



NEW YORK  
CITY BAR

**COMMITTEE ON  
IMMIGRATION & NATIONALITY LAW**

VICTORIA F. NEILSON  
CHAIR  
42 W. 44TH STREET  
NEW YORK, NY 10036  
Phone: (917) 499-8869  
[Vickie.neilson@gmail.com](mailto:Vickie.neilson@gmail.com)

December 19, 2019

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

*Submitted via <https://www.regulations.gov>*

**Re: U.S. Citizenship and Immigration Services Fee Schedule, 84 Fed Reg. 62280  
(proposed Nov. 14, 2019), DHS Docket No. USCIS-2019-0010; RIN 1615-AC18.**

Dear Ms. Deshommès:

On behalf of the Immigration & Nationality Law Committee of the New York City Bar Association (“City Bar”)<sup>1</sup>, we respectfully submit this comment in response to the publication on November 14, 2019 of the above-referenced notice published in the Federal Register (84 Fed. Reg. 62280).

## **I. INTRODUCTION**

The proposed fee schedule effectively nullifies congressional oversight of immigration by raising fees so high that statutorily created pathways to status are rendered meaningless. The Immigration and Nationality Act sets forth the statutory framework for family-based, humanitarian, and employment-based immigration as well as other paths by which noncitizens gain lawful status and, in many cases, become new Americans. The proposed fees are dramatically higher for key forms of relief, which, combined with the proposed curtailment of fee waivers, will make it effectively impossible for many noncitizens to apply for immigration status. This is not an appropriate exercise of agency decision-making authority.

---

<sup>1</sup> With 24,000 members, the City Bar has a longstanding mission to equip and mobilize the legal profession to practice with excellence, promote reform of the law, and advocate for access to justice in support of a fair society.

## II. THE PROPOSED CHANGES ARE DRAMATIC AND HARMFUL

The operating budget of U.S. Citizenship and Immigration Services (USCIS), and of the Immigration and Nationality Service before it, has long been reliant primarily on user fees with only minimal Congressional appropriations. However, as USCIS expenses have surged in recent years, the agency has sought to pass the burden on to applicants with devastating effects and without a corresponding improvement in services. The proposed increase follows only two years after 2016 increases, which were the first fee increase since 2010. The 2016 increases were more modest, and they had a tiering option for naturalization fees that was explicitly aimed at *not* chilling applications. In contrast, the current fee increase is much more dramatic and likely to cut off legal pathways to lawful permanent residence and citizenship.

Though not all fees are slated to increase in the proposed schedule, for certain forms of relief the fees will skyrocket. For example, for a person applying for lawful permanent residence through a spousal, immediate relative petition, the total fee burden will increase by \$990 to a total of \$2,750.<sup>2</sup> The fee for an application for advance permission to enter on Form I-192, a common waiver for people who might otherwise be barred from regularizing their status, will jump from \$930 to \$1,415.<sup>3</sup> Perhaps most concerning, the fee for a naturalization application will increase by 60 percent, from \$725 to \$1,170.<sup>4</sup> During this same period, the United States saw inflation of only 7 percent.<sup>5</sup> The Department of Homeland Security is increasing expenses without increasing services and its purported justifications raise concerns about the agency's true motivations, as discussed *infra*.

The dire effects of these increases will be magnified by the proposal to also eliminate fee waivers for several types of filings, including:

- Form I-90, Application to Replace Permanent Resident Card;
- Form I-751, Petition to Remove Conditions on Residence;
- Form I-765, Application for Employment Authorization;
- Form N-336, Request for a Hearing on a Decision in Naturalization Proceedings;
- Form N-400, Application for Naturalization; and
- Form N-600, Application for Certificate of Citizenship.<sup>6</sup>

A 60 percent increase in the N-400 filing fee, combined with elimination of a reduced filing fee which is currently available for that application, and the fee waiver, will lead to fewer naturalization applications, given that in 2017, nearly 40 percent of applicants for citizenship

---

<sup>2</sup> U.S. Citizenship and Immigration Services Fee Schedule (hereinafter "Proposed Rule"), 84 Fed Reg. 62280, 62326-27 Table 19 (proposed Nov. 14, 2019).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> See U.S. Bureau of Labor Statistics, CPI Inflation Calculator (November 2019), <https://data.bls.gov/cgi-bin/cpicalc.pl?cost1=100&year1=201610&year2=201910>. (All linked cited in this comment letter were last checked on December 19, 2019).

<sup>6</sup> See generally Proposed Rule, Section (V)(C).

received a fee waiver.<sup>7</sup> These proposed changes are in direct contrast to the last fee increases in 2016, which provided a reduced filing fee option for naturalization applicants earning more than 150 percent but less than 200 percent of the federal poverty line. The reduced filing fee was instituted so that citizenship would be available to hard-working permanent residents even if they were not wealthy. On July 4, 2019, Vice President Pence swore in a crowd of forty-four new Americans, stating:

I'm also told you come from just about every walk of life. There's an electrician among you. A banker. There's a college counselor, an IT engineer, and even an Uber driver... Last year, more than three-quarters of a million people raised their right hand and swore the very same oath that you just took. And your example and theirs gives evidence that then, as now, and throughout our nation's history, America has the most generous system of legal immigration in the history of the world.<sup>8</sup>

These words ring hollow as the administration seeks to raise fees to a level where many working people could not pay. This fee hike will inevitably disrupt full civic participation by long-term lawful permanent residents who are interested in becoming citizens of their adopted homeland. A 2018 study based on research in New York found that high fees create a daunting barrier for many noncitizens, and that the United States has seen a dramatic decrease in the naturalization of its permanent residents over the past few decades.<sup>9</sup> In 1970, 64 percent of legal residents were naturalized, but that dropped to 56 percent by 2011. Meanwhile, Australia, Canada, and the United Kingdom were more generous, naturalizing 67 to 89 percent of similarly situated immigrants.<sup>10</sup> A recent study by the Center for Migration Studies concluded that:

3.3 million or 39 percent of naturalization-eligible persons live in households with incomes of less than 150 percent of the federal poverty guidelines. In short, the proposed fee increases would price out many adjustment- and naturalization-eligible persons from moving up in status, to their detriment and the detriment of their families and communities.<sup>11</sup>

The elimination of a fee waiver option for I-765 applications for work authorization simply does not make sense. If an applicant cannot pay the filing fee, and will thus be unable to obtain or renew work authorization, they will become less, not more, self-reliant, poorer, not richer, and more

---

<sup>7</sup> Tovin Lapan, *U.S. Citizenship Application Fee Waivers Rule Challenged in New Lawsuit*, FORTUNE, (Nov. 8, 2019), available at <https://fortune.com/2019/11/08/us-citizenship-application-fee-uscis-waiver-lawsuit>.

<sup>8</sup> See Remarks by Vice President Pence at Naturalization Ceremony (July 4, 2019), <https://www.whitehouse.gov/briefings-statements/remarks-vice-president-pence-naturalization-ceremony/>.

<sup>9</sup> Jens Hainmuellera,b,c,1,2, Duncan Lawrenceb,1, Justin Gestd, Michael Hotardb, Rey Koslowskie, and David D. Laitin, A randomized controlled design reveals barriers to citizenship for low-income immigrants 115 Proceedings of the National Academy of Sciences of the United States of America 939 (Jan. 30, 2018), available at <https://www.pnas.org/content/115/5/939>.

<sup>10</sup> *Id.*

<sup>11</sup> Donald Kerwin and Robert Warren, Center for Migration Studies, *Putting Americans First: A Statistical Case for Encouraging Rather than Impeding and Devaluing US Citizenship*, at 8, JOURNAL ON MIGRATION AND HUMAN SECURITY, <https://journals.sagepub.com/doi/pdf/10.1177/2331502419894286>.

likely to become reliant on government or charitable benefits. It creates a paradox where someone cannot work because they do not have enough money to request permission to work.

Finally, the drastic increase in the filing fee for Form I-192 (Application for Advance Permission to Enter as a Nonimmigrant), combined with the elimination of a fee waiver for the Form I-192, effectively renders the waiver of inadmissibility impossible.<sup>12</sup> This change would eliminate statutorily available waivers of inadmissibility for many applicants and prevent those inadmissible nonimmigrants from ever obtaining status.

### **III. THE PROPOSED CHANGES WOULD DISPROPORTIONATELY AFFECT SOME GROUPS, BUT EVEN MIDDLE-CLASS FAMILIES MAY STRUGGLE**

The increase in fees and the elimination of fee waivers would affect hundreds of thousands of noncitizens every year. According to a 2017 report of fee waivers, USCIS granted 627,959 fee waivers in 2016.<sup>13</sup> The vast majority of these waived fees helped people obtain citizenship, green cards, and work authorization.<sup>14</sup> When immigrants pursue these applications, the resulting stability better allows them to flourish and financially contribute to the United States through taxes and job creation. Not only will the fees make it more difficult for the working poor and vulnerable members of our communities, but even middle-class families will be discouraged from stabilizing their status when faced with thousands of dollars in fees.

The proposed fee hike and elimination of waivers also show a failure to recognize that wealthy immigrants are not the only ones who contribute to our country. Senior citizens with limited resources and families facing an ever-growing stack of fees per person will likely be hit hard. When older family members are blocked from status, this can be not only emotionally devastating, but also a financial loss. U.S. citizens often rely on their parents to care for grandchildren, contribute additional income, and save money by living together as a family, while also enriching the communities in which they live.

In addition, research suggests that fee increases have a disparate racial impact, limiting opportunities for immigrants from non-European countries.<sup>15</sup> For example, when the United States previously increased fees for naturalization, the share of Mexican lawful permanent residents who applied for naturalization dropped from 19.8 percent in 2008 to 12.7 percent in

---

<sup>12</sup> Petitioners for U nonimmigrant status frequently require this waiver. Although they are statutorily eligible to apply for a fee waiver, those whose income is too high for a fee waiver, but not high enough to pay \$1415, will be foreclosed from regularizing their immigration status.

<sup>13</sup> Department of Homeland Security, USCIS Fee Waiver Policies and Data (Sept. 27, 2017), <https://www.dhs.gov/sites/default/files/publications/USCIS%20-%20Fee%20Waiver%20Policies%20and%20Data.pdf>.

<sup>14</sup> *Id.*

<sup>15</sup> Jeanne Batalova, Michael Fix, and Mark Greenberg, *Through the Back Door: Remaking the Immigration System via the Expected "Public-Charge" Rule*, Migration Policy Institute (Aug. 2018), <https://www.migrationpolicy.org/news/through-back-door-remaking-immigration-system-expected-public-charge-rule>

2010.<sup>16</sup> This is especially troubling when viewed in light of remarks demonstrating racial animus the administration has made relating to immigrants of color.<sup>17</sup>

Even those exempted from the fees would likely suffer due to the contradictory and confusing language in the proposed rule. Any potential rule would need to more explicitly address protections and exemptions for certain humanitarian categories and contain provisions to ensure that these exemptions are publicized and respected. For example, the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) permits the waiver of fees for certain applications *and any associated applications* even if those fees normally would not be waivable.<sup>18</sup> Although the proposed rule notes the statutory protections for victims of crime, survivors of domestic violence, unaccompanied children, and other categories under the TVPRA, the general elimination of waivers is likely to cause a great deal of confusion among these vulnerable groups. In particular, these groups are also statutorily exempt from the public charge ground of inadmissibility, but the proposed rule confusingly states that people protected by the TVPRA *can* request fee waivers for ancillary forms while people exempted from the public charge rule *cannot* request fee waivers for the exact same forms.<sup>19</sup> Many potential applicants may not be aware of the special protections to which they are entitled and may fail to seek protection as a result. In the section on employment authorization, the proposed rule creates an explicit categorical exemption for VAWA, T, and U categories,<sup>20</sup> recognizing “the humanitarian nature of these programs” and that “it is more efficient to exempt that population from fees than to employ staff to review fee waiver requests that would usually be approved.”<sup>21</sup> Based on this same reasoning, similar categorical exemptions should be created for other forms associated with statutory protections to ensure that these vulnerable individuals receive the help to which they are entitled.

#### **IV. THE PROPOSED ASYLUM FILING FEE UNDERMINES ASYLUM PROTECTIONS**

One of the most deeply troubling policies in the proposed rule is the imposition of a non-waivable \$50 filing fee for asylum seekers. Asylum seekers are people fleeing for their lives. They often leave their countries with nothing but the clothes on their backs, arriving without a

---

<sup>16</sup> *High Fees Limiting U.S. Citizenship to Wealthy, Non-Mexicans*, NBC, (Jan. 11, 2015), <https://www.nbcnews.com/news/latino/high-fees-limiting-u-s-citizenship-wealthy-non-mexicans-n283061>.

<sup>17</sup> The president has made concerning remarks regarding immigrants from Latin America, Africa, the Caribbean, the Middle East and other regions. *See* Jayashri Srikantiah & Shirin Sinnar, *White Nationalism as Immigration Policy*, 71 *Stan. L. Rev.* 197 (Mar. 2019).

<sup>18</sup> *See* William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Pub. L. No. 110–457, 122 Stat. 5044 (2008); 8 U.S.C. 1255(l)(7).

<sup>19</sup> *Compare* Proposed Rule, Section (IV)(D)(3), Table 7, 84 Fed. Reg. 62297; Proposed Rule, 84 Fed. Reg. 62299 n. 81.

<sup>20</sup> We also note with concern that the proposed rule fails to address Cancellation of Removal for Battered Spouses when discussing employment authorization and fee waivers under the TVPRA. *See* Proposed Rule, Section (IV)(D)(3), Table 7, 84 Fed. Reg. 62297

<sup>21</sup> Proposed Rule Section (IV)(D)(3), 84 Fed. Reg. 62302.

cent in their pockets. To send people back to death and persecution simply because they do not have \$50 is unconscionable, illegal, and undermines statutory asylum protections.

The proposed \$50 fee violates Article 29(1) of the 1951 Convention Relating to the Status of Refugees (the Convention).<sup>22</sup> The Convention explicitly prohibits fiscal charges “whatsoever” other than those that may be “levied on their nationals in similar situations.”<sup>23</sup> For example, asylum seekers in the United States are expected to pay taxes levied on income the same as U.S. citizens. The proposed rule, however, deliberately misinterprets this caveat as permitting a fee for the filing of an asylum application. However, such a fee clearly is not imposed on U.S. citizens in similar situations because a U.S. citizen would never be in the position of applying to the U.S. government for asylum or any other immigration benefit. Furthermore, in discussing fees with regard to other services, such as the acquisition of documents or certifications, the Convention emphatically states the necessity of fee waivers for indigent asylum seekers.<sup>24</sup>

Currently, only three of one hundred and forty-seven countries surveyed charge a fee to request asylum.<sup>25</sup> For the United States, once a leader in protecting refugees, to charge a fee would set a dangerous precedent for other nations.

An asylum fee was last proposed in 1994 in the United States, during one of the most restrictive asylum reforms in U.S. history.<sup>26</sup> Unlike the current proposal, that plan included a fee waiver, and even then, the government ultimately rejected the idea of implementing a fee. In addition, the proposed rule treats asylum differently from other forms of humanitarian protection, such as VAWA self-petitions and petitions for U or T nonimmigrant status. While these categories are protected by distinct statutory regimes, it is inappropriate to throw out longstanding rules in order to offer lesser protections to a separate subset of particularly vulnerable humanitarian applicants.

The proposed rule cites growing affirmative asylum backlogs as a reason for charging a fee. Notably, however, the asylum fee is expected to bring in a mere \$8.15 million.<sup>27</sup> In addition, a \$50 filing fee will not discourage frivolous filings; it will only discourage the most desperate and vulnerable. Furthermore, many factors contributing to the backlog are the result of U.S. policies.<sup>28</sup> The United States has withdrawn aid and slashed efforts to meaningfully improve

---

<sup>22</sup> Convention relating to the Status of Refugees, 189 U.N.T.S. 150, entered into force April 22, 1954.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*, Article 25(4).

<sup>25</sup> See Library of Congress, Fees Charged for Asylum Applications by States Parties to the 1951 Refugee Convention (Dec. 29, 2017), <https://www.loc.gov/law/help/asylum-application-fees/index.php>; 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>.

<sup>26</sup> Proposed Asylum Rule, 59 Fed. Reg. 14,779 (proposed Mar. 30, 1994).

<sup>27</sup> It is an interesting choice to attempt to raise \$8.5 million off the backs of desperate asylum-seekers while also proposing to send \$207.6 million in filing fee revenues to ICE. See Part VI, *infra*.

<sup>28</sup> See Doris Meissner, Faye Hipsman, and T. Alexander Aleinikoff, *The U.S. Asylum System In Crisis: Charting a Way Forward*, Migration Policy Institute (September 2018), <https://www.migrationpolicy.org/sites/default/files/publications/MPI-AsylumSystemInCrisis-Final.pdf>.



security in many of the regions that asylum seekers are fleeing, has closed off other pathways to immigration status, and has reallocated resources previously used for affirmative asylum. For example, the Newark Asylum Office, which processes affirmative asylum applications for some parts of New York, stopped normal functioning in 2019, citing the reassignment of asylum officers to the border.<sup>29</sup> Moreover, the Trump administration's systematic efforts to impede asylum seekers call into question the true purpose of the fee.<sup>30</sup> Such concerns are only reinforced by a separate proposed rule seeking to place limitations on work authorization for asylum seekers.<sup>31</sup>

Similarly, the proposed rule would charge a fee for first time employment authorization document (EAD) applications by asylum seekers for the first time. USCIS has consistently exempted asylum seekers from having to pay a fee for their first EAD, recognizing the unique circumstances that lead asylum seekers to flee without regard to their financial well-being. Requiring asylum seekers to pay for an EAD before they are legally able to work, and after they have already paid for an asylum application, appears punitive and intended to deter the most vulnerable from seeking asylum in the United States. The inability of asylum seekers to obtain employment authorization, in turn, will affect their ability to pay for legal counsel and thereby make it more difficult for them to prevail on the asylum applications.<sup>32</sup>

## **V. THE STATED JUSTIFICATIONS FOR THE PROPOSED FEE INCREASES RAISE CONCERNS**

Respectfully, the supposed “need” for increased fees has been created by USCIS’s own inefficient allocation of resources. For example, USCIS has chosen to interview applicants for entire classes of applications that were previously adjudicated on the papers,<sup>33</sup> and schedule interviews for many more, such as straightforward Form I-751 petitions or VAWA adjustment of status cases, that could far more efficiently be adjudicated without an interview. The primary purpose of Form I-751 is simply to transition someone who was granted conditional permanent residence through marriage to regular permanent residence after two years. There is no reason for an interview in routine cases like this.

---

<sup>29</sup> Julia Ainsley, *Letter shows U.S. asylum officers in Newark, N.J., Boston were reassigned to border cases*, NBC News (Aug. 22, 2019), available at <https://www.nbcnews.com/politics/immigration/letter-shows-u-s-asylum-officers-newark-boston-were-reassigned-n1045361>.

<sup>30</sup> See Nicole Narea, *The demise of America’s asylum system under Trump, explained*, Vox (Nov. 5, 2019), <https://www.vox.com/2019/11/5/20947938/asylum-system-trump-demise-mexico-el-salvador-honduras-guatemala-immigration-court-border-ice-cbp>.

<sup>31</sup> See USCIS Docket ID USCIS-2019-24293, OMB Control Number 1615-AC27, published in the Federal Register on Nov. 14, 2019.

<sup>32</sup> One study showed that among non-detained individuals in immigration court, those with counsel saw success in seventy-four percent of case compared with thirteen percent of those unrepresented. *Accessing Justice: The Availability & Adequacy of Counsel in Immigration Proceedings* (hereinafter “Accessing Justice”), New York Immigrant Representation Study (Dec. 2011), [www.cardozolawreview.com/content/denovo/NYIRS\\_Report.pdf](http://www.cardozolawreview.com/content/denovo/NYIRS_Report.pdf).

<sup>33</sup> See USCIS to Expand In-Person Interview Requirements for Certain Permanent Residency Applicants (Aug. 28, 2017), available at <https://www.uscis.gov/news/news-releases/uscis-to-expand-in-person-interview-requirements-for-certain-permanent-residency-applicants>.

USCIS also increasingly issues Notices of Intent to Deny (“NOIDs”) and Requests for Evidence (“RFEs”),<sup>34</sup> frequently misidentifies or mischaracterizes evidence submitted, or requests evidence that has already been submitted. USCIS also denies numerous legitimate fee waiver requests the first time they are filed, approving them only after attorneys and applicants refile them and USCIS personnel once again review them.<sup>35</sup> This inefficient duplication of work costs USCIS time and money, but those costs should not be passed along to immigrants. Further, USCIS has improperly denied applications based on illegal policy changes that were subsequently enjoined by federal courts, such as USCIS’s attempt to deny Special Immigrant Juvenile Status to applicants who were over 18 but under 21 years of age at the time of application.<sup>36</sup> USCIS has spent time and money litigating such cases, notifying class members of the litigation results, and then processing the cases correctly a second time. USCIS should not pass costs resulting from its own inefficiency on to applicants.

Another justification for increased fees is costs associated with additional vetting to root out potential fraud in immigration benefit applications. However, USCIS has provided no evidence that prior vetting procedures were insufficient or that it has discovered previously hidden fraud.<sup>37</sup>

Finally, the projected workload volumes offered to justify the proposed increases in fees seem inconsistent with numbers from prior years. USCIS projects annual average workload receipts of 9,336,013 for FY 2019/2020,<sup>38</sup> a figure much higher than workload receipts in any of the last four years. In fact, workload receipts have fallen since FY2017. Total workload receipts were 8,070,917 in FY 2016; 8,530,722 in FY 2017; 7,527,851 in FY 2018; and 5,684,300 through Quarter 3 of FY 2019, which can be estimated to a likely total workload receipt of 7,570,000 by the end of FY 2019.<sup>39</sup> The proposed rule does not explain the basis for projecting a

---

<sup>34</sup> See, e.g., USCIS data showing a steady increase in the number of RFEs issued in H-1B visa cases between Fiscal Year 2015-2019, available at [https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/BAHA/H-1B\\_Quarterly\\_Request\\_for\\_Evidence\\_RFE\\_FY2015-FY2019\\_Q3.pdf](https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/BAHA/H-1B_Quarterly_Request_for_Evidence_RFE_FY2015-FY2019_Q3.pdf).

<sup>35</sup> Following widespread fee waiver denials, legal technical assistance organizations were forced to devote resources to fee waiver practice advisories. See, e.g., “Practice Advisory: Fee Waivers for VAWA self-petitions, U and T visa applications” (Aug. 2018), available at <https://asistahelp.org/wp-content/uploads/2018/09/ASISTA-Practice-Advisory-Fee-Waivers.pdf>.

<sup>36</sup> *R.F.M. et al v. Nielsen* (S.D.N.Y Mar. 15, 2019), decision available at <https://www.legalaidnyc.org/wp-content/uploads/2019/06/SIJS-CaseInformation-SIJSVictory.pdf>.

<sup>37</sup> Deconstructing the Invisible Wall: How Policy Changes by the Trump Administration Are Slowing and Restricting Legal Immigration, American Immigration Lawyers Association, (Apr. 24, 2018), available at [www.aila.org/infonet/aila-report-deconstructing-the-invisible-wall](http://www.aila.org/infonet/aila-report-deconstructing-the-invisible-wall).

<sup>38</sup> 84 Fed. Reg. 62289-90.

<sup>39</sup> Workload receipt data available at [https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/all\\_forms\\_performancedata\\_fy2016\\_qtr4.pdf](https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/all_forms_performancedata_fy2016_qtr4.pdf); [https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/Quarterly\\_All\\_Forms\\_FY17Q4.pdf](https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/Quarterly_All_Forms_FY17Q4.pdf); [https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/Quarterly\\_All\\_Forms\\_FY18Q4.pdf](https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/Quarterly_All_Forms_FY18Q4.pdf); and



nearly 25% increase in receipts between FY18 and FY20, which calls into question USCIS's projected fiscal needs based upon supposed increases in receipts.

## **VI. TRANSFER OF FUNDS TO ICE BY USCIS IS AN IMPROPER USE OF FEES**

USCIS is the agency dedicated to the administration and adjudication of immigration benefits. When USCIS was created under The Homeland Security Act of 2002, it was specifically designed to be a service-oriented immigration agency separate and distinct from immigration enforcement agencies.<sup>40</sup> Therefore, the proposal to transfer \$112 million from the Immigration Examinations Fee Account ("IEFA") to Immigration and Customs Enforcement (ICE) for use in enforcement appears contrary to USCIS's mission and IEFA's purpose, particularly when USCIS's case processing times and backlogs have ballooned and the money could be appropriately spent adjudicating applications and addressing the backlog. The proposal to transfer funds to ICE is also puzzling given that USCIS forecasts a \$1.2 billion dollar shortfall under the current fee schedule. If the reason for hiking fees is to cover a shortfall in USCIS operating funds, USCIS should not be passing funds to ICE, which is meant to be a tax-funded agency. The proposed transfer is a disturbing embodiment of the trend of turning USCIS into an enforcement arm rather than the affirmative benefits agency that Congress intended it to be. USCIS appears to have attempted to mitigate concerns by reducing the amount from an initial proposal to transfer \$207 million in an amendment to the proposed rule. However, transferring \$112 million is still an extraordinary sum—the equivalent of 2 million asylum applications with the proposed \$50 fee.

Moreover, since it is Congress's role to determine the funding level of ICE, taking applicant-financed fees from USCIS to give ICE more resources than Congress allotted undermines Congress's role in funding agencies.

## **VII. CONCLUSION**

The City Bar urges USCIS to withdraw this rulemaking and reassess its actual needs to increase fees to better serve noncitizens. The fees proposed herein will be prohibitive for many noncitizens, including asylum seekers, thus serving as a deterrent for noncitizens to stabilize their immigration status. We further urge withdrawal of the unprecedented and improper proposal to transfer funds from USCIS to ICE, which would preserve \$112 million for USCIS to put towards application adjudication—its Congressionally mandated mission.

Respectfully,

Victoria Neilson  
Chair, Immigration & Nationality Law Committee

---

[https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/Quarterly\\_All\\_Forms\\_FY19Q3.pdf](https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/Quarterly_All_Forms_FY19Q3.pdf).

<sup>40</sup> Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 213 (codified as amended in scattered sections of 6 U.S.C.), available at [www.dhs.gov/sites/default/files/publications/hr\\_5005\\_enr.pdf](http://www.dhs.gov/sites/default/files/publications/hr_5005_enr.pdf); Lisa M. Seghetti, Cong. Research Serv., RL31388, Immigration and Naturalization Service: Restructuring Proposals in the 107th Congress 2 (2002), available at <https://fas.org/sgp/crs/RL31727.pdf>.