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March 8, 2023

Carol Cribbs, Deputy Chief Financial Officer  
U.S. Citizenship and Immigration Services  
Department of Homeland Security  
5900 Capital Gateway Drive  
Camp Springs, MD 20746

RE: Comments on proposed rule. Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, DHS Docket No. USCIS-2021-0010, USCIS-2021-0010, RIN 1615-AC 68

Submitted via regulations.gov.

Dear Chief Cribbs:

We submit the following comment to the proposed rule on the fee schedule published on January 4, 2023. We appreciate the agency's hard work on this rule and the efforts to keep immigration benefits accessible to low-income applicants, especially to naturalization applicants. In addition, we are very pleased to see the increase in exemptions of fees for many categories of humanitarian applicants. We detail our support for these changes below. As a preliminary matter, we request that USCIS formally withdraw the 2020 USCIS Fee Schedule and Immigration Benefit Request Requirements (CIS No. 2627-18; DHS Docket No. USCIS-2019-0010, Aug. 3, 2020) (the "2020 Fee Schedule"). The 2020 Fee Schedule never went into effect as it has been subject to a preliminary injunction issued in *ILRC v Wolf*, Case No. 20-cv-05883-JSW (N.D. Cal., Sept. 29, 2020).

However, USCIS has never formally withdrawn the 2020 Fee Schedule, and there is no final judgment in the *ILRC v. Wolf* matter, which has been stayed pending the finalization of the current proposed rule. The proposed rule appropriately removes many of the objectionable features contained in the 2020 Fee Schedule, including the implementation of a fee for asylum applications and the gutting of fee waivers. We commend the agency for proposing a rule without these provisions.

However, if the current proposed rule is subject to judicial review and, if a court were to find that some portion of the rule is unlawful, we are concerned that the result would be a return to the 2020 rule not currently in effect, but finalized in the Code of Federal Regulations, nonetheless. As such, we urge USCIS to formally withdraw the 2020 Fee Schedule to ensure that the 2016 Fee Schedule currently in effect would return should future litigation affect the current proposed rule. USCIS should also state that its withdrawal of the 2020 Fee Schedule is severable from the remainder of the current proposal, so that any judicial invalidation of any portion of the current proposal would not endanger the lawful and appropriate decision to withdraw the 2020 Fee Schedule.

Additionally, we have identified parts of the rule that should be amended before publication of a final rule. We believe that the standards for fee waivers (receipt of a means-tested benefit, financial hardship, and income at or below 150% of the FPG) should be included specifically in the rule itself, not just in the preamble to the rule.

We also find that favoring online filers of USCIS applications with lower fees is unfair to low-income applicants, applicants of color and those with less computer and internet access. This is especially true because USCIS has not included Form I-912, Request for Fee Waiver, in those forms that can be filed online – the fee waiver request can only be filed as a paper application by mail. Since the fee waiver must accompany the immigration benefit application, persons seeking a fee waiver are required to file all applications where the fee waiver is requested on paper. The population who needs fee waivers is thus automatically disadvantaged by any fee reductions for persons who file online.

We remain concerned about the fee increases to forms that are necessary for work, travel, family reunification, and permanent residence. While we acknowledge USCIS' work to adhere to an "ability to pay" model, the increased fees for many of these applications will put the benefits out of reach for many applicants who are low-income and of color, but do not qualify for a fee waiver. These benefits are integral to financial stability and full participation in civic life for immigrant communities, and the financial barriers posed by increased fees – including the proposal for yearly inflationary fee raises – disproportionately discriminate against low-income populations and Black and brown communities. We urge USCIS to prioritize the actual effect of the fee increases on applicants and the consequences of raised fees.

Our objections to these sections of the proposed rule and our suggestions for improvements to the final rule are specified below. Additionally, we have provided feedback on a number of USCIS form revisions included in the proposed rule, including Form I-90, Form I-485, Form I-912, Form N-400, and Form N-600K.

### **The Immigrant Legal Resource Center**

The Immigrant Legal Resource Center (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 immigration law and processes.

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 eligible individuals apply for U.S. citizenship. 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.

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.

The ILRC is also a leader in interpreting family-based immigration law as well as VAWA, U, and T immigration relief for survivors, producing trusted legal resources including webinars, trainings, and manuals such as *Families &*

*Immigration: A Practical Guide; 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.*

### **I. We Commend the Fee Exemptions for Asylum-Seekers and Certain Immigrant Survivors of Crime.**

We applaud the agency for codifying the fee exemption for asylum applications. Strengthening this long-standing policy through regulatory action will ensure that asylum-seekers can access protections regardless of their financial situation and recognizes the importance of access to the asylum system. Further, we support the agency's decision to codify fee exemptions for initial work authorization for asylum applicants in order to ensure that all asylum seekers can obtain lawful employment during the pendency of the asylum case.

We also commend USCIS for the fee exemptions in its proposed rule for certain other vulnerable immigrant populations. We commend the proposed exemptions for immigrant survivors seeking relief as VAWA Self-Petitioners, T visa applicants, U visa petitioners, and Special Immigrant Juvenile status (SIJS) petitioners, as well as exemptions from fees for adjustment of status for T visa holders, VAWA Self-petitioners filing I-360's concurrently with their adjustment applications, and those who have status under the Cuban Adjustment Act (CAA) and the Haitian Refugee Immigrant Fairness Act (HRIFA), and SIJS. These exemptions are a welcome change that will increase access to immigration relief for low-income survivors of crime, and thus more completely achieve the goals of these humanitarian programs to provide stability and safety from abuse for immigrant survivors. These exemptions will also avoid the arbitrary and inconsistent fee waiver adjudications currently disproportionately affecting these populations, as many of them have faced repeated rejections and delays because of erroneous fee waiver denials.<sup>1</sup> Moreover, these exemptions will streamline the processing of these applications and save the agency the time and resources otherwise spent on adjudicating fee waivers for these benefits. Such measures will also reduce the backlogs for these humanitarian forms of relief and contribute to overall agency efficiency.

Given the wide-ranging benefits of these exemptions to USCIS, applicants, and their representatives, we ask USCIS to extend the exemptions to all survivor-based categories, including VAWA Self-Petitioners who are not filing concurrent I-360's and I-485's, U visa holders applying for adjustment, and conditional residents seeking waivers of joint filing requirements based on battery or extreme cruelty, among others. Such extensions will increase access to benefits for these vulnerable populations, avoid confusion for applicants and their representatives, and further streamline the adjudications of these benefits.

### **II. We Commend the Modest Increases for Naturalization Fees.**

We wish to commend the agency for its efforts to keep the increases for naturalization applications modest and for reducing the overall fee for reduced-fee naturalization applications. Cost is routinely identified as a major barrier to naturalization both by polling conducted by the ILRC, and data compiled by others.<sup>2</sup> Keeping the fees at current levels with a slight increase will not necessarily remove financial barriers identified by potential naturalization applicants, but it will also not erect further financial barriers to the eligible-to-naturalize population. We also applaud the agency for maintaining its commitment to the reduced fee option for low-income naturalization applicants by lowering the reduced fee by 6%. Finally, we additionally commend the agency for lowering the costs of

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<sup>1</sup> In its 2016 annual report, the CIS Ombudsman noted that the increase in form length of the I-912 disproportionately disadvantaged pro se applicants and resulted in inconsistent adjudications which led, in turn, to increased requests for case assistance and unnecessary re-filing of subsequent applications. See Citizenship and Immigration Ombudsman, *Annual Report 2016*, (June 29, 2016).

<sup>2</sup> USC Dornsife Equity Research Institute, *Interactive Map: Eligible to Naturalize Adults by Probability of Naturalization - by PUMA (2018)*, 2018, <https://dornsife.usc.edu/csii/map-eligible-to-naturalize-puma/>.

Form I-90 (by 14%) in addition to the recent changes allowing for auto-extension of green cards for naturalization applicants.

We do wish to note that for naturalization applicants who do not pay the biometrics fee under the current fee structure – those applicants over 75 years of age – the increase is larger (from \$640 to \$760, or an increase of 19% as opposed to the 5% increase for all other naturalization applicants who pay the biometrics fee of \$85). USCIS should implement a lower fee for this population that parallels the 5% increase for most naturalization applicants.

Further, we urge USCIS to explore other cost-saving and efficiency measures in the entire naturalization process that would allow for a reduction in naturalization fees for all applicants. These measures could include waivers of interviews and flexibilities around oaths and testing as well as adjudicatory efficiencies including the elimination of extreme vetting practices that cost agency time, money, and staffing that could be used elsewhere. Lowering the cost of naturalization would be the most effective step that USCIS could take to promote naturalization.

### **III. Changes to fee waiver process and forms.**

#### **a. The standards for fee waivers should be included in the regulation, not just in the preamble.**

We support the agency's commitment to provide fee waivers for immigration benefits applicants who are unable to pay by reverting to the inability to pay model. This is a vast improvement over the changes that had been proposed in the 2020 fee rule which would have eliminated fee waivers for the majority of applicants.

We appreciate that the preamble to the proposed rule describes the agency's commitment to the current fee waiver standards and details that receipt of a means-tested benefit, income at or below 150% of the FPG, or a financial hardship are the standards for determining "inability to pay."<sup>3</sup> These three standards have been agency policy for the determination of fee waivers since 2010.<sup>4</sup> We note that while that policy memo was included in the former manual used by USCIS adjudicators, called the Adjudicators Field Manual (AFM), the fee waiver standards have not been published in the policy guidance currently used by the USCIS, the USCIS Policy Manual. It is important to enshrine these standards in the regulation to protect access to fee waivers in the future.

We are concerned that USCIS has not put these three standards in the proposed regulation itself, which only states that the standard for a fee waiver is the "inability to pay consistent with the status or benefit sought."<sup>5</sup> These standards need to be specified in the regulation, as the preamble has no legal effect and will not appear once the final rule is published.

The reason that these three standards should be in the regulation itself is that they could be subject to change once again if they are not in the rule. We have seen what can happen in this regard when the agency attempted to change fee waiver eligibility standards by altering the language on the I-912 Request for Fee Waiver form in 2018-2020 by removing eligibility by receipt of a means-tested benefit from the form.<sup>6</sup>

The three eligibility standards for fee waivers were developed by USCIS in the agency's 2010 policy memo and subsequent release of the I-912 Request for Fee Waiver form. The agency developed these standards after extensive collaboration with stakeholders. Until 2010, there was no USCIS form to request a fee waiver and no uniform standards defining the regulatory guideline of "inability to pay." Stakeholders reported a lack of accountability and extreme inconsistency in USCIS's treatment of fee waiver requests prior to 2010. The

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<sup>3</sup> 88 Fed. Reg. 456-458 (Jan. 4, 2023).

<sup>4</sup> USCIS, *Fee Waiver Guidelines as established by the Final Fee Rule*, PM 602.0011.1 (Mar. 13, 2011).

<sup>5</sup> 88 Fed. Reg. 593 (Jan. 4, 2023).

<sup>6</sup> The fee waiver form changes and subsequent injunction are described at 88 Fed. Reg. 456 (Jan. 4, 2023).

development of the policy memo and Form I-912's three standards for eligibility were improvements that added clarity and transparency to the process.<sup>7</sup>

As such, we request that USCIS codify the fee waiver eligibility language by incorporating it into the final regulation, not just in the preamble or other supporting statements. Otherwise, we risk losing over a decade of progress in improved transparency and fairness in adjudications of fee waivers.

b. USCIS should consider raising the income threshold for fee waiver eligibility.

In codifying the eligibility grounds for a fee waiver, USCIS should consider raising the income level threshold for fee waiver applicants. Specifically, USCIS should raise the threshold for a fee waiver to 200% of the Federal Poverty Level as determined by the Department of Health and Human Services.<sup>8</sup> Raising the threshold more accurately reflects the realities of low-income individuals, particularly as this rule seeks significant increases for fees for integral applications like those for work authorization, permanent residence, and family petitions. Fee reduction thresholds for naturalization applications should be raised as well to cover individuals whose household income is at or below 250% of the federal poverty line.

**IV. Reducing Fees for Online Filers Discriminates Against Low-Income Applicants and Persons with Less Computer Access**

The proposed rule has a reduced fee for immigration benefits for applicants who file online using the myUSCIS account system, and higher fees are assessed for persons who file on paper via U.S. Postal mail.<sup>9</sup> Not all applications are available for online filing, but the agency intends to increase online filing for benefits soon. The agency justifies the online discount because there is a cost-savings to the government for online filing.

For applicants, however, there is often no real option to submit online. If they are low income and require a fee waiver, the I-912 Request for a Fee Waiver is not available for online filing.<sup>10</sup> Since the fee waiver must accompany the benefit application, this means that such applicants must file on paper if they seek a fee waiver. In the proposed rule USCIS stated that online filing is more efficient and points to the advantages for applicants and the agency alike,<sup>11</sup> but the agency is denying these efficiencies to low-income applicants and those without reliable access to technology and internet. Even where a fee waiver is approved, applicants who file fee waivers experience longer wait times for receipt notices, in many cases to significant detriment.<sup>12</sup> Where a fee waiver is denied and the application rejected, further delays ensue. Delays and processing issues are severe enough that many fee-waiver eligible applicants will delay filing if possible or pay the application fees while struggling to pay other expenses.

The purpose of providing a fee waiver at all is to ensure that financial status does not dictate an individual's ability to access the immigration benefits for which they are eligible. By continuing to emphasize online filing without addressing the needs of low-income applicants, USCIS is ensuring that only those with financial resources can take advantage of any of the benefits associated with online filing. As such, USCIS must eliminate the fee difference

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<sup>7</sup> While stakeholders continue to report challenges in the USCIS's adjudication of fee waiver requests, the development of the form and the three standards were welcomed as major improvements to the process.

<sup>8</sup> Dept. Of Health and Human Services, *Poverty Guidelines*, Jan. 19, 2023.

<sup>9</sup> 8 CFR 106.2 (Jan. 4, 2023). For example, Form I-90 to replace a permanent residence card is \$455 if filed online and \$465 if filed on paper. See rationale in the preamble 88 Fed. Reg. 489-491 (Jan. 4, 2023).

<sup>10</sup> USCIS, I-912 *Fee Waiver Instructions, Where to File* <https://www.uscis.gov/i-912>.

<sup>11</sup> 88 FR 490.

<sup>12</sup> The ILRC has dozens of examples on file detailing the egregious delays and harm caused to the applicants and has previously advocated with the agency on this matter. These examples can be provided to the agency upon request.

between online and paper filings given that the increased fee for paper filing will disproportionately affect low-income applicants.

**V. USCIS Should Prioritize Other Cost-Mitigation Efforts Before Raising Fees.**

Generally, ILRC is opposed to the increase of fees for immigration benefits. High application fees create barriers for low- and middle-income applicants that keep them from accessing the documentation they need to work and live financially secure lives in the United States. Further, increased fees perpetuate family separation if U.S. citizen or LPR petitioners are not able to afford the fees to help eligible family members immigrate to the United States.

a. Adjustment of Status

While we are concerned about fee increases across the board, we are particularly concerned about the increases and changes for adjustment of status applications. For applicants currently paying both the application and biometrics fees, the increased fee of \$1,540 represents a 26% increase for Form I-485. This increase is significant on its own but is compounded by the fact that there is no longer a reduced fee for applicants under 14 years of age and that adjustment applicants will no longer be able to file for work and travel authorization without additional fees. These changes will result in an enormous increase for those looking to adjust who are not eligible for a fee waiver.

For example, for a family-based adjustment for a family of four with two children under the age of 14, the cost for the minimum applications to ensure that the adults in the family can work and that everyone can adjust status together goes up by 88% under the new fee structure.

| Current Fees  | Proposed Fees   |
|---|---|
| I-485 x 2 = \$1140 x 2 = \$2280<br>Biometrics Fees x 2 = \$85 x 2 = \$170<br>I-485 (reduced) x 2 = \$750 x 2 = \$1500 | I-485 x 4 = \$1540 x 4 = \$6160<br>I-765 x 2 = \$650 x 2 = \$1300 |
| I-765 x 4 = \$0   | No work authorization for children                                |
| I-131 x 4 = \$0   | No travel authorization for anyone                                |
| <b>Total = \$3950</b>   | <b>Total = \$7460 (increase of 88%)</b>                           |

It is imperative that applicants for adjustment of status are afforded the opportunity to work, especially given the long backlogs and processing times. An employment authorization document is also important for child applicants who may not have access to any other U.S. government identification. Further, many adjustment applicants have not been able to travel outside of the United States for many years due to insecure immigration status and the ability to travel while an application for adjustment of status is pending helps to alleviate family separation. While adjustment applicants are not barred from seeking these benefits and paying the accompanying fee, the proposed fee increases will put those benefits out of reach for many applicants.

Additionally, even without work authorization or travel authorization applications, the increases have the potential to cause families to adjust at different times based on what they can afford. This could cause instability for the family as some members of the family would remain without permanent status while the family attempts to save for application fees. Applicants will also likely turn to unscrupulous lending institutions or rely on credit cards or other high-interest mechanisms to pay their expenses and benefits fees. Many may even avoid applying for permanent status due to the cost. We are sympathetic to the argument that USCIS must cover their adjudication costs, but USCIS will recoup no costs if eligible people do not apply.

Finally, a barrier to adjustment of status is a barrier to naturalization. The longer eligible individuals put off adjusting status, the longer it will take them to become U.S. citizens. Promoting naturalization cannot just be an effort at the final stage of an individual's immigration journey. The agency can begin promoting the idea of naturalization at the adjustment stage and ensure that applicants are not barred from accessing permanent residence based solely on their financial situation.

We urge USCIS to reconsider these provisions for adjustment of status applicants who are not fee-waiver eligible. For the final rule USCIS should consider including the following:

- A continuation of the current policy providing for a reduced fee for adjustment applicants under 14 years of age.
- A reduced fee option for all adjustment applicants over 150% of the Federal Poverty Guidelines like the reduced fee option for naturalization.
- A cap on the number of fees to be paid by immediate family members applying together.
- A continuation of the current policy allowing adjustment applicants to file I-765s and I-131s with no additional fee.

b. Other applications

USCIS should also reconsider the increases for other family-based and humanitarian applications due to the negative impact raising the fees will have.<sup>13</sup>

- I-130, 53% increase – This increase will prolong family separation for low- and middle-income petitioners who may have several eligible family members (e.g., a spouse and children) abroad who wish to immigrate to the United States. Increases in fees for family petitions run the risk of prolonged separation as families may elect to split the family further by petitioning for one family member at a time. Additionally, this is inefficient for USCIS and the Department of State as processing the family together inevitably saves time and resources.
- I-765, 31% increase – Work authorization is critical for noncitizens to establish financial stability, educational opportunity, and protection from harm by unscrupulous employers. Further, it leads to greater stability for the family members of applicants, including those who are children and U.S. citizens. Increasing the fee for I-765s has the potential to delay work authorization for individuals and thus delay their full economic and civic participation in U.S. society, causing a ripple effect for families and communities.
- I-601A, 55% increase – The wait for an I-601A waiver filed with the Nebraska Service Center is currently 34.5 months – almost three years – and the wait at the Potomac Service center is even longer at 39.5 months.<sup>14</sup> While we are not unsympathetic to the challenges the agency faces in addressing backlogs, particularly in the absence of more congressional funding, increasing the fee for the I-601A – a waiver that was created to address family separation concerns – by this much without first addressing the long processing times is unacceptable. USCIS has a responsibility to utilize existing resources to address backlogs before asking applicants to pay higher fees.
- I-212, 50% increase – Similarly, USCIS must first address the long processing times for the I-212 waiver, which has a case processing time of approximately two years.<sup>15</sup>

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<sup>13</sup> The increases noted in this section include biometrics fees where applicable.

<sup>14</sup> USCIS, *Check Case Processing Times*, <https://egov.uscis.gov/processing-times/> (last accessed Feb. 16, 2023).

<sup>15</sup> *Id.*

## **VI. USCIS Should Eliminate the Language that Allows for Yearly Fee Increases Based on Inflation.**

A yearly increase in fees based on inflation will erect further barriers to immigration benefits for low-income applicants – many of whom are members of Black and brown communities – without the benefit of the analysis that USCIS has shown in this current fee rule. Applications associated with naturalization, permanent residency, and work authorization deeply affect individuals' ability to fully engage with society and participate in the political process and, as such, USCIS has taken this into account when raising fees. In the current proposed rule, USCIS took great care to apply an "ability to pay" model, demonstrating an understanding of the importance of this kind of inquiry. As such, fees were not raised as high on some applications as on others. Yearly inflationary increases would not allow for this flexibility and the mitigation work that USCIS has done, for example, to promote naturalization through fee policy, would be negated.

Further, while we remain supportive of USCIS seeking appropriations from Congress to address the existing backlogs and processing delays, regular fee raises would decrease the incentive for USCIS to use its existing resources to ensure that backlogs and processing times do not skyrocket again. As we have seen over the last few years, staffing is an important aspect of the fiscal health of the agency, but it is not one that can be relied upon to ensure that application processing times remain reasonable. USCIS should focus on innovative and creative ideas regarding how to improve efficiency measures across all applications with existing resources, and regular fee increases would hamper that endeavor.

## **VII. USCIS Should Address Inefficiencies in Adjudications Before Raising Application Fees.**

We recognize that as a predominantly fee-funded agency, USCIS must recoup the costs of operations and where alternative funding, such as congressional appropriations, is not available, other measures must be taken. However, any increase in application fees must be accompanied by other cost-mitigation measures at the agency including a reduction of unnecessary and costly fraud detection measures levied against all applications, regardless of whether there are any indicators of fraud.

For example, we ask USCIS to withdraw the section of the USCIS Policy Manual on "extreme vetting," as announced in the policy alert entitled "Prerequisite of Lawful Admission for Permanent Residence under All Applicable Provisions for Purposes of Naturalization," issued November 18, 2020. This section requires officers to engage in unnecessary, time-intensive, and burdensome re-adjudication of prior immigration applications. Officers must "verify" the underlying lawful permanent residence (LPR) status in all naturalization cases, even where no question about eligibility is raised, in essence re-adjudicating an individual's LPR status. In the process of this "re-adjudication," officers are requesting documentation "proving" eligibility that in many cases is no longer available, or should be in the possession of USCIS, such as an alleged prior "deportation order" from the 1970s when the applicant had indicated they received "voluntary departure." This disproportionately affects low-income, vulnerable, and unrepresented naturalization applicants, as they may not have resources to obtain verification for various filings and information provided at the original application for LPR status, sometimes decades in the past.

Similarly, in both the naturalization and survivor-based context, ILRC has identified multiple examples of officers sending Requests for Evidence (RFEs) for additional evidence and information regarding underlying applications that were not at issue at the time of approval. This practice causes backlogs and processing times to lengthen as adjudicators are required to assess not only the application before them, but all underlying applications that were approved by previous officers.

The fraud-first and extreme vetting practices that have been prevalent at USCIS for a number of years must be addressed through policy changes and training to reduce application processing times and costs. USCIS persists in the same level of vetting procedures for all applications – including the re-adjudication of applications already



approved – which is costly and inefficient. To pass the cost burden of these unnecessary procedures to applicants is impermissible and should be addressed before fees are increased.

### VIII. Conclusion

In constructing the final fee rule, it is our hope that USCIS will address the concerns we have raised here. We commend the agency for its efforts to ensure that vulnerable populations are not barred from accessing relief, but more can always be done to remove the financial barriers that exist within the application benefits system.

Sincerely,

/s/Elizabeth Taufa

Elizabeth Taufa

Policy Attorney and Strategist

Immigrant Legal Resource Center

### Suggestions to Form Changes

- **Forms Generally**
  - On many of the form revisions – including Form I-765, N-400, and I-90 – USCIS has removed the language in the instructions alerting applicants that they may be eligible for a fee waiver. The removal of this language will reduce the chance that someone who is eligible for a fee waiver will apply for one. For all forms for which a fee waiver may be filed for certain categories of applicants, USCIS must ensure that language is present in the instructions that alerts applicants to potential fee waiver eligibility.
- **Form I-485, Application to Register Permanent Residence or Adjust Status**
  - Question 61 in Part 8, “Are you subject to public charge?” We ask that USCIS provide clarification for this question in the instructions. The question is confusing as it has to do with who is exempt from the public charge inadmissibility ground; however, some read it as requiring a legal determination about whether the particular applicant is *inadmissible* based on public charge. If an applicant is exempt from the affidavit of support but not public charge or switching tracks from an exempt status to a family-based process, there is additional confusion. The instructions direct applicants to the USCIS Policy Manual web site, but do not offer any more direction on this point. Rather than direct applicants to the policy manual, USCIS should direct applicants to the Public Charge Resources web site or incorporate the information found there into the form instructions.
  - Questions 62-65: These questions should be clarified to say... We have received many questions from practitioners about different household situations (e.g., what if parents split custody of a child, what about adult children who live with the applicant), whether income is annual income as reported on the most recent taxes or current annual income, assets, and liabilities (e.g., whether student loans count).
- **Form N-400, Application for Naturalization**
  - ILRC previously commented on the N-400 on July 15, 2022, and the current proposed rule has reopened a comment period. We resubmit our prior comments on changes that are needed to make the form more user friendly and administratively efficient. The July 2022 comment is posted online at <https://www.ilrc.org/resources/comment-form-n-400-application-naturalization>.
  - In addition to our previously submitted comments, the instructions to the N-400 as revised remove the language advising applicants that they may be eligible for a fee waiver. This language should be kept in the instructions so that fee waiver eligible applicants are not prevented from applying for naturalization because they are unable to pay the fee.

- **Form N-600K, Application for Citizenship and Issuance of Certificate under Section 322**
  - On June 30, 2022, ILRC commented on the N-600K form when USCIS opened the form for comment. We resubmit that comment as USCIS has reopened the comment period in the current proposed rule. The June 2022 comment may be found online at <https://www.ilrc.org/resources/comment-n-600k>.
- **Form I-90, Application to Replace Permanent Resident Card**
  - The revisions to the I-90 instructions remove the language<sup>16</sup> advising applicants that they may be eligible for a fee waiver. USCIS must replace this language or add a similar disclaimer letting applicants know that fee waivers are available for eligible individuals.
- **Form I-912, Request for Fee Waiver**
  - The use of Form I-912, Request for Fee Waiver, provides consistency and transparency in the fee waiver process. However, USCIS should eliminate questions on Form I-912 that are not relevant to fee waiver eligibility and ensure that supporting documentation is considered liberally.
  - In Part 1, Question 2, the revised form requests the applicant’s immigrant or non-immigrant status which is irrelevant to the issue of inability to pay, the regulatory standard for the fee waiver. This question should be eliminated.
  - Part 2, Question 6 asks the applicant to provide a Social Security number, which is irrelevant to the issue of inability to pay. In the interest of streamlining the form and eliminating the collection of unnecessary information, this question should be eliminated.

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<sup>16</sup> “Fee Waiver You may be eligible for a fee waiver under 8 CFR 103.7(c). If you believe you are eligible for a fee waiver, complete Form I912, Request for Fee Waiver and submit it and any required evidence of your inability to pay the filing fee with this application. You can review the fee waiver guidance at [www.uscis.gov/feewaiver](http://www.uscis.gov/feewaiver).”