for fee waivers to submit any credible evidence that could establish their inability to pay a prescribed fee and should not restrict or dictate the types of evidence that will be considered to meet eligibility criteria. In large part, the fee-waiver provisions in USCIS's November 14, 2019 proposed rule seek to codify changes that USCIS has already attempted to implement by modifying the current I-912 fee waiver form (OMB Control Number 1615-0116).[49] NWIRP joined many organizations and individuals around the country in opposing the proposed changes to the I-912 form and, unfortunately, the current proposal suffers from many of the same flaws and problems that plagued the original attempt at restricting individuals' ability to access fee waivers. NWIRP objected previously to the fact that USCIS was attempting to change the substantive standard for eligibility for a fee waiver through a change to a form[50] and objects to the attempt by USCIS in this proposal to do so by requiring specific forms of documentation.

In light of the close link between the attempted form-change and the fee-waiver aspects of this proposal, NWIRP re-iterates the objections it made to USCIS and OMB in response to the fee waiver form-change proposals that USCIS proposed in September 2018, April 2019, and June 2019, and adopted in October 2019. NWIRP is attaching to this regulatory comment the multiple comments it submitted in opposition to the form modification proposal and incorporates them by reference here (Appendix A).

[47] Regulatory Impact Analysis at 25.
[48] Regulatory Impact Analysis at 27.
[49] *See generally* USCIS, *Agency Information Collection Activities; Revision of a Currently Approved Collection: Request for Fee Waiver; Exemptions*, 83 Fed. Reg. 49120 (Sept. 28, 2018). The U.S. District Court for the Northern District of California has preliminarily enjoined DHS from implementing the form changes. *See I-912, Request for Fee Waiver*, https://www.uscis.gov/i-912.
[50] See Appendix A.

While we intend to incorporate all of the objections made against the earlier proposal here, we emphasize and highlight the following points:

- By eliminating the option for applicants to pursue a fee waiver on the basis of receipt of a means-tested public benefit, the proposed regulatory change will place a significant time and resource burden on individual applicants and their families. As we articulated fully in our earlier comments, the option to pursue a fee waiver through the means-tested benefit category has been simpler and more efficient for applicants and USCIS's rationales for eliminating this option have not been justified.
- Similarly, the proposed elimination of the means-tested benefit option will negatively impact USCIS, which will have to undertake a more burdensome and time-consuming process of evaluating claims under the proposed income standard.
- The elimination of the means-tested benefit option for pursuing a fee waiver will also lead to a significant negative impact for legal service providers, including nonprofit organizations, and ultimately reduce access to legal services. As we explained in detail in our earlier comments, NWIRP has found that the income-based option for qualifying for a fee waiver required significantly more time and effort than the means-tested benefit option. Because organizations like ours have limited capacity, any time we spend in complying with more stringent requirements to be able to demonstrate eligibility will inevitably lead to a reduction in availability of services to low-income individuals and families in our communities, compared to a standard that allows applicants to establish eligibility based on receipt of means-tested benefits.
- The problems outlined above will be exacerbated by the requirement that the current proposal seeks to codify that would require the submission of tax transcripts when pursuing a fee waiver. Under the regulatory scheme in place before December 2019, the submission of tax transcripts was not a requirement for applicants for a fee waiver, but the proposed rule would codify such a requirement (something that the earlier proposed modifications to the I-912 form have already attempted to do). As outlined in our earlier comments, this requirement will significantly burden not only applicants for fee waivers but also legal service providers such as NWIRP. Obtaining a single IRS document can be a slow and challenging process. The IRS offers transcripts and verifications of non-filing online, but only to individuals with mobile phones and financial accounts in their name, Social Security numbers or tax identification numbers, the same mailing address as the IRS has on file, and English proficiency, as well as internet access. In NWIRP's experience, individuals who are elderly, disabled, homeless, or survivors of domestic abuse, among others, are likely to lack the required accounts, stable mailing addresses, or other requisites—while also facing financial limitations that may be particularly severe. And although individuals can seek documents from the IRS by mail, that process requires anywhere from several days to six weeks or more, especially for individuals who have moved since they last filed taxes and thus need to change their address with the IRS before seeking a transcript.[51]

In addition to NWIRP, other commenters responding to USCIS's recent attempt to change the fee-waiver standard through a form-change emphasized how essential fee waivers can be for low-income

[51] *See* IRS, *Welcome to Get Transcript* (Sept. 10, 2019), https://www.irs.gov/individuals/get-transcript (regarding requirements and timeline for transcripts by mail); IRS, *Get Transcript FAQs* (Nov. 15, 2019), https://www.irs.gov/individuals/get-transcript-faqs (discussing English-only access to online form, as well as address-change process and the wait-time required).

individuals seeking reasonable access to vital immigration benefits. They also explained why USCIS should retain the means-tested benefit criterion for establishing fee-waiver eligibility. Further, they explained that rather than requiring individuals to seek and obtain transcripts from the Internal Revenue Service (IRS) to establish their income, USCIS should accept more readily-available forms of documentation of income, such as copies of filed tax returns or pay stubs. These comments remain relevant to the current proposal, and NWIRP incorporates them by reference here. They were filed in the administrative record in *City of Seattle v. DHS*, No. 3:19-cv-07151-MMC (N.D. Cal. filed Oct. 29, 2019), and are available in ECF Nos. 42-3 through 42-5, at Bates Stamp pages 515-532, 994-5944. NWIRP explicitly urges USCIS and OMB to evaluate those comments as part of the record for the changes embodied in the November 14 proposed rule. A portion of those comments are attached to this letter (Appendix B).

15. The Proposed Rule Will Adversely Impact Survivors of Human Trafficking, Domestic Violence, Sexual Assault and Other Crimes

NWIRP is also concerned that the proposed rule does not address the significant negative impact that this proposal, including the changes USCIS has already sought to implement by modifying the I-912 form, can have on survivors of domestic violence, sexual assault, human trafficking and other crimes who are pursuing humanitarian protections such as those under the Violence Against Women Act (VAWA) or U or T petitions. While the proposed rule that is the subject of this letter recognizes the statutory requirement to preserve fee waivers for this group of applicants, it fails to consider the practical consequences of its proposal.

As a preliminary matter, USCIS's proposal to increase fees for several application forms would lead to significant negative impacts on survivors of human trafficking and other violent crimes. Though the applications for survivor-based relief themselves do not have a fee,[52] applicants must often file ancillary forms that do have fees. The proposed rule significantly increases these fees for applicants. For example, the proposed rule would increase the fee for the I-765, Application for Employment Authorization to $390.00. The proposed rule increases the I-192 Application for Advance Permission to Enter as a Nonimmigrant fee from $930 to $1415.00 (an increase of 52%), and the I-929 Application for Qualified Family Members of U visa holders from $230 to $1515.00, an increase of 559%.

Over the past three years, NWIRP has helped hundreds of survivors pursue humanitarian protections, including over 500 survivors whom we helped to file petitions for U nonimmigrant status. We are confident that the increased fees proposed by USCIS will make it much more challenging if not impossible for survivors of violence to obtain humanitarian protection. For instance, the I-192 waiver form is one that is frequently required to be filed by survivors of crime who are pursuing U nonimmigrant status. This means that while the petition for U nonimmigrant status itself does not have a fee, the fee of the I-192 form becomes a de facto required fee to pursue that status. While USCIS might reply that this fee is one that could be waived by a fee waiver, this is not going to be adequate given the problems with the other proposed changes to the fee waiver process that we outline throughout this comment. As just one example, consider a survivor of violence who is applying for U

[52] See Table 19; Proposed Rule at 62326. See also Proposed Rule at 62298.

nonimmigrant status and for whom the I-192 waiver is required; consider that she's single and has income of $15,650 per year. Under USCIS's proposal, she will be required to pay $1,515 in order to obtain U visa protection, just under 10% of her total annual income, and she will not be eligible to seek a fee waiver because her gross income is just above the 125% level of the federal poverty guidelines. She would not be able to seek a fee waiver under the options previously available (such as receipt of a means-tested benefit or financial hardship) because the proposed rule eliminates those options. It is common sense that such a set of circumstances—which are not only plausible but likely—will lead many survivors of violence to not be able to obtain protections they are entitled to under law. This will mean that survivors will not be able to access critical resources—including employment opportunities or medical care—that will enable them to mitigate the harms of their victimization. That is unacceptable.

USCIS should have been aware of these issues even before this proposal was published because in 2018 and earlier in 2019, when USCIS sought to implement similar changes by modifying the fee-waiver form, it received a significant number of negative comments that highlighted the negative impact the proposed changes would have on immigrant survivors of violence. In this proposal, USCIS seeks to go even further, and thus makes the problem even worse.

As many of the commenters on the fee-waiver form change, including NWIRP, pointed out, survivors of violence (and especially domestic violence survivors) would be harmed by a narrowing of the fee-waiver eligibility criteria and would be particularly disadvantaged by the heightened documentation requirements that USCIS contemplated then (and now seeks to codify in even stricter form). In the context of its proposed form-change, USCIS changed its original proposal and created an exception applicable to survivors of violence who could establish that they could not comply with the increased documentation requirements if they could establish this was "due to their victimization." As NWIRP pointed out in its comments in response to this proposal, this change did not resolve the concerns about the negative impact on survivors, as the change itself imposed a burden on survivors (to re-establish victimization) and it was unclear what would be required to meet this new vague standard.

The concerns we expressed in our earlier comments are heightened when we consider the proposed rule that is the subject of this comment. In the current proposed regulatory text, USCIS does not reference any exceptions to the documentary requirements for survivors of violence. While USCIS appeared to earlier recognize that survivors of violence should be provided some leeway, the current proposed rule does not appear to take this into account at all and does not reference any exceptions to the requirement even under the vague "victimization" standard that it offered earlier. Instead, proposed 8 C.F.R. § 106.3(g) appears to generally require IRS tax transcripts or other documents from the IRS from fee-waiver applicants, something that USCIS has already appeared to recognize will disadvantage immigrant survivors.

As we noted earlier, NWIRP urges USCIS not to adopt any of the proposed changes to the fee-waiver regulation; it should not adopt heightened documentary requirements for fee waivers in *any* cases. However, if USCIS decides to move forward with a regulation regarding documentation requirements, it should at the very least recognize the particular burden these requirements impose on survivors of violence and explicitly lay out *in the proposed regulation* (not simply form instructions) that they will not apply or be mitigated in those cases. NWIRP urges USCIS to allow a lower standard of evidence—such as

the "any credible evidence" standard used in the VAWA statute—for all fee waiver applicants, but at the very least such a standard should be available to survivors of violence to establish eligibility for fee waivers.

16. If USCIS Adopts an Income Threshold for Fee-Waiver Eligibility, It Should Adopt a Threshold of 200% of the Federal Poverty Guidelines

As noted earlier, NWIRP urges USCIS to retain the current "inability to pay" criteria for assessing fee waiver requests and to allow fee waivers to be pursued on the basis of receipt of a means-tested benefit and/or financial hardship, as has been the case prior to December 2019. In addition, and especially to the extent that USCIS decides to move forward with an income-based standard as the exclusive criteria for establishing fee waiver eligibility, NWIRP urges USCIS not to lower the income threshold for eligibility for fee waivers to 125% of the federal poverty guidelines but to instead set a higher limit of at least 200% of the federal poverty guidelines.

Setting the threshold at the 125% level is simply too low. Although USCIS asserts that this benchmark is used in the contexts of the public charge provision and therefore the affidavits of support, it is not appropriate here as those contexts are different. Unlike a public charge determination or an affidavit-of-support requirement, which are forward-looking and seek to make predictions about an individual's future situation, the fee waiver consideration is focused on an individual's financial circumstances at a particular point: when they need to apply for immigration benefits. Thus, the income standard should be tied to an inability to pay those particular fees at the time of the application. USCIS, however, does not provide any link between the proposed threshold and an individual's ability to pay application fees.

In its 2011 memorandum on fee waivers, USCIS appropriately looked to whether individuals are receiving means-tested benefits, because such benefits generally reflect a government agency's determination that an individual faces financial constraints. USCIS began accepting proof of means-tested benefits to establish fee-waiver eligibility because, as a USCIS ombudsman explained in 2009, means-tested benefits "represent[] another agency's independent assessment of [the applicant's] economic circumstances."[53] It made sense for USCIS to look to other agencies' benefits guidelines, as USCIS does not have special expertise in assessing individuals' financial circumstances. Then, when the agency set out the income criterion in its first I-912 form, it adopted a benchmark of 150 percent of the federal poverty guidelines after commenters "noted that this is a standard measure for determining if an individual qualified for a mean[s]-tested benefit."[54]

If USCIS now seeks to base fee-waiver eligibility *solely* on whether or not households earn below a certain income level, USCIS should adopt an income benchmark that is higher than 150 percent of the federal poverty guidelines, to reflect the variety of circumstances that may render individuals unable to pay USCIS fees and to encompass both the income standards used by benefits programs that are lower

[53] USCIS, CIS Ombudsman Teleconference: Fee Waivers: How Are They Working for You, September 30, 2009 (Mar. 9, 2018), https://www.uscis.gov/archive/archive-outreach/cis-ombudsman-teleconference-fee-waivers-how-are-they-working-you-september-30-2009.

[54] See USCIS, Supporting Statement, Request a Fee Waiver (Form I-912), OMB No. 1615-New (2010), https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201007-1615-007 (at "Supporting Statement A").

than 150 percent of the federal poverty guidelines and those that are higher than 150 percent. For example, in Washington State, nutrition assistance is available to individuals with household income at or below 200 percent of the federal poverty guidelines. If individuals' financial circumstances mean that they need assistance with a necessity such as food, then it makes sense to assume they also need assistance with USCIS filing fees.

17. USCIS Failed to Appropriately Consider the Damaging Effects of the Proposed Changes to the Fee Waiver Process

As explained in this letter and in NWIRP's earlier comment letters regarding USCIS' attempt to change the fee-waiver standard through a form change, USCIS failed to properly analyze and justify the changes it is proposing to the fee waiver process. Among other things, USCIS did not recognize or address the harm that individuals will suffer from forgoing or delaying benefits applications or paying for unaffordable fees. It should be noted that the harm is not only to individual applicants who may become unable to work due to delays in pursuing employment authorization, for instance, but will also impact family members of the applicants—including U.S. citizen children and spouses—as well as employers who might be forced to lay off valuable employees.

USCIS' attempts at quantitative analysis are also flawed. It did not use its own data to estimate what small fraction of individuals would continue to be eligible for fee waivers under the new standard. It took a sample of data in which less than 1 percent of fee-waivers were for individuals and forms that would be eligible "according to statute," the key criterion for fee waivers under the proposed rule. USCIS then, however, stated that the sample was not necessarily accurate because USCIS did not collect data from its own service centers.[55] Moreover, USCIS estimated the drop in fee-waiver volume without using even the 1 percent figure that was the only one it calculated.[56] Further, USCIS stated that restricting fee waivers will mean that some individuals will not apply for benefits, but still assumed in its quantitative Regulatory Impact Analysis calculations that the fee-waiver changes will not affect the number of applications.[57]

18. USCIS Should Provide a Mechanism for Individuals to Submit Applications for Director's Exemptions

USCIS's propose rule provides that the agency's director would have authority to waive fees on an individual, case-by-case basis.[58] However, this provision is then limited in that individual applicants will not be able to apply to the Director for such a waiver.[59] NWIRP submits that, in order to make this mechanism in any way meaningful, USCIS should create a mechanism for applicants to be able to submit a request for consideration of this discretionary authority. Such a mechanism should also provide that the request date corresponds with the filing date so that it does not prejudice applicants who are denied such fee exemptions and are ultimately required to pay the filing fee.

[55] *See* Regulatory Impact Analysis at 36-37.
[56] *See generally* Regulatory Impact Analysis at 38-46.
[57] *See* Regulatory Impact Analysis at 46; 84 Fed. Reg. at 62333.
[58] Proposed 8 C.F.R. § 106.3(b)(1).
[59] Proposed 8 C.F.R. § 106.3(b)(2).

19. USCIS Failed to Provide an Adequate Opportunity for NWIRP and Other Interested Parties to Comment on the Complex Changes Proposed

Our organization also wants to make clear our objection to the process and manner in which this problematic, complex proposal has been rolled out.

First, USCIS has not given interested parties, including NWIRP, adequate time to comment on such a complex regulatory proposal. When USCIS originally published this proposal in the Federal Register, it only allowed a 30-day comment period and only after intense public and congressional pressure did it extend the period slightly by 14 days. USCIS did not explain why it did not allow 60 days (or longer) to comment on such a significant set of proposed policy changes, ones that took up 92 pages in the Federal Register, involved a high level of detail, and were accompanied by additional, lengthy quantitative analyses published in the regulations.gov docket. In addition, the benefit of the short extension USCIS implemented was limited because it included federal holidays and the final deadline (December 30) fell during a holiday period during which many organizations are closed and individuals are spending time with families. NWIRP was certainly limited in its ability to adequately comment to this proposal because it did not have sufficient time to fully analyze the proposed regulation, as well as the proposed changes to forms. The short timeline did not allow NWIRP staff to fully consult and engage with each other in assessing the proposal and USCIS's analysis.

Second, the already problematic timeline for comment was made worse by the fact that on December 9, when DHS announced the extension of the principal comment period, it both *shortened* the comment period on the multiple form changes proposed with the notice, *and* published new complex information.[60] This meant that NWIRP and other interested parties had even less than the minimum 30-day period to analyze the new data and respond to the proposal, and their time to comment on form changes was less than what they earlier anticipated. Significantly, the new information that USCIS attempted to characterize as "supplemental," in fact added substantial uncertainty to the analysis as USCIS appeared to suggest that the increase in fees it was proposing was different from what it outlined in the original November 14 notice, but in some indeterminate way. Given this, USCIS should at the very least re-publish the entire notice with a revised analysis using the data it included in the "supplemental" notice of December 9. It should then provide a full 60-day period for comments by the public.

***

For all of the reasons articulated above, NWIRP strongly objects to the proposed rule and urges USCIS to reject this proposal in full. The proposed changes will create perhaps insurmountable barriers for those seeking to secure their immigration status, gain vital humanitarian protections, be together with their families in their communities, and naturalize so that they can participate fully in American life and be civically engaged.

[60] 84 Fed. Reg. 67243 (Dec. 9, 2019).

Please do not hesitate to contact me if you have any questions. You may reach me at (206) 957-8609 or via email at jorge@nwirp.org.

Sincerely,

Jorge L. Barón
Executive Director