

January 3, 2022

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

*Submitted via <http://www.regulations.gov>*

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

Dear Mr. Elmore:

The Tahirih Justice Center (“Tahirih”) and the Immigrant Center for Women and Children (“ICWC”) write to oppose the continued use, with minimal changes, of the U.S. Immigration & Customs Enforcement (“ICE”) Tip Form, as proposed under OMB Control Number 1653-0049 and ICE Docket ID ICEB-2019-0010 . This comment concerns two topics listed in the Federal Register notice: “whether the proposed collection of information is necessary for the proper performance of the functions of the agency” and “the quality, utility, and clarity of the information to be collected.” 86 Fed. Reg. at 80,269.

Tahirih is a national, nonpartisan policy and direct services organization that has served more than 30,000 survivors of gender-based violence and their families since its inception in 1997. Our clients are survivors of gender-based violence, including domestic violence, rape and sexual torture, forced marriage, human trafficking, widow rituals, female genital mutilation/cutting (FGM/C), and so-called “honor” crimes.<sup>1</sup>

Tahirih provides free legal and social services to help our clients find safety and justice as they engage in the daunting, courageous, and rewarding work of rebuilding their lives and contributing to their communities as illustrated by our clients’ stories. Since its founding, Tahirih has also served as an expert resource for the media, Congress, policymakers, and others on immigration remedies for survivors fleeing gender-based violence. *See, e.g.*, Tahirih Justice

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<sup>1</sup> For background information on these types of gender-based violence, *see, e.g.*, UNHCR, *Guidelines on the Protection of Refugee Women* 17, <https://www.unhcr.org/3d4f915e4.html>; UN Women, *Defining “honour” crimes and “honour” killings*, <https://endvawnow.org/en/articles/731-defining-honourcrimes-and-honour-killings.html>; [https://en.wikipedia.org/wiki/Female\\_genital\\_mutilation](https://en.wikipedia.org/wiki/Female_genital_mutilation); [https://en.wikipedia.org/wiki/Forced\\_marriage](https://en.wikipedia.org/wiki/Forced_marriage); <https://www.widowsrights.org/>.

Center, *Tahirih in the News*;<sup>2</sup> Tahirih Justice Center, *Congressional Testimony*;<sup>3</sup> Tahirih Justice Center, *Comments*.<sup>4</sup>

ICWC is a non-profit legal services organization whose mission is to provide affordable immigration services to underrepresented immigrants in California and Nevada. Specifically, ICWC cases focus on the rights and legal remedies of the most vulnerable immigrant communities, including survivors of domestic violence, sexual assault, and other serious crimes. ICWC represents thousands of clients before USCIS each year with a specialization in U nonimmigrant status. ICWC advocates for immigrant survivors by providing direct legal services, hosting a database for advocates nationwide, conducting national trainings and publishing practice manuals in our area of expertise. Since its founding in 2004, ICWC has provided legal assistance to more than 45,000 individuals, including many who are eligible for, and have received, U nonimmigrant status.

## **I. Use of the Tip Form Against Survivors of Gender-Based Violence Violates Federal Law and ICE Policy**

The tip form, in both the current and proposed states, is directly inconsistent with the “proper performance of the functions of the agency” (86 Fed. Reg. at 60,269), because it invites routine violations of federal law. Congress has enacted strong confidentiality provisions in 8 U.S.C. § 1367 that protect survivors of gender based violence, including those who self-petition under the Violence Against Women Act (“VAWA”) and those who apply for T and U nonimmigrant status. Among other things, § 1367 prohibits the Department of Justice, the Department of Homeland Security, and the Department of State from “mak[ing] an adverse determination of admissibility or deportability of a[ noncitizen] using information furnished solely by” enumerated groups of people. 8 U.S.C. § 1367(a)(1). These prohibited sources include “a spouse or parent who has battered the [noncitizen] or subjected the [noncitizen] to extreme cruelty”; a spouse or parent who has battered the non-citizen’s child or subjected the child to extreme cruelty; the perpetrator of a crime giving rise to an application for U nonimmigrant status; and the trafficker or perpetrator of actions giving rise to an application for T nonimmigrant status. *Id.* § 1367(a)(1)(A)-(F).

The statute contains extremely narrow exceptions in which information from a prohibited source may be used. None of the exceptions could even conceivably apply to most situations in which information is submitted via a tip form. *See* 8 U.S.C. § 1367(b). And the statute mandates that “[a]nyone who willfully uses ... information” in violation of § 1367 “shall be subject to appropriate disciplinary action” and civil fines. *Id.* § 1367(c).

The result is that using information from a Tip Form for its intended purpose—*i.e.*, investigating violations of law that could render noncitizens inadmissible or removable—will violate federal law if the information comes from a prohibited source. After all, the Tip Form

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<sup>2</sup> [https://www.tahirih.org/news-media/latest-updates/?tab=tahirih-in-the-news\\_](https://www.tahirih.org/news-media/latest-updates/?tab=tahirih-in-the-news_)

<sup>3</sup> [https://www.tahirih.org/pubs/?qmt%5Bpub\\_cat%5D%5B%5D=131](https://www.tahirih.org/pubs/?qmt%5Bpub_cat%5D%5B%5D=131).

<sup>4</sup> [https://www.tahirih.org/pubs/?qmt%5Bpub\\_cat%5D%5B%5D=261](https://www.tahirih.org/pubs/?qmt%5Bpub_cat%5D%5B%5D=261).

expressly applies to suspected “benefit/marriage fraud” and even bare “illegal immigration,” and nothing in the Tip Form limits its use against those who are battered, those who suffered extreme cruelty, or those who have applied for, or received, T or U nonimmigrant status. Further, the Tip Form expressly allows the anonymous provision of information, leaving ICE with no way at all to know whether the information originates from a prohibited source and therefore cannot be used consistent with § 1367. And the requirement that the submitter declare that they have not provided knowingly false information does not even begin to ensure compliance with § 1367, because application of the statute turns on the identity of the source and the subject of the information rather than the truthfulness of the information. Use of the Tip Form against survivors of battery and extreme cruelty, the parents of survivors of battery or extreme cruelty, or anyone who has applied for or received T or U nonimmigrant status, therefore exposes ICE and its employees to liability under federal law.

Furthermore, ICE Directive 11005.3, “Use of a Victim-Centered Approach with Noncitizen Crime Victims,”<sup>5</sup> expressly incorporates the requirement to adhere to § 1367. Directive 11005.3, § 5.3. As currently constructed, then, use of the Tip Form in its current and proposed forms is contrary to the agency’s own governing policy as well as federal law. *See also* DHS Instruction No. 002-02-01, *Implementation of Section 1367 Information Provisions*.<sup>6</sup>

## II. The Tip Form Will Harm Countless Survivors of Gender-Based Violence

Information gleaned from the Tip Form will also lack any “utility” in many cases (86 Fed. Reg. at 60,269), because people who are prohibited sources under VAWA are uncommonly likely to make reports on the Tip Form. Decades of research and evidence demonstrate that perpetrators of gender-based violence go to great lengths to punish and control victims. *See, e.g.,* Michelle Ciurria, *The Loss of Autonomy in Abused Persons: Psychological, Moral, and Legal Dimensions*, 7 *Humanities* 48 (May 17, 2018); Marilyn Friedman, *Autonomy, Gender, Politics* (2003); Domestic Abuse Intervention Programs, *Understanding the Power and Control Wheel*;<sup>7</sup> Rachel Louise Snyder, *No Visible Bruises: What We Don’t Know About Domestic Violence Can Kill Us* (2019). As part of this dynamic, those who perpetrate abuse routinely wield deportation and other immigration consequences as tools of control over survivors who do not have immigration status. *See, e.g.,* Margaret E. Adams & Jacquelyn Campbell, *Being Undocumented & Intimate Partner Violence (IPV): Multiple Vulnerabilities Through the Lens of Feminist Intersectionality*, 11 *Women’s Health & Urb. Life* 15, 21-24 (2012); Misty Wilson Borkowski, *Battered, Broken, Bruised, or Abandoned: Domestic Strife Presents Foreign Nationals Access to Immigration Relief*, 31 *U. Ark. Little Rock L. Rev* 567, 569 (2009); Nat’l Domestic Violence Hotline, *Abuse and Immigrants*;<sup>8</sup> *see also* Violence Against Women Act of 2000 Section-by-Section Summary, 146 Cong. Rec. S10188-03, at S10195 (2000) (before VAWA, abusive U.S. citizen and lawful permanent resident spouses used their ability to petition for a permanent visa

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<sup>5</sup> <https://www.ice.gov/doclib/news/releases/2021/11005.3.pdf>.

<sup>6</sup> [https://niwaplibrary.wcl.american.edu/wp-content/uploads/implementation-of-section-1367-information-provisions-instruction-002-02-001\\_0\\_0.pdf](https://niwaplibrary.wcl.american.edu/wp-content/uploads/implementation-of-section-1367-information-provisions-instruction-002-02-001_0_0.pdf).

<sup>7</sup> <https://www.theduluthmodel.org/wheels/faqs-about-the-wheels/>.

<sup>8</sup> <https://www.thehotline.org/is-this-abuse/abuse-and-immigrants-2>.

for their abused spouses as a means to blackmail and control the spouse). Simply put, “deportation is an omnipresent weapon with which abusers threaten their immigrant partners.” Edna Erez & Nawal Ammar, *Violence Against Immigrant Women and Systemic Responses: An Exploratory Study* (2003).<sup>9</sup>

Some perpetrators of abuse even fabricate serious criminal charges against survivors to deliberately heighten the risk of deportation. Tahirih is aware of an example where an abuser planted drugs in his wife’s car, and then smashed her tail light to get her pulled over and arrested. In another example, an abuser set fire to his home himself and called the fire department to report that his wife had done it. She was arrested and jailed for weeks. In still another example, an abuser threw his partner down and attempted to rape her. When she pushed him off and called the police, he claimed she had assaulted him. Because of a language barrier, the responding law enforcement agent accepted the abuser’s account, arrested the survivor, and held her in isolation for nearly two weeks because of failure to provide language access and improperly applied COVID protocols.

Both DHS and the former Immigration and Naturalization Service (“INS”) have this noted the ability and tendency of those who perpetrate abuse to use the threat of immigration consequences to control survivors. A 1998 memorandum from the INS General Counsel made clear that abusive spouses “destroy documents” and that survivors therefore must often seek immigration status “without the abusive spouse’s knowledge or consent.” Memorandum from Paul Virtue, General Counsel, Immigration & Naturalization Service (Oct. 16, 1998), at 7-8.<sup>10</sup> A 2013 DHS directive on § 1367 makes clear that “[a]busers often claim their marriage is fraudulent in order to exact revenge or exert further control over the victim.” DHS Instruction No. 002-02-001, at 11. It also makes clear that violations of § 1367 could give rise to serious, even life-threatening, dangers to victims and their family members. And Directive 11005.3, meanwhile, recognizes that “convictions for domestic violence may be the result of self-defense by a victim against an abuser” and that “the context of any arrests” must be “carefully evaluated.” Directive 11005.3, § 5.12.

In short, there can be no question whatsoever that people who commit domestic abuse, trafficking, and other forms of gender-based violence will use any available tool to exercise control over survivors. The Tip Form hands them a very powerful method of doing so—the threat and use of a direct, anonymous line to say to immigration authorities whatever the abuser wants to say about a survivor’s actions or immigration status. Any claim that people who commit abuse would not use the potential power handed to them by the Tip Form is belied by decades of research and experience and by DHS’s own past acknowledgments. And so it is inevitable that many people who commit abuse and other crimes—prohibited sources under VAWA—will make use of the tip form. All the available evidence therefore demonstrates that use of the form routinely harms survivors, violates federal law and ICE policy, and results in information that cannot be useful to the agency because it cannot legally be used to impose immigration consequences.

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<sup>9</sup> <https://www.ncjrs.gov/pdffiles1/nij/grants/202561.pdf>.

<sup>10</sup> <https://asistahelp.org/wp-content/uploads/2018/10/Virtue-Memo-on-Any-Credible-Evidence-Standard-and-Extreme-Hardship.pdf>.

### **III. The Tip Form Must Be Withdrawn or, in the Alternative, Significantly Revised**

In short, the Tip Form both invites routine violations of federal law and provides an easy mechanism for those who perpetrate gender-based violence to retaliate against survivors and to use threats of deportation to manipulate them with impunity. The only way to prevent these violations of federal law is to eliminate the Tip Form, and we strongly urge ICE to do so in order to protect survivors of gender-based violence—and to protect the agency and its employees from liability. In particular, although use of the Tip Form is consistent with VAWA in cases where the information does not pertain to a survivor of battery or extreme cruelty, or an applicant for or recipient of T or U nonimmigrant status, it is not possible to know whether someone who is the subject of a report has suffered battery or extreme cruelty (or has had a child subjected to battery or extreme cruelty) by the source. It is therefore only full elimination of the form that will accomplish full compliance with federal statutory requirements.

In the alternative, and at a bare minimum, ICE must require those who fill out the tip form to provide significant additional information. This information includes (1) the name of the source; (2) contact information for the source; (3) the relationship between the source and the subject of the tip; (4) the age of the subject of the tip; and (5) a certification under penalty of perjury that he/she is not a prohibited source under VAWA. Requiring this information will deter many abusers and traffickers from using the form to punish victims and therefore reduce violations of § 1367.

If it chooses this option, however, ICE must also take two further steps in every case. First, it must ensure statutory compliance by independently determining whether the person who submits the Tip Form is a prohibited source under VAWA, and it must do so before making an adverse determination of inadmissibility or removability. Second, consistent with ICE Directive 11005.3, ICE “must consult available records and databases \* \* \* to determine whether the noncitizen” subject of Tip Form information has received or applied for a “victim-based immigration benefit[ ]” or is a victim of a crime. Directive 11005.3, §§ 2 & 5.1. And to comply with the Directive, ICE must do so before taking any civil immigration enforcement action as a result of information submitted on the Tip Form.

Please do not hesitate to reach out to me at [richardc@tahirih.org](mailto:richardc@tahirih.org) if you have any questions or if we can provide any further information .

Sincerely,

A handwritten signature in dark ink, appearing to read 'Richard Caldarone', is written over a light gray rectangular background.

Richard Caldarone  
Litigation Counsel  
Tahirih Justice Center