1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 MIRIAM NÚÑEZ
IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

I, Miriam Núñez, hereby 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 Managing Attorney of the Citizenship & Family-Based Unit at the Central American Resource Center of California ("CARECEN"), a 501(c)(3) non-profit organization headquartered in Los Angeles, California.

CARECEN's Mission

3. CARECEN is a civil rights, social services, and community empowerment organization. It is the largest Central American immigrant rights organization in the country. Its mission is to empower Central Americans and all immigrants by defending human and civil rights, working for social and economic justice, and promoting cultural diversity.

4. CARECEN is headquartered in Los Angeles, California, with offices in Van Nuys and San Bernardino, California. CARECEN also provides services through regularly scheduled appearances at over 20 offsite locations throughout Southern California, including Los Angeles, Orange, San Bernardino, and Ventura counties. This includes the provision of immigration legal services at various California State University and community college campuses throughout Southern California. In Los Angeles County alone, there are hundreds of thousands of permanent residents who are eligible to become citizens but have not yet done so. As part of its mission of community empowerment, CARECEN offers free legal assistance to eligible immigrants in order to help them apply for citizenship and become civically engaged citizens.

Naturalization Funding

5. CARECEN receives financial support for its naturalization program through several grants from governments and other non-profits. One critical stream of funding is from the state of California. Through its Department of Social Services ("CDSS") Immigration Services Funding program, California pays CARECEN a fixed amount per completed naturalization application. It is an annual contract with quarterly reporting and periodic payments. In order to keep receiving this funding and maintain current services and staff levels, CARECEN needs to

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

complete the required deliverables per the contract. CARECEN has to complete a minimum number of N-400 filings.

6. CARECEN also receives grant funding from the New Americans Campaign ("NAC"). The terms of this grant *do* require CARECEN to host a minimum number of workshops per reporting period in addition to submitting a certain number of applications per grant period. The changes to the fee waiver process will result in fewer workshops and fewer applications submitted per workshop. As a result, we would struggle to meet the terms of this particular grant and may lose the funding.

CARECEN's Workshop Model

7. Although our primary funding does not require that we have workshops, in practice, for us to meet our high deliverable numbers for naturalization applications, we depend on hosting legal workshops in order to process many more applicants with straightforward cases in one day.

8. CARECEN offers naturalization services in two formats: large naturalization workshops and individual one-on-one appointments.

9. CARECEN typically holds one to two naturalization workshops per quarter.

10. Recently, each workshop has attracted 20 to 30 people. During busy periods, such as election years, we see as many as 40 to 50 people per workshop.

11. Each year, CARECEN helps around 1,000 eligible permanent residents submit naturalization applications. For example, in 2016 CARECEN assisted 1,236 permanent residents in filing their naturalization applications. In 2017, we completed 1,142 naturalization applications. In 2018, we assisted 873 permanent residents in filing for naturalization.

12. CARECEN's workshops are staffed by a combination of staff attorneys, United States Department of Justice ("DOJ")-Accredited Representatives, legal assistants, and volunteers.

a. Naturalization Applications with Means-Tested Benefits Fee Waivers

13. Approximately 60 to 70 percent of the naturalization applications prepared by CARECEN are submitted with an application for a fee waiver. Of those, the majority use the applicant's receipt of a means-tested benefit ("MTB") to prove eligibility.

14. MediCal, California's Medicaid program, is the most common benefit used to establish our clients' fee waiver eligibility.

15. Workshop participants are pre-screened for eligibility before the workshop and are instructed to bring their permanent resident card (also known as a green card) and other required documentation to the workshop. If they need to apply for a fee waiver, we ask them to bring a copy of their MTB verification letter. We encourage applicants to bring a MTB verification letter if they receive a public benefit because it is the simplest way to determine waiver eligibility and to apply for a fee waiver.

16. At the workshop itself, participants move through a series of stations. First, an attorney or accredited representative reviews their eligibility for naturalization and whether there are any "red flags" that require further attention.

17. If the application is straightforward, with no complex legal issues, a staff member or volunteer helps them to fill out the application and fee waiver forms, which are then reviewed by an attorney or DOJ-Accredited Representative for quality control. After a final meeting with

the attorney or representative to go over naturalization timeline and process, the application is complete and ready for submission on the same day.

b. Naturalization Applications with Complex Fee Waivers

18. If individuals do not receive a MTB but *do* have income below 150 percent of the poverty line, we will sometimes assist them with preparing a fee waiver application. However, that is much more burdensome for our staff than MTB-based applications—it can require two or three appointments with our office, rather than a one-day visit to a naturalization workshop.

19. Offering naturalization services in a one-on-one setting is very time-consuming for our staff. We try to reserve these appointments for individuals with more complex needs, including fee waivers based on income or financial hardship.

20. When an application is more complicated, for instance if the applicant has a criminal history or has a complicated fee waiver application, the client is referred to our individual one-on-one services. For example, recently unemployed applicants who are not receiving MTBs often lack documentation to prove their lack of income. For these services, the applicant will come to CARECEN's office for one or more meetings to gather the information needed to fill out the application. In our experience, these applications are often rejected for lack of traditional income documentation, such as tax filings and pay stubs. This occurs despite CARECEN providing considerably more time in preparation and follow-up time with the applicants on income-based fee waiver applications.

21. In our experience, we have seen that a higher percentage of applications for fee waivers are rejected when they are not filed with proof of a MTB, often needing to be corrected or simply resubmitted a second time for acceptance. For this reason, we prefer to not prepare

those applications as *pro se* filings, because of the higher risk that the applications would be rejected and returned to a workshop participant. We refer these individuals to in-house follow-up appointments and to sign a contract along with the G-28 Form to officially represent the client throughout the naturalization process, and not just assist in form preparation for a *pro se* filing.

22. Naturalization workshops have been viable because we have been able to file for many people in a one-appointment service setting due largely to the fact that the fee waiver based on MTB can easily be prepared in that same day and the evidence to support it documented by one letter.

Harm to CARECEN from Changes to the Fee Waiver Process

23. USCIS's changes to the I-912 fee waiver form will drastically affect CARECEN's naturalization programs.

24. CARECEN 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 2019 comment "Re: Agency USCIS, OMB Control Number 1615-0116").

a. Decimation of the Workshop Model

25. Our workshop model will have to be significantly revamped and would not be a viable option for many low-income immigrants who we aim to assist through these workshops. Because applicants will not be able to establish eligibility for a fee waiver based solely on a MTB, they will have to try to establish eligibility by proving their incomes. Because of the complexity of proving income, we will no longer be able to use volunteers to complete the fee waiver portion of the application.

26. In our experience, providing this service is simply not possible in a single-day workshop. This will dramatically reduce the number of individuals we are able to assist at any given workshop. We will be forced to substantially rework our workshop model. Workshops that have been our most effective means of completing and submitting naturalization applications may no longer be viable if proof of MTB no longer constitutes sufficient fee-waiver evidence.

27. When we assist applicants with fee waiver applications based on income, we often have to ask applicants to get more information and documents, including sometimes talking to their tax preparer, if they have one (and many do not). Documents may include things like bank records, tax records, pay stubs, and more. If tax transcripts become a requirement, that will also require more work and time to obtain.

28. Proving income in this way often takes two to three appointments, if not more, with our staff before the application can be submitted. That adds to the burden on our organization, since we have to spend more time trying to follow up with clients and scheduling additional meetings.

29. Many of our clients live in homes with one or more adult children who sometimes contribute financially to the household. Under the new rule, the income of these family members has to be proven as well. Getting information about their household income from these family members can be difficult, and our clients often do not understand why we need this information. This adds not only to how long it takes an individual client to complete an application, but also to the burden on our staff; staff may have to speak with multiple family members, explain complex processes by phone, and teach the client and their family members about things that are

typically outside of staff expertise (i.e. how tax records work). This will require a lot of additional training within the organization.

30. Clients will also have trouble proving their income using tax evidence. Many of our clients are elderly and retired and have not filed taxes in years. Others have transient or seasonal work, so proving their annual income can be challenging.

31. In addition, many of our clients will not be able to use the IRS's online tax transcript tool which requires (1) information from past tax records, (2) an email address, (3) a personal account number for a credit card, mortgage, home equity loan, home equity line of credit, or car loan, and (4) a mobile phone with the taxpayer's name on the account. Many of them are older and they are unlikely to have a credit card or home or car loan to enable them to use the online tool, which requires proof of some sort of credit line to prove identity. A large proportion of our clients also do not use email on a regular basis, which is also required for the online tool. Alternatively, requesting an IRS transcript by mail will add additional delay, and require them to come back for more appointments with our office.

b. Immediate Diversion of Resources

32. Once the change has gone into effect, CARECEN will immediately need to revamp our naturalization workshop model until we can retrain our staff and determine whether the new form is feasible in a workshop model at all. We cannot risk having clients submit incorrect or unhelpful documentation, and we do not want to devote significant resources to workshops that may cause more confusion and delay in light of the new rules.

33. We will immediately need to retrain our staff on how to evaluate and prove a client's income-based fee waiver application accurately under the new rules. Few of them have

significant experience preparing such applications because we simply have not needed to do so at this scale in the past—and, some of the requirements are new.

34. This will require developing new training manuals, checklists, and other materials to use in training our staff.

35. We will also have to engage in community education and know-your-rights trainings to inform prospective applicants of the new requirements.

36. This retraining and community education will divert staff resources from serving a greater number of naturalization applicants, as well as divert time we could dedicate to more vulnerable naturalization applicants, such as applicants who are elderly, disabled, or require complicated medical waivers.

37. For applicants who would have otherwise pursued a MTB-based fee waiver application and who are still eligible for a fee waiver under the new rule, we expect that the change will result in a significant increase in staff time spent on consultation, analysis, follow-up, and preparation. The change will greatly increase the hours spent on cases we are ultimately able to file. We also expect that that the total number of clients served in our naturalization programs will drop considerably, potentially by over a third. Additionally, our staff will spend considerable time on cases that are ultimately never filed because clients are not able to comply with the heightened evidentiary requirements or will fail to follow-up. We would be facing a need to hire more legal staff to meet our contract deliverables.

38. We will incur these costs as soon as the new form goes into effect. If the rule is later enjoined, we would not be able to recoup those costs.

39. In response to comments about the proposed changes, USCIS suggested that applicants will be able to use the same evidence that they use to prove eligibility for a MTB to prove eligibility for a fee waiver. That is not true. This response ignores practical differences between a USCIS application and a state social services program. Applicants for MTBs often work with a caseworker to develop evidence of their income and present it to the agency. USCIS offers no such service, so these changes will transfer that burden onto immigration service providers like CARECEN. At our current staff and funding levels, we are not equipped to fill that void. And, as described below, our funding is actually put at risk by the proposed changes.

c. Loss of Funding

40. We foresee the new rule putting the workshop model on pause for about three months if not longer, which would be a full reporting period and likely push us out of compliance with the NAC funding which requires workshops. It will also put us far behind in number of deliverables overall. It is very possible we will evaluate and determine workshops will not be viable at all because the anticipated drop in completed applications will no longer cover the time, effort, and expense it takes to plan and execute a workshop.

41. Moreover, in our experience, when completing an application requires multiple appointments, a significant proportion of applicants will not end up completing their application because busy schedules and lack of transportation make it hard to attend multiple appointments.

42. This will affect our funding. Our funding from the state of California is based on the number of applications we submit. This change will significantly affect our program funding, including staff changes, and a reduction in number of clients we are able to serve.

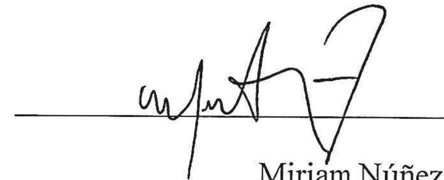
43. We will also potentially fall out of compliance with our grants from CDSS and other funders, which require us to hit certain numerical targets. There may be a drop of over a third of applicants who otherwise would have applied with proof of a MTB. To the extent that we are unable to meet deliverables, we will be unable to meet the terms of this grant and are likely to lose this source of funding, or receive reduced funding in the future. For that reason, despite the changes to the fee waiver process, we will push hard to try to meet the terms of this grant—but this will require heightened investment in staff and time. If this happens, we anticipate our eligibility for future federal grants will be impacted, for both naturalization and other programs, for failure to comply with the terms of our grant. CDSS will withdraw its funding.

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

44. The changes to the I-912 fee waiver form have the potential to deeply undermine CARECEN's ability to provide naturalization assistance via the workshop model, impacting our mission of community empowerment through greater civic engagement. Adjusting to the change will require diversion of resources to adapt our service delivery model. 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. If CARECEN is unable to meet its contractual obligations of completed naturalization applications, the organization would face loss of significant funding. This loss of funding could result in having to terminate our citizenship programs, which would significantly weaken our ability to deliver on our mission of advancing civic engagement and empowering the Central American and broader immigrant community.

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.



Miriam Núñez
Managing Attorney
Central American Resource Center of California

EXHIBIT A

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

Re: Docket ID USCIS-2010-0008 – Public Comment Opposing Proposed Changes to Fee Waiver Eligibility Criteria, FR Doc. 2018-21102 Filed November 27, 2018; 83 FR 49120-49121

Dear Ms. Deshommes:

I am writing on behalf of the Central American Resource Center (CARECEN), Los Angeles, in opposition to the Department of Homeland Security (DHS), United States Citizenship and Immigration Services' (USCIS), proposed changes to fee waiver eligibility criteria. Docket ID USCIS-2010-0008, OMB Control Number 1615-0116, published in the federal register on September 28, 2018.

CARECEN was founded in 1983 by Salvadoran refugees who fled the civil war in El Salvador to seek safety and shelter in the United States. We have since grown to be the largest grassroots organization in the country serving Central American immigrants. CARECEN's legal department provides direct legal services to approximately 25,000 individuals each year. We also have a robust organizing department and Day Laborer Center. Our mission is to empower all immigrants by defending their human and civil rights, working for social and economic justice, and promoting cultural diversity.

CARECEN's legal services department is comprised of multiple units including Naturalization and Family-Based immigration, our Special Victims Unit (which completes U visa, VAWA, and T Visa applications), DACA, and Deportation Defense. As such, we provide a wide range of services to the immigrant community in Los Angeles and are experts in the challenges that these individuals and families face. The vast majority of our clients are low income and the fee waiver can be a life-changing option for them.

As of 2016, California was home to more than 10 million immigrants, or about one quarter of the foreign-born population nationwide. In February 2017, the Pew Research Center released a report that found that 10 percent of the country's undocumented immigrants, or 1,000,000 people, live in Los Angeles County and Orange County. This number does not account for the people living in Los Angeles and Orange counties who are lawful immigrants or lawful permanent residents and who will need to continue to file for relief and benefits with USCIS. As of September 24, 2018, nearly 1 in 10 residents in Los Angeles County are lawful permanent residents.

Of the clients we serve each year, approximately 80 percent of them receive means-tested public benefits. Because of this, accessibility to a fee waiver for immigration relief is a necessary benefit for our clients. If these proposed changes are finalized, we will see a chilling effect on the immigrant community.

These changes will harm the most vulnerable members of the immigrant population, such as U Visa and VAWA applicants. More than 94 percent of domestic violence survivors also experienced some form of economic abuse; sometimes, they do not even have access to a bank account. For survivors of sexual

assault, felonious assault, and human trafficking, these new proposed changes will prevent them from applying for relief for which they are eligible. This will keep these individuals from accessing protections that Congress enacted to protect them.

In the naturalization context, the increased burden of applying for a fee waiver will undoubtedly prevent otherwise eligible legal permanent residents from applying for their citizenship. For many, the application fee of $725.00 is too burdensome and they will decide not to apply because of it.

For these reasons, we strongly oppose the proposed changes to the fee waiver form and accepted evidence. These changes will be an additional burden on immigrant communities as well as federal agencies and service providers.

I. The proposed changes will significantly burden individuals applying for immigration benefits and will negatively impact our communities

The proposed rule will require individuals applying for a fee waiver to use form I-912 and will no longer permit individuals to document their eligibility through an affidavit or statement documenting their low-income status. It also requires each individual to submit their own fee waiver and no longer permits family members to use the same I-912 to demonstrate eligibility for the fee waiver. Additionally, and most challenging for the immigrant community, are the changes proposed to qualifying evidence for the fee waiver. USCIS contends that because of the discrepancies in federal poverty guidelines across the country, means-tested benefits are not an accurate way to determine if someone lives below the poverty guidelines. However, not allowing immigrants to demonstrate their income levels with evidence of receiving public benefits and requiring tax transcripts from the Internal Revenue Service (IRS) will significantly burden applicants and will create a chilling effect on those wishing to apply for relief with immigration.

A. Affidavits and letters that comply with 8 C.F.R. § 103.7(c) should still be permitted

Limiting fee waiver requests by only accepting those submitted with form I-912 will drastically limit the availability of access to fee waivers. Letters and affidavits that document and address all eligibility requirements pursuant to 8 C.F.R. § 103.7(c) ease the burden for applicants who are applying for relief and benefits. Eliminating this option will greatly burden applicants, especially those who are submitting applications on their own, without assistance from an attorney or legal services provider. This change will burden applicants by requiring them to locate and submit documents when a self-generated request can sufficiently demonstrate an applicant's eligibility for a fee waiver. This proposed change directly conflicts with 8 C.F.R. § 103.7(c) and is therefore impermissible.

B. Family members should not be required to submit their own I-912

Requiring each applicant to submit their own I-912 will be a time and resource burden on applicants. Currently, family members can submit a single fee waiver for multiple applicants, which greatly eases the process because it only requires the applicants to compile their financial information in one location. This is particularly important for families who are applying for relief or benefits for their minor children because documenting each individual child's financial information is time consuming and confusing for clients. This proposal would require each applicant to gather the required evidence, which includes IRS transcripts, proof that the person is not required to file taxes, and verification from the IRS of the applicant's non-filing status.

C. Means-tested benefits should be sufficient evidence that an applicant qualifies for a fee waiver

The proposed changes also eliminate the use of means-tested benefits to establish eligibility for the fee waiver. In accordance with 8 C.F.R. § 103.7(c), applicants can retain proof of their receipt of means-tested benefits to prove their eligibility. USCIS contends that states have different requirements for determining whether an individual qualifies for means-tested benefits. However, USCIS has not provided any evidence that they have wrongly granted a fee waiver to applicants who do not qualify for one.

Additionally, if an applicant receives government benefits, they have already gone through a screening process to establish that they are living below the federal poverty guidelines. In doing so, they have already demonstrated their eligibility for a fee waiver from USCIS. They should not be required to do so again in order to access relief and benefits that can empower them and improve their lives.

D. Tax transcripts should not be required to establish eligibility for a fee waiver

Finally, the proposed rule would require applicants to include their tax transcripts from the IRS to demonstrate that their household income is at or below 150 percent of the federal poverty guidelines. Currently, applicants can provide USCIS with a copy of their most recent tax return to show that they meet this requirement. It is unclear what the motivation behind this particular change is as the government has not provided an explanation as to why tax returns are insufficient. Obtaining a tax transcript is going to prove difficult and burdensome to applicants who likely do not have a copy of this document on hand. It will delay applicants from seeking relief for which they are eligible and greatly increase the burden of applying for immigration benefits.

As a legal services provider, CARECEN has filed thousands of fee waivers for clients and it is unequivocally easier to do so if a client receives public benefits. USCIS states that the estimated time burden per response to a fee waiver is 1.17 hours and argues that these changes will decrease the time burden. However, even for our legal staff, it is sometimes difficult to determine if a client is eligible for a fee waiver based on taxes alone. For example, in the naturalization context, one of the first questions we ask a client is whether they receive public benefits and, if they do not, what their estimated income and household size is. We do this early in the consultation stage because we know that many of our clients will not be able to apply for naturalization if they are required to pay the fee. When reviewing a consultation, we are able to determine in a matter of seconds whether a person can apply for a fee waiver if they receive public benefits. If they do not, the analysis can drag on for days. This is because the client needs to obtain a copy of his or her taxes. We then need to discuss with the client what changes he or she has had in household income since last filing taxes. As some of our clients do not have full time jobs but rather work as contractors for different employers, this is often a difficult thing to discern. Because of all of these factors, we know that eliminating the means-tested benefits option will greatly increase, rather than decrease, the amount of time USCIS spends analyzing fee waiver eligibility.

In addition, requiring tax transcripts will place a higher burden on clients who are either not Internet savvy or are seniors. For example, many of our naturalization clients are over the age of 65 and have never had a reason to learn how to navigate the Internet with efficiency. Some of them also do not have a child or family member who can help with this process. Additionally, many of these clients are retired and are therefore not required to file taxes. This will cause confusion as these naturalization applicants will be unsure which evidence is required for them to apply for a fee waiver.

Finally, our clients who receive means-tested benefits live on very tight budgets. Each paycheck they receive goes to food, clothing, school supplies, rent, etc. Every dollar is accounted for. They do not have the ability to pay expensive immigration fees. The proposed changes to the fee waiver will make the immigration process even more arduous, confusing, and inaccessible for thousands of immigrants who would otherwise be eligible to apply for relief.

II. The proposed changes will increase inefficiencies in processing fee waiver requests and further burden government agencies

USCIS contends that the proposed changes will streamline and expedite the fee waiver process because they will only receive evidence that is necessary to make an eligibility determination. On the contrary, these proposed changes will slow down an already overburdened system. As of March 31, 2018, there were nearly 6 million pending cases in front of DHS. Indeed, the government itself has admitted that USCIS does not have sufficient resources to process the influx of applications it has received. Given this backlog, USCIS should be seeking to ease the burden of applying for a fee waiver rather than raising the evidentiary standards and making it increasingly difficult for people to apply for naturalization and other immigration benefits.

The proposed changes will also place an undue burden on the IRS and USCIS does not address whether the agency is prepared to respond to the increase in document requests it will receive if this proposal is finalized. Applicants who are applying for a fee waiver based on income will be required to request documents from the IRS to establish their eligibility. This will include verification from the IRS of changes in employment, non-employment, or inability to work. Applicants will likely need to return multiple times to the IRS to obtain copies of all necessary documents. This will not only delay applicants from filing for relief and benefits, but will also increase the IRS' production of documents and evidence it will need to provide. This seems arbitrary and duplicative as much of this evidence can be provided through other means, such as a verification of public benefits letter from the awarding government agency, or an affidavit from the applicant documenting his or her income.

These delays will have negative impacts on our clients. For example, a U Visa recipient who is applying to adjust status on the basis of four years of continuous, U-visa status, is eligible for a fee waiver. This is particularly important in the U Visa context because many of our clients are survivors of domestic violence and are among some of the most vulnerable members of the immigrant community. Adjusting their status is an imperative, life-changing step for them. However, if an application is returned for an insufficient fee waiver, it is possible that we will miss the deadline to timely file their adjustment. This, coupled with the other changes implemented by USCIS over the last year, could have dire consequences for these applicants.

III. The proposed changes will place a greater burden on legal services providers, reduce access to legal services, and increase challenges to the most vulnerable members of the immigrant community

The proposed changes will increase the burden of representing immigrants for non-profits and legal service providers and will cause a chilling effect on immigrants who are eligible to apply for relief or

benefits but cannot afford to do so. For naturalization applicants, many legal permanent residents rely on the fee waiver to be able to apply for their citizenship. For many, this is the final step in a decades-long road to achieve a life-long dream of becoming a United States Citizen.

Across the country, in rural areas and dense cities alike, legal service providers have found that hosting workshops for the community is the most time efficient way to provide services to a large number of clients. This is possible, in part, because we are able to explain with relative ease how an applicant can obtain the necessary evidence to apply for a fee waiver. If applicants need to visit the IRS multiple times in order to get the required documentation, workshops may no longer be a tenable way to serve the community.

In addition, many non-profits rely on grants to keep their doors open. In order to qualify for these grants, non-profits need to serve a specified number of clients each year. These proposed changes to the fee waiver will make this requirement even more difficult to attain. At a time when fewer people are reaching out for help due to our political climate, this may cause some smaller non-profits to lose their funding and will therefore prevent them from serving the community that is in desperate need of assistance.

The proposed changes to the fee waiver eligibility criteria, coupled with the increased evidentiary burden on applicants, will create insurmountable burdens for individuals to apply for immigration benefits and naturalization. We strongly urge USCIS to propose a rule that would actually streamline this process, not one that will make it dubious and impossible for so many. The immigrant community wants nothing more than to be able to live with their families in safety and to be able to civically engage in our American political process. If we increase the burden to access, many of these individuals and families will never be able to achieve this dream.

Sincerely,

Michelle Seyler
mseyler@carecen-la.org
(213) 385-7800 ext. 160
2845 W 7th St.
Los Angeles, CA 90005

EXHIBIT B

USCIS Desk Officer
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

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 Free Waiver FR Doc. 2019-06657

Dear Desk Officer:

I am writing on behalf of the Central American Resource Center (CARECEN), Los Angeles, 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.

CARECEN was founded in 1983 by Salvadoran refugees who fled the civil war in El Salvador to seek safety and shelter in the United States. We have since grown to be the largest grassroots organization in the country serving Central American immigrants. CARECEN's legal department provides direct legal services to approximately 25,000 individuals each year. We also have a robust organizing department and Day Laborer Center. Our mission is to empower all immigrants by defending their human and civil rights, working for social and economic justice, and promoting cultural diversity.

CARECEN's legal services department is comprised of multiple units including Naturalization and Family-Based immigration, our Special Victims Unit (which completes U visa, VAWA, and T Visa applications), DACA, and Deportation Defense. As such, we provide a wide range of services to the immigrant community in Los Angeles and are experts in the challenges that these individuals and families face. The vast majority of our clients are low income and the fee waiver can be a life-changing option for them.

As of 2016, California was home to more than 10 million immigrants, or about one quarter of the foreign-born population nationwide. In February 2017, the Pew Research Center released a report that found that 10 percent of the country's undocumented immigrants, or 1,000,000 people, live in Los Angeles County and Orange County. This number does not account for the people living in Los Angeles and Orange counties who are lawful immigrants or lawful permanent residents and who will need to continue to file for relief and benefits with USCIS. As of September 24, 2018, nearly 1 in 10 residents in Los Angeles County are lawful permanent residents.

Of the clients we serve each year, approximately 80 percent of them receive means-tested public benefits. Because of this, accessibility to a fee waiver for immigration relief is a necessary benefit for our clients. If these proposed changes to the fee waiver are finalized, hundreds of thousands of immigrants who are eligible for relief will face an even steeper burden in seeking benefits with USCIS because of the complications added to the fee waiver process.

Overview of the impact of the new fee waiver rules on immigrant communities

The proposed fee waiver changes will harm the most vulnerable members of the immigrant population, such as U Visa and VAWA applicants, and others who qualify for humanitarian relief. Domestic violence survivors are particularly vulnerable as more than 94 percent also experienced some form of economic abuse; sometimes, they do not even have access to a bank account. Though USCIS contends that these applicants may still qualify for a fee waiver, the requirements to prove this eligibility will place an undue burden on applicants and will prevent otherwise eligible individuals from applying for life-changing relief with USCIS.

In the naturalization context, the increased burden of applying for a fee waiver will undoubtedly prevent otherwise eligible legal permanent residents from applying for their citizenship. For many, the application fee of $725.00 is too burdensome and they will be forced to decide between providing for their families and seeking naturalization.

For these reasons and the reasons outlined below, we strongly oppose the proposed changes to the fee waiver form and accepted evidence. These changes will be an additional burden on immigrant communities as well as federal agencies and service providers.

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

USCIS developed the Form I-912 in 2010 after extensive collaboration with stakeholders and then published the current fee waiver guidance. This guidance replaced ten prior memos that contained contradictory and confusing instructions on fee waivers and finally provided applicants with a streamlined, uniform process for obtaining 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 current analysis for fee waiver eligibility is:

Step 1: the applicant is receiving means-tested benefits; or

Step 2: the applicant's household income is at or below 150% of the federal poverty guidelines at the time of filing; or

Step 3: the applicant suffers a financial hardship

Under this guidance, USCIS continued to accept applicant-generated fee waiver requests that were not submitted on the form I-912. The codified standard for fee waiver eligibility for certain types of USCIS forms is described in the regulations as making fee waivers available when "the party requesting the benefit is unable to pay the prescribed fee."

Current Revisions

On September 28, 2018, USCIS published in the Federal Register a Notice of Agency Collection Activities; Revision of a Currently Approved Collection: Request for Fee Waiver; Exceptions as a notice under the Paperwork Reduction Act (PRA). This notice stated that USCIS intended to eliminate the receipt of means-tested benefits as an eligibility ground for a fee waiver, and announced alterations to form I-912 accordingly. This notice also stated that USCIS would continue to allow eligibility for a fee waiver if an individual 's household income is 150 percent or less of the federal poverty guidelines or if he or she can establish financial hardship. The purported reason for the elimination of public benefits is that different income levels are used in different states to determine eligibility for means-tested benefits, and stated that these differences resulted in inconsistent adjudications. However, no documentation, evidence, or analysis was offered in support of this claim. The notice also stated that if USCIS finalized this change, it would eliminate the current USCIS Fee Waiver Guidance and replace it. As of the writing of this comment, no new 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 these changes and would eliminate the receipt of public benefits as a ground of eligibility for the fee waiver. Notably, USCIS continues to contend that these changes will "reduce" the evidence required, when in fact it is only eliminating the ways in which an individual can establish eligibility for a fee waiver. USCIS states that fee waivers based on "poverty income guidelines threshold and financial hardship criteria" will be retained, but offers no additional details or guidance on what this means. In the April 5th notice, there was only a summary reference to the 1,198 comments previously received in response to the September 28, 2018 notice, and USCIS stated simply that it is proceeding with the form revision "after considering the public comments."

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. Under the PRA, a government agency is required to explain the purpose of the form being produced and its burden on the public. Use of the PRA process in this case is inappropriate because the proposed changes to the fee waiver eligibility process are much more than an information collection. Rather, they drastically alter substantive eligibility requirements, the accepted forms of evidence, and are a radical change in the law that is being finalized without sufficient public notice and comment.

Overview of the Negative Affects of the Proposed Rule

The proposed rule will require individuals applying for a fee waiver to use form I-912 and will no longer permit individuals to prove their eligibility through an affidavit or statement documenting their low-income status. Most challenging for the immigrant community are the changes proposed to qualifying evidence for the fee waiver. USCIS contends that because of the discrepancies in federal poverty guidelines across the country, means-tested benefits are not an accurate way to determine if someone lives below the poverty guidelines. However, USCIS has not provided any evidence that the discrepancies at the state level are resulting in unfair adjudication of fee waivers at the federal level.

Additionally, USCIS argues that these revisions are necessary because income levels used to determine receipt of public benefits vary from state to state. However, the regulations clearly state that the underlying legal standard for fee waiver eligibility is ability to pay. This standard is necessarily different for an applicant who lives in California than it is for an applicant living in rural Minnesota. If USCIS holds differently situated individuals to the same standard when determining fee waiver eligibility, adjudications will become inconsistent and unfair. For example, to live comfortably in Los Angeles, a family of one would need to earn over $74,000, compared to the median national income of $56,516.

Required Use of Form I-912 Places an Unacceptable Time and Resource Burden on Individuals

Requiring use of Form I-912 to grant a fee waiver request will drastically limit the availability of fee waivers. Applicants must continue to be permitted to submit applicant-generated fee waiver requests, such as a letter or affidavit in compliance with the law. The relevant code section, 8 C.F.R. § 103.7(c) states, in pertinent part, "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."

Allowing applicants to demonstrate eligibility in these circumstances eases the burden for applicants who are applying for relief and benefits. Eliminating this option will greatly burden applicants, especially those who are submitting applications on their own, without assistance from an attorney or legal services provider. This change will burden applicants by requiring them to locate and submit documents when a self-generated request can sufficiently demonstrate an applicant's eligibility for a fee waiver. This proposed change directly conflicts with 8 C.F.R. § 103.7(c) and is therefore impermissible.

Means-tested benefits should be sufficient evidence that an applicant qualifies for a fee waiver

The proposed changes also eliminate the use of means-tested benefits to establish eligibility for the fee waiver. In accordance with 8 C.F.R. § 103.7(c), applicants can retain proof of their receipt of means-tested benefits to prove their eligibility. To do so, applicants need only submit an official letter demonstrating their receipt of public benefits from the administering government agency to prove eligibility. Documenting receipt of public benefits on the Form I-912 is equally an easy process as the means-tested benefits portion of the form spans less than half a page and only requires information regarding who receives the benefit, their relation to the fee waiver requester, the agency providing the benefit, type of benefit, and dates the benefit covers. This information is easy and quick to obtain for clients, making this process relatively simple for people who are eligible for relief from USCIS but who cannot afford to pay.

Under the new rule, an applicant requesting a fee waiver based on income must prove income level (or lack thereof) and provide information on nearly three pages on the revised Form I-912, including 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.

Similarly, establishing inability to pay on the basis of financial hardship is equally burdensome and far more time-intensive than requesting a fee waiver based on receipt of public benefits. To establish eligibility under the financial hardship standard, the requestor will have to document their financial expenses and liabilities on Form I-912 and attach evidence of these expenses. This may include medical bills, credit card bills, utility bills, and receipts for money spent on food, clothing, rent, and other necessities.

Both of these alternative methods for proving eligibility are time consuming, punitive, and arduous. USCIS maintains that these options will not require more time or effort for applicants because they will be "Merely providing [the] same documentation to USCIS" that they provided to the benefit-granting agency.

This is misguided. First, USCIS will require the most recent evidence an applicant can provide. For many, this evidence was provided to the government agency granting the public benefit months or even years prior to their current request for a fee waiver. This will require applicants to gather and keep track of countless receipts and proof of expenses. This will not only burden applicants, government agencies, and legal services providers but will also deter applicants from seeking relief and prolong the process of applying to USCIS for benefits. Second, different evidence is required for means-tested benefits than what USCIS will request from applicants. For example, many means-tested benefits require applicants to provide pay stubs and bank statements. Obtaining these documents is much easier than compiling all expenses for the preceding month and submitting it to USCIS *in addition to a tax transcript*.

Additionally, if an applicant receives government benefits, they have already gone through a screening process to establish that they are living below the federal poverty guidelines. In doing so, they have already demonstrated their eligibility for a fee waiver from USCIS. They should not be required to do so again in order to access relief and benefits that can empower them and improve their lives.

USCIS dismisses the claim that the fee waiver changes will increase burdens on applicants and states, blanketly and without evidence, that these changes will have a minimal affect on applicants. This is misguided and ignores the burdens that the new fee waiver requirements will place on applicants and the government alike.

Tax transcripts should not be required to establish eligibility for a fee waiver

The proposed rule would also require applicants to include their tax transcripts from the IRS to demonstrate that their household income is at or below 150 percent of the federal poverty guidelines. Currently, applicants can provide USCIS with a copy of their most recent tax return to show that they meet this requirement. It is unclear what the motivation behind this particular change is as the government has not provided an explanation as to why tax returns are insufficient. Obtaining a tax transcript is going to prove difficult and burdensome to applicants who likely do not have a copy of this document on hand. It will delay applicants from seeking relief for which they are eligible and greatly increase the burden of applying for immigration benefits.

As a legal services provider, CARECEN has filed thousands of fee waivers for clients and it is unequivocally easier to do so if a client receives public benefits. USCIS states that the estimated time burden per response to a fee waiver is 1.17 hours and argues that these changes will decrease the time burden. However, even for our legal staff, it is sometimes difficult to determine if a client is eligible for a fee waiver based on taxes alone. For example, in the naturalization context, one of the first questions we ask a client is whether they receive public benefits and, if they do not, what their estimated income and household size is. We do this early in the consultation stage because we know that many of our clients will not be able to apply for naturalization if they are required to pay the fee. When reviewing a consultation, we are able to determine in a matter of seconds whether a person can apply for a fee waiver if they receive public benefits. If they do not, the analysis can drag on for days. This is because the client needs to obtain a copy of his or her taxes. We then need to discuss with the client what changes he or she has had in household income since last filing taxes. As some of our clients do not have full time jobs but rather work as contractors for different employers, this is often a difficult thing to discern. Because of all of these factors, we know that eliminating the means-tested benefits option will greatly increase, rather than decrease, the amount of time USCIS spends analyzing fee waiver eligibility.

In addition, requiring tax transcripts will place a higher burden on clients who are either not Internet savvy or are seniors. For example, many of our naturalization clients are over the age of 65 and have never had a reason to learn how to navigate the Internet with efficiency. Some of them also do not have a child or family member who can help with this process. Additionally, many of these clients are retired and are therefore not required to file taxes. This will cause confusion as these naturalization applicants will be unsure which evidence is required for them to apply for a fee waiver.

Finally, our clients who receive means-tested benefits live on very tight budgets. Each paycheck they receive goes to food, clothing, school supplies, rent, etc. Every dollar is accounted for. They do not have the ability to pay expensive immigration fees. The proposed changes to the fee waiver will make the immigration process even more arduous, confusing, and inaccessible for thousands of immigrants who would otherwise be eligible to apply for relief.

The proposed changes will increase inefficiencies in processing fee waiver requests and further burden government agencies

USCIS contends that the proposed changes will streamline and expedite the fee waiver process because they will only receive evidence that is necessary to make an eligibility determination. On the contrary, these proposed changes will slow down an already overburdened system. As of March 31, 2018, there were nearly 6 million pending cases in front of DHS. Indeed, the government itself has admitted that USCIS does not have sufficient resources to process the influx of applications it has received. Given this backlog, USCIS should be seeking to ease the burden of applying for a fee waiver rather than raising the evidentiary standards and making it increasingly difficult for people to apply for naturalization and other immigration benefits.

The proposed changes will also place an undue burden on the IRS and USCIS does not address whether the agency is prepared to respond to the increase in document requests it will receive if this proposal is finalized. Applicants who are applying for a fee waiver based on income will be required to request documents from the IRS to establish their eligibility. This will include verification from the IRS of changes in employment, non-employment, or inability to work. Applicants will likely need to return multiple times to the IRS to obtain copies of all necessary documents. This will not only delay applicants from filing for relief and benefits, but will also increase the IRS' production of documents and evidence it will need to provide. This seems arbitrary and duplicative as much of this evidence can be provided through other means, such as a verification of public benefits letter from the awarding government agency, or an affidavit from the applicant documenting his or her income.

These delays will have negative impacts on our clients. For example, a U Visa recipient who is applying to adjust status on the basis of four years of continuous, U-visa status, is eligible for a fee waiver. This is particularly important in the U Visa context because many of our clients are survivors of domestic violence and are among some of the most vulnerable members of the

immigrant community. Adjusting their status is an imperative, life-changing step for them. However, if an application is returned for an insufficient fee waiver, it is possible that we will miss the deadline to timely file their adjustment. This, coupled with the other changes implemented by USCIS over the last year, could have dire consequences for these applicants.

The proposed changes will place a greater burden on legal services providers, reduce access to legal services, and increase challenges to the most vulnerable members of the immigrant community

The proposed changes will increase the burden of representing immigrants for non-profits and legal service providers and will cause a chilling effect on immigrants who are eligible to apply for relief or benefits but cannot afford to do so. For naturalization applicants, many legal permanent residents rely on the fee waiver to be able to apply for their citizenship. For many, this is the final step in a decades-long road to achieve a life-long dream of becoming a United States Citizen.

Across the country, in rural areas and dense cities alike, legal service providers have found that hosting workshops for the community is the most time efficient way to provide services to a large number of clients. This is possible, in part, because we are able to explain with relative ease how an applicant can obtain the necessary evidence to apply for a fee waiver. If applicants need to visit the IRS multiple times in order to get the required documentation, workshops may no longer be a tenable way to serve the community.

In addition, many non-profits rely on grants to keep their doors open. In order to qualify for these grants, non-profits need to serve a specified number of clients each year. These proposed changes to the fee waiver will make this requirement even more difficult to attain. At a time when fewer people are reaching out for help due to our political climate, this may cause some smaller non-profits to lose their funding and will therefore prevent them from serving the community that is in desperate need of assistance.

The proposed changes to the fee waiver eligibility criteria, coupled with the increased evidentiary burden on applicants, will create insurmountable burdens for individuals to apply for immigration benefits and naturalization. We strongly urge USCIS to propose a rule that would actually streamline this process, not one that will make it dubious and impossible for so many. The immigrant community wants nothing more than to be able to live with their families in safety and to be able to civically engage in our American political process. If we increase the burden to access, many of these individuals and families will never be able to achieve this dream.

Sincerely,

Michelle Seyler

mseyler@carecen-la.org
(213) 385-7800 ext. 160
2845 W 7th St.
Los Angeles, CA 90005