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Submitted via Regulations.gov

Samantha Deshommes
Chief, Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
5900 Capital Gateway Drive
Camp Springs, MD 20746

Re: Comments on USCIS-2121-0010-0001, Notice of Proposed Rulemaking; U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements

Dear Ms. Deshommes:

The Catholic Legal Immigration Network, Inc., or CLINIC¹ submits these comments regarding the Notice of Proposed Rulemaking, or NPRM, titled U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, which would increase filing fees for applications and petitions for immigration benefits, many affecting low-income immigrants. CLINIC strongly urges the Department of Homeland Security, or DHS, to reconsider several of these fee increases, as they would unduly increase burdens on stakeholders and make immigration benefits inaccessible to some noncitizens.

Embracing the Gospel value of welcoming the stranger, CLINIC has promoted the dignity and protected the rights of immigrants in partnership with a dedicated network of Catholic and community legal immigration programs since its founding in 1988. CLINIC's network, originally comprised of 17 programs, has now increased to more than 450 diocesan and community-based programs in 49 states and the District of Columbia. CLINIC is the largest nationwide network of nonprofit immigration programs. Through its affiliates, CLINIC advocates for the just and humane treatment of noncitizens. Nearly all of CLINIC's affiliates offer legal services to help qualified noncitizens to apply for permanent residence, employment authorization, provisional waivers, and other forms affected by this proposed rulemaking.

As a faith-based organization, CLINIC adheres to and is guided by Catholic social teaching. In the words of Pope John Paul II, our work aspires that "every person's dignity is respected, the immigrant is welcomed as a brother or sister, and all humanity forms a united family which knows how to appreciate with

¹ Elnora Bassegy, Policy Advocate; Nicole Bonjean, Managing Attorney; Marta Garcia-Lascurain, Staff Attorney; and Karen Sullivan, Director of Advocacy authored these comments. The authors would like to thank Laura Burdick, Field Support Coordinator, and Devi Jadeja, Programs Assistant for their contributions to this comment.

discernment the different cultures which comprise it.”² Due to our work with noncitizens around the country, we are deeply concerned that the proposed fee and policy changes would disproportionately harm low-income immigrants and their families, reducing their access to immigration benefits for which they qualify and derivative benefits that support the health and wellbeing of many families.

I. DHS Should Withdraw the 2020 USCIS Fee Schedule and Immigration Benefit Request Requirements

We request that DHS formally withdraw the 2020 USCIS Fee Schedule and Immigration Benefit Request Requirements.³ The 2020 Fee Schedule never went into effect because it has been subject to a preliminary injunction issued in *ILRC v Wolf*.⁴ However, USCIS has never formally withdrawn the 2020 Fee Schedule, and there is no final judgment in the *ILRC v. Wolf* matter, which has been stayed pending the results of the current proposal. The current proposal appropriately removes many of the objectionable features contained in the 2020 Fee Schedule, such as the unprecedented new fee for asylum applications and the elimination or restriction of fee waivers.

The current proposal reflects a considered policy judgment on the part of USCIS that those features of the 2020 Fee Schedule are undesirable as a policy matter and are inconsistent with the goals of federal immigration laws. However, we anticipate that the current fee proposal may also be subject to judicial review after it is adopted. If, for any reason, a court were to find that some portion of the new fee proposal is unlawful, the result should not be a return to the 2020 Fee Schedule. Rather, by formally withdrawing the 2020 Fee Schedule, USCIS can assure that the result would be a return to the current status quo, which is the 2016 Fee Schedule now in effect. Also, USCIS should state that its withdrawal of the 2020 Fee Schedule is severable from the remainder of the current proposal, so that any judicial invalidation of any portion of the current proposal would not endanger the lawful and appropriate decision to withdraw the 2020 Fee Schedule.

In comparison to the enjoined 2020 Fee Schedule, we support the current NPRM’s reversion to a system that prioritizes distribution of fees based on the filers’ ability to pay. We also support the NPRM’s withdrawal of the proposed fee to apply for asylum, and its codified fee exemption for asylees and refugees as well as their initial Employment Authorization Document. Further, we support efforts to reduce fees associated with vulnerable applicants who have been victims of crimes and abuse; we address some aspects of these efforts in our comments below.

II. The Proposed Fee Increases Impact Family-Based and Humanitarian-Based Immigrants and Lawful Permanent Residents

CLINIC supports immigration policies and procedures that facilitate family unity and welcomes changes that improve access to important immigration benefits. According to feedback from our hundreds of affiliated programs, the affordability of filing fees is a top challenge for low-income and hard-working applicants and families when applying for immigration benefits. The proposed fee rule’s greatest impact would be on low-to-moderate-income immigrants who would face a significant financial barrier to access immigration benefits. Most working-class applicants would not qualify for fee waivers and exemptions, particularly in family-based immigration where an applicant may not be considered a public charge. For those unable to pay, the opportunity to obtain or retain immigration benefits, including the ability to work with authorization, would be at risk, leaving them at an unfair disadvantage. Families, particularly those

² Pope John Paul II, *Message of the Holy Father for the World Migration Day 2000*, LIBRERIA EDITRICE VATICANA (2000), https://www.vatican.va/content/john-paul-ii/en/messages/migration/documents/hf_jp-ii_mes_21111999_world-migration-day-2000.html.

³ CIS No. 2627-18; DHS Docket No. USCIS-2019-0010, Aug. 3, 2020.

⁴ *ILRC v Wolf*, Case No. 20-cv-05883-JSW (N.D. Cal., Sept. 29, 2020).

with young children, would see the highest fee increases and would be among the hardest hit by the proposed fees, as they may be forced to apply for immigration benefits on a piecemeal basis, causing undue delay that would prolong both family reunification and full integration into our society.

A. The Proposed Changes to the Adjustment of Status Application Process Would Harm Most Applicants

1. CLINIC Opposes Unbundling Interim Benefits and Prohibitive Proposed Fees

Due to immigrant visa backlogs and increased USCIS processing times, adjustment applicants often face long waits before their lawful permanent residence status is granted. Applicants rely on employment authorization to live and work in the United States while their application is pending. Most adjustment applicants filing Form I-485, Application to Register Permanent Residence or Adjust Status, also file Form I-765, Application for Employment Authorization and Form I-131, Application for Travel Document. DHS proposes separate fees for concurrently filed Forms I-485, I-765, and I-131 that would lead to a 130 percent increase in initial filing costs for paper filings, changing significantly from \$1,225 to \$2,820. An applicant who chooses not to seek travel authorization, and files only paper Forms I-485 and I-765, would pay \$2,190 in fees, a 79 percent increase in initial filing costs. These increases would affect all applicants, regardless of age, as DHS has also proposed to eliminate the lower \$750 filing fee for children under age 14 who concurrently file with a parent, requiring them to pay the same fee as adults.

The steep fee increases would pose a significant financial burden and would make adjustment of status unattainable for many low-income and working-class applicants who are immigrating through a U.S. citizen or lawful permanent resident relative or adjusting status through asylum or U nonimmigrant status. Increasing the overall cost of adjustment of status and ancillary interim benefits would delay and prevent many low-income individuals from becoming permanent residents and undermine family unity and the public interest. Adjustment applicants could forgo seeking an interim employment authorization document to reduce their initial filing cost, but this would be harmful. For applicants who can work, the employment authorization document is often tied to their ability to apply for or retain a job, and in many cases, a valid state's driver's license, or identification card. Moreover, an employment authorization document may be an applicant's only source of valid identification, both adults and children can use the document as a source of identification.

Furthermore, after the effective date of the proposed rule, an applicant who is required to pay fees to adjust status would no longer qualify to renew interim benefits without a fee while their adjustment of status is pending. Instead, payment for any interim benefit renewal would be required unless the applicant qualifies for a fee waiver. Those seeking to renew employment authorization would pay an additional \$555 or \$650 depending on the method of filing. Similarly, those seeking to renew travel authorization would pay an additional \$630. With this change, DHS further exacerbates the fee increases for applicants likely to be affected by long processing times and visa-related delays that are generally outside of the applicant's control.

2. We Oppose Increasing Filing Costs for Children Under Age 14 Concurrently Filing Form I-485 with a Parent

Currently, there are two different filing fees for Form I-485. The fee for an adult is \$1,140 and the fee for a child under age 14 concurrently filing with a parent is \$750.⁵ DHS proposes one standard fee of \$1,540 fee for all applicants, including all children under age 14.⁶

In support of these increases, DHS states that, “USCIS does not track the adjudication time for Form I-485 based on the age of the applicant, so there are no data showing a cost difference correlated to the difference in applicant age.”⁷ In doing so, DHS is again failing to consider the argument that young children, particularly those of tender age, are less likely to have inadmissibility and discretionary issues that would delay adjudications such as immigration violations, criminal history, and misrepresentation. Further, as was the case in the last fee review in 2020, DHS fails to address potential efficiencies in adjudicating two related Forms I-485 submitted by family members concurrently. Overall, the proposed rule would clearly burden families who would be required to pay an increased total cost for multiple concurrent adjustments or be forced to choose which family members to prioritize for adjustment.

DHS is also proposing to incorporate the currently separate biometrics fee into certain main benefit fees for adjustment of status and employment authorization requests. While USCIS is proposing this change to streamline operations, this change is an additional and unnecessary cost that is being assessed to children under age 14 who are currently exempt from biometrics fees and in many cases, also exempt from a biometric services requirement. It is unjustifiable and against public policy to increase filing fees for children by incorporating biometrics fees where biometric services are not required.

Asylee families who have endured long reunification wait times would be some of the most affected by the proposed rule. Particularly, principal asylees who would have to be held back from naturalization until all their derivative asylee relatives adjust status, as well as derivative asylees who would become ineligible for adjustment of status if their principal asylee parent has naturalized. Derivative asylees cannot adjust status as derivatives if the principal asylee naturalizes and becomes a U.S. Citizen.⁸ Although an asylee can petition for a derivative spouse and child, asylee relative petitions can take from 13 to 22.5 months to process.⁹ Once admitted into the United States, a derivative asylee must physically reside in the United States for at least 1 year before they are eligible to adjust status.¹⁰ Once filed, asylee adjustments can take about 36.5 to 37 months to process.¹¹ Consequently, it is increasingly likely that a principal asylee could naturalize and inadvertently cause their derivative asylee relatives to lose eligibility to adjust status on the basis of their derivative status. The proposed increases in fees, particularly for children under age 14, will likely exacerbate this problem, as families may be forced to hold off or stagger filings for adjustment of status due to a lack of finances.

Even though DHS may claim the proposed rule affects only a small percentage of applicants who are children, USCIS overlooks how the overall proposed changes would affect not only children but also their families, effectively creating barriers for low-income and working-class families to become permanent

⁵ See U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 88 Fed. Reg. 494 (proposed Jan. 4, 2023).

⁶ See proposed 8 C.F.R. §106.2(a)(20).

⁷ 88 Fed. Reg. 494.

⁸ See Immigration and Nationality Act §101(a)(42); See 8 C.F.R. §209.2(a)(1)(iii); See Chapter 2, Eligibility Requirements [7 USCIS-PM M.2].

⁹ USCIS, Case Processing Times, <https://egov.uscis.gov/processing-times/> (last visited Feb. 14, 2023).

¹⁰ See 8 C.F.R. §209.2(a)(1)(ii).

¹¹ USCIS, Case Processing Times, <https://egov.uscis.gov/processing-times/> (last visited Feb. 14, 2023).

residents and U.S. citizens. This proposal undermines DHS's long-standing policy goals of family unity and family integration.

3. The INA 245(i) Penalty Fee Proposal Contains Errors

DHS has proposed to delete text from Form I-485, Supplement A, regarding the statutory exemptions to the required INA 245(i) penalty fee.¹² This is erroneous, as Form I-485, Supplement A, contains no such text. Similarly, the proposed rule's preamble and the proposed regulation at 8 CFR 106.2(a)(21) are internally inconsistent.¹³ The preamble states it is unnecessary to codify the statutory exemptions in the CFR, but the related proposed regulations do contain the language regarding the 245(i) penalty fee exemptions. DHS should clarify that these are in fact errors, as it did in the 2020 final fee rule.¹⁴

4. Form G-1055 U.S. Citizenship and Immigration Services Form Fees Contains an Error that Would Affect U Nonimmigrants Seeking Initial (c)(9) Category Employment Authorization Based on Adjustment of Status

DHS has not proposed expanding fee exemptions for persons seeking adjustment of status under INA 245(m).¹⁵ Instead, DHS has proposed that any form associated with U nonimmigrant status be fee exempt up until the filing of a Form I-485.¹⁶ Proposed Form G-1055 states under Appendix B: I-765, Page 23, that a U nonimmigrant seeking to adjust status under INA 245(m) will pay a \$0 fee for an initial Form I-765 under category (c)(9). Given the text of the proposed regulation and the proposed rule preamble, this \$0 fee noted on the Form G-1055 must be a typographical error. If left uncorrected, the error would lead U nonimmigrants to erroneously believe they are fee exempt from an initial Form I-765 based on a concurrently filed or pending Form I-485.

5. DHS Must Clearly Explain How It Plans to Allow Online Filing for Applicants Seeking to File Form I-765 Concurrently with Form I-485

DHS must state when online filing will become available for form I-765 under category (c)(9)

Although DHS has proposed instituting lower fees for the online filing of Form I-765, it is uncertain whether online filing will be available to benefit adjustment applicants seeking interim employment authorization. At this time, online filing for Form I-765 is only available for limited categories of applicants that do not include the (c)(9) eligibility category required for applicants seeking initial or renewal employment authorization while pending adjustment of status. If this limitation remains unchanged, applicants seeking to file Form I-765 concurrently with their Form I-485 adjustment of status application would not be able to use the online filing process when the final fee rule is enacted, thereby eliminating any access to the proposed lower online filing fee.

We urge DHS to make Form I-485 available for online filing. DHS must explain how an applicant required to use paper filing for Form I-485 would proceed to use online filing for Form I-765 without significantly delaying their employment authorization process.

¹² 88 Fed. Reg. 494.

¹³ See *id.*; See proposed 8 C.F.R. §106.2(a)(21).

¹⁴ See 85 Fed. Reg. 46843.

¹⁵ See 88 Fed. Reg at 460-61. See also proposed 8 C.F.R. §106.3(b)(5).

¹⁶ *Id.*

DHS purports to create an incentive for USCIS online filing by offering lower fees, but the proposed fee rule does not announce any intention to allow online filing for Form I-485. Yet, it is the filing of Form I-485 that activates the ability to request employment authorization using Form I-765. USCIS should clarify whether it would require an applicant to provide a Form I-485 receipt number during the online filing process for Form I-765 under category (c)(9) and how it would allow a filer to link an online filed Form I-765 to a paper filed Form I-485.

Without further clarification, the question remains whether lower online filing fees would necessarily provide a practicable incentive. Generally, USCIS completes processing of cases in the order they are received. If the online filing process for Form I-765 under category (c)(9) requires proof of filing of Form I-485, applicants would be unable to use online filing for Form I-765 for days or even weeks, while they wait for USCIS to process their Form I-485 receipt notice. If, when compared to paper filing, the online filing process causes delays in the processing of employment authorization requests, it is highly unlikely that applicants would choose online filing over paper filing.

Accordingly, if online filing is expanded to include Form I-765 under the (c)(9) category, we urge that that USCIS honor the date of filing for Form I-485 for purposes of processing an initial Form I-765 filed online.

Ultimately, if applicants end up frequently declining to use online filing for Form I-765, the cost-benefit analysis DHS used to measure the proposed rule's economic impact may contain significant flaws that underestimate the revenue the rule would generate. It should be noted that Table 15 of the Regulatory Impact Analysis (RIA) for this proposed fee rule shows that USCIS used an average of paper and online fees for Form I-765 to calculate the economic impact of applicants filing separate filing fees for interim benefits concurrently with Form I-485 or after Form I-485 is filed and is pending.¹⁷ In any final fee rule, DHS must address if, when, and how USCIS intends to roll-out online filing for Form I-765 under category (c)(9). Such transparency is warranted considering the serious concerns we have noted over the practicality of online filing for Form I-765 under category (c)(9) and how this may undermine overall incentive for online filing.

B. DHS' Proposal to Limit Payment Types Would Disadvantage Low-Income Immigrants

DHS proposes to make the method of fee payment changeable form-by-form through a designation in the form instructions or by individual notice. This would allow USCIS to prohibit the use of certain types of payment, like cashier's checks or money orders, for certain forms in favor of other methods of payment such as online payments. This proposed limitation would cause hardship to low-income applicants and petitioners, as reliable internet access, U.S. bank accounts, and well-established credit scores are assets that may only be available to more wealthy immigrants. While reloadable debit cards are an option for some, they are not readily available or accessible to all. As representatives of hard-working immigrants, we request that USCIS accept cashier's checks and money orders as methods of payment for all applications, petitions, and requests.

C. Form I-751 Removal of Conditions on Residence Should Remain Accessible

Those who immigrate based on a petition filed by their USC or LPR spouse within two years of their marriage are considered conditional residents. Conditional residents must file a joint petition with their USC or LPR spouse to remove conditions on their residence and preserve their status 90 days before the second anniversary of obtaining LPR status.¹⁸ DHS proposes a staggering 101 percent increase to the

¹⁷ USCIS, FY 2022-2023 Fee Review Regulatory Impact Analysis (RIA), Section 3F (Jan. 4, 2023) available at <https://www.regulations.gov/document/USCIS-2021-0010-0031> (last viewed Feb. 1, 2023).

¹⁸ Immigration and Nationality Act § 216.

current fee for filing Form I-751 Petition to Remove Conditions on Residence, from the cost of \$595 to \$1,195. This increase is 73 percent higher than the last proposed increase of 28 percent from less than two years ago. There is no rationale provided for this increase in the proposed rule. Similarly, proposed fee increases to Form I-751 are not addressed in the Regulatory Impact Analysis to the rule.

We urge DHS to address the efficiencies of adjudicating Forms I-751 and N-400 together. Those who have filed Petitions to Remove Conditions are often eligible to file for Naturalization very shortly afterward. Where an applicant files a Form N-400 while their Form I-751 is pending, the Form I-751 is forwarded to a USCIS field office that may interview the applicant on both the Form N-400 and the Form I-751 on the same day. DHS should clarify if fee review methodology uses any mechanism to account for efficiencies when two benefits are set for an interview at the same time and are adjudicated together. Given the long processing times for Form I-751, it is more likely an applicant will file for naturalization while their removal of conditions petition is pending.

Overall, the current proposed increase makes it even more difficult for low-income families to timely file for removal of conditions. Late filing can have severe consequences, including the conditional resident's loss of lawful status and the risk of being placed into removal proceedings.

D. Form I-601 Provisional Waiver Should Remain Accessible

The creation of the provisional waiver was intended to encourage eligible individuals to complete the immigrant visa process abroad, promote family unity, and improve administrative efficiency.¹⁹ Having an approved provisional waiver helps facilitate immigrant visa issuance at the Department of State, or DOS, streamlines both the waiver and the immigrant visa processes, and reduces the time that applicants are separated from their U.S. citizen or LPR family members, thus promoting family unity.²⁰

Under the proposed rule, the filing fee for the Form I-601A, Provisional Unlawful Presence Waiver, would increase 75 percent from the current cost of \$630 to \$1,105 and no fee waiver is available. This steep increase would discourage and delay individuals from consular processing and undermines the purpose of the provisional waiver. Notably, the FY 2022-2023 Immigration Examinations Fee Account Fee Review Supporting Documentation reflects that both the projected number of cases and completion rates have decreased for Form I-601 since FY 2016. DHS fails to explain any rationale for increasing the fees for this form by such a significant amount. Explanation for this fee increase is warranted particularly because the number of cases and completion rates have decreased, a marked difference from most other immigration benefits affected by the rule.

E. Concerns Regarding Online Filing Inefficiencies and Online Filing Fees

DHS has proposed an online filing expansion for additional forms. While CLINIC does not oppose a gradual online filing expansion, we urge DHS to make the USCIS online filing system more user-friendly and re-design in a way that overcomes serious technical issues and glitches that affect it. Difficulties related to the access, practicality, and function of the current online filing process cause unnecessary delays in the filing of cases as well as case processing. These challenges impact anyone filing forms, including legal services practitioners, who are often deterred from using the online filing system due to experiences with inefficiency. Practitioners filing forms online have reported difficulties with system glitches, erroneous rejections, lost documents, problems with data entry on forms, and more. Without adequate improvements to the current online filing system, practitioners, applicants, and petitioners may continue to avoid the use

¹⁹ Expansion of Provisional Unlawful Presence Waivers of Inadmissibility, 81 Fed. Reg. 50,244 (July 29, 2016) (to be codified at 8 C.F.R. pts. 103, 212).

²⁰ See *id.*

of online filing, leading to increased inefficiency, and defeating the purpose of key elements of the proposed fee rule.

DHS must improve case management so that filers and representatives may properly link all forms filed to their USCIS accounts, regardless of the method of filing. We have noted serious practical concerns regarding the future expansion of online filing for Form I-765 under category (c)(9).²¹ These concerns would be aggravated if filers and representatives were not able to link their online filed Forms I-130 and I-765 with their paper Forms I-131 and I-485 through their online USCIS accounts. It is essential that all filers and representatives have access to a functioning online USCIS account to receive updates and respond to evidence requests on these matters in a timely and efficient manner. It is critical that USCIS creates an efficient process for linking all related forms, particularly interim benefits that directly impact a noncitizen's ability to work and travel with authorization.

DHS should consider that worsening economic conditions combined with significant increases in filing fees, may cause an individual to forgo legal representation to be able to afford the cost of filing. An increase in unrepresented individuals would further complicate issues caused by the current online filing system's inefficiencies. This would result in more applications being filed incorrectly or incompletely. Without adequate safeguards in place to prevent and address further inefficiencies in the USCIS online filing system, the increase in overall fees may lead to more extensive inefficiencies.

Additionally, DHS has proposed the creation of higher fees for certain forms filed on paper versus online. The creation of higher paper filing fees and lower online filing fees disadvantages clients who lack the means or access to file forms and supporting documents online; the very clients who are least able to afford a higher fee. Notably, the issue of access includes not only a lack of internet or computer access but also the issue of sufficient literacy to complete an online process accurately and effectively. Applicants, beneficiaries, and petitioners should not be penalized for any inability to file online.

F. Case Example

We oppose the fee increases and policy changes discussed above, as they would disproportionately harm hard-working immigrant families. As an example of a family that would suffer under these changes, consider the hypothetical case of the Martinez family.

The Martinez family has four members: Mrs. Martinez was born in the United States, and recently married Mr. Martinez who entered the United States with a fiancé K-1 visa. Mr. Martinez has two young daughters from a previous relationship who entered the U.S. with him on K-2 visas. Over the course of the next several years, the Martinez family needs to apply for Adjustment of Status for Mr. Martinez and his two daughters, remove the conditions on residence after two years, and apply for citizenship after three years of residency. We will compare the costs of this process before and after the proposed fee changes.

<i>Paper Form</i>	<i>Current Fee Schedule</i>	<i>Proposed Fee Schedule</i>
<i>I-485 for Mr. Martinez</i>	<i>\$1,140 + \$85 biometrics</i>	<i>\$1,540</i>
<i>I-765 for Mr. Martinez</i>	<i>\$0</i>	<i>\$650</i>
<i>I-131 for Mr. Martinez</i>	<i>\$0</i>	<i>\$630</i>
<i>I-485 for each daughter</i>	<i>\$750 each</i>	<i>\$1,540 each</i>
<i>I-131 for each daughter</i>	<i>\$0</i>	<i>\$630 each</i>
<i>I-751 for Mr. Martinez and his daughters</i>	<i>\$595 + \$85 biometrics</i>	<i>\$1,195</i>
<i>N-400 for Mr. Martinez</i>	<i>\$640 + \$85 biometrics</i>	<i>\$760</i>

²¹ See Supra Section II.A.5.

<i>N-600 for each daughter</i>	<i>\$1,170 each</i>	<i>\$1,385 each</i>
Totals	\$6470	\$11,885

Over a period of at least three years, this family would pay an additional \$5,414 in order to maintain their status and secure citizenship.

G. DHS Must Show Accountability in the Final Fee Rule Implementation

DHS has proposed an extraordinary USCIS fee increase with the stated goal of ensuring that revenue generated from filing and related fees covers costs associated with the adjudication of immigration benefit requests. Under the proposed rule, the current fee schedule would be increased by an unprecedented, weighted average of 40 percent. The NPRM does not contain any assurance that this rule would lead to increased efficiencies, accountability measures, or transparency. As such, the proposed rule comes at a heightened cost for customers and stakeholders who would expect that a rule of such consequence with drastically increased fees would lead to significant backlog reductions, shorter and consistent processing times, information updates, and improved customer service.

Prior to implementing any increase in USCIS fees, DHS must be held accountable to clarify the cost analysis and rationale for final fee adjustments and address critical efficiency issues that may undermine the proposed rule’s potential cost savings. While DHS provides data regarding the proposed rule’s cost savings and benefits, no information is provided about the evaluation or incorporation of any cost savings data that may have resulted from measures or initiatives identified as efficiencies since the FY2019/2020 fee review. The proposed rule acknowledges that USCIS has taken certain measures to increase efficiency and cost reduction and that it is also pursuing efficiencies to streamline adjudications and increase adjudication capacity without adding costs.²² In fact, DHS has stated it may consider identifiable USCIS cost reductions specifically to reduce proposed fees in the final rule. For accountability purposes, we request that DHS expressly state in the final rule whether USCIS has identified any cost reductions and that if cost reductions are identified, DHS must reduce fees upon such consideration or explain its rationale for not doing so.²³ Similarly, to the extent that USCIS receives any additional congressional appropriations to fund any programs currently funded by affected proposed fees, we urge DHS to reduce proposed fees in the final rule upon consideration of the same. Importantly, in the final fee rule, DHS must also address practical efficiency concerns with online filing, as these issues may largely undermine the proposed rule’s stated goals and potential cost savings.

H. CLINIC's Recommendations to Address Concerns in Section II Above

As to fee increases generally:

- Reduce prohibitive fees for the policy and public interest reasons provided above.
- Reduce proposed fees if USCIS identifies financial efficiencies such as cost reductions to be recovered under the proposed rule.
- Reduce proposed fees if USCIS receives congressional appropriations to fund any programs currently funded by affected proposed fees.
- We applaud DHS’ planned increases in efficiency, and we urge USCIS to continue that effort as well as reverse policy changes that led to inefficiencies.
- USCIS should seek congressional appropriations to cover any budgetary shortfalls and annual appropriations specifically dedicated to reducing backlogs.

²² See 88 Fed. Reg. 529.

²³ See *id.* at 529 n. 325.

As to Adjustment of Status:

- Retain bundling of Adjustment of Status and interim benefits.
- Maintain a reasonable fee level that does not impose excessive financial burden on low-income and hard-working applicants and families.
- Preserve the lower filing fee for children under age 14 who file concurrently with a parent.
- Extend the period of validity of interim benefits such as employment authorization and advance parole documents to minimize volume of filings and reduce backlogs.
- Automatically extend or issue longer validity periods for employment authorization documents for (c)(9) category applicants who have paid the Form I-485 application fee between July 30, 2007, and the date of the final fee rule. These actions may help reduce the backlog and increase cost savings given that applicants renewing interim benefits incur additional costs.
- Expand online filing to include Form I-485, Application to Register or Adjust Status.
- If online filing is expanded to include Form I-765 under the (c)(9) category, we urge that USCIS honor the date of filing for Form I-485 for purposes of processing an initial Form I-765 filed online.

As to the online filing process and online filing fees:

- USCIS has developed a strategic plan for FYs 2023-2026, with a stated goal of promoting effective and efficient management and stewardship by accomplishing the objectives of modernization of IT infrastructure and improvement of data quality for case management.²⁴ USCIS efforts to fulfill these objectives must address the concerns and issues stakeholders are facing with the current online filing process. Prior to offering low-cost incentives for online filing, we urge USCIS to engage with stakeholders on a listening session where stakeholders may provide USCIS with valuable feedback on the challenges of the online filing process.
- Reduce higher paper fees to match lower online fees, to serve the equity interests of those who do not have access to the equipment and language skills necessary to file online.

We urge DHS to consider CLINIC's recommendations in Section I above with regard to the fees affecting family-based and humanitarian-based immigrants and lawful permanent residents. It is in the public interest for immigrants to be able to afford to apply for the lawful immigration status for which they qualify. Putting immigration benefits out of the reach of low- and moderate-income noncitizens would threaten families' ability to remain together, essential U.S. workers' access to continuing work authorization, and undermine the principle that the American Dream is achievable regardless of wealth.

III. The Proposed Fee Changes Would Negatively Impact Permanent Residents Seeking to Naturalize

Providing naturalization services for LPRs, through our network of affiliates, has been a priority for CLINIC for many decades. In 2021, access to naturalization was among the top five advocacy priorities for CLINIC affiliates.²⁵ Our affiliates serve vulnerable populations and individuals who are unable to afford the increasing costs associated with naturalization. They provide critical support and assistance in identifying and overcoming barriers applicants face during the naturalization process, allowing a greater quantity of qualified individuals and families to apply.

²⁴ USCIS, FYs 2023-2026 Strategic Plan (Jan. 27, 2023), available at <https://www.uscis.gov/sites/default/files/document/reports/StrategicPlanFY23.pdf> (last viewed Feb. 1, 2023)

²⁵ CLINIC Affiliate Survey (on file with the author).

CLINIC is a co-founder of the New Americans Campaign, or NAC, a national network of more than 200 non-partisan organizations, including legal services providers, faith-based organizations, immigrant rights groups, foundations, and community leaders and other dedicated groups, that commits its efforts to helping lawful permanent residents, or LPRs, access resources to apply for citizenship.²⁶ In its twelfth year, The NAC has completed over 580,000 N-400 applications (including derivative children) and more than 203,000 fee waivers and reduced fee requests. CLINIC, the NAC and its partners have worked diligently to ensure that the naturalization process will continue to be accessible to low-income immigrants.

Citizenship is a significant marker of immigrant integration and a pre-condition to full membership in our constitutional democracy. The benefits of citizenship for both the individual and society cannot be overstated. With nearly 45 million foreign-born residents, the United States' strength and vitality depends on the contributions of its newest members.²⁷ The contributions of naturalized citizens living and working in the United States have long been recognized by government agencies and nongovernmental organizations alike.²⁸ In January 2019, an estimated 9.1 million LPRs were eligible to become citizens.²⁹ Most immigrants strongly value U.S. citizenship, yet unfortunately, over the past two decades, millions of LPRs who are eligible to naturalize have not done so, which is largely attributable to the cost factor.³⁰ High fees combined with other obstacles like limited access to education, lack of access to legal assistance, and low wages, make attaining citizenship insurmountable for millions of LPRs.

A. Form N-400 Should Be More Affordable

CLINIC greatly appreciates DHS' efforts to limit the fee increase for naturalization applicants. DHS is proposing a 5 percent increase (\$35) in the cost of Form N-400. We recognize that this proposed fee increase is modest compared to others in this fee schedule and that the \$760 fee for the N-400 would include the biometrics fee. We also appreciate efforts to preserve existing fee waiver eligibility for low-income and vulnerable populations, and to preserve the partial fee waiver for naturalization. However, the N-400 fee increase would still impact many applicants who already face difficulty in affording the current application fee but do not qualify for a full or partial fee waiver. For lawful permanent residents who hope to naturalize, facing the hurdle of being unable to afford the application fee can be a major deterrence. With the costs of inflation combined with low wages, applying for naturalization could take one family years. Families are already faced with having to apply for naturalization in phases, one member at a time. DHS should seek ways to make Form N-400 more affordable, for example, by offering a discount for families filing two or more N-400s at the same time, which can be adjudicated simultaneously. DHS should eliminate any increase to the naturalization fee to avoid creating additional burdens that may prevent eligible immigrants from achieving U.S. citizenship.

²⁶ The New Americans Campaign, <https://www.newamericanscampaign.org/about/> (last visited Feb. 15, 2023).

²⁷ Frequently Requested Statistics on Immigrants and Immigration in the United States, Migration Policy Institute, [https://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states#:~:text=How%20many%20U.S.%20residents%20are,of%20approximately%20950%2C000%20from%202020.0.](https://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states#:~:text=How%20many%20U.S.%20residents%20are,of%20approximately%20950%2C000%20from%202020.)

²⁸ Naturalized Citizens in the United States, MigrationPolicy.org, <https://www.migrationpolicy.org/article/naturalization-trends-united-states> (last visited Feb. 15, 2023)

²⁹ Naturalized Citizens in the United States, MigrationPolicy.org, <https://www.migrationpolicy.org/article/naturalization-trends-united-states> (last visited Feb. 15, 2023)

³⁰ Reasons for Not Naturalizing, Pewresearch.org, <https://www.pewresearch.org/hispanic/2013/02/04/iv-reasons-for-not-naturalizing-2/>, (last visited Feb. 15, 2023)

B. CLINIC's Recommendations for Avoiding the N-400 Fee Increase

While CLINIC commends the moderate increase in the Form N-400 fee, its recommendation is for DHS to avoid any increase in Form N-400 by seeking funds through Congressional appropriation for naturalization processing. DHS has long recognized the strong public interest in encouraging naturalization, so investment in that effort should be a priority. In addition, DHS should look for more ways to cover the costs of processing N-400s through other application fees, and to seek greater efficiencies and cost savings through the use of technology. In previous years, CLINIC has recommended that the agency look into whether adjudicators may achieve process efficiency by reviewing family applications that were filed together. If such efficiencies exist, it gives reason for USCIS to consider reducing fees for multiple household family members filing together. Without additional ways to cut costs for the N-400, those eligible are likely to wait years to apply or not naturalize at all, as the cost of renewing a green card is significantly less than an application to naturalize. A stable N-400 fee paired with cost reduction measures for N-400 processing would help ensure that our government truly provides naturalization access to those who need it most.

IV. Policies Accompanying Form I-912 Request for Fee Waiver Should Be Adjusted

We greatly appreciate that the proposed rule would preserve existing fee waiver eligibility for low-income and vulnerable populations. To further strengthen existing fee waiver policy, we urge USCIS to incorporate the eligibility criteria—receipt of public benefits, income at or below 150 percent of the poverty level, and financial hardship—into the Policy Manual at Vol. 1, Part B, Chapter 4, and the proposed regulations at 8 CFR 106.3(a)(ii).

CLINIC is a member of the Naturalization Working Group, or NWG, a group coordinated by the National Association of Latino Elected and Appointed Officials, or NALEO, which is the policy complement to the NAC. In July 2022, the NWG and 87 organizations wrote to USCIS Director Jaddou to urge the agency to make Form I-912 available for online filing. It was a goal of the group to promote the online filing of Form I-912 as a matter of equity and efficiency. Making the I-912 available for online filing would help USCIS' goal of increasing online filing for naturalization applications as well as reduce backlogs and processing times.³¹ The NWG strives to improve federal policies and practices related to naturalization and to educate legislators and other policymakers about the need to eliminate barriers to naturalization. The coalition's expertise is derived from its multiple member organizations that have significant experience in promoting naturalization and in assisting newcomers with the U.S. citizenship process. Through its extensive networks of service providers, immigration practitioners, and naturalization applicants, the NWG has developed a profound understanding of the barriers faced by low-income individuals seeking to obtain naturalization. Again, CLINIC urges USCIS to permit online filing of Form I-912 as an option for those who are capable of filing online.

USCIS is proposing to make Form I-912 mandatory rather than allowing applicants to continue to make a fee waiver request either via the I-912 or a written request, a change which DHS admits would be an additional burden for applicants. While we strongly encourage and promote the use of the Form I-912, we appreciate the flexibility offered by the current regulation, which permits any written request. If an individual can successfully demonstrate the need for the fee waiver via a written request, USCIS should continue to accept it.

³¹ In its Fiscal Year 2021 Emergency Stopgap USCIS Stabilization Act report to Congress, USCIS stated that it is seeking ways to encourage naturalization applicants to file online, noting that in Fiscal Year 2020 only 49 percent of naturalization applicants apply online. *See* USCIS, Section 4103 Plan Pursuant to the Emergency Stopgap USCIS Stabilization Act, Fiscal Year 2021 Report to Congress, September 7, 2021 at page 2, available at <https://www.uscis.gov/sites/default/files/document/reports/SIGNED-Section-4103-FY2021-Report-9-7-21.pdf>

Notably, low-income naturalization applicants who currently require a fee waiver are barred from applying for naturalization online since Form I-912 cannot be filed online. Requiring the use of a Form I-912 that cannot be filed online means less flexibility for applicants with special circumstances. For some applicants, the availability of an online application is more beneficial for their circumstances. As a matter of equity, both online and paper filing should be available to all regardless of their earnings.

While it is understandable that USCIS needs resources to advance technology, reduce the backlogs and enhance online services, it is also important that services are accessible to those who need them the most. Ensuring that low-income applicants have equal access to naturalization services via online or paper filing is a high priority for our affiliates. Naturalization access should not be given only to those with greater financial means. By the same token, we encourage USCIS to permit online filing of the fee waiver application as an option, to allow more flexibility for applicants who are capable of filing online. We also ask that USCIS continue to permit written requests for fee waivers.

V. Form I-129, Petition for a Nonimmigrant Worker Should Remain Accessible to Religious Organizations and Religious Workers

International religious workers provide vital services for the health and well-being of communities throughout the United States. U.S. Catholic dioceses and institutes of religious men and women rely heavily upon these religious workers; priests, religious sisters and brothers, and lay ministers from abroad. Some fill a growing need in the Catholic Church for those called to religious vocations. Others provide critical services to local communities and care for vulnerable populations such as children, the elderly, immigrants, refugees, and families at risk. They bring their vocations to parishes, schools, and hospitals throughout the U.S.; caring for our communities in a variety of necessary ways; from everyday spiritual guidance and education to physical and spiritual care and comfort in times of sickness and death. In the last few years, the importance of religious workers and their contributions to our country were on display as communities across the U.S. battled the COVID-19 pandemic. These international religious workers, their religious vocations, and the mission of the Church held communities through their darkest days. This further demonstrated that religious workers are essential.

By law, petitioners (sponsor/employer) of the I-129 petition for an R-1 Religious Worker Visa/Status are non-profit religious organizations. This work is incredibly challenging for these religious organizations because of the limited resources available to them. In addition, as part of their religious vocations, the employees who serve these organizations receive limited income or no income for the important work they do. The proposed fee for the I-129 petition, specifically for religious workers, is excessively burdensome on the U.S. religious worker sponsor. Under the proposed fee schedule, Religious Worker petitions would have a filing fee increase from \$460 to \$1015. This is a staggering 121 percent change; one of the highest percentage increases for nonimmigrant workers. This staggering increase is being proposed for a group that earns no profit and provides one of the most important contributions to the U.S. public interest. We oppose these fee increases because they would disproportionately affect small religious organizations, parishes, and communities that serve a charitable function in our society. The religious worker immigration program, though an employment-based visa category, has traditionally been treated differently by USCIS from other employment categories. To increase filing fees for this category now, similar to other employment categories, is inconsistent with prior practice. Filing fee adjustments for the religious worker program should heavily weigh the non-profit nature of the employer/sponsor.

The Catholic Church is composed of hundreds of religious orders of men and women, or Religious Brothers and Sisters. These orders dedicate their mission and existence to live according to the teachings of the Gospel and Jesus Christ. In doing so they seek to serve God and help those in need. Almost every resource goes to carrying out their missions. The extremely high fee increases for these petitions would make it harder for U.S. religious organizations to bring religious workers to the U.S. Many would decide they can

no longer afford to bring religious workers to the U.S. or would not have the additional resources to continue their indispensable work in our communities. These extremely high additional immigration costs would negatively impact the very missions and community work the religious organizations seek to perform. Such an effect is contrary to the traditions and respect this country holds for faith and religion and would have substantial consequences on the communities they serve.

Conclusion

The Gospel tells us that when we welcome the stranger, we welcome Christ. Our Catholic social teaching emphasizes the importance of the call to participate in community and the inherent dignity of every person, regardless of socioeconomic status. The state is a key player in economic justice. We invite this administration to pursue economic justice by lessening the financial burden on our brothers and sisters seeking immigration benefits.

Thank you for the opportunity to submit these comments. We appreciate your consideration. Please do not hesitate to contact us should you have any questions about our comments or require further information.

Respectfully submitted,

A handwritten signature in blue ink that reads "Anna Gallagher". The signature is written in a cursive, flowing style.

Anna Gallagher
Executive Director
Catholic Legal Immigration Network, Inc.