NATIONAL
IMMIGRATION
LAW CENTER
www.nilc.org

LOS ANGELES
HEADQUARTERS
3435 Wilshire Boulevard
Suite 2850
Los Angeles, CA 90010
213 639-3900
fax 213 639-3911

WASHINGTON, DC
1101 14th Street, NW
Suite 410
Washington, DC 20005
202 216-0261
fax 202 216-0266

OAKLAND
405 14th Street
Suite 1400
Oakland, CA 94612
510 663-8282
fax 510 663-2028

April 2, 2007

Sent by E-mail to OSComments@dhs.gov.

Director, Regulatory Management Division
US Citizenship and Immigration Services
Department of Homeland Security
111 Massachusetts Ave. NW, 3rd floor
Washington DC 20529.

**Re: DHS Docket # USCIS-2006-0044**
**Proposed rule— Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule**

On behalf of the National Immigration Law Center, I am writing to strongly oppose the proposed increases of immigration and naturalization fees contained in the proposed rule that US Citizenship and Immigration Services (USCIS) published in the Federal Register on February 1, 2007. 72 FR 4888 (Feb. 1, 2007)("Proposed Rule").

The National Immigration Law Center is a nonprofit legal advocacy center that works to protect and promote the rights and opportunities of low-income immigrants and their family members. Their having access to apply for naturalization, lawful permanent resident status, employment authorization, and other immigration and naturalization benefits is a core concern of NILC.

The extraordinary and unprecedented fee increases of the proposed rule would have a devastating impact on the ability of low-income immigrants and their family members to apply for immigration and naturalization benefits. The magnitude of the increases, considered by themselves and even more so in conjunction with past increases, cannot be considered fair or reasonable by any standard. Indeed, even under the current fee schedule, low to middle income immigrants already must sometimes save money for months before they can afford the filing fees for many applications.

To take one example of the drastic increases being proposed, the fee for the N-400 application for naturalization would jump from $330 to $595, an increase of over 80 percent. And the new fee would be a 526 percent increase over the $95 fee for this application just ten years ago, and almost a ninefold increase over the $60 1990 fee, even without taking into account the biometrics fee that did not exist then.

Under the proposed rule fees for most other benefits would go up in a comparable fashion. The proposed increase for the I-485 adjustment of status application is particularly outrageous, increasing nearly threefold, from $325

to $900. These increases would place huge obstacles in the way of families seeking to obtain citizenship, permanent residence, or other critical benefits for which they are eligible.

Moreover, the methods used to arrive at the fee increases appear to include a number of flawed assumptions that violate the general principles of the Independent Offices Appropriations Act (IOAA), 31 U.S.C. § 9701, that fees must be fair and related to the cost of providing a benefit. While Congress has provided that fees collected should ensure recovery of the full costs of providing adjudication and naturalization services, including the costs of services provided free of charge to asylum applicants or other immigrants (INA § 286(m)), the proposed rule's calculations exceed these limits and instead serve to grossly inflate the fee.

For example, USCIS's compilation of costs to be offset by fees includes a long list of "enhancements" that require massive investment. See, e.g., Section IV.D.3 of the proposed rule. While these improvements may be desirable, they also will take time to realize, and will provide no benefit at all to the immigrants who will be forced to invest in them when they apply for benefits once a new fee schedule is put in effect. These kind of long-term improvements are precisely the kinds of expenditures that should come from congressional appropriations of public funds, rather than from fees. To expect today's applicants for immigration benefits to shoulder the costs of every long-term improvement that the agency deems desirable, despite the fact that no benefit will accrue to them, is wholly unreasonable. This method of fee calculation in effect imposes a tax, rather than a reasonable fee.

Another defect in the calculation is illustrated in the rationale for the particularly great increase in the fee for the I-485 adjustment of status application. USCIS proposes to have this fee encompass the cost of "interim benefits" – adjudication of applications for employment authorization and advance parole for trips abroad while the adjustment application is pending – rather than continuing to charge separate fees for these adjudications. There is a kernel of merit in the concept underlying this proposal – were the agency to provide adjustment applicants with employment authorization and permission to travel upon receipt of the I-485 application for the duration of the time their adjustment applications are pending it would greatly streamline costs and workload. But this proposal fails to realize that concept, instead retaining the requirement that adjustment applicants apply for these interim benefits as needed. Thus the workload remains, and the cost remains.

Moreover, the proposed rule, by incorporating the cost of "interim benefits" into the I-485 fee, would charge <u>all</u> adjustment applicants the estimated cost of adjudicating employment authorization and advance parole applications,

although many adjustment applicants never use these benefits. For example, asylees who adjust are employment authorized incident to their status and do not need a work permit while their adjustment applications are pending. Similarly, children under 14 years of age and elderly applicants may only rarely apply for an EAD. In addition, only a small percentage of adjustment applicants apply for advance parole. Moreover, as the commentary recognizes, the demand for these benefits will decline as processing times decrease for the underlying adjustment applications. Thus combining the processing costs of the applications for interim benefits with the I-485 application fee is completely unfair, and violates the principle of connecting the fee to the cost of providing the benefit to the applicant.

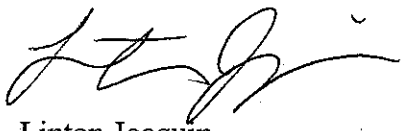
The proposed rule is also alarming in its treatment of fee waivers, particularly given the high fees that are proposed. The proposed rule would eliminate waivers for certain applications, based on the erroneous assumption that an immigrant's inability to pay a high fee implicates the public charge ground of inadmissibility. This is simply untrue. The determination of whether an individual is likely to become a public charge is a prospective test. The test does not require that an immigrant have large amounts of extra cash on hand such as would be needed under the proposed rule. Moreover, many immigrants who apply for adjustment are exempt from the public charge ground of exclusion, such as refugees and asylees. Currently many immigrants must struggle and save to pay the current fees, and unquestionably the gigantic increases being proposed would pose a major obstacle, delaying or preventing their applying for permanent residence.

The proposed fee increases are so high that they compel a recognition that many people will be unable to afford the fees, and the agency should be expanding rather than contracting the use of fee waivers. The proposed rule should allow for individual determinations as to whether a fee waiver should be granted for all types of applications.

As a policy matter, immigration and citizenship are public goods that benefit our entire country and that we as a nation should help pay for. Immigrants bring their talent and hard work to our economy. They pay taxes and help revitalize our communities. In becoming citizens, immigrants demonstrate their strong commitment to their new home country by learning English, gaining knowledge about American history and government, and swearing allegiance to the United States. It is little wonder that newly naturalized citizens, eager to participate in our democracy, consistently vote at higher rates than other citizens. We should be encouraging immigrants to become part of our community by gaining legal status and becoming citizens, not setting up barriers that block their path and keep them out.

For all these reasons, the proposal to increase immigration and naturalization fees is legally flawed, misguided, and counterproductive. We urge USCIS to reconsider this proposal, and to seek other sources of funding for improvements and other operations, rather than add more burdens on immigrants. Thank you for your consideration.

Sincerely,



Linton Joaquin
Executive Director