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Executive Office for Immigration Review, Department of Justice
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RE: EOIR Docket No. 18-0101, RIN 1125-AA90; Fee Review

Dear Assistant Director Reid:

Catholic Charities USA (CCUSA) and the United States Conference of Catholic Bishops Migration and Refugee Services (USCCB/MRS) respectfully submit this comment on the proposed Executive Office for Immigration Review (EOIR) Fee Review, published on February 28, 2020. We are concerned about the proposed fee changes in the published notice and request that EOIR withdraw these proposals that make appeals, applications, and motions less accessible to respondents and could also negatively impact Catholic institutions who work with immigrants.

CCUSA is a national membership organization representing more than 166 diocesan Catholic Charities member agencies, which operate more than 2,600 service locations across the country. Their diverse array of social services reached more than 12.5 million individuals in need last year, and included immigration and refugee services. Our Catholic heritage includes a scriptural call to provide hospitality to newcomers as if welcoming Christ Himself. The Catholic Church, like our nation as a whole, finds its identity and roots in various immigrant communities. We affirm the inherent dignity bestowed by God on every human person, including immigrants and refugees, no matter the circumstances that compel a person to begin a new life in our community.

The USCCB is a nonprofit corporation whose members are the active Catholic bishops of the United States. USCCB advocates and promotes the pastoral teachings of the U.S. Catholic bishops in diverse areas of the nation's life. For years, USCCB's Committee on Migration has collaborated with the U.S. government to welcome and provide direct services to unaccompanied immigrant children, U.S. and foreign-born victims of human trafficking and refugees. USCCB/MRS advocates on behalf of these and other immigrant populations to advance the migration policy priorities of USCCB's Committee on Migration.

CCUSA and USCCB/MRS oppose these dramatic increases in EOIR fees associated with filings for the Board of Immigration Appeals (BIA) appeals, cancellation of removal or suspension of

deportation applications, asylum applications, and motions to reopen or reconsider before the immigration courts or the BIA. The proposed fee increases for most applications are unconscionably high. The greatest increase to appeal the decision of an immigration judge is nearly 800 percent, from \$110 to \$975. This astronomical fee increase places the pursuit of justice outside the grasp of even families with moderate incomes. Likewise, motions to reopen or reconsider before the BIA would rise to \$895. The proposed fee levels are unreasonable and disproportionate to comparable fees in federal courts. The proposed fees also make it increasingly difficult to access justice.

EOIR should ensure that appeals, applications, and motions remain accessible and affordable. These filings are essential to upholding the principles of access to justice and the right to due process. Those who cannot afford these fees may be unable to apply for relief or appeal erroneous decisions. Respondents have only 30 days after an immigration judge's decision to file an appeal, which is a very short timeframe to obtain the \$975 fee. It is not uncommon for immigration judges to make errors and these changes would significantly hinder the applicant's ability to correct errors and seek justice. We suggest that EOIR withdraw the proposal in its entirety. However if EOIR imposes increased fees, we formally recommend that EOIR should clarify that if a request by an individual for a fee waiver is denied, the 30-day filing deadline will be restarted from the date of that denial.

In 2018, 108 Catholic Charities agencies helped welcome and integrate over 300,000 immigrants, refugees, and asylees. This fee increase amounts to a denial of due process for the clients Catholic Charities serve. Clients first have to file with the EOIR for either an appeal or case re-opening before arguing their case in federal immigration court. The sheer amount of the fee increase is an abridgment of the constitutional right to due process based on income. These astronomical fees will lead to the inability to file relief applications, petitions, motions or appeals and may lead to deportation to countries which immigrants do not know or have ties to, particularly for Deferred Action for Childhood Arrivals (DACA) recipients, among others. Vulnerable populations such as domestic violence victims, unaccompanied minors and survivors of torture will also be harmed by these proposed fee increases. The ramifications can lead to a lifetime of mental and emotional harm and family separation. Increasing the fees will also have an impact around the compliance with U.S. immigration law that all individuals see to the extent that they are able. By making such costs prohibitive, you discourage people with legitimate claims from participating in our independent judicial process.

Our agencies serve low-income immigrants at minimal cost across the country with high quality and accredited immigration legal services. Our agencies operating in expensive localities, such as Catholic Charities San Diego, recognize how the proposed fees and the high cost of living in locations like southern California will disproportionately affect low-income families struggling to make ends meet while pursuing their immigration cases. We are very worried that unscrupulous actors will utilize these proposed fee increases to attempt to impose even higher financial demands on vulnerable immigrant communities. Economic realities may lead these immigrants to use *notarios* against their best interests. Making immigration appeals and court filings more costly will result in less accountability and lead to an increase in ineffective and harmful *notario* services that prey on immigrants.

Individuals who otherwise may prevail with their motion or appeal will be prevented access to justice due to these proposed fees. These proposed fees heighten low-income immigrants' inability to pursue their case. Many of the people most in need of access to our judicial system do not have enough income to pay for representation and the new exorbitant fees. While fee waivers are available, they are not guaranteed.

While the proposed rulemaking states that current EOIR fee waiver policies would remain available, it does not acknowledge that with fees rising as much as 800%, the number of fee waiver requests will also increase dramatically. Respondents' increased reliance on fee waivers under this proposal would heighten the burden on judges to adjudicate fee waiver requests. The increasing number of fee waiver requests would divert valuable judicial resources to adjudicating fee waivers rather than substantive claims at a time when the court already has a backlog of more than a million cases. Keeping EOIR fees at a level that most respondents can afford ensures that fee waivers do not become necessary for nearly all filings and do not become a source of increasing backlogs.

Fee waivers may be granted for detained clients, but they face extreme obstacles in the current immigration processes that are drastically heightened if a fee waiver is denied. The proposed fees would only exacerbate the pursuit of justice for detained individuals, particularly for those denied a fee waiver. A detained person's only access to income is \$1 a day for a volunteer job while in detention. If they are quarantined during the current COVID-19 global pandemic or unable to work for other reasons, they will have further limited access to earning finances for their case and well-being. Daily earnings of \$1 are small amounts but necessary for immigrants to buy telephone "minutes" to make personal calls or buy necessary items in the commissary. Detained individuals are already at a disadvantage in obtaining counsel and evidence. The proposed fee increase poses an extreme and unnecessary disadvantage to continue their case. Without financial means from family or friends in the U.S., they are likely out of options.

EOIR also plans to charge a \$50 fee for asylum applications for the first time ever; DHS recently proposed the same fee for affirmative asylum applications. The United States has a moral imperative to accept asylum seekers as well as obligations under domestic and international laws. As a signatory to the 1967 Protocol of the 1951 Convention Relating to the Status of Refugees, the United States has an obligation to accept asylum seekers who seek protection. The administration appears to acknowledge that sending those facing persecution into harm's way because they cannot pay a fee would run afoul of international law by allowing respondents to submit an I-589 without a fee if they seek only withholding of removal or protection under the Convention against Torture (CAT), but not asylum. These lesser forms of relief are in no way comparable to asylum, because they do not have a path to lawful permanent residence or citizenship. Furthermore a respondent who wins withholding or CAT protection will likely face permanent separation from family members because there is no provision for them to apply for family members as derivatives.

Refusing asylum applicants for the inability to pay would effectively cause the United States to break its treaty obligations and flies in the face of the basic intent of the 1980 Refugee Act. In fact, the vast majority of countries that are signatories to the 1951 Convention or 1967 Protocol do not charge a fee for an asylum application.¹ First-time asylum seekers are ineligible for a work permit,

¹ 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->

so charging them \$50 to simply access asylum protections may force them to depend on charity or choose between feeding their families and paying this fee. This uncertainty may result in asylum seekers renouncing this protection altogether. The United States has long been a world leader in refugee protection. If the United States imposes a filing fee for asylum, other countries may begin to do the same. The United States should adhere to its international and domestic obligations and not refuse asylum seekers their chance to seek protection simply for the inability to pay.

We are also concerned that such significant changes are being proposed with only a 30-day comment period, rather than the traditional 60 days.² EOIR acknowledges that it has not conducted a fee study in 33 years. Further, our nation's response to the COVID-19 workforce limitations warrant additional time for concerned advocates and practitioners to review these proposed fee changes. Since EOIR has not changed its fees in over three decades, it is imperative that the public be granted sufficient time to understand the reasons and methodology EOIR used to arrive at such substantial increases, and how EOIR plans to ensure that vulnerable, low-income noncitizens will be able to assert their rights in immigration court and before the BIA.

CCUSA and USCCB/MRS urge EOIR to withdraw its proposed fee increases and maintain its current fee levels for appeals, applications, and motions. EOIR has historically drawn the majority of its funding from congressional appropriations.³ Unlike USCIS, EOIR is not a fee-funded agency. The rulemaking never explains why EOIR needs this additional money, nor does it state that it cannot cover its operating costs through congressional appropriations, or that it must be self-sustaining and why. Any increased funding that EOIR requires should be requested through the appropriations process as it has done in previous years.

Thank you for the opportunity to submit comments on the proposed fee schedule. Please do not hesitate to contact our offices should you have any questions.

Best,



Brian R. Corbin
Executive Vice President,
Member Services
Catholic Charities USA



William A. Canny
Executive Director
Migration and Refugee Services

[trump.html](#) (noting that the United States would be only the fourth country in the world to charge a fee for asylum).

² See, e.g., Executive Order 12866 (Sept. 30, 1993) (stating that agencies should allow “not less than 60 days” for public comment in most cases, in order to “afford the public a meaningful opportunity to comment on any proposed regulation”); see also Executive Order 13563 (January 18, 2011) (stating that “[t]o the extent feasible and permitted by law, each agency shall afford the public a meaningful opportunity to comment through the Internet on any proposed regulation, with a comment period that should generally be at least 60 days”).

³ See, e.g., Executive Office for Immigration Review, Department of Justice, *FY 2020 Budget Request*, www.justice.gov/jmd/page/file/1142486/download.