



January 3, 2022

*Submitted via [www.regulations.gov](http://www.regulations.gov)*

Scott Elmore  
PRA Clearance Officer  
U.S. Immigration & Customs Enforcement  
Department of Homeland Security

**Re: Immigration and Customs Enforcement Agency Information Collection Activity  
Revision of a Currently Approved Collection: Suspicious/Criminal Activity Tip  
Reporting; Docket ID ICEB-2019-0010, OMB Control Number 1653-0049; 86 Fed.  
Reg. 60,269 (Nov. 1, 2021)**

Dear Officer Elmore,

Below please find comments submitted in response to Immigration and Customs Enforcement Agency Information Collection Activity, “Suspicious/Criminal Activity Tip Reporting”; Docket #ICEB-2019-0010, OMB Control Number 1653-0049, which was published on November 1, 2021 in the Federal Register at 86 Fed. Reg. 60, 269, on behalf of the Asian Pacific Institute on Gender-Based Violence (API-GBV). The 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, and serves a national network of advocates, community-based victim services programs, federal agencies, national and state organizations, legal, health, and mental health professionals, researchers and policy advocates. 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.

API-GBV has particular insight into how domestic violence abusers and sexual assault perpetrators leverage the immigration enforcement system in order to continue to entrap and

perpetuate abuse against survivors of violence and crime. API-GBV co-chairs the Alliance for Immigrant Survivors, supporting domestic violence and sexual assault victim advocates and their statewide and national coalitions by providing up-to-date information about immigration policy changes and their particular impacts on the safety-planning that advocates do with immigrant victims to mitigate risks to their well-being. Based on our work supporting victim advocates and in working directly with Asian and Pacific Islander (API) and immigrant survivors of domestic violence, sexual assault, and human trafficking, API-GBV submits the following comments, focused on the proposed tip form's impact on immigrant survivors and likely unnecessary trauma it facilitates through its use.

## **I. The Tip Form Harms Immigrant Survivors**

The ICE Tip Form provides abusers and perpetrators of crime an anonymous tool to weaponize the immigration system against survivors, without consequence or repercussion. As a result, the Tip form, in its current and proposed formats, undermines the progress that communities across the country have made to advance victim safety and well-being, jeopardizing the safety domestic violence, sexual assault, and human trafficking survivors, and thus, detracts from the “proper performance of the functions of the agency.”<sup>1</sup>

Due to the prevalence of domestic and sexual violence and human trafficking, our communities have provided for many important protections and programs to ensure all victims' ability to access safety and justice. Congress has affirmed its commitment to supporting victims to escape, recover from, and overcome abuse in various legislative enactments, including VAWA,<sup>2</sup> the Child Abuse Prevention and Treatment Act (“CAPTA”),<sup>3</sup> and the Victims of Trafficking and Violence Protection Act (“TVPA”).<sup>4</sup> Specifically in the immigration code, a bipartisan Congress sought to limit the ability of abusers to leverage immigration laws and the

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<sup>1</sup> 86 Fed. Reg. at 60,269.

<sup>2</sup> The legislative history accompanying VAWA and the TVPA demonstrates that Congress intended to reduce barriers that immigrant victims face in accessing safety, and specifically address the fear of deportation that prevents many from reporting abuse. Senator Patrick Leahy explained that the U visa “ma[d]e it easier for abused women and their children to become lawful permanent residents” and ensured that “battered immigrant women should not have to choose to stay with their abusers in order to stay in the United States.” 146 Cong. Rec. S10185 (2000) (statement of Sen. Patrick Leahy).

<sup>3</sup> The Child Abuse Prevention and Treatment Act of 2010, Pub. L. No. 111-320 (codified in 42 U.S.C. 5101, et seq.)

<sup>4</sup> The Victims of Trafficking Protection Act of 2000, Pub. L. No. 106-386 (2000)

fear of deportation against their victims, creating the battered spouse waiver of the Immigration Act of 1990,<sup>5</sup> and VAWA of 1994,<sup>6</sup> with Congress specifically noting that “[d]omestic battery problems can be terribly exacerbated in marriages where one spouse is not a citizen, and the non-citizen’s legal status depends on his or her marriage to the abuser. Current law fosters domestic violence in such situations by placing full and complete control of the alien spouse’s ability to gain permanent legal status in the hands of the citizen ...”<sup>7</sup> Abusers and traffickers frequently confiscate survivors’ documents such as their personal correspondence in order to further manipulate, isolate, coerce, and punish them and prevent them from escaping or seeking help.<sup>8</sup>

Members of immigrant communities with uncertain immigration status are particularly vulnerable to crimes such as domestic violence, sexual assault, and human trafficking; often due to fear they will be deported for contacting law enforcement.<sup>9</sup> Abusers often threaten survivors that if they go to the police or the court, they will be arrested because they are undocumented, or threaten to call immigration enforcement to have survivors arrested or deported.<sup>10</sup> According to the National Domestic Violence Hotline, 4,565 victims who called the Hotline in 2018 experienced threats related to immigration status.<sup>11</sup> Congress’ clear intent in creating VAWA self-petitioning, the U visa and the T visa, was to alleviate noncitizen victim’s fears that leaving their abusers and/or accessing help from the legal system would result in their removal.<sup>12</sup>

In addition, Congress also created confidentiality protections that prohibit the government from making adverse determinations based on information solely provided by a perpetrator or a member of a perpetrator’s household or family member.<sup>13</sup> These protections, codified at 8 USC §

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<sup>5</sup> P.L. No. 101-649, 104 Stat. 4978, codified at 8 U.S.C. §1186a(c)(4)),

<sup>6</sup> P.L. No. 103-322, 108 Stat. 1902-1955 (1994)

<sup>7</sup> H.R. Rep. No. 103-395 p. 26 (1993)

<sup>8</sup> See, e.g., Anne L. Ganley, *Health Resource Manual* 37 (2018); Evan Stark, *Coercive Control, How Men Entrap Women in Personal Life*, New York, Oxford University Press (2007).

<sup>9</sup> See 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), retrieved from [https://www.policechiefmagazine.org/wp-content/uploads/PoliceChief\\_April-2018\\_F2\\_Web.pdf](https://www.policechiefmagazine.org/wp-content/uploads/PoliceChief_April-2018_F2_Web.pdf)

<sup>10</sup> National Domestic Violence Hotline, *Abuse and Immigrants*, retrieved from: <https://www.thehotline.org/is-this-abuse/abuse-and-immigrants/>.

<sup>11</sup> National Domestic Violence Hotline. 2018 Impact Report, retrieved from: <https://www.thehotline.org/wp-content/uploads/sites/3/2019/06/Impact-Report-2018.pdf>

<sup>12</sup> Congress has stated that “providing battered immigrant women and children who were experiencing domestic violence at home with protection against deportation . . . frees them to cooperate with law enforcement and prosecutors in criminal cases brought against their abusers.” Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 1502(a)(1)(2) (Oct. 28, 2000). See also New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status, 72 Fed. Reg. 53,014 (2007).

<sup>13</sup> See 8 USC §1367

1367, are “designed to ensure that abusers and other perpetrators cannot use the immigration system against their victims.”<sup>14</sup> 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 (i.e., victims of crime and human trafficking). These protections are in place regardless of whether an application for immigration relief is pending with USCIS.<sup>15</sup>

As noted in a 2013 DHS directive on 8 USC §1367, “[a]busers often claim their marriage is fraudulent in order to exact revenge or exert further control over the victim.”<sup>16</sup> The DHS guidance states:

There are a number of ways DHS employees might receive “tips” from an abuse 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.*<sup>17</sup>

The guidance also makes clear that violations of 8 USC §1367 could give rise to serious, even life-threatening, dangers to victims and their family members. The ICE Tip Form encourages such “tips” from abusers and their collaborators, without apparent safeguards that would prevent the submission of abusive information that threatens VAWA’s immigration protections.

In addition to the harm to immigrant survivors, the ICE Tip 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*. Rather than promoting policies that undermine survivor autonomy and protections such as an anonymous tip

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<sup>14</sup> *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), retrieved from <https://www.congress.gov/109/crpt/hrpt233/CRPT-109hrpt233.pdf>.

<sup>15</sup> Department of Homeland Security, *Implementation of Section 1367 Information Provisions*, DHS Instruction Systems. Instruction Number: 002-02-001. Revision Number: 00., retrieved from [https://www.dhs.gov/sites/default/files/publications/implementation-of-section-%201367-%20information-provisions-instruction-002-02-001\\_0\\_0.pdf](https://www.dhs.gov/sites/default/files/publications/implementation-of-section-%201367-%20information-provisions-instruction-002-02-001_0_0.pdf).

<sup>16</sup> *Id.*, at 11.

<sup>17</sup> *Id.* (emphasis added).

form, ICE policy should serve to contribute to the goals of these vital immigration protections in VAWA, as well as state and local protections that support victim safety and recovery from trauma, healthy families, and violence prevention.

## **II. The Tip Form Encourages Bias and Abuse**

API-GBV further objects to providing the public a form to submit unsubstantiated reports of perceived fraud or other imagined criminal activity about individual immigrants, while failing to fix longstanding issues with existing reporting systems and causing significant harm to immigrant communities.

According to the Department of Justice, hate crimes continue to rise, including those motivated by racial, ethnic, or religious animus,<sup>18</sup> along with gender-bias. 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, including by the FBI's own admission.<sup>19</sup> Relatedly, this past year has demonstrated an increase in targeted bias incidents against the Asian American community, with women making up a majority of the reports (63.3 percent) of over 9,000 reported anti-Asian bias incidents from March 19, 2020- June 30, 2021.<sup>20</sup> These incidents are likely underreported, due to an increased fear of reporting racially motivated crimes and incidents to law enforcement.<sup>21</sup>

ICE does not provide any information about how the agency will test its veracity of the reports, nor has it stated whether anonymous reports will be given equal consideration to non-

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<sup>18</sup> Federal Bureau of Investigations Uniform Crime Reporting Program 2017 Hate Crimes Statistics, retrieved from <https://ucr.fbi.gov/hate-crime/2017/topic-pages/incidents-and-offenses>.

<sup>19</sup> 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>.

<sup>20</sup> Stop AAPI Hate National Report, see <https://stopaapihate.org/wp-content/uploads/2021/08/Stop-AAPI-Hate-National-Report-Final.pdf>

<sup>21</sup> Brendan Lantz, & Marin Wenger "Are Asian Victims Less Likely to Report Hate Crime Victimization to the Police? Implications for Research and Policy in the Wake of the COVID-19 Pandemic." *Crime & Delinquency* (2021); 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>.

anonymous submissions. Thus, ICE has not shown it has any formal mechanism for screening, vetting, or following up on allegations submitted through the Tip Form, especially in the context of determining whether or not a violation of 8 USC §1367 has taken place. At a minimum, ICE should require those who fill out the Tip Form (as well as require this in other contexts) to provide significant additional information, including the name of the source, contact information for the source, the relationship between the source and the subject of the tip, the age of the subject of the tip; and a certification under penalty of perjury that he/she is not a prohibited source under 8 USC § 1367. Requiring this information will deter many abusers and traffickers from using the form to punish victims and therefore reduce violations of § 1367's prohibitions.

In addition, ICE should independently determine whether the person who submits information via the Tip Form (as well as other mechanisms) is a prohibited source under § 1367, and it must do so before making an adverse determination of inadmissibility or removability. Furthermore, consistent with ICE Directive 11005.3, ICE “must consult available records and databases . . . to determine whether the noncitizen” subject of Tip Form information is a beneficiary of, has applied for a victim-based immigration benefit, or is a victim of a crime.<sup>22</sup> To comply with the Directive, ICE must do this consultation and review before taking any civil immigration enforcement action as a result of information submitted on the Tip Form, as well as examining databases and records to determine if the source of information is potentially an abusive family member, trafficker, or other perpetrator of crime or abuse.

The use of a Tip Form that allows for unsubstantiated reporting to ICE, and serves to further perpetuate bias and bigotry against targeted communities. Reported individuals face increased scrutiny, surveillance, and potential loss of government benefits without any due process or sufficient evidence. The Tip Form gives people another government-supported mechanism by which to submit unsubstantiated and unsolicited information to harass and intimidate immigrants and people of color without consequence.

### **III. Conclusion**

Thank you for the opportunity to submit comments on the ICE tip form. We urge ICE to withdraw the proposed form given the additional barriers and hardship it will cause victims

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<sup>22</sup> Department of Homeland Security, *Using a Victim-Centered Approach with Noncitizen Crime Victims*, Directive 11005.3, §§ 2 & 5.1., retrieved from <https://www.ice.gov/doclib/news/releases/2021/11005.3.pdf>

seeking protection from domestic and sexual violence and human trafficking, as well as the impact it has in further perpetuating racial bias against immigrant and API communities and communities of color. API-GBV strongly opposes the current and proposed form, and urges that it be withdrawn. 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**

A handwritten signature in black ink, appearing to read 'Grace Huang', with a stylized flourish at the end.

**GRACE HUANG**

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