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December 23, 2019

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
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Re: Proposed Rule – U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigrant Benefit Request Requirements, DHS Docket No. USCIS-2019-0010, RIN 1615-AC18, 84 Fed. Reg. 62,280 (Nov. 14, 2019); 84 Fed. Reg. 67,243 (Dec. 9, 2019)

Dear Ms. Deshommes:

The Immigrant Legal Resource Center (ILRC) submits this comment on the proposed rule issued by the U.S. Citizenship and Immigration Services (USCIS), U.S. Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigrant Benefit Request Requirements, DHS Docket No. USCIS-2019-0010, RIN 1615-AC18, 84 Fed. Reg. 62,280 (Nov. 14, 2019) (the November Proposal), 84 Fed. Reg. 67,243 (Dec. 9, 2019) (the December Proposal) (collectively, the Proposal). ILRC strongly opposes the Proposal and urges that it be withdrawn.

Through this Proposal, USCIS seeks to increase fees dramatically for vital immigration benefits and services. If the proposed changes go into effect, people and their families will be priced out of citizenship, lawful permanent residency, work permits, asylum, Deferred Action for Childhood Arrivals (DACA), and more. The Proposal targets families, children, the elderly, victims of domestic violence and trafficking, the disabled, and individuals from African, Asian, Central and South American, or Muslim-majority nations, as well as the Caribbean and Mexico, particularly those with lower incomes. Because the fee increases will frustrate the substantive policies that the Immigration and Nationality Act (INA) is meant to promote, they are arbitrary and capricious and contrary to law in violation of the Administrative Procedure Act.

USCIS also proposed to administratively transfer over one hundred million dollars to another agency, Immigration and Customs Enforcement (ICE). The November Proposal sought to transfer $207,600,000 to ICE. Then, on December 9, USCIS changed this number to $112,287,417, based on new information, rationales, and calculations found nowhere in the

November Proposal. USCIS cites no statutory authorization for this unprecedented transfer, and there is none; the proposed transfer is the very example of a regulation that is "contrary to law" in violation of the Administrative Procedure Act. The December Proposal contained no new proposed fee amounts to account for the over $100 million change beyond a vague assertion that it would adjust the fee schedule. With no explanation for the rush, USCIS gave the public less than three weeks, until December 30, in the middle of the holiday season, to comment on both proposals. At a minimum, the Proposal should be re-noticed for a fair opportunity to provide notice and comment, with the actual fee levels that USCIS proposes to impose.

ILRC

ILRC is a national non-profit organization that works to advance immigrant rights through advocacy, educational materials, and legal trainings. ILRC's mission is to work with and educate immigrants, community organizations, and the legal sector to continue to build a democratic society that values diversity and the rights of all people. We serve the individuals and community of organizations that are most impacted by this rule.

ILRC also leads the New Americans Campaign, a national non-partisan effort that brings together private philanthropic funders, leading national immigration and service organizations, and over two hundred local services providers across more than 20 different regions to help prospective Americans apply for U.S. citizenship. As the lead organization for the campaign, ILRC receives and re-grants substantial philanthropic dollars to local immigration service providers across the United States who help lawful permanent residents apply for naturalization. Our local partners have helped more than 435,000 permanent residents apply for naturalization; over 40% of the applications funded by the New Americans Campaign included a fee waiver.

Introduction

The Proposal includes a mix of unlawful appropriations, unprecedented fee hikes, and new barriers to accessing immigration benefits and services through USCIS. USCIS inexplicably allots itself a 54% higher budget than prior years, during a time that this Administration has emphasized tighter federal agency budgets. USCIS does not offer any alternatives based on a flat budget—the level to which virtually all other civilian agencies have been held under the current Administration. Nor does USCIS offer an alternative based on a budget increasing at the rate of inflation. Rather, USCIS offers without any explanation or justification a gigantic budget increase, and then calculates fee increases designed to fund this huge budget increase, although without accounting for the dramatic drop in applications that the fee increases are likely to cause. It achieves this astonishing budget increase through fee hikes that are essentially a tax, at a time that this Administration has emphasized easing the tax burden.

The driver of the proposed fee hikes is the proposed transfer of $112,287,417 to ICE. Although the Immigration and Naturalization Act (INA) authorizes collecting funds only for

"providing immigration and naturalization services," the Proposal explains it hopes to fund enforcement and *denaturalization* efforts—Operation Janus, the ICE Homeland Security Investigations (ICE) National Lead Development Center, and Document and Benefit Fraud Task Forces. This proposed transfer is not authorized by any statute and is contrary to law.

The proposed rule imposes drastic fee hikes. USCIS would charge $540[1] per person to seek asylum and employment authorization in the United States, without exceptions. No other country erects such a barrier to asylum seekers. Only three—including Iran—impose a fee at all, and even those countries permit exceptions. Similarly, USCIS proposes a new fee for DACA renewals, where previously there was no fee, while also charging for employment authorization; this would raise the cost of a DACA renewal, by creating a new fee and including additional fees, to $765. USCIS would "unbundle" filing fees for permanent residence applications, employment authorization, and travel document application, in effect doubling the cost for a green card to over $2,195. USCIS would require a biometric fee as an end-run around statutorily capped fees for Temporary Protected Status (TPS) applicants.

USCIS also proposes to increase the cost of naturalization to $1,170 per person, regardless of age—an increase of 60%-83%. Meanwhile, USCIS would lower the fee for green card renewals. The combined effect of lower fees for green card renewals and higher fees for naturalization discourages lower-income immigrants from becoming citizens, with the benefits of increased governmental representation and employment opportunities.

Contrary to years of agency interpretations of the INA, fee exemptions and waivers would also all but disappear under the Proposal. USCIS would end fee waivers that have made naturalization, green card renewals, and other benefits accessible to low income households. USCIS would narrow eligibility for fee waivers based on income for statutorily eligible populations: Violence Against Women Act (VAWA), U (crime victim), T (trafficked individuals), battered individuals, asylum applicants, and Temporary Protected Status (TPS) applicants.[2] And USCIS would limit its own discretion to change its approach in the future contrary to the scope of discretion Congress granted. *See, e.g.*, H.R. Rep. No. 89-745, at

[1] The November Proposal specified fee amounts, but the December Proposal did not. Therefore, ILRC discusses the fee amounts identified in the November Proposal. ILRC's arguments apply to weaknesses in the Proposal, and do not depend on the exact dollar number of a particular fee. Thus, in the event USCIS proposes or finalizes lower fees than those identified in the November Proposal, such proposal would not absolve USCIS of its duty to address the issues ILRC notes here. See Perez v. Mortg. Bankers Ass'n, 575 U.S. __, 135 S. Ct. 1199, 1203 (2015) ("An agency must consider and respond to significant comments received during the period for public comment.").

[2] As further discussed below, while the Proposal would stay within the statutory requirement of the TVPRA that the associated filings of VAWA, U, T, and TPS be allowed to apply for fee waivers, the new requirements for those fee waivers are punitive in cutting off eligibility for a fee waiver at a drastically lower income level, requiring more documentation, and not allowing an applicant's receipt of means-tested benefit to render an applicant eligible for a fee waiver. These heightened standards will prevent many applicants from qualifying from the main benefit application because associated filings include applications for waivers of inadmissibility which must be approved in order to qualify for the primary benefit of VAWA, U, T and TPS.

38 (1965) (recommending amending INA to give the Attorney General discretion to admit individuals otherwise inadmissible under other INA provisions); H.R. Rep. 89-748, at *6 (1965) (recommending amending INA to give the Attorney General discretion to admit otherwise admissible returning resident immigrants without requiring them to obtain a passport, immigrant visa, reentry permit, or other documentation). Moreover, the Proposal imposes huge fee increases to apply for employment authorization documents (or EADs) for these communities. This makes it harder to obtain employment, with the result that they will never be able to afford to apply for the benefits for which they are statutorily eligible. The result is to frustrate the substantive goals of the INA, by denying applicants with inability to pay statutory relief for which they are eligible.

The Proposal directly contradicts the statutory goals of the INA. Congress explained that "equality and human dignity" are principles of immigration law. H.R. Rep. No. H. R. Rep. 89-745, at 11 (1965). In amending the INA, Senator Kennedy explained, "Reunification of families is to be the foremost consideration." *See* H.R. Rep. 89-748, at 13 (1965); *Fiallo v. Bell*, 430 U.S. 787, 806 (1977) (quoting H.R. Rep. No. 1199, 85th Cong., 1st Sess., 7 (1957) (The INA's legislative history "establishes that congressional concern was directed at 'the problem of keeping families of United States citizens and immigrants united.'"). The INA is a comprehensive statutory scheme that prioritizes admission of immediate relatives of U.S. citizens, including their spouses, parents, and children, by allowing an unlimited number of permanent immigrant visas to be issued to those individuals. *See* 8 U.S.C. § 1151(b)(2)(A)(i); *Solis-Espinoza v. Gonzales*, 401 F.3d 1090, 1094 (9th Cir. 2005) ("The [INA] was intended to keep families together."). Congress created a mechanism—adjustment of status—to allow those already in the United States to apply for permanent resident status. *See Elkins v. Moreno*, 435 U.S. 647, 667 (1978). As the Supreme Court explained, the United States has historically exhibited "extraordinary hospitality to those who come to our country," and "[o]ne indication of this attitude is Congress's determination to make it relatively easy for immigrants to become naturalized citizens." *Foley v. Connelle*, 435 U.S. 291, 294 & n.2 (1978) (citing the INA, 8 U.S.C. § 1427 (1976 ed.)). The INA manifests an affirmative statutory intent to encourage naturalization. In effect, the fee hikes create a wealth test for USCIS services that frustrates the substantive purpose of the statute.

If finalized, these massive changes will reduce or eliminate access to citizenship and life-saving legal protections for all but the wealthy and privileged. The Proposal would cause significant, and in many cases irreparable, harm. With each drastic fee hike per person, family separation becomes inevitable as families are forced to choose which member can apply to move forward and which must remain behind based on how much money they can procure. As noted above, this result is contrary to Congressional will expressed in the INA. *See Solis-Espinoza v. Gonzales*, 401 F.3d at 1094. Such desperate circumstances could expose individuals to physical danger and increase the risk they will fall prey to predatory lenders and perpetrators of immigration fraud. Employment opportunities would be available only to those who can afford

to pay hundreds of dollars on top of all the other fees they must pay for themselves and their families; thus a person too poor to afford work authorization cannot afford to earn an income and obtain basic needs. The fee hikes and punitive fee waiver standards will force immigrant victims of domestic violence to remain with their perpetrator, and trafficked individuals to remain in their trafficked circumstances. The world's most vulnerable individuals would be priced out of asylum or TPS status.

USCIS claims its purpose is to recover its costs of adjudication, but this is pretextual. In fact, USCIS is seeking to reduce or eliminate immigration and naturalization, particularly from individuals from African, Asian, Central and South American, or Muslim-majority nations, as well as the Caribbean and Mexico. For those already naturalized, it would seek to provide funding to deploy ICE to denaturalize non-white individuals. The Proposal also serves as a pretext to end what the Administration has disparagingly referred to as "chain migration." *E.g.*, State of the Union Address (Jan. 30, 2018) ("In recent weeks, two terrorist attacks in New York were made possible by the visa lottery and chain migration."); President's Weekly Address (Feb. 10, 2018) ("Chain migration is a disaster, and very unfair to our country."); Donald J. Trump Twitter (@realdonaldtrump) (Nov. 2, 2017) ("Congress must end chain migration so that we can have a system that is SECURITY BASED! We need to make AMERICA SAFE! #USA????"). Yet, the INA specifically prioritizes family-based petitions.

The Proposal violates the most basic standards for agency action. It is contrary to law: USCIS lacks the authority to appropriate funds to ICE under federal fiscal law and the INA. The proposal is also a pretext for the Administration's attempt to discourage non-white, non-European individuals from having any presence in the United States. It is arbitrary and capricious: it offers no explanation for the astounding budget increase for USCIS and unprecedented lack of carryover, no explanation for what the amount would be used for, no explanation of how benefits justify the costs, no consideration of cost savings and benefits in its cost calculations, and no explanation of why alternatives would not suffice; and it inconsistently applies its stated policy switch to particularly penalize non-white, non-European potential applicants, to name a few weaknesses. The inadequate opportunity to comment exacerbates each weakness.

These issues are detailed below. ILRC strongly opposes the Proposal (including both the November and December Proposals).

Background

ILRC is one of many organizations who provide services benefiting individuals seeking immigration and naturalization benefits. The Proposal would cause reduced immigration and naturalization and impedes ILRC's ability to accomplish the goal of its mission—to continue to build a democratic society that values diversity and rights for all people.

Immigration is a public benefit. Our democracy is strengthened with better representativeness of the individuals who comprise it. The U.S. economy realizes significant gains from immigration. Naturalized citizens lead to a larger tax base at the federal, state, and local levels, and a growth in the GDP. According to one conservative estimate, if even half the legal permanent residents eligible for naturalization actually naturalized, aggregate earnings across the United States would increase from $21 billion to $45 billion over 10 years. Maria E. Enchautegui & Linda Giannarelli, "The Economic Impact of Naturalization on Immigrants and Cities" (Dec. 2015).

A. Legal Landscape

The Immigration and Naturalization Act sought to reduce preferential treatment of European immigrants. As amended in 1965, it repealed national-origin quotas in place since the 1920s, when eugenics theories and statutory bars to immigration from Asian countries were widely accepted. Muzaffar Chishti, Faye Hipsam, & Isabel Ball, "Fifty Years on, the 1965 Immigration and Nationality Act Continues to Reshape the United States" (Oct. 15, 2015), https://www.migrationpolicy.org/article/fifty-years-1965-immigration-and-nationality-act-continues-reshape-united-states. Now, four general principles underlie the current system: family reunification, U.S. labor market contribution, origin-country diversity, and humanitarian assistance. William A. Kandel, "A Primer on U.S. Immigration Policy," Cong. Research Serv. at 2 (June 22, 2018).

To administer the system, INA authorizes charging certain fees, to be deposited into the Immigration Examinations Fee Account (IEFA). 8 U.S.C. § 1356(m). Specifically, "fees for providing adjudication and naturalization services" are to be deposited in the IEFA. 8 U.S.C. § 1356(m). *See also Barahona v. Napolitano*, 2011 WL 4840716, at *2-3 (S.D.N.Y. Oct. 11, 2011) (Congress established IEFA to fund USCIS's costs in operating the adjudications and naturalizations program) (citing H.R. Rep. 100-979, at 38 (1988)). Fees are to be set at a level sufficient to recover its costs in providing these services. 8 U.S.C. § 1356(m); *see also id.* at *11. The INA provides that fees would not be collected for "similar services provided without charge to asylum applicants or other immigrants." 8 U.S.C. § 1356(m).

Under the Homeland Security Act of 2002 (HSA), USCIS has authority to administer the IEFA. Pub. L. No. 107-296, 116 Stat. 2135. USCIS's mission is to "administer[] the nation's lawful immigration system, safeguarding its integrity and promise by efficiently and fairly

adjudicating requests for immigration benefits . . . ." https://www.uscis.gov/aboutus. This stands in contrast to ICE's mission, "to protect America from the cross-border crime and illegal immigration that threaten national security and public safety," which is "executed through the enforcement." https://www.ice.gov/overview. USCIS administers and adjudicates immigrations and naturalization services, and ICE carries out enforcement; these are two separate missions and operations. *See Crane v. Napolitano*, 2013 WL 1744422, at *1 (N.D. Tex. Apr. 23, 2013) (contrasting USCIS mission to "grant[] immigration and citizenship benefits" versus ICE mission as "principle investigative arm of DHS" whose "primary mission is to promote homeland security and public safety through the criminal and civil enforcement," and noting that "ICE receives an annual appropriation from Congress to remove individuals who are unlawfully present in the United States").

B. Affected parties.

Those most affected by the Proposal come from African, Asian, Central and South American, or Muslim-majority nations, as well as the Caribbean and Mexico. These families and individuals are among the most vulnerable people in the world. They travel to the United States in search of asylum or other protections such as Temporary Protected Status. They come to this country to seek opportunities to contribute through improved education and employment opportunities. They often have extremely limited resources. One study of 21 major cities showed 33% of those eligible to naturalize had incomes up to 150% of the federal poverty guidelines (FPG) and thus are likely eligible for a fee waiver under the current system but would be ineligible under the Proposal. And 16% of eligible to naturalize permanent residents of Mexican origin have incomes between 150-200% of FPG, compared to just 8% of European-origin immigrants eligible to naturalize.

1. Asylum and TPS applicants

Asylum and TPS applicants are among the world's most vulnerable populations. By definition, those individuals and their families seeking asylum have suffered persecution or credibly fear that they will suffer persecution due to their race, religion, nationality, membership in a particular social group, or political opinion. https://www.uscis.gov/humanitarian/refugees-asylum/asylum. Depending on circumstance, they seek asylum upon or shortly after arriving in the United States, or raise it as a defense to deportation. As of 2019, there were 540,000 individuals affirmatively seeking asylum, 476,000 defensive individuals defensively seeking asylum (*i.e.*, in enforcement proceedings asserting asylum as a defense). Of that group, approximately 748,000, or 74% of 1,106,000 asylum seekers sought employment authorization (Form I-765 employment authorization application). Likewise, those seeking TPS status have been federally designated as eligible for protections due to war, environmental disasters or epidemics, or other extraordinary conditions in their home countries. https://www.uscis.gov/humanitarian/temporary-protected-status. Due to the sudden and

unpredictable nature of the crises from which they flee, these individuals often have extremely limited resources available to them.

The asylum proposal is irrational and undermines the purpose of laws Congress intended to protect one of the most vulnerable populations USCIS serves. The Proposal would raise fees for seeking asylum and initial employment authorization from $0 to $540 per person, with no exceptions for minors. USCIS would charge $50 for the asylum application plus $490 for initial employment authorization—in other words, the U.S. government would demand payment before an individual could work to save income to afford the payment. TPS applicants under 14 and over 65 years of age would also have to pay additional fees for biometric services and for employment authorizations from which they were previously exempted.

These high prices are inhumane, undermine humanitarian objectives of domestic and international law, and thwart the INA's objective of keeping families together. The proposed fee increase would force a family to make the unconscionable choice of which family member can apply for and possibly attain asylum or TPS status, and which cannot, and who can seek work to provide basic needs, if anyone. Seeking asylum is a human right and tenet of international human rights law to which the United States is bound by treaty to respect, but under the Proposal, the individuals least likely to have the resources to afford the U.S. government's demands would be prevented from receiving basic protections and opportunities envisioned by the INA.

2. DACA recipients

The Proposal also targets Deferred Action for Childhood Arrivals (DACA) recipients. DACA recipients arrived in the United States as children, and currently are eligible to work and study in the United States without facing the threat of deportation. USCIS no longer accepts new DACA applications, but it is required to accept DACA renewals. As part of this Administration's latest attempt to remove DACA protections for these individuals, USCIS proposes a strategy to make it harder for DACA recipients to renew. Under the Proposal, USCIS would charge $765—a DACA renewal fee plus a required employment authorization fee—where before there was no fee for a DACA renewal application. For no lawful purpose, the Proposal would impose this drastic expense on DACA recipients, and those who could not afford to pay would be faced with the threat of deportation proceedings. Furthermore, USCIS would formalize in its regulations that it would no longer accept new DACA applications. As a result, even if the Supreme Court finds that the Administration wrongfully terminated DACA, the Administration is setting itself up to take the position it is not required to accept new DACA applications.

3. Green card applicants

Those seeking to naturalize as a U.S. citizen must first hold a permanent resident card, also known as a green card. Green cards give individuals official immigration status in the United States and allows them to live and work indefinitely in the United States. The Proposal

seeks to "unbundle" the fees for a green card application, employment authorization, and travel documentation, in effect doubling these fees from the current $1,140 to a proposed $2,195. USCIS exacerbates this fee increase by removing the lower fee for children. Lower-income families will disproportionately feel this impact and suffer the irreparable harm of family separation.

4. Naturalization applicants

The Proposal particularly targets those seeking naturalization. Naturalizing as a U.S. citizen leads to the rights and responsibilities of any U.S. citizen—government representation, voting, economic contributions, better employment opportunities. As noted above, before a person can naturalize, they must hold a green card. Currently, there are 9 million permanent residents eligible for citizenship. 32% of that group, or 3 million, are at or below 150% FPG; 12% of that group, or 1 million, are between 150%–200% FPG; and 19% of that group, or 1.7 million, are between 200%–300% FPG. Under the Proposal, a person would first need to be able to afford the costs of the requirements to qualify for naturalization—*e.g.*, the costs of obtaining permanent residence and employment authorizations—as they navigate earlier stages of the USCIS fee schedule. Then, the person would need to pay for naturalization fees, proposed at $1,170 per person regardless of age. These costs would be multiplied for families. And USCIS's proposal to eliminate fee waivers and the reduced fee option would exacerbate these costs. Yet again, the U.S. government would place immigration and naturalization services out of reach for lower-income families. The effect would be to limit the number of immigrants who can become citizens and participate in American democracy – in direct contravention of the purpose of the INA.

5. Victims of Domestic Violence, Crime, and Trafficking

The Proposal attacks vulnerable immigrants who are seeking relief through VAWA (victims of domestic violence), U (certain victims of crime who assist law enforcement), and T visas (trafficked individuals). While allowing a fee exemption for the primary benefit application of these survivors, the Proposal will vitiate that opportunity by creating stricter fee waiver standards for the associated filings. The waiver of inadmissibility is needed in the majority of these applications to qualify for the primary benefit, and it is an associated filing. The new fee for a VAWA applicant's waiver of inadmissibility is $985; for U and T applicants the waiver of inadmissibility costs $1,415. The heightened fee waiver standards eliminate receipt of a means-tested benefit as an eligibility grounds for a fee waiver, penalizing many survivors who were able to qualify for a fee waiver on that basis. The Proposal also states that the fee waiver applicant must show income at or below 125% FPG, lowering it from the current standard of either 150% FPG, or receipt of a means-tested benefit or financial hardship, and requires documentation of income that survivors are unlikely to have. The result of making the fee waivers for associated filings so difficult to obtain will be that many survivors will not be able to qualify for the primary

benefit of VAWA, U or T status – again, in direct contravention of the purpose of the INA in making these visas available.

Discussion

The Proposal suffers from legal, factual, and policy flaws. Due to the haphazard and rushed issuances comprising the Proposal, it is difficult for the public to tell what exactly DHS/USCIS is in fact proposing. The Proposal should not be finalized.

A. General issues with the Proposal

1. Inadequate opportunity to comment.

USCIS released two proposals, asserting budget needs a hundred million dollars apart, skipped details and supporting information, and in the December Proposal, failed entirely to propose actual fee amounts. USCIS's December fee schedule proposal was labeled a "supplement" but advanced ICE transfers and new rationales not previously even alluded to in the November Proposal and did not actually provide a fee schedule. On December 9, the public was given until December 30 (less than 30 days) to comment on both proposals. The confused process, lack of specificity, and extraordinarily abbreviated timeline deny the public—both ILRC and any other members of the public—a meaningful opportunity to comment. 5 U.S.C. § 553(c).

First, the rule is complex and lengthy. The November Proposal addresses fee waivers, fee exemptions, interlaced protections from other statutes, forms for a variety of immigration and naturalization services that relate to one another in practice or by statute, delivery methods, genealogy requests, income-based eligibility for various services, other major federal programs, including those administered by other agencies, and federal appropriations, among others. Assessing even the legal merits of USCIS's position with respect to these issues requires a full comment period.

Adding to this complexity, the Proposal relies on complex cost calculations that involve the application of a cost methodology to information that is in some cases incomplete and might involve extrapolation, or estimates that are derived from other sources. The public cannot meaningfully comment without enough time to gather data, conduct the analysis needed to rebut USCIS's modeling where appropriate, evaluate the agency's information under the Information Quality Act, and assess the agency's proposal against objective or publicly available information. The comment period here does not allow time for completing these essential analyses.

The December Proposal layered in new legal interpretations to support transferring IEFA funds to ICE. It provided a list of particular ICE activities that it believes can be funded by the IEFA, putting forth the argument that such activities "directly relate to the investigation of the immigration adjudication naturalization process." 84 FR at 67,244. This statement and USCIS's

list require legal analysis of INA and HSA provisions, agency authorities, and federal fiscal law for each provision. For example, whether an "investigation of the immigration adjudication and naturalization process" is something covered by the IEFA, whether an activity "directly related" to this is covered by the IEFA, whether each item USCIS lists would be covered under this rationale or any other rationale, whether each item USCIS lists is in fact several items, whether each item USCIS lists is in fact provided for under different statutory authority, are each separate analyses requiring time. None of these statements are logical outgrowths or extension of the proposal, despite USCIS's attempt to style them as "Supplemental Information." *See* 84 FR at 67,243. This analysis, too, requires time.

The comment period is further curtailed by federal and religious holidays. The proposal dated November 14 set a comment due date of December 16. These thirty days—already too short for such a complex rule, as ILRC has previously explained to USCIS, see **Attachment A**—covered the Thanksgiving holiday, a federally recognized holiday when businesses and federal and state governments are closed. The proposal dated December 9 set a comment due date of December 30, 2019. Even styled as a so-called "extension" of the comment period, this timing stretches over yet another national workplace holiday of Christmas, in addition to Chanukah and Kwanzaa. Notably, in the November Proposal, USCIS explains it proposes to change 15 calendar days to 15 business days for premium processing to account for "weekends, federally observed holidays, or the days on which Federal Government offices are closed" in order to "provide USCIS additional time to complete" premium processing. 84 FR at 62,311. USCIS takes the position in its Proposal that business days affect the ability to conduct substantive work, yet ignores its own position in setting a comment due date for the Proposal.

The Proposal includes changes to at least 58 forms. *See* 84 FR 62,347-49 at Table 30 ("The Information Collection table below [Table 30] shows the summary of forms that are part of this rulemaking."). It is impossible to meaningfully review the changes to these 58 forms and any other forms the Proposal might affect but not expressly call out—including reviewing each form against the discussion provided in the Proposal preamble and proposed regulatory changes, collecting facts relevant to each form such as volume or populations likely to use each form, and identifying any legal and factual considerations important for the agency to consider—and provide meaningful comment. USCIS should have separately proposed its form changes and provided adequate opportunity to comment on each. Furthermore, each form is subject to the Paperwork Reduction Act comment process, which requires 60 days for comment.

The comment period is simply too short to fully address and provide all of the relevant supporting data for the many issues in the proposed rule. Nevertheless, ILRC attempts to do so here but strongly believes the public requires an extended comment period.

Meaningful comment also requires an actual proposal on which to comment. The November Proposal suggested a $207 million transfer of IEFA funds to ICE and included six alternative fee schedules, including an alternative fee schedule for transferring $0 funds to ICE

and scenarios for if DACA were discontinued. The December Proposal constituted a seventh alternative (though without an actually proposed fee schedule). These alternative fee scenarios exacerbate the difficulty in determining what USCIS's base assumptions are for its proposal. The public requires adequate opportunity to identify what USCIS is actually proposing.

The December Proposal further obscures the public's ability to understand what USCIS is proposing. The December Proposal suggests a $112 million transfer of IEFA funds to ICE. Instead of providing an updated proposed fee schedule in accord with the nearly $100 million change from the November Proposal, USCIS stated "the resulting fee schedule would, all else remaining the same, be somewhere between those two levels." 84 FR at 67,246. Whatever fee schedule USCIS might finalize from this Proposal, the public is not on notice, and the final rule will not be a logical outgrowth of the Proposal.

It is also unclear what effective date USCIS proposes. The November Proposal states that its "fee review assumes these changes may affect the second year of the biennial period, as FY 2020 began on October 1, 2019." 84 FR at 62,282. A fundamental principle of U.S. law bars retroactive application absent express congressional authorization; no such authorization exists here, thus any final version of a fee rule cannot apply retroactively. The Proposal lacks a lawful proposed effective date, so the public again does not have an ability to meaningfully comment.

USCIS creates confusion to its poorly conceived Proposal, further impeding the public's opportunity to comment, particularly in such a short time-frame.

- It provided a proposal through two issuances—the November Proposal and the December Proposal—and then allowed only three weeks over federal holidays to comment on the full Proposal.

- As discussed above, it styled the December Proposal as a "supplement" to the November Proposal, except that the December Proposal contained or suggested new substantive proposals nowhere identified in the November Proposal.

- USCIS provides a link only to the November Proposal on its website, thus obfuscating the availability of the December Proposal and the new comment deadline of December 30, 2019. *See* https://www.uscis.gov/legal-resources/uscis-federal-register-announcements (last visited Dec. 19, 2019) (**Attachment B**). Clicking on the link USCIS provides takes a would-be commenter to the following site, https://www.govinfo.gov/content/pkg/FR-2019-11-14/html/2019-24366.htm (last visited Dec. 19, 2019). This site is an htm version of the November Proposal only; it provides that December 16, 2019 is the comment date and also does not inform the reader that the December Proposal exists. Thus, USCIS impedes many would-be commenters from reviewing the full Proposal,

which includes the December Proposal, and from understanding that they can still submit comments after December 16, 2019 until December 30, 2019.

2. IEFA funds cannot be diverted to fund ICE.

The Administration does not have statutory authority for diverting funds to ICE. Under the INA, the IEFA is for "providing immigration and naturalization services"; these funds are for USCIS not ICE.

a. DHS's interpretation of the INA is unlawful.

The INA specifies that the IEFA is for expenses in "providing adjudication and naturalization services" and not, as DHS asserts, for "supporting" such services. 8 U.S.C. § 1356(m); 84 FR at 62,287. ICE does not provide adjudication and naturalization services. DHS and USCIS recognize that ICE's activities do not fall within this statutory authority. The Proposal in fact repeatedly highlights that USCIS, and not others, provides this service: "ICE investigations . . . provide direct support of immigration adjudication and naturalization services"; "ICE HSI could use funds transferred from the IEFA to support . . . Document and Benefit Task Forces (DBTFs)," which "support . . . immigration and naturalization services"; "Operation Janus . . . ensur[es] the integrity of the immigration and naturalization services provided by USCIS." 84 FR at 62,287. "[T]hese activities constitute support of immigration adjudication and naturalization services." 84 FR at 62,287.

To get around this statutorily imposed limitation, USCIS offers a novel and unsupported theory that ICE "supports" USCIS adjudication services. It states it will use the IEFA to recover costs for "enforcement and support positions to the extent such positions support adjudication and naturalization services." *See* 84 FR 62,287. But this is inconsistent with the plain language of the statute, which authorizes fees for services USCIS "provides." 8 U.S.C. § 1356(n). Support and provide are not synonyms. DHS and USCIS cannot replace words in the statute with words that achieve their preferred ends.

USCIS's interpretation that "support" of immigration and naturalization services is equivalent to "providing" such services, or that such services include later potential enforcement, is also unreasonable. There is no limiting principle to DHS's interpretation. DHS could thus include any cost as one incurred in "support" of USCIS's mission. Without articulating a limiting principle, USCIS's preferred reading of the statute is also unreasonable.

Furthermore, that interpretation is inconsistent with the reality of ICE's activities and its relationship to USCIS. The November Proposal seeks to fund ICE-led activities Operation Janus, Document and Benefit Fraud Task Forces (DBTFs), and the Homeland Security Investigations (HSI) National Lead Development Center. 84 FR at 62, 287. Briefly:

- Operation Janus is the vehicle for ICE's denaturalization efforts. *See* https://www.ilrc.org/sites/default/files/resources/denaturalization_und_prcs_rcnt_effrts-20181221.pdf; https://www.aila.org/advo-media/issues/all/featured-issue-denaturalization-efforts-by-uscis. DHS uses Operation Janus to identify instances where an individual under a deportation order used a different identity in obtaining naturalization or other immigration benefits. The information identified through Operation Janus serves as a lead for investigations into potential immigration fraud. ICE Fiscal Year 2019 Budget Request at O&S-21, https://www.dhs.gov/sites/default/files/publications/U.S.%20Immigration%20and%20Customs%20Enforcement.pdf.

- DBTFs, which DHS explains are led by ICE, act under ICE's criminal and administrative authorities to investigate document and immigrant benefits fraud. Statement of ICE HSI Deputy Assistant Director Greg Navano for Senate Committee on the Judiciary (Mar. 15, 2017).

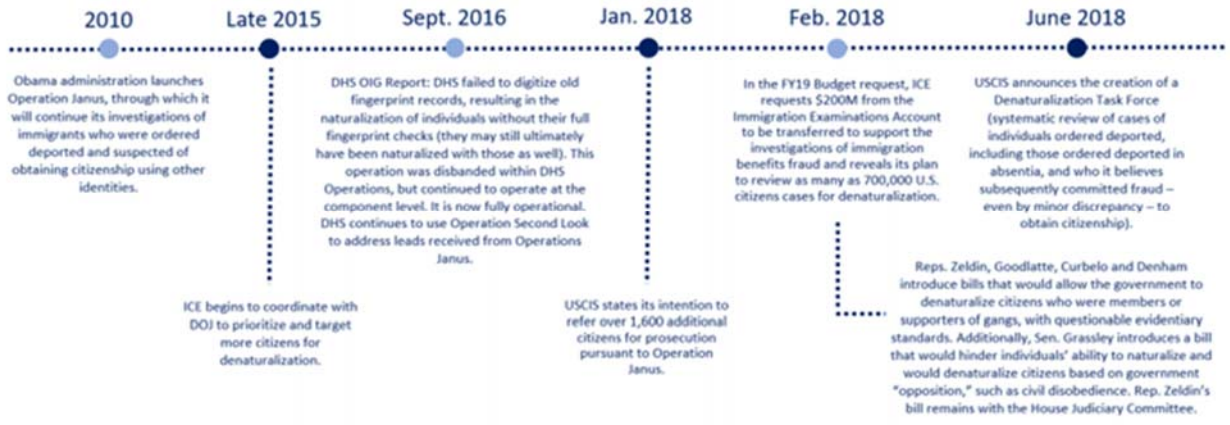
- Likewise, the HSI Lead Development Center will take referrals and leads to conduct investigations that could result in denaturalization. 84 FR at 62, 287. Notably, the use of referrals and leads is particularly vulnerable to abuse—*e.g.*, by an employer against whom an immigrant has complained, an abusive partner, or the many other relationships where there is an unequal power dynamic between the immigrant and the would-be HSI source.

None of these efforts are led by USCIS. None of these efforts involve adjudicating applications; they are enforcement investigations into potential fraud. DHS does not adjudicate these investigations—*i.e.*, it does not decide whether or not such its investigations will lead to prosecution or deportation. That authority is with the Department of Justice, not DHS.

In the December Proposal, DHS sets out another attenuated rationale: the IEFA is for providing adjudication and naturalization services, which it links to "work related to whether applicants may receive" a particular benefit, which it links to "work necessary to . . . provide services," which it says "includ[es] investigations of fraud." 84 FR at 67,244. This daisy chain of strained logic goes beyond a reasonable reading of the statute. The December Proposal listed "General Investigative Activities" and a list of the types of fraud investigations it would seek to fund with the IEFA. It states these activities "directly relate to the investigation of the immigration adjudication and naturalization process." 84 FR 67,244-45. None of these new standards or purported links to ICE are grounded in the statute that authorizes fee increases. The statute simply does not allow IEFA funds to be used for enforcement.

Instead, the Proposal is the latest example of this Administration's attempt to wield enforcement as a deterrent to all immigration and naturalization. According to the ICE FY 2019 budget request, ICE wants to examine 700,000 naturalized citizens' files for potential

denaturalization. *See* ICE Fiscal Year 2019 Budget Request at O&S-21. The graphic below illustrates that through the Proposal, DHS is using USCIS and the IEFA to allow ICE to engage in a mission-creep that has allowed it to engage in civil immigration enforcement and to carry out sweeping collateral arrests, using its authority to conduct criminal investigations as a pretext for deportations and family separations. The infographic below further illustrates this mission-creep:



These efforts emphasize that the proposed fee increase to recover costs is pretextual and in fact for the pursuit of this Administration's disturbing anti-immigrant agenda – which is directly contrary to the purposes for which the INA was enacted.

Several other factors demonstrate that the proposed transfer of funds to ICE is impermissible. First, DHS claims that "immigration and naturalization services" "do not end with a decision to approve or deny a request," but include ICE investigations of potential immigration fraud. 84 FR at 62,287. As above, the statute does not equate enforcement with immigration and naturalization services. Full adjudicatory responsibility lies with USCIS, it is not shared with ICE. DHS's attempt to transfer funds to ICE on this basis is unlawful.

Finally, the Proposal would set a surcharge for the amount necessary to recover the estimated funds to be transferred to ICE. This surcharge would be separately codified and collected along with every benefit request fee established in the rule. 84 FR at 62,288. The INA does not give DHS the authority to double-collect—first for ICE, then for USCIS. DHS's attempt to do so is an unreasonable interpretation of the statute.

b. Collecting IEFA fees to fund activities beyond providing adjudication and naturalization services amounts to an unconstitutional tax.

The Proposal, if adopted, amounts to an unconstitutional tax. Courts have upheld fees that impose "specific charges for specific services to specific individuals or companies." But "an agency could not assess fees, purportedly 'in the public interest' to recoup some of the general costs to the government of operating a particular regulatory scheme." *Seafarers Int'l Union of N. Am. v. U.S. Coast Guard*, 81 F.3d 179, 184 (D.C. Cir. 1996). A policy decision whereby an agency could adjust fee assessments "to encourage or discourage a particular activity" could "carry an agency far from its customary orbit and infringe on Congress's exclusive power to levy taxes." Id. (citing *Nat'l Cable Television Ass'n, Inc. v. United States*, 415 U.S. 336, 340-41 (1974). One federal court applied this jurisprudence to USCIS's authority to collect fees for the IEFA. *Barahona v. Napolitano*, 2011 WL 4840716, at *10-11 (S.D.N.Y. Oct. 11, 2011). There, the court upheld this prior fee rule because those fees were collected to fund USCIS's operations. Here, by contrast, USCIS would collect fees to fund not only USCIS, but also ICE. Further, USCIS would do so inequitably, as further discussed below—such as raising by up to 83% the costs for naturalization without support, but raising only 5% the cost of adoptions for "public and humanitarian interests. *See* 84 FR 62,313. The Proposal attempts to do exactly what the Supreme Court and other courts have rejected.

This unconstitutional new tax would also be inconsistent with this Administration's own policies. The Administration has opposed tax increases, but the fee increases are in effect a tax on low-income individuals to pay for expanded government activity in private individuals' lives. While most of the government has been subjected to stringent budgets or spending freezes, the Proposal's "beneficiary-pays" principle again falls far short of an adequate justification for the drastic fee hikes.

c. DHS does not support its choice to use the IEFA to fund ICE.

USCIS provides no justification for ICE needing $112.3m from the IEFA as opposed to funding ICE from other potential sources. USCIS and ICE are separate agencies with separate missions. The Proposal does not explain why over one hundred million dollars of IEFA funds must be diverted to ICE. The cost of doing so is high, and per the Proposal, would be passed on to the public in the form of drastically increased fees. This is an important aspect of the problem that DHS fails to explain.

Further, during the constitutionally mandated appropriations process, Congress expressly rejected the use of IEFA funds for ICE. Thus, not only is USCIS's proposal to transfer money to ICE unlawful as further detailed below, it directly contradicts Congress's current intent on the use of IEFA funds. *See* Conference Report, HR 1158 – Division D – Homeland SOM FY20 at 10 (**Attachment C**).

As a matter of law, USCIS funds cannot be diverted to ICE. First, a statute must approve the fee diversion under federal appropriations law, which the Proposal concedes. 84 FR at 62,287 ("transfers between appropriations are generally prohibited absent statutory authority") & n.32. Congress has never authorized the transfer of funds from USCIS to ICE. In fact, the FY 2020 appropriations legislation expressly prohibits this. *See* Letter from Rep. Lucille Roybal-Allard, Chairwoman, House Appropriations Subcommittee on Homeland Security, Final FY20 DHS Appropriations Summary for CHC at 4 (Dec. 16, 2019) (the bill "Rejects the proposed use of USCIS Immigration Examination Fee funding to support ICE investigations") (**Attachment D, D-1**). Second, as explained above, the INA does not provide this authority. Further, there is no justification for providing additional funds to ICE, regardless of the avenue. DHS's mismanagement of its own funds, and its own policy choices driving up its costs, are not reasons to fund enforcement on the backs of individuals seeking immigration and naturalization services.

3. Beneficiary-pays principle is arbitrary and capricious and unsupported.

The Proposal explains that DHS is adopting a beneficiary-pays principle. 84 FR at 62,298. In other words, rather than assessing an applicant's ability to pay in determining fees to charge, USCIS would charge based on its alleged costs to adjudicate the application.

DHS must operate within its budget, which Congress and the President approved. In spite of this set budget from Congress, USCIS has taken actions that increase its costs, and then seeks to pass those costs on to the public. The Proposal identifies some of these wasteful and unnecessary activities: extreme vetting, more social media vetting, re-interviewing individuals about asylum claims or marriage status at later stages in immigration process, and enhanced background checks. *See, e.g.*, November Proposal, 84 FR at 62,304 & nn. 106-07. USCIS drives up its own completion rates through higher staff turnover. *See, e.g.*, DHS Office of Inspector General, *USCIS Has Unclear Website Information and Unrealistic Time Goals for Adjudicating Green Card Applications*, OIG-18-58 at 7 (Mar. 9, 2019) ("The drop in staff caused actual completion times, as well as the processing times published on the [USCIS] website, to increase as cases aged without staff to work them, and while USCIS hired and trained replacements."). USCIS adds these costs together as costs for adjudication, when these are in fact costs attributable to USCIS's own incompetence and mismanagement of resources.

In fact, the Proposal identifies three ways to address higher costs: (1) reduce projected costs, (2) use carryover funds, or (3) adjust fees through rulemaking. As noted above, USCIS ignored, and failed to explain why it ignored, attempts to reduce its projected costs. Second, USCIS states that projected carryover is negative. In FY 2017, its carryover was nearly $1 billion—$980,161,000. *See* USCIS FY 2019 Budget Request at CIS-10, IEFA-6, https://www.dhs.gov/sites/default/files/publications/U.%20S.%20Citizenship%20and%20Immigration%20Services.pdf. USCIS's use of all of this budget is astonishing. USCIS must provide an accounting detailing how it incurred expenses to exhaust $1 billion. To the extent USCIS's high

costs are due to its own reckless spending, these costs should not be passed on to applicants. The statute allows funds to be collected for providing adjudication services, not for enabling USCIS's gross mismanagement.

DHS's switch to a so-called beneficiary-pays policy is also unreasonable and unjustified. USCIS's long-time policy has been "that individuals may apply for and be granted a fee waiver for certain immigration benefits and services based on an inability-to-pay." *E.g.*, USCIS Fee Waiver Policies and Data FY 2017, App. B at 2. DHS fails to adequately justify its switch to the "beneficiary-pays" principle. DHS has taken on a policy that is inconsistent with its prior position without providing adequate justification for the change. As the Supreme Court has stated:

> Agencies are free to change their existing policies as long as they provide a reasoned explanation for the change. When an agency changes its existing position, it "need not always provide a more detailed justification than what would suffice for a new policy created on a blank slate." But the agency must at least "display awareness that it is changing position" and "show that there are good reasons for the new policy." In explaining its changed position, an agency must also be cognizant that longstanding policies may have "engendered serious reliance interests that must be taken into account." "In such cases it is not that further justification is demanded by the mere fact of policy change; but that a reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy." It follows that an "[u]nexplained inconsistency" in agency policy is "a reason for holding an interpretation to be an arbitrary and capricious change from agency practice." An arbitrary and capricious regulation of this sort is itself unlawful and receives no *Chevron* deference.

Encino Motorcars, LLC v. Navarro, 136 S. Ct. 2117, 2125-26 (2016) (internal citations omitted).

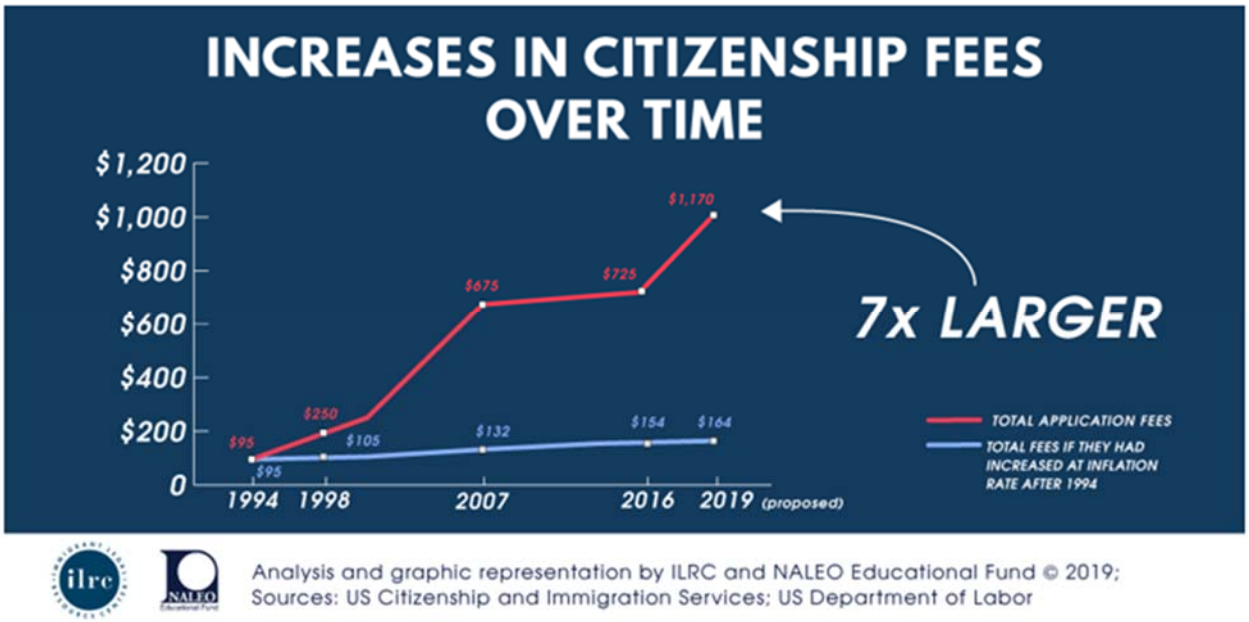
USCIS could not provide adequate justification for this so-called beneficiary-pays principle. The Proposal explains its fee increases would be "more equitable" because it would not force those paying fees to absorb costs for which they received no benefit. 84 FR at 62,299. But the actual beneficiaries of DHS's policy switch appear to be ICE and USCIS. While DHS claims this switch is based on equity, its approach is designed to pull from applicants the funds that DHS fails to effectively manage itself. The higher cost estimates for adjudicating each form are in fact driven by DHS's own incompetence. Thus, potential beneficiaries are paying to benefit USCIS and ICE. This is not in accord with the agency's own purported rationale.

Further, Executive Order 12866 directs that benefits of a rule must justify its costs, but USCIS does not make that showing here. The fees would chill naturalization, thus losing the benefits of increased naturalization. Studies show potential $5.7 billion earnings increase from increased naturalization in 21 major cities, and a $2.03 billion increase in federal, state, city

income tax and payroll tax revenue. Increased naturalization decreases the cost of government programs as individuals gain access to better employment opportunities. For example, a study of one major city showed a potential net fiscal gain of $823 million. Maria E. Enchautegui & Linda Giannarelli, "The Economic Impact of Naturalization on Immigrants and Cities" (Dec. 2015).

Meanwhile, USCIS claims the benefits of increasing the fees are an average savings to applicants of $12 per filing. 84 FR at 62,293. Weighing against this paltry "benefit" are the losses of naturalization benefits, as well as other likely effects of the drastically higher fees. These include higher instances of immigration fraud as individuals become desperate and lose access to normal channels for necessary immigration and naturalization benefits due to their limited incomes, higher instances of predatory lenders preying on these individuals and families, including asylum seekers, higher likelihood of family separation as entire families struggle to come up with the aggregate thousands of dollars per person and per family to afford these services, the disproportionate effect on low-income people, people of color and those from African, Asian, Central and South American, or Muslim-majority nations, as well as the Caribbean and Mexico. The Proposal simply fails to explain how its alleged benefits justify these high costs.

DHS inconsistently applies the beneficiary-pays principle. USCIS proposes to raise some fees by 5%, such as I-600 adoption petitions. *See* 84 FR 62,293. By contrast, the naturalization fee faces a proposed increase of up to 83%, a massive percentage increase from the original naturalization fee of $35 in 1985. *See* USCIS Immigration Benefit Application Fee History (Feb. 3, 2004), https://www.uscis.gov/archive/archive-news/uscis-immigration-benefit-application-fee-history. This price hike for naturalization over the last 25 years is illustrated below.



DHS also fails to explain why the 21% weighted average fee increase is needed, depriving the public of an opportunity to comment on its rationale. Its proposed fee increases are arbitrary, particularly in light of recent fee increase in 2016. The increases are far above any increase that might be needed to address inflation increases. Instead, USCIS appears to be seeking to boost its revenue by over $1,600,000,000 each year, or 54% more than the 2016/2017 revenue baseline. This proposed revenue increase is astonishing and unexplained. In the November Proposal, USCIS set $207.6 million go to ICE, another poorly justified $386 million for payroll increases and "net additional costs," but provided no explanation whatever for the remaining $754 million. 84 FR at 62,286. The December Proposal changed the amount to ICE to $112.3 million, but USCIS provided no additional explanation for the other components of its revenue goal, including what would presumably amount to an uncategorized $670 million in projected expenses.

USCIS explains it must raise fees because it projects a significantly higher volume of applications. *See* 84 FR at 62,289. This makes little sense. Simple math shows that as volume at a set fee goes up, revenue goes up accordingly, thus obviating this basis of USCIS's proposal. USCIS claims that the higher volume of applications lead it to project needing 21,000 more positions, including a 108% increase in staffing for the Fraud Detection and National Security Directorate. USCIS Fee Review Supporting Documentation at 31 (Apr. 2019). USCIS nowhere supports these numbers, and nowhere shows how it connects the high volume to these hires and ultimately the alleged costs they seek to recover. Further, basic economics shows that as prices rise, demand goes down; here, as fees go up, fewer applications would be filed as they become increasingly unaffordable. The result is that revenues could in fact go down with such high fees.

USCIS has provided no sensitivity study and nowhere addresses this potential outcome in its Proposal. Its proposed fee raises lack any basis and ignore elementary economic principles.

USCIS does not seek any comment on this enormous proposed budget increase, nor does it seek comment on any more reasonable budget alternatives or potential operating efficiencies that could reduce its costs. This huge proposed budget increase (effectively a tax increase on the poorest of American residents, as discussed below) is completely unjustified at a time when virtually all civilian agencies have had to make due throughout the current Administration with flat or declining budgets. When the INA gave USCIS the authority to "self-fund" through user fees, it never anticipated that it would use this ability to bloat its budget in this way. At a minimum, USCIS should seek public comment on different and lower budget alternatives.

4. The proposed rule is pretextual and contrary to law under the APA.

USCIS's proposed policy is a pretext for decreasing immigration and naturalization and applying a wealth test for immigration services, contrary to the goals of the statute. As discussed above, the Proposal lacks any basis in law or fact.

First, DHS applies its exceptions to its "beneficiary-pays" principle to carve out exceptions that primarily benefit certain students, adopted children, and religious workers, but ignore public policy benefits related to other equally worthy populations—*e.g.*, immigrants seeking to naturalize, DACA recipients, family members of U-visa holders, I-601A waiver applicants, and work permit applicants, to name a few. Despite the Proposal's claim that USCIS is prioritizing equity, it appears that some are more equal than others. The failure to give comparable treatment to similarly situated populations is the very definition of arbitrary and capricious.

The Proposal instead sets up an obstacle course of barriers based on ability to pay. Citizenship allows immigrants, including long-time residents, greater access to employment and government representation. The Proposal would create a second-class of those who cannot afford citizenship, thus cannot access the same employment opportunities or obtain government representation such as the rights to vote or run for public office.

DHS could have pursued other options to improve its operating budget, such as improving its own efficiencies and retaining staff. Instead, DHS appears to be targeting lower-income people and their families. As discussed in greater detail below, the proposed curtailing of issuing discretionary fee waivers—*e.g.*, narrowing the population of those who potentially qualify for a fee waiver to those at or below 125% of the FPG, removing waivers for those suffering extreme financial hardship or medical emergencies—disproportionately affects these groups. *See* 84 FR at 62,298. Higher fees will further discourage naturalization. The 83% fee raise for naturalization applications, removal of the fee waiver option, plus a 9% decrease in green card renewal fees suggest USCIS intends to deter long-time immigrant residents from

becoming U.S. citizens, thus excluding them from participating in civic responsibilities as voters, jurors, and public servants.

In light of these issues, ILRC requests that USCIS and DHS provide their correspondence on raising fees with other agencies, the Executive Branch, White House, Presidential campaign (2016 and 2020), members of Congress, political party campaign committees and advocacy groups focused on immigration. This information is necessary to complete the record and inform the public of the factors USCIS considered in setting forth its proposal.

5. Cost methodology suffers from significant flaws and cannot be relied upon to support lawful rulemaking.

The Proposal inputs projected application volumes by fee and projected completion rates by form into an activity-based cost (ABC) model. According to DHS, the model output is the cost of adjudicating a particular form. USCIS will then adjust that amount to address its policy preferences and statutory interpretation, depending on the form. 84 FR at 62,288-293.

The Proposal's use of the ABC model is replete with problems. First, it predicts different costs in 2019 compared to 2016 for particular forms with no explanation. Second, USCIS increased the ABC baseline with no explanation. Third, USCIS's explanation for "low volume reallocation"—that the cost for making changes to those fees would not generate enough revenue to merit the change—is pretext for USCIS's actual guiding principle for cost reallocation—its policy priorities. USCIS uses this excuse to reallocate cost increases to other forms. Fourth, USCIS established a new model output based on no fee waivers, which raises the N–400 naturalization application fee in particular. Fifth, USCIS fails to define "full cost," "indirect cost," or "direct cost" in explaining its methodology. Thus it is unclear how these terms would be used, or if there is a limiting principle, and the public lacks the ability to meaningfully comment on the proposed use of these terms.

Crucially, USCIS expressly excludes savings or benefits already realized from its cost projections. Nowhere in the Proposal does USCIS account for the many developments since 2016 that would reduce its costs, including:

- Increased rates of eProcessing (now a significant and growing percentage of N-400 filings among other forms)
- "Efficiency gains resulting from information technology investments and process improvements" (*see* 2016 USCIS Fee Schedule proposal, 81 FR at 26,909 (May 4, 2016))
- System Assisted Processing (electronic pre-adjudication)
- InfoMod (fewer user visits to field offices via InfoPass)
- Closure of international offices, realignment and eliminating some District offices
- Lower refugee intake

By failing to take these savings and benefits into account, USCIS fails to pass these savings on to potential applicants. DHS also failed to account for civil fines or penalties collected and required by INA to be deposited into the IEFA. 8 U.S.C. § 1256(h)(1)(a). Failure to consider these savings along with costs is not reasonable. *See, e.g.*, *High Country*, 52 F. Supp.3d. at 1189-90 (BLM acted arbitrarily and capriciously when it decided to quantify the expected *benefits* of the modifications to the coal leases, yet claim that a similar effort to analyze the *costs* of the lease modifications would be impossible).

USCIS's use of the ABC model output is also troubling. After obtaining the model output, USCIS will reallocate costs outside the model to various forms. USCIS identifies no rationale for this second step. 84 FR at 62,284 & n. 15. USCIS claims that as a third step, it can further reallocate costs "based on value judgments and policy reasons where a rational basis for the methodology is propounded in the rulemaking." 84 FR at 62,284 & n. 16. The statute, enacted through the legislative process, makes value judgments as to whom should have access to immigration benefits; a federal agency does not. *See Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 588-89 (1952). USCIS provides no lawful rationale for this third step. Instead, as discussed in greater detail below, the effect of its arbitrary reallocation is to disproportionately close access to benefits for lower-income individuals and families. In purporting to articulate "value judgments" to determine who should receive immigration benefits, USCIS is unabashedly announcing that a path to U.S. citizenship is unimportant and need not be accessible.

B. Fee waivers and exemptions

USCIS proposes to remove discretionary fee waivers and fee exemptions. 84 FR at 62,296-303. ILRC strongly opposes these proposed revisions and incorporates here its prior comments on fee waivers in full. *See* **Attachments E, F, G**.

1. Fee exemptions

USCIS proposes removing most fee exemptions. *See* 84 FR at 62,301. USCIS would formalize in regulations limits to its discretion to provide fee exemptions. Currently, the USCIS Director can create an exemption from fees for categories or groups of immigrants if it is in the public interest. *See* 8 C.F.R. § 103.7(d); 84 FR at 62,301. USCIS proposes to limit this broad discretion to circumstances relating to 6 specific factors: asylees, refugees, national security, declared emergencies or major disasters, an agreement with the U.S. government and another nation or nations, or USCIS error. *See* 84 FR at 62,301.

With these fee exemption limitations, USCIS would charge TPS applicants under 14 and over 65 years of age, and all asylum applicants, for initial I-765 employment authorization, at $490 per person. 84 FR at 62,301. Currently, these groups are exempt from paying the fee for initial employment authorization. Thus, USCIS would demand these vulnerable individuals pay a $490 fee before they even had the opportunity to work and obtain the income to pay the fee.

The result for TPS applicants would be particularly harmful. USCIS proposes to charge TPS applicants a separate biometric services fee of $30, even though the Proposal bundles that cost for every other category of benefit applicants. The TPS fee is statutorily capped at $50. USCIS does not include the statutorily capped fee in its ABC model, yet asserts that it must recover the costs of TPS. 84 FR at 62,303. In combination with the above employment authorization charges, a first-time TPS applicant must pay $570 to obtain TPS protections and begin to earn income. This high cost per person is even more unaffordable multiplied by family members.

2. Reduced fees for naturalization applicants

USCIS proposes removing the reduced fee option for naturalization applicants. 84 FR at 62,317. Currently, applicant families with incomes between 150% and 200% FPG pay $320 for filing the N-400 application for naturalization, instead of the current full fee of $640. *See* 8 C.F.R. § 103.7(b)(1)(i)(BBB)(1). This option sought to reduce economic barriers to naturalization. *See* 84 FR at 62,317 (citing 81 FR 73,307). USCIS now proposes removing it because the agency now reasons that this option to reduce economic barriers is "not equitable." 84 FR at 62,317, n. 149. Congress in fact encouraged USCIS to consider whether naturalization fees imposed barriers to those within incomes between 150% and 200% of the FPG, particularly because they would not be eligible for a fee waiver. USCIS dismissed Congress, explaining that the reduced fee option is not "in accordance with the principle of self-sufficiency." 84 FR at 62,317, n. 149. While USCIS states Congress has "repeatedly emphasized" this so-called principle, it nowhere supports this statement. USCIS's position that removing economic barriers is not equitable is irrational.

3. Fee waivers

USCIS would eliminate the possibility of a fee waiver for 22 application types that currently provide eligibility for fee waivers. *See* 8.C.F.R. § 103.7(c). And the agency would impose a new and draconian standard for requesting a fee waiver: only if the applicant's income is at or below 125% FPG. This is a drastic change because the current standard is not solely income-based, it is based on ability to pay. The current ability to pay standard allows an applicant to seek a fee waiver at or below 150%, or on other grounds showing inability to pay, specifically receiving a means-tested benefit or experiencing extreme financial hardship such as medical expenses of family members, unemployment, eviction, or homelessness. *See* current Form I-912 at Part 6 (https://www.uscis.gov/system/files_force/files/form/i-912.pdf?download=1), Instructions for Form I-912 at 8 (https://www.uscis.gov/system/files_force/files/form/i-912instr.pdf?download=1). The Proposal would reduce the qualifying income level from 150% FPG down to 125% FPG, and it would remove the other potential qualifiers of means-tested benefits or extreme hardship. 84 FR at 62,298-300.

ILRC strongly opposes USCIS's attempts to impose a solely income-based standard and to slash that income-based standard to 125%. Combined, this drastic narrowing of the eligibility for fee waivers has profound effects on applicants, particularly those from lower-income households and statutorily protected groups, including a disparate impact on individuals living in higher cost-of-living cities or states. USCIS's asserted rationales for imposing these severe qualifications for fee waivers lack a lawful basis.

a. USCIS lacks credible data to support its overly harsh and restrictive fee waiver threshold of 125%.

USCIS claims it needs to recoup costs because the "current trends and level of fee waivers are not sustainable." 84 FR at 62,300. But its own study shows that it has insufficient data to determine foregone revenues from fee waivers. According to USCIS,

> Available USCIS fee waiver data lack the granularity necessary to delineate waived fees in cases of forms with multiple filing fees. The higher fee is assumed to estimate the foregone revenue. Additionally, the fee schedule change in December 2016 and the timing of fee waiver approvals may slightly skew FY 2017 foregone revenue estimates because of fee waiver adjudication timeframes . . . . Finally, automatic biometric services fee waivers associated with underlying forms that require biometrics are not captured adequately and are underreported.

USCIS Fee Waiver Policies and Data, Fiscal Year 2017 Report to Congress at 5 (Sept. 17, 2017). The agency's own conclusions demonstrate that it lacks sufficient factual information to support its asserted rationale, or to support the proposed change in its current policy.

b. USCIS's attempt to include public charge rule elements in the fee rule is arbitrary and capricious.

USCIS appears to be using IEFA charges to accomplish ends it pursued in its public charge rule. These are unrelated, and USCIS's attempt to rationalize its Proposal based on that rule is arbitrary and capricious.

(i) The threshold for fee waivers has no rational connection with public charge concepts.

USCIS claims that the 125% FPG threshold is consistent with the threshold used in the public charge rule and affidavit of support requirements. The public charge rule has been enjoined. And, there is no relationship between public charge, which is a forward-looking projection, and ability to pay a specific immigration fee. The INA sets the 125% FPG income level to assess a sponsor's income in submitting an affidavit of support, and not an individual's

income for public charge purposes. *See* 8 U.S.C. § 1183a(a)(1)(A). The income of a sponsor serves the purpose of demonstrating that the sponsor could support the beneficiary as applicable. *See id.* There is no rational basis to tether the fee waiver eligibility threshold to sponsor income requirements. These are two separate and unrelated legal concepts. Moreover, to the extent USCIS seeks to link fee waiver eligibility to public charge, there is no legal basis to do so. USCIS's purported rationale of consistency does not make sense.

(ii) No basis exists to disqualify those subject to affidavits of support from receiving fee waivers.

USCIS also proposes to disqualify from fee waivers those who are subject to an affidavit of support. This is massive and unjustified change for lawful permanent residents applying for naturalization. Currently, anyone applying to naturalize can apply for a fee waiver, regardless of how they became a permanent resident. However, a lawful permanent resident remains subject to an affidavit of support until they naturalize, die, abandon their permanent resident status, or accrue 40 qualifying quarters of work. *See* 8 U.S.C. § 1183a(b)(3). The proposed change would prevent permanent residents who are subject to an affidavit of support—*e.g.*, from a family member or other sponsor—from applying for fee waivers for applications that are necessary to file to maintain or prove this status. And, to seek naturalization, these individuals would have to pay the U.S. government the full cost of naturalization—*i.e.*, $1,170 per person— regardless of their income. Their only option would be to accumulate the 40 credits—*i.e.*, approximately an uninterrupted 10 years of qualifying work—to have the affidavit of support discharged such that they could potentially become eligible for a fee waiver. The proposal thus harms lawful permanent residents and conditional permanent residents required to obtain support in several ways—their cost of maintaining evidence of status surges, and their cost of seeking naturalization surges. As the costs are assessed per person, these amounts aggregate to make removing conditions for conditional permanent residence, legal permanent residence renewals, and naturalization simply unaffordable for most families. Many immigrants will be unable to afford renewing their green cards, often a requirement for employment and travel.

The proposal to disqualify from fee waiver eligibility those subject to affidavits of support would cause other significant harms. A few examples are listed below:

- Conditional permanent residents are authorized to remain in the United States for two years and are also subject to affidavits of support from a spouse or parent's spouse. *See* 8 C.F.R. § 216.1. To retain permanent resident status, a conditional permanent resident must petition to remove the conditions before the card expires (Form I-751). One of the options for removing a condition is domestic abuse, battery, or extreme cruelty by the conditional permanent resident's sponsor spouse or parent's spouse. *See* current Form I-751 at 3 (https://www.uscis.gov/system/files_force/files/form/i-751.pdf?download=1). Under the Proposal, the I-751 fee would rise 28%, from $595 to $760. *See* 84 FR

at 62,327. The fee hike plus the forced fee waiver ineligibility would make retaining permanent residence status unaffordable for lower-income individuals. Even where such an individual sought to remove conditions based on domestic abuse, battery, or extreme cruelty, that person could simply not afford to leave their abuser under the Proposal's conditions.

- Permanent residents through a family-based (or in rare cases employer-based) petition are subject to an affidavit of support from a qualifying family member or other sponsor. Permanent resident cards, or green cards, are valid for 10 years and then must be renewed. As noted above, a lawful permanent resident must demonstrate the equivalent of 10 years of qualifying quarters of work before they are no longer subject to the affidavit of support. Under the Proposal, only then could they potentially qualify for a fee waiver for naturalization, if USCIS provided for one. Permanent resident also request replacement green cards from USCIS when such cards are lost, damaged, stolen, or if the applicant changes their name or gender. Over these years, these individuals, their spouses, or their derivative children, might no longer be in contact with their sponsor, for example because of domestic violence or child abuse committed by the sponsor. While these individuals would be eligible for a fee waiver if they had sought status through a U visa application (Form I-918), T visa application (Form I-914), or VAWA self-petition (Form I-360), the Proposal would bar these survivors of domestic violence from seeking this fee waiver if they had the misfortune of completing the immigrant visa or adjustment of status process with their abusive petitioner or sponsor and then deciding to leave the abusive relationship after receiving this status. Instead, these individuals would be forced to pay the full fee until they accumulate 10 years of qualifying work, despite statutory protections under the Violence Against Women Act or Trafficking Victims Protection Reauthorization Act.

c. The 125% threshold would harm statutorily protected groups.

USCIS is required by statute to allow certain statutorily protected groups fee waivers. By statute, VAWA, T, U, VAWA Cancellation, and TPS applications have fee caps or exemptions. William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA). The TVPRA also requires USCIS to allow applicants for these primary benefits to apply for a fee waiver for associated filings up to and including the application for permanent residence. Pub. L. No. 110-457 122 Stat. 5044 at 5054; *see* 84 FR at 62,296. The Proposal lists these filings in Table 7. 84 FR at 62,297.

Narrowing the eligibility for fee waivers has profound effects on these statutorily protected groups. While the costs of their primary benefits are controlled by statute, the same

individuals must apply for these associated benefits to gain access to their primary benefits. Barriers to accessing those associated benefits result in barriers to statutory protections.

An example illustrates this effect:

- A VAWA petitioner might be fee exempt from the primary VAWA petition, but one of the required associated filings is I-601—application for waiver on grounds of inadmissibility—which must be granted before the VAWA petition can be approved. That fee is a proposed $985. 84 FR at 62,326. If the petitioner cannot afford the I-601 fee but does not qualify for a waiver under USCIS's stricter proposed standard, then a would-be VAWA applicant cannot seek relief from their abuser, and could remain in a domestic violence situation. Further, if the VAWA applicant's first work permit expires, she may not be able to afford the new $490 price tag for the I-765 employment authorization renewal. Similarly, another associated filing is the application for permanent residence, with a filing fee of $1,120 plus $490 for Form I-765, and $585 for Form I-131 (travel document application) as required by the Proposal. If the VAWA applicant cannot meet the standard for fee waiver, she will be prevented from ever stabilizing her status, which is again a result Congress could not have intended. USCIS would block a person enduring domestic violence from leaving their abuser at nearly every turn.

A trafficked individual applying for a T visa and a U Crime Victim survivor applicant would face similar barriers in the process. The individual often must file an I-192, an associated filing, to qualify for T or U status. Practitioners report that most T and U visa applications do require an I-192 because there is underlying history, most often entry without inspection, that could raise inadmissibility grounds. The proposed fee for the I-192 is $1,415, an astounding 142% raise from the prior fee. 84 FR at 62,326. And if they get past the initial primary benefit application costs, U and T applicants would also face the high costs that VAWA applicants face at the time of filing for adjustment. Thus, the lowered income threshold for fee waivers would circumvent Congress's intent when it created fee exemptions for these groups.

d. USCIS's other arguments in support of limiting fee waivers fail.

USCIS also proposes to limit the agency's discretion to change the current proposal's approach in the future. The agency claims it is "concerned that the current authority provides too much discretion, however, and thus proposes to limit a Director's discretionary waiver" to only certain cases. 84 FR at 62,300. These cases are those "related to one of the following: (1) Asylees, (2) Refugees, (3) National security, (4) federally declared emergencies or major disasters, (5) agreements between the United States and another nation, or (6) USCIS error. In these cases, USCIS would apply the proposed fee waiver eligibility qualifications above—income at or below 125% FPG, not subject to an affidavit of support, not subject to public charge

inadmissibility, must submit a fee waiver request form. *See* proposed 8 C.F.R. § 106.3(d)-(e), 84 FR at 62,363. This is an attempt to limit the discretion of future administration. USCIS fails to address this, or to provide any rationale for this regulation.

USCIS's approach directly contradicts express legislative direction. Congress appropriated funds to USCIS in 2019, expecting that it fund itself through IEFA while continuing the use of fee waivers. In the House Report on Department of Homeland Security Appropriations Bill, 2019, Congress states, "USCIS is expected to continue the use of fee waivers for applicants who can demonstrate an inability to pay." H. R. Rep. No. 115-948, at 61 (2018). Congress was in fact focused on the importance of fee waivers to accessibility to immigration benefits. It went on to "encourage" 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." Id. But here, instead of continuing the use of fee waivers based on inability to pay, and continuing to make available the reduced fee option for naturalization, USCIS is discontinuing both and expressly rejecting the ability to pay principle. Instead of removing barriers to access up to a 200% FPG threshold, USCIS eliminates most fee waivers, increases the stringency to 125% FPG, and dismisses Congress's concerns in favor of its policy. *See* 84 FR at 62,300.

The fee waiver form would become mandatory, requiring certain types of documentation that may not be available to many applicants such as IRS transcripts of tax returns or documentation from the IRS indicating that no tax transcripts were found. *See* 84 FR at 62,363, proposed 8 C.F.R. § 106.3(a)(6)(g). This burden is extraordinarily difficult to meet, and serves as a procedural barrier to achieving the substantive goals of the INA. In addition, the Proposal's elimination of the eligibility grounds for fee waivers of receipt of a means-tested benefit will prevent many from obtaining a fee waiver.[3]

Finally, each and all of the proposed changes for fee waivers could cause the irreparable harms identified above even if USCIS or Congress were to reinstate fee waivers more broadly or expand the types of applications that are fee waiver eligible. The restrictions would have far reaching impacts on not just statutorily protected groups but anyone applying for a fee waiver. USCIS has not provided a rational basis for imposing these extremely stringent and onerous requirements for fee waiver eligibility. ILRC incorporates as part of these comments to the Proposal Attachments E, F, and G.

[3] On December 6, 2019, the District Court for the Northern District of California in Seattle v. DHS enjoined DHS from requiring use of the 10/24/19 edition of Form I-912, Request for Fee Waiver, which would have eliminated means-tested benefits receipt as an eligibility grounds for a fee waiver. *See* https://www.uscis.gov/forms. The Proposal now attempts to formalize that changed standard in its regulations, along with the lower income requirement, mandatory form, and increased documentation.

C. Specific categories

1. Asylum beneficiaries

USCIS expects to collect payment from the world's most vulnerable individuals. Under the November Proposal, it would collect $540 per person regardless of age. This charge would be split into a $50 fee for the asylum application, plus another $490 fee to consider authorizing these individuals to seek employment.

a. USCIS's $50 charge to asylum applicants

With respect to the new $50 application fee per person, applications for asylum must be received within one year of arrival unless an exception applies; USCIS expressly states it "does not want the inability to pay the fee to be an extraordinary circumstance excusing an applicant from meeting the one-year filing deadline." 84 FR at 62,320. In other words, USCIS proposes prohibiting a potential applicant from using inability to pay as a grounds for equitable tolling of the one-year asylum filing deadline. Additionally, the asylum application fee could not be paid in installments. 84 FR at 62,320. Under the Proposal, the fee is mandatory per person and cannot be waived. 84 FR at 62,319. USCIS would charge unaccompanied children, unless the child is in removal proceedings, where USCIS does not have authority to charge them fees. 84 FR at 62,319. USCIS claims the purpose of this fee is to reduce fees on other forms by $5-$10. 84 FR at 62,319.

USCIS would also charge $490 for initial employment authorization (I-765) for asylum seekers and TPS applicants, a fee previously waived for asylum seekers and for TPS applicants under 14 and 65 and over. 84 FR at 62,320 and discussion, *supra*. USCIS estimates this will affect 300,000 asylum applicants, which it says would allow USCIS to lower the I-765 fees by $10, from $500 to $490.

The statute expressly contemplates that asylum is not subject to fees. *See* INA section 286(m) (noting "services provided without charge to asylum applicants"). USCIS explains it is following long-standing agency interpretation that "services provided without charge to asylum applicants" is one of the costs DHS may consider as part of the full costs of providing adjudication and naturalization services. 84 FR 62,282, n.7. The agency acknowledges there that asylum is not subject to fees, (84 FR 62,282), but changes this long-standing interpretation to propose charging asylum fees (84 FR 62,318).

USCIS did not provide a reasonable basis to support the $50 charge. Its approach is not in line with the approach of other countries, despite USCIS's claim. 84 FR at 62,319. Only three of 147 signatory countries to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees charge fees for asylum applicants. 84 FR at 62,319. Those countries are Australia, Fiji, and Iran. Each of those three countries allow waivers. For

example, Iran allows waivers for families. 84 FR at 62,319. USCIS would allow no waivers for the asylum fee. It is out of line with even these three countries. USCIS's own rationale fails to support its proposal.

USCIS' second rationale for this fee is to "alleviate pressure on the immigration benefit system" and to save $5-$10 off other fees. This benefit does not outweigh the cost and is unreasonable. The harms are high, and USCIS nowhere accounts for them. For example, charging fees for unaccompanied children creates a high likelihood of child endangerment, as most children do not have access to $50 or a safe way of obtaining this amount of money. USCIS provides no justification for imposing this unconscionable fee on unaccompanied children seeking asylum.

DHS provides no data or analysis to support its statement that an asylum applicant, including an unaccompanied child not in removal proceedings: could pay $50 in one payment, could do so without requiring an unreasonable amount of savings, or would find this so high as to be unaffordable, particularly with respect to indigent individuals. 84 FR at 62,320. In reality, USCIS's purpose is to "discourage frivolous filings." ILRC strongly disagrees with this characterization. And USCIS provides no data quantifying this alleged issue, nor does it explain how charging $50 per asylum application would resolve it. 84 FR at 62,320.

b. USCIS's unlawful $490 charge to asylum applicants.

In addition to the arbitrary $50 fee is the proposed imposition of the $490 I-765 fee for first-time applicants with pending asylum claims. The INA prohibits the U.S. government from charging asylum applicants for employment authorization beyond the cost of adjudicating the application. *See* 8 U.S.C. § 1158(d)(3) ("Such fees shall not exceed the Attorney General's costs in adjudicating the applications."). Despite this clear statutory directive, USCIS proposes to require asylum applicants to "pay a $490 Form I-765 fee in order to keep the fee lower for all fee-paying EAD applicants." 84 FR at 62,320. Under the Proposal, asylum applicants would have to pay an employment authorization fee above the cost of adjudication in order to save costs to other applicants. USCIS's proposal runs afoul of statutory requirements.

Adding on another $490 also exacerbates each issue above. When applying for asylum, many also seek employment authorization to earn income for themselves and their families. Employment authorization allows an individual to support themselves while awaiting processing of the asylum application. As of 2019, there were 540,000 individuals affirmatively seeking asylum, 476,000 defensive individuals defensively seeking asylum (*i.e.*, in enforcement proceedings asserting asylum as a defense). By end of fiscal year 2018, there were approximately 748,000 work-authorized asylum seekers, or approximately 74% of 1,106,000 asylum seekers sought employment authorization. USCIS fails to address this significant aspect of the problem or provide any quantitative sensitivity analysis.

Even for people who do not need to work, such as minors, the I-765 employment authorization (also known as the Employment Authorization Document, or EAD) is still an important document. It allows asylum seekers to obtain social security numbers and in many states is required for them to obtain drivers licenses. Moreover, asylum seekers in particular may not have access to identity documentation from their home country or might not want to interact with officials from their home country to obtain it. Because it is a federally-issued photo ID, the EAD can be a helpful identity document for non-working asylum seekers who may not be able to obtain a passport or national ID card from their home country.

Despite these costs, USCIS would force payment of $540 per applicant seeking employment to meet the basic needs of their family, plus another $50 per child seeking asylum. USCIS explains the ABC model produced a $500 fee per employment authorization applicant, but with an estimated 300,000 asylum seekers no longer waived from paying, USCIS could reduce the Form I-765 fee by $10 to $490. These small savings do not justify their high costs, nor imposing those high costs on vulnerable populations who do not have the means to pay.

Expecting an individual to pay $490 for an initial EAD when they have only arrived in the United States recently and are legally not allowed to work is absurd. Most families do not have $50 and $490 on hand to give to the U.S. government in quick succession, as no installment payments would be allowed under the Proposal, even though the statute envisions installment payments. *Compare* 84 FR at 62,320 *with* 8 U.S.C. § 1158(d)(3). The high fee encourages family separation, as most families do not have $540 multiplied several times over per person; instead families must make the unconscionable decision of who can go forward and who cannot. If a family manages to flee to the United States together, then the one-year might lapse before every single family member is able to afford to pay for asylum. The result is that many family members would lose their ability to seek asylum. This cruelty and absurdity continues for TPS applicants who are similarly situated to asylum seekers. In desperation to come up with the money USCIS demands, these families and individuals are much more likely to fall prey to predatory lenders, immigration fraud schemes, or to put themselves in physical danger in attempts to find and secure this money. USCIS's purported $10 savings from its own flawed modeling projection is not a sufficient basis to charge the world's most vulnerable populations what amounts to over $500 per person to seek asylum in the United States.

There is no rational connection between the proposed charges and the stated purpose of deterring immigration fraud. Fees this high would likely encourage immigration fraud, as vulnerable populations would be vulnerable to fraudulent claims of assistance as well as turn to predatory lending.

Instead, then, the proposed charges are pretext for the reducing presence of non-European-origin individuals in the United States. One federal court summarized just a few instances of the racist rhetoric animating this Administration's immigration actions:

> President Trump has allegedly expressed animus toward "non-white, non-European people," including by labeling Mexican immigrants as criminals and rapists, "compar[ing] immigrants to snakes who will bite and kill anyone foolish enough to take them in," complaining that 40,000 Nigerians in the United States "would never 'go back to their huts' in Africa," and "disseminat[ing] a debunked story about celebrations of the September 11, 2001, attacks [by Arabs living in New Jersey]." President Trump also specifically made derogatory comments about Haitians, including that the 15,000 admitted to the United States "all have AIDS." One week before TPS was terminated, President Trump asked aloud regarding Latin American and African countries, including Haiti and El Salvador, "Why are we having all these people from shithole countries come here?" He expressed a preference instead for Norwegians, who are overwhelmingly white. The President also asked "Why do we need more Haitians?" and insisted they be removed from an immigration deal.

Ramos v. Nielsen, 321 F. Supp. 3d 1083, 1131 (N.D. Cal. 2018); *see also* Sasha Ingber and Rachel Martin, Immigration Chief: "Give Me Your Tired, Your Poor Who Can Stand On Their Own 2 Feet", NPR (Aug. 13 2019), https://www.npr.org/2019/08/13/750726795/immigrationchief-give-me-your-tired-your-poor-who-can-stand-on-their-own-2-feet (Ken Cuccinelli statement suggesting that low-income immigrants are not welcome in America by rephrasing the Statue of Liberty poem to read, "Give me your tired and your poor who can stand on their own two feet and who will not become a public charge."); https://www.justiceinitiative.org/publications/unmaking-americans. The animosity this Administration has toward people of color and those that are most vulnerable is well known. It manifests itself in the Proposal. And it is flatly inconsistent with the statutory objectives of the INA itself.

Finally, as a matter of public policy, the U.S. serves as a leader and should not be added to the short list of countries who impose a fine on those seeking safety. It should not be the only country in the world to allow no waivers of charges to asylum seekers. It is unconscionable to offer protection only for those who pay.[4]

2. DACA recipients

USCIS proposes to raise DACA renewal fees to $765 through creating a new charge and automatically triggering other charges. There is currently no fee for I-821D DACA renewal applications. Further, USCIS currently does not require DACA renewals to be accompanied by the I-765 or a biometric service fee. Under the proposal, USCIS would require payment for all three elements simultaneously—I-821D at $275, which incorporates the biometric service fee,

[4] As discussed above, the same arguments apply to the portions of the proposal that would impose parallel fees on TPS recipients who have fled civil wars and natural disasters, and who similarly lack the resources to pay these fees.

and the I-765 at $490. USCIS would allow no waiver of DACA fees or the requirement to also pay the I-765 fee. 84 FR at 62,320-321.

ILRC lacks a meaningful opportunity to comment on the DACA fees because USCIS provides no explanation for them. The agency asserts that it exempted the I-821D DACA renewal fee from its cost calculations and allocations using the ABC model, so the DACA fee "does not recover any of the cost for workload without fees or with reduced fees." 84 FR at 62,321. USCIS provides no explanation of how it calculated the $275 fee for DACA renewals or under what authority it was assessing this cost.

Further, the Proposal provides no consistent explanation of how it will apply DACA exemptions. It acknowledges these exemptions: "DACA requestors would still need to pay the filing fee for Form I-765 unless they qualify for an exemption, as provided through policy." 84 FR at 62,320. But the Proposal then says the opposite, that USCIS will provide no DACA fee exemptions. 84 FR at 62,320-21. The Proposal is internally incoherent, thus preventing the public from commenting on an issue of national importance.

USCIS provides insufficient explanation for automatically requiring payment of the $490 I-765 fee for DACA renewal. USCIS asserts, with no supporting data or information, that DACA renewal applicants will already be working and would require employment authorization. 84 FR at 62,321. But USCIS takes the opposite position for permanent residence forms; there, USCIS aims to increase fees by requiring separate filing fees for Form I-485 (application to register permanent residence or adjust status) from Form I-765 (employment authorization application) and Form I-131 (travel document application) and to justify this move by stating that "applicants pay only for the benefits they wish to receive." *See* 84 FR 62,304-05. USCIS lacks consistent or objective analysis.

These issues underscore the fact that USCIS's proposal is pretextual. Making DACA renewal unaffordable harms individuals who are Americans by every other measure. Raising DACA fees is unassociated with any of the stated goals of the Proposal. In particular, USCIS expressly states that cost recovery did not factor into its DACA renewal fee calculations. Instead, USCIS merely seeks to forward the Administration's efforts to strike down DACA, an effort which has repeatedly proven unsuccessful in court.

3. Applicants for legal permanent residence

USCIS proposes to "unbundle" fees for applications to register permanent residence or adjust status, also known as green cards (I-485). The Proposal would require separate filing fees: $1,120 for Form I-485, $490 for Form I-765 (employment authorization application), and $585 for Form I-131 (travel document application). 84 FR 62,304-05. In sum, USCIS proposes to force a green card applicant to pay $1,055 more for services than under the current system.

The Proposal serves no purpose but to make green card applications unaffordable for lower-income individuals, and push legal permanent residence out of reach for most families. It would reduce access to necessary documentation to work, drive, or prove lawful residence for these individuals. As costs go up from $1,000 to over $2,000 per application, families would be forced to make hard choices about who applies for green card and who does not. More green card holders means higher local, state, and federal income tax revenue, and higher unemployment rates. These in turn lead to less dependence on government services and a stronger economy for all. The Proposal is an attack on family immigration and the public interest.

a. USCIS's proposal to "save" $20-$120 by adding $1,055 in fees is irrational.

USCIS says its proposal avoids raising the I-485 fee by $120. 84 FR at 62,304. In other words, to avoid a $120 increase USCIS is imposing a $1,055 total increase. 84 FR at 62,304. USCIS explains that supposed cost savings from unbundling are offset by USCIS's increase background checks, interviewing more I-485 applicants, and "not realiz[ing] efficiency gains" from bundling. 84 FR at 62,304. USCIS's inefficiency is not a basis for demanding higher payment from green card applicants. USCIS's explanations are not reasonable.

Currently, an applicant would pay the Form I-485 fee of $1,140 and may file for no additional fee the Form I-765 and Form I-131. This allows an individual to legally travel and work while their green card application is pending, at a total fee of $1,140. USCIS claims it is reducing the Form I-485 fee by $20, but this is a red herring. While this line item goes down to $1,120, USCIS adds another $1,055 through charging for the I-765 and I-131 where previously it has not. Thus, this assertion of cost-savings is also baseless.

USCIS proposes to remove the current system provision that charges lower fees for children than adults, because it says processing them is not distinguished by age. Thus, the fee for a child would rise from $750 to $1,120 under the Proposal. But if completion rate is influenced by time to adjudicate, *e.g.*, conduct background checks, this would likely be shorter for children. USCIS has not provided data or analysis to address this concern. Further, this is an extreme hike for a small portion of applications. *See* 84 FR at 62,306, Table 10. USCIS's purpose is a pretextual attempt to discourage families from being able to afford to apply for legal permanent residence. USCIS must consider this important aspect of the problem before doubling the fees for children.

b. USCIS's proposals for Supplement A to I-485 have no justification.

Generally, the Proposal reiterates a statutory provision for payment of a separate, additional $1,000 per person fee for those seeking adjustment of status under INA 245(i), which

allows immigrants who would not otherwise qualify (I-485 Supplement A). By statute, children under 17 and those fitting a family unity exception are fee exempt. 8 U.S.C. § 1255(i)(1)(C).

USCIS proposes removing from the Supplement A form the instruction that there is no fee for certain persons. 84 FR at 62,306. The agency asserts that because that direction can be found in the statute, it is not needed on the form. But in so doing, USCIS is making it even more difficult for applicants to identify the few instances where they are not obligated to pay large fees. It would obfuscate the fact that some individuals are exempted from paying the fee by statute, leading fewer people to apply because they would erroneously believe they must pay the fee. USCIS provides no reasonable basis for concealing this information from potential applicants, or excluding this information from the instructions for applicants.

The Proposal also seeks to formalize their position that proof the $1,000 fee was paid at the time the adjustment is filed or is still pending is required to demonstrate that the individual was lawfully admitted, a requirement of naturalization. 8 U.S.C. § 1429. 84 FR at 62,306. In so doing, USCIS is yet again attempting to curtail immigrant families' rights to citizenship.

USCIS's approach targets those who have already submitted applications to adjust status under INA 245(i) by allowing USCIS to revisit prior decisions of USCIS officers who granted status. In effect, it creates a legal penalty for individuals where USCIS does not have a record that the Supplement A fee was paid, or, where an officer determined an exemption applied. This effectively creates the rule that in cases where the naturalization applicant cannot demonstrate USCIS properly handled the Supplement A fee back at the time of their adjustment to lawful permanent resident, the applicant will be found to have not been lawfully admitted at the time of adjustment and denied naturalization. This proposed provision creates an avenue for USCIS to re-investigate granted adjustments under INA 245(i) going back more than twenty years. This could result in stripping lawful permanent residents of their status.

This proposal not only creates a new avenue for the Administration to strip lawful permanent residents of their status, it also creates a new avenue for disqualifying them from naturalization. In fact, this has already been happening at USCIS, where at the time of naturalization if an individual is unable to prove they have paid the $1,000 fee (*e.g.*, because they no longer have the fee receipt, as it was paid years before) USCIS has been charging them as inadmissible at time of entry, attacking their right to have their legal permanent resident status.

USCIS's proposed approach would result in significant and in many cases irreparable harm to legal permanent residents and potential naturalization applicants. USCIS must address this important aspect of the problem.

c. USCIS fails to justify the fee raise for Form 1-131A.

USCIS proposes to raise the fee associated with applying for replacement documentation for permanent residents who lose their card abroad (Form I-131A). 84 FR 62,306-07. The fee would go up 76%, from $435 to $1,010. USCIS says this is because I-131A requires adjudication abroad by the Department of State (DOS), particularly in light of the Administration's decision to shut down USCIS foreign offices. 84 FR at 62,306 & n. 114. This another instance of the government driving up its own costs, which the INA does not permit the IEFA to fund. The Proposal explains that DOS charges USCIS approximately $385 for I-131A adjudications. 84 FR at 62,306-07. But, the Proposal also suggests later on that USCIS directly adjudicates I-131As. 84 FR at 62,307. If so, then it improperly applies the DOS fee to all adjudications for its cost projections. Further, USCIS does not incorporate volume of adjudications or cost projections in light of adjusting USCIS's international footprint. *See* 84 FR at 62,306 n. 114. It is unclear if the basis of the I-131A proposed fee is the DOS charge to USCIS for some forms, the ABC output for USCIS's projected costs, and to what extent these or similar factors weigh into the proposed fee, and USCIS expressly fails to use accurate volume or cost projections in light of its smaller international footprint. The proposed fee raise amount is thus arbitrary.

d. The combined fees are cost prohibitive.

In addition to the higher fees caused by unbundling the above applications, applicants seeking to adjust their status to permanent residence in conjunction with waivers such as an I-601 or an I-212, would face even higher costs. Increases in fees shared by USCIS and CBP may also affect applicants for adjustment of status, as discussed below.

e. Executive Order 13132 (Federalism)

USCIS's proposal would have substantial direct effect on states, on the relationship between the national government and the states, and on the distribution of power and responsibilities among the various levels of government. It would create major declines in local and state income tax revenue, because fewer individuals could afford to apply for authorization for employment or legal permanent residence. The Proposal would separate families, as discussed above. Intact families provide crucial social support, which strengthens neighborhoods, the community, and civic society. As noted by the congressionally appointed Select Commission on Immigration and Refugee Policy:

> [R]eunification . . . serves the national interest not only through the humaneness of the policy itself, but also through the promotion of the public order and well being of the nation. Psychologically and socially, the reunion of family members with their close relatives promotes the health and welfare of the United States.

Human Rights Watch, US: Statement to the House Judiciary Committee on "The Separation of Nuclear Families under US Immigration Law" (March 14, 2013), https://tinyurl.com/HRWFamilySeparation (quoting US Select Committee on Immigration and Refugee Policy, "U.S. Immigration Policy and the National Interest," 1981). The Proposal is not in accord with Executive Order 13132.

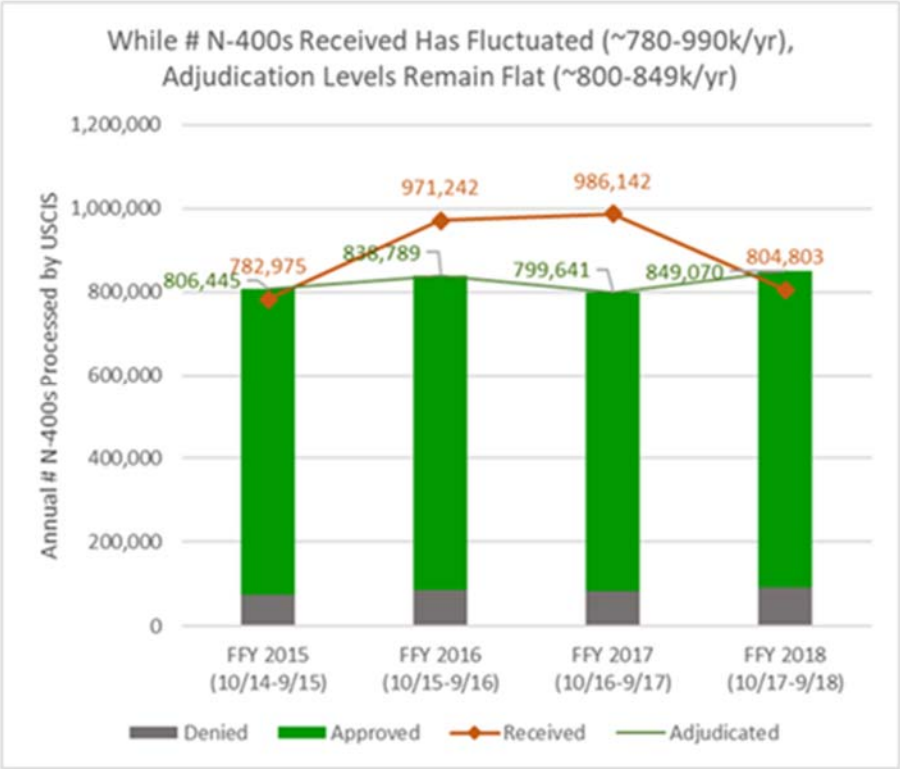
4. Naturalization beneficiaries

USCIS proposes massive and unlawful hurdles in applying for naturalization (Form N-400). USCIS proposes to eliminate the fee waiver (as discussed above in Section B), eliminate the reduced fee for the N-400, and no longer limit the N-400 fee. 84 FR at 62,316-17. USCIS would set the fee at $1,170 per applicant. 84 FR at 62,316. This is a 60% increase for applicants under 75, and for applicants 75 and older, who did not have to pay the biometrics fee before, this is an 83% increase. The graphic below illustrates the time it would take to afford these fees at minimum wage.

a. Statistics based on the government's own data show that USCIS's explanation for raising the N-400 fee is invalid.

USCIS has no basis for raising the fee. It explains that in the past the N-400 fee was set below the cost to adjudicate the form because prior policy—under both Republican and Democratic administrations for decades—has been "to promote naturalization and immigrant integration." Now USCIS wants to implement the beneficiary-pays principle, particularly "given the significant increase in Form N-400 filings in recent years." 84 FR at 62,316. USCIS lacks a

basis for this statement. While it may receive more forms, it does not in fact adjudicate more N-400 forms. USCIS's own statistics show that USCIS's N-400 adjudication rate remains despite fluctuations in the volume of N-400 forms it receives. The graphic below is created from USCIS data at https://www.uscis.gov/data.



USCIS again asserts the explanation that the raised N-400 fee covers the cost of adjudicating N-400 plus the costs not recovered for other forms where fees are limited or offered a waiver by statute. 84 FR at 62,316. It alleges that removing N-400 fee waivers and removing the reduced fee for individuals with incomes between 150-200% FPG also makes up for costs not recovered by other forms. 84 FR at 62,317.

Several choices in particular combine to create the drastic proposed increase to the N-400 fee. First, USCIS increased the ABC model baseline with no explanation, resulting in higher outputs across all forms. Second, USCIS based its model on having no fee waivers. Because fee waivers are used more often with respect to the N-400, this raises the N-400 baseline in particular. Third, USCIS then chose to raise the model output for the N-400 by an additional 18-19%. Fourth, nowhere does USCIS take into account the cost savings from the significant percentage of N-400 applications filed online. The result of these choices is the over $500 increase in the N-400 fee.

As noted throughout this letter, this is a pretextual basis for the exorbitant fee raises USCIS proposes. In footnote 149, USCIS identifies but then ignores Congress's request for DHS to consider whether the current fee is a barrier to those at 150%-200% of the FPG. USCIS repeats its refrain that allowing a fee waiver or reduced fee here would not be equitable or consistent with self-sufficiency. Congress expressly stated that "USCIS is expected to continue the use of fee waivers for applicants who can demonstrate an inability to pay the naturalization fee" and "encourage[d] USCIS to maintain naturalization fees at an affordable level." H.R. Rep. 115-948 at 61. Even with express congressional prompting, USCIS fails to consider an important aspect of the problem—the effect of fees on lower income households.

The harms of the proposed fee raise would be felt by millions of people, disproportionately by low-income residents. In eliminating the N-400 fee waiver, the 3 million legal permanent residents at or below 150% FPG must now pay the full fee. Under the current structure, they paid $0; under the proposal, they would now pay $1,170. In eliminating the N-400 reduced fee, the 1 million legal permanent residents with incomes between 150% and 200% FPG must now pay the full fee. Under the current structure, they paid $405; under the proposal, they would now pay $1,170. And the 1.7 million legal permanent residents with incomes between 200%-300% FPG already strained to afford the current fee of $725, so would almost certainly be priced out of the proposed $1,170 fee. Individuals who are 75 years of age and older did not previously have to pay a biometrics fee; under the Proposal, that fee is incorporated into the N-400 fee, further driving up the costs for this group.

The cost of applying for citizenship would force a painful choice between applying for citizenship and pursuing an immigration benefit or providing for basic needs. The Proposal would put this even farther out of reach for those who need it most. Without citizenship, these individuals would not be able to vote, and would be prohibited from getting the vast majority of federal government jobs that require U.S. citizenship. USCIS has not addressed how it would address these harms, or how any alleged benefits of raising the fee outweighs these costs.

b. Other forms related to naturalization

USCIS proposes no fee increase for military naturalization and certificates of citizenship because the statute prohibits this. While there should be no fee increase where statutorily prohibited, these statutorily imposed limits do not justify raising fees elsewhere.

Similarly, ILRC supports lowering fees for the N-600 and N-600K, which provide evidence of citizenship for minors, but not as a justification to increase other fees.

USCIS proposes to raise the fee for a form N-336, used to request a hearing in appealing a naturalization decision, from $700 to $1,755. USCIS provides no discussion of the high increase on this particular form beyond its general and vague refrain of raising fees to account for costs and a portion of other costs. Raising this fee compounds the pretextual effect of

reducing naturalization, as any individuals who have managed to pay the high fees to apply for naturalization would be even less likely to be able to afford a request for hearing of an adverse decision. For example, an individual with disabilities who applies using form N-648 to get a disability exception to the English and civics requirements for naturalization could have their N-648 denied, an unfortunately frequent occurrence, and consequently be denied naturalization. Making the ability to appeal such an unaffordable decision imposes serious barriers for the most vulnerable of naturalization applicants. The effect is that USCIS could take $1,170 from naturalization applicants, then deny their application on faulty grounds, and the individual would be unable to afford the additional $1,755 to challenge that decision. USCIS would create a system where, unless an individual had $2,925 to navigate the system, USCIS could incorrectly deny that person naturalization for any reason without accountability. *See* 84 FR at 62,317-18.

c. Executive Order 13132 (Federalism)

USCIS's proposal would have substantial direct effect on states, on the relationship between the national government and the states, and on the distribution of power and responsibilities among the various levels of government. It would create major declines in local and state income tax revenue, as fewer individuals could afford to apply for naturalization. This would also result in higher unemployment rates and limit financial and governmental contributions of working-class, less wealthy immigrants. States also have an interest in promoting participation in democracy. Many states fund citizenship clinics which rely on the availability of fee waivers and lower costs to apply. The Proposal is not in accord with Executive Order 13132.

D. Miscellaneous provisions

1. Skipping notice-and-comment rulemaking

USCIS proposes to amend its regulations to allow premium processing fee increases through changes to the I-907 form instructions, and not through notice and comment. 84 FR at 62311. USCIS says these fee increases "need not be codified" because the amount by which it can adjust the fee is inflation per the statute.

USCIS cannot increase fees by a form change. The Proposal is a prime example of why not. Here, USCIS wants to be able to change the fee amount without "undue delay" "when it needs additional premium processing fee revenue to provide premium processing services and to make infrastructure improvements in the adjudications and applicant- or petitioner-service processes." 84 FR at 62,311. The statute does not authorize this. USCIS may only change the fee amount for inflation set by the Consumer Price Index, so this basis is contrary to law. 8 U.S.C. § 1356(u). USCIS's proposal to make such fee changes in the future without going through the rulemaking process and instead discreetly through a form change would be unlawful. Fee changes are substantive changes requiring public notice and meaningful opportunity to comment.

2. Fees shared by USCIS and CBP

The Proposal would combine the cost and volume for proposed fees for forms both USCIS and Customs and Border Patrol (CBP) adjudicate: I-192 – advance permission to enter as non-immigrant; I-193 – waiver of passport/visa; I-212 – permission to reapply to enter US after deportation/removal; I-824 – action on approved application or petition. 84 FR at 62321. DHS asserts combining reduces confusion. 84 FR at 62,322.

In fact these are drastic and unjustified fee hikes to critical forms that are typically filed in conjunction with other forms. Compounded, the cost to legalize status rises to thousands of dollars per person under USCIS's proposal.

3. Form I-881, Application for Suspension of Deportation or Special Rule Cancellation of Removal

USCIS proposes to raise the current fee of $285 per person or $570 per family to a single fee of $1,800. USCIS explains it does not track the different level of adjudicative effort required for individuals versus families, it has no policy reasons to justify separating these fees, and removing the distinction would "simplify" USCIS's administrative burden. USCIS expects the population for this form would be exhausted eventually due to eligibility requirements. 84 FR at 62,323.

USCIS's own justifications do not explain the $1,800 fee. All of these same reasons could have supported a single fee of $285. In addition, the proposal is contrary to the purpose of the statute. The Nicaraguan Adjustment and Central American Relief Act (NACARA) specifically addressed certain asylum-seekers whose applications were mistreated in the 1990s. Per NACARA, unless convicted of an aggravated felony, (1) any registered ABC class member who has not been apprehended at the time of entry after December 19, 1990, who is either (2a) a Salvadoran national who filed an application for asylum on or before January 31, 1996 (with an administrative grace period ending February 16, 1996) or (2b) a Guatemalan national who filed for asylum on or before January 3, 1995, may be eligible to apply for suspension of deportation or special rule cancellation of removal. Pub. L. No. 105-100, 111 Stat. 2160 (Nov. 19, 1997).The impact of the Proposal would be shouldered almost exclusively by Central Americans that were meant to gain protection from this law.

4. Genealogy search and records requests.

USCIS also inexplicably proposes drastically increasing the fee for genealogy and records requests (Forms G-1041 and G-1041A). 84 FR at 62,316. Under the Proposal, a person must first pay $240 for the G-1041 for USCIS to conduct an initial search. A person must then submit a G-1041A for each paper record it requests, at a fee of $385 per request. USCIS states that these fees reflect projected costs of staffing and workload volume, but fails to explain why

these projections are so high, leading to such high fees. Lacking any reasonable explanation, the proposed fees for G-1041 and G-1041A are also arbitrary and capricious.

5. Other fee-related considerations in the Proposal

The Proposal identifies other problematic actions USCIS is considering: charging fees even where no benefit form applies; separating existing paper forms into multiple forms to allow form changes without notice and comment rulemaking, and moving to increased use of e-filing. 84 FR at 62,294. USCIS highlights that "the growing complexity of the adjudication process" over recent years has contributed to longer processing times. 84 FR at 62,294. USCIS claims these efforts would be to accommodate "modernizing," and to allow more "efficient case processing and timely decision-making." 84 FR at 62,294.

ILRC opposes these efforts. USCIS must justify fees based on the record through notice and comment rulemaking; it cannot assess fees where it has not even identified to what form the fee attaches, thus what adjudication or naturalization service it is providing. Nor can the agency change fees or the process for obtaining immigration benefits through making form changes or otherwise complicating the application process, while skipping notice and comment rulemaking.

Furthermore, ILRC vehemently opposes requiring e-filing because it serves as a barrier to many from filing applications. But where a person does choose to use e-filing, it should create cost-savings. Those savings should be factored into USCIS's cost calculations and passed on to reduce application fees. USCIS must provide the public with data on the volume and types of forms submitted electronically and the effect of electronic submission on completion rates and adjudication cost.

Finally, claims of increased transparency related to the e-filing proposal are unfounded and misleading. Posting processing times online does nothing to add transparency for applicants. The USCIS website simply identifies a range of time within which an applicant is *not* to contact the agency. It does not provide information on where an application is in the process or what the applicant should expect next or by when. With the Proposal, this timeframe would be lengthened. While this should reduce costs by reducing workload, USCIS does not account for such savings; instead USCIS makes a baseless claim to transparency.

6. Payment of fees

USCIS proposes a host of additional provisions limiting the conditions under which it will accept payment. It proposes that dishonored checks be submitted only once to financial institution for insufficient funds. 84 FR at 62,295. USCIS would also reject checks dated more than 365 days before. It would require payment through pay.gov for certain fees, or other specified forms of payment, or may prohibit the use of cashier's checks or money orders in

certain instances. It would also make fees non-refundable, regardless of the time it takes to adjudicate.

These proposed provisions combine to make paying the high fees USCIS demands even more difficult, while allowing USCIS more control over these fees.

- In rejecting checks over 365 days old, USCIS is creating a new requirement that not even banks and financial institutions have in place; USCIS does not explain why it needs this rule, particularly where banks do not. Furthermore, USCIS cannot impose retroactive effect on any provision of this rule; thus, it cannot apply this provision to checks already issued before this rule provision might go into effect.

- Requiring the use of pay.gov or prohibiting the use of cashier's checks or money orders create equally harmful effects. USCIS would create a digital divide limiting accessibility for lower-income households who more typically use cashier's checks or money orders and are less likely to be able to access payment avenues needed for online payments.

- Nonrefundable fees further penalize all applicants. USCIS is proposing in many cases to require more and separate forms, which leads to higher charges on the front end for applicants. Meanwhile, USCIS backlog is unprecedented as it processes applications on a last-in-first-out basis. *See* 84 FR 62,294. During this time, an applicant's condition may change, such as health or family changes, and the applicant may no longer need or be able to qualify for the requested immigration service. In instances such as these, the relevant fees should be refundable, as USCIS may not have even begun adjudicating the respective form.

Conclusion

The proposed fee adjustments and reallocation of funds would serve no lawful purpose and cause irreparable harm to families and individuals. The Proposal should not be adopted. Any proposal to adjust fees must have a lawful basis and allow meaningful opportunity to comment.

Respectfully,

Melissa Rodgers
Director of Programs
Immigrant Legal Resource Center
1458 Howard St.
San Francisco, CA 94103

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Sidley Austin LLP
555 California St.
Suite 2000
San Francisco, CA 94104

Attachment A

Via email

November 12, 2019

Kenneth Cuccinelli, Acting Director
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue, N.W.
Washington, D.C. 20529

Paul Ray, Acting Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street, NW
Washington, D.C. 20503

RE: Request for 60-Day Comment Period for USCIS Proposed Fee Schedule: DHS Docket USCIS-2019-0010; RIN 1615-AC18

Dear Acting Director Cuccinelli and Acting Administrator Ray:

We, the undersigned organizations, write to respectfully request that USCIS not limit but ensure a standard 60-day review period in connection with USCIS' proposal to adjust certain immigration and naturalization benefit request fees and the associated regulatory changes.

On November 8, 2019, the U.S. Citizenship and Immigration Services posted for public inspection its biennial fee review and fee adjustment schedule in the Federal Register. The pre-publication notice at page 2 indicated the public would be given only 30 days for comment. We are writing to respectfully request an extension of the comment period in view of the wide scope of this 300+ page rule and in keeping with past USCIS practices that provided the public a 60-day period to review and comment.

Executive Order 12866 states that agencies should allow "not less than 60 days" for public comment in most cases, in order to "afford the public a meaningful opportunity to comment on any proposed regulation." Executive Order 13563 states that "[t]o the extent feasible and permitted by law, each agency shall afford the public a meaningful opportunity to comment through the Internet on any proposed regulation, with a comment period that should generally be at least 60 days."

Considering the complexity of the rule, its policy implications above and beyond fee changes, and the serious consequences of the changes proposed, the undersigned do not see a justification for deviating from the 60-day standard for comment periods, as designated in EO 12866 and EO 13563.

In its proposed rule, USCIS provides no justification whatsoever for deviating from these executive orders. A comparison with prior comparable proposed fee rules shows what a dramatic and unprecedented departure from past practice it would be for USCIS to persist with a 30-day public comment period in this instance:

- 2007 proposed fee rule: approx. 25,500 words (60 days for public comments)
- 2016 proposed fee rule: approx. 38,300 words (60 days for public comments)
- 2019 proposed fee rule: approx. 90,900 words (30 days for public comments)

In other words, USCIS is currently requiring that the public thoroughly analyze and provide comments on a rule that is over 3.5 times longer than a comparable prior proposed rule, in only half the time.

We request this extension of the comment period in order to allow our organizations and the public adequate time to review the proposed regulatory and policy changes and provide meaningful feedback. A 60-day comment period would allow more organizations and affected groups to carefully examine the changes and weigh-in, in turn providing USCIS with more meaningful information to better address and consider the scope of related issues, assess unintended consequences, and prevent potential waste of resources.

Given the nature of the proposals and populations involved, we believe that these unique and expansive changes warrant additional time for review and comment. We thank you for your consideration of our request. Please contact Jill Marie Bussey at jbussey@cliniclegal.org or Rosalind Gold at rgold@naleo.org for any questions or concerns.

Sincerely,

¡HICA! Hispanic Interest Coalition of Alabama

A New Start

African Communities Together

American Immigration Lawyers Association

Arizona Latino Legislative Caucus

Arkansas Immigrant Defense

Arkansas United

ARYSE

Asian American Federation of Florida

Asian Americans Advancing Justice - Atlanta

Asian Americans Advancing Justice - Los Angeles

Asian Americans Advancing Justice | AAJC

Asian Counseling and Referral Service

Asian Pacific American Labor Alliance, AFL-CIO

Asian Pacific Institute on Gender-Based Violence

ASISTA

Bhutanese Community Association of Pittsburgh

Bonding Against Adversity

Boulder Valley Unitarian Universalist Immigration Justice Task Force

Boundless Immigration Inc.

California Partnership to End Domestic Violence

Campesinos Sin Fronteras

Canal Alliance

Canopy NWA

Casa San Jose

Catholic Charities East Bay

Catholic Charities Maine Refugee & Immigration Services

Catholic Charities of East Tennessee

Catholic Charities of the Archdiocese of Washington

Catholic Charities of the Diocese of Stockton

Catholic Legal Immigration Network, Inc.

Catholic Migration Services

Center for Gender & Refugee Studies

Center for Immigrant Advancement, Inc

Center for Law and Social Policy (CLASP)

Center for Pan Asian Community Services, Inc.

Center for Public Policy Priorities

Central American Resource Center of California (CARECEN Los Angeles)

Central American Resource Center of Northern California (CARECEN)

Central Valley Immigrant Integration Collaborative (CVIIC)

Centro Romero

Chaldean Community Foundation

Chicanos Por La Causa

Chinese Information and Service Center

Church World Service

Citizenship News

Coalition for Humane Immigrant Rights - CHIRLA

Colorado Immigrant Rights Coalition (CIRC)

Comunidades Unidas

Conexión Américas

District 1199C Training & Upgrading Fund

Dsi International Inc

Education and Leadership Foundation

Employee Rights Center

End Domestic Abuse Wisconsin

Entre Hermanos

Equality California

Erie Neighborhood House

Esperanza Legal Assistance Center / Immigrant Connection Heritage Church

Families Belong Together

Feeding Texas

Florida Asian Services

Florida Chinese Federation

Freedom for Immigrants

Freedom Network USA

Friendly House Inc

Gateway Community Services Maine

Global Cleveland

GMHC

Greater Portland Immigrant Welcome Center

HANA Center

Her Justice

Heritage Network

HIAS Pennsylvania

Hispanic American Community Education & Services

Hmong American Women's Association

Illinois Coalition Against Domestic Violence

Illinois Coalition for Immigrant and Refugee Rights

Immigrant Legal Advocacy Project

Immigrant Legal Resource Center

Immigration Advocates Network

Immigration Center for Women and Children

Immigration Institute of the Bay Area

Indian Horizon of Florida

Interfaith Refugee and Immigration Service, Los Angeles

Iowa Coalition Against Domestic Violence

Kentucky Refugee Ministries

Kids in Need of Defense (KIND)

Korean Community Center of the East Bay

Lambda Legal

Latin American Coalition

LatinoJustice PRLDEF

League of United Latin American Citizens (LULAC)

Long Beach Immigrant Rights Coalition

Maine Immigrants Rights Coalition

Maine Intercultural Communication Consultants

Make the Road New Jersey

Maria Medrano

Mayor Muriel Bowser (District of Columbia, DC)

Mi Familia Vota

Mi Familia Vota Education Fund

Miami-Dade County Asian American Advisory Board

Michigan United

MIRC

Mixteca Organization, Inc.

NAACP

NANAY CEDC

National Association of Latino Elected and Appointed Officials (NALEO) Educational Fund

National Association of Social Workers - Texas Chapter

National Immigrant Justice Center

National Immigration Forum

National Immigration Law Center

National Korean American Service & Education Consortium (NAKASEC)

National Partnership for New Americans

Naturalize Charlotte

New York Immigration Coalition

New York Legal Assistance Group (NYLAG)

Nigerians in Diaspora Organization Americas, Florida Chapter

Northwest Side Housing Center

Oasis Legal Services

OCA South Florida Chapter

OCA-Greater Houston

OCCORD (Orange County Communities Organized for Responsible Development)

OneAmerica

Pennsylvania Immigration and Citizenship Coalition

Presidents' Alliance on Higher Education and Immigration

Pro Bono Net

Proteus Inc.

Proyecto Inmigrante ICS, INC.

RAICES

San Joaquin College of Law- New American Legal Clinic

SEAMAAC

Self Help for the Elderly

Service Employees International Union

Services, Immigrant Rights & Education Network (SIREN)

Somali Community Center of Maine

Somali Family Safety Task Force

South Asian Network (SAN)

Sull and Associates, PLLC

Sylvester Turner, Mayor of Houston, Texas

Tennessee Immigrant and Refugee Rights Coalition

TheLegalClinic Hawaii

UnidosUS

UNITE HERE

United African Organization

United We Dream

Villa Comunitaria

Virginia Coalition for Immigrant Rights

Voces de la Frontera

We Are All America/Central Arizonans for Sustainable Economy

Welcoming the Stranger

West African Community Council

Winp LLC

World Relief

Attachment B

U.S. Citizenship and Immigration Services

USCIS Federal Register Announcements

On this page you can search the latest USCIS and DHS *Federal Register* announcements organized by publication date.

The *Federal Register* is the official gazette of the United States Government. It provides legal notice of administrative rules and notices and Presidential documents in a comprehensive, uniform manner. Any final rules published in the Federal Register amend Title 8 of the Code of Federal Regulations.

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Procedures for Asylum and Bars to Asylum Eligibility

Published: Dec. 19, 2019
Notice

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Dec. 19, 2019

Notice

Procedures for Asylum and Bars to Asylum Eligibility

Dec. 18, 2019

Notice

Agency Information Collection Activities; Revision, of a Currently Approved Collection: Application for Carrier Documentation

Dec. 18, 2019

Notice

Agency Information Collection Activities; New Collection: Sponsor Deeming and Agency Reimbursement

Dec. 6, 2019

Notice

Agency Information Collection Activities; Proposals, Submissions, and Approvals: Notice of Appeal or Motion

Nov. 21, 2019

Notice

Agency Information Collection Activities; Proposals, Submissions, and Approvals: Petition for CNMI-Only Nonimmigrant Transition Worker

Nov. 19, 2019

Notice

Implementing Bilateral and Multilateral Asylum Cooperative Agreements Under the Immigration and Nationality Act

Nov. 15, 2019

Notice

Modernizing Recruitment Requirements for the Temporary Employment of H-2B Foreign Workers in the United States

Nov. 14, 2019

Notice

U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements

Nov. 5, 2019

Notice

Agency Information Collection Activities; Revision of a Currently Approved Collection: Petition To Remove the Conditions on Residence

Nov. 2, 2019

Notice

Continuation of Documentation for Beneficiaries of Temporary Protected Status Designations for El Salvador, Haiti, Honduras, Nepal, Nicaragua, and Sudan

1 2 3 4 5 6 7 8 9 … next › last »

Attachment C

XEROX

DIVISION __ — DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2020

The following is an explanation of Division _, which makes appropriations for the Department of Homeland Security (DHS) for fiscal year 2020. Funding provided in this agreement not only sustains existing programs that protect the nation from all manner of threats, it ensures DHS's ability to improve preparedness at the federal, state, local, tribal, and territorial levels; prevent and respond to terrorist attacks; and hire, train, and equip DHS frontline forces protecting the homeland.

Unless otherwise noted, references to the House and Senate reports are to House Report 116–180 and Senate Report 116–125, respectively. The language and allocations contained in the House and Senate reports carry the same weight as the language included in this explanatory statement unless specifically addressed to the contrary in the bill or this explanatory statement. While this explanatory statement repeats some language from the House or Senate reports for emphasis, it does not negate the language contained in those reports unless expressly stated. When this explanatory statement refers to the Committees or the Committees on Appropriations, these references are to the House Appropriations Subcommittee on Homeland Security and the Senate Appropriations Subcommittee on Homeland Security.

This explanatory statement refers to certain laws, organizations, persons, funds, and documents as follows: the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93–288, is referenced as the Stafford Act; the Department of Homeland Security is referenced as DHS or the Department; the Government Accountability Office is referenced as GAO; and the Office of Inspector General of the Department of Homeland Security is referenced as OIG. In addition, "full-time equivalents" are referred to as FTE; "full-time positions" are referred to as FTP; "Information Technology" is referred to as IT; the DHS "Working Capital Fund" is referred to as WCF; "program, project, and activity" is referred to as PPA; any reference to "the Secretary" should be interpreted to mean the Secretary of Homeland Security; "component" should be interpreted to mean an agency, administration, or directorate within DHS; any reference to SLTT should be interpreted to mean State, Local, Tribal, and territorial; and "budget request" or "the request" should be interpreted to mean the budget of the U.S. Government for fiscal year 2020 that was submitted to Congress on March 11, 2019.

TITLE I—DEPARTMENTAL MANAGEMENT, OPERATIONS, INTELLIGENCE, AND OVERSIGHT

OFFICE OF THE SECRETARY AND EXECUTIVE MANAGEMENT

OPERATIONS AND SUPPORT

The agreement includes an increase for Operations and Support of $27,498,000 above the budget request, including increases of: $2,900,000 for the Office for Civil Rights and Civil Liberties for the Compliance Branch; $7,500,000 for the Office of Strategy Policy and Plans for a community awareness and training program and activities related to targeted violence and terrorism prevention grants funded through Federal Assistance; $10,000,000 for the establishment of a new Office of Immigration Detention Ombudsman; and $7,548,000 to sustain fiscal year 2019 operational levels, including adjusted personnel costs and the Immigration Data Integration Initiative.

Chief Medical Officer (CMO).—As the primary DHS medical authority, the CMO has oversight responsibility for the Department's medical and public health policies and operations. As such, DHS is directed to ensure that the CMO reviews all contracts that broadly impact how the Department delivers healthcare to individuals in its custody and to departmental personnel. In coordination with operational components, the CMO shall develop departmental requirements for medical services, to include professional healthcare system administration; disease surveillance, reporting, and outbreak response; and measurable performance standards for current and future healthcare record systems. The CMO, in conjunction with operational component leadership as appropriate, is directed to brief the Committees within 90 days of the date of enactment of this Act on these efforts.

Medical Strategy.—In fiscal year 2019, nearly 1,000,000 migrants were apprehended by U.S. Customs and Border Protection, resulting in an unprecedented medical screening and healthcare crisis. As the Department responded, it became clear that a more cohesive strategy was necessary to address emergent medical conditions of detainees, as well as the health of its own workforce. Based on lessons learned from this experience, the Secretary shall develop a DHS-wide medical response strategy for emergent circumstances, including surges in migration, National Special Security Events, Special Event Assessment Rating events, and Stafford Act-

declared disasters. The strategy should also clarify the roles and responsibilities of DHS medical personnel; the need for any new legal authorizations; and any reorganization requirements, as appropriate.

Office of Immigration Detention Ombudsman.—The agreement establishes an Immigration Detention Ombudsman position and provides $10,000,000 for an Office of Immigration Detention Ombudsman, as described in the House Report. The bill withholds $500,000 from the Office of the Secretary for Executive Management (OSEM) until the Secretary approves the Ombudsman.

Office of Strategy, Policy, and Plans.— The agreement includes a realignment of $2,800,000 from the Office of Partnership and Engagement for the new Office of Terrorism Prevention Partnerships (OTPP). OTPP is directed to brief the Committees within 30 days of the date of enactment of this Act on its programs and activities, including its plans for carrying out local community awareness and training, and for the use of funding provided under Management Directorate—Federal Assistance for targeted violence and terrorism prevention grants.

Public Complaint and Feedback System Working Group.—The Department has not fulfilled a requirement in House Report 116-9 to provide semi-annual updates to the Committees on the Public Complaint and Feedback System Working Group. The Department is directed to begin providing such updates not later than 60 days after the date of enactment of this Act. The bill withholds $500,000 from OSEM until the Department provides the first such update, which must address the requirements detailed in House Report 114–668.

FEDERAL ASSISTANCE

(INCLUDING TRANSFER OF FUNDS)

The agreement provides $10,000,000 for targeted violence and terrorism prevention grants, to be transferred to the Federal Emergency Management Agency for purposes of administration.

MANAGEMENT DIRECTORATE

OPERATIONS AND SUPPORT

The agreement includes an increase for Operations and Support of $6,152,000 above the budget request to sustain fiscal year 2019 operational levels, including personnel cost adjustments.

The Department is directed to refrain from initiating new PPAs for which funds have not been provided in an appropriations act, either explicitly or based on a funding request, if such PPAs would have significant resource requirements beyond the budget year. When emergent circumstances otherwise require the initiation of significant PPAs, the Department is directed to provide advance notification to the Committees, along with a detailed justification for why they are required.

PROCUREMENT, CONSTRUCTION, AND IMPROVEMENTS

The agreement provides the requested appropriation for the proposed activities under Procurement, Construction, and Improvements.

INTELLIGENCE, ANALYSIS, AND OPERATIONS COORDINATION

OPERATIONS AND SUPPORT

The agreement provides an increase of $7,500,000 above the budget request for election security. A total of $68,579,000 is available until September 30, 2021.

OFFICE OF INSPECTOR GENERAL

OPERATIONS AND SUPPORT

The agreement includes an increase for Operations and Support of $20,000,000 above the budget request for increased monitoring and oversight of border security and immigration enforcement activities.

TITLE I—ADMINISTRATIVE PROVISIONS

Section 101. The agreement continues a provision requiring the Inspector General to review grants and contracts awarded by means other than full and open competition and report the results to the Committees.

Section 102. The agreement continues a provision requiring the Chief Financial Officer to submit monthly budget execution and staffing reports within 30 days after the close of each month.

Section 103. The agreement continues a provision directing the Secretary to require contracts providing award fees to link such fees to successful acquisition outcomes.

Section 104. The agreement continues a provision requiring the Secretary, in conjunction with the Secretary of the Treasury, to notify the Committees of any proposed transfers from the Department of Treasury Forfeiture Fund to any agency at DHS. No funds may be obligated prior to such notification.

Section 105. The agreement continues a provision related to official travel costs of the Secretary and Deputy Secretary.

Section 106. The agreement includes a provision establishing an Immigration Detention Ombudsman.

Section 107. The agreement continues a provision requiring the Secretary to submit a report on visa overstay data and to post border security metrics on the Department's website.

TITLE II—SECURITY, ENFORCEMENT, AND INVESTIGATIONS

U.S. CUSTOMS AND BORDER PROTECTION

OPERATIONS AND SUPPORT

The agreement provides $12,735,399,000 for Operations and Support of U.S. Customs and Border Protection (CBP), which includes $203,000,000 of prior year emergency funding and of which $500,000,000 is available until September 30, 2021. This emergency funding is fully offset by the rescission of unneeded prior year balances of emergency funding. The bill includes increases above the budget request, including the following: $99,774,000 to sustain prior year initiatives and for personnel cost adjustments; $13,000,000 for Border Patrol Processing Coordinator positions; $56,656,000 for Office of Field Operations staff; $19,651,000 for agriculture specialists; $25,000,000 for innovative technology; $1,500,000 for comprehensive testing of imported honey; $5,000,000 for tribal roads; $2,000,000 for rescue beacons; $2,000,000 for enterprise geospatial improvement services; $20,000,000 for port of entry

technology; $3,000,000 for trade enhancements; $2,000,000 for NAFTA Centers; $5,000,000 to increase Air and Marine flight hours, bringing the total to $15,000,000 and to include the use of contracted pilots; and $21,000,000 for body worn cameras. The agreement includes a reduction below the request of $45,000,000 associated with administrative contract savings for Enterprise Services, $82,218,000 for humanitarian care to be offset with prior year emergency funding and provides no funding for additional Border Patrol agents.

The account total reflects a rescission and re-appropriation of prior year discretionary and emergency funds, which shall be obligated for humanitarian care, to include consumables and medical care, electronic health records, and to address health, life and safety issues at existing Border Patrol facilities, including construction and for improved video recording capabilities.

The agreement includes technical budget realignments, as requested by DHS.

Border Patrol Processing Coordinators.—The bill includes $13,000,000 for Border Patrol processing coordinators. Prior to the execution of funds, CBP shall brief the Committees on the training requirements for these new positions, which should include but not be limited to emergency medical and mental health care; migrant legal rights; Trafficking Victims Protection Reauthorization Act requirements; and how to identify child abuse and neglect. The briefing should also address the total cost of such training and identify the location where training will occur.

Custody and Transfer Metrics.—The agreement requires data reporting on migrants in CBP custody, including data on utilization rates for all short term holding facilities and on the designated removal mechanisms for migrants. CBP shall publish on a publicly accessible website the following on a semimonthly basis: the number of migrants detained in CBP facilities broken out by sector, field office, temporary spaces, humanitarian care centers, and central processing centers; and the utilization rates of all such facilities. On a monthly basis, CBP shall publish the number of migrants transferred out of CBP custody, delineated by transfer destination and, in the case of removal, the removal mechanism.

Electronic Visa Update System (EVUS).— The bill restores $13,850,000 of the $27,661,000 reduction in the budget request to EVUS. CBP is strongly encouraged to work with the appropriate authorizing committees to get fee authority for EVUS. Non-immigrant visa holders who benefit from this program, not U.S. taxpayers, should pay for EVUS.

Gordie Howe International Bridge.—The funding level for Gordie Howe International Bridge is funded at the requested level, and shall be obligated as proposed in the request, in the Operations and Support account and in Procurement, Construction, and Improvements.

Innovative Technology.—At least 15 days prior to the obligation of funds for innovative border security technology, CBP is directed to brief the Committees on the planned obligation of funds. The briefing shall also identify the component sponsor and plans for transitioning technologies to the field. Funding in the bill for such technology shall not exceed $5,000,000 for any individual project.

Intelligent Enforcement and Opioids.—The funding levels for Intelligent Enforcement and opioids are funded at the requested levels and shall be obligated as proposed in the budget request.

Medical Guidance.—The CBP Commissioner issued an interim directive on enhanced medical care to help address the growing influx of migrants crossing the southern border. In conjunction with the DHS CMO, CBP is directed to issue a permanent medical directive and implementing guidance, which shall include the following:

- Clear definitions, metrics, automated reporting requirements, and formal mechanisms for coordinating with the CMO on making determinations that conditions at the border constitute a public health crisis, which should take into consideration: time in custody; holding facility capacity limits; emerging disease outbreaks, such as influenza; and the readiness of each U.S. Border Patrol and Office of Field Operations facility. ~~This~~ (These) metrics shall be reported on a common operating picture such as the Unified Immigration Portal;
- Response plans for public health crisis conditions that include: a convalescence center concept, executed in concert with the CMO and the U.S. Public Health Service; the provision of vaccinations when deemed appropriate by the CMO; and emergency mechanisms to address overcrowding at Border Patrol and port of entry facilities through custodial transfers to Immigration and Customs Enforcement, and the Office of Refugee Resettlement, as appropriate; and
- A peer review process for deaths in custody, including: first level review by the CBP Senior Medical Advisor; second level review convened by the CMO; and external review, as appropriate through an enterprise-level contract executed by the CMO.

Not later than 90 days after the date of enactment of this Act, the CMO, in conjunction with appropriate CBP leadership, shall brief the Committees on an implementation plan for the permanent directive. Additionally, the final guidance and associated implementing guidance shall be made available on a publicly accessible website not later than 15 days after such guidance is finalized.

Migrant Protection Protocols (MPP).—DHS shall establish goals and metrics for assessing the effectiveness of the MPP Program. Metrics shall include the following daily data for migrants entering the United States, by location: the total number of entering migrants apprehended or deemed inadmissible; the number of such migrants amenable to MPP; the number of amenable migrants who assert a fear of returning to Mexico; the number of migrants assigned to MPP appearing at a port of entry to attend immigration adjudication proceedings and the outcomes of such proceedings, including data on the number of removals ordered in absentia; the number of migrants assigned to MPP who remain overnight in the United States; and the number of adults and Unaccompanied Alien Children entering without inspection subsequent to being returned to Mexico through MPP.

Other Reporting.—The briefing on CBP-wide workload, capabilities, assets, and human resource gaps, as described in the Senate Report, shall be provided quarterly. The pilot project on the use of community oriented policing teams, as detailed in the Senate Report 116–125, shall be briefed within one year of the date of enactment of this Act.

Office of Field Operations Staffing.—The agreement includes $104,377,000 to support over 800 new positions in the Office of Field Operations to include 610 additional Officers and Agriculture Specialists. CBP is again encouraged to utilize fee funding to hire up to a total of 1,200 CBP Officers and 240 Agriculture Specialists during fiscal year 2020.

Video Monitoring.—Any failure of closed caption television and associated storage equipment in excess of 120 hours at any CBP facility that detains migrants must be reported to the Office of Professional Responsibility. Such reporting shall be updated weekly.

PROCUREMENT, CONSTRUCTION, AND IMPROVEMENTS

The agreement provides $1,904,468,000 for Procurement, Construction, and Improvements, which includes $30,000,000 of prior year emergency funding. This emergency funding is fully offset by the rescission of unneeded prior year balances of emergency funding.

The agreement includes the following increases above the request: $20,000,000 for innovative technology, of which not more than $5,000,000 may be available for any single project; $15,000,000 for rapidly deployable next generation mobile surveillance systems, including currently deployed light truck based systems; $10,000,000 for Automated Commercial Environment enhancements; $28,383,000 for one additional Multi-Role Enforcement Aircraft with a Dismounted Moving Target Indicator; $32,500,000 for lightweight helicopters; and $9,000,000 for expansion at the Advanced Training Center. The agreement provides a total of $14,830,000 for coastal interceptor vessels and $59,124,000 for non-intrusive inspection equipment, as requested.

Border Barrier System.—The agreement includes $1,375,000,000 for additional border barriers.

Facilities. —The agreement includes $25,000,000 for construction of the Papago Farms Forward Operating Base and for facilities improvements to protect life and improve safety.

Health Record Systems—The account total includes $30,000,000 derived from the rescission and re-appropriation of prior year emergency funds to enable the DHS CMO, in conjunction with CBP, ICE, and other operational components, to develop and establish interim and long-term electronic systems for recording and maintaining information related to the health of individuals in the Department's custody. The systems shall be adaptable to component operational environments and be interoperable with other departmental systems, as appropriate, and with the National Emergency Medical Services Information System. A plan for the design and development of such systems shall be provided to the Committees within 90 days of the date of enactment of this Act.

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

OPERATIONS AND SUPPORT

The agreement includes the following increases above the budget request: $4,000,000 for the Human Exploitation Rescue Operative Child-Rescue Corps; $3,000,000 for cybercrime investigative capabilities; $12,000,000 for a counter-proliferation investigations center; $2,000,000 for the Law Enforcement Systems and Analysis division; $15,000,000 for the Family

Case Management Program (FCMP); $4,000,000 for an independent review of the Alternatives to Detention (ATD) program, including the FCMP; $9,222,000 for repairs and improvements at detention facilities; $14,000,000 for hiring at the Office of Detention Oversight to increase the frequency of detention inspections; $2,000,000 for the Office of the Chief Financial Officer to improve reporting to Congress and the public about Immigration and Customs Enforcement's resource use; $406,000 for an Office of the Principal Legal Advisor facility consolidation project; and $632,382,000 to sustain prior year initiatives and for personnel cost adjustments.

The agreement provides direct funding of $207,600,000 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.

Consistent with the funding recommendations in the House and Senate Reports, the agreement does not include $700,786,000 that was requested to sustain prior year initiatives that were not funded in the fiscal year 2019 appropriation, nor does it include $298,973,000 in requested funding for additional staffing.

Of the amount provided, $53,696,000 is available until September 30, 2021, to include: $13,700,000 for the Visa Security Program; $32,996,000 to support the wiretap program; and $7,000,000 for the Office of Detention Oversight.

The Department and ICE have failed to comply with any of the requirements set forth in the explanatory statement accompanying Public Law 116–6 regarding detailed operational and spending plans for fiscal year 2019 for ICE Operations and Support. The Department and ICE are again directed to execute such requirements for fiscal year 2020.

Enforcement and Removal Operations

Alternatives to Detention (ATD).— For the report required in the Senate Report regarding an analysis of each active ATD program within the last five years, the Secretary shall also submit this report to GAO for review. GAO shall review the reliability and accuracy of data in the report and provide a preliminary briefing to the Committees on its review within 120 days of receipt. GAO shall also conduct a review of the ATD program and report its findings to the Committees on a date agreed to at the time of the preliminary briefing.

Immigration Enforcement at Sensitive Locations.—ICE is directed to follow its policy regarding enforcement actions at or near sensitive locations and is encouraged to review the

scope of the category to areas not previously included where community impacts could be better balanced against ICE law enforcement requirements.

Further, ICE is directed to provide its officers with guidance and training for engaging with victims of crime and witnesses of crime, and to clarify policy guidance on enforcement actions in or near sensitive locations in order to minimize any effect that immigration enforcement may have on the willingness and ability of victims and witnesses to pursue justice.

PROCUREMENT, CONSTRUCTION, AND IMPROVEMENTS

The agreement includes $47,270,000 for procurement, construction, and improvements, consisting of $10,300,000 to accelerate modernization of ICE's immigration information technology systems, data platform, and reporting and analytics capabilities; and $36,970,000 for construction and facilities improvements to address major projects on ICE's facilities maintenance and repair backlog list.

TRANSPORTATION SECURITY ADMINISTRATION

OPERATIONS AND SUPPORT

The agreement includes an increase of $565,370,000 above the budget request, including an increase of $93,382,000 for personnel cost adjustments. The agreement rejects the airline passenger fee increase proposed by TSA, which would have offset the total appropriation by an estimated $550,000,000, thus making the net increase in discretionary spending above the request $1,115,370,000.

Aviation Screening Operations

The agreement includes an increase of $415,633,000 above the request for Aviation Screening Operations, including the following increases: $25,378,000 to fully fund fiscal year 2020 Screening Partnership Program requirements; $46,416,000 to fully fund retention incentives for TSA employees; and $63,351,000, including $14,023,000 requested in PC&I, to fully fund fiscal year 2020 screening technology maintenance requirements.

The agreement sustains the following initiatives funded in fiscal year 2019: $77,764,000 for additional transportation security officers and associated training and support costs to address the continued growth in passenger volume at airports; $83,511,000 to maintain existing TSA staffing at airport exit lanes in accordance with section 603 of Public Law 113–67; $7,000,000 to maintain Screening Partnership Program requirements; $13,341,000 for canine teams to support

increased passenger screening requirements; $6,220,000 for screening requirements associated with the FAA Reauthorization Act of 2018; $10,440,000 for additional program management staffing to support new technology acquisitions; $4,280,000 to continue procurement of Credential Authentication Technology units; and $3,590,000 to support rent increases in the field.

Other Operations and Enforcement

The agreement provides $140,312,000 above the request for Other Operations and Enforcement, including $4,708,000 to replace aging equipment in the Federal Flight Deck Officer (FFDO) and Flight Crew Program and $8,420,000 for cybersecurity pipeline field assessments.

The agreement sustains the following initiatives funded in fiscal year 2019: $46,334,000 for the Law Enforcement Officer Reimbursement Program; $58,800,000 for 31 Visible Intermodal Prevention and Response teams; and $3,100,000 to increase FFDO training capacity.

PROCUREMENT, CONSTRUCTION, AND IMPROVEMENTS

The agreement includes $68,600,000 for the procurement of computed tomography (CT) machines for use at the airport checkpoint. This amount is in addition to funds available from the Aviation Security Capital Fund and will support the acquisition and installation of 320 units. The agreement also includes increases above the request of $1,500,000 to advance CT algorithm development and $40,000,000 for TSA to continue reimbursement of airports that incurred costs associated with the development of a partial or completed in-line baggage system prior to August 3, 2007.

Section 223 of the bill provides direction for capital investment plan requirements in lieu of language included the House Report.

RESEARCH AND DEVELOPMENT

The agreement provides an increase of $2,000,000 above the request for design and development activities for small CT machines, as described in the Senate Report.

COAST GUARD

OPERATIONS AND SUPPORT

The agreement provides an increase of $118,858,000 above the request for Operations and Support, including: $22,122,000 for personnel cost adjustments; $14,600,000 to support additional costs for electronic health records; $10,000,000 for the increased cost for flight training; $1,500,000 for the Great Lakes Oil Spill Center of Excellence; $3,000,000 for the National Maritime Documentation Center and National Vessel Documentation Center; $6,500,000 for the priority environmental compliance and restoration project on the Coast Guard's Unfunded Priority List (UPL); $6,100,000 for recruiting and workforce readiness; $25,000,000 for Depot Maintenance for Cutter Boats and Aircraft; and $15,000,000 for Depot Maintenance for Shore Assets. The agreement continues increases included in fiscal year 2019 of $2,000,000 for a child care subsidy, $15,000,000 for additional military FTE, and $1,672,000 for increased fuel costs. Within the total amount provided, $11,000,000 is available until September 30, 2022, including $6,000,000 to continue the Fishing Safety Training Grants and Fishing Safety Research Grants programs, and $5,000,000 for the National Coast Guard Museum. The agreement also funds requested cybersecurity and IT enhancements.

The agreement includes reductions to the request of $5,942,000 due to the inclusion of Fast Response Cutter (FRC) crew costs in Overseas Contingency Operations and $6,166,000 because of delays in the Offshore Patrol Cutter (OPC) program.

PROCUREMENT, CONSTRUCTION, AND IMPROVEMENTS

The agreement provides an increase of $537,850,000 above the request, including the following: $13,500,000 for In-Service Vessel Sustainment; $260,000,000 for a total of four FRCs; $100,000,000 for long lead time materials for a second Polar Security Cutter; $105,000,000 for the HC-130J aircraft program; $130,000,000 to recapitalize MH-60T aircraft with new hulls; and $70,000,000 for a replacement Long Range Command and Control Aircraft. The bill makes available $100,500,000 for long lead time material for a twelfth National Security Cutter, consistent with the direction in the House Report.

The agreement includes $77,550,000 for Major Construction; Housing; Aids to Navigation; and Survey and Design and provides $122,100,000 for Major Acquisition Systems Infrastructure. Projects on the UPL described in the Senate Report are supported within these funding levels, including land acquisition, as necessary.

The agreement includes $2,000,000 to establish a major acquisition program office to enhance icebreaking capacity on the Great Lakes within 180 days of the date of enactment of this Act. An additional $2,000,000 is included under Operations and Support for recurring program support. The agreement also includes $10,800,000 for the two Maritime Security Response Teams to procure vessels currently in production and used by Department of Defense teams that are capable of operating in contested, near shore environments.

Elizabeth City Air Station.—The bill does not provide funding for enhancements to the runway at the Elizabeth City Coast Guard Air Station. The Coast Guard has estimated the total project cost would exceed $23,000,000, far above the level recommended in the Senate bill. The Coast Guard shall work with state and local partners, including institutions of higher learning, to determine the full scope and cost of mutually beneficial enhancements to Runway 1/19, and explore the potential for sharing costs necessary to ensure the project is completed in an efficient manner. The Coast Guard shall brief the Committees within 120 days of the date of enactment of this Act on the scope, costs, and benefits of the project, including the viability of a financial partnership with non-federal stakeholders.

OPC Program.—The contract awarded to construct the OPC was recently amended to address increased cost estimates after the Acting Secretary determined that relief permitted under Public Law 85–804 was appropriate and necessary to the national defense. An associated delay in delivery of the first two hulls reduced the fiscal year 2020 requirement for the OPC by $148,000,000. Funds included in the agreement continue necessary program requirements. The agreement maintains the commitment to ensuring the Coast Guard can continue the program of record for these critical vessels. As a condition of the granted relief, the vendor will be subject to increased oversight, including additional scrutiny of the costs borne by the Coast Guard. The Coast Guard shall brief the Committees quarterly on the metrics used to evaluate adherence to production timelines and costs, including those attributed to reestablishing the production line and maintaining the skilled workforce required to ensure contract performance.

UNITED STATES SECRET SERVICE

OPERATIONS AND SUPPORT

The agreement provides an increase above the request of $94,668,000, including the following: $7,500,000 for overtime pay; $8,207,000 for personnel costs; $11,900,000 for additional retention initiatives; $12,482,000 for fleet vehicles; $784,000 to sustain fiscal year 2019 funding levels for forensic and investigative support related to missing and exploited children; $3,600,000 for electronic crimes task force modernization; $10,000,000 for radios and hubs; $9,518,000 for travel; $10,000,000 for overtime in calendar year 2019 (authority is provided in bill language for up to $15,000,000); $5,000,000 for permanent change of station costs; and $26,377,000 for basic and advanced computer forensics training for state and local law enforcement officers, judges, and prosecutors in support of the United States Secret Service mission.

Within the total amount provided, $39,763,000 is made available until September 30, 2021, including $11,400,000 for the James J. Rowley Training Center; $5,863,000 for Operational Mission Support; $18,000,000 for protective travel; and $4,500,000 for National Special Security Events.

PROCUREMENT, CONSTRUCTION, AND IMPROVEMENTS

The agreement provides an increase above the request of $10,700,000, which reflects the amount requested under Operations and Support for the Fully Armored Vehicle Program.

RESEARCH AND DEVELOPMENT

The agreement provides an increase above the request of $1,500,000 for Research and Development, for a pilot program with a university-based digital investigation center to maximize and evaluate effective instruction for students enrolled at the National Computer Forensics Institute, such as pre- and post-assessment of student knowledge of procedures and tool utilization.

TITLE II—ADMINISTRATIVE PROVISIONS

Section 201. The agreement continues a provision regarding overtime compensation.

Section 202. The agreement continues a provision allowing CBP to sustain or increase operations in Puerto Rico with appropriated funds.

Section 203. The agreement continues a provision regarding the availability of passenger fees collected from certain countries.

Section 204. The agreement continues a provision allowing CBP access to certain reimbursements for preclearance activities.

Section 205. The agreement continues a provision regarding the importation of prescription drugs from Canada.

Section 206. The agreement continues a provision regarding the waiver of certain navigation and vessel-inspection laws.

Section 207. The agreement continues a provision preventing the establishment of new border crossing fees at land ports of entry.

Section 208. The agreement includes a provision requiring the Secretary to submit an expenditure plan for funds made available under "U.S. Customs and Border Protection – Procurement, Construction, and Improvements".

Section 209. The agreement includes a provision allocating funds within CBP's Procurement, Construction, and Improvements account for specific purposes.

Section 210. The agreement continues and modifies a provision prohibiting the construction of border security barriers in specified areas.

Section 211. The agreement includes a provision on vetting operations at existing locations.

Section 212. The agreement includes a provision that reappropriates prior year emergency funding for humanitarian care, critical life and safety improvements, and electronic health records.

Section 213. The agreement continues a provision allowing the Secretary to reprogram funds within and transfer funds to "U.S. Immigration and Customs Enforcement — Operations and Support" to ensure the detention of aliens prioritized for removal.

Section 214. The agreement continues a provision prohibiting the use of funds provided under the heading "U.S. Immigration and Customs Enforcement – Operations and Support" to

continue a delegation of authority under the 287(g) program if the terms of an agreement governing such delegation have been materially violated.

Section 215. The agreement continues and modifies a provision prohibiting the use of funds provided under the heading "U.S. Immigration and Customs Enforcement – Operations and Support" to contract with a facility for detention services if the facility receives less than "adequate" ratings in two consecutive performance evaluations, and requires that such evaluations be conducted by the ICE Office of Professional Responsibility by January 1, 2021.

Section 216. The agreement continues a provision prohibiting ICE from removing sponsors or potential sponsors of unaccompanied children based on information provided by the Office of Refugee Resettlement as part of the sponsor's application to accept custody of an unaccompanied child, except when that information meets specified criteria.

Section 217. The agreement includes a new provision that requires ICE to report on information related to its 287(g) program.

Section 218. The agreement continues and modifies a provision that requires ICE to provide statistics about its detention population.

Section 219. The agreement continues a provision clarifying that certain elected and appointed officials are not exempt from federal passenger and baggage screening.

Section 220. The agreement continues a provision directing TSA to deploy explosives detection systems based on risk and other factors.

Section 221. The agreement continues a provision authorizing TSA to use funds from the Aviation Security Capital Fund for the procurement and installation of explosives detection systems or for other purposes authorized by law.

Section 222. The agreement continues a provision prohibiting the use of funds in abrogation of the statutory requirement for TSA to monitor certain airport exit points.

Section 223. The agreement contains a new provision requiring TSA to provide a report that includes the Capital Improvement Plan, technology investment and Advanced Integrated Screening Technology. This includes the requirement in the House Report for a report on future-year capital investment plan.

Section 224. The agreement continues a provision prohibiting funds made available by this Act for recreational vessel expenses, except to the extent fees are collected from owners of yachts and credited to this appropriation.

Section 225. The agreement continues a provision under the heading "Coast Guard – Operating Expenses" allowing up to $10,000,000 to be reprogrammed to or from Military Pay and Allowances.

Section 226. The agreement continues a provision requiring the Commandant of the Coast Guard to submit a future-years capital investment plan.

Section 227. The agreement continues a provision related to the allocation of funds for Overseas Contingency Operations/Global War on Terrorism.

Section 228. The agreement continues a provision prohibiting funds to reduce the staff or mission at the Coast Guard's Operations Systems Center.

Section 229. The agreement continues a provision prohibiting the use of funds to conduct a competition for activities related to the Coast Guard National Vessel Documentation Center.

Section 230. The agreement continues a provision allowing the use of funds to alter, but not reduce, operations within the Civil Engineering program of the Coast Guard.

Section 231. The agreement includes a new provision allowing for death gratuity payments to be made by the Coast Guard in the absence of an appropriation.

Section 232. The agreement contains a new provision to reclassify receipts for the Coast Guard Housing Fund.

Section 233. The agreement continues a provision allowing the Secret Service to obligate funds in anticipation of reimbursement for personnel receiving training.

Section 234. The agreement continues a provision prohibiting the use of funds by the Secret Service to protect the head of a federal agency other than the Secretary of Homeland Security, except when the Director has entered into a reimbursable agreement for such protection services.

Section 235. The agreement continues a provision allowing the reprogramming of funds within "United States Secret Service – Operations and Support".

Section 236. The agreement continues a provision allowing funds made available within "United States Secret Service – Operations and Support" to be available for travel of employees on protective missions without regard to the limitations on such expenditures.

TITLE III—PROTECTION, PREPAREDNESS, RESPONSE, AND RECOVERY

CYBERSECURITY AND INFRASTRUCTURE SECURITY AGENCY

As authorized by Public Law 115–278, the Secretary transferred the Federal Protective Service (FPS) to the Management Directorate on May 9, 2019. The Fiscal Year 2020 funding for FPS is therefore appropriated within the Management Directorate.

Not later than 45 days after the date of enactment of this Act, and quarterly thereafter, the Cybersecurity and Infrastructure Security Agency (CISA) is directed to brief the Committees on each of the following: a summary spending plan; detailed hiring plans for each of the mission critical occupations; procurement plans for all major investments; and an execution strategy for each of the new initiatives funded in this agreement.

OPERATIONS AND SUPPORT

The agreement provides an increase of $287,679,000 above the budget request including $9,109,000 to fund personnel cost adjustments. Of the amount provided, $31,793,000 is available until September 30, 2021, to include: $21,793,000 for the National Infrastructure Simulation Analysis Center (NISAC) and $10,000,000 for hiring initiatives.

The agreement rejects the following proposed reductions to initiatives funded in fiscal year 2019: $11,400,000 for operations related to Industrial Control Systems; $3,000,000 for the SLTT cybersecurity information sharing program; $3,000,000 for cybersecurity services for the non-election critical infrastructure sectors; $7,971,000 for cybersecurity advisors; $4,300,000 for the Cybersecurity Education and Training Assistance Program; $3,600,000 for the Continuous Diagnostics and Mitigation program (CDM); $5,425,000 for regionalization efforts to improve service delivery to the field; $18,500,000 for the Chemical Facility Anti-Terrorism Standards program; $1,200,000 for the Office of Bombing Prevention Train-the-Trainer program; $9,738,000 for the NISAC; $1,700,000 for the software assurance program; and $2,000,000 to continue efforts to ensure the integrity of supply chains.

The agreement includes a total of $43,510,000 for the Election Infrastructure Security Initiative, $19,439,000 above the request, to support SLTT governments through the Multi-State Information Sharing and Analysis Center and the National Risk Management Center to increase election security and counter foreign influence.

Cybersecurity

Cybersecurity Workforce.—The agreement includes an increase of $7,100,000 above the request for CISA to expedite national cybersecurity education, training, and workforce development efforts to build a cybersecurity workforce as a national security asset. CISA is directed to develop a consolidated plan that defines a path to educate the cybersecurity workforce of the future and develop content that includes partnering with at least two academic institutions of higher education to cultivate a non-traditional workforce, focused on reaching rural, minority, gender diverse, and veteran populations. These efforts could include cybersecurity competitions and associated costs to identify cyber excellence throughout the nation and within the Federal government. The plan should also clearly articulate measurable outcomes for how efforts comply with Executive Order 13800 and its resulting recommendations. This program is subject to the briefing requirements described above.

To address the requirements described in the House ~~Report~~ and Senate Reports, a briefing shall be provided in collaboration with the Office of Management and Budget (OMB), the Department of Commerce, the Office of Personnel Management, and other agencies and organizations with responsibilities for this issue. CISA is further directed to brief the Committees, not later than 90 days after the date of enactment of this Act, on the deliverables required in the ''Solving the Federal Cybersecurity Workforce Shortage'' proposal; the Executive Order on America's Cybersecurity Workforce; and the November 16, 2017 report entitled ''Supporting the Growth and Sustainment of the Nation's Cybersecurity Workforce''.

CyberSentry.—The agreement includes $7,000,000 for the proposed CyberSentry pilot program, which is $4,000,000 less than the request due to revised cost estimates. Prior to obligating such funds, CISA is directed to brief the Committees on its plan for the program, to include: its process for choosing which vendors, if any, will be used to support the program; its process for choosing which industrial control system owner operators will be selected to participate in the program; and the performance measures that will be used to evaluate the program. Further, CISA is directed to include as a part of its program, an assessment of the state of the market to meet the capabilities sought by this pilot program and an evaluation of any market advancements required to meet such demands.

Federal Cybersecurity.—The agreement includes an increase above the request of $13,000,000 to accelerate data protection and dashboard deployment for the CDM program.

CISA is directed to provide a report not later than 180 days after the date of enactment of this Act detailing how CISA will modernize CDM and National Cybersecurity Protection System (NCPS), including EINSTEIN, to ensure they remain operationally effective given changing trends in technology, the federal workforce, threats, and vulnerabilities. The report shall address the requirements described in the House and Senate Reports.

Federal Network Services and Modernization.—The agreement includes $25,050,000 for a Cybersecurity Shared Services Office, as described in the House and Senate Reports.

Regionalization Effort.—The agreement includes an increase of $5,000,000 above the request to support expansion of CISA regional operations.

Threat Analysis and Response.—The agreement includes an increase of $34,000,000 above the request for threat detection and response capacity. This funding will help address gaps across CISA's threat-focused efforts, including analysis, counter-threat product development, operations planning, operational coordination, and hunt and response teams.

Vulnerability Management.—The agreement includes an increase of $58,500,000 above the request to increase CISA's service capacity for Federal and SLTT governments, critical infrastructure, and industrial control systems. Funds will be used to support the identification of new cybersecurity vulnerabilities and a coordinated plan for potential disclosures of such vulnerabilities, and for requirements of the National Vulnerability Database and the Common Vulnerability Enumeration. Funded activities include: vulnerability and risk analyses; enhancing assessment methodologies; cyber hygiene services; and other related requirements necessary to mature CISA's overall vulnerability management posture.

Infrastructure Protection

Bombing Prevention.—The agreement includes an increase of $5,367,000 above the request to: continue to expand the Train-the-Trainer program and other training modalities; enhance the National Counter-Improvised Explosive Device Capability Assessment Database and technical assistance initiatives needed to track and close capability gaps; and expand the Bomb-making Materials Awareness Program for explosive precursor security.

Regionalization Effort.—The agreement includes an increase of $4,200,000 above the request to continue to support CISA's regionalization effort.

Soft Targets and Crowded Places.—The agreement includes an increase of $5,000,000 above the request to continue CISA's efforts to improve the security of soft targets and crowded places, as described in the House Report.

Emergency Communications

First Responder Emergency Medical Communications.—The agreement includes $2,000,000 for CISA to administer SLTT projects, as in prior years, that aid in the implementation of the National Emergency Communications Plan and demonstration of emergency medical communications in rural areas.

Integrated Operations

The recommendation includes the following increases above the request: $15,000,000 to continue developing CISA's supply chain analysis capabilities, as described in the House ~~Report~~ and Senate Reports; and $1,850,000 to continue CISA's regionalization efforts.

Industrial Control Systems (ICS).—The agreement includes an increase of $10,000,000 above the request for risk analyses of ICS, to include water ICS, as described in the House Report.

Mission Support

The agreement rejects the proposed $3,230,000 reduction to mission support activities and provides an increase of $2,000,000 to improve recruitment and hiring efforts.

PROCUREMENT, CONSTRUCTION, AND IMPROVEMENTS

Cybersecurity

Continuous Diagnostics and Mitigation.—The agreement includes an increase of $75,884,000 above the request to support evolving requirements of CDM capabilities, to include: federal network infrastructure evolution and modernization; data protection and dashboard deployment; deployment of protections to mobile devices; and other enhancements. Of the amount provided, not less than $3,000,000 shall be for endpoint protection.

National Cybersecurity Protection System (NCPS).—The agreement includes $60,000,000 above the request for NCPS to establish and operate a centralized Federal Domain Name System egress service.

RESEARCH AND DEVELOPMENT

Cybersecurity

The agreement supports funding for cybersecurity research and development; through the Science and Technology Directorate instead of CISA as described in both the House and Senate Reports.

Integrated Operations

The agreement includes an increase of $5,000,000 above the request for the Technology Development and Deployment Program, as described in the House Report.

The agreement includes $3,000,000 above the request to develop capabilities to model, simulate, and conduct other advanced analytics of disruptions to cyber and infrastructure networks.

FEDERAL EMERGENCY MANAGEMENT AGENCY

OPERATIONS AND SUPPORT

The agreement provides $14,204,000 below the budget request. A realignment of $33,463,000 is included for facilities that directly support disaster response and recovery operations, as described under the Disaster Relief Fund (DRF). As requested, $2,000,000 is included in the Preparedness and Protection PPA for carrying out the Emergency Management Assistance Compact. The agreement also provides an additional $1,200,000 to support an urban flooding initiative, as described in the Senate Report; $4,294,000 for communications equipment and architecture as described in the House Report; and $858,000 for vehicle recapitalization at Mt. Weather. The agreement rejects the following proposed reductions: $1,800,000 to administer predisaster mitigation programs in conjunction with funds made available through the DRF; $1,000,000 for interoperable gateway system expansion; and $7,787,000 for personnel cost adjustments.

PROCUREMENT, CONSTRUCTION, AND IMPROVEMENTS

The agreement includes an increase of $19,700,000 above the budget request, including: $18,200,000 for design work and renovation of facilities at the Center for Domestic Preparedness; and $4,500,000 for deferred maintenance at the National Emergency Training

Center. A total of $3,000,000 is realigned to the DRF base account for facilities that directly support disaster response and recovery operations.

FEDERAL ASSISTANCE

The agreement includes an increase of $708,452,000 above the budget request, including $629,000 for personnel cost adjustments. The amount provided for this appropriation by PPA is as follows:

	Budget Estimate	Final Bill
Federal Assistance		
Grants		
State Homeland Security Grant Program	$331,939,000	$560,000,000
(Operation Stonegarden)	---	(90,000,000)
(Tribal Security Grant)	---	(15,000,000)
(Non-profit Security)	---	(40,000,000)
Urban Area Security Initiative	426,461,000	665,000,000
(Non-profit Security)	---	(50,000,000)
Public Transportation Security Assistance	36,358,000	100,000,000
(Amtrak Security)	---	(10,000,000)
(Over-the-Road Bus Security)	---	(2,000,000)
Port Security Grants	36,358,000	100,000,000
Assistance to Firefighter Grants	344,344,000	355,000,000
Staffing for Adequate Fire and Emergency Response (SAFER) Grants	344,344,000	355,000,000
Emergency Management Performance Grants	279,335,000	355,000,000
National Priorities Security Grant Program	435,350,000	---
Flood Hazard Mapping and Risk Analysis Program (RiskMAP)	100,000,000	263,000,000
Regional Catastrophic Preparedness Grants	---	10,000,000
High Hazard Potential Dams	---	10,000,000

Emergency Food and Shelter	---	125,000,000
Subtotal, Grants	$ 2,329,489,000	$2,898,000,000
Targeted Violence and Terrorism Prevention Grants (transfer from OSEM)	---	10,000,000
Education, Training, and Exercises		
Center for Domestic Preparedness	66,072,000	66,796,000
Center for Homeland Defense and Security	---	18,000,000
Emergency Management Institute	19,093,000	20,998,000
U.S. Fire Administration	46,605,000	46,844,000
National Domestic Preparedness Consortium	---	101,000,000
Continuing Training Grants	---	8,000,000
National Exercise Program	18,756,000	18,829,000
Subtotal, Education, Training, and Exercises	$150,526,000	$ 280,467,000
Subtotal, Federal Assistance	$2,480,015,000	$3,188,467,000

Continuing Training Grants.—The agreement includes $8,000,000 for Continuing Training Grants to support competitively-awarded training programs to address specific national preparedness gaps, such as cybersecurity, economic recovery, housing, and rural and tribal preparedness. Of this amount, not less than $3,000,000 shall be prioritized to be competitively awarded for Federal Emergency Management Agency-certified rural and tribal training.

U.S. Fire Administration.—Of the total provided for the U.S. Fire Administration, the agreement includes full funding for State Fire Training Grants, in addition to the funding direction provided in the Senate Report. Not later than 180 days after the date of enactment of this Act, FEMA shall brief the Committees on a plan for awarding such grants.

Urban Area Security Initiative (UASI).—Consistent with the Implementing Recommendations of the 9/11 Commission Act, the agreement requires FEMA to conduct risk assessments for the 100 most populous metropolitan statistical areas prior to making UASI grant

awards. It is expected that UASI funding will be limited to urban areas representing up to 85 percent of the cumulative national terrorism risk to urban areas and that resources will continue to be allocated in proportion to risk.

DISASTER RELIEF FUND

The agreement provides $17,863,259,000, which is $3,313,575,000 above the request. Of the total, $17,352,112,000 is provided through the budget cap adjustment for major disaster response and recovery activities and $511,147,000 is for base DRF activities.

Disaster Readiness and Support.—After the fiscal year 2020 President's budget was submitted, a request was made to realign FEMA funding for facilities that directly support disaster response and recovery operations. The realignment of $33,463,000 from Operations and Support and $3,000,000 from Procurement, Construction, and Improvements (PC&I) to the DRF base is reflected in the bill. With the exception of this purpose, FEMA is directed to continue to adhere to the direction in House Report 114–215 with regard to the purposes of the Operations and Support and DRF base accounts.

FEMA is directed to submit a report to the Committees not later than 60 days after the date of enactment of this Act, documenting the criteria and guidance for determining when an expense should be charged to the DRF base, to Operations and Support, or to another account for future years. The report shall also include amounts by fiscal year and by account for all activities described in House report 114–215 related to these disaster related activities since fiscal year 2016. The purpose of this information is to facilitate oversight by enabling cost comparisons in future years.

Predisaster Hazard Mitigation.—FEMA is directed to brief the Committees not later than 30 days after the date of enactment of this Act on the implementation of programs under section 203 of the Stafford Act. The briefing shall include: the status of transitioning the Predisaster Mitigation Grant Program (PDM) to National Public Infrastructure Pre-Disaster Mitigation Assistance (NPIPMA) program; a schedule for implementing and awarding such grants not later than the end of fiscal year 2020; how input provided by SLTT has been incorporated; how the needs of mitigation partners will be met; and how innovation and incentives will be incorporated into the program. Further, the briefing shall include a timeframe for documenting a clear policy on how FEMA will account for variations in funding levels based on the nature of NPIPMA being a percentage of disaster spending. The policy should ensure SLTT can plan for effective

projects by avoiding disruptive fluctuations in funding levels. Last, the briefing shall include a clear plan for how FEMA can best use funds recovered from previous PDM projects, with a clear description of the amount and source of the funds.

NATIONAL FLOOD INSURANCE FUND

The agreement includes an increase of $616,000 above the budget request for personnel cost adjustments.

TITLE III—ADMINISTRATIVE PROVISIONS ~~THIS ACT~~

Section 301. The agreement continues a provision limiting expenses for administration of grants.

Section 302. The agreement continues a provision specifying timeframes for certain grant applications and awards.

Section 303. The agreement continues a provision specifying timeframes for information on certain grant awards.

Section 304. The agreement continues a provision that addresses the availability of certain grant funds for the installation of communications towers.

Section 305. The agreement continues a provision requiring a report on the expenditures of the DRF.

Section 306. The agreement includes and modifies a provision permitting certain waivers to SAFER grant program requirements.

Section 307. The agreement continues a provision providing for the receipt and expenditure of fees collected for the Radiological Emergency Preparedness Program, as authorized by Public Law 105–276.

TITLE IV—RESEARCH, DEVELOPMENT, TRAINING, AND SERVICES

UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES

OPERATIONS AND SUPPORT

The agreement includes an increase of $809,000 above the budget request for personnel cost adjustments.

Application Processing.—The agreement directs USCIS to brief the Committees within 90 days of the date of enactment of this Act on the number of application forms processed by month for fiscal years 2016 through 2019 for the following: form I-130 (Petition for Alien Relative); form I-485 (Application to Register Permanent Residence or Adjust Status); form I-751 (Petition to Remove Conditions on Residence); form N-400 (Application for Naturalization); and forms for initial and renewed employment authorization. The briefing shall include the following data, where applicable, on the immigration status of the petitioner (U.S. citizen or legal permanent resident); nationality of the applicant; processing time; and field office or service center to which the application was assigned. The briefing will also include reasons for delays in processing applications and petitions, including employment authorizations, and what steps USCIS is taking to address the delays.

Fee Waivers.—USCIS is encouraged to continue the use of fee waivers for applicants who demonstrate an inability to pay the naturalization fee, and to consider, in consultation with the Office of the Citizenship and Immigration Services Ombudsman (CIS Ombudsman), whether the current naturalization fee is a barrier to naturalization for those earning between 150 percent and 200 percent of the federal poverty guidelines and who are not currently eligible for a fee waiver, and provide a briefing to the Committees within 60 days of the date of enactment of this Act.

Further, USCIS is encouraged to refrain from imposing fees on any individual filing a humanitarian petition, including, but not limited to, individuals requesting asylum; refugee admission; protection under the Violence Against Women Act; Special Immigrant Juvenile status; a T or U visa; or requests adjustment of status or petitions for another benefit after receiving humanitarian protection. USCIS shall consult with the CIS Ombudsman on the impact of imposing such fees and provide a briefing to the Committees within 60 days of the date of enactment of this Act.

H-2A and H-2B Visa Program Processes.—Not later than 120 days after the date of enactment of this Act, DHS, the Department of Labor, the Department of State, and the United States Digital Service are directed to report on options to improve the execution of the H-2A and H-2B visa programs, including: processing efficiencies; combatting human trafficking; protecting worker rights; and reducing employer burden, to include the disadvantages imposed on such employers due to the current semiannual distribution of H-2B visas on October 1 and April 1 of each fiscal year.

USCIS is encouraged to leverage prior year materials relating to the issuance of additional H-2B visas, to include previous temporary final rules, to improve processing efficiencies.

FEDERAL ASSISTANCE

The recommendation includes $10,000,000 above the request to support the Citizenship and Integration Grant Program. In addition, USCIS continues to have the authority to accept private donations to support this program. ~~The Committee directs~~ USCIS is directed to provide an update on its planned use of this authority not later than 30 days after the date of enactment of this Act, to include efforts undertaken to solicit private donations.

FEDERAL LAW ENFORCEMENT TRAINING CENTERS

OPERATIONS AND SUPPORT

The agreement provides $292,997,000 for Operations and Support, including $724,000 for personnel cost adjustments and $6,755,000 to support additional basic training requirements.

PROCUREMENT, CONSTRUCTION, AND IMPROVEMENTS

The agreement provides an increase of $11,824,000 above the request for the highest priority Procurement, Construction, and Improvements projects. Federal Law Enforcement Training Centers is required to brief the Committees not later than 30 days after the date of enactment of this Act on the proposed allocation of funds, by project, and to subsequently update the Committees on any changes from the planned allocation.

SCIENCE AND TECHNOLOGY DIRECTORATE

OPERATIONS AND SUPPORT

The agreement provides $314,864,000 for Operations and Support. The agreement does not accept the proposed decreases to Operations and Support and includes $2,472,500 above the requested ~~budget~~ for personnel cost adjustments.

RESEARCH AND DEVELOPMENT

The agreement includes $119,248,000 above the request for Research and Development. The Science and Technology Directorate is directed to consider projects referenced in the House and Senate Reports and brief the Committees not later than 30 days after the date of enactment of this Act on the proposed allocation of Research and Development funds by project and to subsequently update the Committee on any changes from the planned allocation. The intent of Senate language on Software Assurances is to support self-adapting security mechanisms that can quickly respond to cyberattacks by deploying countermeasures to increase system resiliency.

COUNTERING WEAPONS OF MASS DESTRUCTION OFFICE

OPERATIONS AND SUPPORT

The agreement provides $179,467,000 for Operations and Support, including an increase of $841,000 for personnel cost adjustments.

The proposed realignments of funding for radiation portal monitors and portable detection system from Procurement, Construction, and Improvements to Operations and Support are rejected. Funding for these programs is provided in Procurement, Construction, and Improvements as described.

PROCUREMENT, CONSTRUCTION, AND IMPROVEMENTS

The agreement provides $118,988,000 for Procurement, Construction, and Improvements. Of the total, $27,000,000 is included for portable detection systems and $13,747,000 is for radiation portal monitor programs. Funding for development of uranium target plates, as described in the House Report, is not included in the total, as that effort is addressed in another Act.

RESEARCH AND DEVELOPMENT

The agreement provides $69,181,000 for Research and Development, of which an increase of $1,500,000 above the request is for active neutron interrogation in the Transformational Research and Development PPA as described in the Senate Report.

TITLE IV—ADMINISTRATIVE PROVISIONS ~~—THIS ACT~~

Section 401. The agreement continues a provision allowing USCIS to acquire, operate, equip, and dispose of up to five vehicles under certain scenarios.

Section 402. The agreement continues a provision limiting the use of A-76 competitions by USCIS.

Section 403. The agreement includes a provision requiring USCIS to provide data about its credible and reasonable fear processes.

Section 404. The agreement continues a provision authorizing the Director of FLETC to distribute funds for incurred training expenses.

Section 405. The agreement continues a provision directing the FLETC Accreditation Board to lead the federal law enforcement training accreditation process to measure and assess federal law enforcement training programs, facilities, and instructors.

Section 406. The agreement continues a provision allowing the acceptance of transfers from government agencies into "Federal Law Enforcement Training Center—Procurement, Construction, and Improvements".

Section 407. The agreement continues a provision classifying FLETC instructor staff as inherently governmental for certain considerations.

TITLE V – GENERAL PROVISIONS

(INCLUDING RESCISSIONS OF FUNDS)

Section 501. The agreement continues a provision directing that no part of any appropriation shall remain available for obligation beyond the current year unless expressly provided.

Section 502. The agreement continues a provision providing authority to merge unexpended balances of prior appropriations with new appropriation accounts, to be used for the same purpose, subject to reprogramming guidelines.

Section 503. The agreement continues a provision limiting reprogramming authority for funds within an appropriation and providing limited authority for transfers between appropriations. All components funded by the Department of Homeland Security Appropriations Act, 20~~19~~20, must comply with these transfer and reprogramming requirements.

The Department must notify the Committees on Appropriations prior to each reprogramming of funds that would reduce programs, projects, activities, or personnel by ten percent or more. Notifications are also required for each reprogramming of funds that would increase a program, project, or activity by more than $5,000,000 or ten percent, whichever is less. The Department must submit these notifications to the Committees on Appropriations at least 15 days in advance of any such reprogramming.

For purposes of reprogramming notifications, "program, project, or activity" is defined as an amount identified in the detailed funding table located at the end of this statement or an amount directed for a specific purpose in this statement. Also, for purposes of reprogramming notifications, the creation of a new program, project, or activity is defined as any significant new activity that has not been explicitly justified to the Congress in budget justification material and for which funds have not been appropriated by the Congress. For further guidance when determining which movements of funds are subject to section 503, the Department is reminded to follow GAO's definition of "program, project, or activity" as detailed in the GAO's *A Glossary of Terms Used in the Federal Budget Process*. Within 30 days of the date of enactment of this Act, the Department shall submit to the Committees a table delineating PPAs subject to section 503 notification requirements, as defined in this paragraph.

Limited transfer authority is provided to give the Department flexibility in responding to emerging requirements and significant changes in circumstances, but is not primarily intended to facilitate the implementation of new programs, projects, or activities that were not proposed in a formal budget submission. Transfers may not reduce accounts by more than five percent or increase accounts by more than ten percent. The Committees on Appropriations must be notified not fewer than 30 days in advance of any transfer.

To avoid violations of the Anti-Deficiency Act, the Secretary shall ensure that any transfer of funds is carried out in compliance with the limitations and requirements of section 503(b). In particular, the Secretary should ensure that any such transfers adhere to the opinion of the Comptroller General's decision in *the Matter of: John D. Webster, Director, Financial Services, Library of Congress, dated November 7, 1997*, with regard to the definition of an appropriation subject to transfer limitations.

The Department shall submit notifications on a timely basis and provide complete explanations of the proposed reallocations, including detailed justifications for the increases and offsets, and any specific impact the proposed changes would have on the budget request for the following fiscal year and future-year appropriations requirements. Each notification submitted to the Committees should include a detailed table showing the proposed revisions to funding and FTE – at the account, program, project, and activity level – for the current fiscal year, along with any funding and FTE impacts on the budget year.

The Department shall manage its programs, projects, and activities within the levels appropriated, and should only submit reprogramming or transfer notifications in cases of unforeseeable and compelling circumstances that could not have been predicted when formulating the budget request for the current fiscal year. When the Department submits a reprogramming or transfer notification and does not receive identical responses from the House and Senate Committees, it is expected to reconcile the differences before proceeding.

The Department is not to submit a reprogramming or transfer notification after June 30 except in extraordinary circumstances that imminently threaten the safety of human life or the protection of property. If an above-threshold reprogramming or a transfer is needed after June 30, the notification should contain sufficient documentation as to why it meets this statutory exception.

Deobligated funds are also subject to the reprogramming and transfer limitations and requirements set forth in section 503.

Section 503(f) authorizes the Secretary to transfer up to $20,000,000 to address immigration emergencies after notifying the Committees of such transfer at least five days in advance.

Section 504. The agreement continues a provision by reference, prohibiting funds appropriated or otherwise made available to the Department to make payment to the WCF, except for activities and amounts allowed in the President's fiscal year ~~2019~~ 2020 budget request. Funds provided to the WCF are available until expended. The Department can only charge components for direct usage of the WCF and these funds may be used only for the purposes consistent with the contributing component. Any funds paid in advance or for reimbursement must reflect the full cost of each service. The Department shall submit a notification prior to adding a new activity to the fund or eliminating an existing activity from the fund. For activities added to the fund, such notifications shall detail the source of funds by PPA. In addition, the Department shall submit quarterly WCF execution reports to the Committees that include activity level detail.

Section 505. The agreement continues a provision providing that not to exceed 50 percent of unobligated balances from prior-year appropriations for each Operations and Support appropriation, shall remain available through fiscal year 20~~20~~21, subject to section 503 reprogramming requirements.

Section 506. The agreement continues a provision that deems intelligence activities to be specifically authorized during fiscal year 2020 until the enactment of an Act authorizing intelligence activities for fiscal year 2020.

Section 507. The agreement continues a provision requiring notification to the Committees at least three days before DHS executes or announces grant allocations; grant awards; contract awards, including contracts covered by the Federal Acquisition Regulation; other transaction agreements; letters of intent; task or delivery orders on multiple contract awards totaling $1,000,000 or more; task or delivery orders greater than $10,000,000 from multi-year funds; or sole-source grant awards. Notifications shall include a description of the project or projects or activities to be funded and the location, including city, county, and state. If the Secretary determines that compliance would pose substantial risk to health, human life, or safety,

an award may be made without prior notification but the Committees shall be notified within 5 full business days after such award or letter is issued.

Section 508. The agreement continues a provision prohibiting all agencies from purchasing, constructing, or leasing additional facilities for federal law enforcement training without advance notification to the Committees.

Section 509. The agreement continues a provision prohibiting the use of funds for any construction, repair, alteration, or acquisition project for which a prospectus, if required under chapter 33 of title 40, United States Code, has not been approved.

Section 510. The agreement continues a provision that includes and consolidates by reference prior-year statutory provisions related to a contracting officer's technical representative training; sensitive security information; and the use of funds in conformance with section 303 of the Energy Policy Act of 1992.

Section 511. The agreement continues a provision prohibiting the use of funds in contravention of the Buy American Act.

Section 512. The agreement continues a provision regarding the oath of allegiance required by section 337 of the Immigration and Nationality Act.

Section 513. The agreement continues a provision that precludes DHS from using funds in this Act to carry out reorganization authority. This prohibition is not intended to prevent the Department from carrying out routine or small reallocations of personnel or functions within components, subject to section 503 of this Act. This section prevents large-scale reorganization of the Department, which should be acted on legislatively by the relevant congressional committees of jurisdiction. Any DHS proposal to reorganize components that is included as part of a budget request will be considered by the Committees.

Section 514. The agreement continues a provision prohibiting funds for planning, testing, piloting, or developing a national identification card.

Section 515. The agreement continues a provision directing that any official required by this Act to report or certify to the Committees on Appropriations may not delegate such authority unless expressly authorized to do so in this Act.

Section 516. The agreement continues a provision prohibiting the use of funds for the transfer or release of individuals detained at United States Naval Station, Guantanamo Bay, Cuba into or within the United States.

Section 517. The agreement continues a provision prohibiting funds in this Act to be used for first-class travel.

Section 518. The agreement continues a provision prohibiting the use of funds to employ illegal workers as described in Section 274A(h)(3) of the Immigration and Nationality Act.

Section 519. The agreement continues a provision prohibiting funds appropriated or otherwise made available by this Act to pay for award or incentive fees for contractors with below satisfactory performance or performance that fails to meet the basic requirements of the contract.

Section 520. The agreement continues a provision prohibiting the use of funds to enter into a federal contract unless the contract meets requirements of the Federal Property and Administrative Services Act of 1949 or chapter 137 of title 10 U.S.C., and the Federal Acquisition Regulation, unless the contract is otherwise authorized by statute without regard to this section.

Section 521. The agreement continues a provision requiring DHS computer systems to block electronic access to pornography, except for law enforcement purposes.

Section 522. The agreement continues a provision regarding the transfer of firearms by federal law enforcement personnel.

Section 523. The agreement continues a provision regarding funding restrictions and reporting requirements related to conferences occurring outside of the United States.

Section 524. The agreement continues a provision prohibiting funds to reimburse any Federal department or agency for its participation in a National Special Security Event.

Section 525. The agreement continues a provision requiring a notification, including justification materials, prior to implementing any structural pay reform that affects more than 100 FTPs or costs more than $5,000,000.

Section 526. The agreement continues a provision directing the Department to post on a public website reports required by the Committees on Appropriations unless public posting compromises homeland or national security or contains proprietary information.

Section 527. The agreement continues a provision authorizing minor procurement, construction, and improvements under Operations and Support accounts.

Section 528. The agreement continues a provision related to the Arms Trade Treaty.

Section 529. The agreement continues a provision to authorize discretionary funding for primary and secondary schooling of dependents in areas in territories that meet certain criteria. The provision provides limitations on the type of eligible funding sources.

Section 530. The agreement continues a provision providing $41,000,000 for "Federal Emergency Management Agency—Federal Assistance" to reimburse extraordinary law enforcement personnel overtime costs for protection activities directly and demonstrably associated with a residence of the President that is designated for protection.

Section 531. The bill continues and modifies a provision extending other transaction authority for the Department through fiscal year 2020.

Section 532. The agreement includes and modifies a provision regarding congressional visits to detention facilities.

Section 533. The agreement includes a provision prohibiting the use of funds to use restraints on pregnant detainees in DHS custody except in certain circumstances.

Section 534. The agreement continues a provision prohibiting the use of funds for the destruction of records related to the sexual abuse or assault of detainees in custody.

Section 535. The agreement continues a provision prohibiting funds for the Principal Federal Official during a Stafford Act declared disaster or emergency, with certain exceptions.

Section 536. The agreement continues a provision concerning offsets for fee increase proposals.

Section 537. The agreement includes a new provision rescinding emergency supplemental funding.

Section 538. The agreement includes a provision rescinding unobligated balances from specified sources.

Section 539. The agreement includes a provision rescinding lapsed balances pursuant to Section 505 of this bill.

Section 540. The agreement includes a provision rescinding unobligated balances from the Disaster Relief Fund.

NOTE TO PRINTER
CAMERA SHOOT PAGES
38-73. DO NOT SET

DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2020
(Amounts in thousands)

	FY 2019 Enacted	FY 2020 Request	Final Bill	Final Bill vs Enacted	Final Bill vs Request
DEPARTMENT OF HOMELAND SECURITY					
TITLE I - DEPARTMENTAL MANAGEMENT, OPERATIONS, INTELLIGENCE, & OVERSIGHT					
Office of the Secretary and Executive Management					
Operations and Support:					
Management and Oversight					
Office of the Secretary	18,527	18,374	18,567	+40	+193
Office of Public Affairs	5,321	5,185	5,255	-66	+70
Office of Legislative Affairs	5,462	5,843	5,830	+368	-13
Office of General Counsel	19,379	21,484	21,570	+2,191	+86
Privacy Office	8,664	8,593	9,993	+1,329	+1,400
Subtotal, Management and Oversight	57,353	59,479	61,215	+3,862	+1,736
Office of Strategy, Policy and Plans	37,950	35,680	48,571	+10,621	+12,891
Operations and Engagement					
Office for Civil Rights and Civil Liberties	25,312	23,938	28,824	+3,512	+4,886
Office of the Citizenship and Immigration Services Ombudsman	6,200	7,780	8,216	+2,016	+436
Office of the Immigration Detention Ombudsman	---	---	10,000	+10,000	+10,000

DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2020
(Amounts in thousands)

	FY 2019 Enacted	FY 2020 Request	Final Bill	Final Bill vs Enacted	Final Bill vs Request
Office of Partnership and Engagement	14,566	14,433	11,982	-2,584	-2,451
Subtotal, Operations and Engagement	46,078	46,151	59,022	+12,944	+12,871
Subtotal, Operations and Support	141,381	141,310	168,808	+27,427	+27,498
Federal Assistance:					
Office of Strategy, Policy, and Plans					
Targeted Violence and Terrorism Prevention Grants	---	---	10,000	+10,000	+10,000
FEMA Assistance Grants (transfer out)	---	---	(-10,000)	(-10,000)	(-10,000)
Total, Office of the Secretary and Executive Management	141,381	141,310	178,808	+37,427	+37,498
(transfer out)	---	---	-10,000	-10,000	-10,000
Net Budget Authority, Office of the Secretary and Executive Management	141,381	141,310	168,808	+27,427	+27,498
Management Directorate					
Operations and Support:					
Immediate Office of the Under Secretary for Management	7,788	7,881	7,903	+115	+22
Office of the Chief Readiness Support Officer	90,726	100,659	101,063	+10,337	+404
Office of the Chief Human Capital Officer	106,344	115,296	116,158	+9,814	+862
Office of the Chief Security Officer	79,431	82,702	83,476	+4,045	+774

DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2020
(Amounts in thousands)

	FY 2019 Enacted	FY 2020 Request	Final Bill	Final Bill vs Enacted	Final Bill vs Request
Office of the Chief Procurement Officer	104,169	108,435	109,741	+5,572	+1,306
Office of the Chief Financial Officer	67,341	90,071	90,829	+23,488	+758
Office of the Chief Information Officer	397,230	416,884	418,246	+21,016	+1,362
Office of Biometric Identity Management					
Identity and Screening Program Operations	70,117	70,156	70,820	+703	+664
IDENT/Homeland Advanced Recognition Technology	160,691	183,906	183,906	+23,215	---
Subtotal, Office of Biometric Identity Management	230,808	254,062	254,726	+23,918	+664
Subtotal, Operations and Support	1,083,837	1,175,990	1,182,142	+98,305	+6,152
Procurement, Construction, and Improvements:					
Construction and Facility Improvements	120,000	223,767	223,767	+103,767	---
Mission Support Assets and Infrastructure	35,920	157,531	142,034	+106,114	-15,497
IDENT/Homeland Advanced Recognition Technology	20,000	---	15,497	-4,503	+15,497
Subtotal, Procurement, Construction, and Improvements	175,920	381,298	361,298	+205,378	---
Research and Development	2,545	---	---	-2,545	---

DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2020
(Amounts in thousands)

	FY 2019 Enacted	FY 2020 Request	Final Bill	Final Bill vs Enacted	Final Bill vs Request
Federal Protective Service:					
FPS Operations					
Operating Expenses	---	---	387,500	+387,500	+387,500
Countermeasures					
Protective Security Officers	---	---	1,148,400	+1,148,400	+1,148,400
Technical Countermeasures	---	---	24,030	+24,030	+24,030
Subtotal, Federal Protective Service (Gross)	---	---	1,559,930	+1,559,930	+1,559,930
Offsetting Collections	---	---	-1,559,930	-1,559,930	-1,559,930
Subtotal, Federal Protective Service (Net)	---	---	---	---	---
Total, Management Directorate	1,262,302	1,557,288	1,563,440	+301,138	+6,152
(Discretionary Appropriations)	(1,262,302)	(1,557,288)	(3,123,370)	(+1,861,068)	(+1,566,082)
(Offsetting Collections)	---	---	(-1,559,930)	(-1,559,930)	(-1,559,930)
Intelligence, Analysis, and Operations Coordination					
Operations and Support	253,253	276,641	284,141	+30,888	+7,500

DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2020
(Amounts in thousands)

	FY 2019 Enacted	FY 2020 Request	Final Bill	Final Bill vs Enacted	Final Bill vs Request
Office of Inspector General					
Operations and Support	168,000	170,186	190,186	+22,186	+20,000
Total, Title I, Departmental Management, Operations, Intelligence, and Oversight	1,824,936	2,145,425	2,216,575	+391,639	+71,150
(Discretionary Appropriations)	(1,824,936)	(2,145,425)	(3,776,505)	(+1,951,569)	(+1,631,080)
(Offsetting Collections)	---	---	(-1,559,930)	(-1,559,930)	(-1,559,930)
(Transfer out)	---	---	(-10,000)	(-10,000)	(-10,000)
TITLE II - SECURITY, ENFORCEMENT, AND INVESTIGATIONS					
U.S. Customs and Border Protection					
Operations and Support:					
Border Security Operations					
U.S. Border Patrol					
Operations	3,884,735	4,068,792	3,958,450	+73,715	-110,342
Emergency Appropriations	---	---	203,000	+203,000	+203,000
Assets and Support	794,117	773,948	696,858	-97,259	-77,090

DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2020
(Amounts in thousands)

	FY 2019 Enacted	FY 2020 Request	Final Bill	Final Bill vs Enacted	Final Bill vs Request
Office of Training and Development	60,349	76,954	60,236	-113	-16,718
Subtotal, Border and Security Operations	4,739,201	4,919,694	4,918,544	+179,343	-1,150
Trade and Travel Operations:					
Office of Field Operations					
Domestic Operations	2,942,710	2,806,833	3,074,199	+131,489	+267,366
International Operations	155,217	145,756	144,940	-10,277	-816
Targeting Operations	250,528	265,128	241,449	-9,079	-23,679
Assets and Support	892,174	980,560	983,568	+91,394	+3,008
Office of Trade	260,395	297,418	279,362	+18,967	-18,058
Office of Training and Development	61,677	47,560	65,515	+3,838	+17,955
Subtotal, Trade and Travel Operations	4,562,701	4,543,255	4,789,033	+226,332	+245,778
Integrated Operations:					
Air and Marine Operations					
Operations	306,506	311,846	314,425	+7,919	+2,579
Assets and Support	525,867	533,768	533,768	+7,901	---
Air and Marine Operations Center	37,589	44,799	36,650	-939	-8,149
Office of International Affairs	41,700	44,541	42,134	+434	-2,407
Office of Intelligence	59,148	66,036	61,685	+2,537	-4,351
Office of Training and Development	6,546	6,102	6,886	+340	+784
Operations Support	112,235	139,799	173,569	+81,334	+33,770
Subtotal, Integrated Operations	1,089,591	1,146,891	1,169,117	+79,526	+22,226

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DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2020
(Amounts in thousands)

	FY 2019 Enacted	FY 2020 Request	Final Bill	Final Bill vs Enacted	Final Bill vs Request
Mission Support					
Enterprise Services	1,482,518	1,561,823	1,537,332	+54,814	-24,491
(Harbor Maintenance Trust Fund)	(3,274)	(3,274)	(3,274)	---	---
Office of Professional Responsibility	196,528	232,986	209,052	+12,524	-23,934
Executive Leadership and Oversight	109,190	108,843	112,321	+3,131	+3,478
Subtotal, Mission Support	1,788,236	1,903,652	1,858,705	+70,469	-44,947
Subtotal, Operations and Support	12,179,729	12,513,492	12,735,399	+555,670	+221,907
(Appropriations)	(12,179,729)	(12,513,492)	(12,532,399)	(+352,670)	(+18,907)
(Emergency Appropriations)	---	---	(203,000)	(+203,000)	(+203,000)
Procurement, Construction, and Improvements:					
Border Security Assets and Infrastructure	1,475,000	5,083,782	1,508,788	+33,788	-3,574,994
Trade and Travel Assets and Infrastructure	625,000	66,124	88,124	-536,876	+22,000
Integrated Operations Assets and Infrastructure					
Airframes and Sensors	112,612	122,189	184,689	+72,077	+62,500
Watercraft	14,500	14,830	14,830	+330	---
Construction and Facility Improvements	270,222	99,593	62,364	-207,858	-37,229
Mission Support Assets and Infrastructure	18,544	15,673	15,673	-2,871	---
Emergency Appropriations	---	---	30,000	+30,000	+30,000
Subtotal, Procurement, Construction, and Improvements	2,515,878	5,402,191	1,904,468	-611,410	-3,497,723
(Appropriations)	(2,515,878)	(5,402,191)	(1,874,468)	(-641,410)	(-3,527,723)
(Emergency Appropriations)	---	---	(30,000)	(+30,000)	(+30,000)

DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2020
(Amounts in thousands)

	FY 2019 Enacted	FY 2020 Request	Final Bill	Final Bill vs Enacted	Final Bill vs Request
CBP Services at User Fee Facilities (Small Airport) (Permanent Indefinite Discretionary)	8,941	9,000	9,000	+59	---
Fee Funded Programs:					
Immigration Inspection User Fee	(769,636)	(826,447)	(826,447)	(+56,811)	---
Immigration Enforcement Fines	(676)	(305)	(305)	(-371)	---
Electronic System for Travel Authorization (ESTA) Fee	(61,417)	(225,184)	(64,384)	(+2,967)	(-160,800)
Land Border Inspection Fee	(53,512)	(56,467)	(56,467)	(+2,955)	---
COBRA Passenger Inspection Fee	(594,978)	(615,975)	(615,975)	(+20,997)	---
APHIS Inspection Fee	(539,325)	(539,325)	(539,325)	---	---
Global Entry Fee	(165,961)	(184,937)	(184,937)	(+18,976)	---
Puerto Rico Trust Fund	(31,941)	(94,507)	(94,507)	(+62,566)	---
Virgin Island Fee	(7,795)	(11,537)	(11,537)	(+3,742)	---
Customs Unclaimed Goods	(1,461)	(1,547)	(1,547)	(+86)	---
9-11 Response and Biometric Exit Account	(71,000)	(61,000)	(61,000)	(-10,000)	---
Subtotal, Fee Funded Programs	2,297,702	2,617,231	2,456,431	+158,729	-160,800
Administrative Provisions					
Colombia Free Trade Act Collections	255,000	267,000	267,000	+12,000	---

DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2020
(Amounts in thousands)

	FY 2019 Enacted	FY 2020 Request	Final Bill	Final Bill vs Enacted	Final Bill vs Request
Reimbursable Preclearance	39,000	39,000	39,000	---	---
Reimbursable Preclearance (Offsetting Collections)	-39,000	-39,000	-39,000	---	---
Total, Adminstrative Provisions	255,000	267,000	267,000	+12,000	---
Total, U.S. Customs and Border Protection	14,959,548	18,191,683	14,915,867	-43,681	-3,275,816
(Appropriations)	(14,998,548)	(18,230,683)	(14,721,867)	(-276,681)	(-3,508,816)
(Offsetting Collections)	(-39,000)	(-39,000)	(-39,000)	---	---
(Emergency Appropriations)	---	---	(233,000)	(+233,000)	(+233,000)
Fee Funded Programs	2,297,702	2,617,231	2,456,431	+158,729	-160,800
Gross Budget Authority, U.S. Customs and Border Protection	17,296,250	20,847,914	17,411,298	+115,048	-3,436,616
U.S. Immigration and Customs Enforcement					
Operations and Support:					
Homeland Security Investigations					
Domestic Investigations	1,658,935	1,429,644	1,769,410	+110,475	+339,766
International Investigations	172,986	169,503	178,806	+5,820	+9,303
Intelligence	84,292	84,056	94,105	+9,813	+10,049
Subtotal, Homeland Security Investigations	1,916,213	1,683,203	2,042,321	+126,108	+359,118

DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2020
(Amounts in thousands)

	FY 2019 Enacted	FY 2020 Request	Final Bill	Final Bill vs Enacted	Final Bill vs Request
Enforcement and Removal Operations					
Custody Operations	3,170,845	3,691,594	3,142,520	-28,325	-549,074
Fugitive Operations	125,969	220,155	139,622	+13,653	-80,533
Criminal Alien Program	219,074	515,075	265,228	+46,154	-249,847
Alternatives to Detention	274,621	209,913	319,213	+44,592	+109,300
Transportation and Removal Program	483,348	557,329	562,450	+79,102	+5,121
Subtotal, Enforcement and Removal Operations	4,273,857	5,194,066	4,429,033	+155,176	-765,033
Mission Support	1,091,898	1,498,839	1,271,110	+179,212	-227,729
Office of the Principal Legal Advisor	260,185	326,317	290,337	+30,152	-35,980
Subtotal, Operations and Support	7,542,153	8,702,425	8,032,801	+490,648	-669,624
Procurement, Construction, and Improvements					
Operational Communications/Information Technology	30,859	7,800	10,300	-20,559	+2,500
Construction and Facility Improvements	10,000	70,970	36,970	+26,970	-34,000
Mission Support Assets and Infrastructure	4,700	---	---	-4,700	---
Subtotal, Procurement, Construction, and Improvements	45,559	78,770	47,270	+1,711	-31,500

DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2020
(Amounts in thousands)

	FY 2019 Enacted	FY 2020 Request	Final Bill	Final Bill vs Enacted	Final Bill vs Request
Fee Funded Programs					
Immigration Inspection User Fee	(135,000)	(135,000)	(135,000)	---	---
Breached Bond/Detention Fund	(55,000)	(55,000)	(55,000)	---	---
Student Exchange and Visitor Fee	(128,000)	(129,800)	(129,800)	(+1,800)	---
Immigration Examination Fee Account	---	(207,600)	---	---	(-207,600)
Subtotal, Fee Funded Programs	318,000	527,400	319,800	+1,800	-207,600
Total, U.S. Immigration and Customs Enforcement	7,587,712	8,781,195	8,080,071	+492,359	-701,124
Fee Funded Programs	318,000	527,400	319,800	+1,800	-207,600
Gross Budget Authority, U.S. Immigration and Customs Enforcement	7,905,712	9,308,595	8,399,871	+494,159	-908,724
Transportation Security Administration					
Operations and Support:					
Aviation Screening Operations					
Screening Workforce					
Screening Partnership Program	197,062	183,370	226,375	+29,313	+43,005
Screener Personnel, Compensation, and Benefits	3,347,774	3,271,468	3,523,547	+175,773	+252,079
Screener Training and Other	230,234	232,356	243,605	+13,371	+11,249
Airport Management	658,479	620,635	637,005	-21,474	+16,370
Canines	164,597	153,354	166,861	+2,264	+13,507
Screening Technology Maintenance	398,137	390,240	468,964	+70,827	+78,724
Secure Flight	114,406	114,958	115,657	+1,251	+699
Subtotal, Aviation Screening Operations	5,110,689	4,966,381	5,382,014	+271,325	+415,633

DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2020
(Amounts in thousands)

	FY 2019 Enacted	FY 2020 Request	Final Bill	Final Bill vs Enacted	Final Bill vs Request
Other Operations and Enforcement:					
Inflight Security					
Federal Air Marshals	763,598	743,291	755,682	-7,916	+12,391
Federal Flight Deck Officer and Crew Training	22,615	16,697	24,606	+1,991	+7,909
Aviation Regulation	220,235	181,487	230,560	+10,325	+49,073
Air Cargo	104,629	104,066	105,497	+868	+1,409
Intelligence and TSOC	80,324	75,905	76,972	-3,352	+1,067
Surface programs	130,141	72,826	140,961	+10,820	+68,135
Vetting Programs	53,016	51,395	51,723	-1,293	+328
Subtotal, Other Operations and Enforcement	1,374,558	1,245,689	1,386,001	+11,443	+140,312
Mission Support	924,832	903,125	912,550	-12,282	+9,425
Subtotal, Operations and Support (Gross)	7,410,079	7,115,195	7,680,565	+270,486	+565,370
Aviation Passenger Security Fees (offsetting collections)	-2,670,000	-2,830,000	-2,830,000	-160,000	---
Passenger Security Fee Increase (offsetting collections)(legislative proposal)	---	-550,000	---	---	+550,000
Subtotal, Operations and Support (Net)	4,740,079	3,735,195	4,850,565	+110,486	+1,115,370

DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2020
(Amounts in thousands)

	FY 2019 Enacted	FY 2020 Request	Final Bill	Final Bill vs Enacted	Final Bill vs Request
Procurement, Construction, and Improvements:					
Aviation Screening Infrastructure					
Checkpoint Support	94,422	148,600	70,100	-24,322	-78,500
Checked Baggage	75,367	14,023	40,000	-35,367	+25,977
Subtotal, Procurement, Construction, and Improvements	169,789	162,623	110,100	-59,689	-52,523
Research and Development	20,594	20,902	22,902	+2,308	+2,000
Fee Funded Programs:					
TWIC Fee	(65,535)	(61,364)	(61,364)	(-4,171)	---
Hazardous Materials Endorsement Fee	(18,500)	(18,600)	(18,600)	(+100)	---
General Aviation at DCA Fee	(700)	(700)	(700)	---	---
Commercial Aviation and Airports Fee	(8,000)	(9,000)	(9,000)	(+1,000)	---
Other Security Threat Assessments Fee	(50)	(50)	(50)	---	---
Air Cargo/Certified Cargo Screening Program Fee	(5,000)	(5,000)	(5,000)	---	---
TSA PreCheck Fee	(136,900)	(137,000)	(137,000)	(+100)	---
Alien Flight School Fee	(5,200)	(5,200)	(5,200)	---	---
Subtotal, Fee Funded Programs	(239,885)	(236,914)	(236,914)	(-2,971)	---

DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2020
(Amounts in thousands)

	FY 2019 Enacted	FY 2020 Request	Final Bill	Final Bill vs Enacted	Final Bill vs Request
Aviation Security Capital Fund (Mandatory)	(250,000)	(250,000)	(250,000)	---	---
Total, Transportation Security Administration	4,930,462	3,918,720	4,983,567	+53,105	+1,064,847
(Discretionary Funding)	(4,930,462)	(3,918,720)	(4,983,567)	(+53,105)	(+1,064,847)
(Discretionary Appropriations)	(7,600,462)	(7,298,720)	(7,813,567)	(+213,105)	(+514,847)
(Offsetting Collections)	(-2,670,000)	(-3,380,000)	(-2,830,000)	(-160,000)	(+550,000)
Aviation Security Capital Fund (mandatory)	250,000	250,000	250,000	---	---
Fee Funded Programs	239,885	236,914	236,914	-2,971	---
Gross Budget Authority, Transportation Security Administration	8,090,347	7,785,634	8,300,481	+210,134	+514,847
Coast Guard					
Operations and Support:					
Military Pay and Allowances	3,864,816	3,996,812	4,023,053	+158,237	+26,241
Civilian Pay and Benefits	939,707	986,429	1,004,319	+64,612	+17,890
Training and Recruiting	189,983	194,930	210,912	+20,929	+15,982
Operating Funds and Unit Level Maintenance	919,533	927,674	929,895	+10,362	+2,221
Centrally Managed Accounts	161,441	150,236	161,205	-236	+10,969
Intermediate and Depot Level Maintenance	1,436,494	1,478,270	1,517,191	+80,697	+38,921
Reserve Training	117,758	124,549	124,696	+6,938	+147
Environmental Compliance and Restoration	13,469	13,495	19,982	+6,513	+6,487

DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2020
(Amounts in thousands)

	FY 2019 Enacted	FY 2020 Request	Final Bill	Final Bill vs Enacted	Final Bill vs Request
Overseas Contingency Operations/Global War on Terrorism (Defense)	165,000	---	190,000	+25,000	+190,000
Subtotal, Operations and Support	7,808,201	7,872,395	8,181,253	+373,052	+308,858
(Non-Defense)	(7,303,201)	(7,532,395)	(7,651,253)	(+348,052)	(+118,858)
(Defense)	(505,000)	(340,000)	(530,000)	(+25,000)	(+190,000)
(Overseas Contingency Operations/Global War on Terrorism)	(165,000)	---	(190,000)	(+25,000)	(+190,000)
(Other Defense)	(340,000)	(340,000)	(340,000)	---	---
Procurement, Construction, and Improvements:					
Vessels:					
Survey and Design-Vessels and Boats	5,500	500	2,500	-3,000	+2,000
In-Service Vessel Sustainment	63,250	77,900	91,400	+28,150	+13,500
National Security Cutter	72,600	60,000	160,500	+87,900	+100,500
Offshore Patrol Cutter	400,000	457,000	312,000	-88,000	-145,000
Fast Response Cutter	340,000	140,000	260,000	-80,000	+120,000
Cutter Boats	5,000	4,300	15,100	+10,100	+10,800
Polar Security Cutter	675,000	35,000	135,000	-540,000	+100,000
Inland Waterways and Western River Cutters	5,000	2,500	2,500	-2,500	---
Polar Sustainment	15,000	15,000	15,000	---	---
Subtotal, Vessels	1,581,350	792,200	994,000	-587,350	+201,800
Aircraft:					
HC-144 Conversion/Sustainment	17,000	17,000	17,000	---	---
HC-27J Conversion/Sustainment	80,000	103,200	103,200	+23,200	---
HC-130J Acquisition/Conversion/Sustainment	105,000	---	105,000	---	+105,000

DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2020
(Amounts in thousands)

	FY 2019 Enacted	FY 2020 Request	Final Bill	Final Bill vs Enacted	Final Bill vs Request
HH-65 Conversion/Sustainment Projects	28,000	50,000	50,000	+22,000	---
MH-60T Sustainment	120,000	20,000	150,000	+30,000	+130,000
Small Unmanned Aircraft Systems	6,000	9,400	9,400	+3,400	---
Long Range Command and Control Aircraft	---	---	70,000	+70,000	+70,000
Subtotal, Aircraft	356,000	199,600	504,600	+148,600	+305,000
Other Acquisition Programs:					
Other Equipment and Systems	3,500	3,500	3,500	---	---
Program Oversight and Management	20,000	20,000	20,000	---	---
C4ISR	23,300	25,156	25,156	+1,856	---
CG-Logistics Information Management System (CG-LIMS)	9,200	6,400	6,400	-2,800	---
Cyber and Enterprise Mission Platform	---	14,200	14,200	+14,200	---
Subtotal, Other Acquisition Programs	56,000	69,256	69,256	+13,256	---
Shore Facilities and Aids to Navigation:					
Major Construction; Housing; ATON; and Survey and Design	74,510	52,000	77,550	+3,040	+25,550
Major Acquisition Systems Infrastructure	175,400	116,600	122,100	-53,300	+5,500
Minor Shore	5,000	5,000	5,000	---	---
Subtotal, Shore Facilities and Aids to Navigation	254,910	173,600	204,650	-50,260	+31,050
Subtotal, Procurement, Construction, and Improvements	2,248,260	1,234,656	1,772,506	-475,754	+537,850

DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2020
(Amounts in thousands)

	FY 2019 Enacted	FY 2020 Request	Final Bill	Final Bill vs Enacted	Final Bill vs Request
Research and Development	20,256	4,949	4,949	-15,307	---
Health Care Fund Contribution (Permanent Indefinite Discretionary)	199,360	205,107	205,107	+5,747	---
Retired Pay (Mandatory)	1,739,844	1,802,309	1,802,309	+62,465	---
Total, Coast Guard	12,015,921	11,119,416	11,966,124	-49,797	+846,708
(Discretionary Funding)	(10,276,077)	(9,317,107)	(10,163,815)	(-112,262)	(+846,708)
(Non-Defense)	(9,771,077)	(8,977,107)	(9,633,815)	(-137,262)	(+656,708)
(Defense)	(505,000)	(340,000)	(530,000)	(+25,000)	(+190,000)
(Overseas Contingency Operations/Global War on Terrorism)	(165,000)	---	(190,000)	(+25,000)	(+190,000)
(Other Defense)	(340,000)	(340,000)	(340,000)	---	---
(Mandatory Funding)	(1,739,844)	(1,802,309)	(1,802,309)	(+62,465)	---
United States Secret Service					
Operations and Support:					
Protective Operations					
Protection of Persons and Facilities	740,895	744,908	754,527	+13,632	+9,619
Protective Countermeasures	56,917	61,543	61,756	+4,839	+213
Protective Intelligence	49,395	49,710	49,955	+560	+245
Presidential Campaigns and National Special Security Events	37,494	155,172	155,199	+117,705	+27
Subtotal, Protective Operations	884,701	1,011,333	1,021,437	+136,736	+10,104

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(Amounts in thousands)

	FY 2019 Enacted	FY 2020 Request	Final Bill	Final Bill vs Enacted	Final Bill vs Request
Field Operations					
Domestic and International Field Operations	647,905	635,174	667,600	+19,695	+32,426
Support for Missing and Exploited Children Investigations	6,000	6,000	6,000	---	---
Support for Computer Forensics Training	25,022	4,000	30,377	+5,355	+26,377
Subtotal, Field Operations	678,927	645,174	703,977	+25,050	+58,803
Basic and In-Service Training and Professional Development	102,923	110,258	110,534	+7,611	+276
Mission Support	481,977	474,968	500,453	+18,476	+25,485
Subtotal, Operations and Support	2,148,528	2,241,733	2,336,401	+187,873	+94,668
Procurement, Construction, and Improvements					
Protection Assets and Infrastructure	85,286	55,289	65,989	-19,297	+10,700
Operational Communications/Information Technology	8,845	---	---	-8,845	---
Construction and Facility Improvements	3,000	1,000	1,000	-2,000	---
Subtotal, Procurement, Construction, and Improvements	97,131	56,289	66,989	-30,142	+10,700

DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2020
(Amounts in thousands)

	FY 2019 Enacted	FY 2020 Request	Final Bill	Final Bill vs Enacted	Final Bill vs Request
Research and Development	2,500	10,955	12,455	+9,955	+1,500
Total, United States Secret Service	2,248,159	2,308,977	2,415,845	+167,686	+106,868
Total, Title II, Security, Enforcement, and Investigations	41,741,802	44,319,991	42,361,474	+619,672	-1,958,517
(Discretionary Funding)	(40,001,958)	(42,517,682)	(40,559,165)	(+557,207)	(-1,958,517)
(Non-Defense)	(39,496,958)	(42,177,682)	(40,029,165)	(+532,207)	(-2,148,517)
(Appropriations)	(42,205,958)	(45,596,682)	(42,898,165)	(+692,207)	(-2,698,517)
(Offsetting Collections)	(-2,709,000)	(-3,419,000)	(-2,869,000)	(-160,000)	(+550,000)
(Defense)	(505,000)	(340,000)	(530,000)	(+25,000)	(+190,000)
(Overseas Contingency Operations/Global War on Terrorism)	(165,000)	---	(190,000)	(+25,000)	(+190,000)
(Other Defense)	(340,000)	(340,000)	(340,000)	---	---
(Mandatory Funding)	(1,739,844)	(1,802,309)	(1,802,309)	(+62,465)	---
Aviation Security Capital Fund (Mandatory)	250,000	250,000	250,000	---	---
Fee Funded Programs	2,855,587	3,361,545	3,013,145	+157,558	-368,400

DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2020
(Amounts in thousands)

	FY 2019 Enacted	FY 2020 Request	Final Bill	Final Bill vs Enacted	Final Bill vs Request
TITLE III - PROTECTION, PREPAREDNESS, RESPONSE, AND RECOVERY					
Cybersecurity and Infrastructure Security Agency					
Operations and Support:					
Cybersecurity:					
Cyber Readiness and Response	272,235	248,311	367,063	+94,828	+118,752
Cyber Infrastructure Resilience	46,571	61,976	86,535	+39,964	+24,559
Federal Cybersecurity	463,267	450,595	493,668	+30,401	+43,073
Subtotal, Cybersecurity	782,073	760,882	947,266	+165,193	+186,384
Infrastructure Protection					
Infrastructure Capacity Building	128,470	126,653	147,901	+19,431	+21,248
Infrastructure Security Compliance	74,435	56,038	75,511	+1,076	+19,473
Subtotal, Infrastructure Protection	202,905	182,691	223,412	+20,507	+40,721
Emergency Communications:					
Emergency Communications Preparedness	54,069	51,959	54,338	+269	+2,379
Priority Telecommunications Service	64,000	64,595	64,663	+663	+68
Subtotal, Emergency Communications	118,069	116,554	119,001	+932	+2,447

DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2020
(Amounts in thousands)

	FY 2019 Enacted	FY 2020 Request	Final Bill	Final Bill vs Enacted	Final Bill vs Request
Integrated Operations:					
Cyber and Infrastructure Analysis	77,136	62,199	109,901	+32,765	+47,702
Critical Infrastructure Situational Awareness	27,351	23,914	26,735	-616	+2,821
(Defense)	(24,889)	(21,762)	(24,329)	(-560)	(+2,567)
Stakeholder Engagement and Requirements	45,386	42,070	42,511	-2,875	+441
(Defense)	(40,847)	(37,863)	(38,260)	(-2,587)	(+397)
Strategy, Policy and Plans	12,979	12,426	12,726	-253	+300
(Defense)	(8,566)	(8,201)	(8,399)	(-167)	(+198)
Subtotal, Integrated Operations	162,852	140,609	191,873	+29,021	+51,264
Office of Biometric Identity Management:					
Mission Support	79,903	77,814	84,677	+4,774	+6,863
(Defense)	(24,770)	(24,122)	(26,250)	(+1,480)	(+2,128)
Subtotal, Operations and Support	1,345,802	1,278,550	1,566,229	+220,427	+287,679
Federal Protective Service:					
FPS Operations					
Operating Expenses	359,196	395,570	---	-359,196	-395,570
Countermeasures					
Protective Security Officers	1,121,883	1,148,400	---	-1,121,883	-1,148,400
Technical Countermeasures	46,031	24,030	---	-46,031	-24,030
Subtotal, Countermeasures	1,167,914	1,172,430	---	-1,167,914	-1,172,430
Subtotal, Federal Protective Service (Gross)	1,527,110	1,568,000	---	-1,527,110	-1,568,000

DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2020
(Amounts in thousands)

	FY 2019 Enacted	FY 2020 Request	Final Bill	Final Bill vs Enacted	Final Bill vs Request
Offsetting Collections	-1,527,110	-1,568,000	---	+1,527,110	+1,568,000
Subtotal, Federal Protective Service (Net)	---	---	---	---	---
Procurement, Construction, and Improvements:					
Cybersecurity					
Continuous Diagnostics and Mitigation	160,000	137,630	213,514	+53,514	+75,884
National Cybersecurity Protection System	95,078	105,838	165,838	+70,760	+60,000
Subtotal, Cybersecurity	255,078	243,468	379,352	+124,274	+135,884
Emergency Communications					
Next Generation Networks Priority Services	42,551	50,729	50,729	+8,178	---
Biometric Identity Management					
Integrated Operations Assets and Infrastructure					
Modeling Capability Transition Environment	413	---	---	-413	---
Infrastructure Protection					
Infrastructure Protection (IP) Gateway	9,787	4,881	4,881	-4,906	---
Construction and Facilities Improvements					
Pensacola Corry Station Facilities	15,000	---	---	-15,000	---
Subtotal, Procurement, Construction, and Improvements	322,829	299,078	434,962	+112,133	+135,884

DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2020
(Amounts in thousands)

	FY 2019 Enacted	FY 2020 Request	Final Bill	Final Bill vs Enacted	Final Bill vs Request
Research and Development:					
Cybersecurity	4,695	24,091	---	-4,695	-24,091
Infrastructure Protection	3,216	1,216	1,216	-2,000	---
Integrated Operations	5,215	5,215	13,215	+8,000	+8,000
Subtotal, Research and Development	13,126	30,522	14,431	+1,305	-16,091
Total, Cybersecurity and Infrastructure Security Agency	1,681,757	1,608,150	2,015,622	+333,865	+407,472
(Discretionary Funding)	(1,681,757)	(1,608,150)	(2,015,622)	(+333,865)	(+407,472)
(Non-Defense)	(66,547)	(64,276)	(69,411)	(+2,864)	(+5,135)
(Appropriations)	(1,593,657)	(1,632,276)	(69,411)	(-1,524,246)	(-1,562,865)
(Offsetting Collections)	(-1,527,110)	(-1,568,000)	---	(+1,527,110)	(+1,568,000)
(Defense)	(1,615,210)	(1,543,874)	(1,946,211)	(+331,001)	(+402,337)
Federal Emergency Management Agency					
Operations and Support					
Regional Operations	159,971	163,234	165,277	+5,306	+2,043
Mitigation	37,999	37,862	41,113	+3,114	+3,251
Preparedness and Protection	133,455	142,457	148,453	+14,998	+5,996
Response and Recovery					
Response	194,419	188,690	190,114	-4,305	+1,424
(Urban Search and Rescue)	(45,330)	(37,832)	(37,832)	(-7,498)	---
Recovery	48,252	48,428	49,013	+761	+565

DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2020
(Amounts in thousands)

	FY 2019 Enacted	FY 2020 Request	Final Bill	Final Bill vs Enacted	Final Bill vs Request
Mission Support	492,162	534,532	508,229	+18,067	-26,303
Subtotal, Operations and Support	1,066,258	1,115,203	1,102,199	+35,941	-13,004
(Defense)	(42,213)	(45,520)	(50,673)	(+8,460)	(+5,153)
Procurement, Construction, and Improvements					
Operational Communications/Information Technology	11,670	15,620	15,620	+3,950	---
Construction and Facility Improvements	71,996	39,496	59,196	-12,800	+19,700
Mission Support, Assets, and Infrastructure	50,164	58,547	58,547	+8,383	---
Subtotal, Procurement, Construction, and Improvements	133,830	113,663	133,363	-467	+19,700
(Defense)	(62,166)	(46,116)	(46,116)	(-18,050)	---
Federal Assistance:					
Grants					
State Homeland Security Grant Program	525,000	331,939	560,000	+35,000	+228,081
(Operation Stonegarden)	(90,000)	---	(90,000)	---	(+90,000)
(Tribal Security Grant)	---	---	(15,000)	(+15,000)	(+15,000)
(Nonprofit Security)	(10,000)	---	(40,000)	(+30,000)	(+40,000)
Urban Area Security Initiative	640,000	426,461	665,000	+25,000	+238,539
(Nonprofit Security)	(50,000)	---	(50,000)	---	(+50,000)
Public Transportation Security Assistance	100,000	36,358	100,000	---	+63,642
(Amtrak Security)	(10,000)	---	(10,000)	---	(+10,000)
(Over-the-Road Bus Security)	(2,000)	---	(2,000)	---	(+2,000)
Port Security Grants	100,000	36,358	100,000	---	+63,642
Assistance to Firefighter Grants	350,000	344,344	355,000	+5,000	+10,656

DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2020
(Amounts in thousands)

	FY 2019 Enacted	FY 2020 Request	Final Bill	Final Bill vs Enacted	Final Bill vs Request
Staffing for Adequate Fire and Emergency Response (SAFER) Grants	350,000	344,344	355,000	+5,000	+10,656
Emergency Management Performance Grants	350,000	279,335	355,000	+5,000	+75,665
National Priorities Security Grant Program	---	430,350	---	---	-430,350
Flood Hazard Mapping and Risk Analysis Program	262,531	100,000	263,000	+469	+163,000
Regional Catastrophic Preparedness Grants	10,000	---	10,000	---	+10,000
High Hazard Potential Dams	10,000	---	10,000	---	+10,000
Emergency Food and Shelter	120,000	---	125,000	+5,000	+125,000
Targeted Violence and Terrorism Prevention Grants (by transfer from OSEM)	---	---	(10,000)	(+10,000)	(+10,000)
Subtotal, Grants	2,817,531	2,329,489	2,908,000	+90,469	+578,511
(by transfer)	---	---	10,000	+10,000	+10,000
Education, Training, and Exercises					
Center for Domestic Preparedness	66,057	66,072	66,796	+739	+724
Center for Homeland Defense and Security	18,000	---	18,000	---	+18,000
Emergency Management Institute	20,741	19,093	20,998	+257	+1,905
U.S. Fire Administration	44,179	46,605	46,844	+2,665	+239
National Domestic Preparedness Consortium	101,000	---	101,000	---	+101,000
Continuing Training Grants	8,000	---	8,000	---	+8,000
National Exercise Program	18,702	18,756	18,829	+127	+73
Subtotal, Education, Training, and Exercises	276,679	150,526	280,467	+3,788	+129,941
Subtotal, Federal Assistance	3,094,210	2,480,015	3,188,467	+94,257	+708,452
(by transfer)	---	---	10,000	+10,000	+10,000

DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2020
(Amounts in thousands)

	FY 2019 Enacted	FY 2020 Request	Final Bill	Final Bill vs Enacted	Final Bill vs Request
Disaster Relief Fund:					
Base Disaster Relief	558,000	474,684	511,147	-46,853	+36,463
Disaster Relief Category	12,000,000	14,075,000	17,352,112	+5,352,112	+3,277,112
Subtotal, Disaster Relief Fund (Gross)	12,558,000	14,549,684	17,863,259	+5,305,259	+3,313,575
(Base DRF Offset from Prior Year Unobligated Funds)	-300,000	---	---	+300,000	---
Subtotal, Disaster Relief Fund (Net)	12,258,000	14,549,684	17,863,259	+5,605,259	+3,313,575
National Flood Insurance Fund					
Floodplain Management and Mapping	188,295	192,260	192,777	+4,482	+517
Mission Support	13,858	13,906	14,005	+147	+99
Subtotal, National Flood Insurance Fund	202,153	206,166	206,782	+4,629	+616
Offsetting Fee Collections	-202,153	-206,166	-206,782	-4,629	-616
Administrative Provisions					
Radiological Emergency Preparedness Program					
Operating Expenses	33,500	33,630	32,630	-870	-1,000
Offsetting Collections	-34,165	-34,630	-33,630	+535	+1,000
Subtotal, Administrative Provisions	-665	-1,000	-1,000	-335	---

DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2020
(Amounts in thousands)

	FY 2019 Enacted	FY 2020 Request	Final Bill	Final Bill vs Enacted	Final Bill vs Request
Total, Federal Emergency Management Agency.....	16,551,633	18,257,565	22,276,288	+5,724,655	+4,018,723
(Non-Defense).....	(16,447,254)	(18,165,929)	(22,179,499)	(+5,732,245)	(+4,013,570)
(Appropriations).....	(4,983,572)	(4,331,725)	(5,067,799)	(+84,227)	(+736,074)
(Offsetting Collections).....	(-236,318)	(-240,796)	(-240,412)	(-4,094)	(+384)
(Disaster Relief Category).....	(12,000,000)	(14,075,000)	(17,352,112)	(+5,352,112)	(+3,277,112)
(Derived from Prior Year Unobligated Balances).....	(-300,000)	---	---	(+300,000)	---
(Defense).....	(104,379)	(91,636)	(96,789)	(-7,590)	(+5,153)

DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2020
(Amounts in thousands)

	FY 2019 Enacted	FY 2020 Request	Final Bill	Final Bill vs Enacted	Final Bill vs Request
Gross budgetary resources, Federal Emergency Management Agency	17,087,951	18,498,361	22,526,700	+5,438,749	+4,028,339
Total, Title III, Protection, Preparedness, Response, and Recovery	18,233,390	19,865,715	24,291,910	+6,058,520	+4,426,195
(Discretionary Funding)	(18,233,390)	(19,865,715)	(24,291,910)	(+6,058,520)	(+4,426,195)
(Non-Defense)	(16,513,801)	(18,230,205)	(22,248,910)	(+5,735,109)	(+4,018,705)
(Appropriations)	(6,577,229)	(5,964,001)	(5,137,210)	(-1,440,019)	(-826,791)
(Offsetting Collections)	(-1,763,428)	(-1,808,796)	(-240,412)	(+1,523,016)	(+1,568,384)
(Disaster Relief Category)	(12,000,000)	(14,075,000)	(17,352,112)	(+5,352,112)	(+3,277,112)
(Derived from Prior Year Unobligated Balances)	(-300,000)	---	---	(+300,000)	---
(Defense)	(1,719,589)	(1,635,510)	(2,043,000)	(+323,411)	(+407,490)
(By transfer)	---	---	(10,000)	(+10,000)	(+10,000)
Gross budgetary resources, Title III	20,296,818	21,674,511	24,542,322	+4,245,504	+2,867,811
TITLE IV - RESEARCH, DEVELOPMENT, TRAINING, AND SERVICES					
U.S. Citizenship and Immigration Services					
Operations and Support					
Employment Status Verification	109,688	121,586	122,395	+12,707	+809

DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2020
(Amounts in thousands)

	FY 2019 Enacted	FY 2020 Request	Final Bill	Final Bill vs Enacted	Final Bill vs Request
Procurement, Construction, and Improvements	22,838	---	---	-22,838	---
Federal Assistance	10,000	---	10,000	---	+10,000
Fee Funded Programs:					
Immigration Examinations Fee Account:					
Adjudication Services:					
District Operations	(1,883,816)	(1,934,033)	(1,934,033)	(+50,217)	---
(Immigrant Integration Grants)	---	(10,000)	---	---	(-10,000)
Service Center Operations	(731,654)	(746,687)	(746,687)	(+15,033)	---
Asylum, Refugee, and International Operations	(337,544)	(349,295)	(349,295)	(+11,751)	---
Records Operations	(152,649)	(155,150)	(155,150)	(+2,501)	---
Premium Processing (Including Transformation)	(648,007)	(658,190)	(658,190)	(+10,183)	---
Subtotal, Adjudication Services	(3,753,670)	(3,843,355)	(3,843,355)	(+89,685)	---
Information and Customer Services:					
Operating Expenses	(119,450)	(125,335)	(125,335)	(+5,885)	---
Administration					
Operating Expenses	(616,622)	(651,808)	(651,808)	(+35,186)	---
Systematic Alien Verification for Entitlements (SAVE)	(35,112)	(34,868)	(34,868)	(-244)	---
Subtotal, Immigration Examinations Fee Account	(4,524,854)	(4,655,366)	(4,655,366)	(+130,512)	---
H1-B Non-Immigrant Petitioner Account:					
Adjudication Services:					
Service Center Operations	(15,000)	(15,000)	(15,000)	---	---

DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2020
(Amounts in thousands)

	FY 2019 Enacted	FY 2020 Request	Final Bill	Final Bill vs Enacted	Final Bill vs Request
Fraud Prevention and Detection Account					
Adjudication Services					
District Operations	(27,333)	(27,773)	(27,773)	(+440)	---
Service Center Operations	(20,156)	(20,377)	(20,377)	(+221)	---
Asylum and Refugee Operating Expenses	(308)	(308)	(308)	---	---
Subtotal, Fraud Prevention and Detection Account	(47,797)	(48,458)	(48,458)	(+661)	---
Subtotal, Fee Funded Programs	(4,587,651)	(4,718,824)	(4,718,824)	(+131,173)	---
Total, U.S. Citizenship and Immigration Services	142,526	121,586	132,395	-10,131	+10,809
Fee Funded Programs	4,587,651	4,718,824	4,718,824	+131,173	---
Gross Budget Authority, U.S. Citizenship and Immigration Services	4,730,177	4,840,410	4,851,219	+121,042	+10,809
Federal Law Enforcement Training Centers					
Operations and Support:					
Law Enforcement Training	248,681	275,420	263,709	+15,028	-11,711
Mission Support	29,195	29,166	29,288	+93	+122
Subtotal, Operations and Support	277,876	304,586	292,997	+15,121	-11,589
Procurement, Construction, and Improvements:					
Construction and Facility Improvements	50,943	46,349	58,173	+7,230	+11,824
Total, Federal Law Enforcement Training Centers	328,819	350,935	351,170	+22,351	+235

DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2020
(Amounts in thousands)

	FY 2019 Enacted	FY 2020 Request	Final Bill	Final Bill vs Enacted	Final Bill vs Request
Science and Technology Directorate					
Operations and Support:					
Laboratory Facilities	121,952	115,965	122,722	+770	+6,757
Acquisition and Operations Analysis	48,510	33,772	48,510	---	+14,738
Mission Support	138,058	129,217	143,632	+5,574	+14,415
Subtotal, Operations and Support	308,520	278,954	314,864	+6,344	+35,910
Research and Development:					
Research, Development, and Innovation	470,765	281,417	381,911	-88,854	+100,494
University Programs	40,500	21,746	40,500	---	+18,754
Subtotal, Research and Development	511,265	303,163	422,411	-88,854	+119,248
Total, Science and Technology Directorate	819,785	582,117	737,275	-82,510	+155,158
Countering Weapons of Mass Destruction Office					
Operations and Support:					
Mission Support	83,919	84,583	85,380	+1,461	+797
Capability and Operations Support	103,176	127,990	94,087	-9,089	-33,903
Subtotal, Operations and Support	187,095	212,573	179,467	-7,628	-33,106

DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2020
(Amounts in thousands)

	FY 2019 Enacted	FY 2020 Request	Final Bill	Final Bill vs Enacted	Final Bill vs Request
Procurement, Construction, and Improvements:					
Large Scale Detection Systems	74,896	78,241	91,988	+17,092	+13,747
Portable Detection Systems	25,200	---	27,000	+1,800	+27,000
Assets and Infrastructure Acquisition	---	---	---	---	---
Subotal, Procurement, Construction, and Improvements	100,096	78,241	118,988	+18,892	+40,747
Research and Development					
Transformational R&D/Technical Forensics					
Transformational R&D	37,002	19,581	21,081	-15,921	+1,500
Technical Forensics	7,100	7,100	7,100	---	---
Subtotal, Transformational R&D/Technical Forensics	44,102	26,681	28,181	-15,921	+1,500
Detection Capability Development and Rapid Capabilities					
Detection Capability Development	30,941	33,000	33,000	+2,059	---
Rapid Capabilities	8,000	8,000	8,000	---	---
Subtotal, Detection Capability Development and Rapid Capabilities	38,941	41,000	41,000	+2,059	---
Subtotal, Research and Development	83,043	67,681	69,181	-13,862	+1,500

DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2020
(Amounts in thousands)

	FY 2019 Enacted	FY 2020 Request	Final Bill	Final Bill vs Enacted	Final Bill vs Request
Federal Assistance					
Capability Building					
Training, Exercises, and Readiness	9,110	14,470	14,470	+5,360	---
Securing the Cities	30,000	24,640	24,640	-5,360	---
Biological Support	25,553	25,553	25,553	---	---
Subtotal, Capability Building	64,663	64,663	64,663	---	---
Total, Countering Weapons of Mass Destruction	434,897	423,158	432,299	-2,598	+9,141
Total, Title IV, Research and Development, Training, and Services	1,726,027	1,477,796	1,653,139	-72,888	+175,343
Fee Funded Programs	4,587,651	4,718,824	4,718,824	+131,173	---

DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2020
(Amounts in thousands)

	FY 2019 Enacted	FY 2020 Request	Final Bill	Final Bill vs Enacted	Final Bill vs Request
TITLE V - GENERAL PROVISIONS					
Financial Systems Modernization	51,000	---	---	-51,000	---
Presidential Residence Protection Assistance (Sec. 527)	41,000	---	41,000	---	+41,000
TSA Operations and Support (P.L. 116-6) (FY19) (Rescission)	---	---	-42,379	-42,379	-42,379
TSA Operations and Support (P.L. 115-141) (FY18) (Rescission)	-33,870	---	---	+33,870	---
TSA Procurement, Construction, and Improvements (P.L. 116-6) (FY19) (Rescission)	---	---	-5,764	-5,764	-5,764
Coast Guard AC&I (P.L. 114-4) (FY15) (Rescission)	-7,400	---	---	+7,400	---
Coast Guard AC&I (P.L. 114-113) (FY16) (Rescission)	-5,200	---	---	+5,200	---
Coast Guard AC&I (P.L. 115-31) (FY17) (Rescission)	---	---	---	---	---
Coast Guard RDT&E (P.L. 115-31) (FY17) (Rescission)	-17,045	---	---	+17,045	---
Coast Guard RDT&E (P.L. 115-141) (FY18) (Rescission)	---	---	-5,000	-5,000	-5,000
CBP PC&I Border Barrier (P.L. 116-6) (Rescission)	---	---	---	---	---
CBP PC&I (FY18) (P.L. 115-141) (Rescission)	---	---	-20,000	-20,000	-20,000
CBP O&S two year (FY19) (Rescission)	---	---	-91,000	-91,000	-91,000
CBP PC&I (FY19) (P.L. 116-6) (Rescission)	---	---	-38,000	-38,000	-38,000
CBP Automation Modernization 70X0531 (Rescission)	---	---	---	---	---
CBP Construction 70X0532 (Rescission)	---	---	---	---	---
CBP BSFIT 70X0533 (Rescission)	---	---	---	---	---
DNDO Federal Assistance (P.L. 115-141) (FY18) (Rescission)	-17,200	---	---	+17,200	---
DHS administrative savings	-12,000	---	---	+12,000	---
Legacy Funds (Rescission)	-51	---	---	+51	---
DHS Lapsed Balances (non-defense) (Rescission)	-8,956	---	-18,534	-9,578	-18,534

DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2020
(Amounts in thousands)

	FY 2019 Enacted	FY 2020 Request	Final Bill	Final Bill vs Enacted	Final Bill vs Request
DHS Lapsed Balances (defense) (Rescission)	-1,589	---	---	+1,589	---
Treasury Asset Forfeiture Fund (Rescission)	-200,000	---	---	+200,000	---
House full committee amendment (Price, et al)					
Immigration provisions	---	---	---	---	---
FEMA Disaster Relief Fund (DRF) (Rescission)	---	-250,000	-300,000	-300,000	-50,000
CBP Humanitarian Assistance (P.L. 116-26)(FY 19)					
(rescission of emergency funding)	---	---	-233,000	-233,000	-233,000
Total, Title V, General Provisions	-211,311	-250,000	-712,677	-501,366	-462,677
(Discretionary Funding)	(80,000)	---	(41,000)	(-39,000)	(+41,000)
(Rescissions/Cancellations)	(-291,311)	(-250,000)	(-520,677)	(-229,366)	(-270,677)
(Non-defense)	(-289,722)	(-250,000)	(-520,677)	(-230,955)	(-270,677)
(Defense)	(-1,589)	---	---	(+1,589)	---
(Rescission of emergency funding)	---	---	(-233,000)	(-233,000)	(-233,000)

DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2020
(Amounts in thousands)

	FY 2019 Enacted	FY 2020 Request	Final Bill	Final Bill vs Enacted	Final Bill vs Request
Grand Total	63,314,844	67,558,927	69,810,421	+6,495,577	+2,251,494
(Discretionary Funding)	(61,575,000)	(65,756,618)	(68,008,112)	(+6,433,112)	(+2,251,494)
(Non-Defense)	(59,352,000)	(63,781,108)	(65,435,112)	(+6,083,112)	(+1,654,004)
(Appropriations)	(52,414,150)	(55,183,904)	(53,040,019)	(+625,869)	(-2,143,885)
(Offsetting Collections)	(-4,472,428)	(-5,227,796)	(-4,669,342)	(-196,914)	(+558,454)
(Disaster Relief Category)	(12,000,000)	(14,075,000)	(17,352,112)	(+5,352,112)	(+3,277,112)
(Rescissions)	(-289,722)	(-250,000)	(-520,677)	(-230,955)	(-270,677)
(Derived from Prior Year Unobligated Balances)	-300,000	---	---	+300,000	---
(Defense)	(2,223,000)	(1,975,510)	(2,573,000)	(+350,000)	(+597,490)
(Overseas Contingency on Operations/Global War on Terrorism)	(165,000)	---	(190,000)	(+25,000)	(+190,000)
(Other Defense)	(2,058,000)	(1,975,510)	(2,383,000)	(+325,000)	(+407,490)
(Appropriations)	(2,059,589)	(1,975,510)	(2,383,000)	(+323,411)	(+407,490)
(Rescissions)	(-1,589)	---	---	(+1,589)	---
(Mandatory Funding)	(1,739,844)	(1,802,309)	(1,802,309)	(+62,465)	---

Attachment D

Committee on Appropriations
Homeland Security, Chairwoman
Labor, Health and Human Services, and Education, Vice Chairwoman

Leader's Council

Congressional Hispanic Caucus

Smithsonian Institution, Board of Regents

LUCILLE ROYBAL-ALLARD
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December 16, 2019

Dear CHC Colleagues:

The outcome on the Homeland Security bill is not what we had hoped it would be. We were not able to limit transfer authority related to the border wall and ICE detention beds, which was our top priority. Additionally, the bill vastly overfunds detention beds at the expense of personnel accounts and funds many miles of border barriers at the expense of higher priorities.

Despite these concerns, we were able to increase congressional oversight of the Administration and make its operations more transparent. This includes measures to improve the standards of care of asylum seekers in CBP facilities at the border and treatment of immigrants in ICE detention. While this final bill is flawed, it is a substantial improvement from a Continuous Resolution, through which we would lose a variety of policy gains that enable us to hold the Administration accountable in this year's bill.

For your information, enclosed is a summary of items in the Homeland Security bill related to immigration enforcement and border operations. Please feel free to reach out to my staff at 202-225-1766 should you have any further questions.

Sincerely,

Lucille

LUCILLE ROYBAL-ALLARD
Chairwoman, House Appropriations Subcommittee on Homeland Security

Attachment D-1

DIVISION D – HOMELAND SECURITY

Bill Summary:

The bill provides $67.8 billion in net discretionary resources, including $48.1 billion for non-defense programs; $2.4 billion for defense-related programs; and $17.4 billion for major disaster response and recovery activities. When excluding major disaster funding, the total provided in the bill is $50.5 billion, which is $1.2 billion below the budget request and $1.1 billion above the FY2019 enacted level, including an increase of $325 million for cybersecurity and infrastructure security activities.

Office of the Secretary – The bill provides $168.8 million for the Office of the Secretary and executive management, including:

- $10,000,000 to establish a new Office of Immigration Detention Ombudsman with responsibility for receiving, investigating, and resolving complaints regarding misconduct by DHS personnel and violations of the rights of individuals in DHS custody, including through unannounced inspections of detention facilities; and

- Directs the DHS Chief Medical Officer to review all contracts that broadly impact how DHS delivers healthcare to individuals in custody and develop departmental requirements for medical services.

- Directs the Secretary to develop a DHS-wide medical response strategy for emergent circumstances to help prevent future humanitarian crises at the border.

Office of Inspector General – The bill provides $190.2 million for the Office of Inspector General, an increase of $22.2 million above the FY2019 enacted level and an increase of $20 million above the budget request for increased oversight of detention and immigration enforcement activities.

U.S. Customs and Border Protection (CBP) – The bill provides $14.9 billion for CBP, $43.7 million below the FY2019 enacted level and $3.3 billion below the President's budget request, including:

- $104 million for 800 new positions in the Office of Field Operations, including 610 additional Officers and Agriculture Specialists;

    - When combined with fee funding, this will allow CBP to hire up to 1,200 new CBP Officers and 240 new Agriculture Specialists during FY2020;

- $16 million for opioid equipment and staffing at international mail and express consignment facilities;

- $222 million for new border security and trade and travel technology.

- $198 million for additional air and marine assets, to include three multi-enforcement aircraft, one above the request;

- $3.96 billion for Border Security Operations, $73.7 million above the FY2019 enacted level and $110.3 million below the President's budget request, including $203 million in emergency funding as follows:

    - $173 million for humanitarian care of individuals in CBP custody; and

    - $30 million for critical life and safety repairs and maintenance at existing Border Patrol Facilities and for improvements to closed caption video systems;

- $30 million for a DHS-wide electronic health records capability; and

- $1.375 billion for fencing along the southwest border, $3.625 billion below the request;

The bill also:

- Provides ***no*** funding for an increased number of border patrol agents.

- Directs any outage of video monitoring equipment in excess of 120 hours to be reported to the CBP Office of Professional Responsibility.

Affirms by reference the following requirements in the House Report:

- Directs CBP to brief the Committees on progress in establishing permanent plans, standards, and protocols to protect the health, safety, and wellbeing of migrants in its custody;

- Directs the Department to hire or otherwise obtain the services of child welfare professionals;

- Directs CBP to maintain a sufficient supply of sleeping mats, toothbrushes, toothpaste, feminine hygiene products, other personal hygiene supplies, and diapers for holding facilities, and ensure that showers are available to individuals held in custody for longer than 48 hours;

- Requires a report addressing the migrant deaths for the prior fiscal year;

- Directs CBP to ensure that separated family units are reunited and transferred together prior to removal, release from CBP custody, or transfer to ICE custody CBP shall assess and report to Congress on whether food provided to individuals held in CBP custody for stays in excess of 24, 48, and 72 hours meets federal dietary guidelines;

- Directs the CBP Commissioner to notify the Committee within 24 hours of each instance in which the holding facilities in a sector or field office reaches or exceeds 150 percent of capacity;

- Directs CBP to provide training on trauma-informed care for all personnel who interact with migrants;

- Directs the Commissioner of CBP to notify the Committee within 24 hours of any instance in which a child is held in a single CBP holding facility for more than five days or spends more than a total of six days in CBP custody;

- Directs CBP to continue its policies and activities that help protect people who travel on foot through dangerous terrain after having entered the United States between the ports of entry;

- Directs numerous reporting requirements on family separation; and

- Directs CBP to provide a briefing on the following: current policy on CBP vehicle pursuit standards; how the policy differs from Department of Justice policy; how CBP justifies pursuits; does CBP consider whether the potential offense in justifying the pursuit is a misdemeanor or a nonviolent felony; the number of high speed pursuits over the last three years; the number of convictions resulting from the pursuits (to include type of convictions); the number of crashes resulting from a pursuit; and the number of migrants injured or killed during a pursuit.

U.S. Immigration and Customs Enforcement (ICE) – Provides $8.08 billion for ICE, $492.4 million above the FY2019 enacted level and $701.1 million below the President's budget request, including:

- $2.04 billion for investigations with cross-border nexus, including those related to human trafficking, financial crimes and cyber investigations, including:
    - $4 million increase for the Human Exploitation Rescue Operative Child-Rescue Corps; and

- $4.4 billion for Enforcement and Removal Operations, $155.2 million above the FY2019 enacted level and $765 million below the President's budget request, including:

    - $3.14 billion for Custody Operations, $28.3 million below the FY2019 enacted level and $549.1 million below the President's budget request.

- $319 million for Alternatives to Detention, $44.6 million above the FY2019 enacted level, including $15 million for family case management and $4 million for an independent review of both ATD and FCMP, including an assessment of the feasibility of nonprofit organizations running the program.

The bill also:

- Rejects the proposed use of USCIS Immigration Examination Fee funding to support ICE investigations.

- Provides ***no*** funding for additional immigration enforcement personnel.

- Provides funding for detention capacity equivalent to the average daily population in detention funded in the FY2019 enacted bill.

- Provides additional funding to address the backlog of critical maintenance and repairs at existing, ICE-owned detention facilities.

Affirms by reference the following requirements in the House Report:

- Requires the ICE Director to notify the Committee 3 business days in advance of detention standard waivers and requires ICE to report on the justification for all waivers on a quarterly basis;

- Directs ICE to provide an update on unaccompanied children transferred from ORR to ICE custody upon their 18th birthday, and report on the rationale for ICE's decision to place 18-year-olds in detention instead of utilizing alternatives to detention or another less restrictive form of oversight;

- Requires ICE to brief the Committee on its plan for the potential use of body worn cameras;

- Directs ICE to follow its policy regarding enforcement actions at or near sensitive locations;

- Directs ICE to provide its officers with guidance and training for engaging with victims and witnesses of crime, and to take steps to minimize any effect that immigration enforcement may have on victims/witnesses;

- Urges ICE to refrain from entering, expanding or renewing contracts for detention facilities located over 100 miles from a Level IV or lower trauma center or at least one government-listed legal aid resource provider;

- Requires continued reporting on medical and mental health staffing, including whether facilities had unfilled position, the types of specialized services offered, and wait times for detainees to see medical personnel;

- Requires ICE to report on the number of detainees with serious medical conditions, including pregnant women, or a serious mental health condition, as well as on the length of their detention;

- Directs ICE to ensure that each family residential center has at least:

    - One medical professional on-site who is qualified to provide pediatric care for every 200 children in residence at that site;

    - One mental health professional specializing in pediatric care; and

    - One such medical professional on-site or on call for every 100 children detained in the facility;

- Directs ICE to report on legal resources available to detainees and to ensure that such information is provided in both English and Spanish;

- Directs ICE to ensure personnel, including ERO officers, are appropriately trained on all agency policies and procedures involving detained parents and legal guardians, including ICE's directive on the Detention and Removal of Alien Parents or Legal Guardians and time of arrest protocols to minimize harm to children;

- For individuals held in detention who receive a positive credible fear or reasonable fear determination, the report directs ICE to report the number granted parole, along with the justifications for denying parole to the rest;

- Directs ICE to brief the Committee on ICE's compliance with the Lyon v. ICE, et al. settlement agreement requiring improved detainee telephone access;

- Directs ICE to limit detention of transgender individuals (except for facilities that meet ICE's standards of care for such individuals);

- Directs ICE to report on the number of individuals deported with a pending or denied U visa application;

- Directs ICE to provide monthly bond statistics, including the average bond amount for detainees; the percentage of detainees released after paying a bond; the average length of detention for individuals who are released on bond; and the average length of

detention for individuals offered release on bond who remain in detention because they do not pay the bond;

- Directs ICE to make public data on: detention facility inspection reports, death in custody reporting, access to facilities, detainee locator, compliance with the 2011 Performance Based National Detention Standards (PBNDS 2011) and Prison Rape Elimination Act (PREA) requirements; and the weekly rate of operations for Custody Operations;

- Directs ICE to provide a report identifying, for each detention contract, Inter-governmental Service Agreement, or Inter-governmental Agreement, the detention standards under which it is inspected and the status of its compliance with PREA (Prison Rape Elimination Act) standards;

- Requires the Department to continue submitting data on the deportation of parents of U.S.-born children semiannually and on removals of honorably discharged members of the armed services semiannually;

- Directs ICE, along with the Office of Immigration Detention Ombudsman, to provide a briefing on a reevaluation of ICE's Risk Classification Assessment process, including recommendations for improving the process, which should include a strong preference for ATD and clear guidance on when detention is required based on an individualized assessment of flight or threat risk; and

- Directs ICE to continue monthly reporting regarding criminality of the detained population, and to differentiate such individuals detained as a result of interior enforcement efforts versus those from border security operations.

U.S. Citizenship and Immigration Services – Provides $122 million for the E-Verify program and $10 million for the Citizenship and Integration Grant program.

Affirms by reference the following requirements in the House report:

- Directs USCIS to provide a briefing on adjudication backlogs and the resources required to clear them;

- Requires UCIS to provide a briefing on how changes in personnel allocation could reduce wait times for initial adjudication to one year or less;

- Directs USCIS to combat human trafficking and protect workers' rights related to the H-2B and H-2A visa programs, and it directs USCIS to execute such programs with more efficiency to reduce employer burden and requires USCIS to provide a report on options to address each of these issues;

- Requires USCIS to consult with stakeholders and brief Congress about any plan to downsize its international operations;

- Encourages USCIS to continue the use of fee waivers for applicants who demonstrate an inability to pay the naturalization fee and encourages to consider if applicants earning between 150-200% of the federal poverty level should also have access to a fee waiver;

- Directs USCIS to accept any one of the following items as proof of inability to pay the naturalization application fee: documentation of receipt of a means-tested public benefit; documentation of income that is at or below 150 percent of the federal poverty guidelines at the time of filing; or documentation of financial hardship, based on extraordinary expenses or other circumstances;

- Directs USCIS to keep naturalization fees at an affordable cost, in order to stem concerns that USCIS would increase costs to more quickly reduce the adjudication backlog;

- Requires USCIS to provide a briefing on the number of forms processed between FY16 and FY19 including information on the immigration status of the petitioner (U.S. citizen or legal permanent resident); nationality of the applicant; processing time; field office or service center to which the application was assigned; reasons for delays in processing applications and petitions; and steps USCIS is taking to address delays.

- Directs USCIS to provide a briefing on the feasibility of a campaign to educate legal permanent residents on the naturalization process at ports of entry.

- Encourages USCIS to avoid charging individuals for humanitarian petitions, including individuals applying for asylum, refugee status, VAWA protections, Special Immigrant Juvenile status (SIJS), or a T or U visa.

Policy Provisions

- Authorizes the establishment of an Immigration Detention Ombudsman, reporting directly to the Secretary, with responsibility for receiving, investigating, and resolving complaints regarding misconduct by DHS personnel and violations of the rights of individuals in DHS custody, including through unannounced inspections of detention facilities.

- Requires DHS to provide data related to its credible and reasonable fear interview process, including data on the results of a pilot to use Border Patrol Agents to conduct such interviews and the impact of a policy restricting eligibility for asylum for migrants who transited through a third country *en route* to the United States.

- Continues and amends language allowing only fencing designs in use as of 2017, but allows adapted designs that mitigate community and environmental impacts after required consultation with jurisdictions through which fencing is planned.

- Prohibits the use of any federal funding to construct fencing in Bentsen-Rio State Park, the National Butterfly Center, the Santa Ana Wildlife Refuge, the Lower Rio Grande Wildlife Refuge between Brownsville, TX, and the Gulf of Mexico, and historic cemeteries.

- Withholds $5,000,000 from CBP headquarters until CBP complies with the following:

    - A requirement for data on migrants in CBP custody, including data on utilization rates for all short-term holding facilities and on the designated removal/transfer mechanisms for migrants formerly in CBP custody;

    - A requirement to issue final medical guidance, in coordination with the DHS Chief Medical Officer, that includes clear metrics, response plans for public health crises (including vaccination plans), and peer review process for deaths in custody;

    - A requirement for data on metrics measuring the effectiveness of the "Migrant Protection Protocols" program.

- Requires ICE to make information publicly available about the numbers and categories of people in ICE custody.

- Requires ICE to make information about the 287(g) program publicly available.

- Requires ICE to sever contracts with detention facilities that fail two consecutive inspections and requires more frequent inspections by ICE's Office of Professional Responsibility.

- Requires ICE to publicly post inspection results and plans to address deficiencies, with the status of addressing such deficiencies to be validated by the new Office of Immigration Detention Ombudsman.

- Authorizes members of Congress to conduct unannounced inspections of detention facilities, as well as designated congressional staff who provide a 24-hour notice.

- Prohibits DHS from destroying records related to potential sexual assault or abuse of individuals in its custody.

- Continues to ensure that information shared with ICE by the Department of Health and Human on potential sponsors of unaccompanied children cannot be used by ICE for detention or removal purposes unless the sponsor has a dangerous criminal background.

- Continues to prevent DHS from placing pregnant women in restraints except in extraordinary circumstances.

Attachment E

Submitted via www.regulations.gov

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

November 27, 2018

Re: Docket ID USCIS-2010-0008 - Public Comment Opposing Proposed Changes to Fee Waiver Form and Eligibility Criteria, FR Doc. 2018-21101 Filed 9-27-18; 83 FR 49120, 49120-49121

Dear Chief Deshommes:

The Immigrant Legal Resource Center (ILRC) submits the following comments in opposition to the Department of Homeland Security (DHS), United States Citizenship and Immigration Services (USCIS) proposed changes to Form I-912, Request for Fee Waiver, and to the fee waiver eligibility criteria and required forms of evidence, USCIS Docket ID USCIS-2010-0008, OMB Control Number 1615-0116, published in the Federal Register on September 28, 2018.

The ILRC is a national non-profit that provides legal trainings, educational materials, and advocacy to advance immigrant rights. The ILRC's mission is to work with and educate immigrants, community organizations, and the legal sector to continue to build a democratic society that values diversity and the rights of all people. Since its inception in 1979, the ILRC has provided technical assistance on hundreds of thousands of immigration law issues, trained thousands of advocates and pro bono attorneys annually on immigration law, distributed thousands of practitioner guides, provided expertise to immigrant-led advocacy efforts across the country, and supported hundreds of immigration legal non-profits in building their capacity. The ILRC is uniquely qualified to provide comments regarding the proposed changes to the fee waiver and eligibility criteria in light of its extensive technical expertise and experience, ongoing community outreach regarding the availability and use of the fee waiver, and publication of practice manuals and other resources for immigration practitioners. ILRC's resources include *Understanding*

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the Naturalization Application Reduced Fee Option & Fee Waiver,[1] *Practice Advisory: Naturalization Reduced Fee Option and Fee Waiver* (March 2018),[2] and *Naturalization Fee Waiver Packet* (November 2016).[3]

The ILRC also leads the New Americans Campaign, a national non-partisan effort that brings together a coalition of foundation funders, leading national immigration and service organizations, and over two hundred local services providers across more than 20 different regions to help prospective Americans apply for U.S. citizenship. We have extensive experience with fee waivers and have helped hundreds of thousands of lawful permanent residents with the naturalization process. Through our extensive networks with service providers, immigration practitioners, and naturalization applicants, we have developed a profound understanding of the barriers faced by low-income individuals seeking to obtain immigration benefits or naturalization and strongly oppose the proposed changes to the fee waiver eligibility criteria.

In recognition of the barriers to accessing immigration relief posed by immigration filing fees, 8 C.F.R. § 103.7(c) provides for a discretionary waiver of certain immigration or naturalization fees based on the standard of inability to pay. The proposed increased requirements and more restrictive evidence that USCIS proposes to collect from applicants will extend the time and work required for applicants to complete (and adjudicators to process) the fee waiver request. Requiring the additional documents will serve as a deterrent to applying for immigration benefits or naturalization. The proposed changes make the form more complex and will likely lead to individuals making more mistakes, adding to the processing time of the application and further adding to the deterrent effect of these changes. In some cases, applicants may not be able to complete the form because of a lack of required documents, significantly limiting the accessibility of the fee waiver, and thereby reducing low-income individuals' access to naturalization and immigration relief.

The proposed changes are a clear attack on naturalization and family-based immigration. If implemented, these changes would discourage lawful permanent residents from seeking fee waivers for naturalization, and in turn from applying for naturalization. The proposed changes to the fee waiver would also make it harder for the most vulnerable immigrants to apply for immigration relief through VAWA, TPS, T-Visas, and U-Visas. The ILRC has deep concerns about the undue and unnecessary burden that the proposed changes to the fee waiver eligibility criteria and required forms of evidence would place on individual applicants, the adjudications process, and the provision of legal services. Rather than imposing arbitrary restrictions on fee waiver eligibility, the ILRC urges USCIS to take an expansive approach to the types of documentary evidence the agency will accept as substantiation of inability to pay the prescribed fee, in order to ensure the fair and efficient adjudication of these applications.

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[1] *Immigrant Legal Resource Center: Understanding the Naturalization Application Reduced Fee Option and Fee Waiver* (Nov. 15, 2018), https://www.ilrc.org/webinars/understanding-naturalization-application-reduced-fee-option-fee-waiver-0.
[2] Available at: https://www.ilrc.org/naturalization-reduced-fee-option-and-fee-waiver.
[3] Available at: https://www.ilrc.org/naturalization-fee-waiver-packet.

I. The Proposed Form Change Eliminating Receipt of Means-Tested Benefits as a Way to Prove Inability to Pay Is Irrational, and Is an Attack on Naturalization and Family-Based Immigration

The proposed form change is an attack on naturalization and therefore an attack on family-based immigration. USCIS proposes to impose restrictions that lack rational justification or grounding in data, but will have the effect of making it much harder for individuals who qualify for the fee waiver to demonstrate their eligibility. The proposed changes to the fee waiver therefore appear designed to reduce the number of lawful permanent residents who naturalize, and thereby become eligible to petition for family members to immigrate. The changes would also reduce access to immigration relief for individuals who qualify under VAWA, TPS, a U-Visa, or a T-Visa.

The most widespread and streamlined way individuals establish their inability to pay the prescribed fee for naturalization or immigration relief is by showing receipt of a means-tested benefit. Removing this pathway to fee waiver eligibility is arbitrary and capricious. Should the proposed changes go into effect, the consequences are predictable: individuals who cannot afford to pay an immigration or naturalization filing fee will face barriers in demonstrating their inability to pay and will therefore find themselves priced out of applying. Research has established that immigration or naturalization filing fees can present an insurmountable obstacle.[4] For example, the naturalization fee has gone up 800 percent in real terms over the last thirty years, pricing many qualified green card holders out of U.S. citizenship.[5] Indeed, the cost of naturalizing is a major barrier to applying for naturalization.[6] As a result, preserving straightforward access to the fee waiver is essential to allow individuals and our country to reap the well-documented benefits[7] of having all qualified naturalization applicants achieve their goal of becoming U.S. citizens. It is equally important to preserving pathways to secure immigration status for vulnerable immigrants.

Receipt of a means-tested benefit provides sufficient evidence of inability to pay the prescribed fee for an immigration or naturalization application, as required by 8 C.F.R. § 103.7(c). USCIS fails to provide any evidence that its current practice needs revision or that accepting proof of receipt of a means-tested benefit has led the agency to grant fee waivers to individuals who were able to pay the fee.

Showing receipt of a means-tested public benefit should not be conflated with demonstrating that one's income falls within specific federal poverty guidelines. The relevant inquiry is not whether individuals who receive a means-tested benefit have a specific income, but whether individuals who receive a means-tested benefit have sufficiently demonstrated their inability to pay the prescribed fee for naturalization or an immigration benefit. This is what 8 C.F.R. § 103.7(c)

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[4] Center for the Study of Immigrant Integration, University of Southern California, *Nurturing Naturalization: Could Lowering the Fee Help?* (Feb. 2013), *available at* https://dornsife.usc.edu/csii/nurturing-naturalization/.
[5] Stanford Immigration Policy Lab, *Policy Brief: Lifting Barriers to Citizenship: Making the citizenship process affordable is critical to unlocking the potential of low-income immigrants who want to become U.S. citizens* (Jan. 2018), *available at* https://immigrationlab.org/project/lifting-barriers-to-citizenship/.
[6] *Id.*
[7] Multiple studies have documented the micro- and macro-economic benefits of naturalization. *See, e.g.*, the research compiled by the New Americans Campaign at http://newamericanscampaign.org/policy-makers/research/#economic-impact-of-naturalization.

requires. USCIS has presented no evidence that individuals who receive means-tested benefits have the disposable income required to pay the one-time, hefty fee required for naturalization or other immigration relief. Therefore, eligibility for a means-tested benefit should be considered separately from income and continue to be accepted as a distinct and fair proxy for an applicant's inability to pay the one-time fee at issue.

Accepting proof of receipt of a means-tested benefit as evidence of inability to pay a prescribed immigration or naturalization fee allows USCIS to avoid duplicating an assessment already performed by expert federal, state, and county government agencies across the nation. Proof of receipt of a means-tested public benefit is a straightforward and efficient method of determining fee waiver eligibility because it builds on the work local and state adjudicators have already invested in reviewing records, instead of requiring federal adjudicators to repeat the same process. USCIS should not waste its resources performing income determinations that second-guess the work of federal, state, and county government agencies.

Eliminating proof of receipt of means-tested public benefits would increase the burden of demonstrating fee waiver eligibility for individuals who are unquestionably eligible for it. It would exacerbate, rather than mitigate, the barriers to naturalization and crucial forms of immigration relief. It would contravene USCIS's own programs, grantmaking initiatives, and policies promoting naturalization.

For all these reasons, it is critical that USCIS preserves the ability for an applicant to present proof of receipt of a means-tested benefit as an accepted form of evidence to demonstrate their eligibility for a fee waiver.

II. The Proposed Form Change Restricting Means of Demonstrating Income Is Unnecessary and Overly Burdensome to Individuals and Agencies

Individuals who do not receive a means-tested benefit may show inability to pay the prescribed fee by providing evidence that their income is at or below 150 percent of the federal poverty guidelines. USCIS proposes to make it far more challenging and burdensome to apply by narrowing the universe of evidence the agency would accept as proof of income-based eligibility for a fee waiver. Specifically, the proposal to require individuals to submit an IRS tax transcript or verification of non-filing, and the proposal to reject other credible evidence of income such as pay statements, W-2 forms, and tax returns, is an arbitrary and unnecessary restriction.

A. Requiring an IRS Tax Transcript or Verification of Non-Filing Letter Would Create an Undue Burden on Individuals and Government Agencies

The requirement that an individual requesting a fee waiver based on income submit an IRS tax transcript if they filed a tax return creates an evidentiary requirement that will limit access to the fee waiver. Individuals who file tax returns have ready access to copies of those returns; they also have their pay statements and W-2 forms. By contrast, it is uncommon for individuals to have tax transcripts on hand; they must take the additional step of requesting one from the IRS. Requiring tax transcripts rather than accepting copies of tax returns and pay statements makes the entire process of proving eligibility for a fee waiver based on income more onerous. There

are multiple types of tax transcripts,[8] and many pieces of information necessary to request transcripts,[9] which may confuse and even prevent individuals from obtaining tax transcripts. For instance, to request a tax transcript online, an individual must not only provide their Social Security number, date of birth, filing status, and mailing address from their latest tax return, but also have access to an email account, their personal account number from a credit card, mortgage, home equity loan, home equity line of credit or car loan, and a mobile phone with their name on the account.[10] While a request for tax transcript by mail requires less information, obtaining transcripts by mail takes a minimum of five to ten calendar days, delaying what should be a straightforward and easy process. Moreover, for applicants who succeed in obtaining a tax transcript, USCIS leaves itself discretion, with no criteria or limitations, to reject the transcript and request a certified transcript, causing further delays in the adjudication of the underlying immigration petition or naturalization application.

The requirement that those who did not file income tax returns submit an IRS Verification of Non-Filing Letter is similarly burdensome and will also prevent otherwise eligible applicants from seeking fee waivers and more secure immigration status. As with the tax return transcript, the Verification of Non-Filing Letter requires an applicant to submit an online or mail request to the IRS for this documentation, adding another step to collecting evidence in support of the fee waiver. This evidentiary restriction is unnecessary. Applicants submitting a Form I-912 already sign under penalty of perjury. If an applicant completes and executes an I-912 stating that they were not required to file a tax return because their income was below the required threshold and supports this claim with recent pay statements showing this assertion to be true, the statement and accompanying evidence are more relevant to USCIS's inquiry into ability to pay than the IRS verification of non-filing would be.

Moreover, the IRS will be inundated by requests for tax transcripts not only from individuals seeking to apply for the fee waiver, but also from all members of the applicants' household seeking to prove income, even if they are not themselves applying for the fee waiver.

B. Restricting Acceptable Proof of Income Is Arbitrary and Capricious

It is reasonable for USCIS to allow individuals who seek to prove their income to do so by the means available to them. There is no justification for eliminating avenues for individuals who meet the regulatory standard to prove their inability to pay the prescribed fee. Indeed, USCIS should accept more, not fewer, forms of evidence. For instance, a federal, state, or county agency that has evaluated an applicant's income while performing an eligibility determination for a means-tested benefit is undoubtedly qualified to provide a written attestation of that individual's household income. There is no reason USCIS should not accept as proof of income an income determination from a federal, state, or county government agency. Broadening, not restricting, the ways in which individuals can prove their income would allow USCIS to adjudicate fee waivers most effectively and efficiently.

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[8] *See Transcript Types and Ways to Order Them*, IRS, https://www.irs.gov/individuals/tax-return-transcript-types-and-ways-to-order-them.
[9] *See Welcome to Get Transcript: What You Need*, IRS, https://www.irs.gov/individuals/get-transcript.
[10] *See id.*

Further, the proposed requirement that religious institutions, non-profits, and community-based organizations perform income verifications is burdensome to institutions and harmful to the individuals they serve. For individuals who have no income or cannot provide proof of income, religious institutions, non-profits, and community-based organizations should continue to verify that the individual is receiving a benefit or support from that organization and to attest to the applicant's financial situation, and USCIS should continue to accept this verification as proof of the individual's inability to pay the immigration or naturalization fee. The proposal would unreasonably impose a further requirement on religious and community-based organizations to attest that the individual has no income, not just that they receive services or benefits from that organization. This proposed change greatly expands the requirement on religious institutions, non-profits, and community-based organizations to review and verify the financial situation of people they assist, a task they are not trained to perform and a standard they are likely unable to meet. As a result, the proposed changes will have the practical effect of almost completely eliminating an entire category of acceptable income evidence.

USCIS's proposal to restrict acceptable proof of income has no reasonable justification and should be rescinded.

III. The Proposed Form Change Particularly Harms Survivors of Domestic Violence, Sexual Assault, Human Trafficking, and Other Crimes

Survivors may have limited access to documents needed in immigration applications due to control exerted by abusers. Additionally, more than ninety-four percent of domestic violence survivors also experienced economic abuse, which may include losing a job or being prevented from working.[11] Immigration relief specifically created for immigrant survivors of domestic violence, sexual assault, human trafficking, and other crimes acknowledges the barriers these individuals face to accessing immigration relief, adopting an "any credible evidence" standard to adjudicate these cases. However, the restrictive evidentiary requirements for fee waivers under this proposed change, coupled with the fact that IRS tax transcripts or verification of non-filing letters must be mailed to the individual, will mean that victims of domestic violence and other crimes will likely need to seek assistance to request these documents and have them mailed to a safe address, or else be discouraged from applying.

Fee waivers are critical to ensuring survivors can access immigration relief. The proposed changes will harm survivors of domestic violence, sexual assault, human trafficking, and other crimes who are unable to meet the stricter evidentiary requirements proposed to prove eligibility. These changes also go against the specific standard adopted for these cases and the congressional intent underlying the immigration provisions of the Violence Against Women Act and its reauthorizations. By limiting the ways a person can show they qualify for a fee waiver, USCIS is creating unnecessary burdens for survivors to access the very legal protections created to ensure survivors' access to safety, security, and justice.

[11] National Coalition Against Domestic Violence, *Facts about Domestic Violence and Economic Abuse,* 1, *available at* https://www.speakcdn.com/assets/2497/domestic_violence_and_economic_abuse_ncadv.pdf.

IV. The Proposed Form Change Places a Significant Burden on Individuals Applying for Naturalization and on Vulnerable Populations Applying for Immigration Benefits, Thereby Harming Them, Their Families, and Our Communities

The proposal mandates that applicants for immigration benefits or naturalization who are unable to pay the prescribed fee use Form I-912 exclusively to apply for a fee waiver. The proposal further requires that each person in a family requesting a fee waiver submit their own I-912 form. These proposed changes would compound the restrictive effects of the points outlined above.

A. The Proposed Requirement that Individuals Requesting Fee Waivers Use Form I-912 Is Unduly Burdensome and Conflicts With 8 C.F.R § 103.7(c)

The proposed form change requiring exclusive use of Form I-912 to request a fee waiver impermissibly conflicts with 8 C.F.R § 103.7(c), which only requires a "written request" and not the use of any specific form. Beyond the fact that the proposed requirement contravenes the regulatory language, USCIS offers no explanation or justification for why it seeks to eliminate other forms of written requests. Not only is the mandate to use Form I-912 as the exclusive vehicle for requesting a fee waiver impermissible, it also lacks a necessary evidentiary basis and any rational connection to the goal of determining ability to pay. Were USCIS to refuse to consider applicant-generated requests for a fee waiver, it would place an additional and unnecessary burden on applicants to locate, complete, and submit the Form I-912, when a self-generated request that provides all the necessary information can equally meet the requirements under 8 C.F.R. § 103.7(c). USCIS must continue to accept applicant-generated fee waiver requests (i.e., requests that are not submitted on Form I-912, such as a letter or an affidavit) that comply with 8 C.F.R. § 103.7(c) and address all of the eligibility requirements.

B. The Proposed Requirement that Family Members Submit Separate Forms I-912 Is Unnecessary and Unduly Burdensome

The proposed requirement that each family submit a separate fee waiver application is similarly harmful because it places an additional time and resource burden on families who may presently submit a single I-912 form for all family-related applications or petitions filed at the same time. Under the proposal, each family member filing a petition would be required to complete a separate I-912 form. The current ability of family members to submit a single fee waiver application simplifies the filing process by collecting all relevant data on a single form with all necessary documentation attached once. This is particularly beneficial when families apply for immigration benefits with minor children, or when couples apply for naturalization at the same time. The proposal would require every applicant to complete the I-912 with the same household information, gather multiple copies of the required documentation being requested, including an IRS transcript or verification of non-filing. For example, if an individual, their spouse, and their children each submit Form I-765, Application for Employment Authorization, the proposal would require each of them to submit separate I-912 forms, documenting the same household income information with identical supporting documentation. There can be no rational basis for this approach, which increases the burden on the applicant, replicates the information needed for a family who could have submitted their request together, and increases the number of fee waiver applications USCIS adjudicators must process. As with other changes proposed, USCIS offers no

justification for this added burden on applicants, or any rationale for using agency resources in this manner. USCIS's failure to demonstrate it engaged in reasoned decision-making about the potential costs of this added requirement makes this proposal appear arbitrary and capricious.

V. The Proposed Form Change Increases Inefficiencies in the Adjudication Process and Will Increase Processing Times for Adjudications for Immigration Benefits and Naturalization

The proposed changes to Form I-912 and its evidentiary requirements, while presented as a way to increase efficiency in the adjudication process, will decrease the efficiency of adjudicators. The onerous requirements proposed to demonstrate fee waiver eligibility will increase the workload to already overburdened USCIS service centers, ultimately resulting in a further slowdown of processing times. Contrary to the agency's claims that these changes will standardize, streamline, and expedite the process of requesting a fee waiver by clearly laying out the most salient data and evidence necessary to adjudicate a waiver, the proposed changes to the process and documentation requirements will decrease efficiency and create a greater burden on the adjudication process.

A. The Proposed Changes Would Create Inefficiencies by Increasing the Number of Fee Waivers USCIS Must Adjudicate

As discussed above, the proposed changes require that each applicant submit their own fee waiver request, even if they are filing with other family members. This means that the number of fee waiver applications will increase. Rather than collecting and reviewing the data once, USCIS proposes to collect duplicate data and review it multiple times.

The proposed changes fail to provide any benefit or consider the added work for adjudicators associated with these changes. Not only will the proposed changes increase the number of fee waivers USCIS must adjudicate; by increasing the number of adjudications, it will also lead to further slowdowns by increasing the risk of adjudication error.

B. The Proposed Form Change Will Contribute to Backlogs by Requiring USCIS Adjudicators to Re-Verify and Reevaluate Information That Has Already Been Provided to and Evaluated by Another Government Agency

As noted above, the proposed changes expand the burden on USCIS adjudicators to re-verify and re-evaluate information pertinent to inability to pay, which has already been reviewed by another governmental agency. Rather than being able to rely simply on a Notice of Action from a federal, state, or local government agency that performed an eligibility determination for a means-tested benefit, USCIS adjudicators will be performing their own income determination for all fee waiver applicants. This change will slow the processing of applications for an agency that already lags on processing times.

Currently, USCIS processing times for naturalization applications (N-400), Petitions for U Nonimmigrant Status (I-918), and I-360 petitions have more than doubled since 2017.[12] Rather than addressing the real concerns associated with the increases in processing times over the past two years, USCIS is instead proposing an unnecessary, unjustified, and burdensome form change that will only exacerbate this problem. Given significant increases in processing times, it makes no sense that USCIS would allocate its resources to duplicative work rather than to adjudicating the underlying immigration and naturalization petitions.

IV. The Proposed Form Change Would Increase the Burden on Legal Service Providers and Reduce the Availability of Legal Services

The proposed changes will increase the burden on non-profit legal service providers and limit access to immigration legal services for individuals in need. In addition, the changes will make it harder for legal service providers to help immigrants who cannot afford the fee apply for immigration benefits and naturalization. The proposed changes will limit the number of individuals whom immigration support organizations will be able to assist. Under the proposed form change, service providers will need to take a longer time explaining and assisting an applicant through the new process, including guiding applicants through the process of finding the new supporting information. Further, service providers will need to dedicate their limited time and resources to revising materials, procedures, and service models, as opposed to serving clients who most need their help.

A. Under the Proposed Form Change the Number of Individuals Who Can be Served Through the Workshop Model Will Be Reduced

Currently, non-profit immigration legal service providers organize workshops as the most efficient model to help eligible applicants apply for immigration benefits and naturalization. Workshops are helpful to both applicants and USCIS because having qualified attorneys and DOJ representatives provide legal services, including in remote areas of the United States that have few legal resources, allows for a reduction in errors and minimizes the fraudulent provision of immigration services.

With the proposed changes to the fee waiver form, it will become harder for non-profit legal service providers to complete applications in the workshop setting. Because workshops depend on having a streamlined process, and on having applicants provide all needed documents to the workshop, the proposed changes will confuse and frustrate individuals who do not have or know about the documentation required to qualify for a fee waiver. Legal service providers will face resource constraints in helping individuals provide significant documentation to prove their eligibility for a fee waiver. The proposed changes would make it so time-consuming and onerous to complete each fee waiver application that organizations may decide to stop providing assistance with fee waivers in the workshop setting. This would cut off access to legal support

[12] For example, in the two years from 2016 to 2018, the N-400, Application for Naturalization, went from having a 5.6 month average adjudication time to a 10.4 month adjudication time in 2018; the I-918, Petition for U Nonimmigrant Status, went from having a processing time of 22.1 months to 40.4 months; and the I-914, Petition for T Nonimmigrant Status, went from a processing time of 7.9 months to 11.2 months. *See Historical National Average Processing Time for All USCIS Offices,* USCIS, https://egov.uscis.gov/processing-times/historic-pt.

and immigration relief for vulnerable populations, including for those in remote areas or other hard-to-reach groups.

B. The Proposed Form Change Disproportionately Impacts Services to Individuals in Under-Resourced Areas

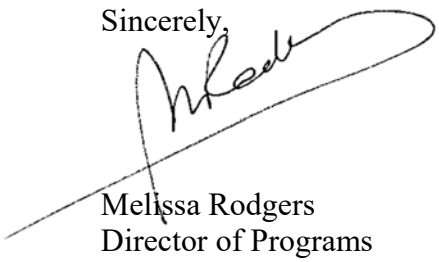
The impact on immigration legal services for under-resourced and rural communities will be especially profound. Many participants in group processing workshops in under-resourced areas qualify for fee waivers, and many depend on the receipt of means-tested benefits to prove their inability to pay the prescribed application fee. Numerous individuals in these remote areas will not have access to or knowledge of the new requirements to provide additional documentation to support their application for a fee waiver. Because of the shortage of legal service providers in these communities, the only time these individuals learn about the application process is often at a workshop. Under the proposed new form, legal service providers would need to dedicate additional time to each client, educating them about how to access IRS transcripts or other supporting documents to verify their income. We estimate that these changes would more than double the amount of time an application would take for a single client. This will limit the number of individuals service providers will be able to help, and the number of applications they will ultimately be able to complete at these workshops.

The proposed changes are problematic not only because of the increased time it will take to serve each client, but also because the changes will limit the locations in which these workshops can be held. Workshops for under-resourced communities often take place in very remote areas with limited access to the internet. If an applicant needs assistance obtaining an IRS transcript to support their fee waiver application, applicants will have to delay their application process until they are able to visit the legal service worker at their organization's office, which may be hours away.

V. Conclusion

The proposed changes to the fee waiver eligibility criteria, as well as the greater evidentiary burden on applicants and their families, will create insurmountable barriers for those seeking to secure their immigration status or naturalize so that they can participate fully in American democracy. We call for USCIS to withdraw the proposed changes to the fee waiver eligibility criteria and required forms of evidence. Instead, we urge USCIS to work to expand the types of documentary evidence accepted to establish eligibility for a fee waiver in order to ensure the fair and efficient adjudication of immigration benefits and naturalization. This will bring us closer to an inclusive process that honors our country's commitment to fairness and justice.

Sincerely,



Melissa Rodgers
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Attachment F

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May 6, 2019

Submitted via email
OMB USCIS Desk Officer
dhsdeskofficer@omb.eop.gov

Re: Agency USCIS, OMB Control Number 1615-0116 - Public Comment Opposing Changes to Fee Waiver Eligibility Criteria, Agency Information Collection Activities: Revision of a Currently Approved Collection: Request for Fee Waiver FR Doc. 2019-06657 Filed 4-4-19; 84 FR 13687, 13687-13688

Dear Desk Officer:

I am writing on behalf of the Immigrant Legal Resource Center (ILRC) in opposition to the Department of Homeland Security (DHS), United States Citizenship and Immigration Services (USCIS) proposed changes to fee waiver eligibility criteria, OMB Control Number 1615-0116, published in the Federal Register on April 5, 2019.

The ILRC is a national non-profit organization that provides legal trainings, educational materials, and advocacy to advance immigrant rights. The ILRC's mission is to work with and educate immigrants, community organizations, and the legal sector to continue to build a democratic society that values diversity and the rights of all people. Since its inception in 1979, the ILRC has provided technical assistance on hundreds of thousands of immigration law issues, trained thousands of advocates and pro bono attorneys annually on immigration law, distributed thousands of practitioner guides, provided expertise to immigrant-led advocacy efforts across the country, and supported hundreds of immigration legal non-profit organizations in building their capacity. The ILRC has produced legal trainings, practice advisories, and other materials pertaining to the fee waiver.

The ILRC also leads the New Americans Campaign, a national non-partisan effort that brings together private philanthropic funders, leading national immigration and service organizations, and over two hundred local services providers across more than 20 different regions to help prospective Americans apply for U.S. citizenship. We have extensive experience with fee waivers and have helped hundreds of thousands of lawful permanent residents with the naturalization process. Through our extensive networks with service providers, immigration practitioners, and naturalization applicants, we have developed a profound understanding of the barriers faced by low-income individuals seeking to obtain immigration benefits or naturalization and strongly oppose the proposed changes to the fee waiver eligibility criteria.

As the lead organization for the New Americans Campaign, the ILRC receives and re-grants substantial philanthropic dollars to local immigration legal services providers across the United States who help lawful permanent residents (LPRs) apply for naturalization. Our local partners have helped more than 400,000 LPRs complete naturalization applications, and for more than 40% of naturalization applications our partners have also helped LPRs complete fee waiver requests. The majority of these requests use receipt of means-tested benefits to establish fee waiver eligibility. The proposed changes to the fee waiver form would have immediate detrimental effects on our ability to ensure the New American Campaign is able to meet its goals and would cause immediate harm to the service providers who participate in the New Americans Campaign and to the LPRs we help every day.

The ILRC is also a leader in VAWA, U, and T immigration relief for survivors, coordinating taskforces and producing trusted legal resources including webinars, trainings, and manuals such as *The VAWA Manual: Immigration Relief for Abused Immigrants, The U Visa: Obtaining Status for Immigrant Victims of Crime* and *T Visas: A Critical Option for Survivors of Human Trafficking*. Although USCIS proposes allowing these applicants to submit other documentation and an explanation of their inability to provide required proof of income, eliminating receipt of means-tested benefits as proof of inability to pay an immigration filing fee will still place an undue burden on these applicants. Most will not be able to comply with the required evidence in support of a fee waiver request, and thus will have to rely on USCIS acceptance of alternative evidence and explanation for failure to obtain the required documentation, even as these applicants are most often in need of fee waivers. Furthermore, in the same way that "any credible evidence" is acceptable for victims of domestic abuse, criminal activity and human trafficking to show their eligibility for VAWA, U nonimmigrant status and T nonimmigrant status respectively, informal, "applicant-generated" fee waiver requests have been acceptable for these types of petitions. Changing the process to require the submission of a Form I-912 would be an undue burden on the survivors applying for these forms of immigration relief, the service providers who assist them, and the ILRC who would need to revise all of our training and written resources to reflect these new, stricter requirements.

Background on Current Fee Waiver Guidance and Optional Form I-912, Request for Fee Waiver

In 2010, after extensive collaboration with stakeholders, USCIS developed the Form I-912, Request for Fee Waiver, and then published the current fee waiver guidance.[1] USCIS held public teleconferences and gathered extensive information from stakeholders before making these changes.[2] The guidance

[1] USCIS Policy Memorandum, PM-602-0011.1, Fee Waiver Guidance as established by the Final Rule of the USCIS Fee Schedule: Revisions to the Adjudicator's Field Manual (AFM) Chapter 10.9, AFM Update AD11-26 (March 13, 2011) [hereinafter USCIS Fee Waiver Guidance].
[2] USCIS, Executive Summary, USCIS Stakeholder Engagement: Fee Waiver Form and Final Rule (January 5, 2011), https://www.uscis.gov/sites/default/files/USCIS/Outreach/Public%20Engagement/National%20Engagement%20Pa

replaced ten prior memos that contained contradictory instructions on fee waivers, and the new form for the first time allowed applicants a uniform way of applying for a fee waiver.

The purpose of the form and the new three-step eligibility analysis was to bring clarity and consistency to the fee waiver process. The analysis for fee waiver eligibility is:

Step 1: the applicant is receiving a means-tested benefit; or
Step 2: the applicant's household income is at or below 150% of the poverty income guidelines at the time of filing; or
Step 3: the applicant suffers a financial hardship.

USCIS continued to consider applicant-generated fee waiver requests not submitted on the form. The standard for fee waiver eligibility for limited types of USCIS forms is described in the underlying regulation as making fee waivers available when "the party requesting the benefit is unable to pay the prescribed fee."

Current Revisions

On September 28, 2019, USCIS published in the Federal Register a Notice of Agency Collection Activities; Revision of a Currently Approved Collection: Request for a Fee Waiver; Exemptions as a notice under the Paperwork Reduction Act (PRA). The notice stated that USCIS intended to eliminate the eligibility ground of receipt of a public benefit for the fee waiver, and alter the Form I-912 accordingly, but would continue to allow eligibility for financial hardship or income of 150% or less of the poverty income guidelines. The agency stated that since different income levels were used in different states to determine means-tested benefits, using that standard has resulted in inconsistent adjudications. No documentation or analysis was offered. The notice also stated that if USCIS finalized this change, it would eliminate the current USCIS Fee Waiver Guidance and replace it. No new proposed guidance was published for public comment. A total of 1,198 comments were filed in response.

On April 5, 2019, the current notice was published, stating that USCIS was proceeding with the change, eliminating public benefits receipt as an eligibility ground for the fee waiver, and that it was proceeding

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ges/2010%20Events/November%202010/Executive%20Summary%20-%20Fee%20Waiver%20Form%20and%20Final%20Fee%20Rule.pdf (accessed April 8, 2019) and DHS CIS Ombudsman Teleconference: Fee Waivers: How are they working for you (September 30, 2009), https://www.uscis.gov/archive/archive-outreach/cis-ombudsman-teleconference-fee-waivers-how-are-they-working-you-september-30-2009 (accessed April 8, 2019), in which USCIS stated that it was developing a fee waiver form to clarify and streamline the fee waiver process, that the form would be published first for stakeholder comment, and that USCIS would use receipt of means-tested benefits as a clear eligibility ground for a fee waiver, "because it represents another agency's independent assessment of your economic circumstances," another effort to lend clarity to the process.

with the form revision. USCIS continues to disingenuously refer to the elimination of means-tested benefits in support of a fee waiver request as a "reduction" in the evidence required,[3] when in fact what it does is reduce the *ways* in which an applicant can prove inability to pay, as proof of public benefits was never required, but merely an option that many applicants utilized. Fee waivers based on "poverty income guidelines threshold and financial hardship criteria" will apparently be retained, although no details are offered. The notice also announced that the current fee waiver guidance would be rescinded, and new guidance would be issued. There was only summary reference in the April 5, 2019 notice of the 1,198 comments received in response to the September 28, 2018 notice, simply stating that "USCIS… is proceeding with the form revision after considering the public comments."[4]

The PRA Process is Inappropriate for Substantive Guidance Changes.

USCIS has proceeded in this process with a collection of information under the Paperwork Reduction Act (PRA) of 1995. The PRA requires the agency to explain the purpose of the form being produced and its burden on the public. Here, however, much more than a form or collection of information is involved, and the use of streamlined PRA process is inappropriate.

The changes proposed here are not information collection. Instead, they go to the heart of a substantive eligibility requirement. The proposed changes to the fee waiver eligibility criteria and accepted forms of evidence represent a fundamental change in the law that is being finalized without sufficient public notice and comment.

Additional Burdens Created by the Revision

Eliminating eligibility for a means-tested benefit is unnecessary and unfounded.

The revision eliminates an individual's ability to use proof of receipt of means-tested public benefits to demonstrate inability to pay the prescribed fee in accordance with the regulations. Receipt of a means-tested benefit is sufficient evidence of inability to pay, which is what 8 C.F.R. § 103.7(c) requires. USCIS fails to provide any evidence that accepting proof of receipt of a means-tested benefit has led the agency to grant fee waivers to individuals who were able to pay the fee. Receipt of means-tested benefits is by far the most common and straightforward way to demonstrate fee waiver eligibility because applicants can show they have already been screened for income-based eligibility by simply providing a copy of the official eligibility determination letter, or Notice of Action, from the government agency administering the means-tested benefit to confirm this.

[3] *See* 84 FR 13687 (Apr. 5, 2019) ("The proposed revision would *reduce* the evidence required for a fee waiver…") (emphasis added).
[4] 64 FR 13867 (Apr. 5, 2019).

USCIS argued, in making these revisions, that the various income levels used by states to grant a means-tested benefit result in inconsistent income levels being used to determine eligibility for a fee waiver. Consequently, a fee waiver may be granted for one person who has a certain level of income in one state but denied for a person with that same income who lives in another state.

However, the underlying legal standard for a fee waiver is ability to pay, according to the regulations.

USCIS takes the position that permitting fee waivers based on the receipt of public benefits leads to inconsistent results because of "the various income levels used in states to grant a means-tested benefit." This is a spurious argument for many reasons. First, the standard for a fee waiver is "ability to pay," which is not a standard that requires all fee waiver recipients to have identical incomes. Indeed, one would expect individuals living in high-cost areas of the United States to have less disposable income and therefore a lower ability to pay an immigration fee than individuals with identical incomes living in low-cost areas of the United States. The approach USCIS takes here, which is to require identical income levels regardless of factors such as cost of living, is arbitrary and cannot possibly be a fair measure of "ability to pay."

By contrast, states administering public benefit programs have a proven track record of identifying individuals who have insufficient income to cover the full cost of essential needs such as health care, food, or shelter. Although income eligibility rules for public benefit programs may vary slightly between states, the variation is insufficient to justify the position USCIS is taking. Indeed, USCIS has provided no data to back up its claims. Programs such as Medicaid and SNAP operate under strict rules that have created a consistent system that every state in the nation has found sufficient to adjudicate eligibility for these major programs. Individuals who qualify for public benefits have, by definition, a lack of disposable income. They are clearly individuals who are appropriately eligible for immigration fee waivers. Moreover, they have been fully vetted by government agencies whose business it is to determine income-based program eligibility. For USCIS to take the position that receipt of a public benefit is not a fair proxy of inability to pay, with no evidence to back up its claim, is arbitrary and capricious.

Individuals who have already passed a thorough income eligibility screening by government agencies should not have to prove their eligibility all over again to USCIS. By eliminating receipt of a means-tested benefit to show eligibility, the government is adding an additional burden on immigrants who already are facing the economic challenge of paying application fees that have risen exponentially in recent years. USCIS is taking the indefensible position that it cannot tell which public benefit programs are means-tested and which ones are not. Given that the largest means-tested programs are federal program such as Medicaid or SNAP, this assertion is plainly a pretense for an action that has no real basis in fact. Indeed, the very reason USCIS provided for why it created a fee waiver form that included

receipt of a means-tested benefit as a way to establish inability to pay was "because it represents another agency's independent assessment of [the individual's] economic circumstances."[5]

Finally, USCIS cites the fee waiver approval rate for fiscal year 2017 as a basis for "inconsistencies" necessitating elimination of means-tested benefits to prove fee waiver eligibility,[6] rather than providing any evidence of actual inconsistencies in adjudicating fee waivers. This shows that USCIS' true aim with this proposed revision is to reduce the number of approved fee waivers, rather than reduce "inconsistencies," because the percentage approved has nothing to do with consistency or inconsistency in adjudication.

These proposed changes will discourage eligible individuals from filing for both fee waivers and immigration benefits and place heavy time and resource burdens on individuals applying for fee waivers.

The revision will place a time and resource burden on individuals applying for fee waivers, thereby limiting the availability of fee waivers for many individuals.

Required use of Form I-912 places an unacceptable time and resource burden on individuals

By only accepting fee waiver requests submitted using Form I-912, USCIS will limit the availability of fee waivers. Applicants must continue to be permitted to submit applicant-generated fee waiver requests (i.e., requests that are not submitted on Form I-912, such as a letter or an affidavit) that comply with 8 C.F.R. § 103.7(c), and address all of the eligibility requirements. Indeed 8 C.F.R. § 103.7(c)(2) states, "To request a fee waiver, a person requesting an immigration benefit must submit *a written request* for permission to have their request processed without payment of a fee with their benefit request. The request must state the person's belief that he or she is entitled to or deserving of the benefit requested, the reasons for his or her inability to pay, and evidence to support the reasons indicated." (Emphasis added.)

Eliminating the currently accepted applicant-generated fee waiver request places an additional and unnecessary burden on applicants to locate, complete, and submit the Form I-912, when a self-generated request that provides all of the necessary information can equally meet the requirements.

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[5] DHS CIS Ombudsman Teleconference: Fee Waivers: How are they working for you (September 30, 2009), https://www.uscis.gov/archive/archive-outreach/cis-ombudsman-teleconference-fee-waivers-how-are-they-working-you-september-30-2009 (accessed April 8, 2019).

[6] *USCIS Responses to Public Comments Received on the 60-day Federal Register Notice, "Agency Information Collection Activities; Revision of a Currently Approved Collection: Request for Fee Waiver; Exemptions," 83 FR 49120 (Sept. 28, 2018)* at 3 ("In FY 2017, USCIS approved 588,732 or 86% of these fee waiver requests. To increase the consistency in the shifting of the cost of fee waivers to those who pay fees, USCIS has decided to apply more consistent standards of income and financial hardship for the purposes of determining inability to pay a fee."), available at https://www.aila.org/, AILA Doc. No. 19040834 (posted Apr. 10, 2019).

Requiring transcripts of tax returns places an unacceptable time and resource burden on individuals

In addition to mandating use of the Form I-912, under the proposed changes the applicant must also procure additional new documents including a federal tax transcript from the Internal Revenue Service (IRS) to demonstrate household income less than or equal to 150% of the federal poverty guidelines. This, too, will limit availability of fee waivers for many applicants. Currently, applicants can submit a copy of their most recent federal tax returns to meet this requirement. The government does not provide any reason why a transcript is preferred over a federal tax return. Federal tax returns are uniform documents and most individuals keep copies on hand. In contrast, no one has a tax transcript unless they take the additional step of requesting one, in this instance solely to request a fee waiver. Requiring tax transcripts rather than accepting copies of tax returns and pay statements makes the entire process of proving eligibility for a fee waiver based on income more onerous. There are multiple types of tax transcripts,[7] and many pieces of information necessary to request transcripts,[8] which may confuse and even prevent individuals from obtaining tax transcripts. For instance, to request a tax transcript online, an individual must not only provide their Social Security Number, date of birth, filing status, and mailing address from their latest tax return, but also have access to an email account, their personal account number from a credit card, mortgage, home equity loan, home equity line of credit or car loan, and a mobile phone with their name on the account.[9] While a request for tax transcript by mail requires less information, obtaining transcripts by mail takes a minimum of five to ten calendar days, delaying what should be a straightforward and easy process. Moreover, for applicants who succeed in obtaining a tax transcript, USCIS leaves itself discretion, with no criteria or limitations, to reject the transcript and request a certified transcript, causing further delays in the adjudication of the underlying immigration petition or naturalization application. The proposed requirement will place an additional burden on individuals for more documents and does not account for those individuals who might need assistance obtaining a transcript due to lack of access to a computer or for delays involving delivery of mail.[10]

The two remaining bases for a fee waiver request require more information and evidence than the means-tested benefits basis, placing an unacceptable time and resource burden on individuals

Finally, narrowing the range of ways an applicant can prove inability to pay, from three options to two—income at or below 150% of the federal poverty guidelines or financial hardship—will also increase the

[7] *See Transcript Types and Ways to Order Them*, IRS, https://www.irs.gov/individuals/tax-return-transcript-types-and-ways-to-order-them.
[8] *See Welcome to Get Transcript: What You Need*, IRS, https://www.irs.gov/individuals/get-transcript.
[9] *See id.*
[10] Although there is an option to download tax transcripts from the IRS website, this appears to require a Social Security Number, so many will need to resort to having their tax transcripts mailed to them instead. *See* https://www.irs.gov/individuals/get-transcript.

burden on applicants in terms of information they must provide on the Form I-912 and required evidence in support because the remaining two options involve far more information and evidence than a fee waiver based on receipt of means-tested benefits.

An applicant requesting a fee waiver based on receipt of means-tested benefits need only submit a copy of the official eligibility determination letter, or Notice of Action, from the government agency administering the benefit to prove such eligibility. On the Form I-912, the section on means-tested benefits as a basis for requesting a fee waiver spans less than half a page, simply requiring information on who receives the benefit (and their relationship to the fee waiver requester), the agency providing the benefit, type of benefit, and dates the benefit covers—all information readily available from the benefits determination letter.

In contrast, an applicant requesting a fee waiver based on income must prove income (or lack thereof) and provide information spanning nearly three pages on the proposed revised Form I-912, which includes information on their employment status, household size and income, and detailed dollar amounts of any additional income received such as parental support, spousal support, child support, educational stipends, royalties, pensions, unemployment benefits, Social Security benefits, and veteran's benefits.

The evidence and information required for a fee waiver request based on financial hardship is similarly onerous and far more time-intensive than requesting one based on means-tested benefits. To request a fee waiver based on financial hardship, the requester will have to fill out nearly a page of information on the revised Form I-912 just for this basis, including detailing monthly expenses and liabilities (and providing proof of these expenses and liabilities, which means gathering and attaching copies of utility bills, medical bills, credit card bills, receipts for money spent on food and rent, commuting costs, etc.).

Both these alternative methods for proving inability to pay in support of a fee waiver request are far more arduous than submitting proof an applicant receives means-tested benefits. Further, to the extent that USCIS maintains this will not take more time or effort because applicants will be "merely providing [the] same documentation to USCIS,"[11] that they provided to the benefit-granting agency, this is inaccurate for a number of reasons. One, USCIS will want to see recent evidence, rather than older copies of utility bills, medical bills, credit card bills, receipts for money spent on food and rent, commuting costs, etc. Therefore, the applicant will have to go through the same time-intensive process yet again of collecting all the varied proofs of income or expenses and liabilities that they have already collected to prove their eligibility for a means-tested benefit. Two, different evidence is required for means-tested benefits than USCIS will be requesting. For instance, many means-tested benefits require

[11] *USCIS Responses to Public Comments Received on the 60-day Federal Register Notice, "Agency Information Collection Activities; Revision of a Currently Approved Collection: Request for Fee Waiver; Exemptions," 83 FR 49120 (Sept. 28, 2018)* at 4, available at https://www.aila.org/, AILA Doc. No. 19040834 (posted Apr. 10, 2019).

applicants to provide pay stubs and bank statements. USCIS will only accept pay stubs *in addition to a tax transcript*, for those who have experienced a salary or employment change since they filed their income taxes. Other means-tested benefits require copies of federal income tax returns, which USCIS will also no longer accept.

USCIS appears dismissive of claims that the fee waiver revisions will increase the burden on applicants and chooses to prefer, without substantiation, its own view that the burden of this change will be minimal or non-existent.[12] In assessing claims of increased burden and whether such burden is justified, USCS has failed to engage in a reasoned analysis and meaningfully address comments and concerns about increased burden on applicants, as required as part of this process.

This revision will negatively impact the ability of individuals, especially those who are vulnerable, to apply for immigration benefits for which they are eligible.

The filing fee associated with various immigration benefits can be an insurmountable obstacle to applying for naturalization or another immigration benefit. Any opportunity to mitigate the costs associated with filing should be designed to ease, rather than exacerbate, these obstacles.

Increasing the burden of applying for a fee waiver will further limit access to naturalization for otherwise eligible lawful permanent residents. The naturalization fee has increased by 600% over the last 20 years, pricing many qualified green card holders out of U.S. citizenship. USCIS asserts, without any evidence to back up its claim, that individuals can merely "save funds" and apply later if they do not have the funds to apply today.[13] This both fails to consider the harm to individuals resulting from the delay in applying and unjustifiably assumes individuals applying for fee waivers have disposable income that could be set aside.

The changes would harm the most vulnerable populations.

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[12] *See, e.g., USCIS Responses to Public Comments Received on the 60-day Federal Register Notice, "Agency Information Collection Activities; Revision of a Currently Approved Collection: Request for Fee Waiver; Exemptions," 83 FR 49120 (Sept. 28, 2018)* at 1 ("USCIS understands that this change will require people to obtain different documentation… *However, applicants may still request fee waivers*. USCIS does not believe the changes are an excessive burden on respondents.") (emphasis added); at 4 ("Thus, the additional burden should be minimal. In any event, DHS has considered the burden on applicants and determined that the benefits of the policy change exceed the potential small burden increase."), available at https://www.aila.org/, AILA Doc. No. 19040834 (posted Apr. 10, 2019).

[13] *USCIS Responses to Public Comments Received on the 60-day Federal Register Notice, "Agency Information Collection Activities; Revision of a Currently Approved Collection: Request for Fee Waiver; Exemptions," 83 FR 49120 (Sept. 28, 2018)* at 5, available at https://www.aila.org/, AILA Doc. No. 19040834 (posted Apr. 10, 2019).

More than 94% of domestic violence survivors also experienced economic abuse, which may include losing a job or being prevented from working. Fee waivers are critical to ensuring survivors can access relief. As USCIS has indicated, greater "consistency" in fee waiver adjudication seems to correlate with lower rates of approval,[14] and this will harm survivors of domestic violence, sexual assault, human trafficking, and other crimes who are least able to afford immigration filing fees while being most in need of protection by our immigration laws.

The changes would also harm people with disabilities. Thirty percent of adults receiving government assistance have a disability. For most, that disability limits their ability to work. Eliminating receipt of a means-tested benefit as proof of fee waiver eligibility, or any new requirements that make the process more complicated and time-intensive, will further burden those with disabilities in accessing an immigration benefit for which they are eligible.

The changes will increase inefficiencies in processing fee waiver requests while further burdening government agencies.

USCIS claims the changes will standardize, streamline, and expedite the process of requesting a fee waiver by clearly laying out the most salient data and evidence necessary to make the decision. Instead, these proposed changes will slow down an already overburdened system, delaying and denying access to immigration benefits or naturalization for otherwise eligible immigrants. USCIS adjudicators will be forced to engage in a time-consuming analysis of voluminous and varied financial records in support of an income or financial hardship showing, rather than relying on the professional expertise of social services agencies who routinely determine eligibility for means-tested benefits.

This revision also places an unnecessary burden on the IRS and fails to address whether the IRS is prepared to handle a sudden increase in requests for documents. Under the revision, almost every person who applies for a fee waiver based on their annual income must also request the required documentation from the IRS in order to prove their eligibility.

The changes will place a time and resource burden on legal service providers and reduce access to legal services, especially in under-resourced locations.

The revisions detailed above will increase the burden on non-profit legal service providers and limit access to immigration legal services for individuals in need. In addition, it will make it harder for legal service providers to help immigrants who cannot afford the fee in applying for immigration benefits and naturalization.

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[14] *See USCIS Responses to Public Comments Received on the 60-day Federal Register Notice, "Agency Information Collection Activities; Revision of a Currently Approved Collection: Request for Fee Waiver; Exemptions," 83 FR 49120 (Sept. 28, 2018)* at 3, available at https://www.aila.org/, AILA Doc. No. 19040834 (posted Apr. 10, 2019).

Fee waiver preparation for low-income immigrants demands hours of work from legal services providers. The fee waiver based on receipt of a means-tested benefit is efficient in that the provider knows which document will be sufficiently probative for USCIS. The other grounds for a fee waiver, financial hardship and a threshold of the poverty income guidelines, are much less clear, and require far more time to gather sufficient documentation. An experienced advocate can help an applicant complete a fee waiver request on the basis of receipt of a means-tested benefit in 10 minutes. Other modes of establishing inability to pay require ten or twenty times more work and time, for both the advocate and the applicant. DHS grossly underestimates the time burden involved in gathering the documentation needed and engaging in income calculations.

Currently, non-profit immigration legal service providers, including those in remote areas of the United States, organize one-day workshops as the most efficient model to help eligible applicants apply for immigration benefits and naturalization. Workshops are helpful to both applicants and USCIS because increasing access to qualified immigration attorneys or accredited representatives allows for a reduction in errors and minimizes the fraudulent provision of immigration services. With the proposed changes to the fee waiver form, it will become harder or even impossible for non-profit legal service providers to complete applications in the workshop setting. Organizations may stop providing assistance with fee waivers in the workshop setting. This would cut off access to legal support and immigration relief for vulnerable populations, particularly for those in remote or other hard-to-reach areas with limited access to reputable immigration assistance.

The changes will also directly impact the ILRC and our work. The ILRC provides numerous in-person and webinar trainings on many topics including fee waivers. Once the proposed changes to the fee waiver process take effect, the ILRC will have to plan and present additional webinars and other trainings to alert and re-train the field of immigration legal advocates in how to screen, prepare, and file fee waivers in light of such a significant change, as well as notifying and educating the immigrant community at-large. The ILRC will also have to dramatically re-vamp our publications on fee waivers, including manuals and practice advisories, to reflect this major change to the fee waiver process, eliminating one of three grounds for requesting a fee waiver, after nearly a decade during which fee waivers have remained unchanged.

With respect to our leadership of the New Americans Campaign, the proposed change undermines the service model that is at the heart of our work and the best practices in delivering naturalization legal services to large numbers of LPRs who need the help—models we have gathered and shared with local organizations throughout the United States. The philanthropic funding we receive is predicated on our ability to engage in high impact work. Therefore, in addition to the harm the form changes will create for immigrants and the organizations that serve them, the changes will also result in financial harm to the ILRC.

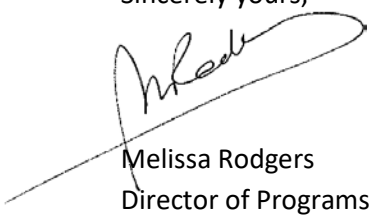
Conclusion

The proposed form change will harm the most vulnerable immigrants and naturalization applicants, with no reasonable justification. The change will create new barriers to applying for immigration relief, making the regulatory provision for fee waivers a distant promise, inaccessible to most applicants including many for whom the fee waiver process was intended—deserving individuals with a substantiated inability to pay. The proposed changes will make it significantly harder for non-profit legal service provides to help eligible applicants secure the fee waivers to which they are entitled. Finally, the proposed changes will further burden adjudication of immigration petitions and naturalization applications at USCIS, an agency already plagued by well-documented adjudication backlogs across all types of cases.[15]

USCIS should review the development of the current fee waiver standards and engage in a reasoned analysis of how it arrived at its current proposal. Nothing in the current notice indicates an understanding of how and why the current form and guidance were created in 2010, which is critical to planning any changes. The Form I-912 request for fee waiver with its three-step eligibility formula, and the 2011 guidance, were specifically created to simplify the fee waiver adjudication process. The eligibility for receipt of a means-tested benefit was the linchpin of that simplified process.

We urge USCIS, rather than implement the revision, to retain the current I-912 form and continue accepting applicant-generated requests, and to perform public outreach to gather information, and then engage in full notice and comment procedures on all substantive changes proposed in order to ensure the fair and efficient adjudication of immigration benefits and naturalization.

Sincerely yours,



Melissa Rodgers
Director of Programs
Immigrant Legal Resource Center

[15] AILA Policy Brief: USCIS Processing Delays Have Reached Crisis Levels Under the Trump Administration. AILA Doc. No. 19012834, January 30, 2019, available at https://www.aila.org/infonet/aila-policy-brief-uscis-processing-delays (accessed May 3, 2019).

Attachment G

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June 26, 2019

Submitted via email
OMB USCIS Desk Officer
dhsdeskofficer@omb.eop.gov

Re: Agency USCIS, OMB Control Number 1615-0116 - Public Comment Opposing Changes to Fee Waiver Eligibility Criteria, Agency Information Collection Activities: Revision of a Currently Approved Collection: Request for Fee Waiver FR Doc. 2019-11744, Filed 6-5-19; 84 FR 26137

Dear Desk Officer:

I am writing on behalf of the Immigrant Legal Resource Center (ILRC) in opposition to the Department of Homeland Security (DHS), United States Citizenship and Immigration Services (USCIS) proposed changes to fee waiver eligibility criteria, OMB Control Number 1615-0116, published in the Federal Register on June 5, 2019.

The ILRC is a national non-profit organization that provides legal trainings and educational materials for the immigration legal field and immigrant community. The ILRC also engages in advocacy to advance immigrant rights. The ILRC's mission is to work with and educate immigrants, community organizations, and the legal sector to continue to build a democratic society that values diversity and the rights of all people. Since its inception in 1979, the ILRC has provided technical assistance on hundreds of thousands of immigration law issues, trained thousands of advocates and pro bono attorneys annually on immigration law, distributed thousands of practitioner guides, provided expertise to immigrant-led advocacy efforts across the country, and supported hundreds of immigration legal non-profit organizations in building their capacity. The ILRC has produced legal trainings, practice advisories, and other materials pertaining to the fee waiver.

The ILRC also leads the New Americans Campaign, a national non-partisan effort that brings together private philanthropic funders, leading national immigration and service organizations, and over two hundred local services providers across more than 20 different regions to help prospective Americans apply for U.S. citizenship. We have extensive experience with fee waivers and have helped hundreds of thousands of lawful permanent residents with the naturalization process. Through our extensive networks with service providers, immigration practitioners, and naturalization applicants, we have developed a profound understanding of the barriers faced by low-income individuals seeking to obtain immigration benefits or naturalization and strongly oppose the proposed changes to the fee waiver eligibility criteria.

As the lead organization for the New Americans Campaign, the ILRC receives and re-grants substantial philanthropic dollars to local immigration legal services providers across the United States who help lawful permanent residents (LPRs) apply for naturalization. Our local partners have helped more than 400,000 LPRs complete naturalization applications, and for more than 40% of naturalization applications our partners have also helped LPRs complete fee waiver requests. The majority of these requests use receipt of means-tested benefits to establish fee waiver eligibility. The proposed changes to the fee waiver form would have immediate detrimental effects on our ability to ensure the New Americans Campaign is able to meet its goals and would cause immediate harm to the service providers who participate in the New Americans Campaign and to the LPRs we help every day.

The ILRC is also a leader in VAWA, U, and T immigration relief for survivors, coordinating taskforces and producing trusted legal resources including webinars, trainings, and manuals such as *The VAWA Manual: Immigration Relief for Abused Immigrants, The U Visa: Obtaining Status for Immigrant Victims of Crime* and *T Visas: A Critical Option for Survivors of Human Trafficking*. Although USCIS proposes allowing these applicants to submit other documentation and an explanation of their inability to provide required proof of income, eliminating receipt of means-tested benefits as proof of inability to pay an immigration filing fee will still place an undue burden on these applicants. Most will not be able to comply with the required evidence in support of a fee waiver request, and thus will have to rely on USCIS acceptance of alternative evidence and explanation for failure to obtain the required documentation, even as these applicants are most often in need of fee waivers.

Background on Current Fee Waiver Guidance and Optional Form I-912, Request for Fee Waiver

In 2010, after extensive collaboration with stakeholders, USCIS developed the Form I-912, Request for Fee Waiver, and then published the current fee waiver guidance.[1] USCIS held public teleconferences and gathered extensive information from stakeholders before making these changes.[2] The guidance replaced ten prior memos that contained contradictory instructions on fee waivers, and the new form for the first time allowed applicants a uniform way of applying for a fee waiver.

The purpose of the form and the new three-step eligibility analysis was to bring clarity and consistency to the fee waiver process, both for applicants and adjudicators. The analysis for fee waiver eligibility is:

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[1] USCIS Policy Memorandum, PM-602-0011.1, Fee Waiver Guidance as established by the Final Rule of the USCIS Fee Schedule: Revisions to the Adjudicator's Field Manual (AFM) Chapter 10.9, AFM Update AD11-26 (March 13, 2011) [hereinafter USCIS Fee Waiver Guidance].

[2] USCIS, Executive Summary, USCIS Stakeholder Engagement: Fee Waiver Form and Final Rule (January 5, 2011), https://www.uscis.gov/sites/default/files/USCIS/Outreach/Public%20Engagement/National%20Engagement%20Pages/2010%20Events/November%202010/Executive%20Summary%20-%20Fee%20Waiver%20Form%20and%20Final%20Fee%20Rule.pdf (accessed April 8, 2019) and DHS CIS Ombudsman Teleconference: Fee Waivers: How are they working for you (September 30, 2009), https://www.uscis.gov/archive/archive-outreach/cis-ombudsman-teleconference-fee-waivers-how-are-they-working-you-september-30-2009 (accessed April 8, 2019), in which USCIS stated that it was developing a fee waiver form to clarify and streamline the fee waiver process, that the form would be published first for stakeholder comment, and that USCIS would use receipt of means-tested benefits as a clear eligibility ground for a fee waiver, "because it represents another agency's independent assessment of your economic circumstances," another effort to lend clarity to the process.

Step 1: the applicant is receiving a means-tested benefit; or
Step 2: the applicant's household income is at or below 150% of the poverty income guidelines at the time of filing; or
Step 3: the applicant suffers a financial hardship.

If an applicant qualifies at the first step, the inquiry stops and USCIS grants the fee waiver. This is because the clearest eligibility ground for the fee waiver is the means-tested benefit, which requires evidence from the benefit-granting agency that the applicant is currently receiving a means-tested benefit. The other two eligibility grounds are subject to more arbitrary adjudication and are often challenged by USCIS as containing insufficient documentation and credibility, applicants report.

The standard for fee waiver eligibility for limited types of USCIS forms is described in the underlying regulation as making fee waivers available when "the party requesting the benefit is unable to pay the prescribed fee."

Immigrant communities and their legal representatives report that the development of the I-912 form was an improvement on the pre-2010 system for fee waivers, which had lacked any uniform guidance or a form on which to apply. Nonetheless, stakeholders find that fee waiver applications still require substantial resources to prepare, particularly when applying based on one of the other two criteria, income or financial hardship.

Stakeholders also find that USCIS fee waiver adjudications based on income or financial hardship can be erratic. This is because USCIS lacks expertise in determining income, leading to erroneous denials, and the financial hardship basis is so vague as to permit unbridled subjectivity, leading to arbitrary adjudications and inappropriate denials. Further, the amount and type of documentation required to establish eligibility on these two grounds can vary widely. Applicants report that these types of fee waivers are often repeatedly rejected or denied, with little clarity as to the deficiency.

The means-tested benefit basis is not perfect either, largely because social services programs provide different types of documentation with varying levels of information, e.g. benefit eligibility dates, and applicants may therefore need to supplement information from the benefit-granting agency, but the standard at least is clear on these types of fee waivers. This reliable standard was why USCIS adopted receipt of means-tested benefits as the first of the three criteria for analyzing fee waiver eligibility. There is little subjective interpretation on which benefits are means-tested, thus applicants find that this is the most straightforward basis to apply for a fee waiver and also the most straightforward basis for adjudicators to analyze fee waiver eligibility, which is why USCIS guidance directs adjudicators to look to this basis first. Assuming the applicant is able to provide sufficient proof of receipt of a means-tested benefit, this ends the inquiry for fee waiver adjudicators, as they are able to rely on another government agency's assessment of the applicant's financial resources.

Current Revisions

On September 28, 2018, USCIS published a Notice of Agency Collection Activities; Revision of a Currently Approved Collection: Request for a Fee Waiver; Exemptions in the Federal Register as a notice under the

Paperwork Reduction Act (PRA). The notice stated that USCIS intended to eliminate the eligibility ground of receipt of a means-tested benefit for the fee waiver, and alter the Form I-912 accordingly, but would continue to allow eligibility for financial hardship or income at or below 150% of the poverty income guidelines. The agency stated that since different income levels were used in different states to determine means-tested benefits, using that standard has resulted in inconsistent adjudications. No documentation or analysis was offered. The notice also stated that if USCIS finalized this change, it would eliminate the current USCIS Fee Waiver Guidance and replace it. No new proposed guidance was published for public comment. A total of 1,198 comments were filed in response.

On April 5, 2019, the notice was re-published, allowing for a 30-day public comment period. The notice stated that USCIS had decided to proceed with the change and corresponding form revision to eliminate receipt of means-tested benefits as an eligibility ground for the fee waiver. This notice reiterated USCIS' view, without evidence to support it, that fee waivers should not be based on means-tested benefits because of inconsistent adjudication. The agency provided no evidence that individuals with the ability to pay fees are routinely granted fee waivers.

On June 5, 2019, the current notice was published without substantive change, but with additions to USCIS' rationale offered as justification for the changes. The June notice provides a 30-day period for public comment. USCIS now states that in addition to making the change for "consistency," the agency is also making the change to reduce the availability of fee waivers because it wants to raise fee revenue. These rationales are contradictory and insufficiently supported by evidence. Moreover, the criteria for fee waivers is based on individual ability to pay and should not be based on the revenue goals of a federal agency.

The current notice gives a summary account of how the current fee waiver standards were developed and mischaracterizes the agency's practice on fee waivers prior to 2011 as engaging in holistic analysis. In fact, before the form and standards were adopted in 2011, the confusing fee waiver system was governed by ten contradictory agency memos and no standardized fee waiver form, a process that was widely acknowledged as rife with inconsistencies, lacking in standard procedures and clear guidance, that stymied applicants and burdened adjudicators.[3]

The Paperwork Reduction Act Process is inappropriate for substantive guidance changes and USCIS has failed to follow the prescribed process for comments and posting.

USCIS has proceeded in this process with a collection of information under the Paperwork Reduction Act (PRA) of 1995. The PRA requires the agency to explain the purpose of the form being produced and its burden on the public. Here, however, much more than a form or collection of information is involved, therefore use of streamlined PRA process is inappropriate.

[3] *See* Message from USCIS Director, Proposed Fee Waiver Form (July 16, 2010), https://www.uscis.gov/archive/archive-outreach/message-uscis-director-alejandro-mayorkas-proposed-fee-waiver-form and USCIS, First Ever Fee Waiver Form Makes Its Debut (Nov. 23, 2010), https://www.uscis.gov/archive/blog/2010/11/first-ever-fee-waiver-form-makes-its.

The changes USCIS is proposing are not simply changes in information collection. Instead, they go to the heart of a substantive eligibility requirement. The proposed changes to the fee waiver eligibility criteria and accepted forms of evidence represent a fundamental change in the law that is being finalized without sufficient public notice and comment.

In addition, USCIS has failed to comply with the required public comment process for the proposed fee waiver change and has not meaningfully engaged the individuals impacted by this change. While the notices have requested comments, the agency has failed to respond and post its responses as required.

None of the USCIS responses to public comments are properly posted on RegInfo.gov—neither to the initial 60-day public comment period nor the first 30-day public comment period. Meanwhile, although the 60-day response remains posted on Regulations.gov, there is no response to the first 30-day period.

USCIS' justification that eliminating fee waiver eligibility based on receipt of a means-tested benefit will increase consistency is false: the change will *decrease* consistency in adjudications, not increase it.

The revision eliminates receipt of means-tested benefits as a way for someone to demonstrate inability to pay the prescribed fee, even though receipt of a means-tested benefit is sufficient evidence of inability to pay, as 8 C.F.R. § 103.7(c) requires. USCIS fails to provide any evidence that accepting proof of receipt of a means-tested benefit has led the agency to grant fee waivers to individuals who were in fact able to pay the fee. USCIS fails to provide any convincing data that might call into question whether such proof is an accurate indicator of inability to pay under the regulatory standard.

Granting fee waivers to individuals with varying financial resources is appropriate because the legal standard is not whether individuals have identical income levels; it is whether individuals applying for an immigration benefit or naturalization can afford to pay the filing fee. Individuals with different incomes and assets, whose resources are all low enough to warrant their receipt of means-tested benefits—meet the requisite standard for a fee waiver. USCIS argues, in making these proposed revisions, that the various income levels used by states to grant a means-tested benefit result in inconsistent income levels being used to determine eligibility for a fee waiver. Consequently, a fee waiver may be granted for one person who has a certain level of income in one state but denied for a person with that same income who lives in another state.

This is a spurious argument for many reasons. The standard for a fee waiver is "ability to pay," which is not a standard that requires all fee waiver recipients to have identical incomes. Indeed, one would expect individuals living in high-cost areas of the United States to have less disposable income and therefore a *lower* ability to pay an immigration fee than individuals with identical incomes living in low-cost areas of the United States. The approach USCIS takes here, which is to require identical income levels regardless of factors such as cost of living, is arbitrary and cannot possibly be a fair measure of "ability to pay."

By contrast, states administering public benefit programs have a proven track record of identifying individuals who have insufficient income to cover the full cost of essential needs such as health care, food, or shelter. Although income eligibility rules for public benefit programs may vary slightly between states, the variation is insufficient to justify the position USCIS is taking. Indeed, USCIS has provided no

data to back up its claims. Programs such as Medicaid and SNAP operate under strict rules that have created a consistent system that every state in the nation has found sufficient to adjudicate eligibility for these major programs. Individuals who qualify for public benefits have, by definition, a lack of disposable income. They are clearly individuals who are appropriately eligible for immigration fee waivers. Moreover, they have been fully vetted by government agencies whose business it is to determine income-based program eligibility. For USCIS to take the position that receipt of a public benefit is not a fair proxy of inability to pay, with no evidence to back up its claim, is arbitrary and capricious.

Individuals who have already passed a thorough income eligibility screening by government agencies should not have to prove their eligibility all over again to USCIS. By eliminating receipt of a means-tested benefit to show eligibility, the government is adding an additional burden on immigrants who already are facing the economic challenge of paying application fees that have risen exponentially in recent years. USCIS is taking the indefensible position that it cannot tell which public benefit programs are means-tested and which ones are not. Given that the largest means-tested programs are federal program such as Medicaid or SNAP, this assertion is plainly a pretense for an action that has no real basis in fact. Indeed, the very reason USCIS provided for why it created a fee waiver form that included receipt of a means-tested benefit as a way to establish inability to pay was "because it represents another agency's independent assessment of [the individual's] economic circumstances."[4]

Finally, USCIS cites the fee waiver approval rate for fiscal year 2017 as a basis for "inconsistencies" necessitating elimination of means-tested benefits to prove fee waiver eligibility,[5] rather than providing any evidence of actual inconsistencies in adjudicating fee waivers. This shows that USCIS' true aim with this proposed revision is to reduce the number of approved fee waivers, rather than reduce "inconsistencies," because the percentage approved has nothing to do with consistency or inconsistency in adjudication.

USCIS' revised rationale for the proposed change—to reduce the amount of fee waivers and raise revenue—is contradictory to the first rationale and antithetical to the purpose of fee waivers.

Not only is receipt of means-tested benefits adequate proof of inability to pay in accordance with the regulations, but it is also by far the most common and straightforward way to demonstrate fee waiver eligibility, as applicants can show they have already been screened for income-based eligibility by simply providing a copy of the official eligibility determination letter, or Notice of Action, from the government agency administering the means-tested benefit to confirm this.

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[4] DHS CIS Ombudsman Teleconference: Fee Waivers: How are they working for you (September 30, 2009), https://www.uscis.gov/archive/archive-outreach/cis-ombudsman-teleconference-fee-waivers-how-are-they-working-you-september-30-2009 (accessed April 8, 2019).

[5] *USCIS Responses to Public Comments Received on the 60-day Federal Register Notice, "Agency Information Collection Activities; Revision of a Currently Approved Collection: Request for Fee Waiver; Exemptions," 83 FR 49120 (Sept. 28, 2018)* at 3 ("In FY 2017, USCIS approved 588,732 or 86% of these fee waiver requests. To increase the consistency in the shifting of the cost of fee waivers to those who pay fees, USCIS has decided to apply more consistent standards of income and financial hardship for the purposes of determining inability to pay a fee."), available at https://www.aila.org/, AILA Doc. No. 19040834 (posted Apr. 10, 2019).

By only allowing fee waiver requests to based on income or financial hardship, USCIS will effectively deny the ability of large numbers of applicants to qualify. USCIS is aware of this, and the latest notice now admits this is a motivation for the change. Although USCIS continues to maintain the agency is also trying to make the process more consistent and efficient, with the current notice USCIS' primary motivation is clear: the latest notice adds a discussion of "lost revenue" from granting fee waivers, which it wants to curtail, to its reasons for the change. This change has nothing to do with consistency, and everything to do with denying access to immigration benefits and naturalization for vulnerable populations.

The modified USCIS rationale for elimination of a means-tested benefit in the current notice is that fee waivers are excessive and must be reduced. USCIS' claim that the proposed changes will improve fee waivers—by eliminating the main basis on which most people qualify for a fee waiver—is clearly only an improvement in terms of USCIS revenue, without regard for access to immigration benefits and naturalization for deserving individuals who should be able to apply even if they cannot afford to pay. It is not meant to be an improvement for either applicants or adjudicators as previously claimed.

In the latest notice, USCIS cites to the FY 2016-2017 proposed fee schedule rule as authority. While the authority of a proposed rule is doubtful at best, we note that the overall theme of the cited fee rule was to increase access to citizenship for all income levels, not diminish it, and thus the reference provided in this notice has been taken out of context, for an entirely different purpose.

The USCIS FY 2016 Fee Rule added a new provision to increase access to U.S. citizenship for eligible applicants, creating a reduced fee (sometimes referred to as a "partial fee waiver") for certain naturalization applicants if they had income over 150% and up to 200% of the federal poverty guidelines. The 2016 Fee Rule preserved the existing full waiver for persons receiving a means-tested benefit, with income at or below 150% of the poverty guidelines, or who had financial hardship. The proposed Fee Rule emphasized the importance of access to naturalization for low-income people. USCIS stated that its goal was to increase access to as many eligible naturalization applicants as possible because of the importance of citizenship and the significant public benefit to the Nation, and the Nation's proud tradition of welcoming new citizens, a rationale stated in the 2010 Fee Rule and reiterated in the 2016-2017 rule.

While the proposed Fee Rule that USCIS cites here does refer to overall agency revenues being lost due to fee waivers and exemptions, it refers to them collectively. When exemptions are included together with fee waivers in any statistic, the number reported is meaningless to determine the impact of fee waivers. Exemptions are not subject to the I-912 and current fee waiver standards. By regulation, limited types of humanitarian applications are fee exempt. The estimated lost fee revenues, even if accurate in the aggregate, are thoroughly misleading because they do not parse the specific impact of fee waivers. Additionally, as USCIS continues to increase application fees, its calculations of "forgone revenue" from granting fee waivers will consequently increase as well, without having any connection to whether fee waivers are being improperly granted.

Most importantly, the fee waiver exists to ensure that all eligible applicants have access to immigration benefits and naturalization, even if they are unable to pay the application fee. It is improper and illogical to eliminate fee waivers to justify agency revenue from individuals who are unable to afford the fees.

The revision will place an excessive time and resource burden on individuals applying for fee waivers and on USCIS adjudicators.

The changes will increase inefficiencies in processing fee waiver requests while further burdening government agencies.

USCIS claims the changes will standardize, streamline, and expedite the process of requesting a fee waiver by clearly laying out the most salient data and evidence necessary to make the decision. Instead, these proposed changes will slow down an already overburdened system, delaying and denying access to immigration benefits or naturalization for otherwise eligible immigrants. USCIS adjudicators will be forced to engage in a time-consuming analysis of voluminous and varied financial records in support of an income or financial hardship showing, rather than relying on the professional expertise of social services agencies who routinely determine eligibility for means-tested benefits.

This revision also places an unnecessary burden on the IRS and fails to address whether the IRS is prepared to handle a sudden increase in requests for documents. Under the revision, almost every person who applies for a fee waiver based on their annual income must also request the required documentation from the IRS in order to prove their eligibility.

The changes will place a time and resource burden on legal service providers and reduce access to legal services, especially in under-resourced locations.

The revisions detailed above will increase the burden on non-profit legal service providers and limit access to immigration legal services for individuals in need. In addition, it will make it harder for legal service providers to help immigrants who cannot afford the fee in applying for immigration benefits and naturalization.

Fee waiver preparation for low-income immigrants demands hours of work from legal services providers. The fee waiver based on receipt of a means-tested benefit is efficient in that the provider knows which document will be sufficiently probative for USCIS. The other grounds for a fee waiver, financial hardship and a threshold of the poverty income guidelines, are much less clear, and require far more time to gather sufficient documentation. An experienced advocate can help an applicant complete a fee waiver request on the basis of receipt of a means-tested benefit in as little as ten minutes. Other modes of establishing inability to pay require ten or twenty times more work and time, for both the advocate and the applicant. DHS grossly underestimates the time burden involved in gathering the documentation needed and engaging in income calculations.

Currently, non-profit immigration legal service providers, including those in remote areas of the United States, organize large-scale one-day workshops as the most efficient model to help eligible applicants apply for immigration benefits and naturalization. Workshops benefit both applicants and USCIS because increasing access to qualified immigration attorneys or accredited representatives reduces errors and minimizes the fraudulent provision of immigration services. With the proposed changes to the fee waiver form, it will become harder or even impossible for non-profit legal service providers to complete applications in the workshop setting. Organizations may stop providing assistance with fee

waivers in the workshop setting. This would cut off access to legal support and immigration relief for vulnerable populations, particularly for those in remote or other hard-to-reach areas with limited access to reputable immigration assistance.

The changes will also directly impact the ILRC and our work. The ILRC provides numerous in-person and webinar trainings on many topics including fee waivers. Once the proposed changes to the fee waiver process take effect, the ILRC will have to plan and present additional webinars and other trainings to alert and re-train the field of immigration legal advocates in how to screen, prepare, and file fee waivers in light of such a significant change, as well as notifying and educating the immigrant community at-large. The ILRC will also have to dramatically re-vamp our publications on fee waivers, including manuals and practice advisories, to reflect this major change to the fee waiver process, eliminating one of three grounds for requesting a fee waiver, after nearly a decade during which fee waivers have remained unchanged.

With respect to our leadership of the New Americans Campaign, the proposed change undermines the service model that is at the heart of our work and the best practices in delivering naturalization legal services to large numbers of LPRs who need the help—models we have gathered and shared with local organizations throughout the United States. The philanthropic funding we receive is predicated on our ability to engage in high impact work. Our national impact is closely tied to our use of workshop models where we can assist large numbers of applicants with their naturalization applications and with fee waivers based on the receipt of means-tested benefits. Fee waivers based on income or financial hardship are resource intensive to complete, thereby inhibiting our ability to meet objectives. Therefore, in addition to the harm the form changes will create for immigrants and the organizations that serve them, the changes will also result in financial harm to the ILRC.

This revision will negatively impact the ability of individuals, especially those who are vulnerable or disabled, to apply for immigration benefits for which they are eligible.

The filing fee associated with various immigration applications can be an insurmountable obstacle to applying for naturalization or another immigration benefit. Any opportunity to mitigate the costs associated with filing should be designed to ease, rather than exacerbate, these obstacles.

Increasing the burden of applying for a fee waiver will further limit access to naturalization for otherwise eligible lawful permanent residents. The naturalization fee has increased by 600% over the last 20 years, pricing many qualified green card holders out of U.S. citizenship. USCIS asserts, without any evidence to support its claim, that individuals can merely "save funds" and apply later if they do not have the funds to apply today.[6] This both fails to consider the harm to individuals resulting from the delay in applying and unjustifiably assumes individuals applying for fee waivers have disposable income that could be set aside.

[6] *USCIS Responses to Public Comments Received on the 60-day Federal Register Notice, "Agency Information Collection Activities; Revision of a Currently Approved Collection: Request for Fee Waiver; Exemptions," 83 FR 49120 (Sept. 28, 2018)* at 5, available at https://www.aila.org/, AILA Doc. No. 19040834 (posted Apr. 10, 2019).

The changes would especially harm the most vulnerable populations. More than 94% of domestic violence survivors also experienced economic abuse, which may include losing a job or being prevented from working. Fee waivers are critical to ensuring survivors can access relief. As USCIS has indicated, greater "consistency" in fee waiver adjudication seems to correlate with lower rates of approval,[7] and this will harm survivors of domestic violence, sexual assault, human trafficking, and other crimes who are least able to afford immigration filing fees while being most in need of protection by our immigration laws.

The changes would also harm people with disabilities. Thirty percent of adults receiving government assistance have a disability. For most, that disability limits their ability to work. Eliminating receipt of a means-tested benefit as proof of fee waiver eligibility, or any new requirements that make the process more complicated and time-intensive, will further burden those with disabilities in accessing an immigration benefit for which they are eligible.

Required use of Form I-912 is a regulatory violation and places an unacceptable time and resource burden on individuals.

By only accepting fee waiver requests submitted using Form I-912, USCIS will limit the availability of fee waivers. Applicants must continue to be permitted to submit applicant-generated fee waiver requests (i.e., requests that are not submitted on Form I-912, such as a letter or an affidavit) that comply with 8 C.F.R. § 103.7(c). Indeed, 8 C.F.R. § 103.7(c)(2) states, "To request a fee waiver, a person requesting an immigration benefit must submit *a written request* for permission to have their request processed without payment of a fee with their benefit request. The request must state the person's belief that he or she is entitled to or deserving of the benefit requested, the reasons for his or her inability to pay, and evidence to support the reasons indicated." (Emphasis added.)

Eliminating the currently accepted applicant-generated fee waiver request places an additional and unnecessary burden on applicants to locate, complete, and submit the Form I-912, when a self-generated request that provides all of the necessary information can equally meet the requirements.

Requiring transcripts of tax returns places an unacceptable time and resource burden on individuals.

In addition to mandating use of the Form I-912, under the proposed changes the applicant must also procure additional new documents including a federal tax transcript from the Internal Revenue Service (IRS) to demonstrate household income less than or equal to 150% of the federal poverty guidelines. This, too, will limit availability of fee waivers for many applicants. Currently, applicants can submit a copy of their most recent federal tax returns to meet this requirement. The government does not provide any reason why a transcript of a federal tax return is preferred over a photocopy of a federal tax return. Federal tax returns are uniform documents and most individuals keep copies on hand. In contrast, no one has a tax transcript unless they take the additional step of requesting one, in this instance solely to request a fee waiver. Requiring tax transcripts rather than accepting copies of tax

[7] *See USCIS Responses to Public Comments Received on the 60-day Federal Register Notice, "Agency Information Collection Activities; Revision of a Currently Approved Collection: Request for Fee Waiver; Exemptions," 83 FR 49120 (Sept. 28, 2018)* at 3, available at https://www.aila.org/, AILA Doc. No. 19040834 (posted Apr. 10, 2019).

returns and pay statements makes the entire process of proving eligibility for a fee waiver based on income more onerous. There are multiple types of tax transcripts,[8] and many pieces of information necessary to request transcripts,[9] which may confuse and even prevent individuals from obtaining tax transcripts. For instance, to request a tax transcript online, an individual must not only provide their Social Security Number, date of birth, filing status, and mailing address from their latest tax return, but they must also have access to an email account, their personal account number from a credit card, mortgage, home equity loan, home equity line of credit or car loan, and a mobile phone with their name on the account.[10] While a request for tax transcript by mail requires less information, obtaining transcripts by mail takes a minimum of five to ten calendar days, delaying what should be a straightforward and easy process. Moreover, for applicants who succeed in obtaining a tax transcript, USCIS reserves discretion, with no criteria or limitations, to reject the transcript and request a certified transcript, causing further delays in the adjudication of the underlying immigration petition or naturalization application. The proposed requirement will place an additional burden on individuals for more documents and does not account for those individuals who might need assistance obtaining a transcript due to lack of access to a computer or for delays involving delivery of mail.[11]

The two remaining bases for a fee waiver require more information and evidence than the means-tested benefits basis, placing an unacceptable time and resource burden on individuals and on USCIS adjudicators.

Finally, narrowing the range of ways an applicant can prove inability to pay, from three options to two—income at or below 150% of the federal poverty guidelines or financial hardship—will also increase the burden on applicants in terms of information they must provide on the Form I-912 and required evidence in support because the remaining two options involve far more information and evidence than a fee waiver based on receipt of means-tested benefits.

An applicant requesting a fee waiver based on receipt of means-tested benefits need only submit a copy of the official eligibility determination letter, or Notice of Action, from the government agency administering the benefit to prove such eligibility. On the Form I-912, the section on means-tested benefits as a basis for requesting a fee waiver spans less than half a page, simply requiring information on who receives the benefit (and their relationship to the fee waiver requester), the agency providing the benefit, type of benefit, and dates the benefit covers—all information readily available from the benefits determination letter.

In contrast, an applicant requesting a fee waiver based on income must prove income (or lack thereof) and provide information spanning nearly three pages on the proposed revised Form I-912, which includes information on their employment status, household size and income, and detailed dollar amounts of any additional income received such as parental support, spousal support, child support,

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[8] *See Transcript Types and Ways to Order Them*, IRS, https://www.irs.gov/individuals/tax-return-transcript-types-and-ways-to-order-them.
[9] *See Welcome to Get Transcript: What You Need*, IRS, https://www.irs.gov/individuals/get-transcript.
[10] *See id.*
[11] Although there is an option to download tax transcripts from the IRS website, this appears to require a Social Security Number, so many will need to resort to having their tax transcripts mailed to them instead. *See* https://www.irs.gov/individuals/get-transcript.

educational stipends, royalties, pensions, unemployment benefits, Social Security benefits, and veteran's benefits.

The evidence and information required for a fee waiver request based on financial hardship is similarly onerous and far more time-intensive than requesting one based on means-tested benefits. To request a fee waiver based on financial hardship, the requester will have to fill out nearly a page of information on the revised Form I-912 just for this basis, including detailing monthly expenses and liabilities (and providing proof of these expenses and liabilities, which means gathering and attaching copies of utility bills, medical bills, credit card bills, receipts for money spent on food and rent, commuting costs, etc.).

Both these alternative methods for proving inability to pay in support of a fee waiver request are far more arduous than submitting proof an applicant receives means-tested benefits. Further, to the extent that USCIS maintains this will not take more time or effort because applicants will be "merely providing [the] same documentation to USCIS"[12] that they provided to the benefit-granting agency, this is inaccurate for a number of reasons. One, USCIS will want to see recent evidence, rather than older copies of utility bills, medical bills, credit card bills, receipts for money spent on food and rent, commuting costs, etc. Therefore, the applicant will have to go through the same time-intensive process yet again of collecting all the varied proofs of income or expenses and liabilities that they have already collected to prove their eligibility for a means-tested benefit. Two, different evidence is required for means-tested benefits than USCIS will be requesting. For instance, many means-tested benefits require applicants to provide pay stubs and bank statements. USCIS will only accept pay stubs *in addition to a tax transcript*, for those who have experienced a salary or employment change since they filed their income taxes. Other means-tested benefits require copies of federal income tax returns, which USCIS will also no longer accept.

USCIS appears dismissive of claims that the fee waiver revisions will increase the burden on applicants and chooses to prefer, without substantiation, its own view that the burden of this change will be minimal or non-existent.[13] In assessing claims of increased burden and whether such burden is justified, USCS has failed to engage in a reasoned analysis and meaningfully address comments and concerns about increased burden on applicants, as required as part of this process.

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[12] *USCIS Responses to Public Comments Received on the 60-day Federal Register Notice, "Agency Information Collection Activities; Revision of a Currently Approved Collection: Request for Fee Waiver; Exemptions," 83 FR 49120 (Sept. 28, 2018)* at 4, available at https://www.aila.org/, AILA Doc. No. 19040834 (posted Apr. 10, 2019).

[13] *See, e.g., USCIS Responses to Public Comments Received on the 60-day Federal Register Notice, "Agency Information Collection Activities; Revision of a Currently Approved Collection: Request for Fee Waiver; Exemptions," 83 FR 49120 (Sept. 28, 2018)* at 1 ("USCIS understands that this change will require people to obtain different documentation… *However, applicants may still request fee waivers*. USCIS does not believe the changes are an excessive burden on respondents.") (emphasis added); at 4 ("Thus, the additional burden should be minimal. In any event, DHS has considered the burden on applicants and determined that the benefits of the policy change exceed the potential small burden increase."), available at https://www.aila.org/, AILA Doc. No. 19040834 (posted Apr. 10, 2019).

Reliance on the Federal Poverty Guidelines alone is an irrational measure of ability to pay; receipt of a means-tested benefit reflects differences in cost of living for different states.

In disallowing the receipt of means-tested benefits as a way to establish eligibility for a fee waiver, most applicants will be able to establish their eligibility for a waiver only by proving that their income is at or below 150 percent of the Federal Poverty Guidelines. The Federal Poverty Guidelines provide an inaccurate and too narrow basis for determining "inability to pay" as required by the regulations.

The Federal Poverty Guidelines are uniform for the 48 contiguous states, and do not take the cost of living of any state or locality into account, despite drastic differences in the cost of living across the country. The Bureau of Economic Analysis measures differences in cost of living through its regional price indexes, which compare buying power across all 50 states and the District of Columbia.[14] That data shows that, according to the most recent available data, the price of goods and services was 38% higher in Hawaii, the highest-priced state, than it was in Mississippi, the lowest-priced state. Looking at specific municipalities, both San Francisco and New York had price levels more than 20% above the national average.

The Massachusetts Institute of Technology has developed a Living Wage Calculator to determine the minimum that families need to spend on food, child care, health insurance, housing, transportation, and other basic necessities across a range of different family structures and localities.[15] This, too, reveals significant disparities in cost of living. Whereas the required annual income (before taxes) for a family of two adults and two children with one working adult is $50,433 in Mississippi, it is $60,105 in New York State.

These wide discrepancies in the cost of living mean that the Federal Poverty Guidelines do not reflect the reality on the ground for many U.S. residents. For instance, according to data from the U.S. Department of Housing and Urban Development (HUD), the median income for a family of four in the Seattle metropolitan area in 2019 is $108,600.[16] In determining who is low income in a given metropolitan area, HUD recognizes and adjusts for local conditions.

Similarly, the Census Bureau calculates a Supplemental Poverty Measure (SPM) that takes into account the cost of living in different states. A comparison between the Poverty Guidelines and the SPM reveals how the high cost of living in certain states and localities makes the Poverty Guidelines an inadequate measure of a family's financial status.[17] In 2017, the most recent year for which data is available, the District of Columbia and 16 high-cost states had higher poverty rates under the SPM than they did under the Federal Poverty Guidelines: California, Colorado, Connecticut, Delaware, Florida, Hawaii, Illinois, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Oregon, Texas, and Virginia. Eighteen lower-cost states actually had *lower* poverty rates under the SPM: Alabama, Arkansas, Idaho,

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[14] Bureau of Economic Analysis, *Real Personal Income for States and Metropolitan Areas, 2017* (May 16, 2019), https://www.bea.gov/news/2019/real-personal-income-states-and-metropolitan-areas-2017.
[15] Massachusetts Institute of Technology, *Living Wage Calculator*, http://livingwage.mit.edu/.
[16] U.S. Dep't of Housing and Urban Development, Office of Policy Development and Research (PD&R), *Income Limits, 2019*, https://www.huduser.gov/portal/datasets/il.html.
[17] U.S. Census Bureau, *The Supplemental Poverty Measure: 2017* (Sept. 12, 2018), https://www.census.gov/library/publications/2018/demo/p60-265.html.

Kansas, Kentucky, Louisiana, Maine, Michigan, Mississippi, Montana, New Mexico, Ohio, Oklahoma, Rhode Island, South Carolina, South Dakota, West Virginia, and Wisconsin.

The federal government has recognized that these discrepancies limit the usefulness of the Poverty Guidelines in certain states and localities and has allowed states and federal agencies to use different measures of an applicant's "inability to pay" in administering federally-funded means-tested benefit programs. For these reasons, the Federal Poverty Guidelines, taken alone, are an inadequate measure of an individual's ability to pay the naturalization fee. Preventing USCIS adjudicators from considering receipt of means-tested benefits, and requiring them to look only at the Federal Poverty Guidelines and evidence of financial hardship, blinds the agency to significant differences in cost of living that the federal government considers and accommodates in countless other settings.

Conclusion

The proposed fee waiver change will harm the most vulnerable immigrants and naturalization applicants, with no reasonable justification. The three-time re-publication has not changed the proposal in any substantive way, but has now added the contradictory rationale that the elimination of the means-tested benefit eligibility is not only to improve "consistency" of adjudications, but is also supposed to raise fees for USCIS by reducing the number of people who are eligible for fee waivers. No rational basis exists for such contradictory goals, nor is either goal supported by the research presented.

USCIS has failed to meaningfully engage the individuals impacted in proposing these revisions, including disabled and vulnerable populations who are eligible for immigration benefits. USCIS has violated its own regulations in failing to follow the requirements for analysis and posting of comments and in requiring a form that is not dictated by their regulations.

The change will create new barriers to applying for immigration relief, making the regulatory provision for fee waivers a distant promise, inaccessible to most applicants including many for whom the fee waiver process was intended—deserving individuals with a substantiated inability to pay. The proposed changes will make it significantly harder for non-profit legal service providers to help eligible applicants secure the fee waivers to which they are entitled. Finally, the proposed changes will further burden USCIS adjudicators at a time when the agency is already plagued by crisis-level adjudication backlogs across all types of cases.[18]

USCIS should review the development of the current fee waiver standards and engage in a reasoned analysis of how it arrived at its current proposal. Nothing in the current notice indicates an understanding of how and why the current form and guidance were created, which is critical to planning any changes. The Form I-912 request for fee waiver with its three-step eligibility formula, and the 2011

[18] Bipartisan Letter from Senators to USCIS Seeks Answers on USCIS Backlog, AILA Doc. No. 19052842, May 30, 2019, available at https://www.aila.org/advo-media/whats-happening-in-congress/congressional-updates/bipartisan-letter-senators-uscis-backlog and AILA Policy Brief: USCIS Processing Delays Have Reached Crisis Levels Under the Trump Administration. AILA Doc. No. 19012834, January 30, 2019, available at https://www.aila.org/infonet/aila-policy-brief-uscis-processing-delays (accessed June 20, 2019).

guidance, were specifically created to simplify the fee waiver adjudication process. The eligibility for receipt of a means-tested benefit was the linchpin of that simplified process.

We urge USCIS, rather than implement the revision, to retain the current I-912 form and means-tested benefit eligibility, to continue accepting applicant-generated requests, and to perform extensive public outreach and research to gather information on the actual burden these changes would pose for applicants and USCIS adjudicators, and then engage in full notice and comment procedures on all substantive changes proposed in order to ensure the fair and efficient adjudication of immigration benefits and naturalization.

Sincerely yours,

Melissa Rodgers
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