



Submitted via www.regulations.gov

Samantha Deshommes, Chief
Regulatory Coordination Division, Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue NW
Washington, DC 20529-2140

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

April 16, 2019

Dear Ms. Deshommes:

I am writing on behalf of the National Housing Law Project (NHLP) in opposition to the Department of Homeland Security (DHS), United States Citizenship and Immigration Services (USCIS) proposal to implement the new Form G-1530: USCIS Tip Form, OMB Control Number 1615 - NEW, Docket ID USCIS-2019-0001, published in the Federal Register on February 15, 2019.

NHLP's mission is to advance housing justice for poor people and other marginalized communities, including immigrants and their families. The proposal to implement the new USCIS Tip Form would further embolden unscrupulous landlords that already use the threat of reporting tenants' immigration status to illegally coerce immigrant tenants to pay higher rents, evict tenants, and to comply with unwanted sexual advances.¹ The proposed form would jeopardize immigrant families' housing stability and place them at risk of homelessness, which could negatively impact their employment, education, health, and ability to otherwise be self-sufficient. We urge that the Tip Form be withdrawn in its entirety.

I. The USCIS Tip Form is unnecessary and encourages the presumption of fraud in the immigration benefits process

¹ CA Senate Rules Committee, Senate Floor Analyses on AB 291 (August 30, 2017), available at https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180AB291.

USCIS's primary function, as established by the Homeland Security Act of 2002, is to adjudicate immigration benefits.² Over the last two years, USCIS has transformed into another immigration enforcement agency through its increased focus on fraud and the implementation of other sweeping policy changes.³ There are already existing mechanisms for collecting information about fraud, e.g. through the HSI Tip Line, which already operates with questionable effectiveness. Creating another avenue to invite the public to submit unsubstantiated reports of fraud about individual immigrants not only creates unnecessary redundancies but also significant harm to immigrant communities.

According to the Department of Justice, hate crimes continue to rise, particularly those motivated by racial, ethnic, or religious animus.⁴ For example, Muslim, Arab, Iranian, Middle Eastern, and South Asian communities face targeted harassment and violence at alarming rates, especially 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 by the FBI's own admission.⁵ Similarly, the FBI reports that hate crimes against Hispanics and Latino communities have risen nationally.⁶ These incidents are also underreported, due to an increased fear of reporting racially motivated crimes and incidents to law enforcement.⁷

The implementation of the USCIS Tip Form permits unsubstantiated reporting to USCIS, the agency with jurisdiction over immigration benefits, and creates a high likelihood that bias and bigotry will play a role in reporting. Reported individuals face increased scrutiny,

² U.S. Citizenship and Immigration Services was created with the Congressional intent of focusing on benefits adjudication, rather than an enforcement-focused agency. On its website it states that it was "formed to enhance the security and improve the efficiency of national immigration services by exclusively focusing on the administration of benefit applications. Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP), components within DHS, handle immigration enforcement and border security functions" (emphasis added). USCIS Webpage, "Our History" (May 25, 2011), available at <https://www.uscis.gov/about-us/our-history>.

³ Joshua Breisblatt, "USCIS Is Slowly Being Morphed into an Immigration Enforcement Agency" (July 9, 2018), available at <http://immigrationimpact.com/2018/07/09/uscis-guidance-immigration-benefit/>.

⁴ Federal Bureau of Investigations Uniform Crime Reporting Program 2017 Hate Crimes Statistics, available at <https://ucr.fbi.gov/hate-crime/2017/topic-pages/incidents-and-offenses>.

⁵ 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>.

⁶ See Arab American Institute, Hate Crimes Continue to Surge in America (November 13, 2018), available at http://www.aaiusa.org/hate_crimes_continue_to_surge_in_america (summarizing FBI 2017 statistics).

⁷ 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>.

surveillance, and potential loss of benefits without any due process that could enable them to refute allegations of fraud.

Landlords are already using tenants' immigration status to retaliate against who try to exercise their legal rights as tenants.⁸ The proposed form will provide landlords an easy and anonymous avenue to exploit tenants that are already vulnerable tenants.

II. The USCIS Tip Form Misuses USCIS Resources

Resources put toward vetting unsubstantiated tips from anonymous members of the public will take away from adjudication of benefits. USCIS has radically slowed application processing in the past two years.⁹ Complicating the adjudications process with anonymous and unfounded allegations of fraud in a system that already suffers from backlogs and a lack of transparency will harm applicants and their families.

The proposed form will likely lead to increased false reporting by landlords. Landlords are often unfamiliar with the complexities of immigration law in this country, and are not in a position to be making legal determinations about people's immigration status. Many will likely act on perceived immigration status by relying on racial profiling. Investigating these false reports will cost USCIS valuable time and resources.

Not only is such reporting and targeting unjust, it is also a waste of government resources to focus on claims that have no relevance to fraud or abuse. Moreover, by creating an "other" category, USCIS is opening its reporting to claims with no connection to fraud, instead creating yet another avenue for bigotry and harassment with serious consequences for individuals, communities of color, and government administrators.

III. The USCIS Tip Form violates due process

A. The USCIS Tip Form is overbroad and vague

USCIS fails to set any criteria for reporting fraud and there is no requirement that an allegation be made in connection with a pending application for benefits. The form also provides no definition of "fraud," which has a complex definition under the Immigration Act and in case law. Additionally, it is unclear how the information collected through the USCIS Tip Form will be used in adjudications.

⁸ Julia Wick, L.A. Landlords Exploiting Immigration Fears To Threaten Tenants, LAist (April 7, 2017), available at https://laist.com/2017/04/07/landlords_ice.php.

⁹ Jason Boyd and Greg Chen, AILA Policy Brief: USCIS Processing Delays Have Reached Crisis Levels Under the Trump Administration, American Immigration Lawyers Association (January 30, 2019), available at <https://www.aila.org/advo-media/aila-policy-briefs/aila-policy-brief-uscis-processing-delays>.

B. Anonymous Reporting Encourages Misuse

The proposed USCIS Tip Form requests that individuals provide their name and contact information but does not require it to make a report. Thus, USCIS has no formal mechanism to follow up on allegations, and applicants for benefits have no opportunity to learn about derogatory information lodged against them or refute any allegations.

USCIS has not provided any information how it will handle and respond to these anonymous tips. It is unknown what mechanisms are in place for USCIS to determine the validity of information provided by anonymous tips and to accurately assess whether they are impermissibly motivated. Without this information, it is unclear whether reported individuals will have any access to due process or any recourse against false reports.

Furthermore, the failure to collect information from the person completing the form creates a likelihood that those targeting individuals based upon racism and bigotry will have the option of submitting numerous baseless claims with no accountability.

IV. The USCIS Tip Form Threatens VAWA Confidentiality and Puts Survivors at Risk

The USCIS Tip Form provides abusers and perpetrators of crime an anonymous tool to weaponize the immigration system against survivors, without consequence or repercussion. This is extremely problematic and dangerous, as “one of the most intimidating tools abusers and traffickers of immigrants use is the threat of deportation.”¹⁰ Abusers often threaten survivors that if they go to police or the court they will be arrested because they are undocumented, or threaten to call immigration enforcement to have survivors arrested or deported.¹¹

To combat this, Congress created special immigration protections in the Violence Against Women Act (VAWA) for survivors of domestic violence, sexual assault, human trafficking and other forms of violence to allow survivors to seek protection without fear of deportation. These provisions were critical for one survivor, Tatyana who came to the U.S. as a “mail-order bride,” to escape her abusive husband, who had actively prevented Tatyana from seeking a lawful immigration status in order to control and abuse her.¹² The

¹⁰ Stacey Ivie et al., *Overcoming Fear and Building Trust with Immigrant Communities and Crime Victims*, INT’L ASS’N OF CHIEFS OF POLICE (Apr. 2018), available at http://library.niwap.org/wp-content/uploads/PoliceChief_April-2018_Building-Trust-With-Immigrant-Victims.pdf.

¹¹ National Domestic Violence Hotline, *Abuse and Immigrants*, available at: <https://www.thehotline.org/is-this-abuse/abuse-and-immigrants/>.

¹² Arvind Dilwar, *How Anti-Immigration Policy Spurs Domestic Violence*, Pacific Standard (Aug. 10, 2018), available at <https://psmag.com/social-justice/how-anti-immigration-policy-spurs-domestic-violence>.

proposed form would add another tool to the arsenal of abusers that are already adept at navigating the legal system to enable their abuse.

Recognizing that perpetrators will try to manipulate legal systems against survivors, Congress also created confidentiality protections that mandate, *inter alia*, that the government not to make adverse determinations based on information solely provided by an perpetrator or a member of a perpetrator's household or family member.¹³ These protections, codified at 8 USC § 1367 are "designed to ensure that abusers and other perpetrators cannot use the immigration system against their victims."¹⁴

This protection applies to abused spouses and children generally as well as to those who are eligible to apply for benefits as VAWA self-petitioner, or who are eligible for VAWA cancellation, U visa or T visa relief. These protections are in place regardless of whether an application for immigration relief is pending with USCIS.¹⁵ DHS's own guidance instructs:

There are a number of ways DHS employees might receive "tips" from an abuser or an abuser's family, such as: calling ICE to report the victim as illegal, a "landlord" (who may actually be a human trafficker) calling ICE to report that his "tenants" are undocumented, or providing information to USCIS rebutting the basis for the victim's application. When a DHS employee receives adverse information about a victim of domestic violence, sexual assault, human trafficking or an enumerated crime from a prohibited source, *DHS employees treat the information as inherently suspect.*¹⁶

Given USCIS's further mandate to protect domestic violence victims who have applied for benefits under VAWA, the lack of safeguards in the process to prevent submission of abusive information threatens statutory protections in VAWA. Furthermore, the form poses a risk to the government of liability for violations of the confidentiality provisions, *which are punishable by civil and monetary penalties of up to \$5,000 per violation under 8 USC 1367.*

¹³ See 8 USC 1367.

¹⁴ *Id.*; See also, *Department of Justice Appropriations Authorization Act, Fiscal Years 2006 through 2009: Report of the Committee on the Judiciary, House of Representatives, to accompany H.R. 3402* H.R. Rep. No. 109-233, at 120 (2005), available at <https://www.congress.gov/109/crpt/hrpt233/CRPT-109hrpt233.pdf>.

¹⁵ Department of Homeland Security, *Implementation of Section 1367 Information Provisions*, DHS Instruction Systems. Instruction Number: 002-02-001. Revision Number: 00., available at https://www.dhs.gov/sites/default/files/publications/implementation-of-section-%201367-%20information-provisions-instruction-002-02-001_0_0.pdf.

¹⁶ *Id.*

The obligations of 1367, which Congress has consistently expanded over time, are enormously important to survivors of violence. It is unknown whether or how these protections have been taken into account in the proposal to publish the fraud tip form.

V. Information Sharing and Lack of Accountability

The USCIS Tip Form appears to allow any and all unsubstantiated information provided to be shared liberally with other law enforcement agencies, including Immigration and Customs Enforcement. USCIS has not provided any direction on what types of information should be submitted nor provided a notice that a submission to this government system is subject to perjury laws.

VI. Conclusion

The National Housing Law Project stridently opposes the publication of the USCIS Tip Form as it creates additional hardship for immigrant communities and vulnerable individuals. USCIS should withdraw the USCIS Tip Form immediately and instead work on developing policies that do not threaten immigrant communities, waste resources, or undermine due process and access to critical immigration benefits.

If you have questions, please contact me at kng@nhlp.org.

Sincerely,

/s/

Karlo Ng

Supervising Attorney