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Lauren Alder Reid
Assistant Director
Office of Policy
Executive Office for Immigration Review, Department of Justice
5107 Leesburg Pike, Suite 2600
Falls Church, VA 22041

RE: EOIR Docket No. 18-0101, RIN 1125-AA90; Fee Review

Dear Assistant Director Reid:

UnidosUS respectfully submits 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.

Since 1968, UnidosUS—formerly known as the National Council of La Raza—has been committed to building a stronger America by creating opportunities for Latinos. In this rich 50-year history, UnidosUS has remained a trusted, nonpartisan voice for Latinos, serving the community through research, policy analysis, and state and national advocacy. We also work closely with a network of nearly 300 community-based organizations in 37 states, the District of Columbia, and Puerto Rico, to serve our community in a variety of areas including civil rights and immigration, education, and health. Many of our community partners provide direct services in these areas. This proposed fee schedule frustrates our immigrant integration goals, undermines the integrity of our legal immigration system established under our laws, and would inflict significant harm on our communities.

UnidosUS opposes these sudden and dramatic increases in EOIR fees associated with filings for appeals to the Board of Immigration Appeals (BIA), applications for cancellation of removal or suspension of deportation, applications for asylum, 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 is nearly 800 percent, from \$110 to \$975, to appeal the decision of an immigration judge, placing it outside of the grasp even of families with a moderate income. 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.

UnidosUS also strongly opposes EOIR's complete lack of impact assessment that should accompany a significant proposed rule change, as well as the implication that such changes would not impact small entities. Indeed, even before the COVID-19 crisis, the Federal Reserve's annual Report on the Economic Well-Being of U.S. Households shows that at least four in ten Americans would be unable to pay for an unexpected \$400 expense.^{*} Recent polling by UnidosUS suggests that only 25% of Latino families could afford such an expense. The number of Americans who would struggle would undoubtedly be higher if the Federal Reserve were to ask about a \$975 unexpected expense.

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. Some may turn for assistance to unscrupulous actors who prey on immigrants, thus this proposed rule is contrary to the work of the government agencies to warn immigrants and educate them to beware of immigration scams.

Respondents have only 30 days after an immigration judge decision to file an appeal; this 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 seek justice to correct them. We suggest that EOIR withdraw the proposal in its entirety, however if EOIR imposes increased fees, it should clarify that if a request for a fee waiver is denied, the 30-day filing deadline will be restarted.

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.

^{*} Federal Reserve System Board of Governors, "Report on the Economic Well-Being of U.S. Households in 2018," May 2019, <https://www.federalreserve.gov/publications/files/2018-report-economic-well-being-us-households-201905.pdf> (accessed March 26, 2020).

We are also concerned that such significant changes are being proposed with only a 30-day comment period, rather than the traditional 60 days.* EOIR acknowledges that it has not conducted a fee study in 33 years. 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.

UnidosUS urges 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.† 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 needs 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 Laura Vazquez, lvazquez@unidosus.org to provide further information.

Laura Vazquez
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* 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”).

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