



Freedom Network USA

April 12, 2019

Samantha Deshommes, 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

Submitted via www.regulations.gov

Re: Public Comment Opposing Form G-1530: USCIS Tip Form
OMB Control Number 1615-NEW
Docket ID USCIS-2019-0001

Dear Ms. Deshommes:

On behalf of Freedom Network USA (FNUSA), I am writing 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.

FNUSA, established in 2001, is a coalition of 68 non-governmental organizations and individuals that provide services to, and advocate for the rights of, trafficking survivors in the United States. Our members include survivors themselves as well as former prosecutors, civil attorneys, criminal attorneys, immigration attorneys, and social service providers who have assisted thousands of trafficking survivors. Together, our members provide services to over 2,000 trafficking survivors each year.¹

As the Department of Justice explains,

Foreign nationals have specific vulnerabilities tied to their immigration status, which traffickers exploit. Task force members will benefit from understanding the real fear of jail and/or deportation that prevents foreign-born victims from coming forward to admit their abuse. Foreign-born victims often lack documentation to prove their identity, fear they will be deported, fear threats to family members back home, do not understand that there are support services available to them, or are intentionally isolated geographically or through lack of language access. Foreign-born victims also may have experienced corrupt or

¹ Freedom Network USA 2018 Member Report, available at <https://freedomnetworkusa.org/app/uploads/2018/04/FRN-Member-Report-Digital-FINAL.pdf>.

violent law enforcement officers in their home countries, furthering their fears of seeking assistance.²

The establishment of this Tip Form will likely be used by human traffickers to further exploit and traumatize their victims. FNUSA strongly opposes the use of USCIS resources to support the ability of human traffickers to threaten and intimidate trafficked immigrants in this way.

I. The USCIS Tip Form is Unnecessary and Allows Human Traffickers to Exploit Victims Using USCIS' Own Form

USCIS's primary function, as established by the Homeland Security Act of 2002, is to adjudicate immigration benefits.³ There are already existing mechanisms for collecting information about fraud, e.g. through the HSI Tip Line. 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.

Human traffickers routinely use threats of deportation as a method of control, and it is therefore likely that they will abuse the proposed USCIS Tip Form to further their criminal enterprise. They tell their victims that they will contact DHS to have them deported if they do not comply with the trafficker's demands. This new USCIS Tip Form will function as a new enforcement tool for traffickers, because people who fear deportation are less likely to report abuse or file for immigration relief.⁴ Traffickers and abusers of undocumented people routinely prey on that fear: "[o]ne of the most intimidating tools abusers and traffickers of undocumented immigrants use is the threat of deportation."⁵

² DOJ Office for Victim of Crime Training and Technical Assistance Center Human Trafficking Task Force eGuide (accessed April 12, 2019), available at <https://www.ovcttac.gov/taskforceguide/eguide/4-supporting-victims/45-victim-populations/foreign-national-victims/>

³ 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>.

⁴ See *Overcoming Fear and Building Trust with Immigrant Communities and Crime Victims*, Police Chief Magazine (April 2018), available at http://library.niwap.org/wp-content/uploads/PoliceChief_April-2018_Building-Trust-With-Immigrant-Victims.pdf. Notably, ICE recognizes this potential chilling effect in its own internal policies toward victims of crimes such as trafficking. See Memorandum from John Morton, June 17, 2011, p.2 (urging ICE agents to exercise prosecutorial discretion and avoid removal of, inter alia, victims of trafficking "to avoid deterring individuals from reporting crimes and from pursuing actions to protect their civil rights, ICE officers, special agents, and attorneys are reminded to exercise all appropriate discretion on a case-by-case basis when making detention and enforcement decisions in the cases of victims of crime, witnesses to crime, and individuals pursuing legitimate civil rights complaints").

⁵ *Id.*

The USCIS Tip Form will permit traffickers, or their collaborators, to submit unsubstantiated reports to USCIS, the agency with jurisdiction over immigration benefits for trafficking victims. Reported individuals will face increased scrutiny, surveillance, and potential loss of benefits without any due process that could enable them to refute allegations of fraud.

II. The USCIS Tip Form Misuses USCIS Resources

Resources used for 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.⁶ 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.

Trafficking survivors are already suffering from the extended processing times. The T Visa conveys access to services and support necessary for trafficking survivors to safely assist law enforcement in the investigation and prosecution of the traffickers, through certification by the Department of Health and Human Services⁷. Extended processing times undermine the criminal justice system, because survivors remain in tenuous living situations without access to legal employment or public benefits during the adjudication period. In some cases, detained survivors are forced to remain in in detention for months or years as they await the adjudication of their T Visa, generally due to the crimes they were forced to commit by their trafficker. Extending this process further, likely due to tips filed by the traffickers, is inhumane and undermines the intent of Congress.

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,” 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. Again, this broad form will be used by human traffickers to threaten their victims with a mechanism for their deportation.

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.

⁶ 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>.

⁷ See 22 USC 7105(b)(1)(E).

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.

Furthermore, the failure to collect information from the person completing the form creates a likelihood that human traffickers 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 human traffickers an anonymous tool to weaponize the immigration system against survivors, without consequence or repercussion. This is extremely 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

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 a 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:

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/>.

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

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 mandate to protect human trafficking victims who have applied for a T Visa, 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.*

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

FNUSA 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.

Sincerely,



Jean Bruggeman
Executive Director
Freedom Network USA

https://www.dhs.gov/sites/default/files/publications/implementation-of-section-%201367-%20information-provisions-instruction-002-02-001_0_0.pdf.

¹³ *Id.*