



Protecting Immigrant
Women and Girls
Fleeing Violence

October 31, 2019

U.S. Department of State Desk Officer
Office of Information and Regulatory Affairs
Office of Management and Budget

Office of Visa Services
Bureau of Consular Affairs
U.S. Department of State

Submitted via [https://www.regulations.gov/document?D= DOS-2019-0039-0001](https://www.regulations.gov/document?D=DOS-2019-0039-0001)

**Re: Comments in Response to Notice of Information Collection Under OMB
Emergency Review: Immigrant Health Insurance Coverage, Docket No.
DOS-2019-0039, 84 Fed. Reg. 58,199**

Dear Desk Officer:

The Tahirih Justice Center (Tahirih) is pleased to submit the following comments in response to the Notice of Information Collection Under OMB Emergency Review: Immigrant Health Insurance Coverage. The Notice, which was published in the Federal Register on October 30, 2019, relates to the implementation of Presidential Proclamation 9945, which purports to require applicants for immigrant visas to establish that they will be covered by an “approved health insurance plan within 30 days of entry into the United States.” 84 Fed. Reg. at 58,199.

Tahirih is a national, nonpartisan policy and direct services organization that has assisted over 25,000 immigrant survivors of gender-based violence throughout the past twenty-one years. Our clients endure unimaginable atrocities such as human trafficking, domestic violence, forced marriage, honor crimes, and sexual assault.

Tahirih urges that the Notice be immediately withdrawn, because the Proclamation it seeks to implement is illegal and therefore lacks the force of law. As an initial matter, the underlying Proclamation exceeds the authority of the executive branch. The Proclamation could affect up to two-thirds of applicants for immigrant visas. Far from constituting a rational implementation of the Immigration and Nationality Act, such a sweeping ban directly undermines the statutory scheme.

The Proclamation nevertheless invokes presidential authority under 8 U.S.C. § 1182(f) to find that the entry of certain individuals “would be detrimental to the interests of the United States.” But the Proclamation contains

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no findings of fact to support its claim that immigrants who cannot immediately obtain the listed types of health insurance are detrimental to the United States. And there is no plausible justification, on national security grounds or otherwise, for such a finding.

The Proclamation's effects on survivors of domestic abuse exemplify its underlying infirmities. The Proclamation appears on its face to apply to self-petitioners under the Violence Against Women Act (VAWA) who file their petitions outside the United States. As the Department of Homeland Security has recognized, Congress enacted the self-petitioning regime to allow survivors of "domestic violence, battery, and extreme cruelty" to "independently seek legal immigration status in the" United States. USCIS, *Fact Sheet: USCIS Issues Guidance for Approved Violence Against Women Act (VAWA) Self-Petitioners*, <https://www.uscis.gov/archive/archive-news/fact-sheet-uscis-issues-guidance-approved-violence-against-women-act-vawa-self-petitioners>. Congress did so because abusers routinely "threaten to withhold immigration sponsorship as a tool of abuse." *Id.*; see also USCIS, *Battered Spouse, Children & Parents*, <https://www.uscis.gov/humanitarian/battered-spouse-children-parents> (self-petitioning allows survivors "to seek both safety and independence from their abuser, who is not notified of the filing"). By requiring self-petitioners outside the United States to seek "approved" health insurance, however, the Proclamation effectively requires many survivors to remain dependent on their abusers, who can now threaten to withhold health insurance—and thus immigration status—as a tool of abuse. That result directly undermines VAWA and therefore unquestionably exceeds presidential authority under § 1182(f).

The Proclamation also appears to apply to derivatives of VAWA self-petitioners who are between 18 and 21 years old and to all children and spouses of former asylees and former T- and U-visa holders who are now lawful permanent residents. These family members will be barred from entering the country unless they can afford the expensive types of health insurance that are considered "approved." And the types of insurance that are approved make clear that this bar is not intended to improve health outcomes or the U.S. economy. Rather, it is—like the illegal public-charge rules previously issued by the Department of State and the Department of Homeland Security—simply a method of barring entry to poorer immigrants. After all, subsidized, comprehensive health insurance plans under the Affordable Care Act is not approved under the Proclamation—but expensive, short-term, non-comprehensive "junk" insurance plans *are* approved.

In addition to exceeding executive authority under § 1182(f), the Proclamation is also illegal for a host of other reasons. At a minimum, the Proclamation violates the equal-protection and due process rights of prospective immigrants; violates the substantive provisions of the Administrative Procedure Act (APA) because it is both arbitrary and contrary to law; and violates the procedural aspects of the APA because it announces a sweeping change in policy without a rational explanation and without prior notice and comment.

Furthermore, because the Proclamation is illegal, it lacks the force of law. There is accordingly no basis for attempting to force OMB review to completion on an emergency basis—and the issuance of the Notice with only a 2-day comment period has prejudiced Tahirih and other potential commenters by preventing them from fully responding to the issues raised in the Notice and the underlying Proclamation. The Notice should accordingly be withdrawn. Instead, the Department of State should issue a request for substantive comments on the implementation of the Proclamation (as required by the APA) and then seek OMB review in the ordinary course.

Sincerely,

s/Richard Caldarone

Richard Caldarone
Litigation Counsel