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Regulatory Coordination Division, Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
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November 27, 2018

Re: Docket ID USCIS-2010-0008 - Public Comment Opposing Proposed Changes to Fee Waiver Form and Eligibility Criteria, FR Doc. 2018-21101 Filed 9-27-18; 83 FR 49120, 49120-49121

Dear Chief Deshommes:

The Immigrant Legal Resource Center (ILRC) submits the following comments in opposition to the Department of Homeland Security (DHS), United States Citizenship and Immigration Services (USCIS) proposed changes to Form I-912, Request for Fee Waiver, and to the fee waiver eligibility criteria and required forms of evidence, USCIS Docket ID USCIS-2010-0008, OMB Control Number 1615-0116, published in the Federal Register on September 28, 2018.

The ILRC is a national non-profit that provides legal trainings, educational materials, and advocacy to advance immigrant rights. The ILRC's mission is to work with and educate immigrants, community organizations, and the legal sector to continue to build a democratic society that values diversity and the rights of all people. Since its inception in 1979, the ILRC has provided technical assistance on hundreds of thousands of immigration law issues, trained thousands of advocates and pro bono attorneys annually on immigration law, distributed thousands of practitioner guides, provided expertise to immigrant-led advocacy efforts across the country, and supported hundreds of immigration legal non-profits in building their capacity. The ILRC is uniquely qualified to provide comments regarding the proposed changes to the fee waiver and eligibility criteria in light of its extensive technical expertise and experience, ongoing community outreach regarding the availability and use of the fee waiver, and publication of practice manuals and other resources for immigration practitioners. ILRC's resources include *Understanding*

the Naturalization Application Reduced Fee Option & Fee Waiver,[1] *Practice Advisory: Naturalization Reduced Fee Option and Fee Waiver* (March 2018),[2] and *Naturalization Fee Waiver Packet* (November 2016).[3]

The ILRC also leads the New Americans Campaign, a national non-partisan effort that brings together a coalition of foundation funders, leading national immigration and service organizations, and over two hundred local services providers across more than 20 different regions to help prospective Americans apply for U.S. citizenship. We have extensive experience with fee waivers and have helped hundreds of thousands of lawful permanent residents with the naturalization process. Through our extensive networks with service providers, immigration practitioners, and naturalization applicants, we have developed a profound understanding of the barriers faced by low-income individuals seeking to obtain immigration benefits or naturalization and strongly oppose the proposed changes to the fee waiver eligibility criteria.

In recognition of the barriers to accessing immigration relief posed by immigration filing fees, 8 C.F.R. § 103.7(c) provides for a discretionary waiver of certain immigration or naturalization fees based on the standard of inability to pay. The proposed increased requirements and more restrictive evidence that USCIS proposes to collect from applicants will extend the time and work required for applicants to complete (and adjudicators to process) the fee waiver request. Requiring the additional documents will serve as a deterrent to applying for immigration benefits or naturalization. The proposed changes make the form more complex and will likely lead to individuals making more mistakes, adding to the processing time of the application and further adding to the deterrent effect of these changes. In some cases, applicants may not be able to complete the form because of a lack of required documents, significantly limiting the accessibility of the fee waiver, and thereby reducing low-income individuals' access to naturalization and immigration relief.

The proposed changes are a clear attack on naturalization and family-based immigration. If implemented, these changes would discourage lawful permanent residents from seeking fee waivers for naturalization, and in turn from applying for naturalization. The proposed changes to the fee waiver would also make it harder for the most vulnerable immigrants to apply for immigration relief through VAWA, TPS, T-Visas, and U-Visas. The ILRC has deep concerns about the undue and unnecessary burden that the proposed changes to the fee waiver eligibility criteria and required forms of evidence would place on individual applicants, the adjudications process, and the provision of legal services. Rather than imposing arbitrary restrictions on fee waiver eligibility, the ILRC urges USCIS to take an expansive approach to the types of documentary evidence the agency will accept as substantiation of inability to pay the prescribed fee, in order to ensure the fair and efficient adjudication of these applications.

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[1] *Immigrant Legal Resource Center: Understanding the Naturalization Application Reduced Fee Option and Fee Waiver* (Nov. 15, 2018), https://www.ilrc.org/webinars/understanding-naturalization-application-reduced-fee-option-fee-waiver-0.
[2] Available at: https://www.ilrc.org/naturalization-reduced-fee-option-and-fee-waiver.
[3] Available at: https://www.ilrc.org/naturalization-fee-waiver-packet.

I. The Proposed Form Change Eliminating Receipt of Means-Tested Benefits as a Way to Prove Inability to Pay Is Irrational, and Is an Attack on Naturalization and Family-Based Immigration

The proposed form change is an attack on naturalization and therefore an attack on family-based immigration. USCIS proposes to impose restrictions that lack rational justification or grounding in data, but will have the effect of making it much harder for individuals who qualify for the fee waiver to demonstrate their eligibility. The proposed changes to the fee waiver therefore appear designed to reduce the number of lawful permanent residents who naturalize, and thereby become eligible to petition for family members to immigrate. The changes would also reduce access to immigration relief for individuals who qualify under VAWA, TPS, a U-Visa, or a T-Visa.

The most widespread and streamlined way individuals establish their inability to pay the prescribed fee for naturalization or immigration relief is by showing receipt of a means-tested benefit. Removing this pathway to fee waiver eligibility is arbitrary and capricious. Should the proposed changes go into effect, the consequences are predictable: individuals who cannot afford to pay an immigration or naturalization filing fee will face barriers in demonstrating their inability to pay and will therefore find themselves priced out of applying. Research has established that immigration or naturalization filing fees can present an insurmountable obstacle.[4] For example, the naturalization fee has gone up 800 percent in real terms over the last thirty years, pricing many qualified green card holders out of U.S. citizenship.[5] Indeed, the cost of naturalizing is a major barrier to applying for naturalization.[6] As a result, preserving straightforward access to the fee waiver is essential to allow individuals and our country to reap the well-documented benefits[7] of having all qualified naturalization applicants achieve their goal of becoming U.S. citizens. It is equally important to preserving pathways to secure immigration status for vulnerable immigrants.

Receipt of a means-tested benefit provides sufficient evidence of inability to pay the prescribed fee for an immigration or naturalization application, as required by 8 C.F.R. § 103.7(c). USCIS fails to provide any evidence that its current practice needs revision or that accepting proof of receipt of a means-tested benefit has led the agency to grant fee waivers to individuals who were able to pay the fee.

Showing receipt of a means-tested public benefit should not be conflated with demonstrating that one's income falls within specific federal poverty guidelines. The relevant inquiry is not whether individuals who receive a means-tested benefit have a specific income, but whether individuals who receive a means-tested benefit have sufficiently demonstrated their inability to pay the prescribed fee for naturalization or an immigration benefit. This is what 8 C.F.R. § 103.7(c)

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[4] Center for the Study of Immigrant Integration, University of Southern California, *Nurturing Naturalization: Could Lowering the Fee Help?* (Feb. 2013), *available at* https://dornsife.usc.edu/csii/nurturing-naturalization/.
[5] Stanford Immigration Policy Lab, *Policy Brief: Lifting Barriers to Citizenship: Making the citizenship process affordable is critical to unlocking the potential of low-income immigrants who want to become U.S. citizens* (Jan. 2018), *available at* https://immigrationlab.org/project/lifting-barriers-to-citizenship/.
[6] *Id.*
[7] Multiple studies have documented the micro- and macro-economic benefits of naturalization. *See, e.g.*, the research compiled by the New Americans Campaign at http://newamericanscampaign.org/policy-makers/research/#economic-impact-of-naturalization.

requires. USCIS has presented no evidence that individuals who receive means-tested benefits have the disposable income required to pay the one-time, hefty fee required for naturalization or other immigration relief. Therefore, eligibility for a means-tested benefit should be considered separately from income and continue to be accepted as a distinct and fair proxy for an applicant's inability to pay the one-time fee at issue.

Accepting proof of receipt of a means-tested benefit as evidence of inability to pay a prescribed immigration or naturalization fee allows USCIS to avoid duplicating an assessment already performed by expert federal, state, and county government agencies across the nation. Proof of receipt of a means-tested public benefit is a straightforward and efficient method of determining fee waiver eligibility because it builds on the work local and state adjudicators have already invested in reviewing records, instead of requiring federal adjudicators to repeat the same process. USCIS should not waste its resources performing income determinations that second-guess the work of federal, state, and county government agencies.

Eliminating proof of receipt of means-tested public benefits would increase the burden of demonstrating fee waiver eligibility for individuals who are unquestionably eligible for it. It would exacerbate, rather than mitigate, the barriers to naturalization and crucial forms of immigration relief. It would contravene USCIS's own programs, grantmaking initiatives, and policies promoting naturalization.

For all these reasons, it is critical that USCIS preserves the ability for an applicant to present proof of receipt of a means-tested benefit as an accepted form of evidence to demonstrate their eligibility for a fee waiver.

II. The Proposed Form Change Restricting Means of Demonstrating Income Is Unnecessary and Overly Burdensome to Individuals and Agencies

Individuals who do not receive a means-tested benefit may show inability to pay the prescribed fee by providing evidence that their income is at or below 150 percent of the federal poverty guidelines. USCIS proposes to make it far more challenging and burdensome to apply by narrowing the universe of evidence the agency would accept as proof of income-based eligibility for a fee waiver. Specifically, the proposal to require individuals to submit an IRS tax transcript or verification of non-filing, and the proposal to reject other credible evidence of income such as pay statements, W-2 forms, and tax returns, is an arbitrary and unnecessary restriction.

A. Requiring an IRS Tax Transcript or Verification of Non-Filing Letter Would Create an Undue Burden on Individuals and Government Agencies

The requirement that an individual requesting a fee waiver based on income submit an IRS tax transcript if they filed a tax return creates an evidentiary requirement that will limit access to the fee waiver. Individuals who file tax returns have ready access to copies of those returns; they also have their pay statements and W-2 forms. By contrast, it is uncommon for individuals to have tax transcripts on hand; they must take the additional step of requesting one from the IRS. Requiring tax transcripts rather than accepting copies of tax returns and pay statements makes the entire process of proving eligibility for a fee waiver based on income more onerous. There

are multiple types of tax transcripts,[8] and many pieces of information necessary to request transcripts,[9] which may confuse and even prevent individuals from obtaining tax transcripts. For instance, to request a tax transcript online, an individual must not only provide their Social Security number, date of birth, filing status, and mailing address from their latest tax return, but also have access to an email account, their personal account number from a credit card, mortgage, home equity loan, home equity line of credit or car loan, and a mobile phone with their name on the account.[10] While a request for tax transcript by mail requires less information, obtaining transcripts by mail takes a minimum of five to ten calendar days, delaying what should be a straightforward and easy process. Moreover, for applicants who succeed in obtaining a tax transcript, USCIS leaves itself discretion, with no criteria or limitations, to reject the transcript and request a certified transcript, causing further delays in the adjudication of the underlying immigration petition or naturalization application.

The requirement that those who did not file income tax returns submit an IRS Verification of Non-Filing Letter is similarly burdensome and will also prevent otherwise eligible applicants from seeking fee waivers and more secure immigration status. As with the tax return transcript, the Verification of Non-Filing Letter requires an applicant to submit an online or mail request to the IRS for this documentation, adding another step to collecting evidence in support of the fee waiver. This evidentiary restriction is unnecessary. Applicants submitting a Form I-912 already sign under penalty of perjury. If an applicant completes and executes an I-912 stating that they were not required to file a tax return because their income was below the required threshold and supports this claim with recent pay statements showing this assertion to be true, the statement and accompanying evidence are more relevant to USCIS's inquiry into ability to pay than the IRS verification of non-filing would be.

Moreover, the IRS will be inundated by requests for tax transcripts not only from individuals seeking to apply for the fee waiver, but also from all members of the applicants' household seeking to prove income, even if they are not themselves applying for the fee waiver.

B. Restricting Acceptable Proof of Income Is Arbitrary and Capricious

It is reasonable for USCIS to allow individuals who seek to prove their income to do so by the means available to them. There is no justification for eliminating avenues for individuals who meet the regulatory standard to prove their inability to pay the prescribed fee. Indeed, USCIS should accept more, not fewer, forms of evidence. For instance, a federal, state, or county agency that has evaluated an applicant's income while performing an eligibility determination for a means-tested benefit is undoubtedly qualified to provide a written attestation of that individual's household income. There is no reason USCIS should not accept as proof of income an income determination from a federal, state, or county government agency. Broadening, not restricting, the ways in which individuals can prove their income would allow USCIS to adjudicate fee waivers most effectively and efficiently.

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[8] *See Transcript Types and Ways to Order Them*, IRS, https://www.irs.gov/individuals/tax-return-transcript-types-and-ways-to-order-them.
[9] *See Welcome to Get Transcript: What You Need*, IRS, https://www.irs.gov/individuals/get-transcript.
[10] *See id.*

Further, the proposed requirement that religious institutions, non-profits, and community-based organizations perform income verifications is burdensome to institutions and harmful to the individuals they serve. For individuals who have no income or cannot provide proof of income, religious institutions, non-profits, and community-based organizations should continue to verify that the individual is receiving a benefit or support from that organization and to attest to the applicant's financial situation, and USCIS should continue to accept this verification as proof of the individual's inability to pay the immigration or naturalization fee. The proposal would unreasonably impose a further requirement on religious and community-based organizations to attest that the individual has no income, not just that they receive services or benefits from that organization. This proposed change greatly expands the requirement on religious institutions, non-profits, and community-based organizations to review and verify the financial situation of people they assist, a task they are not trained to perform and a standard they are likely unable to meet. As a result, the proposed changes will have the practical effect of almost completely eliminating an entire category of acceptable income evidence.

USCIS's proposal to restrict acceptable proof of income has no reasonable justification and should be rescinded.

III. The Proposed Form Change Particularly Harms Survivors of Domestic Violence, Sexual Assault, Human Trafficking, and Other Crimes

Survivors may have limited access to documents needed in immigration applications due to control exerted by abusers. Additionally, more than ninety-four percent of domestic violence survivors also experienced economic abuse, which may include losing a job or being prevented from working.[11] Immigration relief specifically created for immigrant survivors of domestic violence, sexual assault, human trafficking, and other crimes acknowledges the barriers these individuals face to accessing immigration relief, adopting an "any credible evidence" standard to adjudicate these cases. However, the restrictive evidentiary requirements for fee waivers under this proposed change, coupled with the fact that IRS tax transcripts or verification of non-filing letters must be mailed to the individual, will mean that victims of domestic violence and other crimes will likely need to seek assistance to request these documents and have them mailed to a safe address, or else be discouraged from applying.

Fee waivers are critical to ensuring survivors can access immigration relief. The proposed changes will harm survivors of domestic violence, sexual assault, human trafficking, and other crimes who are unable to meet the stricter evidentiary requirements proposed to prove eligibility. These changes also go against the specific standard adopted for these cases and the congressional intent underlying the immigration provisions of the Violence Against Women Act and its reauthorizations. By limiting the ways a person can show they qualify for a fee waiver, USCIS is creating unnecessary burdens for survivors to access the very legal protections created to ensure survivors' access to safety, security, and justice.

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[11] National Coalition Against Domestic Violence, *Facts about Domestic Violence and Economic Abuse,* 1, *available at* https://www.speakcdn.com/assets/2497/domestic_violence_and_economic_abuse_ncadv.pdf.

IV. The Proposed Form Change Places a Significant Burden on Individuals Applying for Naturalization and on Vulnerable Populations Applying for Immigration Benefits, Thereby Harming Them, Their Families, and Our Communities

The proposal mandates that applicants for immigration benefits or naturalization who are unable to pay the prescribed fee use Form I-912 exclusively to apply for a fee waiver. The proposal further requires that each person in a family requesting a fee waiver submit their own I-912 form. These proposed changes would compound the restrictive effects of the points outlined above.

A. The Proposed Requirement that Individuals Requesting Fee Waivers Use Form I-912 Is Unduly Burdensome and Conflicts With 8 C.F.R § 103.7(c)

The proposed form change requiring exclusive use of Form I-912 to request a fee waiver impermissibly conflicts with 8 C.F.R § 103.7(c), which only requires a "written request" and not the use of any specific form. Beyond the fact that the proposed requirement contravenes the regulatory language, USCIS offers no explanation or justification for why it seeks to eliminate other forms of written requests. Not only is the mandate to use Form I-912 as the exclusive vehicle for requesting a fee waiver impermissible, it also lacks a necessary evidentiary basis and any rational connection to the goal of determining ability to pay. Were USCIS to refuse to consider applicant-generated requests for a fee waiver, it would place an additional and unnecessary burden on applicants to locate, complete, and submit the Form I-912, when a self-generated request that provides all the necessary information can equally meet the requirements under 8 C.F.R. § 103.7(c). USCIS must continue to accept applicant-generated fee waiver requests (i.e., requests that are not submitted on Form I-912, such as a letter or an affidavit) that comply with 8 C.F.R. § 103.7(c) and address all of the eligibility requirements.

B. The Proposed Requirement that Family Members Submit Separate Forms I-912 Is Unnecessary and Unduly Burdensome

The proposed requirement that each family submit a separate fee waiver application is similarly harmful because it places an additional time and resource burden on families who may presently submit a single I-912 form for all family-related applications or petitions filed at the same time. Under the proposal, each family member filing a petition would be required to complete a separate I-912 form. The current ability of family members to submit a single fee waiver application simplifies the filing process by collecting all relevant data on a single form with all necessary documentation attached once. This is particularly beneficial when families apply for immigration benefits with minor children, or when couples apply for naturalization at the same time. The proposal would require every applicant to complete the I-912 with the same household information, gather multiple copies of the required documentation being requested, including an IRS transcript or verification of non-filing. For example, if an individual, their spouse, and their children each submit Form I-765, Application for Employment Authorization, the proposal would require each of them to submit separate I-912 forms, documenting the same household income information with identical supporting documentation. There can be no rational basis for this approach, which increases the burden on the applicant, replicates the information needed for a family who could have submitted their request together, and increases the number of fee waiver applications USCIS adjudicators must process. As with other changes proposed, USCIS offers no

justification for this added burden on applicants, or any rationale for using agency resources in this manner. USCIS's failure to demonstrate it engaged in reasoned decision-making about the potential costs of this added requirement makes this proposal appear arbitrary and capricious.

V. The Proposed Form Change Increases Inefficiencies in the Adjudication Process and Will Increase Processing Times for Adjudications for Immigration Benefits and Naturalization

The proposed changes to Form I-912 and its evidentiary requirements, while presented as a way to increase efficiency in the adjudication process, will decrease the efficiency of adjudicators. The onerous requirements proposed to demonstrate fee waiver eligibility will increase the workload to already overburdened USCIS service centers, ultimately resulting in a further slowdown of processing times. Contrary to the agency's claims that these changes will standardize, streamline, and expedite the process of requesting a fee waiver by clearly laying out the most salient data and evidence necessary to adjudicate a waiver, the proposed changes to the process and documentation requirements will decrease efficiency and create a greater burden on the adjudication process.

A. The Proposed Changes Would Create Inefficiencies by Increasing the Number of Fee Waivers USCIS Must Adjudicate

As discussed above, the proposed changes require that each applicant submit their own fee waiver request, even if they are filing with other family members. This means that the number of fee waiver applications will increase. Rather than collecting and reviewing the data once, USCIS proposes to collect duplicate data and review it multiple times.

The proposed changes fail to provide any benefit or consider the added work for adjudicators associated with these changes. Not only will the proposed changes increase the number of fee waivers USCIS must adjudicate; by increasing the number of adjudications, it will also lead to further slowdowns by increasing the risk of adjudication error.

B. The Proposed Form Change Will Contribute to Backlogs by Requiring USCIS Adjudicators to Re-Verify and Reevaluate Information That Has Already Been Provided to and Evaluated by Another Government Agency

As noted above, the proposed changes expand the burden on USCIS adjudicators to re-verify and re-evaluate information pertinent to inability to pay, which has already been reviewed by another governmental agency. Rather than being able to rely simply on a Notice of Action from a federal, state, or local government agency that performed an eligibility determination for a means-tested benefit, USCIS adjudicators will be performing their own income determination for all fee waiver applicants. This change will slow the processing of applications for an agency that already lags on processing times.

Currently, USCIS processing times for naturalization applications (N-400), Petitions for U Nonimmigrant Status (I-918), and I-360 petitions have more than doubled since 2017.[12] Rather than addressing the real concerns associated with the increases in processing times over the past two years, USCIS is instead proposing an unnecessary, unjustified, and burdensome form change that will only exacerbate this problem. Given significant increases in processing times, it makes no sense that USCIS would allocate its resources to duplicative work rather than to adjudicating the underlying immigration and naturalization petitions.

IV. The Proposed Form Change Would Increase the Burden on Legal Service Providers and Reduce the Availability of Legal Services

The proposed changes will increase the burden on non-profit legal service providers and limit access to immigration legal services for individuals in need. In addition, the changes will make it harder for legal service providers to help immigrants who cannot afford the fee apply for immigration benefits and naturalization. The proposed changes will limit the number of individuals whom immigration support organizations will be able to assist. Under the proposed form change, service providers will need to take a longer time explaining and assisting an applicant through the new process, including guiding applicants through the process of finding the new supporting information. Further, service providers will need to dedicate their limited time and resources to revising materials, procedures, and service models, as opposed to serving clients who most need their help.

A. Under the Proposed Form Change the Number of Individuals Who Can be Served Through the Workshop Model Will Be Reduced

Currently, non-profit immigration legal service providers organize workshops as the most efficient model to help eligible applicants apply for immigration benefits and naturalization. Workshops are helpful to both applicants and USCIS because having qualified attorneys and DOJ representatives provide legal services, including in remote areas of the United States that have few legal resources, allows for a reduction in errors and minimizes the fraudulent provision of immigration services.

With the proposed changes to the fee waiver form, it will become harder for non-profit legal service providers to complete applications in the workshop setting. Because workshops depend on having a streamlined process, and on having applicants provide all needed documents to the workshop, the proposed changes will confuse and frustrate individuals who do not have or know about the documentation required to qualify for a fee waiver. Legal service providers will face resource constraints in helping individuals provide significant documentation to prove their eligibility for a fee waiver. The proposed changes would make it so time-consuming and onerous to complete each fee waiver application that organizations may decide to stop providing assistance with fee waivers in the workshop setting. This would cut off access to legal support

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[12] For example, in the two years from 2016 to 2018, the N-400, Application for Naturalization, went from having a 5.6 month average adjudication time to a 10.4 month adjudication time in 2018; the I-918, Petition for U Nonimmigrant Status, went from having a processing time of 22.1 months to 40.4 months; and the I-914, Petition for T Nonimmigrant Status, went from a processing time of 7.9 months to 11.2 months. *See Historical National Average Processing Time for All USCIS Offices,* USCIS, https://egov.uscis.gov/processing-times/historic-pt.

and immigration relief for vulnerable populations, including for those in remote areas or other hard-to-reach groups.

B. The Proposed Form Change Disproportionately Impacts Services to Individuals in Under-Resourced Areas

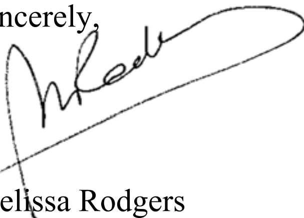
The impact on immigration legal services for under-resourced and rural communities will be especially profound. Many participants in group processing workshops in under-resourced areas qualify for fee waivers, and many depend on the receipt of means-tested benefits to prove their inability to pay the prescribed application fee. Numerous individuals in these remote areas will not have access to or knowledge of the new requirements to provide additional documentation to support their application for a fee waiver. Because of the shortage of legal service providers in these communities, the only time these individuals learn about the application process is often at a workshop. Under the proposed new form, legal service providers would need to dedicate additional time to each client, educating them about how to access IRS transcripts or other supporting documents to verify their income. We estimate that these changes would more than double the amount of time an application would take for a single client. This will limit the number of individuals service providers will be able to help, and the number of applications they will ultimately be able to complete at these workshops.

The proposed changes are problematic not only because of the increased time it will take to serve each client, but also because the changes will limit the locations in which these workshops can be held. Workshops for under-resourced communities often take place in very remote areas with limited access to the internet. If an applicant needs assistance obtaining an IRS transcript to support their fee waiver application, applicants will have to delay their application process until they are able to visit the legal service worker at their organization's office, which may be hours away.

V. Conclusion

The proposed changes to the fee waiver eligibility criteria, as well as the greater evidentiary burden on applicants and their families, will create insurmountable barriers for those seeking to secure their immigration status or naturalize so that they can participate fully in American democracy. We call for USCIS to withdraw the proposed changes to the fee waiver eligibility criteria and required forms of evidence. Instead, we urge USCIS to work to expand the types of documentary evidence accepted to establish eligibility for a fee waiver in order to ensure the fair and efficient adjudication of immigration benefits and naturalization. This will bring us closer to an inclusive process that honors our country's commitment to fairness and justice.

Sincerely,



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