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Department of Homeland Security (USDHS)
Citizenship and Immigration Services (USCIS)
Office of Policy and Strategy
Samantha Deshommnes, Chief
Regulatory Coordination Division
Submitted VIA Electronic Mail to:
<http://www.regulations.gov>

Re: Comments in Response to the Proposed Revision of USCIS Form I-912 Request for Fee Waiver: OMB Control Number 1615-0116; Docket ID USCIS-2010-0008

The Tahirih Justice Center (Tahirih) is pleased to submit the following comments in response to USCIS' proposed revision of *Form I-912 Request for Fee Waiver*, published in the Federal Register on 09/28/2018 at <https://federalregister.gov/d/2018-21101>.

Tahirih is a national policy and direct services organization that has assisted over 25,000 immigrant survivors of gender-based violence for the past twenty-one years. Our clients endure horrific abuses such as human trafficking, domestic violence, sexual assault and other crimes. Due to the dynamics of abuse, immigrant survivors are mostly indigent and rely heavily on fee waivers in order to apply for immigration relief and ultimately find safety. As a result, survivors will suffer disproportionately from the unnecessary new evidentiary restrictions proposed by USCIS.ⁱ

On behalf of our clients, Tahirih strongly opposes USCIS' proposal to revise Form I-912 and rescind the Form's corresponding Policy Memorandum, PM-602-0011.1.ⁱⁱ Instead, we urge USCIS to maintain flexible evidentiary policies that can both reflect the unique circumstances our clients face as survivors and that do not pose additional burdens for taxpayers.

- I. **Prohibiting evidence of receipt of means-tested public benefits to establish eligibility for fee waivers will prevent survivors of gender-based violence from applying for immigration relief designed specifically for them.**
 - a. The vast majority of survivors are indigent and unable to pay filing fees.

A hallmark of domestic violence is perpetrators' use of both acute and chronic threats of harm to keep survivors in a perpetual state of isolation, poverty, and various forms of dependence. Economic dependence is prevalent among

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survivors, as abusers condition them to expect brutal retaliation for either applying for a work permit, or for seeking employment if already eligible to work. Perpetrators are commonly known to hold survivors' documents hostage, further preventing them from securing employment as a logistical matter and - by design - all but guaranteeing their dependence on them indefinitely. Abusers are well aware that when victims have fewer opportunities to interact independently with others outside the home, they are less likely to try to escape or report abuse. The paralysis survivors experience is compounded when children are involved, especially when the only alternative to a violent home is homelessness.

Survivors who are authorized to work face additional challenges to obtaining and maintaining employment. They might frequently or abruptly miss work due to the violent, unstable circumstances at home, making them vulnerable to termination by employers. With limited ability to earn income consistently, survivors overwhelmingly depend on fee waivers in order to apply for immigration relief.

- b. Under the proposed revision to Form I-912, survivors' meritorious fee waiver requests will largely be denied; they often have no access to primary evidence of income due to extremely low wages, and/or manipulation and control by abusers.

Survivors requesting fee waivers commonly submit evidence that they receive whatever means-tested benefits they are eligible for in their state, rather than evidence of income such as pay stubs or tax returns. Survivors who are able to work have limited if any access to such evidence for a variety of reasons. Most notably, as explained above, abusers maintain strict control over documentation relating to every aspect of their lives.

In addition, survivors authorized to work who are self-employed or paid in cash for low paying jobs likely do not have pay stubs to demonstrate income. Those who do receive pay stubs might not be able to show income for a 30 day period if they change jobs frequently due to the nature of the industry they work in, childcare issues, harassment because they are immigrants, or termination as a result of trauma-related absences. Those with small children who work part-time, or survivors with extremely low paying jobs are not required to file tax returns and may have no evidence to submit. Finally, applicants may be unable to obtain copies of tax returns if they relied on notaries who fraudulently claimed to file them on their behalf.

In one example, Maria*, from Honduras, endured years of domestic and sexual violence. She applied for asylum, and received her first work authorization which did not require a fee. Maria worked as a babysitter and sold food. She applied to renew her work authorization while her asylum case was pending, requesting waiver of the fee for the renewal. Because of the nature of her work, she was unable to submit pay stubs. Instead, she provided proof that she receives subsidized medical care through her county public health system, which is a benefit only available to those whose household income is under 150% of the poverty guidelines. Her request was granted, and she continued working. Maria's fee waiver request would have been denied under the proposed revision to Form I-912, leaving her unable to afford the work authorization renewal filing fee. Without a job, Maria would have faced eviction while awaiting adjudication of her asylum application.

Tahirih also assists women who apply for relief as VAWA self-petitioners abused by U.S. citizens or Legal Permanent Resident spouses. In these cases, fee waivers are important because the adjustment of status application requires a fee, as does the request for renewal of employment authorization. Petitioners such as our client Anna* must renew work authorization regularly while they await their priority dates for filing applications to adjust status, or while their applications for adjustment of status are pending. If they cannot obtain fee waivers, they risk remaining in limbo indefinitely despite eligibility for a green card.

Survivors who otherwise qualify for fee waivers should not be denied because they have no access to certain evidence, but can otherwise establish that they are indigent by showing that they have received means-tested benefits.

II. The harm that the proposed revision to Form I-912 will inflict on survivors far outweighs its potential benefits; alternatives that don't harm survivors should be implemented instead.

The stated purpose of the proposed revision is to eliminate inconsistency in income levels among fee waiver recipients, as eligibility for means-tested benefits varies by state. Instead of prohibiting applicants from submitting proof of receipt of benefits to achieve this goal, USCIS could, along with such evidence, require evidence showing that the relevant benefits are only available to those whose income level matches the level required to be eligible for a fee waiver. Currently an applicant's income must be at or below 150% of the Federal Poverty Guidelines to be eligible for a fee waiver. Therefore, applicants who receive a particular benefit could submit proof that the benefit is not available to those whose income is above 150% of the guidelines.

Survivors of human trafficking, like our client Sofia*, must often file an application for a waiver of inadmissibility when applying for the T visa, due to circumstances beyond their control resulting from the trafficking. While the T visa petition does not require a fee, an application for a waiver of inadmissibility does. Sofia, from Ethiopia, endured Female Genital Mutilation/Cutting, kidnapping, forced marriage, domestic violence, rape, and labor trafficking. She hadn't yet been authorized to work when she requested a fee waiver for her waiver of inadmissibility, so like Maria, she was unable to submit pay stubs or tax returns. Instead, Sofia provided proof that she receives county subsidized medical care which is only available to those whose household income is under 150% of the poverty guidelines. Her request was granted. Under the proposed revision to Form I-912, Sofia's request would have been denied – effectively preventing her from applying for a T visa – despite her eligibility for relief. For survivors of human trafficking like Sofia and others, the T visa is an essential bridge to safety and healing. Survivors should not be arbitrarily thwarted in pursuing such relief because of a lack of traditional documentation of their household income.

The detriment to survivors resulting from the proposed revision to Form I-912 far outweighs any purported benefit of consistency that it might confer. Denial of fee waivers to those who otherwise meet the income eligibility requirements is unnecessary in light of alternatives, as outlined above. The ultimate outcome of the proposed revision is prolonged poverty and instability for survivors and

the emboldening of violent perpetrators. Rather, implementation of an efficient and fair process benefits all stakeholders involved.

III. Contrary to Congress’ intent in enacting specific immigration remedies to help survivors escape violent perpetrators, the proposed revision inappropriately puts new barriers in survivors’ way and ultimately rewards abusers.

Through the Violence Against Women Act (VAWA) and the Trafficking Victims Protection Act (TVPA), Congress recognized the specific need to protect immigrant survivors of gender-based violence because they are uniquely at risk of exploitation by abusers. Abusers use the threat of deportation to manipulate and control victims, leaving them with little hope of recourse. Remedies under the VAWA and TVPA are therefore critical to ensuring that they can come forward out of the shadows and pursue justice.

Along these lines, survivors are permitted by law to submit “any credible evidence”ⁱⁱⁱ to support their claims. This flexible evidentiary standard, established by Congress, reflects the reality of the hardship survivors face in trying to escape the power and control dynamics of gender-based violence. Evidentiary restrictions, like the proposed revision to Form I-912, functionally serve as a bar to relief. It is arbitrary and ill-conceived for survivors to be able to meet the evidentiary requirements for substantive relief under the VAWA and the TVPA, but be unable to apply because they don’t meet stricter evidentiary criteria for the underlying fee waiver.

Congress created humanitarian remedies to help survivors of gender-based violence get back on their feet and contribute to society. When survivors face insurmountable barriers to self-sufficiency, entire communities pay the price. We therefore urge you to abandon the proposed revision to Form I-912.

We look forward to your detailed feedback on these comments, and please contact me at irenas@tahirih.org or 571-282-6180 for additional information.

Respectfully,



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*Pseudonym

ⁱ Currently, to support a fee waiver request, an applicant can submit evidence showing that 1) her household income level meets the poverty-guideline threshold; 2) she faces other financial hardship; and/or 3) she receives a means-tested benefit. The proposed revision would eliminate the 3rd option, deeming evidence of receipt of means-tested benefits unacceptable.

ⁱⁱ Fee Waiver Guidelines as Established by the Final Rule of the USCIS Fee Schedule; Revisions to Adjudicator’s Field Manual (AFM) Chapter 10.9, AFM Update AD11-26 (Mar. 13, 2011).

ⁱⁱⁱ See Immigration & Nationality Act Section 204(a)(1)(J).