December 30, 2019

Samantha Deshommes
Chief, Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue NW, Mailstop #2140
Washington, DC 20529-2140

Re: DHS Docket No. USCIS-2019-0010 – Comments on Proposed Fee Rule

Dear Ms. Deshommes,

The undersigned 38 organizations that encourage and assist qualified lawful permanent residents (LPRs) to naturalize write to vehemently oppose the proposed fee schedule published for comment by U.S. Citizenship and Immigration Services (USCIS) on November 14, 2019 at 84 Fed. Reg. 62280, DHS Docket No. USCIS-2019-0010. This rule was unwisely and unfairly promulgated with an extraordinarily short comment period and at a time of serious doubt over whether putative agency leadership may legally exercise authority. It would harm our nation by making it much more difficult to become a U.S. citizen, and do a disservice to fee-paying customers by demanding that they expend more to receive less. An action that offers specious logic to justify a policy reversal that would weaken the American economy and our security is constitutionally suspect where, as here, it would diminish opportunities for, and is advanced by an Administration that is openly hostile to, immigrants of color. We strongly urge the agency to reconsider its proposal, especially the proposed naturalization fee increase and elimination of fee waivers.

Many of our organizations are members of the Naturalization Working Group (NWG), which is coordinated by the National Association of Latino Elected and Appointed Officials (NALEO) Educational Fund, and made up of national and local organizations committed to helping LPRs become United States citizens. The NWG strives to improve federal policies and practices related to naturalization and to educate legislators and other policymakers about the need to address barriers to naturalization. Our coalition's expertise derives from its multiple member organizations that have significant experience in promoting naturalization and in assisting newcomers with the U.S. citizenship process, including immigrants who are serving in our military. The NWG is the policy complement to the New Americans Campaign (NAC), a diverse nonpartisan national network of respected immigrant-serving organizations, legal service providers, faith-based organizations, immigrant rights groups, foundations and community

leaders. The Campaign transforms the way aspiring citizens navigate the path to becoming new Americans.

I. The Fee Rule Promulgation Process Is Flawed

The Proposal's Comment Period Is Unreasonably Truncated

In view of the fee rule's enormous consequences for our organizations and the clients we serve, the millions of American businesses and families that depend upon USCIS, and the smooth functioning of our economy nationwide, it is imperative that stakeholders have adequate time to deliver well-researched comments on this proposal. Applicable law and customary procedure strongly reinforce the proposition that public participation in rulemaking is crucial to ensuring that agencies are effective and accountable, and that agencies should allow for 60 days or more to collect sufficient input on their most significant proposals. While the minimum comment period length is 30 days by tradition, numerous sources designate 60 days as the preferred or default length, particularly for major rules that, like the proposed fee rule, would affect large numbers of people or carry large costs. Executive Order 12866 governs all executive rulemaking actions and requires that agencies, "provide the public with meaningful participation in the regulatory process…which in most cases should include a comment period of not less than 60 days."[1] Accordingly, the federal government's own fact sheet about the rulemaking process states, "Generally, agencies will allow 60 days for public comment. Sometimes they provide much longer periods."[2]

USCIS has frequently determined that 60-day comment periods were necessary to secure useful public comments on past fee rule proposals. When the government published proposed fee schedules based on its four most recent full reviews, in 1998, 2007, 2010, and 2016, USCIS (and its predecessor, the Immigration and Naturalization Service, or INS) in each instance opened a comment period longer than the one initially accorded in this instance; three of the four reviews were followed by 60-day comment periods.[3] INS likewise gave the public 60 days to comment on a proposed 2001 adjustment of fees to account for inflation, even though the proposal did not include a full review or the extensive background documentation associated with such re-examination of the fee structure.[4] USCIS also frequently seeks authorization or reauthorization of information collection requests associated with the immigration and

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[1] Exec. Order No. 12866, Sec. 6(a), 58 Fed. Reg. 51735 (Oct. 4, 1993), https://www.archives.gov/files/federal-register/executive-orders/pdf/12866.pdf.

[2] eRulemaking Program, U.S. Environmental Protection Agency, "Regulatory Timeline" 2, https://www.regulations.gov/docs/FactSheet_Regulatory_Timeline.pdf.

[3] Immigration and Naturalization Service, Department of Justice, "Adjustment of Certain Fees of the Immigration Examinations Fee Account," 63 Fed. Reg. 1775 (Jan. 12, 1998), https://www.govinfo.gov/content/pkg/FR-1998-01-12/pdf/98-576.pdf; U.S. Citizenship and Immigration Services, Department of Homeland Security, "Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule," 72 Fed. Reg. 4888 (Feb. 1, 2007), https://www.govinfo.gov/content/pkg/FR-2007-02-01/html/E7-1631.htm; U.S. Citizenship and Immigration Services, Department of Homeland Security, "U.S. Citizenship and Immigration Services Fee Schedule," 75 Fed. Reg. 33445 (June 11, 2010), https://www.govinfo.gov/content/pkg/FR-2010-06-11/pdf/2010-13991.pdf; U.S. Citizenship and Immigration Services, Department of Homeland Security, "U.S. Citizenship and Immigration Services Fee Schedule," 81 Fed. Reg. 26904 (May 4, 2016), https://www.govinfo.gov/content/pkg/FR-2016-05-04/pdf/2016-10297.pdf [hereinafter "NPRM 5/4/16"].

[4] Immigration and Naturalization Service, Department of Justice, "Adjustment of Certain Fees of the Immigration Examinations Fee Account," 66 Fed. Reg. 41456 (Aug. 8, 2001), https://www.govinfo.gov/content/pkg/FR-2001-08-08/pdf/01-19875.pdf.

naturalization benefit application process, and agencies must allow 60 days for initial public comments on such information requests.[5] It would be incredible for the agency to conclude that the much more complicated and well-documented task of resetting fees deserves or demands less time for public vetting than proposed form edits, so it is unsurprising that 60 days is the longstanding normal duration of fee rule comment periods.

Although we appreciate the extension of the present comment period from 32 to 46 days, the allotted period remains too short to permit stakeholders to thoroughly review, research, and respond to the proposed rule. In particular, because our organizations were not notified of this extension until more than half of the original comment window had elapsed – in fact, our originally requested extension was explicitly denied in a letter from the USCIS Acting Director[6] – we did not sequence our activities to ensure adequate time to conduct in-depth analysis and seek outside expert feedback. Furthermore, the agency's Dec. 9 revised Notice was not a mere extension, but also presented substantive new information and sharply changed analysis of its intent to transfer funds to ICE, while providing only 21 days to analyze this substantially changed information. It also shortened the review of forms from 60 to 45 days, in apparent violation of Paperwork Reduction Act's requirement at 44 U.S.C. § 3506(c)(2)(A).

By impairing meaningful public feedback, this truncated opportunity falls afoul of principles and guidelines that govern federal rulemaking. Our organizations harbor numerous significant concerns about the data and policy priorities underlying the proposed fee schedule. The unusually shortened comment period has rendered us unable to fully investigate and discuss these concerns in the present comments, including:

- Accuracy of software for computing and assigning costs to particular benefit requests – although USCIS invites stakeholders to view the commercial software it used to calculate costs and their drivers, 84 Fed. Reg. 62281, our attempts to take advantage of this offer have been fruitless. Employees who answer the phone line provided have told us they do not know to what items the Federal Register notice refers, and cannot help us. The short comment period provides insufficient time to resolve this problem, gain access to the software, and conduct review and testing to identify, describe, and propose remedies for any weaknesses in its methodologies.
- Accuracy and logic of cost and revenue projections - our organizations' anecdotal experiences and common sense create significant doubts about the soundness of calculations that rely on presumptions that, for example, a limited cut of FY2016/17 receipts is an appropriate predictor of FY19/20 workload, and demand for naturalization will remain static in the face of enormous fee changes. However, because we have such a short time to respond to this proposal, we have sought but not been able to secure affordable academic analysis that would fully document and describe the historical bases for our doubts that the fee rule's calculations fairly enumerate likely future expenses and revenues. In addition, our initial understanding that the comment timeline would be only 32 days long dissuaded us from timely seeking and incorporating into our analysis relevant detailed information that USCIS does not routinely disclose but that our organizations have sought or plan to seek through FOIA procedures. This information includes annual numbers of fee waiver requests submitted, approved, and denied, identified by the type of application with which they are submitted.

[5] *E.g.*, National Archives, "Information Collection Notices," https://www.federalregister.gov/information-collection-notices.

[6] Letter from USCIS Acting Director Ken Cuccinelli II to CLINIC, Inc. Advocacy Director Jill Marie Bussey (Nov. 15, 2019), https://cliniclegal.org/resources/federal-administrative-advocacy/uscis-response-advocates-request-60-day-comment-period.

- Size of likely economic impact – our organizations disagree with USCIS's assertion that the costs and benefits of its proposal will adhere exclusively to applicants for services and the Department of Homeland Security (DHS); social science overwhelmingly backs the assertion that the American economy will suffer if people are dissuaded from immigrating and naturalizing by the changes proposed in this fee rule. We are unable to produce for USCIS's immediate consideration a tailored scientific analysis of the likely effect on indicators like GDP of the rule, such as that contained in the Urban Institute's 2015 report for Cities for Citizenship, "The Economic Impact of Naturalization on Immigrants and Cities,"[7] because of the unusually short time set out for submitting comments. Sophisticated estimation of this sort is an intensive undertaking; research and drafting of Cities for Citizenship's report, which required several months, did not even begin until after New York City's Mayor's Office of Immigrant Affairs had dedicated months to publishing a request for research proposals and to interviewing respondents.

USCIS fails to provide any justification for providing a historically atypical and truncated period for submission of comments on the proposed fee schedule. Moreover, this departure from precedent prevents stakeholders from conducting and submitting numerous critical analyses that are relevant to the proposal. In light of the foregoing, USCIS should further extend or reopen the comment period for the proposed fee rule to provide at least 60 cumulative days for stakeholders to submit feedback.

It Is Improper to Issue a Significant Rule When the Authority of DHS and USCIS Leadership Is in Question

We are concerned that, in another departure from past practice, USCIS has proposed sweeping policy changes, like elimination of fee waivers, in a fee schedule. This represents a significant change to what has been an operational biennial fee review process to ensure that USCIS has the resources to meet its needs. While this would be noticeable under normal circumstance, it is egregious at a time when the agency has lacked confirmed leadership to exercise "significant authority pursuant to the laws of the United States."[8]

Meaningful questions about and challenges to the legal authority of agency leadership involved in promulgation of the proposed fee rule are currently pending. In one case before the U.S. District Court for the Northern District of California[9], a municipality and several non-profit service providers argue that Acting Director Kenneth Cuccinelli is not lawfully serving as the Acting Director of USCIS, and as a result an administrative action advanced under his signature has no force or effect. Further, a Nov. 15, 2019 letter from the House Committee on Homeland Security to the Government Accountability Office (GAO) questions the legality of former Acting Secretary Kevin McAleenan's recent appointment of Chad Wolf as Acting DHS Secretary, and also Acting Secretary Wolf's appointment of Kenneth Cuccinelli as Senior Official Performing the Duties of the Deputy Secretary. The letter notes that prior transgressions against

[7] María E. Enchautegui and Linda Giannarelli, The Urban Institute, "The Economic Impact of Naturalization on Immigrants and Cities" (Dec. 2015), https://www.urban.org/sites/default/files/publication/76241/2000549-The-Economic-Impact-of-Naturalization-on-Immigrants-and-Cities.pdf [hereinafter "Economic Impact of Naturalization"].

[8] Officers of the United States, including the Director of USCIS, who must be appointed by the President and confirmed by the Senate, are so described in *Buckley v. Valeo*, 424 U.S. 1, 109, 126, 143 (1976).

[9] *E.g.*, Plaintiffs' Motion for Preliminary Injunction and Memorandum of Points and Authorities 21-23, Nov. 6, 2019, *Seattle v. DHS,* No. 3:19-cv-07151-MMC (N.D. Cal. 2019), https://cliniclegal.org/sites/default/files/resources/2019-1108-preliminary-injunction-motion.pdf.

regular appointment procedures "may have rendered Mr. McAleenan's appointment unlawful from the start."[10] DHS currently has acting officials in the Office of the Secretary and Deputy Secretary, leading USCIS, ICE, and CBP, and overseeing the Office of the Executive Secretary and Office of the General Counsel; all of these positions are critical to evaluating and coordinating on immigration rule-making endeavors. In light of the lack of responsible authorities and while the legality of certain appointments remains in doubt, it is not appropriate for the agency to make the radical and untested policy shifts it proposes.

II. The Proposed Fee Schedule Is Premised on Incomplete Data and Faulty Assumptions

USCIS's fee rule proposal depends upon assertions and assumptions about expenses and revenues that seem faulty and illogical to our organizations. Though the unusually short period provided for submitting comments on the proposal prevents us from obtaining and analyzing a full set of relevant details, we have identified and describe below many aspects of calculations that appear incorrect based on the information available to us. Inaccuracies in revenue and cost projections would render the proposed fee schedule unusable, and necessitate complete revision; USCIS must urgently reconsider whether its models are consistent with past experience and knowledgeable advocates' projections of future demand.

In addition, we disagree with USCIS's assertion that its proposal adheres to Congressional direction. As the agency considers Congressional will in its decision-making process, it must widen its scope to incorporate a full picture of the many occasions on which the legislature has demanded that USCIS keep naturalization affordable, honor the nation's commitment to refugee protection, and exercise its authority in other ways that the present rule would ignore or run against. Congress retains responsibility for and authority over the agency, and USCIS rulemaking must follow its direction.

Revenue Projections Rely On Incorrect Assumptions

We are concerned that USCIS's estimates of future revenue are premised on clearly faulty assertions. To make FY 2019/2020 revenue projections for this rule, the agency chose to base calculations on a seemingly randomly-chosen window of receipts from June 2016 to May 2017. USCIS does not explain why it chose this period, which aligns neither with the fiscal year, nor the Federal government's quarters. The designated period is not representative of likely FY19 and FY20 workload, because it includes months in which USCIS experienced both an anticipated election-year increase in filings, and a one-time extraordinary increase likely attributable to heightened anxiety in the wake of President Donald Trump's election, which was characterized by extreme anti-immigrant rhetoric and actions.

The year spanning June 2016 to May 2017 roughly aligns with the period of FY16 Q2 through FY17 Q1. According to annual data on "All USCIS Application and Petition Form Types" on the USCIS website, for naturalization, it is a period of particularly high receipts (with each quarter registering 238,000 receipts or more during that period). Curiously, for the preceding quarter (FY16 Q1) naturalization receipts were about 185,000, and while receipts remained high in the first quarter after this data pull (FY17 Q2), they

[10] Letter from Cong. Bennie G. Thompson, Chairman, House Committee on Homeland Security and Cong. Carolyn B. Maloney, Acting Chairwoman, House Committee on Oversight and Reform, to Comptroller General of the United States Gene Dodaro 2 (Nov. 15, 2019), https://homeland.house.gov/news/correspondence/thompson-and-maloney-ask-for-emergency-review-of-wolf-and-cuccinelli-appointments.

dropped below 200,000 for the following two quarters. The agency does not explain why, in spite of significant evidence of the unusual nature of this period, this is an appropriate time period upon which to base the entirety of its projections, or why only one year's worth of data is sufficient to measure and predict trends. In fact, while a total of 1,023,235 naturalization applications were filed between FY16 Q2 and FY17 Q1, just 598,073 were filed during the first three quarters of FY19; at this rate, the annual total for FY19 will come to approximately 800,000, or about 20 percent fewer applications than the baseline year used in calculations.

In addition, we very strongly disagree with DHS's statement, in various sections of the rule as well as in the regulatory impact analysis, that changes in its fee waiver policy would not impact projected volume. For example, "Throughout this analysis, DHS assumes that all of these applicants would apply for immigration benefit requests by finding funds from which to pay their fees including (but not limited to) paying by credit card, borrowing from relatives or others in their social networks, loans, etc."[11] This assumption – which is, like the random 12-month period chosen as the basis of volume projections, at the heart of the agency's modeling and revenue projections – runs against available evidence to the contrary. For example, a 2013 study from the University of Southern California looked at the relationship between fee increases and naturalization, and found that while the overall impact on aggregate demand may be nearly impossible to test, the negative impact on certain groups was clear and pronounced, stating, "… the weight of the evidence suggests that the price increases for naturalization in 2004 and 2007 are a significant barrier to citizenship for less educated and lower income immigrants. Further, the evidence suggests that the decision by an immigrant to naturalize is price sensitive…."[12]

In addition, in a 2019 study published in the Proceedings of the National Academy of Sciences[13], the Immigration Policy Lab at Stanford University found that the creation of Form I-912 in 2010 to streamline the fee waiver process resulted in approximately 73,000 low income immigrants naturalizing each year who otherwise would not have applied. Otherwise put, it was only because an accessible and more easily navigable alternative to paying full fees came into existence that tens of thousands of LPRs were able and willing to begin the process of becoming U.S. citizens. This trend holds even beyond our own country. Research published in 2019 by Statistics Canada found a drop in the citizenship rate

[11] U.S. Citizenship and Immigration Services, Department of Homeland Security, "Regulatory Impact Analysis, U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements" 49, RIN No. 1615-AC18, CIS No. 2627-18, DHS Docket No. USCIS-2019-0010 (Oct. 30, 2019) [hereinafter "RIA 2019"].

[12] Manuel Pastor, Jared Sanchez, Rhonda Ortiz, Justin Scoggins, National Partnership for New Americans, "Nurturing Naturalization: Could Lowering the Fee Help?" 17 (Feb. 2013), https://dornsife.usc.edu/assets/sites/731/docs/Nurturing_Naturalization_final_web.pdf [hereinafter "Nurturing Naturalization"].

[13] Vasil Yasenov, Michael Hotard, Duncan Lawrence, Jens Hainmueller, and David D. Laitin, "Standardizing the fee-waiver application increased naturalization rates of low-income immigrants," 116 Proceedings of the National Academy of Sciences of the United States 16768 (Aug. 6, 2019), https://www.pnas.org/content/116/34/16768.

among lower income applicants[14] that corresponded with increases in the application fee for Canadian citizenship.[15]

This available evidence suggests that if the USCIS moves forward with its broad elimination of fee waivers, there would be a significant impact on the agency's overall volume of applications and the socio-economic characteristics of applicants for its benefits. At a minimum, it must provide stronger evidence it would meet volume projections, or reconsider projections in light of uncontradicted research findings that naturalization application volume is significantly price-sensitive.

A key assumption underlying USCIS's conclusion that, "the current trends and level of fee waivers are not sustainable"[16] is likewise in error and points to another weakness in calculations of projected revenues. USCIS says that eliminating certain fee waivers will significantly lessen the associated amount of foregone revenue and obviate the need for an additional 10 percent average increase in fees. However, the agency errs in assuming an upward-only trend of foregone revenue due to fee waivers, an error that means the core of the fee rule rests on a faulty foundation and must be redone. USCIS makes its assumptions based on fee waiver data from FY13 through FY17 which show an upward trend in foregone revenue. The agency points to this observation again and again as justification throughout the rule. However, it omits a key fact of which it was fully aware while producing the fee rule: FY18 forgone revenue actually went down from the prior year. This became public knowledge when the agency published an Oct. 25, 2019 statement to announce revisions to the fee waiver Form I-912: "USCIS has estimated that the annual dollar amount of fee waivers increased from around $344.3 million in fiscal year 2016 to $367.9 million in FY 2017. In FY 2018, the estimated annual dollar amount of fee waivers USCIS granted was $293.5 million."[17] This recent decline of more than $70 million in forgone revenue and its impact on projections for FY19 and FY20 are neither acknowledged nor reflected in the fee rule or any supplementary materials.

Relatedly, the rule attempts to show that because "fee waiver requests and forgone revenue have trended upward in a period of economic improvement"[18] that a downturn in the economy would be associated with an increased volume of fee waiver receipts that would be debilitating for the agency. But the upward trend the rule cites did not continue in FY18 and may also have fluctuated during now-concluded FY19, fundamentally altering this analysis. Moreover, the agency does not define what it means when it describes a period of economic improvement, and does not attempt to distinguish between the likely effects of economic inputs including stock market value and real wages when it asserts that year-to-year increases in foregone revenues are associated with booming economic

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[14] Feng Hou and Garnett Picot, Statistics Canada, "Trends in the Citizenship Rate Among New Immigrants to Canada," Catalogue No. 11-626-X – 2019015 – No. 101 (Nov. 13, 2019), https://www150.statcan.gc.ca/n1/en/pub/11-626-x/11-626-x2019015-eng.pdf?st=UhmqNlMT.

[15] *E.g.*, Kareem El-Assal, Canada Immigration Newsletter, "Canada expects a 40 per cent increase in citizenship among immigrants by 2024" (Nov. 19, 2019), https://www.cicnews.com/2019/11/canada-expects-a-40-per-cent-increase-in-citizenship-among-immigrants-by-2024-1113203.html#gs.jy88or.

[16] U.S. Citizenship and Immigration Services, Department of Homeland Security, "U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements: Notice of Proposed Rulemaking," RIN No. 1615-AC18, 84 Fed. Reg. 62280, 62300 (Nov. 14, 2019), https://www.govinfo.gov/content/pkg/FR-2019-11-14/pdf/2019-24366.pdf [hereinafter "NPRM 11/14/19"].

[17] U.S. Citizenship and Immigration Services, Department of Homeland Security, "USCIS Updates Fee Waiver Requirements" (Oct. 25, 2019), https://www.uscis.gov/news/news-releases/uscis-updates-fee-waiver-requirements.

[18] NPRM 11/14/19, *supra* n. 16, at 62300.

conditions. Perhaps most concerning, the agency does not supply any factual or historical basis for an ungrounded speculation that a recession economy would prompt a relative increase in successful fee waiver filings. Instead, it seems to silently ignore other factors that in our long experience are more significant in determining fee waiver usage, such as the standardization of the process with the introduction of Form I-912 in 2010.

Finally, USCIS's revenue analysis fails to explain the alarming discrepancy between DHS's FY20 budget's Congressional Justification[19] that projects that USCIS will maintain a carryover balance in excess of $1.3 billion at the end of each FY19 and FY20, and fee study supporting documentation that shows end-of-FY19 carryover in the red, at negative $248.8 million and projects FY20 carryover at more than negative $1.5 billion.[20] Assuming the fee rule detail to be correct, this represents a nearly $3 billion negative swing in projections – a magnitude of 50% of the agency's current total budget authority – and yet this is the first public mention of what would be an unprecedented level of financial distress. Based on our understanding of the agency's representations, we would have expected the rule to reflect the near-future availability to the agency of a large pot of application fees that have been paid but not yet booked as received and available for expenditure. In the strict financial sense, as noted in this fee rule's Supporting Documentation, "For accounting purposes, USCIS cannot recognize revenue as earned until completing work, i.e., when it has rendered a decision to an applicant or petitioner on an immigration benefit request."[21] Therefore, the agency does not count fees associated with cases in its backlog toward revenue until work is completed. Given the extraordinary current size of the pending workload, this means the agency is sitting on tens if not hundreds of millions of dollars in revenue already received but not yet accrued. Our organizations cannot discern how or whether these funds are factored into agency modeling.

For all these reasons, USCIS's calculations of expected future revenues appear to our organizations to be severely and fatally flawed. USCIS must re-examine these projections, and explain in future publications concerning the fee rule the factual bases for assumptions about factors like those we highlight here.

Cost Projections Omit Important Considerations

In addition to observing that revenue projections rest on clearly erroneous assumptions, our organizations are alarmed that USCIS fails to consider significant, damaging costs of its proposal to the nationwide economy and to other aspects of our well-being as a country. Its methodologies for projecting agency expenses and for assigning them to various activities also seem to contradict independent sources of relevant information. Our analysis leaves us with questions about whether projected future expenditures are overestimated, and leads us to conclude that USCIS underestimated the harmful economic costs of implementing its proposed fee schedule. USCIS also seems to have discounted the degree to which it proposes to impose charges on U.S. citizens, and to deprive Americans of social and financial stability and opportunity. U.S. citizens and U.S.-based businesses are important

[19] U.S. Citizenship and Immigration Services, Department of Homeland Security, "Budget Overview: Fiscal Year 2020 Congressional Justification," No. CIS-1 (2019), https://www.dhs.gov/sites/default/files/publications/19_0318_MGMT_CBJ-Citizenship-Immigration-Services_0.pdf.

[20] U.S. Citizenship and Immigration Services, Department of Homeland Security, "Immigration Examinations Fee Account: Fee Review Supporting Documentation" 14 (Figure 3), (April 2019) [hereinafter "Supporting Documentation 2019"].

[21] *Id*. at 13.

customers of the immigration benefits system, and they – not some amorphous population of nonresident noncitizens – would suffer the losses that severely restricting access to immigration and naturalization would cause.

Our organizations cannot discern how USCIS's costs could have legitimately increased in such a sudden and dramatic way in FY18 and FY19, as represented in documentation associated with the proposed fee rule. USCIS does not explain whether and how management and technology choices have reduced certain workloads or led to efficiencies and reduced costs, like the "efficiency gains resulting from information technology investments and process improvements"[22] anticipated and articulated in the FY 2016/2017 fee rule. The agency does not describe its expanded use of eProcessing, now representing 27 percent of N-400 adjudications, and its associated efficiency and cost savings, even though it has repeatedly emphasized this point in correspondence to Members of Congress.[23] Furthermore, the agency has stated multiple times – including in a May 2019 letter to Senator Thom Tillis (R-NC)[24] – that it expects all benefits will be filed and adjudicated electronically by the end of calendar year 2020. A near-term, complete digital transition could not but produce significant cost savings and workflow innovations, but these are not addressed in the proposed rule. Nor are the efficiencies and savings that stakeholders have been promised from initiatives already underway including the following:

- Use of System Assisted Processing to conduct some pre-adjudication functions electronically;
- Introduction of InfoMod project to reduce user visits to field offices via InfoPass system;
- Closure of international offices and the realignment and elimination of some District offices; and
- Lower refugee intake.

If these and other efforts actually have failed so abjectly that USCIS's minimum necessary operating budget must grow by, according to the agency itself, 54 percent on average compared to annual budgets projected in the 2016 fee rule, then the agency stakeholders and Members of Congress who have supported and authorized projects deserve an explanation. In the alternative, USCIS should reconsider whether it can expect greater savings and efficiencies in future years than it has projected.

Our organizations harbor a series of unanswered questions about the model USCIS says it has used to calculate the costs of performing various services. Because we do not see expected cost savings factored into estimates of future expenditures, we are concerned about the accuracy of the dramatically larger operating budgets USCIS proposes for FY19 and FY20. In enumerating its reasons for requesting overall increases in fees, the agency projects approximately $1.3 billion in additional annual revenue, and accounts for the need for just $755.3 million of that total in the first year of the fee study, for purposes including pay and benefits for existing and new staff and for proposed transfer to Immigration and Customs Enforcement (ICE).

In addition, the agency's model for attributing its unexplained exponential increase in expenditures to adjudication of various forms seems to us to be fundamentally flawed. Rather than modeling costs

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[22] U.S. Citizenship and Immigration Services, Department of Homeland Security, "FY 2016/2017 Immigration Examinations Fee Account Fee Review Supporting Documentation with Addendum" 10 (Oct. 2016) [hereinafter "Supporting Documentation 2016"].

[23] *E.g.,* Letter from Director L. Francis Cissna to Cong. Jesús G. "Chuy" Garcia 8-9 (April 5, 2019), https://www.uscis.gov/sites/default/files/files/nativedocuments/Processing_Delays_-_Representative_Garcia.pdf [hereinafter "Garcia Letter 4/19"]; Letter from Director L. Francis Cissna to Senator Thom Tillis 1-3 (May 23, 2019), https://www.uscis.gov/sites/default/files/files/nativedocuments/Processing_Delays_-_Senator_Tillis.pdf [hereinafter "Tillis Letter 5/19"].

[24] Tillis Letter 5/19, *supra* n. 23, at 3.

based on the amount of work needed to compete adjudications by benefit type, the agency assigns model output costs that are "the projected total cost from the ABC model divided by projected fee-paying volume. It is only a forecast unit cost (using a budget) and not the actual unit cost (using spending from prior years). USCIS does not track actual costs by immigration benefit request."[25] This model assumes straight-line cost increases with increased receipts, and fails to factor in any efficiencies gained (or lost) through volume. If it is true that completing a higher number of cases nets USCIS no efficiencies, that fact would contradict economic orthodoxy, and merit explanation from the agency.

In its executive summary to this proposed rule, DHS takes a far too limited view of the costs and detrimental impacts of changes to forms and fee structures. It suggests "much of this total is expected to be transfers between applicants and the federal government or between groups of applicants, rather than new, real resource costs to the U.S. economy."[26] In fact, we are very confident that implementation of the rule as proposed would significantly reduce new applications and approvals for services USCIS adjudicates, especially U.S. citizenship. Researchers have repeatedly and consistently confirmed the existence of positive associations between naturalization and greater educational attainment, household income,[27] and fiscal and economic returns[28]. Limiting naturalization – especially for those lower income applicants who stand to gain the most from the opportunities naturalization provides – will have material negative effects on the U.S. economy and the outcomes for affected families. The rule erroneously omits any acknowledgement or attempt at analysis of the economic and fiscal costs of fewer people becoming citizens, and of fewer people accessing other services for which fees would increase or fee waivers would be eliminated. Such analysis is indispensable to USCIS's fulfillment of its duty to anticipate and quantify costs and benefits of its proposals, and to ensure that regulatory action would serve the public interest. Elsewhere the agency has recognized this by, for example, acknowledging the adverse health consequences and harm that would befall immigrants and families that would disenroll from benefits, in its rulemaking on public charge.

USCIS Incorrectly Characterizes Congressional Intent

We strongly disagree with USCIS's characterization of its proposed fee rule as "account[ing] for, and…consistent with"[29] Congressional direction around appropriations and agency management. The present Notice of Proposed Rulemaking (NPRM) gets no farther than a single instance of citation to Congress's direction, in H. Rep. 115-948 at page 61, to consider expanding access to fee waivers. The agency illogically protests inability to do so in consideration of the supposed principle of self-sufficiency, even though income is not a necessary qualification for citizenship and there is no such principle of self-sufficiency applicable to the naturalization process. In addition to rejecting this instruction without sound rationale, USCIS fails to acknowledge or explain its pointed rejection of Congress's consistent and strong demands that naturalization remain affordable and accessible.

Congress has been very clear in its conviction that naturalization provides special benefits to all Americans, and that USCIS's and other executive agencies' policies should encourage LPRs to seek

[25] Supporting Documentation 2019, *supra* n. 20, at Appendix V, Table 3, Footnote 12.
[26] NPRM 11/14/19, *supra* n. 16, at 62332.
[27] Brittany Blizzard and Jeanne Batalova, Migration Policy Institute, "Naturalization Trends in the United States" (July 11, 2019), https://www.migrationpolicy.org/article/naturalization-trends-united-states [hereinafter "Naturalization Trends"].
[28] Economic Impact of Naturalization, *supra* n. 7.
[29] NPRM 11/14/19, *supra* n. 16, at 62283.

citizenship. Lawmakers signaled this when they enshrined the Office of Citizenship in law upon creation of the Department of Homeland Security; it is the only such office that must be maintained within USCIS to promote a particular immigration service that the agency administers. Examples of additional pertinent legislative action taken over the past decade include:

- Authorization to the Secretary of Defense to reimburse USCIS for the costs of processing servicemembers' applications for citizenship, to ensure that naturalization is free to individuals who have volunteered to defend the nation, at Section 8070 of H.R. 2055, the Consolidated Appropriations Act of 2012, 125 STAT. 823;
- Allocation of multiple years of discretionary appropriations (or, in the alternative, authorization to spend IEFA funds) for Citizenship and Integration Grants administered by the Office of Citizenship; for example, $2.5 million in FY14, Section 543(b) of H.R. 3547, the Consolidated Appropriations Act, 2014, 128 STAT. 276; and $10 million in FY19, Title IV of H.J. Res. 31, the Consolidated Appropriations Act, 2019, 133 STAT. 34; and
- Creation of a dedicated Treasury account for donations to fund immigrant integration grants and citizenship promotion, and extension of authorization to the Director of USCIS to solicit public funding for those purposes, Section 404(c) of H.R. 244, the Consolidated Appropriations Act, 2017, 131 STAT. 422-23.

Moreover, Committee reports accompanying appropriations acts over the course of the past decade have frequently included language extolling the benefits of naturalization. For example, Senate Report 113-198 on S. 2534, the Department of Homeland Security Appropriations Bill, 2015, states, "the Committee believes it is in our country's best interest to encourage and assist individuals who are eligible and eager to become citizens to apply for citizenship and to understand the rights and responsibilities of American citizenship. As USCIS undertakes the review of its fee structure, the Committee urges the agency to recognize the important benefit that naturalization confers on our nation, and maintain naturalization fees at an appropriate level." House Report 116-180 on H.R. 3931, the Department of Homeland Security Appropriations Bill, 2020, addresses some additional topics that regularly arise in Congressional discussion of USCIS's efforts: "The Committee directs USCIS to continue the use of fee waivers for applicants who demonstrate an inability to pay the naturalization fee," and, "to brief the Committee on the feasibility of initiating a campaign to provide lawful permanent residents who arrive at ports of entry with information about the naturalization process and to encourage them to apply for U.S. citizenship."

By advancing policies that would make it far more difficult for qualified LPRs to naturalize, USCIS's fee rule impermissibly defies Congressional intent. A rule that clearly conflicts with the intent that has animated many years of pro-naturalization lawmaking is an action set up for failure, and likely to become the target of maneuvers such as adoption of a resolution of disapproval pursuant to the Congressional Review Act. Rather than risking the waste of the enormous effort it has already undertaken to review its fee structure, USCIS should revisit its proposed rule to ensure that it more faithfully reflects Congressional direction.

III. The Proposed Fee Schedule Would Reverse Present Policy Without Justification

Our organizations find that the proposed rule is not justified by logic or by reference to appropriate policy goals, in addition to being premised on missing or incorrect factual assertions. USCIS's failure to justify a proposed radical shift in the philosophy underpinning the fee rule places this entire schedule on shaky ground. The agency's defense of the major changes it proposes is further undermined by its insistence on an improper diversion of funds that Congress has rejected. USCIS must reconsider its

proposed course of action because it cannot legitimately rationalize its extreme departure from the status quo.

USCIS Fails to Justify a Switch from Evaluating Ability to Pay to Imposing Full Costs on Beneficiaries

Though the present NPRM takes a very different approach to setting fees than its predecessors, USCIS does not explain the policy rationale for its choices, nor what has changed since previous fee studies were conducted in 2016 and earlier to cause the agency to upend its philosophy. For example, in the naturalization context, where USCIS had long aimed to "promote naturalization and immigrant integration,"[30] there is no rationale set forth to articulate whether this is still a goal, or if not, what has changed. Outside of saying that it wants to be "equitable," and without explaining how such efforts serve its stakeholders or the best interests of the nation generally, USCIS does not offer any reason for its alleged strict adherence[31] to a new guiding principle of beneficiary-pays. Nor does it acknowledge caveats applicable to the principle that users of government services should pay the actual costs of providing those services. Most significantly, the 2008 GAO report the agency cites on fee setting principles explicitly notes, "Under the beneficiary-pays principle, the government may wish to charge some users a lower fee or no fee to encourage certain behaviors that provide a public benefit, such as advancing a public policy goal."[32] This is precisely what Congress and the public have always asked the agencies administering immigration and naturalization benefits to do, and how USCIS and the INS before it have always operated. The lack of sufficient reasoning for departing from the practice of keeping the N-400 fee affordable and offering fee waivers to encourage naturalization is no small matter. In fact, similar failures have forced DHS to defend myriad administrative actions, such as attempted cancellation of the DACA program, in federal courts.

While USCIS claims in vague language that proposed fee increases and the elimination of most fee waivers would enable it to recover full operating costs and maintain an "adequate" level of service, the agency is noticeably silent on the topic of its service delivery goals or commitments to customers during the period of time covered by the proposal. This is a particularly egregious omission in light of the significant backlogs the agency is currently facing, and the widespread concern about processing delays that both the public and Members of Congress have loudly expressed.[33] Although it proposes to increase revenues by more than $1 billion annually, representing a very significant portion of its overall expenditures, USCIS shockingly "estimates that it will take several years before USCIS backlogs decrease measurably"[34] in the present NPRM. By contrast, in its most recent concluded 2016 fee rule, USCIS

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[30] *E.g., id.* at 62316.

[31] Nor does the agency even uniformly apply the principles it claims to have followed in setting proposed fees: a handful of categories of applications, including forms concerning international adoptions and temporary religious workers, are exempted from being charged the costs that USCIS has determined can be attributed to those operations.

[32] Government Accountability Office, "Federal User Fees: A Design Guide" 10, No. GAO-08-386SP (May 29, 2008), https://www.gao.gov/products/GAO-08-386SP [hereinafter "Federal User Fees 2008"].

[33] Bipartisan groups Members of Congress have sent several letters to USCIS during calendar years 2018 and 2019 to register alarm at and ask for more information about remedies for extraordinary application backlogs and processing delays, *e.g*., Letter from Cong. Pete Olson et al. to Director L. Francis Cissna (March 28, 2019), https://olson.house.gov/sites/olson.house.gov/files/wysiwyg_uploaded/USCIS%20Letter_0.pdf; Letter from Senator Thom Tillis et al. to Director L. Francis Cissna (May 13, 2019), https://www.aila.org/advo-media/whats-happening-in-congress/congressional-updates/bipartisan-letter-senators-uscis-backlog?utm_source=AILA%20Email&utm_medium=COAL.

[34] NPRM 11/14/19, *supra* n. 16, at 62294.

explicitly prioritized processing improvements, stating, "Through this rule, USCIS expects to collect sufficient fee revenue to fully support RAIO, SAVE and the Office of Citizenship. This would allow USCIS to discontinue diverting fee revenue to fund these programs, thereby increasing resources to fund the personnel needed to improve case processing, reduce backlogs, and achieve processing times that are in line with the commitments in the FY 2007 Fee Rule, which USCIS is still committed to achieving."[35]

Far from articulating goals for timely application adjudication as a rationale for increasing fees and shifting burdens among beneficiaries, USCIS is proposing a course of action that is likely to exacerbate its backlog problem. In 2019 letters to Members of Congress[36] and in July 2019 testimony before the House Judiciary Committee[37], USCIS has acknowledged that, for example, 2016's $45 naturalization fee increase and other premiums imposed contributed to receipt of an anticipatory, pre-increase surge a new applications; this phenomenon alongside discretionary policy changes implemented by the Trump Administration drove growing backlogs and waiting periods for adjudication. Moreover, the GAO resource on federal fee-setting guidelines[38] that the NPRM cites, supposedly in support of shifting from an ability-to-pay to beneficiary-pays principle, actually observes that, "Abrupt imposition of new or substantially increased user fees could have unintended consequences. For example, in May 2007, U.S. Citizenship and Immigration Services (USCIS) published a new fee schedule that raised fees effective July 2007 for immigrant and naturalization benefit applications by an average of 88 percent. Large numbers of applicants filed for benefits before the increase took effect, which contributed to a surge that exacerbated USCIS's backlog of applications."

Given that the volume prompted by an N-400 fee increase of about 8 percent in 2016 seems to have had a significant negative effect on USCIS's ability to keep up with its workload, the present proposed increase of 83 percent for fee-paying applicants, and the prospective increase from $0 to $1170 for lower-income LPRs, are virtually certain to prompt a sudden, paralyzing flood of incoming applications. Managing N-400 receipts is just one small piece of USCIS's mission, and fee changes in other areas that USCIS justifies merely as consistent with the beneficiary-pays philosophy will further contribute to dramatic jumps and dips in agency workload. USCIS has failed to file a fee rule that is justified by planned efforts to meet the public demand that it reduce waiting times, and moreover, its proposal will foreseeably worsen the very situation that has caused universal alarm about its operations, and popular calls for systemic changes.

Imposition of a fee in measure with the cost of providing a service is a starting point for government agencies that charge their customers, but not a goal or a public policy end in and of itself. USCIS cannot operate in isolation from consideration of the penultimate economic and social importance of what it does; its goal is not to recoup its costs however it can, but to extend temporary and permanent status and citizenship to noncitizens in ways that meet our critical needs and desires for a skilled workforce, family unity, and a more resilient and secure nation. Even in its altered form that seems to have sought

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[35] NPRM 5/4/16, *supra* n. 3, at 26910.

[36] *E.g.*, Garcia Letter 4/19, *supra* n. 23; Tillis Letter 5/19, *supra* n. 23.

[37] U.S. Citizenship and Immigration Services, Department of Homeland Security, "Joint Written Testimony of Don Neufeld, Associate Director, Service Center Operations Directorate, Michael Valverde, Deputy Associate Director, Field Operations Directorate, and Michael Hoefer, Chief, Office of Performance and Quality, Management Directorate, to the House Committee on the Judiciary, Subcommittee on Immigration and Citizenship" 2 (July 16, 2019), https://docs.house.gov/meetings/JU/JU01/20190716/109787/HHRG-116-JU01-Wstate-NeufeldD-20190716.pdf [hereinafter "USCIS 2019 Congressional Testimony"].

[38] Federal User Fees 2008, *supra* n. 32.

to downplay its role as a public service provider[39], the agency's own mission statement sets forth these principles: "U.S. Citizenship and Immigration Services administers 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." For these reasons, balancing the budget on a strict beneficiary-pays principle to be "equitable" has never taken, and cannot now take, absolute precedence for USCIS over ensuring that the legal immigration system serves American families' and businesses' interests, and pushes law-abiding, patriotic newcomers who are committed to our way of life to seek citizenship. USCIS's proposed change in fee-setting principle is unjustified and improper.

Proposed Fee Waiver Policies Defy Logic

Our organizations very strongly oppose the proposed elimination of fee waivers for N-400s and other applications related to citizenship, which USCIS similarly defends with unconvincing logic. Without acknowledging or evaluating the benefits[40] of ensuring access to naturalization and other forms of status regardless of ability to pay, or explaining why it must depart from past practice of building the cost of fee waivers into fees charged to paying customers, USCIS states conclusively that fee waivers have become too costly to sustain. Its assessment of the value of fee waivers granted fails because it does not account for recent fee increases or indicate whether fee waiver volume has actually changed: for example, 50,000 naturalization fee waivers granted in 2015 would have the same equivalent value as about 46,900 naturalization fee waivers granted in 2017. Therefore, the increase in the value of fee waivers that USCIS says occurred between 2016 and 2017 does not necessarily represent an increase in the number or rate of fee waivers requested or granted. Moreover, the present NPRM nowhere acknowledges the more recent decline in the effective cost of fee waivers in FY18, which belies the suggestion that fee waivers impose an ever-increasing burden on the limited resources available to USCIS.

We are also troubled and confused by USCIS's failure to address how it has uniformly applied the anticipated effect of eliminating fee waivers to affected applications. The agency explains that it proposes decreases to N-600 and N-600K fees "Because fee waivers would be limited under this proposed rule, [and] fee-paying Forms N-600 and N-600K would no longer need to cover the cost of adjudicating fee-waived Forms N-600 and N-600K."[41] We understand that the agency does not see the situation with respect to N-400 forms in the same way, because the fee associated with the N-400 has been set at a level below the estimated actual cost of adjudicating each application. At the same time, prospective elimination of N-400 fee waivers will have a significant impact on revenue collected, and

[39] *E.g.,* Richard Gonzales, National Public Radio, "America No Longer A 'Nation Of Immigrants,' USCIS Says" (Feb. 22, 2018), https://www.npr.org/sections/thetwo-way/2018/02/22/588097749/america-no-longer-a-nation-of-immigrants-uscis-says.

[40] Eliminating fee waivers would impose heavy, damaging costs on families, municipalities, and other stakeholders. For example, researchers found that standardization of the I-912 Request for a Fee Waiver in 2010 produced approximately 73,000 more naturalization applications annually from qualified LPRs with lower incomes who would not otherwise have applied. By naturalizing, these individuals increase their employment rates and income by an average of eight to 11 percent; they subsequently pay higher taxes and use fewer public benefits. The Cities for Citizenship Partnership found in 2015 that if 7.5 million LPRs eligible for citizenship chose to naturalize by 2020, their earnings would increase the GDP by $37-52 billion over the course of just ten years, and reduce demand for benefits such as Medicaid and SNAP by millions of dollars. The costs and losses attributable to a severe decline in the naturalization of low-income LPRs would be quite significant.

[41] NPRM 11/14/19, *supra* n. 16, at 62317.

USCIS must consistently apply the same logic across buckets of work. Proposed elimination of fee waivers should have notably lessened the size of the increase USCIS seeks to impose upon naturalization fee-payers.[42] The glaring absence of any such discussion leaves us with concern that the naturalization process may have been singled out for unfavorable treatment, in an inexcusable betrayal of the best interests of the nation. In sum, USCIS has not shown that abruptly ending settled fee waiver policies that have been in place for decades is advisable or necessary to produce any benefit. It has also failed to demonstrate that any reasonable alternative exists to jettisoning fee waivers and pricing hundreds of thousands of individuals out of pursuing citizenship and boosting their own earnings and our nation's economy.

Especially compelling evidence of the weakness of the reasoning underlying proposed elimination of full and partial fee waivers is contained in a footnote to the NPRM that tries to explain why USCIS is directly rejecting Congressional direction to expand waivers. The agency states, "Recently, Congress encouraged USCIS 'to consider whether the current naturalization fee is a barrier to naturalization for those earning between 150 percent and 200 percent of the federal poverty guidelines, who are not currently eligible for a fee waiver.' H. Rep. 115-948 at 61. Although USCIS considered this report in formulating this proposed rule, USCIS has determined that it is neither *equitable*, nor in accordance with the principle of *self-sufficiency* that Congress has frequently emphasized, to continue to force certain other applicants to subsidize fee-waived and reduced-fee applications for naturalization applicants who are unable to pay the full cost fee [emphasis added]."[43] These reasons for defying Congress and upending USCIS operations are laughable: equity is not a federal policy goal in the ill-defined sense in which USCIS uses it. We are unaware of, and USCIS has not supplied, any data, research, or other actual factual evidence that supports the notion that applying what appears to be its particular vision of "equitability" to the immigration system improves outcomes or boosts Americans' well-being. Moreover, USCIS's citation to "self-sufficiency" is one of the most egregiously misleading portions of the proposed fee rule. Income and self-sufficiency are completely irrelevant in the naturalization process, as they should be; candidates for U.S. citizenship are never quizzed or judged on their finances, nor required to show how they will support themselves, and no such consideration applies in this context.

Our organizations are troubled by DHS's proposal to narrow the regulatory authority for the Director of USCIS to waive any fee for a case or specific class of cases, when the Director determines that such action would be in the public interest and the action is consistent with other applicable law. In an apparent internal contradiction, the fee rule would limit this nominally discretionary waiver authority to certain enumerated categories. In light of the sweeping nature of the policy proposals in this fee rule, and the agency's acknowledgement that their implementation "would be a significant change from past fee waiver regulations and policies,"[44] USCIS should not limit the future discretion to make fee waivers available. There is a readily available and effective alternative if USCIS leadership should conclude that discretion extends too broadly: the Director can simply opt not to exercise the authority to approve

[42] For example, presume that in FY19, the N-400 fee is $725 with biometrics, and there are 600,000 paying naturalization applicants and 200,000 fee waiver applicants. If all 800,000 individuals paid the same fee, USCIS would have raised the same amount of revenue by charging each person $543. Accordingly, while attempting to recover alleged actual costs from each naturalization applicant would raise the baseline fee, simultaneous elimination of fee waivers should have brought the proposed fee back down by what our rough calculations suggest should be a noticeable amount.

[43] NPRM 11/14/19, *supra* n. 16, at 62317, FN 149.

[44] *Id.* at 62300.

waivers. To tie the Director's hands for now and into the future is unnecessary, and presents more downstream risk than reward given the multitude of untested factors proposed in this fee rule.

Finally, we incorporate (and attach as Appendixes A-C) our comments in opposition to the strained rationale advanced to justify changes to the I-912 form for requesting fee waivers, which were implemented on Dec. 2, 2019 and enjoined on Dec. 9, 2019 by Judge Chesney in the U.S. District Court for the Northern District of California. Changes that USCIS previously adopted in spite of our criticisms – including ending acceptance of receipt of means-tested benefits as proof of qualification for a fee waiver, and requiring tax transcripts or Internal Revenue Service-issued statements from all applicants – are repeated in the revised forms that USCIS has published for a statutorily-deficient comment period of less than 60 days in connection with the present fee study.[45] We continue to oppose these changes because their adoption will hurt, not help, USCIS as it works to resolve internal workflow challenges and to reduce waiting times for application adjudication.

In addition, we are unconvinced by the comparison USCIS evokes as explanation for its proposal to reduce the upper eligibility threshold for fee waivers from 150 percent to 125 percent of federal poverty level income. USCIS argues that 125 percent is an appropriate marker because it is the minimum required to qualify as the sponsor of an intending immigrant. This inquiry measures something entirely different than the fee waiver application, however, and one situation is not analogous to the other. USCIS has determined that with income above 125 percent of poverty, one can afford to support an additional person if the need arises. "Support" might entail providing such necessities as a home, food, toiletries, and clothing, which may not actually cost much at all to give to one additional member of an established household.[46] Moreover, immigrants who need sponsors to obtain visas are generally authorized to work, and not expected to actually rely upon public benefits or sponsors for subsistence. In contrast, the operative question in determining eligibility for a fee waiver is whether an individual can afford to pay a large fee on top of normal living expenses. Incurring the expense is not a distant theoretical possibility, but a certainty, and the expense itself is not for a necessity but for an extraordinary expenditure in excess of the usual cost of living. It is not just appropriate but necessary that the fee waiver qualification threshold remain where it has been, at 150 percent of poverty level, to serve as an apt indicator of whether a potential applicant for naturalization or other benefits can afford to support him- or herself *and,* in addition, to pay significant application fees of hundreds or thousands of dollars.

ICE Activities Are Not "Immigration Adjudication and Naturalization Services" and May Not Be Funded from Immigration Fees

Our organizations vehemently disagree with USCIS's disingenuous argument that some ICE activities are a part of the immigration adjudication process and should therefore be funded with fees paid by applicants for benefits. By law, application fees are deposited into the Immigration Examinations Fee

[45] Pursuant to Judge Chesney's order (Order Granting Plaintiffs' Motion for Nationwide Preliminary Injunction (Dec. 11, 2019), No. 3:19-cv-07151-MMC (N.D. Cal.)), USCIS must restart the information collection request clearance process anew for a revised I-912 form that conforms to the Court's decision. However, the version of the I-912 published as supporting material to USCIS's December 9, 2019 NPRM does not meet the Court's specifications, nor have members of the public been allotted the minimum 60 days under the Paperwork Reduction Act to comment upon that version. Therefore, USCIS may not move forward with implementation of a revised I-912 based on the present notice-and-comment process.

[46] For example, a homeowner could provide housing to someone she sponsored virtually for free; the only likely cost in this scenario would be in the form of modest premiums to some utility bills.

Account (IEFA), which must be used to pay for "providing immigration adjudication and naturalization services and the collection, safeguarding and accounting for fees deposited in and funds reimbursed from the 'Immigration Examinations Fee Account'." 8 U.S.C. §1356(n). Little precedent exists to show what activities constitute "immigration adjudication and naturalization services," because, to our knowledge, no DHS or INS administrators have ever attempted to use funds in the IEFA for work beyond the bounds of the obvious, plain-language meaning of the terms, as the NPRM now proposes. This very fact confirms what logic tells us: adjudication services are performed exclusively by USCIS[47], which conducts its own fraud detection and verification procedures during the application review process, including through its own internal Fraud Detection and National Security Directorate (FDNS) funded by yet another discreet fee account. In fact, the list of ICE activities[48] that USCIS proposes to pay for with IEFA funds in its Dec. 9 Notice, at 84 Fed. Reg. 67243, very closely resembles FDNS's description of its work[49], and begs further investigation of an apparent duplication of efforts, the efficiency of involving ICE, and FDNS's effectiveness.

USCIS also has exclusive authority to set fees because it is the sole entity that performs the "adjudication and naturalization" functions that those fees are used to underwrite. Enforcement activities, including criminal prosecutions based on interactions with USCIS, that happen outside the process of rendering a decision on a currently-pending application are so distinguished from "adjudication" that they are assigned to a separate agency and have always been exclusively funded by means other than the IEFA. In fact, growing conviction that adjudication and enforcement activities needed to be assigned to distinct entities to ensure more effective operation of the immigration system was a strong driver of the decision to create the Department of Homeland Security, and to delineate separate roles for USCIS and ICE.[50] ICE's work is not now, and has not ever been, within the scope of the purposes of the IEFA described in law.

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[47] Further evidence that this is the case is found throughout the U.S. Code and Code of Federal Regulations. For example, the long and detailed text of 8 C.F.R. § 103.2, "Submission and adjudication of benefit requests," names USCIS 58 separate times, but does not mention ICE even once in setting forth exhaustive guidelines and instructions for rendering of decisions on immigration and naturalization applications.

[48] These include "investigation of benefit fraud," identifying "individuals who attempt to use document and benefit fraud to compromise the integrity of the immigration system," and "statistical analysis of benefit fraud." U.S. Citizenship and Immigration Services, Department of Homeland Security, "U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements: Extension of comment period; availability of supplemental information," RIN No. 1615-AC18, 84 Fed. Reg. 67243 (Dec. 9, 2019), https://www.federalregister.gov/documents/2019/12/09/2019-26521/us-citizenship-and-immigration-services-fee-schedule-and-changes-to-certain-other-immigration.

[49] FDNS officers' duties include "conducting administrative investigations into suspected benefit fraud and aiding in the resolution of national security or criminal concerns. Administrative investigations may include compliance reviews, interviews, site visits, requests for evidence, and may also result in a referral to ICE for consideration of a criminal investigation." U.S. Citizenship and Immigration Services, Department of Homeland Security, "Fraud Detection and National Security Directorate: What We Do" (Aug. 2, 2019), https://www.uscis.gov/about-us/directorates-and-program-offices/fraud-detection-and-national-security-directorate.

[50] *E.g.,* Lisa M. Seghetti, Congressional Research Service, Library of Congress, "Immigration and Naturalization Service: Restructuring Proposals in the 107th Congress," No. RL31388 (Dec. 30, 2002), https://www.everycrsreport.com/reports/RL31388.html (stating, "There appeared to be a consensus among the Administration, Congress, and commentators that the immigration system, primarily INS, was in need of restructuring. There also appeared to be a consensus among interested parties that the former INS's two main functions — service and enforcement — needed to be separated.").

The unprecedented and illogical nature of DHS's proposal to misuse IEFA funds to pay for ICE's enforcement work has prompted Congress to convincingly reject like attempts advanced in the President's Budgets. For example, the President's Budget for FY19 requested that $207.6 million from the IEFA be transferred to ICE[51]. Congressional appropriators either ignored or outright rejected this request. Conference Report 116-9 on H.J. Res. 31, providing FY19 appropriations, echoes the denial set forth in House Report 115-948, accompanying the House Committee's draft bill, declaring that legislation, "does not assume the use of $207,600,000 in Immigration Examination User Fee revenue to partially offset costs for eligible activities in this account due to concerns with the impact to U.S. Citizenship and Immigration Services (USCIS) operations and the growing backlog in applications for immigration benefits."[52] Senate Report 115-283 adds further explanation of the meaning of language in both chambers' bills that restricts transfers of funds between agencies within DHS: "The Committee expects the Department to manage its programs and activities within the levels appropriated. The Committee reminds the Department that reprogramming or transfer requests should be submitted only in the case of an unforeseeable emergency or a situation that could not have been predicted when formulating the budget request for the current fiscal year."[53] In response to the Administration's persistence, Congress was even more definitive in its most recent actions. H.R. 3931, the Homeland Security Appropriations Bill for FY20, included an explicit prohibition on transfer to or availability of IEFA funds for ICE.[54] Congress elaborated on this point in the explanatory statement accompanying the full-year FY20 appropriations package it adopted under the title of H.R. 1158, writing, "The agreement provides direct funding of $207,600,000 [for ICE] above the request in lieu of the proposed use of Immigration Examinations User Fee revenue to partially offset costs for eligible activities in this account due to concerns with the impact to U.S. Citizenship and Immigration Services operations and the growing backlog in applications for immigration benefits."[55] Its statement alone should foreclose any further consideration of transfer from the IEFA to ICE.

Both federal law and federal lawmakers oppose the facially invalid notion that application adjudication encompasses the immigration enforcement operations carried out by ICE; in addition, Congress already regularly approves exponentially larger annual operating budgets for ICE than for USCIS. In FY19, for example, Congress authorized ICE to spent more than $7.5 billion, mostly from taxpayer funds, while USCIS received less than $150 million in discretionary appropriations and authorization to spend just over $4.5 billion in total. Apart from the illegality of the action, it would constitute exceedingly poor public policy to pull funds from an agency that is already struggling to manage its workload, and warning stakeholders that it risks running out of funding, to dedicate them instead to a better-funded component that regularly touts the successes[56] that its already-robust funding has enabled. Further, recent developments cast serious doubt upon the soundness of calculations on which this transfer request purports to be based. USCIS's Dec. 9 Federal Register Notice extending the present comment deadline also reduces the proposed transfer of $207.6 million in fee funds to ICE by about half, to $112

[51] Department of Homeland Security, "FY 2019 Budget in Brief" 78, https://www.dhs.gov/sites/default/files/publications/DHS%20BIB%202019.pdf.
[52] Department of Homeland Security Appropriations Bill, 2019, House Report 115-948 (Sept. 18, 2018) at 28; Making Further Continuing Appropriations for the Department of Homeland Security for Fiscal Year 2019, and for Other Purposes, House Report 116-9 (Feb. 13, 2019) at 481.
[53] Department of Homeland Security Appropriations Bill, 2019, Senate Report 115-283 (June 21, 2018) at 117.
[54] Department of Homeland Security Appropriations Act, 2020, H.R. 3931, 116th Cong. § 407 (2019).
[55] Explanatory Statement, Division D – Department of Homeland Security Appropriations Act, 2020 10 (Dec. 16, 2019), https://docs.house.gov/billsthisweek/20191216/BILLS-116HR1158SA-JES-DIVISION-D.pdf.
[56] *E.g.*, U.S. Immigration and Customs Enforcement, Department of Homeland Security, "ICE Statistics" (Dec. 14, 2018), https://www.ice.gov/statistics.

million, for what the agency now calls "allowable costs." Its further explanation is that $112 million represents the FY21 personnel cost of a specific number of criminal investigators and supporting personnel, whose job title explicitly places their work outside the scope of application adjudication. Even if this work were IEFA-reimbursable – and it is not – USCIS's detailed explanation of its cost is a post-hoc justification that reveals the larger previous transfer request to have lacked a factual basis, and also puts the credibility of the revised request in question. In light of its dubious nature and Congress's strong rejection of the request, we demand that USCIS withdraw its proposal to transfer IEFA funding to ICE.

As the agency acknowledges at 84 Fed. Reg. 67246, proposed fee levels must be reduced in accord with the decline in the amount that USCIS proposes to spend in the years covered by the present fee study. It is not sufficient for the agency to state in vague terms that, "the resulting fee schedule would…be somewhere between those two levels," referring to high and low projections set forth at 84 Fed. Reg. 62328. Projected fees vary by as much as $60 between the two scenarios, and there are many possible choices for planners allocating savings to mitigating fee increases; the changes USCIS adopts because of the revision of its ICE transfer request could therefore be very consequential. The agency must provide additional time to stakeholders to comment on a specific, revised list of proposed fees that take into account its revision of its budget.

IV. USCIS Failed to Consider Less Harmful Alternative Means of Balancing Its Budget

Our organizations find that the rationale for the fee rule fails in one more final and fatal respect: in derogation of applicable requirements, USCIS has not shown that it considered less harmful alternatives to its proposals, much less explained why it chose its preferred course of action over other possibilities. For the purpose of the following discussion only, we presume that current expenditures outpace revenue collections, and that USCIS must make changes to avoid budget deficiencies. However, as noted above, we retain doubts that this is an accurate characterization of the agency's position.

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available alternatives as they conduct rulemaking. However, DHS seems not to have given thorough consideration to any course of action other than adopting some disruptive fee increases and making significant fee policy changes, like eliminating fee waivers. The agency itself notes that there are three ways to address its projected revenue shortfall: reducing projected costs; using carryover funds or revenue from the recovery of prior year obligations; or adjusting fees with notice and comment rulemaking. It has shirked its responsibility to explain its reasons for bypassing the first and second options, and ignored other unnamed options.

USCIS Could Reduce Costs

Our organizations believe that USCIS should already have reduced its costs, and could easily achieve greater cost savings in the fiscal years in question. The agency's extensive discussion of cost pressures and revenues excludes any description of the impact of the efficiencies it has long promised from transitioning to electronic operations, consolidating offices, and other reform efforts. If those initiatives have failed to produce results, that failure would represent a case of potentially serious mismanagement that deserves investigation, and for which future applicants for benefits should not be surcharged.

Elsewhere – for example, in 2019 testimony to the House Judiciary Committee[57] - USCIS has acknowledged that its own discretionary policy changes have driven increased costs in the most recent fiscal years. It could easily reverse many or all of these changes and save significantly on projected expenditures. However, it has not attempted to quantify the costs or benefits of changes, nor the potential effect on its FY19 and FY20 budgets of undoing bureaucratic red tape that has slowed application processing. Before implementing extreme fee increases that will cripple aspects of the legal immigration system, USCIS must seek internal savings, or explain why it cannot achieve them.

We are concerned that USCIS may be accelerating spending in some areas without apparent justification. One example is found in language about the Administration's budget request for the Department of Justice for FY20, which notes an expected increase in denaturalization case referrals from DHS.[58] What budget documents strangely characterize as a "staggering" future caseload is actually, upon closer inspection, an anticipated growth in the number of annual case referrals from 324 to 360, or just 11 percent of very small absolute numbers. To produce this modest expansion, the budget proposal reveals that USCIS plans to increase the number of its staff assigned to Operation Janus, a special investigative project, from 13 to 70, or more than 438 percent. This mismatch between the effort put in and gain achieved is troubling, and begs further investigation of whether USCIS's expenditures are justified and whether savings sufficient to balance its books could be achieved by revisiting current resource allocations.

USCIS has adopted numerous changes to its procedures between FY17 and FY20 whose cumulative effects are seen in systemic changes to case completion rates. For example, in 2017 USCIS began requiring officers to conduct in-person interviews with categories of applicants for visas who were previously exempted unless case-specific concerns existed. During the same year USCIS rescinded an internal policy of favoring approval of requests to extend previously-granted temporary work permits, absent changed circumstances. Adjudicators must now re-assess each application for extension, regardless of whether any factors justify extraordinary additional scrutiny. Dramatic increases in the rate of issuance of Requests for Evidence (RFEs) are additional evidence that adjudicators face internal pressure to investigate applicants more aggressively, although no apparent change in applicants' qualifications warrants this approach. During the first quarter of FY19, more than half of new applicants for H-1B work visas received RFEs, compared to just 20.8 percent of all applicants in FY16.

While explicitly mandating heightened scrutiny of several categories of applicants, USCIS has also implicitly moved toward conducting more searching reviews of applicants by proposing to lengthen and complicate application components and add administrative red tape to legal immigration procedures. In 2018 and 2019, USCIS proposed to lengthen forms and complicate instructions associated with numerous aspects of the naturalization process. In late 2018, for example, USCIS proposed several burdensome additions to the N-400 application for naturalization, including overbroad requests for information about topics with no conceivable relevance to naturalization adjudication, such as history of having one's fingerprints taken, up to ten years of travel history, and details of all of the activities of any groups with which an applicant has ever associated in his or her life. The agency had planned to enforce the elimination of acceptance of means-tested benefits documentation as proof of qualification for a fee waiver from December 2, 2019. Whereas other accepted forms of proof require often-voluminous

[57] USCIS 2019 Congressional Testimony, *supra* n. 37, at 5-6.
[58] Open Society Justice Initiative, "Unmaking Americans: Insecure Citizenship in the United States" 43 (2019), https://www.justiceinitiative.org/uploads/e05c542e-0db4-40cc-a3ed-2d73abcfd37f/unmaking-americans-insecure-citizenship-in-the-united-states-report-20190916.pdf.

documentation of financial circumstances, and adjudicators' intensive analysis of that documentation, receipt of means-tested benefits takes advantage of another government agency's prior evaluation of an applicant's financial situation, and can be proven with a single page. USCIS sought to reject such filings in spite of their obvious efficiency advantages over alternative procedures. This particular matter is the subject of ongoing litigation against the agency.

In addition to asking fee waiver applicants and adjudicators to produce and review more unnecessary paper, USCIS has also begun the process of attempting to add questions and other bureaucratic requirements to such forms as the N-445 Notice of Oath Ceremony, the N-648 Medical Certification for Disability Exceptions, and I-90 Application to Replace a Permanent Resident Card. For example, USCIS has adopted a rule that generally requires an N-648 to be filed at the same time as the N-400, notwithstanding the fact that because of the extreme backlog of pending applications, many LPRs now wait two years or more from submission of an N-400 to be called for a naturalization interview. During such lengthy delays, it is at least possible, if not likely, that detailed analysis of the effects of an applicant's impairments may change. Where that happens, applicants will be forced to re-do examinations and re-submit information about issues they have already addressed.
The new rule will also force applicants who develop a disability during the pendency of their applications to expend extra time, energy, and expense defending the timing of their requests for accommodations.

Moreover, proposed revisions to the N-648 seem patently superfluous. Although the form already includes extensive questions about the nature and consequences of an applicant's disabilities, including, "Clearly describe how each of the applicant's disabilities and/or impairments affects his or her ability to demonstrate knowledge and understanding of English and/or civics," a proposed revised N-648 would also separately include virtually identical, duplicative instructions to, "Describe the severity of effects of each disability/impairment" and "Describe how each relevant disability/impairment affects specific functions of the applicant's daily life, including the ability to work or go to school, ability to learn civics and/or English, etc."

USCIS's changed policy around issuance of RFEs and Notices of Intent to Deny (NOID) is yet another example of a discretionary choice that has already increased costs for both USCIS and applicants, or threatens to do so in the near future. It has long been the case that when USCIS received an application that seemed to be incomplete or incorrect, its standard practice was to send an RFE or NOID, as appropriate, in response to which petitioners could correct errors and supplement evidence. However, as of September 2018, adjudicators may decline to give applicants a chance to correct or supplement their files before denying an application. As a result, individuals who could previously perfect their applications during adjudication are now summarily denied benefits, and must re-start applications anew, which multiplies USCIS officers' and applicants' time on task, and obligates applicants to pay fees twice.

Although the foregoing list of examples is long, it is not an exhaustive representation of the procedural changes that have slowed USCIS adjudications. Their cumulative effects appear very significant on the most important factor driving USCIS's cost – adjudication time. According to the April 2019 letter from then-Director Cissna to U.S. Representative Jesus Garcia (D-IL), the average number of cases completed each hour declined from 0.95 in FY14 for employment-based green card applications to 0.57 in FY18, and from 0.69 in FY14 to 0.62 in FY18 for applications for naturalization.[59] Applications for replacement certificates of naturalization or citizenship were being processed at about half their FY14 rate by FY18.

[59] Garcia Letter 4/19, supra n. 23, at 4-6.

Almost everywhere one looks, and in the case of all of the relative higher-volume types of cases, USCIS did its work notably more slowly in FY18 than in FY14. Unsurprisingly, the agency explains in the fee rule that it has had to staff up to keep up, and that "[t]his additional staffing requirement reflects the fact that it takes USCIS longer to adjudicate many workloads than was planned for in the FY 2016/2017 fee rule".[60] But the reasoning for complicating adjudications, and the assessment of the value in maintaining changes including those we have cited, is missing. Therefore, USCIS leaves unconsidered the very real possibility that it could balance its budget at less peril to our economy and security by reforming internal procedures to achieve savings than by imposing drastic fee increases.

USCIS Could Draw Upon Carryover Funds

The present NPRM mentions, but quickly dismisses, the relatively small figure the agency believes it could recover from deobligated prior-year funding. USCIS also projects that it will go from an end-of-year carryover balance of approximately $800 million in FY18 to negative $250 million in FY19, and a whopping negative $1.5 billion in FY20. This is staggering information that conflicts with representations made elsewhere. The USCIS supplement on page 10 of DHS's FY20 budget request estimates combined carryover and recovery balances of about $1.4 billion annually at the end of FY19 and the end of FY20. Presuming that recoveries represent less than $100 million annually, as stated in the NPRM, the wide discrepancy between end-of-year balance projections published in the budget in March 2019 and in the Supporting Documentation dated just one month later in April 2019 is alarming and confusing, and remains unexplained. Budget documents contradict the NPRM's flat, unexplored assertions that carryover and recoveries will not be sufficient to cover shortfalls.

USCIS Could Seek Discretionary Appropriations

Our organizations are deeply dismayed that in spite of strong historical precedent and current Members of Congress' explicit interest, USCIS provides no indication that it has considered the alternative to raising fees of seeking additional discretionary appropriations. Congress has allocated discretionary funding for application processing to USCIS during the 15 years of DHS's existence on multiple occasions, so this option is defensible and realistic. For example, to support USCIS backlog reduction efforts in calendar years 2005 and 2006, Congress dedicated $140 million of discretionary funding to that purpose in P.L. 108-334, H.R. 4567, the FY05 Homeland Security Appropriations Act. P.L. 109-295, H.R. 5441, making appropriations for DHS for FY07, set aside $47 million in discretionary funding for digitizing records, and an additional $21.1 million for the Systematic Alien Verification for Entitlements (SAVE) program. H.R. 3931 in the 116th Congress would have dedicated discretionary funding for the SAVE program again, and for the costs of running the Office of Citizenship and making Citizenship and Integration Grants. Because discretionary appropriations constitute an addition to, rather than a substitution for, IEFA funds, such funding could obviate the need to raise more revenue from fee-paying customers, and has certainly fulfilled that function in the recent past.

Moreover, we note that increasing amounts in successive years' appropriations bills and Members' comments in hearings and other Committee meetings indicate strong interest in funding USCIS to ensure smooth functioning and expeditious service to its customers. For example, during the House Judiciary Committee's 2019 hearing on USCIS operations, U.S. Representative Lou Correa (D-CA) asked, "I'm trying to figure out what can we do – what can I do – to help you help those individuals that want to be American citizens fulfill that American dream…Do you need more resources for automation, to

[60] NPRM 11/14/19, *supra* n. 16, at 62286.

make sure you cross-check all this information to make sure only the good people who deserve to be Americans become Americans? What else can we do to help you get your job done in a timely manner?" During the same hearing, U.S. Representative Sylvia Garcia (D-TX) cited a letter from a bipartisan group of Members from the Houston area to former Director Cissna, in which they asked, "Do you need additional statutory direction or funding to better respond in a timely way?" She noted that the Director has regrettably responded negatively, but that she and other Members remained interested in exploring the topic, and she asked witnesses once again whether Congress could not provide the agency with supplemental resources to address the problem.

USCIS Could Distribute Fee Increases Widely to Avoid Provoking Extreme Application Logjams

Our organizations are surprised and dismayed that the present NPRM does not meaningfully acknowledge the most straightforward and time-tested method for increasing revenues without imposing shocking cost increases in discreet areas: distributing cost increases across applications. In previous fee studies USCIS has adhered to this approach to appropriately balance the imperative of funding operations against the importance of maintaining an accessible immigration system that serves American families' and businesses' needs, and does not price broad swaths of the public out of seeking benefits. For example, assuming FY18 receipt volume, USCIS could raise a very significant additional sum of $343.8 million annually by increasing the cost for business petitions for non-immigrant and immigrant workers using forms I-129 and I-140 by $500 each; such fees are relatively less likely to represent an insurmountable burden to securing benefits to businesses than they would if imposed on fees that private individuals typically pay. USCIS could increase Premium Processing Fees without negatively affecting any applicants' access to it services, because Premium Processing is optional and likely affordable even at a higher price to most or all of the entities that currently use it, given its consistently high price relative to standard application fees. USCIS could likewise increase the special fee charged to petitions for H-1B, H-2B, and L-1 work visas to raise funding for its Fraud Prevention and Detection Account. In a typical year, there are tens or hundreds of thousands more applications for these work visas than there are visas available[61], a strong indicator that demand and actual application volume would not suffer in the face of higher prices. These are only some of the many options that USCIS seems to have left unexplored but that may be far less disruptive to the immigration system and the economy than the changes proposed in the present NPRM.

V. The Proposed Fee Rule Is Discriminatory and Would Cause Irreparable Harm

For all of the reasons we have cited above, USCIS's promulgation of the proposed fee schedule is arbitrary and suspect. The NPRM departs from standard practice and is issued under questioned authority. The particulars of the proposed fee structure rest on ill-founded assumptions and unsound logic, and include aspects that appear to our organizations to be unlawful, and likely to inflict unnecessary harms that USCIS has failed to fully acknowledge. In short, the rule is not sufficiently justified. Its lack of internal coherence and thorough rationale are indicative of one of its most consequential failings: its unconstitutionally discriminatory nature. Laws and guidelines that apply to federal rulemaking require regulations like the fee study be justified by comparison of all of their costs to benefits, and free of discriminatory taint, to ensure that they do not inflict irreparable harms on our nation or its people. Unfortunately, the proposed fee rule fails on this count as well. If implemented,

[61] *E.g.,* Youyou Zhou, Quartz, "Winning the H-1B visa lottery is no longer enough" (May 13, 2019), https://qz.com/1614743/winning-the-h-1b-visa-lottery-is-getting-more-and-more-difficult/.

USCIS's proposals would hurt both our organizations and the entire nation in ways that could not be repaired or reversed.

The Proposal Is Unconstitutionally Discriminatory

Our organizations vehemently oppose the proposed fee study on the basis of its racially and ethnically discriminatory intent. Many of the hallmarks of an unconstitutionally discriminatory action set forth in the landmark case of *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977), are present in the process that led to proposal of this fee schedule, and in its substance. The factors that render this proposed rule untenable include its arbitrary character and lack of non-discriminatory justification; the fact that its effects would "bear[] more heavily on one race than another," *Washington v. Davis,* 426 U.S. 229, 242 (1976); its relationship to a series of similar official actions with discriminatory effects; and its departures from the principles and procedures that normally apply to fee schedule reviews.[62]

We are troubled by USCIS's historically aberrant failure to connect the significant changes it proposes to fees and fee waivers to the attainment of any policy goals. In a general sense, the agency must review its fee structure periodically to ensure recovery of its costs, and as is appropriate, take into account a full range of consequences and organizational goals to arrive at proposals that best meet both USCIS's and its stakeholders' needs. For example, in 2010, USCIS calculated fees at a level that would fund its operations and support several performance enhancements, including deployment of the Electronic Immigration System for case management and automated pre-adjudication procedures to reduce future demands on personnel. In 2016, USCIS again described its priorities as not simply recovering its costs, but adapting to Congressional appropriations trends, continuing strategic investments in automation and cybersecurity and building back-ups in case of system failure, providing customers with more information about case processing times, and preserving and expanding access to selected benefits for qualified lower-income applicants.[63] In the present NPRM, by contrast, the agency omits discussion of the ends it seeks to attain, except to reference the imperative of funding itself and a new and ill-justified shift in fee-paying principle to pursue equitability, apparently for its own sake.

Lack of explanation of the practical ends that USCIS seeks is a particularly fatal flaw in this instance because the agency has proposed dramatic, harmful changes without explaining what factors prompt it to abandon prior goals. Moreover, the agency has failed to show how it has weighed the benefits of alleged equitable assignment of expenses against the social and economic costs of heavily surcharging applicants whose access it has consistently prioritized in past reviews. Rulemaking requirements exist to protect against arbitrary actions like this sudden proposal of the precise opposite of DHS's decades-long stance on naturalization, in the absence of any allegation or proof that the reasons for historical practice are no longer valid or are overborn by pursuit of some other critical goal. Illogical decisions that disproportionately threaten harm to discrete populations who are historical targets of discrimination are highly suspect, and circumstantially indicative of discriminatory motive. In less than three years and without a stated rationale for its reversal of course, USCIS proposes to reject the longstanding policies it set forth in 2016 and in prior studies: "DHS uses its fee setting discretion to adjust certain immigration benefit request fees that would be overly burdensome on applicants, petitioners, and requestors…Historically, as a matter of policy, USCIS has chosen to limit fee adjustments for certain benefit requests…DHS has determined that the act of requesting and obtaining U.S. citizenship deserves

[62] *Arlington Heights,* 429 U.S. at 266-68.
[63] Supporting Documentation 2016, *supra* n. 22, at 6-7; 10-12.

special consideration given the unique nature of this benefit to the individual applicant, the significant public benefit to the Nation, and the Nation's proud tradition of welcoming new citizens."[64]

By making it more expensive and difficult for qualified individuals to apply for citizenship and some immigration benefits, USCIS would impose cost and hardship on people who are disproportionately members of underrepresented racial and ethnic groups. The agency cannot plausibly deny advance knowledge of this fact, because, as we have noted, research and experience provide overwhelming evidence that the volume of applications for services varies with prices charged for USCIS's services: the Immigration Impact blog succinctly summarized the matter when it noted in 2015, "When the price goes up, naturalization rates go down."[65] For example, in calendar year 2007, prior to implementation of a large fee increase, USCIS received 1,383,275 applications for naturalization, a historic high; in 2008, under a new fee regime, the agency received just 525,786 naturalization applications.[66] Worse yet, close investigation of historical data indicates that the dissuasive effect of increasing fees is most pronounced for Mexican legal permanent residents.[67]

Even if this were not true, any action that prevents the current and future pool of qualified individuals from pursuing citizenship will necessarily have racially skewed effects. As of 2018, according to American Community Survey 1-year data, fewer than one-quarter of all naturalized citizens were non-Hispanic whites; Black, Asian, and Latinos accounted for more than 76 percent of all naturalized citizens. Although the Census Bureau does not produce similarly comprehensive data about LPRs eligible for citizenship, available evidence suggests that people who are already and will become eligible for naturalization fit similar demographic profiles. DHS's most recent report shows that among LPRs' top ten countries of origin, from which about 55 percent of the population hails, all but one are nations whose residents are mostly Latino or Asian.[68]

Under normal circumstances, the disproportionate negative effect on Black, Asian, and Latino residents of making it significantly harder to naturalize and to access other immigration services programs might be said to be incidental. However, in this instance it must be understood as a central and intended feature that is consistent with a series of similar actions undertaken by the present Administration. The list of the Administration's extraordinary policy positions and official statements that demonstrate animus against immigrants of color is extremely long. We describe herein just a few of the many available exemplars:

- On at least 12 occasions between May and December 2016, President Trump equated travel restrictions his Administration implemented with a ban on immigration of Muslims from African, Middle Eastern, and Asian countries; e.g., on July 17, 2016 he told CBS's Lesley Stahl, "We're gonna not let people come in from Syria…"[69] The Administration adopted procedures that led to

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[64] *Id.* at 22-23.

[65] Paul McDaniel, American Immigration Council, "The Cost of Citizenship is a Barrier for Some Immigrants" (Jan. 9, 2015), http://immigrationimpact.com/2015/01/09/cost-citizenship-barrier-immigrants/#.Xe7I7tVOnIU.

[66] National Council of La Raza, "Citizenship Beyond Reach" 2, https://thehill.com/sites/default/files/nclr_citizenship_beyond_reach_0.pdf.

[67] NBC News, "High Fees Limiting U.S. Citizenship to Wealthy, Non-Mexicans" (Jan. 11, 2015), https://www.nbcnews.com/news/latino/high-fees-limiting-u-s-citizenship-wealthy-non-mexicans-n283061.

[68] Bryan Baker, Office of Immigration Statistics, Department of Homeland Security, "Population Estimates - Lawful Permanent Resident Population in the United States: January 2015" 4 (May 2019), https://www.dhs.gov/sites/default/files/publications/lpr_population_estimates_january_2015.pdf.

[69] David Bier, Cato Institute, "A Dozen Times Trump Equated his Travel Ban with a Muslim Ban" (Aug. 14, 2017), https://www.cato.org/blog/dozen-times-trump-equated-travel-ban-muslim-ban.

shocking drops in immigration from specific targeted countries such as Libya and Yemen[70], in spite of DHS's own conclusion that national origin "is unlikely to be a reliable indicator of potential terrorist activity."[71]

- On May 16, 2018, during a meeting with community representatives about "sanctuary" city policies, President Trump complained about individuals – primarily Latino – migrating into the United States through Mexico and referred to them as, "…not people. These are animals."[72]
- As he declared a national emergency that would help justify reprogramming of federal funding to build physical barriers between the United States and Mexico, President Trump assailed immigration from the south and stoked fear of Latino noncitizens with statements like, "We're talking about an invasion of our country with drugs, with human traffickers, with all types of criminals and gangs."[73]
- The Department of Justice began in 2017 to deny Byrne Justice Assistance Grants for strengthening public safety to certain jurisdictions that would not promise to participate in immigration enforcement activity. The targeted cities, counties, and states have been repeatedly and uniformly vindicated in their lawsuits challenging the Administration's attempt to coerce them into action that may itself be unconstitutional. The Administration singled out communities of color for this harsh treatment that courts have rejected: successful lead plaintiffs in active cases include the state of California (39.3 percent Latino, 14.7 percent Asian, 5.8 percent Black); San Francisco (34.3 percent Asian, 15.2 percent Latino, 5.2 percent Black); Chicago (29.5 percent Black, 28.7 percent Latino, 6.7 Asian); Los Angeles (48.9 percent Latino, 12.1 percent Asian, 8.7 percent Black); the state of New York (19.2 percent Latino, 15.7 percent Black, 8.5 percent Asian); New York City (29.2 percent Latino, 24.3 percent Black, 14.2 percent Asian); Philadelphia (41.5 percent Black, 15.2 percent Latino, 7.4 percent Asian); Santa Clara, CA (42.2 percent Asian, 18.3 percent Latino); and Richmond, CA (39.7 percent Latino, 19.9 percent Asian, 16.5 percent Black).
- During a January 2018 meeting with Members of Congress concerning immigration legislation, President Trump derided Haiti and African nations like Sudan as "shithole" countries, and said that he would prefer that immigrants to the United States come from countries like Norway (with a population that is likely more than 90 percent white as of 2017[74]). A month earlier, he

[70] Robert L. Tsai, Politico Magazine, "Trump's Travel Ban Faces Fresh Legal Jeopardy" (March 27, 2019), https://www.politico.com/magazine/story/2019/03/27/trump-travel-ban-lawsuit-supreme-court-unconstitutional-226103; Vahid Niayesh, Quartz, "Statistics show that Trump's 'travel ban' was always a Muslim ban" (Oct. 28, 2019), https://qz.com/1736809/statistics-show-that-trumps-travel-ban-was-always-a-muslim-ban/.

[71] Rick Jervis, USA Today, "DHS memo contradicts threats cited by Trump's travel ban" (Feb. 25, 2017), https://www.usatoday.com/story/news/2017/02/24/%20dhs-memo-contradict-travel-ban-trump/98374184/.

[72] Gregory Korte and Alan Gomez, USA Today, "Trump ramps up rhetoric on undocumented immigrants: 'These aren't people. These are animals.'" (May 17, 2018), https://www.usatoday.com/story/news/politics/2018/05/16/trump-immigrants-animals-mexico-democrats-sanctuary-cities/617252002/.

[73] Damian Paletta, Mike DeBonis, John Wagner, Amy B. Wang, Missy Ryan, The Independent, "National emergency: Lawsuits launched in bid to stop Trump building border wall" (Feb. 17, 2019), https://www.independent.co.uk/news/world/americas/us-politics/trump-national-emergency-lawsuits-border-wall-mexico-democrats-a8783241.html.

[74] Central Intelligence Agency, "World Factbook: Norway," https://www.cia.gov/library/publications/the-world-factbook/geos/no.html (noting that 91.5 percent of Norwegians are of European ethnicity).

reportedly commented that Haitians "all have AIDS" and Nigerians would not "go back to their huts."[75]

- The Trump Administration has taken unprecedented and comprehensive action to restrict grants of asylum. Policies that have slowed or prevented the presentation of hundreds of thousands of requests for protection include the Attorney General's attempt to overturn long-settled case law on asylum claims based on persecution by criminal gangs and domestic abusers and against extended families; new rules that deny protection to people who pass through a third country or enter the U.S. without inspection as they flee for safety; refusals to extend legal proceedings to allow claimants to secure counsel and evidence; and the so-called Migrant Protection Protocol, which forces people seeking protection to wait outside the United States for a chance to present a claim and which has resulted in the death and injury of vulnerable people. The Trump Administration has also drastically reduced refugee admissions, from nearly 85,000 in 2016 to a proposed total of no more than 18,000 in FY20. Once again, scaling back protection of refugees and asylees keeps immigrants of color outside the country. In 2017, the leading countries of origin of newly-admitted refugees and asylees were the Democratic Republic of the Congo, Iraq, Syria, Somalia, Burma, China, El Salvador, and Guatemala: all home to populations of primarily Black, Asian, or Middle Eastern/North African residents.[76]
- The Trump Administration attempted to end deferred-action protections for people who became undocumented residents as children and for people from acutely-challenged nations that would struggle to reintegrate large numbers of people who have settled in the United States. Temporary Protected Status and Deferred Enforced Departure protections applied to such countries as El Salvador, Honduras, Haiti, Liberia, and Nepal. The Administration has pursued expulsion of people who in many instances are long-term residents of our nation in spite of its own experts' warnings that these actions could exacerbate unrest and hurt American interests, given the poor state of living conditions in the countries concerned.[77]
- In 2018, the Administration announced that it would include a question about residents' citizenship on the 2020 Census questionnaire for all households. Through litigation, the public secured access to deliberative documents that led to this action. This material revealed that data scientists had advised agency decision makers that the question was likely to cause a decline in responses and the quality of data concerning immigrant households of color in particular. The Department of Commerce's rationale for adopting the question in spite of the harm it would cause communities of color appeared so contrived that its decision could not withstand deferential judicial review under the Administrative Procedure Act.

The present Administration's striking and overwhelming pattern of making policy choices that disfavor communities of color – particularly those with immigrant origins – illustrates its frequent departure from usual procedure, another typical feature of discriminatory action. Agencies must design rules to best serve specific public goals, so federal regulations including USCIS fee studies must be the product of fact-gathering and reasoning processes that agencies can describe thoroughly. In particular, fees for immigration services and naturalization have long been set to accomplish goals beyond providing

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[75] Jen Kirby, Vox, "Trump wants fewer immigrants from 'shithole countries' and more from places like Norway" (Jan. 11, 2018), https://www.vox.com/2018/1/11/16880750/trump-immigrants-shithole-countries-norway.
[76] Office of Immigration Statistics, Department of Homeland Security, "Annual Flow Report – Refugees and Asylees: 2017" (March 2019), https://www.dhs.gov/sites/default/files/publications/Refugees_Asylees_2017.pdf.
[77] *E.g.,* Plaintiffs' Exhibit 2 (Aug. 23, 2018), *Ramos v. Nielsen*, No. 3:18-cv-01554-EMC (N.D. Cal.), https://cdn.pacermonitor.com/pdfserver/NEFG44I/94398072/Ramos_et_al_v_Nielsen_et_al__candce-18-01554__0096.2.pdf.

sufficient revenue to run the agency. These goals include preserving access to non-revenue services like humanitarian protection, and encouraging immigrants to make choices, like naturalizing, that benefit all Americans. Major reconfigurations of fees have proceeded only after the expiration of full-length comment periods, and only after previous Administrations have welcomed stakeholder engagement and given careful and thoughtful consideration to those stakeholders' needs and desires.

In proposing the present fee schedule and adopting the discriminatory policies we have cited, however, the Administration has repeatedly ignored logic and sought to avoid and limit public input. It has abruptly reoriented its process to serve the newly-introduce principle of equitability, without examination or explanation of how "equitable" fees better serve the public interest than fees set to protect humanitarian programs and encourage naturalization. It ignores the fact that, historically, even less-severe increases in the cost of naturalization have regularly provoked spikes in application volume of the sort that would snarl workflow and exacerbate critical backlog challenges the agency acknowledges. The Administration has repeatedly frustrated stakeholders even before conclusion of the public comment period: first, it cancelled organizations' meetings with OMB personnel pursuant to E.O. 12866 to rush the proposed rule to publication with an extraordinarily short 32-day comment period. Then, on December 9, 2019, the agency extended this period to 45 days for the fee rule, while simultaneously shortening the comment period for changes to associated forms to less than the 60-day minimum duration required by the Paperwork Reduction Act. At the same time, USCIS proposed substantive changes to its planned expenditures, and effectively shortened to less than the minimum 30 days the amount of time it granted stakeholders to review and respond to the revised proposal. A substantial portion of the revised comment period overlaps with the holiday season, during which stakeholders' capacity diminishes. When considered alongside the Administration's pattern of unjustified embrace of policies that hurt communities of color, and its explicit animosity toward those disfavored populations, these departures from usual procedure are circumstantial evidence of unconstitutional discriminatory intent.

Administering the laws fairly, and treating all people equally regardless of their demographic characteristics, are among our nation's central governing principles, and our public servants' most important duties. Within the context of the present Administration's sustained campaign to exclude immigrants of color, USCIS's proposal fails in this regard. The agency must revisit its fidelity to its constitutional obligation to avoid discrimination based on race, ethnicity, and national origin.

By Preventing LPRs from Seeking Citizenship, the Proposal Will Irreparably Harm Our Organizations and the American Economy

We have noted our concern with the fact that USCIS's fee proposal is based on the shaky proposition that significant changes to fees and fee waiver availability will not alter the pace of incoming applications, nor the number or percentage of applicants for benefits who are successful. To the extent the agency acknowledges that its proposals will make it more difficult to access and navigate immigration benefits programs, it believes that applicants may merely delay, but not change, their plans. The regulatory impact analysis accompanying the proposed rule states, for example, "DHS assumes that applicants would submit these immigration benefit requests regardless of eligibility for a fee waiver…[and] that all of these applicants would apply for immigration benefit requests by finding funds from which to pay their fees including…paying by credit card, borrowing from relatives or others in their social networks, loans, etc… [A]s we have estimated…with regard to the proposed changes to fee waiver policies, DHS projects no changes in the filing annual volume of Form N-400 as a result of

terminating the N-400 fee discount for low-income applicants and Form I-942. Applicants are expected to use other financial means such as credit cards or personal loans…"[78]

Both USCIS's actual historical experience and relevant research disprove this assumption, however, and demonstrate how the agency's proposal will irreparably harm our organizations and the nation. In fact, changes in the cost of applying for citizenship have provoked significant changes in application volume. For example, before the N-400 fee increased from $95 to $225 in 1998, annual naturalizations rose to a then-unprecedented peak of more than 1 million annually, before falling to less than half that annual total post-price increase.[79] The number of naturalizations in a year did not surpass 1 million again until a flood of applications came in in advance of another eye-popping cost increase of more than 80 percent, from $330 to $595, in FY07.[80] In July 2007 – immediately prior to implementation of the increase - more than 460,000 people filed naturalization applications, seven times as many as had applied over the same period a year earlier.[81] Once again, after USCIS's 2007 price hike took effect, the number of new N-400s dropped precipitously, to about 525,000 total in calendar year 2008.[82] In circumstances less extreme than the present, where no changes to fee waiver policies were expected, LPRs have proven sensitive to the cost of pursuing elective benefits like naturalization; therefore, "fee increases can have a significant impact on both the volume and the composition of who naturalizes."[83]

Ebbs and flows in application volume corresponding with prices increases since 1994 are especially predictable given the large expenditure that a naturalization application represents for most people, and the trends over the same period in income and inflation. The cost of citizenship has increased far faster than the inflation rate or average incomes during the 1990s and the 21st century. In 1994, a person earning minimum wage would have had to work 22 hours to pay the $95 N-400 fee, but under USCIS's proposed fee schedule, today's minimum wage worker would have to work for 161 hours – approximately one month – to earn enough to pay for a naturalization application. If the cost of applying for citizenship had increased at the same rate as inflation since 1994, today's applicants would pay a fee of $164; USCIS's proposed $1,170 fee imposes a relative increase that is seven times larger than the average increase in the cost of all other goods and services over the same period of time.

The combined impact of a severe increase in the N-400 fee and prospective complete elimination of full and partial fee waivers for naturalization would not just delay but permanently prevent LPRs from seeking citizenship. The findings we have cited from Stanford University's Immigration Policy Lab (IPL) support this conclusion. The IPL notes that creation of the standardized I-912 form in 2010 made the fee waiver application process less burdensome, and its results more predictable. Therefore, nonprofit service providers including our organizations were able to increase our efforts to educate LPRs about their eligibility and to assist them with applications. The improved accessibility of the fee waiver process coincided with a rebound in naturalization application volume to pre-2007 fee increase levels, and an increase in the naturalization rate of the eligible people with the lowest incomes. Researchers concluded that in sum, these changes persuaded about 73,000 people annually who would not

[78] RIA 2019, *supra* n. 11, at 46, 120.
[79] Naturalization Trends, *supra* n. 27.
[80] *Id.*
[81] Migration Policy Institute, "Behind the Naturalization Backlog: Causes, Context, and Concerns" 1 (Feb. 2008).
[82] James Lee and Nancy Rytina, Office of Immigration Statistics, Department of Homeland Security, "Annual Flow Report - Naturalizations in the United States: 2008" 2 (March 2009), https://www.dhs.gov/sites/default/files/publications/Naturalizations_2008.pdf.
[83] Nurturing Naturalization, *supra* n. 12, at 3.

otherwise have pursued citizenship to begin the naturalization process.[84] Another experiment that compared lower-income LPRs who did and did not receive special notifications about fee waivers found that those who received notifications about fee waiver availability were 35 percent more likely to have filed N-400s within months of the alert.[85]

The IPL's work builds on the Center for the Study of Immigrant Integration's findings about naturalization price sensitivity by showing that cost determines not just when individuals naturalize, but whether or not they ever take that step. Even among those who are most inclined to naturalize and most knowledgeable about the process, like experimental groups of people who had registered their interest in citizenship through the public-private partnership NaturalizeNY, receipt of a voucher to pay for all application costs doubled the citizenship application rate from 37 to 78 percent.[86] Just as the persuasive effects of eliminating application costs and the administrative burden of completing a fee waiver application often change the minds of the lowest-income LPRs eligible for citizenship, the chilling effects of both dramatically increasing fees and simultaneously withdrawing waivers are likely to be enormous, and permanent. The most recent decade of research shows us that many, if not most, LPRs who find the naturalization process unaffordable and logistically daunting simply forego citizenship instead of delaying it, which makes intuitive sense: long-term LPRs already enjoy access to the unrestricted right to work, ability to travel to and from the country, and eligibility for many public benefits.

Our organizations and the entire nation will suffer losses we cannot recoup if USCIS implements its fee proposal and new naturalizations plummet as a result. As members of the New Americans Campaign (NAC),[87] – working with partners across 22 sites nationwide – many of our organizations have dedicated many years to building up the internal capacity and external relationships we needed to successfully organize a robust schedule of naturalization workshops around the country. NAC affiliates wield roughly $4 million in annual private funding to support preparation of approximately 30,000 N-400s in a typical year. These private funders are making an investment in new citizens to the benefit of the nation. There are ten lead national organizations in the NAC that share resources with more than 135 regional partners. Advocates could not easily or quickly repurpose this expertise and infrastructure it has taken years to acquire, in the event that extreme price changes cause a sharp drop in interest in applying. Instead, our organizations would likely have to undertake layoffs, office closures, and other visible contractions that would hurt our presence, reputation, and viability. The negative effects on our work – not just with applicants for citizenship but with a broad cross-section of American families and businesses – would endure because the extraordinary demands USCIS proposes to make of aspiring new Americans would permanently alienate potential applicants, dissuading them from considering citizenship over the long term.

Nor can our economy recover the losses it would suffer if the fee study went into effect and the number of new naturalization applications bottomed out. No one disputes that naturalized citizens contribute

[84] Immigration Policy Lab, Stanford University, "Research Brief: Streamlining Fee Waiver Requests Helped Low-Income Immigrants Become Citizens" (Aug. 2019), https://immigrationlab.org/content/uploads/2019/08/IPL-Research-Brief_fee-waiver-standardization.pdf.
[85] Immigration Policy Lab, Stanford University, "Research Brief: A 'Nudge' to Boost Citizenship Rates" (April 2019), https://immigrationlab.org/content/uploads/2019/04/IPL-Research-Brief_Nudge.pdf.
[86] Immigration Policy Lab, Stanford University, "Lifting Barriers to Citizenship" (Jan. 2018), https://immigrationlab.org/project/lifting-barriers-to-citizenship/.
[87] *See* New Americans Campaign, "About the New Americans Campaign," https://www.newamericanscampaign.org/about/.

positively to national wealth. We know of no counterpoint to studies that have found that rates of employment, higher education, home ownership, income and tax payments increase when noncitizens naturalize.[88] In the aggregate, the naturalization of 7.5 million LPRs over the course of five years would have increased GDP by between $37-52 billion over a ten-year period, according to calculations published in 2018.[89]

The economic value of naturalization would be greater if more of those eligible naturalized more rapidly, of course: the sooner LPRs choose citizenship, the more productive years they will enjoy as fully-contributing Americans. However, if USCIS proceeds with its proposal, the naturalization rate will decrease significantly from FY20 to FY21 and beyond, and lower-income LPRs will likely forego applying for citizenship in the long term. The lost value of the increased income and economic activity we sacrifice because of the falling naturalization rate will compound in the coming years. Time is of the essence when we invest in our future by welcoming new Americans: when someone delays the decision to naturalize, his or her lifetime earnings, tax payments, and other contributions to our nation are irrevocably diminished.

VI. Conclusion

USCIS's fee schedule proposes significant and unprecedented changes to its application pricing and budgeting that would shock the immigration and naturalization system, and inflict severe negative consequences on the American economy and a wide range of stakeholders. The corresponding NPRM offered an unreasonably short comment submission period. USCIS exacerbated this situation in its publication of December 9, 2019, which shortened the comment period for form changes to less than the required 60 days, and left stakeholders with less than 30 days to comment on alterations to the agency's central proposal. The agency has failed to justify the harm its fee schedule would cause by describing countervailing benefits. It has not explained why it shifted course and adopted a new paradigm for setting fee levels just two years after its last fee review, in spite of the fact that USCIS has historically let at least a decade pass between major increases to the cost of naturalization and other applications. Lack of due process, logical explanation, and of full, honest consideration of all the foreseeable costs of drastically changing the immigration and naturalization benefit fee structure place this action in a chain of official events and statements that demonstrate unconstitutional discriminatory animus toward immigrants of color. In view of the permanent harm that the discriminatory policy of pricing large numbers of LPRs out of citizenship would cause, USCIS cannot move forward with these proposed changes. We strongly urge USCIS to recreate a proposed fee schedule for FY19 and FY20 that preserves fee waivers and affordable naturalization, as all of its predecessors have done.

Thank you for your consideration of our views.

Sincerely,

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[88] *E.g.,* Donald Kerwin and Robert Warren, Center for Migration Studies, "Putting Americans First: A Statistical Case for Encouraging Rather than Impeding and Devaluing US Citizenship" Table 1, Journal on Migration and Human Security (Dec. 2019), https://journals.sagepub.com/doi/full/10.1177/2331502419894286.

[89] Cities for Citizenship, "America is Home: How Individuals, Families, Cities & Counties Benefit by Investing in Citizenship" 4 (2017-2018), https://static1.squarespace.com/static/5b3ce8865417fc2819a24bc2/t/5b9826d1cd8366126f70b0c2/1536698073553/C4C+Report+2018+FINAL.pdf.

Arkansas Immigrant Defense
Asian Americans Advancing Justice – Los Angeles
Asian Counseling and Referral Service
Boundless Immigration Inc.
Campesinos Sin Fronteras
Catholic Charities Maine Refugee & Immigration Services
Center for Employment Training
Central American Resource Center of California (CARECEN – Los Angeles)
Centro CHA Inc.
Chinese Information and Service Center
Citizenship News
Council on American-Islamic Relations – Greater Los Angeles Area Office (CAIR-LA)
Emerald Isle Immigration Center
Employee Rights Center
GMHC, Inc.
HIAS Pennsylvania
Hispanic Association of Colleges and Universities (HACU)
Illinois Coalition for Immigrant and Refugee Rights
Immigrant Legal Resource Center
Immigration Resource Center of San Gabriel Valley
Indian Horizon of Florida
Interfaith Refugee & Immigration Service
The International Institute of Metropolitan Detroit, Inc.
Korean Community Center of the East Bay
Massachusetts Immigrant and Refugee Advocacy Coalition
Mujeres Latinas en Accion
NALEO Educational Fund
National Hispanic Media Coalition
National Latinx Psychological Association
National Partnership for New Americans
Oasis Legal Services
OneAmerica
Promise Arizona
Refugee Women's Alliance
River City Federal Credit Union
San Joaquin College of Law
Self-Help for the Elderly
UnidosUS