



December 2, 2022

The Honorable Merrick Garland
Attorney General of the United States
U.S. Department of Justice

Re: *Matter of Thomas & Thompson*, 27 I&N Dec. 674 (A.G. 2019)

Dear Attorney General Garland,

We are legal and community organizations working with, and addressing the needs of survivors of domestic violence, sexual assault, human trafficking, forced marriage and child abuse. We work to center individuals and families who are Black, Latinx, Asian and Pacific Islander, from the Middle East, Indigenous, and people of color. Nearly all are noncitizens as well, or living in mixed-status families. We represent the needs of green card holders, asylees, DACA beneficiaries, undocumented individuals, and applicants for immigration status and protections, including survivor-based protections. Supporting expanded access to post-conviction and sentencing relief for noncitizen survivors aligns with our central goal of eliminating oppressive structures that erect barriers to justice and cause further harm to survivors of violence.

On behalf of the survivors we work with, we write to urge you to vacate and overrule prior Department of Justice precedents – including *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999) (en banc), *Matter of Pickering*, 23 I&N Dec. 621 (2003), and *Matter of Thomas & Thompson*, 27 I&N Dec. 674 (A.G. 2019) – that decline to respect post-conviction and sentencing relief ordered under state or federal law. Post-conviction relief and criminal justice reform measures play a critical role in restoring stability and access to safety for the people we work with. These agency precedents that decline to recognize post-conviction relief for noncitizens lead to increased traumatization, deportations, detention, and family separation for survivors of violence and their families. We urge you to reverse these harmful decisions and issue new decisions that correctly recognize that Congress legislated the immigration laws to continue the decades of history recognizing post-conviction relief in immigration proceedings.

As part of the cycle of violence and abuse, survivors often experience arrest, prosecution, conviction, and incarceration. This happens for a multitude of reasons. As a tool of power and control, abusers may fabricate charges against survivors, and many are often more adept at manipulating the criminal legal system. As survivors experience social isolation, lack of access to resources, and threats of retaliation or harm, they are often unable to effectively defend

themselves and the plea bargain system encourages the acceptance of convictions out of a sense of desperation. Survivors are often forced into unlawful conduct by abusers and traffickers, such as forced prostitution, drug sale, and theft. Survivors often experience post-traumatic stress, depression, and anxiety, which can lead to negative police interactions and convictions. The lack of access to supportive services that is exacerbated by barriers to immigration relief further increases noncitizen survivors' vulnerability to criminalization.

The racially disproportionate arrest, conviction, and sentencing patterns endemic in the United States also impact survivors who are Black, Latinx, Asian and Pacific Islander, from the Middle East, Indigenous, and people of color (including LGBTQ survivors of these groups), and makes the availability of post-conviction relief crucial for noncitizen survivors to thrive. Mandatory arrest laws disproportionately burden survivors of color and LGBTQ survivors of domestic violence incidents. Black survivors are less likely to be believed and supported than their white counterparts, leading to greater incarceration and disenfranchisement from services and mechanisms of stability, including immigration relief. Trafficking survivors as well are frequently arrested for drug possession and other offenses related to coping with traumatization.

Criminal justice reform laws leading to conviction expungements, vacatur, and sentence reductions have played a vital role in reducing the continued harms of systemic violence that survivors experience. The continued negative impacts of convictions on survivors include barriers to employment, public assistance, safe housing, family unity and parental rights. Post-conviction relief laws alleviate these injustices, but not within the immigration system. For noncitizens, the negative effects include the severe consequence of deportation, detention, family separation, and ineligibility for humanitarian protections. These additional stressors often place the ameliorative effects of criminal justice reform out of reach to noncitizen survivors. The current federal Justice Department standards fail to recognize post-conviction relief in immigration proceedings and continue to impose obstacles and penalties for convictions and sentences that no longer exist, and cause continued harm to noncitizen survivors.

The current standards set forth in *Matter of Roldan*, *Matter of Pickering* and *Matter of Thomas & Thompson* are also an agent of retraumatization. They force survivors to pursue arduous procedures in order to have convictions eliminated for immigration effect. They often require survivors to retell trauma, at times gratuitously so, without any therapeutic benefit or healing function. These standards deny survivors agency in moving on from violence and its cascading impacts, by strictly limiting when post-conviction relief will be meaningfully available, and where it is available, and by forcing survivors to pursue only certain bases for post-conviction relief so that it will be comprehensively impactful. This is contrary to a trauma-informed approach to reform, and contrary to what justice would look like for survivors, a community to whom it is critical to deliver personal agency.

ALLIANCE FOR IMMIGRANT SURVIVORS

By passing post-conviction relief laws and authorizing criminal courts to adjudicate post-conviction cases, states are indicating their desire to alleviate the effects of an unjust prior adjudication. On the contrary, the current federal standards erode trust between survivors and the courts and perpetuate traumatic effects. When a noncitizen experiences what for many is the worst possible consequence of a conviction – deportation – because the elimination mechanism is given no effect, it further traumatizes that survivor and broadly undermines trust in the court system within the immigrant survivor community at large. How can we expect survivors to trust a system that tells them they no longer have a conviction on their record and yet continues to treat them as if they do?

We urge you to vacate these harmful precedents and issue new decisions that correctly recognize that the immigration law gives effect to conviction vacatur, expungements, re-sentencings and other forms of post-conviction relief, without regard to the underlying reason for the post-conviction action. Doing so will further the interests of immigrant survivors of violence who are unjustly impacted by past convictions.

We respectfully request a meeting to discuss these issues further.

Thank you for your consideration.

Sincerely,

ASISTA Immigration Assistance
Asian Pacific Institute on Gender Based Violence (API-GBV)
Esperanza United (formerly Casa de Esperanza: National Latin@ Network)
Tahirih Justice Center

On behalf of:

African Immigration Alliance of the Courageous Resistance of the Desert
American Gateways
Asylum Seeker Advocacy Project (ASAP)
Bridges Faith Initiative
California Partnership to End Domestic Violence
Central American Legal Assistance
Coalición de Derechos Humanos
Coalition Ending Gender-Based Violence
Coalition on Human Needs
The Door's Legal Services Center

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End Domestic Abuse Wisconsin
Freedom Network USA
Futures Without Violence
Georgia Coalition Against Domestic Violence
Her Justice, Inc.
Hispanic Federation
Human Rights Initiative Of North Texas
Immigrant Legal Advocacy Project
Immigration Center for Women and Children
Immigration Equality
Immigration Law & Human Rights Services
Indiana Coalition Against Domestic Violence
Iowa Coalition Against Domestic Violence
Jane Doe Inc. (MA Coalition Against Sexual Assault and Domestic Violence)
The Legal Aid Society
Legal Allies PC
Life Span
Los Angeles Center for Law and Justice
Louisiana Survivors for Reform
Mariposa Legal, program of COMMON Foundation
Maya Human Rights Program Comunidad Maya Pixan Ixim
Middle Way House. Bloomington, Indiana
Mid-South Immigration Advocates
National Alliance to End Sexual Violence
National Black Women's Justice Institute
National Coalition Against Domestic Violence
The National Domestic Violence Hotline
National Immigrant Justice Center
National Immigration Law Center
National Network for Immigrant and Refugee Rights
National Network to End Domestic Violence
New Hour for Women & Children LI
North Carolina Coalition Against Domestic Violence
Ohio Immigrant Alliance
OLA RAZA INC
Oxfam America
Peace Over Violence
Robert F. Kennedy Human Rights
Robertson Immigration Law Firm

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Rocky Mountain Immigrant Advocacy Network
Sanctuary for Families
The Second Step
South Dakota Voices for Peace (SDVFP)
Sunita Jain Anti-Trafficking Initiative
Tulane Immigrant Rights Clinic
Ujima Inc., The National Center on Violence Against Women in the Black Community
Unitarian Universalist Refugee & Immigrant Services & Education
University of Maryland Carey School of Law Gender Violence Clinic
U.S. Committee for Refugees and Immigrants (USCRI)
Unlocal
ValorUS
Vermont Network Against Domestic and Sexual Violence
Virginia Sexual and Domestic Violence Action Alliance
Violence Free Minnesota: the coalition to end relationship abuse
Washington Defender Association
Washington State Coalition Against Domestic Violence (WSCADV)
Women & Justice Project
The Women's Law Center of Maryland
Daniela Armenta
Max Caraballo
Michelle Carey
Janay Cauthen
Donna Coker, University of Miami School of Law
Aglae Eufrazio
Amy Fox
Christopher L. Haberman, Supervising Attorney, Women and Family Defense Project,
OLA Raza, Inc,
Ilana Nazizi
Mariliz Romero de Aquino
Annie Slusher
Brenda Todwong
Lynn Tramonte

Cc: Deputy Attorney General Lisa Monaco and Associate Attorney General Vanita Gupta, U.S.
Department of Justice, Office of the Attorney General