



December 30, 2019

Via Federal e-Rulemaking Portal

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

**Re: U.S. Citizenship and Immigration Services Fee Schedule  
84 Fed Reg 62280 (Nov. 14, 2019)  
DHS Docket No. USCIS-2019-0010; RIN 1615-AC18**

Dear Chief Deshombres,

Brooklyn Defender Services (“BDS”) submits these comments in opposition to the U.S. Citizenship and Immigration Services (“USCIS”) Proposed Rule on the USCIS Fee Schedule, 84 Fed. Reg 62280, issued on November 14, 2019 (hereinafter, “Proposed Rule”), Docket No. USCIS-2019-0010.

BDS is a full-service public defender organization in Brooklyn, New York, that provides multi-disciplinary and client-centered criminal defense, family defense, immigration, and civil legal services, along with social work and advocacy support. BDS represents low-income people in nearly 30,000 criminal, family, civil, and immigration proceedings each year. Since 2009, BDS has counseled, advised, or represented more than 15,000 clients in immigration matters including deportation defense, affirmative applications, advisals, and immigration consequence consultations in Brooklyn’s criminal court system. About a quarter of BDS’s criminal defense clients are foreign-born, roughly half of whom are not naturalized citizens and therefore at risk of losing the opportunity to obtain lawful immigration status as a result of criminal or family defense cases. Our criminal-immigration specialists provide support and expertise on thousands of such cases. BDS’s immigration practice represents people in applications for immigration relief, adjustment of status, and naturalization before USCIS, and in non-detained removal proceedings in New York’s immigration courts. In addition, BDS is one of three New York Immigrant Family Unity Project (“NYIFUP”) providers and has represented more than 1,400 people in detained deportation proceedings since the inception of the program in 2013.

As set forth below, BDS strongly opposes the Proposed Rule. BDS, along with legal service providers across the country, represents underserved and vulnerable low-income immigrants. As part of our representation, we regularly work with people to determine what, if any, immigration benefits they may be eligible for and, where appropriate, advise them on preparing and submitting applications for these benefits. Unfortunately, applying for benefits is costly—the applications are regularly accompanied by expensive mandatory fees. These fees are already often a barrier to access the stability that comes with immigration status and authorization to work. In order to pay for immigration applications, our clients pull from already limited resources if they can—money that otherwise would be used to take care of and feed their families—or hope the government grants their request to waive fees associated with their applications. These fees can total thousands of dollars depending on the type of application. For many of our clients, including single parents, heads of households, domestic violence and abuse survivors, young or homeless individuals, and those with physical or mental health issues, paying the current fees is simply impossible.

The Proposed Rule's increase in fees and elimination of fee waivers will unduly burden immigrant communities and the legal services providers, such as BDS, who serve them. DHS's purported concern with USCIS's budget is just another poorly veiled attempt to suppress access to lawful immigration benefits and citizenship by low-income immigrants and immigrants of color. If implemented, the Proposed Rule would mean thousands of low-income immigrants would be "priced out" of the legal immigration system all together, leaving most benefits accessible to only the wealthy. The United States immigration system was not built to serve only those immigrants with means, yet that is exactly what this Proposed Rule seeks to achieve. BDS asks that USCIS immediately halt implementation of the Proposed Rule.

**1. USCIS Should Not Burden Immigrant Families With Costs Associated with Agency Mismanagement and Unnecessary Practice and Policy Changes**

The proposed USCIS fee schedule would increase fees and eliminates fee waivers for the benefit categories most commonly used by low-income immigrants, leaving essential immigration benefits inaccessible to many immigrant applicants. BDS opposes USCIS's attempt to place the burden of its policy decisions and mismanagement on the backs of immigrant families.

USCIS is primarily a fees-funded agency and receives only a small portion of its budget from Congress. 8 U.S.C. § 1356(m)-(n). Since 2010, USCIS has increased filing fees by weighted averages of 10 percent and 21 percent,<sup>1</sup> but has not achieved any

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<sup>1</sup> USCIS Fee Schedule, Final Rule, 75 Fed. Reg. 58962 (Sept. 24, 2010) (increasing by average of 10%); USCIS Fee Schedule, 81 Fed Reg 73292 (Oct. 24, 2016) (increasing by average of 21%).

associated improvement in processing times, backlogs, or customer service.<sup>2</sup> Although USCIS cites increased applications as the reason for the backlogs and processing times, USCIS backlogs and wait times are largely due to the regulatory, policy, and practice changes made by the Administration that cause adjudications to take longer and be more inefficient than necessary.

Applicants, and the BDS attorneys who represent them, regularly experience firsthand the impact of inefficient adjudication at USCIS. For example, in some cases, USCIS Requests for Evidence (“RFEs”)<sup>3</sup> seek information or documentation that was clearly already provided in the application submission, or is not required by statute. Similarly, in other cases, RFEs—addressed to attorneys—erroneously state that a G-28 Notice of Appearance was not provided or endorsed, despite the G-28 or original signature having been included in the application. USCIS notices, including denials and RFEs, are sometimes postmarked long after the date printed on the notice itself. Because appeal or RFE response deadlines are tied to the notice date rather than the postmark date, these inconsistencies are prejudicial to applicants and attorneys. Further, USCIS customer service deficiencies—including disconnected calls, unanswered emails, or incorrect case status information being provided—result in applicants being denied a meaningful opportunity to respond to RFEs, which in turn can result in erroneous denials.

Moreover, USCIS has removed language stating a commitment to customer service,<sup>4</sup> and eliminated important customer services like InfoPass.<sup>5</sup> Even those applicants eligible and willing to reapply for benefits after an initial erroneous denial are often prevented from doing so because they cannot afford the substantial application fees a second time. These inefficiencies create more work for the USCIS adjudicators, which in turn extend processing times, increase re-filings and backlogs, and ultimately inflate costs for the agency. USCIS’s purported shortfalls are a problem of their own making

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<sup>2</sup> See *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*, 116<sup>th</sup> Cong. (2019) (joint written testimony of Don Neufeld, Associate Director, Service Center Operations Directorate, USCIS, and Michael Valverde, Deputy Associate Director, Field Operations Directorate, USCIS); Am. Immigr. Law. Assoc., AILA Policy Brief: USCIS Processing Delays Have Reached Crisis Levels under the Trump Administration (2019), <https://www.aila.org/advo-media/aila-policy-briefs/aila-policy-brief-uscis-processing-delays>.

<sup>3</sup> Requests for Evidence or “RFEs” are requests that USCIS makes during the adjudication process after a review of the application submission asking for documents or information necessary to make a determination on the application.

<sup>4</sup> 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 Policy Alert: USCIS Public Services No. PA-2019-03 (May 10, 2019).

<sup>5</sup> <https://my.uscis.gov/en/appointment/v2>.

caused by poor policy and organizational choices, and it is, thus, inappropriate to transfer such shortfalls to immigrants without addressing these inefficiencies.

Furthermore, USCIS admits that it has made, and plans to continue making, adjudications even more onerous, 84 Fed Reg. at 62294 (noting the “growing complexity” of cases over the past few years has contributed to longer adjudication times), and that the revenue generated by the Proposed Rule will be used to fund the increased workload projections caused by these changes, *id.*<sup>6</sup> Low-income immigrants should not be made to pay for the problems and inefficiencies caused by this Administration’s anti-immigrant agenda. Many of these changes are unnecessary and inefficient. Several others have been found unlawful or enjoined by federal courts, which means that USCIS must roll back or halt implementation of an adjudication practice or USCIS policy.<sup>7</sup> The Rule fails to quantify how much USCIS has spent on drafting and implementing unlawful and unwise policy and regulatory decisions, or how these decisions have impacted the accuracy and speed of adjudication.

Lastly, the Proposed Rule acknowledges that the increased revenue generated will not, in the near-term, decrease immigration application backlogs or wait times. “[C]ompletion rates are based on reported adjudication hours and completions. USCIS does not believe the level of effort for future adjudications will decrease.” 84 Fed Reg. at 62294. “USCIS estimates that it will take several years before USCIS backlogs decrease measurably.” 84 Fed Reg. at 62294. Burdening applicants without improving the adjudication process is not only illogical, it undermines USCIS’s stated purpose for the Proposed Rule.

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<sup>6</sup> Such changes referenced in the Proposed Rule include “greater use of social media screenings” for USCIS applications and more in-person interviews of applicants for certain immigration benefits, where previously no interview was required. 84 Fed. Reg. at 62294.

<sup>7</sup> *See, e.g., Ramos v. Nielsen*, 336 F. Supp. 3d 1075, 1108 (N.D. Cal. 2018) (temporarily enjoining the government from implementing the decision to terminate Temporary Protected Status (“TPS”) designations of certain countries and ordering DHS to ensure the continued validity of documents issued by USCIS that prove lawful status and employment authorization for TPS holders); *RFM v. Nielsen*, No. 18-cv-5068 (S.D.N.Y. Mar. 15, 2019) (finding USCIS acted arbitrarily and capriciously when it implemented its Over-18 Denial Policy for SIJ petitioners because the policy went beyond the scope of the federal statute and lacked a reasoned explanation); *New York v. U.S. Dep’t of Homeland Sec.*, No. 19-cv-7777, 2019 WL 5100372, at \*12 (S.D.N.Y. Oct. 11, 2019) (granting a nationwide temporary injunction and staying USCIS’s public charge rule from going into effect upon finding that plaintiffs were likely to succeed on merits of claims that USCIS and DHS exceeded their statutory authority and acted contrary to law); *Make the Rd. New York v. Cuccinelli*, No. 19-cv-7993, 2019 WL 5484638, at \*13 (S.D.N.Y. Oct. 11, 2019) (same, and one of several other courts across the country enjoining the changes to the USCIS public charge regulations); *City of Seattle v. DHS*, No. 19-cv-7151 (N.D. Cal. Dec. 9, 2019) (issuing nationwide temporary injunction barring USCIS changes to the I-912 Fee Waiver Form and USCIS Policy Manual finding that USCIS failed to properly engage in the notice-and-comment rulemaking required by the Administrative Procedure Act).

## **2. USCIS Fees Would Disproportionally Impact Low-Income Communities and Communities of Color**

If implemented, the unwarranted increases to the fee schedule and the inability to request a fee waiver would result in financial hardship for immigrant and mixed-status families in the near- and long-term. Low-income immigrants will delay applying or opt not to apply for an immigration status that they are eligible for due to financial considerations. Many who do ultimately decide to apply will be forced to take out loans causing increased debt. The result is that low-income immigrants will be “priced out” of the legal immigration system all together, leaving most immigration benefits accessible to only the wealthy. For example, fees for a green card application, when filed together with a request for employment and travel documents, would rise by about 79 percent, from \$1,225 for most applicants to \$2,195 (not including the underlying petition); applications for citizenship would increase by about 83 percent, from \$640 to \$1,170; and renewals for recipients of the Deferred Action for Childhood Arrivals (“DACA”) program, would increase from \$495 to \$765. For low-income individuals, the financial benefits of employment authorization and legal status include increased wages, a greater opportunity for stable housing and healthcare, the ability to find jobs that better fit their skills or start their own business, and access to education.<sup>8</sup> As such, the Rule will result in greater financial instability for immigrant and mixed status families, negatively impacting their health, well-being, and educational prospects. This financial insecurity will, in turn, reverberate across all communities.

The fee schedule’s proposal to eliminate filing fee waivers for all application categories except those waivers that are statutorily required would make essential benefits such as citizenship, green card renewal, and employment authorization wholly inaccessible for low-income immigrants. Immigration benefits have the power to lift up and transform families and communities. Congress has specifically called on USCIS to keep the pathway to citizenship affordable and accessible,<sup>9</sup> and naturalization is one of the most frequent application types for which fee waivers are requested.<sup>10</sup> The proposed elimination of fee waivers for most applications undermines this congressional directive,

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<sup>8</sup> Congressional Budget Office, *The Economic Impact of S. 744, the Border Security, Economic Opportunity, and Immigration Modernization Act*, June 2013, at 7, <https://www.cbo.gov/sites/default/files/113th-congress-2013-2014/reports/44346-immigration.pdf>; Tom Jawetz, *Testimony Before the U.S. House Committee on the Budget, Building a More Dynamic Economy: The Benefits of Immigration*, June 26, 2019, <https://www.americanprogress.org/issues/immigration/reports/2019/06/26/471497/building-dynamic-economy-benefits-immigration/>.

<sup>9</sup> H. Rep. No. 115-948 accompanying H.R. 6776, the Department of Homeland Security Appropriations Act (2019).

<sup>10</sup> USCIS, *USCIS Fee Waiver Policies and Data, Fiscal Year 2017 Report to Congress*, Sept. 17, 2017, App’x D, [www.dhs.gov/sites/default/files/publications/USCIS%20-%20Fee%20Waiver%20Policies%20and%20Data.pdf](http://www.dhs.gov/sites/default/files/publications/USCIS%20-%20Fee%20Waiver%20Policies%20and%20Data.pdf).

and is a flawed and shortsighted policy. Beyond the unfairness of eliminating fee waivers for benefits applications, the removal of these fee waivers for those applications that seek required documentation is particularly unjust, because it takes away the ability of a low-income individual to prove their lawful status or citizenship and access the benefits and exercise the rights they are due. Both I-90 applications to obtain a new green card—that LPRs are required to carry with them—and N-600 applications to obtain certificates of citizenship—that some U.S. citizens need to prove their citizenship and apply for a U.S. passport and social security card—are associated with high numbers of fee waivers.<sup>11</sup> USCIS should maintain fee waivers for all current categories.

The proposed changes to the method of fee payment would also disproportionately impact low-income immigrants. The proposal to make the method of fee payment different form-to-form would allow USCIS to prohibit the use of certain kinds of payments for certain application or petitions in favor of other methods of payment through arbitrary decision making and without any transparency. This proposed limitation would cause hardship to low-income applicants and petitioners, as reliable internet access, U.S. bank accounts, and well-established credit scores are assets that are often only available to more wealthy immigrants. BDS urges USCIS to continue accepting cashier's checks and money orders as methods of payment for all applications and petitions.

Moreover, what the rule does not adequately consider is that providing low-income workers access to employment authorization and/or legal status benefits not only the applicant, their family, and their community, but also the United States more generally. For example, in analyzing the 2013 Immigration Bill that passed the Senate, S. 744, the Congressional Budget Office calculated that currently unauthorized workers would see a wage increase of 12 percent by obtaining legal residency, which would generate a net increase in government revenues stemming directly from taxing the additional earnings caused by this change in status.<sup>12</sup> DACA recipients similarly benefit the country as a whole. After receiving the employment authorization associated with DACA, roughly half of recipients moved to jobs with better pay, better working conditions, that better fit their

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<sup>11</sup> *Id.*

<sup>12</sup> Congressional Budget Office, *The Economic Impact of S. 744, the Border Security, Economic Opportunity, and Immigration Modernization Act*, June 2013, at 7, 15, <https://www.cbo.gov/sites/default/files/113th-congress-2013-2014/reports/44346-immigration.pdf>; Tom Jawetz, *Testimony Before the U.S. House Committee on the Budget, Building a More Dynamic Economy: The Benefits of Immigration*, June 26, 2019, <https://www.americanprogress.org/issues/immigration/reports/2019/06/26/471497/building-dynamic-economy-benefits-immigration/> (the change in legal and employment status under the 2013 legislation “would have decreased federal budget deficits by approximately \$1 trillion over 20 years, increased the nation’s GDP by 3.3 percent in 10 years and 5.4 percent in 20 years, and increased average wages for all workers after 10 years”).

training and long-term goals, and that provided health insurance and other benefits.<sup>13</sup> Average wages of DACA recipients increased by 97 percent for those over 25 years old, which translates to financial stability for their families and tax revenues, purchasing power, and economic growth at the local, state, and federal levels.<sup>14</sup> These examples demonstrate that any proposed changes to the fee schedule should not just take into account the costs of adjudicating applications, but rather must account for the greater costs to our communities and the U.S. economy if fewer individuals have stable status or permission to work because of high application fees or the refusal to accept meritorious fee waiver requests. Immigrants breathe life and fuel prosperity into our nation when given the opportunity.

### **3. Immigration Applications Should Remain Affordable and Accessible to All Eligible Immigrants**

BDS and the clients we represent have experienced first-hand how difficult it is for low-income immigrants to gather the funds to pay for immigration applications, and how many times the ability to merely apply for benefits depends on being granted a fee waiver. But we have also seen what clients are able to do once they have access to employment authorization and the stability of an immigration status.

BDS has represented many DACA recipients who struggle to afford the renewal fee but make significant sacrifices to maintain stability for themselves and their families. The proposed increase from \$495 to \$765 would create a significant barrier to accessing protection from deportation and work authorization for these young people. 84 Fed. Reg. at 62320-21. DACA recipients depend on valid work permits to support their families and would suffer greatly from an increase in the DACA renewal fee. DACA applicants that BDS represents may simultaneously be full-time college students and working to help their families, but still face financial constraints. One turn of events, like a landlord selling the house the family lives in, can result in DACA recipients facing significant financial problems making their employment authorization renewal that much more important *and* the payment of a renewal fee that much more difficult. Furthermore, the fee increase is short-sighted. Maintaining current fee levels for the I-821D and I-765 forms will allow these young people to continue their educational and employment goals, earn a living to support themselves and their families, and contribute to their local communities. In

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<sup>13</sup> *Amid Legal and Political Uncertainty, DACA Remains More Important Than Ever*, Aug. 15, 2018, <https://www.americanprogress.org/issues/immigration/news/2018/08/15/454731/amid-legal-political-uncertainty-daca-remains-important-ever/>.

<sup>14</sup> *Id.*; see also Immigration Initiative at Harvard, *The Long-Term Impact of DACA: Forging Futures Despite DACA's Uncertainty*, Special Report 1, 2019, [https://immigrationinitiative.harvard.edu/files/hii/files/final\\_daca\\_report.pdf](https://immigrationinitiative.harvard.edu/files/hii/files/final_daca_report.pdf) (explaining work authorization associated with DACA initially provided “educational pathways and boosted employment options,” resulting in financial stability that has, over the last seven years, allowed DACA recipients to “take on new financial obligations—living independently, taking care of their families, enrolling their children in daycare programs, and managing car payments and mortgages”).

contrast, increasing fees harms not only the DACA recipients and their families, but also the U.S. economy by limiting their educational and employment opportunities.<sup>15</sup>

BDS also represents many people in family-based petitions for lawful permanent residence (“LPR”) who similarly struggle to afford the fees as they are right now. Family-based green cards not only provide stability and security, but also keep families together. For such LPR applications, the proposed rule would increase fees from \$1,225 to \$2,195, which includes the I-485 green card application, the I-765 employment authorization document, and the I-131 travel document, with each fee being charged separately. 84 Fed. Reg at 62305. Increasing the fees would seriously burden eligible families, but USCIS’s proposal to remove the ability to request fee waivers on these forms is simply cruel.

The fee increase is a result of USCIS’s proposal to “unbundle” the employment authorization and travel forms commonly filed concurrently with the green card application, and instead charge a separate fee per form. 84 Fed. Reg at 62305. This proposal ignores the rationale and process that led to bundling initially. The “bundling” of these three forms was introduced in the 2010 USCIS fee schedule when USCIS explained that bundling “restored the proper relationship between processing efficiency and fee revenue generation” and “lowered the total costs for the large number of applicants who would have had to pay multiple times under the old system.” *Barahona v. Napolitano*, No. 10-cv-1574, 2011 WL 4840716, at \*5 (S.D.N.Y. Oct. 11, 2011) (citing Adjustment of Immigration and Naturalization Benefit Application and Petition Fee Schedule, Final Rule, 72 Fed. Reg. 29,851, 29,852 (May 30, 2007)).<sup>16</sup> At that time, USCIS rejected *a la carte* pricing, “because the costs and administrative burden associated with explaining and administering such a system outweighed any benefits it offered to a subset of the permanent residence applicants.” *Id.* USCIS now argues the opposite.

Most applicants for adjustment of status who will file Form I-485 will also request employment authorization and many also require an advance parole travel authorization. Under the scheme laid out in the Proposed Rule, eligible applicants would often be forced to forgo some of these benefits because of financial constraints. Due to immigrant visa backlogs, applicants for adjustment often face long waiting time before their permanent residency is granted. They rely on employment authorization so that they can continue to live and work in the United States while their application is pending. The steep fee increase and elimination of fee waivers will make employment authorization in conjunction with their adjustment of status unattainable for many low-income individuals who are applying through a U.S. citizen or lawful permanent resident relative,

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<sup>15</sup> See *Amid Legal and Political Uncertainty, DACA Remains More Important Than Ever*, Aug. 15, 2018, <https://www.americanprogress.org/issues/immigration/news/2018/08/15/454731/amid-legal-political-uncertainty-daca-remains-important-ever/>.

<sup>16</sup> See also USCIS Fee Schedule, Proposed Rule, 75 Fed. Reg. at 33,448–49 (AR 17038–39), 33,455 (AR 17045) (June 11, 2010); USCIS Fee Schedule, Final Rule, 75 Fed. Reg. 58,962 (Sept. 24, 2010).

and cause unnecessary family separation. For example, BDS represents people eligible for lawful permanent residence who suffer from medical conditions, who are widowed, who lose their jobs, and, are thus forced to move into a shelter, who will struggle to pay the increased fee. What these barriers are preventing individuals from attaining is not solely legal status, but also the ability to support themselves and their families, and access a range of benefits, including health insurance, Access-a-Ride, and other services they need.

In addition, BDS represents many survivors of domestic violence who are eligible for adjustment of status as VAWA self-petitioners and who already struggle to pay application fees. After suffering years of physical and emotional abuse at the hands of their spouses, which often includes financial control and preventing access to legal employment opportunities, VAWA self-petitioners often have limited financial means. VAWA clients are often homeless immediately after leaving their abusers, and many are suffering from physical and mental health issues. The limited means they do have are important to maintaining independence from the abuser and providing for children, who are often U.S. citizens. Although VAWA is one of the few categories that still has a fee waiver under the Proposed Rule, as it is mandated by statute, the proposed increase in fees would greatly burden VAWA petitioners' ability to apply for adjustment of status, particularly if the changes to the fee waiver process are implemented.

Furthermore, employment authorization documents should remain accessible and affordable, as valid employment authorization is directly tied to the ability of immigrants to provide for their families and to contribute to the U.S. economy. In many cases, families of immigrants who are detained by ICE suffer severe financial consequences, such as loss of a steady income or eviction, when the main bread-winner is forced to stop working. This financial insecurity continues even after a person is released from ICE custody. When a family is struggling to pay for even the basic necessities or fight an eviction case, the \$410 fee to procure a work permit they are eligible for is already extremely difficult to pay, and the proposed \$80 increase would make an already significant challenge nearly impossible. Moreover, an employment authorization document not only allows for legal work, but also serves as important identification to prove eligibility for a social security card, health insurance, medications, and basic necessities.

Perhaps the most “novel” component of the Proposed Rule is the proposal to charge asylum seekers a \$50 fee to apply for asylum. If the measure were to take effect, the United States would become one of only four countries in the world to charge for asylum applications.<sup>17</sup> The U.S. is obligated under domestic laws and international treaties to accept asylum seekers. The 1967 Protocol of the 1951 Convention Relating to

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<sup>17</sup> Boundless, *Marriage Green Card and Citizenship Application Fees to Increase Under New Proposal*, Nov 10, 2019, <https://www.boundless.com/blog/fee-hikes-citizenship-immigration-forms/>.

the Status of Refugees requires the United States to accept asylum seekers who ask for protection. The proposed \$50 fee puts the United States in the position of rejecting a plea for asylum, because of an inability to pay, and would effectively cause the U.S. to break its treaty obligations, and flouts what should be an obvious moral imperative to accept those who seek protection from persecution. Notably, the vast majority of countries who are signatories to the 1951 Convention or 1967 Protocol do not charge a fee for an asylum application.<sup>18</sup> 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.

Moreover, accepting asylum seekers includes ensuring they are able to support themselves, and secure basic necessities like clothing, shelter, and food. Imposing a \$490 fee for the initial employment authorization document—contrasted with the current free application—is an exorbitant fee for asylum applicants. The ability to work and obtain a social security card is especially important for asylum applicants who have, in many cases, been forced to flee their home countries without bringing financial resources with them or having contacts in the United States., and may have been excluded from economic opportunities in their home countries for the very reasons they are applying for asylum.

Lastly, naturalization fees should be affordable. The proposed fee schedule would increase the filing fee for naturalization from \$640 to \$1,170, an 83 percent increase. This substantial increase, in combination with the elimination of the fee waiver, would make citizenship unattainable for low-income immigrants. The benefits of naturalization for individuals and the U.S. society cannot be overstated and the application fee must not be used to prevent access to citizenship and its benefits. “Citizenship can serve as a catalyst for immigrants to become more: dedicated to democratic principles; informed about the Constitution; engaged in political elections; represented in the political system; proficient in the English language; unified as families; employable in higher paying jobs; and integrated within a wider circle of people and institutions.”<sup>19</sup> With approximately nine million LPRs eligible to naturalize who have not yet filed for naturalization,<sup>20</sup> and the significant benefits that immigrant integration brings to the United States, it is in the country’s best interests to incentivize naturalization and set fees accordingly.<sup>21</sup>

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<sup>18</sup> See Zolan Kanno-Youngs and Miriam Jordan, *New Trump Administration Proposal Would Charge Asylum Seekers an Application Fee*, N.Y. TIMES, Nov. 8, 2019, <https://www.nytimes.com/2019/11/08/us/politics/immigration-fees-trump.html> (Noting that the United States would be only the fourth country in the world to charge a fee for asylum).

<sup>19</sup> Jeff Chenoweth and Laura Burdick, Catholic Legal Immigration Network, *A More Perfect Union: A National Citizenship Plan*, at vii, <https://cliniclegal.org/resources/guides-reports-publications/more-perfect-union-national-citizenship-plan>.

<sup>20</sup> Robert Warren and Donald Kerwin, *The US Eligible-to-Naturalize Population: Detailed Social and Economic Characteristics*, 3 J. Migration & Hum. Security 306, 306 (2015).

<sup>21</sup> While the current fee is already out-of-reach for some, the dramatic increase proposed by the rules would create an insurmountable hurdle for many qualified would-be applicants.

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

If implemented, the Proposed Rule would allow USCIS to transfer \$207.6 million over 2019 and 2020—approximately ten percent of the additional revenue generated under the Rule—to ICE in accordance with the President's 2019-2020 budget.<sup>22</sup> 84 Fed. Reg. at 62287-88. BDS strongly opposes this proposal, and any misuse of applicant fees to fund ICE and its enforcement functions.

USCIS is charged with administering immigration applications and, in turn, providing benefits. By contrast, ICE—a separate component agency of DHS—is charged with enforcement operations. The proposed transfer from USCIS to ICE is another example of USCIS increasing its own costs, while simultaneously claiming that fee increases are necessary to pay for a shortfall associated with adjudicating applications. That shortfall is self-imposed.

USCIS's "primary funding source," according to the Immigration and Nationality Act ("INA"), is the applicant-funded Immigration Examinations Fee Account ("IEFA"). 8 U.S.C. §§ 1356(m). While the INA allows USCIS to use the IEFA to "fund the expenses of providing immigration adjudication and naturalization services and the cost of collection, safeguarding and accounting for the IEFA funds," 84 Fed. Reg. 62287 (citing 8 U.S.C. §§ 1356(m)-(n)), it does not specifically condone use of funds for enforcement purposes. Nonetheless, USCIS defends the ICE transfer by claiming that USCIS may also use IEFA funds to "reimburse" ICE for "qualifying costs." *Id.*

In support of the transfer, the Proposed Rule lists several services that ICE and its investigatory branch, Homeland Security Investigations ("HSI"), "could" and "may" conduct for USCIS. Nonetheless, the Proposed Rules does not specify how the money transferred to ICE will be used or explain why any increased role for HSI or focus on fraud in USCIS applications is necessary. DHS fails to include any data or rationale to support its argument that such a large transfer to ICE is necessary to investigate fraud in USCIS applications, or that information shared with or the fraud work done by ICE and HSI has materially impacted USCIS determinations—as opposed to being merely fishing expeditions for ICE enforcement operations.

It is not appropriate to redirect funds from immigrants intended for adjudication of their immigration benefits to be used for enforcement against those same immigrants' communities. BDS is concerned that this transfer represents further cooperation between ICE and USCIS to further ICE's enforcement and deportation agenda.

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<sup>22</sup> Boundless, *USCIS Fee Hike: How Immigrants Are Affected*, <https://www.boundless.com/research/uscis-fee-hike-immigrants-affected/>.

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For the reasons provided here, BDS requests that USCIS consider these recommendations and immediately halt the implementation of the Proposed Rule.

Please do not hesitate to contact us if you have questions regarding our comments. Thank you for your attention and considering our concerns.

Sincerely,

/s/ Sonia Marquez

Sonia Marquez

Civil Rights—Immigration Attorney

/s/ Brooke Menschel

Brooke Menschel

Civil Rights Counsel