



**City of Seattle**  
Mayor Jenny A. Durkan

December 23, 2019

Ms. Samantha Deshombres  
Chief Regulatory Coordination Division, Office of Policy and Strategy  
U.S. Citizenship and Immigration Services  
Department of Homeland Security  
20 Massachusetts Ave. NW  
Washington, D.C. 20529

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

Dear Chief Deshombres:

The City of Seattle (“City”) respectfully submits this comment on the proposed U.S. Citizenship and Immigration Services (USCIS) Fee Schedule rule (“Rule”), published on November 14, 2019.

The new Rule, subject to public comment, proposes to increase the cost of the applications for work authorization, for adjustment of status to lawful permanent resident (LPR), and for citizenship among other benefits. It also proposes, in the vast majority of cases, to eliminate the option for using a fee waiver to waive the fees associated with seeking these benefits for income-eligible immigrants. This will price low- and middle-income immigrants out of access to lawful status or make it impossible for them to obtain valid proof of lawful status.

**We oppose the proposed fee schedule on the grounds that it would limit people’s ability to both apply for lifesaving legal protections and to advance in the immigration process. The Rule will negatively impact immigrant families, discourage or prevent hardworking people from immigrating, and deter immigrants from becoming U.S. citizens eligible to vote. Therefore, we request that USCIS withdraw all fee schedule provisions because they make immigration benefits less accessible to low-income and other vulnerable immigrants.**

**The proposed Rule effectively creates a “pay-to-play” approach to citizenship, and is part of a broader campaign by this administration to remake this country to exclusively serve the wealthy.**

The estimated total population of Seattle is 730,400 people<sup>1</sup>, and of those, the United States Census estimates that 18 percent, or around 131,472 individuals, are foreign-born<sup>2</sup>. Twenty-four percent of King County residents were born outside the United States, significantly higher than the national average of 14 percent. Of these immigrants, the majority contribute to Seattle’s economy, whether by starting

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<sup>1</sup> See [https://www.ofm.wa.gov/sites/default/files/public/dataresearch/pop/april1/ofm\\_april1\\_population\\_final.pdf](https://www.ofm.wa.gov/sites/default/files/public/dataresearch/pop/april1/ofm_april1_population_final.pdf)

<sup>2</sup> See <https://www.census.gov/quickfacts/fact/table/seattlecitywashington,US/PST045217>

successful small and large businesses, paying taxes, or working in one of the many local industries that support both the local and the national economies.

Due in large part to the above statistics, and because Seattle embraces its identity as a welcoming city, the City government has made great efforts to protect our immigrant and refugee workers and families. Such efforts include executive orders<sup>3</sup>, resolutions<sup>4</sup>, and ordinances<sup>5</sup> to ensure immigrants feel safe to report criminal activity and crimes, or by funding programs to help income-eligible residents with basic needs. In this role, the City manifests its core value of providing infrastructure, goods, and services for all residents, but especially for vulnerable, disabled, and marginalized people.

In addition, the City of Seattle created the Office of Immigrant and Refugee Affairs (OIRA) in 2012 to improve the lives of Seattle's immigrant and refugee families. Through OIRA, the City of Seattle funds and coordinates two naturalization programs called the New Citizen Campaign (NCC) and the New Citizen Program (NCP) to help an estimated 75,000 Seattle-area legal permanent residents ("LPR") become U.S. citizens. Since its inception in 1997, NCP has served over 19,000 people, provided naturalization assistance to over 12,300 LPRs, successfully naturalized 9,500 LPRs, and provided over 90,000 hours of citizenship instruction. NCC works with community partners to co-host events called citizenship clinics and citizenship workshops all over Seattle that have to date served 1,843 LPRs.

The City of Seattle is a Welcoming City, because we know that immigrants and refugees make our city better and contribute to the fabric of Seattle. For these reasons and more we oppose the proposed Rule in its entirety.

**1. *The proposed Rule would cause irreparable harm to the City of Seattle and its residents.***

**a) *The proposed increased fees and elimination of all discretionary fee waivers would disproportionately harm low-income residents of the city.***

**The proposed fee increases would force immigrant and refugee families to choose between their basic needs and accessing immigration benefits.** Seattle's massive growth has undoubtedly had consequences, as this city has one of the highest costs of living in the U.S., driven primarily by housing costs. According to the Council for Communities and Economic Research, Seattle is the fifth most expensive place to live in the country.<sup>6</sup> Its high median income, \$88,944 for a family of four<sup>7</sup> (Boston: \$107,800<sup>8</sup>, San Francisco: \$118,400<sup>9</sup>) creates challenges for families with incomes below this threshold, transitioning between jobs, or in the process of immigrating. Immigrants that work at minimum wage jobs have a hard time getting their basic needs met, even with one of the highest minimum wages in the country. For the thousands of immigrant residents of the City who earn the current minimum wage of

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<sup>3</sup> Executive Order 2016-08, "Executive Order reaffirming Seattle as a welcoming city." See: [http://murray.seattle.gov/wp-content/uploads/2016/11/Executive-Order-2016-08\\_Welcoming-City.pdf](http://murray.seattle.gov/wp-content/uploads/2016/11/Executive-Order-2016-08_Welcoming-City.pdf)

<sup>4</sup> Resolution Number: 31193, "Resolution affirming support for comprehensive immigration reform." See <http://clerk.seattle.gov/~scripts/nph-brs.exe?s1=&s3=&s2=&s4=Ordinance+121063&Sect4=AND&I=200&Sect2=THESON&Sect3=PLURON&Sect5=RESNY&Sect6=HITOFF&d=RESF&p=1&u=%2F~public%2Fresny.htm&r=7&f=G>

<sup>5</sup> Ordinance Number 121063, "An ordinance concerning inquiries by Seattle City officers and employees into immigration status, and activities designed to ascertain such status; and amending Seattle Municipal Code Chapter 4.18 in connection therewith." See <http://clerk.ci.seattle.wa.us/~scripts/nph-brs.exe?d=CBOR&s1=114436.cbn.&Sect6=HITOFF&I=20&p=1&u=~public/cbor2.htm&r=1&f=G>

<sup>6</sup> See <http://coli.org/quarter-1-2019-cost-of-living-index-released/>

<sup>7</sup> See <https://www.dshs.wa.gov/esa/eligibility-z-manual-ea-z/state-median-income-chart>

<sup>8</sup> See <http://www.bostonplans.org/housing/income,-asset,-and-price-limits>

<sup>9</sup> See <https://sf-planning.org/home-sf-affordability-requirements>

\$12.00 an hour, applying for a green card or citizenship would require almost full month's pay, forcing families to choose between providing their basic needs and pursuing an immigration benefit.

The 2017 Self Sufficiency Standard for Washington State notes that a family with two adults, an infant, and a preschooler would need to earn \$86,359 annually (\$20.45 per adult per hour) to be self-sufficient, a single adult would require \$27,241 annually (\$12.90 hourly).<sup>10</sup> Thus, even fully employed families on fixed incomes living in Seattle still struggle to afford basic needs and rely on local, state, and federal programs and services to bridge the gap between their incomes and the high cost of living. These same families do not have the option to save up for the proposed cost of the astonishingly high USCIS fees over time.

Additionally, Seattle and Washington state have always welcomed immigrants of various economic statuses, including those most vulnerable and poor. According to the U.S. Department of State's Bureau of Populations, Refugees and Migrations, Washington state is currently the second largest state for refugee resettlement.<sup>11</sup> **These fees would disproportionately affect refugees and asylees already impacted by the trauma of fleeing war, violence, and terror.**

Aside from the exorbitant fee hikes, the elimination of the fee waiver would also have drastic effects. Access to the fee waiver for certain immigration benefits have allowed immigrants on fixed incomes the ability to obtain or maintain immigration benefits without sacrificing food, shelter, transportation, or health care. The proposed elimination of the fee waiver could force families to cut out essential needs to pay for the proof of lawful status that allows them to work. This would have sweeping consequences for the health, well-being, and financial security of immigrant families, forcing them to use a great portion of their earnings and any savings to pay for immigration benefits. It is reasonable to predict that Seattle and King County will feel the economic impacts of this through increased demand on its safety net programs and services, such as food aid, utility bill assistance, emergency financial assistance, and eviction prevention.

Under current rules, discretionary fee waivers allow individuals with financial need to apply for certain immigration benefits without a filing fee. Elimination of those fee waivers would impact the most vulnerable immigrants and would prevent them from building a better life for themselves and their loved ones.

Eliminating discretionary fee waivers will lead to decreased financial stability and self-sufficiency and create additional barriers to prevent immigrants from fully integrating into their communities. These immigration benefits have the power to lift up and transform families, communities, and the country. By denying benefits to a large segment of those otherwise eligible, this Rule would make it even harder for immigrants to achieve a sense of permanence in their chosen home.

Another likely scenario with disproportionate impacts to immigrants is that many immigrant community members will likely conflate news about this Rule with the Department of Homeland Security rule regarding public charge (Inadmissibility on Public Charge Grounds, CIS No. 2637-19, DHS Docket No. USCIS-2010-0012, RIN: 1615-AA22). Already Seattle-based advocates are reporting that media outlets and community members are referring to the revised fee schedule proposal as the "public charge rule." This new round of immigration-related news will likely again result in many low-income immigrants

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<sup>10</sup> Pearce, Diana M., "The Self-Sufficiency Standard for Washington State 2017," The Workforce Development Council of Seattle-King County, September 2017. Available at [http://selfsufficiencystandard.org/sites/default/files/selfsuff/docs/WA2017\\_SSS.pdf](http://selfsufficiencystandard.org/sites/default/files/selfsuff/docs/WA2017_SSS.pdf)

<sup>11</sup> See <https://www.wrapsnet.org/admissions-and-arrivals/>

being afraid to access any human services and means-tested benefits. This fear of accessing benefits, whether these rules apply or not, has been well documented in countless studies and public comments, including our own public comment submitted to the Federal Register on December 10, 2018<sup>12</sup>. This would lead to low-income immigrants' deteriorating living conditions and quality of life, which in turn will impact our whole City and entire nation. Immigrant families reluctant to access benefits and services they legally qualify for results in a greater reliance on more expensive uncompensated and charity care, increased accessing of more costly emergency services, decreased reimbursement for health care providers, increased health care debt, and increased health care costs due to delayed care.

The Rule disproportionately targets low-income immigrant families and places unnecessary and preventable burdens on our economic and social infrastructure stemming from the new fee schedule.

**b) The proposed Rule would harm the city and the state's shared economy and workforce.**

Seattle's last measured GDP per capita was \$80,833 in 2017<sup>13</sup>. Recognized as one of the fastest growing economies in the U.S., the city's GDP per capita was the fourth highest among the 40 largest metropolitan areas in 2016, and its third quarter 2017 average weekly wage of \$1,445 was the third highest<sup>14</sup>. The GDP per capita of Washington state was \$64,937 in 2017, and in 2018, the state ranked #1 in the U.S. for economic activity, which included measurements of GDP growth, exports per capita, and startup activity in the state<sup>15</sup>. The economic success of our state depends upon cities' collective capacities to employ workers, to retain workers whose spending contributes to the economy, and to fund services supporting workers and their families so they can continue to contribute to our shared financial success.

A significant number of these workers are either immigrants or children of immigrants. Roughly one in seven residents of Washington state is an immigrant, while one in eight residents is a native-born U.S. citizen with at least one immigrant parent<sup>16</sup>. Thus, if this Rule and new fee schedule goes into effect, it would cause significant harm to the economy and workforce of the city of Seattle and to the state of Washington because the exorbitant fee hikes would severely damage the ability of immigrant workers to successfully contribute to our city and our state's workforce.

A recent analysis performed by OneAmerica, a Washington state-based nonprofit that serves immigrants and refugees, showed that would-be naturalization applicants lose out on significant income gains if fee-waiver-eligible applicants decide not to apply for naturalization. If even 94 individuals in the city of Seattle (five percent of the population analyzed by OneAmerica) could not obtain a fee waiver, and therefore declined to apply for and obtain U.S. citizenship, their households together would lose out on a combined \$300,000+ in income for each year they failed to become U.S. citizens, a sizeable loss of spending power for our city. For the State of Washington, this lost household income results in a decrease of more than \$1 million in future spending and revenue from newly naturalized immigrants across the state, negatively impacting cities like Seattle, and others.

Naturalization opens employment opportunities for immigrant workers, including federal government employment and private sector jobs related to national security. Recent studies show the enormous

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<sup>12</sup> Regulations.gov tracking number 1k2-9717-wa17

<sup>13</sup> See [https://www.opendatanetwork.com/entity/310M200US42660/Seattle\\_Metro\\_Area\\_WA/economy.gdp.per\\_capita.gdp?year=2017](https://www.opendatanetwork.com/entity/310M200US42660/Seattle_Metro_Area_WA/economy.gdp.per_capita.gdp?year=2017)

<sup>14</sup> See <https://www.businessinsider.com/us-economy-by-metro-area-ranked-san-francisco-seattle-austin-2018-4#4-seattle-tacoma-bellevue-wa-37>

<sup>15</sup> See <https://washingtonstatewire.com/washingtons-economy-ranks-first-in-nationwide-report/>

<sup>16</sup> See <https://www.americanimmigrationcouncil.org/research/immigrants-in-washington>

contributions of naturalized U.S. citizens and the individual economic improvements immigrants experience when they naturalize. For example, if all eligible LPRs naturalized, it could add \$2 billion in annual tax revenue nationally.<sup>17</sup> Moreover, naturalized citizens are less likely to experience unemployment<sup>18</sup> and are more likely to buy homes, to invest in their local economies,<sup>19</sup> and to increase their earnings by eight to 11 percent.<sup>20</sup> **By neglecting to consider the positive outcomes for naturalized citizens, USCIS further promotes the false ideology that immigrants are unfairly taking advantage of the fee waiver process.**

More specifically, the proposed Rule would damage the City's and state's economies by increasing unemployment among immigrant workers. According to the Pew Research Center's analysis of the American Community Survey's data for unemployment rates for immigrants in 2017, immigrants who arrived in the past five years had a 7.1 percent unemployment rate nationally, while immigrants who have lived in the U.S. for more than 10 years had a 3.9 percent unemployment rate.<sup>21</sup> When people are unable to obtain a green card or renew immigration documents that provide proof of lawful work status, they lose jobs, occupational licenses, and the ability to provide for their families. Forced out of the workforce, these residents are then no longer able to contribute to the local economy as homeowners, consumers, and taxpayers. Employers, including schools, hospitals, and state agencies, lose workers, increasing the state's unemployment rate, which would be harmful to our economy. All economic sectors stand to be impacted, as immigrants comprise a sizeable portion of Seattle's and Washington's workforce in a number of industries, from tech to construction to agricultural work, to name a few.

Related to the issue of this Rule creating increased immigrant unemployment, this proposed Rule would significantly reduce the potential for millions in tax revenue. Immigrant households account for \$27.5 billion in spending power for Washington state, and immigrants living in the Seattle Metropolitan Area pay \$8 billion in taxes annually. The 2019-2020 combined operating and capital budgets of the government of the City of Seattle is \$7.13 billion<sup>22</sup>, which places Seattle's total budget within the 10 highest of U.S. cities<sup>23</sup>. The new Rule proposes to increase the fee for form N-400 application for naturalization from \$640 to an incredible \$1,170. If just 10 percent<sup>24</sup> of the estimated 75,000 lawful permanent residents (LPRs) eligible to naturalize in Seattle-King County were to apply to naturalize under the higher fee, the \$530 cost difference would represent \$3,975,000 lost from the local economy. If, in alignment with national rates, 40 percent of those applicants would have previously used a fee waiver but are no longer able to, there is an additional loss of \$1,920,000, which adds up to a total loss of \$5,895,000. This does not begin to touch upon losses associated with green card renewals, petitions for family members, or the applications filed by those who are not yet LPRs.

**c) Decreased access to naturalization will cause harm to American democracy due to limited immigrant participation in voting and other forms of civic engagement.**

Citizenship is a deeply democratic idea and the gateway to full participation in the civic life of the United States. **Raising the fee to apply to naturalize by 83 percent, from \$640 to \$1,170, while simultaneously**

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<sup>17</sup> See [https://www.urban.org/research/publication/economic-impact-naturalization-immigrants-and-cities/view/full\\_report](https://www.urban.org/research/publication/economic-impact-naturalization-immigrants-and-cities/view/full_report)

<sup>18</sup> See <https://www.migrationpolicy.org/research/economic-value-citizenship>

<sup>19</sup> See <http://publications.unidosus.org/handle/123456789/1123>

<sup>20</sup> See <https://dornsife.usc.edu/csii/citizen-gain/>

<sup>21</sup> See <https://www.pewresearch.org/fact-tank/2019/06/03/recently-arrived-u-s-immigrants-growing-in-number-differ-from-long-term-residents/>

<sup>22</sup> See <https://openbudget.seattle.gov/#!/year/default>

<sup>23</sup> See [https://www.govtech.com/navigator/numbers/top-20-us-cities-by-budget\\_59.html](https://www.govtech.com/navigator/numbers/top-20-us-cities-by-budget_59.html)

<sup>24</sup> The New Americans Campaign estimates that nearly nine million LPRs are eligible for citizenship, but only 10 percent naturalize each year. See <https://www.newamericascampaign.org/about/>

**eliminating all non-discretionary fee waivers amounts to the federal government is creating a de facto “poll tax”.** This unreasonably high cost for citizenship will effectively prevent low-income immigrants from being able to access enfranchisement as voters. This tax on immigrants to vote will rob our City, state, and country of reaching its full democratic potential. **Income has never been and should never be a requirement of U.S. citizenship.**

It is unreasonable to believe most families on fixed incomes would be able to afford the \$1,170 filing fee for naturalization. For a single person living at 100 percent of the federal poverty level, the \$1,170 application fee for Form N-400 would be their monthly income.<sup>25</sup> The elimination of the fee waiver would have overwhelming impacts both nationally and locally. A 2014 study showed that 32 percent of eligible LPRs in the U.S. live below 150 percent of the poverty level, and 22 percent fall within the 150 and 200 percent range.<sup>26</sup> This means that 54 percent of the LPRs who are able to naturalize would be eligible for a fee waiver or a reduced fee. Eliminating the fee waiver and reduced fee options would ostensibly block over half of the estimated 8.8 million eligible LPRs from seeking U.S. citizenship, and would therefore block the right to vote.

Naturalized Americans are also able to run for most elected positions. Both Republicans and Democrats have benefited from naturalized immigrants winning elections to represent their communities and districts. Ensuring that the opportunities to run for office and vote in elections are accessible to all eligible residents leads to better community participation in decision-making on the issues that impact all residents, such as schools, transportation, and human services. This significant fee increase will suppress naturalization for all but the wealthy and will further divide the country, establishing a second-class tier of long-term LPRs who cannot afford to fully participate as candidates and as voters in our democracy.

**d) Elimination of provisional fee waiver could wrongfully involve LPRs in the criminal legal system and cause undue interactions with law enforcement.**

Most immigration benefits are not optional for those applying for or seeking to maintain lawful permanent status in the U.S. For example, letting one’s green card expire is not an option for those seeking employment or planning to travel internationally. Moreover, Section 264(e) of the Immigration and Nationality Act requires that “every alien, eighteen years of age and over, shall at all times carry with him and have in his personal possession any certificate of alien registration or alien registration receipt card issued to him.” Failure to carry a green card with you is a misdemeanor with penalties of up to \$100 and 30 days in jail. (I.N.A. Section 264(e).) Therefore, those unable to afford the \$415 renewal fee for their green card would be in violation of the above cited provision. This could criminalize and prevent employment of tens of thousands of lawful permanent residents for simply not being able to afford to renew their green cards.

Individuals without valid green cards, even those with legal immigration status, are potentially more vulnerable as a result of not having this government-issued identification document. It can be harder to obtain a driver’s license without an alternate ID, and any contact with local law enforcement or Immigration and Customs Enforcement is potentially disastrous for those lacking a driver’s license or proof of lawful immigration status.

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<sup>25</sup> See <https://aspe.hhs.gov/2019-poverty-guidelines>

<sup>26</sup> See [https://dornsife.usc.edu/assets/sites/731/docs/Report\\_Profiling-the-Eligible-to-Naturalize.pdf](https://dornsife.usc.edu/assets/sites/731/docs/Report_Profiling-the-Eligible-to-Naturalize.pdf)

**e) The proposed form change would cause direct harm to Department of Justice (DOJ)-recognized agencies and their staff.**

The City of Seattle, through the Office of Immigrant and Refugee Affairs, has an ongoing and significant investment in naturalization services, through both the New Citizen Campaign (NCC) and New Citizen Program (NCP). We work with local and national partners to engage Seattle-area LPRs via outreach, education, citizenship workshops, legal assistance, and case management. NCC works with community partners to co-host citizenship clinics all over Seattle, serving an average of 30 to 50 individuals per month and has organized large-scale events that have to-date served 1,082 lawful permanent residents. Through its consortium of 12 community-based nonprofit organizations, NCP provides ongoing free case management services to immigrants and refugees living in Seattle/King County who are low-income, elderly, illiterate, or have limited English proficiency.

The proposed fee changes and elimination of discretionary fee waivers will increase the burden on nonprofit legal service providers and limit access to immigration legal services for individuals in need. This Rule will greatly reduce the capacity of our nonprofit partners to effectively and efficiently serve their clients. All 12 NCP agencies are DOJ-recognized agencies staffed by DOJ-accredited representatives. The DOJ's Office of Legal Access Programs (OLAP), which recognizes nonprofit agencies and accredits their staff members, was designed to increase access to legal services for low-income immigrants. OLAP's Recognition and Accreditation (R&A) Program "aims to increase the availability of competent immigration legal representation for low-income and indigent persons, thereby promoting the effective and efficient administration of justice." This proposed Rule would greatly undermine the ability of DOJ-recognized agencies to achieve a key component of OLAP's mission.

The inability to serve most low-income clients would decimate the nonprofit immigration legal service sector. Besides the inability to save up for new filing fees, clients will also be confused about the changes, and clarifying new information takes time. Instead of preparing fee waiver forms and supporting clients throughout the immigration process, nonprofit agency staff will spend time looking for philanthropic donations to pay for filing fees or helping clients brainstorm about potential donation resources such as family members or churches. DOJ-accredited representatives will need to warn clients about the potential risks of accessing high-cost loans. Some clients may be hesitant to pay the exorbitant \$1,170 filing fee for naturalization if they have any doubts about their ability to pass the English or civics tests required for most applicants.

Collectively, the lack of clients eligible to naturalize or able to afford the application fee will mean fewer clients served. As most grants are based on service outputs and outcomes, serving fewer clients and performing fewer service activities may lead to reductions in outside funding. As funding decreases, agencies may be forced to lay off staff, further hampering their capacity to serve the clients that remain.

Staff layoffs make it harder for agencies to retain institutional knowledge and maintain DOJ recognition. DOJ-accredited representatives must study immigration law and obtain practical work experience for years to attain this credential. They attend trainings to stay informed about changes to the law. Continuous training is necessary to maintain DOJ accreditation and attain mastery over even a single area of immigration practice. Cuts to staffing are a waste of the finite resources spent on staff training and lead to a gutting of the knowledge base of an individual agency.

Lastly, if the proposed rule change is implemented, NCP agencies would have to change their informational and educational materials, forms, and websites, incurring costs for design, printing, and

distribution. The City of Seattle itself will be required to make significant changes to several informational materials. OIRA will spend additional staff hours on eliminating outdated collateral, editing the existing printed materials (flyers, document lists, and application checklists), as well as updating multiple webpages associated with NCC and NCP. Additionally, these revised printed materials will need to be translated into multiple languages. OIRA roughly estimates that the cost of the design, reprinting, and translating documents and web pages to account for these new changes will cost the City and nonprofit partners a combined \$35,000 in accumulated costs and staff time.

***2. This proposed Rule makes USCIS less accountable for the mismanagement of its own resources and leads to further backlogs.***

Over the last few decades, immigration fees have climbed at an alarming rate. In 1985, the application fee for citizenship was \$35, and the fee for a green card was \$85. If those figures had risen with inflation, fees would now be \$85 for citizenship, and \$207 for a green card. Instead, as of 2019, we've already seen fees for green cards and naturalization increase at almost eight times the rate of inflation. Under USCIS's new proposal, the fees for both permanent residence and naturalization would jump still higher, to a total level almost 14 times the rate of inflation.<sup>27</sup>

Just in the last decade, USCIS has increased filing fees by weighted averages of 10 percent, and now another proposed 21 percent, but has not achieved any associated improvement in processing times, backlogs, or customer service. During that same period, USCIS's backlog has increased by more than 6,000 percent,<sup>28</sup> the overall average case processing time had increased 91 percent between 2014 and 2018.<sup>29</sup>

Organizations like the American Immigration Lawyers Association (AILA) and the National Partnership for New Americans (NPNA) have highlighted the record-breaking backlog of cases at USCIS. AILA concluded that the overall average processing times for USCIS cases has increased 46 percent since Federal Fiscal Year 2016 and 91 percent since Federal Fiscal Year 2014<sup>30</sup>. During that span, the Department of Homeland Security (DHS) has implemented a range of unwarranted policies and practices that directly lengthen processing times. Such practices include, for example, expanding the types of cases that now require an in-person interview. These across-the-board interviews drain limited resources and prolong the waits for people seeking employment visas in the United States, as well as those trying to reunite with their families or achieve full enfranchisement by becoming U.S. citizens. Similarly, the percentage of cases for which USCIS requests supplemental evidence—evidence that is often duplicative or irrelevant—has skyrocketed. In the first quarter of the current fiscal year, USCIS issued “Requests for Evidence” for 60 percent of all H-1B petitions, a rate nearly three times as high as in fiscal 2016.<sup>31</sup>

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<sup>27</sup> See <https://www.boundless.com/blog/uscis-fees-increase-comparison/>

<sup>28</sup> See Policy Changes and Processing Delays at U.S. Citizenship and Immigration Services: Hearing before the House Subcomm. on Immigration of the H. Comm. on the Judiciary, 116th Cong. (2019) (joint written testimony of Don Neufeld, Associate Director, Service Center Operations Directorate, USCIS, and Michael Valverde, Deputy Associate Director, Field Operations Directorate, USCIS)

<sup>29</sup> Am. Immigr. Law. Assoc., AILA Policy Brief: USCIS Processing Delays Have Reached Crisis Levels under the Trump Administration (2019), <https://www.aila.org/advo-media/aila-policy-briefs/aila-policy-brief-uscis-processing-delays>

<sup>30</sup> AILA Policy Brief: USCIS Processing Delays Have Reached Crisis Levels Under the Trump Administration," American Immigration Lawyers Association, January 30, 2019, [https://www.aila.org/infonet/aila-policy-brief-uscisprocessing-delays?utm\\_source=AILA%20Email&utm\\_medium=COAL](https://www.aila.org/infonet/aila-policy-brief-uscisprocessing-delays?utm_source=AILA%20Email&utm_medium=COAL)

<sup>31</sup> “The Trump administration is making legal immigration harder, too.” León Rodríguez, former director of U.S. Citizenship and Immigration Services from 2014 to 2017. See <https://www.washingtonpost.com/outlook/2019/07/29/trump-administration-is-making-legal-immigration-harder-too/>

In all previous fee schedule adjustments since 2005, USCIS has used the cost of inflation, increased efficiency, and the elimination for backlogs to justify its fee increases. Below is the summary of the 2005 Notice of Adjustment of the immigration Benefit Application Fee Schedule<sup>32</sup>:

*This Notice announces that the Department of Homeland Security, U.S. Citizenship and Immigration Services, will increase the fees for immigration benefit applications and petitions to account for cost increases due to inflation. The fee increases will apply to applications or petitions filed on or after October 26, 2005. The average fee increase for inflation is approximately \$10 per application or petition. Fees collected from persons filing immigration benefit applications and petitions are deposited into the Immigration Examinations Fee Account and are used to fund the full cost of providing immigration benefits, including the full cost of providing benefits such as asylum and refugee admission for which no fees are assessed.*

Similarly, the 2007 fee adjustment final rule cites the need to “meet national security, customer service, and processing time goals, and to sustain and improve service delivery.”<sup>33</sup> In sharp contrast to the current proposal, the underlying justification for each of the four most recent fee schedule updates has been to align fee revenue with the costs of maintaining adequate services or improving services. In each case, the applicant’s increased fee correlates with better service. **The current proposal directly contradicts the tradition of connecting USCIS fees to service delivery and is part of a larger policy of limiting, delaying, and obstructing services.**

In the last few years, USCIS implemented a number of policies that have had a negative impact on the customer service experience of its customers. They include restricting availability of Infopass appointments and services available for walk-in customers, the elimination of the e-mail address dedicated to interview reschedule requests by representatives, and the moving of interview locations to other faraway USCIS offices. These policies, arguably designed to improve efficiency, did not result in any significant improvements in processing times.

It is reasonable to predict that the proposed fee increases, and elimination of discretionary fee waivers will not improve USCIS efficiency. As long as there is no limit on how much DHS could increase users’ fees, there is no incentive for USCIS to adjudicate applications in a more efficient way. Adjudications might become more complex and time-consuming. **To fix the backlog, the agency should start by ending bad policies—not by raising fees to underwrite them.**

History shows that substantially increased fees leads to increased backlog of applications. The U.S. Government Accountability Office (GAO), an independent, nonpartisan agency that works for Congress, found that the abrupt imposition of new or substantially increased user fees leads to an increased backlog because of the large number of people who choose to apply for immigration benefits right before the fee increase goes into effect. For example, in May 2007, USCIS published a new fee schedule that raised fees for immigration and naturalization benefit applications by an average of 88 percent. Large numbers of applicants filed for benefits before the increase took effect in July 2007, which contributed to a surge that exacerbated USCIS’s backlog of applications.

**3. The Rule’s proposed transfer of over \$200 million in USCIS applicant fees to ICE is contrary to the agency’s service-oriented statutory mandate.**

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<sup>32</sup> See <https://www.regulations.gov/document?D=USCIS-2005-0013-0001>

<sup>33</sup> See [www.regulations.gov/document?D=USCIS-2006-0044-3481](http://www.regulations.gov/document?D=USCIS-2006-0044-3481)

In 2002, Congress created USCIS to function as a service-oriented immigration benefits agency, distinct from the immigration enforcement missions of ICE and CBP. This separation of functions emerged as a solution to inefficiencies of the former Immigration and Naturalization Service (INS), coupled with inability to meet service obligations, despite increases in funding from fees and appropriations. Prior to the creation of USCIS, INS was using a portion of its immigration benefit collections to fund non-service activities such as border security and interior enforcement. Due to this suspected interweaving of service and non-service funding, there was a significant push to separate the service and enforcement functions of INS. As a result, USCIS was tasked with the work to enhance the security and improve the efficiency of national immigration services by exclusively focusing on the administration of benefit applications.

Not only there was an administrative reform of the INS, but Congress also codified in the Immigration and Nationality Act, or INA, that the applicant-funded Immigration Examinations Fee Account (IEFA) is USCIS's "primary funding source" used "to fund the cost of processing immigration benefit applications and petitions"—that is, "to adjudicate applications and petitions for benefits under the Immigration and Nationality Act and to provide necessary support to adjudications and naturalization programs." Despite this clear statutory instruction, however, USCIS seeks to transfer those funds to serve another purpose. By unnecessarily and wrongfully transferring funds from the IEFA to ICE, USCIS is betraying not only its own mission but also Congress's clear statutory intent.

Transfer of the over \$207 million to ICE is also contrary to the "beneficiary pays" principle, cited in the proposed Rule. According to GAO, equity of federal user fees is a balancing act between two principles: beneficiary-pays and ability-to-pay.<sup>34</sup> This proposed Rule explains that it gives preference to the beneficiary-pays principle over the ability-to-pay principle. Though DHS doesn't consider the meaning of the beneficiary-pays principle and doesn't apply it consistently throughout the proposed changes. According to GAO, "under this principle, if a program primarily benefits the general public (e.g., national defense), it should be supported by general revenue, not user fees; if a program primarily benefits identifiable users, such as customers of the U.S. Postal Service, it should be funded by fees; and if a program benefits both the general public and users, it should be funded in part by fees and in part by general revenues."<sup>35</sup> Because ICE operations are meant to benefit the general public and not those requesting immigration benefits, it should seek revenue increase through appropriations from Congress, not through fee increases passed on to immigrants with lawful status.

We find it wholly improper to redirect payments from immigrants intended for the adjudication of their immigration benefits to instead be used for enforcement against their communities. In the past, increased fees have not translated to improved services, but even worse, the Rule proposes that those fees be diverted to fund enforcement that harms applicants' families and communities.

#### ***4. The proposed Rule's plan to institute a fee for asylum application is immoral and contrary to the United States' current legal obligations.***

The proposed Rule plans to impose a \$50 fee for those filing for affirmative asylum. If implemented, the U.S. would become only the fourth nation in the world to charge people who are fleeing for their lives, seeking asylum. An asylum fee would dramatically undermine American values and further risk the lives

<sup>34</sup> GAO, *Federal User Fees: A Design Guide* (May 29, 2008), available at <https://www.gao.gov/products/GAO-08-386SP>

<sup>35</sup> FEDERAL USER FEES, Fee Design Characteristics and Trade-Offs Illustrated by USCIS's Immigration and Naturalization Fees. Statement of Susan J. Irving, Director Federal Budget Analysis Strategic Issues, available at <https://www.gao.gov/assets/130/124322.pdf>

of asylum seekers, who by definition are some of the world's most vulnerable people. The U.S. has a moral imperative to accept asylum seekers as well as obligations under domestic and international laws. As a signatory to the 1967 Protocol of the 1951 Convention Relating to the Status of Refugees, the U.S. has an obligation to accept asylum seekers who seek protection.

Refusing asylum applicants for the inability to pay would effectively cause the U.S. to break its treaty obligations and flies in the face of the basic intent of the 1980 Refugee Act. In fact, the vast majority of countries who are signatories to the 1951 Convention or 1967 Protocol do not charge a fee for an asylum application.<sup>36</sup> The United States has long been a world leader in refugee protection. If the U.S. imposes a filing fee for asylum, other countries may begin to do the same. This could have disastrous effects on refugee resettlement when the number of refugees and displaced people are at historic highs. The U.S. should adhere to its international and domestic obligations and not refuse asylum seekers their chance to apply for protection simply for the inability to pay.

***5. The proposed Rule's increase of DACA renewal fee is designed to take advantage of the vulnerable beneficiaries of the program, whose futures are uncertain.***

The Rule would increase the cost of a Deferred Action for Childhood Arrivals (DACA) renewal from \$495 to \$765, an overall increase of 55 percent. DACA recipients' lives depend on the decision of the U.S. Supreme Court, which could terminate this program at any point during the next few months. If the increased fees go into effect, DACA renewal applicants will be asked to pay more money for an uncertain benefit, which could be terminated shortly after a DACA renewal request is made, or even before it is adjudicated. Moreover, DACA renewals are not eligible for fee waivers. Until the future of the DACA program is decided, it's immoral to prey on vulnerable immigrants who have very few practical options other than to stay in the country they grew up in.

***6. The new Notice published by the Department of Homeland Security on December 9, 2019 significantly changes the reasoning for fee changes, and should also impact the proposed fees.***

On December 9, 2019, the Department of Homeland Security published another Federal Register Notice ("new Notice")<sup>37</sup> in connection with its proposed USCIS fee schedule that was published on November 14, 2019. The new Notice indicates that USCIS will transfer \$112 million from the Immigration Examinations Fee Account to Immigration and Customs Enforcement, rather than the \$207.6 million figure contained in the November 14<sup>th</sup> Notice of Proposed Rulemaking. This constitutes a significant change in reasoning for why the fees should be raised and should undoubtedly impact the calculation of such fees. The new Notice did not update any proposed fee changes to go along with the lower planned amount of transfer to ICE. Because DHS submitted this consequential change to the Rule after an already significant amount of public comment time has passed, the City believes DHS should withdraw the Rule (DHS Docket No. USCIS-2019-0010; RIN 1615-AC18) entirely. And, if needed, DHS must revise and re-publish the proposed fee schedule with another comment period, preferably a 60-day comment period.

***Conclusion***

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<sup>36</sup> Zolan Kanno-Youngs and Miriam Jordan, *New Trump Administration Proposal Would Charge Asylum Seekers an Application Fee*, N.Y. TIMES, Nov. 8, 2019, <https://www.nytimes.com/2019/11/08/us/politics/immigration-fees-trump.html> (Noting that the United States would be only the fourth country in the world to charge a fee for asylum)

<sup>37</sup> See: [https://www.federalregister.gov/documents/2019/12/09/2019-26521/us-citizenship-and-immigration-services-fee-schedule-and-changes-to-certain-other-immigration?ct=t\(AgencyUpdate\\_120919\)](https://www.federalregister.gov/documents/2019/12/09/2019-26521/us-citizenship-and-immigration-services-fee-schedule-and-changes-to-certain-other-immigration?ct=t(AgencyUpdate_120919))

These proposed fee changes appear to be yet another attack on vulnerable immigrants by the Trump administration. Higher fees, the elimination of many opportunities for fee waivers and fee exemptions, and the exclusion of many families from the immigration process are all impacts from the Rule that will place undue burden on our prospective and current immigrant and refugee residents and workers. The newest members of our American society are striving each and every day to escape poverty and increase self-sufficiency. We should make that effort easier, not harder. In addition, this Rule's disproportionate harm to lawfully permanent resident immigrant workers would have significant impacts on the economies of growing cities like Seattle and states like Washington, the economic drivers of the U.S.

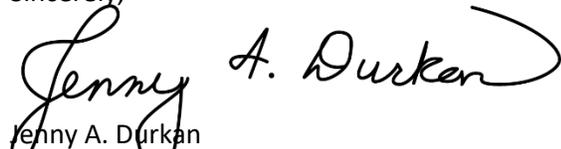
**We urge DHS to withdraw its current proposal, and instead dedicate its efforts to advancing policies that strengthen—rather than undermine—the ability of immigrants to live in this country and build a better future for themselves and their loved ones.**

**In New York Harbor, the Statue of Liberty stands tall and holds a torch that lights the way. It proclaims, 'Give me your tired, your poor, your huddled masses yearning to breathe free.'**

**We must uphold that promise.**

Thank you for the opportunity to submit comments on the proposed rulemaking. Please do not hesitate to contact Joaquin Uy with the Seattle Office of Immigrant and Refugee Affairs at [joaquin.uy@seattle.gov](mailto:joaquin.uy@seattle.gov), who will be able to respond to questions and clarifications.

Sincerely,



Jenny A. Durkan  
Mayor of Seattle