



Submitted via www.regulations.gov

Samantha Deshommès, 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

Dear Ms. Deshommès:

This comment is submitted on behalf of the Asian Pacific Institute on Gender-Based Violence (API-GBV) in opposition to the Department of Homeland Security (DHS), United States Citizenship and Immigration Services (USCIS) proposal to implement the new **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.

API-GBV is a national resource center on domestic violence, sexual violence, trafficking, and other forms of gender-based violence in Asian and Pacific Islander and immigrant communities. API-GBV works in partnership with various national networks of advocates, community-based service programs, federal and state government agencies, national and state organizations, legal, health, and mental health professionals, researchers, policy advocates, and activists from social justice organizations to better address the needs of Asian and Pacific Islander and immigrant victims. API-GBV analyzes critical issues, promotes culturally relevant evidence-informed intervention and prevention, provides consultation, technical assistance, and training; develops resources, conducts and disseminates research and impacts systems change through administrative advocacy and policy analysis. Based on our experience and supporting victim advocates who work with Asian and Pacific Islander and immigrant survivors of gender-based violence, and in working directly with immigrant survivors of gender-based violence, we strongly oppose the proposal to implement the new Form-G-1530: USCIS Tip Form.

I. The USCIS Tip Form Threatens VAWA Confidentiality and Puts Survivors At Risk

Like all victims, immigrants experience physical and sexual violence, risk of harm to their children, psychological and emotional harm, and financial abuse.¹ Immigrant women face a high risk for experiencing severe domestic violence victimization, including and not limited to, intimate partner homicide. Among intimate partner homicide victims in the United States, immigrant victims are disproportionately represented compared to their representation in the U.S. population.² For immigrant victims of intimate partner violence, abusers may exploit their victims' lack of English proficiency, isolation from their family and other helping systems, lack of understanding or familiarity with the American legal system, religious and cultural customs, to further threaten, isolate, and abuse them.³ In addition, abusers often use their lack of secure immigration status as a tool of coercion and control, by threatening detention and deportation alongside separation from children or other family members.⁴

The USCIS Tip Form provides abusers and perpetrators of crime an anonymous tool to weaponize the immigration system against survivors, without consequence or repercussion. This is extremely problematic and dangerous, as "one of the most intimidating tools abusers and traffickers of immigrants use is the threat of deportation."⁵

Survivors in the United States on visas which are dependent on their spouses can be highly vulnerable to abuse and immigration threats. The abuser has the ability to dictate whether a survivor can attain or maintain stable immigration status and will often hide legal documents and threaten to withdraw or refrain from filing applications that would allow survivors to obtain status in order to maintain power and control. In addition, survivors report that abusers threaten that if they go to the police or court, they will be arrested because they are undocumented, or threaten to call immigration enforcement to have survivors arrested or deported.⁶

With recent policies and calls for local law enforcement to engage in federal immigration enforcement efforts, immigrant survivors have become increasingly fearful to report domestic violence, sexual assault, and human trafficking. In a 2017 survey of 715 advocates and

¹ P. Leung and M. Cheung, "A prevalence study on partner abuse in six Asian American ethnic groups in the USA," *International Social Work*, 51; 635 (2008)

² Michael Runner, Mieko Yoshihama, & Steve Novick, Intimate partner violence in immigrant and refugee communities: Challenges, promising practices and recommendations. (2009) Retrieved from: <https://www.rwjf.org/en/library/research/2009/03/intimate-partner-violence-in-immigrant-and-refugee-communities.html>

³ Yvonne Amanor-Boadu, Jill Messing, Sandra M. Stith, Jared R. Anderson, Chris S. O'Sullivan, Jacquelyn C. Campbell, "Immigrant and non-immigrant women: Factors that predict leaving an abusive relationship." *Violence Against Women*, 18, 611-633 (2012)

⁴ Anita Raj & Jay Silverman "Violence Against Women: The Roles of Culture, Context, and Legal Immigrant Status on Intimate Partner Violence," *Violence Against Women*, 8, 367-398 (2002).

⁵ 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.

⁶ National Domestic Violence Hotline, *Abuse and Immigrants*, available at: <https://www.thehotline.org/is-this-abuse/abuse-and-immigrants/>.

attorneys serving immigrant survivors, 78% of advocates and attorneys reported that survivors have concerns about contacting police, and 43% of advocates worked with immigrant survivors who dropped civil or criminal cases related to an abuser or perpetrator because they were afraid to continue with their cases.⁷ With the underreporting of crime and immigrant survivors' reluctance to assist in investigations, 69% of law enforcement officials report that domestic violence has become harder to investigate, 63% said the same about human trafficking, and 59% said this was true about sexual assault.⁸

Abusers' threats have been extremely harmful to survivors in the Asian and Pacific Islander (API) community where between 21-55% of API women report experiencing domestic or sexual violence during their lifetimes.⁹ Survivors are forced to decide whether it is more dangerous to stay in an abusive relationship or seek help and potentially place themselves at risk of immigration enforcement. A survivor of verbal, emotional, and physical violence who immigrated to the United States from India explains that the worst abuse she suffered were the threats from her husband that her immigration status was tied to his, and that she would be deported if she left him or reported him to the police.¹⁰ DAYA, a nonprofit supporting South Asian survivors of domestic violence, reported that in the first nine and a half months of 2018, while call volume from survivors remained the same, the number of reports by survivors of immigration threats more than doubled compared to the previous year.¹¹

To combat an abuser's exploitation of a survivor's immigration status, Congress created special immigration protections in the Violence Against Women Act (VAWA) for survivors of domestic violence, sexual assault, human trafficking and other forms of violence to allow survivors to seek protection without fear of deportation. VAWA provides survivors with pathways to petition for survivor-based immigration status independent of the abuser, weakening the abuser's ability to use immigration as a way to control the survivor.

Recognizing that abusers will attempt to manipulate legal systems against survivors, Congress created confidentiality protections that mandate, *inter alia*, that the government not to make adverse determinations based on information solely provided by a perpetrator or a member of a perpetrator's household or family member.¹² These protections, codified at 8 USC § 1367 are

⁷ Asian Pacific Institute on Gender-Based Violence, *2017 Advocate and Legal Service Survey Regarding Immigrant Survivors* (2017), available at: <https://s3.amazonaws.com/gbv-wp-uploads/wp-content/uploads/2017/07/27202842/Immigration-2017-Advocate-Legal-Service-Survey-Key-Findings.pdf>.

⁸ American Civil Liberties Union, *Freezing Out Justice* (May 2018), available at: <https://www.aclu.org/report/freezing-out-justice>.

⁹ Mieko Yoshihama & Chic Dabby, Asian Pacific Institute on Gender-Based Violence. *Facts & Stats Report: Domestic Violence in Asian and Pacific Islander Homes* (2015), Oakland, CA: Available at <https://www.api-gbv.org/resources/facts-stats-dv-api-homes/>.

¹⁰ Massarah Mikati, As legal status options narrow for immigrants, domestic abuse reports rise, *Houston Chronicle* (October 26, 2018), available at <https://www.houstonchronicle.com/news/houston-texas/houston/article/As-legal-status-options-narrow-for-immigrants-13340451.php>.

¹¹ *Id.*

¹² See 8 USC 1367

“designed to ensure that abusers and other perpetrators cannot use the immigration system against their victims.”¹³

This protection applies to abused spouses and children generally as well as to those who are eligible to apply for benefits as a VAWA self-petitioner, or who are eligible for VAWA cancellation, U visa or T visa relief. These protections are in place regardless of whether an application for immigration relief is pending with USCIS.¹⁴ DHS’ own guidance instructs:

There are a number of ways DHS employees might receive “tips” from an abuser or an abuser’s family, such as: calling ICE to report the victim as illegal, a “landlord” (who may actually be a human trafficker) calling ICE to report that his “tenants” are undocumented, or providing information to USCIS rebutting the basis for the victim’s application. When a DHS employee receives adverse information about a victim of domestic violence, sexual assault, human trafficking or an enumerated crime from a prohibited source, *DHS employees treat the information as inherently suspect.*¹⁵

These confidentiality provisions were a necessary response to the fact that abusers who become aware of a survivor’s case for immigration status will often attempt to interfere with the case to prevent the survivor from attaining status. When the abuser of a survivor from Taiwan learned that the survivor had a pending VAWA Self-Petition, he attempted to sue United States Citizenship and Immigration Services (USCIS) and sent letters to USCIS claiming that he was the only one who could obtain papers for the survivor.¹⁶

Ensuring that there are confidentiality provisions in place to protect the safety and information of the survivor has been crucial in encouraging survivors to apply for survivor-based immigration relief that allows them to escape abuse and begin to rebuild their lives. For example, a survivor from Vietnam who lacked stable immigration status as her U.S. citizen husband and abuser failed to help her file for permanent residency after bringing her to the U.S. on a fiancée visa only felt safe filing for a VAWA self-petition after she was assured that her husband would not be informed of her application.¹⁷ The legal prohibition against using information from an abuser’s family members has been critical for non-citizen API survivors applying for status, as a

¹³ *Id.*; 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>.

¹⁴ 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.

¹⁵ *Id.*

¹⁶ National Immigrant Women’s Advocacy Project, *Stories From the Field: A Collection of Stories of Immigrant Survivors Documenting the Need for VAWA Immigration Protections In the Violence Against Women Act (VAWA) Reauthorization of 2012*. American University Washington College of Law (May 16 2012), available at: <http://niwaplibrary.wcl.american.edu/wp-content/uploads/2015/CULT-Tool-FieldStories.pdf>.

¹⁷ “Immigrant Survivor Success Stories,” available at: <http://www.civilrightsdocs.info/pdf/women/vawa/vawa-u-success-stories-rev-5812.pdf>.

dynamic of gender-based violence in API communities can manifest as abuse of a single survivor by multiple perpetrators. In the extended Asian family structure, the family members of a perpetrator may also wield power and control over a survivor and subject the survivor to abuse. In these relationships and environments, survivors receive immigration threats from not only the abuser, but also from the abuser's family. A survivor from South Asia who came to the U.S. as a young bride on a dependent visa recalls both her husband and her in-laws threatening to cancel her visa. The survivor ultimately successfully filed for a U visa that provided her with immigration status separate from her abuser and abuser's family.¹⁸

Anonymous reporting encourages misuse of the USCIS Tip Form by abusers and perpetrators of crime and undermines the express intent of the confidentiality provisions and VAWA.

The proposed USCIS Tip Form requests that individuals provide their name and contact information but does not require it to make a report. This would provide an opportunity for abusers and perpetrators of domestic and sexual violence, along with their family members, to circumvent the confidentiality provisions as they would have the ability to submit "tips" of immigration fraud anonymously. It is unknown what mechanisms are in place for USCIS to determine the validity of information provided by anonymous tips and to accurately assess whether the information submitted is impermissibly motivated by abusers. The implementation of the USCIS Tip Form would therefore jeopardize the ability for survivors to seek protection without harmful interference from an abuser or perpetrator, undermining the very intent and purpose of the confidentiality provisions. Furthermore, the form poses a risk to the government of liability for violations of the confidentiality provisions, *which are punishable by civil and monetary penalties of up to \$5000 per violation under 8 USC 1367*. Given USCIS's further mandate to protect domestic violence victims who have applied for benefits under VAWA, the lack of safeguards in the process to prevent submission of abusive information also threatens statutory protections in VAWA.

The USCIS Tip Form will discourage survivors from pursuing survivor-based immigration relief and protection.

With the recent expansion of immigration enforcement actions, survivors have become reluctant to pursue immigration cases. In 2017, 62% of agencies observed an increase in the number of immigration-related questions from survivors who shared concerns about whether or not to submit petitions for immigration status.¹⁹ The implementation of the USCIS Tip Form would only serve to further deter survivors from applying or petitioning for immigration relief. USCIS has not provided any information on how it will handle and respond to anonymous tips submitted through the USCIS Tip Form. By providing abusers and perpetrators of domestic and sexual violence with an official channel to submit "tips" of immigration fraud without any formal mechanism to follow up on allegations, survivors will fear that abusers will provide information that will result in the rejection of their cases and lead to their deportation. The USCIS Tip Form would therefore become yet another means for abusers and perpetrators of domestic and sexual violence to silence survivors and keep them trapped in abusive relationships and situations.

¹⁸ Geri Spieler, Immigration Crackdown Puts Abused Women in Double Jeopardy, Thruthdig (November 6 2018), available at: <https://www.truthdig.com/articles/immigration-crackdown-puts-abused-women-in-double-jeopardy/>.

¹⁹ Asian Pacific Institute on Gender-Based Violence, *supra*, note 7.

The obligations of 1367, which Congress has consistently expanded over time, are enormously important to survivors of violence. It is unknown whether or how these protections have been taken into account in the proposal to publish the fraud tip form.

II. Information Sharing and Lack of Accountability

The USCIS Tip Form appears to allow any and all unsubstantiated information provided to be shared liberally with other law enforcement agencies, including Immigration and Customs Enforcement (ICE). USCIS has not provided any direction on what types of information should be submitted nor provided a notice that a submission to this government system is subject to perjury laws.

Information sharing with ICE will be highly detrimental to survivors of domestic and sexual violence. Currently, even with the confidentiality provisions in place for survivor-based petitions and applications for immigration relief, survivors are still subjected to immigration enforcement actions due to information provided by an abuser. ICE arrested a South Asian Muslim survivor after her abuser notified ICE that he was withdrawing his support of her visa. The survivor was placed in removal proceedings based on this information *despite the fact that she had a prima facie approval of her VAWA Self-Petition and was in a period of authorized stay pending the outcome of her petition.*²⁰ By allowing information submitted to USCIS to be shared with ICE, abusers will have another means by which to report survivors to immigration enforcement agencies and place survivors at increased risk of arrest and deportation, notwithstanding the prohibitions found at 8 USC 1367.

III. The USCIS Tip Form violates due process and is overbroad and vague.

USCIS fails to set any criteria for reporting fraud and there is no requirement that an allegation be made in connection with a pending application for benefits. The form also provides no definition of “fraud,” which has a complex definition under the Immigration Act and in case law. The lack of concrete requirements and unclear definitions of the USCIS Tip Form will provide abusers with broad leeway to submit claims of purported fraud. Moreover, by creating an “other” category, USCIS is opening its reporting to claims with no connection to fraud, instead creating yet another avenue for abusers to subject immigrant survivors to harassment with serious consequences for survivors and government administrators.

IV. The USCIS Tip Form is unnecessary and encourages the presumption of fraud in the immigration benefits process

USCIS’s primary function, as established by the Homeland Security Act of 2002, is to adjudicate immigration benefits.²¹ Over the last two years, USCIS has transformed into another

²⁰ National Immigrant Women’s Advocacy Project, *supra* note 16.

²¹ U.S. Citizenship and Immigration Services was created with the Congressional intent of focusing on benefits adjudication, rather than an enforcement-focused agency. On its website it states that it was “formed to enhance the

immigration enforcement agency through its increased focus on fraud and the implementation of other sweeping policy changes.²² There are already existing mechanisms for collecting information about fraud, e.g. through the HSI Tip Line, which already operates with questionable effectiveness. Creating another avenue to invite the public to submit unsubstantiated reports of fraud about individual immigrants not only creates unnecessary redundancies but also significant harm to immigrant communities.

The presumption of fraud will be particularly harmful for immigrant survivors of gender-based violence, as there already exists an attitude of disbelieving and blaming survivors of domestic and sexual violence. The API community is especially marked by a strong culture of normalizing violence against women, which leads women's experiences of violence to be discounted and causes survivors to be considered entirely or partially at fault for the violence. Placing a larger emphasis on fraud in the immigration benefits process will exacerbate the rhetoric that survivors are lying about abuse or sexual assault and create even more barriers for survivors to come forward. Reported survivors will face increased scrutiny, surveillance, and potential loss of benefits without any due process that could enable them to refute allegations of fraud.

V. The USCIS Tip Form Misuses USCIS Resources

Resources put toward vetting unsubstantiated tips from anonymous members of the public and abusers will take away from adjudication of benefits. The adjudications process and immigration system are already suffering from backlogs and USCIS has radically slowed application processing in the past two years.²³ The processing delays for survivor-based immigration relief such as the VAWA self-petition, U visa, and T visa leave survivors without stable immigration status independent of their abusers, causing them to remain highly vulnerable to abuse. In fiscal year 2018, USCIS processed visas for trafficking victims to petition for immigrant workers more slowly than it did in fiscal year 2014.²⁴ Survivors seeking protection through the U visa are particularly impacted by processing delays, which has reached 51 to 51.5 months to simply be placed on the waitlist, not issuance of the full four-year visa.²⁵ The backlog of U visa cases has also reached over 229,000 pending applications.²⁶ The diversion of even more resources from adjudicating cases to investigating anonymous and unfounded allegations of fraud will only serve to further overburden the immigration system and impede the ability for survivors to attain

security and improve the efficiency of national immigration services by exclusively focusing on the administration of benefit applications. Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP), components within DHS, handle immigration enforcement and border security functions" (emphasis added). USCIS Webpage, "Our History" (May 25, 2011), available at <https://www.uscis.gov/about-us/our-history>.

²² Joshua Breisblatt. "USCIS Is Slowly Being Morphed into an Immigration Enforcement Agency" (July 9, 2018), available at <http://immigrationimpact.com/2018/07/09/uscis-guidance-immigration-benefit/>.

²³ Jason Boyd and Greg Chen, AILA Policy Brief: USCIS Processing Delays Have Reached Crisis Levels Under the Trump Administration, American Immigration Lawyers Association (January 30, 2019), available at <https://www.aila.org/advo-media/aila-policy-briefs/aila-policy-brief-uscis-processing-delays>.

²⁴ *Id.*

²⁵ USCIS processing times are available at: <https://egov.uscis.gov/processing-times/>.

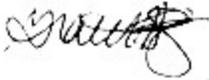
²⁶ This includes those applications that have not been reviewed at all as well as those individuals on the U visa waitlist with deferred action. See USCIS U visa data set, available at: https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Victims/1918u_visastatistics_fy2018_qtr4.pdf.

status that would allow them to leave abusive relationships and have access to resources to move forward with their lives.

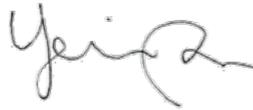
VI. Conclusion

For the foregoing reasons, the Asian Pacific Institute on Gender-Based Violence strongly opposes the publication of the USCIS Tip Form as it creates additional hardship for vulnerable immigrants and survivors of domestic violence, sexual assault, and human trafficking. USCIS should withdraw the USCIS Tip Form immediately and instead work on developing policies that do not discourage immigrant survivors from accessing help and that do not threaten immigrant communities, waste resources, or undermine due process and access to critical immigration benefits. Please contact me if you have any questions or concerns relating to these comments. Thank you.

Respectfully submitted,
ASIAN PACIFIC INSTITUTE ON GENDER-BASED VIOLENCE



GRACE HUANG
Policy Director
ghuang@api-gbv.org



YEIN PYO
Program Coordinator