



THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

December 30, 2019

Via electronic submission

RE: Re: U.S. Citizenship and Immigration Services Fee Schedule, DHS Docket No. USCIS-2019-0010; RIN 1615-AC18

Dear Chief Deshommes:

The City of New York (“the City”) submits this comment in opposition to the U.S. Citizenship and Immigration Services’ (USCIS) and Department of Homeland Security’s (DHS) proposed rule entitled “U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements,” published on November 14, 2019 (“Proposed Rule”). The Proposed Rule violates the Administrative Procedures Act, would have devastating consequences for New Yorkers, and must be withdrawn. Nothing in these comments constitutes a waiver of any arguments that the City may assert in any other forum.

The Proposed Rule cumulatively creates unprecedented and unjustified barriers to immigrants seeking to adjust status and naturalize, by eliminating fee waivers for all applications where they are not statutorily required, and increasing application fees so disproportionately that low-income immigrants will be unable to afford to file certain critical applications, even if otherwise eligible for an immigration benefit, such as adjustment of status to lawful permanent residence, employment authorization, or naturalization. The Proposed Rule also improperly seeks to annually transfer over one hundred million dollars from USCIS to Immigration and Customs Enforcement (ICE), for enforcement purposes, despite a lack of statutory authority and allocation of funds to do so. This proposed transfer of funds to ICE is contrary to Congressional intent and exceeds USCIS’ statutory authority, rendering the Proposed Rule’s elimination of fee waivers and imposition of fee increases to fund this transfer arbitrary and capricious.

Furthermore, this Proposed Rule comes on the heels of a growing number of proposed rules promulgated by the Department of Homeland Security which the City has consistently opposed,¹ all of which seek to deter immigrants from applying affirmatively for benefits and to

¹ The City has repeatedly commented on the recent slew of Proposed and Interim Final Rules that have sought to impose barriers to obtaining asylum, adjustment of status, and naturalization. Most notably, see: comment in opposition to Public Comments on Agency Information Collection Activities; Revision of a Currently Approved Collection: Medical Certification for Disability Exceptions (10/25/2019); comment in opposition to Asylum Eligibility and Procedural Modifications (8/15/2019); comment in opposition to Inadmissibility on Public Charge

create obstacles to family reunification and citizenship. It is part of a larger coordinated strategy by this federal administration to challenge immigrant pathways to stability in the United States.

For these and the below reasons, we call upon USCIS to withdraw the Proposed Rule in its entirety.

I. The Proposed Rule Harms The City of New York’s Economic Well-Being and is Contrary to City Values

New York City is the ultimate city of immigrants, with over 3.2 million immigrants making up almost 40% of our population. This immigrant population is deeply tied to the City as a whole. For example, nearly 60% of New Yorkers live in households with at least one immigrant.² Immigrant New Yorkers speak over 200 languages, own over half of our small businesses,³ and are integral to our ability to thrive as a city. The City of New York is committed to advancing fairness and equity for all New Yorkers. In furtherance of that commitment, the City has prioritized three broad goals to benefit our immigrant population: enhancing the economic, civic and social integration of immigrant New Yorkers; facilitating access to justice for immigrant New Yorkers; and advocating for continued immigration reforms at all levels of government in order to eliminate inequities that impact New York’s immigrant communities.

New York City’s economic, cultural and civic vitality depends on our immigrant communities, and the City is deeply committed to innovative and equitable policies that promote the well-being and inclusion of our immigrant communities. Recognizing that New York is not only a city of immigrants, but also a city that thrives because of our immigrant communities, this mayoral administration has increased and enhanced access to legal assistance for immigrants by investing over \$30 million dollars in a continuum of free legal service programs for immigrant New Yorkers for fiscal year 2020. Together with the New York City Council, the City of New York has invested over \$50 million in immigration legal services.

The Proposed Rule stands in sharp opposition to these values and commitments, and indeed undermines the City’s investments in supporting immigrant access to justice by erecting significant new barriers to such access.

a. Elimination of Fee Waivers and Increase in Application Fees

The Proposed Rule eliminates fee waivers for all categories of immigration applications other than those few applications where it is statutorily required. Fee waivers are a critical option for low-income immigrants seeking to renew their lawful permanent resident card, apply for

Grounds (12/10/2018); and comment in opposition to Agency Information Collection Activities; Revision of a Currently Approved Collection: Request for Fee Waiver; Exemptions (11/27/2018). The City incorporates by references these comments.

² *Id.* at 23.

³ NEW YORK CITY MAYOR’S OFFICE OF IMMIGRANT AFFAIRS, State of Our Immigrant City: MOIA Annual Report for Calendar Year 2018, 11, *available at* https://www1.nyc.gov/assets/immigrants/downloads/pdf/moja_annual_report%202019_final.pdf.

employment authorization, and file for naturalization. As a result of this change, fees will be an insurmountable obstacle that would make these essential benefits inaccessible in many cases.

The Proposed Rule then further exacerbates the elimination of fee waivers with astounding increases in the fees themselves. For example, the cost for an I-485 application for adjustment of status is proposed to increase by 79%, from the existing high cost of \$1,225 to an unprecedented cost of \$2,195. The cost for an application for naturalization is proposed to increase by 83%, from the existing high cost of \$640 to \$1,170. The existing costs already pose a challenge to immigrant families seeking access to justice and other essential benefits. To increase these fees further, and by such an unprecedented amount, will make immigration benefits wholly cost-prohibitive for many.

b. New York City has a strong interest in supporting access to naturalization

Adjustment of status and naturalization, for which USCIS seeks to increase the fees while eliminating the option of fee waivers for naturalization, are precisely the benefits that have the ability to transform individuals and families in New York City seeking to achieve stability and participate in their communities. In fact, it is because of the benefits of naturalization that Congress has called on USCIS to keep the pathway to citizenship affordable and accessible.⁴ To impose further barriers to citizenship will be devastating not only for individual New Yorkers but for the City as a whole.

Approximately 56.2% of immigrant New Yorkers are naturalized U.S. citizens and an estimated 622,000 immigrant New Yorkers are lawful permanent residents who are potentially eligible to naturalize.⁵ The naturalization-eligible population in New York City is deeply integrated into the economic and social life of our City: this population has lived in the U.S. for an average of 18 years and in 2018, this population accounted for about \$19 billion in earnings in our City.⁶

Of particular note in the City's access to justice initiatives is ActionNYC, which offers free immigration legal screenings and support. Since July 1, 2016, ActionNYC and other City-funded legal services programs have provided assistance to low-income and other vulnerable immigrants in over 5,000 naturalization applications and over 6,000 applications for permanent residency.⁷ In addition to ActionNYC, the New York City Mayor's Office of Immigrant Affairs (MOIA) operates NYCcitizenship, a citywide community-based naturalization legal services program, in partnership with the Brooklyn, Queens, and New York Public Library systems, the New York City Department of Social Services (DSS), New York Legal Assistance Group

⁴ H. Rep. No. 115-948 accompanying H.R. 6776, the Department of Homeland Security Appropriations Act (2019).

⁵ NEW YORK CITY MAYOR'S OFFICE OF IMMIGRANT AFFAIRS, State of Our Immigrant City: MOIA Annual Report for Calendar Year 2018, 11, available at https://www1.nyc.gov/assets/immigrants/downloads/pdf/moia_annual_report%202019_final.pdf.

⁶ NEW YORK CITY MAYOR'S OFFICE OF IMMIGRANT AFFAIRS, "Fact Sheet: Eligible to Naturalize New Yorkers," Dec. 2019, available at <https://www1.nyc.gov/site/immigrants/about/research-evaluations.page>.

⁷ NEW YORK CITY OFFICE OF CIVIL JUSTICE, 2018 Annual Report, 46, available at <https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ-Annual-Report-2018.pdf>

(NYLAG), and the Mayor’s Fund to Advance NYC. NYCitizenship provides free, safe and high-quality naturalization legal services across the five boroughs. Through NYCitizenship, individuals receive comprehensive legal screenings to determine eligibility for naturalization, and full legal representation in filing applications with USCIS. All eligible individuals also receive legal assistance with full and partial fee waivers as well as medical disability waiver applications. Additionally, clients are connected to free and confidential financial counseling. Since its launch in 2016, over 17,000 individuals have been reached through the program. Over 2,700 naturalization applications have been filed through the program during this time – about 77% of which were filed with accompanying full or partial fee waivers.⁸ This number is in addition to the numerous applications filed through ActionNYC with accompanying full or partial fee waivers. The New York City Council has also long funded Citizenship NOW!, a citywide naturalization legal screening and advice program operated through the City University of New York.

The Proposed Rule would harm about 280,000 people in the naturalization-eligible population in New York City who fall below 200% of the Federal Poverty Level (FPL) and would qualify for a fee waiver or reduced fee from USCIS under current rules. Among those who would be harmed are naturalization-eligible DSS clients to whom the City provides application assistance through the NYCitizenship program. A 2015 Pew Research Center survey of naturalization-eligible LPRs who had not applied for citizenship found that the leading reasons for the failure to apply were cost, concern about language and civics requirements, and the complexity of the naturalization process. In fact, this same survey of about 800 immigrants found that 19% cited financial barriers, mainly the cost of naturalizing, as their reason for not naturalizing.⁹

Additionally, the impact that fee increases have on naturalization rates has been clearly documented in the data: in federal fiscal year (FFY) 2007 after USCIS announced that naturalization application fees would increase from \$400 to \$675, application rates jumped 89% from the previous year (from 730,642 in FFY2006 to 1,383,275 in FFY2007). After the fee increases were then actually implemented, the number of applications fell significantly by 62% in the following year (from 1,383,275 in FFY2007 to 525,786 in FFY2008).¹⁰

Programs like NYCitizenship, which provides comprehensive assessment on fee waiver eligibility as part of the course of representation, are key to unlocking the full potential of our immigrant communities. Naturalization is a powerful tool to promote income security as well as more robust voter engagement. According to a study of naturalization-eligible immigrants in 21 cities, including New York City, the economic benefits of naturalization are clear. New citizens see individual annual earnings increase by an average of 8.9%, or \$3,200; the employment rate

⁸ Based on program administrative data as of June 2019.

⁹ PEW RESEARCH CENTER, “Mexican Lawful Immigrants Among the Least Likely to Become U.S. Citizens”, Oct 2015 - Nov 2015, available at <https://www.pewresearch.org/hispanic/2017/06/29/mexican-lawful-immigrants-among-least-likely-to-become-u-s-citizens/>.

¹⁰ NEW YORK CITY COMPTROLLER, “The New York City Citizenship Fund: Expanding Access to Citizenship in the Five Boroughs,” May 2017, available at <https://comptroller.nyc.gov/reports/the-new-york-city-citizenship-fund-expanding-access-to-citizenship-in-the-five-boroughs/>.

among this population rises 2.2 percentage points; and homeownership in this group increases 6.3 percentage points.¹¹ Additionally, national research shows that integration, success, and contributions of immigrants increase as they advance toward naturalization. In fact, the socioeconomic indicators of naturalized citizens often match or exceed those of the native-born, e.g. in educational attainment, homeownership, self-employment, and mean income.¹²

The naturalization impact of this rule also stands to harm the City’s economy. Research shows that supporting immigrants in accessing the services they need produces long-term benefits for the City. For example, in New York City, we have estimated that if all naturalization-eligible immigrants were to become citizens, then annual city, state, and federal tax revenue would rise \$789 million and public benefits costs would decrease \$34 million, for a net benefit of \$823 million.¹³

c. New York City’s strong interest in naturalization includes protecting access to justice and pathways to status

With the City’s interest in supporting access to naturalization comes an interest in protecting the pathways that immigrants must navigate to eventually naturalize. Non-citizens do not apply for immigration benefits in a one-off vacuum – rather, a person’s immigration journey to citizenship is often a long and multi-step process, requiring multiple applications leading up to naturalization over the course of many years.

Before reaching the point of naturalization eligibility, non-citizens must first become lawful permanent residents for a period of three or five years, depending on the individual case. The pathways to lawful permanent residency in the first place are myriad and often complex, based on family or employment-based immigration, fear-based relief such as asylum, or other humanitarian applications. As adjudication times may be long and may require interviews with USCIS officers, many immigration benefits allow for employment authorization documents (EADs) to be obtained during the pendency of an application, which may also be renewed over time. As the road to naturalization eligibility may be lengthy, unpredictable and costly, non-prohibitive fees and fee waiver eligibility are of the utmost import even before the naturalization stage.

The fee hikes under this Proposed Rule create overwhelming barriers to the entirety of an immigrant journey. For example, one common pathway for U.S. citizen spouses with lawful entries to the United States is to file concurrent applications including a spousal petition, adjustment of status application, and application for employment authorization in order to work

¹¹ URBAN INSTITUTE RESEARCH REPORT, “The Economic Impact of Naturalization on Immigrants and Cities,” Dec. 2015, p. VI, available at <https://www.urban.org/sites/default/files/publication/76241/2000549-The-Economic-Impact-of-Naturalization-on-Immigrants-and-Cities.pdf>

¹² CENTER FOR MIGRATION STUDIES, “Putting Americans First: A Statistical Case for Encouraging Rather than Impeding and Devaluing US Citizenship,” Dec 2019, available at <https://journals.sagepub.com/doi/pdf/10.1177/2331502419894286>.

¹³ URBAN INSTITUTE RESEARCH REPORT, “The Economic Impact of Naturalization on Immigrants and Cities, Dec. 2015, p. VI, available at <https://www.urban.org/sites/default/files/publication/76241/2000549-The-Economic-Impact-of-Naturalization-on-Immigrants-and-Cities.pdf>.

lawfully during the pendency of the adjustment application. Such concurrent applications, if filed when the spouses have been married less than two years, and if granted, will result in conditional lawful permanent residence. Two years after such a grant, the beneficiary must file an application to “remove” the conditions, thereby becoming a lawful permanent resident before they may naturalize. When the proposed fee increases for these applications are taken together (including the fee hike for the I-130 spouse petition, the I-485 application for adjustment of status together with the I-765 application for employment authorization, as well as a fee increase for the I-751 petition to remove conditions and the I-485 application for adjustment of status) the cost of such an immigrant journey would be a total of \$3,510 over the course of approximately four years from the initial application through the removal of conditions, with a subsequent \$1,170 for purposes of naturalization. This would bring one such common immigrant journey to a total of \$4,680, a prohibitive cost for low-income New Yorkers at a time when they are likely to be building a new life and establishing themselves in a new place.

d. New York City has a strong interest in beneficiaries of Deferred Action for Childhood Arrivals

Deferred Action for Childhood Arrivals (DACA) is a humanitarian form of relief for childhood arrivals to the United States who comply with certain requirements related to continuous physical presence and education, among others. Of the approximately 700,000 DACA recipients nation-wide,¹⁴ New York City is home to about 30,000 DACA recipients,¹⁵ who are deeply integrated into our communities. For instance, on average, these New Yorkers have lived in the U.S. for 13 years and arrived when they were on average 9 years old. Many are homeowners or contribute to mortgages in New York City. New Yorkers eligible for DACA are employed in a variety of ways, including thousands who work as managers or professionals and thousands more who work in educational and health services industries.¹⁶

The Proposed Rule takes specific aim at DACA and does so at a time of great uncertainty, with the fate of hundreds of thousands of DACA beneficiaries hanging in the balance now that the Supreme Court has heard oral arguments in consolidated cases regarding termination of the program. DACA confers protection on beneficiaries for a period of two years, at which point applicants must file renewal applications. USCIS’s proposal to increase the total fee for a DACA renewal from the current cost of \$495 to \$765 – a 55% increase – is unprecedented since the initiation of the DACA program in 2012. As is, the existing fee is a barrier that prevents many DACA beneficiaries from renewing timely.

¹⁴ UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, “Approximate DACA Receipts as June 30, 2019,” June 2019, *available at* [https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Static files/DACA Population Receipts since Injunction Jun 30 2019.pdf](https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Static%20files/DACA%20Population%20Receipts%20since%20Injunction%20Jun%2030%202019.pdf).

¹⁵ NEW YORK CITY MAYOR’S OFFICE OF IMMIGRANT AFFAIRS, Fact Sheet: DACA and DREAM Act in New York City, Jan. 2018, *available at* <https://www1.nyc.gov/assets/immigrants/downloads/pdf/daca-fact-sheet-2018-jan-2018.pdf>.

¹⁶ NEW YORK CITY MAYOR’S OFFICE OF IMMIGRANT AFFAIRS, Fact Sheet: DACA and DREAM Act in New York City, Jan. 2018, *available at* <https://www1.nyc.gov/assets/immigrants/downloads/pdf/daca-fact-sheet-2018-jan-2018.pdf>.

Nationally, a 2019 survey of DACA recipients demonstrates that any threats to DACA, including additional cost barriers to DACA renewal, will cause widespread harm to recipients and their families. Seventy-nine percent reported that their increased earnings as a result of their receipt of DACA have “helped [their] family financially and 25% reported that their increased earnings have “helped [them] take care of an elderly parent or relative.”¹⁷ Data also shows us that DACA makes a significant difference in the lives of DACA recipients, including earning higher wages and thus higher tax revenue that benefits the greater economy. In a 2019 survey to DACA holders, the survey found that the average hourly wage of respondents increased by 86% since receiving DACA – increasing from \$10.46 per hour to \$19.45 per hour.¹⁸ In New York City, DACA recipients contribute an estimated \$1.9 billion in City Gross Domestic Product (GDP).¹⁹ In FY18, the City has assisted approximately 1,500 New York City residents with DACA renewals.²⁰

e. New York City has a strong interest in and demonstrated history of welcoming and supporting asylum-seekers

In 1968, the United States acceded to the 1967 Protocol Relating to the Status of Refugees (“Protocol”), which largely incorporated the 1951 Convention Relating to the Status of Refugees (“Refugee Convention”).²¹ Article 33(1) of the Refugee Convention enshrines the principle of nonrefoulement: “[n]o Contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”²² In acceding to the Protocol, the United States sent a message to the world that brave leadership included providing refugees with a safe and welcoming home. New York

¹⁷ CENTER FOR AMERICAN PROGRESS, “DACA Recipients’ Livelihoods, Families, and Sense of Security Are at Stake This November,” Sept. 2019, *available at* <https://www.americanprogress.org/issues/immigration/news/2019/09/19/474636/daca-recipients-livelihoods-families-sense-security-stake-november/>.

¹⁸ CENTER FOR AMERICAN PROGRESS, “DACA Recipients’ Livelihoods, Families, and Sense of Security Are at Stake This November,” Sept. 2019, *available at* <https://www.americanprogress.org/issues/immigration/news/2019/09/19/474636/daca-recipients-livelihoods-families-sense-security-stake-november/>.

¹⁹ NEW YORK CITY MAYOR’S OFFICE OF IMMIGRANT AFFAIRS, Fact Sheet: DACA and DREAM Act in New York City, Jan. 2018, *available at* <https://www1.nyc.gov/assets/immigrants/downloads/pdf/daca-fact-sheet-2018-jan-2018.pdf>.

²⁰ NYC OFFICE OF CIVIL JUSTICE, 2018 Annual Report, Apr. 2019, *available at* <https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ-Annual-Report-2018.pdf>.

²¹ See Convention Relating to the Statute of Refugees art. 33(1), July 28, 1951, 140 U.N.T.S. 1954 (hereinafter “Refugee Convention”); Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223 (1968) (hereinafter “Protocol”); see also *INS v. Stevic*, 467 U.S. 407, 416 (1984) (“The Protocol bound parties to comply with the substantive provisions of Articles 2 through 34 of the United Nations Convention Relating to the Status of Refugees . . . with respect to “refugees” as defined in Article 1.2 of the Protocol.”). The Convention and Protocol have been ratified by 145 and 146 countries, respectively. See U.N. Treaty Collection, Convention relating to the Status of Refugees (last updated Mar. 19, 2018); U.N. Treaty Collection, Protocol relating to the Status of Refugees (last updated Mar. 19, 2018), https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=V-5&chapter=5&clang=_en.

²² Refugee Convention, *supra* note 1, art. 33(1).

City is proud to be part of a country that embraced that position, and the City remains committed to upholding those values today.

As such, the City is alarmed at the Proposed Rule's targeting of asylum-seekers. For the first time in American history, USCIS proposes to charge a fee for those applying for asylum affirmatively. The United States has a moral imperative to enable asylum seekers to avail themselves of their rights and pursue their application for relief. The notion that someone fleeing their country due to persecution should have to pay a fee in order to have their application reviewed is simply unacceptable and flies in the face of our values as a City and as a nation.

Additionally, refusing asylum applicants due to their inability to pay the application fee would effectively cause the United States to break its treaty obligations and is inconsistent with 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.²³ Should the United States charge a fee, it would become one of only four countries in the world that does so.²⁴ The City implores USCIS to adhere to international and domestic obligations and not refuse asylum seekers their chance to seek protection simply for the inability to pay.

II. The Proposed Rule Improperly Allocates Direly Needed Funds for Enforcement Purposes

While USCIS asserts that increased fees are necessary for their ability to continue to adjudicate benefits, it simultaneously seeks to transfer about one hundred and twelve million dollars from its Immigration Examinations Fee Account (IEFA) to Immigration and Customs Enforcement (ICE).²⁵ Congress has codified in the Immigration and Nationality Act (INA) that the applicant-funded IEFA is a fee account “for expenses in providing immigration adjudication and naturalization services[.]” 8 U.S.C. § 1356(n). Indeed, the IEFA is USCIS's “primary funding source” for processing affirmative applications for immigration benefits, including support needed for their adjustment of status and naturalization programs.²⁶ Despite this clear instruction, USCIS inexplicably now seeks to transfer an overwhelming amount of these funds to

²³ 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).

²⁴ Australia charges the equivalent of \$25 USD; Fiji charges the equivalent of \$221 USD, and Iran charges the equivalent of \$293 USD. See U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 84 Fed. Reg. 62280 (proposed Nov. 14, 2019).

²⁵ The Proposed Rule also fails to provide an updated fee schedule incorporating the change in the annual transfer amount from USCIS to ICE. This supplementary information was published just two weeks before the comment submission deadline and is without observance of procedure required by law.

²⁶ Oversight of U.S. Citizenship and Immigration Services: Ensuring Agency Priorities Comply with the Law before the Senate Committee on the Judiciary, Subcommittee on Immigration and National Interest on March 2015 available at <https://www.uscis.gov/tools/resources-congress/presentations-and-reports/oversight-us-citizenship-and-immigration-services-ensuring-agency-priorities-comply-law-senate-committee-judiciary-subcommittee-immigration-and-national-interest-march-2015>.

serve an entirely different, enforcement-related purpose at a separate investigative agency. Such a transfer exceeds statutory authority and is not in accordance with law. Moreover, because USCIS justifies its elimination of fee waivers and increase in application fees as necessary in order to adjudicate benefits, but will instead use these funds in a manner entirely inconsistent with that purported justification—for reimbursement of ICE’s activities—the Proposed Rule is arbitrary and capricious.

This transfer of funds to ICE is even more unjustifiable because USCIS is currently experiencing unprecedented backlogs in naturalization applications and other immigration benefits applications. For example, according to data available from USCIS, as of September 2018 the backlog of citizenship applications pending before the agency is 738,148.²⁷ This backlog has doubled from 367,000 in late 2015 to the current backlog of nearly 740,000, with the majority of this skyrocketing increase happening under the current administration.²⁸ In spite of these large and growing backlogs, the Proposed Rule claims it needs to increase fees and eliminate fee waivers to cover USCIS operation shortfalls, only to transfer those funds to ICE for enforcement-related initiatives.

Additionally, linking USCIS with enforcement is likely to exacerbate growing chilling effects to non-citizens who may be fearful about filing immigration applications with USCIS in the first place. USCIS currently has robust fraud detection systems. In 2004, USCIS created the Fraud Detection and National Security Directorate, which is described as leading USCIS’s efforts to ensure the integrity of the nation’s immigration benefits process.²⁹ Transferring money will not improve USCIS’s integrity, but rather will entangle USCIS services with enforcement and removal in a way that will drive immigrants away from USCIS, and create a significant chilling effect. By way of example, practices of ICE enforcement at USCIS marriage-based petition adjudication interviews where ICE has appeared in certain instances and arrested the beneficiary spouse, have caused grave concern. The City has already seen this occur on numerous occasions, including the case of Mr. Martinez, a Queens resident with a U.S. citizen spouse of over a dozen years and two young U.S. citizen children. Mr. Martinez was abruptly arrested by ICE at a USCIS field office where he was presenting himself with his wife for a marriage-based adjudication interview. Mr. Martinez’s children, including his three-year-old daughter and four-month old son, had their father ripped from them without notice on the very day that he was pursuing steps to adjusting his immigration status.³⁰ Cases like this have had a chilling effect on immigrants who would otherwise avail themselves of USCIS benefits.³¹

²⁷ “Number of Form N-400, Application for Naturalization, by Category of Naturalization, Case Status, and USCIS Field Office Location, July 1 – September 30, 2018,” U.S. Citizenship and Immigration Services, accessed March 7, 2019, https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Naturalization%20Data/N400_performance_data_fy2018_qtr4.pdf.

²⁸ See “Data Set: Form N-400 Application for Naturalization,” U.S. Citizenship and Immigration Services, accessed March 7, 2019, <https://www.uscis.gov/tools/reports-studies/immigration-forms-data/data-set-form-n-400-application-naturalization>.

²⁹ <https://www.uscis.gov/about-us/directorates-and-program-offices/fraud-detection-and-national-security-directorate>

³⁰ <https://www.nyclu.org/en/press-releases/court-stays-deportation-father-arrested-immigration-interview>.

³¹ See *e.g.*, Complaint at 5, Sanchez, et al., v. McALEENAN Civil No. 1:19-cv-01728-GJH (D Md 2019) (where a husband went with his wife, immigration lawyer, and an interpreter to a scheduled marriage-based petition (I-130)

The notion that an agency tasked with processing immigration relief applications would seek to divert desperately needed funds for the mission of a separate entity specifically tasked for enforcement and removal is reprehensible. Combining services with enforcement is counter to Congressional intent and Congressional finding.³² It also contradicts DHS’ own assertions that USCIS has insufficient resources—one of the key justifications for fee hikes in the first place. Lastly, as stated in a recent letter from members of Congress, if DHS believes that immigration enforcement agencies need more funding, then they should work with Congress to address those budget shortfalls.³³ USCIS must not instead transfer money designated for other purposes as a way to circumvent Congressional power to spend money. To be clear, this transfer of money is not an internal reallocation of resources, but rather a dramatic shift in immigration policy – the effect of which will be to further increase application backlogs, disincentivize immigrants to interact with USCIS, and harm stakeholders, including cities such as New York.

III. DHS Has Not Complied With the Treasury General Appropriations Act

The Treasury General Appropriations Act mandates:

Before implementing policies and regulations that may affect family well-being, an agency shall assess whether the action — (1) strengthens or erodes the stability or safety of the family and, particularly, the marital commitment; (2) strengthens or erodes the authority and rights of parents in the education, nurture, and supervision of their children; (3) helps the family perform its functions, or substitutes governmental activity for the function; (4) increases or decreases disposable income or poverty of families and children; (5) is warranted because the proposed benefits justify the financial impact on the family; (6) may be carried out by State or local government or by the family; and (7) establishes an implicit or explicit policy concerning the relationship between the behavior and personal responsibility of youth, and the norms of society.³⁴

interview. Upon arrival, a USCIS officer asked questions about their marriage, and approved the I-130 petition on the spot. The wife was then escorted out of the room because the USCIS officer said that a supervisor needed to come and authenticate the case. However, instead of a USCIS supervisor, ICE officers came to arrest the husband, put him in handcuffs, and took him to a detention center without letting him see his wife or say goodbye. This complaint describes how numerous immigrants have been victims of this “bait-and-switch” orchestrated by the U.S. Department of Homeland Security.); *see also Lin v. Nielsen*, No. 8:18-cv-03548- GJH, Order Granting Temporary Restraining Order, Nov. 19, 2019, 4 (granting a preliminary injunction enjoining DHS from removing an immigrant who was arrested at his marriage interview pending further proceedings stating the order was in the public interest, as it “requires DHS to comport with its own rules and regulations, and bars arbitrary and capricious agency action towards vulnerable undocumented immigrants).

³² Congressional Research Service, “Immigration and Naturalization Service: Restructuring Proposals in the 107th Congress” (Dec. 30, 2002); https://www.everycrsreport.com/files/20021230_RL31388_3678de56f7aba9d7d612f19a020d1f0030db4_d9c.pdf. (In 2002, the Congressional Research Service observed that there “appeared to be a consensus among interested parties that the former INS’s two main functions — service and enforcement — needed to be separated.”).

³³ <https://foresthillspost.com/meng-calls-on-trump-administration-to-abandon-fee-hikes-for-immigrants-applying-for-citizenship>.

³⁴ Pub. L. No. 105- 277, §654(c)(1-7), 112 Stat. 2681-528-30 (1998).

DHS has completely ignored this directive by failing to assess whether the Proposed Rule strengthens or erodes the stability or safety of the family, increases or decreases disposable income or poverty of families and children, and is warranted because the proposed benefits justify the financial impact on the family. The Proposed Rule is silent on these questions, but elimination of fee waivers and the enormous increase in fees will undoubtedly erode the stability and safety of immigrant families, in particular, those families with both citizen and non-citizen members. These proposals will create barriers to family reunification for low-income immigrants and certainly would have an impact on disposable income and poverty for families and children seeking to adjust their status or naturalize. While DHS purports to implement the elimination of the fee waiver and increase in fees in order to cover costs for providing adjudication and naturalization services, DHS has not analyzed whether these changes, including the unlawful transfer of funds to ICE, justify the financial impact on the family. In fact, any perceived benefit of the projected revenue is outweighed by the negative financial impact on families and the heightened barriers to naturalization and citizenship, which in turn harm the City and the nation, as described above.

IV. Conclusion

For the reasons articulated above, the City of New York urges DHS to promptly withdraw in its entirety the Proposed Rule, which would create overwhelming and unjustified barriers to non-citizen residents in accessing immigration benefits, and have significant economic and social consequence to the City as a whole. DHS must instead work with Congress to address any budget shortfalls that the agency identified in a way that improves adjudication times, addresses the naturalization backlog, and increases services for our constituents.