



STATE OF WASHINGTON

December 30, 2019

Ken Cuccinelli
Acting Director
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue NW
Washington, DC 20529

Re: Docket No. USCIS-2019-0010, *Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements* (November 14, 2019)

Dear Acting Director Cuccinelli:

On behalf of the state of Washington, we write to express our deep opposition to the U.S. Citizenship and Immigration Services (USCIS) *Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements*, Docket No. USCIS-2019-0010 (November 14, 2019) (hereafter referred to as “Proposal”), which increases fees for numerous immigration benefit categories and eliminates all fee waivers except those that are statutorily required. Shamefully, this Proposal institutes a fee for individuals seeking asylum for the first time in our nation’s history. The Proposal will harm economically vulnerable immigrants and asylum seekers, and we urge you to withdraw it.

As Governor and Attorney General of Washington, we have worked together to ensure that our state welcomes immigrants, refugees, and asylum seekers, in the face of unrelenting xenophobia and racial animosity. Washington led the legal challenge against the travel ban in January 2017, is currently in litigation to preserve the Deferred Action for Childhood Arrivals Program (DACA) to protect Dreamers, and is working to end the Administration’s harmful Public Charge Rule.

Like those actions by the Trump Administration, this Proposal is cruel. This Proposal is yet another of this Administration’s policies that targets immigrants from Latin American, Africa, and other countries of origin for non-White immigrants and that seeks to discourage immigration and naturalization, particularly by individuals without financial resources. As such, it is contrary to the Fifth Amendment’s implicit guarantee of equal protection. You yourself confirmed this stance in a nationally televised interview when you remarked, “Give me your tired and your poor

who can stand on their own two feet.” This perspective runs counter to our nation’s history, to our American values, and to our laws.

We are concerned about many aspects of the Proposal. In this comment letter, we focus on its impact on vulnerable populations. Omission of discussion of specific components in this comment letter should not be interpreted as support.

Increased fees for DACA Renewal and Work Authorization

The DACA Program was created in 2012 and provides protection from deportation and work authorization for undocumented individuals who were brought to the country as children and meet certain criteria. Under this Proposal, renewal fees for the nearly 18,000 DACA recipients in Washington would change from \$495 to \$765. This sharp increase is deeply troubling, given that it disproportionately targets people of Latin American origin, exacerbates the anxiety around the future of the program, and penalizes important contributors to Washington’s economy.

The fee changes for DACA recipients are consistent with President Trump’s long-standing animus toward individuals of Mexican and Central American origin. In *State of New York, et al., v. Trump, et al.*, to protect DACA recipients, Plaintiff states alleged, “Ending DACA, whose participants are mostly of Mexican origin, is a culmination of President Trump’s oft-stated commitments — whether personally held, stated to appease some portion of his constituency, or some combination thereof — to punish and disparage people with Mexican roots.”¹ Indeed, between 2012 and 2017, more than 78 percent of DACA recipients were from Mexico, and more than 8 percent were from El Salvador, Guatemala, and Honduras.² Judge Nicholas Garaufis, of the United States District Court in the Eastern District of New York, noted in his Memorandum & Order of March 29, 2018:

“To establish discriminatory purpose, Plaintiffs identify a disheartening number of statements made by President Donald Trump that allegedly suggest that he is prejudiced against Latinos and, in particular, Mexicans....Accepting Plaintiffs’ non-conclusory allegations as true and reading all reasonable inferences in their favor, the court concludes that these allegations are sufficiently racially charged, recurring, and troubling as to raise a plausible inference that the decision to end the DACA program was substantially motivated by discriminatory animus.”³

¹ Complaint for Declaratory and Injunctive Relief at 2, 3, *New York, et al. v. Trump, et al.*, No. 1:17-cv-05228 (E.D.N.Y. filed Sept. 6, 2017), available at https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Another/News/Press_Releases/new_york_et_al._v._trump_et_al_-_17cv5228.pdf.

² USCIS, Number of Form I-821D, Consideration of Deferred Action for Childhood Arrivals, by Fiscal Year, Quarter, Intake, Biometrics and Case Status, Fiscal Year 2012-2017, September 30 https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/daca_performancedata_fy2017_qtr4.pdf (last visited Dec. 29, 2019).

³ Memorandum and Order at 17, *New York, et al. v. Trump, et al.*, No. 1:17-cv-05228 (E.D.N.Y. Mar. 29, 2018), available at https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Another/News/Press_Releases/GaraufisDACAMTDRuling.pdf.

It is no surprise, then, that the Trump Administration has remained steadfast in its efforts to end the DACA Program altogether. Having failed to secure an outright reversal, the Administration is clearly using its USCIS's fee-setting authority to circumvent the pending litigation and tax the program out of existence. It is an act of bad faith to increase the cost of an extension for multiple years while simultaneously trying to terminate the program altogether.

The state of Washington has been fighting, and will continue to fight, in court to preserve the Program and protect Dreamers. Not only is it the right thing to do, but research has shown that Dreamers provide significant economic benefits to our state. Washington residents eligible for DACA contribute approximately \$51 million each year in state and local taxes. Ending DACA would cost Washington's economy \$258 million in lost tax revenue over 10 years. Although the fee increase in this Proposal is not equivalent to an outright termination of the program, given that a number of individuals would no longer be able to afford renewals, the state expects a decrease in revenues should this Proposal go into effect.

Establishment of fee for Asylum

Asylum is a humanitarian protection for those fleeing persecution. As proposed by the Administration, those seeking asylum would have to pay \$50 to apply, with no possibility of a waiver. Doing so thwarts long-standing, internationally accepted policies that recognize the horrifying circumstances faced by people fleeing persecution. And, similar to the increase in fees for DACA renewals, this imposition will have the effect of disproportionately targeting people from Mexico and Central America.

Under current law, individuals whose asylum applications are granted must wait for 150 days before submitting an application to USCIS for a work authorization, and the approval process often takes months. These individuals are financially vulnerable, and the new \$50 fee is far too high a price to ask of those seeking refuge. Nearly every other nation that accepts asylees understands this; currently, only three other countries—Fiji, Australia, and Iran—charge a fee for asylum seekers. This Proposal would make the United States the fourth.

Again, this fee is consistent with the Trump Administration's xenophobia and racial animus toward those from Mexico and Central America. There are extreme discrepancies in the denial rate of asylum seekers based on their nationality. Mexico, Haiti, El Salvador, Honduras, and Guatemala, respectively, had the highest denial rates of the 10 nationalities with the most asylum decisions between FY 2012 and FY 2017.⁴ These high denial rates are in part due to the lack of access to legal assistance, and adding to the costs will do nothing to ameliorate the disparity.

Increased costs to apply for naturalization

Naturalization is already an expensive process, but this Proposal adds more than \$400 dollars to the application itself, with a new total of \$1,170. A figure this high disproportionately impacts

⁴ Holly Yan, *Which Nationalities Get Rejected the Most for US Asylum*, CNN, May 3, 2018, <https://www.cnn.com/2018/05/03/world/us-asylum-denial-rates-by-nationality/index.html> (last visited Dec.29, 2019).

low-income immigrants seeking to become citizens, many of whom are people of color, and consequently prevents them from fully participating in democracy.

According to the Center for the Study of Immigrant Integration at the University of Southern California, Washington has more than 180,000 residents who are eligible to naturalize, nearly 50,000 of whom have a high probability of doing so.⁵ Most of these individuals will be subject to the full and sudden impact of a more than 60 percent increase in cost as proposed, a cost that will now reach two percent of the median American household income.⁶ For context, the citizenship application fee was \$35 in 1985. Adjusted for inflation, the fee should be \$85, not the \$725 it is currently or the \$1,170 as proposed.⁷ An increase of this magnitude unquestionably supports the notion that the Administration plans to restrict the privilege of citizenship to only those with wealth.

But citizenship should not be viewed as a reward for affluence. Citizenship is a symbol of an individual's commitment to the United States, a commitment to participating in democracy by, for example, voting and serving on juries. The benefits of naturalization are enjoyed not only by the individual, who has better educational and employment opportunities, but also by the country, which would see an increase in national income and immigrant integration.⁸ Instead, the Trump Administration would rather advance its anti-immigrant agenda and covet political and economic power to support that agenda. The naturalization fee increase will shamefully keep citizenship out of reach for many low-income immigrants and immigrants of color based solely on cost.

Increased burden on the state of Washington and local non-profit organizations.

In addition to its direct impact on immigrant communities, this Proposal will interfere with numerous state, local, and non-profit programs that assist individuals with various USCIS applications and petitions. These programs provide a wide range of services that include document-preparation support, training for the citizenship interview and exam, fee reimbursement, and legal aid. As fees increase and waiver eligibility constricts, fee-reimbursement funds will subside and related services will go unutilized.

Alongside local agencies like the city of Seattle's Office of Immigrant and Refugee Affairs, the state of Washington provides funding for a number of core immigration programs. Washington's Office of Refugee and Immigrant Assistance (ORIA) within the Department of Social and Health

⁵ University of Southern California Center for the Study of Immigrant Integration, *Eligible to Naturalize Adults by Probability of Naturalization by State*, <https://dornsife.usc.edu/csii/map-eligible-to-naturalize-state> (last visited Dec. 23, 2019).

⁶ Christopher Ingraham, *The Cost to Become a U.S. Citizen is Going up 61 Percent*, The Washington Post, Nov. 13, 2019, available at <https://www.washingtonpost.com/business/2019/11/13/cost-become-us-citizen-is-going-up-percent>.

⁷ Boundless, *Marriage Green Card and Citizenship Application Fees to Increase Under New Proposal*, Nov. 10, 2019, <https://www.boundless.com/blog/fee-hikes-citizenship-immigration-forms> (last visited Dec. 20, 2019); Alex Shashkevich, "High Cost of Naturalization Prevents Low-Income Immigrants from Becoming Citizens, Stanford Study Finds," Stanford News Service, Jan. 17, 2018, <https://news.stanford.edu/press-releases/2018/01/17/low-income-immig-u-s-citizenship> (last visited Dec. 20, 2019).

⁸ Shashkevich, A., *supra* note 7.

Services, for example, administers the state-funded Naturalization Services program. The ORIA allocates most of the program's annual budget of \$1,657,000 toward assisting individuals with N-400 preparation and citizenship training. The program also offers fee reimbursements whenever an individual's waiver application is denied. Likewise, Washington's Department of Commerce administers the New Americans program in partnership with the statewide non-profit organization OneAmerica. Similar to ORIA, they offer N-400 guidance as well as technical legal assistance.

If USCIS implements this Proposal concurrently with the fee waiver rule, Washington's agencies anticipate that the demand for fee reimbursement will outpace other services, even though these services are critical to a successful naturalization application.

In addition to OneAmerica, Washington is home to a number of other organizations, including La Casa Hogar, CIELO, and the Spokane Immigrant Rights Coalition, that directly serve immigrant populations. At present, these organizations are increasingly concerned about their ability to continue doing so. For example, CIELO's "Immigrant Family Fund" is already almost depleted due to an upswing of "urgent, humanitarian, and family reunification" requests for filing fee assistance. If fees increase further, CIELO will be entirely unable to replenish its reserves and it, like the Spokane Immigrant Rights Coalition's "Family Support Fund," will disappear. Similar to OneAmerica, increased fees will jeopardize other immigration resources like La Casa Hogar's Citizenship Education and Naturalization Services, which offer citizenship training and legal aid and which are dependent on reasonable application fees.

Transfer of funds from USCIS applications to enforcement agencies

As part of this Proposal, USCIS intends to transfer \$415,200,000 in fee revenues to Immigration and Customs Enforcement (ICE) to further its mission of removing immigrants from the United States. You are on record stating that the fee increase would help an "overextended system." The Proposal seeks to "ensure that USCIS recovers its full operating costs and maintains an adequate level of service" [including] "to fund overall requirements and general operations related to USCIS IEFA programs." This is problematic for at least three reasons, and likely violates multiple statutory and treaty-based limitations that prevent USCIS from using vulnerable immigrants to fundraise for ICE. First, the proposed allocation of funds is beyond the scope of USCIS's legislative authority. Second, doing so will have the harmful effect of forcing immigrants to pay extra to have their family and community members deported. And thirdly, diverting funds away from USCIS strains credulity when USCIS itself is unable to address the operational issues confronting its own administration.

Neither 8 U.S.C. § 1356 nor any other statute gives USCIS authority to transfer IEFA fee collections to ICE. Under 8 USC §§ 1356(m) and (n), expenditures from USCIS application fees are clearly earmarked for "providing adjudication and naturalization services." The fees ought to be set with reference to the cost of providing such services, including the cost of fee collection. Because the United States Attorney General is charged with "safeguarding and accounting" for such fees, he should not be complicit in any misdirection of revenues stemming from this Proposal. If he decides to do so, he will be acting unlawfully.

Equally important, using application fees to further immigration enforcement will pit certain immigrants against others. This Administration has proposed myriad rules that negatively affect diverse groups of immigrants. Often, it does so in a way that fails to recognize the interconnectedness of immigrant communities, where people with a variety of statuses co-exist.⁹ With this attempt to forward application revenues to ICE, the Proposal makes it so that one's effort to secure their future will finance their neighbor's undoing.

Equally confounding is that the last round of fee increases in 2016 failed to yield any improvement in customer service. Instead, average case processing times “surged by 46 percent from FY 2016 to FY 2018.”¹⁰ It is, therefore, inconceivable that revenues from this round of increases would be allocated away from that endeavor. In Washington, wait times in Seattle have reached up to 19.5 months for I-485 processing and 19.5 months for N-400 processing.¹¹ In Spokane, wait times for I-485's are even longer, up to two years.¹² This is, of course, a far cry from Congress' vision when it first created USCIS and provided for “pilot initiatives for backlog elimination.”¹³ As the Administration continues to change immigration policy and undermine expectations for reasonably foreseeable outcomes, it must surely allow some relief in the form of improved efficiency. Hundreds of millions of dollars sent elsewhere cannot be the solution.

Increased risk for notario and other fraud

The changes set forth in the Proposal increase the risk that predatory actors, such as those misrepresenting their qualifications to provide assistance navigating the immigration system, will take advantage of those seeking help to access immigration benefits.

As the Administration continues to focus its disfavor on immigrant communities, affected individuals will be even more susceptible to false promises of relief. The American Bar Association reported that the demand for immigration-law services “increased dramatically” in early 2017.¹⁴ This upswing in demand is directly connected to an increase in predatory practices. Although the extent to which immigration fraud occurs is unknown,¹⁵ uncertainty that is compounded by the current political climate,¹⁶ the American Bar Association has explained that an increase in anxiety among immigrant communities promotes exploitation.¹⁷ Given that this

⁹ See, e.g., Department of Housing and Urban Development Proposed Rule: Housing and Community Development Act of 1980: Verification of Eligible Status, 84 FR 20589 (proposed May 10, 2019) (to be codified at 24 C.F.R. 5), available at <https://www.federalregister.gov/documents/2019/05/10/2019-09566/housing-and-community-development-act-of-1980-verification-of-eligible-status>.

¹⁰ See Statement of Marketa Lindt, U.S. House of Representatives, Judiciary Committee, Subcommittee on Immigration and Citizenship, July 16, 2019, <https://www.aila.org/infonet/marketa-lindts-written-testimony-uscis-hearing> (last accessed Dec. 30, 2019).

¹¹ USCIS, Check Case Processing Times, <https://egov.uscis.gov/processing-times/> (last visited Dec. 20, 2019).

¹² *Id.*

¹³ 6 USC § 271(a)(5).

¹⁴ Lorelai Laird, “Increased Enforcement of Immigration Laws Raises Scam Risk,” ABA Journal, May 2018, available at http://www.abajournal.com/magazine/article/immigration_law_scams/P1.

¹⁵ Lorelai Laird, “Underreporting Makes Notario Fraud Difficult to Fight,” ABA Journal, May 1, 2018, http://www.abajournal.com/magazine/article/underreporting_notario_fraud (last visited Dec. 20, 2019).

¹⁶ *Id.*

¹⁷ Lorelai Laird, “Increased Enforcement of Immigration Laws Raises Scam Risk,” *supra* note 14.

Proposal is already causing anxiety and will lead to a race to file before the change in fees, there is little doubt that unscrupulous individuals will continue to prey on victims.

The Washington Attorney General's Office has taken legal action against such actors in the past for violating Washington's Consumer Protection Act, and the Office will remain vigilant. However, USCIS must also be attentive to these practices by dishonest and predatory actors. Given that the Administration is fully aware of this issue — USCIS notes on its website that fraudulent businesses market shorter wait times or other non-existent benefits in exchange for exorbitant professional costs¹⁸ — it is shortsighted to implement such a drastic change in immigration procedures so hastily.

Conclusion

It can take months for a low-wage individual to save enough to pay a filing fee, and those who are retired, unemployed, living with a disability, or in school face even more difficulty. Failing to take any of this into consideration will be another signal by the Administration of its disfavor of any form of immigration.

In conclusion, we reiterate our deep opposition to this Proposal and urge you to abandon it.

Sincerely,



Jay Inslee
Governor



Bob Ferguson
Attorney General

CC: Samantha Deshommes, Chief, Regulatory Coordination Division

¹⁸ USCIS, Common Scams,(Dec. 3, 2019), <https://www.uscis.gov/avoid-scams/common-scams> (last visited Dec. 23, 2019).