



December 18, 2019

Submitted via www.regulations.gov

Ms. Samantha Deshombres, Chief
Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
20 Massachusetts Ave. NW
Washington, D.C. 20529

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

Dear Chief Deshombres:

The Catholic Legal Immigration Network, Inc. (CLINIC), in conjunction with the United States Conference of Catholic Bishops Migration and Refugee Services (USCCB/MRS) and Catholic Charities USA (CCUSA), respectfully submit this comment in response to the Department of Homeland Security's notice of proposed rulemaking (hereinafter, NPRM or proposed rule) titled, "U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements," published on November 14, 2019 and supplemented on December 9, 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 vulnerable people.

Embracing the Gospel value of welcoming the stranger, CLINIC promotes the dignity and protects the rights of immigrants in partnership with a dedicated network of immigration legal services programs. This network includes approximately 380 programs operating in 49 states and the District of Columbia. CLINIC's network employs roughly 1,400 attorneys and accredited representatives who, in turn, serve hundreds of thousands of low-income immigrants each year. Nearly all of CLINIC's affiliates offer family-based immigration, naturalization and citizenship, VAWA and other categories implicated by the proposed changes.

USCCB/MRS is a nonprofit corporation whose members are the active Catholic Bishops of the United States. USCCB/MRS advocates and promotes the pastoral teachings of the U.S. Catholic Bishops in diverse areas of the nation's life. USCCB/MRS collaborates with the U.S. government to welcome and manage the provision of services to unaccompanied immigrant children, U.S. and foreign-born victims of human trafficking, and refugees. Since the inception of the refugee resettlement program, USCCB/MRS has assisted in the resettlement of approximately one million individuals. USCCB/MRS, through the Catholic Charities network administers service programs for vulnerable populations on the move throughout the country. USCCB/MRS advocates on behalf of these and other immigrant populations to advance the migration policy priorities of USCCB's

Committee on Migration. The Catholic Church’s work in assisting immigrants stems from the belief that every person is created in God’s image and all are deserving of human dignity.

CCUSA is a national membership organization representing more than 167 diocesan Catholic Charities member agencies. These member agencies operate more than 2,600 service locations across the 50 states, the District of Columbia, and five U.S. territories. Their diverse array of social services reached more than 12.5 million individuals in need last year. These services include immigration and refugee services. In 2018, our agencies served over 300,000 people at the southern border with more than 150 staff and volunteers deployed to assist in humanitarian efforts. Catholic Charities assisted over 303,500 migrants with welcoming and integration services in 2018. Our Catholic heritage includes a scriptural call to provide hospitality to newcomers as if welcoming Christ Himself. The Catholic Church, like our nation as a whole, finds its identity and roots in various immigrant communities. We affirm the inherent dignity bestowed by God on every human person, including immigrants and refugees, no matter the circumstances that compel a person to begin a new life in our community.

As Catholic organizations, CCUSA, CLINIC, and USCCB/MRS adhere to and are guided by Catholic social teaching, which emphasizes welcome and accompaniment of the newcomer and care for the poor as essential ways of knowing God. The Church teaches that these obligations flow from the inalienable dignity of each human person, and that a society upholds this dignity by promoting the common good. Lastly, we strongly believe that the family unit is “the building block of society”¹ and that we must work to maintain and protect the family.

Due to our work with immigrants and refugees around the country, we are deeply concerned that the proposed fee and policy changes would disproportionately harm low-income immigrants and their families, reducing their access to immigration benefits for which they qualify and derivative benefits that support the health and wellbeing of many families. Additionally, we are concerned that the proposed fee schedule changes could threaten the sustainability of long-standing nonprofit legal services organizations that make up our Catholic service networks. As we discuss in more detail below, the anticipated harm that would result from these proposals goes beyond immigrants and the organizations that serve them, but have much larger societal implications, most notably affecting family unity and stability.

I. General Comments

We submit the following comments describing the primary areas of concern regarding the proposed rule. Due to the significantly shorter comment period than previously provided for such significant changes, we were not able to provide comprehensive comments. Therefore, omission of any aspect of the proposed changes from these comments should not be interpreted as tacit approval.

Federal law requires that the Chief Financial Officer of an agency “review, on a biennial basis, the fees . . . imposed by the agency for services and things of value it provides, and make recommendations on revising those charges to reflect costs incurred by it in providing those

¹ Letter from Pope Francis to Cardinal Kurt Koch (Oct. 4, 2013), available at https://w2.vatican.va/content/francesco/en/messages/pont-messages/2013/documents/papa-francesco_20131004_world-council-churches.html.

services and things of value.”² The undersigned recognize the necessity to conduct this review and adjust fees to cover reasonable changes in costs incurred to provide this service. However, in recent years, USCIS has been failing to meet the basic expectations of expedient and efficient adjudication of immigration benefits.³

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,⁴ the overall average case processing time had increased 91 percent between 2014 and 2018,⁵ and USCIS has removed language from its resources that stated any commitment to customer service.⁶ USCIS’ purported shortfalls are a manmade problem that is a result of its poor policy and organizational choices. Immigrants and their petitioners should not have to bear a significant fee increase due to USCIS’ own mismanagement and organizational choices as set forth below, particularly when they cannot expect service to improve as a result.⁷

A. As DHS’s Customer Service Component, USCIS Should Not Transfer Funds to ICE, Which Does Not and Cannot Perform USCIS’s Functions.

USCIS serves as the customer service branch of the Department of Homeland Security (DHS). Its mission is to “administer[] the nation’s lawful immigration system, safeguarding its integrity and promise by efficiently and fairly adjudicating requests for immigration benefits while protecting Americans, securing the homeland, and honoring our values.”⁸ According to the Homeland Security Act of 2002, this includes adjudications of “immigrant visa petitions[,]” “naturalization petitions[,]” applications for refugees and asylum seekers, “[a]djudications performed at service centers[,]” and “[a]ll other adjudications performed by the Immigration and Naturalization Service” prior to the effective date.⁹

Prior to 1988, the Immigration and Naturalization Service—the precursor to USCIS—was funded by appropriations.¹⁰ In 1988, Congress enacted a modification to the Immigration and Nationality

² 31 U.S.C.S. § 902(a)(8) (LexisNexis 2019).

³ See, e.g., *Policy Changes and Processing Delays at U.S. Citizenship and Immigration Services: Hearing before the House Subcomm. on Immigration of the H. Comm. On the Judiciary*, 116th Cong. (2019) [hereinafter *Hearing*] (testimonies of Jill Marie Bussey, Director of Advocacy, CLINIC; Marketa Lindt, President, AILA; Eric Cohen, Executive Director, ILRC, and joint testimony of Don Neufeld, Associate Director, Service Center Operations Directorate, USCIS, and Michael Valverde, Deputy Associate Director, Field Operations Directorate, USCIS).

⁴ See *Hearing, supra* note 3 (joint written testimony of Don Neufeld, Associate Director, Service Center Operations Directorate, USCIS, and Michael Valverde, Deputy Associate Director, Field Operations Directorate, USCIS).

⁵ AM. IMMIGR. LAW. ASSOC., AILA POLICY BRIEF: USCIS PROCESSING DELAYS HAVE REACHED CRISIS LEVELS UNDER THE TRUMP ADMINISTRATION 1 (2019), available at www.aila.org/advo-media/aila-policy-briefs/aila-policy-brief-uscis-processing-delays.

⁶ See Max Greenwood, *Immigration Agency Removing ‘Nation of Immigrants’ from Mission Statement*, THE HILL, Feb. 22, 2018, <https://thehill.com/homenews/administration/375112-us-immigration-agency-to-remove-reference-to-us-as-nation-of>; see also U.S. CIT. & IMMIGR. SERV., POLICY ALERT: USCIS PUBLIC SERVICES NO. PA-2019-03 (2019).

⁷ See U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 84 Fed. Reg. 62,280, 62,294 (proposed Nov. 14, 2019).

⁸ USCIS, www.uscis.gov/aboutus (last visited Dec. 5, 2019).

⁹ Homeland Security Act of 2002 § 451(b), 6 U.S.C.S. § 271(b) (LexisNexis 2019).

¹⁰ U.S. CIT. & IMMIGR. SERV. HISTORY OFFICE AND LIBRARY, OVERVIEW OF INS HISTORY 4 (2012).

Act that stated that “all adjudication fees . . . shall be deposited . . . into a separate account entitled ‘Immigration Examinations Fee Account’” (IEFA).¹¹ These fees are to be used for “expenses in providing immigration adjudication and naturalization services[.]”¹² In other words, USCIS relies on IEFA as its “primary funding source” and uses IEFA “to fund the cost of processing immigration benefit applications and petitions”¹³—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.”¹⁴ USCIS has the authority to “prescribe such rules and regulations as may be necessary to carry out . . . provisions” of the INA relating to the collection and disposition of fees.¹⁵

Despite this clear statutory instruction, however, USCIS sought to transfer \$207.6 million from IEFA to Immigration and Customs Enforcement (ICE) in fiscal year 2019 “for law enforcement fraud investigations.”¹⁶ ICE sought to use \$92.7 million of this transfer to hire “300 new Homeland Security Investigations (HSI) Law Enforcement Officers (LEOs)[.]”¹⁷ For the remaining \$114.9 million, ICE declared an intent to “support[] the immigration benefit fraud prevention and detection and the investigatory work necessary to adjudicate immigration benefit applications and petitions, including visa overstay and worksite enforcement[,]” and to support Operation Janus.¹⁸ In ICE’s own budget overview for fiscal year 2019, ICE described its transfer of funds from IEFA as “support [for] the prevention and detection of immigration benefit fraud[.]”¹⁹ ICE argued in its budget overview that the cost of immigration adjudications and naturalization services “includes investigations to determine whether individuals or organizations requesting immigration benefits pose a threat to national security, public safety, or the integrity of the Nation’s immigration system[,]” even after USCIS has rendered an adjudication.²⁰ ICE admitted in its own budget review that it sought to use IEFA funds not for adjudication, but for enforcement.²¹ This transfer of funds is contrary to the purpose and intent of the IEFA account and undermines the ability of USCIS to fulfill its stated mission.

With the revised NPRM published on December 9, the agencies again attempt to transfer funds from IEFA to ICE, this time in the amount of \$112,287,417 in each of the next two fiscal years. Once again, this proposed transfer is contrary to statutory instruction and congressional intent. The fees paid by applicants and petitioners into IEFA are intended to fund USCIS’s adjudication of benefits, not enforcement activities that are separately and expressly provided for in statute and in congressional appropriations.

¹¹ Immigration and Nationality Act § 286(m), 8 U.S.C.A. § 1356(m) (West); *id.* § 286(m) (note 1988).

¹² *Id.* § 286(n).

¹³ U.S. DEP’T OF HOMELAND SECURITY, U.S. CIT. & IMMIGR. SERV., BUDGET OVERVIEW FISCAL YEAR 2019, CONGRESSIONAL JUSTIFICATION CIS – IEFA - 4 (2019).

¹⁴ *Hearings Before a Subcommittee of the Committee on Appropriations*, 101st Cong. 72 (1990) (Dep’t of Justice FY 1991 Budget Summary).

¹⁵ Immigration and Nationality Act § 286(j).

¹⁶ U.S. DEP’T OF HOMELAND SECURITY, *supra* note 13, at CIS – IEFA - 8.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ U.S. DEP’T OF HOMELAND SECURITY, U.S. IMMIGR. AND CUSTOMS ENF’T, FY19 CONGRESSIONAL BUDGET JUSTIFICATION ICE – O&S – 21 (2019).

²⁰ *Id.* at ICE – O&S - 20.

²¹ *Id.* at ICE – O&S - 21.

Furthermore, DHS already has access to an interagency account to fund fraud detection and prevention: the aptly named Fraud Detection and Prevention Account established by INA § 286(v).²² In 2004, Congress amended the INA to provide for the creation of this account, of which the Secretary of Homeland Security is entitled to a one-third portion, for the purpose of detecting and combating “immigration benefit fraud[.]”²³ ICE was established through the reorganization pursuant to the 2002 Homeland Security Act, and these enforcement activities were intended to be funded by appropriations.²⁴ Thus, ICE has no need to seek a transfer of funds from IEFA.

By unnecessarily transferring funds from IEFA to ICE, USCIS is acting contrary not only to its own mission but also disregarding Congress’s clear statutory intent and circumventing Congress’s constitutionally-mandated role of funding the federal government.

B. Immigration Benefits Should Remain Accessible.

Immigration benefits must remain accessible to applicants and petitioners of all socioeconomic strata. Catholic social teaching emphasizes the value of economic freedom, for the economy must exist for the benefit of the human, not vice versa.²⁵ It is not in anyone’s best interests for people to fall out of lawful immigration status solely because they cannot afford to pay the filing fee. It would certainly be harmful to the immigrants and their families, but it would also be detrimental to employers who would lose their workers, and to the U.S. economy that would lose productivity.

II. USCIS Should Preserve Current Fee Waivers.

The fee schedule proposes to eliminate filing fee waivers for all categories except those that are statutorily required. Eliminating fee waivers would undermine the mission of USCIS by presenting obstacles in the path of compliance with immigration laws.

If DHS were to eliminate all fee waivers except for those enumerated by statute, then the only people who would qualify for fee waivers would be VAWA self-petitioners,²⁶ battered spouses of certain nonimmigrants,²⁷ U visa applicants, T visa applicants, TPS recipients,²⁸ and certain children adopted by U.S. citizens.²⁹ While, certainly all important, this would leave out dozens of other forms of fee waiver relief that have a long-standing track record for serving our national and societal interests by allowing people to maintain their immigration status and work authorization,

²² Immigration and Nationality Act § 286(v); *id.* § 286(v) (note 2004).

²³ *Id.* § 286(v); *id.* § 286(v) (note 2004).

²⁴ Compare Homeland Security Act of 2002, Title IV, Subtitle D, Pub. L. No. 107-296, 116 Stat. 2135, 2192-2195 (2002) (codified as amended at 6 U.S.C. §§ 251–57) (establishing the Citizenship and Immigration Services, which provides for the collection payments) *with id.* at Subtitle E (codified as amended at 6 U.S.C. §§ 271–79) (regarding enforcement functions, which does not provide for the collection payments).

²⁵ *Seven Themes of Catholic Social Teaching*, U.S. CONFERENCE OF CATHOLIC BISHOPS (2005), www.usccb.org/beliefs-and-teachings/what-we-believe/catholic-social-teaching/seven-themes-of-catholic-social-teaching.cfm.

²⁶ This pertains not only to VAWA self-petitioners, but also to those subject to cancellation of removal under VAWA. Immigration and Nationality Act §§ 240A(b)(2), 245(1)(7).

²⁷ Battered spouses and/or parents of battered children of certain nonimmigrants qualify for fee waivers for applications for employment authorization. *Id.* §§ 106, 245(1)(7).

²⁸ *Id.* § 245(1)(7).

²⁹ This pertains only to the renewal or replacement of an already-issued immigrant visa. *Id.* § 221(c)(4).

remain with their families, and pursue full integration and civic engagement through naturalization.

A. History of USCIS' Inconsistent Management of Fee Waivers.

USCIS has a disappointing history of managing fee waivers in a way that limits their accessibility to those in need. The proposed elimination of the full and partial fee waivers for naturalization would add another dark chapter to that history.

Nearly 20 years ago, CLINIC documented in its report, *Citizenship At Risk*, the unfortunate, early steps legacy INS took in managing fee waivers. The report states, "Before October 1988, when the INS issued fee waiver guidance, the INS lacked national procedures for implementing a fee waiver, and many local offices often made their own procedures. In many offices there was no "point person" with the authority to make decisions on fee waiver requests; therefore, few were granted. Furthermore, the INS kept no records of fee waivers requested or approved."

"When fee waivers were occasionally approved, there was a lack of consistency in the decisions, both nationally and within local offices, so that applicants with equivalent backgrounds and incomes would receive different decisions depending on chance factors such as geography and who happened to adjudicate their applications. There was no time limit for decisions, so applicants requesting a waiver would often wait many months for an answer, delaying the receipt of an important immigration benefit. In effect, applicants were penalized for applying for a fee waiver For these reasons, many applicants simply stopped asking for the fee waivers" ³⁰

CLINIC's report further states, "In 1997, the bipartisan U.S. Commission on Immigration Reform criticized the INS for lacking a clear and consistent fee waiver policy."³¹ Following the criticism from the Commission and advocates, INS issued guidance on October 9, 1998, just four days before its sizeable fee increase took effect. While the number of fee waivers received and approved increased, the process remained problematic and irregular due chiefly to the lack of a fee waiver form and standard procedures among adjudicators. The problems led to a lawsuit filed in Miami over a "systematic and Miami district-wide policy" of refusing to grant, or in some instances, even to acknowledge requests for fee waivers.³² Representative Ileana Ros-Lehtinen, from Miami, complained that the INS's application of the fee waiver guidelines was "willy-nilly." "Sometimes a very poor person will get rejected and an equally poor person will be excused from paying," she stated.³³ INS settled the lawsuit.

For over a decade, and despite repeated requests from advocates, INS and then USCIS lacked a fee waiver application form. During those years, many nonprofits used a CLINIC-designed form that helped document an applicant's eligibility under the policy guidelines. USCIS finally produced a fee waiver application form (Form I-912) in 2010 that greatly improved the process, together with the ability to establish eligibility by submitting evidence of receiving a means-tested

³⁰ LAURIE JOYCE ET AL., CATHOLIC LEGAL IMMIGRATION NETWORK, INC., *CITIZENSHIP AT RISK: NEW OBSTACLES TO NATURALIZATION* 13 (2000).

³¹ *Id.*

³² Mary Hladky, *Advocates for Poor Immigrants Sue to Force INS to Waiver Citizenship Fees*, MIAMI DAILY BUSINESS REVIEW, Dec. 30, 1999.

³³ Marika Lynch, *INS Hit with Suit Over Fee Waivers*, MIAMI HERALD, Feb. 8, 2000.

benefit. The new process was more transparent, easy and swift to adjudicate, and far better than any prior fee waiver policy. Yet, in October 2019, USCIS released a new Form I-912 and eliminated receipt of a means-tested benefit from the eligibility criteria, making the process for requesting a fee waiver extremely burdensome, if not completely out of reach, for approximately two-thirds of fee waiver applicants.³⁴

B. The Positive Outcomes of the Prior Fee Waiver Policy.

The pre-October 2019 version of the fee waiver form (I-912) and its associated policy were reliable enough to use in the naturalization workshop model, the primary method used by low-income immigrants to access the application process. The workshop model is used by nonprofits and legal advocates to provide “one-stop” application assistance utilizing authorized practitioners and volunteers. The New Americans Campaign’s effectiveness and efficiency relies on the workshop model.³⁵ Workshops often have a fee waiver station to assist applicants in applying for a fee waiver based on receipt of a means-tested benefit. The Naturalization Working Group reports that a majority of the applicants served at workshops qualify for fee waivers, and the majority of them use receipt of means-tested benefits to prove their inability to pay.³⁶ This is a significant success in terms of nonprofit agencies’ missions to serve the poor in our various communities. It stems from the Catholic Church’s well-documented tradition in pursuit of the common good and care for “these least ones[.]”³⁷ It is well understood that the cost of USCIS fee waivers is borne by applicants who pay full fees. This is a function of pursuing the common good.

USCIS’s Fiscal Year 2017 Report to Congress Fee Waiver and Policies Data provides a table of all fee waivers from 2013-2017 showing a steady increase in requests and subsequent approvals.³⁸ This data shows the great need for fee waivers. In terms of Catholic social teaching, the justification for fee waivers is found in the obligation to care for the poor and vulnerable.³⁹

USCIS has long acknowledged that fee waivers are in the public interest. This diversion from that historic position would significantly alter the operations of the immigration service as a whole. People have long depended on the availability of fee waivers to be able to maintain and improve the stability of their status in the United States, which itself leads to integration and self-reliance. When immigrants are able to access key benefits that give them new immigration status, improve their status, or reunite families, we all benefit. For naturalization in particular, the benefits to society are enormous. Studies have shown that naturalized citizens earn more than their noncitizen

³⁴ This form change is now enjoined per *City of Seattle v. Trump*, No. 3:19-cv-07151-MMC (N.D. Cal. filed Nov. 16, 2019).

³⁵ CLINIC and many of its affiliates are members of the New Americans Campaign; for more information see <https://cliniclegal.org/new-americans-citizenship-campaign>.

³⁶ Letter from Naturalization Working Group to Samantha Deshommes, U.S. Cit. & Immigr. Serv. Reg’y Coord. Div. Chief (Nov. 27, 2018) (on file with author), available at <https://cliniclegal.org/sites/default/files/advocacy/Sign-on%20to-NWG-Comments-on-USCIS-Fee-Waiver-changes.pdf>.

³⁷ *Matthew* 25:31–46 (NABRE).

³⁸ U.S. CIT. & IMMIGR. SERV., USCIS FEE WAIVER POLICIES AND DATA: FISCAL YEAR 2017 REPORT TO CONGRESS 5 (2017). Although there is reason to doubt the accuracy of the data in this report as a whole, this trend seems to be supported by surrounding contextual evidence.

³⁹ U.S. CONFERENCE OF CATHOLIC BISHOPS & CATHOLIC RELIEF SERVICES, OPTION FOR THE POOR AND VULNERABLE (2017).

counterparts.⁴⁰ “For a variety of reasons, naturalized immigrants are likely to see a boost in their family incomes that can benefit their children, their communities and the nation as a whole.”⁴¹ Immigrants who earn more money pay more in taxes and spend more. Naturalization increases individual earnings by an average of 8.9 percent or \$3,200; increases employment rate by 2.2 percent; and increases homeownership by 6.3 percent.⁴² A study that looked at 21 cities found that “the earnings increase and employment gains from the naturalization of those eligible to naturalize would translate into \$5.7 billion in the 21 cities combined.”⁴³ In addition, federal, state, and city income tax and federal payroll tax (from both employers and employees) would increase by \$2.03 billion.⁴⁴

Data revealed years ago that fee waivers would be necessary for many years to come. The Urban Institute in 2003 found that 41 percent of those currently eligible for naturalization and 49 percent of those soon to be eligible for naturalization at that time were under 200 percent of the poverty level.⁴⁵

The poor are even poorer than in years past. “It’s been 10 years since Congress set the current federal minimum wage at \$7.25. Yet across the board, wages simply are not keeping up as day-to-day costs continue to soar. Pew Research found that the average paycheck has the same purchasing power it did 40 years ago. That’s true even in smaller metro areas where the cost of living can be lower.”⁴⁶

The current fee waiver system has been in place for decades. USCIS has not satisfactorily explained the justification for completely eliminating fee waivers for naturalization and several other application categories even in its more than 300 pages of proposed rule-making. The absence of any fee waiver for naturalization is a flawed and short-sighted policy. It will result in considerable harm to new American families and the nation’s democracy as a whole. Cutting off fee waivers for naturalization also is contrary to the goals of full integration in American life, of which citizenship is the ultimate goal and standard. Citizenship, which bestows the ability of individuals to actively and fully participate in American civic and political life, is a benchmark that denotes full Americanization.

C. Likely Consequences of Increased Naturalization Fees without Fee Waivers.

In addition to the elimination of fee waivers, the application fee for Naturalization would

⁴⁰ See, e.g., MADELEINE SUMPTION & SARAH FLAMM, MIGR. POLICY INST., THE ECONOMIC VALUE OF CITIZENSHIP FOR IMMIGRANTS IN THE UNITED STATES 11 (2012).

⁴¹ MANUEL PASTOR & JUSTIN SCOGGINS, CTR. FOR THE STUDY OF IMMIGR. INTEGRATION, CITIZEN GAIN: THE ECONOMIC BENEFITS OF NATURALIZATION FOR IMMIGRANTS AND THE ECONOMY 1 (2012).

⁴² MARIA E. ENCHAUTEGUI & LINDA GIANNARELLI, URBAN INST., THE ECONOMIC IMPACT OF NATURALIZATION ON IMMIGRANTS AND CITIES, at vi. (2015).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ MICHAEL FIX ET AL., URBAN INSTITUTE, TRENDS IN NATURALIZATION 6 (2003).

⁴⁶ Megan Leonhardt, *What It’s Like Trying to Live on Minimum Wage: It’s a ‘Constant Struggle’*, CNBC, July 18, 2019, www.cnbc.com/2019/07/18/what-its-like-to-live-on-minimum-wage-in-the-us.html.

increase from \$640 to \$1,170.⁴⁷ The following are anticipated, but unfortunate, consequences of USCIS' proposed fee schedule and fee waiver rule for the future of naturalization. The list is not exhaustive.

- Low-income applicants would not be able to afford to apply for naturalization unless they access a loan and thereby go into debt.
- Applicants would not be able to afford, and thereby will forego, legal assistance with applications.
- A reduction in legal assistance would lead to fewer applications completed correctly or completely, thereby reducing USCIS' efficiency in processing and adjudicating applications.
- Families with two or more members eligible for naturalization at the same time would have to stagger their applications across several years rather than applying together.
- Due to lack of legal representation, fewer people would apply for disability waivers, English language exemptions or reasonable accommodations under the Rehabilitation Act. Fewer people with disabilities or special needs would be able to naturalize, creating a greater gap between the poor and wealthy.
- Fewer people would apply for naturalization overall, despite their desire to become citizens.
- Far fewer people would be able to participate as voters in our democracy. National and locally elected officials and the government offices they serve would be increasingly less representational. The term "representational government" will have less credibility with each passing year.
- Fewer people would gain the other benefits that come with naturalization, such as better employment and educational opportunities.
- Fewer low-income people would be able to file immediate relative petitions to unite their families more quickly.
- Fewer people would be eligible to fill jobs that require U.S. citizenship.
- As people face these challenges in accessing naturalization, the nonprofit organizations that serve them will, in turn, face insurmountable challenges to achieve their missions and meet their program goals.

A federal government policy that shrinks the number of immigrants arriving to this country, makes it harder for them to become self-sufficient, places barriers to achieving integration, and widens the gap between citizen and non-citizen would harm our country's political, economic and social future. Failure to promote and facilitate naturalization could result in "long-term disenfranchisement; inter-generational civic disengagement; political alienation; fragmentation by social class, nationality, and immigration status; a large immigrant underclass; mixed-status families; and immigrant families physically separated for lengthy periods."⁴⁸

To the contrary, the public and private sectors should continue their highly productive partnership in creating new citizens and reducing the wealth and opportunity gaps already in existence.

⁴⁷ All fee amounts in these comments are based upon the proposed fees listed in the Nov. 14, 2019 Federal Register Notice. We are unable to respond to the fee adjustments referenced in the Dec. 9, 2019 Federal Register Notice because they were not sufficiently described.

⁴⁸ JEFF CHENOWETH & LAURA BURDICK, CATHOLIC LEGAL IMMIGRATION NETWORK, INC., A MORE PERFECT UNION: A NATIONAL CITIZENSHIP PLAN 16 (2007).

D. Recommendations.

Based on the analysis above, we make the following recommendations for the proposed fee schedule:

- Restore full and partial fee waivers for naturalization, along with the prior fee waiver eligibility guidelines that allowed for receipt of a means-tested benefit to demonstrate eligibility.
- Delay implementation of any naturalization fee increases to allow Congress to decide if legislation is possible to restore reasonable naturalization fees that do not eliminate access for a sizeable percentage of the Lawful Permanent Resident (LPR) population seeking naturalization.
- USCIS and advocates should present to Congress a request for appropriated funds that address, in part if not in whole, USCIS business model challenges in keeping services affordable while providing quality customer service.

III. Family-based Immigration Is the Cornerstone of Our Immigration System and Should Continue to be Accessible for Future American Families.

The family is the building block of American society, and imposing or increasing burdens on those seeking to pursue better lives for their families is antithetical to American values. The call to family, community, and participation is a central tenet of Catholic social teaching.⁴⁹ Proposals to increase fees and eliminate fee waivers for many categories of benefits will place low and moderate income families at a disadvantage, making immigration benefits less accessible to the most vulnerable. Additionally, the increased cost will also harm larger families, as it could require family members to stagger applications for naturalization as to ensure they can cover the new exorbitant costs.

A. The Proposed Fee Waiver Exemptions Are Overly Narrow.

CLINIC, CCUSA, and USCCB/MRS oppose proposals that would eliminate fee waivers that are not statutorily mandated and that would greatly restrict USCIS authority to issue discretionary waivers.⁵⁰

DHS proposes eliminating fee waivers for all benefits except those that are mandated by statute.⁵¹ The proposed rule references only a few categories of applicants that would remain fee exempt as required by law.⁵² At the same time, DHS proposes significant fee increases. This would mean

⁴⁹ U.S. CONFERENCE OF CATHOLIC BISHOPS, *supra* note 25.

⁵⁰ We have continuously opposed policy changes that would restrict access to fee waivers. *See, e.g.* Letter from Catholic Legal Immigration Network, Inc. to Office of Management and Budget (May 3, 2019), *available at* <https://cliniclegal.org/resources/fee-waivers-uscis/clinic-public-comment-opposing-uscis-changes-fee-waivers>; Letter from Catholic Charities USA to Office of Management and Budget (July 3, 2019), *available at* www.catholiccharitiesusa.org/advocacy_update/ccusa-opposes-the-u-s-citizenship-and-immigration-services-proposed-rule-eliminating-the-option-to-apply-for-a-fee-waiver-based-on-receipt-of-a-means-tested-benefit/.

⁵¹ U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 84 Fed. Reg. at 62,299.

⁵² *Id.* at 62,297.

that applicants for most benefits would not have any opportunity to request a fee waiver. Applicants for the most common family-based immigration benefits, such as adjustment of status and related interim benefits; provisional waivers; and removal of conditions on permanent residency would not be eligible for a fee waiver.

Under proposed 8 CFR §§ 106.3 (b) (c) and (f), discretionary fee exemptions for individuals or specific form types would be greatly restricted. The NPRM states that the USCIS Director may only consider a waiver related to one of the following: asylees; refugees; national security; emergencies or major disasters; an agreement between the U.S. government and another nation or nations; or USCIS error.⁵³

This narrowing of the discretionary authority would exclude many family-based immigrants from qualifying for a fee waiver. Proposals to increase fees and eliminate fee waivers for many categories of benefits will disadvantage low and moderate income families, making immigration benefits less accessible to the most vulnerable. USCIS should have the discretion to consider the totality of an applicant or requestor's circumstances, regardless of what benefit they seek.

Likewise, the restrictive categories for which discretionary fee waivers would be available would disadvantage recipients of certain humanitarian benefits, such as Special Immigrant Juvenile Status and Cuban Adjustment applicants. Under most circumstances, these individuals would be unable to seek fee waivers for related benefits such as adjustment of status. Those who receive humanitarian benefits are among the most vulnerable in our society; they are likely to be in need of financial assistance and it would be appropriate to offer the opportunity to seek a fee waiver.

Proposed 8 CFR § 106.3(c) allows a fee waiver for emergent circumstances or natural disaster, but only if the restrictive requirements of proposed 8 CFR § 106.3(d) are met. All people who are affected by emergent disaster or natural disaster should be eligible for a fee waiver to be granted in an exercise of discretion.

1. The Requirements for Fee Waiver Eligibility Are Overly Restrictive.

In addition to the restrictions discussed above, DHS proposes making fee waivers unavailable to applicants who have an annual income at or below 125 percent of the federal poverty guideline; are subject to the public charge ground of inadmissibility; subject to an affidavit of support; or those who are already sponsored immigrants.⁵⁴ This proposal would disproportionately harm low-income and working-class families.

2. The Proposed Rule Obscures the Process for Obtaining a Fee Waiver.

According to proposed 8 CFR § 106.3(b)(2) an individual may not directly submit a request that the Director exercise the authority to grant a fee waiver. Given this statement, it is unclear how any individual could request a fee waiver using Form I-912. Applicants should not be forced to rely on DHS identifying them as eligible for a fee waiver. DHS's suggestion that exemptions for

⁵³ *Id.* at 62,363.

⁵⁴ *Id.* at 62,332.

specific forms or specific classes of applicants would be publicized on the USCSIS website or through policy updates is wholly insufficient.

B. Affidavit of Support, Sponsored Immigrants, and Public Charge.

DHS 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.⁵⁵ 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.⁵⁶ Thus many intending immigrants and permanent residents would be unable to receive fee waivers for immigration benefits.

C. The Proposed Changes to the Adjustment of Status Application Process Would Harm Most Applicants.

1. We Oppose Unbundling Interim Benefits.

DHS 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 and advance parole travel authorization. Due to immigrant visa backlogs, applicants for adjustment often face long waits before their permanent residency can be granted. They rely on employment authorization so that they can continue to live and work in the United States while their application for adjustment is pending. 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 will make adjustment of status unattainable for many low-income individuals who are immigrating through a U.S. citizen (USC) or LPR relative. Increasing the overall cost of adjustment of status would prevent many low-income and working-class individuals from becoming permanent residents and undermines family unity.

2. We Oppose Increasing Costs for Children Under 14 Concurrently Filing Form I-485 with a Parent.

Currently, there are two different fees for I-485. The fee for an adult is \$1,140 and the fee for a child under the age of 14 concurrently filing with a parent is \$750.⁵⁷ DHS proposes one standard

⁵⁵ Immigration and Nationality Act § 212(a)(4)(C); 8 C.F.R. § 213a.2(b)(1) (2019).

⁵⁶ 8 C.F.R. § 213a.2(e)(2)(i).

⁵⁷ U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 84 Fed. Reg. at 62,305–06.

⁵⁷ *Id.* at 62,305.

fee of \$1,120 fee for all applicants, including children under the age of 14 years concurrently filing Form I-485 with a parent.⁵⁸

DHS states that “there is no data showing a cost difference correlated to the difference in applicant age” and it is proposing separate fees for interim benefits.”⁵⁹ However, DHS does not address potential efficiencies in adjudicating two related Form I-485s submitted by family members concurrently. This rule would burden families who would be required to pay an increased total cost for multiple concurrent adjustments or be forced to choose which family members to prioritize for adjustment. This would create barriers for low-income and working-class individuals to become permanent residents and would undermine the long-standing goal of family unity.

3. We Oppose Deleting Language Regarding 245(i) Penalty Fee Exemptions from the Regulations.

DHS proposes to delete language from the regulations stating that there is no fee for 245(i) adjustment when the applicant is an unmarried child under 17 or the spouse or the unmarried child under 21 of an individual with lawful immigration status and who is qualified for and has applied for voluntary departure under the family unity program.⁶⁰ DHS claims that since the fee exemption is explicitly provided by statute under INA 245(i)(1)(C) and is included in the form instructions, it is unnecessary to codify it in the Code of Federal Regulations. However, removing it from the regulations may create confusion and make it harder for applicants to identify that a fee exemption is available.

D. Other Benefits.

1. Form I-751, Petition to Remove Conditions on Residence.

Those who immigrate based on a petition filed by their USC or LPR spouse within two years of their marriage are considered conditional residents. Conditional residents must file a joint petition with their USC or LPR spouse to remove conditions on their residence and preserve their status 90 days before the second anniversary of obtaining LPR status.⁶¹

DHS proposes a 28 percent increase to the current fee for filing Form I-751 Petition to Remove Conditions on Residence, from \$595 to \$760. This 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.

⁵⁸ See proposed 8 C.F.R. §106.2(a)(16).

⁵⁹ U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 84 Fed. Reg. at 62,305.

⁶⁰ *Id.* at 62,306.

⁶¹ Immigration and Nationality Act § 216.

2. Form I-601A, Application for Provisional Unlawful Presence 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.⁶² 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 LPR family members, thus promoting family unity.⁶³

Under the proposed rule, the filing fee for the I-601A Provisional Unlawful Presence Waiver would increase 52 percent from the current cost of \$630 to \$960. This steep increase and the lack of fee waivers would discourage individuals from consular processing and undermine the purpose of the provisional waiver.

E. Example Case.

We oppose the fee increases and policy changes discussed above, as they would disproportionately harm hard-working immigrant families. As an example of a family that would suffer under these changes, consider the hypothetical case of the Martinez family.

The Martinez family has four members: Mrs. Martinez was born in the United States, and recently married Mr. Martinez who entered the United States with a visa. Mr. Martinez has two daughters from a previous relationship who were born abroad. The family needs to apply for Adjustment of Status for Mr. Martinez and his two daughters, remove the conditions on residence after two years, and apply for citizenship after three years of residency. We will compare the costs of this process before and after the proposed fee changes.

<i>Form</i>	<i>Current Fee Schedule</i>	<i>Proposed Fee Schedule</i>
<i>I-130 for Mr. Martinez and his daughters</i>	<i>\$535</i>	<i>\$555</i>
<i>I-485 for Mr. Martinez</i>	<i>\$1,140 + \$85 biometrics</i>	<i>\$1,120</i>
<i>I-765 for Mr. Martinez</i>	<i>\$0</i>	<i>\$490</i>
<i>I-131 for Mr. Martinez</i>	<i>\$0</i>	<i>\$585</i>
<i>I-485 for each daughter</i>	<i>\$750 each</i>	<i>\$1,120 each</i>
<i>I-131 for each daughter</i>	<i>\$0</i>	<i>\$585 each</i>
<i>I-751 for Mr. Martinez and his daughters</i>	<i>\$595 + \$85 biometrics</i>	<i>\$760</i>
<i>N-400 for Mr. Martinez</i>	<i>\$640 + \$85 biometrics</i>	<i>\$1,170</i>
<i>N-600 for each daughter</i>	<i>\$1,170 each</i>	<i>\$1,015 each</i>
<i>Totals</i>	<i>\$7,005</i>	<i>\$10,120</i>

Over a period of three years, this family would pay an additional \$3,115 in order to maintain their status and secure citizenship.

⁶² Expansion of Provisional Unlawful Presence Waivers of Inadmissibility, 81 Fed. Reg. 50,244 (July 29, 2016) (to be codified at 8 C.F.R. pts. 103, 212).

⁶³ See *id.*

F. Recommendations.

- Maintain family-based fee levels, as the increase would not be reasonable, particularly for low-income families, as no fee waivers would be available.
- Maintain bundling of Adjustment of Status and interim benefits.

IV. Religious Organizations and Religious Workers.

International religious workers provide critical pastoral care and social services for American parishioners and communities. Catholic dioceses and institutes of religious men and women rely heavily upon religious sisters, brothers, and lay missionaries from abroad, who are sponsored and qualify for this status. Some fill a growing need in the Catholic Church for those called to religious vocations. Others provide critical services to local communities in areas including religious education and care for vulnerable populations such as abused and neglected children, the elderly, immigrants, refugees, and families at risk. For example, international religious sisters perform a variety of ministry activities. According to a recent study, 21 percent of international sisters serve in parish/diocesan/ethnic group ministry. Another 20 percent in hospital/healthcare ministry and 15 percent serve in education.⁶⁴

Because of the increasingly diverse ethnic makeup of our religious congregations and the nation as a whole, the Religious Worker program is particularly important in addressing the specific pastoral and service-related needs of ethnic groups, including the Hispanic, Asian, and African communities. This program is also important because religious organizations face obstacles in using traditional employment-related categories, which historically have not fit their unique situations. Further, due to their often austere lifestyles, many religious workers may not be able to afford USCIS' proposed fee increases.

A. I-129 & I-360 Petitions.

USCIS is proposing to separate Form I-129, Petition for Nonimmigrant Worker into different forms and to charge different fees for the new forms. The proposal indicates "the proposed fees are calculated to better reflect the costs associated with processing the benefit requests..." (page 62307). Under the proposed schedule, Religious Worker petitions would be filed using Form I-129MISC and the filing fee would increase from \$460 to \$705. This is a staggering 53 percent change. The filing fee for Form I-360 would increase from \$435 to \$455.

We oppose these fee increases because they would disproportionately affect small religious organizations that serve a charitable function in our society. By law, petitioners (sponsor/employer) of the I-129 petition for an R-1 Religious Worker Visa/Status⁶⁵ and an I-360 Special Immigrant Religious Worker⁶⁶ are non-profit religious organizations. Faith-based organizations play a critical role in society and often serve as a safety net for those especially in

⁶⁴ MARY JOHNSON ET AL., *MIGRATION FOR MISSION: INTERNATIONAL CATHOLIC SISTERS IN THE UNITED STATES* 59 (Oxford U. Press 2019).

⁶⁵ 8 C.F.R. 214.2(r)(8)(i).

⁶⁶ 8 C.F.R. 204.5(m)(1).

need (children, the poor, elderly, infirmed, etc.). This work is incredibly challenging for these religious organizations because of the limited resources available to them. In addition, the employees who serve these organizations receive limited income or no income for the important work they do. The proposed fee increases for the I-129 and I-360 petitions are unduly burdensome on the U.S. religious worker sponsor. The Catholic Church is composed of hundreds of religious orders of men and women (Religious Brothers and Sisters). These orders dedicate their mission and being to live according to the teachings of the Gospel and Jesus Christ. In doing so they seek to serve God and the community and help those in need. Almost every resource goes to carrying out this mission. The extremely high fee increases in these petitions will make it harder for U.S. religious organizations to bring religious workers to the U.S. It will have a chilling effect on U.S. religious organizations and many will decide they can no longer afford to bring religious workers to the U.S. Such an effect is contrary to the traditions and respect this country holds for faith and religion.

B. I-485, I-765, & I-131 Applications.

As mentioned, religious workers who come to the U.S. receive low salaries or no salaries for the important work they do. In particular, vowed members of religious orders profess the vow of poverty.⁶⁷ This means that they are not permitted to keep income for their work but instead contribute any compensation back to the order so it can fulfill its mission (helping those in need). The extremely high fee increase to the permanent residence process (I-485, I-765, and I-131 applications) will make it very difficult for religious workers to ever obtain this benefit. The negative impact this will have on American communities is alarming. Again, this country has a long history of religious organizations and religious workers as cornerstones of community support in American society. To unfairly penalize these low-income organizations and immigrants (not just religious workers) is unconscionable.

C. USCIS Should Consider Policy Changes and Operational Efficiencies that Would Reduce or Eliminate the Need to Increase Filing Fees.

CLINIC's Religious Immigration Services program represents approximately 150 Catholic dioceses and religious communities throughout the United States and over 800 international religious workers at any given time serving the Catholic Church in the United States. Over the past few years, CLINIC's clients have suffered from USCIS policy changes that have hindered the ability of religious institutions to petition for and maintain the religious workers necessary to carry out their faith-based missions. As detailed in CLINIC's recent testimony before the House Committee on the Judiciary's Subcommittee on Immigration and Citizenship, USCIS policy changes such as refusing to give deference to their own previous approval decisions and withdrawing a category of expedited processing frequently used by religious workers have caused significant problems and left religious institutions without essential personnel. The backlogs in processing I-485 applications for Permanent Resident Status have additional negative effects on religious workers due to limitations specific to the R-1 visa.⁶⁸

⁶⁷ 1983 CODE C.668 §§ 1, 3, 5.

⁶⁸ See *Hearing, supra* note 3 (testimony of Jill Marie Bussey, Director of Advocacy, CLINIC).

As indicated in our testimony, lengthening USCIS processing times for permanent residency has detrimental effects on the sponsoring religious institution and the religious worker. When USCIS processing times extend, religious institution petitioners have to maintain the religious worker's underlying nonimmigrant status and/or seek renewed Employment Authorization Documents (EADs). Extending the nonimmigrant status requires the institution to pay more government filing and legal fees, using precious resources that could be spent on ministries. When USCIS takes so long to process these religious worker cases, the religious worker and the communities they serve also suffer. This is exemplified by the case of a priest with the Diocese of Ogdensburg (NY).

Father Arjun⁶⁹ is a Catholic priest, originally from India, serving in upstate New York, across a 160-mile rural, mostly low-income area. In his mission, Father Arjun celebrates Mass, has religious education, conducts weddings, visits the sick, and presides over funerals. Father Arjun's green card has been pending for over two years now. Not having his permanent residency has forced him and the diocese to submit application after application and pay fee upon fee in order to maintain work authorization, he will have to request a second medical examination now that the first expired, draining his diocese of resources. As a result of these delays, he has had tremendous difficulty maintaining his driver's license, the key tool that allows him to fulfill his calling.

D. Recommendations.

- Eliminate fee increases for religious workers consistent with the benefit these workers provide to American communities and the limited means of the nonprofit religious organization petitioners.
- Restore longstanding guidance leading to more efficient case processing and lower costs of adjudication, including guidance directing USCIS adjudicators to give deference to prior determination of eligibility in the adjudication of petitions for extension of nonimmigrant status (PM3020151), and eliminate compulsory interviews for all employment-based petitions.

V. Humanitarian Relief.

The proposed fee schedule would greatly disadvantage those seeking humanitarian relief in the United States.

A. DACA.

The current total fee for Deferred Action for Childhood Arrivals (DACA) renewals is \$495. DHS proposes to establish a new \$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 DACA.

DACA is a particular kind of deferred action created to offer protection from removal and employment authorization to people who were brought to the United States as children and who have essentially grown up in the United States. In granting someone DACA, USCIS exercises

⁶⁹ Name has been changed to protect privacy.

prosecutorial discretion in determining whether it would be an efficient use of limited enforcement resources to pursue removal of an applicant. According to immigration legal scholar Shoba Sivaprasad Wadhia, DACA involves “significant humanitarian considerations that have historically been and continue to be acknowledged in determining whether discretion should be exercised.”⁷⁰

In 2016, DHS declined to consider DACA in its fee schedule revisions because it considered DACA an exercise of prosecutorial discretion rather than an immigration benefit.⁷¹ DHS stated that its omission of DACA “mitigates an unnecessary revenue risk, by ensuring that USCIS will have enough revenue to recover full cost regardless of DHS’s discretionary decision to continue [DACA].”⁷² While employment authorization may be considered an immigration benefit, DACA itself, as a form of deferred action, is not a conferral of a benefit, but a choice not to take action.⁷³ Consequently, DACA need not be considered part of the USCIS general fee schedule at all.

Most DACA requesters are, by definition, young people who often struggle to afford the existing DACA application 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 portion are 15 to 20 years old.⁷⁴ 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.⁷⁵ 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.⁷⁶ With increased opportunity to work, DACA recipients also have increased financial responsibilities. According to a 2019 study, 78.5 percent of DACA recipients who have been able to earn more money use that income to help their family financially; 25.2 percent care for an elderly parent or relative; and 46.9 percent pay for childcare costs.⁷⁷

Case Example:

Guillermo arrived in the United States when he was 12 years old. When the program was created in 2012, he applied and was granted DACA. After graduating high school, he used the EAD he received through DACA to earn money to support himself, and help support his mother and sister. After some time, Guillermo had earned enough money to apply to and attend college in the evenings, while still working during the day. He carefully budgets the money that he needs to pay his tuition each term, contribute to his family’s rent and expenses, and cover the cost to renew his EAD every two years. There is seldom much money left over. If the

⁷⁰ Shoba Sivaprasad Wadhia, *Response: In Defense of DACA, Deferred Action, and the DREAM Act*, 91 TEX. L.R. 59, 71 (2013).

⁷¹ U.S. Citizenship and Immigration Services Fee Schedule, 81 Fed. Reg. 73292, 73312 n.71 (Oct. 24, 2016).

⁷² *Id.* at 73312–13.

⁷³ See Shoba Sivaprasad Wadhia, *Demystifying Employment Authorization & Prosecutorial Discretion in Immigration Cases*, 6 COLUM. J. RACE & L. 1, 6 (2016).

⁷⁴ U.S. CIT. & IMMIGR. SERV., DACA POPULATION RECEIPTS SINCE INJUNCTION 14 (2019).

⁷⁵ ZENÉN J. PÉREZ, UNITED WE DREAM, A PORTRAIT OF DEFERRED ACTION FOR CHILDHOOD ARRIVALS RECIPIENTS: CHALLENGES & OPPORTUNITIES THREE-YEARS LATER 14 (Adam Luna et al. eds. Oct. 1, 2015).

⁷⁶ *Id.* at 11–12.

⁷⁷ TOM K. WONG, ET AL., CTR. FOR AMERICAN PROGRESS, RESULTS FROM 2019 NATIONAL DACA STUDY (2019), available at <https://cdn.americanprogress.org/content/uploads/2019/09/18122133/New-DACA-Survey-2019-Final-1.pdf>.

proposed fee increases are enacted, Guillermo would have to find an additional \$275 each time he renews his status to cover the DACA renewal fee. If he is not able to find the additional money, he would have to stop attending college in order to maintain his status and keep his job. It does not benefit Guillermo, his family, his college, his employer, or the U.S. economy for him to have to quit school just in order to maintain lawful immigration status.

Maintaining current fee levels for DACA applications allows these young people to continue 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.

B. Asylum - Fee for Form I-589, Application for Asylum and for Withholding of Removal.

1. Requiring Asylum Seekers to Pay for Protection is Against International Norms.

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. Further, through the Refugee Act, the US has domestic legal responsibility to asylum seekers. Originally drafted in 1980, the Refugee Act establishes the core principles of asylum adjudications in line with U.S. treaty obligations. The Refugee Act has been amended but never has Congress required a fee for an asylum application. Refusing asylum applicants for the inability to pay would effectively cause the U.S. to abrogate its treaty obligations and would violate the basic intent of the 1980 Refugee Act. In fact, the vast majority of countries who are signatories to the 1951 Convention and/or 1967 Protocol do not charge a fee for an asylum application.⁷⁸ According to USCIS' own research, the U.S. would be joining the list of fee-charging countries with Iran, Fiji, and Australia and charge the third highest fee.⁷⁹ This proposed fee runs counter to the U.S.'s consistent leadership in accepting more refugees than any other country in the world.

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. The statute explicitly mentions "services provided without charge to asylum applicants or other immigrants."⁸⁰ USCIS sets fees at levels that also cover the cost of benefit requests from applicants who are not charged, such as asylum seekers and refugees.⁸¹ While this may not be definitive in proving that Congress intended asylum applications to remain free from fees, this inclusion indicates that Congress at least contemplated waiving or exempting from fees certain forms of relief, including but not limited to asylum. Charging a mandatory fee for an affirmative asylum application runs counter to this nation's mission of welcoming the persecuted. Protection from persecution should not come with

⁷⁸ GLOBAL LEGAL RESEARCH CENTER, LAW LIBRARY OF CONGRESS, FEES CHARGED FOR ASYLUM APPLICATIONS BY STATES PARTIES TO THE 1951 REFUGEE CONVENTION (2017), available at www.loc.gov/law/help/asylum-application-fees/asylum-application-fees.pdf.

⁷⁹ U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 84 Fed. Reg. at 62,319.

⁸⁰ Immigration and Nationality Act § 286(m).

⁸¹ U.S. DEP'T OF HOMELAND SECURITY, *supra* note 13, at CIS – IEFA - 4.

a price tag. Addressing the root causes of migration should be at the public policy forefront rather than the suggested deterrence-minded proposal that targets the victims of migratory displacement.

2. The Proposed Mandatory Fee for the Affirmative Asylum Application will Burden Survivors of Persecution.

USCIS is proposing to implement a mandatory \$50 fee on all affirmative asylum applications. Thus, if an applicant lacks the ability to pay the fee, asylum seekers will not have access to asylum protection, employment authorization, a refugee travel document or a pathway to U.S. Citizenship. USCIS argues that the amount of \$50 was chosen because it was large enough to produce a revenue and at the same time small enough to be affordable. USCIS is wrong to assume that the \$50 fee is so modest that it would not be burdensome because many asylum seekers come to the United States with barely anything and will continue to have difficulty obtaining employment authorization in order to work legally.

Asylum seekers come to the United States fleeing persecution and most come to the shores of the United States with nothing more than the clothes on their backs. Upon arrival asylum seekers face many obstacles. For instance, asylum seekers have to wait to receive permission to legally work in the United States. Congress codified a waiting period for work permits for asylum seekers in 1996 in response to purported notion that asylum seekers were filing asylum applications in order to gain a work permit.⁸² Thus, asylum seekers can apply for a work permit 150 days after they have submitted an application for asylum with the assumption that the employment authorization would be issued after the 180 days the application is pending.⁸³ Asylum seekers must wait six full months *after* the asylum application has been filed in order to receive employment authorization and start the road to financial stability. Moreover, most asylum seekers are prohibited from receiving federal public benefits and most state public benefits.⁸⁴ Thus with no safety net or access to employment, asylum seekers who arrive with nothing more than the clothes on their backs and small amounts of cash in their pockets are unable to pay an asylum fee of any amount.⁸⁵

Asylum seekers generally deplete their life savings to travel to the United States and cannot afford even the extra cost of \$50.⁸⁶ Consequently, many asylum seekers face severe financial instability and the prospect of working industries where they could be prone to exploitation, unsafe work

⁸² David A. Martin, *Making Asylum Policy: The 1994 Reforms*, 70 WASH. L. REV. 725, 733 (1995).

⁸³ 8 C.F.R. § 208.7 (1994).

⁸⁴ KARINA FORTUNY & AJAY CHAUDRY, URBAN INSTITUTE, A COMPREHENSIVE REVIEW OF IMMIGRANT ACCESS TO HEALTH AND HUMAN SERVICES vii (2011), available at www.urban.org/sites/default/files/publication/27651/412425-A-Comprehensive-Review-of-Immigrant-Access-to-Health-and-Human-Services.PDF.

⁸⁵ Lindsay M. Harris & Joan Hodges-Wu, *Asylum Seekers Leave Everything Behind. There's No Way They Can Pay Trump's Fee.*, WASH. POST, May 1, 2019, www.washingtonpost.com/outlook/2019/05/01/asylum-seekers-leave-everything-behind-theres-no-way-they-can-pay-trumps-fee/?noredirect=on&utm_term=.f4103a5f7230; "WE CAN'T HELP YOU HERE": U.S. RETURNS ASYLUM SEEKERS TO MEXICO, HUMAN RIGHTS WATCH (2019), available at www.hrw.org/report/2019/07/02/we-cant-help-you-here/us-returns-asylum-seekers-mexico.

⁸⁶ Harris & Hodges-Wu, *supra* note 85; Suzanne Gamboa, "Heartless': Advocates Bristle at Trump Plan to Charge Asylum-Seekers a Fee," NBC News (Apr. 30, 2019), www.nbcnews.com/news/latino/heartless-advocates-bristle-trump-plan-charge-asylum-seekers-fee-n1000341.

environments, and labor or sex trafficking.⁸⁷ Asylum seekers are forced to live hand to mouth as they struggle to pay for their daily living expenses and a mandatory fee of \$50 would be a heavy burden. The amount of money is irrelevant when the pocket from which it is charged is empty.

3. By Requiring a Mandatory Asylum Fee, DHS Is Reversing Its Own Policy that Humanitarian Applications Should Be Fee Exempt.

DHS will not permit a fee waiver for the asylum application because the agency *assumes* the cost of adjudicating fee waiver requests may exceed the revenue of the fee thus “offsetting any cost recovery achieved from the fee.” One can only infer this assumption to be based on the fact that most asylum seekers will apply for a fee waiver, and many will most likely qualify for a fee waiver. If this is the logic of the USCIS reasoning in not allowing for a fee waiver, USCIS should revisit its own comments to the federal regulation where it exempted fees for other humanitarian benefits. In prior regulations, USCIS stated very clearly:

USCIS proposed to exempt certain classes of aliens from paying a filing fee where it believes that the incidence of fee waivers due to inability to pay would be very high. In the proposed rule, USCIS proposed to expand the class fee exemptions to three small volume programs: Victims of human trafficking (T visas), victims of violent crime (U visas), and Violence Against Women Act (VAWA) self petitioners. . . . Anecdotal evidence indicates that applicants under these programs are generally deserving of a fee waiver. Thus, USCIS determined that these programs would likely result in such a high number of waiver requests that adjudication of those requests would overtake the adjudication of the benefit requests themselves.⁸⁸

In the context of humanitarian applications such as T and U visas and VAWA self-petitions, USCIS recognized that applicants under these applicants are meant to be given special protections because they are victims of some of the most hideous crimes imaginable. Asylum seekers fleeing violence, torture and persecution are no less deserving. Congress intended to protect asylum seekers and never instituted a fee on asylum applications, and there is no benefit to USCIS doing so now. USCIS’s only explanation for instituting a mandatory fee is that the cost to adjudicate the fee waiver applications would be too high. If that is the case, the asylum application should continue to be fee exempt similar to other humanitarian applications. There has never been a wealth test for the world’s most vulnerable individuals to exercise their right to seek asylum in the United States; it is unconscionable that USCIS would not only force asylum seekers to pay to seek safety but to simultaneously prohibit them from even seeking a waiver of the fee.

⁸⁷ See, e.g., INT’L LABOUR ORG. & WALK FREE FOUND., GLOBAL ESTIMATES OF MODERN SLAVERY: FORCED LABOUR AND FORCED MARRIAGE 52–53 (2017) (“[I]n countries of destination . . . the identification and protection of those deemed most at risk of modern slavery should considered part of the response to influxes of asylum seekers.”).

⁸⁸ Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule, 72 Fed. Reg. 29,851, 29,865 (May 30, 2007) (to be codified at 8 C.F.R. pt. 103).

C. Requiring a Fee for the Initial Employment Authorization for Asylum Seekers will Burden Vulnerable Victims of Persecution.

The DHS proposed rule if published in the current form would require that asylum seekers applying for their first employment authorization document to pay a fee. Currently, asylum seekers apply for an employment authorization under the category (c)(8),⁸⁹ indicating that their asylum application has been pending for 180 days. This first employment authorization application under this category has historically been fee exempt. The current rule would require that asylum seekers who have an asylum application pending to now pay the regular fee for their first work permit application.

1. Requiring a Fee for the First EAD Based on a Pending Asylum Application Will Disenfranchise Vulnerable Asylum Seekers.

Eliminating the fee exemption for the first employment authorization application for asylum applicants leaves vulnerable asylum seekers without the ability to support themselves and their families. This rule change could cause lasting harm to vulnerable people already living on the margins.

The first employment authorization application for asylum seekers has historically been fee exempt, recognizing that this uniquely vulnerable population is unlikely to have the funds to pay for an initial EAD, and may lack family ties in the United States to provide financial support. Introducing a fee for an asylum seeker's first work permit puts them at great disadvantage making them unable to contribute to American society while they await a final adjudication of their asylum application. Currently the average wait time for asylum final adjudication in immigration court is 696 days.⁹⁰ Asylum seekers should continue to be allowed to benefit from the first free work permit so they can best contribute to society and become financially solvent.

Charging an insurmountable fee to access to lawful employment during the pendency of their asylum claims will remove countless willing workers from the legal workforce. For asylum seekers, many of whom are already traumatized from persecution, harm and threats, causing them to apply for asylum, not giving them vital access to a work permit will further alienate them from society. Without the ability to work, asylum seekers will continue to live in a destabilized situation, which will cause further housing, food, and physical insecurity.⁹¹ All of these external instabilities could lead to further mental and physical health deterioration.

2. Asylum Seekers Will Not Be Able to Access Vital Services without Government-Issued Identification.

For many immigrants, EADs serve as an important identification document allowing them to access a driver's license, state identification card, Social Security card, medical card etc. These

⁸⁹ 8 C.F.R. § 274a.12(c)(8) (2019).

⁹⁰ *Immigration Court Backlog Tool*, TRAC IMMIGRATION, https://trac.syr.edu/phptools/immigration/court_backlog/ (last visited Dec. 5, 2019).

⁹¹ HUMAN RIGHTS FIRST, CALLOUS AND CALCULATED: LONGER WORK AUTHORIZATION BAR ENDANGERS LIVES OF ASYLUM SEEKERS AND THEIR FAMILIES 1 (Apr. 2019), available at www.humanrightsfirst.org/sites/default/files/Work_Authorization.pdf.

forms of identification are vital for new immigrants and for asylum seekers who fled persecution without any identification. These documents are the first step toward self-reliance. Without an identification card, an asylum seeker may have trouble enrolling children in school, accessing health services, riding public transportation, renting an apartment, or reporting a crime.⁹² The rule change would also cause significant hardship to asylum seekers' families and destabilize the financial and health situation their children, spouses, parents, and other family members. Additionally, charities, including faith-based social services organizations, will be forced to expend limited resources to help asylum seekers with subsistence while they wait longer for the ability to support themselves through work. In 2018, Catholic Charities agencies fed nearly 10 million people dealing with food insecurity.⁹³ Forty-four million total meals were prepared and 120,500 were served per day in 2018. The inability to work and provide for one's family while pursuing an asylum case will continue to stretch our already limited resources available to those in need.

In addition to basic survival necessities, asylum seekers without documentation fear contacting the police in the event of crime. The fear of potential removal from the United States constantly hovers over undocumented immigrants and without at least some form of identification, many who are victims or witnesses would never call the police in the event of a crime.⁹⁴

3. Hindering Access to Employment Authorization Affects Asylum Seekers' Ability to Pursue their Asylum Claims in the United States.

Gaining asylum in the United States is very dependent on obtaining competent counsel.⁹⁵ Asylum seekers often flee their home country with little to no ability to plan for their trip, and when they arrive they have few personal belongings. Most of the time, they do not have any financial means to support themselves, let alone hire an attorney, and they depend on local nonprofit organizations. Pro bono attorneys and nonprofit organizations do not have the capacity to represent every asylum seeker, and thus many asylum seekers must seek private attorneys for representation. Asylum seekers who are unable to work will be unable to pay an attorney and this inability to pay will seriously impact their chances in gaining asylum. Charging an insurmountable employment authorization fee on the first application will impair these asylum seekers' ability to secure representation, which will in turn negatively affect their ability to gain asylum in the United States.

⁹² HAMUTAL BERNSTEIN ET AL., URBAN INST., ADULTS IN IMMIGRANT FAMILIES REPORT AVOIDING ROUTINE ACTIVITIES BECAUSE OF IMMIGRATION CONCERNS 2, 11 (2019); Brooke A. Lewis, *HPD Chief Announces Decrease in Hispanics Reporting Rape and Violent Crimes Compared to Last Year*, HOUSTON CHRONICLE (Apr. 6, 2017), www.chron.com/news/houston-texas/houston/article/HPDchief-announces-decrease-in-Hispanics-11053829.php.

⁹³ Catholic Charities USA, Annual Report, at 5 (2018), available at www.catholiccharitiesusa.org/wp-content/uploads/2019/12/CCUSA-2018-Annual-Report-FINAL_no-donors.pdf.

⁹⁴ BERNSTEIN ET AL., *supra* note 92, at 2, 11; Lewis, *supra* note 92; James Queally, *Latinos are Reporting Fewer Sexual Assaults Amid a Climate of Fear in Immigrant Communities, LAPD Says*, L.A. TIMES (Mar. 21, 2017), www.latimes.com/local/lanow/la-me-ln-immigrant-crime-reporting-drops-20170321-story.html.

⁹⁵ *Outcomes by Nationality and Representation Status*, TRAC IMMIGRATION, <https://trac.syr.edu/immigration/reports/491/> (last visited Dec. 9, 2019); Samantha Balaban et al., *Without A Lawyer, Asylum-Seekers Struggle With Confusing Legal Processes*, NPR (Feb. 28, 2018, 2:10 PM), www.npr.org/2018/02/25/588646667/without-a-lawyer-asylum-seekers-struggle-with-confusing-legal-processes.

Legal counsel for asylum seekers in their underlying asylum applications, makes it more likely that they will prevail on their applications.⁹⁶ Asylum seekers' work authorization should be prioritized by USCIS. Rather than place additional hurdles⁹⁷ before asylum seekers in their quest for self-sufficiency, the U.S. government should welcome the stranger and allow asylum seekers to provide for themselves and their families by issuing employment authorization as quickly as legally possible under the INA.

D. Increased Fees for I-929, Petition for Qualifying Family Member of a U-1 Nonimmigrant.

The purpose of the Petition for Qualifying Family Member of a U visa holder is to encourage, establish and support family unity for victims of crime. This petition is integral to support family unity where a U visa holder was not able to include a qualifying family member on a U visa application. Form I-929 allows victims of crime, many of whom continue to suffer from mental and physical trauma, to be reunited with family members even if these family members could not be included when the original U visa application was filed. Allowing victims of crime to be reunited with family members—spouses, children and in the case of minors, parents—is integral to their healing and treatment. The fee increase from \$230 to \$1515, a 559 percent increase, will discourage family unity for victims of crime in particular need of family support.

The fee increase is unfair and inconsistent with Congressional intent. Congress intended for victims of crime and their family members to benefit from U protection without having to worry about how they were going to pay.⁹⁸ Currently, family members of U visa applicants are able to be included as a derivative on Supplement A of the U visa application at no charge. However, qualifying family members who were not originally included in the initial U visa application have always paid a modest fee, eligible for a fee waiver. This striking, nearly six-fold increase coupled with the more stringent standards for filing a fee waiver, will effectively discourage family unity for victims of crime.

⁹⁶ Asylum seekers cannot afford legal representation without the ability to lawfully work, and asylum seekers represented by legal counsel are nearly four times more likely to win their cases than those appearing in immigration court without an attorney. HUMAN RIGHTS FIRST, CENTRAL AMERICANS WERE INCREASINGLY WINNING ASYLUM BEFORE PRESIDENT TRUMP TOOK OFFICE 3 (Jan. 2019), available at www.humanrightsfirst.org/sites/default/files/Asylum_Grant_Rates.pdf. See also *Asylum Decisions*, TRAC IMMIGRATION, <https://trac.syr.edu/phptools/immigration/asylum/> (last visited Dec. 17, 2019).

⁹⁷ In the past two years, asylum seekers have faced unprecedented restrictions on their ability to exercise their right to seek safety in the United States. The government has sought to impose an Asylum Ban barring those who enter the U.S. without inspection from eligibility to seek asylum, Aliens Subject to a Bar on Entry Under Certain Presidential Proclamations, 83 Fed. Reg. 55,934 (proposed Nov. 9, 2018) (to be codified at 8 C.F.R. pts. 208, 1003, 1208), which is currently enjoined. It has implemented a Third Country Transit Bar, Asylum Eligibility and Procedural Modifications, 84 Fed. Reg. 33,829 (July 16, 2019) (codified at 8 C.F.R. pts. 208, 1003, 1208), preventing those who have transited through a country on the way to the southern border from being eligible for asylum. It has forced vulnerable asylum seekers to wait in dangerous conditions in Mexico while their cases are pending in the United States, *Migrant Protection Protocols (MPP)*, U.S. IMMIGR. AND CUSTOMS ENF'T, www.ice.gov/factsheets/migrant-protection-protocols-mpp (last updated Nov. 12, 2019), and it has announced its intentions to charge a fee for asylum applications Memorandum on Additional Measures To Enhance Border Security and Restore Integrity to Our Immigration System, 2019 DAILY COMP. PRES. DOC. 251 (Apr. 29, 2019).

⁹⁸ Immigration and Nationality Act § 245(l)(7).

VI. Naturalization.

When more people can naturalize, the United States benefits. According to the Center for Migration Studies, while causation is unclear, “for naturalized citizens, median income and naturalization rates rise as age, length of residence, ability to speak English, and educational attainment increase.”⁹⁹ Additionally, in almost every category, “those who have not yet naturalized have lower median incomes than those who have naturalized.”¹⁰⁰

A. The Importance of Naturalization to the United States.

Naturalization is so important to the vitality of democracy in the United States that it is the only immigration-related benefit embedded in the Constitution.¹⁰¹ With 43 million foreign-born residents,¹⁰² the United States’ strength and vitality depends on the contributions of its newest members, including their ability to exercise their full rights and responsibilities as citizens.

The benefits of naturalization to individuals and the U.S. society cannot be overstated. “For individuals, these include the right to vote, faster family reunification, better employment and educational opportunities, and a stronger attachment to the United States. For U.S. society, naturalization can be viewed as a benchmark of integration. 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.”¹⁰³

Immigrants strongly desire to naturalize. “The annual number of naturalization applications filed has increased in recent years. The number rose by nearly 200,000 between FY 2015 and 2016 (783,062 to 972,151), and FY 2017 saw a small additional increase to 986,851.”¹⁰⁴ “In FY 2017, the median number of years of residence for newly naturalized citizens (that is, the period between the date when they gained LPR status and when they were naturalized) was eight years.”¹⁰⁵

Numerous studies have demonstrated the role naturalization plays in the integration of the foreign-born in the U.S. society. CLINIC’s report, *A More Perfect Union: A National Citizenship Plan*, cites eight studies from 1997 to 2005 just before the report was published.¹⁰⁶

⁹⁹ Robert Warren & Donald Kerwin, *The US Eligible-to-Naturalize Population: Detailed Social and Economic Characteristics*, 3 J. ON MIGRATION & HUMAN SECURITY 306, 317 (2015).

¹⁰⁰ *Id.*

¹⁰¹ U.S. CONST. art. I, § 8, cl. 4.

¹⁰² *Selected Characteristics of the Native and Foreign-Born Populations: 2016 American Community Survey 1-Year Estimates*, U.S. CENSUS BUREAU, <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk> (last visited Dec. 5, 2019).

¹⁰³ CHENOWETH & BURDICK, *supra* note 48, at vii.

¹⁰⁴ Brittany Blizzard & Jeanne Batalova, Migration Policy Inst., *Naturalization Trends in the United States*, MIGRATION INFO. SOURCE (July 11, 2019), www.migrationpolicy.org/article/naturalization-trends-united-states.

¹⁰⁵ *Id.*

¹⁰⁶ CHENOWETH & BURDICK, *supra* note 48, at 14–16.

Newly naturalized citizens, eager to participate in our democracy, consistently vote at higher rates than other citizens.¹⁰⁷ In 2018, “The naturalized-citizen turnout rate among Latinos was 44.2 percent, higher than the 39.0 percent turnout for U.S.-born Latinos. (Naturalized citizens are immigrants who have become U.S. citizens. Latinos and Asians are the nation’s two largest immigrant groups.) This gap between the Latino groups narrowed from 2014, when turnout was 35.2 percent and 24.2 percent, respectively. For Asians, naturalized citizens had a turnout rate of 42.7 percent compared with 36.7 percent for those born in the U.S.”¹⁰⁸

In 2015, an estimated 9.3 million legal permanent residents were eligible to apply for naturalization.¹⁰⁹ A 2015 study of 21 U.S. cities found that “if all eligible immigrant residents were to naturalize, their aggregate income would increase by \$5.7 billion, yielding an increase in homeownership by over 45,000 people and an increase in tax revenue of \$2 billion. Nationally, if half of the eligible immigrant population of the United States naturalized, the increased earning and demand could boost GDP by \$37-52 billion per year.”¹¹⁰

In sum, from the first writing of the U.S. Constitution to today’s social and economic research, there is no doubt as to the huge benefits naturalization provides to the United States.

B. The Importance of Naturalization to the Catholic Church in the United States and Catholic Nonprofit Organizations.

The Catholic Church seeks to abide by scriptural teachings to provide care for migrants globally.

“You shall treat the alien who resides with you no differently than the natives born among you; you shall love the alien as yourself; for you too were once aliens in the land of Egypt. I, the Lord, am your God.”¹¹¹ There are dozens of other Old and New Testament scriptures that speak to the command to care for travelers and strangers in our midst.¹¹² The Holy Family of Jesus, Mary and Joseph on their way from Bethlehem to Egypt are viewed as a migrant, even a refugee, family. The Catholic Church in the United States views itself as an immigrant church since it was established in the country by Catholic immigrants. The Church seeks to not only welcome, but fully integrate newcomers into the broader fabric of parish life and empower them in U.S. society as a whole.

Annually, the Catholic Church participates in the Catholic Immigrant Integration Initiative Conference. CLINIC hosts an Immigrant Integration Center with resources, research studies, project initiatives and flow-through funding. All of the Catholic efforts towards integration aim

¹⁰⁷ JEFFREY S. PASSEL, ELECTION 2004: THE LATINO AND ASIAN VOTE, URBAN INST. (2004).

¹⁰⁸ Jens Manuel Krogstad et al., *Historic Highs in 2018 Voter Turnout Extended Across Racial and Ethnic Groups*, PEW RESEARCH GROUP (May 1, 2019), www.pewresearch.org/fact-tank/2019/05/01/historic-highs-in-2018-voter-turnout-extended-across-racial-and-ethnic-groups/.

¹⁰⁹ Ana Gonzalez-Barrera & Jens Manuel Krogstad, *Naturalization Rate Among U.S. Immigrants Up Since 2005, With India Among the Biggest Gainers*, PEW RESEARCH GROUP (Jan. 18, 2018), www.pewresearch.org/fact-tank/2018/01/18/naturalization-rate-among-u-s-immigrants-up-since-2005-with-india-among-the-biggest-gainers/.

¹¹⁰ *The State of New American Citizenship*, BOUNDLESS IMMIGRATION (Feb. 4, 2019), www.boundless.com/american-citizenship-report/, (citing ENCHAUTGUI & GIANNARELLI, *supra* note 42).

¹¹¹ *Leviticus* 19:34 (NABRE).

¹¹² See, e.g., *22 Bible Verses on Welcoming Immigrants*, SOJOURNERS, <https://sojo.net/22-bible-verses-welcoming-immigrants> (last visited Dec. 5, 2019).

for full inclusion and feature naturalization. Welcoming immigrants and helping them become citizens is seen by the Church as obeying scripture, living out the love of Christ and practicing the common good. Serving immigrants and naturalizing new citizens is a practical way Catholic nonprofits act on their individual mission statements in caring for the poor and people on the move.

Naturalization has been a high priority for CLINIC since its founding in 1988. CLINIC has managed dozens of projects, national, regional and state-wide, to naturalize immigrants. In its more than 30 year history, CLINIC has expended up to \$20 million in flow-through funds to over 80 local nonprofits for naturalization services, focusing on serving low-income immigrants. CLINIC has also expended significant resources to provide training and materials to promote and facilitate naturalization. CLINIC is a co-founder of the New Americans Campaign (NAC), a nine-year initiative that has helped over 250,000 people apply for naturalization. Through the NAC, CLINIC currently funds 27 nonprofits in a dozen cities.

CLINIC affiliates consistently report that naturalization is the first or second most-requested service by low-income immigrants coming to them for legal information and representation.¹¹³ In addition, our data reveals that 96 percent of affiliates provide naturalization application assistance and 68 percent provide naturalization test preparation classes for low-income immigrants.

Nearly 86 percent of CLINIC affiliates, many of whom are Catholic Charities agencies, report that the N-400 filing fee is either extremely significant or a very significant factor for their clients.¹¹⁴ Data from CLINIC's affiliates participating in the New Americans Campaign show that up to 40 percent of naturalization applications are filed with a full or partial fee waiver. These fee waivers are bona fide and well-documented since they are prepared by authorized immigration legal representatives.

All of the above reflects the long and deep commitment of the Catholic Church, CLINIC and its affiliates to keep naturalization accessible, affordable and indispensable to the nation's vitality. In CLINIC's view, making naturalization more difficult to obtain, and most available for the wealthiest, is a mockery of the Church's best efforts for almost a century.

C. USCIS' History of Naturalization Fee Increases Against its Ongoing Mismanagement.

For decades, CLINIC and Catholic Charities agencies have observed a ratcheting-up of naturalization and other application fees that suggests an irregular, if not broken, business model and poses harm to the country's national security and future. Furthermore, fees have increased even as USCIS continues to struggle year after year to maintain quality customer service and reduce processing wait times and application backlogs.

In 1998, legacy INS Commissioner Doris Meissner announced that the naturalization fee would need to increase significantly from \$95 to \$225 to cover the application process. Commissioner Meissner assured the public that the increase would not take effect until the INS had addressed customer service problems by reducing the backlog of applications and speeding up processing

¹¹³ CATHOLIC LEGAL IMMIGRATION NETWORK, INC., 2017 ANNUAL AFFILIATE SURVEY (2018).

¹¹⁴ *Id.*

times.¹¹⁵ Yet, 21 years later, we see little gained for immigrant-paying customers. Over 700,000 naturalization applications are currently in a backlog with wait times double from 2016, jumping “from 5.6 months to 10.1 months as of” early 2019.¹¹⁶

Additional fees have mounted steadily since 1998 with few improvements resulting. “In 2002, the application fee rose to \$260 and the biometrics fee to \$50, for a total of \$310. By 2005 the citizenship application fee had risen to \$330 and the biometrics fee to \$70, for a total of \$400. This was a 320 percent increase over eight years. Just two years later in 2007 the naturalization application fee rose to \$595. It was reported by USCIS that the significant increase in 2007 included technology transformations that would bring efficiency and greater customer service later on, particularly the ELIS case file system. Ongoing increases leading to 2019 have brought the current total to \$725 (\$640 for the N-400 and \$85 for the biometrics fee).

Even with these steady increases, USCIS struggles to provide efficient management and good customer service to immigrant applicants. An Office of Inspector General report from 2017, titled “USCIS Has Been Unsuccessful in Automating Naturalization Benefits Delivery,” states,

The problems in N-400 automation can be attributed to poor program management practices, which have continued since prior ELIS releases. Given its focus on meeting established system release dates, USCIS did not fully address our prior report recommendations to improve user support, stakeholder engagement, performance measurement, and testing to ensure ELIS met user needs and improved operations.

Given the problems encountered in naturalization processing, USCIS has not succeeded in meeting its operational efficiency, customer service, and national security goals. Instead, ELIS introduced naturalization processing inefficiencies as backlogs increased by more than 60 percent and processing times nearly doubled. Moreover, interviews and ceremonies for at least 10,000 naturalization applicants were canceled, and more than 200 individuals became citizens without proper background checks, posing threats to national security. USCIS recently began efforts to address these challenges; however, only time will tell whether these efforts are effective in delivering needed ELIS capability and realizing intended transformation benefits.¹¹⁷

It is worth noting, as stated above, that there were previous OIG reports critical of USCIS’ management of immigrant applications fees as its primary source for delivery of immigration benefits.¹¹⁸ Yet, customers continue to pay very substantial fees in support of USCIS’ ongoing mismanagement. It is also worth noting that the past fee increases were justified by providing

¹¹⁵ JOYCE ET AL., *supra* note 30, at 12.

¹¹⁶ MING HSU CHEN, COLORADO STATE ADVISORY COMMITTEE TO THE U.S. COMMISSION ON CIVIL RIGHTS, CITIZENSHIP DELAYED: CIVIL RIGHTS AND VOTING RIGHTS IMPLICATIONS OF THE BACKLOG IN CITIZENSHIP AND NATURALIZATION APPLICATIONS 9 (2019).

¹¹⁷ OFFICE OF INSPECTOR GEN., DEP’T OF HOMELAND SECURITY, OIG-18-23, USCIS HAS BEEN UNSUCCESSFUL IN AUTOMATING NATURALIZATION BENEFITS DELIVERY (2017).

¹¹⁸ OFFICE OF INSPECTOR GEN., DEP’T OF HOMELAND SECURITY, OIG-18-58, USCIS HAS UNCLEAR WEBSITE INFORMATION AND UNREALISTIC TIME GOALS FOR ADJUDICATING GREEN CARD APPLICATIONS (2018).

greater customer service access to USCIS, most notably through InfoPass, which allowed customers to make in-person appointments with a USCIS officer. While a costly endeavor, again supported by fees, customers and advocates found InfoPass to be a major improvement in customer service, particularly when application processing backlogs and long waits were the norm. However, USCIS recently ended InfoPass appointments, stating, “The Information Services Modernization Program ends self-scheduling of InfoPass appointments and instead encourages applicants to use USCIS online information resources to view general how-to information and check case statuses through the USCIS Contact Center. Recent improvements to online tools provide applicants the ability to obtain their case status and other immigration information without having to visit a local field office.”¹¹⁹

USCIS announced the end of InfoPass in favor of its phone-based Contact Center, yet the Contact Center has been heavily criticized from its beginning due to long wait times, inaccurate information, and reliance on auto-messages without the ability to speak to a person.

D. The Federal Government’s Paltry Efforts to Assist Immigrants Wishing to Naturalize and Access Affordable, Quality Services.

The United States government does little to promote naturalization and make it accessible and affordable. Before Congressional appropriations, USCIS used fees from applicants to support the Office of Citizenship and the 40 or so naturalization and ESL/civics grants it awarded. These grants, along with web-based information, is almost the sum of our nation’s efforts to guide over 700,000 eligible people a year.

Given this paltry effort, the federal government, at a minimum, should not hinder people from becoming citizens if they are statutorily eligible. And yet, we see decade after decade of ever-rising fees; sustained, if not elongated, waiting periods; longer and more complicated forms; mismanaged technology contracts; and a reduction in successful customer service initiatives like InfoPass that are designed to inform customers and solve problems effectively. No business in the American capitalist market could remain open if it operated like USCIS.

VII. Alternatives.

There are many alternatives to ensure that USCIS receives the funding it needs without passing those costs on to immigrants and their families. Where backlogs and increasing costs are attributable to USCIS’s poor policy choices, those costs should be covered by combination of reversing those policy changes and supplementing with Congressional appropriations.

A. USCIS Should Reverse Policy Changes that Led To Inefficiencies.

Over the past two years, massive and persistent policy changes, agency restructuring, errors, irregularities, and mismanagement have created crisis-level processing delays and other problems that have left USCIS’ customers facing serious, life-altering consequences. This is despite

¹¹⁹ *USCIS to Expand Information Services Modernization Program to Key Locations*, U.S. CIT. & IMMIGR. SERV. (Oct. 30, 2018), www.uscis.gov/news/news-releases/uscis-expand-information-services-modernization-program-key-locations.

applicants paying fees, putting forth sensitive information in trust, and doing everything asked of them. Timely case processing, receiving fast and correct information, and other services from USCIS means the difference between a family having an income or not, being able to drive to medical appointments or school, being able to put a roof over a child's head and food on the table, or a survivor of violence being able to leave their abuser. These breakdowns and failures at USCIS rip at the seams of a person's life and have a ripple effect across society, affecting employers, the economy, and our communities.

Both deliberate policy choices by the current administration and mismanagement created the current crisis at USCIS that is upending the stability of survivors, families, and businesses across the country. These policy decisions have limited applicants' ability to quickly resolve administrative problems with their cases, and created unnecessary burdens on the agency's time and resources.

While many policy changes at USCIS have created the current crisis, there are a few primary drivers. The unnecessary expansion of in-person interview requirements¹²⁰ and related "extreme vetting"¹²¹ adds time and burden to the process. USCIS did not provide sufficient evidence that existing vetting procedures were insufficient.¹²²

New rules regarding Requests for Evidence (RFE) and Notices of Intent to Deny (NOID)¹²³ create needless redundancies and drain resources. Cases with small errors or issues that were previously resolved through customer service and moved along through the system are being denied, forcing applicants to start from the beginning and resulting in USCIS repeat adjudicatory steps. This also places an unfair financial burden on applicants, forcing people to pay filing fees to refile a case. At the extremes, this policy can result in an applicant not being able to access the immigration benefit at all.

USCIS also eliminated the 90-day processing requirement for Employment Authorization Documents (EADs).¹²⁴ When cases languish in review, applicants cannot make long-term plans for their future. Travel within the United States and abroad may become more complicated or impossible, and their work authorization may lapse, leading to loss of jobs, driver's licenses, and other hardship for families.

In addition to adjudicatory policies, USCIS is mismanaging its resources. As a fee-funded agency, USCIS is intended to use revenues collected as filing fees in order to timely and accurately

¹²⁰ *USCIS to Expand In-Person Interview Requirements for Certain Permanent Residency Applicants*, U.S. CIT. & IMMIGR. SERV. (Aug. 28, 2017), www.uscis.gov/news/news-releases/uscis-to-expand-in-person-interview-requirements-for-certain-permanent-residency-applicants.

¹²¹ *See, e.g.*, Exec. Order No. 13,780, 82 Fed. Reg. 13,209 (Mar. 6, 2017), available at www.whitehouse.gov/presidential-actions/executive-order-protecting-nation-foreign-terrorist-entry-united-states-2/.

¹²² AM. IMMIGR. LAW. ASSOC., *DECONSTRUCTING THE INVISIBLE WALL: HOW POLICY CHANGES BY THE TRUMP ADMINISTRATION ARE SLOWING AND RESTRICTING LEGAL IMMIGRATION 5* (2018), available at www.aila.org/infonet/aila-report-deconstructing-the-invisible-wall.

¹²³ Issuance of Certain RFEs and NOIDs; Revisions to Adjudicator's Field Manual (AFM) Chapter 10.5(a), Chapter 10.5(b), PM-602-0163 (July 13, 2018), available at www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/AFM_10_Standards_for_RFEs_and_NOIDs_FINAL2.pdf.

¹²⁴ *USCIS Publishes Final Rule for Certain Employment-Based Immigrant and Nonimmigrant Visa Programs*, U.S. CIT. & IMMIGR. SERV. (Nov. 18, 2016), www.uscis.gov/news/news-releases/uscis-publishes-final-rule-certain-employment-based-immigrant-and-nonimmigrant-visa-programs.

adjudicate cases. However, USCIS is diverting resources to enforcement-focused activities that contradict the agency's Congressional mandate. We oppose such a profound departure from the agency's mission, including an unjustified redirection of funds to establish an office and hire personnel to inspect thousands of already-approved naturalization cases.¹²⁵ It is also attempting for the second time to transfer more than millions of dollars to ICE to support enforcement activities.¹²⁶ At a time when USCIS is failing to fulfill its Congressionally-mandated purpose, diverting customer-paid funds to other purposes besides adjudication is particularly.

Reversing these policies would increase efficiency of adjudications at USCIS, reducing the cost of case adjudication, and making their existing resources stretch further. Before they seek to increase fees for hard-working immigrant families, USCIS must return to more efficient practices and responsibly utilize the fees they receive.

B. USCIS Should Seek Appropriations to Cover Any Budgetary Shortfalls.

USCIS could move forward with receiving Congressional appropriations and as a result, not be reliant solely on fees. Currently, with the exception of Citizenship and Assimilation grants,¹²⁷ USCIS is not subject to federal appropriations, as it is fee-funded. As noted above, USCIS has been eligible for appropriations in the past,¹²⁸ and could again be eligible to receive funding. This would help to ensure that operations could be maintained and that funds needed would not be subject to solely fee increases.

While there are concerns related to the ability of USCIS to continue its work despite possible shutdowns or other outcomes due to being subject to appropriations, a solution to shield USCIS and their work from such uncertainty would be to label the work of USCIS as critical and therefore immune to such issues. There is precedent for this designation from other parts of DHS, most notably the Transportation Security Administration (TSA).¹²⁹

VIII. Conclusion.

The Gospel tells us that when we welcome the stranger, we welcome Christ. Our Catholic social teaching emphasizes the importance of the call to participate in community and the inherent dignity of every person, regardless of socioeconomic status. The state is a key player in economic justice. We invite this administration to pursue economic justice by lessening the financial burden on our brothers and sisters seeking immigration benefits.

¹²⁵ Seth Freed Wessler, *Is Denaturalization the Next Front in the Trump Administration's War on Immigration?*, N.Y. TIMES (Dec. 19, 2018), www.nytimes.com/2018/12/19/magazine/naturalized-citizenship-immigration-trump.html.

¹²⁶ U.S. DEP'T OF HOMELAND SECURITY, *supra* note 13, at CIS – IEFA - 8.

¹²⁷ See *Citizenship and Assimilation Grant Program*, U.S. CIT. & IMMIGR. SERV., www.uscis.gov/about-us/citizenship-and-assimilation-grant-program (last updated Sept. 26, 2019). See also Consolidated Appropriations Act of 2019, tit. IV, Pub. L. No. 116-6, 133 Stat. 13 (2019), available www.congress.gov/116/plaws/publ6/PLAW-116publ6.pdf

¹²⁸ See U.S. CIT. & IMMIGR. SERV. HISTORY OFFICE AND LIBRARY, *supra* note 10 **Error! Bookmark not defined.**

¹²⁹ U.S. DEP'T OF HOMELAND SECURITY, PROCEDURES RELATING TO A LAPSE IN APPROPRIATIONS (2018), available at www.dhs.gov/sites/default/files/publications/DHS%20Procedure%20Related%20to%20a%20Lapse%20in%20Appropriations%20%2812-20-2018%29%20-%20FINAL%20..._0.pdf

Thank you for the opportunity to submit these comments. We appreciate your consideration. Please do not hesitate to contact us should you have any questions about our comments or require further information.

Respectfully submitted,

A handwritten signature in black ink that reads "William Canny". The signature is written in a cursive, flowing style.

William Canny
Executive Director
USCCB Migration and Refugee Services

A handwritten signature in purple ink that reads "Brian R. Corbin". The signature is written in a cursive, flowing style.

Brian R. Corbin
Executive Vice President,
Member Services
Catholic Charities USA

A handwritten signature in blue ink that reads "Anna Gallagher". The signature is written in a cursive, flowing style.

Anna Gallagher
Executive Director
Catholic Legal Immigration Network, Inc.