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

December 30, 2019

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

Dear Ms. Deshommès:

The Asian & Pacific Islander American Health Forum (APIAHF) submits this comment on the proposed U.S. Citizenship and Immigration Services (USCIS) Fee Schedule, published on November 14, 2019. We are concerned about a number of the fee and policy proposals in the published fee schedule, and request that USCIS **withdraw all provisions** that make immigration benefits less accessible to low-income and other vulnerable immigrants.

APIAHF is the nation's leading health policy organization working to advance the health and well-being of over 20 million Asian Americans, Native Hawaiians and Pacific Islanders (AA and NHPI) across the U.S. and territories. APIAHF works to improve access to and the quality of care for communities who are predominately immigrant, many of whom are limited English proficient, and may be new to the U.S. health care system or unfamiliar with private or public coverage. We have longstanding relationships with over 100 community-based organizations in 34 states and the Pacific, to whom we provide capacity building, advocacy and technical assistance.

As such, we have a strong understanding of the needs and barriers in immigrant communities and the impact changes in immigration and public assistance policy would have on them. For over 32 years, APIAHF has worked extensively on both the issues of immigration and health. Through research, analysis and community partnerships, these issues are the core of our expertise. APIAHF and our partners have consistently advocated for the importance of access to health care and other public assistance for all families, regardless of their citizenship status. We know from experience that immigration status is a strong social determinant of health, impacting everyone from a person's livelihood to the type of insurance coverage they can obtain. 12.3% of Asian Americans live below the

federal poverty level, though the rate can range as high as 39.4% for Burmese Americans.¹

The proposed increases in fees are substantial and unjustified and come at a time when fees are already a barrier for immigrants adjusting their status. The fees will create an impossible hurdle for low-income immigrants. As such, we oppose all aspects of the proposed fee schedule that would act as a barrier between low-income immigrants and the immigration benefits for which they qualify.

I. General Comments

The proposed USCIS fee schedule disproportionately increases fees and eliminates fee waivers for the benefit categories most commonly used by low-income immigrants, leaving essential immigration benefits accessible primarily to the affluent. These unwarranted changes would result in financial hardship for immigrant and mixed-status families, immigrants delaying or losing immigration status due to financial considerations, increased dependence on debt to finance applications, and decreased involvement of qualified legal assistance resulting in difficult and inefficient USCIS processing and adjudication, among many other problems.

APIAHF opposes USCIS' attempt to place the burden of its own mismanagement on the backs of hard-working immigrant families. Since 2010, USCIS has increased filing fees by weighted averages of 10 percent and another 21 percent but has not achieved any associated improvement in processing times, backlogs, or customer service. During that same period, USCIS' backlog has increased by more than 6,000 percent,² the overall average case processing time had increased 91 percent between 2014 and 2018,³ and USCIS has removed language from its resources that stated any commitment customer service.⁴

For the reasons provided here, USCIS should promptly withdraw the provisions of its proposed fee schedule that would make immigration benefits less

¹ American Community Survey, 2012-2015 5-Year Poverty Estimates, available at <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>.

² See *Policy Changes and Processing Delays at U.S. Citizenship and Immigration Services: Hearing before the House Subcomm. on Immigration of the H. Comm. On the Judiciary*, 116th Cong. (2019) (joint written testimony of Don Neufeld, Associate Director, Service Center Operations Directorate, USCIS, and Michael Valverde, Deputy Associate Director, Field Operations Directorate, USCIS).

³ Am. Immigr. Law. Assoc., AILA Policy Brief: USCIS Processing Delays Have Reached Crisis Levels under the Trump Administration (2019), <https://www.aila.org/advo-media/aila-policy-briefs/aila-policy-brief-uscis-processing-delays>.

⁴ See Max Greenwood, *Immigration Agency Removing 'Nation of Immigrants' from Mission Statement*, THE HILL, Feb. 22, 2018, <https://thehill.com/homenews/administration/375112-us-immigration-agency-to-remove-reference-to-us-as-nation-of>; see also Policy Alert: USCIS Public Services No. PA-2019-03 (May 10, 2019).

accessible to hard-working families and vulnerable people. USCIS has not used the filing fees applicants have already paid to USCIS efficiently, and they must not be expected to bear a significant increase in fees without improvement in processing times, backlogs, and customer service.

II. USCIS' Proposal to Limit Payment Types Would Disadvantage Low-Income Immigrants

USCIS proposes to make the method of fee payment changeable form-by-form through a designation in the form instructions. This would allow USCIS to prohibit the use of certain types of payment, like cashier's checks or money orders, for certain application or petitions in favor of other methods of payment such as online payments. This proposed limitation would cause hardship to low-income applicants and petitioners, as reliable internet access, U.S. bank accounts, and well-established credit scores are assets that may only be available to more wealthy immigrants. Therefore, we request that USCIS accept cashier's checks and money orders as methods of payment for all applications and petitions.

III. USCIS' Proposal to Transfer Applicant Fees to ICE Is Improper

In the proposed fee schedule, USCIS seeks over two years to transfer \$415.2 million in applicant fees held in the Immigration Examinations Fee Account, or IEFA, to Immigration and Customs Enforcement, or ICE, for enforcement purposes. APIAHF vehemently opposes this misuse of applicant fees.

Congress codified in the Immigration and Nationality Act, or INA, that the applicant-funded IEFA is USCIS's "primary funding source" used "to fund the cost of processing immigration benefit applications and petitions"—that is, "to adjudicate applications and petitions for benefits under the Immigration and Nationality Act and to provide necessary support to adjudications and naturalization programs." Despite this clear statutory instruction, however, USCIS seeks to transfer those funds to serve another purpose. By unnecessarily and wrongfully transferring funds from IEFA to ICE, USCIS is betraying not only its own mission but also Congress's clear statutory intent. We find it wholly improper to accept payments from immigrants intended for adjudication of their immigration benefits, and to redirect those funds to be used for enforcement against their communities.

IV. USCIS Should Maintain Fee Waivers for All Current Categories

The fee schedule proposes to eliminate filing fee waivers for all categories except those that are statutorily required. This proposal would make essential benefits such as citizenship, green card renewal, and employment authorization inaccessible for low-income immigrants. Fee waivers help families to improve their stability, financially support themselves, and fully integrate into their communities. These immigration benefits have the power to lift up and transform

families, communities, and the country as a whole. Because of the benefits of naturalization—one of the form types most frequently associated with fee waiver requests⁵—Congress has called on USCIS to keep the pathway to citizenship affordable and accessible.⁶ A recent Congressional Committee report states, “USCIS is expected to continue the use of fee waivers for applicants who can demonstrate an inability to pay the naturalization fee.”⁷ USCIS’ proposed elimination of filing fee waivers would severely undermine Congressional intent, and is also a flawed and shortsighted policy. It will result in considerable harm to new American families and the nation’s democracy as a whole.

The elimination of the fee waiver and combined fee increases also stands to disproportionately impact Asian Americans. The majority of Asian Americans and Pacific Islanders immigrate through the family-immigration process. In 2017, 38% of immigrants who obtained lawful permanent residence were from Asia and Pacific Islands.⁸

V. Adjustment of Status Applications Should Remain Bundled and Affordable

USCIS proposes separate fees for concurrently filed Forms I-485, I-765, and I-131. Most applicants for adjustment of status who will file Form I-485 will also request employment authorization and advance parole travel authorization. Due to immigrant visa backlogs, applicants for adjustment often face long waits before their permanent residency is granted. They rely on employment authorization so that they can continue to live and work in the United States while their application is pending. These applicants will see a 79 percent increase in the total cost of filing Forms I-485, I-765, and I-131. The steep increase, from \$1,225 to \$2,195, and the elimination of fee waivers will make adjustment of status unattainable for many low-income and working class people who are immigrating through a U.S. citizen or lawful permanent resident relative. A minimum-wage worker who is likely already living paycheck-to-paycheck would have to work an extra 134 hours just to cover the increase in the application fees. Increasing the overall cost of adjustment of status would prevent many low-income individuals from becoming permanent residents and undermine family unity. As described above, this particularly stands to disproportionately impact Asian American and Pacific Islanders as the majority immigrant to the US via the family-immigration system.

⁵ USCIS Fee Waiver Policies and Data, Fiscal Year 2017 Report to Congress, USCIS (Sept. 17, 2017), www.dhs.gov/sites/default/files/publications/USCIS%20-%20Fee%20Waiver%20Policies%20and%20Data.pdf.

⁶ H. Rep. No. 115-948 accompanying H.R. 6776, the Department of Homeland Security Appropriations Act (2019).

⁷ Id. [Emphasis added].

⁸ Asian Americans Advancing Justice, How Immigration Shapes Asian American and Pacific Islander Communities, June 2019, https://advancingjustice-aaajc.org/sites/default/files/2019-06/1153_AAJC_Immigration_Final_Pages_LR-compressed.pdf.

VI. The Petition to Remove Conditions on Residence Should Remain Accessible

USCIS proposes a 28 percent increase to the current fee for filing Form I-751 Petition to Remove Conditions on Residence, from \$595 to \$760. This increase and the elimination of the fee waiver make it more difficult for low-income families to file timely. Late filing can have severe consequences, including the conditional resident's loss of lawful status and the risk of being placed into removal proceedings. Furthermore, those filing Petitions to Remove Conditions are often eligible to file for Naturalization very shortly afterward. Due to the fee increases in both of these categories, applicants for both benefits would go from paying \$1,235 in filing fees to \$1,930—a 56 percent increase in payment during that short period of time.

VII. Fee Waivers Should be Available to Those Subject to the Affidavit of Support

USCIS proposes making fee waivers unavailable to applicants who are subject to the public charge ground of inadmissibility; those who are subject to an affidavit of support; and those who are already sponsored immigrants. The USCIS Director would also be barred from granting a discretionary fee waiver to anyone in the former categories. This proposal would disproportionately harm low and moderate income families.

Most family sponsored immigrants are subject to the public charge ground of inadmissibility and are required to have an affidavit of support regardless of income.⁹ Moreover, the affidavit of support contract terminates only after specific criteria are met.¹⁰ The end result is that an immigrant would likely be barred from fee waiver eligibility for years, without regard to their actual need. This would create an additional barrier for low income immigrants who seek immigration benefits that they would otherwise be eligible for, including naturalization.

VIII. USCIS Should Withdraw the Fee Increase for the Provisional Waiver

The creation of the provisional waiver was intended to encourage eligible individuals to complete the immigrant visa process abroad, promote family unity, and improve administrative efficiency. Having an approved provisional waiver helps facilitate immigrant visa issuance at the Department of State (DOS),

⁹ INA 212(a)(4)(C); 8 CFR 213a.2(b)(1).

¹⁰ “The liability of the sponsor executing the affidavit of support terminates only when the sponsored immigrant becomes a U.S. citizen, earns or is credited with a total of 40 qualifying quarters as defined by social security law; dies; loses or abandons LPR status and departs the U.S.; or is ordered removed but readjusts status in immigration proceedings.” *See* 8 CFR § 213a.2(e)(2)(i).

streamlines both the waiver and the immigrant visa processes, and reduces the time that applicants are separated from their U.S. citizen or lawful permanent resident family members, thus promoting family unity.¹¹

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

IX. USCIS Should Not Impose a Renewal Fee for DACA

The current total fee for Deferred Action for Childhood Arrivals (DACA) renewals is \$495. USCIS proposes to establish a new, additional \$275 fee for Form I-821D, which would raise the new total cost for DACA renewal to \$765. This 55 percent increase would create a significant barrier to accessing the protection from deportation and work authorization young immigrants need for their stability.

Most DACA requesters are, by definition, young people who often struggle to afford the existing DACA request fee. Of the approximately 660,880 total active DACA recipients reported on June 30, 2019, approximately 544,180 are age 30 or below, and 112,160 of that number are fifteen to twenty years old. In a 2015 survey of DACA recipients, nearly 70 percent of respondents indicated that they struggled to pay their monthly bills and expenses with their current incomes. However, 80.6 percent of respondents indicated that they were employed, and 80.1 percent believed that DACA would help them achieve their professional goals.

Maintaining current fee levels for the I-821D form allows these young people to continue on their educational paths and to participate in the American economy. Increasing the fee for DACA renewal requests not only hinders current DACA recipients' abilities to earn a living for themselves and their families, but it also harms the U.S. economy by increasing the financial burden on its participants. Further, the proposal stands to impact the estimated 150,000 Asian Americans who were estimated to be eligible for DACA when the program began in 2012.¹²

X. USCIS Should Not Impose a Fee to File for Asylum

USCIS plans to impose a \$50 fee for those filing for affirmative asylum. The U.S. has a moral imperative to accept asylum seekers as well as obligations under domestic and international laws. As a signatory to the 1967 Protocol of

¹¹ 81 Fed. Reg. 50244.

¹² Asian Americans Advancing Justice, How Immigration Shapes Asian American and Pacific Islander Communities, June 2019, https://advancingjustice-aaajc.org/sites/default/files/2019-06/1153_AAJC_Immigration_Final_Pages_LR-compressed.pdf.

the 1951 Convention Relating to the Status of Refugees, the U.S. has an obligation to accept asylum seekers who seek protection.

Refusing asylum applicants for the inability to pay would effectively cause the U.S. to break its treaty obligations and flies in the face of the basic intent of the 1980 Refugee Act. In fact, the vast majority of countries who are signatories to the 1951 Convention or 1967 Protocol do not charge a fee for an asylum application.¹³ The United States has long been a world leader in refugee protection. If the United States imposes a filing fee for asylum, other countries may begin to do the same. This could have disastrous effects on refugee resettlement when the number of refugees and displaced people are at historic highs. The U.S. should adhere to its international and domestic obligations and not refuse asylum seekers their chance to seek protection simply for the inability to pay.

XI. Naturalization Fees Should Be Affordable

The proposed fee schedule would increase the filing fee for Naturalization from \$640 to \$1,170, an 83 percent increase. This substantial increase would make naturalization less accessible for low-income and working class people. The benefits of naturalization to individuals and the U.S. society cannot be overstated and the application must not be overpriced in order to avoid suppressing access to the benefits. “Citizenship can serve as a catalyst for immigrants to become more: dedicated to democratic principles; informed about the Constitution; engaged in political elections; represented in the political system; proficient in the English language; unified as families; employable in higher paying jobs; and integrated within a wider circle of people and institutions.”¹⁴ With approximately 9 million Lawful Permanent Residents, or LPRs, eligible to naturalize who have not yet filed,¹⁵ and the significant benefits that immigrant integration brings to the United States, it is in the country’s best interests to incentivize naturalization by maintaining a low application fee.

In combination with the elimination of the fee waiver, the fee increase for Naturalization would make citizenship unattainable for low-income immigrants. Congress has called on USCIS to keep the pathway to citizenship affordable and accessible.¹⁶ Pursuant to this expectation, USCIS has historically redistributed a

¹³ See Zolan Kanno-Youngs and Miriam Jordan, *New Trump Administration Proposal Would Charge Asylum Seekers an Application Fee*, N.Y. TIMES, Nov. 8, 2019, <https://www.nytimes.com/2019/11/08/us/politics/immigration-fees-trump.html> (Noting that the United States would be only the fourth country in the world to charge a fee for asylum).

¹⁴ JEFF CHENOWETH AND LAURA BURDICK, CATHOLIC LEGAL IMMIGRATION NETWORK, A MORE PERFECT UNION: A NATIONAL CITIZENSHIP PLAN, at vii, <https://cliniclegal.org/resources/guides-reports-publications/more-perfect-union-national-citizenship-plan>.

¹⁵ Robert Warren and Donald Kerwin, *The US Eligible-to-Naturalize Population: Detailed Social and Economic Characteristics*, 3 J. Migration & Hum. Security 306, 306 (2015).

¹⁶ H. Rep. No. 115-948 accompanying H.R. 6776, the Department of Homeland Security Appropriations Act (2019).

portion of the cost of naturalization applications among other application fee types to subsidize affordable naturalization and encourage immigrant integration.¹⁷ This proposed fee rule would abandon that historic practice and charge the actual cost of naturalization to applicants, disregarding the agency's previous concern for incentive and the affordability of naturalization. The proposed fee increase is contrary to Congressional intent, and contrary to the interests of the United States society and economy.

Thank you for the opportunity to submit comments on the proposed fee schedule. For questions, please contact Juliet K. Choi, APIAHF Chief of Staff and Senior Vice President for Government and External Relations at jchoi@apiahf.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kathy Ko Chin', with a horizontal line extending to the right.

Kathy Ko Chin,

APIAHF President & CEO

¹⁷ See, e.g., U.S. Citizenship and Immigration Services Fee Schedule, 75 Fed. Reg. 58,975, www.govinfo.gov/content/pkg/FR-2010-09-24/pdf/2010-23725.pdf.