



December 30, 2019

Ms. Samantha Deshommes, 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
Submitted via www.regulations.gov

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

Dear Chief Deshommes:

Asian Americans Advancing Justice | AAJC submits this comment on the proposed U.S. Citizenship and Immigration Services (USCIS) Fee Schedule, published on November 14, 2019.

First, Advancing Justice | AAJC objects to the brief period during which comments are being accepted. The initial comment period of 30 days was inadequate. We joined with fellow advocates in signing a letter to USCIS requesting a comment period of at least 60 days to address the lengthy proposed rule that will have far-reaching consequences. This request was denied.

While the comment period was later extended by 15 days, this extension is insufficient. The addition days of the brief extension period fall during the holiday season, and USCIS supplemented the proposed rule with projected costs regarding reimbursement by USCIS to ICE. Even with the extension, the comment period is still inadequate.

Since we remain gravely concerned about many of the fee and policy proposals in the published fee schedule, we submit this comment to request that USCIS withdraw all provisions that make immigration benefits less accessible to low-income and other vulnerable immigrants.

Asian Americans Advancing Justice | AAJC (Advancing Justice | AAJC) is a national non-profit, non-partisan organization founded in 1991. Our mission is to advance the civil and human rights of Asian Americans, and build and promote a fair and equitable society for all. Our wide-ranging efforts include promoting civic engagement, forging strong and safe communities, and creating an inclusive society. Furthermore, advocacy on immigration policy has been central to Advancing Justice | AAJC's work from the beginning. Since Asian Americans are disproportionately impacted by the visa backlogs in the family immigration system, our advocacy efforts continue to focus on family reunification.

In addition, Advancing Justice | AAJC has served as the site leader for the New Americans Campaign in the Washington D.C. metropolitan area since the summer of 2015. In this role, Advancing Justice | AAJC convenes D.C. area organizations that provide citizenship assistance in order to coordinate activities so that we can more effectively reach and serve eligible legal permanent residents in applying for naturalization. The eligible-to-naturalize population in the D.C. metropolitan area is large (222,279 individuals) and diverse, encompassing immigrants from all over the world.

As an organization dedicated to serving Asian American, Native Hawaiian and Pacific Islander communities, we also note that as of the 2010 Census, there are nearly 750,000 Asian Americans and over 17,000 Native Hawaiians and Pacific Islanders (NHPI) in the D.C. metropolitan area.¹ Since almost two-thirds of Asian Americans are foreign-born,² the Asian American population is a majority immigrant community that will be significantly impacted by the proposed changes. In addition, while Native Hawaiians are an indigenous population and do not number many immigrants among them, there are 2,400 NHPI in the D.C. area who are foreign-born.³ The Asian American and NHPI population clearly has a stake in how immigration fees, including fee waivers, are determined.

Asian Americans Advancing Justice | AAJC believes that U.S. Citizenship and Immigration Services should support immigrants in their journey to becoming U.S. citizens and should make adjustment of status and naturalization more accessible. Advancing Justice | AAJC strongly objects to the proposed changes that will put immigration status and U.S. citizenship beyond the reach of immigrants with limited resources.

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.

Advancing Justice | AAJC is deeply concerned that the Department of Homeland Security is increasing fees, particularly for naturalization and adjustment of status to permanent residence, in a concerted effort to deter the immigration and naturalization of people of color, and that these policies are rooted in and motivated by racism. Notably, the President has expressed a preference

¹ Asian Americans Advancing Justice, A COMMUNITY OF CONTRASTS: ASIAN AMERICANS, NATIVE HAWAIIANS AND PACIFIC ISLANDERS IN THE SOUTH, 2014, 59.

² *Id.* at 63.

³ *Id.*



for immigrants from Norway from other parts of the world.⁴ The Southern Poverty Law Center⁵ and the New York Times⁶ have documented that President Trump's chief immigration advisor Stephen Miller, has cited to White Nationalist websites and espoused the views of White Nationalists in regard to immigration. Politico has reported that Miller was obsessed with promulgating the public charge rule changes, which are also an effort to lower legal immigration to the U.S.⁷ Congress has chosen not to lower legal immigration levels, and it is clear that the White House intends to do so through administrative changes. Raising immigration fees in order to slow or limit the ability of people of color or people of certain national origins to become lawful permanent residents or U.S. citizens would be odious and violate the Constitution's Equal Protection Clause, among other laws.

Advancing Justice | AAJC 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,⁸ the overall average case processing time had increased 91 percent between 2014 and 2018,⁹ and USCIS has removed language from its resources that stated any commitment to customer service.¹⁰ USCIS' purported shortfalls are the result of its poor policy and organizational choices.

We describe below how these changes will impact our organization and our clients, and the reasons for our opposition. Omission of any proposed change from this comment should not be interpreted as tacit approval. We oppose all aspects of the proposed fee schedule that will act as a barrier between low-income immigrants and the immigration benefits for which they qualify.

1. Naturalization Fees Should Be Affordable

Naturalization is essential to fully integrate immigrants as equal members of society and enable them to fully participate in our democracy. Welcoming aspiring new Americans and providing a pathway to full citizenship stabilizes immigrant families and communities while strengthening the economy for everyone.

⁴ Katie Rogers and Jason DeParle, *The White Nationalist Websites Cited by Stephen Miller*, THE NEW YORK TIMES (November 18, 2019).

⁵ Michael Edison Hayden, *Stephen Miller's Affinity for White Nationalism Revealed in Leaked Emails*, The Southern Poverty Law Center (November 12, 2019).

⁶ See Rogers and DeParle, *supra* at 4.

⁷ Ted Hesson, *Emails show Stephen Miller pressed hard to limit green cards*, POLITICO (August 2, 2019).

⁸ 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).

⁹ American Immigration Lawyers Association, AILA Policy Brief: USCIS Processing Delays Have Reached Crisis Levels under the Trump Administration (2019).

¹⁰ See Max Greenwood, *Immigration Agency Removing 'Nation of Immigrants' from Mission Statement*, THE HILL (February 22, 2018); see also Policy Alert: USCIS Public Services No. PA-2019-03 (May 10, 2019).



Asian immigrants are among the fastest to apply for naturalization once they become eligible. While individuals who naturalized in fiscal year 2017 spent a median of eight years in lawful permanent resident (LPR) status before becoming U.S. citizens, immigrants from Asia and Africa spent the least number of years in LPR status, a median of six years before becoming U.S. citizens.¹¹

The U.S. should support immigrants in their path to citizenship by making naturalization more accessible, including keeping fees 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 U.S. society cannot be overstated. “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.”¹² With approximately 9 million LPRs eligible to naturalize who have not yet filed,¹³ 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 citizenship affordable and accessible.¹⁴ Pursuant to this expectation, USCIS has historically redistributed a portion of the cost of naturalization applications among other application fee types to subsidize affordable naturalization and encourage immigrant integration.¹⁵ 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 longstanding Congressional intent, and contrary to the interests of the U.S. society and economy.

The naturalization rate for the overall immigrant population is 47% and approximately 58% of Asian American immigrants are naturalized citizens.¹⁶ There are significant variations within the various Asian American national origin groups. The highest naturalization rates of 70 percent and higher are among Hmong, Vietnamese, Cambodian, and Laotian Americans, and the lowest

¹¹ Asian Americans Advancing Justice – AAJC and Asian Americans Advancing Justice – Los Angeles, INSIDE THE NUMBERS: HOW IMMIGRATION SHAPES ASIAN AMERICAN AND PACIFIC ISLANDER COMMUNITIES (June 2019), 68.

¹² 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>.

¹³ Robert Warren and Donald Kerwin, *The US Eligible-to-Naturalize Population: Detailed Social and Economic Characteristics*, 3 J. Migration & Hum. Security 306, 306 (2015).

¹⁴ H. Rep. No. 115-948 accompanying H.R. 6776, the Department of Homeland Security Appropriations Act (2019).

¹⁵ 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.

¹⁶ Advancing Justice – AAJC and Advancing Justice – Los Angeles, INSIDE THE NUMBERS, 68.



rates, 21 and 23 percent respectively, are among Nepalese and Burmese Americans.¹⁷ While Asian immigrants naturalize at high rates, the overall numbers indicate that significant numbers of Asian American and Pacific Islander immigrants have yet to naturalize. This is where our citizenship work enters in.

Each month, our local partners in the New Americans Campaign hold several low-cost citizenship workshops in the D.C. metropolitan area to assist and guide eligible LPRs through the naturalization process. Advancing Justice | AAJC is committed to empowering immigrant communities and increasing civic engagement, and will continue to strenuously object to changes that create added barriers to naturalization and prevent immigrants from becoming voters and fully participating in our democracy.

2. 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 few types most frequently associated with fee waiver requests¹⁸—Congress has called on USCIS to keep the pathway to citizenship affordable and accessible.¹⁹ 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.”²⁰ 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 fee waiver and reduced fee for naturalization have been invaluable tools in our naturalization efforts. The availability of the fee waiver and reduced fee have been instrumental to our outreach. Educating people about this assistance with the cost of naturalization has been an important component of our messaging to promote citizenship and encourage people to naturalize. Some of the organizations we work with through the New Americans Campaign have built partnerships with social service agencies to notify recipients of public benefits that they are eligible for fee waivers. Outreach and education about fee waivers have enabled thousands of vulnerable LPRs who might not otherwise have naturalized to gain the greater security that comes with U.S. citizenship.

¹⁷ *Id.* at 12.

¹⁸ USCIS Fee Waiver Policies and Data, Fiscal Year 2017 Report to Congress, USCIS (September 17, 2017), www.dhs.gov/sites/default/files/publications/USCIS%20-%20Fee%20Waiver%20Policies%20and%20Data.pdf.

¹⁹ H. Rep. No. 115-948 accompanying H.R. 6776, the Department of Homeland Security Appropriations Act (2019).

²⁰ *Id.* [Emphasis added].



3. Adjustment of Status Applications Should Remain Bundled and Affordable

USCIS proposes separate fees for concurrently filed Forms I-485 (Application to Register Permanent Residence or Adjust Status), I-765 (Application for Employment Authorization), and I-131 (Application for Travel Document). 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 worker earning the federal minimum wage of \$7.25 per hour who is likely already living paycheck-to-paycheck would have to work 134 hours—more than 3 weeks—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.

Asian Americans are disproportionately impacted by the family visa backlogs, waiting for years for visas to become available so that they can adjust status and become lawful permanent residents. As of fiscal year 2019, there are nearly 3.7 million aspiring immigrants waiting for family preference visas and more than 40 percent of the people stuck in the family backlogs are from Asia.²¹ Increased filing fees will put adjustment of status out of reach for these individuals who have already endured decades of separation.

4. 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 (Consideration of Deferred Action for Childhood Arrivals), 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.²² 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.²³ 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.²⁴

²¹ Advancing Justice – AAJC and Advancing Justice – Los Angeles, INSIDE THE NUMBERS, 37.

²² U.S. Citizenship and Immigration Services, *Approximate DACA Receipts as of June 30, 2019..*

²³ United We Dream, A PORTRAIT OF DEFERRED ACTION FOR CHILDHOOD ARRIVALS RECIPIENTS: CHALLENGES AND OPPORTUNITIES THREE-YEARS LATER (October 2015), 14.

²⁴ *Id. at 12.*



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.

Among Asian countries, South Korea has had the highest DACA participation rate at 24 percent as of August 2018, ranking 14th behind nations from Central and South America and the Caribbean.²⁵ While Asian Americans have had low application rates for DACA, the impact of deferred action has deeply significant and life-changing for those who have applied. DACA, and the tremendous opportunities it provides, must remain affordable and accessible.

5. 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 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.²⁶ 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.

China has been a top country of origin for both affirmative and defensive asylum seekers for many years. People from China were the beneficiaries of 26.8% of the affirmative asylum claims in FY 2014 declining to 11.5% of affirmative asylum claims in FY 2016. Other significant Asian countries of origin for asylum seekers in FY 2016 include Egypt (5.9%), Syria (5.6%), Iraq (5.2%) and Iran (3.2%).

6. 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

²⁵ Advancing Justice – AAJC and Advancing Justice – Los Angeles, INSIDE THE NUMBERS, 49.

²⁶ See Zolan Kanno-Youngs and Miriam Jordan, *New Trump Administration Proposal Would Charge Asylum Seekers an Application Fee*, N.Y. TIMES (November 8, 2019), <https://www.nytimes.com/2019/11/08/us/politics/immigration-fees-trump.html> (Noting that the U.S. would be only the fourth country in the world to charge a fee for asylum).



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.

7. 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.²⁷ Moreover, the affidavit of support contract terminates only after specific criteria are met.²⁸ 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.

8. 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), 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.²⁹

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.

²⁷ INA 212(a)(4)(C); 8 CFR 213a.2(b)(1).

²⁸ “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).

²⁹ 81 Fed. Reg. 50244.



9. 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. To further illustrate, use of credit is limited among minority populations. According to a 2014 report, 74 percent of Asian Americans and Pacific Islanders (AAPIs) surveyed reported having at least one credit card, while only 56 percent of Hispanics and African Americans reported having such access to credit.³⁰ In addition, many minorities are “underbanked,” which refers to individuals who own bank accounts but use them infrequently and also use nonbank services like payday loans, check cashing, or prepaid cards. Nearly half of African Americans (47 percent) are underbanked, as are 34 percent of Hispanics and 23 percent of AAPIs.³¹ Finally, significant portions of these populations are “unbanked,” having neither checking nor savings accounts: 21 percent of Hispanics, 19 percent of African Americans, and 7 percent of AAPIs.³² As organizations that work with hard-working immigrant families, we request that USCIS continue to accept cashier’s checks and money orders as methods of payment for all applications and petitions.

10. 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 (IEFA) to Immigration and Customs Enforcement (ICE) for enforcement purposes. Advancing Justice | AAJC vehemently opposes this misuse of applicant fees. Congress holds the power of the purse and it is Congress’s role to determine the budget of executive agencies. This transfer seeks to usurp that role in contravention of the Immigration and Nationality Act and appropriations bills.

Congress codified in the Immigration and Nationality Act 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

³⁰ National CAPACD, National Council of La Raza, and National Urban League, **BANKING IN COLOR: NEW FINDINGS ON FINANCIAL ACCESS FOR LOW- AND MODERATE-INCOME COMMUNITIES** (2014), 8.

³¹ *Id.* at 7.

³² *Id.*



adjudication of their immigration benefits, and to redirect those funds to be used for enforcement against their communities.

For the reasons provided here, USCIS should promptly withdraw the provisions of its proposed fee schedule that would make immigration benefits less accessible to hard-working families and vulnerable people. USCIS has not used the filing fees applicants have already paid to USCIS efficiently, and applicants must not be expected to bear a significant increase in fees without improvement in processing times, backlogs, and customer service.

Thank you for your consideration of our comments on the proposed fee schedule. For further information, please do not hesitate to contact Marita Etcubañez at (202) 296-2300, ext. 0120 or metcubanez@advancingjustice-aajc.org.

Respectfully submitted,

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