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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

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

Dear Chief Deshommès:

The National Women's Law Center (the Center) respectfully submits this comment on the proposed U.S. Citizenship and Immigration Services (USCIS) Fee Schedule, published in the Federal Register on November 14, 2019. The Center is concerned about a number of the fee and policy proposals in the published fee schedule and requests that USCIS withdraw all provisions that make immigration benefits less accessible, especially for immigrant women with low incomes and survivors.

The Center fights for gender justice — in the courts, in public policy, and in society — working across the issues that are central to the lives of women and girls. The Center uses the law in all its forms to change culture and drive solutions to the gender inequity that shapes society and to break down the barriers that harm everyone — especially those who face multiple forms of discrimination. For more than 45 years, the Center has been on the leading edge of every major legal and policy victory for women.

Because of this work, the Center strongly opposes the proposed rule, which represents USCIS's latest effort to create barriers for individuals applying for immigration benefits¹ and is part of a larger pattern of attacks from the Administration upon the well-being of

¹ See e.g., comment letters on Dep't of Homeland Sec., U.S. Citizenship & Immigration Servs., Agency Information Collection Activities; Form I-912; Request for an Individual Fee Waiver, USCIS-2010-0008, available at <https://www.regulations.gov/docketBrowser?rpp=25&po=75&dct=PS&D=USCIS-2010-0008&refD=USCIS-2010-0008-0144>.

immigrant families.² 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. The Center opposes all aspects of the proposed fee schedule that would create a barrier between low-income immigrant women and their families and the immigration benefits for which they qualify. A few of the Center's specific concerns are below.

I. The proposed fee schedule would impose hardships on immigrant women and families.

As over 80 members of Congress have stated, the proposed rule would “inevitably price out hundreds of thousands, if not millions, of people from obtaining citizenship and other immigration benefits for which they qualify, based solely on their inability to afford these unreasonably high fees.”³ These unwarranted fee 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. These proposed revisions will also enormously burden service providers that assist immigrants.

The proposed fee schedule would especially burden immigrant women and their families. Throughout their lives, immigrant women, especially Black, Latinx, and Asian immigrant women, generally are at higher risk of economic insecurity than men because of pay disparities and other forms of discrimination, overrepresentation in low-wage work, and disproportionate responsibility for caregiving, among other factors. For example, immigrant women face significant wage disparities. They are paid less than native-born women,⁴ and are paid 66 cents for every dollar earned by native-born men.⁵ Many immigrant women of color face a substantial wage gap: Black, Latinx, and Asian immigrant women made 62, 47, and 92 cents respectively for every dollar made by a white, non-Hispanic native-born man.⁶ In addition, immigrant women are overrepresented in low-wage jobs (the 40-lowest paying jobs such as maid or housekeeper, nursing, psychiatric, or home health aide, or cashier), comprising 17

² These include, but certainly are not limited to, family separation, increased ICE raids in communities, the Department of Homeland Security public charge rule, and the U.S. Census Bureau's effort to place a citizenship question on the 2020 Census questionnaire.

³ Letter from Representative Grace Meng et al. to Acting Dep't of Homeland Sec. Sec'y Chad Wolf & Acting Dep't of Homeland Sec., U.S. Citizenship & Immigration Servs. Director Ken Cuchinelli (Nov. 19, 2019), *available at* <https://meng.house.gov/sites/meng.house.gov/files/Letter.pdf>.

⁴ INST. FOR WOMEN'S POL'Y RES., STATUS OF WOMEN IN THE STATES: THE EMPLOYMENT AND EARNINGS OF IMMIGRANT WOMEN (2018), <https://statusofwomendata.org/immigrant-women/>.

⁵ NAT'L WOMEN'S LAW CTR. calculations based on U.S. CENSUS BUREAU, 2018 CURRENT POPULATION SURVEY, USING SARAH FLOOD ET AL., INTEGRATED PUBLIC USE MICRODATA SERIES (IPUMS): VERSION 6.0 [dataset] (Minneapolis, University of Minnesota, 2018), *available at* <https://doi.org/10.18128/D030.V6.0>.

⁶ *Id.* In this comment, the “Black” race category includes those who identified themselves as Black or African American, the “Latinx” category includes people of any race who identified themselves to be of Hispanic, Latino, or Spanish origin, and the “white, non-Hispanic” race category includes those who identified themselves as white, but not of Hispanic origin in the source material.

percent of the low-wage workforce, as compared to only eight percent of the overall workforce.⁷ Eighty-eight percent of immigrant women working at low-wage jobs are women of color.⁸ And more than half of all immigrant women are parents, compared to 45 percent of immigrant men and 28 percent of native-born women.⁹ Because increases in immigration-related fees would have a particularly harsh impact on immigrant women, the proposed rule should be withdrawn.

Additionally, USCIS should withdraw the proposed rule because it creates significant barriers for individuals with few resources available to them, including survivors of domestic violence, sexual assault, human trafficking, and other crimes, to access immigration benefits. Access to immigration benefits is essential for women to escape abusive situations and gain self-sufficiency following abuse.

While USCIS states that the fee increase would make it “more equitable for all immigration benefit requests by requiring fees for the service to be paid by those who benefit,”¹⁰ this purported rationalization completely ignores the public policy benefits of having immigration relief accessible to those who qualify. Access to secure immigration benefits, including naturalization, can lead to an increase in an individual’s wages, create stability for family members and contribute to the economic growth of this country as a whole.¹¹ Further, the proposed rule undermines the congressional intent to make humanitarian relief accessible to victims/survivors and contravenes the purpose of USCIS as a *benefit-granting* agency,¹² not one focused on enforcement. USCIS should instead focus its efforts on ensuring that immigrants with low incomes and survivors have access to immigration relief for which they are eligible.

II. USCIS should neither create new fees nor increase existing fees.

Creating a \$50 fee for immigrants filing for affirmative asylum not only contravenes our country’s moral imperative to accept asylum seekers but also the U.S. government’s obligations under domestic and international laws, including the 1967 Protocol of the 1951 Convention Relating to the Status of Refugees and 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—only three countries charge a fee.¹³ The United States should adhere to its international and domestic obligations and

⁷ NAT’L WOMEN’S LAW CTR. calculations based on U.S. CENSUS BUREAU, 2019 CURRENT POPULATION SURVEY, using SARAH FLOOD ET AL., INTEGRATED PUBLIC USE MICRODATA SERIES (IPUMS): VERSION 6.0 [dataset] (Minneapolis, University of Minnesota, 2018), *available at* <https://doi.org/10.18128/D030.V6.0>.

⁸ *Id.*

⁹ *Id.* (defined as “own children” in their household).

¹⁰ U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 84 Fed. Reg. 62280, 62299 (proposed on Nov. 14, 2019).

¹¹ CTR. FOR AM. PROGRESS, HOW CITIZENSHIP HELPS THE ECONOMY (Mar. 2013), *available at* <https://cdn.americanprogress.org/wp-content/uploads/2014/03/EconofCitizenship.pdf>.

¹² Congress specifically designated USCIS as the immigration benefits and adjudications agency in the Homeland Security Act in 2002. See 6 U.S.C. § 271(b).

¹³ See ZOLAN KANNO-YOUNGS & 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>.

not block asylum seekers from seeking protection simply because of their inability to pay a fee.

In addition, USCIS proposes raising, in many cases more than doubling, the fees for some of the most commonly used immigration benefits, while simultaneously gutting the use and criteria for fee waivers (as discussed further below).¹⁴ This would create a financial hardship for many immigrant women with low incomes and their families, including survivors. While the applications for survivor-based relief themselves do not have a fee,¹⁵ applicants must often file ancillary forms that impose fees. The proposed rule would significantly increase these fees for applicants¹⁶ and should be withdrawn.

III. USCIS should withdraw its proposals to change fee waiver policies.

The fee schedule proposes to eliminate filing fee waivers for all categories except those that are statutorily required. The proposed rule sharply narrows the criteria for fee waivers and completely eliminates the financial hardship criteria. The proposed rule states that USCIS will only consider fee waiver requests from individuals who can demonstrate they have an annual household income at or below 125 percent of the federal poverty guidelines (FPG),¹⁷ as opposed to the previous 150 percent of the FPG. Also, it would only provide very limited authority to the USCIS Director—the Director would only have the authority to grant “discretionary fee waiver requests” in extremely limited circumstances.¹⁸ Reducing the FPG threshold, eliminating the means-tested

¹⁴ See U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 84 Fed. Reg. at 62298, 62326 (Table 19).

¹⁵ For example, there is no fee for an I-360 application for a VAWA self-petitioner or Applicant for Special Immigrant Juvenile Status. See DEP’T OF HOMELAND SEC., U.S. CITIZENSHIP & IMMIGRATION SERVS., I-360, Petition for Amerasian, Widow(er), or Special Immigrant, <https://www.uscis.gov/i-360> (last reviewed/updated Aug. 29, 2019). Similarly, there is no fee for an application for U nonimmigrant status or T nonimmigrant Status. See DEP’T OF HOMELAND SEC., U.S. CITIZENSHIP & IMMIGRATION SERVS., I-918, Petition for U Nonimmigrant Status, <https://www.uscis.gov/i-918> (last reviewed/updated Oct. 30, 2019); DEP’T OF HOMELAND SEC., U.S. CITIZENSHIP & IMMIGRATION SERVS., I-914, Application for T Nonimmigrant Status, <https://www.uscis.gov/i-914> (last reviewed/updated July 10, 2019).

¹⁶ See U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 84 Fed. Reg. at 62326 (Table 19). For example, the proposed rule would increase the fee for a I-765, Application for Employment Authorization to \$390, the I-192 Application for Advance Permission to Enter as a Nonimmigrant fee from \$930 to \$1415 (an increase of 52 percent), and the I-929 Applications for Qualified Family Members of U visa holders from \$230 to \$1515 (an increase of 559 percent). *Id.*

¹⁷ U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 84 Fed. Reg. at 62299. In addition to the 125 percent FPG criteria, fee waivers will only be available to those “seeking an immigration benefit for which he or she is not required to submit an affidavit of support under INA section 213A, 8 U.S.C. 1183a or is not already a sponsored immigrant as defined in 8 CFR 213a.1”; and who are “seeking an immigration benefit for which they are not subject to the public charge inadmissibility ground under INA section 212(a)(4), 8 U.S.C. 1182(a)(4).” *Id.*

¹⁸ U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 84 Fed. Reg. at 62301. The proposed rule would “limit a Director’s discretionary waiver to cases related to one of the following: (1) Asylees; (2) Refugees; (3) National security; (4) Emergencies or major disasters declared in accordance with 44 CFR part 206, subpart B; (5) An agreement between the U.S. government and another nation or nations; or (6) USCIS error.” *Id.* at 62300.

benefit criteria,¹⁹ and eliminating the financial hardship criteria of fee waivers will result in over **400,000** fewer fee waiver application approvals.²⁰

Fee waivers help families overcome financial barriers to accessing essential immigration benefits such as citizenship, green card renewal, and employment authorization. This in turn improves their economic stability and ability to 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 requests²¹ – Congress has specifically called on USCIS to keep the pathway to citizenship affordable and accessible.²² 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.”²³ USCIS’ proposed elimination of filing fee waivers, therefore, would severely undermine Congressional intent. Because this proposal would make naturalization, as well as other immigration benefits, inaccessible for immigrants with low incomes, it would detrimentally impact immigrant women, their families, and communities. It is a flawed and shortsighted policy that will result in considerable harm to immigrant families new to the United States and harm the nation’s democracy as a whole.

Eliminating fee waivers will also specifically harm survivors of violence applying for naturalization and those seeking status through non-humanitarian channels. The proposed rule upholds statutorily protected fee waivers for VAWA self-petitioners²⁴ and U and T visa applicants for any forms filed in relation to their main benefit until they have adjusted status.²⁵ However, it also states that generally fee waivers will no longer be available for any naturalization applications and many other forms in non-survivor based cases, including legal permanent residence applications, work permit applications, and Form I-751, Petitions to Remove Conditions on Residence.²⁶ This

¹⁹ This proposal comes from Agency Information Collection Activities; Revision of a Currently Approved Collection: Request for Fee Waiver; Exemptions, 83 Fed. Reg. 49120 (proposed on Sept. 28, 2018).

²⁰ DEP’T OF HOMELAND SEC., U.S. CITIZENSHIP & IMMIGRATION SERVS., REGULATORY IMPACT ANALYSIS, U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements 42, Docket no. USCIS-2019-0010 (Nov. 22, 2019).

²¹ DEP’T OF HOMELAND SECURITY, U.S. CITIZENSHIP & IMMIGRATION SERVS., USCIS FEE WAIVER POLICIES AND DATA, FISCAL YEAR 2017 REPORT TO CONGRESS (Sept. 27, 2017), *available at* <http://www.dhs.gov/sites/default/files/publications/USCIS - Fee Waiver Policies and Data.pdf>.

²² H.R. REP. NO. 115-948, at 61-62 (2018).

²³ *Id.* at 62.

²⁴ As defined by 8 U.S.C. § 1101(a)(51)(C).

²⁵ For a full list of forms still eligible for fee waivers in survivor-based cases for VAWA self-petitioners, U and T visa applicants, see U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 84 Fed. Reg. at 62296, 62297 (Table 7).

²⁶ See U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 84 Fed. Reg. at 62999. Fee waivers will be eliminated for naturalization, and the following forms in non-survivor based cases: 1) Form I-90, Application to Replace Permanent Resident Card; 2) Form I-765, Application for Employment Authorization; 3) CNMI related petitions and applications; 4) Form I-485, Application to Register Permanent Residence or Adjust Status; 5) Forms for applicants exempt from the public charge inadmissibility ground; 6) Form I-751, Petition to Remove Conditions on Residence. *Id.* Note that applicants seeking a domestic violence-based I-751 waivers are defined as “VAWA self-petitioners” under 8 U.S.C. § 1101(a)(51)(C) and thus access to fee waivers are statutorily protected under the Trafficking Victims Protection Reauthorization Act

ignores the fact that survivors of domestic violence, sexual assault, and human trafficking may pursue other routes to secure immigration status which lack such explicit protections, such as seeking lawful permanent residence on a basis other than those specifically designed for crime survivors. These survivors would no longer have access to fee waivers.

Specifically, the fact that legal permanent residents applying for naturalization, including those who are survivors of domestic violence, sexual assault, and other crimes experienced in another country and/or in the United States, will not have access to fee waivers under the proposed rule is especially problematic. Over the last several years, the high cost of naturalization has often been a barrier for individuals who are eligible to apply.²⁷ Thus, raising the fees for naturalization, coupled with eliminating the availability of fee waivers, will put low-income legal permanent residents survivors in the unconscionable position of having to choose between expending resources to become a U.S. citizen and providing basic necessities for their families.

Eliminating the financial hardship category and narrowing the other criteria for fee waivers is unjustifiable and creates barriers for survivors to access relief. Consequently, USCIS should withdraw this proposed rule that would particularly harm women survivors.

IV. USCIS should withdraw its improper proposal to transfer applicant fees to Immigration and Customs Enforcement.

The proposal to transfer \$207.6 million²⁸ in applicant fees held in the Immigration Examinations Fee Account (IEFA) to Immigration and Customs Enforcement (ICE) is improper. USCIS is largely funded by the IEFA. Congress codified in the Immigration and Nationality Act (INA) that the applicant-funded IEFA is should be used “for expenses in providing immigration adjudication and naturalization services” and administering the IEFA.²⁹ 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 violating its own mission and Congress’s clear statutory intent, thus exceeding its statutory authority under the INA. The Center finds it wholly and legally improper to extract payments from immigrants intended for

of 2008, 8 U.S.C. § 1255(l)(7).

²⁷ See MANUEL PASTOR ET AL., NAT’L PARTNERSHIP FOR NEW AMS. & CTR. FOR THE STUDIES OF IMMIGRANT INTEGRATION AT THE U. S. CAL., NURTURING NATURALIZATION: CAN LOWERING THE FEE HELP? (Feb. 2013), available at https://dornsife.usc.edu/assets/sites/731/docs/Nurturing_Naturalization_final_web.pdf; see also CHINELO NKECHI IKEM, HIGH APPLICATIONS FEES CAN BE A SIGNIFICANT BARRIER TO NATURALIZATION, PACIFIC STANDARD MAGAZINE (Feb. 22, 2018), <https://psmag.com/economics/application-fee-naturalization>.

²⁸ USCIS posted a second notice reducing this proposed transfer to \$112.3 million. U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 84 Fed. Reg. 67243, 67244 (published on Dec. 9, 2019 to extend the comment period for the proposed rule published on Nov. 14, 2019). The Center’s comments apply regardless of the amount of the proposed transfer.

²⁹ 8 U.S.C. § 1356(n).

adjudication of their immigration benefits and then redirect those funds towards enforcement targeting immigrant communities.

V. Conclusion

For the reasons provided above, USCIS should promptly withdraw the provisions of its proposed fee schedule that would make immigration benefits less accessible to immigrants. The proposal would especially hurt immigrant women with low incomes and survivors and runs counter to USCIS' purpose as established by Congress. USCIS should improve its policies and organizational choices to improve processing times, backlogs, and customer service rather than placing the heavy burden of increased fees on immigrants.

Sincerely,



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