



December 27, 2019

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Chief, Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services, Department of Homeland Security
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RE: DHS Docket No. USCIS-2019-0010: Comment to U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements

Dear Ms. Deshommes:

Kids in Need of Defense (KIND) respectfully submits this comment on the November 14, 2019, Notice of Proposed Rulemaking for “U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements (“Proposed Rule”).¹ The government proposes a steep and unwarranted escalation of fees applicable to numerous immigration application benefits, imposing barriers to seeking asylum, working lawfully in the United States, applying for permanent residence, and becoming a citizen that are so daunting that many qualified candidates will be unable to afford benefits for which they are eligible. While KIND has a particular interest in those aspects of the rule that affect unaccompanied and separated children, the overall impact of the Proposed Rule is so significant that it threatens to undermine access to legal status for millions of qualified immigrants. Consequently, our comments note both specific issues that will deeply affect our clients as well as broader issues regarding the intent, methodology, and impact of this rule on the community. KIND believes that this Proposed Rule, if adopted, would suppress applications for immigration benefits, particularly for many of the most vulnerable, including asylum-seekers, unaccompanied children, and low-income families. We ask you to rescind the Proposed Rule, engage with stakeholders to understand the full public policy costs of the proposed “beneficiary pays” model of assessment, and submit a revised fee schedule that returns to the “ability to pay” model of assessing fees, a critical tool in ensuring access to immigration benefits for all.

¹ U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 84 Fed. Reg. 62,280 (Nov. 14, 2019) (Proposed Rule).

KIND is a national nonprofit organization dedicated to providing free legal representation and protection to unaccompanied immigrant and refugee children in removal proceedings. Since January 2009, KIND has received referrals for more than 20,000 children from 70 countries and has administered training more than 42,000 times to attorneys working to represent such children. KIND has field offices in ten cities: Los Angeles, San Francisco, Atlanta, Baltimore, Boston, Houston, Newark, New York City, Seattle, and Washington, DC. Legal services professionals who serve children through KIND provide defense in removal proceedings and pursue immigration benefits and relief for which their clients may be eligible. KIND also employs social services coordinators throughout the country, providing unaccompanied children with the support they need outside of the courtroom. KIND promotes protection of children in countries of origin and transit countries and works to address the root causes of child migration from Central America. KIND also advocates for laws, policies, and practices to improve the protection of unaccompanied children.

Many of KIND's clients have fled severe violence and threats to their lives in their countries of origin and may be eligible for asylum, Special Immigrant Juvenile Status, or other forms of relief. Reasonable fees, fee exemptions, and fee waivers are critical to ensuring that these children can access immigration protections and benefits for which they are eligible. Moreover, as unaccompanied children are often supported by family members or other sponsors, the impact of immigration fees on the entire household can play a critical role in decisions about when and whether to pursue additional immigration benefits, such as adjustment of status and naturalization. Consequently, any proposed fee increase can have a ripple effect throughout a family, and throughout the entire community, as it shifts the incentives and barriers for pursuing immigration benefits. The higher the fees, the more difficult it becomes for new Americans to fulfill the promise of American life by becoming engaged citizens. This added sense of uncertainty and instability can delay a sense of permanency that allows survivors of trauma and violence to make peace with their past. For young people on the cusp of adulthood, these additional barriers can have a lasting impact on their lives and the level of contribution they can make to their new country.

I. The Proposed Fee Rule Fails to Provide a Transparent, Clear, or Logical Justification for the Proposed Fee Schedule, Abandoning Decades of Public Policy Designed to Treat Humanitarian Protection and Pursuit of Immigration Benefits as Public Goods

Long before the creation of the Department of Homeland Security, federal agencies wrestled with how to fairly set fees for immigration benefits, but those decisions have ultimately been weighted towards providing access to critical immigration benefits, such as asylum and

citizenship. The Proposed Rule abandons this approach, offering no justification for dramatic increases in fees, except to declare that it is unfair for some to bear the burden of application fees while others do not. In fact, Congress specifically authorized the federal government to distribute the cost of fees in such a way that asylum seekers and others would be spared the burden of application fees they could not afford to pay. With the creation of the Immigration Examination Fee Account (IEFA)² in 1989, Congress instructed the legacy Immigration and Naturalization Service (INS) to reimburse any appropriation for expenses in providing immigration adjudication and naturalization services. In 1990, Congress further instructed the INS that it may set fees at a level that would ensure the recovery of the full costs of providing all such services, including the cost of similar services provided without charge to asylum applicants or other immigrants.³ As the General Accounting Office noted in a 1994 assessment of proposed fee increases, the INS had the discretion to set fees within the context of identifying a fair fee, taking into account the impact on applicants. INS chose, for example to charge a naturalization fee that would not recover its full costs at the time, because INS officials determined it would not have been a “fair or equitable fee because it could discourage aliens from applying for naturalization.”⁴ Although fees have continued to climb since then, DHS in the past has at least acknowledged the level of hardship this may impose on applicants, and has attempted to mitigate costs in other ways, such as making some applications available at a reduced fee, bundling interim benefits (employment authorization and travel authorization) with adjustment of status applications, the use of fee exemptions, and wide use of fee waivers.⁵

The Proposed Rule flatly rejects such efforts, declining to maintain past practices with respect to limiting fee increases on most humanitarian and naturalization related applications for “policy reasons,” without providing any sound policy arguments.⁶ For example, the preamble to the Proposed Rule notes that DHS used to consider setting fees below actual cost as “appropriate in order to promote naturalization and immigrant integration. DHS now believes that shifting costs to other applicants in this manner is not equitable given the significant increase in Form N-400 filings in recent years.”⁷ Similarly, the proposed rule acknowledges that the agency’s fee setting structure has in the past relied heavily on an “ability-to-pay” model, but that the agency now believes that a “beneficiary pays” model of fee setting requires

² Department of Justice Appropriation Act, 1989, Pub. L. No. 100-459, 102 Stat. 2186, 2203 (1988).

³ Department of Justice Appropriation Act, 1991 Pub. L. No. 101-515, 104 Stat. 2101, 2121 (1990).

⁴ *INS User Fees, INS Working to Improve Management of User Fee Accounts*, General Accounting Office, GAO/GGD-94-101, April 1994 at 7.

⁵ Chad C. Haddal, *US Citizenship and Immigration Services’ Immigration Fees and Adjudication Costs: The FY2008 Adjustments and Historical Context*, CRS Report for Congress, CONGRESSIONAL RESEARCH SERVICE, (June 12, 2007), at 8, 22-26.

⁶ Proposed Rule at 62293.

⁷ *Id.* at 62316.

virtually eliminating fee waivers, except in those cases where a fee waiver is statutorily required to be made available. Foregoing more than 40 years of practice, USCIS also proposes recovering a portion of the cost of submitting asylum applications by charging a \$50 fee, exempting unaccompanied minors only, despite the fact that it acknowledges that charging the fee means that some people who are not placed in removal proceedings will “have no means of applying for recognition as a person in need of refugee protection and its attendant benefits such as asylum or withholding-based employment authorization, travel documents, or documentation of immigration status, if they do not pay the proposed \$50 fee.”⁸ Furthermore, DHS has explicitly declined to provide a fee waiver for those who are unable to pay.⁹ This declaration says volumes about the narrow approach to setting fees taken by USCIS, as the rule elsewhere notes that exempting asylum seekers from fee applications would increase on average the cost of other applications by approximately eight dollars. It should seem obvious that ensuring continued access to asylum for all asylum seekers is, on balance, more important than adding a nominal amount spread across all applications, but USCIS fails to even address this issue. Congress appears to agree, recently encouraging USCIS to refrain from charging a fee for humanitarian applications, including asylum, to consult with the USCIS Ombudsman’s office before imposing any such fees, and to brief Congress on the possible impact of moving forward with such plans.¹⁰

In each case, the decisions to raise fees, cut fee waivers, or charge for humanitarian benefits is unsupported by clear analysis or financial need. In fact, budget analysts who have scoured the fee rule justification and its supporting documents note a 57% discrepancy between revenue generated and proposed expenditures.¹¹ This undermines the stated aim of recovering costs and places the motivation of the rule in doubt. It appears that USCIS is setting artificially high fees in order to deter applicants from seeking benefits for which they are eligible. Given USCIS’s other statements within the rule that it does not anticipate that the increased fees will lead to improvement in the quality or speed of services, it is almost impossible to conclude that

⁸ *Id.* at 62319.

⁹ *Id.* at 62299-62300.

¹⁰“Further, USCIS is encouraged to refrain from imposing fees on any individual filing a humanitarian petition, including, but not limited to, individuals requesting asylum; refugee admission; protection under the Violence Against Women Act; Special Immigrant Juvenile status; a Tor U visa; or requests adjustment of status or petitions for another benefit after receiving humanitarian protection. USCIS shall consult with the CIS Ombudsman on the impact of imposing such fees and provide a briefing to the Committees within 60 days of the date of enactment of this Act., HR 1158, Consolidated Appropriations Act 2020, Pub-L 116-93, (December 20, 2019), Conf. Report, Div. D, Department of Homeland Security Appropriations Act, p 28.
<https://docs.house.gov/billsthisweek/20191216/BILLS-116HR1158SA-JES-DIVISION-D.pdf>

¹¹ *USCIS Fee Hike: How Immigrants Are Affected*, Boundless, www.boundless.com/research/uscis-fee-hike-immigrants-affected/, accessed December 26, 2019.

this rule is designed with the public's best interest in mind. Instead, the rule impedes access to legitimate benefits.

As we note below, this arbitrary allocation of costs will have a direct impact on unaccompanied minors and other children, even as it more broadly undermines the framework of our immigration system. Our clients who receive initial grants of asylum or special immigrant juvenile status will find that their opportunities to fully and fairly integrate into their new country are hindered by excessive costs, including high fees for initial work authorization documents, ultimately imposing additional burdens on their ability to become permanent residents and citizens. Rather than welcoming immigrants, the rule inexplicably adopts a fee schedule that will deter them from full participation.

II. The Proposed Fee Rule Arbitrarily Imposes Burdens on Asylum Seekers, Failing to Consider the Impact of Fees for Both Asylum and Employment Authorization Applications

The United States is a signatory to international treaties protecting the rights of refugees¹²; its obligations are codified under the Refugee Act of 1980.¹³ Central to those protections is the guarantee of access to the asylum process, such that “Any alien who is physically present in the United States or who arrives in the United States . . . irrespective of such alien’s status, may apply for asylum.”¹⁴ Historically, one of the measures of this guaranteed access has been the ability to apply for asylum without cost, as well as the ability to work if the asylum application remains pending beyond a reasonable initial period.¹⁵ The proposed rule would jettison both principles, charging \$50 for an asylum application, and requiring asylum seekers to pay \$490 for their initial employment authorization document. Although USCIS would exempt the vast majority of unaccompanied children seeking asylum from the asylum filing fee, it does not exempt them from the employment authorization fee. USCIS provides no rationale for these changes, other than a claim that asking asylum seekers to pay a portion of the costs of adjudicating their application, and the full cost of adjudicating their employment authorization

¹² UN High Commissioner for Refugees (UNHCR), *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol*, September 2011, available at: <https://www.refworld.org/docid/4ec4a7f02.html> [accessed 22 December 2019].

¹³ Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102 (codified in scattered sections of titles 8 & 22, U.S.C.).

¹⁴ 8 USC § 1158(a)(1).

¹⁵ As part of an Asylum Reform initiative proposed in 1994, the Department of Justice initially sought to impose a \$130 fee on asylum applicants, but withdrew the proposal following extraordinary opposition from the public which argued then, as now, that charging for an asylum application is contrary to our international obligations to permit refugees to seek asylum in the United States and violates 8 U.S.C. § 1158(a)(1).

document, creates a system that is more equitable,¹⁶ in particular reducing fee increases \$10 per employment authorization application.

A. Imposing a Fee for Asylum Amounts to New Kind of Asylum Ban

This portion of the proposed rule effectively creates a new asylum ban for those unable to pay the proposed \$50 application fee. While the fee is well below the estimated \$366 cost of adjudication, there is no basis for concluding, as the government suggests, that this fee would “not be so high as to be unaffordable to even an indigent” person.¹⁷ Moreover, USCIS rejects offering a fee waiver, for fear that the costs of adjudicating multiple requests would cancel out the relatively small \$8.15 million¹⁸ of estimated revenue gained from the fee. And yet, this demonstrates that the government recognizes that many thousands of people will find the fee unaffordable, negating its own arguments that the fee is fair or reasonable. This is clearly in violation of 8 U.S.C. § 1158(a)(1), as it imposes a financial condition on the right to apply for asylum. Read within the broader context of the Administration’s efforts to restrict access to asylum¹⁹, the imposition becomes inherently suspect as one more attempt to limit opportunities for asylum seekers in the United States.

Under the Proposed Rule, unaccompanied children are exempted from the filing fee, but only if their application was initially filed with USCIS while the child was in immigration court proceedings.²⁰ This exemption is significant, as most unaccompanied children who file for asylum do so after being placed in immigration proceedings, but it does not cover all unaccompanied children, and fails to justify requiring a fee where a child files affirmatively. The rule appears to condition the fee exemption on a jurisdictional provision within the Trafficking Victims Protection Reauthorization Act (TVPRA) that requires USCIS to take initial jurisdiction over any unaccompanied child’s asylum application filed before the court. The proposed rule continues, “Consistent with the protections provided to UACs by the TVPRA, and to avoid undue delay for this vulnerable population by impeding UACs in removal proceedings from filing a Form. I–589, DHS proposes to exclude them from the proposed fees.”

¹⁶ Proposed Rule at 62320.

¹⁷ *Id.* at 62320.

¹⁸ *Id.* at 62319.

¹⁹ See *Shattered Refuge: A U.S. Senate Investigation into the Trump Administration’s Gutting of Asylum*, Office of Senator Jeff Merkley, November 2019, available at <https://www.merkley.senate.gov/imo/media/doc/SHATTERED%20REFUGE%20-%20A%20US%20Senate%20Investigation%20into%20the%20Trump%20Administration%20Gutting%20of%20Asylum.pdf>

²⁰ *Id.*

Under this analysis, however, it should not matter whether a child files affirmatively or defensively for asylum, as the TVPRA clearly intends for all unaccompanied children to be treated fairly and with the same guarantees and protections, regardless of when or how they file for asylum. The TVPRA ensures that children in removal proceedings are accorded the same access to the non-adversarial asylum process, which is more likely to be child-friendly and adaptable to a child's circumstances. The proposed rule turns this notion on its head, making asylum accessible only to those children who are already in removal proceedings. Instead, USCIS should exempt all unaccompanied children from the filing fee, regardless of whether they file defensively or affirmatively.

B. Imposing a Fee for an Initial Employment Authorization Places Undue Hardship on Asylum Seekers, Particularly Unaccompanied Children

In addition to charging a fee for asylum, the Proposed Rule eliminates the waiver of the fee for the I-765, Application for Employment Authorization, requiring asylum-seekers, even unaccompanied children, to pay \$490 in order to receive work authorization while their applications are pending. No fee waiver is available for this application, which will make it particularly difficult for asylum seekers, who must wait six months after filing their application before becoming eligible for an EAD, to find the funds to pay this fee. Ironically, the government has already acknowledged that a high filing fee would make it difficult for asylum seekers to pay for asylum but ignores the fact that the same circumstances will also make it difficult for them to apply for the EAD. Whatever savings they may have or family support they receive could be exhausted long before they become eligible for the EAD, effectively creating a situation in which people would have to forgo applying for work authorization or risk working without it until they could pay the fee to work legally. Such barriers only increase the vulnerability of individuals who have fled for their lives and run counter to the requirements under the Refugee Convention and its 1967 Protocol to make gainful employment accessible to those seeking asylum.²¹

For unaccompanied children, accessibility to an EAD document is critical, regardless of whether they are eligible to work. EADs open the door to employment, providing work-eligible older

²¹ Art 17 Refugee Convention; See Yael Schacher, Why Forbidding Asylum Seekers from Working Undermines the Right to Seek Asylum, WASHINGTON POST (Nov. 18, 2019), available at <https://www.washingtonpost.com/outlook/2019/11/18/why-forbidding-asylum-seekers-working-undermines-right-seek-asylum/>.

unaccompanied children²² with the financial support they need to access housing, food, clothing,²³ and legal support²⁴ while their asylum cases are pending. By frustrating access to such support, the proposed rule could diminish children’s ability to navigate the asylum process and obtain immigration relief.²⁵ KIND social service providers across the country note that work authorization offers children better and safer work opportunities, as well as the chance of accessing employer-supported health insurance and other benefits. The ability to contribute to their own self-sufficiency can in turn produce powerful psychological and social benefits that make it easier to sustain a prolonged asylum application process and ensure that children obtain the healing and treatment that they need to thrive after traumatic experiences.²⁶

The EAD also serves as a de facto identification document, and is frequently a precursor to obtaining state identification, state services, and access to education. EADs are often the only proof of residence asylum seekers can provide.²⁷ Unaccompanied children need EADs to receive Social Security Number (SSNs),²⁸ which are common prerequisites for enrolling in school, obtaining health insurance, and receiving preventative care.²⁹ For example, unaccompanied children in Georgia who do not have SSNs are ineligible for PeachCare, the state-wide child healthcare program,³⁰ and the same is generally true for state identification documents and access to physical and mental health treatment nationwide. KIND’s social

²² Because of the length of I-589 adjudications, a substantial number of minors who seek asylum as unaccompanied children remain in the process while they reach adulthood and lose access to foster care and other forms of community financial support, leaving them as reliant on work as adult applicants.

²³ See *New Work Authorization Rule for Asylum Seekers Could Have Devastating Consequences*, HUMAN RIGHTS FIRST (Sept. 6, 2019), <https://www.humanrightsfirst.org/press-release/new-work-authorization-rule-asylum-seekers-could-have-devastating-consequences>.

²⁴ *At Least Let Them Work: The Denial of Work Authorization and Assistance for Asylum Seekers in the United States*, HUMAN RIGHTS WATCH (Nov. 12, 2019) <https://www.hrw.org/report/2013/11/12/least-let-them-work/denial-work-authorization-and-assistance-asylum-seekers-united> (“[B]ecause they cannot work, they cannot afford legal assistance, and because they cannot afford legal assistance, they often fail to represent their claims competently[.]”)

²⁵ *Id.*

²⁶ See Michelle L. Burbage and Deborah Klein Walker, *A Call to Strengthen Mental Health Supports for Refugee Children and Youth*, NAT’L ACADEMY OF MED. (August 2018), <https://nam.edu/a-call-to-strengthen-mental-health-supports-for-refugee-children-and-youth>.

²⁷ See Mass. Registry of Motor Vehicles, *Massachusetts Identification (ID) Requirements*, <https://www.mass.gov/guides/massachusetts-identification-id-requirements>.

²⁸ See U.S. Social Security Admin., *Applying for Your Social Security Number While Applying Your Work Permit*, https://www.uscis.gov/sites/default/files/USCIS/Working%20in%20the%20US/EBE_Flyer_Apply_for_your_Social_Security_Number_While_Applying_for_Your.pdf.

²⁹ See, e.g., Ga. Dep’t of Community Health, *Citizenship, Immigration and Identity Requirements*, <https://dch.georgia.gov/programs/peachcare-kids/eligibility-criteria/citizenship-immigration-and-identity-requirements> (requiring SSN for enrollment in Georgia PeachCare).

³⁰ *Id.*; GA. DEP’T OF HUM. SERVS., *MEDICAID MANUAL*, § 2215 (last revised Feb. 2019), available at <http://www.georgiamedicaidlaw.net/gamedicaid/2215.pdf>.

service staff have observed that an SSN is a prerequisite for obtaining a driver's license in New York, opening a bank account as a teenager in Massachusetts, obtaining a driver's license or state ID in Texas, receiving an independent living stipend for long term foster care recipients in Washington state, and in dozens of other state programs in our areas of service.

The importance of ensuring access to healthcare cannot be overemphasized. The act of seeking asylum in itself can be both traumatic and psychologically taxing, over and above the traumas and injuries many child asylum seekers suffered in their countries of origin that prompted their travel here.³¹ Children entering the country are unsure whether they will get to safely remain in the U.S. or be sent back to the violence, sexual abuse, persecution, or extreme poverty that they fled. The proposed rule would compound that uncertainty and worsen existing psychological damage by inhibiting access to treatment.³² Instead of creating a sense of safety and security, children would now have to worry about whether they can afford their EADs, which could easily contribute to their uncertainty and insecurity, heightening the fears and anxieties that already plague many child asylum seekers.³³

III. The Proposed Fee Rule Arbitrarily Imposes New Barriers to Seeking Adjustment of Status and Naturalization, Ignoring Significant Evidence that Fees are the Greatest Barrier to Citizenship

Many of KIND's clients receive Special Immigrant Juvenile Status after having been deemed abused, abandoned, or neglected by a state court. We are pleased to see that USCIS proposes no change to the waiver of the fee for the Form I-360, Petition for Special Immigrant Status, but other changes to the fee structure will make it much harder for our clients to submit their applications for adjustment of status or to work during the pendency of that application. Young people, many of whom have no resources of their own, should not be subject to mandatory fees for filing the I-485 or obtaining an EAD while their adjustment of status

³¹ Kiara Alvarez and Margarita Alegria, *Understanding and Addressing the Needs of Unaccompanied Immigrant Minors*, AM. PSYCHOLOGICAL ASS'N (June 2016),

<https://www.apa.org/pi/families/resources/newsletter/2016/06/immigrant-minors>.

³² Human Rights Watch, *At Least Let Them Work*, (Nov. 12, 2013) ("[Asylum seekers] who had survived egregious persecution in their home countries said that being barred from work made them feel that they were re-experiencing persecutory or discriminatory treatment."), *available at* <https://www.hrw.org/report/2013/11/12/least-let-them-work/denial-work-authorization-and-assistance-asylum-seekers-united>.

³³ See, e.g. *New Work Authorization Rule for Asylum Seekers Could Have Devastating Consequences*, *supra* note 29.

application is pending. We urge USCIS to retain the fee waiver option, including retaining proof of receiving a means tested benefit,³⁴ for all applications for which it is currently available; Our clients frequently apply for and are granted a fee waiver when submitting the I-485. Under current practice, this automatically gives them access to an employment authorization document pending the completion of their case. Given the growing backlog of visa availability in SIJS cases, eliminating the fee waiver for the I-485 and requiring applicants to pay a separate fee for the EAD imposes a double hardship, as our experience shows that few of our clients can easily raise the funds to pay for the I-485 itself, let alone raise another \$490 to pay for the EAD. Retaining the fee waiver provides a better and fairer option to ensure that those who can pay do, but those who cannot pay are not precluded from becoming a permanent resident.

Moreover, we caution that increasing fees in this manner may have unintended consequences, particularly for unaccompanied children, resulting in difficulty finding sponsors and a lower level of legal representation. Family members and other sponsors of unaccompanied children may become more reluctant to accept responsibility for an unaccompanied child if the burden of paying for his or her applications is added to their responsibilities. It may also become more difficult to place unaccompanied children's cases with pro bono counsel. KIND strives to ensure that no unaccompanied child goes unrepresented, and to do so we work closely with a vast network of pro bono counsel across the country. These lawyers volunteer thousands of hours annually and give selflessly, but it may become more difficult to place cases if the client has no means of receiving a fee waiver, as whether the application can be filed will turn on subsidizing the client's fees, which many pro bono counsel are unable to do. KIND and other legal service providers may have to shift resources to support these new fees, potentially reducing the overall number of children who can be represented. Lack of representation also leads to an overall drop in efficiency for the system, as cases frequently face greater delays and uncertainty when a child is unrepresented. Similarly, more charitable and government resources may have to be directed at providing fee support, shifting the burden of these fees not to the applicant, as the Proposed Rule suggests, but to the public. Restoring the availability of the fee waiver would prevent these problems, more properly placing the distribution of costs across the population benefitting from USCIS services.

IV. The Proposed Fee Rule Is Likely to Discourage or Delay Full Participation in Community Life Among Young People

³⁴ See order granting a preliminary injunction against the revised fee waiver form, which included numerous policy changes within the form instructions, including elimination of showing proof of evidence of a means tested benefited as establishing eligibility for a waiver. *City of Seattle et al. v. Department of Homeland Security, et. al*, Case 3:19-cv-07151-MMC, U.S. District Court (N.D. CA, December 11, 2019).

Most of KIND’s clients will become eligible for permanent residence or citizenship after our work with them has concluded, but we remain deeply concerned about the impact of the fee increases on the overall health, well-being, and civic engagement of our former clients. The Proposed Rule imposes a 61% increase³⁵ in the naturalization application fee, increasing the cost from \$640 to \$1170, despite significant evidence that high fees are the most serious obstacle to naturalizing.³⁶ For young people, this burden could be even higher, forcing them to choose between applying for naturalization or meeting their basic needs, including becoming financially independent, finishing high school or college, paying for childcare, or saving for higher education or a home. Our clients are often just beginning to see a future for themselves after years of trauma, abuse, or persecution. Many of them are highly motivated to succeed, but financial barriers to naturalization will impede their progress.

Raising the fees while offering no chance to seek a waiver sends a strong signal that USCIS is not interested in encouraging naturalization or welcoming immigrants—directly contrary to its statutory mission.³⁷ Moreover, it delays the opportunity for young people to become active in civic life, participating as voters and having a greater say in their community. USCIS should be encouraging civic engagement, and in fact the Office of Citizenship within USCIS is designed precisely to do that. A fee schedule which stands in direct opposition to that mission and message is one that is likely to create greater aversion to young people’s interest in completing the path to citizenship and becoming a full part of their adopted country.

V. The Proposed Fee Rule Inappropriately Proposes Transferring Funds to ICE, Outside the Authority Granted to USCIS, And Must be Recalculated

The Proposed Rule unfairly and unlawfully burdens asylum seekers and other benefit applicants by charging them for ICE investigative activities. The initial Proposed Rule includes a projected unlawful transfer of \$207.6 million to reimburse ICE for investigative services relating to adjudicating benefits; although recently scaled back to \$112 million, there was no

³⁵ Christopher Ingraham, The Cost to Become a U.S. Citizen is Going Up 61%, WASHINGTON POST, November 12, 2019, www.washingtonpost.com/business/2019/11/13/cost-become-us-citizen-is-going-up-percent/

³⁶ See Donald Kerwin and Robert Warren, *Putting Americans First: A Statistical Case for Encouraging Rather than Impeding and Devaluing U.S. Citizenship*, Center for Migration Studies, JOURNAL ON MIGRATION AND HUMAN SECURITY, 8. <https://journals.sagepub.com/doi/pdf/10.1177/2331502419894286>; Thai V. Le, Manuel Pastor, et al, Paths to Citizenship Using Data to Understand and Promote Citizenship, USC Dornsife Center for Immigrant Integration Studies, January 2019.

https://dornsife.usc.edu/assets/sites/731/docs/PathsToCitizenship_Full_Report_CSII.pdf; Jens Heimuller, et al. *A Randomized Control Design Reveals Barriers for Low Income Immigrants*, 15 PNAS, Number 5, Stanford University, January 30, 2018.

<https://www.pnas.org/content/pnas/115/5/939.full.pdf>

³⁷ See 6 U.S.C. § 271(b).

corresponding reduction in fees.³⁸ The government argues that this transfer is justified by the investigative support ICE provides, pointing to language establishing the Immigration Examinations Fee Account (IEFA), which must be used to pay for “providing immigration adjudication and naturalization services and the collection, safeguarding and accounting for fees deposited in and funds reimbursed from the ‘Immigration Examinations Fee Account’.” 8 U.S.C. § 1356(n). Congress, however, has flatly rejected this contention. The initial Homeland Security Appropriations Bill for FY2020 included an explicit prohibition on transfer to or availability of IEFA funds for ICE.³⁹ Congress made it clear that ICE should seek reimbursement from the appropriators, rather than USCIS, noting in the statement accompanying the full-year FY 2020 appropriations package “The agreement provides direct funding of \$207,600,000 [for ICE] above the request in lieu of the proposed use of Immigration Examinations User Fee revenue to partially offset costs for eligible activities in this account due to concerns with the impact to U.S. Citizenship and Immigration Services operations and the growing backlog in applications for immigration benefits.”⁴⁰

Given this explicit Congressional intervention, the Proposed Rule requires significant revisions. The original \$207.6 million transfer must be factored into a reduced fee schedule, one that more properly weighs equities. For example, even if USCIS could justify its proposal to charge an asylum fee, the elimination of the ICE transfer costs makes it unnecessary. Similarly, USCIS has substantially more leeway in providing for fee waivers or reductions of fees for employment authorization or naturalization applications. In fact, this change to USCIS’s projected revenue needs is significant enough to require that USCIS completely revisit its fee schedule and to provide the public with more input into the process.

Conclusion

USCIS has failed to justify the extensive changes to its fee schedule, presenting a plan that inexplicably shifts from an “ability to pay” framework to that of a “beneficiary pays” framework which ignores many of the underlying principles and policies that have long grounded our immigration system. Rather than a “beneficiary pays” model, however, the Proposed Rule creates the distinct possibility that legal service providers or charitable foundations will pay fees, struggling to maintain access to benefits for asylum seekers, unaccompanied children, and low-income people who are priced out of USCIS’s adjudication services. With respect to unaccompanied children, the rule fails to uphold the United States’ commitment to humanitarian protection and to the promotion of permanent, stable legal status, something which is clearly in the best interests of a child.

³⁸ U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 84 Fed. Reg. 67243 (Dec. 9, 2019).

³⁹ See HR 3931, Department of Homeland Security Appropriations Act 2020, Section 407.

⁴⁰ *Supra* note 10 at 10.

The United States must continue to provide access to asylum for everyone; proposals to charge a fee to apply for asylum and obtain an initial work permit create barriers that some applicants will be unable to overcome. Even for many unaccompanied children, who are exempt from the asylum filing fee, the imposition of the fee on the initial work authorization document has the potential to delay or deny them access to work, health, education, and other benefits. For unaccompanied children who qualify for Special Immigrant Juvenile Status, the elimination of fee waivers, coupled with new requirements to file and pay separately for an EAD when submitting an adjustment application, creates similar barriers that will likely delay or prevent them from moving forward with their applications. Finally, KIND is concerned that further barriers to citizenship, imposed through fees on adjustment of status and naturalization applications, will deter young people from continuing on the path to citizenship, depriving them of the opportunity to contribute to the United States, to engage fully in civic life, and to fulfill their dreams.

USCIS should not stand in the way of safety and stability but should instead create a fee schedule that recognizes the importance of providing humanitarian protections to the most vulnerable, ensuring that all children have genuine access to the immigration benefits for which they are eligible, and promoting and encouraging access to citizenship. In addition, the recent Congressional ban on transfer of IEFA funds to ICE and more input into the impact of fee increases on humanitarian benefits requires a delay in implementing any fee increase, as well as a recalculation and publication of a revised fee schedule. We urge USCIS to take this as an opportunity to work with the public rather than to attempt to craft a new schedule on its own.

We respectfully request that USCIS withdraw the Proposed Rule, commit to stakeholder discussions to gain a greater understanding of the true costs and equities involved in seeking immigration benefits, and work with the public to devise a fee schedule to fairly balance ability to pay against administrative costs

Thank you for the opportunity to comment upon this rule. Should you have further questions, please contact Mary Giovagnoli at mgiovagnoli@supportkind.org.

Sincerely,

A handwritten signature in black ink that reads "Jennifer Podkul". The signature is written in a cursive, flowing style.

Jennifer Podkul
Vice President for Policy and Advocacy
Kids in Need of Defense