

April 4, 2017

Recommendations for the Protection of Immigrant Survivors of Human Trafficking, Domestic Abuse, and Sexual Violence

The Tahirih Justice Center is the largest non-partisan, non-profit organization in the United States providing pro bono legal defense, as well as social services support, for immigrant women and girls fleeing violence. Tahirih litigates about 700 cases at any given time out of its offices in Houston, San Francisco, the Washington, DC area, and Baltimore, protects over 2,000 women and children annually. The heroic immigrant women and girls we serve are standing up against human rights abuses including human trafficking, child marriage, female genital mutilation, and domestic violence. Through their courage, they are transforming their lives, their families, and their communities. Since 1997, Tahirih has assisted over 22,000 women and girls fleeing violence. With a 99% success rate in the cases Tahirih litigates, we assist immigrant women and girls in accessing legal rights already available to them, but nearly impossible to access without an attorney. Tahirih is widely-recognized for its efficiency and innovation and has received awards from Goldman Sachs, DVF, Washington Post, and the Meyer Foundation.

Unique Vulnerabilities of Immigrant Women and Girls Fleeing Violence

Violence against women is a pernicious and persistent global tragedy. Annually, 1 in 3 women are victims of abuse, 82 million girls are forced into marriage, 3 million girls are genitally mutilated, 1 million are forced into modern-day slavery, and between 5,000 and 20,000 women are murdered for being a “dishonor” to their families. At the same time, women and children are fleeing and courageously demanding a life free of violence. The United States has long demonstrated its rejection of gender-based violence through laws that have passed with robust bipartisan support.¹

Immigrant women in the United States who have experienced exploitation or abuse here or abroad face unique obstacles as they seek justice and safety, including cultural differences, limited English proficiency, fear of law enforcement, and unfamiliarity with the legal system. Often distrustful of people in power and traumatized by their abuse, they will likely only share the intimate and sensitive details of their experiences as victims of human trafficking, for example, after they have been able to develop trust.

Achieving immigration status is a critical step in a woman’s journey from victim to survivor. When able to access the legal status to which they are entitled, trafficked and abused immigrant women and girls can come out of the shadows, work legally, achieve financial stability, protect their children, challenge cultural norms in their communities from a position of independence, and economically enrich the diverse communities they call home. Marginalized women and children may not be able to fulfill their full

Baltimore
201 N. Charles St.
Suite 920
Baltimore, MD 21201
Tel: 410-999-1900
Fax: 410-630-7539
Baltimore@tahirih.org

Greater DC | National
6402 Arlington Blvd.
Suite 300
Tel: 571-282-6161
Fax: 571-282-6162
TTY: 711
Falls Church, VA 22042
GreaterDC@tahirih.org
Justice@tahirih.org

Houston
1717 St. James Place
Suite 450
Houston, TX 77056
Tel: 713-496-0100
Fax: 713-481-1793
Houston@tahirih.org

San Francisco Bay Area
881 Sneath Lane
Suite 115
San Bruno, CA 94066
Tel: 650-270-2100
Fax: 650-466-0006
SFBayArea@tahirih.org

www.tahirih.org

economic or personal potential, which hinders their own ability to stay safe, and limits our overall national success.

Recommendations

With the goals of protecting women and girls from violence, ensuring compliance with U.S. law, and enabling those fleeing violence to access laws designed for their protection, we offer the following recommendations for this administration.

1. The administration should support the strengthening of the Trafficking Victims Protection Act (TVPA) and the Violence Against Women Act (VAWA) during reauthorization. As mentioned above, immigrant women and girls are particularly vulnerable to exploitation and violence by human traffickers, abusers, and other criminals. Perpetrators deliberately use their victims' fear of authority, unfamiliarity with the law, language barriers, and fear of deportation to their advantage as they establish their power and control. Recognizing this, current laws such as the Violence Against Women Act (VAWA) and the Trafficking Victims Protection Act (TVPA) not only create a safety net of shelters and community based organizations for victims, but also provide specific remedies for immigrant women, including the VAWA self-petition, the T visa, and the U visa. These laws specifically promote collaboration with police and allow women who have been victimized to achieve safety by providing them with access to legal status and protection.

Both the TVPA and VAWA have historically enjoyed broad, bipartisan support, and their reauthorization is essential to provide protections for victims of trafficking and domestic abuse. The protections in these laws are strong, but improvements can be made to ensure that women and girls in the United States – regardless of their immigration status – are able to find safety. The administration has a role in encouraging both parties in Congress to push for strengthening these laws and not diminishing them in any way.

Specifically, the administration should push Congress to eliminate the annual limit on U visas. Even if a woman is deemed eligible for a U visa today, she must wait several years to get the visa because of an annual limit on the number of people who can receive them each year. We know that victims of crime are reporting and cooperating with law enforcement in large numbers, serving the intent of the law, yet they are not able to access the benefit. Eventually, this long wait will begin to discourage individuals from coming forward. The cap, therefore, undermines the purpose and strength of the law.

Until the annual cap is eliminated, the Department of Homeland Security (DHS) should routinely grant parole to children of survivors while they wait for their visas. DHS has the authority to parole children of survivors into the U.S. but does not have a clear system for adjudicating parole requests. As a result, children remain highly vulnerable to abuse, exploitation, and retaliation from traffickers, while their mothers remain in legal limbo. Allowing children to reunite with their mothers will alleviate further trauma to both and reduce the need for mental health services and associated costs.

2. DHS should protect survivors of trafficking, domestic abuse, and sexual violence from deportation. In 2011, DHS issued a policy memorandum protecting survivors of human trafficking, domestic violence and sexual assault from deportation, absent adverse factors such as being a public safety or national security threat.² As DHS has recognized, victims and witnesses to crime, should be permitted to seek congressionally created lawful status specifically intended to protect them to keep our communities safe. DHS's 2011 policy promotes national security and public safety by supporting laws that incentivize immigrant cooperation with law enforcement. As first-hand witnesses to human trafficking and other crimes, survivors present in the United States are invaluable to helping law enforcement get dangerous traffickers and other criminals off the streets. DHS should affirmatively reiterate its commitment to this policy and ensure its continuation.³

3. DHS should continue and expand its current policy to avoid arrest of immigrants at sensitive locations such as schools, hospitals, and churches. In 2011, DHS announced via memorandum a new policy prohibiting immigration arrests at certain protected locations, including hospitals, schools, and places of worship, and specifically referred to the need to protect survivors of violence.⁴ No immigrant should ever fear arrest when seeking emergency medical treatment at a hospital, taking children to school, or attending a religious event. Victims of trafficking and domestic violence must feel safe in these locations; often, a social worker at a hospital is the first to ask a woman whether she previously knew her attacker, or a teacher or clergy person may be the first to ask a woman if she is a victim of violence.

It is not currently clear whether this policy continues to exist, and the administration should reaffirm its commitment to avoiding arrest at sensitive locations. In addition, it should take the opportunity to expand the protection to include not only safe presence at these locations but safety while in transit to or from them, as well as additional locations such as courthouses.⁵ Advocates for victims of violence know that it takes tremendous courage to face one's trafficker or abuser in court. If a victim must also overcome her fear of deportation by making use of the criminal and civil court systems that exist to provide justice and safety to victims and society in general, then we are all less safe.

4. DHS should articulate clear priorities for the apprehension and removal of immigrants. A lack of clear priorities for removal can create confusion, mistrust, and fear throughout immigrant communities, with devastating consequences. Because the current articulation makes it possible for nearly any undocumented immigrant to be considered a priority for deportation, families are not attending church or other places of worship, are avoiding medical appointments, and are disengaging from school. Priorities for enforcement should be specific, clear, and reflective of both DHS capacity and optimal prioritization for the public interest. Carefully outlined and strictly followed priorities can help foster stability in communities. They allow for prosecution and removal inside the boundaries of legally enforceable rights and norms such as those enshrined in the Constitution.

5. Resources should be invested in adjudication of claims for immigration status. Current backlogs in initial adjudications of claims for immigration status create waiting times that now stretch more than five years into the future. Efficient adjudications are a goal for provision of legal benefits and enforcement alike. More adjudicators will mean that those who are eligible for status will more quickly receive it and be able to work legally, access safety, and raise their children without fear of deportation, while those who are not eligible will be made aware of that more quickly. Investments in enforcement must follow, not precede, investments in adjudications so that it is clear that those who are being removed have had access to a full and fair adjudication process.

6. DHS should not detain women and mothers with children arriving at the border. Among the women and children arriving at the southern border, 91% are from Central America, where they are experiencing war-levels of violence. In 2016, one out of every four (or 25%) of all those arriving at the southern border were children.⁶ The majority have experienced severe trauma and are fleeing gender-based violence in Guatemala, El Salvador, and Honduras, some of the most dangerous places in the world for women and children due to rampant abuse, rape, and femicide, committed with complete impunity, particularly by gangs.⁷ Among those women and mothers with children who are given a chance to ask for asylum, an overwhelming majority – 88% – pass through the initial screening stage because they have demonstrated to a U.S. asylum officer that they may win asylum when they meet an immigration judge.⁸ This number is so high because the humanitarian crisis facing women and children in their home countries is real and as yet unresolved.⁹

For those who have been allowed to see an immigration judge, women are detained in prison-like conditions with their children and with minimal access to lawyers, counselors, and health care providers.

Detention of women asylum seekers with their children is unnecessary and harmful to them; as trauma survivors and witnesses, the women and children need to be cared for as refugees, not treated like criminals. Additionally, detention of women with children is inefficient. Family detention costs \$343 per day per person (or \$125,195 per year). Currently there are only 3,400 family detention beds, while over 100,000 mothers and children cross our southern border seeking safety annually. To detain all until their case is adjudicated is horribly inefficient when one considers the 98% compliance rate with court orders by those in deportation proceedings when they have a lawyer.¹⁰ Tahirih, for example, can provide legal representation for approximately \$5,000 per client per year. Releasing families and providing them with access to lawyers actually ensures that they will show up for court while also allowing the United States to fulfill its international and domestic law responsibilities to provide a full and fair opportunity to access asylum protections.

7. DHS should stop subjecting women and mothers with children arriving at the border to the expedited removal process and refer them directly to the Immigration Court instead. The expedited removal process unnecessarily re-traumatizes survivors, results in the unlawful return of vulnerable refugee women and children to violence, and wastes resources. Although intended to promote efficiency, it does the opposite, by requiring women to endure a two-tiered duplicative screening process.

Following a perilous journey to the U.S., a woman arriving at the border must disclose sensitive details of trauma, including rape, to a potentially armed border patrol agent in order to even be considered an asylum seeker. Unfortunately, all too often women and mothers with children who qualify for asylum are unable to apply because it is too difficult for them to tell their stories to border agents. Others, who may be able to effectively communicate their fear of return, are nevertheless unlawfully rejected. The result is the return of potentially qualifying refugees to persecution, an act called *refoulement* that is prohibited by binding international law as well as domestic immigration law.

If a woman makes it through the border, because expedited removal is applied, she will be detained and subjected to an additional asylum screening. Women therefore have to reiterate the details of their trafficking, rape, or abuse multiple times. This is well-known to be highly re-traumatizing and is unnecessary.¹¹ In addition, because of recent changes to the DHS screening lesson plan, asylum officers are being trained to apply a much higher standard than was ever contemplated when this process was established.¹² Instead, DHS should cease using expedited removal and simply refer every woman and mother with a child to an immigration judge to adjudicate her claim for asylum. The multiple steps of the expedited removal process results in a waste of critical resources that could be used to better protect public safety in other ways.

8. DHS should not separate women from their children at the border as proposed. On March 7, DHS proposed separating women from their children at the border to deter them from seeking safe haven in the US, citing danger from traffickers during their escape.¹³ It is well-known that asylum seekers fleeing for their lives face an impossible choice – to leave behind their homes and all that they know, or risk the perilous journey to the United States where they might find safety and protection from violence. Forcing mothers and children to be separated at the border is an inhumane, unnecessary, and potentially costly policy which will create logistical complications for several U.S. government agencies. We urge DHS not to implement this policy.

9. DHS should not adjudicate claims for asylum in Mexico as proposed. In his February 20 memorandum, DHS Secretary Kelly indicated that DHS may begin holding asylum seekers in Mexico while their claims are adjudicated. Leaving already vulnerable women and children who have survived trauma in the perilous position of being stranded at the Mexican border will invite violence. As has consistently been the experience of women and child refugees around the world when living in camps or other settlements

near borders, traffickers and other criminals find easy prey among the unemployed and unprotected mothers and children seeking refuge. In addition to the real, human cost of leaving refugees vulnerable to trafficking and other crime in this way, it will be impossible to afford women and children in these camps access to legal counsel, to which they have a right, and a fair judicial proceeding. Inevitably, people who qualify for asylum will be returned to their home countries to face persecution, which is a violation of our international and domestic legal obligations.

10. Federal, state, and local governments should promote laws and policies that encourage trafficking and abuse survivors to access emergency services. Under the Trafficking Victims Protection Act (TVPA), a victim of violence may apply for the T or U visa if she comes forward and cooperates with law enforcement to investigate or prosecute a perpetrator. This law was passed with robust bipartisan support because it serves a critical public safety goal by incentivizing cooperation between law enforcement and all members of a community, not just U.S. citizens. It is a matter of broad public interest to ensure that all victims and witnesses, including those without immigration documentation, feel able to call 911 to get help, use emergency medical services, and cooperate with law enforcement. If victims feel they cannot come forward, the purpose of the T and U visas is thwarted while communities pay the price.

Perpetrators of trafficking, domestic abuse, and sexual violence, regardless of their immigration status, may commit other crimes against immigrant and citizen victims; as a result, these visas not only protect immigrant survivors, but make all of us safer. In addition, many victims have children who have also witnessed or experienced harm, for whom they serve as the only protector from violence and exploitation. If victims fear that cooperation with law enforcement could result in deportation and separation from their children, they are less likely to come forward.

Measures that foster community trust of the police enjoy broad support from law enforcement agencies and prevent violent criminals from going undetected and acting with impunity.¹⁴ Trust in law enforcement agencies is critical for victims and witnesses to be able to step forward, and that trust is eroded when deportation is entangled with policing criminal activity. The federal government should avoid entering into any agreements with local jurisdictions that would put community members at risk.

There are many additional changes that the Administration can make to better protect women and girls who have experienced human trafficking, domestic abuse, and sexual assault. As representatives of women and girls who have experienced these crimes, we are eager to work with the administration to ensure that immigrant survivors are protected.

Please contact Tahirih Justice Center CEO Layli Miller-Muro at layli@tahirih.org or Chief of Policy and Programs Archi Pyati at archip@tahirih.org for further information.

¹ This includes the Violence Against Women Act, 42 U.S.C. sections 13701 through 14040, 1994.

² See <https://www.ice.gov/doclib/secure-communities/pdf/domestic-violence.pdf>.

³ Tahirih Justice Center, "Review of February 20, 2017 Department of Homeland Security Memoranda," 2017, <http://www.tahirih.org/wp-content/uploads/2017/02/Summary-of-Feb-20-2017-DHS-Memos.pdf>.

⁴ See: <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf>.

⁵ During the weeks that followed the arrest of a domestic violence victim at a courthouse in El Paso, while the victim was obtaining a restraining order against her perpetrator, reporting of domestic violence incidents in the immigrant community plummeted. Nora Caplan-Bricker, *I Wish I'd Never Called the Police*, Slate.com (Mar. 19, 2017), <http://slate.me/2mYrYgC>; James Queally, *Latinos are reporting fewer sexual assaults amid a climate of fear in immigrant communities, LAPD says*, L.A. Times (Mar. 21, 2017), <http://lat.ms/2nPwdva>.

⁶ <http://www.pewresearch.org/fact-tank/2014/07/22/children-12-and-under-are-fastest-growing-group-of-unaccompanied-minors-at-u-s-border/>.

⁷ Tahirih Justice Center, "Righting the Wrong: Why Detention of Asylum-Seeking Mothers and Children in America Must End Now," 2015, available at: <http://www.tahirih.org/wp-content/uploads/2015/10/Righting-the-Wrong-Why-Detention-of-Asylum-Seeking-Mothers-and-Children-Must-End-Now-Web-Copy.pdf>.

⁸ Tahirih Justice Center, "Summary of February 13, 2017 Asylum Division Lesson Plan Implementing Executive Orders," 2017, available at: <http://www.tahirih.org/wp-content/uploads/2017/03/Tahirih-Summary-of-CFI-RFI-Changes-3.6.17.pdf>.

⁹ United Nations High Commissioner for Refugees, "Women on the Run," 2015, available at: <http://www.unhcr.org/en-us/publications/operations/5630f24c6/women-run.html>.

¹⁰ Human Rights First, "Myth vs. Fact: Immigrant Families' Appearance Rates in Immigration Court", available at: <http://www.humanrightsfirst.org/sites/default/files/MythvFact-Immigrant-Families.pdf>.

¹¹ Tahirih Justice Center, "Righting the Wrong: Why Detention of Asylum-Seeking Mothers and Children in America Must End Now," 2015, available at: <http://www.tahirih.org/wp-content/uploads/2015/10/Righting-the-Wrong-Why-Detention-of-Asylum-Seeking-Mothers-and-Children-Must-End-Now-Web-Copy.pdf>.

¹² Tahirih Justice Center, "Summary of February 13, 2017 Asylum Division Lesson Plan Implementing Executive Orders," 2017, available at: <http://www.tahirih.org/wp-content/uploads/2017/03/Tahirih-Summary-of-CFI-RFI-Changes-3.6.17.pdf>.

¹³ Samantha Schmidt, *DHS is Considering Separating Mothers and Children Who Cross the Border Illegally*, WashingtonPost.com (March 7, 2017), https://www.washingtonpost.com/news/morning-mix/wp/2017/03/07/dhs-is-considering-separating-mothers-and-children-who-cross-the-border-illegally/?utm_term=.7df00e711db0.

¹⁴ Letter from the Major County Sheriffs' Association and Major City Chiefs Association Opposing S. 2146 (Oct. 20, 2015), <http://bit.ly/1RnPg7g>; Robbins, *Police Fear Trump Immigration Orders May Handcuff Effort to Fight Gangs* (quoting a statement by the International Association of Chiefs of Police); Andrea Noble, *Donald Trump, Police Union at Odds Over 'Sanctuary Cities' Funding*, Wash. Times (Nov. 22, 2016), <http://bit.ly/2nfrzJt> (citing National Fraternal Order of Police former Executive Director James Pasco).