

April 16, 2019

Ms.Samantha Deshommnes, Chief
Regulatory Coordination Division, Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue NW
Washington, DC 20529-2140

Re: Public Comment Opposing Form G-1530: USCIS Tip Form
OMB Control Number 1615–NEW; Docket ID USCIS-2019-0001
Submitted via www.regulations.gov

Dear Ms. Deshommnes:

The following eight organizations that are members of the Steering Committee of the National Task Force to End Sexual and Domestic Violence (“NTF”) submit this comment to express opposition to the proposed Form G-1530: USCIS Tip Form, OMB Control Number 1615 - NEW, Docket ID USCIS-2019-0001, published in the Federal Register on February 15, 2019 (hereinafter “USCIS Tip Form”).¹

The NTF comprises of a large and diverse group of national, tribal, state, territorial and local organizations across the country. For over twenty-five years, members of the NTF have focused on the development, passage and implementation of effective public policy to address and prevent domestic violence, dating violence, sexual assault and stalking. As the Steering Committee of the NTF, we represent thousands of organizations and advocates across the country dedicated to ensuring that all survivors of domestic violence and sexual assault receive the protections they need and deserve, including those from marginalized communities.

Many of our organizations worked with Congress to create essential protections in the bipartisan Violence Against Women Act of 1994 (VAWA) and in subsequent reauthorizations of the law. VAWA’s legislative history makes clear that one of the critical goals of this landmark legislation was to alleviate the barriers that immigrant survivors often face accessing protection and safety, noting that immigrant survivors “. . . should not have to choose to stay with their abusers in order to stay in the United States.”²

¹ U.S. Citizenship and Immigration Services. “Agency Information Collection Activities; New Collection: USCIS Tip Form”, 84 FR 4518 (February 15, 2019), available at <https://www.federalregister.gov/documents/2019/02/15/2019-02381/agency-information-collection-activities-new-collection-uscis-tip-form>

² 146 Cong. Rec. S10185 (2000) (statement of Sen. Patrick Leahy), available at: <https://www.govinfo.gov/content/pkg/CREC-2000-10-11/pdf/CREC-2000-10-11-senate.pdf> See also 146 Cong.

The NTF is dedicated to keeping survivors safe and free from continuing trauma, while holding perpetrators accountable. The USCIS Tip Form should be withdrawn as it does neither; it has the potential to create additional risks and barriers for immigrant survivors of domestic violence, sexual assault, dating violence and stalking and would embolden perpetrators of violence to further weaponize the immigration system against survivors, without consequence or repercussion.

I. The USCIS Tip Form Increases Barriers and Risks for Survivors

The U.S. Congress has long recognized that protecting victims of domestic violence, sexual assault, human trafficking, and other crimes is in keeping with the humanitarian interests of the United States. Congress has also acknowledged that abusers often use a victim's immigration status as a tool of power and control. This understanding led to legal provisions in the Violence Against Women Act (VAWA) and the Trafficking Victims Protection Act intended to protect immigrant victims of crimes.

One of the most intimidating tools abusers and traffickers of immigrants use is the threat of deportation.³ As reported by the National Domestic Violence Hotline (NDVH), abusers often threaten survivors that if they go to police or the court they will be arrested because they are undocumented or threaten to call immigration enforcement to have survivors arrested or deported.⁴ In its 2017 Impact Report, the NDVH indicated that nearly 8,000 victims who had contact with the Hotline were struggling with immigration issues.⁵

Recent changes in immigration policy are sharpening the tools of abusers and resulting in increased risks of harm to survivors. Unfortunately, abusers' threats that victims will be deported and separated from their children are being actualized. Victims have been arrested at courthouses,⁶ abusers try to manipulate the legal system against survivors,⁷ and immigrant survivors around the

Rec. S8571 (2000) (statement of Sen. Paul Sarbanes) (“[VAWA II] will also make it easier for battered immigrant women to leave their abusers without fear of deportation.”), available at: <https://www.govinfo.gov/content/pkg/CREC-2000-09-14/pdf/CREC-2000-09-14-senate.pdf>

³ Stacey Ivie et al., *Overcoming Fear and Building Trust with Immigrant Communities and Crime Victims*, INT’L ASS’N OF CHIEFS OF POLICE (Apr. 2018), available at http://library.niwap.org/wp-content/uploads/PoliceChief_April-2018_Building-Trust-With-Immigrant-Victims.pdf.

⁴ National Domestic Violence Hotline, *Abuse and Immigrants*, available at: <https://www.thehotline.org/is-this-abuse/abuse-and-immigrants/>.

⁵ National Domestic Violence Hotline. “2017 Impact Report.”, available at <https://www.thehotline.org/wp-content/uploads/sites/3/2018/06/2017-Impact-Report-DigitalFINAL.pdf>

⁶ E.g. Michael Gordon. “Mother and her son turned up for a domestic-violence case. Then ICE arrested them” *Charlotte Observer* (July 20, 2018), available at: <http://bit.ly/2SXzmfw>

⁷ See e.g. Justin Fenton. “Baltimore attorney arrested for allegedly offering rape victim \$3K to not testify, saying Trump will deport her” *The Baltimore Sun* (May 24, 2017), available at: <http://bit.ly/2BNI2dF>

country are afraid to reach out for help to address domestic violence and sexual assault due to fears of deportation.⁸

The results of a 2017 survey of advocates and attorneys further illustrate this chilling effect. 78 percent of respondents to the survey reported that immigrant survivors expressed concerns about contacting the police and 43 percent of advocates worked with immigrant survivors who dropped civil or criminal cases because they feared continuing their cases.⁹ In another recent survey, 69 percent of law enforcement officials reported that domestic violence was harder to investigate due to immigrant survivors' unwillingness to come forward.¹⁰ 64 percent of law enforcement also expressed concern for community safety when immigrant crime survivors are afraid to seek assistance.¹¹

Recognizing that abusers will often try to manipulate legal systems against survivors, Congress created critical protections for the information that survivors share with officials that are “. . . designed to ensure that abusers and criminals cannot use the immigration system against their victims.”¹² Among these protections is that DHS and other agencies may not make adverse determinations on survivor-based cases based on information solely provided by a perpetrator or a member of a perpetrator's household or family member, with extremely limited exceptions.¹³ These protections are so critical that they apply regardless of whether an application for immigration relief is pending with USCIS and carry a \$5,000 civil penalty and disciplinary action if violated.¹⁴ DHS itself recognized:

Violations of Section 1367 could give rise to serious, even life-threatening, dangers to victims and their family members. Violations compromise the trust victims have in the efficacy of services that exist to help them and, importantly, **may unwittingly aid perpetrators retaliate against, harm or manipulate victims**

⁸ See e.g. Claudia Boyd-Barrett, “Facing Anti-Immigrant Rhetoric and ICE Raids, Fewer Undocumented Victims Willing to Report Domestic Violence” California Health Report (Feb. 21, 2019), available at <http://bit.ly/2H2rzpK>

⁹ “2017 Advocate and Legal Service Survey Regarding Immigrant Survivors.” Available at: <http://www.tahirih.org/wp-content/uploads/2017/05/2017-Advocate-and-Legal-Service-Survey-Key-Findings.pdf>

¹⁰ “Freezing Out Justice: How immigration arrests at courthouses are undermining the justice system,” American Civil Liberties Union, 2018. Available at: <https://www.aclu.org/report/freezing-out-justice>

¹¹ *Id.*

¹² See 8 USC 1367; See also “Department of Justice Appropriations Authorization Act, Fiscal Years 2006 through 2009: Report of the Committee on the Judiciary, House of Representatives, to accompany H.R. 3402” H.R. Rep. No. 109-233, at 120 (2005). Available at: <https://www.congress.gov/109/crpt/hrpt233/CRPT-109hrpt233.pdf>

¹³ See 8 USC 1367; This protection applies to abused spouses and children generally as well as to those who are eligible to apply for benefits as VAWA self-petitioner, or who are eligible for VAWA cancellation, U visa or T visa relief.

¹⁴ See 8 USC 1367; See also Department of Homeland Security, “Implementation of Section 1367 Information Provisions” DHS Instruction Systems. Instruction Number: 002-02-001. Revision Number: 00., available at https://www.dhs.gov/sites/default/files/publications/implementation-of-section-%201367-%20information-provisions-instruction-002-02-001_0_0.pdf.

and their family members, and elude or undermine criminal prosecutions.¹⁵

DHS' own guidance states that “. . . abusers often claim their marriage is fraudulent in order to exact revenge or exert further control over the victim.”¹⁶ The proposed USCIS Tip Form will serve as a tool for abusive partners and perpetrators of crime to anonymously accuse survivors of fraud, to manipulate survivors, potentially harm their immigration cases, and perpetuate the cycle of power and control with total impunity. While the USCIS Tip Form indicates that reporting individuals may list their name and contact information, it is not a requirement. Furthermore, the USCIS Tip Form does not contain a statement requiring the reporter to verify the veracity of the allegations nor list any consequences or penalties for providing false information.¹⁷

USCIS has not provided any information about how it will handle and respond to these anonymous tips. It does not indicate whether there are legal and procedural safeguards to determine the validity of information provided by anonymous tips and to accurately assess whether they are impermissibly motivated by abuser retaliation. Without this information, it is unclear whether reported survivors will have any access to due process or any recourse against false reports.

II. The USCIS Tip Form is Unnecessary and Ineffective

Based upon the breadth of experience and expertise of our organizations, we hold that the USCIS Tip Form is unnecessary and will cause significant harm to immigrants, including immigrant survivors and their children.¹⁸ Furthermore, the proposed USCIS Tip Form is an unneeded redundancy, as the Department of Homeland Security (DHS) already has various mechanisms in place for the public to report suspected fraud.¹⁹ Thus, the proposed USCIS Tip Form does not solve any demonstrable insufficiencies in current processes and procedures and is duplicative of existing efforts.²⁰ USCIS already has significant backlogs in adjudicating claims, resulting in lengthy delays that undermine safety for victims who have submitted applications for the VAWA self-petition, the U visa for victims of crime, and the T visa for victims of trafficking. The USCIS

¹⁵ Department of Homeland Security, *Implementation of Section 1367 Information Provisions*, DHS Instruction Systems. Instruction Number: 002-02-001. Revision Number: 00., available at https://www.dhs.gov/sites/default/files/publications/implementation-of-section-%201367-%20information-provisions-instruction-002-02-001_0_0.pdf. [Emphasis added].

¹⁶ *Id.*

¹⁷ *Cf. e.g.* Immigration and Customs Enforcement (ICE) Homeland Security Investigation Tip Form (last updated 08/23/2018), available at <https://www.ice.gov/webform/hsi-tip-form>

¹⁸ *See* note 1 *supra*. The February 15th Federal Register Notice asks commenters to evaluate “whether the proposed collection of information is necessary for the function of the agency, including whether the information will have practical utility.”

¹⁹ *See e.g.* Immigration and Customs Enforcement (ICE) Homeland Security Investigation Tip Form (last updated 08/23/2018), available at <https://www.ice.gov/webform/hsi-tip-form> *See also* USCIS. “Report Fraud” (last updated March 4, 2019), available at <https://www.uscis.gov/report-fraud>

²⁰ *See* 5 CFR 1320.5(d)(1)(ii).

tip form will only lead to further delays, while simultaneously undermining effective adjudication and the integrity of the process.

III. Conclusion

Our organizations are extremely concerned about preventing fraud, as it undermines the integrity of our institutions and the experiences of survivors. However, we strongly believe that the current mechanisms in place to identify and manage fraud are adequate, and that the USCIS Tip Form does not contribute to those efforts, rather, it threatens existing protections for immigrant survivors of domestic violence, dating violence, sexual assault, stalking and trafficking. We call for its immediate withdrawal.

We are grateful for your careful consideration of our comments. For additional information, you may contact Rosie Hidalgo at rhidalgo@casadeesperanza.org.

Respectfully submitted,

Casa de Esperanza: National Latin@ Network for Healthy Families and Communities
Futures Without Violence
Legal Momentum
National Alliance to End Sexual Violence
National Coalition Against Domestic Violence
National Domestic Violence Hotline
National Network to End Domestic Violence
National Resource Center on Domestic Violence