

December 20, 2019

Submitted via www.regulations.gov

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



Re: U.S. Citizenship and Immigration Services Fee Schedule, DHS Docket No. USCIS-2019-0010; RIN 1615-AC18

Dear Chief Deshommes:

Below please find comments submitted in response to the proposed U.S. Citizenship and Immigration Services (USCIS) Fee Schedule, published on November 14, 2019, on behalf of the Asian Pacific Institute on Gender-Based Violence (API-GBV). The API-GBV is a national resource center on domestic violence, sexual violence, trafficking, and other forms of gender-based violence in Asian and Pacific Islander and immigrant communities. The API-GBV works in partnership with various national networks of advocates, community-based service programs, federal and state government agencies, national and state organizations, legal, health, and mental health professionals, researchers, policy advocates, and activists from social justice organizations to better address the needs of Asian and Pacific Islander and immigrant victims. API-GBV analyzes critical issues, promotes culturally relevant evidence-informed intervention and prevention, provides consultation, technical assistance and training; develops resources, conducts and disseminates research, and impacts systems change through administrative advocacy and policy analysis. Based on our experience supporting victim services providers who work with Asian and Pacific Islander and immigrant survivors of gender-based violence, and in working directly with immigrant survivors, we strongly oppose the proposed fee schedule, and request that USCIS withdraw all provisions that make immigration benefits less accessible to low-income and other vulnerable immigrants.

The rule creates yet another barrier for immigrant survivors applying for immigration benefits.¹ Survivors, particularly immigrant survivors, of violence often lack access to financial resources due to abusers exerting economic exploitation and control, trauma affecting survivors' ability to work, and other factors. Raising fees and eliminating fee waivers for applications for immigration benefits will exacerbate the financial barriers that survivors already face, harming

¹ See e.g., comments submitted in response to USCIS, "Agency Information Collection Activities; Form I-912; Request for an Individual Fee Waiver," USCIS-2010-0008, available at <https://www.regulations.gov/docketBrowser?rpp=25&po=75&dct=PS&D=USCIS-2010-0008&refD=USCIS-2010-0008-0144>

their ability to leave abusive relationships, gain protection, and live a life free from violence and exploitation.

I. General Comments

The API-GBV calls on USCIS to withdraw the proposed rule as it creates significant barriers for individuals – including survivors of domestic violence, sexual assault, human trafficking and other crimes – to access immigration benefits. The proposed USCIS fee schedule disproportionately increases fees and eliminates fee waivers for the benefit categories most commonly used by low-income immigrants. These unwarranted changes would put safety out of reach for survivors who depend on lower application fees or fee waivers in order to apply for and gain immigration relief. Further, the proposed rule undermines the congressional intent to make humanitarian relief accessible to victims and contravenes the purpose of USCIS as a *benefit-granting* agency, not one focused on enforcement.² USCIS should instead focus its efforts on ensuring that low-income and other vulnerable immigrants have access to immigration relief for which they are eligible.

USCIS states that the fee increase would make it “more equitable for all immigration benefit requests by requiring fees for the service to be paid by those who benefit.”³ While this sounds like a credible goal, it disregards the public policy benefits of having immigration relief accessible to those who qualify. Access to secure immigration benefits can lead to an increase in an individual’s wages, create stability for family members, and contribute to the economic growth of our country as a whole.⁴ For crime survivors in particular, access to immigration benefits is essential to escape abusive situations, recover from abuse, and gain self-sufficiency following victimization.

We describe below how some of these changes will impact our organization and the victim service providers and immigrant survivors we serve, and the reasons for our opposition. Omission of any proposed change from this comment should not be interpreted as tacit approval. We oppose all aspects of the proposed fee schedule that would act as a barrier between immigrant survivors and the immigration benefits for which they qualify.

II. The Proposed Rule Would Cause Severe Harm and Erect Economic Barriers for Immigrant Survivors of Violence

a. Immigrants are Disproportionately Vulnerable to Violence and Abuse

Increasing barriers to access to immigration status will necessarily implicate thousands of immigrant victims. Intimate partner violence (IPV) is widespread in the United States, with

² Congress specifically designated USCIS as the immigration benefits and adjudications agency in the Homeland Security Act in 2002 See, Section 451(b) Pub. L. No. 107–296, 116 Stat. 2135 (November 25, 2002), available at: https://www.dhs.gov/xlibrary/assets/hr_5005_enr.pdf

³ Proposed Rule at 62299.

⁴ The Center for American Progress. “How How Citizenship Helps the Economy”, available at <https://cdn.americanprogress.org/wp-content/uploads/2014/03/EconofCitizenship.pdf>

twelve million men and women experiencing rape, physical violence, or stalking by an intimate partner each year. Immigrant women in particular face a high risk for experiencing severe IPV and domestic violence victimization. Among intimate partner homicide victims in the United States, immigrant victims are disproportionately represented compared to their representation in the U.S. population.⁵ According to a review of 147,902 intimate partner homicides from 2003-2013 across 19 U.S. states, foreign-born victims were more likely than U.S. born victims to be associated with intimate partner violence related deaths. In addition, foreign-born women killed by their intimate partners were more likely than U.S. born women to be married, young, and killed by a young partner who strangled, suffocated, or stabbed them.⁶

In the API community, between 21-55% of API women report experiencing domestic or sexual violence in their lifetimes.⁷ In a six-year period, an analysis of 160 cases of domestic violence-related homicide in API families resulted in 226 fatalities, including intimate partner, children, familicide, and other domestic violence-related homicides. Of these victims, 78% were women and girls, 20% were men and boys, and 2% were unknown (no information was available on the sex).⁸

b. The Fee Schedule Changes Reinforce the Ability of Abusers and Perpetrators to Use Immigration Status and Finances as Tools of Abuse and Violence

Abusers utilize a myriad of tactics to dominate and control survivors – subjecting them to emotional or psychological abuse, isolating them from friends and family, dictating what survivors can do or say, or convincing survivors that they deserve the abuse. For immigrant victims of intimate partner violence, abusers may exploit their victims’ lack of English proficiency, isolation from their family and other helping systems, lack of understanding or familiarity with the American legal system, religious and cultural customs, in order to further threaten, isolate, and abuse them.⁹ Immigrant survivors are also particularly vulnerable as abusers and assailants often exploit survivors’ immigration status, threatening survivors that they will be deported or face immigration enforcement if they attempt to leave the abusive relationship or report the violence. As a result, survivors are afraid to call the police or go to court to seek help. 76.25% of advocates report that immigrant survivors have concerns about

⁵ Michael Runner, Mieko Yoshihama, & Steve Novick, Intimate partner violence in immigrant and refugee communities: Challenges, promising practices and recommendations. (2009) Retrieved from: <https://www.rwjf.org/en/library/research/2009/03/intimate-partner-violence-in-immigrant-and-refugee-communities.html>.

⁶ Sabri, B., Campbell, J., & Messing, J., (2018). Intimate Partner Homicides in the United States, 2003-2013: A Comparison of Immigrants and Nonimmigrant Victims. *Journal of Interpersonal Violence*, 1-23.

⁷ Mieko Yoshihama & Chic Dabby, Asian Pacific Institute on Gender-Based Violence. *Facts & Stats Report: Domestic Violence in Asian and Pacific Islander Homes* (2015), Oakland, CA: Available at <https://www.apigbv.org/resources/facts-stats-dv-api-homes/>.

⁸ Chic Dabby, Hetana Patel & Grace Poor, Shattered Lives: Homicides, Domestic Violence and Asian Families. (2010) Retrieved from <https://www.api-gbv.org/resources/shattered-lives-homicides-domestic-violence-asian-families/>.

⁹ Yvonne Amanor-Boadu, Jill Messing, Sandra M. Stith, Jared R. Anderson, Chris S. O’Sullivan, Jacquelyn C. Campbell, “Immigrant and non-immigrant women: Factors that predict leaving an abusive relationship.” *Violence Against Women*, 18, 611-633 (2012).

contacting police and three out of four advocates report that immigrant survivors have concerns about going to court for a matter related to the abuser or offender.¹⁰

One of the most common and effective tools of abuse that forces survivors to stay in or return to violent relationships is financial abuse. Abusers will sabotage survivors' employment, ruin their credit, build up debt in their name, or limit their access to financial resources in order to prevent survivors from attaining economic independence.¹¹ In addition, survivors of sexual violence often face detrimental economic consequences as a result of the violence – trauma may harm their ability to work or they may be forced to leave their employment in order to escape their assailant.

Immigration status may limit a survivor's ability to gain employment, preventing them from working and earning their own income. Abusers may deceive immigrant survivors who are legally able to work, claiming that doing so would draw unwanted attention from immigration authorities and result in deportation. Cultural beliefs and values may also impose strict gender roles that pressure women to stay at home and cede employment opportunities to their male partners. This is often the case in traditional Asian families where men are the providers and women are expected to be the caretakers. Financial abuse causes survivors to have little to no financial resources of their own, forcing them to become dependent on their abusers for housing, food, health care, and other basic needs. As such, survivors must make an impossible decision between staying in an abusive relationship and risking falling into poverty if they leave.

With immigration status and financial abuse being two highly effective and dangerous tools of intimidation and control, opportunities for immigrant survivors of violence to apply for and gain immigration relief, regardless of their financial means is crucial to ensuring that immigrant survivors are able to seek and find safety. For many immigrant survivors, their survival depends on it.

III. USCIS Should Not Increase Fees for Applications Related to or Connected with Survivor-Based Relief

USCIS proposes raising the fees for some of the most commonly used immigration benefits, while simultaneously limiting the use and criteria for fee waivers.¹² The changes contained in the proposed rule would create a financial hardship for immigrant families, and place them in an impossible position of having to choose between delaying or falling out of legal immigration status or providing for their day-to-day necessities.

¹⁰ Asian Pacific Institute on Gender-Based Violence, ASISTA Immigration Assistance, et al. Immigrant Survivors Fear Reporting Violence (2019). Retrieved from: <https://static1.squarespace.com/static/5b9f1d48da02bc44473c36f1/t/5d290b07a8dea8000138bf97/1562970888076/2019-Advocate-Survey-Final.pdf>

¹¹ Postmus, J. L., Plummer, S. B., McMahon, S., Murshid, N. S., & and Mi Sung Kim, M. S.(2012). Understanding economic abuse in the lives of survivors. *Journal of Interpersonal Violence*, 27(3),411–430., Adams, A, Sullivan,C, Bybee, D, & Greeson, M. (2008), Development of the scale of economic abuse. *Violence Against Women*, 13, 563-588.

¹² See Table 19; Proposed Rule at 62326. See also Proposed Rule at 62298.

Though the applications for survivor-based relief themselves do not have a fee,¹³ applicants must often file ancillary forms that do have fees. The proposed rule significantly increases these fees for applicants.¹⁴ For example, the proposed rule would increase the fee for an I-765, Application for Employment Authorization to \$390.00. The proposed rule increases the I-192 Application for Advance Permission to Enter as a Nonimmigrant fee from \$930 to \$1415.00 (an increase of 52%), and the I-929 Applications for Qualified Family Members of U visa holders from \$230 to \$1515.00, an increase of 559%.¹⁵ In significantly raising the costs of these ancillary applications connected to underlying applications for which there are not a fees, and failing to provide for waivers (see further discussion regarding fee waivers, below), the proposed rule ignores the fact that survivors of domestic violence, sexual assault and human trafficking may desperately need timely processing of such ancillary applications to escape and overcome abuse.

IV. USCIS Should Not Impose a Renewal Fee for DACA

The Deferred Action for Childhood Arrivals (DACA) program provides the opportunity for immigrants who have grown up and spent most of their lives in the United States to receive protection from deportation, work, and continue to live in the country that they have called home since childhood. According to USCIS, there were approximately 660,880 total active DACA recipients reported as of June 30, 2019. Of these, over 18,000 were Asian and Pacific Islanders. Four of the top 25 countries of birth of DACA recipients are Asian countries – South Korea, Philippines, India, and Pakistan.¹⁶ In addition, the Migration Policy Institute estimates that 1,322,000 immigrants are immediately eligible for DACA. Looking at just the top 30 nations of origin of DACA recipients, approximately 8% of eligible recipients are Asian immigrants.¹⁷

The ability to receive immigration protection under DACA is crucial for many immigrant survivors of domestic and sexual violence. Most DACA requesters are, by definition, young immigrants. Of the approximately 660,880 total active DACA recipients, approximately 544,180 are age 30 or below, and 112,160 of that number are fifteen to twenty years old. Due to age, the DACA eligible population is particularly vulnerable to abuse and violence. Women between the ages of eighteen and twenty-four experience the highest rate of rape and sexual assault compared to women of all other age groups.¹⁸ 71% of female survivors report that they were subjected to intimate partner violence before 25 years old, 23% of who were victimized before age eighteen, and 58% of male survivors report being victimized before age 25, 14% of who were victimized

¹³ There is no fee, for example for an I-360 application for a VAWA self-petitioner or Applicant for Special Immigrant Juvenile Status. See <https://www.uscis.gov/i-360>. Similarly, there is no fee for an application for U nonimmigrant status or T nonimmigrant Status. See also <https://www.uscis.gov/i-918> and <https://www.uscis.gov/i-914>

¹⁴ See Table 19, Proposed Rule at 62326

¹⁵ *Id.*

¹⁶ United States Citizenship and Immigration Services. DACA Population Recipients since Injunction. Retrieved from: https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Static_files/DACA_Population_Receipts_since_Injunction_Jun_30_2019.pdf

¹⁷ Migration Policy Institute. Deferred Action for Childhood Arrivals (DACA) Data Tools. Retrieved from: <https://www.migrationpolicy.org/programs/data-hub/deferred-action-childhood-arrivals-daca-profiles>.

¹⁸ U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics (2014 December). Rape and Sexual Assault Victimization Among College-Age Females, 1995-2013. Retrieved from: <https://www.bjs.gov/content/pub/pdf/rsavcaf9513.pdf>.

when they were under eighteen years of age.¹⁹ The vulnerabilities that come with being an immigrant combined with the vulnerabilities of being under the age of 25 leads DACA to be an essential form of protection for DACA eligible survivors of gender-based violence.

The current total fee for Deferred Action for Childhood Arrivals (DACA) renewals is \$495. USCIS proposes to establish a new, additional \$275 fee for Form I-821D, which would raise the new total cost for DACA renewal to \$765. In a 2015 survey of DACA recipients, 61% of recipients reported having financial obligations to their families and helping to pay the bills, including rent and utilities. However, nearly 70 percent of respondents indicated that they struggled to pay their monthly bills and expenses with their current incomes.²⁰ Survivors of domestic and sexual violence often have little to no access to financial resources or ability to earn income due to financial abuse and/or trauma and workplace factors (such as if the assailant is with the same employer) affecting their ability to hold employment. As such, survivors already face enormous financial barriers affording the current DACA renewal fee. The 55 percent increase in costs proposed in the fee rule would only make it even more difficult for immigrant survivors to access the protection from deportation and work authorization they need to find safety and stability.

In a survey of shelters and organizations serving survivors of domestic and sexual violence, 50% of service providers responded that they had helped a survivor obtain DACA. Some of the responses included, “DACA provided a sense of peace knowing that she [the survivor] did not have to remain silent when being abused for fear of her immigration status”²¹ and,

DACA provides work authorization and the removal of fear of imminent deportation – two things that my clients need to feel free to leave their abusive partners. DACA enables my clients to leave abusive relationships by providing financial and emotional stability for themselves and their children.²²

Maintaining current fee levels for the I-821D form is therefore crucial to ensuring that young survivors of domestic and sexual violence have the opportunity to escape from abuse, earn a living for themselves and their families, and rebuild their lives.

V. USCIS Should Not Impose a Fee to File for Asylum

USCIS plans to impose a \$50 fee for those filing for affirmative asylum. This proposal contravenes longstanding policy, the moral imperative for the U.S. to accept asylum seekers as well as obligations under domestic and international laws. As a signatory to the 1967 Protocol of the 1951 Convention Relating to the Status of Refugees, the U.S. has an obligation to accept asylum seekers who seek protection.

¹⁹ U.S. Department of Justice, Office for Victims of Crime, the National Center for Victims of Crime (2017). Intimate Partner Violence. Retrieved from:

https://ovc.ncjrs.gov/ncvrw2017/images/en_artwork/Fact_Sheets/2017NCVRW_IPV_508.pdf.

²⁰ United We Dream (October 2015). A Portrait of Deferred Action for Childhood Arrivals Recipients: Challenges and Opportunities Three-Years Later. Retrieved from <https://unitedwedream.org/wp-content/uploads/2015/10/DACA-report-final-1.pdf>.

²¹ Casa de Esperanza: National Latin@ Network. Testimonies From the Field: Benefits of DACA for Survivors of Domestic and Sexual Violence. Retrieved from

https://www.nationallatinonetwork.org/images/files/Quote_Sheet_for_Hill_Visits_2.pdf.

²² *Id.*

Immigrant survivors of domestic, sexual, and other forms of gender-based violence flee from their home countries and seek asylum in the U.S. in hopes of finding safety, protection, and the ability to not have to fear for their lives. Some of these survivors are fleeing from countries where it is extremely dangerous to be a woman. El Salvador and Honduras have among the highest death rates for women in the world.²³ However, with a 95% impunity rate for sexual and femicide crimes, perpetrators and abusers in Honduras rarely face consequences.²⁴ The rate of violent death for women in El Salvador is the third highest in the world,²⁵ and seven out of every ten victims of sexual violence are under the age of 20.²⁶ In Guatemala, acts of violence against women are the most reported crimes, with an average of 560,000 reports a year.²⁷ In Venezuela – which was the top country of origin for affirmative asylum cases in 2017²⁸ – women and girls become victims of homicide by a rate of 24.5 per every 100,000 women, putting Venezuela as the country with the second highest femicide rate in 2016 when looking at countries that are not currently in an armed conflict.²⁹ Furthermore, among 357 cases brought before the International Criminal Court regarding violence, abuse, and torture perpetrated by security forces against political prisoners, 190 were about rape and sexual abuse.³⁰

From 2015 to 2017, Chinese asylum seekers made up the highest percentage of affirmative and defensive asylum claims granted by nationality in the U.S. In 2017, one in five individuals granted asylum were from China.³¹ Domestic and sexual violence in China are pervasive issues that Chinese society often minimizes or normalizes. Chinese courts often value traditional norms of keeping families together over the rights and safety of women. Courts in China have often ruled against granting women survivors of domestic violence a divorce, with some even boasting about the number of marriages they have “saved.”³² A study by the United Nations Population

²³ Small Arms Survey (November 2016). A Gendered Analysis of Violent Deaths. Small Arms Survey Research Notes, Number 63, 1-8. Retrieved from: http://www.smallarmssurvey.org/fileadmin/docs/H-Research_Notes/SAS-Research-Note-63.pdf.

²⁴ United Nations Human Rights Office of the Commissioner (10 July 2014). Honduras: UN human rights expert calls for urgent action to address impunity for crimes against women and girls. Retrieved from: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14847&LangID=E>.

²⁵ O’Toole, M. (2018, March 4). El Salvador’s Gangs Are Targeting Young Girls. *The Atlantic*. Retrieved from: <https://www.theatlantic.com/international/archive/2018/03/el-salvador-women-gangs-ms-13-trump-violence/554804/>.

²⁶ Lobo-Guerrero, C. (2017, September 2). In El Salvador, ‘Girls Are a Problem.’ *The New York Times*. Retrieved from: <https://www.theatlantic.com/international/archive/2018/03/el-salvador-women-gangs-ms-13-trump-violence/554804/>.

²⁷ Piette, C. (2015, December 5). Where women are killed by their own families. *BBC News*. Retrieved from: <https://www.bbc.com/news/magazine-34978330>.

²⁸ United States Department of Homeland Security, Office of Immigration Statistics, Office of Strategy, Policy & Plans (March 2019). Annual Flow Report: Refugees and Asylees 2017). Retrieved from https://www.dhs.gov/sites/default/files/publications/Refugees_Asylees_2017.pdf.

²⁹ Mathema, S. (2018, June 1). They Are (Still) Refugees: People Continue to Flee Violence in Latin American Countries. *Center for American Progress*. Retrieved from: <https://www.americanprogress.org/issues/immigration/reports/2018/06/01/451474/still-refugees-people-continue-flee-violence-latin-american-countries/>.

³⁰ United States Department of Justice (2018). Venezuela 2018 Human Rights Report. Retrieved from: <https://www.justice.gov/eoir/page/file/1160296/download>.

³¹ United States Department of Homeland Security, *supra* note 30 at 9.

³² Wang, Y. (Nov. 26, 2018). Chinese Courts Give Domestic Abusers a Pass. *Human Rights Watch*. Retrieved from <https://www.hrw.org/news/2018/11/26/chinese-courts-give-domestic-abusers-pass#>.

Fund on gender-based violence in China found that 26% of men reported perpetrating physical intimate partner violence one to two times and 19% reported using violence three or more times. In addition, one in five Chinese men report having perpetrated rape against a partner or non-partner and 75% of men report never having experienced any legal consequences.³³

Survivors of domestic and sexual violence seeking asylum in the U.S. are often doing so as a last resort because there is little hope of finding protection and safety from their abusers and assailants in their home countries. Immigrant survivors who possess very few resources to begin with flee with even less. Instituting a fee for asylum would make it virtually impossible for the most vulnerable immigrant survivors of horrific domestic and sexual abuse to live a life free from the threats and violence of their abusers and perpetrators.

Creating additional barriers by imposing a fee on asylum applications would effectively cause the U.S. to break its treaty obligations and flout in the face of the basic intent of the 1980 Refugee Act. In fact, the vast majority of countries who are signatories to the 1951 Convention or 1967 Protocol do not charge a fee for an asylum application.³⁴ The United States has long been a world leader in refugee protection and served as a beacon of hope for survivors fleeing domestic and sexual violence in their home countries. If the United States imposes a filing fee for asylum, other countries may follow. This could have disastrous effects on refugee resettlement at a time when the number of refugees and displaced people are at historic highs. The U.S. should adhere to its international and domestic obligations and not refuse asylum seekers their chance to seek protection simply for the inability to pay.

VI. Naturalization Fees Should Be Affordable

The proposed fee schedule would increase the filing fee for Naturalization from \$640 to \$1,170, an 83 percent increase. This substantial increase would make naturalization less accessible for many immigrant survivors of violence. The benefits of naturalization to individuals, including survivors, and the U.S. society cannot be overstated and the application must not be overpriced in order to avoid suppressing access to the benefits. “Citizenship can serve as a catalyst for immigrants to become more: dedicated to democratic principles; informed about the Constitution; engaged in political elections; represented in the political system; proficient in the English language; unified as families; employable in higher paying jobs; and integrated within a wider circle of people and institutions.”³⁵ With approximately 9 million Lawful Permanent Residents, or LPRs, eligible to naturalize who have not yet filed,³⁶ and the significant benefits

³³ Wang, X., Gang, F., & Hongtao, L. (2013). Research on Gender-based Violence and Masculinities in China: Quantitative Findings. *United Nations Population Fund China*. Retrieved from: <http://www.partners4prevention.org/resource/research-gender-based-violence-and-masculinities-china-quantitative-findings>.

³⁴ See Zolan Kanno-Youngs and Miriam Jordan, *New Trump Administration Proposal Would Charge Asylum Seekers an Application Fee*, N.Y. TIMES, Nov. 8, 2019, <https://www.nytimes.com/2019/11/08/us/politics/immigration-fees-trump.html> (Noting that the United States would be only the fourth country in the world to charge a fee for asylum).

³⁵ JEFF CHENOWETH AND LAURA BURDICK, CATHOLIC LEGAL IMMIGRATION NETWORK, A MORE PERFECT UNION: A NATIONAL CITIZENSHIP PLAN, at vii, <https://cliniclegal.org/resources/guides-reports-publications/more-perfect-union-national-citizenship-plan>.

³⁶ Robert Warren and Donald Kerwin, *The US Eligible-to-Naturalize Population: Detailed Social and Economic Characteristics*, 3 J. Migration & Hum. Security 306, 306 (2015).

that immigrant integration brings to the United States, it is in the country's best interests to incentivize naturalization by maintaining a low application fee.

One of the most important benefits of citizenship for immigrant survivors is that it provides protection against immigration-related threats. As noted earlier, abusers and perpetrators will threaten survivors who lack stable immigration status that they will be deported or face immigration enforcement actions if they report the violence or seek help. These threats are highly effective in intimidating, coercing, and trapping survivors in abuse and violence. However, possessing citizenship status nullifies these threats and gives survivors assurance that they will not be deported or arrested by immigration officials if they call the police or go to court. It is therefore crucial to keep the pathway to citizenship accessible and affordable for immigrant survivors to ensure that survivors feel safe reaching out for help.

Congress has called on USCIS to keep the pathway to citizenship affordable and accessible.³⁷ Pursuant to this expectation, USCIS has historically redistributed a portion of the cost of naturalization applications among other application fee types to subsidize affordable naturalization and encourage immigrant integration.³⁸ This proposed fee rule would abandon that historic practice and charge the actual cost of naturalization to applicants, disregarding the agency's previous concern for incentive and the affordability of naturalization. The proposed fee increase is contrary to Congressional intent, and contrary to the interests of the United States society and economy.

VII. Adjustment of Status Applications Should Remain Bundled and Affordable

USCIS proposes separate fees for concurrently filed Forms I-485, I-765, and I-131. Most applicants for adjustment of status who will file Form I-485 will also request employment authorization and advance parole travel authorization. Due to immigrant visa backlogs, applicants for adjustment often face long waits before their permanent residency is granted. They rely on employment authorization so that they can continue to live and work in the United States while their application is pending. These applicants will see a 79 percent increase in the total cost of filing Forms I-485, I-765, and I-131. The steep increase, from \$1,225 to \$2,195, and the elimination of fee waivers will make adjustment of status unattainable for many VAWA self-petitioners, U visa holders, T visa holders, and other immigrant survivors and their children who are eligible for adjustment of status. A minimum-wage worker and survivor who is likely already living paycheck-to-paycheck would have to work an extra 134 hours just to cover the increase in the application fees. Increasing the overall cost of adjustment of status would prevent many immigrant survivors from becoming permanent residents and undermine their ability to continue to move forward and rebuild their lives.

VIII. USCIS Should Maintain Fee Waivers for All Current Categories

The fee schedule proposes to eliminate filing fee waivers for all categories except those that are statutorily required. As a result of statutory mandates, fee waivers for certain applications related

³⁷ H. Rep. No. 115-948 accompanying H.R. 6776, the Department of Homeland Security Appropriations Act (2019).

³⁸ See, e.g., U.S. Citizenship and Immigration Services Fee Schedule, 75 Fed. Reg. 58,975, www.govinfo.gov/content/pkg/FR-2010-09-24/pdf/2010-23725.pdf.

to the Violence Against Women Act (VAWA), including abused conditional residents seeking to remove conditions, U and T visas, battered spouses of certain nonimmigrant visa holders under INA §106, and Temporary Protected Status (TPS) would remain.³⁹ Congress mandated that DHS ***shall permit applicants to apply for a waiver of any fees associated*** with filing an application as a VAWA self-petitioner,⁴⁰ a T or U visa application, or an application for VAWA cancellation or suspension of deportation.⁴¹ In doing so, Congress recognized that ensuring equal access to immigration protections is crucial for crime survivors to achieve safety and security.

The proposed rule states that generally fee waivers will no longer be available for any naturalization applications and many other forms in non-survivor based cases, like legal permanent residence applications, work permit applications, and Form I-751, Petitions to Remove Conditions on Residence, among others.⁴² However, many immigrant survivors seek status through other immigration categories. Although fee waivers for certain survivor-related applications will remain, by eradicating fee waivers for many other applications, the proposed rule ignores the fact that survivors of domestic violence, sexual assault, human trafficking, and other gender-based abuses may pursue other routes to secure immigration status which lack such explicit protections. For example, survivors may seek lawful permanent residence on a basis other than those specifically designed for crime survivors. In these instances, these survivors will no longer have access to fee waivers.

In addition, under the proposed rule, legal permanent residents applying for naturalization – including those who are survivors of domestic violence, sexual assault and other crimes – will not have access to fee waivers. Over the last several years, the high cost of naturalization has often been a barrier for individuals who are eligible to apply.⁴³ Thus, raising the fees for naturalization by 83%, coupled with eliminating the availability of fee waivers, will put low-income legal permanent residents escaping violence in the unconscionable position of having to choose between expending resources to become a U.S. citizen or cover necessities for their families.

Because of the benefits of naturalization—one of the form types most frequently associated with fee waiver requests⁴⁴—Congress has called on USCIS to keep the pathway to citizenship

³⁹ 8 U.S.C. 1255(l)(7)

⁴⁰ INA 101(a)(51)

⁴¹ William Wilberforce Trafficking Victims Protection Reauthorization Act. Section by section 201(d)(7), Public Law No: 110-457 (December 23, 2008) (codified at 8 U.S.C. § 1255(l)(7)), available at: <https://www.congress.gov/110/plaws/publ457/PLAW-110publ457.pdf>. [Emphasis added].

⁴² See Proposed Rule at 62999. Fee waivers will be eliminated for naturalization, and the following forms in non-survivor based cases: 1) Form I-90, Application to Replace Permanent Resident Card; 2) Form I-765, Application for Employment Authorization; 3) CNMI related petitions and applications; 4) Form I-485, Application to Register Permanent Residence or Adjust Status; 5) Forms for applicants exempt from the public charge inadmissibility ground; Form I-751, Petition to Remove Conditions on Residence. Note that applicants seeking a domestic violence-based I-751 waivers are defined as "VAWA self-petitioners" under INA 101(a)(51)(C) and thus access to fee waivers are statutorily protected under the TVPRA of 2008 (8 U.S.C. § 1255(l)(7)).

⁴³ See National Partnership for New Americans & the Center for the Studies of Immigrant Integration at the University of Southern California "Nurturing Naturalization: Can Lowering the Fee Help?" (February 2013), available at https://dornsife.usc.edu/assets/sites/731/docs/Nurturing_Naturalization_final_web.pdf; See also Chinelo Nkechi Ikem. "High Applications Fees Can Be a Significant Barrier to Naturalization. *Pacific Magazine* (February 22, 2018) <https://psmag.com/economics/application-fee-naturalization>

⁴⁴ USCIS Fee Waiver Policies and Data, Fiscal Year 2017 Report to Congress, USCIS (Sept. 17, 2017), www.dhs.gov/sites/default/files/publications/USCIS%20-%20Fee%20Waiver%20Policies%20and%20Data.pdf.

affordable and accessible.⁴⁵ A recent Congressional Committee report states, “USCIS is expected to continue the use of fee waivers for applicants who can demonstrate an inability to pay the naturalization fee.”⁴⁶ USCIS’ proposed elimination of filing fee waivers would severely undermine Congressional intent, and is also a flawed and shortsighted policy. It will result in considerable harm to immigrant survivors and their children becoming new American families, as well as harm the nation’s democracy as a whole.

The importance of fee waivers for immigrant survivors seeking immigration relief cannot be emphasized enough. Many immigrant survivors applying for immigration status are only able to do so through the availability of fee waivers as they simply do not have the money to pay the steep application fees. Fee waivers have the power to open a pathway for immigrant survivors of domestic and sexual violence to escape abusive relationships, find safety and stability, and rebuild their lives through attaining immigration status separate from their abuser or perpetrator. The proposal to eliminate fee waivers would only serve to erect an insurmountable economic barrier for many immigrant survivors, trapping them in vulnerable and violent situations and environments.

IX. Fee Waivers Should be Available to Those Subject to the Affidavit of Support

USCIS proposes making fee waivers unavailable to applicants who are subject to the public charge ground of inadmissibility; those who are subject to an affidavit of support; and those who are already sponsored immigrants. Most family sponsored immigrants are subject to the public charge ground of inadmissibility and are required to have an affidavit of support regardless of income.⁴⁷ The USCIS Director would also be barred from granting a discretionary fee waiver to anyone in the former categories.

This proposal would disproportionately harm low and moderate-income families, including many immigrant survivors and their children. For domestic violence survivors, their abusive spouses may very well be their sponsors who were responsible for providing affidavits of support. If these survivors are ineligible for fee waivers for critical applications, including employment authorization or permanent residence, they may be faced with the inability to leave or recover from domestic violence and coercion. It is therefore critical to keep fee waivers available to those subject to the affidavit of support to ensure that immigrant survivors do not have to return to their abusers and may continue to seek immigration benefits for which they are eligible.

X. Eliminating the Financial Hardship Category and Narrowing the Other Criteria for Fee Waivers Is Unjustifiable and Creates Barriers for Survivors to Access Relief.

USCIS has already taken dramatic measures to limit the use and criteria of fee waivers.⁴⁸ Earlier this year, USCIS eliminated the means-tested benefit criteria for fee waivers, which drastically and

⁴⁵ H. Rep. No. 115-948 accompanying H.R. 6776, the Department of Homeland Security Appropriations Act (2019).

⁴⁶ Id. [Emphasis added].

⁴⁷ INA 212(a)(4)(C); 8 CFR 213a.2(b)(1).

⁴⁸ See e.g. DHS. USCIS. “Agency Information Collection Activities; Form I-912; Request for an Individual Fee Waiver,” USCIS-2010-0008 (September 28, 2018) available at: <https://www.regulations.gov/document?D=USCIS-2010-0008-0144>

unjustifiably limited access to immigration benefits. For immigrant survivors of domestic and sexual violence, presenting evidence of means-tested benefits was a clear and unambiguous method to demonstrate financial hardship without relying on documentation that may be unsafe or burdensome to obtain. For over a year, advocates have voiced their strong opposition to the I-912 form changes as they have limited survivors' access to immigration relief. Current fee waiver adjudications are inconsistent, and often do not contain any details why a fee waiver request has been rejected.

API-GBV submitted comments opposing USCIS' proposed rule to eliminate the means-tested benefit criteria for fee waivers due to the impact it would have on immigrant survivors of domestic and sexual violence. Means-tested benefits such as the Supplemental Nutrition Assistance Program (SNAP) and Temporary Assistance for Needy Families (TANF) are invaluable programs that help survivors meet their basic needs and rebuild their lives after escaping abuse and exploitation. As such, receipt of a means-tested benefit is a simple, clear form of proof to document lack of available financial resources to pay immigration fees. USCIS' decision to no longer consider receipt of a means-tested benefit as evidence of financial need will prevent many immigrant survivors who genuinely lack the money to pay immigration application fees from accessing the protection they need and deserve.

The current proposed rule narrows the criteria for fee waivers even further; and eliminates the financial hardship criteria entirely. The proposed rule states that USCIS will only consider fee waiver requests from individuals who can demonstrate they have an annual household income at or below 125 percent of the federal poverty guidelines.⁴⁹ It also indicates that USCIS Director can grant "discretionary fee waiver requests" in extremely limited circumstances.⁵⁰

Immigrant survivors will be among those most heavily impacted by the proposed changes to fee waiver eligibility. Narrowing the federal poverty guideline criteria from 150% to 125% will disqualify many immigrant survivors who are making every effort to move forward and support themselves and their children from receiving fee waivers for immigration benefits, ultimately stunting their ability to continue to heal and move on with their lives. Eliminating the financial hardship criteria will mean that USCIS will no longer consider the numerous financial challenges and obstacles that survivors face as proof of their inability to pay application fees. Although there is no set definition as to what constitutes financial hardship, USCIS has offered examples such as medical expenses and homelessness – both of which affect many immigrant survivors of violence.

⁴⁹ [Emphasis added]. In addition to the 125% FPG criteria, fee waivers will only be available to those seeking an immigration benefit for which he or she is not required to submit an affidavit of support under INA section 213A, 8 U.S.C. 1183a or is not already a sponsored immigrant as defined in 8 CFR 213a.1; and who are seeking an immigration benefit for which they are not subject to the public charge inadmissibility ground under INA section 212(a)(4), 8 U.S.C. 1182(a)(4). *See* U.S. Citizenship and Immigration Service. "Regulatory Impact Analysis: U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements" CIS No. 2627-18; DHS Docket No.: USCIS-2019-0010; RIN: No: 1615-AC18 at 28 (October 30, 2019) available at <https://www.regulations.gov/document?D=USCIS-2019-0010-0559> (hereinafter "Regulatory Impact Analysis")

⁵⁰ Proposed rule at 62301. The proposed rule would "limit a Director's discretionary waiver to cases related to one of the following: (1) Asylees; (2) Refugees; (3) National security; (4) Emergencies or major disasters declared in accordance with 44 CFR part 206, subpart B; (5) An agreement between the U.S. government and another nation or nations; or (6) USCIS error."

A report released by the Centers for Disease Control and Prevention (CDC) revealed that the cost of intimate partner rape, physical assault, and stalking amounts to nearly \$4.1 billion for direct medical and mental health care services.⁵¹ Many immigrant survivors of domestic and sexual violence and their children are at risk of homelessness. Over 90% of homeless women report having experienced domestic abuse or sexual violence in their lives, while over 50% of homeless women report that domestic violence was the immediate cause of their homelessness.⁵² Victim service providers, advocates, and allies across the United States report that survivors became homeless as a result of sexual violence.⁵³ Removing the financial hardship criteria will dismiss all of these demonstrations of financial need.

USCIS acknowledges that “limiting fee waivers may adversely affect *some* applicants’ ability to apply for immigration benefits.”⁵⁴ By reducing the federal income guidelines criteria for fee waivers from 150% to 125% of the federal poverty guidelines, “DHS estimates about **22,748** fewer fee waiver applications would be approved.”⁵⁵ Eliminating the means-tested benefit and financial hardship criteria of fee waivers, USCIS estimates that an additional 377,918 fee waiver applicants would no longer be eligible to receive a fee waiver.⁵⁶ Thus, “some applicants” actually means **400,666** individuals annually, roughly the population of Tampa, Florida.⁵⁷

The proposed (and current) I-912 instructions create additional burdens that are *ultra vires* to the statute permitting fee waivers for survivor-based cases, as it appears as if survivors need to demonstrate a nexus between their victimization and their lack of income or proof of income.⁵⁸ This non-statutory language is burdensome on survivors, as they may face obstacles obtaining income or providing proof of income for reasons that may or may not be related to their victimization. Further, this language runs counter to existing law as Congress did not place any such limits on fee waivers when it codified their use for survivor-based relief.⁵⁹

Whether intentional or not, the proposed rule will act as a barrier to status for immigrant survivors. The additional limits on fee waiver criteria, coupled with the stringent documentation

⁵¹ U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Injury Prevention and Control (March 2003). Costs of Intimate Partner Violence Against Women in the United States. Retrieved from <https://www.cdc.gov/violenceprevention/pdf/IPVBook-a.pdf>.

⁵² McLaughlin, M. & Fox, D. (2019). Housing Needs of Victims of Domestic Violence, Sexual Assault, Dating Violence, and Stalking, National Network to End Domestic Violence, Retrieved from https://nlihc.org/sites/default/files/AG-2019/06-02_Housing-Needs-Domestic-Violence.pdf.

⁵³ National Sexual Violence Resource Center. *Housing and Sexual Violence: Overview of National Survey* (2010). Retrieved from http://www.nsvrc.org/sites/default/files/NSVRC_Publications_Reports_Housing-and-sexual-violenceoverview-of-national-survey.pdf

⁵⁴ Regulatory Impact Analysis at 7

⁵⁵ *Id.* at 42.

⁵⁶ *Id.* “As previously shown, DHS estimates about 371,714 fee waiver applications were approved based on the means-tested benefit criterion and about 6,204 fee waiver applications were approved based on the financial hardship criterion.”

⁵⁷ U.S. Census Bureau. “U.S. Census Bureau QuickFacts Tampa City, Florida”, available at <https://www.census.gov/quickfacts/fact/table/tampacityflorida#>

⁵⁸ The current I-912 instructions state, “If you already have or are applying for VAWA benefits or T or U nonimmigrant status, and due to your victimization, you do not have any income or cannot provide proof of income as required in the paragraph above, describe your situation in sufficient detail in Part 3., Item Number 12. to substantiate your inability to pay as well as your inability to obtain the required documentation.”

⁵⁹ See note 39, *supra*.

requirements for fee waivers will prevent many survivors from qualifying for fee waivers. We fear that low-income eligible survivors will not apply for these critical benefits given the significant barriers to demonstrate their eligibility for fee waivers. In this way, the proposed rule undermines the bipartisan Congressional intent in establishing VAWA-based relief.

XI. USCIS' Proposal to Transfer Applicant Fees to ICE Is Improper

In the proposed fee schedule, USCIS originally sought to transfer \$207.6 million in FY 2019 and FY 2020 in applicant fees held in the Immigration Examinations Fee Account, or IEFA, to Immigration and Customs Enforcement, or ICE, for enforcement purposes. USCIS has since projected an annual transfer of \$112,287,417 rather than the original \$207.6 million.⁶⁰ Despite the change in the amount of the transfer, the agency still seeks to fund enforcement actions by raising fees (in some cases exorbitantly) on low-income immigrants seeking necessary immigration benefits. The API-GBV vehemently opposes this misuse of applicant fees.

Congress codified in the Immigration and Nationality Act, or INA, that the applicant-funded IEFA is USCIS's "primary funding source" used "to fund the cost of processing immigration benefit applications and petitions"—that is, "to adjudicate applications and petitions for benefits under the Immigration and Nationality Act and to provide necessary support to adjudications and naturalization programs." Despite this clear statutory instruction, however, USCIS seeks to transfer those funds to serve another purpose. By unnecessarily and wrongfully transferring funds from IEFA to ICE, USCIS is betraying not only its own mission but also Congress's clear statutory intent. Some of the unfortunate consequences will be increased delays for survivor-based petitions, meaning increased delays to stability and safety. It is absolutely improper to accept payments from immigrants intended for adjudication of their immigration benefits, and to redirect those funds to be used for enforcement against their communities.

XII. CONCLUSION

For the reasons provided here, USCIS should promptly withdraw the provisions of its proposed fee schedule that would make immigration benefits less accessible to immigrant survivors of domestic, sexual, and other gender-based abuses. Thank you for the opportunity to submit comments on the proposed fee schedule. Please do not hesitate to contact Grace Huang to provide further information.

Respectfully submitted,
ASIAN PACIFIC INSTITUTE ON GENDER-BASED VIOLENCE



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⁶⁰ U.S. Citizenship and Immigration Service. "U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements" 84 FR 67243 (December 9, 2019), available at <https://www.regulations.gov/document?D=USCIS-2019-0010-0001>