U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue NW, Mailstop #2140
Washington, DC 20529-2140

RE: DHS Docket No. USCIS-2019-0010, Comments in Response to Proposed Rulemaking: USCIS Service Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements

Dear Sir/Madam:

I am an immigration attorney and sole proprietor of the Law Offices of Monica Kane. My legal career has been dedicated to the practice of immigration law, and the majority of my work throughout my career has been on behalf of low-income immigrants and mixed-status families, including victims of crime and domestic violence. I was a staff attorney at Neighborhood Legal Services of Los Angeles County, a Legal Services Corporation-funded non-profit organization, from 2002 to 2005 and from 2009 to 2014. From 2005 to 2007, I provided immigration legal services and representation to refugees, asylees, and mixed-status families at Jewish Family and Children's Services, a social service agency in San Francisco. In my private practice, I have continued to represent low-income immigrants and mixed-status families. My areas of expertise in immigration law include family-based petitions and adjustment of status, VAWA and U nonimmigrant related relief, and naturalization and citizenship.

I respectfully submit this comment opposing the proposed fee schedule rule, DHS Docket No. USCIS-2019-0010, including changes to certain fees, changes in fee waiver availability, and the transfer of funds from USCIS to ICE. As I note below, **these changes could actually shift costs from petitioners and applicants to taxpayers, which I believe is contrary to what most Americans would want.**

Insufficient Time for Thorough Review and Comment

On November 14, 2019, DHS published the proposed rulemaking, with a 30-day window for review and response. The proposed rulemaking was 92 pages long, with three columns per page, including supplemental information, changes to numerous forms, and the proposed updated regulatory language. Furthermore, the proposed rulemaking was not a simple "fee schedule change," as drastic changes to the availability of fee waivers were also proposed. 30 days was not enough time to thoroughly review and comment on the proposal, especially as the Thanksgiving holiday fell right in the middle of the review and comment period.

On December 9, 2019, DHS published an "extension" of the comment period to December 30, 2019, but included additional information for review and comment. This extension was meager, given the supplemental information to be considered, and the fact that it encompasses yet another holiday period, as well as year-end business activities that could limit the public's participation.

My comments herein are largely based on the proposed rulemaking that was issued on November 14, 2019, as they were drafted prior to the December 9, 2019 "extension" and intended to be submitted on or before December 16, 2019. The three-week period between December 9th and 30th, was simply not a fair opportunity for most of the public to review and comment on the additional materials.

I would also like to note that before the fee changes in 2016 and the substantial fee schedule change in 2007, the proposed rulemakings provided a 60-day comment period (May 4, 2016 to July 5, 2016, and February 1, 2007 to April 2, 2007, respectively).

Inappropriate Moment for Proposed Rulemaking

In addition to the fact that the proposed rulemaking was issued at a time when the review and comment period would conflict with holiday and year-end activities, it does not seem like DHS had all the information necessary to move forward with a proposed rulemaking on fee changes at the time the proposed rule was published. The November 14, 2019 proposed rulemaking included SIX different scenarios for fee changes, based on variables such as the outcome of litigation surrounding the DACA program and Congressional approval of transfer of funds to ICE. Not only were the various fee scenarios A-F convoluted and confusing, but I was left with the impression that this fee change rule was being rushed out before key information was settled. Now, through a cursory reading of the December 9, 2019 proposed rulemaking, it appears that DHS "anticipates a downward adjustment in the proposed fees."

The issuance of additional supplemental information less than a month later adds to the impression that the November 14, 2019 proposed rulemaking was issued prematurely and was subsequently supplemented on December 9, 2019 in an attempt to make up for its insufficiencies. This is reminiscent of the DHS final rule on public charge inadmissibility that was published in August 2019 (and subsequently enjoined by federal district courts). News reports as well as the need for technical corrections to the DHS final rule in the two-month period between its publication and intended implementation indicated that the rule was rushed out to meet political goals, and I believe the proposed rulemaking on fee changes reflects a similar impetus.

Changes to Fees

Many of the proposed fee changes do not seem well-reasoned or justified, especially considering that the fees were updated just three years ago. It is almost impossible that there have been such substantial changes to the processing of immigration petitions and applications in the past three years to justify new increases of 52% (for Form I-601A), 79% (for Form I-485 with concurrently filed Forms I-765 and I-131), 83% (for Form N-400), and **559%** (for Form I-929), just to give a few examples. I have filed many I-929 petitions in the years before and since the 2016 fee increase, and in my view, the processing and adjudication of this benefit has not changed significantly enough to justify a 559% increase in the filing fee.

Likewise, adding a new fee for Form I-821D would increase the cost of DACA renewal applications by 55%. Yet, Form I-821D was not found to need its own fee in 2012, when it was introduced, or in 2016, when USCIS last updated its fees. The bulk of the work on a Form I-821D would be done at the time of an initial DACA application, but USCIS has not accepted initial DACA applications since September 2017. Almost all of the DACA renewals I have filed since January 2018, when renewals were reinstated by court order, have been adjudicated within about one month of filing. In my view, very little adjudication time is spent on DACA renewals, and thus, there is no justification to suddenly start charging applicants an extra $275 for this brief and straightforward process.

Even some of the fee decreases are puzzling, in light of the current processing and adjudication of the corresponding benefits. For example, the fees for Forms I-90 and I-817 would be decreased under the

proposed rule, yet both form types currently experience inordinate delays. A simple renewal of a permanent resident card via Form I-90 currently takes up to 11 months (processing times range from 7 months to 11 months). It is hard to understand why confirming a permanent resident's status and issuing a new card takes that long under the current fee schedule, and it seems unlikely that these processing times will improve with decreased fees for this benefit type.

In addition to the apparent arbitrariness and lack of reasoning for the fee changes, the increased fees (and elimination of fee waivers, addressed below) will make it that much harder for potential applicants and petitioners to seek the relief for which they are eligible. **I am concerned that this will mean fewer permanent residents who want to become U.S. citizens will be financially able to apply for naturalization and family members of U.S. citizens and permanent residents will be unable to legalize their status or keep their permanent residence, in the case of conditional residents.** The increased fees and elimination of fee waivers would act as an "invisible wall," blocking the legal paths to permanent residence and U.S. citizenship that Congress has provided for by statute.

Changes to Fees for Forms I-765 and I-131

Since 2007, the filing fee for Form I-485 has included not only the adjustment of status application, but also the interim benefits applications for employment authorization (Form I-765) and advance parole travel document (Form I-131). The filing fee for Form I-485 was increased substantially in 2007 to account for the inclusion of interim benefits. (Prior to July 30, 2007, the filing fee for Form I-485 was just $325, and Forms I-765 and I-131 required a separate fee. On July 30, 2007, the filing fee for Form I-485 increased to $930, but this new fee also covered initial and renewal applications for employment authorization and advance parole travel documents.)

The proposed fee rule seeks to reduce the current filing fee for Form I-485 by just $20, while requiring applicants to pay separate fees for each Form I-765 ($490) and Form I-131 ($585). Even with the slight decrease in the Form I-485 filing fee, the proposed fee appears to maintain the bulk of the huge increase in the Form I-485 filing fee from 2007 (when Forms I-765 and I-131 were "bundled" into the Form I-485 filing fee) while also adding back in the separate interim benefits application fees. Thus, while it appears on its face to be a 79% increase over the current fees for similar services, in fact it is likely higher because the interim benefits application fees were already factored into the cost of processing Form I-485 starting in 2007.

Moreover, part of the reason for including interim benefits in the Form I-485 filing fee was to give USCIS an incentive to process and adjudicate Form I-485 in a timely manner to avoid the costs of having to issue employment authorization and advance parole renewals. Returning to separate filing fees for interim benefits eliminates the incentive for timely adjudication. It also appears to signal a willingness to let adjudication times lag further and further behind the processing goals (and achievements) of previous administrations.

Excerpts of the Federal Register notices regarding the 2007 fee rule changes are attached for your reference.

Changes to Fee Waivers

Proposed Section 106.3 would effectively end the availability of fee waivers, other than for victims of domestic violence, human trafficking, and other crimes, and Temporary Protected Status applicants.

This is a mean-spirited rule, which is clearly meant to keep low-income individuals from applying for citizenship, permanent residence, and other immigration relief.

There is no benefit to our society or our communities from the proposed rule. On the contrary, it is extremely undemocratic and un-American to bar the doors to fuller participation in our representative government and society at large by making it harder for people to become U.S. citizens or even start on the path to U.S. citizenship by applying for permanent residence.

Increasing the filing fee, eliminating the reduced fee, and eliminating the fee waiver for Form N-400 is a thinly veiled attempt to slow the number of new citizens and potential new voters. **There is no income requirement for naturalization, and the proposed rule should not be allowed to effectively create one.**

Eliminating the availability of a fee waiver for Form I-90 is contrary to the public interest and really makes no sense at all. Form I-90 is required when a lawful permanent resident needs to renew an expiring permanent resident card or replace a lost or stolen card. The permanent resident continues to be a permanent resident with or without a card, but the card can be necessary to prove employment authorization to a new employer or to access other identity documents that are used to complete Form I-9 at a new job. The card may also be required by the Social Security Administration to process a retirement benefits application. A low-income individual may not be able to pay for Form I-90, which they need to file to obtain the very document that will help them re-enter the workforce and raise their income (or access earned retirement benefits to do the same). The proposed rule unfairly punishes a lawful permanent resident for being unable to pay the filing fee for Form I-90 to renew or replace their permanent resident card and creates an unnecessary barrier to improving one's economic status.

The proposed rule also appears to eliminate the availability of the fee waiver for Form I-751, whether filed jointly or not. A jointly filed Form I-751 must be filed within a 90-day window at the end of the conditional residence period. In order to not allow financial difficulties to interfere with the timely filing of this petition (which does not have any income requirement and does not subject the petitioners to the public charge ground of inadmissibility), a fee waiver should continue to be available to low-income individuals. **It is not in the public interest to have a conditional resident lose status, or even worse, be placed in removal proceedings (discussed further, below) simply because they could not afford to pay almost $800 (or more, if dependents are included) to file Form I-751 on time.**

Furthermore, one of the grounds for a waiver of the joint filing requirement for Form I-751 is for victims of battery or extreme mental cruelty. It is incongruous to allow a fee waiver for victims of domestic violence who qualify for VAWA and the U visa, but not for I-751 petitioners filing alone as victims of domestic violence. A fee waiver should continue to be available in these circumstances.

Even for those individuals who would be potentially eligible to apply for fee waivers, the combination of increased fees and the reduction of the income threshold for a fee waiver would serve as a barrier for many applicants. For example, U nonimmigrant adjustment of status applications must be filed within a one-year (or smaller) window, and many times, multiple family members need to submit their applications around the same time. **I represent many families of U nonimmigrants whose household income is between 125% and 150% of the Federal poverty guidelines, and the availability of the fee waiver is crucial to ensuring that all family members can submit their adjustment of status applications in a timely manner.**

It is important to keep in mind that in addition to the application filing fees and biometrics fees, adjustment of status applicants must submit Form I-693, completed by a USCIS-approved civil surgeon, and recent updates to the requirements for Form I-693 have driven up the cost of this part of the adjustment of status application to around $500, and sometimes more, per applicant.

It is also important to keep in mind that to date, the Vermont Service Center (which receives the victim-based petitions and applications) does not accept credit card payments. Thus, for victims of domestic violence, human trafficking, and other crimes, financing the cost of the filing fee(s) is not an option. Adjustment of status applicants either have to come up with at least $2000 (including I-485 filing fee, biometrics fee, civil surgeon fee, and under the proposed rule, separate filing fees for Forms I-765 and I-131) or qualify for a fee waiver. Reducing the income threshold for fee waivers from 150% FPL to 125% FPL would harm these vulnerable applicants for whom continuing legal status and employment authorization is essential not only to their economic stability but for their emotional healing and well-being.

Transfer of Funds to ICE

I strongly oppose the transfer of funds from USCIS to ICE. When Congress created the Department of Homeland Security and moved the functions of the former Immigration and Naturalization Service into ***separate bureaus***, it meant to maintain an agency focused on the adjudication of benefits. Congress also specified that the bureaus would be funded separately and collected fees are not transferable between the agencies.

In addition to being contrary to the statute, it just seems wrong to take the fees that petitioners and applicants have paid for a specific service and send them to a different agency for a different purpose. I think it sends a positive message to the American public that USCIS is user-fee funded, i.e., that immigrants and their petitioners pay for the adjudication of their applications and petitions, and that message is damaged if it turns out that another agency is taking that money for its own purposes.

I also oppose the diversion of USCIS employees to perform enforcement work for ICE and CBP. The delays in adjudications we have seen in the past two years are likely attributed to the siphoning of USCIS staff, not insufficient funds raised through user-fees.

Excerpts of the Homeland Security Act of 2002 are attached for your reference.

Real Costs

The proposed fee changes, including the evisceration of the current fee waiver provisions, will make it more difficult for eligible immigrants and their petitioners to file affirmative applications with USCIS. **Disincentivizing the filing of eligible applications with USCIS is not in the public interest.** Since USCIS is user-fee funded, eligible applicants and petitioners can resolve their immigration status or applications for relief with USCIS ***at little to no cost to taxpayers***.

When high fees and lack of fee waivers keep potential applicants from resolving their immigration matters with USCIS, some may find themselves in removal proceedings. While USCIS is largely user-fee funded, the immigration court system and ICE prosecutors are not. Individuals who end up in removal proceedings could include conditional residents who can't afford to file their Form I-751 on time, U and T nonimmigrants who can't afford to file their adjustment of status applications on time, and others who

get caught up in immigration enforcement efforts before they can save the money to file an affirmative application with USCIS. Such individuals may have an opportunity to apply for relief from removal in removal proceedings, but these cases often take years and several hearings to complete ***AT THE TAXPAYERS' EXPENSE***. Thus, the proposed rule could lead to the additional taxpayer expenses that result from unnecessary immigration court litigation.

****Disincentivizing and creating financial barriers to resolving immigration matters through USCIS is not a sound policy for immigrants, their petitioners and U.S. citizen family members, or the American public as a whole.****

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In conclusion, the proposed rule appears to be a barely veiled attempt to force immigrants and their petitioners to pay higher fees to USCIS, not so much to cover the costs of their petitions and applications, but to fund immigration enforcement efforts. It is highly unlikely that the higher fees will improve the current USCIS processing times. In addition, some of the fee changes seem arbitrary and without sufficient reasoning or understanding of how the benefit is currently adjudicated.

I strongly oppose the fee change rule, including not only the outsized and arbitrary fee increases, but also the elimination of fee waivers for most applications, the reduction of the income threshold for the fee waivers that would still be available, and the transfer of funds from USCIS to ICE.

Respectfully submitted,

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