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I. ABOUT THE ORGANIZATION

The Advocates for Human Rights is a nonprofit, nongovernmental organization headquartered in Minneapolis, Minnesota. Founded in 1983, The Advocates for Human Rights' mission is to implement international human rights standards to promote civil society and reinforce the rule of law. Holding Special Consultative Status at the United Nations, The Advocates regularly engages UN human rights mechanisms.

For forty years, The Advocates for Human Rights has provided free legal representation to asylum seekers, Special Immigrant Juveniles, victims of human trafficking and victims of human rights violations in detention. We have provided free legal services for more than 10,000 cases and are one of the only organizations providing such services free of charge in the area. The Advocates also regularly trains and mentors pro bono lawyers, coordinates and presents on immigration topics at conferences in the Upper Midwest, and leads on numerous efforts around legal services for migrants.

The Advocates for Human Rights is a global expert in women's human rights, particularly in the area of domestic violence. We have worked in Central and Eastern Europe, the former Soviet Union, the Caucasus, Central Asia, Mongolia, Morocco, Nepal, Mexico, Haiti, and the United States. At the request of government officials, embassies, and NGOs, we help draft laws that promote the safety of women. We have provided commentary on new and proposed domestic violence laws in nearly 30 countries. We have worked with host country partners to document violations of women's human rights, including domestic violence. We train police, prosecutors, lawyers, and judges to implement both new and existing laws on domestic violence. In addition, our Stop Violence Against Women website serves as a forum for information, advocacy, and change and, working with the UN, we developed the Legislation and Justice sections of the UN Women's Virtual Knowledge Center to End Violence Against Women.

II. INTRODUCTION

The Advocates welcomes the opportunity to comment on the new fee rule. We first start by noting that there must be a change in DHS funding to ensure that USCIS functions are not improperly placed on the applicant while bloated detention and enforcement budgets, funded by Congress, pull USCIS resources such as asylum adjudicators to staff ramped-up border

operations. While we recognize that the law restricts how USCIS funds its operations, The Advocates urges DHS to work with Congress to ensure fair funding. USCIS notes "full costs" must be covered, which includes: personnel costs, physical overhead, consulting and other indirect costs, management/supervision, enforcement.

We further welcome the change back to the ability-to-pay approach. Immigration benefits cannot discriminate based on income or class. Individuals have the right to family unity, employment opportunities, and humanitarian protection regardless of class and other distinctions that often impact the ability to pay due to structural racism and inequities. The previously-proposed policy would have ensured that individuals from higher income brackets were provided greater opportunities to access immigration benefits. Because of the structural racism and inequities in our systems, this would have had a multiplier effect of increasing racial disparities in our immigration system by disproportionately preferencing individuals who could pay, which would be more largely individuals from privileged racial backgrounds rather than historically disadvantaged BIPOC communities. The Advocates, therefore, supports the Department's return to a more equitable ability-to-pay approach.

The Advocates thanks the Department for proposing fee exemptions that reflect the realities faced by victims of crime, trafficking, domestic violence and human rights violations. We applaud the Department for removing the previously-proposed asylum fee, which would have made the U.S. one of only three nations to charge a fee for asylum protections and served only as an arbitrary deterrent to exercising one's right to seek protection from persecution and torture. While we also welcome the reinstatement of fee waivers for a range of case types, The Advocates includes herein detailed recommendations on urgently-needed clarifications and updates to the evidentiary standard for review of fee waivers which have arbitrarily and capriciously been adjudicated to bar access to benefits for a number of our clients over the past few years.

While The Advocates supports the humanitarian changes proposed in this rule, we urge the Department to ensure that costs do not pit one group against another. Significant increases in family-based visa applicants, for example, will impinge on the right of many to access family unity. And, increases in certain employment-based visa categories could result in employers turning to more exploitative practices to fill staffing needs or pass along the cost of increased visa processing to workers, putting that at risk of trafficking. Yet, the fee exemptions and waivers for humanitarian-based applications are urgently needed and reflect a fairer system in addition to reducing costs and administrative burden for USCIS processing fee waivers and appeals related to fee waiver denials.

The Advocates also notes that the regulation proposes changes that "may be necessary to implement the rule titled 'Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers.'" The Advocates has written a Comment in opposition to that rule. That rule would make changes to the asylum and CAT processing system that compromise the rights of asylum seekers and due process of law in exchange for suggested efficiencies to the US Government. To the extent that the instant fee rule makes changes to plan for the asylum rule, The Advocates notes its opposition to that rule.

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In sum, The Advocates encourages DHS to maintain the portions of this proposed regulation that protect vulnerable groups and remedy a number of gaps in the immigration benefits fee structure, but do so while pursuing alternative paths to funding that will prevent the Department from continuing to place the burden of immigration benefits processing on individuals while obtaining nearly unlimited funding for enforcement and removal operations.

III. FUNDING THE ASYLUM PROGRAM WITH EMPLOYER PETITION FEES

While The Advocates does not support the premise that operational costs should pit the rights of one group against another, and continue to note that Congressional appropriations with a reduction in enforcement, detention and deterrence costs, should be the priority, we appreciate the Department's approach that works to ensure those most vulnerable are not barred from accessing benefits due to ability to pay. We further note that decisions by the Department to prioritize increasing cumbersome, harsh, time-consuming, resource-intensive processes and procedures for asylum cases is a significant factor in funding that is being shifted to businesses.

Notwithstanding, The Advocates supports a cost shifting that provides a greater share is covered by employer petitions. In part, The Advocates supports this as a means of ensuring asylum seekers and other vulnerable groups are not harmed by the Department's funding structure. Providing an asylum processing fee for asylees risks individuals being returned to persecution and torture if they cannot afford to pay, while providing a higher fee for employment-based sponsorship may result in challenges in staffing for employers—significantly different interests are at stake.

In addition, The Advocates notes that many asylum seekers can fill the positions that employment-based petitions might otherwise be filed for. Many asylum seekers hold higher education degrees and have vast experience and skills in crucial fields; however, because of their political opinions, religions, race, nationality or membership in particular social groups, such as LGBTQ+ individuals, they are forced to flee to seek safety in the U.S. With the recent arrival of Afghan refugees, for example, many employers report having filled positions that they were unable to fill due to workforce shortages in the U.S. Similarly, many businesses have written about the value of employing asylum seekers and refugees. Therefore, employers may not have to file more costly employment-based visa applications if they are instead able to hire asylees to fill such positions.

IV. FEE WAIVERS

a. Need for Fee Waivers

As the Department notes, "USCIS may waive the fee for certain immigration benefit requests when the individual requesting the benefit is unable to pay the fee. *See* 8 CFR 103.7(c) (Oct. 1, 2020)." Additionally, it notes: "Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) requires DHS to permit certain categories of applicants to apply for fee waivers for "any fees associated with filing an application for relief through final adjudication of the adjustment of status."

The Advocates knows from our work that fee waivers provide a life-saving opportunity for victims of crime to get out of abusive and exploitative situations, access long-term stability, reunite with family, obtain authorization to work lawfully, which removes a factor of vulnerability leading to human trafficking, and access benefits to overcome trauma and improve their lives. These benefits also allow victims to have the courage to come forth and support a law enforcement investigation that helps prevent and punish serious crimes, such as trafficking.

Without access to fee waivers, The Advocates has seen the negative impact this has on victims. Indeed, for the past five years, USCIS has made accessing fee waivers nearly impossible even where they were available to applicants. A shift in policy on evidentiary requirements and approach to adjudication of fee waivers resulted in wholesale denials of fee waivers on vague bases of lack of evidence. As a result, The Advocates had to ask many applicants to find ways to pay exorbitant fees, fundraise, or face deportation to harm and loss of benefits. In at least one case, The Advocates had a client whose fee waiver was denied for lack of evidence when he had no ability to produce any (more regarding standards of evidence, below). His T visa application was thus denied for failing to provide a Form I-192, and he was deported to his home country where he now has no access to medical care needed for a workplace injury suffered at the hands of his trafficker. In other cases, The Advocates had youth victims of crime explain that they experienced workplace exploitation bordering on trafficking when they decided to take exploitative jobs as their only means of working to pay USCIS fees connected with their immigration applications.

Through its victim-centered approaches, DHS purports to understand the fact that people frequently fall victim to crime and abuse because of financial coercion and dependence. Visa sponsors may hold fees over the head of a domestic violence victim in order to retain control. Traffickers force victims into forced labor or indentured servitude to pay off debts to afford fees or to cover housing costs. Abusive parents may use financial controls to force children to remain in abusive homes. And, asylum seekers can end-up becoming victims of exploitation by communities or sponsors who take advantage of the fact that they have no resources and no ability to work for many months while they await their case processing. Removing these forms of coercion and control by allowing requests to waive significant fees that would otherwise stand in the way of accessing benefits ensures that DHS does not contribute to such harms.

b. **Evidentiary Standard Must be Updated**

While The Advocates welcomes the return to the policy allowing fee waivers for humanitarian claims, it encourages the Department to update the regulations to close gaps by providing clarity in terms of evidence that may be presented. We support the Department continuing to base inability to pay on a range of evidentiary standards, including means-tested benefits, household income using the FPG, *or* financial hardship. We note, however, that such bases must not be applied categorically and must come with adequate guidance on evidentiary standards. For example, evidence of means-tested benefits cannot be demanded for a fee waiver as most individuals requesting fee waivers will be ineligible for means-tested benefits until the benefit for which they are seeking the waiver is granted. The Regulation as currently written provides insufficient guidance regarding evidence to account for the fact that many people applying for

fee waivers are unlikely to have significant evidence, or the type of evidence USCIS requests, to prove lack of income. Indeed, proving lack of income in itself seeks to prove a negative.

An individual who has no employment-- whether because they are unable to work lawfully, or because their employment or life is controlled by an abuser, or because they have been injured or unable to work due to harms suffered as a victim of a serious crime, or they cannot work due to age or injury—would not have pay stubs. Without a means of income one is also unlikely to have a bank account in which to put money they do not have. Moreover, many victims of crimes and exploitation are either prevented from opening their own bank account or are unable to open one due to lack of access to identity or other documents required by banks. Many such individuals, therefore, will also be unlikely to have filed taxes. And, may have no proof of bills and other costs due to those being controlled by their abuser or because they have been forced to fine creative ways to survive and may be unhoused, living with friends without a formal lease agreement, living in a shelter without bills or utilities, etc.

The Department should, as noted, continue to allow officers to "grant a request for fee waiver in the absence of some of this documentation so long as the available documentation supports that the requestor is more likely than not to be unable to pay the fee" as allowed under the preponderance of the evidence standard. However, more guidance should be provided regarding documentation, including training officers in the types of situations that, while they may not lend to written evidence that can be submitted to USCIS, actually support the need for a fee waiver as well as the underlying humanitarian claim. DHS should not only provide a list *possible* evidence that includes both common proofs of financial need like taxes, pay stubs and bills, but also less formal types of acceptable evidence such as written letters from roommates, affidavits from social or legal services organizations that condition services on lack of income, handwritten bills, and the like. Moreover, DHS should also provide clear instructions that an office can or should waive a fee upon a sworn statement from the applicant that they are a victim of abuse or exploitation.

c. **Requirement to Submit Fee Waiver Form**

The Advocates for Human Rights urges DHS to retain its flexibility regarding forms used for fee waivers. Printing, translating, completing and sending forms requires additional costs that applicants who are in financial need likely do not have. While this process certainly eases the burden on the agency, it should consider some flexibility where possible.

d. **Fees Associated**

The Advocates welcomes the Department's continued application of fee waivers to forms associated with certain types of humanitarian benefits. As the Department notes, it interprets "any fees associated with filing an application for relief through final adjudication of the adjustment of status" to mean that, in addition to the main immigration benefit request (such as Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, Form I-914, Application for T Nonimmigrant Status, or Form I-918, Petition for U Nonimmigrant Status), these categories of applicants must have the opportunity to request a fee waiver for any form associated with the main benefit application up to and including the adjustment of status

application." The Advocates encourages the Department to provide clear guidance to adjudicators and in policy that reflects the breadth intended by this language. It should also update its records to so reflect so that FOIA requests or congressional reporting will provide information about fee waiver grant rates of related applications notwithstanding where certain forms may have no fee.

V. FEE EXEMPTIONS

The Advocates for Human Rights is grateful for the Department's proposal to provide fee exemptions for certain categories of applicants, particularly humanitarian claims. This regulation will not only ensure any individuals are protected from further exploitation and harm by ensuring access to lifesaving benefits for crime victims and victims of human rights abuses, but it will also save the Agency significant time and resources currently expended on adjudicating fee waivers for groups of cases that will more often than not require a fee waiver.

The Department proposes to provide exemptions, *inter alia*, for SIJS under 8 CRF 106.2(a)(16)(m); Extensions of Status for T nonimmigrants; Applications for Asylum and Withholding of Removal; Registration for Classification as a Refugee; Refugee/Asylee Relative Petition; Employment authorization documents when applying as a person granted asylee status, withholding of removal, Applicants for asylum and withholding; renewal EADs for persons granted withholding, TPS re-registration, U and T derivative family members. We support these exemptions for the below-detailed reasons based on our work with applicants who will benefit as well as our broader understanding of human rights standards and community need.

A. Trafficking Victims

The Agency correctly notes that "The TVPRA requires DHS to permit certain categories of requestors filing petitions and applications to apply for fee waivers, including for "any fees associated with filing an application for relief through final adjudication of the adjustment of status." This provision of the TVPRA provides crucial protection and congressional recognition that, in order for the US to prevent and punish trafficking, it must provide protections for noncitizen victims. Congress recognized that victims of crimes will be unlikely to afford fees for immigration services without facing serious harm or possible re-exploitation. While Congress required DHS to allow fee waivers for this group of victims, it did not prohibit DHS from completing exempting them from fees.

Additionally, the U.S. is a party to the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Under the Protocol, the U.S. has agreed to "implement measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including . . . in particular, the provision of . . . material assistance." (Art. 6.4). The Protocol also details obligations for States Party to adopt "appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases" giving "appropriate consideration to humanitarian and compassionate factors". (Art. 7). The Administration must, therefore, work to develop fee guidelines that reflect the world understanding, as adopted by the U.S. in ratifying the Protocol, that trafficking victims

require special care in regards to their financial situation as well as legal status in the country. By adopting the fee exemptions contained in this regulation, the U.S. is taking an important step toward bringing the U.S. policies in-line with international best practices which make immigration protections accessible to trafficking victims and provide due consideration for their financial situation.

The Advocates for Human Rights supports the proposed change to exempt fees for all forms related to T visa through adjustment for the applicant and derivatives. Through many years of work with noncitizen victims of trafficking, The Advocates knows that most trafficking victims lack sufficient resources to cover basic needs, much less exorbitant immigration fees. Many labor trafficking victims have toiled for years with nothing to show for it due to wage theft, false debts, and more that traffickers use to keep individuals in forced labor. Additionally, because trafficking victims will have lost their only source of income and support by escaping the trafficking situation, requiring fees before they can access a work permit or immigration relief Congress intended them to access only leads to re-victimization and may even force some victims back to their trafficker or other exploitative situations.

Yet, The Advocates has also seen from our work on T visas that providing an option for a fee waiver is unnecessary burdensome for the victim, service provider and government. Since many or most trafficking victims will require a fee waiver, USCIS must expend resources adjudicating such. Unfortunately, however, many trafficking victims lack evidence that USCIS requests in support of fee waivers—most will have lost or never had pay stubs due to the trafficking and they will not have work authorization until their T visa is granted. As such, many T applicants will also have not filed taxes to include as evidence in support of fee waivers. Moreover, given the control exercised by traffickers, most trafficking victims will also lack bills or other pieces of evidence in their own name. These factors result in denials of fee waivers by USCIS or requests for additional evidence, which create additional administrative processing costs for the Department, as well as prolonged trauma while victims await decisions. In worse cases, such issues result in denials of applications, giving rise to serious harms for victims and additional administrative burden for USCIS. For example, The Advocates has had at least two cases in which a T visa applicant was denied their bona fide T visa simply for failing to be able to file an I-192 waiver. Those waivers were not filed solely because USCIS denied the fee waiver request for failing to be able to submit the type of evidence USCIS desired. As a result, at least one applicant was removed from the US and brought a civil suit against USCIS for the improper denial of the fee wavier request. Given these common issues, the Department must factor the cost of ongoing litigation as well as the hardship to trafficking victims for denials arising from fee waiver rejections. Hence, the exemption is a welcome change for both the Department and applicants.

B. Victims of Criminal Activity

The same issues noted with trafficking victim cases are also present in many cases for victims of criminal activity. The Advocates welcomes the Department's proposal that any form associated with U nonimmigrant status be fee exempt up until the filing of a Form I-485. While The Advocates notes the larger number of U visa applicants, we discourage the Department from limiting the exemption at the I-485 period. As noted in regards to T visas, people applying for U

visas will similarly lack the type of evidence requested for fee waivers but will also lack the resources to cover filing fees. This particularly will be the case if USCIS ultimately institutes the proposed I-485 increases included in the instant rule. By requiring U visa applicants and their derivatives to pay or request a fee waiver at the LPR state, the Department will be facing additional administrative burden to adjudicate fee waivers and possible litigation for improper denials, while also perpetuating hardship and ongoing instability for victims of crimes that Congress intended to be protected.

Permanent residence is a crucial step for individuals, particularly for people who have experienced crime. By providing a path to permanent residence, individuals experience stability and certainty. Permanent residence also unlocks access to additional benefits, long-term employment, the ability to travel outside the US without fear, and a path to becoming a citizen. Failing to provide this path means that crime victims will be left without certain status. While many will be guided and supported to find a way to cover fees for permanent residence, a nonzero number will ultimately not be able to pursue such applications due to cost and challenges with presenting fee waiver applications. The small amount of money saved by USCIS by limiting fee exemptions for this group is not worth the harm that will be imposed.

C. VAWA

The Advocates welcomes the Department's changes to exempt VAWA applicants from most fees. As the Department rightly recognizes, "abusers often maintain control over financial resources to further the abuse, and victims may have to choose between staying in an abusive relationship and poverty and homelessness. Therefore, victims of abuse may not have access to their finances or the financial means to pay for fees when filing VAWA Form I-360, Form I-485, and associated forms."

We are disappointed, however, that the Department is proposing to limit the exemptions as an attempt to balance the need to cover its costs through fees. The Department wrongly notes that it "must weigh these difficult considerations against the number of VAWA self-petition filings it receives each year and the transfer of costs to other petitions . . . ." Creating arbitrary categories of exemptions while at the same time recognizing the hardship fees will impose on victims of violence which the U.S., through passage of VAWA and its reauthorizations, has sworn to protect, is a false compromise. The Department can-- indeed, should—exempt all fees through adjustment for VAWA applicants regardless of the number of applications it receives.

This is particularly the case given the fact that USCIS must still provide fee waivers for VAWA applications. It strains logic to require processing of fee waivers for categories of cases where USCIS knows the vast majority of applicants will qualify. The cost for USCIS to review, adjudicate and defend fee waiver decisions is what should be weighed when determining the cost of exemptions. Moreover, USCIS must weigh the impact on victims Congress has directed it to protect. Despite the Department itself acknowledging that "victims of abuse may not have access to their finances . . ." it proposes to force such victims to apply for fee waivers—requests that will require the victim to provide proof of their finances, which many may be unable to do given abuses will likely control financials by keeping all records in their own names. Therefore, the Department should simply grant exemptions through the adjustment process to fully set

victims of domestic violence on a path toward permanence and self-sufficiency rather than erecting arbitrary barriers that will simply harm them.

Finally, the Advocates notes that the current system proposed is likely to create confusion, especially amongst pro se applicants. The Department processes to exempt "all forms associated with the Form I-360 filing through final adjudication of the adjustment of status application, including the filing of Form I-290B" when an applicant files the I-360 and I-485 concurrently only. Yet, some applicants may be unaware of their ability to file concurrently. Others may have initially filed with an abusive partner and then been forced to convert their case to a self-petition. And, the fact that an appeal is only fee exempt if concurrently filed limits due process and access to justice—for a population too often denied such—solely based on an administrative technicality which is likely to confuse many and require a full understanding of the process of one's case, which may not be possible given many domestic violence survivors are often forced to move or cannot maintain records due to ongoing abuse.

D. OAW

The Advocates for Human Rights welcomes the expanded fee exemptions for Special Immigrant Afghan or Iraqi translators or interpreters, Iraqi Nationals Employed by or on behalf of the U.S. Government, or Afghan nationals employed by or on behalf of the U.S. Government or employed by the ISAF to all forms associated with filings from initial status filing through final adjudication of the adjustment of status application.

Since the arrival of Afghan allies in the Upper Midwest following the U.S. withdrawal from Afghanistan, The Advocates has been a leading provider of pro bono legal services for Afghans in immigration processes. The Advocates is contracted by the state of Minnesota to provide these services and has trained and mentored numerous attorneys to provide such services to hundreds of Afghans and their family.

Through this work, we know that Afghans are facing financial hardships and cannot access the benefits to which Congress intended them to be entitled without financial hurdles. Ensuring fee exemptions means that Afghans will be able to apply for long-term benefits to remain safely in our communities without additional challenges of fee waivers or fee payments. Indeed, such exemptions will also reduce the burden on Afghan supporters, including military and veterans who have been undertaking the financial burden of supporting their allies as well as covering legal fees and filing costs. By exempting fees for most associated applications, USCIS is removing the financial concerns that have plagued our military, veteran, faith and other communities that are working to support our Afghan neighbors, while also reducing administrative burden on USCIS because nearly all Afghan cases will be eligible for a fee waiver and the Department need not spend resources adjudicating such for an entire group that would qualify.

E. Special Immigrant Juveniles

The Advocates welcomes the proposed fee exemptions for all forms associated with an SIJ through final adjudication of the adjustment of status application. The Advocates, as Congress, knows that special immigrant juveniles are particularly vulnerable and a group that is very

unlikely to be able to cover the fees for immigration filings or be able to deftly navigate the fee waiver process. Yet, this population is often in the most need of protection.

Special immigrant juveniles by definition lack the healthy support of one or both parents. The Advocates knows from our own work that such youth are often not only in need of protections, but also extremely vulnerable to trafficking. Easy access to SIJS without financial consideration allows such youth to access permanence, protections in the US, and benefits which allow them to more easily thrive. Requiring fees for accessing these benefits often either discourages juveniles from even applying or may force them into exploitative situations, which can turn into trafficking or other harms. The Advocates has had numerous cases in recent years involving UACs who were trafficked in the US because of lack of basic financial supports. Indeed, a 2019 survey of youth in Minnesota found that at least 5,000 youth reported trading sex for something of value.[1] While accessing fee waivers provided a crucial option for such youth, requiring the fee waiver created an additional barrier to protection. Many youth were unable to provide evidence to support fee waiver requests when USCIS demanded specific, nearly unattainable evidence from them, resulting in improper denials. Requiring fee waivers also reduced the ability of youth to access legal counsel as organizations or attorneys willing to take pro bono cases could be dissuaded given the time required to prepare and respond to decisions on fee waivers. And, such a requirement created additional administrative work for USCIS as youth are particularly unlikely to have financial records.

Indeed, the Conference to the Refugee Convention, specifically recognized the need for "[t]he protection of refugees who are minors, in particular unaccompanied children and girls, with special reference to guardianship and adoption." Under Art. 25 of the UDHR ". . . childhood [is] entitled to special care and assistance." And, Article 39 of the Convention on the Rights of the Child requires that "States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child." Article 20 of the Convention further requires that "A child . . . in whose own best interests cannot be allowed to remain [with parents] shall be entitled to special protection and assistance provided by the State." By making SIJ protection financially viable for abused, abandoned and neglected children to access, the Department is taking a crucial step toward upholding international best practices related to children.

F. Asylum

The Advocates supports the Department's proposal to "codify that there is no fee for an Application for Asylum and for Withholding of Removal (Form I-589)." As we commented after the introduction of the initial fee regulation proposing a $50 asylum fee, the U.S. would become one of only three countries that imposes a fee to access asylum, and the provision of such a fee serves only to punish and deter those who seek protections Congress afforded them. Moreover, we know from our work with this population that the imposition of fees also creates

[1] MYST Project 2019 Data Brief | School of Nursing (umn.edu)

vulnerabilities to trafficking and exploitation as destitute asylum seekers try to find ways to cover fees necessary for these basic protections. The Department is right to remove that fee.

We also welcome the Department's plan to continue to provide a fee exemption for the initial filing of Form I-765 for persons with pending asylum applications and those who were granted asylum (asylees). This is in-line with the UN Convention on Refugees, which requires "The Contracting States shall give sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals . . . ." (Art. 17).

In nearly all of our cases, asylum seekers lack the resources to pay fees until they are able to work; yet, many of them wish to be able to access authorization so that they can support themselves and their families. Providing fee-exempt access to employment authorization allows asylum seekers the crucial, initial foothold to recover from trauma and support themselves so that they may cover later fees. Additionally, because many other resources require an identification, providing a fee-exempt employment card also allows survivors to access driver's licenses that have wide-ranging impacts.

Finally, The Advocates welcomes the continuing availability of fee waivers for asylees filing Forms I-290B, I-765, for EAD renewal, and I-485. We urge the Department to specifically codify fee exemptions and waivers for all forms filed by asylees through adjustment and family reunification. Asylum seekers, and people recently granted asylum, are among our most vulnerable. Requiring high fees of them to access basic benefits only serves to perpetuate harms, pushing many into exploitative situations and leaving them vulnerable to trafficking. The Department's efforts to reduce barriers through fee exemptions and waivers will save lives.

G. Refugees

Similar to asylum seekers outlined above, refugees merit additional protections and cannot be expected to cover high immigration fees. Demanding such fees will harm vulnerable populations and inhibit their ability to recover from trauma and begin to thrive in America. Therefore, we welcome the Department's plan of continuing to provide a fee exemption for the initial filing of Form I-765, and providing exemptions for renewals or replacements, for persons who were admitted or paroled as refugees. As the Department notes, this is consistent with Article 17(1) of the 1951 Convention Relating to the Status of Refugees (as incorporated in the 1967 Protocol Relating to the Status of Refugees), which states, "The Contracting State shall accord to refugees lawfully staying in their territory the most favorable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment."

The Advocates further supports the exemption for filing of Form I-131, Application for Travel Document, for persons admitted or paroled as refugees, including LPRs who obtained such status as refugees in the United States. Under Article 28 of the Refugee Convention, "Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory." Ensuring such documents are affordable through fee exemption furthers the purpose of Article 28 and U.S. interests in upholding those provisions. Moreover, numerous refugees have need to travel outside the U.S. for work or other purposes that support U.S. interests, but cannot do so if they are unable to obtain a passport from the country from

which they sought refuge. Making travel documents accessible is a smart step, and is not an overly costly or burdensome process for USCIS to outweigh the benefits.

The Advocates notes, however, that the Refugee Convention also calls on states to "as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and cost of such proceedings." Art. 34. Therefore, The Advocates also urges the Department to provide exemptions for naturalization of refugees, as well. Particularly as naturalization costs increase in the proposed rule, the Department is obliged to ensure such increases to do not hinder the naturalization of refugees. At a minimum, the Department must clearly guarantee fee waivers for refugees through the naturalization process.

VI. FEE INCREASES

The Agency notes that: "This greater number of positions reflects increased operational demands on USCIS, including growth in workload volumes, growth in the time required per case which is in part driven by a combination of changing adjudication policy and length of the forms, and expanded responsibilities for other offices, such as Fraud Detection and National Security (FDNS), including social media vetting." The Advocates counters that the Department must work to reduce its costs for processing, such as by abandoning costly excessive processing policies that created significant bureaucratic burden and unnecessary cost. This included the policy requiring USCIS to undertake an interview for every single applicant for a benefit even where the case was clearly approvable. Such policies also included elongating forms and increasing evidentiary burdens, which increased the time USCIS must spend reviewing applications—a cost now shifted to the applicant. Anti-immigrant sentiments and efforts to create arbitrary burdens that prevent applicants or delay processing cannot form the basis of a cost increase that is passed along to the applicant.

Additionally, The Advocates notes that, to the extent that fees are increased due to the requirement that USCIS be a fee-paid agency, the Department must advocate for Congress to change this structure and appropriate adequate funds for services that do not disproportionately impact or exclude those requesting USCIS services.

a. I-130 Fee Increase

Raising costs on family reunification fees threatens to violate the right to family enshrined the Universal Declaration of Human Rights and other human rights standards that the US has agreed to uphold. The world community has recognized, and the US has agreed, that family is a crucial right, necessary for human survival. The Universal Declaration of Human Rights recognizes the family as "the natural and fundamental group unit of society" and declares that it is "entitled to protection by society and the State" (UDHR16). Family-based immigration petitions allow individuals to reunite with family members and continue those crucial connections safely in the US, thus furthering the human right to family.

Raising the cost of an I-130 petition will impact the ability of many individuals to reunite with family members, thereby thwarting the overarching value of family as a fundamental unit of society.

b. I-601 AND I-601A INCREASED TO $920 AND $1105 RESPECTIVELY; I-192 INCREASE BY $170 TO $1100

The Advocates calls on the Department to reduce the I-601, I-601A, and I-192 form fees. These forms are required to be filed when an individual has an inadmissibility ground that would otherwise bar the relief for which they are eligible. These fees are already incredibly high in the context of other immigration fees. Yet, The Advocates notes that these forms are most often required by individuals with criminal or immigration violations giving rise to inadmissibility. The Advocates notes that the racial inequities of the criminal and immigration justice systems disproportionately impact BIPOC communities. Requiring exorbitant fees from those who in need of waivers reinforces these racial inequities. High fees will mean certain immigrants who otherwise would be eligible for regularized status and citizenship may be barred unless they are able to obtain the higher fee amount. It will also mean that individuals will be continually separated from family and unable to process on family-based petitions without the high fee. Migrant workers in need of a waiver may be barred from necessary economic opportunity without the high fee.

The proposed fee increase will disproportionately impact BIPOC communities that may be more likely to need waivers. Numerous studies document that BIPOC individuals are significantly more likely to be arrested and charged for crimes than white individuals who commit those crimes. Those same studies also note that BIPOC individuals overwhelmingly face greater likelihood of conviction, worse plea deals, and harsher sentences. Because criminal immigration bars requiring waivers are often only required where there is a higher sentence or more serious conviction, therefore, the increased waiver fees will be more likely to impact BIPOC individuals who will be more likely to need waivers due to the racial disparities in our criminal justice systems.

Similarly, people from non-white countries also face more immigration restrictions, which may lead to greater likelihood of immigration violations. For example, while a European- or Canadian-passport holder may enter the US on visa waiver or exemption, an African-passport holder must process a visa at a consulate, often unable to overcome high bars regarding financial evidence and other ties. To visit family or seek safety, they may therefore be forced to enter or remain irregularly. Likewise, many Latin Americans who are eligible for short-term migration visa may overstay due to economic need and challenges with securing future visas as well as higher rates of labor trafficking.

Because the waiver forms already disproportionately impact individuals based on race and nationality, the Department should not raise fees in a way that adds to these harms. Moreover, because the waiver system is part of outdated immigration laws that punish individuals and bar immigration based on all manner of outmoded ideas regarding acceptable migrants, any efforts to further entrench these harms, which is what will result form these fee increases, simply perpetuate xenophobic, racist and harmful stereotypes are vestiges of discriminatory immigration laws that must be changed.

c. H-2A INCREASES

The Advocates urges the Department to thoroughly research and work with experts on human trafficking to determine whether these H-2A increases will result in increased instances of

trafficking. Already, The Advocates and others see incredibly high rates of labor trafficking by H-2A visa sponsors. We are concerned that raising costs will simply be transferred on to the H-2A applicant as another form of coercive control keeping them in debt bondage and forced labor. An increased fee may mean that H-2A sponsors/employers become more likely to engage in wage theft, cost shifting, and other illegal labor practices, which can often lead to labor trafficking. The U.S., as a party to the Palermo Protocol on Human Trafficking, as well as under the Trafficking Victims Protection Act and its Reauthorizations, has sworn to prevent and punish trafficking. If raising fees for labor-based visas already rife with exploitation will increase trafficking, the Department must abandon this planned increase.

d. I-290B NOTICE OF APPEAL INCREASE

The Advocates encourages the Department to remove the significant increase in costs for an appeal. The Advocates notes that appeals are filed where there is alleged USCIS error. However, there is no recourse for recuperating such costs if the appeal is won, showing USCIS error. Notwithstanding, an appeal may be an essential requirement for an individual to obtain benefits to which they are entitled, including to be with family, access relief as a victim of a crime, or to secure a needed employee. This leaves many with no choice but to file an appeal or Motion to Reconsider, requiring the payment of this high fee. Since USCIS retains that fee whether the appeal is sustained or not, the Department should not raise this fee given successful cases will be proof of USCIS error and individuals should not be penalized or prevented from accessing benefits simply by the cost of an appeal, or forced to re-file and incur additional costs for new filings.

e. I-824 APPLICATION FOR ACTION INCREASE

The Advocates is concerned about the 45 percent increase in fees associated with the I-824. This application is required for action on a petition or application that has been approved by USCIS. In many cases, this relates to a family member of a person in an humanitarian category. For example, The Advocates has a number of Afghan SIV holders who need to file I-824s for their family members to be able to safely join them in the US. It is not clear from the proposed regulation whether this form would be included within the exemptions for certain humanitarian categories. To the extent that it is not, we urge the Department to add it to the list of exempt forms for SIVs, U, T, VAWA, asylees and refugees so that they will not be required to cover this increased fee as a last step for being reunited with family and no longer having the stress of worrying whether their family member may become victim of retaliation for their humanitarian claims.

In addition, The Advocates further urges the Department to abandon the fee increase on this form. In several cases, the I-824 has been requested where USCIS has made a mistake, such as indicating an I-824 was required to send an I-130 to consular processing when the applicant clearly indicated they would consular process rather than pursue adjustment of status. While a person in such a situation could reach out to DHS to address the error, that results in delays and potential administrative or legal costs to the applicant, which should not be added to with higher I-824 filing fees.

VII. LOWER FEES FOR FORMS FILED ONLINE

As the Department notes, such a policy will disproportionately impact those who do not have access to or knowledge of online systems. While the Department notes that an individual may use a public internet or computer option, such as a library, The Advocates notes that such systems may create data protection concerns. Given the highly sensitive nature of immigration filings, which often include personal identifying information, tax information, social security numbers, and more, requiring use of such—particularly for individuals who may have legitimate concerns about exposure of such data, such as victims of crimes and domestic violence, the Department must make accommodations to ensure no one is forced to use an unsafe system to access benefits to which they are entitled. Indeed, such benefits may be specifically related to vulnerabilities that require more care with confidential information.

The Department must also ensure that online filing does not become the only means of acceptable filing. Such a change would create barriers for pro se applicants with no internet access or those who are not able to readily use computers.

Finally, The Advocates encourages the Department to ensure that an online filing does not replace paper notices *from* the agency. Many individuals may be able to access online systems to file online, but may then lose reliable connection to online systems to follow-up on their case. Paper mailings of important documents, such as Receipt Notices, RFEs, NOIDs, decisions and biometrics must continue to be provided by paper mail and electronically even for those who file online.

VIII. CONCLUSION

In sum, The Advocates urges the Department to ensure that this fee regulation is completed in complimentary with efforts to change the fee system currently requiring USCIS to be a fee-funded agency, when it is clear that the model unduly harms individuals and violates rights to family unity as well as accessing protections as victims of crimes and human rights violations. In addition, The Advocates urges the Department to ensure cost-saving measures that end costly and unnecessary policies that drive-up the cost of USCIS operations, which are then shifted onto the applicants. By removing unnecessary requirements for interviewing, reducing the length of applications, updating policies to request additional evidence only when necessary, and more, the Department can ensure the costs charged to applicants are only those necessary to justly process applications.

Beyond those crucial systemic changes, The Advocates welcomes the Department's effort in the instant regulation to address fee issues for vulnerable populations. The exemptions created for crime victims, trafficking victims, vulnerable youth, asylees and refugees will not only ensure that such individuals are not barred from protections Congress intended them to access simply for failing to pay a fee, but will also reduce costs to USCIS by avoiding the requirement to spend time and resources reviewing fee waivers. Indeed, in the past, USCIS has also had to expend resources litigating incorrect fee waiver denials for such applicants. The exemptions take a crucial step toward addressing those concerns.

While we welcome such changes, The Advocates is disappointed that the Department has chosen to raise fees elsewhere in order to transfer such costs. Most notably, we encourage the Department to abandon plans to increase fees that will violate the rights of individuals to family unity. We also implore DHS to review any unintended consequences of fee increases that will create vulnerabilities to human trafficking by employers and visa sponsors who seek to recover increased fees through exploitation. Moreover, we encourage the Department to withdraw the proposed fee increases for waivers of inadmissibility that perpetuate harmful and xenophobic bars to immigration, as well as withdrawing increases for appeals and request for action by USCIS—both of which will require applicants to bear a higher cost for already exorbitant fees when dealing with USCIS error.

We remain available should you have questions or require further information.

Sincerely,

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