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Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security
20 Massachusetts Ave., NW, Mailstop #2140
Washington, DC 20529-2140.

Re: DHS Docket No. USCIS-2019-24366, Comments in Response to U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements

Dear Chief Deshommnes:

We write on behalf of the Community College Consortium for Immigrant Education (CCCIE) and the Presidents' Alliance on Higher Education and Immigration (Presidents' Alliance), two higher education organizations committed to supporting immigrant and international students and families. We submit this comment letter in response to the U.S. Department of Homeland Security's (DHS) Notice of Proposed Rulemaking (NPRM or proposed rule), *Comments in Response to U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements* (Docket No. USCIS-2019-24366). We write to express our opposition to the proposed fee increases and reduction in availability of fee waivers.

CCCIE is a national network of community colleges and other professional organizations committed to increasing educational and career opportunities for immigrant and refugee students. CCCIE builds the capacity of community colleges to accelerate immigrant and refugee success and raises awareness of the essential role these colleges play in advancing immigrant integration through education. CCCIE's work is guided by a Blue Ribbon Panel of community college leaders, representing over 50 colleges serving an estimated 1.2 million students.

The non-partisan Presidents' Alliance brings together college and university leaders dedicated to increasing public understanding of how immigration policies and practices

impact our students, campuses and communities, and supporting policies that create a welcoming environment for undocumented, immigrant, and international students. The Alliance is comprised of over 440 presidents and chancellors of public and private colleges and universities, serving over five million students in 41 states, D.C. and Puerto Rico.

I. USCIS' PROPOSED 45-DAY COMMENT PERIOD IS UNREASONABLE, ARBITRARY, AND VIOLATES TWO EXECUTIVE ORDERS

As a threshold matter, we strongly oppose USCIS' decision to only allow a 45-day (originally 30 days) comment period for this proposed rule and urge it to extend the comment period to a full 60 days. The Presidents' Alliance represents and collaborates with over 440 college and university presidents, many of whose campuses would be undoubtedly affected by this rule. To support the ability of these higher education institutions to comment on this proposed rule, the Presidents' Alliance developed a template comment that institutions can modify, adapt, and utilize to highlight campus and locality-specific impacts regarding the proposed rule. Unfortunately, 45 days does not provide a sufficient or reasonable period of time for our member institutions to collect relevant economic and immigration data and statistics; interview immigrant students, professors, and staff; and turnover a meaningful comment highlighting the impact of the proposed rule on educational stakeholders.

USCIS provides no justification for the shortened comment period, a decision that violates two Executive Orders (EO). EO 12866 directs agencies to allow "not less than 60 days" for public comment in most cases, to "afford the public a meaningful opportunity to comment on any proposed regulation."¹ Similarly, EO 13563 states that "[t]o the extent feasible and permitted by law, each agency shall afford the public a meaningful opportunity to comment through the Internet on any proposed regulation, with a comment period that should generally be at least 60 days."²

II. SUBSTANTIVE COMMENTS ON PROPOSED RULE

As we discuss below, we have serious policy and legal concerns with the proposed fee increases and sharp reduction in availability of fee waivers. These increases do not reflect the costs that applicants must endure when securing and compensating legal counsel to assist in preparing time consuming and complicated immigration petitions. Immigration fees can range from \$250 to upwards of \$10,000, with many petitions

¹ Exec. Order No. 12866 (Sept 30, 1993), *available at* <https://www.archives.gov/files/federal-register/executive-orders/pdf/12866.pdf>.

² Exec. Order No. 13563 (Jan. 18, 2011), *available at* <https://obamawhitehouse.archives.gov/the-press-office/2011/01/18/executive-order-13563-improving-regulation-and-regulatory-review>.

hovering around \$1,000.³ Thus, the proposed increase exacerbates the already high cost of applying for an immigration benefit, from beginning to end.

Further, since 2010, USCIS increased filing fees by weighted averages of 10 percent and then another 21 percent but has not achieved any associated improvement in processing times, backlogs, or customer service. During that same period, USCIS' backlog increased by more than 6,000 percent;⁴ the overall average case processing time had increased 91 percent between 2014 and 2018.⁵ As higher education institutions working to support our students, staff, faculty and families, we were also dismayed to see that USCIS struck language from its resources regarding its commitment to customer service.⁶ USCIS has not utilized previously paid filing fees to improve USCIS' efficacy and immigrants must not be expected to bear a significant increase in fees without corresponding improvement in processing times, backlogs, and customer service.

We describe below how some of these changes will impact our institution, students, and those we serve; and the reasons for our opposition. While we highlight only a portion of the proposed changes, please note that omission of any proposed change from this comment should not be interpreted as tacit approval. We oppose all aspects of the proposed fee schedule that would act as a barrier between low-income immigrants and the immigration benefits for which they qualify.

A. Proposed Increase in Naturalization Fees and Elimination of Fee Waiver

The proposed fee schedule will deter low-income immigrant students and family members from applying for naturalization. This will result in reduced social and economic mobility for students and reduced long-term contributions to our communities and economy. We oppose USCIS' attempt to significantly increase naturalization fees on low-income immigrant students and families. As educators working with low-income immigrant students, we see first-hand the benefits of social and economic mobility for our students, alumni, and their families. Encouraging and lowering the barriers to those eligible for permanent residency and citizenship is an important element of this integration, which strongly benefits our campuses,

³ Liz Daneu, *Is An Immigration Lawyer Worth The Cost?*, AllLaw, Feb. 3, 2016, <https://www.alllaw.com/articles/nolo/us-immigration/lawyer-worth-cost.html>.

⁴ See Policy Changes and Processing Delays at U.S. Citizenship and Immigration Services: Hearing before the House Subcomm. on Immigration of the H. Comm. On the Judiciary, 116th Cong. (2019) (joint written testimony of Don Neufeld, Associate Director, Service Center Operations Directorate, USCIS, and Michael Valverde, Deputy Associate Director, Field Operations Directorate, USCIS).

⁵ USCIS Processing Delays Have Reached Crisis Levels under the Trump Administration, American Immigration Lawyers Association, 2019, <https://www.aila.org/advo-media/aila-policy-briefs/aila-policy-brief-uscis-processing-delays>.

⁶ See Max Greenwood, *Immigration Agency Removing 'Nation of Immigrants' from Mission Statement*, The Hill, Feb. 22, 2018, <https://thehill.com/homenews/administration/375112-us-immigration-agency-to-remove-reference-to-u-s-as-nation-of>; See also Policy Alert: USCIS Public Services No. PA-2019-03 (May 10, 2019).

communities, and economy in the long-term. Naturalization is a key driver in allowing immigrants to fully integrate into our and economically contribute to our country. Naturalization boosts individual earnings by upwards of 11 percent, leading to upwards of \$45 billion in increased cumulative earnings over a decade.⁷ We request that DHS conduct a thorough cost-benefit analysis, including the economic costs of raising the barriers to naturalization through long-term reduced economic and social mobility of these immigrant populations.

The fee schedule proposes to eliminate filing fee waivers for all categories except those that are statutorily required. We oppose this proposed change. The fee schedule would make essential benefits such as citizenship, green cards, and employment authorization inaccessible for low-income immigrants, especially students. Fee waivers help families to improve their stability, financially support themselves, and fully integrate into their communities while allowing them to allocate funds for their higher education. Because of the benefits of naturalization—one of the form types most frequently associated with fee waiver requests,⁸ Congress called on USCIS to keep the pathway to citizenship affordable and accessible.⁹

For example, CUNY, which runs one of the most prominent citizenship and naturalization clinics in New York reports that 54.8 percent of naturalization applicants they assist qualify for fee waivers.¹⁰ That number rises to 75.6 percent for N-600s (e.g. applications for certificates of citizenship for children of U.S. citizens who derive citizenship from their parents).¹¹ Finally, for I-90s (replacement or renewal permanent resident card) the number is 65.8 percent. Additional financial barriers to naturalization will decrease the number of LPRs who seek to naturalize and use university services and clinics (discussed further below).

B. Deferred Action for Childhood Arrivals (DACA)

USCIS proposes to increase the total fees for DACA to \$765, up from \$495, a total increase of 55 percent. We oppose this proposed increase and urge USCIS to maintain the current total cost of \$495. USCIS proposes increasing the fee to file Form I-765 from \$410 to \$490; and Form I-821D from \$0 to \$250. USCIS will maintain the current \$85

⁷ Manuel Pastor and Justin Scoggins, *Citizen Gain: The Economic Benefits of Naturalization for Immigrants and the Economy*, Center for the Study of Immigrant Integration, University of Southern California, Dec. 2012, <https://dornsife.usc.edu/csii/citizen-gain/>.

⁸ USCIS Fee Waiver Policies and Data, Fiscal Year 2017 Report to Congress, USCIS (Sept. 17, 2017), www.dhs.gov/sites/default/files/publications/USCIS%20-%20Fee%20Waiver%20Policies%20and%20Data.pdf.

⁹ H. Rep. No. 115-948 accompanying H.R. 6776, the Department of Homeland Security Appropriations Act (2019).

¹⁰ Email Interview with Allan Wernick, Director, CUNY Citizenship Now! (Nov. 19, 2019) (on file with author).

¹¹ *Id.*

biometrics fee. As an initial matter, this increase does not rationally correspond to the cost to adjudicate DACA as USCIS is well aware that the processing fees from Form I-765 submitted as part of a DACA application more than cover the costs of processing of Form I-765 and Form I-821D; and provide excess funds for the agency. The proposed increase for DACA represents a significant financial burden that will depress renewal applications, undermine access to higher education, and run afoul of multiple district court injunctions.

1. The increased fee represents a significant financial barrier

Ivy Teng Lei, a DACA recipient who utilized virtually all of her savings to pay for DACA, stated “For many of the undocumented youths, paying for [college] is already a struggle, let alone a burdensome fee that can be used to pay for their rent, food and books.”¹² The Migration Policy Institute (MPI) concluded that even the existing, more reasonable fee “remains a barrier to DACA renewal.”¹³ Importantly, nearly half of DACA holders received financial assistance from family or others to pay DACA fees.¹⁴ DACA holders have consistently shared that the recurring renewal fee is a “large financial burden,” with over a third of applicants delaying applying for DACA for an average of three months while they saved additional funds.¹⁵

A majority (51 percent) of DACA holders stated that even the Obama-era \$465 filing fee was “a financial hardship on themselves or their families.”¹⁶ DACA holders indicated that a more reasonable affordable fee that reflects their economic situations would be \$200.¹⁷ Approximately 35 percent of DACA eligible individuals live in families with incomes less than 100 percent of the federal poverty level; and two-thirds live in households with incomes less than 200 percent of the federal poverty level.¹⁸ Moreover,

¹² Jana Kasperkevic, *The high cost of being a legal immigrant in the US: \$465*, THE GUARDIAN, Jan. 8, 2014, <https://www.theguardian.com/money/2014/jan/08/undocumented-dreamers-immigration-daca-cost-fee>.

¹³ Angelo Mathay and Margie McHugh, *DACA at the Three-Year Mark: High Pace of Renewals, But Processing Difficulties Evident*, Migration Policy Institute 8, Aug. 2015, available at <https://www.migrationpolicy.org/research/daca-three-year-mark-high-pace-renewals-processing-difficulties-evident>.

¹⁴ *Id.* (“Paying for DACA is a family and community expense with just over half (51%) of respondents reporting that they paid for their fees on their own.”).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Tom K. Wong, Ph.D. and Carolina Valdivia, *In Their Own Words: A Nationwide Survey of Undocumented Millennials* 4, United We Dream, May 20, 2014, available at <https://goo.gl/NbCN7Z>.

¹⁸ Jeanne Batalova, Sarah Hooker, and Randy Capps, *Deferred Action for Childhood Arrivals at the One-Year Mark: A Profile of Currently Eligible Youth and Applicants*, Migration Policy Institute 8, Aug. 2013, available at

over two-thirds of DACA holders support their families financially, further depleting available funds for renewal of DACA.¹⁹

DACA recipients are already ineligible for Form I-912, *Request for Fee Waiver* and only eligible for narrow, hard-to-obtain fee exemptions, meaning that virtually all DACA recipients will pay the full cost to renew. This, coupled with the above economic and fiscal data, demonstrates that the fee increase will depress and discourage renewal application numbers.

2. The fee-related decrease in DACA renewals will undermine access to higher education

The continued financial accessibility of DACA is essential for students to continue and complete their education. Thirty-three percent of DACA recipients indicated they were currently “in school” and pursuing a bachelor’s or higher degree.²⁰ Of the DACA recipients who indicated they were enrolled in school, 93 percent indicated that because of DACA they pursued educational opportunities that they previously could not.²¹ The proposed increase in fees, which as stated above will depress the number of DACA renewals and approvals, will reduce the number of DACA recipients who can enter, continue, and complete their higher education.

3. The increase in fees for DACA violates multiple district court injunctions

Importantly, USCIS is under three district court orders that preliminary enjoins USCIS from rescinding DACA, requires USCIS to continue to accept renewal requests, and continue to implement DACA in a manner *identical* to before the rescission date. As the court in *Regents* ordered, the preliminary injunction directed USCIS to “to maintain the DACA program on a nationwide basis on the same terms and conditions as were in effect before the rescission on September 5, 2017, including allowing DACA enrollees to renew their enrollments”²² In *Batalla*, the court ordered that USCIS to “maintain the DACA program on the same terms and conditions that existed prior to the

<https://www.migrationpolicy.org/research/deferred-action-childhood-arrivals-one-year-mark-profile-currently-eligible-youth-and?pdf=cirbrief-dacaatoneyear.pdf>.

¹⁹ Zenen Jaimes Perez, *A Portrait of Deferred Action for Childhood Arrivals (DACA) Recipients*, United We Dream, Oct. 1, 2015, available at

<https://unitedwedream.org/2015/10/united-we-dream-releases-major-survey-of-immigrant-youth-with-daca/>.

²⁰ Tom K. Wong et al., Center for American Progress et al., *DACA Recipients' Livelihoods, Families, and Sense of Security are at Stake This November*, Sept. 19, 2019,

<https://www.americanprogress.org/issues/immigration/news/2019/09/05/474177/know-daca-recipient-s-united-states/>.

²¹ *Id.*

²² *Status of Current DACA Litigation*, National Immigration Law Center, June 7, 2019,

<https://www.nilc.org/issues/daca/status-current-daca-litigation/>.

promulgation of the DACA Rescission Memo.”²³ As discussed above, a 55 percent increase in fees would likely establish insurmountable economic barriers for applicants seeking to renew their DACA. For these individuals, an unaffordable fee increase would likely represent a constructive denial for their renewal applications, violating the various district court injunctions.

C. Proposed Fee Schedule Would Decrease Experiential Learning Opportunities

A large number of higher education institutions, including many Presidents' Alliance member universities, operate immigration law clinics, where law students provide legal assistance to immigrants filing for immigration benefits or who appear in immigration court.²⁴ Through these kinds of immigration clinics, an institution's law school clinic provides services pro bono to low income and vulnerable immigrants from the local community who could otherwise likely not afford legal representation or assistance. For these individuals in particular, the proposed increase in fees, especially for DACA, asylum, adjustment of status, and naturalization, would represent a significant financial burden. The proposed fees would not only likely discourage these individuals from seeking legal assistance and representation through the institution's law school clinic, it would also reduce experiential learning opportunities for law students.

The proposed fees would also likely discourage these individuals from seeking all kinds of collateral support that would help them in their application process. This can include citizenship classes, English as a Second Language classes, social services, and more. Beyond the adverse consequences on the impacted immigrant populations, the regulations will also impact our students who gain invaluable experiential learning opportunities through programs and clinics designed to support low-income immigrant populations in our communities.

D. USCIS' Proposed \$50 for Asylum Seekers Runs Counter to our Nation's Commitment to Asylees

USCIS plans to impose a \$50 fee for those filing for affirmative asylum. Our nation and higher education campuses have a moral imperative to accept asylum seekers as well as obligations under domestic and international laws. Asylees bring diverse perspectives to our classrooms, both as students and scholars. As a signatory to the 1967 Protocol of the 1951 Convention Relating to the Status of Refugees, our country has an obligation to accept asylum seekers who seek protection.

²³ *Id.*

²⁴ *Public Interest Clinics*, American Bar Association (last accessed Dec. 11, 2019), https://www.americanbar.org/groups/center-pro-bono/resources/directory_of_law_school_public_interest_pro_bono_programs/definitions/pi_pi_clinics/.

Refusing asylum applicants for the inability to pay would effectively cause the United States to break its treaty obligations and flies in the face of the basic intent of the 1980 Refugee Act. In fact, the vast majority of countries who are signatories to the 1951 Convention or 1967 Protocol do not charge a fee for an asylum application.²⁵ The United States has long been a world leader in refugee protection. If the United States imposes a filing fee for asylum, other countries may begin to do the same. This could have disastrous effects on refugee resettlement when the number of refugees and displaced people are at historic highs. We must adhere to our international and domestic obligations and not refuse asylum seekers their chance to seek protection simply for the inability to pay. Asylum is the first step for individuals to be able to normalize and stabilize their life and one day pursue or teach in higher education.

E. Proposed Fee Increases Would Severely Impact Low-Income Immigrant Community College Students

According to the National Center for Education Statistics, more than one-third of community college students (37%) have family incomes of less than \$20,000 per year.²⁶ Immigrants and the children of immigrants make up nearly a third of the student population at community colleges.²⁷ Many face the same struggles as other community college students, attending college part-time while juggling jobs and family responsibilities. However, immigrant-origin students often face unique financial challenges and experience difficulties in marshaling the financial resources to pay college tuition and fees. They are less likely than other students to apply for financial aid, tend to be debt adverse, and cover most of their college costs themselves.²⁸ The proposed fee increases and elimination of fee waivers will prove especially punishing for hard-working, low-income immigrant students by depriving them of future opportunities to adjust their status, apply for green cards, gain citizenship, and apply for DACA renewal.

For the reasons provided above, USCIS should promptly withdraw the provisions of its proposed fee schedule that would make immigration benefits less accessible to hard-working students, families and vulnerable migrants. Thank you for the opportunity to submit comments on the proposed fee schedule. Please do not hesitate to contact

²⁵ See Zolan Kanno-Youngs and Miriam Jordan, *New Trump Administration Proposal Would Charge Asylum Seekers an Application Fee*, N.Y. TIMES, Nov. 8, 2019, <https://www.nytimes.com/2019/11/08/us/politics/immigration-fees-trump.html> (Noting that the United States would be only the fourth country in the world to charge a fee for asylum).

²⁶ *Community College FAQs*, Community College Research Center, Teachers College, Columbia University, <https://ccrc.tc.columbia.edu/Community-College-FAQs.html>.

²⁷ Current Population Survey—Education Supplement, Migration Policy Institute, Oct. 2017 (on file with author).

²⁸ Teranishi, R.T., Suárez -Orozco, C., & Suárez -Orozco, M., Immigrants in community colleges: Effective practices for large and growing population in U.S. higher education. *The Future of Children*, 21 (1), 153-169, available at <https://files.eric.ed.gov/fulltext/EJ920371.pdf>, as cited in *Immigrant-Origin Students in Community College: Navigating Risk and Reward in Higher Education*, (2019), New York and London: Teachers College Press, Columbia University.

Miriam Feldblum (mfeldblum@presidentsalliance.org) at the Presidents' Alliance or Jill CasnerLotto (Jill.CasnerLotto@cccie.org) at CCCIE to provide further information.

Sincerely,



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