December 20, 2019

Samantha Deshommes
Chief, Regulatory Coordination Division
Office of Policy and Strategy
United States Citizenship and Immigration Services (USCIS)
U.S. Department of Homeland Security
20 Massachusetts Avenue, N.W.
Washington, D.C. 20529

Re: DHS Docket No. USCIS-2019-0010; RIN 1615-AC18

Dear Chief Deshommes:

The National Immigration Forum (the Forum) respectfully submits the following comment in response to the proposed Department of Homeland Security's (DHS) U.S. Citizenship and Immigration Services (USCIS) Fee Schedule rule published on November 14, 2019.

The Forum advocates for the value of immigrants and immigration to the nation. Founded in 1982, the Forum plays a leading role in the national debate about immigration, knitting together innovative alliances across diverse faith, law enforcement, veterans, and business constituencies in communities across the country. As part of the Forum's work, we have partnered with over 400 businesses through the New American Workforce (NAW) to assist their eligible immigrant employees with the naturalization application process so they can become full contributors in the workplace, community, and economy by offering information and application workshops and civics instruction at the worksite. These partnerships inform the Forum's expertise on naturalization and immigrant integration.

The Forum appreciates the opportunity to provide its views on the proposed USCIS fee schedule rule. The Forum recognizes USCIS, as a fee-funded agency, must review and adjust its application fees to meet the operational needs associated with the maintenance and administration of the agency's day-to-day operations. The Forum also believes it is important to recognize our country's interest in ensuring a secure, but fair and accessible immigration system that maintains our tradition as a nation of immigrants. The Forum respectfully requests that USCIS consider the following six adjustments to the proposed USCIS fee schedule to ensure the proposed fees do not have a detrimental effect on America's long-term economic and civic health.

1. Set the Naturalization Fee at an Accessible Level and Continue Existing Naturalization Fee Waivers and the Reduced Fee Option.

USCIS should ensure the Application for Naturalization (Form N-400) fee is affordable and, if increases are required, make them more incremental. USCIS should also maintain existing fee waivers and the reduced fee option for the naturalization application. USCIS' proposal to increase the naturalization fee from $640 to $1,170, a $530 or 83% increase and to eliminate the existing naturalization fee waiver and the reduced fee option is exorbitant and inconsistent with USCIS' previous determinations. USCIS has opted in the past to increase or maintain the naturalization fee at a level that is accessible to most lawful permanent residents (LPRs) who are eligible and eager to apply for U.S. citizenship. USCIS could continue that practice by increasing the naturalization fee more incrementally, such as at a rate consistent with the pace of inflation. Increasing the naturalization fee by the culminative rate of inflation since 2016 would increase the fees by only about 7.2%. Had USCIS and its legacy agencies maintained the naturalization fee

increases at the rate of inflation since 1994, when the fee was $95, the naturalization fee would now be $164 – an affordable fee for eligible LPR applicants. Recognizing that citizenship should not be out of reach of those with low incomes, USCIS has also opted to maintain the naturalization fee waivers and, in the fiscal year (FY) 2016/2017 fee rule, established an additional reduced fee option for applicants with family incomes greater than 150% and not more than 200% of the Federal Poverty Guidelines (FPG). Maintaining existing naturalization fee waiver requests and the reduced fee option could potentially assist more than one hundred thousand individuals to naturalize each year, including those who are working and do not have the income to be able to save enough to afford the naturalization application fees.

The Forum believes the naturalization fee must be set at an accessible level to promote naturalization and immigrant integration. As noted by USCIS in the FY 2010/2011 fee rule (75 FR 33461), "the act of requesting and obtaining U.S. citizenship deserves special consideration given the unique nature of this benefit to the individual applicant, the significant public benefit to the Nation, and the Nation's proud tradition of welcoming new citizens." By maintaining the naturalization fee at an accessible level, USCIS can reinforce these principles and ensure more LPRs naturalize and fully participate in our communities. For this reason, USCIS increased the naturalization fee to $640 in the fiscal year (FY) 2016/2017 fee rule, a $45 or 8% increase that was consistent with the pace of inflation since the previous fee rule. USCIS also maintained the naturalization fee at $595 in the FY 2010/2011 fee rule, the same amount as the previous fee rule in FY 2008/2009. If USCIS is going to deviate from its long-standing practice to ensure the naturalization fee is increased incrementally and maintained at an accessible level, it should explain why it believes naturalization no longer "deserves special consideration…given [its] unique nature."

USCIS should encourage naturalization because it helps our country generate citizens who are fully invested and able to participate in and contribute to all aspects of our civic and economic life. The Center for Migration Studies (CMS) found in a 2019 report that "[t]he naturalized population has a higher percentage (than legal noncitizens) that has a college degree (35 vs. 33 percent); speaks English well, very well, or only English (84 vs. 67 percent); works in skilled occupations (44 vs. 37 percent); has health care (92 vs. 82 percent); exceeds the poverty level (90 vs. 84 percent); and owns their homes (68 vs. 42 percent)." The CMS report found that naturalization enhances the ability of LPRs to fully contribute to their communities. Naturalization provides access to better paying jobs by signaling command of the English language and commitment to remain in the U.S. in the long term. It also opens the door to jobs and other opportunities that require U.S. citizenship. In addition, a report by the Urban Institute in 2015 found that if all LPRs in the 21 cities the report examined naturalized, aggregate earnings would increase by almost $6 billion and federal, state and city revenue would increase by slightly more than $2 billion. By naturalizing, new Americans can contribute to their communities and participate in U.S. society to their fullest potential.

Consider the Impact on Naturalization Applicants and the U.S. Economy

DHS failed to fully consider the impact of the USCIS proposed rule on naturalization applicants and on the U.S. economy. DHS states in the proposed rule's "Regulatory Impact Analysis" that it "assumes" applicants who currently qualify for fee waivers, including the naturalization fee waiver, would continue to, "apply for immigration benefit requests by finding funds from which to pay their fees including (but not limited to) paying by credit card, borrowing from relatives or others in their social networks, loans, etc." In the proposed rule, DHS acknowledges that eliminating existing fee waivers, "may also result in some people not applying for an immigration benefit request" but adds that, "[a]t this time, DHS cannot predict how many applicants would no

longer be able to file or how that would impact the volumes of the underlying forms." DHS should not implement the proposed changes until the Department is able to collect and evaluate data on how many applicants for naturalization would no longer be able to file for naturalization as a result of eliminating the existing fee waiver. DHS should also collect and evaluate data on how many applicants for naturalization have access to credit cards, loans and/or are able to rely on relatives and friends to pay for the potential $1,170 naturalization fee.

DHS also failed to consider the negative impact on the U.S. economy of having fewer LPRs naturalize. A significant increase to the naturalization fee would likely hurt the U.S. economy, because it would prevent LPRs from naturalizing and being eligible for jobs and other opportunities that require U.S. citizenship. In addition, USCIS failed to consider the possibility that a potential reduction in the number of naturalization applications received due to the new fee increase could severely impact the agency's revenue. Because USCIS is proposing a major fee change that will impact naturalization applicants, the U.S. economy, and the agency's revenue, the agency should fully consider all aspects of the potential impact of the fee increase before implementing the proposed changes.

USCIS is also proposing to significantly increase the Immigration and Examinations Fee Account (IEFA) budget to $4.782 billion per year, a 56% or $1.716 billion increase from USCIS' proposed budget of $3.066 billion in FY 2017. USCIS claims the cost projections include funding for enhancements to facilitate the processing of additional workload, but fails to provide sufficient evidence or fully justify why a significant portion of the increase should fall on naturalization applications. USCIS should indicate how the increase in cost projections were determined and disseminated among various applications, and what role the additional money is expected play in improving processing backlogs for naturalization applicants.

USCIS should set the naturalization fee at an accessible level to promote naturalization and immigrant integration. Evidence suggests that ensuring eligible immigrants naturalize will strengthen America's civic and economic life. In contrast, USCIS' proposal to increase the naturalization fee will likely act as a barrier to naturalization and fails to fully consider the impact of the fee increase on naturalization applicants and the economy.

2. Maintain the Current Fee Structure for "Consideration of Deferred Action for Childhood Arrivals" (Form I-821D) Renewal Requests.

USCIS should maintain the current Deferred Action for Childhood Arrivals (DACA) fee structure because the proposed changes are inconsistent with two nationwide preliminary injunctions issued by federal district courts to maintain DACA, "on the same terms and conditions as were in effect before its rescission on September 5, 2017" (*Regents of Univ. of Cal. v. DHS* , 279 F. Supp. 3d 1011, 1029–31 (N.D. Cal. 2018) and *Batalla Vidal v. Nielsen*, 279 F. Supp. 3d 401 (E.D.N.Y. 2018)). Currently, DACA requestors must pay a total fee of $495, which includes a $410 fee for the "Application for Employment Authorization" (Form I-765) and an $85 fee for biometric services. DACA requestors must also file "Consideration of Deferred Action for Childhood Arrivals" (Form I-821D), which currently has no fee. USCIS' proposal to add a new $275 fee for Form I-821D renewal requests would be a material change in terms and conditions related to DACA. Combined with the proposed fee for Form I-765, which would be $490, the total DACA renewal fee would be $765, a $270 or 55% increase.

Even if a court were to find that the proposed changes are not material, the rule does not adequately consider how the fee increases may impact DACA recipients and the economy. The Forum is concerned that the proposed DACA renewal fee of $765 may act as a significant barrier

for DACA renewal requests. DACA has significantly improved the economic outcomes for many DACA recipients, but a significant portion of the population are still students and/or young individuals with limited incomes. For instance, the Migration Policy Institute found in a 2017 report that 20 percent of DACA recipients were enrolled in secondary school and 18 percent were enrolled in college. USCIS' proposed DACA renewal fee would require DACA recipients enrolled in high school and college to collect and pay $765 every two years. In comparison, under the proposed rule, LPRs must pay $415 every ten years to renew their green card. The proposed USCIS fee rule places a significant financial burden on DACA recipients, because they must apply to renew every two years. Increasing the DACA renewal fee to $765 could price out and discourage eligible DACA recipients from submitting a renewal request, potentially leading to a drop in the number of DACA renewal requests and individuals with work authorization. USCIS should consider exempting DACA recipients who are students and/or young individuals with limited incomes from the proposed DACA renewal request fee if it is implemented.

DHS' proposed fee increases would likely deter some of the nearly 700,000 undocumented immigrants who came to the U.S. as children protected under DACA from renewing, which could significantly impact the U.S. economy. DACA holders grew up and have lived in the U.S. for most of their lives, graduated high school and are currently pursuing a bachelor's degree or higher education, enlisting in the military or working jobs. Over the next ten years, DACA recipients are expected to contribute an estimated $433 billion to the U.S. GDP, $60 billion in fiscal impact, and $12.3 billion in taxes to Social Security and Medicare if they are allowed to continue to work legally in the U.S. Policies to limit the number of DACA recipients would hurt the U.S. economy, because it would prevent DACA recipients from contributing fully to their communities and the workforce.

3. Eliminate Proposed Barriers to Asylum Seekers, Including the Asylum Fee and the Initial Employment Authorization Fee.

Currently, asylum seekers in the U.S. do not a pay a fee to apply for asylum or the initial application for employment authorization. USCIS' proposal to impose a fee of $50 per asylum seeker represents a departure from the long held American tradition and practice to be a place of refuge, free of charge, for those fleeing persecution. Individuals fleeing persecution often leave behind much of their net worth or expend it in simply escaping or getting to a country where they can seek asylum. This fee would represent an even greater burden for families. To charge individuals and families for seeking asylum is contrary to our humanitarian values.

The U.S. is the largest economy in the world and currently spends approximately $366 on processing an asylum application, which is subsidized entirely by surcharges on other fee applications. USCIS argues that "a minimal fee would mitigate the fee increase of other immigration benefit requests;" however, USCIS is proposing many other fee increases, in some cases very significant increases, and does not explain specifically how the $50 asylum fee would help mitigate other fee increases. USCIS should explain how these fees would be used so the public can understand whether the humanitarian cost of imposing a fee is offset by a corresponding benefit. Also, USCIS does not explain how it arrived at $50 as the appropriate amount to charge an asylum seeker. USCIS needs to explain why it arrived at that decision and why a lower amount such as $5, $10, $25, or $45 is not a more appropriate amount to charge. Furthermore, USCIS should explain how the $50 fee was not imposed as a deterrent designed to prevent individuals from seeking asylum.

Only three other countries charge an asylum fee: Australia ($25), Fiji ($221) and Iran ($293). By imposing a fee to apply for asylum, the U.S., as a global leader, would encourage other countries to consider charging fees as well. Both the Convention Relating to the Status of Refugees of 1951,

and the Protocol Relating to the Status of Refugees of 1967, to which the U.S. is a signatory, restrict asylum charges by stipulating specific criteria for exceptions.

The proposed imposition of a fee to apply for asylum fails to provide an option of a fee waiver for asylum applicants who cannot afford to pay the fee. The lack of asylum fee waivers deviates from past practices of providing fee waivers for those in need, discriminates against the poor, and promotes unauthorized work.
In addition, the proposed fee for the initial application for employment authorization by asylum seekers would be harmful to the asylum seeker and likely our economy. A fee of $410 for a renewal of employment authorization with the possibility of filing for a fee waiver currently exists. The proposed fee schedule would lead to an increase from $0 to $490 for the initial employment authorization and from $410 to $490 for a renewal. It would also eliminate all fee waivers for employment authorization and apply to all Employment Authorization Documents (EADs) for asylum seekers regardless of whether the asylum application was filed with DHS or the Department of Justice (DOJ).

Those fleeing persecution often leave behind most of their fixed assets. Not charging an initial employment authorization fee for an asylum seeker makes common sense as they cannot work to cover the fee, often do not have access to funds they may have left behind, and often do not have social networks from whom they could borrow the funds. Encouraging individuals to work is beneficial for them and for our economy. The initial fee for asylum work authorization contravenes the value and dignity of work. Imposing a fee to apply for an initial employment authorization encourages asylum seekers to work without authorization simply to pay for the employment authorization. USCIS' justification for the new fee requirement for the initial application for employment authorization is "in order to keep the fee lower for all fee-paying EAD applicants." That justification is inadequate in that the difference would be minimal for fee-paying EAD applicants of $10, and especially in light of the fact that initial applicants would not be working to cover the $490 they would now be required to pay. This requirement would have a negative and disproportionally impact on initial applicants. In addition, USCIS is proposing in their fee increases to increase the fee for employment authorization for fee-paying applicants from $410 to $490. It would seem that the proposed increase of $80 would more than cover the $10 increase needed to keep the initial application for employment authorization free. USCIS needs to provide an explanation of what the $80 increase would cover and why it would not be used to cover initial EAD applications.

USCIS needs to be more transparent about this fee. It was not captured in "Table 19: Proposed Fees by Immigration Benefit" and therefore, the public may not have received enough notice about it. This fee for initial employment authorization represents a significant and unrealistic financial burden for an asylum seeker as evident when compared to its equivalent value for a U.S. citizen. For example, using percent of GDP per capita comparisons, $490 for someone from Honduras would compare to over $6,000 for someone from the U.S. As with the fee for asylum applications, USCIS does not explain how it will use the revenue gained from this fee.

These new fees are contrary to U.S. values and traditions. USCIS has not articulated a sufficient justification for why an asylum application fee and an initial application fee for employment authorization should be instituted. Also, USCIS should institute fee waivers for good cause and adequately explain how encouraging unauthorized work is outweighed by the benefits of the application fees.

4. Provide Clear and Adequate Justifications for the Proposed Fee Increases on Nonimmigrant Worker Visas.

Concerning nonimmigrant worker visas, the Forum believes the justifications for proposed fee increases are inadequate. The worker visa fee increases in USCIS' proposed rule could have wide-ranging negative effects on the economy and across the labor market, and it is not often clear how they were determined or what role the additional money would play in improving the system. Low-skilled H-2A farmworkers who help bring food to American tables would see the cost of renewing their temporary visa spike 86% from $460 to $860. Hundreds of thousands of middle and high-skilled H-1B workers would see their basic filing fee rise over 20% to more than $500. Even managers and executives face dramatic fee rises under the new rule, with L-1 visa fees set to rise 77% from $460 to $815.

For many of the nonimmigrant visa fee increases, including H-2A, H-1B, and L filing fees, the proposed rule justifies the increases as part of a decision to split up the inclusive nonimmigrant Petition for a Nonimmigrant Worker (Form I-129) into 10 different forms (and fees) specific to visa categories. USCIS writes that this will "simplify or consolidate information requirements" (84 FR 62307). However, the rule sets significantly increased fees in 8 of the 10 categories, creating an overall increase far more than would be adequately justified simply by the decision to disaggregate the forms.

Some of the I-129 form increases also have individual justifications in the proposed rule, but they are vague or inadequate. For example, concerning the 86% fee increase for named H-2A beneficiaries, USCIS cites an Office of Inspector General (OIG) report on the H-2 fee structure as justification. However, the report explicitly refrains from recommending a change in fees, noting that collecting more detailed cost data will be critical for USCIS to "inform its H-2 petition fee setting activities" (OIG-17-42, p. 18). USCIS does not indicate that it has collected and analyzed such data (including receipt numbers and determining the time it takes during different processing stages and for different types of applicants). Without analysis of additional data, the OIG report alone does not adequately justify the increase in H-2A named beneficiary fees. USCIS should follow through with the first recommendation from the OIG report in full prior to any H-2A fee adjustments to ensure that such changes are adequately informed.

For H-1B filing fee increases, the rule notes the proposed new fee reflects the cost of fraud prevention efforts. However, this cost is not listed or referenced in the rule. The Forum recommends a more thorough analysis of the cost of fraud prevention efforts in order to more clearly explain the impact on processing costs. For the significant 77% L-visa filing fee increase, the proposed rule provides justification relating to additional statutory fees applied to some L workers, as well as to past completion rates for L visas. However, there is no clear connection described between these reasons and the new $815 fee, and the true completion rate would be unpredictable for the proposed Form I-129L given it is a new, simplified form. USCIS should provide more clarity about how it has determined fees for L-visa applicants, including providing data on the proportion of applicants who are required to pay the additional statutory fees and the process for predicting completion rates of the new disaggregated I-129 forms.

Beyond these changes, it is clear that the increase in fees are not directly tied to improving application processing times where delays can have significant consequences for employers, employees, families, students, and others. For example, F-1 international students have access to Optional Practical Training (OPT), where they can continue their training in an employment setting after they finish their academic programs. Applications for OPT are not accepted until 90 days before the start of employment, but USCIS processing times are averaging significantly more

than 90 days, in some cases taking up to five months. This inefficiency causes students to lose access to employment and to the OPT program overall. USCIS should not increase fees so significantly unless these increases can be specifically tied to improvements in processing. That is not the case here, as the proposed rule raises fees without tackling critical processing inefficiencies.

The Forum recognizes that as a fee-funded agency USCIS generally must match fees with the actual processing costs of visa applications, however, this proposed rule includes several worker visa fee increases that lack clear and adequate justification.

5. Direct Applicant Fee Funds Towards USCIS' Core Adjudicative Functions, Not to Immigration and Customs Enforcement (ICE).

The Forum is opposed to the proposed transfer of $112.3 million from USCIS' Immigration and Examinations Fee Account (IEFA) to ICE because we believe that such a transfer is an improper use of USCIS applicant fee funds.

DHS justifies the transfer as an appropriate means to permit ICE to "fully recover all costs for ICE administered immigration adjudication and naturalization services." Because DHS seeks to recover the full amount of the transfer through the fee schedule, the transfer contributes to the increases in various fees. Such investigative efforts by ICE have not previously been interpreted to be part of "immigration adjudication and naturalization services." Accordingly, in previous years, ICE Homeland Security Investigations (HSI) investigations of immigration benefit fraud were predominantly paid for out of appropriations. Investigative functions are traditional ICE functions that should be funded by Congress via appropriations.

The limited pool of USCIS fees should be directed toward core adjudicative and naturalization functions, rather than investigative and enforcement functions.

6. Ensure USCIS' Small Entity Analysis Fully Considers the Impact of the Fee Schedule on Small Businesses and Small Organizations.

USCIS should amend the "Small Entity Analysis" to include consideration of the effects of the proposed fee increases on small entities that pay for other applications such as the "Application for Naturalization" (Form N-400) and "Consideration of Deferred Action for Childhood Arrivals" (Form I-821D). Under the Regulatory Flexibility Act (RFA), USCIS must analyze the economic impact of the proposed fee changes on small entities, including "small businesses" and "small organizations," that file and pay fees for immigration benefit requests. However, USCIS limited its analysis to small entities that file for some worker, investor and genealogy immigration benefit requests and did not consider fee increases on small entities that file and/or pay for other immigration benefits.

USCIS should revise its "Small Entity Analysis" to consider the economic impact of the proposed rule on small entities that file and/or pay for any immigration benefits applications such as the naturalization and/or DACA renewal fees. The Forum is aware of several small businesses and small organizations that pay for their employees' naturalization fees and/or DACA renewal fees. USCIS should develop an economic impact analysis on small businesses that fully accounts for the proposed increase in these benefit requests before moving forward on any proposed fee increases.

As another example, the Forum meets the definition of a small organization under the RFA and pays for the naturalization fee and the DACA renewal fee on behalf of its employees as an employment benefit. The "Small Entity Analysis" fails to consider the impact these proposed fee changes would have on the Forum and other small organizations that pay for their employees' naturalization or DACA renewal fees. USCIS should revise the "Small Entity Analysis" to include the economic impact of the proposed USCIS fee schedule on small organizations that pay for immigration benefit requests.

Conclusion

The Forum thanks USCIS for the opportunity to provide its views on the proposed fee schedule rule. The Forum believes USCIS has an opportunity to strengthen America's long-term economic and civic health by improving the agency's proposed fee schedule. USCIS should ensure naturalization is accessible, the DACA fee structure remains in place, no barriers to asylum seekers are added, fee funds are properly maintained in IEFA, worker visas fee increases are justified, and the impact on small entities are considered fully. Thank you for your consideration.

Sincerely,

Ali Noorani
Executive Director