

October 12, 2020

Michael J. McDermott,
Security and Public Safety Division, Office of Policy and Strategy,
U.S. Citizenship and Immigration Services,
Department of Homeland Security,
20 Massachusetts Ave. NW,
Washington, DC 20529-2240

Re: Collection and Use of Biometrics by U.S. Citizenship and Immigration Services;
DHS Docket No. USCIS-2019-0007; RIN 1615-AC14
Submitted via: www.regulations.gov

Dear Mr. McDermott:

On behalf of Casa de Esperanza: National Latin@ Network for Healthy Families and Communities, I submit this comment in response to the U.S. Citizenship and Immigration Service (USCIS) proposed rule, entitled “Collection and Use of Biometrics by U.S. Citizenship and Immigration Services” initially published in the Federal Register on September 11, 2020 (hereinafter “proposed rule”). For the reasons outlined below, we urge USCIS to withdraw the proposed rule.

Casa de Esperanza works directly with immigrants, including those who are survivors of domestic and sexual violence, those affected by human trafficking, and children who have suffered abuse, abandonment, or neglect. As an organization committed to enhancing access to safety for survivors, we are deeply concerned about the myriad ways this proposed rule vastly expands the collection of biometrics which will have a unique and significant negative impact on survivors of domestic violence, sexual assault, human trafficking, and other crimes. Not only will the proposed rule deter survivors from coming forward to access benefits specifically created for their protection, it will also increase the level of risk to survivors’ safety, privacy, and security.

Casa de Esperanza was founded in 1982 in Minnesota to provide emergency shelter and support services for women and children experiencing domestic violence. Additionally, in 2009 Casa de Esperanza launched the National Latin@ Network for Healthy Families and Communities, which is a national resource center that provides training & technical assistance, research, and national policy advocacy focused on addressing and preventing gender based violence, primarily in Latino and immigrant communities. Our organization works directly with immigrant victims of domestic and sexual violence seeking services and safety. Additionally, our research staff has been involved in community participatory research projects and other research initiatives that highlight the experiences of immigrant survivors, the barriers they encounter, and the ways in which they experience re-traumatization due to inadequate systems responses.¹ The research indicates that

¹ Rodriguez, R., Serrata, J. V., Macias, R. M., Hildago, R., Nava, N., & Garcia, O. (In press). IPV among Latina survivors: Unique considerations, strategies and opportunities. In Geffner, R., Vieth, V., Vaughan-Eden, V., Rosenbaum, A., Hamberger, L.K., & White, J. (Eds.), *Handbook of interpersonal violence across the lifespan*. Springer International Publishing (2020). See also: Rodriguez, R., et al., Action research at the intersection of structural and family violence in an immigrant latino community: a youth-led study. *Journal of Family Violence*, (2018). 33(8): p. 587- 596.

immigration status is often used as a tool of abuse by perpetrators and can result in significant barriers that prevent immigrant survivors from accessing services and safety. The new biometrics rule would make it even harder for survivors to access services. Based upon these experiences providing services and support to survivors and advocates at the local and national level, we strongly oppose the proposed rule, which will only further undermine victim safety, and urge that it be rescinded. The research indicates that fears regarding immigration issues and concerns about confidentiality are some of the barriers that can prevent Latina survivors from accessing services. Based upon these local and national experiences, we strongly oppose the proposed rule and request that it be rescinded.

I. USCIS has provided insufficient opportunity to comment

The proposed rule is deeply flawed substantively and procedurally. Executive Order 12866 provides that agencies “should afford the public a *meaningful opportunity* to comment on any proposed regulation, which in most cases should include a comment period of *not less than* 60 days.” USCIS has placed unjustified administrative and personal burdens on organizations like ours by providing such an inadequate timeframe in which to submit comments.

The importance of a sufficient comment period is even more critical due to the extraordinary changes to working conditions caused by the COVID-19 pandemic. The pandemic has caused an increased rate of domestic and sexual violence particularly by already marginalized populations and have augmented the complexity and challenges of serving survivors. Agencies that serve survivors are either at capacity or must now navigate additional and novel barriers in their service provision.

It takes time to collect information, particularly given that many of our advocates, researchers and programmatic staff members are spread throughout the country, in different time zones with varying situations of “work from home.” Some staff are now juggling work as full-time caretakers and others have had to scale back the number of hours of work. Additionally, gathering information from our direct service providers, those who provide assistance to survivors of intimate partner violence, do not have “traditional” work hours and it takes longer periods of time to gather relevant information for these kinds of public comments. Therefore, we need at minimum 60 days to respond with more precision. This short time frame has placed an undue burden of urgency when we need to prioritize providing assistance to survivors and service providers, in keeping with our mission.

Our agency has also been preoccupied with preparing other public comments to proposed rule changes, including the EOIR regulations impacting administrative closure and other procedural changes, as well as changes to asylum policy, among others.

For these procedural deficiencies alone, the USCIS should withdraw the proposed rule. Immigrant survivors of domestic violence and human trafficking are uniquely impacted by this proposed rule. USCIS does a disservice to these survivors and to service providers that serve them by providing such a limited time frame to respond to such substantive challenges.

II. The Proposed Rule will exacerbate an already existing chilling effect on survivors coming forward to access protections created for their safety.

As the proposed rule acknowledges, “For many immigrant victims of domestic violence, battery, or extreme cruelty, the U.S. citizen or lawful permanent resident family members who sponsor their applications threaten to withhold legal immigration sponsorship as a tool of abuse.” For this reason, a bipartisan majority in Congress enacted the Violence Against Women Act (VAWA) and later the Trafficking Victims Protection Act (TVPA) which contained protections for immigrant survivors. These forms of relief play a critical role in helping survivors and their families find independence, safety and stability.

Over the last several years, the Department of Homeland Security’s (DHS) constant barrage of calculated policy shifts have made it significantly harder for survivors to seek these remedies that were intended to provide protection to the most vulnerable, and have made it much more difficult and onerous for service providers to render assistance. These policy changes have created a significant chilling effect in a survivors’ willingness to reach out to access these protections Congress created for them.

We are providing information from two recent national surveys of attorneys and advocates who work with immigrant survivors that indicate the chilling effect these changes in immigration policy have caused. Recent surveys of the field from 2017² and 2019³ show how advocates and attorneys have seen increased fear among immigrant survivors who are afraid to contact law enforcement or go to the courts for assistance. The survey respondents indicated how numerous policy changes have a chilling effect and also result in confusion that often discourages immigrant survivors from seeking safety (including among those who are undocumented or who have temporary immigration status, legal permanent residency, or who live in mixed-status households) and often results in fear of accessing medical/health, nutrition and social service programs to which they and/or their children may be entitled.⁴ This includes general fear in interacting with state agencies, and increased confusion about state and federal benefit programs, as a result of changes to the public charge rules. Attorneys and advocates shared how immigrant survivors also face increased barriers when pursuing immigration remedies due to numerous other changes in administrative policies and practices, including, among other things, significant increases in fees and greater restrictions to access fee waivers, increased risks of detention, difficulties in obtaining certifications from law enforcement or other agencies for U visa applications, and significant changes to the rules for seeking and obtaining asylum protections for those fleeing gender-based violence. The proposed rule will further exacerbate an already existing chilling effect on survivors coming forward to access protections created for their safety.

A. Expansion of Biometrics

² Advocate and Legal Service Survey Regarding Immigrant Survivors, available at: <https://www.tahirih.org/wp-content/uploads/2017/05/2017-Advocate-and-Legal-Service-Survey-Key-Findings.pdf>

³ Immigrant Survivors Fear Reporting Violence, available at: <https://www.tahirih.org/wp-content/uploads/2019/06/2019-Advocate-Survey-Final.pdf>

⁴ Batalova, Jeanne, Michael Fix, and Mark Greenberg. 2018. Chilling Effects: The Expected Public Charge Rule and Its Impact on Legal Immigrant Families' Public Benefits Use. Available at:

The proposed rule exacerbates this fear by vastly expanding USCIS' biometrics collection authority in a way that is overbroad, ambiguous, and needlessly invasive. Specifically, the proposed rule expands USCIS authority to collect biometric data beyond fingerprints and photographs to include additional "modalities" such as iris scan, palm print, facial recognition, voice print, and DNA. For survivors who have endured physical, sexual and emotional abuse or stalking, complying with these new and invasive biometric requirements may exacerbate the harm and trauma they have suffered.

While USCIS purports it will not deploy an absolute biometric requirement in all instances for all forms, the proposed rule fails to specify which modalities will be utilized in the collection of survivor-based relief. Survivor privacy is paramount to ensure their safety, and USCIS undermines this safety by their lack of transparency in the process and adds additional burdens for survivors and the agencies that serve them.

USCIS' estimates of costs of this process to the applicant vastly devalue non-tangible costs, such as missing school or work, relying on a friend or family member to take them, both for emotional support and transportation to Application Support Center (ASC) appointment and (thus *their* time-related opportunity costs) not to mention that in rural areas, the ASCs are vastly more than the 50 miles round trip estimated by USCIS. This causes unnecessary burden on applicants. For example, a survivor residing in Mobile, Alabama must travel to New Orleans for the closest ASC Center, a trip nearly 2 hours away.

While there is an ASC in Saint Paul, MN, there are many other Latina survivors that reside in rural areas of Minnesota who would have an incredibly difficult time getting to a local ASC. Moreover, their hours of operations would mean that applicants would have to miss work and school and be subjected to an invasive and emotional procedure. These are the kinds of intangible costs that result in unnecessary hardship. Extending biometrics to those under the age of 14 further increases the hardship.

Many of these additional forms of biometrics, like facial recognition, have been found to be extremely unreliable, racially biased, and reinforce bias against transgender individuals. In addition, USCIS' justification for using voice prints to be integrated into USCIS call center processes is not only deeply disturbing, but also raises concerns of racial and gender bias.

Furthermore, these biometrics may link to databases that have incomplete, inaccurate or outdated information about the applicant. Databases use complex queries to extract certain kinds of data that may have human bias. For example, a trafficking survivor may have had their criminal case vacated given the nexus to trafficking, however relevant databases may not be up to date to reflect this information if they have not been updated properly by technicians. USCIS indicates applicants will be offered an opportunity to rebut derogatory information the agency considered but does nothing to offer applicants redress when these errors occur or provide a way to challenge the information in the database.

Lastly, the expansion of biometrics is deeply concerning for survivors given that it will necessarily increase *who* has access to this information. Abusers and perpetrators of crime often threaten to report survivors to the police or to the immigration authorities in order to maintain power over their victims and keep them silent. Congress created confidentiality protections for survivors

through the Violence Against Women Act, codified at 8 USC § 1367, to ensure that abusers and other perpetrators cannot use the immigration system against their victims. Despite the numerous policies put in place surrounding survivor information, violations of these provisions occur with regularity.

We are deeply concerned that the sweeping expansion of biometrics will lead to additional disclosures (either intentionally or through vulnerabilities to hacking and other breaches), which will jeopardize survivor safety. The proposed rule acknowledges there could be some unquantified impacts related to privacy concerns for risks associated with the collection and retention of biometric information. and would expand the population that could have privacy concerns. Whenever sensitive information about a victim is shared between agencies, the security of that information is compromised due to the increasing number of people authorized to access the information, and increased risks of unauthorized access and hacking. This is especially true of survivors of domestic violence, sexual assault, stalking, trafficking and other crimes who may have justified concerns about what information is shared, with whom and for what purpose. For example, in cases of domestic violence or stalking where the abuser or the abuser's friends or family are in law enforcement, this raises significant security concerns regarding who may potentially have access to these biometric databases.

B. Expansion of DNA collection

The proposed rule will immediately allow for DHS, in its discretion, to request, require, or accept DNA or DNA test results, which include a partial DNA profile, for individual benefit requests requiring proof of a genetic relationship. Phase V of their implementation plan would permit DHS to request or require DNA evidence in survivor-based relief, including but not limited to:

- VAWA Self-Petitions involving abuse of children or parents (Form I-360)
- Application for T Nonimmigrant Status Supplement A (Form I-914A)
- Petition for U Nonimmigrant Status Supplement A (Form I-918A)
- Petition for Qualifying Family Member of a U-1 Nonimmigrant (Form I-929)

USCIS estimates that thousands of survivors and their family members may be subject to these new DNA requests. As these requests are within the "discretion" of the adjudicator, this undoubtedly will lead to inconsistent treatment of survivors, adding additional costs and burdens to an already arduous adjudication process. The potential costs to survivors are staggering; DNA tests often incur a \$440 fee to test first genetic relationship and \$220 for each additional test, which are costs the applicant must take on.

USCIS has not demonstrated that there is any systemic problem in establishing qualifying relationships for these matters, nor has the agency acknowledged that these additional costs create significant barriers to survivors who may be facing economic instability related to their victimization. There are many economic barriers that survivors have to overcome to get safely away from their abuser, including not having access to separate finances from the abuser. Additionally, the abuser may maintain access to documents necessary to take funds out of a financial account, may harm the credit history of a survivor and undermine her access to funds, and may engage in economic abuse to sabotage her ability to secure or maintain employment. These additional financial burdens to survivors are not at all addressed in the proposed rule.

USCIS purportedly “recognizes that some individuals who submit biometrics/DNA could possibly be apprehensive about doing so and may have concerns germane to privacy, intrusiveness, and security.” In cases of domestic violence, stalking, human trafficking and other crimes, survivors may have valid concerns about this process and the privacy of this information. According to the Electronic Privacy Information Center, “Domestic violence victims have high needs for privacy, as they are already the target of an abuser, and often need to keep data from them. This abuse can also involve privacy violations such as surveillance, monitoring, or other stalking. For a domestic violence victim, the need for privacy is a need for physical safety.” While the proposed rule acknowledges the protections of 8 USC 1367, it does not sufficiently consider the unique concerns of survivors of crime and lacks specific details about how this information may potentially be used outside the adjudication setting.

III. VAWA and T Visa Adjustment of Status Evidentiary Changes

USCIS proposes new documentary requirements for good moral character determinations in both VAWA self-petitions and T visa adjustment of status applications. In particular, the proposed rule would:

- remove the requirement that VAWA self-petitioners and T visa-based adjustment applicants who have resided in the United States submit police clearance letters as evidence of good moral character because DHS will be able to obtain the individual’s criminal history using the biometrics
- consider conduct beyond the requisite period immediately before filing, where: (1) The earlier conduct or acts appear relevant to an individual’s present moral character; and (2) the conduct of the self-petitioner/applicant during the three years immediately before filing does not reflect that there has been a reform of character from an earlier period. See generally 8 CFR 316.10(a)(2).
- remove the presumption of good moral character for VAWA self-petitioners and T adjustment applicants 14 years of age and younger.

These provisions are simply unnecessary. Like so much of this proposed rule, these are solutions without demonstrable problems. VAWA self-petitioners *already* are required to submit biometrics in order to obtain work permits incident to approval of the self-petition. Similarly, T visa holders *already* are required to submit biometric evidence upon filing of their adjustment applications. Thus, USCIS already has existing mechanisms in place in order to verify an applicant’s identity. As indicated above, databases that USCIS searches as a result of biometrics may also contain incomplete, inaccurate or outdated information about the applicant. Indeed, USCIS has not sufficiently demonstrated how the current process is unreliable or how it directly burdens USCIS to review these police letters.

The proposed rule’s reliance on regulatory language from the naturalization context is in direct conflict with the statute and is inappropriate for VAWA self-petitions and T visa adjustment adjudications. Congress wanted to recognize the unique circumstances facing survivors and thus established different frameworks to consider good moral character in these forms of relief. For example, in the T visa adjustment of status content, Congress limited the requisite period for evaluating good moral character. This was done to ensure that T visa holders would not be unjustly prejudiced or retraumatized by repeatedly reviewing criminal acts that they were forced

to engage in as part of their abuse and exploitation. These issues would *already have* been addressed as part of their underlying T visa application. By allowing this look back beyond the period authorized by Congress, USCIS is unlawfully introducing additional subjective elements which can be used to retraumatize survivors and subjectively deny them the protections afforded under the law.

Lastly, removing the presumption of good moral character for VAWA self-petitioners and T visa adjustment applicants under 14 creates needless barriers for young applicants and increases the burden on survivors. USCIS already had the authority to get more information from applicants if warranted and codifying these provisions in the regulations adds additional barriers without sufficient justification.

IV. The Proposed Rule is Overbroad and Creates Needless Administrative Barriers and Costs

The proposed rule unjustly oversteps USCIS's authority under existing law. The laws that USCIS cite in the proposed rule do not support the agency's authority to justify these sweeping changes.

Over the last several years, USCIS has created significant barriers to immigration relief in a variety of ways--some by way of seismic regulatory overhauls and other discrete and calculated procedural shifts. This proposed rule is USCIS' latest attempt to leverage bureaucracy to limit access to protections. USCIS is currently working its way through a massive, historic backlog.

Our organization has worked with numerous immigrant survivors who are having to wait extended periods of time beyond a year before having their T visa, or VAWA self-petitions adjudicated, and are having to wait beyond five years for the adjudication of U visa applications. Immigrant survivors have been unable to obtain work authorization or apply for public benefits for years, which puts them in further danger since they are unable to be financially independent and are vulnerable to further exploitation and abuse.

The reality is that these unprecedented backlogs undermine the effectiveness of these critical benefits. Such long waits for the adjudication of their cases, coupled with other barriers can be devastating to survivors, and cause them possibly to either face homelessness, leave injuries untreated, or have to return to violent homes.

As a result of the proposed rule, survivors who are facing these incredible backlogs will endure even more hurdles as USCIS extends scarce resources for new equipment, training, operating procedures, and adds additional steps to the adjudication process. Resources put toward implementing the proposed rule will take away from the adjudication of benefits, which is the principal job of USCIS.

V. Continuous Vetting Erodes Due Process & Survivor Security

The proposed rule would implement "continuous vetting" procedures in which individuals may "be subjected to continued and subsequent evaluation of eligibility for their immigration benefits to ensure they continue to present no risk of causing harm subsequent to their entry. This rule

proposes that any individual alien who is present in the United States following an approved immigration benefit may be required to submit biometrics unless and until they are granted U.S. citizenship.”

Continuous vetting has its origins in the administration’s discriminatory executive orders authorizing the Muslim bans. These policies raise significant civil rights concerns and open up further discriminatory surveillance of people of color. Requiring survivors to submit biometrics repeatedly, at any time, until they obtain citizenship is not only a tremendous waste of agency resources, but creates instability and insecurity for survivors seeking to heal from victimization.

The net effect of this “extreme vetting” on survivor-based cases will be to complicate their adjudications; give license to subjective decision-making without regard to the dynamics of violence and trauma that Congress intended; and lead to wildly inconsistent results by adjudicators across the country.

III. Conclusion

There are myriad issues of concern to our organization that we simply do not have the time nor capacity to address in this comment given the extremely restrictive comment deadline. We strongly oppose the proposed rule due to the significant and harmful impact it would have on survivors of gender-based violence. We call on USCIS to promptly withdraw the proposed rule in its entirety.

Thank you for the opportunity to submit comments on the proposed rule. Please contact me if you have any questions relating to these comments.

Respectfully submitted,



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