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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. Deshommes:

I am writing on behalf of the National Survivor Network (NSN) 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.

The NSN is a Survivor Leadership Program of the CAST. In February 2011, CAST launched the NSN in an effort to foster connections between survivors of diverse forms of human trafficking and to build a national anti-trafficking movement in which survivors are at the forefront and recognized as leaders. Members of the NSN include survivors with various backgrounds and origins spanning 24 countries. Active members currently reside in over 38 states including. The NSN's diverse membership makes it uniquely representative of the myriad of situations experienced by survivors of human trafficking. By connecting survivors across the country, the NSN supports and encourages survivors to realize and develop confidence in their own leadership qualities and for others to learn to value their insight not just as survivors but as experts in the field.

I. 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.¹ Over the last two years, USCIS has transformed into another immigration enforcement agency through its increased focus on fraud and the implementation of other

¹ 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 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>.



sweeping policy changes.² 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.

According to the Department of Justice, hate crimes continue to rise, particularly those motivated by racial, ethnic, or religious animus.³ For example, Muslim, Arab, Iranian, Middle Eastern, and South Asian communities face targeted harassment and violence at alarming rates, particularly in the last few years, like many other communities of color and immigrant communities. Recent reports from the Federal Bureau of Investigations (FBI) show that Muslim, Arab, Iranian, Middle Eastern, and South Asian Americans are facing heightened levels of harassment and violence, and these numbers are severely underreported by the FBI's own admission.⁴ Similarly, the FBI reports that hate crimes against Hispanics and Latino communities have risen nationally.⁵ These incidents are also underreported, due to an increased fear of reporting racially motivated crimes and incidents to law enforcement.⁶

The implementation of the USCIS Tip Form permits unsubstantiated reporting to USCIS, the agency with jurisdiction over immigration benefits, and creates a high likelihood that bias and bigotry will play a role in reporting. Reported individuals face increased scrutiny, surveillance, and potential loss of benefits without any due process that could enable them to refute allegations of fraud.

The skepticism and biased nature of the current system leaves trafficking victims uniquely vulnerable to deportation. If they seek escape from their trafficker, all that is needed is an anonymous tip of fraud for their claim to be dismissed. Victims of traffickers are threatened with deportation and the U.S. government is now complicit in the coercion that keeps them enslaved, as defined by the Trafficking Victims Protection Act and Violence Against Women Act. The current low rate of U-visa and T-visa eligibility and the extremely high rate of deportation of asylum seekers makes the idea of sanctuary an unrealistic option to getting away from their traffickers. Victims have no reason to believe they will receive either freedom or justice. Hearing instances of individuals being anonymously reported for fraud who are eligible for asylum, U-Visa, or a T-Visa under our humanitarian laws that are without question deported based upon their trafficker, abuser, or other anonymous tip perpetuates the cycles of abuse that made them vulnerable to trafficking in the first place. The coercive nature of threats to

² 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/>.

³ Federal Bureau of Investigations Uniform Crime Reporting Program 2017 Hate Crimes Statistics, available at <https://ucr.fbi.gov/hate-crime/2017/topic-pages/incidents-and-offenses>.

⁴ John Eligon, Hate Crimes Increase for the Third Consecutive Year, F.B.I. Reports, New York Times (November 13, 2018), available at <https://www.nytimes.com/2018/11/13/us/hate-crimes-fbi-2017.html>.

⁵ See Arab American Institute, Hate Crimes Continue to Surge in America (November 13, 2018), available at http://www.aaiusa.org/hate_crimes_continue_to_surge_in_america (summarizing FBI 2017 statistics).

⁶ Brendan Campbell, Angel Mendoza and Tessa Diestel, Rising hate drives Latinos and immigrants into silence, News21 (August 22, 2018), available at <https://www.philly.com/philly/living/rising-hate-drives-latinos-and-immigrants-into-silence-20180822.html>.



their deportation is how a perpetrator maintains control and compliance over vulnerable individuals—enabling them with the tools to effectively wield this coercion goes directly against the intent of the Trafficking Victims Protection Act and the Violence Against Women’s Act.

II. The USCIS Tip Form Misuses USCIS Resources

Resources put toward vetting unsubstantiated tips from anonymous members of the public will take away from adjudication of benefits. USCIS has radically slowed application processing in the past two years.⁷ Complicating the adjudications process with anonymous and unfounded allegations of fraud in a system that already suffers from backlogs and lack of transparency will harm applicants and their families.

In previous years, victims applying for T-visa were believed; justice and safety were a priority. At times the T-visa would be granted before their Continued Presence was granted. Now, this six to eight-month process can take up to 23 months. The assumption of fraud in every application criminalizes victims with prejudice and the delays in the T-visa process allows them to be deported before the merits of their application can be assessed. The process of filing for these humanitarian protections was originally six to eight months and in several instances that process has exceeded twenty-three months now. There are cases where a T-Visa was granted before the Continued Presence was granted making them eligible to stay in the US while the visa was being processed. When we are running on the premise that fraud is the only reason for applying for humanitarian visas rather than looking into the allegations of domestic violence, human trafficking and need for asylum the process criminalizes victims with prejudice allowing the delays to push through the deportation process.

Not only is such reporting and targeting unjust, it is also a waste of government resources to focus on claims that have no relevance to fraud or abuse. Moreover, by creating an “other” category, USCIS is opening its reporting to claims with no connection to fraud, instead creating yet another avenue for bigotry and harassment with serious consequences for individuals, communities of color, and government administrators.

III. The USCIS Tip Form violates due process

A. The USCIS Tip Form 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,”

⁷ 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>.



which has a complex definition under the Immigration Act and in case law. Additionally, it is unclear how the information collected through the USCIS Tip Form will be used in adjudications.

B. Anonymous Reporting Encourages Misuse

The proposed USCIS Tip Form requests that individuals provide their name and contact information but does not require it to make a report. Thus, USCIS has no formal mechanism to follow up on allegations, and applicants for benefits have no opportunity to learn about derogatory information lodged against them or refute any allegations.

USCIS has not provided any information how it will handle and respond to these anonymous tips. 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 they are impermissibly motivated. Without this information, it is unclear whether reported individuals will have any access to due process or any recourse against false reports.

When a trafficking victim comes into contact with law enforcement, the trafficker would rather sacrifice the victim than bring unwanted attention to their criminal activity. When victims know that the government will assume fraud before seeing them as a victim of crime or abuse, the government becomes complicit in their exploitation. Should they escape, foreign victims of trafficking are acutely aware that there will be no help or support for them in the U.S. This pervasive assumption of fraud and denial of abuse only encourages the perpetrators of crimes to protect themselves and deport the person they are abusing. This emboldens the perpetrators of severe forms of trafficking to continue their coercion based upon threats of deportation. This makes individuals more susceptible to the crimes these humanitarian visas should protect them from.

Furthermore, the failure to collect information from the person completing the form creates a likelihood that those targeting individuals based upon racism and bigotry will have the option of submitting numerous baseless claims with no accountability.

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

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.”⁸ 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.⁹

⁸ 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.

⁹ National Domestic Violence Hotline, *Abuse and Immigrants*, available at: <https://www.thehotline.org/is-this-abuse/abuse-and-immigrants/>.



To combat this, 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.

Recognizing that perpetrators will try to manipulate legal systems against survivors, Congress also created confidentiality protections that mandate, *inter alia*, that the government not to make adverse determinations based on information solely provided by an perpetrator or a member of a perpetrator's household or family member.¹⁰ These protections, codified at 8 USC § 1367 are "designed to ensure that abusers and other perpetrators cannot use the immigration system against their victims."¹¹

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. These protections are in place regardless of whether an application for immigration relief is pending with USCIS.¹² 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.*¹³

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 threatens statutory protections in VAWA. 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.*

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.

¹⁰ See 8 USC 1367

¹¹ *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>.

¹² 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.

¹³ *Id.*



V. 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. 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.

VI. Conclusion

NSN stridently opposes the publication of the USCIS Tip Form as it creates additional hardship for immigrant communities and vulnerable individuals. USCIS should withdraw the USCIS Tip Form immediately and instead work on developing policies that do not threaten immigrant communities, waste resources, or undermine due process and access to critical immigration benefits.