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 MELISSA RODGERS IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

I, Melissa Rodgers, declare as follows:

1. I have personal 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 Director of Programs at Immigrant Legal Resource Center ("ILRC"), a 501(c)(3) non-profit organization headquartered in San Francisco, California. I am also the director of the New Americans Campaign, described in more detail below.

ILRC's Mission

3. ILRC's mission is to work with and educate immigrants, community organizations, and the legal sector to continue to build a democratic society that values diversity and the rights of all people. As a key part of that mission, ILRC serves as the lead agency for the New Americans Campaign ("NAC").

4. The NAC began in 2011, but naturalization has been core to ILRC's work for decades. Through the work of the NAC alone, ILRC has helped hundreds of thousands of lawful permanent residents ("LPR") with the naturalization process. ILRC also has extensive expertise in areas of immigration law such as petitions filed under VAWA (the Violence Against Women Act), U-Visas (for victims of crimes), T-Visas (for victims of human trafficking), and Temporary Protected Status. As a result, ILRC has extensive experience with fee waivers.

The New Americans Campaign

5. NAC is a national campaign aimed at increasing the number of "new Americans" by providing legal services and resources related to the naturalization process. NAC brings together a coalition of private philanthropic funders, leading national immigration law and advocacy organizations, and over 200 local naturalization services providers across more than 20 different regions to help prospective Americans apply for U.S. citizenship.

6. The NAC coalition, led by ILRC, includes naturalization services providers who receive NAC funding in Arizona, Arkansas, California, Colorado, the District of Columbia, Florida, Georgia, Illinois, Maryland, Michigan, Nevada, New York, North Carolina, Ohio, Pennsylvania, Texas, Virginia, and Washington. In addition, service providers in Alabama, Hawaii, Idaho, Massachusetts, Oklahoma, Oregon, Tennessee, Utah, and Wisconsin participate in the NAC as non-funded affiliates.

7. As the lead agency for NAC, ILRC receives all of the funding for the NAC in the first instance. Because the sole purpose of the NAC is to increase the number of "new Americans," all of ILRC's NAC funders require that ILRC, through the NAC, increase the total

number of naturalization applications generated by the NAC-funded organizations. This goal is embedded in ILRC's agreements with each funder. The ILRC updates its funders as to its progress toward this goal through regular reporting and in-person presentations.

8. Some of ILRC's funders have even more specific quantitative requirements, including specific numerical goals for the number of naturalization applications that NAC partners generate. Several funders require completion of fee waivers in addition to naturalization applications and at least two funders require that a quarter or more of the applications ILRC generates through the NAC are accompanied by fee waivers.

9. ILRC sub-grants NAC funding that it receives to seven of its NAC national partners (all non-profit organizations). The terms of the agreements between ILRC and five of the national partners have explicit quantitative requirements[1] (that is, a numerical requirement for naturalization applications that each national partner must fulfill) that enable ILRC to meet its own grant requirements.

10. Six of the ten national partners (including ILRC) sub-grant funding to local legal services organizations (called "local partners"). These grants, too, have explicit quantitative requirements that enable the national partners, and ILRC, to meet their own grant requirements. In this way, ILRC funds between 100 and 150 local partners in a given year.

11. Through its management of the NAC, ILRC has been directly responsible for (and accountable to its funders for) about 30,000 naturalization applications per year for each of the last few years.

12. If ILRC is unable to meet the quantitative requirements of its naturalization grants or fails to increase the number of naturalization applications each year, our grants are unlikely to be renewed.

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[1] One national partner only performs policy work, and another performs technology-related work. ILRC's agreements with these partners therefore do not include quantitative requirements for completed naturalization applications.

ILRC's Workshop Model

13. ILRC, through the NAC, offers naturalization services primarily through a naturalization workshop model. These naturalization workshops are the main generator, by far, of the completed naturalization applications for which ILRC is responsible. The exact percentage completed through workshops varies from year to year but is approximately 60 percent on average. In the NAC's 2018 fiscal year, 69 percent of individuals who received NAC-funded services attended a workshop rather than having individualized in-office services. In the NAC's 2019 fiscal year, that number was 65 percent.

14. Naturalization workshops are one-day events that serve LPRs who are eligible to apply for naturalization. Although every workshop provider tweaks the model to serve its particular community, in general the workshops serve as a one-stop-shop for completing a naturalization application that is ready to file with the United States Citizenship and Immigration Services ("USCIS"). Participants are asked to come with everything they need to complete their application, including documentation supporting their eligibility for a fee waiver.

15. ILRC has promoted as a best practice naturalization workshop models that include a step in the workshop process where applicants who qualify for a fee waiver can get help completing their fee waiver application either after or before they complete their naturalization application. This workshop-based fee waiver assistance is usually designed for simple fee waiver applications using straightforward evidence only—specifically, fee waiver applications that rely on evidence that the applicant receives a means-tested public benefit ("MTB").

16. Participants who need and qualify for a fee waiver but cannot use a MTB verification letter are generally not able to complete their application at a workshop, because the other methods for proving eligibility require working closely with an advocate to ensure the accuracy and completeness of the waiver form. This is especially important because there is no appeal from the denial of a fee waiver.

17. Depending on the locality and capacity of the local partner, a workshop may serve anywhere from small numbers up to 1,000 LPRs, with each eligible participant leaving the workshop with a completed application by the end of the day. The largest single-day number of completed applications, from a single workshop, is 464.

18. In some jurisdictions, the workshop model is so reliant on MTB verification letters that local partners have developed partnerships with the government agencies that administer MTBs to efficiently generate verification letters on-site during the workshop. In 2016, ILRC published a case study on this model, authored by a Stanford PhD.[2] That study found, among other things, that these partnerships "have yielded up to, and at times exceeded, tenfold increases in the number of LPRs receiving naturalization assistance in one sitting." In San Francisco, for example, the local human services agency collaborates with NAC partners and the San Francisco Office of Civic Engagement and Immigrant Affairs ("OCEIA"), by not only publicizing workshops to public benefits recipients through mailed announcements, but participating in the workshop itself by printing verification letters at a station at the workshop.

19. A huge percentage of workshop participants are eligible for and submit fee waiver applications. Since 2011, 40 percent of naturalization applications completed by NAC local partners using the NAC funding regranted through ILRC in both workshop and office contexts included a fee waiver application. And, the percentage has increased in recent years: the average since 2015 has risen to 44 percent

20. For some local partners, the percentage of naturalization applications that also include a fee waiver application is much higher. Since they joined the NAC, for example, 84 percent of the applications from several local partners in Arizona included a fee waiver. Local

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[2] Marion Coddou, *A Case Study in Innovative Partnerships: How Human Services Agencies Can Help Increase Access to U.S. Citizenship*, Immigrant Legal Resource Center (March 2016), *available at*: https://www.newamericanscampaign.org/about/best-practices-in-naturalization/#a-case-study-in-innovative-partnerships.

partners in San Francisco completed 78 percent of their applications with fee waivers. And 75 percent of applications generated by local partners in Akron included fee waivers.

21. The MTB verification letter is far and away the most common method for proving fee waiver eligibility. In my experience working with our national and local partners, fee waiver applications based on MTB verification letters are also granted the most often.

22. In fact, some of ILRC's local partners have adopted workshop models that *only* serve clients who submit fee waivers with a MTB verification letter.

23. In total, ILRC's local partners have completed over 65,000 fee waiver applications supported by NAC funding. Although ILRC does not collect this data from every local partner, I know that the vast majority of these fee waiver applications are submitted on the basis of a MTB verification letter. In a recent survey of NAC partners, which generated 149 responses, 80 percent of respondents reported to ILRC that their organization uses proof of MTB as the basis of eligibility for at least half of the fee waiver applications that they complete on behalf of naturalization applicants. 58 percent said this was the case for at least three quarters of the fee waiver applications they complete. 24 percent reported that *over 90 percent* of the fee waiver applications they complete for naturalization applicants are based on the receipt of MTB.

24. ILRC provides its local and national partners with funding, legal practice advisories, research, and best practices for the naturalization workshops. ILRC staff attorneys train local and national partner staff in the law, process, and best practices around naturalization applications, including fee waivers, and equip them to train their workshop staff and volunteers. ILRC drafts and distributes materials like "red flag checklists" and other documents to assist with screening workshop participants and smoothly move them through workshop stations. ILRC maintains a full-time staff member to survey NAC partner organizations every quarter concerning their workshop practices, and develops new practices based on successful models.

Harm to ILRC from Changes to the Fee Waiver Process

a. Decimation of the Workshop Model

25. If the MTB verification letter is eliminated as a basis for fee waiver eligibility, many of the naturalization workshops funded by ILRC with NAC funding will be smaller or less well attended, or eliminated in favor of individual office appointments, and therefore the number of naturalization applicants these workshops can serve will plummet. This is either because NAC partners will no longer be able to advertise fee waiver assistance at their workshops, leading to lower attendance, or because they will have to severely curtail the number of fee waiver-eligible applicants they can help at a workshop due to the new rule. This impact will be felt as soon as the new rule goes into effect.

26. ILRC made its objections to the rule change clear, and it explained how it would be severely harmed, in comments submitted during the Paperwork Reduction Act process. *See* **Ex. A** (Nov. 27, 2018 comment "Re: Docket ID USCIS-2010-0008"); **Ex. B** (May 6, 2019 comment "Re: Agency USCIS, OMB Control Number 1615-0116"); **Ex. C** (June 26, 2019 comment "Re: Agency USCIS, OMB Control Number 1615-0116") (collectively, "ILRC's Comments").

27. As discussed above, the workshop model relies predominantly on low-income immigrants being able to prove their eligibility for a fee waiver by demonstrating that they receive a MTB. For the reasons laid out in the Amended Complaint, and explained in detail in ILRC's Comments, proving an applicant's income is typically too difficult, documentation-intensive, and time-consuming to do in the workshop setting. There are several reasons for this, including the detailed income and expense documentation required by the new form, which cannot be effectively analyzed, compiled, and packaged in a single, short setting. In addition, the new requirement that applicants submit a tax transcript adds a significant layer of administrative burden that workshops cannot accommodate—and that is aside from the fact that many of the

clients served by ILRC's grantees and partners may not have the requisite financial instruments, such as a mortgage or home equity loan account number, or other information required to request a transcript online. Altogether, our partners estimate that the new process will require a detailed individualized assessment of income and assets for each applicant, and review of documentation, which could take ten times more work and time from advocates assisting clients with fee waiver applications—something that the workshop setting simply does not allow for. In responding to ILRC's Comments, among others, USCIS has grossly underestimated the time burden involved in applying for a fee waiver under the new rule.

28. It will be very difficult—and in some cases impossible—for workshops with high percentages of applicants that require and complete fee waivers to continue, once the MTB basis for a fee waiver is eliminated.

b. Immediate Diversion of Resources

29. ILRC will also suffer immediate harm if the proposed change goes into effect, as it will have to divert significant resources to address and counter the effects of the change. As the leader of the NAC, ILRC will be forced to devote extensive staff time and resources to quickly creating new educational and training materials; editing and re-publishing existing materials, including books and law manuals; re-training hundreds of lawyers and United States Department of Justice-Accredited Representatives across the country; and, most notably, attempting to design a new service model to accommodate more complex fee waiver applications and longer application preparation times. Conservatively, ILRC estimates an additional expenditure of 50 hours of staff time and $10,000 to address the rule change..

30. Further, to educate LPRs on the rule change and its impact on their application process, ILRC has and will create additional community alerts and pay for those alerts to be translated into several languages.

31. In its role as a national leader in analyzing and disseminating legal analysis affecting immigration practitioners, ILRC has and will issue practice alerts on the changed

requirements, including guidance for helping clients through the newly complex and burdensome process. It also actively participates in other new, fee-waiver focused listservs, in an effort to provide analysis and best practices related to the new changes.

32. As soon as the change is implemented, ILRC will have to produce and disseminate an updated webinar covering the changes and their impact on the naturalization process.

33. ILRC will have to revise and republish numerous major publications that include chapters or sections on fee waivers, including its Naturalization Manual (a 1,000-page volume used by practitioners nationwide); other manuals on U-Visas, T-Visas, and the Violence Against Women Act (all applications also affected by changes to the fee waiver); and the Annotated Guide to Completing Fee Waivers.

34. Perhaps most notably, significant staff time and resources will have to immediately be spent on addressing the devastating effect of the fee waiver changes on the workshop model upon which ILRC and its local and national partners rely.

35. As the leader of NAC, local and national organizations have and will continue to look to ILRC to guide them in addressing these changes. Thus, ILRC will have to update and redistribute numerous educational and analytical documents related to the workshop model, including best practice trainings and materials.

36. But more than that, ILRC will have to engage with the NAC national and local organizations to completely re-design the workshop model to accommodate the new fee waiver process. This will be exceedingly difficult because, in addition to all the logistical barriers discussed above, the workshop may no longer be a viable model for many local partners, particularly in areas where a high percentage of clients require a fee waiver.

37. The new workshop model will almost certainly require more time per person and it is unlikely that naturalization applications with fee waivers will be completed in a single day session. It would require very different communication to applicants about what to bring to workshops.

38. Moreover, a new workshop model may require that staff rather than volunteers handle fee waiver completion. Alternatively it may require extensive training of more highly skilled volunteers, which itself requires more staff time (volunteers require ongoing training due to turnover).

39. This will mean that ILRC's Senior Manager for Innovation & Learning for the New Americans Campaign, a full-time staff member, will spend a very significant percentage of her time for the foreseeable future working with partner agencies to design a service model that still reaches low-income LPRs and generates the requisite number of completed applications. This will entail conference calls, regional meetings, and conference sessions; extensive research and testing; development of brand-new toolkits and workshop materials; and new trainings and webinars to teach partner organizations what to do to serve their clients. This work will be urgent: local partners, some very small, depend on funding that is tied to meeting application quotas. National partners have contractual obligations to ILRC to meet application quotas. And the ILRC has contractual obligations to meet certain quotas.

40. This work is the direct result of the change to the fee waiver process. None of it would be necessary if USCIS did not propose and seek to implement this change. And, it is an extreme burden on the time, resources, and capacity of ILRC, all of which would be devoted to fulfilling ILRC's mission through new programming, teaching, or research.

41. We will begin to incur these costs as soon as the new form goes into effect. If the rule were later enjoined, ILRC would not recoup the expenditure of these resources.

c. Loss of Funding

42. Eliminating access to the workshop model for fee-waiver eligible naturalization applicants will drastically reduce, by thousands, the number of immigrants that ILRC will be able to serve through its grants to naturalization service providers. This is our estimate of the minimum impact and we believe the numerical impact will be much higher. Currently, 60 percent of NAC naturalization applications are from naturalization applicants served through workshops.

43. This will jeopardize ILRC's existing funding streams. All of ILRC's naturalization program funding for the NAC is contingent on ILRC demonstrating increases in the total number of naturalization applications generated through the NAC program. The goal of increasing naturalization applications is embedded in ILRC's grant agreements with each funder. The ILRC regularly updates its funders as to its progress toward this goal.

44. In addition, some of the ILRC's funders have even more specific quantitative requirements, including specific numerical goals for number of naturalization applications filed. At least two funders require that a certain percentage of the applications ILRC files through the NAC are filed with fee waivers; and several others require that we complete fee waivers for those applicants who qualify. These requirements cannot be met without the use of naturalization workshops and the MTB fee waiver process.

45. Further, philanthropic funders will see less impact from their grants as naturalization applications go down for low-income immigrants who cannot afford the application fee without a fee waiver. Consequently, ILRC anticipates that funders will divert their grant portfolios away from naturalization workshops to other philanthropic endeavors. Due to the new policy and form, it is anticipated that the trajectory of NAC application numbers will decline rather increase as it has since 2011. If NAC funding is completely lost, ILRC will lose well over $500,000 and would have to lay off staff.

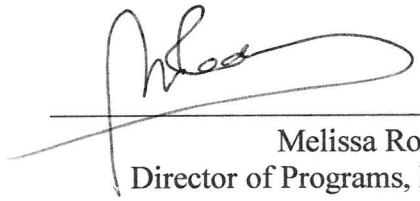
d. Changes to the Fee Waiver Process Will Frustrate ILRC's Mission

46. The changes to the fee waiver process have the potential to deeply undermine ILRC's ability to provide naturalization assistance via its tested and effective naturalization workshop model, harming our mission of working with and educating immigrants, community organizations, and the legal sector to continue to build a democratic society. Adjusting to the changes will require diversion of resources to adapt our service delivery model and may very well endanger the NAC. We will have to invest additional resources to continue delivering citizenship

assistance even as we expect that we will face a drop in the number of naturalization applications completed as a result of the more onerous fee waiver application process.

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.



Melissa Rodgers
Director of Programs, ILRC

EXHIBIT A

Submitted via www.regulations.gov

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

November 27, 2018

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

Dear Chief Deshommes:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Restricting Acceptable Proof of Income Is Arbitrary and Capricious

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

V. Conclusion

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

Sincerely,

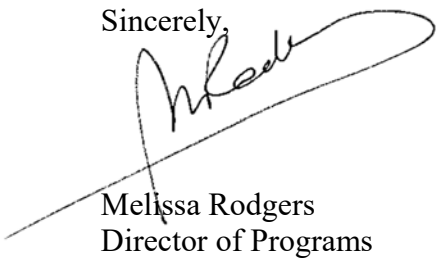

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EXHIBIT B

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May 6, 2019

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

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

Dear Desk Officer:

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

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

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

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

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

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

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

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

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

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

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

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

Current Revisions

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

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

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

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

The PRA Process is Inappropriate for Substantive Guidance Changes.

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

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

Additional Burdens Created by the Revision

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The changes would harm the most vulnerable populations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

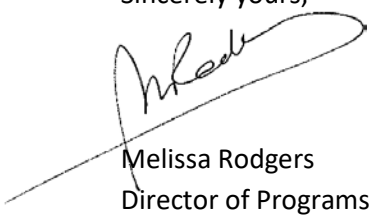
Conclusion

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

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

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

Sincerely yours,



Melissa Rodgers
Director of Programs
Immigrant Legal Resource Center

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

EXHIBIT C

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June 26, 2019

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

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

Dear Desk Officer:

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

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

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

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

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

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

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

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

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

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

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

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

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

Immigrant communities and their legal representatives report that the development of the I-912 form was an improvement on the pre-2010 system for fee waivers, which had lacked any uniform guidance or a form on which to apply. Nonetheless, stakeholders find that fee waiver applications still require substantial resources to prepare, particularly when applying based on one of the other two criteria, income or financial hardship.

Stakeholders also find that USCIS fee waiver adjudications based on income or financial hardship can be erratic. This is because USCIS lacks expertise in determining income, leading to erroneous denials, and the financial hardship basis is so vague as to permit unbridled subjectivity, leading to arbitrary adjudications and inappropriate denials. Further, the amount and type of documentation required to establish eligibility on these two grounds can vary widely. Applicants report that these types of fee waivers are often repeatedly rejected or denied, with little clarity as to the deficiency.

The means-tested benefit basis is not perfect either, largely because social services programs provide different types of documentation with varying levels of information, e.g. benefit eligibility dates, and applicants may therefore need to supplement information from the benefit-granting agency, but the standard at least is clear on these types of fee waivers. This reliable standard was why USCIS adopted receipt of means-tested benefits as the first of the three criteria for analyzing fee waiver eligibility. There is little subjective interpretation on which benefits are means-tested, thus applicants find that this is the most straightforward basis to apply for a fee waiver and also the most straightforward basis for adjudicators to analyze fee waiver eligibility, which is why USCIS guidance directs adjudicators to look to this basis first. Assuming the applicant is able to provide sufficient proof of receipt of a means-tested benefit, this ends the inquiry for fee waiver adjudicators, as they are able to rely on another government agency's assessment of the applicant's financial resources.

Current Revisions

On September 28, 2018, USCIS published a Notice of Agency Collection Activities; Revision of a Currently Approved Collection: Request for a Fee Waiver; Exemptions in the Federal Register as a notice under the

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

On April 5, 2019, the notice was re-published, allowing for a 30-day public comment period. The notice stated that USCIS had decided to proceed with the change and corresponding form revision to eliminate receipt of means-tested benefits as an eligibility ground for the fee waiver. This notice reiterated USCIS' view, without evidence to support it, that fee waivers should not be based on means-tested benefits because of inconsistent adjudication. The agency provided no evidence that individuals with the ability to pay fees are routinely granted fee waivers.

On June 5, 2019, the current notice was published without substantive change, but with additions to USCIS' rationale offered as justification for the changes. The June notice provides a 30-day period for public comment. USCIS now states that in addition to making the change for "consistency," the agency is also making the change to reduce the availability of fee waivers because it wants to raise fee revenue. These rationales are contradictory and insufficiently supported by evidence. Moreover, the criteria for fee waivers is based on individual ability to pay and should not be based on the revenue goals of a federal agency.

The current notice gives a summary account of how the current fee waiver standards were developed and mischaracterizes the agency's practice on fee waivers prior to 2011 as engaging in holistic analysis. In fact, before the form and standards were adopted in 2011, the confusing fee waiver system was governed by ten contradictory agency memos and no standardized fee waiver form, a process that was widely acknowledged as rife with inconsistencies, lacking in standard procedures and clear guidance, that stymied applicants and burdened adjudicators.[3]

The Paperwork Reduction Act Process is inappropriate for substantive guidance changes and USCIS has failed to follow the prescribed process for comments and posting.

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

[3] *See* Message from USCIS Director, Proposed Fee Waiver Form (July 16, 2010), https://www.uscis.gov/archive/archive-outreach/message-uscis-director-alejandro-mayorkas-proposed-fee-waiver-form and USCIS, First Ever Fee Waiver Form Makes Its Debut (Nov. 23, 2010), https://www.uscis.gov/archive/blog/2010/11/first-ever-fee-waiver-form-makes-its.

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

In addition, USCIS has failed to comply with the required public comment process for the proposed fee waiver change and has not meaningfully engaged the individuals impacted by this change. While the notices have requested comments, the agency has failed to respond and post its responses as required.

None of the USCIS responses to public comments are properly posted on RegInfo.gov—neither to the initial 60-day public comment period nor the first 30-day public comment period. Meanwhile, although the 60-day response remains posted on Regulations.gov, there is no response to the first 30-day period.

USCIS' justification that eliminating fee waiver eligibility based on receipt of a means-tested benefit will increase consistency is false: the change will *decrease* consistency in adjudications, not increase it.

The revision eliminates receipt of means-tested benefits as a way for someone to demonstrate inability to pay the prescribed fee, even though receipt of a means-tested benefit is sufficient evidence of inability to pay, as 8 C.F.R. § 103.7(c) requires. USCIS fails to provide any evidence that accepting proof of receipt of a means-tested benefit has led the agency to grant fee waivers to individuals who were in fact able to pay the fee. USCIS fails to provide any convincing data that might call into question whether such proof is an accurate indicator of inability to pay under the regulatory standard.

Granting fee waivers to individuals with varying financial resources is appropriate because the legal standard is not whether individuals have identical income levels; it is whether individuals applying for an immigration benefit or naturalization can afford to pay the filing fee. Individuals with different incomes and assets, whose resources are all low enough to warrant their receipt of means-tested benefits—meet the requisite standard for a fee waiver. USCIS argues, in making these proposed revisions, that the various income levels used by states to grant a means-tested benefit result in inconsistent income levels being used to determine eligibility for a fee waiver. Consequently, a fee waiver may be granted for one person who has a certain level of income in one state but denied for a person with that same income who lives in another state.

This is a spurious argument for many reasons. The standard for a fee waiver is "ability to pay," which is not a standard that requires all fee waiver recipients to have identical incomes. Indeed, one would expect individuals living in high-cost areas of the United States to have less disposable income and therefore a *lower* ability to pay an immigration fee than individuals with identical incomes living in low-cost areas of the United States. The approach USCIS takes here, which is to require identical income levels regardless of factors such as cost of living, is arbitrary and cannot possibly be a fair measure of "ability to pay."

By contrast, states administering public benefit programs have a proven track record of identifying individuals who have insufficient income to cover the full cost of essential needs such as health care, food, or shelter. Although income eligibility rules for public benefit programs may vary slightly between states, the variation is insufficient to justify the position USCIS is taking. Indeed, USCIS has provided no

data to back up its claims. Programs such as Medicaid and SNAP operate under strict rules that have created a consistent system that every state in the nation has found sufficient to adjudicate eligibility for these major programs. Individuals who qualify for public benefits have, by definition, a lack of disposable income. They are clearly individuals who are appropriately eligible for immigration fee waivers. Moreover, they have been fully vetted by government agencies whose business it is to determine income-based program eligibility. For USCIS to take the position that receipt of a public benefit is not a fair proxy of inability to pay, with no evidence to back up its claim, is arbitrary and capricious.

Individuals who have already passed a thorough income eligibility screening by government agencies should not have to prove their eligibility all over again to USCIS. By eliminating receipt of a means-tested benefit to show eligibility, the government is adding an additional burden on immigrants who already are facing the economic challenge of paying application fees that have risen exponentially in recent years. USCIS is taking the indefensible position that it cannot tell which public benefit programs are means-tested and which ones are not. Given that the largest means-tested programs are federal program such as Medicaid or SNAP, this assertion is plainly a pretense for an action that has no real basis in fact. Indeed, the very reason USCIS provided for why it created a fee waiver form that included receipt of a means-tested benefit as a way to establish inability to pay was "because it represents another agency's independent assessment of [the individual's] economic circumstances."[4]

Finally, USCIS cites the fee waiver approval rate for fiscal year 2017 as a basis for "inconsistencies" necessitating elimination of means-tested benefits to prove fee waiver eligibility,[5] rather than providing any evidence of actual inconsistencies in adjudicating fee waivers. This shows that USCIS' true aim with this proposed revision is to reduce the number of approved fee waivers, rather than reduce "inconsistencies," because the percentage approved has nothing to do with consistency or inconsistency in adjudication.

USCIS' revised rationale for the proposed change—to reduce the amount of fee waivers and raise revenue—is contradictory to the first rationale and antithetical to the purpose of fee waivers.

Not only is receipt of means-tested benefits adequate proof of inability to pay in accordance with the regulations, but it is also by far the most common and straightforward way to demonstrate fee waiver eligibility, as applicants can show they have already been screened for income-based eligibility by simply providing a copy of the official eligibility determination letter, or Notice of Action, from the government agency administering the means-tested benefit to confirm this.

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

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

By only allowing fee waiver requests to based on income or financial hardship, USCIS will effectively deny the ability of large numbers of applicants to qualify. USCIS is aware of this, and the latest notice now admits this is a motivation for the change. Although USCIS continues to maintain the agency is also trying to make the process more consistent and efficient, with the current notice USCIS' primary motivation is clear: the latest notice adds a discussion of "lost revenue" from granting fee waivers, which it wants to curtail, to its reasons for the change. This change has nothing to do with consistency, and everything to do with denying access to immigration benefits and naturalization for vulnerable populations.

The modified USCIS rationale for elimination of a means-tested benefit in the current notice is that fee waivers are excessive and must be reduced. USCIS' claim that the proposed changes will improve fee waivers—by eliminating the main basis on which most people qualify for a fee waiver—is clearly only an improvement in terms of USCIS revenue, without regard for access to immigration benefits and naturalization for deserving individuals who should be able to apply even if they cannot afford to pay. It is not meant to be an improvement for either applicants or adjudicators as previously claimed.

In the latest notice, USCIS cites to the FY 2016-2017 proposed fee schedule rule as authority. While the authority of a proposed rule is doubtful at best, we note that the overall theme of the cited fee rule was to increase access to citizenship for all income levels, not diminish it, and thus the reference provided in this notice has been taken out of context, for an entirely different purpose.

The USCIS FY 2016 Fee Rule added a new provision to increase access to U.S. citizenship for eligible applicants, creating a reduced fee (sometimes referred to as a "partial fee waiver") for certain naturalization applicants if they had income over 150% and up to 200% of the federal poverty guidelines. The 2016 Fee Rule preserved the existing full waiver for persons receiving a means-tested benefit, with income at or below 150% of the poverty guidelines, or who had financial hardship. The proposed Fee Rule emphasized the importance of access to naturalization for low-income people. USCIS stated that its goal was to increase access to as many eligible naturalization applicants as possible because of the importance of citizenship and the significant public benefit to the Nation, and the Nation's proud tradition of welcoming new citizens, a rationale stated in the 2010 Fee Rule and reiterated in the 2016-2017 rule.

While the proposed Fee Rule that USCIS cites here does refer to overall agency revenues being lost due to fee waivers and exemptions, it refers to them collectively. When exemptions are included together with fee waivers in any statistic, the number reported is meaningless to determine the impact of fee waivers. Exemptions are not subject to the I-912 and current fee waiver standards. By regulation, limited types of humanitarian applications are fee exempt. The estimated lost fee revenues, even if accurate in the aggregate, are thoroughly misleading because they do not parse the specific impact of fee waivers. Additionally, as USCIS continues to increase application fees, its calculations of "forgone revenue" from granting fee waivers will consequently increase as well, without having any connection to whether fee waivers are being improperly granted.

Most importantly, the fee waiver exists to ensure that all eligible applicants have access to immigration benefits and naturalization, even if they are unable to pay the application fee. It is improper and illogical to eliminate fee waivers to justify agency revenue from individuals who are unable to afford the fees.

The revision will place an excessive time and resource burden on individuals applying for fee waivers and on USCIS adjudicators.

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

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

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

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

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

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

Currently, non-profit immigration legal service providers, including those in remote areas of the United States, organize large-scale one-day workshops as the most efficient model to help eligible applicants apply for immigration benefits and naturalization. Workshops benefit both applicants and USCIS because increasing access to qualified immigration attorneys or accredited representatives reduces errors and minimizes the fraudulent provision of immigration services. With the proposed changes to the fee waiver form, it will become harder or even impossible for non-profit legal service providers to complete applications in the workshop setting. Organizations may stop providing assistance with fee

waivers in the workshop setting. This would cut off access to legal support and immigration relief for vulnerable populations, particularly for those in remote or other hard-to-reach areas with limited access to reputable immigration assistance.

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

With respect to our leadership of the New Americans Campaign, the proposed change undermines the service model that is at the heart of our work and the best practices in delivering naturalization legal services to large numbers of LPRs who need the help—models we have gathered and shared with local organizations throughout the United States. The philanthropic funding we receive is predicated on our ability to engage in high impact work. Our national impact is closely tied to our use of workshop models where we can assist large numbers of applicants with their naturalization applications and with fee waivers based on the receipt of means-tested benefits. Fee waivers based on income or financial hardship are resource intensive to complete, thereby inhibiting our ability to meet objectives. Therefore, in addition to the harm the form changes will create for immigrants and the organizations that serve them, the changes will also result in financial harm to the ILRC.

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

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

Increasing the burden of applying for a fee waiver will further limit access to naturalization for otherwise eligible lawful permanent residents. The naturalization fee has increased by 600% over the last 20 years, pricing many qualified green card holders out of U.S. citizenship. USCIS asserts, without any evidence to support its claim, that individuals can merely "save funds" and apply later if they do not have the funds to apply today.[6] This both fails to consider the harm to individuals resulting from the delay in applying and unjustifiably assumes individuals applying for fee waivers have disposable income that could be set aside.

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

The changes would especially harm the most vulnerable populations. More than 94% of domestic violence survivors also experienced economic abuse, which may include losing a job or being prevented from working. Fee waivers are critical to ensuring survivors can access relief. As USCIS has indicated, greater "consistency" in fee waiver adjudication seems to correlate with lower rates of approval,[7] and this will harm survivors of domestic violence, sexual assault, human trafficking, and other crimes who are least able to afford immigration filing fees while being most in need of protection by our immigration laws.

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

Required use of Form I-912 is a regulatory violation and places an unacceptable time and resource burden on individuals.

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

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

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

In addition to mandating use of the Form I-912, under the proposed changes the applicant must also procure additional new documents including a federal tax transcript from the Internal Revenue Service (IRS) to demonstrate household income less than or equal to 150% of the federal poverty guidelines. This, too, will limit availability of fee waivers for many applicants. Currently, applicants can submit a copy of their most recent federal tax returns to meet this requirement. The government does not provide any reason why a transcript of a federal tax return is preferred over a photocopy of a federal tax return. Federal tax returns are uniform documents and most individuals keep copies on hand. In contrast, no one has a tax transcript unless they take the additional step of requesting one, in this instance solely to request a fee waiver. Requiring tax transcripts rather than accepting copies of tax

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

returns and pay statements makes the entire process of proving eligibility for a fee waiver based on income more onerous. There are multiple types of tax transcripts,[8] and many pieces of information necessary to request transcripts,[9] which may confuse and even prevent individuals from obtaining tax transcripts. For instance, to request a tax transcript online, an individual must not only provide their Social Security Number, date of birth, filing status, and mailing address from their latest tax return, but they must also have access to an email account, their personal account number from a credit card, mortgage, home equity loan, home equity line of credit or car loan, and a mobile phone with their name on the account.[10] While a request for tax transcript by mail requires less information, obtaining transcripts by mail takes a minimum of five to ten calendar days, delaying what should be a straightforward and easy process. Moreover, for applicants who succeed in obtaining a tax transcript, USCIS reserves discretion, with no criteria or limitations, to reject the transcript and request a certified transcript, causing further delays in the adjudication of the underlying immigration petition or naturalization application. The proposed requirement will place an additional burden on individuals for more documents and does not account for those individuals who might need assistance obtaining a transcript due to lack of access to a computer or for delays involving delivery of mail.[11]

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

Finally, narrowing the range of ways an applicant can prove inability to pay, from three options to two—income at or below 150% of the federal poverty guidelines or financial hardship—will also increase the burden on applicants in terms of information they must provide on the Form I-912 and required evidence in support because the remaining two options involve far more information and evidence than a fee waiver based on receipt of means-tested benefits.

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

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

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

educational stipends, royalties, pensions, unemployment benefits, Social Security benefits, and veteran's benefits.

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

Both these alternative methods for proving inability to pay in support of a fee waiver request are far more arduous than submitting proof an applicant receives means-tested benefits. Further, to the extent that USCIS maintains this will not take more time or effort because applicants will be "merely providing [the] same documentation to USCIS"[12] that they provided to the benefit-granting agency, this is inaccurate for a number of reasons. One, USCIS will want to see recent evidence, rather than older copies of utility bills, medical bills, credit card bills, receipts for money spent on food and rent, commuting costs, etc. Therefore, the applicant will have to go through the same time-intensive process yet again of collecting all the varied proofs of income or expenses and liabilities that they have already collected to prove their eligibility for a means-tested benefit. Two, different evidence is required for means-tested benefits than USCIS will be requesting. For instance, many means-tested benefits require applicants to provide pay stubs and bank statements. USCIS will only accept pay stubs *in addition to a tax transcript*, for those who have experienced a salary or employment change since they filed their income taxes. Other means-tested benefits require copies of federal income tax returns, which USCIS will also no longer accept.

USCIS appears dismissive of claims that the fee waiver revisions will increase the burden on applicants and chooses to prefer, without substantiation, its own view that the burden of this change will be minimal or non-existent.[13] In assessing claims of increased burden and whether such burden is justified, USCS has failed to engage in a reasoned analysis and meaningfully address comments and concerns about increased burden on applicants, as required as part of this process.

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

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

Reliance on the Federal Poverty Guidelines alone is an irrational measure of ability to pay; receipt of a means-tested benefit reflects differences in cost of living for different states.

In disallowing the receipt of means-tested benefits as a way to establish eligibility for a fee waiver, most applicants will be able to establish their eligibility for a waiver only by proving that their income is at or below 150 percent of the Federal Poverty Guidelines. The Federal Poverty Guidelines provide an inaccurate and too narrow basis for determining "inability to pay" as required by the regulations.

The Federal Poverty Guidelines are uniform for the 48 contiguous states, and do not take the cost of living of any state or locality into account, despite drastic differences in the cost of living across the country. The Bureau of Economic Analysis measures differences in cost of living through its regional price indexes, which compare buying power across all 50 states and the District of Columbia.[14] That data shows that, according to the most recent available data, the price of goods and services was 38% higher in Hawaii, the highest-priced state, than it was in Mississippi, the lowest-priced state. Looking at specific municipalities, both San Francisco and New York had price levels more than 20% above the national average.

The Massachusetts Institute of Technology has developed a Living Wage Calculator to determine the minimum that families need to spend on food, child care, health insurance, housing, transportation, and other basic necessities across a range of different family structures and localities.[15] This, too, reveals significant disparities in cost of living. Whereas the required annual income (before taxes) for a family of two adults and two children with one working adult is $50,433 in Mississippi, it is $60,105 in New York State.

These wide discrepancies in the cost of living mean that the Federal Poverty Guidelines do not reflect the reality on the ground for many U.S. residents. For instance, according to data from the U.S. Department of Housing and Urban Development (HUD), the median income for a family of four in the Seattle metropolitan area in 2019 is $108,600.[16] In determining who is low income in a given metropolitan area, HUD recognizes and adjusts for local conditions.

Similarly, the Census Bureau calculates a Supplemental Poverty Measure (SPM) that takes into account the cost of living in different states. A comparison between the Poverty Guidelines and the SPM reveals how the high cost of living in certain states and localities makes the Poverty Guidelines an inadequate measure of a family's financial status.[17] In 2017, the most recent year for which data is available, the District of Columbia and 16 high-cost states had higher poverty rates under the SPM than they did under the Federal Poverty Guidelines: California, Colorado, Connecticut, Delaware, Florida, Hawaii, Illinois, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Oregon, Texas, and Virginia. Eighteen lower-cost states actually had *lower* poverty rates under the SPM: Alabama, Arkansas, Idaho,

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[14] Bureau of Economic Analysis, *Real Personal Income for States and Metropolitan Areas, 2017* (May 16, 2019), https://www.bea.gov/news/2019/real-personal-income-states-and-metropolitan-areas-2017.
[15] Massachusetts Institute of Technology, *Living Wage Calculator*, http://livingwage.mit.edu/.
[16] U.S. Dep't of Housing and Urban Development, Office of Policy Development and Research (PD&R), *Income Limits, 2019*, https://www.huduser.gov/portal/datasets/il.html.
[17] U.S. Census Bureau, *The Supplemental Poverty Measure: 2017* (Sept. 12, 2018), https://www.census.gov/library/publications/2018/demo/p60-265.html.

Kansas, Kentucky, Louisiana, Maine, Michigan, Mississippi, Montana, New Mexico, Ohio, Oklahoma, Rhode Island, South Carolina, South Dakota, West Virginia, and Wisconsin.

The federal government has recognized that these discrepancies limit the usefulness of the Poverty Guidelines in certain states and localities and has allowed states and federal agencies to use different measures of an applicant's "inability to pay" in administering federally-funded means-tested benefit programs. For these reasons, the Federal Poverty Guidelines, taken alone, are an inadequate measure of an individual's ability to pay the naturalization fee. Preventing USCIS adjudicators from considering receipt of means-tested benefits, and requiring them to look only at the Federal Poverty Guidelines and evidence of financial hardship, blinds the agency to significant differences in cost of living that the federal government considers and accommodates in countless other settings.

Conclusion

The proposed fee waiver change will harm the most vulnerable immigrants and naturalization applicants, with no reasonable justification. The three-time re-publication has not changed the proposal in any substantive way, but has now added the contradictory rationale that the elimination of the means-tested benefit eligibility is not only to improve "consistency" of adjudications, but is also supposed to raise fees for USCIS by reducing the number of people who are eligible for fee waivers. No rational basis exists for such contradictory goals, nor is either goal supported by the research presented.

USCIS has failed to meaningfully engage the individuals impacted in proposing these revisions, including disabled and vulnerable populations who are eligible for immigration benefits. USCIS has violated its own regulations in failing to follow the requirements for analysis and posting of comments and in requiring a form that is not dictated by their regulations.

The change will create new barriers to applying for immigration relief, making the regulatory provision for fee waivers a distant promise, inaccessible to most applicants including many for whom the fee waiver process was intended—deserving individuals with a substantiated inability to pay. The proposed changes will make it significantly harder for non-profit legal service providers to help eligible applicants secure the fee waivers to which they are entitled. Finally, the proposed changes will further burden USCIS adjudicators at a time when the agency is already plagued by crisis-level adjudication backlogs across all types of cases.[18]

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

[18] Bipartisan Letter from Senators to USCIS Seeks Answers on USCIS Backlog, AILA Doc. No. 19052842, May 30, 2019, available at https://www.aila.org/advo-media/whats-happening-in-congress/congressional-updates/bipartisan-letter-senators-uscis-backlog and AILA Policy Brief: USCIS Processing Delays Have Reached Crisis Levels Under the Trump Administration. AILA Doc. No. 19012834, January 30, 2019, available at https://www.aila.org/infonet/aila-policy-brief-uscis-processing-delays (accessed June 20, 2019).

guidance, were specifically created to simplify the fee waiver adjudication process. The eligibility for receipt of a means-tested benefit was the linchpin of that simplified process.

We urge USCIS, rather than implement the revision, to retain the current I-912 form and means-tested benefit eligibility, to continue accepting applicant-generated requests, and to perform extensive public outreach and research to gather information on the actual burden these changes would pose for applicants and USCIS adjudicators, and then engage in full notice and comment procedures on all substantive changes proposed in order to ensure the fair and efficient adjudication of immigration benefits and naturalization.

Sincerely yours,

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