



December 30, 2019

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U.S. Citizenship and Immigration Service
Department of Homeland Security
20 Massachusetts Ave., NW
Washington, DC 20529-2140

RE: "U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements"
DHS Docket No: USCIS-2019-0010; RIN: 1615-AC18
Submitted via www.regulations.gov

Dear Ms. Deshommès:

On behalf of ASISTA, I submit this comment in response to "U.S. Citizenship and Immigration Services (USCIS) Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements" published in the Federal Register on November 14, 2019 (hereinafter "proposed rule").¹

The mission of our agency is to advance the dignity, rights, and liberty of immigrant survivors of violence. For over 15 years, ASISTA has been a leader on policy advocacy to strengthen protections for immigrant survivors of domestic violence, sexual assault, human trafficking and other crimes created by the Violence Against Women Act (VAWA) and the Trafficking Victims Protection Act (TVPA). We assist advocates and attorneys across the United States in their work on behalf of immigrant survivors. We submit this comment based on these guiding principles and our extensive experience.

¹ U.S. Citizenship and Immigration Service. "U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements" (hereinafter "proposed rule") 84 FR 62280 (November 14, 2019), available at <https://www.regulations.gov/document?D=USCIS-2019-0010-0001>

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I. Introduction

We firmly oppose the proposed rule as it diminishes access to immigration benefits for thousands of individuals, including crime survivors. The excessive fee increases, combined with the harsh limitations on fee waivers, create barriers to access citizenship and other immigration benefits, and “disproportionately restrict access to working class, low-income, elderly and other immigrants who would otherwise be able apply.”² The proposed rule also undermines the bipartisan congressional goals to make humanitarian immigration relief accessible to victims. In addition, it fundamentally contravenes the purpose of USCIS to serve as a *benefit-granting* agency, not one focused on enforcement through its proposed transfer of millions of dollars to Immigration and Customs Enforcement (ICE).³ We urge USCIS to immediately withdraw the proposed rule, and instead work to ensure that low-income and other vulnerable immigrants can obtain immigration relief for which they are eligible.

II. General Comment

USCIS’ proposed rule is extremely problematic in both substance and in form. Executive Order 12866 provides that agencies “should afford the public a *meaningful opportunity* to comment on any proposed regulation, which in most cases should include a comment period of *not less than 60* days.”⁴ Initially, USCIS only provided a 30-day comment period for the proposed rule. The agency eventually extended the deadline an additional 15 days after releasing new information related to transfer of funds to ICE.⁵ The proposed rule is over 90 pages long and is extremely complex and detailed. Moreover, it contains over 150 supporting documents. USCIS has willfully and deliberately made a mockery of the administrative process by providing such insufficient time to review and provide comment.

With regard to substance, USCIS justifies its drastic fee increases and limits on fee waivers in order to allow for “an assessment of USCIS policy changes, staffing levels, cost revenue, etc.”⁶ In addition, the agency states it would use this increased revenue “to ensure that USCIS would

² Letter to Acting DHS Secretary Chad Wolf and Acting USCIS Director Ken Cuccinelli. “Re: U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request DHS Docket No: USCIS-2019-0010: RIN: 1615-AC18” (November 19, 2019). Available at: <https://meng.house.gov/sites/meng.house.gov/files/Letter.pdf>

³ Congress specifically designated USCIS as the immigration benefits and adjudications agency in the Homeland Security Act in 2002 See, Section 451(b) Pub. L. No. 107–296, 116 Stat. 2135) (November 25, 2002), available at: https://www.dhs.gov/xlibrary/assets/hr_5005_enr.pdf

⁴ [Emphasis added]. Executive Order 12866 58 Fed. Reg. 190 (September 30, 1993), available at <https://www.archives.gov/files/federal-register/executive-orders/pdf/12866.pdf>

⁵ USCIS. “Proposed rule; extension of comment period; availability of supplemental information” (December 9, 2019), available at <https://www.regulations.gov/document?D=USCIS-2019-0010-2237>

⁶ Proposed Rule at 62283.

recover its full operating costs and maintain an adequate level of service.”⁷ Nowhere in the proposed rule does USCIS shed light on what “policy changes” they assessed in the course of drafting the proposed rule, nor on the cost or staffing levels necessary to support them. Nor has USCIS sufficiently shown how the proposed rule will improve customer service or processing times to an “adequate level of service.” In fact, USCIS estimates that it will take several years before the agency’s backlogs decrease measurably.⁸

Furthermore, USCIS states that limiting fee waivers will “make the fee increase more equitable for all immigration benefit requests by requiring fees for the service to be paid by those who benefit.”

⁹ These myopic policy justifications serve as little more than pretext, and ignore the public policy benefits of naturalization and making immigration relief available to those who qualify. Access to secure immigration benefits, including naturalization, creates stability for applicants and their family members, can lead to an increase in individual wages, and benefits U.S. economic growth.¹⁰ Indeed, “[w]hen immigrants gain status and graduate to more permanent and secure statuses, they benefit, as do their families, communities, and nation.”¹¹

We find the fee increase for DACA renewals and the USCIS plans to impose a \$50 fee for those filing for affirmative asylum to be egregious. Refusing asylum applicants for their inability to pay this new fee undermines U.S. obligations under international and domestic law. For survivors of violence, including asylum seekers, access to immigration benefits is essential to escape abusive situations and gain self-sufficiency following victimization.

III. Background on VAWA and TVPA-based Forms of Immigration Relief

Many immigrant survivors of domestic violence, sexual assault, and human trafficking fear that reaching out for help will result in their deportation.¹² Recently, this fear has been exacerbated by DHS “policy changes” including but not limited to an increase in courthouse arrests, as well as

⁷See U.S. Citizenship and Immigration Service. “Regulatory Impact Analysis: U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements” CIS No. 2627-18; DHS Docket No.: USCIS-2019-0010; RIN: No: 1615-AC18 at 3 (October 30, 2019) available at <https://www.regulations.gov/document?D=USCIS-2019-0010-0559> (hereinafter “Regulatory Impact Analysis”)

⁸ Proposed Rule at 62294.

⁹ Proposed Rule at 62299.

¹⁰ The Center for American Progress. “How Citizenship Helps the Economy”, available at <https://cdn.americanprogress.org/wp-content/uploads/2014/03/EconofCitizenship.pdf>

¹¹Donald Kerwin & Robert Warren. “Putting Americans First: A Statistical Case for Encouraging Rather than Impeding and Devaluing US Citizenship” *Journal on Migration and Human Security* (2019), available at <https://journals.sagepub.com/doi/pdf/10.1177/2331502419894286>

¹² See Cora Engelbrecht. “Fewer Immigrants Are Reporting Domestic Abuse: Police Blame Fear of Deportation” *New York Times* (June 3, 2018), available at <https://www.nytimes.com/2018/06/03/us/immigrants-houston-domestic-violence.html>

USCIS policies that have created a chilling effect on survivors coming forward.¹³ A 2019 nationwide survey of advocates found that 75% of advocates who work with survivors state that immigrant survivors fear calling the police and 3 out of 4 advocates surveyed stated that survivors fear going to court for a matter related to the abuser/offender, with one responded stating “Immigrant survivors no longer want to go to family court. They are too scared. They put up with abuse and they refuse to get child support because they are scared they will be reported to Immigration [authorities].¹⁴

Abusers and perpetrators of crime often prey on that same fear: “[o]ne of the most intimidating tools abusers and traffickers of undocumented immigrants use is the threat of deportation. Abusers and other criminals use it to maintain control over their victims and to prevent them from reporting crimes to the police.”¹⁵ The service providers and advocates we serve hear these stories often. Survivors report that abusive partners “often threatened them with halting or stopping their immigration process. Common threats included contacting immigration or withholding the [survivors’] green card.”¹⁶ As survivors may rely on their abusive spouse for their legal status, these threats coerce survivors to stay silent about the abuse they endure.¹⁷

¹³See Hannah Rappleye, Stephanie Gosk, Brenda Breslauer and John Carlos Frey. “Immigration Crackdown Makes Women Afraid to Testify Against Abusers, Experts Say.” NBC News (September 22, 2018), available at <https://www.nbcnews.com/politics/immigration/immigration-crackdown-makes-women-afraid-testify-against-abuser-s-experts-warn-n908271>; See also Congressional letter to Ken Cuccinelli, Acting Director of U.S. Citizenship and Immigration Service on Notice to Appear Policy Changes (July 31, 2019), available at https://jayapal.house.gov/wp-content/uploads/2019/07/UPDATE-Jayapal_Escobar_USCIS_NTA_Letter_07312019-002.pdf

¹⁴ See “May 2019 Advocate Survey: Immigrant Survivors Fear Reporting Violence” Asian-Pacific Institute on Gender Based Violence, ASISTA Immigration Assistance, Casa de Esperanza: National Latin@ Network, National Alliance to End Sexual Violence, National Domestic Violence Hotline, National Network to End Domestic Violence, and Tahirih Justice Center available at <https://www.tahirih.org/pubs/may-2019-advocate-survey-immigrant-survivors-fear-reporting-violence/>; See also Rebecca Tan. “Amid immigration crackdown, undocumented abuse victims hesitate to come forward” Washington Post (June 30, 2019) available at https://www.washingtonpost.com/local/social-issues/amid-immigration-crackdown-undocumented-abuse-victims-hesitate-to-come-forward/2019/06/30/3cb2c816-9840-11e9-830a-21b9b36b64ad_story.html?utm_term=.f0302819c5d2

¹⁵ See Stacey Ivie et al. “Overcoming Fear and Building Trust with Immigrant Communities and Crime Victims”, Police Chief Magazine (April 2018), available at http://www.policechiefmagazine.org/wp-content/uploads/PoliceChief_April-2018_F2_Web.pdf See also Matthew Haag. “Texas Deputy Accused of Molesting 4-year-old and Threatening to Deport Her Mother” New York Times (June 18, 2018), available at <https://www.nytimes.com/2018/06/18/us/cop-molests-girl-deport-mother.html>;

¹⁶ Monica Scott, Shannon Weaver and Akiko Kamimura. “Experiences of Immigrant Women who Applied for Violence Against Women Act (VAWA) self-petitions in the United States: Analysis of Legal Affidavits.” Diversity and Equality in Health and Care (2018) 15(4): 145-150, available at <http://diversityhealthcare.imedpub.com/experiences-of-immigrant-women-who-applied-for-violence-against-women-act-vawa-self-petition-in-the-united-states-analysis-of-lega.pdf>

¹⁷ *Id.*

As part of its efforts to stop the weaponization of our immigration system by abusers, rapists, human traffickers and other perpetrators of crime, a bipartisan majority in Congress created special paths to immigration relief for survivors in VAWA because it recognized:

a battered spouse may be deterred from taking action to protect him or herself, such as filing for a civil protection order, filing criminal charges, or calling the police, because of the threat or fear of deportation. Many immigrant women live trapped and isolated in violent homes, afraid to turn to anyone for help. They fear both continued abuse if they stay with their batterers and deportation if they attempt to leave.¹⁸

Later Congress established, also in a bipartisan fashion, two additional remedies for immigrant survivors: the T visa to assist victims of human trafficking, and the U visa to assist noncitizen victims of certain eligible crimes (including domestic violence, sexual assault, and trafficking) who are willing to assist in the investigation or prosecution of those crimes. In creating these new remedies for immigrant victims, Congress recognized the importance of fostering cooperation between undocumented victims and law enforcement or other agencies tasked with investigating crimes.¹⁹ These protections play a critical role in helping immigrant survivors find independence, safety and stability for themselves and their children.

Applications for VAWA self-petitions, U and T visas, and work authorization granted upon approval do not have a fee.²⁰ USCIS exempted fees for these applications, as noted in the USCIS 2007 fee rule.²¹ The agency reasoned that:

Those programs involve the personal well being of a few applicants and petitioners, and the decision **to waive these fees reflects the humanitarian purposes of the authorizing statutes. *The final rule maintains this blanket fee exemption because it is consistent with***

¹⁸ See H.R. REP. NO. 103-395, at 26-27 (1993); See also Section 1513(a)(2)(A), Public Law No: 106-386, 114 Stat. 1464 (2000) (indicating that Congress created the U and T visa program to “strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, trafficking...and other crimes...committed against aliens, while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States.”)

¹⁹ *Id.* See also section 1513(a)(2)(A), Public Law No: 106-386, 114 Stat. 1464. Congress found that “providing battered immigrant women and children . . . with protection against deportation . . . frees them to cooperate with law enforcement and prosecutors in criminal cases brought against their abusers.” Pub. L. No. 106-386, § 1502(a)(2), 114 Stat. 1464 (2000) (emphasis added).

²⁰ There is no fee, for example for an I-360 application for a VAWA self-petitioner or Applicant for Special Immigrant Juvenile Status. See <https://www.uscis.gov/i-360>. Similarly, there is no fee for an application for U nonimmigrant status or T nonimmigrant Status, See also, <https://www.uscis.gov/i-918> and <https://www.uscis.gov/i-914>.

²¹ U.S. Citizenship and Immigration Service. “Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule” 72 FR 29851 Docket No. USCIS-2006-0044 CIS No. 2393-06 (May 30, 2007, available at <https://www.federalregister.gov/documents/2007/05/30/E7-10371/adjustment-of-the-immigration-and-naturalization-benefit-application-and-petition-fee-schedule>)

the legislative intent to assist persons in these circumstances. Anecdotal evidence indicates that applicants under these programs are generally deserving of a fee waiver.”²²

Nonetheless, VAWA self-petitioners, and U and T visa applicants must often file ancillary forms that do have a significant fees,²³ which would rise exponentially under the proposed rule. Indeed, USCIS plans on raising the fees for some of the most commonly used immigration forms for survivors while simultaneously limiting access to fee waivers.²⁴

IV. Fee Increases Create Burdens for Immigrant Families and Limit Access to Immigration Benefits

The proposed rule increases the fee for the I-192 Application for Advance Permission to Enter as a Nonimmigrant (a form commonly used for U and T visa applicants) from \$930 to \$1415.00, an increase of 52%. In addition, USCIS proposes increasing the fee for I-929 Applications for Qualified Family Members of U visa holders from \$230 to \$1515.00.²⁵ This is a drastic and wholly inexplicable increase. I-929 filings represent an extremely minor percentage of the applications filed annually with USCIS, with FY2019 figures showing that only 833 applications have been filed in the first three quarters, and 1,192 total filed in FY2018.²⁶ USCIS places enormous and unjustifiable burdens on immigrant victims and their families when it raises the fees for I-929 applications over 559%.

In addition, low-income VAWA self-petitioners, U and T visa holders will be burdened by the increase in fees for adjustment of status applications to become legal permanent residents. Currently adjustment applications cost \$1,225 for most applicants, which includes the cost of other forms related to employment authorization and travel. The proposed rule “unbundles” these filing fees for these applications (I-485, I-765 and I-131) which would increase the total price of that package to \$2,195, an increase of 79%. In addition, low-income survivors who are legal permanent residents would be harmed by an 83% increase in fees for naturalization from \$640 to \$1170. The changes in the proposed rule would create a financial barriers for low income

²² *Id.* Emphasis added.

²³ For example, an I-765, Application for Employment Authorization **currently** has a \$495 fee; See <https://www.uscis.gov/i-765> ; an I-192 Application for Advance Permission to Enter as a Nonimmigrant has a \$930 fee See <https://www.uscis.gov/i-192>; an I-485 application to Register Permanent Residence or Adjust Status ranges in fees from \$750 to \$1,225, See <https://www.uscis.gov/i-485> **This is all under the current fee structure.**

²⁴ See Table 19; Proposed Rule at 62326. See *also* Proposed Rule at 62298.

²⁵ *Id.*

²⁶ USCIS. All USCIS Application and Petition Form Types (Fiscal Year 2019, 3rd Quarter, Apr. 1-Jun. 30, 2019)(September 19, 2019), available at:

https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/Quarterly_All_Forms_FY19Q3.pdf; USCIS. All USCIS Application and Petition Form Types (Fiscal Year 2018, 4thQuarter, July 1-September 30, 2018)(Feb. 26, 2019), available at https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/Quarterly_All_Forms_FY18Q4.pdf

immigrant survivors, and place them in an unconscionable position of having to choose between delaying or falling out of legal immigration status or providing for their families' necessities.

USCIS last adjusted the fee schedule in December 2016, by a weighted average increase of 21 percent.²⁷ Since then, USCIS processing times have drastically increased,²⁸ causing hardship for immigrant families and diminishing survivors' ability to rebuild their lives following abuse. USCIS has failed to demonstrate how the last fee increase affected processing times, and does not provide any explanation about how this current fee increase will improve the agency's functions.

The delays in adjudication for survivor-based forms of relief have been growing for years. A decade ago, a CIS Ombudsman report stated the "Ombudsman is concerned that USCIS has not allocated the resources needed to timely process T and U non-immigrant, as well as eligible adjustment, cases."²⁹ Again, in May of 2016, advocates nationwide expressed their deep concern over case delays in the U visa program, as processing times were then over two years.³⁰ In December 2019, U visa processing times are now posted at 52.5 to 53 months, more than double where they were three years earlier.³¹ According to USCIS data, the average processing time for U visa applications was 11.4 months in FY2014. In FY2019, the average processing time was 44.5 months, a 290% increase.³² VAWA self-petitions now take between 18.5 and 24 months to be adjudicated.³³ USCIS' posted processing times for T visa applications for victims of human trafficking are between 19 and 26.5 months,³⁴ a 314% increase from FY2015 when these applications took 6.4 months to adjudicate.³⁵

The reality is that these shocking backlogs undermine the effectiveness of these critical benefits. Such long waits for the adjudication of their cases, coupled with other barriers (like a lack of access to work authorization or other financial supports) can be devastating to survivors, and cause them

²⁷ See Proposed Rule at 62281.

²⁸ Kanyakrit Vongkiatkajorn. "Report: Immigration Applications Are Seeing "Crisis-Level" Delays Under the Trump Administration" (January 30, 2019), available at <https://www.motherjones.com/politics/2019/01/report-immigration-applications-are-seeing-crisis-level-delays-under-the-trump-administration/>

²⁹ Department of Homeland Security. CIS Ombudsman. "Improving the Process for Victims of Human Trafficking and Certain Criminal Activity: The T and U Visa January 29, 2009", available at https://www.dhs.gov/xlibrary/assets/cisomb_tandu_visarecommendation_2009-01-26.pdf

³⁰ See Sign-On Letter to Director Rodríguez on Significant Delays in Adjudicating Petitions for U Nonimmigrant Status And USCIS Response (2016), available at <https://asistahelp.org/wp-content/uploads/2019/07/2016-ASISTA-Sign-on-letter-on-U-processing-delays-and-response-1.pdf>

³¹ See USCIS Processing Times at <https://egov.uscis.gov/cris/processTimesDisplayInit.do> for processing times for I-918 Application for U Nonimmigrant Status adjudicated at the Vermont Service Center

³² USCIS. "Historic National Average Processing Times for All USCIS Offices", available at <https://egov.uscis.gov/processing-times/historic-pt> (actual percentage 290%)

³³ See Note 31, *supra*. for processing times for I-360 VAWA self petitions adjudicated at the Vermont Service Center

³⁴ *Id.* for processing times for I-914 Application for T Nonimmigrant Status processed at Vermont Service Center

³⁵ See note 32, *supra*.

possibly to either face homelessness or have to return to violent homes. Similarly, survivors who are facing these incredible backlogs risk potential deportation before their applications are adjudicated, which contravenes the purpose of these bipartisan protections established by Congress.

Congressional goals are also undermined by U and T visa processing delays as they impact public safety. Tucson Police Chief Chris Magnus stated that “his biggest concern about U visas is that the program’s effectiveness would diminish as a result of the enormous backlog as witnesses or victims may get deported before getting through the program: ‘If word gets out that this does nothing for you, then people won’t be willing to come forward.’”³⁶ Sgt. Inspector Antonio Flores in San Francisco, California stated “the growing delays in issuing the U visas have frightened undocumented immigrant victims from coming forward and, in turn, thwarted charges against suspects.”³⁷ Staff at the Denver district attorney’s office put it plainly, “If the delay is too long, it could limit the value of the tool.”³⁸

USCIS has not justified why the agency requires another 21% increase just three years later. Nor has USCIS adequately shown how this fee increase will diminish increasing processing delays and improve customer service. In fact, USCIS estimates that it will take several years before the agency’s backlogs decrease measurably.³⁹ By its own admission, USCIS concedes that applicants will pay drastically more for diminished service and results.

V. Diminished Access to Fee Waivers Will Harm Immigrant Families & Survivors

Fee waivers have been and are absolutely essential for immigrant survivors to access survivor-based immigration protections. Congress recognized that ensuring equal access to these protections is crucial, especially for survivors who may have few financial resources of their own. For this reason, Congress codified the use of fee waivers in certain humanitarian cases in the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, specifically stating that DHS *shall permit applicants to apply for a waiver of any fees associated* with filing a VAWA self-petition, a T or U visa application, Temporary Protective Status, or an application for VAWA cancellation or suspension of deportation.⁴⁰

³⁶ Human Rights Watch. “Immigrant Crime Fighters: How the U visa Program Makes U.S. Communities Safer” (July 8, 2019) available at

<https://www.hrw.org/report/2018/07/03/immigrant-crime-fighters/how-u-visa-program-makes-us-communities-safer>

³⁷ Zolan Kanno-Youngs. “Trump’s Immigration Crackdown Has Blunted Police Efforts to Be Tough on Crime” New York Times (May 14, 2019) available at

<https://www.nytimes.com/2019/05/14/us/politics/trumps-immigration-visa-crime.html>

³⁸ See Human Rights Watch Report, Note 36 *supra*.

³⁹ Proposed rule at 62294.

⁴⁰ William Wilberforce Trafficking Victims Protection Reauthorization Act. Section by section 201(d)(7), Public Law No: 110-457 (December 23, 2008) (codified at 8 U.S.C. § 1255(l)(7)), available at: <https://www.congress.gov/110/plaws/publ457/PLAW-110publ457.pdf>. [Emphasis added].

Meaningful access to fee waivers is critical given the economic realities that survivors often face. While intimate partner violence permeates all income levels, there is research cited by the Centers for Disease Control and Prevention that indicates that intimate partner victimization is associated with economic, food and housing insecurity.⁴¹ Experts note that “batterers create economic instability for their partners through economic sabotage and control. And poverty, in turn, creates increased vulnerability to violence and additional barriers to safety.”⁴²

Thus, many survivors need fee waivers to access the vital survivor-based immigration protections Congress created. They may be fleeing abuse, may not have resources to pay for fee-based ancillary forms, nor have access to primary forms of evidence to demonstrate their economic need. And yet, the proposed rule eviscerates access to fee waivers for these and other applicants.

A. Limiting the Use of Fee Waivers Will Create Harsh Barriers for Low-Income Survivors.

Fee waivers for Temporary Protected Status⁴³ (TPS) and for survivor-based immigration protections under the Violence Against Women Act (VAWA), including VAWA self-petitioners⁴⁴ and T and U visa applications are statutorily protected and cannot be eliminated by DHS.⁴⁵ However, the proposed rule states that generally fee waivers will no longer be available for any naturalization applications and many other forms in non-survivor based cases, like legal permanent residence applications, work permit applications, and Form I-751, Petitions to Remove Conditions on Residence, among others.⁴⁶ We further object to USCIS’ proposal to make fee waivers unavailable to applicants who are subject to the public charge ground of inadmissibility; those who are subject to an affidavit of support; and those who are already sponsored immigrants, as it would disproportionately harm low and moderate income families.

⁴¹ NISVS. “An Overview of Intimate Partner Violence in the United States — 2010 Findings”, available at <https://www.cdc.gov/violenceprevention/pdf/ipv-nisvs-factsheet-v5-a.pdf>

⁴² Sara J. Shoener and Erika A. Sussman. “Economic Ripple Effect of IPV: Building Partnerships for Systemic Change” Domestic Violence Report. August/September 2013, available at https://csaj.org/document-library/Shoener_and_Sussman_2013_-_Economic_Ripple_Effect_of_IPV.pdf

⁴³ See INA sec. 244, 8 U.S.C. 1254a.

⁴⁴ As defined by INA 101(a)(51)

⁴⁵ See 8 U.S.C. 1255(l)(7); The proposed rule indicates that fee waivers will remain available to VAWA self-petitioners and U and T visa applicants for any forms filed in relation to their main benefit until they have adjusted status. See Proposed Rule at 62296, and Table 7 at 62297 for full list of forms still eligible for fee waivers in survivor-based cases for VAWA self-petitioners, U and T visa applicants.

⁴⁶ See Proposed Rule at 62999. Fee waivers will be eliminated for naturalization, and the following forms in non-survivor based cases: 1) Form I-90, Application to Replace Permanent Resident Card; 2) Form I-765, Application for Employment Authorization; 3) CNMI related petitions and applications; 4) Form I-485, Application to Register Permanent Residence or Adjust Status; 5) Forms for applicants exempt from the public charge inadmissibility ground; Form I-751, Petition to Remove Conditions on Residence. Note that applicants seeking a domestic violence-based I-751 waivers are defined as “VAWA self-petitioners” under INA 101(a)(51)(C) and thus access to fee waivers are statutorily protected under the TVPRA of 2008 (8 U.S.C. § 1255(l)(7)).

USCIS hinders access to immigration relief to those who have most to gain by access to legal immigration status. The proposed rule ignores the reality that survivors of domestic violence, sexual assault and human trafficking may pursue other routes to secure immigration status which lack such explicit protections--for example, survivors may seek lawful permanent residence on a basis other than those specifically designed for crime survivors. In these instances, these survivors will no longer have access to fee waivers.

In addition, under the proposed rule, legal permanent residents applying for naturalization, including those who are survivors of domestic violence, sexual assault and other crimes, will not have access to fee waivers. Over the last several years, the high cost of naturalization has often been a barrier for individuals who are eligible to apply.⁴⁷ Recent studies show that under the proposed rule, an individual earning minimum wage would need to work 161 hours, or a full months wages, in order to afford the new naturalization fee in the proposed rule.⁴⁸ Thus, raising the fees for naturalization by 83%, while concurrently eliminating the availability of fee waivers, will put low-income legal permanent residents escaping violence in the unconscionable position of having to choose between expending resources to become a U.S. citizen or cover basic necessities for their families.

B. Narrowing the Criteria For Fee Waivers Will Diminish Access to Survivor-based Protections.

USCIS has already taken dramatic measures to limit fee waivers.⁴⁹ Earlier in 2019, USCIS proposed form and policy changes that would create additional documentation requirements for fee waivers; require the use of the I-912 form; and eliminate the means-tested benefit criteria for fee waivers.⁵⁰ For over a year, advocates have voiced their strong opposition to the I-912 form

⁴⁷ See National Partnership for New Americans & the Center for the Studies of Immigrant Integration at the University of Southern California “Nurturing Naturalization: Can Lowering the Fee Help?” (February 2013), available at https://dornsife.usc.edu/assets/sites/731/docs/Nurturing_Naturalization_final_web.pdf; See also Chinelo Nkechi Ikem. “High Applications Fees Can Be a Significant Barrier to Naturalization. *Pacific Magazine* (February 22, 2018) <https://psmag.com/economics/application-fee-naturalization>

⁴⁸ NALEO Education Fund and ILRC. “Hours of Work Required to Pay Citizenship Fees.” (2019) <https://www.newamericanscampaign.org/wp-content/uploads/2019/12/NatZFee-HoursWorked-final.png>

⁴⁹See e.g. DHS. USCIS. “Agency Information Collection Activities; Form I-912; Request for an Individual Fee Waiver,” USCIS-2010-0008 (September 28, 2018) (hereinafter “September 2018 Announcement”) available at: <https://www.regulations.gov/document?D=USCIS-2010-0008-0144>

⁵⁰ U.S. Citizenship and Immigration Services, Department of Homeland Security. “Agency Information Collection Activities; Revision of a Currently Approved Collection: Request for Fee Waiver; Exemptions” 84 FR 26137 (June 5, 2019) (hereinafter “June 2019 Announcement”), available at <https://www.federalregister.gov/documents/2019/06/05/2019-11744/agency-information-collection-activities-revisio-n-of-a-currently-approved-collection-request-for-fee>; See also DHS. USCIS. “Agency Information Collection Activities; Form I-912; Request for an Individual Fee Waiver,” USCIS-2010-0008, 84 FR 13687 (April 5, 2019) (hereinafter “April 2019 Announcement”), available at:

changes as they limit survivors' access to immigration relief, and contained substantive policy changes under the guise of a form revision. These proposed changes are now subject to a nationwide injunction pursuant to a pending matter (*Seattle v. DHS*) in the U.S. District Court for the Northern District of California.⁵¹

Yet the proposed rule again sharply narrows the criteria for fee waivers; and eliminates the means tested benefit **and** financial hardship criteria entirely. The rule states that USCIS will only consider fee waiver requests from individuals who can demonstrate they have an annual household income at or below 125 percent of the federal poverty guidelines.⁵² It also mandates the use of the I-912 form and states that USCIS Director can grant "discretionary fee waiver requests" in extremely limited circumstances.⁵³

USCIS acknowledges that "limiting fee waivers may adversely affect **some** applicants' ability to apply for immigration benefits."⁵⁴ By reducing the federal income guidelines criteria for fee waivers from 150% to 125% of the federal poverty guidelines, "DHS estimates about **22,748** fewer fee waiver applications would be approved."⁵⁵ Eliminating the means-tested benefit and financial hardship criteria of fee waivers, USCIS estimates that an additional 377,918 fee waiver applicants would no longer be eligible to receive a fee waiver.⁵⁶ Thus, "some applicants" actually means **400,666** individuals annually, roughly the population of Tulsa, Oklahoma.⁵⁷

We are deeply concerned that USCIS arrives at these estimates using data collected from October 2, 2017 through October 27, 2017 using only fee waiver applications that were submitted to the

<https://www.federalregister.gov/documents/2019/04/05/2019-06657/agency-information-collection-activities-revision-of-a-currently-approved-collection-request-for-fee>

⁵¹*City of Seattle v. DHS* Order Granting Plaintiffs' Motion for Nationwide Preliminary Injunction (December 11, 2019), available at

<https://assets.documentcloud.org/documents/6574605/65-PI-Order-20191211.pdf>

⁵² [Emphasis added]. In addition, fee waivers will only be available to those seeking an immigration benefit for which he or she is not required to submit an affidavit of support under INA section 213A, 8 U.S.C. 1183a or is not already a sponsored immigrant as defined in 8 CFR 213a.1; and who are seeking an immigration benefit for which they are not subject to the public charge inadmissibility ground under INA section 212(a)(4), 8 U.S.C. 1182(a)(4). See U.S. Citizenship and Immigration Service. "Regulatory Impact Analysis: U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements" CIS No. 2627-18; DHS Docket No.: USCIS-2019-0010; RIN: No: 1615-AC18 at 28 (October 30, 2019) available at

<https://www.regulations.gov/document?D=USCIS-2019-0010-0559> (hereinafter "Regulatory Impact Analysis")

⁵³ Proposed rule at 62301. The proposed rule would "limit a Director's discretionary waiver to cases related to one of the following: (1) Asylees; (2) Refugees; (3) National security; (4) Emergencies or major disasters declared in accordance with 44 CFR part 206, subpart B; (5) An agreement between the U.S. government and another nation or nations; or (6) USCIS error."

⁵⁴ Regulatory Impact Analysis at 7.

⁵⁵ *Id.* at 42.

⁵⁶ *Id.* "As previously shown, DHS estimates about 371,714 fee waiver applications were approved based on the means-tested benefit criterion and about 6,204 fee waiver applications were approved based on the financial hardship criterion."

⁵⁷ U.S. Census Bureau. "Quickfacts: Tulsa City, OK", available at

<https://www.census.gov/quickfacts/fact/table/tulsacityoklahoma/PST045218>

USCIS Office of Intake and Document Production (OIDP) at lockbox locations.⁵⁸ According to USCIS, this OIDP sample results showed that less than 1 percent of approved fee waivers were eligible based on the individual being qualified according to statute.⁵⁹ This is due to the long-standing and obvious fact that humanitarian protections including VAWA self-petitions, U and T visa applications are submitted to the Vermont Service Center, and not at OIDP lockbox facilities.⁶⁰ DHS indicates that it was not able to collect data at the service centers, but does not explain why it was not possible to do so. USCIS admits that fee waivers based on the individual being qualified according to statute (e.g. VAWA, U and T visa related matters, and TPS) “could be more than 1 percent of the total.”⁶¹ Given what appears to be its deliberate and blatant lack of information related to survivor-based forms of immigration relief, USCIS creates a wholly insufficient and incomplete proxy on which to base these drastic policy changes.

Furthermore, USCIS’ data is incomplete as it only shows fee waiver trends through FY2017.⁶² USCIS fails to demonstrate the fee waiver approval rates for the past two fiscal years. We request that USCIS release this data, as over the last two years, advocates report an increase in denials of fee waiver applications, especially those related to survivor-based immigration relief, even prior to the publication of the proposed rule or the prior fee waiver form revisions.⁶³ This significant rejection of fee waivers can cause survivors enormous hardship. Service providers report that survivors have had to borrow from others to pay fees or else missed critical deadlines because of fee waiver denials, which effectively denies them access to the appropriate legal process regarding their claim.

1. USCIS’ Stringent Fee Waiver Evidentiary Requirements Undermine Congressional Intent

We recognize that a fee waiver adjudication is a distinct determination from a merits decision. However, USCIS thwarts the will of Congress when it imposes an evidentiary standard for fee waivers that is more difficult to meet than the legal protections Congress created for survivors under VAWA and the TVPA.⁶⁴ As mentioned earlier, Congress recognized that crime survivors should not be precluded from seeking status due to inability to pay fees or due to their inability to present primary evidence to prove their claim.⁶⁵ Current USCIS fee waiver guidelines recognize the need for this documentary flexibility indicating that applicants may submit “any other

⁵⁸ Regulatory Impact Analysis at 33 and 39.

⁵⁹ E.g. including VAWA self-petitioners, U and T visa applicants, etc. *Id.* at 39.

⁶⁰ *Id.* at 39 and 40.

⁶¹ *Id.* at 39.

⁶² *Id.* at 34.

⁶³ See Sign on Letter to USCIS Director Francis Cissna (September 4, 2018), available at https://asistahelp.org/wp-content/uploads/2019/12/Final_Submission_Fee_Waiver_Cover_Letter.pdf

⁶⁴ See e.g. INA 204(a)(1)(J), INA 214(p)(4);

⁶⁵ See ASISTA Comment to USCIS-2010-0008, OMB Control Number 1615-0116; Agency Information Collection Activities; Revision of a Currently Approved Collection: Request for Fee Waiver; Exemptions, available at <https://asistahelp.org/wp-content/uploads/2018/12/ASISTA-Fee-Waiver-comment-FINAL-11.27.18.pdf>

documentation or evidence that demonstrates the individual's inability to pay the fee based on his or her overall financial picture and household situation" in order to demonstrate financial hardship.⁶⁶ The guidelines also indicate that "a fee waiver request may be approved in the absence of additional documentation if the applicant's request is sufficiently detailed to substantiate his or her inability to pay."⁶⁷ Thus, under current guidance, an affidavit or declaration under penalty of perjury should be sufficient to demonstrate eligibility for a fee waiver.

2. Eliminating Means-Tested Benefit Criteria for Fee Waivers Blocks Paths to Status

For survivors of domestic violence, sexual assault and human trafficking, means-tested benefits support basic economic security and independence and are, therefore, critically important.⁶⁸ Survivors of intimate partner violence, sexual assault and human trafficking may be fleeing abusive living situations, may not have their own income source, or else their partners control primary documents. Some survivors may be facing critical deadlines related to their cases or otherwise may not have the time nor the ability to obtain additional documentation to support a fee waiver request.

Using receipt of means-tested benefits as a stand-alone criteria for survivors is a simple, straightforward way to demonstrate their economic need without relying on documentation that may be unsafe or burdensome to obtain. By eliminating the means-tested benefit criteria for fee waivers, USCIS is eliminating one of the most unambiguous forms of evidence of financial hardship.

The rationale for using means-tested benefits as a criteria for fee waivers is that the applicant's financial hardship has been *pre-established* by a state agency. In order to receive benefits under a means-tested program, individuals or families often have to establish their eligibility based on their own lack of income and/or assets. State agencies administering means-tested benefits must screen for financial hardship and inquire about an applicant's assets like property, savings, as well as their income level before determining whether an applicant qualifies for a benefit. Therefore, receipt of a means-tested benefit *by definition* means that an individual is of limited means and that said benefit is necessary to help meet their basic needs.

⁶⁶ PM-602-0011.1 "Fee Waiver Guidelines Established by the Final Rule of the USCIS Fee Schedule: Revisions to Adjudicator Field Manual (AFM) Chapter 10.9, AFM Update AD11-26.p. 7 (March 13, 2011), available at: <http://bit.ly/2011USCISFeeWaiverGuidelines> (hereinafter "Fee Waiver Guidelines").

⁶⁷ Fee Waiver Guidelines at 4 and 5.

⁶⁸ See Shaina Goodman. NCRDV "The Difference between Surviving and Not Surviving Public Benefits Programs and Domestic and Sexual Violence Victims' Economic Security" (January 2018), available at https://vawnet.org/sites/default/files/assets/files/2018-10/NRCDV-TheDifferenceBetweenSurvivingandNotSurviving-UpdatedOct2018_0.pdf

This is an unambiguous criteria for determining fee waiver eligibility, and USCIS does not include any rationale in the proposed rule for its exclusion. Receipt of means-tested benefits *per se* demonstrates an individual's financial need, as defined by the state which knows best what is necessary to live above the poverty line within its boundaries. USCIS should continue to accept receipt of means tested benefits as evidence of an applicant's "reasons for their inability to pay" under the regulations.⁶⁹

3. Eliminating the Financial Hardship Criteria for Fee Waivers Will Harm Survivors

USCIS does not include any discernible rationale for eliminating this criteria for fee waivers in the proposed rule. Indeed, the proposed rule itself does not even mention eliminating this criteria at all.⁷⁰ According to current fee waiver guidance, fee waivers may be granted if an individual demonstrates "that he or she is under financial hardship due to extraordinary expenses or other circumstances affecting his or her financial situation to the degree that he or she is unable to pay the fee."⁷¹ This can include:

uninsured (or underinsured) medical bills, situations that could not normally be expected in the regular course of life events, or a medical emergency or catastrophic illness affecting the individual or the individual's dependents. If the individual is under financial hardship, the individual should demonstrate that he or she has suffered a sufficiently negative financial impact as a result of this hardship **in a reasonably recent period preceding the filing of the fee-waiver request so as to render the applicant's income during that period insufficient to pay the fee.**⁷²

The current fee waiver guidance recognizes that there are often extraordinary circumstances that cause financial hardship, and that those hardships should not prevent access to critical and stable immigration benefits when an applicant may need them the most. USCIS estimates that 6,204 applications were based on financial hardship in its ODP sample.⁷³ Again, this sample size does not seem to include data related to survivor-based applications.

Eliminating this criteria for fee waivers will disproportionately impact immigrant survivors, given the devastating economic effects of domestic violence and other gender-based violence. Abusers commonly prevent survivors from accessing or acquiring financial resources in order to maintain power and control in the relationship.⁷⁴ In one study, 99% of domestic violence victims reported

⁶⁹ 8 CFR 103.7(c)

⁷⁰ Proposed Rule at 62299. The Regulatory Impact Analysis similarly does not contain any justification or discussion why this criteria was eliminated.

⁷¹ Fee Waiver Guidelines at 7.

⁷² *Id.* [Emphasis Added]

⁷³ Regulatory Impact Analysis at 48.

⁷⁴ This is known as economic or financial abuse, which is "behavior that seeks to control a person's ability to acquire, use, or maintain economic resources, and threatens their self-sufficiency and financial autonomy." See NNEDV.

experiencing economic abuse.⁷⁵ Furthermore, survivors may be forced to stay with abusers because they depend on them for financial support or housing. In a 2012 survey, three out of four victims said they stayed with their abusers longer for economic reasons.⁷⁶

In addition, experiencing physical, psychological or economic abuse can affect a survivor's ability to obtain or maintain stable employment.⁷⁷ A survey of survivors conducted by the Maine Department of Labor indicated that abuse affected a survivor's "performance and productivity, including being constantly harassed at work, delayed getting to work, or prevented from going to work. As a result, 60 percent of victims in the study reported having either quit their job or being terminated as a result of the abuse."⁷⁸

4. Narrowing the Federal Poverty Guideline Criteria Will Create Undue Barriers to Relief

USCIS proposes to narrow the household income criteria for fee waivers from 150% of the FPG to 125% percent of FPG, indicating that this is "appropriate" since it would be consistent with public charge and affidavit of support requirements.⁷⁹ We strongly disagree that this is an appropriate measure as it would mean that thousands of individuals would become ineligible to apply for fee waivers. Individuals above 125% of FPG frequently still have a demonstrable financial need, as evidenced by the fact that other means tested benefits utilize criteria above that level for eligibility purposes.⁸⁰ By limiting access to fee waivers, fewer people will have access to immigration relief for which they otherwise may be eligible. This can have a devastating impact on applicants and

"Financial Abuse Fact Sheet" <https://nnedv.org/?mdocs-file=10108>; See also Melissa Jeltsen. "The Insidious Form of Domestic Violence That No One Talks about" Huffington Post (October 21, 2014) , available at https://www.huffingtonpost.com/2014/10/21/domestic-violence_n_6022320.html

⁷⁵ Adrienne E. Adams. "Measuring the Effects of Domestic Violence on Women's Financial Well-Being" Center for Financial Security-University of Wisconsin-Madison (2011), available at <https://centerforfinancialsecurity.files.wordpress.com/2015/04/adams2011.pdf>

⁷⁶ Mary Kay. "2012 Truth About Abuse Survey Report" available at. http://content2.marykayintouch.com/public/PWS_US/PDFs/company/2012Survey.pdf

⁷⁷ Institute for Women Policy Research. "The Economic Cost of Intimate Partner Violence, Sexual Assault, and Stalking" (August 2017), available at:

https://iwpr.org/wp-content/uploads/2017/08/B367_Economic-Impacts-of-IPV-08.14.17.pdf; See also Michelle Chen. "The Economic Costs of Domestic Violence" The Nation (Sept. 20, 2017), available at <https://www.thenation.com/article/the-economic-costs-of-domestic-violence/> (reporting that a 2005 survey of survivors found that two-thirds had suffered direct impacts on their work performance).

⁷⁸ See Institute for Women Policy Research article, note 77 *supra*.

⁷⁹ Proposed Rule at 62999.

⁸⁰ For example, eligibility for Supplemental Nutrition Assistance Program (SNAP) in FY2019 required applicants to show they were at or below 133% of FPG. See

<https://fns-prod.azureedge.net/sites/default/files/media/file/FY19-Income-Eligibility-Standards.pdf> ; Medicaid programs for children are currently available for those families who demonstrate 133% of FPG (or in some states above), as well as 37 states including the District of Columbia that expand Medicaid coverage to adults at some percentage over 130% of FPG. See <https://www.medicaid.gov/medicaid/eligibility/index.html> and <https://www.kff.org/medicaid/issue-brief/status-of-state-medicaid-expansion-decisions-interactive-map/>

their families. For these reasons, the criteria for fee waivers should be based upon ***an applicant's*** economic need, and not USCIS' budgetary goals.

VI. Comments on Proposed Revisions to I-912 Form and Instructions

Again, we reiterate our deep opposition to USCIS limited comment period to review over 150 supplemental documents that relate to the proposed rule. As the I-912 waiver form is central to the proposed rule's objectives, we submit the following comments with regard to the I-912 fee waiver form, instructions, and related policy.

A. USCIS Should Continue to Accept "Applicant-Generated" Fee Waiver Requests

The requirement that applicants must submit an I-912 in lieu of a declaration and supporting evidence that outlines the factors in the regulations runs counter to existing pattern and practice where an applicant could submit a declaration and/or other supporting documents to comply with the requirements indicated in the regulations at 8 CFR 103.7(c). USCIS should continue to accept "applicant-generated" fee waiver requests (such as a letter, declaration or affidavit) that demonstrate an applicant or a petitioner is eligible for a fee waiver.

Eliminating this currently accepted form of request places an additional and unnecessary hardship on survivors to locate, complete, and submit the Form I-912. For *pro se* survivors, for survivors with limited English proficiency, as well as for service providers who work with a high-volume caseload, the requirement of the I-912 is an unnecessary burden. The proposed I-912 form itself is a complex nine-page form, with ten pages of instructions. It is often easier for survivors and those who serve them to use applicant generated fee requests to demonstrate income, expenses and the reasons the applicant or petitioner is unable to pay the immigration fees. These applicant-generated forms of proof comport with the requirements of 8 CFR 103.7(c) and with the any credible evidence standard.

USCIS's own guidance states that while the I-912 fee waiver application was created to help standardize requests, the use of a USCIS form is NOT mandated by regulation, so USCIS will continue to consider "applicant-generated" fee waiver requests that comply with 8 CFR 103.7(c).⁸¹ Moreover, the regulations do not specify that any particular form of proof must be used to show inability to pay, just that such a showing must be made. USCIS has not sufficiently justified its rationale for making the Form I-912 a requirement, nor explained how such a *sine qua non* requirement complies with the any credible evidence standard. We similarly object to revisions to the Form I-918, Instructions for Petition for U Nonimmigrant Status that eliminate the option for written statements to request a fee waiver for inadmissibility waivers.⁸²

⁸¹See Fee Waiver Guidelines at 2.

⁸² I-918 Table of Changes, OMB Number: 1615-0104, available at <https://www.regulations.gov/document?D=USCIS-2019-0010-0290>

B. USCIS should Continue the Practice of Requiring One Fee Waiver Application Per Family

Furthermore, the I-912 instructions submitted as supplemental material to the proposed rule requires that each applicant and derivative family member submit separate fee waivers instead of one fee waiver submission for an entire family unit.⁸³ Not only is this inefficient, it will cause delays and impose a burden on survivors that Congress could not have intended. USCIS data suggests that 90% percent of Form I-912 filings were filed for one person on one form⁸⁴ However, it appears as if this data was derived from the ODP sample which seemingly does not include any data regarding fee waivers submitted with survivor-based forms of relief.⁸⁵ For those applying for VAWA self-petitions, as well as U and T visas, the impact will be considerable. Survivors applying for these humanitarian protections often include derivative family members in their applications. For example, the chart below shows the number of U and T visa applications filed in FY2018:⁸⁶

| Form of Relief | Principal Applications Filed (FY2018) | Derivative Applications Filed (FY 2018) | Total Applications Filed (FY 2018) |
|----------------|---------------------------------------|---|------------------------------------|
| U Visa | 34,967 | 24,024 | 58,991 |
| T visa | 1,613 | 1,315 | 2,928 |

This chart shows that survivors often submit applications for additional family members. Requiring a Form I-912 for each person filing a fee waiver request would also add burdens for survivors and service providers, who would need to spend extra time and resources filling out multiple ten-page forms and taking time to navigate the complex documentary criteria. In addition, the proposed revisions would also increase the burden on USCIS adjudicators who would need to review thousands of additional I-912s to assess fee waiver eligibility for family units. This requirement disproportionately impacts survivors and their families, as well as the specialized unit of

⁸³ See *Instructions for I-912, Request for Fee Waive* 10.30.2019, p 3 (posted November 14, 2019) available at <https://beta.regulations.gov/document/USCIS-2019-0010-0088> (hereinafter "Proposed I-912 Instructions")

⁸⁴ Regulatory Impact Analysis at 35.

⁸⁵ *Id.* at 35.

⁸⁶ Source: U.S. Citizenship and Immigration Services, *Number of I-918 Petitions for U Nonimmigrant Status (Victims of Certain Criminal Activities and Family Members) by Fiscal Year, Quarter, and Case Status 2009-2019* (Last accessed December 28, 2019) available at

https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Victims/I918u_visastatistics_fy2019_qtr3.pdf ; See also U.S. Citizenship and Immigration Service, Form I-914, Application for T Nonimmigrant Status by Fiscal Year, Quarter, and Case Status (last accessed December 28, 2019) available at:

https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Victims/I914t_visastatistics_fy2019_qtr3.pdf

adjudicators at the Service Centers charged with adjudicating survivor-based protections. We call on USCIS to continue its current policy of permitting one fee waiver for each family unit.

C. I-912 Form

The updated I-912 Form contains provisions that are difficult to comprehend and will cause confusion and burden for survivors filling out the application. For example, Part 1, Question A asks applicants to list a receipt number, when they may be applying for benefits for the first time, and not have one.⁸⁷ Nowhere in the instructions does it state what applicants should do if applying for first time benefits, nor does it explain what supporting documents may be needed to support the selection.⁸⁸ Part 3, Questions C on page 4 provides no checkbox for “other” or “unknown” as there may be applicants who are uncertain or unaware of whether a household member filed a tax return, and who may have an explanation that goes beyond the scope of the options provided in the form.⁸⁹

D. Documentation Requirements Present Barriers for Survivors

The I-912 instructions indicate that applicants must provide a transcript of each household member’s tax return and, if not available, seek other documentation (e.g. IRS Form 1099-G, W-2 form, etc.) to prove income.⁹⁰ Though survivors may not need to include income of an abuser, they may still need to obtain tax transcripts from other household members, including adult children or other family members which can be time-consuming and arduous process.

For example, to request a transcript online, the IRS requires an applicant to have an SSN and “access to your email account; your personal account number from a credit card, mortgage, home equity loan, home equity line of credit or car loan; and a mobile phone with your name on the account.”⁹¹ Survivors and other applicants often do not possess or have access to this information. To apply for a transcript by mail, applicants need less information, but will need to wait an additional 5-10 days, which may impact critical filing deadlines.⁹² Fee waiver applicants who may be in emergency or transitional housing, or do not have the language or technology access to obtain these transcripts will face additional burdens obtaining this information.

⁸⁷ Form I- 912, Request Fee Waiver (Posted Nov. 14, 2019), available at <https://www.regulations.gov/document?D=USCIS-2019-0010-0089> (hereinafter Proposed I-912 Form)

⁸⁸ See Proposed I-912 instructions at 4.

⁸⁹ See Proposed I-912 Form.

⁹⁰ See Proposed I-912 instructions at 6.

⁹¹ Internal Revenue Service. “Tax Record: Transcript” available at <https://www.irs.gov/individuals/get-transcript>

⁹² *Id.*

The Form I-912 Instructions list seven different scenarios which may impact what type of documentation should be provided to demonstrate annual income.⁹³ Below Number 7 it reads,

If you already have or are applying for VAWA benefits or T or U nonimmigrant status, and due to your victimization, you do not have any income or cannot provide proof of income as required in the paragraph above, provide any available documentation of your income, such as pay stubs or affidavits from religious institutions, non-profits, or other community based organizations verifying that you are currently receiving some benefit or support from that entity and attesting to your financial Situation. Describe your particular situation in sufficient detail in Part 3., Item Number 10.

Similar language is repeated on page 8 of the I-912 instructions, stating:

NOTE: If you already have or are applying for VAWA benefits or T or U nonimmigrant status, and due to your victimization, you do not have any income or cannot provide proof of income for yourself or your household members as required in Part 3. Item Numbers 5. - 10. above, describe your situation in sufficient detail in Part 3. Item Number 10. to substantiate your inability to pay as well as your inability to obtain the required documentation. Additionally, provide any available documentation of your and/or your household's income, such as pay stubs or affidavits from religious institutions, non-profits, or other community-based organizations verifying that you are currently receiving some benefit or support from that entity and attesting to your financial situation.⁹⁴

This language is burdensome for survivors, as they may face obstacles obtaining income or providing proof of income for reasons that may or may not be related to their victimization. There are undoubtedly links between victimization and economic necessity and financial hardship.⁹⁵ However, it is essential to consider survivors' lives and circumstances from a fuller view. Experts also show that a survivor's financial risks and considerations may not be related to an abusive partner's behavior.⁹⁶ For example, survivors may be laid off because of downsizing or shifts in the economy.⁹⁷ While this financial hardship is not abuser-generated, the loss of income and other benefits can profoundly impact a survivor's options.⁹⁸

The proposed I-912 instructions create additional burdens that are *ultra vires* to the statute permitting fee waivers for survivor-based cases, notably with the phrase "due to your

⁹³ See Proposed I-912 instructions at 6.

⁹⁴ *Id.* at 8.

⁹⁵ See discussion above, notes 74 to 77 *supra*.

⁹⁶ Jill Davies and Eleanor Lyon. "Domestic Violence Advocacy: Complex Lives/Difficult Choices Second Edition." SAGE (2014) p. 42

⁹⁷ *Id.*

⁹⁸ *Id.*

victimization.”⁹⁹ Survivors should not have to demonstrate a nexus between their victimization and their lack of income or proof of income. This non-statutory requirement is burdensome on survivors, as they may face obstacles obtaining income or providing proof of income for reasons that may or may not be related to their victimization. Further, this language runs counter to existing law as Congress did not place any conditions on the availability of fee waivers for survivors when it codified the use of fee waivers for filing a VAWA self-petition, a T or U visa application, or an application for VAWA cancellation or suspension of deportation.¹⁰⁰

Whether intentional or not, the proposed rule will act as a barrier to status for the crime survivors we serve. The additional limits on fee waiver criteria, coupled with the stringent documentation requirements for fee waivers will prevent many survivors from qualifying for fee waivers. We fear that eligible survivors will not apply for these critical benefits given the significant barriers to demonstrate their eligibility for fee waivers and thus, chose to forgo applying. In this way, the proposed rule undermines the bipartisan Congressional intent in establishing VAWA and TVPA based relief.

E. Protecting Survivors Information

The new form asks applicants to *self-identify* as a survivor by asking whether they are applying for a battered spouse or child of a legal permanent resident or U.S. Citizen under 240A(b)(2); a T nonimmigrant, a person with Temporary Protected Status, a U nonimmigrant or a VAWA self-petitioner.¹⁰¹ Most of these types of relief, with the exception of Temporary Protected Status, are subject to certain protections and sanctions regarding privacy, confidentiality, and presumptions against evidence from abusers and perpetrators, codified at 8 USC 1367.¹⁰² Neither the USCIS privacy notices on the I-912 instructions,¹⁰³ nor the Requestors Certification on the I-912 form¹⁰⁴ contain language that mentions these critical protections for survivors. USCIS must make clear in both of these sections that any disclosure or receipt of information complies with the protections at 8 USC 1367.

VII. The Transfer of Funds to ICE is Unconscionable

We deeply oppose USCIS’ plan to transfer over \$110.2 million in applicant fees to Immigration and Customs Enforcement for enforcement purposes. It is reprehensible that the agency seeks to fund enforcement actions by raising fees (in some cases exorbitantly) on low-income immigrants seeking necessary immigration benefits. Furthermore, Congress created USCIS to be a

⁹⁹ See Proposed I-912 Instructions pp. 6 and 8.

¹⁰⁰ See note 40 *supra*.

¹⁰¹ See Proposed I-912 Form at 1.

¹⁰² See also USCIS Policy Manual-Chapter 7 Privacy and Confidentiality, available at <https://www.uscis.gov/policy-manual/volume-1-part-a-chapter-7>

¹⁰³ See Proposed I-912 Instructions at 10.

¹⁰⁴ See Proposed I-912 Form at 6.

benefit-granting agency.¹⁰⁵ The proposed rule represents yet another way in which USCIS is betraying that mission and becoming a third enforcement arm of DHS.

VIII. Conclusion

For the reasons mentioned above, we hold that the proposed rule will impose an unjustified cost on immigrants eligible for benefits to help them gain stability and thrive. It also will impose an unjustified cost on survivors who seek critical pathway to obtain justice and safety.

USCIS should promptly withdraw the proposed rule as it makes immigration benefits less accessible and runs counter to its mission as established by Congress.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Cecelia Levin", written in a cursive style.

Cecelia Friedman Levin
Policy Director
ASISTA

¹⁰⁵ See Note 3 *supra*.