



December 20th, 2019

Submitted via www.regulations.gov

Ms. Samantha Deshombres, 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

Dear Chief Deshombres:

FWD.us submits this comment on the proposed U.S. Citizenship and Immigration Services (USCIS) Fee Schedule, DHS Docket No. USCIS-2019-0010 (NRPM), which was published on November 14, 2019, and amended on December 9, 2019. We are concerned about a number of the fee and policy proposals in the proposed fee schedule, and request that USCIS withdraw all provisions that make immigration benefits less accessible to low-income and other vulnerable immigrants.

FWD.us represents a community of business leaders, entrepreneurs, and advocates with thousands of volunteers spanning a majority of the states in the country, who are dedicated to improving immigration laws, policies, and processes in the United States. We are a bipartisan advocacy organization started by key leaders in the tech and business community who want to facilitate innovation and growth in those sectors-- which benefit local, state, and U.S. economies and communities-- by eliminating unnecessary barriers to lawful immigration to the U.S. We believe our country is stronger when all of us have the opportunity to live up to our full potential. This means ensuring our nation's legal immigration laws and policies are administered effectively, and that legal immigration options are accessible to everyone who qualifies, regardless of personal wealth. Our mission and our work with directly-impacted communities

and employers allows us to understand the significance of these proposed fees for applicants and petitioners, and the families and/or businesses that support them, and the repercussions of the increases and elimination of waivers proposed herein.

We understand that statutory and financial realities require USCIS to periodically adjust fees, in order to effectively carry out its mission and deliver satisfactory customer service. But we believe this is possible without making legal immigration prohibitively expensive for the most vulnerable and desperate individuals trying to avail themselves of the process, as well as for American businesses seeking to sponsor valued employees and workers. We are especially concerned with the unfair and unnecessary barriers this proposal creates for naturalization and the extraordinary burdens it places on vulnerable applicants like asylum-seekers and DACA-recipients.

To that end, we respectfully file this public comment to oppose the NPRM and to request that USCIS, as part of the Department of Homeland Security (DHS), reduces the fee increases for the immigration programs that traditionally have had fees to more reasonable and justified levels, to eliminate the provisions that would instate new fees for programs that have previously never been subjected to fees (i.e. asylum and the ancillary employment authorization document (EAD) for asylum seekers and a new DACA filing fee), to restore fee waivers for immigration programs that the NPRM proposes to eliminate; and to formally abandon efforts to transfer collected fees to ICE without Congressional approval.

It is Unlikely that Increasing Fees Will Improve USCIS Processing Times

This proposal for significant fee increases comes at a time when USCIS has unprecedented processing slowdowns and case backlogs, despite previous fee increases¹, largely because of policy changes undertaken at USCIS. While USCIS has contiously delayed promised changes to modernize and streamline the filing process, the agency has simultaneously required additional filings, interviews, and screenings for various programs, as well as social media vetting, extending the amount of time needed to adjudicate applications. In the NPRM, USCIS did not include an analysis of how these recent policy changes have contributed to its backlog,

¹ Most recently in 2016; the table of fee changes is available from USCIS at <https://www.uscis.gov/forms/our-fees>.

nor did USCIS explain what it plans to do with about \$754 million of its new revenue,² and therefore did not reasonably explain or justify, as is required under the Administrative Procedures Act (APA), the significant increase of existing fees, creation of new fees, and elimination of fee waivers proposed in its NPRM. The agency is asking customers to pay more while delivering less.

Analysis by the American Immigration Lawyers Association (AILA)³ has found that, over the past three years, productivity in terms of both receipts and completions is down for USCIS while backlogs grow longer. AILA found that average case processing times have increased by nearly 91% over the last five years, even as case receipt volume has fallen. From FY17 to 18, case processing times increased by 19% even though there was a 17% decrease in receipt volume. AILA's analysis documents how new Trump Administration policies (including "extreme vetting" requirements, onerous in-person interview requirements, increased scrutiny of H-1B high skilled worker petitions, and abandoning longstanding practices of deference for previously approved petitions) have directly contributed to these slowdowns.⁴ So it is not clear that any additional funding will solve these issues,⁵ or that wait times won't just continue to grow as the agency implements additional requirements promised in the Unified Agenda.⁶

We ask that USCIS refrain from increasing fees and instating new fees until the agency justifies those increases with a clear and detailed plan to eliminate backlogs and reduce

² USCIS accounts for funding for transfers to ICE, pay raises for current staff, hiring staff, and net additional costs, but neglects to account for \$754,321,684.58 of the total \$1,348,171,684.58 .

³ American Immigration Lawyers Association, "USCIS Processing Delays Have Reached Crisis Levels Under the Trump Administration", January 30, 2019, available at <https://www.aila.org/infonet/aila-policy-brief-uscis-processing-delays>.

⁴ The increase in bureaucratic red tape and wait times have been particularly burdensome for employers, who have seen their ability to grow and produce impaired by the increased difficulty in sponsoring employees for temporary and permanent immigration. See Andrew, Stuart, "Ken Cuccinelli, U.S. Immigration Services Chief, Boasts Of Increasing Bureaucracy", Forbes, October 21, 2019, available at <https://www.forbes.com/sites/stuartanderson/2019/10/21/usciss-cuccinelli-boasts-of-increasing-immigration-bureaucracy>.

⁵ It is our understanding that other USCIS policies, such as "quality-based adjudications" in lieu of a metrics-based adjudications operation, also significantly contribute to backlogs. If this is the case, it should be at least identified in the proposed rule as a contributing factor for the increase in fees-- since more hiring of adjudicators is needed-- and we encourage USCIS to re-examine this policy to determine whether there are ways to increase productivity while maintaining the quality of adjudications.

⁶ The Unified Agenda can be viewed at <https://www.reginfo.gov/public/do/eAgendaMain>. This is in addition to rulemaking that could be proposed outside of what's listed in the agenda, and additional measures established through agency memos and updated guidance.

processing times, analysis of how current and proposed policy changes will further impact wait times, and an explanation of how specific increases will support those efforts.

Occasional Statutorily-Authorized Fee Increases Should Not Serve as a Bar to Immigration Based on Wealth

Like the recently finalized changes to public charge determinations and executive order establishing new requirements for health insurance (both of which have been enjoined), the NPRM's proposed fee increases, elimination of certain fee waivers, and newly imposed fees seem clearly directed at barring immigration and naturalization on the basis of wealth, and not merely to incrementally increase fees to accommodate agency operating costs. We oppose these drastic increases that appear to be for political purposes, and instead urge USCIS to explore ways to make immigration more accessible, not less.

The proposed fee increases and elimination of waivers impose excessive fiscal burdens on applicants and employers, and will make legal immigration prohibitively expensive for many immigrants and American businesses, alike. While the agency lists the average increase as 21%, the increases are actually much more significant for widely-used form types, including those required for naturalization and long-term immigration and its ancillary benefits. For example, the proposal raises legal immigration fees by over \$1,000 for citizenship (an 83% increase) and legal permanent residence (a 79% increase).⁷ Meanwhile, the NPRM proposes to eliminate fee waivers for naturalization, forcing applicants to bear the full cost (if they are able), in addition to all other legal and filing fees. For context, the cost to file just one of these forms is higher than the median weekly income for U.S. workers;⁸ for low-income workers, it is a much more significant share.⁹

⁷ Boundless Immigration, "Marriage Green Card and Citizenship Application Fees to Increase Under New Proposal," November 10, 2019, available at <https://www.boundless.com/blog/fee-hikes-citizenship-immigration-forms>.

⁸ Bureau of Labor Statistics, "Usual Weekly Earnings of Wage and Salary Workers Third Quarter 2019", October 16, 2019, available at <https://www.bls.gov/news.release/pdf/wkyeng.pdf>.

⁹ When partial fee waivers for naturalization were introduced in 2016, experts estimated about [12% of the population eligible to naturalize](#) (1 million people) would qualify because of their income. Eliminating the waiver could push naturalization back out of reach for them.

Currently, about 40% of applicants request fee waivers,¹⁰ and include young applicants who have not built up sizable savings, older and retired applicants without steady income, and low-income workers for whom the immigration benefit will help them improve their economic situation. This is especially important for benefits that grant work authorization. With work authorization, recipients can achieve self-sufficiency and better provide for themselves and their families. But if work authorization is too expensive to attain, individuals can be trapped in poverty with no opportunity to improve and provide for themselves. This is yet another way eliminating waivers and making legal immigration benefits inaccessible makes self-sufficiency substantially harder.

These waivers are essential to ensuring the legal immigration process is fairly accessible to everyone, and that personal wealth is not a determining factor in someone's ability to immigrate. This is critical because legal immigration facilitates economic growth and development at local, state, and federal levels,¹¹ meaning the benefits to American communities of making the system more accessible will far outweigh the relatively small loss in revenue for the agency.

Economic Harm of Restricting Access to Naturalization Outweighs Any Benefits of Increasing Fees

Making naturalization prohibitively expensive also prevents aspiring citizens from enjoying the benefits of citizenship, including a stronger economic footing for themselves and

¹⁰ Lapan, Tovin, "New Rule Limiting U.S. Citizenship Application Fee Waivers Challenged in Federal Lawsuit", Fortune, November 8, 2019, available at <https://fortune.com/2019/11/08/us-citizenship-application-fee-uscis-waiver-lawsuit>.

¹¹ A great deal of research has documented the ways immigrants contribute disproportionately to federal, state, and local economies - we suggest starting with "Immigrants Contribute Greatly to U.S. Economy, Despite Administration's "Public Charge" Rule Rationale" by the Center on Budget and Policy Priorities (available at <https://www.cbpp.org/research/poverty-and-inequality/immigrants-contribute-greatly-to-us-economy-despite-administrations>), "The Economic and Fiscal Consequences of Immigration" by the National Academies of Science, Engineering, and Medicine (available at <https://www.nap.edu/read/23550>), Immigrants as Economic Contributors: Immigrant Tax Contributions and Spending Power" by the National Immigration Forum (available at <https://immigrationforum.org/article/immigrants-as-economic-contributors-immigrant-tax-contributions-and-spending-power/>), "State and Local Fiscal Effects of Immigration" by the Urban Institute (available at https://www.urban.org/sites/default/files/publication/90796/state_and_local_fiscal_effects_of_immigration.pdf), and "The Many Contributions of Immigrants to the American Economy" by the U.S. Treasury (available at <https://www.treasury.gov/connect/blog/Pages/The-Many-Contributions-of-Immigrants-to-the-American-Economy.aspx>).

their families. Naturalization provides better access to jobs and an opportunity to accumulate “U.S.-specific human capital.”¹² The result is higher employment rates and an increase in individual earnings between 8-11%.¹³ That is additional money naturalized citizens can use to support their families and pay back into the U.S. economy. In this way, naturalization can help immigrants lift themselves out of poverty and low-income jobs; preventing them from naturalizing keeps them stuck and limits their potential.

Naturalization brings benefits to the broader community as well, and restricting naturalization will hurt the economy at a national and local level. Research from the Urban Institute¹⁴ shows that naturalizing all those eligible would lead to increases in individual earnings by as much as \$3,900, increases in employment rates of 2.2 percentage points, and increases in homeownership of 6.3 percentage points, along with a federal, state, and local tax revenue increase of \$2 billion. Because these individuals are now fully committed citizens of the United States, those benefits will persist and increase year after year; on the other hand, restricting access to naturalization, particularly for the underemployed and impoverished, will also deny their communities these benefits.

New Fees Place Unfair Burdens on Vulnerable Populations and Function to Restrict or Dismantle Critical Humanitarian Programs

The rule proposes new fees to apply for asylum *and* to apply for the ancillary benefit of work authorization.¹⁵ Should the proposed new fees be finalized, asylum seeking applicants who cannot afford to pay the fees may have no option but to relinquish the option to file for asylum, and could even consequently face deportation. Those seeking asylum are, by definition, fleeing

¹² For research documenting the positive impact of citizenship on individual earnings and employment, see research from the Center for the Study of Immigrant Integration (available at https://domsife.usc.edu/assets/sites/731/docs/citizen_gain_web.pdf), the Migration Policy Institute (available at <https://www.migrationpolicy.org/research/economic-value-citizenship>), and the Economic Policy Institute (available at <https://www.epi.org/publication/bp256/>).

¹³ Pastor, Manuel and Justin Scoggins, “The Economic Benefits of Naturalization for Immigrants and the Economy,” Center for the Study of Immigrant Integration, December 2012, available at https://domsife.usc.edu/assets/sites/731/docs/citizen_gain_web.pdf.

¹⁴ Enchautegui, Maria E. and Linda Giannarelli, “The Economic Impact of Naturalization on Immigrants and Cities,” the Urban Institute, December 9, 2015, available at <https://www.urban.org/research/publication/economic-impact-naturalization-immigrants-and-cities>.

¹⁵ It has been widely remarked that only the countries of Iran, Fiji, and Australia currently charge for asylum applications.

targeted violence and persecution in their home countries. Many have already sacrificed their personal fortunes to make the journey to America. Demanding they then pay additional fees to even *apply* for help is not only immoral, it will actively expose individuals to danger by pushing refuge further out of reach. Such proposes are out of sync with Congressional intent and the plain language of the INA, which says clearly that fees for adjudication and naturalization are supposed to cover the costs of adjudicating asylum filings and “similar services,” such as the ancillary EAD application.¹⁶

These proposed changes, along with other proposed rules revising the application process and extending the time applicants must wait to apply, (DHS Docket No. USCIS-2018-0001 “Removal of 30-Day Processing Provision for Asylum Applicant- Related Form I-765 Employment Authorization Applications” and DHS Docket No. USCIS-2019-0011 “Asylum Application, Interview, and Employment Authorization for Applicants”), will effectively put work authorization out of reach for many asylum applicants. As noted above, work authorization is critical for individuals to attain self-sufficiency, support their families, and contribute to the community. As Upwardly Global notes in a submitted comment regarding this proposal,¹⁷ making EADs inaccessible would also have economic consequences, including a potential \$4.5 billion in lost earnings for applicants. These costs are not adequately considered in the NPRM. The proposed new and increased fees for asylum are another alarming step towards dismantling our asylum system and should be abandoned.

The additional fees that the NPRM proposes to impose on Deferred Action for Childhood Arrivals (DACA) requesters, which have never been subjected to such fees, would harm this vulnerable population. The Trump Administration has been ordered by various courts to keep the DACA program open for renewals,¹⁸ at least until the Supreme Court issues a decision on the Administration’s efforts to end the program. Despite this, USCIS is proposing to increase DACA renewal fees by \$275. DACA recipients are, by definition, young, and many are enrolled

¹⁶ 8 USC 1356 (m), “Fees for providing adjudication and naturalization services may be set at a level that will ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants.”

¹⁷ Comment tracking number 1k3-9dyg-idgy, available at <https://www.regulations.gov/searchResults?rpp=25&po=0&s=1k3-9dyg-idgy>

¹⁸ See National Immigrant Law Center, “DACA Litigation Timeline”, September 28, 2019, available at <https://www.nilc.org/issues/daca/daca-litigation-timeline/>

full-time in school. Most DACA recipients live in mixed status families in which other undocumented family members may not be able to work legally.¹⁹

For these reasons, DACA recipients already struggle to meet the steep \$495 renewal fee every two years (in fact, many charitable organizations have established funds to support DACA recipients in completing their renewals²⁰). Increasing the fee by over 50% could make DACA prohibitively expensive for applicants who have been enrolled, protected from deportation and authorized to work for years already. The proposed rule therefore seems like a de facto effort to make DACA more inaccessible and reduce the population of recipients, effectively drawing down the program despite legal injunctions. DACA should remain in its current form and no additional fees imposed.

Transferring Funds to Immigration and Customs Enforcement From USCIS Coiffers is Counter Intuitive

Proposing increased fees, new fees, and the elimination of fees for certain waivers on the backs of immigrants and American businesses by arguing it is needed operationally, but simultaneously proposing a transfer of funds to the enforcement arm of DHS, Immigration and Customs Enforcement, is counter-intuitive and not reasonably justified or explained. The proposed transfer of over \$100 million to ICE to fund enforcement efforts, including but not limited to denaturalization and worksite enforcement, would circumvent Congressional authority and force legal immigrants to bear the cost of ICE's irresponsibility. While USCIS is primarily fee-funded, ICE's budget is appropriated by Congress, and Congress has regularly chastised ICE for a lack of fiscal discipline.²¹ Furthermore, USCIS' Fraud Detection and National Security directorate already serves the function of what the rule proposes that ICE do. The justification

¹⁹ United We Dream, "A Portrait of Deferred Action for Childhood Arrivals", October 2015, available at <https://unitedwedream.org/wp-content/uploads/2015/10/DACA-report-final-1.pdf>.

²⁰ See Informed Immigrant, "DACA Fundraiser", available at <https://www.informedimmigrant.com/daca-fundraiser>

²¹ In 2017, the House Appropriations Committee admonished ICE for a "financial management weakness," writing that "ICE has a duty and responsibility to the Department, the Congress, and to taxpayers to be forthright in the identification of its requirements and the proper execution of its funding. It must manage-to-budget and cannot operate under the false perception that Congress will provide a bailout if financial controls fail or are simply ignored." In 2018, the Senate Appropriations Committee echoed these concerns, writing in their report, "In light of the Committee's persistent and growing concerns about ICE's lack of fiscal discipline, whether real or manufactured, and its inability to manage detention resources within the appropriations made by law without the threat of anti-deficiency, the Committee strongly discourages transfer or reprogramming requests to cover ICE's excesses."

appears to be a shell, and if that is the case, we discourage USCIS and DHS from infusing politics into this fee rule on the backs of immigrants and their families and U.S. employers. At a time when USCIS customers are suffering (quite literally in some cases) under the growing backlogs and processing delays this agency faces, it is unconscionable that they would be asked to make up for another agency's financial mismanagement.

We recognize that Congress appropriated additional funding for ICE in FY20 in similar amounts initially requested by the agency and initially proposed in this rule; we also note that the Committee on Appropriations recognized that such a transfer would be detrimental to USCIS' operations and its efforts to reduce backlogs, and forbids the transfer of such funds.²² We want to note for the administrative record that it is, at best, unclear whether USCIS has statutory authority to transfer funds to ICE from the user fee accounts as opposed to the fraud prevention account which is paid into for these specific purposes. We ask that when finalizing the fee rule, USCIS acknowledge these legal issues and also note that the agency recognizes the value of applying user fees narrowly for the purpose of reducing backlogs reducing processing times certainty. We ask USCIS to remove the ICE transfer from its proposal, and reduce fee increases appropriately.

Conclusion

USCIS exists to administer the legal immigration system, which must include ensuring legal immigration is accessible and possible for those who qualify. The agency's success is best measured in its efficiency in processing immigration filings and effectiveness in welcoming prospective new Americans to the country. The proposed fee increases create massive barriers that will make legal immigration exceedingly difficult, even impossible, for many.

We strongly urge the agency to revisit its proposal; specifically, we ask the agency to reduce increases for critical form types such as for naturalization and adjustment of status, abandon efforts to eliminate fee waivers and impose new and increased fees for asylum-seekers

²² The Committee writes, "The recommendation does not assume the use of \$207,600,000 from the Immigration Examination Fee Account (IEFA) to partially offset costs for eligible activities in this account due to concerns with the impact to U.S. Citizenship and Immigration Services (USCIS) operations and the growing backlog in applications for immigration benefits; an administrative provision in the bill prohibits the use of IEFA funds for ICE operations." See <https://www.congress.gov/116/crpt/hrpt180/CRPT-116hrpt180.pdf>

and DACA-recipients, and to abandon its proposal to transfer hundreds of millions of dollars to ICE. Further, we ask the agency to examine how policies introduced in the past years have contributed to increasing delays and backlogs at the agency, and look for ways to increase efficiency and productivity without passing the full price on to the individuals the agency was created to serve.