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Kerry Doyle
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Anna Hinken
Senior Engagement Liaison
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Re: Proof of delivery

Dear Mr. Johnson, Ms. Doyle, and Ms. Hinken:

The Tahirih Justice Center (“Tahirih”) is pleased to submit this letter in response to the informal request for feedback issued by Immigration and Customs Enforcement (“ICE”) concerning a method of delivering Notices to Appear (“NTAs”) and hearing notices in immigration court that provides sufficient proof to support *in absentia* removal orders.

Tahirih is a national, nonpartisan policy and direct services organization that has served more than 30,000 survivors of gender-based violence and their families since its inception in 1997. Our clients are survivors of gender-based violence, including domestic violence, rape and sexual torture, forced marriage, human trafficking, widow rituals, female genital mutilation/cutting (FGM/C), and so-called “honor” crimes.¹

¹ For background information on these types of gender-based violence, see, e.g., UNHCR, *Guidelines on the Protection of Refugee Women* 17, <https://www.unhcr.org/3d4f915e4.html>; UN Women, *Defining “honour” crimes and “honour” killings*, <https://endvawnow.org/en/articles/731-defining-honourcrimes-and-honour->

Tahirih provides free legal and social services to help our clients find safety and justice as they engage in the daunting, courageous, and rewarding work of rebuilding their lives and contributing to their communities as illustrated by our clients' stories. Since its founding, Tahirih has also served as an expert resource for the media, Congress, policymakers, and others on immigration remedies for survivors fleeing gender-based violence. *See, e.g.,* Tahirih Justice Center, *Tahirih in the News*;² Tahirih Justice Center, *Congressional Testimony*;³ Tahirih Justice Center, *Comments*.⁴

The burden on the agency to prove delivery where it seeks an *in absentia* removal order must be high. After all, the consequences of an improper *in absentia* removal—which can extend to the *refoulement* and death or persecution of the person ordered removed—are incredibly severe. In contrast, the burden on the government of taking steps to ensure receipt of an NTA or hearing notice amount only to minor administrative inconveniences. And the adoption of a policy that generates robust proof of delivery in all cases will save the government money in the long run by forestalling the years of additional litigation that often follows from attempts to enforce *in absentia* removal orders of which people were unaware.

We write to emphasize that any proof-of-delivery policy adopted by ICE must, like every policy that directly affects people seeking asylum and other respondents in immigration court, take account of two inescapable facts. The first is that many people who receive NTAs or hearing notices in immigration court are the subject of ongoing campaigns of abuse by intimate partners, traffickers, or others who would not hesitate to intercept court notices as a means of maintaining their control. The second is that most people who find themselves in immigration court are survivors of severe trauma. In fact, many people in immigration court are there *because* severe trauma caused them to flee their homes. As shown below, these facts demand that an NTA or hearing notice may give rise to an *in absentia* order only if the notice was signed for by the person being served or their authorized legal representative and the notice was sent in a language in which the person being served is both fluent and literate. They also require ICE and the Executive Office for Immigration Review (“EOIR”) to coordinate and share changes of address that either agency receives from respondents.

I. Any Proof of Delivery Policy Must Ensure That the Respondent Has Personally Received the Delivery of a Notice Written in a Language in Which the Respondent Is Fluent

Any policy concerning proof of delivery must also take account of the fact that many people served with notices to appear—including many of Tahirih’s asylum clients—continue to experience intimate partner violence or abuse committed by others, including human traffickers, after arriving in the United States. That fact is significant, because those who commit human trafficking and domestic abuse demand complete control over survivors’ lives. As part of that control, those who commit trafficking and abuse routinely confiscate or destroy documents that might assist survivors in achieving independence—including documents critical to survivors’ ability to avoid deportation and gain legal

killings.html; https://en.wikipedia.org/wiki/Female_genital_mutilation;
https://en.wikipedia.org/wiki/Forced_marriage; <https://www.widowsrights.org/>.

² https://www.tahirih.org/news-media/latest-updates/?tab=tahirih-in-the-news_

³ https://www.tahirih.org/pubs/?qmt%5Bpub_cat%5D%5B%5D=131.

⁴ https://www.tahirih.org/pubs/?qmt%5Bpub_cat%5D%5B%5D=261.

status in the United States. *See, e.g.*, Anne L. Ganley, *Health Resource Manual* 37 (2018); Rachel Louise Snyder, *No Visible Bruises: What We Don't Know About Domestic Violence Can Kill Us* (2019) (“*No Visible Bruises*”); Julieta Barcaglioni, *Domestic Violence in the Hispanic Community* (Aug. 31, 2010);⁵ Memorandum from Paul Virtue, General Counsel, Immigration & Naturalization Service (Oct. 16, 1998), at 7-8;⁶ Edna Erez et al., *Intersection of Immigration and Domestic Violence: Voices of Battered Immigrant Women*, 4 *Feminist Criminology* 32, 46-47 (2009); Immigration & Customs Enforcement, *Information for Victims of Human Trafficking* (2016);⁷ National Sexual Violence Resource Center, *Assisting Trafficking Victims: A Guide for Victim Advocates* 2 (2012);⁸ Margaret E. Adams & Jacquelyn Campbell, *Being Undocumented & Intimate Partner Violence (IPV): Multiple Vulnerabilities Through the Lens of Feminist Intersectionality*, 11 *Women's Health & Urb. Life* 15, 21-24 (2012); Misty Wilson Borkowski, *Battered, Broken, Bruised, or Abandoned: Domestic Strife Presents Foreign Nationals Access to Immigration Relief*, 31 *U. Ark. Little Rock L. Rev.* 567, 569 (2009); Nat'l Domestic Violence Hotline, *Abuse and Immigrants*;⁹ Edna Erez & Nawal Ammar, *Violence Against Immigrant Women and Systemic Responses: An Exploratory Study* (2003);¹⁰ *see also* Violence Against Women Act of 2000 Section-by-Section Summary, 146 *Cong. Rec.* S10188-03, at S10195 (2000) (noting that, before VAWA, abusive U.S. citizen and lawful permanent resident (“LPR”) spouses used their ability to petition for a permanent visa for their abused spouses “as a means to blackmail and control the spouse”). There is thus a significant risk that survivors will never receive immigration-related documents that are mailed to them and delivered to an address they share with someone who abuses them.

Any method that ICE generally accepts as showing proof of delivery of critical documents such as NTAs and hearing notices must therefore be one that ensures that either the respondent or the respondent's representative or designee has personally received the document. Personal service by an immigration officer is ideal, but we also recognize that it is not always possible. Where service by mail or a private delivery service is necessary, however, an NTA or hearing notice must be served by means that allow for release of the document to the person being served—and *only* that person—by requiring the signature of the person being served to be provided in a way that can become part of the record. Further, because many people who face proceedings in immigration court have work authorization but will face uncertain or shifting hours, the chosen method must be one that provides as much flexibility as possible in time and day of delivery and that, to the extent possible, gives the person being served the ability to request delivery within a specified window.

The issue is at least slightly simpler if the person being served has a legal representative. In that case, the representative should know a safe way to contact the survivor and relay the information in the

⁵ <https://safeharborsc.org/domestic-violence-in-the-hispanic-community>.

⁶ <https://asistahelp.org/wp-content/uploads/2018/10/Virtue-Memo-on-Any-Credible-Evidence-Standard-and-Extreme-Hardship.pdf>.

⁷ <https://www.ice.gov/sites/default/files/documents/Document/2017/brochureHtVictims.pdf>.

⁸ https://www.nsvrc.org/sites/default/files/publications_nsvrc_guides_human-trafficking-victim-advocates.pdf.

⁹ <https://www.thehotline.org/is-this-abuse/abuse-and-immigrants-2>.

¹⁰ <https://www.ncjrs.gov/pdffiles1/nij/grants/202561.pdf>.

notice. There must nevertheless be safeguards against the possibility that the representative is committing fraud against, or otherwise not acting in the best interests of, their supposed client. Thus, where the person being served is represented, the agency should (1) send the notice to the person being served by a means that generates a proof of delivery, and (2) send a copy to the representative by means that requires the signature of the representative.

A second step is also necessary to ensure that the person being served can meaningfully understand the document without reliance on an abuser or trafficker. The NTA or hearing notice must be sent in a language in which the person being served is both fluent and literate. In situations in which the person is not literate in any language, the document should be sent in both English and a language the person speaks, along with pictorial instructions directing the person to take the document to a trusted friend or family member for them to read aloud. If a person is known to be severely sight-impaired, meanwhile, service by mail is simply inappropriate; in that rare case, service and contemporaneous explanation by an immigration officer is necessary.

We recognize that these suggestions are not cost-free. But anything less carries an unacceptably high risk that a person subjected to ongoing abuse or trafficking will be ordered removed *in absentia* because they never actually received the notice. Further, the additional cost to the government would be marginal and cannot compare to the harm of *in absentia* orders issued because a notice was intercepted by an abuser or trafficker. Such orders at worst lead to death or persecution following *refoulement* and, at best, to years of additional proceedings that traumatize respondents the waste of government resources in amounts that dwarf the cost of additional postage or delivery fees.

II. The Agencies Must Act to Minimize the Administrative Burden on Survivors of Severe Trauma

People who are respondents in immigration court are also typically survivors of severe trauma resulting from attempted murder, rape, torture, or other violence. And the effects of trauma are far-reaching. Trauma, of course, has serious effects on survivors' memory and emotions. *See, e.g.,* Altaf Saadi et al., *Associations between memory loss and trauma in US asylum seekers: A retrospective review of medico-legal affidavits* at 5 (Mar. 23, 2021), PLoS ONE 16(3):e0247033;¹¹ Int'l Ass'n of Chiefs of Police, *Sexual Assault Incident Reports: Investigative Strategies* 3 (Aug. 8, 2018);¹² U.S. Dep't of Justice, Office on Violence Against Women, *The Importance of Understanding Trauma-Informed Care and Self-Care for Victim Service Providers* (July 30, 2014);¹³ Deborah Davis & William C. Follette, *Foibles of Witness Memory for Traumatic/High Profile Events*, 66 J. Air L. & Com. 1421, 1455-56 (2001); U.S. Dep't of Health & Hum. Servs., Substance Abuse & Mental Health Servs. Admin., *A Treatment Improvement Protocol (TIP) Series No. 57, Trauma-Informed Care in Behavioral Health Services* 61 (2014);¹⁴ Heather J. Clawson et al., U.S. Dep't of Health & Hum. Servs., *Treating*

¹¹ <https://doi.org/10.1371/journal.pone.0247033>.

¹² <https://www.theiacp.org/resources/document/sexual-assault-incident-reports-investigative-strategies>.

¹³ <https://store.samhsa.gov/sites/default/files/d7/priv/sma14-4816.pdf>.

¹⁴ <https://www.justice.gov/archives/ovw/blog/importance-understanding-trauma-informed-care-andself-care-victim-service-providers>.

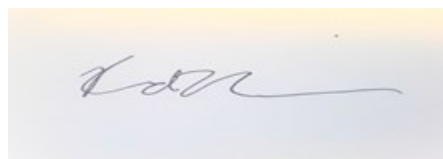
the Hidden Wounds: Trauma Treatment and Mental Health Recovery for Victims of Human Trafficking 1 (2008).¹⁵ Importantly, however, trauma also affects cognition: It “can greatly reduce flexible coping and rational decisions that could be expected of people in free conditions” and so can interfere with the ability to perform tasks in service of self-protection. T. K. Logan et al., *Understanding Human Trafficking in the United States*, 10 *Trauma, Violence, & Abuse* 3, 16 (January 2009); see also, e.g., Tahirih Justice Center, *Precarious Protection: How Unsettled Policy and Current Laws Harm Women and Girls Fleeing Persecution* (Oct. 2009).¹⁶ And for many survivors, trauma reasserts itself each time they take an action in connection with an immigration case based on their traumatic experiences.

Thus, asking survivors of severe trauma to perform additional administrative tasks is asking them to do something highly stressful and far from trivial—especially given that they must do so in a foreign language. The position of ICE and EOIR that trauma survivors must bear the burden of separately updating their address with both agencies therefore places a burden on the person who is, through no fault of their own, least able to bear it. Indeed, at worst, that position threatens to remove people to danger *because* the traumatic experiences that drove them to seek asylum in the United States leave them in no position to carefully think through paperwork.

The agencies themselves, in contrast, have decades of experience working with NTAs, hearing notices, and change of address forms. There is no persuasive reason why ICE and EOIR cannot share address information, so that when a person with a pending immigration court case updates the address with one agency, that change automatically transfers to the other agency as well. Doing so will reduce missed hearings—and so improve efficiency and preserve the resources of both agencies. Doing so would also, of course, reduce the need for *in absentia* orders; reduce follow-on litigation; and reduce *refoulement*. It is therefore far past time for the agencies to take this commonsense step.

Please do not hesitate to reach out to me at richardc@tahirih.org if you have any questions or if we can provide any further information.

Sincerely,



Richard Caldarone
Litigation Counsel
Tahirih Justice Center

¹⁵ <https://aspe.hhs.gov/system/files/pdf/75356/ib.pdf>.

¹⁶ https://www.tahirih.org/wp-content/uploads/2009/10/Precarious-Protection_Tahirih-Justice-Center.pdf.