

Joint Comment in Response to Request for Public Input: Identifying Barriers Across U.S.
Citizenship & Immigration Services (USCIS) Benefits and Services; CIS No. 2684-21; DHS Docket
No. USCIS–2021–0004; RIN 1615-ZB87

I. Introduction	2
II. Policy Barriers	3
A. Regulatory Barriers:	3
1. VAWA regulations	3
2. I-751 regulations	4
3. U visa regulations	5
4. T visa regulations	7
B. Policy Manual Barriers	8
1. Submission of Benefit Requests	8
2. Use of Discretion	11
C. Law Enforcement U visa Certification Guide	14
D. Implement Parole Procedures for U visa Program:	15
E. 8 U.S.C. § 1367 Protections	15
III. Procedural/Adjudication Barriers	16
A. Fee Waivers	16
B. Processing Times	17
C. Barriers in Information Collections	19
1. Frequent Changes in Edition Date	19
2. Burdensome Length of Forms	19
D. Requests For Evidence (RFEs)	20
E. Biometrics Abroad Alternative	20
F. Receipt Notice Delays	22
G. Short Employment Authorization Document (EAD) Renewals	22
H. FOIA Response Problems	22
I. Interviews	23
IV. Communication Channel Barriers	23
A. Humanitarian Unit Hotline	23
B. Supervisory Review Requests	24
C. National Benefits Center (NBC) VAWA Inquiries	24
D. Infopass	24
E. Stakeholder Engagement	25
F. Barriers in Communication for Pro Se Applicants	25
G. Barriers in Communication for Survivors with non-humanitarian cases	25
H. Reinstate and Strengthen DHS Council to Combat Violence Against Women	26
V. “Bright Spots”	26

I. Introduction

On behalf of the 82 undersigned organizations, we submit this comment in response to USCIS's request for public input entitled "Identifying Barriers Across U.S. Citizenship & Immigration Services (USCIS) Benefits and Services," published in the Federal Register on April 19, 2021.¹

Our organizations assist, support, and advocate on behalf of immigrant survivors of domestic violence, sexual assault, human trafficking and other abuses. We appreciate the opportunity to provide comments to identify the barriers to services and benefits that survivors currently encounter. We are grateful that USCIS has already taken steps to remedy some of these barriers, including withdrawing proposed regulations on biometrics collection,² halting the implementation of the public charge rule,³ rescinding the 2018 Notice to Appear Guidance,⁴ and eliminating the "blank space criteria" for form filings.⁵ These efforts demonstrate that USCIS has started to implement the objectives of President Biden's Executive Order 14012 so that "our laws and policies encourage full participation by immigrants, including refugees, in our civic life; that immigration processes and other benefits are delivered effectively and efficiently; and that the Federal Government eliminates sources of fear and other barriers that prevent immigrants from accessing government services available to them."⁶

However, there is more to be done to dismantle the barriers that immigrant survivors face accessing relief, especially protections created under the Violence Against Women Act (VAWA) and Trafficking Victims Protection Act (TVPA). Benefits like VAWA self-petitions, U and T visas were created with the express recognition that survivors, by virtue of the abuse they endure, face significant obstacles to protection, driven by the fear that reaching out for help will result in separation from their families or deportation. A bipartisan majority in Congress created

¹ U.S. Citizenship and Immigration Services, Department of Homeland Security. "Identifying Barriers Across U.S. Citizenship & Immigration Services (USCIS) Benefits and Services; Request for Public Input" CIS No. 2684-21; DHS Docket No. USCIS-2021-0004; RIN 1615-ZB87 86 FR 20398 (April 19, 2021) available at <https://www.govinfo.gov/content/pkg/FR-2021-04-19/pdf/2021-07987.pdf>

² USCIS. "DHS Withdraws Proposed Biometrics Rule" (May 7, 2021), available at <https://www.uscis.gov/news/alerts/dhs-withdraws-proposed-biometrics-rule>

³ USCIS. "Public Charge" (last updated April 15, 2021), available at <https://www.uscis.gov/green-card/green-card-processes-and-procedures/public-charge>

⁴ Rebecca Scholtz. "Biden Administration Rescinds 2018 USCIS Notice to Appear Guidance" (Feb. 23, 2021), available at <https://bit.ly/3hy6YvI>

⁵ USCIS. "USCIS Confirms Elimination of "Blank Space" Criteria (April 1,2021), available at <https://www.uscis.gov/news/alerts/uscis-confirms-elimination-of-blank-space-criteria>

⁶ Executive Office of the President. Executive Order 14012. "Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans" 86 FR 8277,(February 2, 2021), available at <https://www.govinfo.gov/content/pkg/FR-2021-02-05/pdf/2021-02563.pdf>

these benefits to alleviate the barriers immigrant survivors often face, noting that victims “should not have to choose to stay with their abusers in order to stay in the United States.”⁷

Over the last several years, USCIS has created significant barriers to these forms of relief in a variety of ways--some by way of seismic regulatory overhauls, others through discrete and targeted procedural shifts--all seemingly designed to reduce the number of individuals seeking and/or obtaining immigration relief. As noted in the Washington Post, “President Trump’s ‘wall’ has been built not of steel or concrete but of paperwork and red tape.”⁸

The impact of these barriers is staggering. Survivors have been deported before their U visa applications have been adjudicated, due, in part, to the extensive backlog in adjudications. Survivors and their families have spent limited resources needed for basic necessities on immigration fees for fear their fee waivers will be rejected. A rape survivor declined a Sexual Assault Nurse Examiner (“SANE”) exam because she feared that doing so would preclude her from receiving lawful permanent residency or citizenship in the future due to the public charge grounds.⁹ Though USCIS has taken strides to address these issues, there is more the agency needs to do to restore integrity and trust.

To this end, we share the following concerns and recommendations based upon our collective experience and expertise so that survivors’ access to protections is strengthened and harmful barriers are removed.

I. Policy Barriers

A. Regulatory Barriers

1. VAWA regulations

The regulations regarding VAWA self-petitions are extremely outdated and have not been updated in decades.¹⁰ For example, the regulations still contain provisions related to extreme hardship, even though this requirement was removed for self-petitions by subsequent VAWA reauthorization.¹¹ In addition, the regulations do not account for those eligible to apply for VAWA as intended spouses, though this provision was added pursuant to VAWA 2000. There

⁷ 146 Cong. Rec. S10185 (2000) (statement of Sen. Patrick Leahy).

⁸ Catherine Rampell. “Opinion: The Trump administration’s no-blanks policy is the latest Kafkaesque plan designed to curb immigration” Washington Post (August 6, 2020), available at <https://wapo.st/2RoRVJZ>

⁹ Brief of Amici Curiae Nonprofit Anti-Domestic Violence and Sexual Assault Organizations in Support of Plaintiff’s Motion for Preliminary Injunction. “State of Washington et al v. DHS et al. (Sept. 19, 2019), available at <http://bit.ly/2mfArzU>

¹⁰ INS. “Interim Petition to Classify Alien as Immediate Relative of a United States Citizen or as a Preference Immigrant; Self-Petitioning for Certain Battered or Abused Spouses and Children” 61 FR 13061; See also INS. “Prima Facie Review of Form I-360 When Filed by Self-Petitioning Battered Spouse/Child” 62 FR 60769 (Nov. 13, 1997)

¹¹ 8 CFR § 204.2(c)(1)(viii).

are numerous other statutory changes that are not reflected in the regulations that commonly cause confusion both for adjudicators and self-petitioners.

- **Recommendation:** Update VAWA regulations so that they comport with subsequent reauthorizations of VAWA.
- **Recommendation:** Amend regulations to provide a mechanism for employment authorization and deferred action for pending cases to improve paths to stability and independence for survivors.¹²
- **Recommendation:** Amend regulations so that approved VAWA self-petitioners in removal proceedings are eligible for deferred action and accompanying work authorization.

2. I-751 regulations

The regulations governing domestic violence waivers of conditional residence are even more outdated than the VAWA regulations.¹³ These regulations fail to take into account the “any credible evidence” standard which was mandated in the context of I-751 domestic violence waivers in the original VAWA.¹⁴ The failure to change these regulations causes inconsistent adjudication practices across the country and barriers to survivors who are conditional residents.

Similarly, the regulations require a derivative child to submit their own I-751 *joint petition* if they received conditional residency more than 90 days before or after the parent.¹⁵ However, USCIS is applying this provision to those survivors seeking waivers, which is needlessly burdensome and confusing to survivors. Unlike joint petitions, which must be filed during the 90 days preceding the expiration of conditional residence for both the non-citizen spouse and child, conditional residence waivers may be filed at any time. Therefore, individuals applying to remove the conditions on their residency through a waiver should be able to remove the conditions of their children without a separate filing which amounts to additional costs and resource expenditure for USCIS, advocates, survivors and their families.

¹² See discussion on processing times *infra*. Part III, Section C.

¹³ 62 FR 10349 (March 6, 1997), available at <https://bit.ly/33Pskwl>

¹⁴ See Violent Crime Control and Law Enforcement Act of 1994, Pub. L. NO.103-322, § 40,702 Stat. 1796, 1955 amending INA § 216(c)(4)

¹⁵ 8 CFR § 216.4(a)(2)

USCIS should create a uniform and straightforward process to be able to convert a joint filing to a domestic violence-based waiver in a way that protects survivor confidentiality. There does not seem to be a consistent process across different USCIS service centers.

- **Recommendation:** Amend existing regulations to comport with the longstanding changes in the law
- **Recommendation:** Update agency guidance and Form I-751 instructions to permit derivatives to apply at the same time as the principal for waiver-based cases, regardless of whether the derivatives obtained conditional residency at a different time than the principal.
- **Recommendation:** Create standard procedures to permit the conversion of a jointly filed I-751 petition to a battered spouse waiver in a way that reduces trauma and protects survivor confidentiality.
- **Recommendation:** Ensure that all USCIS officers involved in the adjudication of these applications are trained on the dynamics of domestic violence, impact of trauma, proper evidentiary standards, confidentiality and other matters related to domestic violence claims.

3. U visa regulations

USCIS should also remove procedural barriers to relief for survivors through revisions to the U visa regulations. This includes, but is not limited to, extending the six-month validity period for I-918B law enforcement certifications. This limited time frame often causes hardship for survivors seeking U visa relief, as it may take months to receive documentation relevant to the filing, including FOIA responses and documents from abroad. In addition, USCIS claims that it lacks authority to grant nunc pro tunc I-539 applications for individuals who are in removal proceedings or who have an outstanding order of removal under 8 CFR § 214.1(c)(4)(iv). This position is inconsistent with existing guidance under PM-602-0032.2 and authority. USCIS should amend its regulations to ensure that those in removal proceedings or with an order of removal may extend their status. USCIS should also issue regulations to specify how overseas U visa derivatives who have not yet consular processed can extend the validity of their Form I-918A derivative petition. Currently, USCIS takes the position that in order for the derivative to extend the validity of the approved I-918A petition, the principal must file a Form I-539 to extend their own stay even where the principal would not otherwise need an extension.

USCIS should implement a procedure to issue work authorization while the U visa application is pending. In the U visa context, Congress made clear that all U-visa petitioners with “pending, bona fide applications” are eligible for employment authorization documents (EADs).¹⁶ USCIS has never implemented that section, preventing U petitioners from receiving an EAD until they are placed on the regulatory waitlist--a process that now takes at least five years.¹⁷ The regulations should make clear that a U visa petition is “bona fide” if it is complete, if it contains all required attachments, including the Form I-918B certification, and if the petitioner has supplied any required biometric information. This would fulfill congressional goals behind the U visa while not requiring the agency to conduct a full, final review of a petition on the merits unless and until a U visa becomes available.

In addition, as noted below, there has been a marked increase in the number of I-192 waiver denials based on discretion over the last several years. Survivors applying for U nonimmigrant status who are inadmissible to the United States are required to file a Form I-192 waiver in conjunction with a Form I-918 U petition in order to waive any ground of inadmissibility.¹⁸ The regulation at 8 C.F.R. § 212.17(b)(3) states in pertinent part: "There is no appeal of a decision to deny a waiver." This regulation unjustly limits administrative review of these discretionary denials.

- **Recommendation:** USCIS should extend the validity period of I-918 Supplement B certifications to at least one year.

- **Recommendation:** USCIS should issue regulations that provide deferred action, and the EADs that accompany deferred action, for all bona fide U visa petitioners while their applications are pending.

- **Recommendation:** USCIS should amend its regulations so that I-539 extensions are fully available to those in removal proceedings and those with final orders of removal.

¹⁶ INA § 214(p)(6).

¹⁷ Moreover, USCIS has declined to implement § 214(p)(6) even though a sworn deposition of then-Associate Director for SCOPS Don Neufeld showed that USCIS “essentially completed” the more searching “process for determining Plaintiffs’ waitlist eligibility within months of when Plaintiffs filed their petitions.” *Solis v. Cissna*, 2019 WL 8219790, 2019 U.S. Dist. LEXIS 229051, at *44 (D.S.C. July 11, 2019). Given that admission, providing EADs under § 214(p)(6) would not increase the administrative burden faced by USCIS; rather, it would simply accelerate the issuance of EADs in conformity with the unambiguous will of Congress.

¹⁸ 8 C.F.R §§ 212.17, 214.14(c)(2)(iv).

- **Recommendation:** The regulations at 8 C.F.R. § 212.17(b)(3) should be amended to permit appeals of denied I-192 waivers for U visa petitioners.

4. T visa regulations

USCIS’s narrow interpretation of “physical presence on account of trafficking” creates barriers to individuals applying for T nonimmigrant status. The statute requires only that the applicant be in the US, and that their presence in the US is ‘on account of’ their victimization. Although the statute gives one specific example (allowed entry for participation in investigative or judicial processes), the statute does not suggest that this example is meant to limit physical presence in the way currently interpreted by USCIS.¹⁹ We incorporate by reference the comments of the Coalition to Abolish Slavery and Trafficking and Freedom Network USA, the largest coalition of experts and advocates providing a human rights-based approach to fighting human trafficking in the country, as they provide more detailed analysis and recommendations on this issue.²⁰

Additionally, USCIS should amend existing regulations to provide bona fide determinations on T visas such that applicants have access to employment authorization while their applications are pending. Michael Aytes, previously Acting Deputy Director wrote, “USCIS does not currently have a backlog of I-914 cases; therefore, focusing on issuing interim EADs is not necessary. USCIS believes it is more efficient to adjudicate the entire I-914 and grant the T status, which produces work authorization for the applicant, rather than to touch the application twice in order to make a bona fide determination. However, in the event that

¹⁹ For example, over the last several years, USCIS has taken the position in many cases that an applicant has failed to demonstrate their physical presence under § 214.11(g) because of the length of time that has transpired between escaping the trafficking situation and filing the I-914, finding instead that the applicant’s continuing presence in the U.S. is no longer directly related to the trafficking. This *de facto* temporal limitation is not found in the statute or the legislative history and results in the exclusion of many bona fide victims of trafficking from the protections intended by Congress. Another instructional example is that USCIS has required applicants to demonstrate how the trauma from the trafficking victimization has impacted their day-to-day life and have evidence to prove that they were harmed by their trafficking victimization. This narrow interpretation is also not reflected in the statute or legislative history and excludes victims of trafficking who have been unidentified for several years and who are just learning that they may have access to services, protection, and assistance.

²⁰ Freedom Network USA. Comment in Response to DHS Docket No. USCIS-2011-0010, Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for “T” Nonimmigrant Status (February 17, 2017), available at <https://freedomnetworkusa.org/app/uploads/2017/03/ENUSACommentsTReg.docx> ; CAST Comment in Response to Response to DHS Docket No. USCIS-2011-0010, Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for “T” Nonimmigrant Status (February 17, 2017), available at <https://castla.box.com/v/2017TVisaRegCommentsFinal>

processing times should exceed 90 days, USCIS will conduct bona fide determinations for the purpose of issuing employment authorization.”²¹

As discussed below, processing times for T visa applications have increased dramatically since 2009, now taking between 17-29 months. USCIS has previously indicated that the bona fide determination process for T visas is akin to a full adjudication for relief and thus, would slow down administrative processes. USCIS must consider ways to make the bona fide determination process less onerous and more streamlined in order to provide trafficking survivors with paths to security and independence while their applications are pending, given that they now take over two years to adjudicate.

- **Recommendation:** USCIS should issue regulations that provide deferred action, and the EADs that accompany deferred action, for all bona fide T visa petitioners while their applications are pending.

- **Recommendation:** USCIS should amend the T visa regulations such that the “physical presence on account of trafficking” requirement is not so narrowly construed as it currently is. A broader interpretation is necessary given the legislative intent in protecting vulnerable victims and encouraging more victims to report crimes of trafficking.

B. Policy Manual Barriers

In 2020, USCIS made several revisions to the USCIS Policy Manual Chapters, which adversely impacted survivor-based relief.

1. Submission of Benefit Requests

In March 2020, USCIS released revisions to the chapter regarding submission of benefit requests at a time when our country was about to enter a nationwide state of emergency due to the COVID-19 pandemic.²² Our principal concerns about this chapter include the limited opportunity for comment, its failure to comport with existing authority, and the confusion and hardship these policies created.²³

²¹ USCIS. Memorandum, ‘Improving the Process for Victims of Trafficking and Certain Criminal Activity: The T and U Visas.’ USCIS (May 22, 2009), available at <https://bit.ly/3hCwFLH>.

²² Volume 1: General Policies and Procedures, Part B, Chapter 6: Submission of Benefit Requests, Policy Alert March 5, 2020, available at <https://bit.ly/3bxs8pQ>

²³ ASISTA. “Comment: USCIS Policy Manual: Volume 1 - General Policies and Procedures, Part B - Submission of Benefit Requests, Chapter 6 - Submitting Requests” (March 18, 2021), available at <https://asistahelp.org/wp-content/uploads/2021/05/Policy-Manual-Comment.pdf>

a. Rejection of Forms

Although USCIS has rescinded its blank space policy, hundreds of asylum and U visa applications rejected under this harsh policy are still affected. For example, USCIS rejected a petition of a rape survivor for nonmaterial blank spaces on the I-918 form. Her petition was sent to USCIS before December 30, 2019, while her child was under 21. Her child turned 21 after the original attempted filing and now because of the rejection, he has now “aged-out” of protection.²⁴ We remain deeply concerned that USCIS used this guidance as a pretext to implement harsh and unnecessarily restrictive measures like rejecting applications for blank spaces on forms.

This Policy Manual chapter states that “if the benefit requester later resubmits a previously rejected, corrected benefit request, USCIS processes the case anew, without prejudice.” The policy alert does not address cases where the *rejection itself* causes prejudice, including erroneous rejections; rejections for reasons inconsequential to the substance of the filing; rejections related to fee waiver adjudication issues; and rejections that otherwise cause hardship.

USCIS regulations and other authority should be revised to eliminate the hardship that rejections of forms often cause applicants and petitioners. For example, when a petitioner files an outdated version of a USCIS form that is identical to the current information collection, this inadvertent error may cost an applicant their filing deadline, potentially precluding them from obtaining immigration relief. Another example is of a domestic violence survivor U adjustment applicant whose fee waiver request based on receipt of medical benefits was denied, even though this evidence had been sufficient in other instances. By the time the survivor received the fee waiver denial and accompanying U AOS rejection, her U visa had expired, and she lacked both work authorization and the ability to travel abroad. USCIS must amend its rejection policy to address these barriers.

- **Recommendation:** Reopen Policy Manual chapter on Submissions of Public Benefits for comment given its publication and comment deadline at the outset of the COVID-19 national emergency declaration;
- **Recommendation:** USCIS should maintain the initial filing date in matters where the case was rejected, especially when those rejections are due to fee waiver rejections; are erroneous or overbroad; or would otherwise cause hardship to survivors (e.g. to protect aging out of a derivative or the expiration of a U visa certification, missing a

²⁴ Catherine Rampell. Opinion: “This latest trick from the Trump administration is one of the most despicable yet” Washington Post (February 13, 2020), available at <https://wapo.st/3eQPJUo>

critical deadline).

b. Date of Receipt

Similarly, the regulations and guidance regarding date of receipt should be amended such that the mailing date is considered the date of receipt. In other areas of law as well as administrative procedure (such as tax law) the U.S. stamped postmark is deemed the date of delivery.²⁵ In other regulations, if the cover of a document bears a timely postmark, the document will be considered filed timely, even if it is received after the last day of the period prescribed for the filing of such document.²⁶

Revising these regulations and procedures would alleviate considerable barriers for applicants and petitioners, as there are often circumstances outside of their control that prevent timely receipt at USCIS Service Centers or Lockboxes (e.g. weather, service delays, etc.).

In addition, USCIS should address any circumstances in which it will consider backdating a receipt date, for instance, for humanitarian circumstances, due to fee waiver denials, in cases of USCIS error, and/or in cases where rejections impede access to immigration relief for which applicants are otherwise entitled (such as fee waiver adjudications and cases impacted by the blank space policy). USCIS has the authority to grant nunc pro tunc relief and it has exercised that authority for many years in humanitarian cases when warranted.

- **Recommendation:** USCIS should revise its regulations and guidance so that an application or petition will be considered timely filed upon proof that it was postmarked or submitted via U.S. mail or via courier service by the deadline.
- **Recommendation:** USCIS should address the circumstances in which it would backdate a receipt date for humanitarian reasons to accommodate survivors' applications, including in cases of USCIS error, deadlines missed due to fee waiver rejections, and all cases impacted by the blank space processing policy.
- **Recommendation:** USCIS should restore impacted filings rejected as a result of the blank space policy so that they retain their initial filing dates nunc pro tunc. This includes but is not limited to:
 - Accepting as current any expired I-918 Supplement B: U Nonimmigrant Status Certification Forms in impacted cases;
 - Restoring the age of derivatives or principals at the time of the original submission; and

²⁵ 26 USC § 7502

²⁶ 72 CFR § 70.305

- Accepting as current any forms that were valid at the time of the original submission but now have a new edition date.

2. Use of Discretion

In 2020, USCIS issued several policy manual alerts regarding the use of discretion in USCIS adjudications, including adjustment of status and applications for discretionary employment authorization.²⁷ In August 2020, 79 organizations submitted a comment in opposition to Policy Manual revisions regarding applying discretion in USCIS adjudications including employment authorization.²⁸ We remain deeply concerned that many of the discretionary factors contained in this guidance fail to account for the impacts of abuse, posing challenges for survivors to favorably address these discretionary factors given the devastating consequences of abuse.

Survivor-based forms of immigration relief inherently require that the individual suffer some sort of trauma and, along with asylum, withholding of removal or Convention Against Torture-related claims, include the following:

- VAWA self-petitioners must demonstrate they have experienced “battery or extreme cruelty.”²⁹
- Special Immigrant Juvenile Status applicants must show they have suffered abuse, abandonment or neglect or a similar basis under state law.³⁰
- U visa petitioners must have “suffered substantial physical or mental abuse.”³¹
- T visa applicants must demonstrate they are a victim of “a severe form of human trafficking”³²

Many of the factors contained in the guidance on discretion for USCIS adjudications ignore the realities of individuals applying for survivor-based protections and how common it is for negative factors to arise as a *consequence* of victimization, economic instability, and/or trauma.

²⁷ Use of Discretion for Adjustment of Status [Policy Alert](#), November 17, 2020; Use of Discretion Applying Discretion in USCIS Adjudications [Policy Alert](#), July 15, 2020, and Applications for Discretionary Employment Authorization Involving Certain Adjustment Applications or Deferred Action, [Policy Alert](#), January 14, 2021

²⁸ Volume 1: General Policies and Procedures, Part E, Adjudications, Chapter 8, Discretionary Analysis, 1 USCIS-PM E.8, available at <https://www.uscis.gov/policy-manual/volume-1-part-e-chapter-8>; See also Volume 10: Employment Authorization, Part A, Employment Authorization Policies and Procedures, Chapter 5, Discretion, 10 USCIS-PM A.5 <https://www.uscis.gov/policy-manual/volume-10-part-a-chapter-5>

²⁹ See e.g. INA § 204(a)(1)(A)(iii)(I)(bb).

³⁰ INA § 101(a)(27)(J);

³¹ INA § 101(a)(15)(U)(i)(I);

³² INA § 101(a)(15)(T)(i)(i)

These common consequences include mental health grounds of inadmissibility,³³ addiction issues, and a history of immigration or criminal violations. These issues may often be related to the abuse or exploitation survivors have experienced in their lifetimes. An Institute for Women’s Policy Research study found that nearly one in four survivors surveyed said they were encouraged, pressured, or forced by their partner to engage in an illegal activity.³⁴ In addition, sex trafficking survivors have, by the very definition of the crime, been forced to commit unlawful commercial sex acts. Other survivors, including survivors of domestic violence, are falsely accused by their abusers of crimes including assault or domestic violence as a form of exercising their power and control.

USCIS Policy Manual guidance on discretion inappropriately penalizes survivors for the abuse they have experienced. Officers may “ask the requestor directly why he or she warrants a favorable exercise of discretion” in cases where any negative factor is present, seemingly regardless of the weight of the factor.³⁵ The guidance instructs officers to document any response, or lack thereof, in the record.³⁶ USCIS provides no instruction on how the “any credible evidence” standard for survivor-based cases factors into its discretionary analysis.

During the Trump administration, advocates noticed a “shift in practice where USCIS began routinely issuing demands for more evidence and denying applications for any applicant who has had *any* contact with the criminal justice system, no matter how minor that contact was.”³⁷

This is true even in cases where a criminal issue had been resolved as part of a prior application. For example, advocates report receiving Requests for Further Evidence (RFEs) for U visa holders related to criminal or other inadmissibility issues at the time of adjustment of status even when these issues have been fully disclosed, addressed, and waived as part of the underlying U visa application.³⁸

³³ See e.g. Monika Batra Kashyap. “Heartless Immigration Law: Rubbing Salt into the Wounds of Immigrant Survivors of Domestic Violence” 95 Tul. L. Rev. 51 (2020), available at <https://www.tulanelawreview.org/pub/volume95/issue1/heartless-immigration-law-4ts7w>

³⁴ See Cynthia Hess and Alona Del Rosario, [Dreams Deferred: A Survey on the Impact of Intimate Partner Violence on Survivors’ Education, Careers, and Economic Security](#) (Institute for Women’s Policy Research: Jan. 2019) and accompanying [executive summary/factsheet](#).

³⁵ Volume 1: General Policies and Procedures, Part E, Adjudications, Chapter 8, Discretionary Analysis, 1 USCIS-PM E.8, available at <https://www.uscis.gov/policy-manual/volume-1-part-e-chapter-8>

³⁶ *Id.*

³⁷ Evangeline Chan & Amy Cheung. “It’s Time for a #MeToo Reckoning in Immigration” Ms. Magazine (April 26, 2021), available at <https://bit.ly/3wd1gTX> [Emphasis added]

³⁸ Angela Harriet* “How the Biden Administration Should Better Protect Immigrant Domestic Violence Survivors Like Me” Gotham Gazette (March 8, 2021), available at <https://bit.ly/3buDQle>

USCIS should also end its heavy reliance on police reports for determinations of discretion. USCIS commonly uses police reports in making discretionary determinations in certain circumstances to find out “what happened,” even if no charges were brought, the charges were later dismissed or expunged, the charges were pled down, or for juvenile arrests where confidentiality is often protected by state laws. It is highly inappropriate for USCIS to seek police/arrest reports and use them to make their own analysis of the client’s arrest, especially if those reports did not result in formal charges or convictions and for juvenile proceedings. USCIS should comply with existing BIA precedent which states that uncorroborated police reports are not probative and should not be afforded significant weight in adjudications.³⁹

- **Recommendation:** Rescind Policy Manual Chapters on Use of Discretion in USCIS Adjudications, including chapters related to the issuance of employment authorization and to adjustment of status applications.⁴⁰
- **Recommendation:** Require **all adjudicators** responsible for survivor-based relief to receive training on trauma and trauma responses.
- **Recommendation:** Revise adjudication manuals and procedures to prevent the re-adjudication of previously waived grounds of inadmissibility upon adjustment of status or other subsequent filings (e.g. I-539 extensions).
- **Recommendation:** Revise adjudication manuals and procedures to prevent the use of police reports to be used in discretionary analysis absent a conviction or corroborating evidence of the allegations. Revise adjudication manuals and procedures to prevent, in any circumstance, the use of juveniles’ police reports in discretionary determinations.
- **Recommendation:** Revise forms and form instructions so they no longer request information and/or documentation related to an arrest record: no evidence or information should be requested for juvenile arrest records; police reports should not

³⁹ See e.g. *In Re Arreguin De Rodriguez*, 21 I. & N. Dec. 38, 42 (BIA 1995) (“[W]e are hesitant to give substantial weight to an arrest report, absent a conviction or corroborating evidence of the allegations contained therein.”) and *In Re Sotelo-Sotelo*, 23 I. & N. Dec. 201, 205 (BIA 2001) (“[I]n the absence of a conviction, we find that the outstanding warrant should not be considered an adverse factor in this case.”) See also ASISTA amicus to Vermont Service Center, available here:

<https://asistahelp.org/wp-content/uploads/2018/08/Extrinsic-ROC-Amicus-Brief-on-CIS-reliance-on-arrests-.pdf>

⁴⁰ See Joint Comment submitted August 14, 2020, available at <https://bit.ly/3eSd8oA> ; See Joint Comment submitted December 17, 2020, available at <https://bit.ly/3eV4Ufz> ; See also ASISTA Comment submitted February 15, 2021, available at <https://bit.ly/3hxzeP8>.

be requested absent a conviction or corroborating evidence of the allegations.

Advocates report receiving an increase in the number of RFEs on matters related to survivor-based relief as well as decisions that are internally inconsistent. For additional and unnecessary RFEs, both applicants and the government must spend additional time interacting with that case, where the initial evidence should have been sufficient for the officer to proceed in adjudicating the case.

- **Recommendation:** USCIS should invest additional resources in training new officers and reviewing their work to ensure consistent adjudication practices. USCIS should also provide mechanisms for increased stakeholder engagement and methods to resolve questions about adjudications, both individually and systemically.

C. Law Enforcement U visa Certification Guide

In July 2019, USCIS issued a modified Law Enforcement Resource Guide which reduces access to the U visa by overtly encouraging law enforcement agencies (LEAs) to limit their certifications of a victim's "helpfulness" in investigations or prosecutions, a necessary element of a U visa application.⁴¹ The 2019 Resource Guide recommended that LEAs conduct their own discretionary background checks on those seeking certifications, although such checks are already conducted by USCIS at a later stage in the U visa application process. It also recommended that LEAs consider imposing time limits on reporting of crime (even though the statute sets no such requirements) and take other limiting measures.⁴²

- **Recommendation:** DHS should rescind the 2019 Resource Guide issued in July 2019 and revert to the one issued in 2015⁴³ to serve as a baseline to which further updates and improvements should be made.
- **Recommendation:** The 2015 Resource Guide should also be improved to better address reported persistent problems with certification requests from LEAs.⁴⁴ A re-issued Resource Guide should also promote timely decisions on certification requests and otherwise promote clear and uniform survivor-centered and trauma-informed certification policies.

⁴¹ USCIS. 2019 U Visa Law Enforcement Resource Guide, available at <https://bit.ly/3yhsPxi>

⁴² ASISTA. "Policy Update: DHS Publishes Harmful New U Visa Law Enforcement Resource Guide" (August 5, 2019), available at <https://bit.ly/3hrLuk2>

⁴³ USCIS. U and T visa Law Enforcement Resource Guide, Updated 2015, available at <https://bit.ly/3eTDtmk>

⁴⁴ Laura C. Morel. "The U visa is supposed to help solve crimes and protect immigrants. But police are undermining it" *Reveal* (Nov. 7, 2019), available at <https://bit.ly/33OjNcW>

- **Recommendation:** USCIS should expand training opportunities for certifiers. Among U visa petitioners, victims of gender-based violence can face particular obstacles to certification. Abusers and perpetrators already often manipulate the authorities with false allegations of fraud or other wrongdoing to discredit victims. Improved training and guidance is needed for LEAs to ensure that the U visa works as intended, especially for domestic violence victims intended as a primary beneficiary.

D. Implement Parole Procedures for U visa Program:

In June 2016, the CIS Ombudsman made a formal recommendation to USCIS to implement a parole program for U visa petitioners and derivatives on the U visa waitlist.⁴⁵ The CIS Ombudsman recognized that “eligible victims subject to the U visa cap often remain abroad, despite clear Congressional intent they be afforded entry and *an express regulatory obligation* to be paroled into the United States while awaiting an available visa.”⁴⁶ USCIS agreed to these recommendations in August 2016.⁴⁷ However, instead of implementing this policy, the last Administration put even stricter limits on the use of parole, limiting the ability of U visa applicants (both principals and derivatives) abroad, who are awaiting the issuance of a U visa, to be reunified with family members in the United States, as well as limiting the ability of U visa applicants to travel with the use of advance parole.

- **Recommendation:** USCIS should create a parole program for U waitlisted applicants abroad to enter the U.S. pursuant to 8 C.F.R. § 214.14(d)(2) and implement the CIS Ombudsman’s office formal recommendations to USCIS to grant parole to U visa principals and derivatives abroad on the waitlist. These recommendations call for providing “a mechanism for U petitioners on the waiting list to be reunified with their immediate family members in the United States [which] serves a ‘significant public benefit.’” USCIS should clarify that U visa holders can utilize advance parole in order to travel in the same way that T visa holders are able to.

E. 8 U.S.C. § 1367 Protections

Under 8 U.S.C. § 1367, DHS, DOJ, and the Department of State are barred from taking adverse action against a victim based on information from an alleged abuser/perpetrator, and are also barred from disclosing any information about victims who are VAWA self-petitioners or

⁴⁵ CIS Ombudsman. “Parole for Eligible U Visa Principal and Derivative Petitioners Residing Abroad” (June 16, 2016), available at

<https://www.dhs.gov/sites/default/files/publications/cisomb-u-parole-recommendation-061616.pdf>

⁴⁶ *Id.* Emphasis added.

⁴⁷ USCIS. Response to Recommendation on Parole for Eligible U visa Principal and Derivative Petitioners Residing Abroad(August 18, 2016), available at <https://bit.ly/3tUz46H>

beneficiaries of battered spouse waivers or T or U visa applications, with some limited exceptions. Though there is a \$5000 civil penalty for breaches of confidentiality and DHS's Office for Civil Rights and Civil Liberties (CRCL) accepts complaints of alleged violations, policies enforcing these provisions have no real teeth. There is no clarity on what, if any, consequences flow to officers/agents who violate law or policy on confidentiality or enforcement at sensitive locations; no entity designated nor mechanism described for assessing the \$5000 penalty for confidentiality violations; and no process outlined whereby those impacted can clearly access redress.

- **Recommendation:** Revive, refine, and expand upon existing instructions prepared under the Obama administration for handling 8 U.S.C. § 1367 violations.
- **Recommendation:** Promulgate regulations and implementing guidance that improve and clarify both the investigation process and penalties for DHS personnel's violations of Section 1367. The regulations and guidance at a minimum should include (but not be limited to) the strengthening of USCIS non-disclosure guidelines to prohibit disclosing information contained in victim-related applications except for the sole purpose of adjudicating such applications, as well as protections for impacted individuals from adverse immigration consequences upon notice of a violation of Section 1367, including redress for individuals who've been negatively impacted.

III. Procedural/Adjudication Barriers

A. Fee Waivers

In the summer 2018, there was a drastic and unannounced shift in fee waiver adjudications at the Humanitarian Unit at the Vermont and Nebraska Service Centers.⁴⁸ As a result, practitioners and applicants spend critical and limited resources preparing and re-submitting denied fee waiver applications without any clear understanding of what evidence USCIS would find sufficient to grant the fee waiver requests. In April 2021, stakeholders held a listening session with USCIS that outlined the significant impact of these egregious denials. These fee waiver denials have resulted in missed deadlines, including opportunities for appeals and administrative review.⁴⁹

Fee waiver adjudications for survivor-based benefits are extremely inconsistent. There does not seem to be any consistent rationale between which fee waivers are granted and which are

⁴⁸ See [Organizational Sign-on Letter to USCIS Director Cissna](#) (September 4, 2018).

⁴⁹ ASISTA. "Notes from Listening Session with USCIS on Fee Waiver Adjudications (April 6, 2021), available at <https://asistahelp.org/wp-content/uploads/2021/04/Notes-from-Fee-Waiver-Listening-Session-with-USCIS-4.6.2021-.pdf>

denied. In the listening session, 80% of individuals surveyed indicated that fee waivers were first denied and then later granted with identical information, and 70% reported that they had identical fee waivers both denied and approved for different family members.⁵⁰

USCIS fee waiver adjudication practices also demonstrate a lack of clarity regarding the standards and criteria for fee waivers. For example, applicants are filing fee waivers based on one criterion, but adjudicators frequently evaluate and ask for documents related to a separate basis. In addition, USCIS is failing to take into account the documentary challenges that survivors often face to “prove” their economic need. One advocate reported that they applied for a fee waiver for minors who were dependent on the state and were living in a juvenile shelter. These minors were not working because of their age. USCIS denied these fee waivers even when a letter from the shelter was attached.⁵¹

USCIS takes the position that there is no availability of formal review of a fee waiver denial. As a result, even where there is clear USCIS error in denying a fee waiver request, the only practical avenue for the applicant is to refile the application and either pay the filing fee or request a fee waiver again, which can result in missed deadlines or age-outs.

- **Recommendation:** USCIS should restore and build upon its previous policy and practice for adjudicating fee waivers for SIJS, VAWA, U and T visa-related applications, taking into account barriers survivors and others vulnerable individuals face accessing relief.
- **Recommendation:** USCIS should provide adequate training and oversight so that USCIS personnel adhere to consistent standards for fee waiver adjudications so that adjudications are non-arbitrary and take into consideration the barriers documenting financial insecurity for survivors and other vulnerable populations.
- **Recommendation:** USCIS should develop a formal avenue for review of fee waiver denials so that applicants and their counsel can seek administrative review and avoid the consequences of having to re-file.

B. Processing Times

The processing times for survivor-based forms of immigration protections like VAWA self-petitions and U and T visas have skyrocketed, undermining the effectiveness of these critical benefits. VAWA self-petitions now take between 19.5 and 25 months to be

⁵⁰ *Id.*

⁵¹ *Id.*

adjudicated.⁵² Current processing times for T visa applications are between 17 and 29 months,⁵³ an exponential increase from FY2015 when these applications took 6.4 months to adjudicate.⁵⁴

In the case of U visas, the delay is even more egregious, as there is a 5-year backlog in the initial adjudication process. Current processing times for I-918 U visa applications indicate that adjudications can take about 59 months.⁵⁵ This is the posted time for placing cases on the U visa waitlist and issuing employment authorization based on deferred action, *not* the issuance of a full 4-year U visa. According to an April 2020 USCIS report, the wait time for an actual U visa is now 5-10 years, and, despite regulatory directives, the agency has in recent years declined to use the waitlist to its full protective potential. In 2008, for example, USCIS placed 7,421 principal petitioners on the waiting list--only about one-third the number of U visa applicants who were on the waiting list in 2014.⁵⁶ The U visa processing backlog has continued to grow since at least 2015, when the posted processing time for U visa applications was 11.5 months. The current delays in case processing and backlog of VAWA and U and T visas mean that survivors must wait years before they can access protection and safety.⁵⁷

- **Recommendation:** USCIS should increase its ability to reduce this backlog by immediately hiring an additional 60-80 adjudicators trained to address victim-related cases. At last count, USCIS only had approximately 100-120 adjudicators for a caseload of over 268,000 pending U visa cases (principal applicants + derivatives).⁵⁸ These adjudicators must be well trained in not only knowing the requirements of the relevant applications for relief, but also, crucially, in understanding the dynamics of victimization and trauma.

- **Recommendation:** VAWA self-petitions and T and U visas should be adjudicated within six months of application, and USCIS should be allocated sufficient resources to timely

⁵² See USCIS Processing Times at <https://egov.uscis.gov/processing-times/> for processing times for I-360 VAWA self-petitions adjudicated at the Vermont Service Center

⁵³ *Id.* for processing times for I-914 Application for T Nonimmigrant Status processed at Vermont Service Center.

⁵⁴ USCIS. "Historic National Average Processing Times for All USCIS Offices" (captured March 12, 2019) available at <https://web.archive.org/web/20190312202427/https://egov.uscis.gov/processing-times/historic-pt>

⁵⁵ See USCIS Processing Times at <https://egov.uscis.gov/processing-times/> for processing times for I-918 Petition for U Nonimmigrant Status adjudicated at the Vermont or Nebraska Service Centers

⁵⁶ USCIS. U Visa Filing Trends April 2020, available at <https://bit.ly/33Qik66>

⁵⁷ Joint Written Statement from ASISTA, Tahirih Justice Center, Asian Pacific Institute on Gender-Based Violence and Casa de Esperanza (April 28, 2021), available here:

<https://docs.house.gov/meetings/JU/JU01/20210428/112515/HHRG-117-JU01-20210428-SD004.pdf>

⁵⁸ USCIS. Form I-918, Petition for U Nonimmigrant Status, by Fiscal Year, Quarter, and Case Status (Fiscal Year 2021, 1st Quarter, Oct. 31 - December 31, 2020), available at

https://www.uscis.gov/sites/default/files/document/reports/I918u_visastatistics_fy2021_qtr1.pdf

adjudicate applications.

- **Recommendation:** USCIS should issue work authorization if VAWA self-petitions, U visas, SIJS applications, and T visas are pending over 180 days in order to mitigate the harm that survivors face by the long USCIS processing delays.⁵⁹ This work authorization should be accompanied by deferred action to provide additional protections from deportation while their matters remain pending and up to and until all opportunities for administrative and judicial review are exhausted.

C. Barriers in Information Collections

1. Frequent Changes in Edition Date

USCIS is frequently updating form editions with limited grace periods for required use of the new version--sometimes only 30 to 60 days. This change in requirements for a form of immigration relief creates an enormous burden to both applicants and advocates, especially those advocates at community-based organizations who cannot easily pass on the cost to the applicant. Applicants for immigration benefits spend many months and sometimes over a year to prepare and ultimately submit an application to USCIS. The sudden pivot away from a form that an applicant has already signed and prepared with the help of their advocate causes additional delay and diverted resources.

- **Recommendation:** USCIS should provide a one-year window to applicants to continue using a previous version of a form when a form version changes. This is particularly helpful if there are no substantive changes in the information collection. In these cases, USCIS should extend the grace period or allow previous editions to be accepted. If the changes in the new form version are more substantive and/or time sensitive, USCIS can provide a shorter, but six-month window to applicants to continue using a previous version of that form.

2. Burdensome Length of Forms

Certain USCIS forms apply to multiple types of applications, resulting in multiple pages and/or irrelevant questions for a particular applicant. These extraneous sections both sow confusion and waste resources. For example, the I-360 Form is 19 pages long and self-petitioners who are domestic violence survivors only complete 11 of those 19 pages; 8 pages are superfluous. The Form I-192 for U and T visa applicants is extremely duplicative of information already provided

⁵⁹ See e.g. discussion of bona fide determinations for U and T visas, *supra*.

in the underlying I-918(A)/I-914(A) applications, and certain information seems irrelevant (e.g. employment information); therefore, the extra questions are an unnecessary waste for both applicants and USCIS officers.

- **Recommendation:** USCIS should consider reducing the number of pages of certain forms and adapt them to particular forms of relief, especially the I-912 Fee Waiver Form, the I-360 for VAWA self-petitioners, and the I-192 for U and T visa applicants.
- **Recommendation:** USCIS should provide greater language access to forms and form instructions to reduce barriers for applicants and petitioners with limited English proficiency.

D. Requests For Evidence (RFEs)

In 2018, USCIS expanded the situations in which applications can be denied without the issuance of an RFE or NOID. The agency moved from a policy where denials without RFEs were reserved for situations in which there was “no possibility” that relief could be granted to a situation in which adjudicators must determine, on a case-by-case basis, whether they believe the applicant is statutorily eligible and whether they believe there is sufficient initial evidence to warrant an RFE. These vague standards work directly against pro se applicants who cannot be expected to understand precisely how statutory eligibility works or, without guidance, to understand precisely what evidence the agency wishes to have. RFEs are vital for those purposes, and USCIS should therefore revoke the 2018 memorandum (PM-602-0163) and reinstate the June 3, 2013, Policy Memorandum “Requests for Evidence and Notices of Intent to Deny.”⁶⁰

- **Recommendation:** USCIS should rescind the 2018 Policy Memorandum “Issuance of Certain RFEs and NOIDs.”

E. Biometrics Abroad Alternative

Due to the prolonged pause in biometrics collection at U.S. consulates, applicants for U nonimmigrant status abroad are unable to proceed in applying for their U visas. In March 2020, the COVID-19 pandemic caused U.S. consulates around the world to close for all but certain services, including emergency situations (e.g. age-out of derivative child abroad). In the fall of 2020, some consulates reopened for gradually more services, including more regular scheduling options for non-emergent U nonimmigrant visas. Today, in May 2021, the

⁶⁰ USCIS. Issuance of Certain RFEs and NOIDs (July 13, 2018), incorporated into USCIS Policy Manual, guidance archived at https://web.archive.org/web/20200401152530/https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/AFM_10_Standards_for_RFEs_and_NOIDs_FINAL2.pdf

consulates have still **not** resumed appointments to collect biometrics for U nonimmigrant applicants abroad.

While USCIS has been flexible in postponing the deadline for biometrics for those abroad during this past year, the agency's insistence on biometrics taken by the consulate is harmful for applicants abroad whose cases are now ripe for approval and entry to the U.S. Over this past year, some advocates have unsuccessfully attempted to provide alternative documentation for biometrics. USCIS already has a policy in place to accept alternative biometrics evidence where, for example, the biometrics for an applicant either in the U.S. or abroad are impossible to decipher (e.g. due to worn down finger pads like for an applicant working as a dishwasher). Only one case we know of with the alternative evidence has been accepted and approved--the rest were rejected or told to wait until consulates reopened for services. Other advocates have waited patiently, getting extensions upon extensions, and now their clients will continue to wait for months on end without a pathway to enter the country.

USCIS's unwillingness to consider alternative biometrics evidence that would be acceptable in other circumstances has resulted in family separation. In one case, the 54-year-old victim of a felonious assault filed his U visa petition in 2015, which was approved on January 12, 2021. He hasn't seen his family since he left Mexico in 2001. His advocate helped him respond to the RFE for biometrics abroad for his derivative wife and two children in October 2020, providing their Mexican State of Jalisco criminal record results and an affidavit from each. USCIS has refused to review this evidence and instead issued new and identical biometrics RFEs on February 2, 2021. Although they would be immediately eligible and able to consular process with an approved I-918A, the family is stuck abroad in Mexico because USCIS is unwilling to accept alternative evidence of their clean criminal background. This family was separated for 20 years, 6 of those while the U visa was pending. They should not wait longer due to these administrative barriers.

The consulates will assess a case for a U nonimmigrant visa, but they will not collect the biometrics that will allow USCIS to grant the approval of the I-918 petition. The COVID-19 pandemic may last for many years longer due to dramatically slower vaccination campaigns abroad than in the United States.

- **Recommendation:** USCIS should adopt its previous practice of accepting as an alternative to biometrics an affidavit from the applicant attesting to their criminal history together with records from the local law enforcement agency in the municipality where they have resided for over 90 days (with exceptions provided for youth between 14-17 years old who cannot yet legally obtain those records). USCIS

should issue guidance on this alternative and instruct its officers to provide this option by way of the biometrics abroad Requests for Evidence.

F. Receipt Notice Delays

In the past year, USCIS has experienced delays as long as 4-6 months to issue receipt notices, particularly in survivor-based cases where a fee waiver was requested (e.g. U visa cases at NSC and VSC, AOS cases at NBC). This delay causes extreme uncertainty and fear. If an applicant or petitioner does not have confirmation whether their case was received, it creates additional instability and distrust in the process. If their case is ultimately rejected, then survivors face additional obstacles (e.g. form expiration, U visa expiration for AOS cases, certification expiration for U visa cases) trying to refile.

- **Recommendation:** USCIS should obtain and maintain the resources necessary to be able to issue receipt notices within 1 to 2 weeks of the application's arrival at USCIS.

G. Short Employment Authorization Document (EAD) Renewals

Although USCIS knows that there are lengthy processing times for various forms of relief, including U visas, adjustment of status for asylees, and VAWA self-petitioners, it issues EADs for those individuals only in one-year increments. This creates a significant, and needless, burden on both the petitioners and the agency. In fact, given that EAD applications have processing delays as well, we frequently see situations in which a petitioner always has an EAD application in process. This system helps no one: it strains USCIS's resources and the limited capacity of representatives, and it places a substantial burden on pro se petitioners.

- **Recommendation:** USCIS should automatically extend work authorization for VAWA self-petitioners, U visa and T visa holders and applicants, and other survivors until they are able to obtain their visas, and asylees until their applications for adjustment of status are adjudicated, in order to minimize the financial and administrative burden, both on USCIS and survivors.

H. FOIA Response Problems

Under current policy, practitioners must file FOIA requests in order to receive information from USCIS about their clients. Unfortunately, responses from USCIS suffer from both delays and inconsistencies. On the delay front, although USCIS is under a court order to comply with the statutory deadlines for FOIA responses when responding to requests for A-files (*see Nightingale v. USCIS*, N.D. Cal. No. 3:19-cv-3512, Dkt. 89 (Dec. 17, 2020)), the agency, by its own admission, continues to violate those deadlines for almost 30% of requests (*see id.* Dkt. 97, at 3). This failure to adhere to statutory deadlines makes it extremely difficult for counsel to

provide effective and timely representation to clients who have experienced trauma and, in many cases, remain in highly precarious situations in the United States.

USCIS's responses to FOIA requests are also highly uneven and, in some cases, inconsistent with USCIS's own policies. As in the fee waiver arena, the agency has returned files for all but one family member, while denying an identical, simultaneous FOIA request for another family member represented by the same counsel. Further, although USCIS's FOIA Request Guide states that a Form G-28 Notice of Entry of Appearance, standing alone, suffices to show the client's agreement to the request, the agency frequently rejects requests that contain a completed G-28 on the ground that they do not also contain a standalone Certification of Agreement from the client.⁶¹ It also frequently provides incomplete productions that counsel knows lack documents previously filed with the agency. All of these departures from policy waste the resources of both counsel and the agency by requiring seriatim, duplicative requests.

- **Recommendation:** To minimize needless burdens on the agency and counsel, USCIS should work toward providing automatic access to client records upon the filing of a complete Form G-28. In the interim, USCIS must--given the order in *Nightingale*--comply with the statutory deadlines for responding to A-file FOIA requests, and it should retrain all employees responding to those requests to ensure that the agency's policies are followed and that duplicative requests are minimized.

I. Interviews

Interviews for VAWA-based adjustment of status cases as well as I-751 domestic violence-based waivers can often be traumatizing for survivors. USCIS should establish clear criteria as to when interviews are deemed necessary and when they can be waived to avoid additional trauma to survivors. Despite clear guidance to the contrary, there are still instances where adjudicators improperly inquire into the domestic violence a VAWA self-petitioner has suffered during the adjustment interview.

- **Recommendation:** All district office adjudicators should be trained annually on the dynamics of domestic violence, trauma-informed interviewing, and confidentiality practices. USCIS District Offices should consider waivers of VAWA-based interviews when necessary to avoid further trauma.

⁶¹ USCIS FOIA Request Guide, available at https://www.uscis.gov/sites/default/files/document/guides/USCIS_FOIA_Request_Guide.pdf

IV. Communication Channel Barriers

A. Humanitarian Unit Hotline

The email hotlines at the Nebraska and Vermont Service Centers often take up to one month or more to respond to a question from advocates related to VAWA, U or T visa relief. Even then, the response often is vague or does not provide sufficient information in response to the inquiry.

- **Recommendation:** USCIS should dedicate more resources to staffing the hotline with trained and qualified officers, and with enough officers to respond within 15 calendar days of a representative's request. In addition, USCIS automatic hotline response confirmation should include an accurate estimate of response times to hotline inquiries so that representatives know when to expect a reply.

B. Supervisory Review Requests

The prior Administration halted the option for advocates to request supervisory review of insufficient hotline correspondence, RFEs issued either in error or without sufficient detail, or errors made by USCIS that need corrective action. For example, when RFEs are issued erroneously or with unclear language, the hotline instructs the advocate to respond to the RFE as best as they can. This then both diverts resources from advocates and causes applicants to spend unnecessary resources on an RFE response.

- **Recommendation:** USCIS should immediately revert to its previous practice of allowing supervisors to review cases through a hotline request.

C. National Benefits Center (NBC) VAWA Inquiries

Some approved VAWA self-petitioners must wait over a year for an interview for adjustment of status. These adjustment applications are often transferred from the Vermont Service Center (VSC) to the National Benefits Center (NBC) before they are filed with the local District Office. There is no clear way for VAWA self-petitioners and their representatives to contact NBC to ascertain information about a case that is outside processing times.

- **Recommendation:** USCIS should create a Hotline for NBC VAWA cases, similar to the survivor-based hotlines at VSC, NSC, and NBC for SIJS cases.

D. Infopass

The loss of the Infopass system has caused immense barriers for attorneys and survivors who now must jump through multiple customer service hoops in order to receive information, to seek help with an emergency situation, or to help resolve a problem. Indeed, the loss of the ability to self-select an appointment time to meet with a USCIS representative in person creates extra barriers for survivors and other vulnerable individuals who have difficulty navigating the existing customer service system.

- **Recommendation:** USCIS should renew the ability for individuals to self-schedule appointments with local field offices, like under the prior Infopass system.

E. Stakeholder Engagement

For many years prior to January 2017, the Vermont Service Center convened stakeholders at least once annually in-person and quarterly via teleconference. However, these opportunities for mutual exchange have been abandoned. In the past, these stakeholder engagement events were preceded by a webinar on a particular training topic and provided routine opportunities for the Humanitarian Division and VAWA Unit leadership to share operational and processing information as well as practice pointers, filing tips, or how best to use the VAWA Unit hotline. Subject matter experts in the field participated and raised questions cropping up for practitioners that USCIS could then seek to address and resolve. These mechanisms for regular, open communication helped ensure that applications were properly submitted and expedited, and also facilitated fair and consistent processing, redounding to the benefit of all involved—most importantly, to survivors.

- **Recommendation:** USCIS should reinstate the regular stakeholder meetings hosted by those in leadership, both on-site and telephonically (or by video conference) so that stakeholders can engage with USCIS on survivor-based applications.

F. Barriers in Communication for Pro Se Applicants

People seeking relief pro se face even more difficulty contacting USCIS. Our understanding is that pro se applicants can neither telephone nor email USCIS; they must submit all correspondence via postal mail. This routinely results in lengthy delays or the outright inability of pro se applicants to receive updates on their applications. And we know from many conversations with people who have initially submitted applications pro se that the inability of unrepresented applicants to have meaningful contact with the agency often results in the issuance of RFEs, NOIDs, and denials. We understand that 8 U.S.C § 1367 protections often impact these channels, but we encourage USCIS to engage with advocates and survivors in

order to expand the channels and methods by which pro se applicants may contact USCIS in compliance with the law.

G. Barriers in Communication for Survivors with non-humanitarian cases

Survivors are often eligible for multiple immigration benefits and may have more than one pending application at a time. For example, a crime victim may have a pending U visa petition as well as a pending DACA application. While the representative may communicate with USCIS about the U visa petition through the dedicated email hotlines, the normal method of communication regarding the non-humanitarian case, i.e., the USCIS Contact Center, is unavailable due to USCIS's implementation of 8 USC § 1367. This can result in the applicant's utter inability to communicate with USCIS regarding the non-humanitarian case.

- **Recommendation:** USCIS should create a means of communication for individuals covered under 8 USC § 1367 but who also have non-humanitarian cases pending.

H. Reinstate and Strengthen DHS Council to Combat Violence Against Women

The Council to Combat Violence Against Women (CCVAW) was launched by DHS in 2012 and held an initial stakeholder gathering in 2013. Detailed recommendations submitted by victim advocates at that time included a call to address a wider range of forms of violence and to extend coordination efforts across other agencies like DOJ, DOS, and DOL, especially since laws, policies, processes, and structures that impact immigrant survivors span more than one agency. The CCVAW last produced a major product, a resource guide, in 2015, but appears to no longer convene. This is one example of how combating violence against women and adopting a trauma-informed and survivor-sensitive approach was previously prioritized.

- **Recommendation:** It is essential that those within USCIS rededicate themselves to this Council to ensure that there is a coordinated effort to focus on survivor issues internally within DHS as well as cross-departmentally within government. Functions of this Council could include opportunities for stakeholder engagement, as well as oversight over violations of 8 U.S.C. § 1367. In addition, the CCVAW should coordinate with the Blue Campaign and other DHS components cross-agency, such as the Office of Migrant Protection, as well as chair an inter-agency (Health and Human Services (HHS), DOJ, DOS) workgroup on immigrant survivors of violence.

V. "Bright Spots"

As mentioned above, we are grateful for the policy changes USCIS has already adopted in order to remove some of the most egregious barriers to access to relief, including halting the public charge rule and rescinding the NTA memorandum. USCIS should expand its public outreach

regarding these policy changes so that a wide audience is aware that these barriers have been removed.

USCIS policies providing greater flexibility on deadlines have been critical during the national emergency. The COVID-era policy of accepting electronically reproduced original signatures for forms that require an original “wet” signature, per form instructions, is similarly helpful to practitioners, and one that we hope continues on a more formal basis in the future.

USCIS’s brightest moments occur when the agency takes time to engage in meaningful connection and build relationships with stakeholders. USCIS’s renewed commitment to public engagement (e.g. participation in listening sessions and other events) is a critical step in this direction. But this also occurs (and should continue to occur) on an individual basis as well. For instance, an advocate reported that USCIS once returned a check meant for her agency that was erroneously included in the filing, instead of rejecting the application outright. Another attorney reported that a USCIS adjudicator at a District Office called her directly to notify her that a document was missing from her client’s file instead of issuing a Request for Evidence which would have slowed down the survivor’s application process. These examples of individual connection leave a lasting impression, and overall reduce barriers for applicants and petitioners seeking relief.

Thank you for the opportunity to provide comments. We look forward to continuing to work with USCIS to address these barriers for immigrant survivors. Should you require additional information please contact: Cecelia Friedman Levin, Policy Director, ASISTA, cecelia@asistahelp.org; Jessica Farb, Directing Attorney, Immigration Center for Women and Children, jess@icwclaw.org; Grace Huang, Director of Policy, Asian Pacific Institute on Gender-based Violence (API-GBV), ghuang@api-gbv.org; Irena Sullivan, Senior Immigration Policy Council, Tahirih Justice Center, irenas@tahirih.org.

Respectfully submitted:

NATIONAL ORGANIZATIONS (28)

Alianza Nacional de Campesinas
Asian Pacific Institute on Gender-Based Violence
ASISTA
Casa de Esperanza: National Latin@ Network
Church World Service
Cooperative Baptist Fellowship

Faith in Public Life
Franciscan Action Network (FAN)
Freedom Network USA
Hispanic Federation
Human Trafficking Legal Center
Immigrant Legal Resource Center
Immigration Center for Women and Children
International League of Advocates
Just Neighbors
MIRA USA Inc.
National Immigrant Justice Center
National Immigrant Women's Advocacy Project Inc.
National Immigration Law Center
National Justice for Our Neighbors
National Network for Arab American Communities (NNAAC)
National Network for Immigrant & Refugee Rights
National Resource Center on Domestic Violence
Project Lifeline
SABA Foundation
SABA North America
Tahirih Justice Center
The National Domestic Violence Hotline

STATE AND LOCAL ORGANIZATIONS (54)

Arizona

Florence Immigrant and Refugee Rights Project

California

Al Otro Lado
Bay Area Legal Aid
California Partnership to End Domestic Violence
Los Angeles Center for Law and Justice
Verity

District of Columbia

AsylumWorks
Ayuda

Casa Ruby

Florida

Americans for Immigrant Justice

Florida Legal Services, Inc.

VIDA Legal Assistance, Inc.

Georgia

Raksha, Inc.

Hawaii

The Legal Clinic Hawai'i

Illinois

Legal Action Chicago

Legal Aid Society of Metropolitan Family Services

Heartland Alliance

Iowa

Law Office of Sonia Parras PLLC

Maryland

University of Maryland SAFE Center for Human Trafficking Survivors

Women's Law Center of Maryland, Inc.

Massachusetts

Harbor Communities Overcoming Violence (HarborCOV)

Northeast Justice Center

Missouri

EMC Immigration Law

New Jersey

Manavi

New Mexico

New Mexico Immigrant Law Center

New York

Capital District Women's Bar Association Legal Project

Her Justice, Inc.

New York Justice for Our Neighbors, Inc.

RAHAMA

Sanctuary for Families

The Legal Aid Society

Urban Justice Center Domestic Violence Project

Ohio

Advocating Opportunity

Crime Victim Services

The Legal Aid Society of Cleveland

Pennsylvania

Aldea - The People's Justice Center

Nationalities Service Center

Rhode Island

Progreso Latino

Tennessee

Tennessee Justice for Our Neighbors

Texas

American Gateways

Fellowship Southwest

Human Rights Initiative of North Texas

Justice For Our Neighbors - North Central Texas

Mosaic Family Services

Refugee and Immigrant Center for Education and Legal Services (RAICES)

Texas Council on Family Violence

Texas Impact

Vermont

Vermont Network Against Domestic and Sexual Violence

Virginia

Brody Immigration Law PLLC

Just Neighbors

Washington

Northwest Immigrant Rights Project (NWIRP)

Washington Coalition of Sexual Assault Programs

Washington State Coalition Against Domestic Violence (WSCADV)

Wisconsin

End Domestic Abuse Wisconsin