UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

THE CITY OF SEATTLE, IMMIGRANT LEGAL RESOURCE CENTER, CATHOLIC LEGAL IMMIGRATION NETWORK, INC., SELF-HELP FOR THE ELDERLY, ONEAMERICA, AND CENTRAL AMERICAN RESOURCE CENTER OF CALIFORNIA, *Plaintiffs*, vs. DEPARTMENT OF HOMELAND SECURITY, KEVIN MCALEENAN, KENNETH T. CUCCINELLI, AND UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, *Defendants*.	Case No. 3:19-cv-07151-MMC

DECLARATION OF MEGHAN KELLY-STALLINGS IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

I, Meghan Kelly-Stallings, hereby declare as follows:

1. I have personal and professional knowledge of the matters set forth herein. I would testify to the facts in this declaration under oath if called upon to do so.

2. I am the Citizenship Program and Policy Specialist for the City of Seattle's Office of Immigrant and Refugee Affairs ("OIRA").

3. The City of Seattle created OIRA in 2012 to improve the lives of Seattle's immigrant families. We believe supporting immigrants creates a stronger future for our nation. Just as previous immigrants were before, today's immigrants are tomorrow's U.S. citizens who will be fully engaged in the cultural and civic life of our society both locally and nationally.

4. The City of Seattle objected to USCIS's proposed changes to the fee waiver three times. Its comments, submitted to USCIS via regulations.gov, are attached as **Exhibits A, B,** and **C**.

Seattle's Naturalization Program

5. OIRA funds and coordinates two naturalization programs, the New Citizen Campaign ("NCC") and the New Citizen Program ("NCP"), to help the estimated 75,000 Seattle-area lawful permanent residents ("LPRs") become U.S. citizens. We work with local and national partners to engage these LPRs via outreach, education, citizenship workshops, legal assistance, and case management.

6. The NCC works with community partners to hold naturalization workshops (also called "citizenship clinics") all over Seattle, serving an average of 30 to 50 individuals per month. NCC also organizes intermittent large-scale workshops that, to date, have served 1,975 lawful permanent residents in applying for citizenship.

7. Individuals attending NCC citizenship clinics are screened by volunteer immigration attorneys and Department of Justice-accredited representatives; and those deemed ready to apply are assisted in the completion of their N-400 naturalization application and, when necessary, the I-912 fee waiver application.

8. Approximately 30 percent of clinic attendees qualify for a fee waiver, and the vast majority of those establish their fee waiver eligibility with a means-tested public benefit ("MTB") letter.

9. The NCP is a consortium of 12 community-based nonprofit organizations that provide ongoing, free case management services to low-income immigrants and refugees living in Seattle/King County. Many of these clients are elderly, illiterate, disabled, or have limited English language skills.

10. NCP attorneys and accredited representatives represent clients throughout the naturalization process, including preparation and submission of N-400 naturalization applications and I-912 fee waiver forms, and disability waivers and appeals when needed.

11. NCP services also include citizenship instruction/tutoring, interview preparation, and referrals to outside legal assistance in highly complex cases. These services are available in Arabic, Amharic, Burmese, Cambodian, Cantonese, French, Korean, Mandarin, Moldavian, Polish, Romanian, Russian, Samoan, Somali, Spanish, Tigrinya, Tongan, and Vietnamese.

12. 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. Since 2015, 95 to 99 percent of NCP participants applied for a few waiver; and the vast majority did so on the basis of receiving a MTB.

13. To qualify for NCP services, clients must either receive a MTB or be a low-income resident of Seattle. Clients who receive a MTB may reside outside of Seattle. Those who do not must reside within Seattle city limits and provide proof of their low-income status, defined as having an income which is 50 percent or less of the area's median as determined by the U.S. Department of Housing and Urban Development (HUD). In 2018, 668 new participants enrolled in NCP. Among new participants, 89 percent (593) received a MTB.

14. In 2018, 573 NCP clients filed N-400 naturalization applications, and among those 96 percent (549) filed an accompanying I-912 fee waiver form. Only eight percent (42) of the 549 fee waiver requests filed were submitted by someone *not* receiving a MTB. These statistics are consistent with past years, where 97 percent (1,786 out of 1,849) of naturalization submissions in 2015, 2016, and 2017 had an accompanying I-912 fee waiver application.

State Means-Tested Benefit Thresholds Reflect Differences in Cost of Living

15. One of USCIS's stated rationales for eliminating the MTB-based path to a fee waiver is that there is variation among states in what constitutes income eligibility for a MTB. That variation reflects differences in the cost of living in different states and does not mean that

individuals receiving benefits at a higher income level can actually afford the $725 application fee.

16. A Washington resident who qualifies for food stamps may earn slightly more than a Mississippi resident who qualifies for food stamps, but the higher cost of living in Washington means that the Washington resident is just as unable to afford the $725 application fee. Because state means tests take into account the actual cost of living in a particular state, an individual's eligibility for local benefits is a far better gauge of their ability to afford the filing fee than the Federal Poverty Guidelines.

17. A study performed by the University of Washington School of Social Work examined the "self-sufficiency standard," defined as the "amount needed to meet each basic need at a minimally adequate level, without public or private assistance."[1] It provides an in-depth look at the costs borne by workers, including housing, food, childcare, and transportation. The study found that a single parent with two children living in Seattle would need to earn $33.37 per hour in a full-time job to be completely self-sufficient. Not surprisingly, the self-sufficiency standard was higher in Brooklyn ($37.42) and San Francisco ($37.71), and much lower in Atlanta ($22.88) and Milwaukee ($27.63).[2] This data underscores the fact that the cost of living varies greatly throughout the country, a reality not reflected in the Federal Poverty Guidelines.

18. Clients receiving MTBs have already had their incomes verified by a state agency with expertise in local wages and cost of living. USCIS is no longer accepting this determination, which takes up significant adjudication resources. Instead these determinations will now have to be repeated by USCIS and increase already-huge backlogs in processing immigration cases.

[1] Diana M. Pearce, *The Self-Sufficiency Standard for Washington State 2017*, Prepared for The Workforce Development Council of Seattle-King County at 3 (Sept. 2017) *available at* http://selfsufficiencystandard.org/sites/default/files/selfsuff/docs/WA2017_SSS.pdf.

[2] *Id.* at 10.

Naturalization Workshops and Clinics

19. NCC, working with community partners, holds naturalization workshops and monthly clinics all over Seattle. A citizenship workshop is a large-scale event where volunteer attorneys, interpreters, and others assist eligible green card holders with completing their N-400 naturalization application through an organized step-by-step process. The goal for these events is usually to serve 300 to 500 people. A citizenship clinic, on the other hand, is the same as a citizenship workshop, except it is a small-scale event, usually with a goal of serving 25 to 50 people.

20. Naturalization workshops and clinics are usually seven to eight hours long, but attendees are generally required to reserve a time slot. Each time slot designates the hour when an attendee should arrive to the event. Attendees spend between an hour to four or five hours or more at a clinic or workshop to complete each step of the application preparation process. These steps include eligibility screening, completion of the 20-page N-400 naturalization application and the I-912 fee waiver application as needed, review of the completed application, copying and preparing the application for mailing, and explaining the next steps in the application process to the applicant.

21. Attendees are informed beforehand to bring certain documents, including their Permanent Resident Card (also known as a Green Card), any documents pertaining to their immigration history, and all current and expired passports. If the applicant is applying for a fee waiver, they are told to bring proof of receipt of public benefits or proof of income, such as an award letter from the federal agency granting the MTB (usually the U.S. Department of Health and Human Services or the Washington State Department of Social and Health Services) or a document or documents verifying income. Workshop and clinic attendees often hear about the events through social media, ethnic media, or outreach flyers, and have often had little to no previous contact with immigration legal service providers. Attendees are informed of the required

documentation over the phone, via social media, agency websites, or email and must obtain the relevant documents on their own.

22. Workshop and clinic attendees are often provided in-language assistance through community partners and/or volunteer immigration attorneys and interpreters.

Processing Income-Based Fee Waivers is Not Feasible in a Workshop Setting

23. NCC currently has a very straightforward process of informing fee waiver-eligible clinic attendees about what supporting documentation to bring to the clinic. We inform clinic attendees who receive a MTB to bring a "public benefits letter." This document is a simple piece of evidence that many of our clients already have or can easily and quickly obtain. If an attendee fails to bring a benefits letter to the clinic, a fee waiver request can still be completed, and the client is given simple instructions to insert the benefits letter before mailing in the application packet on their own.

24. In contrast, providing proper documentation for an income-based fee waiver is very difficult in the clinic setting, even under the current framework. Although, out of an abundance of preparedness, we ask all clinic attendees to bring their most recent tax returns and recent pay stubs, most attendees do not bring sufficient documentation because these items are difficult to collect, or they do not have them. Without sufficient proof of income, volunteer attorneys are unable to complete a fee waiver request and will ask attendees to return to a future clinic with more evidence.

25. Attendees who complete income-based fee waivers at a clinic despite missing evidence are sent home with instructions to gather and insert further documentation before filing their I-912 fee waiver form. But these applicants are often overwhelmed and uncertain about what to include and usually do not complete the process on their own. Some return to a subsequent clinic, but others become discouraged and do not pursue naturalization at all.

26. Even when clinic attendees do bring adequate documentation of income to the clinic, their fee waiver requests are often rejected by USCIS. Those attendees either return for

additional assistance at a subsequent clinic, are referred to one-on-one appointments where it is easier to determine whether income documents provide sufficient proof of low-income status, or give up on the process altogether.

Harm to Seattle from Changes to the Fee Waiver Process

a. Decimation of the Workshop/Clinic Model and Increased Burdens on Naturalization Service Providers

27. In the past, we have considered not providing assistance with income-based fee waivers at our NCC clinics at all because of these difficulties. As it is, preparing income-based fee waivers is extremely time-consuming and the requests are often rejected, leaving the applicant unsure of what to do next.

28. The changes to the fee waiver form, which allow only income- or hardship-based requests, make the entire process more difficult and time-consuming. The new income-based fee waiver request would require all applicants to submit the most recent year's Internal Revenue Service (IRS) tax transcript, plus the tax transcripts of any individual who contributes to the household income. An IRS tax transcript can be obtained online only by applicants with a valid email address, who have a valid financial account in their name, and who are able to provide the mailing address used to file their most recent tax returns. Many clients do not have the necessary financial accounts and therefore cannot apply online at all. At the same time, requesting a tax transcript by mail can be very confusing for individuals with language barriers, and further delays the naturalization application process. Some clients have not paid taxes in years because they do not earn enough money to warrant filing taxes, and thus are not able to request a tax transcript at all.

29. Requests for tax transcripts cannot reasonably be submitted in the workshop setting because volunteers are unable to assist attendees with gathering the information required for an online request or preparing a mail-in request packet. This is especially true for those applicants who simply do not have the requisite information available.

30. Applicants who file an income-based fee waiver request are often overwhelmed by the documentation needed to establish eligibility. They need extra time to collect documents, lengthening their naturalization application process. Since providing a benefits letter is no longer an option, the time, confusion, and difficulty of completing income-based fee waivers at our clinics will now apply to *all* fee waiver applicants. And, as mentioned above, applicants now must collect this information for every contributing member of their household. This is an immense burden, particularly where transience, seasonal employment, informal employment, lack of English language skills, or other circumstances have made financial record-keeping difficult.

31. This rule change will punish very low-income LPRs because individuals who earn too little to be required to file taxes will not be able to obtain the required federal tax transcript to submit with the income-based fee waiver. Applicants who have experienced a reduction in income since filing their previous year's tax return may be stuck without any clear evidence to demonstrate current fee waiver eligibility, and will likely be forced to wait until the following year to have their tax returns reflect their new income level—if it has not changed yet again.

32. Due to limited time and volunteer resources at clinics, NCC partners will not be able to help these individuals with their fee waiver requests at our citizenship clinics. Form filler volunteers are trained to complete the fee waiver application at clinics, but are sometimes uncomfortable making income determinations based on IRS tax returns, requiring experts to step in to review these documents. Volunteers will now be asked to assist attendees in obtaining IRS tax transcripts, an entirely new and unfamiliar activity, before reviewing their income and completing the fee waiver. Volunteers will need to be trained on how to obtain tax transcripts, including how to review the documentation the attendee provides to obtain the tax transcript, documentation that is not required by the N-400 naturalization application or the old version of the fee waiver. Volunteers will need to then apply online to obtain the tax transcripts and, if successful, review the attendee's income, then complete the fee waiver. In all, this process will

strain volunteer capacity. Additionally, clinics are often held in community spaces without good access to the internet, making online applications for tax transcripts impossible.

33. The changes to the fee waiver form will significantly increase the NCC and NCP resources that are needed to complete a naturalization application. On average, it takes an NCP service provider between 15 and 45 minutes to prepare an I-912 fee waiver based on a client's receipt of a MTB. In contrast, I-912 fee waivers based on income or hardship can take upwards of two hours to complete and many take much longer, particularly if USCIS rejects an initial request, which must then be resubmitted. Even in a best case scenario, where the client has a properly filed tax return and recent pay stubs in support of an income-based request, an income-based I-912 can take at least twice as long to prepare (between 30 and 90 minutes per I-912). This is no small difference: if NCP agencies had to spend this extra time on each of the roughly 549 MTB-based I-912 fee waivers filed by NCP agencies in 2018, 137 to 412 additional staff hours would have been spent with no increase in application numbers, especially considering that all applicants will need to obtain tax transcripts for themselves and all household members before completing the I-912 fee waiver itself.

34. Besides the additional time required to prepare the I-912 fee waivers, clients will also be confused about the documentary requirements and require additional help to understand the new requirements and how to meet them. Providing extra help takes time—both staff time and interpreter time, where applicable. Each appointment to which the client does not bring the proper evidence for a fee waiver—quite common in our experience—means additional staff time explaining which documents to bring to the next appointment and how to obtain them. This is time when staff would otherwise be preparing applications and attending client interviews at USCIS. The additional time needed to instruct clients is on top of the additional time needed to prepare the I-912s themselves.

35. Staff at NCP and NCC agencies will also spend more time seeking technical assistance, including consulting with tax experts for questions about income verification and how to obtain tax transcripts and other tax forms.

36. With the new rule, USCIS contends that eliminating the public benefits ground will simplify the fee waiver process. This assertion is completely unsupported by our and our partners' experiences. If income- and hardship-based waivers become the only options, the process will become significantly more complicated, especially for MTB recipients who do not file income taxes.

b. Immediate Diversion of Resources

37. To prepare NCC and NCP agency staff to obtain tax transcripts, determine income from IRS tax documents, and prepare the new version of the I-912 fee waiver form, OIRA will need to immediately expend resources. These resources include staff time to develop and coordinate training content, space rental and parking costs, as well as the costs for printing forms and training materials.

38. OIRA will have to immediately 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 designing, reprinting, and translating documents and web pages to account for this new change and for outlining the complicated steps to apply for a fee waiver will cost the City and nonprofit partners a combined $35,000 in accumulated costs and staff time. Because the income-based fee waiver request now requires tax transcripts, something that was never previously required, we may need to make additional updates to printed materials and websites once we gain a better understanding of how the USCIS requirements function in practice. These additional edits, if needed, will require updated translations and the associated costs far surpassing the initial estimated $35,000 figure.

39. OIRA will also spend additional staff time providing technical assistance to NCC and NCP partner agencies to help their staff learn the new fee waiver process. OIRA will work with the partner agencies to track I-912 fee waiver denials, communicate best practices in fee waiver assistance as they emerge, and coordinate network inquiries to USCIS as needed. OIRA staff will spend time coordinating with tax experts and tax assistance providers to ensure that the staff at NCC and NCP partner agencies have access to technical assistance related to IRS applications and income verification, and that participants in NCP and NCC are able to access high quality tax assistance services as needed. All of this additional work will likely result in an additional need for staff time and funding for OIRA and NCC and NCP organizations.

40. The first naturalization clinic after the fee waiver changes go into effect is currently scheduled for December 14, 2019. As such, OIRA will be aiming to immediately divert significant resources to implement necessary changes in order to maximize the efficacy of this first clinic, but is anticipating reduced capacity at this first clinic after the fee waiver changes are in effect.

c. **Economic Harm to Seattle**

41. The City of Seattle has repeatedly demonstrated its support of both immigrants and citizenship through resolutions. The 1997 Seattle City Council Resolution 29634 affirms that "new immigrants continue to add to the diversity and vitality of our nation."[3] The 2001 Seattle City Council Resolution 30355 states that "[w]e [the City of Seattle] recognize the courage, dedication and difficulty of the transition that is made by each and every immigrant, we acknowledge the contributions made to our culture and our economy by immigrant families, and we rededicate ourselves to fully supporting the New Citizen Initiative which provides a warm, welcoming hand to our new neighbors."[4] Because the City of Seattle has long recognized that

[3] Seattle City Council Res. 29634 (Sept. 15, 1997) *available at* http://clerk.seattle.gov/search/resolutions/29634.

[4] Seattle City Council Res. 30355 (July 2, 2001) *available at* http://clerk.seattle.gov/search/resolutions/30355.

naturalization offers economic benefits and allows for immigrants to be more engaged in the civic life of Seattle and this nation, the City of Seattle has offered citizenship assistance since 1997, when then Mayor Norm Rice instituted the New Citizen Initiative. Today this has become the New Citizen Program, and it has been joined by the New Citizen Campaign that started in 2016. The reduced naturalization rate in Seattle that is sure to follow from USCIS's policy changes and their impact on our citizenship programs will bring about concrete economic harms in Seattle and prevent the City from fulfilling its mission for OIRA and its citizenship programs.

42. Multiple studies show the economic gains associated with naturalization; becoming a U.S. citizen increases individual earnings eight to 11 percent, which in turn improves family outcomes and the overall local, state, and national economy.[5]

43. According to a recent study from the Urban Institute[6], the employment rate rises 2.2 percent for eligible-to-naturalize permanent residents once they naturalize. Among other things, this reflects new job opportunities that are available for citizens, including full access to federal government jobs, as well as easier access to jobs requiring foreign travel.

44. The Urban Institute researchers concluded that if 60 percent of eligible-to-naturalize Seattle residents were to do so, their aggregate annual earnings would go up by $54 million. By contrast, if only 25 percent of eligible permanent residents naturalized, their aggregate annual earnings would go up by just $23 million.[7]

45. A recent analysis performed by OneAmerica, a Washington State-based non-profit, showed that Washington households lose out on significant income gains if fee waiver-

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[5] *See, e.g.*, Manuel Pastor & Justin Scoggins, UNIVERSITY OF SOUTHERN CALIFORNIA'S CENTER FOR THE STUDY OF IMMIGRANT INTEGRATION, *Citizen Gain: The Economic Benefits of Naturalization for Immigrants and the Economy*, at 23 (Dec. 2012) *available at* https://dornsife.usc.edu/csii/citizen-gain/.

[6] Maria E. Enchautegui & Linda Giannarelli, URBAN INSTITUTE, *The Economic Impact of Naturalization on Immigrants and Cities*, (Dec. 2015), *available at* https://www.urban.org/sites/default/files/publication/76241/2000549-The-Economic-Impact-of-Naturalization-on-Immigrants-and-Cities.pdf.

[7] *Id.* at 19.

eligible LPRs decide not to apply for naturalization. If even 94 LPRs (five percent of the population analyzed by OneAmerica) cannot obtain a fee waiver and therefore decline to apply for U.S. citizenship, their households lose out on a combined $300,000 (or $3,296 per LPR) in income for *each year* they fail to become U.S. citizens. This lost household income results in more than $1 million of lost future spending and revenue in Washington State per year.[8]

46. When LPRs in Seattle naturalize, the City obtains concrete benefits from their income gains. All City revenue sources are directly or indirectly affected by the performance of the local, regional, national, and even international economies. For example, revenue collections from sales, business and occupation, and utility taxes, which together account for 55.5 percent of General Fund revenue, fluctuate significantly as economic conditions affecting personal income, construction, wholesale and retail sales, and other factors in the Puget Sound region change.[9] As individuals earn more and spend more on goods and services in the City, the City's gross domestic product increases and that spending propels economic growth. The City of Seattle reaps the benefits through greater sales tax revenue, which it invests in government services and infrastructure.

47. LPRs are also more likely to buy their own homes once they have naturalized. The Urban Institute estimates that the homeownership rate among new citizens is seven percent higher than for the eligible-to-naturalize population. It found that homeownership is "highly beneficial for most families, offering both financial gains and a way to build wealth."[10]

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[8] Sarah Sumadi, *Economic Impact of Decreased Naturalizations from Non-Use of Fee Waiver*, OneAmerica OMB EO 12866 meeting handout, Inadmissibility on Public Charge Grounds, RIN 1615-AA22 (May 9, 2018) *available at* https://www.reginfo.gov/public/do/viewEO12866Meeting?viewRule=false&rin=1615-AA22&meetingId=3415&acronym=1615-DHS/USCIS.

[9] City Budget Office, City of Seattle – 2020 Proposed Budget at 43, *available at* http://www.seattle.gov/financedepartment/20proposedbudget/documents/General_Fund_Revenue_Overview.pdf.

[10] Laurie Goodman & Christopher Mayer, *Homeownership is still financially better than renting*, URBAN WIRE (Feb. 21, 2018), *available at* https://www.urban.org/urban-wire/homeownership-still-financially-better-renting.

48. Naturalization and the economic gains that flow from it also reduce the use of government benefits, freeing up City and state tax revenue for other programs.

49. By creating a barrier to naturalization for Seattle residents who receive safety net assistance, USCIS is decreasing those residents' opportunities for economic well-being. This directly harms the City of Seattle's economic interests by decreasing the number of residents who can naturalize—and by naturalizing, increase their incomes, spending, and the economic stability of their families and the City. USCIS's actions also harm the City's interest in maintaining its current, robust naturalization program, which is aimed at bringing ever more Seattleites into the community of citizens for the reasons explained above.

d. Changes to the Fee Waiver Process Will Frustrate OIRA's Mission

50. Given these complications, NCP agencies will simply be unable to serve as many clients at their current staffing levels. Thus, the proposed rule will cause eligible LPRs to be delayed in filing their applications, not only because of the time needed to obtain additional evidence in support of an income- or hardship-based fee waiver, but also because they will have to wait longer to receive legal services from nonprofit agencies with reduced capacity due to the burdens caused by this rule.

51. Delays in submitting a naturalization application are more than a mere inconvenience: among other things, they delay the client's ability to vote, submit petitions for family members, and obtain certain types of employment.

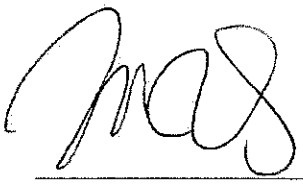
52. The reduced availability of fee waivers is also likely to reduce the total number of applications submitted through our program, even if clients are willing to wait until NCP agencies have the capacity to help them. The added complexity of the form is likely to lead many potential applicants to give up on their application. And denials by USCIS—already common for income- and hardship-based fee waiver applications—will lead yet more applicants to give up on their application.

53. Finally, some applicants will have no choice but to give up on their applications because their fixed incomes do not allow them to save for a filing fee or pay back a loan taken out to pay the fee. Among NCC clinic and workshop applicants who do not end up filing their naturalization applications, the top reason cited is not having enough money to pay the filing fee.

54. This reduction in the number of applications and naturalizations would negatively affect OIRA's mission to improve the lives of immigrants and refugees and achieve the final steps of immigrant integration: the ability to vote and participate fully in the democratic process. If the number of clients served goes down significantly, it may also mean a reduction to program funding for both NCC and NCP, and associated cuts to OIRA staffing for these programs.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed on November 6, 2019.



Meghan Kelly-Stallings
Citizenship Program and Policy Specialist
City of Seattle, Office of Immigrant and Refugee Affairs

EXHIBIT A

Seattle
Office of Immigrant and
Refugee Affairs
Cuc Vu, Director

Submitted via www.regulations.gov

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

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

Dear Ms. Deshommes:

The City of Seattle (City) submits this comment in response to the proposed rule published by the Department of Homeland Security (DHS) and the United States Citizenship and Immigration Services (USCIS) in their Notice of Proposed Rule Making published on September 28, 2018.

The City of Seattle strongly opposes the proposed rule to modify the Form I-912, Request for Fee Waiver.

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. In line with the City of Seattle values of social justice and equity, OIRA works to strengthen immigrant and refugee communities by engaging them in decisions about the City of Seattle's future and improving the City's programs and services to meet the needs of all constituents. We believe supporting immigrants creates a stronger future for our nation. Just as previous immigrants did before, today's immigrants are tomorrow's U.S. citizens who will be fully engaged in the cultural and civic life of our society both locally and nationally.

To that end, OIRA 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 lawful permanent residents (LPRs) become U.S. citizens. We work with local and national partners to engage these LPRs via outreach, education, citizenship workshops, legal assistance, and case management.

The Form I-912 allows individuals with financial need to apply for certain immigration benefits without a filing fee. Fee waivers aid the most vulnerable immigrants, including refugees, asylees, unaccompanied minors, and victims of trafficking. For LPRs eligible to naturalize, it affords those unable to pay the $725 filing fee the opportunity to achieve the dream of U.S. citizenship.

About the New Citizen Campaign (NCC)

The New Citizen Campaign (NCC) works with community partners to co-host events called "citizenship clinics" all over Seattle, serving an average of 30-50 individuals per month. Additionally, NCC has

organized large-scale events that have to date served 1,082 lawful permanent residents. Individuals are screened by volunteer immigration attorneys and Department of Justice (DOJ)-accredited representatives, and those deemed ready to apply are assisted in the completion of their N-400, and when necessary, the I-912 fee waiver application. Since 2016, NCC clinics and workshops have helped hundreds of applicants complete the I-912. Approximately 30 percent of clinic attendees qualify for a fee waiver, and the vast majority of those establish their eligibility with a public benefits letter.

About the New Citizen Program (NCP)

The New Citizen Program (NCP) is a consortium of 12 community-based nonprofit organizations that provide ongoing free case management services to low-income immigrants and refugees living in Seattle/King County. Many of these clients are elderly, illiterate, disabled or have limited English skills. NCP attorneys and accredited representatives represent clients throughout the naturalization process, including preparation and submission of N-400s and I-912s, and disability waivers and appeals when needed. NCP services also include citizenship instruction/tutoring, interview preparation, and referrals for outside legal assistance in highly complex cases. In-language services are available in Mandarin, Vietnamese, Cambodian, Cantonese, Tongan, Samoan, Korean, Amharic, Tigrinya, Russian, Ukrainian, Romanian, Moldavian, Spanish, Burmese, Polish, French, and Arabic. 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.

To qualify for NCP services, clients must either receive a means-tested public benefit or be a low-income resident of Seattle. (Clients who receive a means-tested benefit may reside outside of Seattle; those who do not must reside within Seattle city limits and provide proof of their low-income status.) In 2017, 687 new participants enrolled in NCP. Among new participants, 87 percent, (595) were public benefits recipients. In 2017, 596 clients filed N-400 applications, and among these, 95 percent (569) filed an accompanying I-912. Only nine percent (53) of the 569 fee waiver requests filed were submitted by someone not on public benefits. These statistics are consistent with past years, where in fact, 97 percent (1237 out of 1276) of N-400 submissions in 2015 and 2016 had an accompanying I-912 application.

The proposed rule change would create an unnecessary paperwork burden for low-income lawful permanent residents attempting to become U.S. citizens.

When conducting outreach in advance of an NCC citizenship clinic, the current process of informing fee waiver eligible attendees what supporting documentation to bring is relatively straightforward. We inform applicants who receive a means-tested public benefit to bring to the clinic what is called a public benefits letter. For many of our clients, this document is a simple piece of evidence that they already have or can easily obtain in a short amount of time. For those who fail to bring a benefits letter to the clinic, a fee waiver request can still be completed with instructions to insert the benefits letter before mailing in the application packet on their own.

In contrast, providing proper documentation for an income-based fee waiver is already difficult in the clinic setting. All applicants are asked to bring with them their most recent tax returns and recent pay stubs, but most applicants do not bring sufficient documentation because these items are more difficult to collect. Without sufficient proof of income, volunteer attorneys may be unable to complete their fee waiver request and will ask applicants to return to a future clinic with more evidence. Applicants who complete income-based fee waivers at a clinic despite missing evidence are sent home with instructions

to include further documentation before filing their I-912; these applicants are often overwhelmed and uncertain about what to include and usually do not complete the process on their own. Instead, they usually return to a future clinic, or become discouraged and do not pursue naturalization. Even clinic attendees who do bring adequate documentation of income often have their fee waiver requests rejected by USCIS and either return for additional assistance at a future clinic or give up on the process. We have considered avoiding income-based fee waivers at our clinics because of these difficulties.

If the proposed rule becomes final in its current form, preparing an income- or hardship-based fee waiver request would become even more difficult and time-consuming. The new income-based fee waiver request would require all applicants to submit the most recent year's tax return, plus recent pay stubs of any individual who contributes to the household income. Applicants who file an income-based fee waiver request are often overwhelmed by the documentation needed to establish eligibility. They will need extra time to collect these documents, lengthening the wait for them to become citizens. The time, confusion and difficulty of completing income-based fee waivers at our clinics will now apply to all fee waiver applicants.

This rule change will punish low income people because individuals who earn too little to be required to file taxes may not even have the required federal tax return to submit with the income-based fee waiver. Applicants who have experienced a reduction in income since filing their previous year's tax return may be stuck without any clear evidence to demonstrate current fee waiver eligibility, and would likely be forced to wait until the following year to have their tax returns reflect their new income level. Due to limited time and volunteer resources at workshops, we won't be able to help these individuals with their fee waiver requests at our workshops.

The proposed rule change would cause <u>inefficiency</u> and overwhelm the limited resources of applicants, advocates and USCIS.

The City recently asked New Citizen Program (NCP) service providers if and how this rule change, if implemented, would affect their work. Their responses varied somewhat, based on differences in agency size and client demographics, but all agreed that eliminating the public benefits basis of eligibility would have a significant detrimental effect on their clients, and in most cases, their organizations.

I-912s based on income or hardship take more time to prepare.

Eight-seven percent of new NCP participants enrolled in 2017 received public benefits, and 91 percent (516) of the I-912s filed in 2017 were done so on behalf of clients who received public benefits. NCP agencies report that they rarely, if ever, file an income- or hardship-based I-912 for someone who receives public benefits, since it is the most straightforward way to demonstrate fee waiver eligibility. Service providers agreed that, on average, it takes between 15 and 45 minutes to prepare an I-912 based on a client's receipt of public benefits. In contrast, I-912s based on income status or hardship might take upwards of two hours to complete, and many take much longer, if USCIS rejects the initial request which must then be resubmitted. Even in a best-case scenario, where the client has a properly-filed tax return and recent pay stubs in support of an income-based request, some advocates stated that the I-912 would take at least twice as long to prepare (between 30 and 90 minutes per I-912). If this extra time per case is extended to the roughly 516 public benefits-based I-912s filed by NCP agencies in 2017, this would equal approximately between 129 and 387 additional staff hours per year—a highly conservative estimate of the time burden imposed by the proposed rule change.

Consider an applicant who worked throughout 2017 but stopped working in early 2018 to stay at home with a new baby and has not returned to paid employment. That client, based on her 2017 tax return, might not be eligible for a fee waiver. Even though her household size is larger, if she is unemployed at the time she applies for the fee waiver, she will have no recent pay stubs to prove her current lack of income.

However, she may have become eligible for public benefits since leaving her job, and this would be the easiest way for her to demonstrate fee waiver eligibility. If she can't use receipt of benefits as the basis for her I-912, she will need to track down the 2017 tax returns and recent paystubs of any family members who contribute to the household income. In addition to these documents, her I-912 will need to 'explain' the basis for changes or inconsistencies between the 2017 return and the November 2018 status quo. For most people, this task is daunting without expert assistance.

NCP advocates elaborated on the challenges they have faced in filing income-based fee waivers:

> *"The clients we have helped with income based fee waivers all have had more stable lives and work situations. If we have to do income based fee waivers for all our clients, I have a feeling they would be more complex due to less stable life and work situations and lack of access to good records."*
>
> *"This will affect our clients, because their household resources change from year to year. For example, a family who might have made enough income last year due to their tax return might lose employment in the middle of the year or the family circumstances might change. It is hard to prove that they are low income and qualified for fee-waiver if we are only dependent on tax returns."*

Advocates stress that, in the vast majority of cases, income-based fee waiver requests take considerably more time to prepare than requests based on public benefits.

The documents necessary for an I-912 based on income or hardship are challenging, if not impossible, for certain applicants to obtain.

The proposed rule ignores the reality that many fee waiver applicants are not required to file tax returns, so the documents needed to support an income-based application are not readily available. Since the income-based ground explicitly requires a tax return, many individuals will be forced to qualify under the poorly-defined hardship ground or just give up, which means paying a filing fee they cannot afford or deciding not to apply.

Many low-income applicants do not work, or do not earn enough that they are required to file a tax return. Individuals who are single, under 65 and not blind, are exempt from filing if their earned income is less than $12,000 (or $400 for self-employment income). For those over 65, the threshold is slightly higher, $13,600. For married individuals filing jointly, the minimum income ranges from $24,000 to $26,600, depending on the ages of the spouses. Many NCP clients are not required to file taxes due to their low incomes. Many NCP clients are retired elders (173 new participants in 2017 over age 65), and many are disabled and unable to work (150 N-648 disability waivers filed in 2017).

One of the larger agencies in NCP, which houses a separate program to assist clients in filing their taxes, explains that the additional burden—even with in-house tax help—would still be significant.

"[W]e help clients to file income tax, or the clients do it by themselves. Most likely, these type of clients belong to the most vulnerable group, they can't find a way to file tax. At the end we have to do it for them. Based on my experience, we might have to write a letter to explain how the clients support themselves with ZERO income too. If it is rejected, we have to find other ways. So from a service provider's view, it would double or triple our time, plus explaining to the clients."

For clients who do not file income taxes, the only clear proof of non-filing is a "Verification of Non-filing Letter" provided by the IRS. The request for this letter may be submitted online only if the individual has previously filed taxes; otherwise it must be done via regular mail. This letter only shows that the client did not file a federal tax return in a certain year—it does not verify their income or confirm that their income level exempted them from having to file a tax return. Clients who provide this letter in lieu of a tax return, even with additional proof of income like recent pay stubs, may have their I-912 rejected because the verification letter does not prove anything about the client's income status. Additionally, the letter cannot be requested from the IRS until June 15 of the year following the year in which a person did not file federal income taxes.

I-912s based on income status or hardship are more likely to be rejected by USCIS, requiring additional time from service providers and USCIS adjudicators.

The City asked NCP service providers the following: "For the I-912s based on income or financial hardship, were they accepted by USCIS the first time? If not, how many times did you have to refile? How much time did it take to refile?" Several service providers responded that these requests were rejected more often, and required them to refile, sometimes multiple times, before USCIS would accept them. Each time it was necessary to refile, the agency expended significant time (on average, over an hour) to contact the client, gather additional documentation and prepare a new I-912. NCC clinics often experience applicants returning to clinics with their denied fee waiver requests but without an understanding of what additional information they need. Clinic volunteers must inform these applicants what documents are needed and how to obtain them, then refer these applicants to yet another future clinic or to one-on-one services.

Fee waiver rejections also discourage and induce fear in applicants, which takes more service provider time to address. Applicants who receive a fee waiver rejection from USCIS often believe it is a denial of their entire application for naturalization. Service providers must take time to explain that it is possible to refile the fee waiver request and that this will not negatively impact their naturalization process, aside from the additional wait time in processing. Some applicants believe that USCIS will view their applications negatively because they are requesting a fee waiver, and the fee waiver rejection is further evidence for them that requesting a waiver is bad for their chances of naturalizing. This outcome is even more common with applicants from NCC clinics who do not always inform service providers of their fee waiver rejection.

As the vast majority of NCP clients receive public benefits, NCP service providers rarely file fee waiver requests based on income or hardship. In general, individuals who do not earn enough to file taxes are eligible for, and usually receive, public benefits, so hardship-based waivers are rarely the only option. Many NCP agencies do not file hardship-based I-912s, as they are too time-consuming to prepare, and based on experience, unlikely to be approved.

"Filing based on financial hardship takes so long that I mostly don't do it. Generally people don't have the evidence required, or the evidence is unavailable."

"I've only filed a few based on financial hardship and they've been returned."

"I never tried hardship. I feel if the client income is between $10,000 and $18,000 (for one person), it would get approved. But if the income is extremely low, lower than $2,000 to $0, it will get rejected. USCIS only asks for income tax return."

"They [fee waivers based on hardship] are rarely approved, and usually the clients give up and pay the fee if they can."

"If current income used as proof (lower than tax return), [the fee waiver request is] rarely approved. Used current paystubs, but difficult to prove change in income (e.g., mother quit job to care for new born baby or ill child, only father making income...)"

In proposing the new rule, USCIS contends that eliminating the public benefits ground will simplify the fee waiver process. This assertion is completely unsupported by our partners' experience. If income- and hardship-based waivers become the only options, the process will become significantly more complicated, especially for public benefits recipients who would not otherwise file income taxes.

Redetermining the income status of public benefits recipients is a waste of government resources.

Clients receiving means-tested public benefits have already had their incomes verified by a state agency with expertise in local wages and cost of living—why does USCIS want to second-guess this determination? Our tax dollars pay local and state agencies to determine whether someone qualifies as low-income. USCIS is proposing to reconsider this determination, which would take up significant adjudication resources, and increase already-huge backlogs in processing immigration cases.[1] USCIS will need additional resources to train officers in adjudicating the revised I-912. USCIS staff will spend additional time repackaging and returning the rejected applications. For applicants committed to obtaining the fee waiver, USCIS may review and reject the I-912 multiple times, incurring new postage fees each time.

There is some variation among states in what constitutes income eligibility for a means-tested benefit. An individual living in Washington State might qualify for state benefits with a higher income than someone living in Mississippi. While the Federal Poverty Guidelines differ for residents of Alaska and Hawaii versus the contiguous 48 states, this does not reflect the fact that the cost of living varies greatly among the 48 states. An individual living in Washington who qualifies for food stamps may earn slightly more than someone in Mississippi getting food stamps, but the higher cost of living in Washington means that the Washington resident is similarly unable to afford the $725 filing fee for the N-400. As opposed to the Federal Poverty Guidelines, an individual's eligibility for local benefits is a far better gauge of their ability to afford the filing fee.

A study performed by the University of Washington School of Social Work examined the 'self-sufficiency standard', or the "amount needed to meet each basic need at a minimally adequate level, without public or private assistance."[1] It provides an in-depth look at the costs borne by workers, including

[1] http://selfsufficiencystandard.org/sites/default/files/selfsuff/docs/WA2017_SSS.pdf

housing, food, childcare and transportation. The study found that a single parent with two children, a preschooler and a school-age child, living in Seattle, would need to earn $33.37 per hour in a full-time job to be completely self-sufficient. Not surprisingly, the self-sufficiency standard was higher in Brooklyn ($37.42) and San Francisco ($37.71), and much lower in Atlanta ($22.88) and Milwaukee ($27.63). This data underscores the fact that the cost of living varies greatly throughout the country, a reality not reflected in the Federal Poverty Guidelines.

This proposed rule will also increase the workload of the Internal Revenue Service, as many individuals who are not required to file tax returns would be forced to do so in order to show income-based fee waiver eligibility. Significant IRS resources will also be needed to process requests for tax transcripts (Form 4506-T) or a Verification of Non-filing. By implementing this proposed rule, DHS would impose a significant, and wholly unnecessary, burden on the IRS. This increased burden, without additional resources allotted, will likely lead to delays in the IRS's production of requested tax documents.

The proposed rule change would directly harm low-income immigrants.

While some clients would suffer nothing more than a delay in filing their immigration cases if this rule change goes into effect, many others will experience direct harm. Many clients, if they are unable to obtain the documentation necessary to support an income- or hardship-based fee waiver request, will be forced to take out a high-interest loan. Some clients will be forced to choose between paying an application fee and paying their other bills. Some applicants will have no choice but to give up on their applications because their fixed incomes do not allow them to save for a filing fee or pay back a loan. Among NCC clinic and workshop applicants who do not end up filing their naturalization applications, the top reason cited is not having enough money to pay for the filing fee.

Our partner agencies described specific ways their clients would be harmed:

> *"This will affect almost all our clients. It will lengthen the time it takes to prepare their applications, and will make gathering all the necessary documents needed more time consuming and confusing. This will add stress and a potential barrier for many of our clients, potentially causing some to not move forward with their applications or having to use money essential to the well-being of their families."*
>
> *"People significantly delay filing their cases because they are waiting to save money or find it, borrow it from family, etc."*
>
> *"Cases are on hold because clients are sometimes not able to find certain documents to prove the financial hardship part."*

Delays in submitting a naturalization application are more than a mere inconvenience: they delay the client's ability to vote, submit petitions for family members, and obtain certain types of employment. The proposed rule will cause applicants to be delayed in filing their applications, not only from the time needed to obtain additional evidence in support of an income- or hardship-based fee waiver, but also from waiting longer to receive legal services at a nonprofit agency with reduced capacity due to the burden of this rule.

Some NCP agencies assist clients with green card renewals (Form I-90) when a client is not ready to apply for citizenship. Fee waiver rejections on the I-90 would lead to some individuals losing proof of

lawful status in the United States, which makes it harder to demonstrate eligibility to work, and eligibility to receive the life-saving public benefits on which they rely.

Individuals lacking proof of lawful status are in violation of federal law and face a greater risk of negative encounters with immigration officials, including detention and placement in removal proceedings. Residents of Seattle and King County are further at risk for expedited removal by U.S. Customs and Border Patrol due to their vicinity to the U.S.-Canada border. LPRs need valid proof of their lawful status, and making it harder to obtain a fee waiver for the I-90 compromises their stability and security in the U.S. The proposed rule subjects vulnerable populations to deeper poverty and possible arrest.

The proposed rule change would drain the resources of U.S. Department of Justice (DOJ)-recognized agencies.

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 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.

> *"[NCP agency] will continue working for low-income people but the time we spend on each case will be much longer. I hope we can have more support from funder, either lower the goal or increase the fund."*
>
> *"This rule change will change our client base and will change our funding opportunities to serve the low income immigrant and refugee community. This means only immigrants with higher income base will get priority when it should be the other way around. Lots of families will fall into the cracks. Our case management practices will change in that we will need to do outreach targeting the higher income communities. We might be forced to charge nominal fees."*
>
> *"Fewer clients will apply. Longer wait times for our services because each case will take longer. I still don't know what we will use to show income if no tax return was filed."*

The resources needed to prepare income- or hardship-based fee waiver applications will overwhelm the limited resources of nonprofit agencies. Besides the additional time required to prepare the I-912, clients will also be confused about the documentary requirements, and providing extra help takes time. Each appointment to which the client does not bring the proper evidence for a fee waiver means additional staff time explaining which documents to bring to the next appointment and how to obtain them. This is time when staff would otherwise be preparing applications and attending client interviews at USCIS.

Collectively, the extra time expended per client will mean fewer clients served. As many grants to service providers are based on 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 clients.

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, often for several years, to attain this credential. They attend trainings to stay informed about changes to the law. 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.

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 proposed rule change will reduce the number of low-income individuals applying for naturalization, and thereby decrease the positive effects of naturalization.

When a fee waiver request is denied, some clients pay the filing fee. Others are deterred from applying altogether. These individuals are delayed, if not permanently discouraged, from applying for U.S. citizenship. Naturalization applicants already face long wait times due to USCIS processing delays, and an inability to afford the N-400 filing fee further delays the opportunity to fully participate in voting and other civic duties[2]. By making it harder to obtain a fee waiver, USCIS creates an unnecessary obstacle to an immigrant's full participation in American society. Our government should be doing exactly the opposite of this: encouraging naturalization and making the process as accessible and efficient as possible.

Multiple studies show the economic gains associated with naturalization; becoming a U.S. citizen increases individual earnings eight to 11 percent[3], which in turn improves family outcomes and the overall economy. By creating obstacles for families for receiving safety net assistance, USCIS is decreasing their opportunities for future economic wellbeing. A recent analysis performed by OneAmerica, a Washington State-based nonprofit, 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 (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 would lose out on a combined $300,000 ($3,296 per person) in income for each year they failed to become U.S. citizens. This lost household income results in a decrease of more than $1 million in future spending and revenue.

In sum, the proposed rule creates massive inefficiency without any clear gain.

The City of Seattle strongly opposes the proposed rule to modify the Form I-912, Request for Fee Waiver.

The City of Seattle opposes the proposed changes to the Form I-912 because it would cause additional obstacles for individuals applying, and otherwise eligible for, immigration benefits. The rule change will not improve efficiency or reduce costs for the U.S. government, and will likely cause significant additional costs and extended processing delays. The upside for the government is unclear. While USCIS may not have to adjudicate as many fee waiver requests, since some applicants will be deterred from seeking one, it will be left with a far more complex task. Instead of having a sizable portion of fee waiver

[2] http://partnershipfornewamericans.org/portfolio/npna-report-building-a-second-wall-uscis-backlogs-preventing-immigrants-from-becoming-citizens/

[3] http://newamericanscampaign.org/policy-makers/research/#citizen-gain-report

requests based on the fairly straightforward public benefits standard, all I-912s will require significant documentary evidence. With applicants forced to be creative in demonstrating financial hardship, officers will require additional training in how to review fee waiver requests efficiently and fairly. This process will lead to many more rejections and re-filings, and this is a waste of time for everyone.

More importantly, the rule change will directly harm low-income immigrants, including those elderly and disabled. Nonprofit organizations charged with assisting low-income immigrants will be overwhelmed by the additional time burden imposed by the rule change and may struggle to stay afloat. This rule change would cause irrevocable damage to the New Citizen Campaign and New Citizen Program, their community partners, and the vulnerable clients they serve.

Thank you for the opportunity to submit comments on the proposed rulemaking. Please do not hesitate to contact me at Meghan.kelly-stallings@seattle.gov.

Sincerely,

Meghan Kelly-Stallings
Citizenship Program and Policy Specialist
City of Seattle Office of Immigrant and Refugee Affairs

EXHIBIT B

Seattle
Office of Immigrant and
Refugee Affairs
Cuc Vu, Director

May 4, 2019

Submitted via email

OMB USCIS Desk Officer
dhsdeskofficer@omb.eop.gov

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

Dear Desk Officer:

The City of Seattle ("the City") submits this comment in response to the proposed revision of a currently approved collection published by the Department of Homeland Security (DHS) and the United States Citizenship and Immigration Services (USCIS) in their Agency Information Collection Notice published on April 5, 2019 and to address the responses by USCIS to comments previously submitted in response to their Notice of Proposed Rule Making (NPRM) published on September 28, 2018.

The City of Seattle continues to strongly oppose the proposed rule to modify Form I-912, Request for Fee Waiver.

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. The City of Seattle, through its Office of Immigrant and Refugee Affairs, 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 workshops all over Seattle that have to date served 1,701 LPRs.

Form I-912 allows individuals with financial need to apply for certain immigration benefits without a filing fee. Fee waivers aid the most vulnerable immigrants, including refugees, asylees, unaccompanied minors, and victims of trafficking. For LPRs eligible to naturalize, it affords those unable to pay the $725 filing fee the opportunity to achieve the dream of U.S. citizenship. The proposed modification for Form I-912 would

make it significantly more difficult for the City's constituents and program participants to prove eligibility for the fee waiver.

Additionally, the "USCIS Responses to Public Comments Received on the 60-Day Federal Register Notice, 'Agency Information Collection Activities; Revision of a Currently Approved Collection: Request for Fee Waiver; Exemptions,' 83 FR 49120"[1] did not adequately address any of the concerns expressed in OIRA's initial public comment.

I. The proposed rule change would cause inefficiency and overwhelm the limited resources of applicants, advocates and USCIS. And USCIS has not adequately addressed the burden that the proposed rule change would create for low-income lawful permanent residents attempting to become U.S. citizens.

A significant portion of OIRA's initial comment focused on the harm the proposed fee waiver changes would cause Seattle residents and specifically the participants of our two City of Seattle naturalization programs. In fact, a significant portion of comments to the initial public response period addressed the concern that a change to the fee waiver would meaningfully harm applicants for immigration benefits. Yet, the USCIS response belittles these significant concerns by stating, "USCIS does not believe the changes are an excessive burden on respondents" (Comment Response 1).

What makes this worse is that USCIS notes that while Paperwork Reduction Act (PRA) Federal Register Notices "do not rise to the level of notice and comment rule making, they do provide public notice and demonstrate that commenters' concerns have been considered" (Comment Response 3). By brushing aside and failing to respond to the unnecessary burden associated with this changed fee waiver process, USCIS demonstrates that it has indeed not at all considered commenters' concerns.

Doubling down on this lack of concern for the burden that will face alien applicants seeking a fee waiver, USCIS further assumes that a person would not apply for public assistance solely to qualify for a fee waiver. This assumes that USCIS policy and information collection do not affect the decisions of immigrants seeking benefits. Yet, in practice, we have seen clearly that USCIS policy and even leaked policy updates and proposed rule changes affect the decisions of immigrant applicants. The prime example of this is the decision by many immigrant and refugee families to drop out of public assistance programs over fears of becoming a public charge after the draft version of the 2017 White House executive order pertaining to public charge leaked in February 2017. OIRA received reports from both immigrants living within Seattle and staff from immigrant-serving non-governmental organizations that immigrants themselves started

[1] U.S. Citizenship and Immigration Services, Federal Register, Agency Information Collection Activities; Form I-912; Request for an Individual Fee Waiver, Docket ID: USCIS 2010-008, "USCIS Responses to Public Comments on I-912 Revision 60-day Federal Register Notice," April 5, 2019, https://www.regulations.gov/document?D=USCIS-2010-0008-1243.

refusing local and federal benefits that they qualify for and also requested case managers to disenroll them from social programs that they are eligible for. This trend has been widely documented by media outlets.[2] [3]

Similarly, families who may not be able to easily demonstrate low-income for an income-based fee waiver may choose to obtain benefits to demonstrate to USCIS their eligibility for a benefits-based fee waiver. OIRA's initial public comment demonstrates clearly the difficulty applicants and legal advocacy agencies have in successfully applying for fee waivers based on income. This difficulty may motivate some applicants to retain or apply for public benefits for which they are eligible to demonstrate financial need and inability to pay USCIS filing fees. Immigration policy affects the everyday decisions of immigrants and refugees. Assuming otherwise demonstrates a huge gap or a willful disregard in USCIS' understanding of its customers.

II. The documents necessary for an I-912 based on income or hardship are challenging, if not impossible, for certain applicants to obtain, despite USCIS assertions the process is easy.

USCIS makes baseless assumptions about the availability of proof of income documentation in the response to public comments for the previous 60-day comment period. They state that "applicants who receive a means tested benefit should have income documentation readily available" (Comment Response 7). This statement is false in two ways. First, there are many circumstances in which immigrants and refugees would receive means-tested public assistance without any earned income whatsoever, meaning they would have no proof of income. Recently resettled refugees fall into this category, among many others. The assumption that someone who receives a means-tested benefit should have proof of other income is unsupported.

An example we provided in our first public comment, which USCIS failed to respond to, considers an applicant who is currently unemployed and therefore has no proof of current income. She may qualify for public benefits by providing a job termination letter or other proof to the benefits-granting agency. After her unemployment claim has passed, she may still qualify for public assistance based on her original income documentation because she has still not gained employment and therefore has no earned income. Benefits-granting agencies understand these circumstances and, in many cases, continue to grant assistance. This individual would not have proof of current income, or lack thereof, aside from documentation showing her receipt of public assistance.

Second, while some applicants may have income documentation readily available, this documentation does not necessarily meet the current or proposed requirements of Form I-912 eligibility. Currently, a filed income tax return is insufficient evidence for filing Form I-912 because more recent income documentation,

[2] Shapiro, Nina, "As Trump considers penalties, Seattle-area immigrants turn down public benefits they're entitled to claim," Seattle Times, August 12, 2018, https://www.seattletimes.com/seattle-news/legal-immigrants-in-seattle-area-alarmed-over-possible-penalties-for-using-benefits/.
[3] Baumgaertner, Emily , "Spooked by Trump Proposals, Immigrants Abandon Public Nutrition Services," New York Times, March 6, 2018, https://www.nytimes.com/2018/03/06/us/politics/trump-immigrants-public-nutrition-services.html.

such as pay stubs, are needed to cover the gap between the previous year's income and the current immigration filing. Past practice has shown that a tax transcript or W-2s are insufficient proof of even taxable income and do not necessarily meet the evidentiary requirement to show household income for purposes of fee waiver eligibility. In rejecting these fee waiver applications for insufficient proof, USCIS has offered the rationale that neither tax transcripts nor W-2s officially show a family's taxable income the way tax returns do.

The USCIS responses to the initial comment period state that tax transcripts are the preferred alternative to the most recent year's tax return for proof of income. This is ironic in that it has been USCIS practice to *not* accept transcripts in support of the Form I-912, the Affidavit of Support or as evidence of having filed taxes to establish good moral character for naturalization eligibility. It is also ironic in that an applicant would usually have no reason to obtain tax transcripts and would need to order these. While an applicant may be able to view tax transcripts online, this requires the following proof according the Internal Revenue Service (IRS): "access to your email account; your personal account number from a credit card, mortgage, home equity loan, home equity line of credit or car loan; and a mobile phone with your name on the account."[4] Anyone who has worked with low-income populations knows that access to an individual mobile phone account or email address, much less other financial accounts, can be out of reach.

This means that whole segments of the population who would need to obtain tax transcripts in order to qualify for a fee waiver would be unable to do so immediately online. Those without the above information can have tax transcripts mailed in five to ten days to the mailing address *listed on the last tax return*. Applicants who have moved since then would experience an additional burden. None of this evinces the USCIS claim that this form of income documentation is "readily available." Additionally, the IRS has instituted a new tax transcript protocol to protect taxpayer data. This new transcript will include limited identifiable information for the taxpayer, including the last four digits of the social security number and the first four characters of the taxpayers' surname.[5] USCIS has not addressed whether this redacted tax transcript will be sufficient for use as evidence of an applicant's income without their full identifying information.

The USCIS response also states that W-2 forms would offer enough proof of a person's income for fee waiver eligibility (Response to Comment 8). And while W-2s are readily available to an individual tax payer after February of the next year, it does not mean that USCIS will accept this as proof of household income in practice or that the W-2s of an applicant's household members are "readily available." The USCIS summation that this will cause a "potential small burden increase" is a gross understatement and completely ignores the bulk of public comments by OIRA and others. Similar to tax returns, W-2s reflect an individual's earnings during the previous calendar year. If an individual, at the time they are applying for

[4] https://www.irs.gov/individuals/get-transcript

[5] https://www.irs.gov/individuals/about-the-new-tax-transcript-faqs

naturalization, is not earning as much as they did in the previous year, their W-2 paints an inaccurate picture of their economic need.

III. The proposed rule change would directly harm low-income immigrants.

USCIS continues to ignore the disproportionate harm this policy change would have on low-income immigrants. In the response to Comment 11, USCIS states that "providing the criteria in policy guidance for how an applicant may provide evidence of eligibility to have such fees waived is neither punishing nor discriminatory." However, based on our work with LPRs and based on comments from our community partners, the criteria as stated in NPRM will negatively impact immigrants with low incomes. Hence, the criteria as stated is both discriminatory and punishing to low-income immigrants. USCIS proceeds to then not respond to the discriminatory nature of this form change against low- and very low-income applicants. Instead their response to Comment 9 asserts that applicants who are unable to obtain a fee waiver for naturalization can instead simply renew their green card, ignoring the fact that someone unable to pay the $725 naturalization filing fee may be similarly unable to pay the $495 green card renewal filing fee.

In response to Comment 11, USCIS notes that prior to current policy, low-income applicants still filed for benefits and paid fees. This is a difficult statement to interpret but unhelpful no matter the interpretation. Prior to the introduction of USCIS Form I-912, applicants still had the opportunity to request that fees be waived, by demonstrating their inability to pay as stated in CFR 103.7(c)(2). Applicants requesting that fees be waived would still submit evidence of inability to pay, including proof of receiving means-tested benefits. Moreover, USCIS provides no evidence regarding rates of application filings among low-income applicants prior to Form I-912 and after.

Throughout its responses, USCIS promotes an unfounded claim that immigrants are taking advantage of the system through fee waiver filings. USCIS asserts in response to Comment 10 that families with income "considerably above the poverty level" are granted fee waivers. Evidence of this claim is not provided anywhere in USCIS's responses and is damaging in that those who are likely to suffer most under this proposed change are the very low-income families who do not have enough earned income to warrant tax filings or who have no earned income at all and therefore no documentation of financial hardship aside from their receipt of public benefits.

IV. The proposed rule change will reduce the number of low-income individuals applying for naturalization, and thereby decrease the positive effects of naturalization.

In addition to not clearly demonstrating why the current criteria for fee waivers is damaging to the agency, USCIS also fails to respond to the argument that providing fee waivers for naturalization applications leads to immense individual and community benefits, both economic and otherwise. Recent studies show the enormous 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.[6] Moreover, naturalized citizens are less likely to experience unemployment[7] and are more likely to buy homes, to invest in their local economies,[8] and to increase their earnings by eight to 11 percent.[9] By neglecting to respond to the positive outcomes for naturalized citizens, USCIS further promotes the ideology that immigrants are unfairly taking advantage of the fee waiver process.

V. The proposed rule change would drain the resources of U.S. Department of Justice (DOJ)-recognized agencies.

USCIS does not address the increased burden for immigration advocates and DOJ-recognized agencies, except to note that advocates will now need to provide affidavits to victims of certain types of crime to replace the previous standard of providing proof of means-tested benefits, (see below for further discussion). In response to Comment 7, USCIS asserts that nonprofit community organizations would simply need to copy applicants' income tax returns instead of copying their public assistance letters. However, as outlined above, many low- and very-low income immigrants and refugees do not have income tax returns, other proof of income, or in some cases, any income aside from public benefits.

In these cases, a nonprofit agency may need to assist the applicant in filing income taxes, despite the fact that the applicant's income is so low they would not otherwise be required to file federal income taxes. Or they may need to assist the applicant in obtaining IRS tax transcripts, with the difficulty of that process outlined above. For those who have never earned taxable income, agencies would need to apply to obtain tax transcripts and W-2s in order to obtain proof from the IRS that the agency has no such documents on file for those individuals. Advocates may need to call in the client's family members to appointments to offer affidavits on behalf of the applicant or to provide their own W-2 forms or file taxes for these household members. In none of these cases is the process as easy as obtaining a copy of the person's proof of receiving public assistance. And it is unlikely that these additional efforts would be deemed sufficient to prove income eligibility for the fee waiver. Advocates would additionally need to collect proof of *current* income on behalf of all household members to submit with the application. All of this requires hours of additional work that is completely ignored in USCIS's consideration of this form change.

The resources needed to prepare income- or hardship-based fee waiver applications will overwhelm the limited resources of nonprofit agencies that help LPRs. Agency staff time could be more efficiently used to prepare applications and attend client interviews at USCIS than collecting IRS documentation on behalf of clients' household members. Collectively, the extra time expended per client will mean fewer clients served. As many grants to service providers are based on 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 clients.

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[6] https://www.urban.org/research/publication/economic-impact-naturalization-immigrants-and-cities/view/full_report

[7] https://www.migrationpolicy.org/research/economic-value-citizenship

[8] http://publications.unidosus.org/handle/123456789/1123

[9] https://dornsife.usc.edu/csii/citizen-gain/

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, often for several years, to attain this credential. They attend trainings to stay informed about changes to the law. 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. All of this adds up to direct harm to dozens of Seattle-area nonprofit agencies serving low-income immigrants and refugees, and the USCIS response to initial comments fails to address this harm.

VI. Redetermining the income status of public benefits recipients is a waste of government resources.

USCIS does not respond to this proposal being a waste of government resources, but instead responds to the argument it would waste taxpayer dollars. They assure that the agency, including fee waiver adjudication, is funded by application filing fee income. The argument that USCIS does not waste taxpayer money misses the point that the proposal would waste government resources, including local agency resources and USCIS fee income.

First, USCIS's proposal to re-adjudicate an applicant's level of income after the local benefits-granting agency has already done this is wasteful and unnecessary. USCIS' response to Comment 5 states that the fee waiver "request is distinct from that of other benefits granting agencies," but does not give any reasoning as to why. The law governing fee waivers requires the person demonstrate their "inability to pay" (CFR 103.7(c)(2)). USCIS gives no argument to understand how a person's inability to pay for food, housing, or electricity is so distinct from their inability to pay for an immigration benefit.

Second, the response to public comments asserts that fee waiver adjudication is funded by income from other application fees, and that applicants who pay fees should not pay higher fees to offset the costs of fee waiver-based applications. This again is part of the agency's underlying argument that immigrants who request fee waivers are leeching off those who pay filing fees. Yet the Department of Homeland Security (DHS) has little problem expending fee income on completely unrelated programming. DHS's recent budget proposal actually plans to divert filing fee revenue away from adjudication. The proposed DHS FY 19 budget identifies a transfer of $207.6 million from the Immigration Examination Fee Account (IEFA) to fund ICE enforcement initiatives "consistent with the Administration's Executive Orders," such as the border wall and increasing the number of detention beds.[10] This transfer of huge amounts of fee revenue does not illustrate USCIS's expressed concern for fee-paying applicants.

[10] From the proposed budget (https://www.dhs.gov/sites/default/files/publications/DHS%20BIB%202019.pdf) providing the this context on the Immigration Examinations Fee Account (IEFA): "USCIS collects fees to recover the full cost of providing immigration adjudications and naturalization services. This includes the cost of investigatory work necessary to adjudicate applications and petitions, including work performed after an adjudication decision has been rendered by USCIS."

Third, USCIS does not address the increased resource burden of requiring each individual file their own I-912, where previously household members could file a single joint application to waive fees on some application types. In response to Comment 15, USCIS states that less than 10 percent of I-912 filings were for multiple members of the same household using the same form. While no year is cited for this rate, the USCIS response to Comment 4 cites that for FY 2017 the agency approved 588,723 fee waiver applications representing 86 percent of fee waiver filings. This tells us that the total I-912 filings for FY 2017 was 684,572. If we follow the statement that approximately 10 percent were filed using one form for multiple household members and using FY 2017 numbers, this means there would be at the very least an increase of 68,457 I-912s should this proposed rule be enacted. A 10 percent increase in adjudications is objectively a significant increase in the use of government resources. And the 10 percent increase assumes an average household size of two for those previously filing together on one fee waiver. If the average household size is three, the proposed change would create 136,914 more filings annually, and the increase in USCIS adjudication resources only goes up if the average household size is larger. USCIS does not address this increased resource burden of at least 10 percent more fee waiver adjudications through this proposed change.

VII. The USCIS responses to public comments address additional arguments inadequately or not at all.

First, USCIS does not offer any information as to why the "inability to pay" as the basis of demonstrating fee waiver eligibility from CFR 103.7(c)(2) must equate to income below 150 percent of the federal poverty guidelines. In several responses to comments, the agency asserts that fee waiver adjudication is uneven because some public benefits recipients earn above 150 percent of the poverty line, but does not address the fact that in many jurisdictions, earning 150 percent of the poverty guidelines would not allow a household to afford rent, food, and other basic survival needs. Last year, the National Low-Income Housing Coalition (NLIHC) released their annual Out of Reach report showing that federal minimum wage would not cover rent anywhere in the United States.[11]

More important to this discussion, it shows that nationally, a family would need to earn $22.10 an hour to afford a modest two-bedroom apartment. Assuming this rate applied to full-time work, annual earnings to afford a two-bedroom apartment would be $45,968.[12] For a family of four, this would be well above the USCIS fee waiver standard of $37,650 of 150 percent of the federal poverty guidelines. It is also above the threshold for a family of five. A family of five that is unable to afford a two-bedroom apartment can hardly be expected to come up with hundreds to thousands of dollars in USCIS filing fees. Leaders from the USCIS Seattle Field Office have used the high cost of living in the Seattle area as a reason for that office's chronic understaffing and hence that office's ongoing adjudication delays and backlogs. They have stated that the salary of USCIS officers is insufficient to meet the high cost of living in the area, and therefore the office

[11] https://www.cbsnews.com/news/minimum-wage-doesnt-cover-the-rent-anywhere-in-the-u-s/?fbclid=IwAR2eKx3fRzsvJHwZHaaob_Lj6FLjbvXu9gDI7IDeTpU0n7d2-knJf8rkpEg

[12] http://nlihc.org/oor

has difficulty hiring staff to adjudicate applications.[13] Surely, if USCIS officer salaries are not enough to afford living in a major metropolitan area, an applicant with earnings slightly above 150 percent of the poverty line living in a high-cost area should be justified in demonstrating their inability to pay with proof of means-tested benefits.

USCIS itself also proposes that this standard of 150 percent of the federal poverty guidelines is insufficient to prove financial stability. The current standard for determining an intending immigrant would not become a public charge is an affidavit of support filed on behalf of the immigrant by someone earning at least 125 percent of the poverty guidelines. Yet in October 2018, USCIS proposed changing the public charge determination standards through another NPRM.[14] One of the altered criteria was to use an annual income of 250 percent or above the federal poverty level as a positive factor in someone's ability to avoid a public charge determination, while income below 125 percent of the line is a negative factor. USCIS maintains that a household below 125 percent of the poverty line is unable to prove financial soundness, but someone above 150 percent of the poverty level is too wealthy to warrant assistance in paying fees that can add up to thousands of dollars.

Second, some statements in the USCIS response to comments appear to purposefully bend the truth. For instance, in the response to Comment 12, they state, "USCIS did not propose to change any requirement for obtaining immigration benefits." It may be true that this form change does not alter the form or collection requirements for any benefit-granting forms. However, in practice, changing the fee waiver eligibility criteria does negatively affect an applicant's ability to obtain immigration benefits. The statement above is completely disingenuous and counter to the purported outcomes of this form change.

VIII. Proposed accommodations for victims such as VAWA, T Visas, U Visas, and SIJS in this updated proposed information collection revision are insufficient and nonsensical.

OIRA's previous comment did not address the potential ill effects of the proposed form change on Seattle's most vulnerable immigration benefits applicants. However, the USCIS response compels us to address this issue. First, the USCIS response proposes to burden advocates for VAWA and T and U visa recipients with more work to prove fee waiver eligibility. The agency asks these agencies to provide survivors with affidavits explaining the benefits they receive from said agencies. This is flawed in that many, if not most, agencies providing support for survivors rely on their client's receipt of public benefits to pay the costs of their shelter, food, or other necessities. Asking these agencies to provide affidavits that they administer the survivors' receipt of public assistance puts an additional time and resource burden on agencies by asking them to write a letter explaining the receipt of benefits that a letter from the public assistance agency could have done. If the agency does provide financial assistance or housing to survivors, they may not wish to disclose this information, given the vulnerable nature of housing survivors.

[13] U.S. Citizenship and Immigration Services District 20 Quarterly Stakeholders Meeting, December 6, 2018, USCIS Seattle Field Office, 12500 Tukwila International Boulevard, Seattle, Washington 98168.

[14] Inadmissibility on Public Charge Grounds, Notice of Proposed Rulemaking, 83 Fed. Reg. 51114, DHS Docket No. USCIS-2010-0012.

This last point is amplified by USCIS's decision in Comment Response 20 that it is "unnecessary" to add information to form I-912 instructions about the legally mandated obligation to protect the safety and confidentiality of victims of violence, trafficking, and other crimes. An agency that assists survivors of crime or domestic violence that is not normally required to write affidavits surrounding an applicant's current economic situation would not be encouraged to provide this information for a form type that does not even specify the information will be protected for survivors of abuse, trafficking, and crime.

IX. In sum, the proposed rule creates massive inefficiency without any clear gain, and USCIS utterly fails to address the concerns of the public about this policy shift disguised as a form change.

The City of Seattle continues to strongly oppose the proposed rule to modify the Form I-912, Request for Fee Waiver.

The City of Seattle opposes the proposed changes to the Form I-912 because it would cause additional obstacles for individuals applying, and otherwise eligible for, immigration benefits. The rule change will not improve efficiency or reduce costs for the U.S. government, and will likely cause significant additional costs and extended processing delays. The upside for the government was not demonstrated in the initial proposed form change, nor in the USCIS response to the 1,198 comments filed to the Federal Register by community members and stakeholders.

More importantly, the rule change will directly harm low-income immigrants, including those elderly and disabled. Nonprofit organizations charged with assisting low-income immigrants will be overwhelmed by the additional time burden imposed by the rule change and may struggle to stay afloat. This rule change would cause irrevocable damage to the City of Seattle's New Citizen Campaign and New Citizen Program, our community partners, and the vulnerable clients we serve.

Thank you for the opportunity to submit comments on the proposed rulemaking. Please do not hesitate to contact Meghan Kelly-Stallings at meghan.kelly-stallings@seattle.gov for comments or clarifications regarding this response.

Sincerely,

Cuc Vu, Director
Office of Immigrant and Refugee Affairs
City of Seattle
cuc.vu@seattle.gov
(206) 727-8515

EXHIBIT C

Seattle
Office of Immigrant and
Refugee Affairs
Cuc Vu, Director

July 3, 2019

Submitted via email

OMB USCIS Desk Officer
dhsdeskofficer@omb.eop.gov

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

Dear Desk Officer:

The City of Seattle ("the City") submits this comment in response to the proposed revision of a currently approved collection published by the Department of Homeland Security (DHS) and the United States Citizenship and Immigration Services (USCIS) in their Agency Information Collection Notice published on June 5, 2019. We are responding to the lack of response to the public comments previously submitted on April 5, 2019 and to address the inadequacy of responses by USCIS to comments submitted in response to their Notice of Revision of Currently Approved Collection published on September 28, 2018.

The City of Seattle continues to strongly oppose the proposed rule to modify Form I-912, Request for Fee Waiver.

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.

Form I-912 allows individuals with financial need to apply for certain immigration benefits without a filing fee. Fee waivers aid the most vulnerable immigrants, including refugees, asylees, unaccompanied minors,

and victims of trafficking. For LPRs eligible to naturalize, it affords those unable to pay the $725 filing fee the opportunity to achieve the dream of U.S. citizenship. The proposed modification for Form I-912 would make it significantly more difficult for the City's constituents and program participants to prove eligibility for the fee waiver.

The "USCIS Responses to Public Comments Received on the 60-Day Federal Register Notice, 'Agency Information Collection Activities; Revision of a Currently Approved Collection: Request for Fee Waiver; Exemptions,' 83 FR 49120"[1] did not adequately address any of the concerns expressed in OIRA's initial November 2018 public comment. To date, USCIS also has not at all responded to any public comments from the previous 30-day Federal Register Notice 84 FR 13687.

I. USCIS has failed to respond to previous arguments against this form change; we therefore reiterate our previous arguments here.

USCIS' response to the initial 60-day comment period does not address the harm the change to Form I-912 and the eligibility criteria for a fee waiver would have on applicants and especially very-low income families. In the agency's announcement of a third comment period, USCIS does not address these concerns at all. The USCIS lack of response seems to deny the real harm that would be caused by this policy change. We therefore reiterate the arguments made in our previous comments about harm this policy would cause to low-income immigrants, Department of Justice (DOJ)-recognized agencies, and the City of Seattle as a whole.

a. The proposed change would cause direct harm to low-income immigrants.

The USCIS policy change presented in the proposed form change for Form I-912 request for fee waiver, would cause direct harm to low-income immigrants. The proposed change would eliminate the most commonly used and most accessible way to establish fee waiver eligibility. It instead calls for documentation that the average person does not have readily available, and that would be impossible for a significant portion of the population to obtain. Those most likely to lack this documentation are very low-income immigrants and refugees.

As argued in our response to USCIS published responses to the 60-day comment period, the USCIS claim that those who receive public benefits would also have other proof of income is baseless. First, many immigrants and refugees receiving public assistance in fact do not have any income documentation available, because they are newly arrived to the United States, or because their only source of income is public assistance, or because their income level has changed since the previous tax year. Second, the form change published on April 5, 2019 and the most recent version published June 5, 2019 both call for tax

[1] U.S. Citizenship and Immigration Services, Federal Register, Agency Information Collection Activities; Form I-912; Request for an Individual Fee Waiver, Docket ID: USCIS 2010-008, "USCIS Responses to Public Comments on I-912 Revision 60-day Federal Register Notice," April 5, 2019, https://www.regulations.gov/document?D=USCIS-2010-0008-1243.

transcripts over income tax returns. It is extremely rare for any person to need their tax transcripts, especially since the majority of situations requiring proof of income more readily accept the more easily accessible tax return, so this transcript documentation is not "readily available" for the vast majority of fee waiver applicants.

Tax transcripts were in fact not previously accepted by USCIS as adequate proof of income. An applicant would usually have no reason to obtain tax transcripts and would need to order these. While an applicant may be able to view tax transcripts online, this requires the following proof according the Internal Revenue Service (IRS): "access to your email account; your personal account number from a credit card, mortgage, home equity loan, home equity line of credit or car loan; and a mobile phone with your name on the account."[2] For low-income populations, access to an individual mobile phone account or email address, much less other financial accounts, can be out of reach.

This means that whole segments of the population who would need to obtain tax transcripts in order to qualify for a fee waiver would be unable to do so immediately online. Those without the above information can have tax transcripts mailed in five to ten days to the mailing address *listed on the last tax return*. Applicants who have moved since then would experience an additional burden. None of this evinces the USCIS claim that this form of income documentation is "readily available." Additionally, the IRS has instituted a new tax transcript protocol to protect taxpayer data. This new transcript will include limited identifiable information for the taxpayer, including the last four digits of the social security number and the first four characters of the taxpayers' surname.[3] USCIS has not addressed whether this redacted tax transcript will be sufficient for use as evidence of an applicant's income without their full identifying information.

The time and resource burden of obtaining tax transcripts is great, but even greater is the burden of filing income taxes for applicants who are not required to file them, just to prove income eligibility for the fee waiver. For such families, they would need to attend multiple appointments with nonprofit community organizations or with tax preparation agencies to file taxes that they would otherwise not be required to file. If DOJ-recognized agencies have the capacity to assist, this process could be free or low-cost. If they do not have the capacity to assist, which is likely to be the case (see discussion in Section b. below), they would need to pay an accountant or tax agency for this assistance. If they have no earned income, this could amount to a Kafkaesque process starting with months of waiting for proof from the IRS that they in fact have no income to report, then filing this lack of income with the IRS, only to prove to USCIS what could have previously been proven with a simple letter from a benefits-granting agency.

Throughout USCIS responses published April 5, 2019 to the initial comment period, the agency continually belittles the burden this policy change would incur on low-income immigrants, and goes even further to

[2] https://www.irs.gov/individuals/get-transcript
[3] https://www.irs.gov/individuals/about-the-new-tax-transcript-faqs

disparage low-income immigrants as unworthy. For example, the USCIS response to Comment 9 asserts that applicants who are unable to obtain a fee waiver for naturalization can instead simply renew their green card. This statement ignores the fact that someone unable to pay the $725 naturalization filing fee may be similarly unable to pay the $495 green card renewal filing fee.

Moreover, the agency claims that applicants who are unable to obtain a fee waiver can simply save up money over time. This assumes all households have disposable income, which is unfounded. Applicants without the appropriate documentation to prove fee waiver eligibility would experience direct harm. Many clients, if they are unable to obtain the documentation necessary to support an income- or hardship-based fee waiver request, will be forced to take out a high-interest loan. Some clients will be forced to choose between paying an application fee and paying their other basic needs bills. Some applicants will have no choice but to give up on their applications because their fixed incomes do not allow them to save for a filing fee or to pay back a loan.

USCIS continues to ignore the disproportionate harm this policy change would have on low-income immigrants. In the response to Comment 11 published with the previous notice, USCIS states that "[p]roviding the criteria in policy guidance for how an applicant may provide evidence of eligibility to have such fees waived is neither punishing nor discriminatory." However, based on the time and resource burden of obtaining tax transcripts, especially for very low-income applicants who have not previously filed tax returns, along with the experience of our community partners who have avoided submitting income-based fee waivers due to consistent denials, the newly proposed criteria will negatively and disproportionately impact immigrants with low incomes. Hence, the criteria as stated is both discriminatory and punishing to low-income immigrants. USCIS proceeds to then not respond to the discriminatory nature of this form change against low- and very low-income applicants.

The inability to prove fee waiver eligibility or pay filing fees can lead to more profound harm. Individuals lacking proof of lawful status are in violation of federal law and face greater risk of negative encounters with immigration officials, including detention and placement in removal proceedings. Residents of Seattle and King County are further at risk for expedited removal by U.S. Customs and Border Patrol due to their vicinity to the U.S.-Canada border. LPRs need valid proof of their lawful status, and making it harder to obtain a fee waiver for the I-90 compromises their stability and security in the U.S. The proposed rule subjects vulnerable populations to deeper poverty and possible arrest.

In response to Comment 11, USCIS notes that prior to current policy, low-income applicants still filed for benefits and paid fees. This is true, but misleading. Prior to the introduction of USCIS Form I-912, applicants still had the opportunity to request that fees be waived by demonstrating their inability to pay as stated in CFR 103.7(c)(2). Applicants requesting that fees be waived would still submit evidence of inability to pay,

including proof of receiving means-tested benefits. Applicants could submit a benefits letter with a brief explanation that receipt of such benefits shows their inability to pay the filing fee; many service providers had template letters to which they could quickly and simply add the specific details of their client's financial need, making the process less burdensome than the new requirement to obtain tax transcripts. Furthermore, USCIS provides no evidence regarding rates of application filings among low-income applicants prior to Form I-912 and after.

Throughout its responses, USCIS promotes an unfounded claim that immigrants are taking advantage of the system through fee waiver filings. USCIS asserts in response to Comment 10 that families with income "considerably above the poverty level" are granted fee waivers. Evidence of this claim is not provided anywhere in USCIS's responses. And this assertion is significantly damaging to the most vulnerable LPR populations, in that those most likely to suffer under this proposed change are the very low-income families who do not have enough earned income to warrant tax filings or who have no earned income at all and therefore no documentation of financial hardship aside from their receipt of public benefits.

b. The proposed form change would cause direct harm to DOJ-recognized agencies and their staff.

USCIS does not address the increased burden for immigration advocates and DOJ-recognized agencies, except to note in response to comments published April 5, 2019 that advocates will now need to provide affidavits to victims of certain types of crime to replace the previous standard of providing proof of means-tested benefits. In the most recent notice published June 5, 2019, USCIS makes no effort to respond to the thousands of comments received through both previous commenting rounds. In Comment 7 from the April 5th response, USCIS asserts that nonprofit community organizations would simply need to copy applicants' income tax returns instead of copying their public assistance letters. However, as outlined above, many low- and very-low income immigrants and refugees do not have income tax returns, or other proof of income, or in some cases any income aside from public benefits. Moreover, since the April 5th and June 5th publications of the edited Form I-912 require tax transcripts, this USCIS response is completely false. As nonprofit organizations would need to additionally help applicants obtain these transcripts before they can be copied, which inefficiently increases the amount of time organizations will be required to spend with their clients.

Where applicants have not filed income taxes, a nonprofit agency may need to assist the applicant in filing, despite the fact that the applicant's income is so low they would not otherwise be required to file federal income taxes. This is extra additional time. Or they may need to assist the applicant in obtaining IRS tax transcripts, with the difficulty of that process outlined above. This is extra additional time. For those who have never earned taxable income, agencies would need to apply to obtain tax transcripts and W-2s in order to obtain proof from the IRS that the agency has no such documents on file for those individuals. This

is extra additional time. Advocates may need to call in the client's family members to appointments to offer affidavits on behalf of the applicant or to provide their own W-2 forms or file taxes for these household members. This is extra additional time. In none of these cases is the process as easy as obtaining a copy of the person's proof of receiving public assistance. And it is unlikely that these additional burdensome efforts would be deemed sufficient to prove income eligibility for the fee waiver. Advocates would additionally need to collect proof of *current* income on behalf of all household members to submit with the application. All of this requires hours of additional work that USCIS seems to completely ignore in their consideration of this form change.

The resources needed to prepare income- or hardship-based fee waiver applications will overwhelm the limited resources of nonprofit agencies that help LPRs. Agency staff time could be more efficiently used to prepare applications and attend client interviews at USCIS rather than collecting unnecessary IRS documentation on behalf of clients' household members. Collectively, the extra time expended per client will mean fewer clients served. As many grants to service providers are based on 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 clients.

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, often for several years, to attain this credential. They attend trainings to stay informed about changes to the law. 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. All of this adds up to direct harm to dozens of Seattle-area nonprofit agencies serving low-income immigrants and refugees, and the USCIS response to initial comments fails to address this harm.

c. The proposed change would harm the City of Seattle, especially its citizenship programs.

A significant portion of OIRA's two previous comments focused on the harm the proposed fee waiver changes would cause Seattle residents and specifically the participants of our two City of Seattle naturalization programs. In fact, a significant portion of comments to the first two public response periods addressed the concern that a change to the fee waiver would meaningfully harm applicants for immigration benefits. Yet, the USCIS response belittles these significant concerns by stating, "USCIS does not believe the changes are an excessive burden on respondents" (Comment Response 1). For the second round of comments, USCIS did not bother to publish a response. 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 Program (NCP) and New Citizen Campaign (NCC). 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 30-50 individuals per month and has organized large-scale events that have to date served 1,082 legal permanent residents. NCP is a separate component of the New Citizen Campaign. 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 skills. To qualify for NCP services, clients must either receive a means-tested public benefit or be a low-income resident of Seattle.

This proposed change would harm the City of Seattle because of the suffering its implementation would cause to the city's vulnerable residents and the nonprofit community outlined above. It would also harm the City through the economic losses associated with LPRs *not* naturalizing. In both of our initial comments, we argue that providing fee waivers for naturalization applications leads to immense individual and community benefits, both economic and otherwise. Recent studies show the enormous 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.[4] Moreover, naturalized citizens are less likely to experience unemployment[5] and are more likely to buy homes, to invest in their local economies,[6] and to increase their earnings by eight to 11 percent.[7] By neglecting to respond to the positive outcomes for naturalized citizens, USCIS further promotes the ideology that immigrants are unfairly taking advantage of the fee waiver process. It also ignores the negative consequences this policy change that is essentially disguised as a form change would have on the City of Seattle and its economy.

Beyond the harm to residents, our nonprofit community, and the greater Seattle community and economy, the proposed change would directly harm the City's financial investments in naturalization. First, the New Citizen Program services and capacity would suffer. To qualify for NCP services, clients must either receive a means-tested public benefit or be a low-income resident of Seattle. (Clients who receive a means-tested benefit may reside outside of Seattle. And those who do not must reside within Seattle city limits and provide proof of their low-income status.) In 2018, 573 NCP clients filed N-400 applications and among these, 96 percent (549) filed an accompanying I-912. Only 8 percent (42) of the 549 fee waiver requests filed were submitted by someone not on public benefits. This proposed change to fee waiver eligibility would significantly increase the time needed to assist in the almost 90 percent of cases that would have previously used a public benefits-based fee waiver. This increased time per case will ultimately decrease the number of clients assisted in filing for naturalization. Because NCP services focus on people who are low-income, elderly, illiterate, and with limited English skills, this will also mean a decrease in services to these highly vulnerable populations.

[4] https://www.urban.org/research/publication/economic-impact-naturalization-immigrants-and-cities/view/full_report
[5] https://www.migrationpolicy.org/research/economic-value-citizenship
[6] http://publications.unidosus.org/handle/123456789/1123
[7] https://dornsife.usc.edu/csii/citizen-gain/

Second, the New Citizen Campaign clinics would not be able to continue with their current model. At NCC clinics, individual applicants are screened by volunteer immigration attorneys and DOJ-accredited representatives. And those deemed ready to apply are assisted in the completion of their N-400 and the I-912 fee waiver application when needed. Fee waiver assistance has been an ongoing component of the NCC citizenship events since their inception in 2016. Approximately 30% of clinic attendees qualify for a fee waiver, and the vast majority of those establish their eligibility with a public benefits letter. Because this proposed change would require tax transcripts from fee waiver applicants, and because of the difficulty in obtaining tax transcripts outlined above, it will be extremely difficult to serve fee waiver applicants in our one-day clinics.

NCC clinics offer a bridge between services for very low-income applicants, such as those served by the New Citizen Program, and those who can afford a private attorney. Without the ability to serve low-income applicants at the clinics, the program will fail to achieve its foundational goal, and therefore program funding could be at risk. Similarly, the New Citizen Program funding is largely based on service deliverables. When NCP providers spend significantly more time on each case, and service numbers go down, funding is also likely to go down. NCC and NCP funding combined account for 30 percent of OIRA program dollars. By disabling service delivery, this policy change puts at risk the significant investment the City of Seattle has made to naturalization.

II. The USCIS responses to public comments address additional arguments inadequately or not at all.

Making a bad situation even worse, USCIS notes that while Paperwork Reduction Act (PRA) Federal Register Notices "do not rise to the level of notice and comment rule making, they do provide public notice and demonstrate that commenters' concerns have been considered" (Comment Response 3). By brushing aside and failing to respond to the unnecessary burden associated with this changed fee waiver process, USCIS demonstrates that it has indeed not at all considered commenters' concerns.

Demonstrating this lack of concern for the burden that will face alien applicants seeking a fee waiver, USCIS further assumes that a person would not apply for public assistance solely to qualify for a fee waiver. This assumes that USCIS policy and information collection do not affect the decisions of immigrants seeking benefits. Yet, in practice, we have seen clearly that implemented USCIS policies and even leaked policy updates and proposed rule changes do affect the decisions of immigrant applicants. The prime example of this is the decision by many immigrant and refugee families to drop out of public assistance programs over fears of becoming a public charge after the draft version of the 2017 White House public charge executive order leaked to media outlets in February 2017. OIRA received reports from both immigrants living within Seattle and staff from immigrant-serving community-based organizations that immigrants themselves started refusing local and federal benefits that they qualify for, and many also requested case managers to disenroll them from social programs that they are eligible for. This trend has been widely documented by

media outlets.[8] [9] Immigration policy affects the everyday decisions of immigrants and refugees. Assuming otherwise demonstrates a huge gap or a willful disregard in USCIS' understanding of its customers.

If the careless response to the first comment period was not enough, USCIS further clarified its carelessness toward its own constituents and the public by publishing its third notice regarding the fee waiver without responding to both the comments submitted in the previous 30-day comment period ending May 5, 2019 and the calls for more adequate responses to the comments submitted in the initial 60-day period.

III. With this third notice, USCIS now admits the reason for this proposed form change is to reduce the number of fee waivers submitted.

The proposed change to fee waiver eligibility will create a clear burden on applicants who will no longer be able to qualify. What has only become clear with this third notice published June 5, 2019 is that USCIS is aware of this burden and that the agency in fact wants fewer applicants to qualify. In the previous notices and comment responses, USCIS discussed applicants who were well above the poverty line taking advantage of the fee waiver criteria, without showing any evidence that this was the case. Still the agency has provided no evidence of wrongdoing on the part of applicants, but instead reveals the motivation of increasing revenue as the justification for the form change.

The problem with this rationale is that the fee waiver exists to ensure access to immigration benefits and naturalization, especially for vulnerable populations. The standard for fee waiver eligibility is "inability to pay" and is intended to ensure deserving individuals have access to immigration benefits, not based on the revenue goals of USCIS. Ironically, USCIS cites the FY 2016-2017 proposed fee schedule as justification for reviewing the fee waiver guidance, but the 2016-2017 fee schedule intentionally *increased* access for low-income families by creating a reduced fee, or partial fee waiver, for naturalization applicants whose income fell between 150 and 200 percent of the Federal Poverty Guidelines.

Beyond the false pretenses of the previous two notices that claimed this form change was intended to increase efficiency and uniformity in adjudicating fee waivers, USCIS reveals its true motive still without clear justification. The notice states that revenue lost to fee waivers and exemptions has increased from $191 million in FY 2010-2011 to $613 million in FY 2016-2017. These numbers are completely useless in justifying new limits on the fee waiver as they include *exemptions*, which have nothing to do with fee waivers. Fee exemptions include applications for adjustment of status for refugees, and for military

[8] Shapiro, Nina, "As Trump considers penalties, Seattle-area immigrants turn down public benefits they're entitled to claim," Seattle Times, August 12, 2018, https://www.seattletimes.com/seattle-news/legal-immigrants-in-seattle-area-alarmed-over-possible-penalties-for-using-benefits/.

[9] Baumgaertner, Emily , "Spooked by Trump Proposals, Immigrants Abandon Public Nutrition Services," New York Times, March 6, 2018, https://www.nytimes.com/2018/03/06/us/politics/trump-immigrants-public-nutrition-services.html.

personnel applying to naturalize, among many other benefits applications. The information USCIS provides makes it impossible to tell how much revenue is "lost" just to fee waivers as opposed to immigration benefits exempt from fees. Also, during the FY 2010-2011 fee review, USCIS both increased fees and created a standard system for requesting a fee waiver through Form I-912, which would naturally have resulted in more applicants requesting the fee waiver and a subsequent shift in fee generation. Still, by not clarifying what portion of the foregone revenue relates to the fee waiver versus fee exemptions, USCIS appears to be overstating the "problem" of fee waivers. By drawing a false comparison, USCIS points to a lack of justification for even this revenue loss rationale.

IV. The Federal Poverty Guidelines are inadequate.

The Federal Poverty Guidelines are an inadequate measure of the standard set for USCIS fee waiver adjudication by CFR 103.7(c)(2) as "inability to pay." USCIS does not offer any information as to why the inability to pay as the basis of demonstrating fee waiver eligibility must equate to income below 150 percent of the Federal Poverty Guidelines. In several responses to comments published on April 5, 2019, the agency asserts that fee waiver adjudication is uneven because some public benefits recipients earn above 150 percent of the poverty line, but does not address the fact that in many jurisdictions, earning 150 percent of the poverty guidelines would not allow a household to afford rent, food, and other basic survival needs. Many studies indicate that the Federal Poverty Guidelines are wholly insufficient in accounting for a family's ability to afford basic needs, and several federal agencies rely on more thorough and localized measures of poverty, including the Department of Housing and Urban Development, discussed below.

Last year, the National Low-Income Housing Coalition (NLIHC) released their annual Out of Reach report showing that federal minimum wage would not cover rent anywhere in the United States.[10] More importantly, it shows that nationally, a family would need to earn $22.10 an hour to afford a modest two-bedroom apartment. Assuming this rate applied to full-time work, annual earnings to afford a two-bedroom apartment would be $45,968.[11] For a family of four, this would be well above the USCIS fee waiver standard of $37,650 of 150 percent of the federal poverty guidelines. It is also above the threshold for a family of five. A family of five that is unable to afford a two-bedroom apartment can hardly be expected to come up with hundreds to thousands of dollars in USCIS filing fees.

The Massachusetts Institute of Technology has developed a Living Wage Calculator to determine the minimum that families need to spend on food, childcare, health insurance, housing, transportation, and other basic necessities across a range of different family structures and localities.[12] This, too, reveals

[10] https://www.cbsnews.com/news/minimum-wage-doesnt-cover-the-rent-anywhere-in-the-u-s/?fbclid=IwAR2eKx3fRzsvJHwZHaaob_Lj6FLjbvXu9gDI7IDeTpU0n7d2-knJf8rkpEg
[11] http://nlihc.org/oor
[12] Massachusetts Institute of Technology, Living Wage Calculator, http://livingwage.mit.edu/.

significant disparities in cost of living. Whereas the required annual income (before taxes) for a family of two adults and two children with one working adult is $50,433 in Mississippi, it is $64,559 in King County, Washington, where Seattle is located. In Washington state, Basic Food (the state's SNAP, or food stamps, program) is available to anyone earning more than 200% of the Federal Poverty Guidelines, reflecting the higher cost of living in this state.[13] This means a family of four is eligible for nutrition assistance if it earns up to $51,000—even though the family would not be "poor" under the Federal Poverty Guidelines.

Leaders from the USCIS Seattle Field Office have used the high cost of living in the Seattle area as a reason for that office's chronic understaffing and hence that office's ongoing adjudication delays and backlogs. They have stated that the salary of USCIS officers is insufficient to meet the high cost of living in the area, and therefore the office has difficulty hiring staff to adjudicate applications.[14] Surely, if USCIS officer salaries are not enough to afford living in a major metropolitan area, an applicant with earnings slightly above 150 percent of the poverty line living in a high-cost area should be justified in demonstrating their inability to pay with an easily accessible proof of means-tested benefits, such as a simple letter from a benefits-granting agency.

These wide discrepancies in the cost of living results in Federal Poverty Guidelines that do not accurately reflect the reality on the ground for many U.S. residents. For instance, according to data from the U.S. Department of Housing and Urban Development (HUD), the median income for a family of four in the Seattle metropolitan area in 2019 is $108,600. Based on this median income, HUD (which does not rely on the Poverty Guidelines) considers a family of four earning less than $88,250 to be "low income" and potentially eligible for rental assistance. But according to the Federal Poverty Guidelines, that family is not poor, because its income is more than 300% of the Federal Poverty Guidelines and significantly more than the national median income. Of course, the fact that a family living in a high-cost area makes more than 300% of the static Federal Poverty Guidelines does not mean they can afford housing where they live—a fact HUD recognizes and has adjusted for. The federal government has recognized that these discrepancies limit the usefulness of the Poverty Guidelines in certain states and localities and has allowed states and federal agencies to use different measures of an applicant's "inability to pay" in administering federally funded means-tested benefit programs.

USCIS itself also proposes that this standard of 150 percent of the Federal Poverty Guidelines is insufficient to prove financial stability. The current standard for determining an intending immigrant would not become a public charge is an affidavit of support filed on behalf of the immigrant by someone earning at least 125 percent of the poverty guidelines. Yet in October 2018, USCIS proposed changing the public

[13] Washington State Department of Social and Health Services, Washington Basic Food Program, https://www.dshs.wa.gov/sites/default/files/ESA/csd/documents/Basic%20Food_Q_and_A.pdf.
[14] U.S. Citizenship and Immigration Services District 20 Quarterly Stakeholders Meeting, December 6, 2018, USCIS Seattle Field Office, 12500 Tukwila International Boulevard, Seattle, Washington 98168.

charge determination standards through another NPRM.[15] One of the altered criteria was to use an annual income of 250 percent or above the federal poverty level as a positive factor in someone's ability to avoid a public charge determination, while income below 125 percent of the line is a negative factor. USCIS maintains that a household below 125 percent of the poverty line is unable to prove financial soundness, but someone above 150 percent of the poverty level is too wealthy to warrant assistance in paying fees that can add up to thousands of dollars.

The current federal administration is even aiming to change the way the Federal Poverty Guidelines are measured. On May 7, 2019, the Office of Management and Budget (OMB) published notice of its intent to recalculate the criteria for the Official Poverty Measure, from which Federal Poverty Guidelines are drawn (FR Doc. 2019-09106). It is paradoxical that USCIS would bear down on its use of the poverty guidelines during a time when counterparts at OMB highlighting the flaws in the measurement of its foundation, the Official Poverty Measure.

V. This form change would create huge additional inefficiencies and is a waste of resources for the federal government itself.

The proposed change to I-912 and fee waiver eligibility would cause a huge waste of government resources. In the April 5th response, USCIS does not respond to this proposal being a waste of government resources, but instead responds to the argument it would waste taxpayer dollars. They assure that the agency, including fee waiver adjudication, is funded by application filing fee income. The argument that USCIS does not waste taxpayer money misses the point that the proposal would waste already limited government resources, including local agency resources and USCIS income generated from fees.

First, USCIS's proposal to re-adjudicate an applicant's level of income after the local benefits-granting agency has already done this is wasteful and unnecessary. USCIS' response to Comment 5 states that the fee waiver "request is distinct from that of other benefits granting agencies," but does not give any reasoning as to why. The law governing fee waivers requires the person demonstrate their "inability to pay" (CFR 103.7(c)(2)). USCIS gives no argument to understand how a person's inability to pay for food, housing, or electricity is so distinct from their inability to pay for an immigration benefit.

Second, the April 5, 2019 response to public comments asserts that fee waiver adjudication is funded by income from other application fees, and that applicants who pay fees should not pay higher fees to offset the costs of fee waiver-based applications. This again is part of the agency's underlying argument that immigrants who request fee waivers are leeching off those who pay filing fees. The agency doubles down on this argument with the June 5th notice to the Federal Register by clarifying the justification for the change is to prevent lost revenue from eligible applicants requesting the fee waiver. Yet the Department of Homeland Security (DHS) has little problem expending fee income on completely unrelated programming.

[15] Inadmissibility on Public Charge Grounds, Notice of Proposed Rulemaking, 83 Fed. Reg. 51114, DHS Docket No. USCIS-2010-0012.

DHS's recent budget proposal actually plans to divert filing fee revenue away from adjudication. The proposed DHS FY 19 budget identifies a transfer of $207.6 million from the Immigration Examination Fee Account (IEFA) to fund ICE enforcement initiatives "consistent with the Administration's Executive Orders," such as the border wall and increasing the number of detention beds.[16] This transfer of huge amounts of fee revenue does not illustrate USCIS's expressed concern for fee-paying applicants.

Third, USCIS does not address the increased resource burden of requiring each individual to file their own I-912, where previously household members could file a single joint application to waive fees on some application types. In the April 5th response to Comment 15, USCIS states that less than 10 percent of I-912 filings were for multiple members of the same household using the same form. While no year is cited for this rate, the USCIS response to Comment 4 cites that for FY 2017 the agency approved 588,723 fee waiver applications that represented 86 percent of fee waiver filings. This tells us that the total I-912 filings for FY 2017 was 684,572. If we follow the statement that approximately 10 percent were filed using one form for multiple household members and using FY 2017 numbers, this means there would be at the very least an increase of 68,457 I-912s should this proposed rule be enacted. A 10 percent increase in adjudications is objectively a significant increase in the use of government resources. And the 10 percent increase assumes an average household size of two for those previously filing together on one fee waiver. If the average household size is three, the proposed change would create 136,914 more filings annually, and the increase in USCIS adjudication resources only goes up if the average household size is larger. USCIS does not address this increased resource burden of at least 10 percent more fee waiver adjudications through this proposed change.

Finally, USCIS' method for announcing and proposing this change has been wholly inefficient. Initiating three rounds of public comment in a dizzying use of the Paperwork Reduction Act, is at best inefficient and at worst an awkward attempt to avoid the repercussions of failing to give proper public notice. The first notice received close to 1,200 comments, and the second round received at least hundreds more, sent directly to the Office of Management and Budget via email. Now we are asked to respond to a third notice, without even an attempt at response to the second round of comments. This has constituted a waste of time for the public, especially the stakeholders who will be harmed by this change, and the government staffers who are charged with responding to their public comments. Moreover, the agency did not publish until a third notice their true rationale for this change, namely, to recover more revenue for the agency by denying more fee waivers. The public has spent time and energy responding to two notices that did not even include the actual intent of this change. The use of agency time and staff toward this roundabout endeavor is wasteful and inefficient.

[16] From the proposed budget (https://www.dhs.gov/sites/default/files/publications/DHS%20BIB%202019.pdf) providing the this context on the Immigration Examinations Fee Account (IEFA): "USCIS collects fees to recover the full cost of providing immigration adjudications and naturalization services. This includes the cost of investigatory work necessary to adjudicate applications and petitions, including work performed after an adjudication decision has been rendered by USCIS."

The City of Seattle continues to strongly oppose the proposed rule to modify the Form I-912, Request for Fee Waiver.

The City of Seattle opposes the proposed changes to the Form I-912 because it would cause additional significant obstacles for individuals applying, and otherwise eligible for, immigration benefits. The rule change will not improve efficiency or reduce costs for the U.S. government, and will likely cause significant additional costs and extended processing delays. Both the initial proposed form change and the USCIS response to the 1,198 comments filed to the Federal Register by community members and stakeholders failed to demonstrate the upside for the government.

More importantly, the rule change will directly harm vulnerable people, including low-income immigrants, which include those who are elderly and/or disabled. Nonprofit organizations charged with assisting low-income immigrants will be overwhelmed by the additional time burden imposed by the rule change and may struggle to stay afloat. This rule change would cause irrevocable damage to the City of Seattle's New Citizen Campaign and New Citizen Program, our community partners, and the vulnerable clients we serve.

Thank you for the opportunity to submit comments on the proposed rulemaking. Please do not hesitate to contact Christina Guros at christina.guros@seattle.gov for comments or clarifications regarding this response.

Sincerely,

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