



# STATUS OF USCIS FEE WAIVER CHANGES – OCTOBER 2, 2020

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## I. Introduction

The United States Citizenship and Immigration Services' (USCIS) new fee rule was scheduled to take effect on October 2, 2020.<sup>1</sup> The rule drastically increased filing fees and severely limited the availability of fee waivers.<sup>2</sup> However, a federal judge in the District Court for the Northern District of California enjoined the rule nationwide in its entirety on September 29, 2020.<sup>3</sup> Further developments in the litigation will need to be followed closely to determine when or if the final fee rule will take effect.<sup>4</sup>

This practice advisory describes the changes intended by the 2020 fee rule to fee waivers, explains the new criteria and supporting documentation for those few fee waivers that would remain if the rule goes into effect, and discusses the impact of the litigation on fee waivers.

**As of the date of this advisory, none of the changes to fee waiver standards nor to the fee waiver form are in effect,** and USCIS will continue to review fee waivers for eligibility under receipt of a means-tested public benefit, income at or below 150 percent of the federal poverty income guidelines, or a financial hardship. Previous litigation halted efforts by USCIS, in late 2019, to change fee waiver policy through changes to the fee waiver application form, Form I-912. An injunction in that case, *City of Seattle v. DHS*, has required USCIS to continue accepting fee waiver applications where eligibility is based on receipt of means-tested public benefits. Further developments in this litigation will need to be followed closely as well.<sup>5</sup>

USCIS intended in its currently-enjoined fee rule to eliminate the ability of low-income immigrants to apply for a fee waiver for most benefits, including naturalization, replacement of green cards, employment authorization, and removal of conditions on permanent residence, among others. The 2020 fee rule preserved statutorily-mandated fee exemptions for a small number of humanitarian applications, and certain associated applications filed by those applicants remain eligible for a fee waiver, but under a new, more restrictive standard. These restrictions are enjoined as of the date of this advisory, but further developments need to be monitored as the litigation continues.

## II. Background on USCIS Fee Waivers

Until 2007, almost any type of USCIS benefit application could be accompanied by an application for a fee waiver if the applicant was unable to pay the prescribed fee. USCIS began limiting the types of applications that could be accompanied by a fee waiver in the 2007 fee rule, creating a limited list that prohibited two-thirds of the application types from the possibility of a fee waiver.<sup>6</sup> The 2007 regulations considerably limited which application types could be accompanied by fee waivers from almost all of them to roughly one-third of them.<sup>7</sup> The Department of Homeland Security (DHS) made no changes to the types of applications that could be accompanied by fee waivers in the 2010 and 2016 fee rules.<sup>8</sup> A list of forms for which fee waivers have been accepted since the 2007 rule and to the present time can be found at the end of this practice advisory, as Appendix One.

The enjoined 2020 fee rule drastically reduces the list of application benefit types that can be accompanied by a fee waiver, confining this possibility to immigration benefits and associated applications from individuals in a few humanitarian categories.<sup>9</sup> Generally speaking, these are applicants for whom the main immigration benefit request is statutorily exempt from fees under the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA), as well as some other humanitarian applicants.<sup>10</sup>

Prior to the 2020, currently-enjoined fee rule, the legal standard set forth in USCIS regulations allowed low-income immigrants to apply for a fee waiver if they could establish that they were “unable to pay the prescribed fee.”<sup>11</sup> USCIS abandoned that principle in the enjoined 2020 rule to adopt a free-market ethos called “beneficiary pays,” the guiding principle of the astronomic fee hikes and elimination of most fee waivers.<sup>12</sup>

For the past decade, USCIS has been operating under agency guidance and the I-912 fee waiver form. A full decade ago, USCIS developed the Form I-912 after extensive collaboration with stakeholders, and then published the accompanying fee waiver guidance.<sup>13</sup> USCIS held public teleconferences and gathered extensive information from stakeholders before finalizing the new form and guidance.<sup>14</sup> 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 I-912 form created three distinct grounds on which an applicant could demonstrate their inability to pay the prescribed application fee, and thereby qualify for a fee waiver. The purpose of the form and the three criteria for eligibility it provided was to bring clarity and consistency to the fee waiver process, both for applicants and adjudicators. The form and the accompanying guidance on fee waivers allowed eligibility for fee waivers in three possible circumstances, each providing a distinct means of demonstrating eligibility: (1) the applicant is receiving a means-tested benefit; or (2) the applicant’s household income is at or below 150% of the poverty income guidelines at the time of filing; or (3) the applicant suffers a financial hardship.<sup>15</sup>

As noted above, in 2019 USCIS attempted to change this policy by making changes to the I-912 form, resulting in the *City of Seattle v. DHS* lawsuit. Those changes were stopped by the preliminary injunction in that case. The three-prong standard articulated above will remain in place as long as the 2019 injunction in *City of Seattle v. DHS* and the current nationwide injunction on the fee rule hold.

### III. Enjoined 2020 Fee Rule Limits Fee Waivers to the Associated Filings of Humanitarian Benefit Applications

Under the enjoined fee rule, the possibility of applying for a fee waiver is limited to applications for an immigration benefit and associated filings with a primary immigration benefit that falls into one of the following humanitarian categories: Violence Against Women Act (VAWA) self-petitioners and derivatives, trafficked individuals with T visas, victims of crimes with U visa, battered spouses of nonimmigrant A, G, E-3 or H visa holders, and special immigrant juveniles *who are placed in out-of-home care under supervision of a juvenile court or a state child welfare agency at time of filing* (emphasis added). The italicized language pertaining to special immigrant juveniles was added for the first time by the 2020 fee rule and may limit the fee waiver possibility to a smaller subset of these applicants. At this time, it is unclear how this limitation will be applied, as it did not exist in the prior rule. The only guidance that USCIS provides in the rule is the inclusion of foster care as an example of out-of-home care, but this does not address the various other custodial settings in which special immigrant juveniles may reside.<sup>16</sup> Also included for fee waivers of associated filings is the tiny program that exists for Iraqi or Afghan translators employed by the U.S. Government—primarily military translators.<sup>17</sup> Fee waivers remain available for applicants for Temporary Protected Status (TPS), including both initial applicants and re-registering TPS beneficiaries.

These categories are limited to individuals for whom there is a statutory or regulatory provision allowing for fee waivers. The specific associated filings of these programs that may be accompanied by a fee waiver under the new standards are outlined in a chart found in the rule.<sup>18</sup> Generally “associated filings” applies to waivers, employment authorization, parole, appeals, and later applications for permanent residence or naturalization by persons in these categories.<sup>19</sup>

Applications that were eligible to be accompanied by fee waivers under the former rule but *would be precluded from fee waivers* if the 2020 fee rule takes effect include the following applications (except if they are submitted as associated filing by individuals in one of the humanitarian categories above): N-400 naturalization application; I-90 replacement of green card; I-131 application for travel document when requesting humanitarian parole; I-191 application for advance permission to return to unrelinquished domicile; I-290B notice of appeal or motion where the underlying application did not require a fee or that fee was waived; I-751 petition to remove the conditions on residence (unless the filing is based on abuse);<sup>20</sup> I-765 applications for employment authorization; I-817 application for family unity benefits; I-881 application for suspension or special rule cancellation; N-336 to request a hearing on a decision in naturalization; N-470 application to preserve residence for naturalization purposes; N-565 application for replacement of naturalization or citizenship document; N-600 application for certificate of citizenship, and I-129 petition for nonimmigrant worker or to extend/change nonimmigrant status for Commonwealth of the Northern Mariana Islands.<sup>21</sup> In addition, the former rule allowed for fees to be waived for applicants *not subject to the public charge ground of inadmissibility* who apply for an: I-192 advance permission to enter as a nonimmigrant; I-193 waiver of passport or visa; I-485 to adjust status to lawful permanent resident; or I-601 for waiver of grounds of inadmissibility.<sup>22</sup> The new 2020 fee rule requires applicants to pay the full fee for all the application types above, regardless of their ability to afford it. As long as the injunction preventing the fee rule from going into effect remains in place, all these application benefit types can continue to be submitted with fee waivers.

## IV. Fee Waivers Under the 2020 Fee Rule

### A. Eligibility Standard – Income at or below 125 Percent of the Federal Poverty Income Guidelines

If it takes effect, the new fee rule will also change the standard for fee waiver eligibility. Therefore, even for the few categories of applicants who retain the right to apply for a fee waiver, narrowed eligibility criteria will make it harder for these individuals to qualify. Receipt of a means-tested benefit or financial hardship will no longer be qualifications for fee waivers. Rather, the new standard, if it takes effect, will limit fee waivers strictly to applicants who can show their income is at or below 125 percent of the federal poverty guidelines.<sup>23</sup> This strict income limit will replace the current fee waiver eligibility standard at 8 C.F.R. § 103.7(c), which is based on demonstrating inability to pay the prescribed fee. No other means of establishing fee waiver eligibility will be accepted.

Currently, as of the date of this practice advisory, both the fee waiver injunction and the fee rule injunction<sup>24</sup> are maintaining in place the eligibility criteria dating back to 2011. However, as the litigation proceeds, the new criteria could go into effect.

### B. Fee Waiver Form I-912

The USCIS fee waiver form would be required of all fee waiver applicants under the 2020 enjoined fee rule, whereas use of the form is optional under the 2011 standards.<sup>25</sup> The 2020 fee rule included in it a revision of Form I-912. This revised edition of the fee waiver form will be required for applications postmarked on or after the effective date of the new fee rule.<sup>26</sup>

Prior to the enjoined fee rule, USCIS attempted to revise the I-912 and published proposed versions in the Federal Register on September 28, 2018, April 5, 2019, and June 5, 2019, eliminating the means-tested benefit criteria for fee waiver eligibility in each of these versions and adding documentation requirements such as tax transcripts for the I-912.<sup>27</sup> Those revisions, reflected in a final fee waiver form change published in October 2019,<sup>28</sup> were enjoined nationwide in *City of Seattle v. DHS*.<sup>29</sup> The injunction required DHS to return to the policies that were in place before October 25, 2019, including accepting means-tested benefits as proof of fee waiver eligibility and accepting previous editions of the I-912.

The 2020 fee rule, however, if it takes effect, will provide USCIS with a regulation that alters the eligibility and standards for fee waivers. For now, the injunction in *ILRC et al v. Chad Wolf, et al.* prevents that from taking place.

### C. Supporting Documentation

The enjoined 2020 fee rule specifies the supporting documentation that will be required for fee waivers: gross household income must be documented with tax transcripts from the IRS. If an applicant was not required to file a tax return, they can submit their most recent wage and tax statement, Form-1099C to demonstrate certain government payments, or Form SSA-1099 as evidence of Social Security benefits. Persons who do not have income and have not filed tax returns are instructed to submit documentation from IRS indicating that no federal tax transcripts were found, nor W-2s. A separate instruction says that persons who did file a federal

tax return, if they have had a change in salary or employment, must also submit copies of consecutive pay statements for the most recent month, or longer.<sup>30</sup>

There is a specific provision in the 2020 fee rule regarding VAWA self-petitioners and U (victims of crime) and T (trafficked individuals) nonimmigrants who are applying for a fee waiver for one of the “associated filings” and who do not have income nor can provide proof of income: these individuals are required to describe their circumstances in detail to substantiate that they have no income and are therefore at or below 125 percent of the poverty guidelines, and also explain the inability to obtain documentation. Furthermore, the VAWA, U and T fee waiver applicants are instructed to provide pay stubs or affidavits from non-profit institutions or religious organizations verifying any support being received and attesting to the applicant’s financial situation.<sup>31</sup> Special immigrant juveniles applying for fee waivers for one of the associated filings are instructed to provide evidence of approval of special immigrant juvenile status and evidence that they remain in out-of-home care such as foster care.<sup>32</sup>

#### D. Fee Exemptions

Fee exemptions, where no fee is charged, and thus no fee waiver is needed, continue to be available in the enjoined 2020 fee rule for the limited humanitarian categories where a statute or regulation require the exemption. The preamble to the fee rule charts all the filing fee exemptions, and also states that “in general, USCIS exempts a fee for an application or request to replace a document based on USCIS error.”<sup>33</sup> The most important fee exemptions are for I-360 VAWA self-petitions, I-360 applications for special immigrant juvenile status, I-918 applications for U visa, I-914 applications for T visa, certain I-765 initial or renewal applications for employment authorization, largely for humanitarian categories, refugees or asylees (but not asylum applicants), I-821 TPS re-registrations, N-400 military naturalizations under Section 328 or 329 of the INA, and certain I-600 orphan petitions and I-800 petitions to classify convention adoptees. Several other minor applications that have fee exemptions are listed in the fee rule.<sup>34</sup>

#### E. Director’s Fee Waiver or Fee Exemption

The enjoined 2020 fee rule also describes a narrowed USCIS Director’s exception that can allow fee waivers in very rare circumstances, specifically “if the Director determines that such action is an emergent circumstance, or if a major natural disaster has been declared.”<sup>35</sup> This stands in contrast with the broad discretion to create fee waivers or exemptions accorded to the USCIS Director in the current 8 C.F.R. § 103.7(d).<sup>36</sup> Moreover, under the 2020 fee rule, the Director’s limited discretion may not be applied to any benefit that is subject to the affidavit of support requirement, unless the applicant is seeking an I-751 waiver of the joint filing requirement to remove conditions on residence based on abuse; and it may not be applied to any benefit subject to public charge inadmissibility under INA § 212(a)(4). The USCIS Director or the Deputy Director are the only two persons authorized to authorize an additional fee waiver, and as noted above only in emergency circumstances such as a declared national disaster. Such a waiver cannot be requested by an applicant and may only be invoked by the Director; thus it appears that it would be very rarely available.<sup>37</sup>

The Director of USCIS also has the authority to grant fee *exemptions*, if determined to be in the public interest and related to: to asylees or refugees; national security; emergencies or major disaster; an agreement between the U.S. government and another nation; or USCIS error.<sup>38</sup> Here too, the 2020 fee rule narrows the pre-existing discretion available to the USCIS Director.

## V. Status of the 2020 Fee Rule and Litigation

The 2020 fee rule would drastically affect the entire USCIS fee structure and fee waiver eligibility criteria, but it has been enjoined nationwide effective September 29, 2020.<sup>39</sup> The final fee rule was scheduled to go into effect October 2, 2020 but that date is now postponed and will be determined by the courts.<sup>40</sup> It is expected that USCIS fee waivers will continue under the 2011 guidance during the fee rule injunction,<sup>41</sup> allowing fee waivers for the more than twenty benefit types listed in the appendix to this practice advisory, and allowing individuals to qualify for fee waivers on the basis of receipt of a means-tested benefit, income at or below 150 percent of the federal poverty income guidelines, or a financial hardship. For more updates on the status of the fee rule injunction and litigation see <https://www.aila.org/advo-media/issues/all/changes-to-uscis-fee-schedule>.

### Appendix One: Applications Eligible for a fee waiver

The list of applications and petitions that USCIS will consider for a fee waiver under rules in effect prior to the 2020 fee rule and as long as the fee rule injunction is in effect is as follows, see <https://www.uscis.gov/i-912> (last visited Oct. 2020):

- Biometric services fee, except for the biometric services fee required for Form I-601A, Application for Provisional Unlawful Presence Waiver, filed under 8 CFR 212.7(e);
- Form I-90, Application to Replace Permanent Resident Card;
- Form I-129, Petition for a Nonimmigrant Worker, but only if you are applying for E-2 CNMI investor nonimmigrant status under 8 CFR 214.2(e)(23);
- Form I-131, Application for Travel Document, but only if you are applying for humanitarian parole;
- Form I-191, Application for Advance Permission to Return to Unrelinquished Domicile;
- Form I-192, Application for Advance Permission to Enter as Nonimmigrant, but only if you are exempt from the public charge grounds of inadmissibility;
- Form I-193, Application for Waiver for Passport and/or Visa, but only if you are exempt from the public charge grounds of inadmissibility;
- Form I-290B, Notice of Appeal or Motion, but only if your underlying application was fee exempt, the fee was waived, or it was eligible for a fee waiver;
- Form I-485, Application to Register Permanent Residence or Adjust Status, but only if you are applying for lawful permanent resident status based on:
  - An eligibility category that is exempt from the public charge grounds of inadmissibility of section 212(a)(4) of the INA, such as the Cuban Adjustment Act, the Haitian Refugee Immigration Fairness Act;
  - Continuous residence in the United States since before Jan. 1, 1972 (“Registry”);
  - Asylum status; or
  - Special Immigrant Juvenile status or similar categories;
- Form I-539, Application to Extend/Change Nonimmigrant Status, but only if you are applying for any benefit request specified by section 245(l)(7) of the INA or applying for E-2 CNMI investor nonimmigrant status under 8 CFR 214.2(e)(23);
- Form I-601, Application for Waiver of Grounds of Inadmissibility, but only if you are exempt from the public charge grounds of inadmissibility in section 212(a)(4) of the INA;
- Form I-694, Notice of Appeal of Decision Under Sections 245A or 210 of the Immigration and Nationality Act, if your underlying application or petition was fee exempt, the fee was waived, or was eligible for a fee waiver;
- Form I-751, Petition to Remove Conditions on Residence;
- Form I-765, Application for Employment Authorization, unless you are filing under category (c)(33), Deferred Action for Childhood Arrivals;
- Form I-817, Application for Family Unity Benefits;
- Form I-821, Application for Temporary Protected Status;

- Form I-881, Application for Suspension of Deportation or Special Rule Cancellation of Removal;
- Form N-300, Application to File Declaration of Intention;
- Form N-336, Request for a Hearing on a Decision in Naturalization Proceedings;
- Form N-400, Application for Naturalization;
- Form N-470, Application to Preserve Residence for Naturalization Purposes;
- Form N-565, Application for Replacement of Naturalization/Citizenship Document;
- Form N-600, Application for Certification of Citizenship; and
- Form N-600K, Application for Citizenship and Issuance of Certificate under Section 322.

Fee waivers are also accepted for any application or petition that is related to an applicant's status as a:

- Battered spouse of an A, G, E-3, or H nonimmigrant (such as Forms I-485, I-601, and I-212);
- Battered spouse or child of a lawful permanent resident or U.S. citizen under INA 240A(b)(2);
- T nonimmigrant (such as Forms I-192, I-485, and I-601);
- Temporary Protected Status recipient (such as Forms I-131, I-821, and I-601);
- U nonimmigrant (such as Forms I-192, I-485, and I-929); or
- VAWA self-petitioner (such as Forms I-485, I-601, and I-212).

There are no fee waivers for Deferred Action for Childhood Arrivals (DACA).



## End Notes

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<sup>1</sup> Department of Homeland Security (DHS), *USCIS Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, Final Rule*, 85 Fed. Reg. 46,788 (Aug. 3, 2020).

<sup>2</sup> The 2020 fee rule also eliminates the reduced fee for naturalization, Form I-942, which has been available since December 23, 2016, when the last fee rule went into effect.

<sup>3</sup> *ILRC et al. v. Chad F. Wolf, et al.* (N.D. Cal.) (Case No. 4:20-cv-05883-JSW) (Sept. 29, 2020). Note that two other cases challenging the fee rule have been filed, *Northwest Immigrant Rights Project v. USCIS* (D.D.C.) (Case No. 19-cv-03283-RDM) and *Project Citizenship v. DHS* (D. Mass.) (Case No. 1:20-cv-11545).

<sup>4</sup> As of the date of this practice advisory, the government has not appealed the September 29, 2020 order. Any developments in the litigation could affect if and when the 2020 fee rule goes into effect.

<sup>5</sup> As of the date of this practice advisory, the preliminary injunction remains in effect. Developments related to *City of Seattle v. DHS* (Case No. 3:19-cv-07151-MMC) (N.D. Cal.) (preliminary injunction granted Dec. 9, 2019) can be found at <https://protectdemocracy.org/project/city-of-seattle-v-dhs/> (last visited Oct. 2020).

<sup>6</sup> USCIS, *Fee Waiver Policies and Data, Report to Congress by the Acting Director*, p.3, fn.9 (Dec 27, 2017), available at <https://www.hsdl.org/?abstract&did=818268> (last visited Oct. 2020).

<sup>7</sup> See *Final Rule, Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule*, 72 Fed. Reg. 29,851, 29,874 (May 30, 2007).

<sup>8</sup> USCIS, *Fee Waiver Policies and Data, Report to Congress by the Acting Director*, p. 3, fn. 9 (Dec 27, 2017), available at <https://www.hsdl.org/?abstract&did=818268> (last visited Oct. 2020). Some applications and petitions are exempt from filing fees and therefore require neither a filing fee nor a fee waiver. Other USCIS applications and petitions have fee exemption requirements for certain types of benefit requestors. In most cases, the USCIS form and instructions outline the fee exemption and submission requirements if a separate Form I-912 is not required.

<sup>9</sup> DHS, USCIS, 85 Fed. Reg. 46,788, 46,812, *Table 3, Categories and Forms without Fees or Eligible for Fee Waivers* (Aug. 3, 2020).

<sup>10</sup> For the full list, see DHS, USCIS, 85 Fed. Reg. 46,788, 46,812, *Table 3, Categories and Forms without Fees or Eligible for Fee Waivers* (Aug. 3, 2020).

<sup>11</sup> 8 C.F.R. § 103.7(c)(1).

<sup>12</sup> See 85 Fed. Reg. 46,788, 46,799 (Aug. 3, 2020).

<sup>13</sup> 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), [https://www.uscis.gov/sites/default/files/document/memos/FeeWaiverGuidelines\\_Established\\_by\\_the\\_Final%20Rule\\_USCISFeeSchedule.pdf](https://www.uscis.gov/sites/default/files/document/memos/FeeWaiverGuidelines_Established_by_the_Final%20Rule_USCISFeeSchedule.pdf) (last visited Oct. 2020); AFM 10.9 <https://www.uscis.gov/sites/default/files/document/policy-manual-afm/afm10-external.pdf> (hereinafter *USCIS Fee Waiver Guidance 2011*) (last visited Oct. 2020).

<sup>14</sup> DHS Citizenship and Immigration Services Ombudsman, *Annual Report 2013*, p. 48, describing USCIS' development of the new fee waiver form and guidance in 2010, and quoting USCIS: "The fee waiver form reflects significant input from stakeholders ... USCIS heard concerns that the absence of a standardized form led to confusion about the criteria and standards ... The new form identifies clear requirements for documenting a fee waiver request ... USCIS will use the same methodology in reviewing all fee waiver requests." See *Annual Report 2013*, available at [https://www.dhs.gov/sites/default/files/publications/cisomb/cisomb\\_2013-annual-report-to-congress.pdf](https://www.dhs.gov/sites/default/files/publications/cisomb/cisomb_2013-annual-report-to-congress.pdf) (last visited Oct. 2020).

<sup>15</sup> *USCIS Fee Waiver Guidance 2011*.

<sup>16</sup> See 8 CFR 106.3(f)(6).

<sup>17</sup> 8 C.F.R. § 106.3(a)(3). Note that the Special Immigrant Status under the Afghan or Iraqi translator program is limited by statute to 50 total visas issued per year. See Section 1059 of the National Defense Authorization Act for Fiscal Year 2006, Pub. L. 109-163, 119 Stat. 3136, 3443 (Jan. 6, 2006).

<sup>18</sup> DHS, *USCIS Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, Final Rule, Table 3 – Categories and Forms Without Fees or Eligible for Fee Waivers*, 85 Fed. Reg. 46,788, 46,812 (hereafter *Fee Rule, Table 3, Fee Waivers*) (Aug. 3, 2020).

<sup>19</sup> 8 C.F.R. § 106.3.

<sup>20</sup> The 2020 Fee Rule, Table 3, Fee Waivers, Fn. 33 clarifies that applicants for waivers or adjustment as dependents who have suffered abuse are still eligible for fee waivers with I-751 petitions to remove joint condition on residence, Cuban Adjustment, NACARA, and under the Haitian Refugee Immigration Fairness Act.

<sup>21</sup> 8 C.F.R. § 103.7(c). The list of all forms eligible for a fee waiver as long as the fee rule remains enjoined can also be found at the end of this practice advisory.

<sup>22</sup> 8 C.F.R. § 103.7(c).

<sup>23</sup> 8 C.F.R. § 106.3(c).

<sup>24</sup> See footnote 3 and footnote 5, above.

<sup>25</sup> 8 C.F.R. § 106.3(d); see *USCIS Fee Waiver Guidance 2011*.

<sup>26</sup> See USCIS, *I-912, Request for Fee Waiver Alert*, which reads: “Alert: On Sept. 29, 2020, the U.S. District Court for the Northern District of California in *Immigration [sic] Legal Resource Center et al., v. Wolf, et al.*, 20-cv-05883-JWS, preliminarily enjoined DHS from implementing or enforcing any part of the USCIS Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements rule. While the rule is preliminarily enjoined, we will continue to: Accept USCIS forms with the current editions and current fees; and Use the regulations and guidance currently in place to adjudicate applications and petitions. This includes accepting and adjudicating fee waiver requests as provided under Adjudicator’s Field Manual (AFM) Chapters 10.9 and 10.10.” <https://www.uscis.gov/i-912> (last visited Oct. 2020).

<sup>27</sup> USCIS, 83 Fed. Reg. 49,120 (Sept. 28, 2018), 64 Fed. Reg. 13,687 (Apr. 5, 2019), and 84 Fed. Reg. 26,137 (July 5, 2019).

<sup>28</sup> See USCIS New Release, *USCIS Updates Fee Waiver Requirements*, available at <https://www.uscis.gov/news/news-releases/uscis-updates-fee-waiver-requirements> (last visited Oct. 2020).

<sup>29</sup> *City of Seattle v. DHS* (Case No. 3:19-cv-07151-MMC) (N.D. Cal.) (preliminary injunction granted Dec. 9, 2019).

<sup>30</sup> 8 C.F.R. § 106.3(f)(1)-(4).

<sup>31</sup> 8 C.F.R. § 106.3(f)(5)(i)(ii).

<sup>32</sup> 8 C.F.R. § 106.3(f)(6).

<sup>33</sup> DHS, *USCIS Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, Table 4, Filing Fee Exemptions* 85 Fed. Reg. 46,788, 46,828 (Aug. 3, 2020).

<sup>34</sup> *Id.*

<sup>35</sup> 8 CFR § 106.3(b).

<sup>36</sup> 8 C.F.R. § 103.7(d) reads, “Exceptions and exemptions. The Director of USCIS may approve and suspend exemptions from any fee required by paragraph (b)(1)(i) of this section or provide that the fee may be waived for a case or specific class of cases that is not otherwise provided in this section, if the Director determines that such action would be in the public interest and the action is consistent with other applicable law. This discretionary authority will not be delegated to any official other than the USCIS Deputy Director.”

<sup>37</sup> 8 C.F.R. § 106.3(b).

<sup>38</sup> 8 C.F.R. § 106.3(e).

<sup>39</sup> *ILRC et al. v. Chad F. Wolf, et al.* (N.D. Cal.) (Case No. 4:20-cv-05883-JSW (Sept. 29, 2020).

<sup>40</sup> There are also lawsuits against the fee rule in two other courts: *Northwest Immigrant Rights Project v. USCIS* (D.D.C.) (Case No. 19-cv-03283-RDM) and *Project Citizenship v. DHS* (D. Mass.) (Case No. 1:20-cv-11545).

<sup>41</sup> For developments specific to the litigation to preserve access to the fee waiver form under the criteria developed in the 2011 guidance, please visit at <https://protectdemocracy.org/project/city-of-seattle-v-dhs/> (last visited Oct. 2020).



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### About the Immigrant Legal Resource Center

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