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TO: [policyfeedback@uscis.dhs.gov](mailto:policyfeedback@uscis.dhs.gov)

**RE: Feedback on USCIS Policy Alert (PA-2023-14), dated April 11, 2023: Safe Address and Special Procedures for Persons Protected by 8 U.S.C. 1367; Vol. 1, Part A, Ch. 7 [1 USCIS-PM A.7].**

The Tahirih Justice Center (“Tahirih”) and ASISTA submit this feedback in response to the U.S. Citizenship and Immigration Services (“USCIS”) Policy Alert regarding safe address and special procedures for persons protected by 8 U.S.C. 1367 and related revisions to the Policy Manual (hereinafter “USCIS Policy Alert”).<sup>1</sup>

Tahirih is the largest multicity direct services and policy advocacy organization specializing in assisting immigrant survivors of gender-based violence in the United States. In five cities across the country, Tahirih offers legal and social services to women, girls, and others fleeing all forms of gender-based violence, including human trafficking, forced labor, domestic violence, rape and sexual assault, and female genital mutilation/cutting (“FGM/C”). Since its beginning in 1997, Tahirih has provided free legal assistance to more than 32,000 individuals, many of whom have experienced significant psychological and neurobiological effects of trauma.

Tahirih also serves as an expert resource for the media, Congress, policymakers, and other service providers on immigration remedies for people fleeing gender-based violence. *See, e.g.,* Tahirih Justice

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<sup>1</sup> U.S. Citizenship and Immigration Services, “Policy Alert: Safe Address and Special Procedures for Persons Protected by 8 U.S.C. 1367,” PA-2023-14 (Apr. 11, 2023), available at: <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20230411-SafeAddress.pdf>.

Center, *Tahirih in the News*;<sup>2</sup> Tahirih Justice Center, *Congressional Testimony*;<sup>3</sup> Tahirih Justice Center, *Comments*.<sup>4</sup>

ASISTA's mission is to advance the dignity, rights, and liberty of immigrant survivors of violence. For over 15 years, ASISTA has been a leader on policy advocacy to strengthen protections for immigrant survivors of domestic violence, sexual assault, human trafficking, and other crimes created by the Violence Against Women Act ("VAWA") and the Trafficking Victims Protection Act ("TVPA"). ASISTA assists advocates and attorneys across the United States in their work on behalf of immigrant survivors.

We applaud the survivor-centered approach of the procedures and guidance, including the prioritization of survivor safety and autonomy. We are grateful for the opportunity to provide feedback on the proposed Policy Manual updates. Immigrant survivors have faced endless barriers in their journey to seek relief and safety, including numerous hurdles blocking access to the protections created by VAWA and the TVPA. With that in mind, we must work together to ensure that new policy updates operate to help survivors as intended and do not put additional barriers in their way.

## **I. Eliminate Unnecessary Address Collection for Persons Protected by 8 U.S.C. § 1367**

Many survivors are fearful of disclosing their physical address for safety reasons. Indeed, the statute and policy guidance exist to ensure that survivors can use a safe address, including from their representative's Form G-28, to protect them from harm if their physical address ends up in the wrong hands.

As a result, we request that USCIS add a clarification to the Policy Manual that a protected person is not required to provide a complete physical address for any petition or application – whether survivor-based or not – where an alternative safe address, preferred mailing address, and/or representative's Form G-28 address has been provided.<sup>5</sup> This will promote the safety of protected persons by decreasing the possibility of an unauthorized disclosure, accidental or otherwise.

Similarly, we request clarification that persons protected under 8 U.S.C. § 1367 are not required to update their physical address if there has been no change to the relevant safe address, preferred mailing address, or representative's Form G-28 address.

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<sup>2</sup> See <https://www.tahirih.org/news-media/latest-updates/?tab=tahirih-in-the-news>.

<sup>3</sup> See [https://www.tahirih.org/news-media/publications/?publication\\_categories=congressional-testimony](https://www.tahirih.org/news-media/publications/?publication_categories=congressional-testimony).

<sup>4</sup> See [https://www.tahirih.org/news-media/publications/?publication\\_categories=comments](https://www.tahirih.org/news-media/publications/?publication_categories=comments).

<sup>5</sup> Please note that if USCIS maintains that a physical address is needed in order to identify and designate a biometrics location, then we suggest that the collection of a protected person's zip code would be sufficient to achieve that purpose without the need for a full physical address.

**Recommendation:** Issue clarification in Policy Manual that persons protected under § 1367 are not required to provide a physical address (or update their physical address) where an alternative safe address, preferred mailing address, or representative's Form G-28 address has been provided. [1 USCIS-PM A.7(E)(4)]

## **II. Require Training on Trauma, Trauma Responses, and Purpose Behind § 1367 Protections**

It is critical that *all* USCIS employees who have access to protected information under 8 U.S.C. § 1367 understand the impacts of trauma, trauma responses, and the purposes behind the statutory protections. For example, such training should include information on social stigma and family ostracization, economic isolation, internalized shame, repeat victimization, economic abuse; the impacts of trauma on fact finding, evidence gathering, and testimony presentation; and the limits of subjective perception of demeanor, candor, and responsiveness to assess the credibility of trauma survivors. USCIS officers and employees should understand the purpose behind the § 1367 protections in order to properly and effectively implement them across benefit types, including non-survivor-based applications.

**Recommendation:** Require training on trauma, trauma responses, and the procedures and policy reasons behind § 1367 for all officers and employees who have access to information about any case involving a protected person as an applicant, beneficiary, derivative, or petitioner, regardless of whether a survivor-based or non-survivor-based benefit is at issue. As experts in the field, we are happy to assist with identifying relevant training materials to best inform USCIS personnel.

## **III. Address Continuing Barriers in Communication for Protected Persons and Their Advocates**

### **A. Streamline Process to Promptly Accept New or Updated Form G-28 Filings**

Survivors who have legal assistance might work with non-profit attorneys, DOJ-accredited representatives, and pro bono lawyers. For example, in 2022, Tahirih mobilized 1,295 attorneys in our Pro Bono Network to help represent clients. When there is a shuffling of attorneys on a case, an attorney moves offices, or a new attorney is added to a team, typically a new Form G-28 is filed and also attached to email correspondence.

Where a person has been flagged in the system as a protected person under 8 U.S.C. § 1367, the usual methods of obtaining updated case information via online case status websites or phone inquiries are unavailable. For these protected clients, USCIS also will not respond to emails from anyone who is not named on the Form G-28 in the case file.

Unfortunately, a newly-filed Form G-28 is often overlooked or not incorporated into the client's file as it should be, leaving the new attorney of record unable to obtain updated case status information for protected clients, even though they attached the Form G-28 to their email inquiry. Because the typical channels for obtaining case information are unavailable to protected persons and their representatives, the failure to accept a new Form G-28 with email correspondence or to promptly update a case file with a newly-filed Form G-28 results in a significant disparity in timely access to

important case information between clients who are protected under § 1367 and those who are not. Such delays and difficulty in obtaining basic case information are detrimental to the protected client and their case.

**Recommendation:** We urge USCIS to adopt a process to promptly accept a new or updated Form G-28 filed on behalf of persons protected under 8 U.S.C. § 1367. [1 USCIS-PM A.7(E)(2)]

B. Address Lack of Responses and Delayed Responses from Dedicated Email Hotlines

1. Address Hotline Delays

In our experience, representatives might wait one month or more simply to obtain status updates about their cases via the email hotlines at the Nebraska (“NSC”) ([nsc.i-918inquiries@uscis.dhs.gov](mailto:nsc.i-918inquiries@uscis.dhs.gov)) and Vermont Service Centers (“VSC”) ([HotlineFollowupI918I914.vsc@uscis.dhs.gov](mailto:HotlineFollowupI918I914.vsc@uscis.dhs.gov) and [hotlinefollowupi360.vsc@uscis.dhs.gov](mailto:hotlinefollowupi360.vsc@uscis.dhs.gov)), if they receive any response at all. When this issue was raised during a stakeholder call with the Office of Policy and Strategy on May 8, 2023, attendees were told that, if no response was received from one of the hotline accounts within 14-21 days, then they should wait an *additional 45 days* to follow up. Such a significant delay in obtaining critical case information can be detrimental to the outcome of cases of persons protected by § 1367, through no fault of their own.

Although a new representative files a new Form G-28 with USCIS and attaches a Form G-28 to email correspondence, because the forms are frequently overlooked, attorneys are largely unable to access case information including important case updates.

2. Provide Method of Communication or Email Hotline for NBC

In our 2021 joint comment responding to USCIS’s request for public input in “Identifying Barriers Across U.S. Citizenship & Immigration Services (USCIS) Benefits and Services,” we explained that 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 VSC to the National Benefits Center (“NBC”) before they are filed with the local District Office. Attorneys continue to report that there is no clear way for VAWA self-petitioners and their attorneys to contact NBC to request information about a case.

3. Restore the Ability to Self-Schedule Appointments

In addition, although, previously, representatives could call the Contact Center to schedule an appointment at a field office, representatives are no longer permitted to schedule an appointment or obtain any information via the Contact Center number.

Losing the ability to self-schedule an appointment to meet with a USCIS representative in person creates additional barriers for survivors who have difficulty navigating the customer service system. Since we raised this issue in 2021, this problem has been further compounded by survivors’ frequent inability to schedule any appointment at all, including via the Contact Center.

4. Ensure Adequate Method of Communication for Protected Persons to Obtain Information about Their *Non-Survivor-Based* Benefits

Finally, survivors are often eligible for multiple immigration benefits and may have more than one pending application at a time. For example, a survivor might have a pending U visa petition, as well as a pending DACA application. In a case like this, USCIS policy would prohibit the survivor or her representative from obtaining any information about the DACA application, because she has been flagged in the system as a protected person under 8 U.S.C. § 1367. Thus, a survivor would be unable to communicate with USCIS about her DACA case through the default, non-protected person communication channels (the Contact Center) and could communicate with USCIS only about her U visa case (through the dedicated email hotlines).

**Recommendation:** We again urge USCIS to address the significant delays in hotline response times by dedicating more resources to staffing the hotlines with trained and qualified officers, and with enough officers to respond within 15 calendar days of a representative's request. In addition, we request that USCIS' automatic hotline responses include an accurate estimate of response times to hotline inquiries so that representatives know when to expect a reply. We also reiterate our request for the creation of an email hotline to enable attorneys to obtain information about VAWA cases after they have been transferred to NBC. USCIS should also restore the ability of individual petitioners to self-schedule appointments with local field offices. Finally, USCIS should ensure an adequate method of communication exists for individuals covered under 8 U.S.C. § 1367 to obtain information about their pending non-survivor-based cases or benefits. [1 USCIS-PM A.7(E)(3)]

#### IV. Provide Advocates with Additional Explanation and Examples of Legitimate Agency Purposes, Prohibited Sources, and Prohibited Disclosures

##### A. Permissible Purpose: Provide Description of or Clarity Surrounding "Legitimate Agency Purpose"

Tahirih and ASISTA have observed inconsistent application of the exceptions to prohibited or unauthorized disclosure of protected persons' information for "legitimate Department, bureau, or agency purposes" in 8 U.S.C. § 1367(a)(2) and for a "legitimate law enforcement purpose" in § 1367(b)(2).

**Recommendation:** We request that USCIS clearly define these terms and publish guidance detailing their scope and application, with examples, to ensure that those tasked with making such determinations fully understand what is and is not permitted.

##### B. Prohibited Source: Prevent Use of Police Reports Absent Conviction

The Policy Manual updates explain that "USCIS employees are prohibited from making an adverse determination of admissibility, deportability, or removability on a protected person using information furnished solely by a prohibited source." [1 USCIS-PM A.7(E)(2)] Prohibited sources include the "abuser

or perpetrator of the offense; Family member of the abuser; or Someone acting at the request of the abuser.” Additional prohibited sources are identified in 8 U.S.C. § 1367(a)(1) and include the trafficker or other perpetrator. These additional sources should be specifically identified in the Policy Manual as well for full clarity.

Moreover, USCIS should include additional examples and methods by which a USCIS employee might receive information about a protected person from an unknown source, such that the employee should presume the source is prohibited. For instance, USCIS employees might request and review an adverse police report when making discretionary determinations as part of fact finding, even if the charges were later dismissed or there was no conviction. It is highly inappropriate, and in many cases unlawful under 8 U.S.C. § 1367, for USCIS to consider information contained in adverse police reports or arrest records, especially where the case is still pending or the charges were dismissed, because such information might have been furnished by a prohibited source.

As DHS explained in Instruction # 002-02-001, prohibited sources, such as perpetrators of abuse, have been known to make false allegations about the protected person “in order to exact revenge or exert further control over the victim.” For example, “[a]busers often claim their marriage is fraudulent” for this reason. See DHS Instruction # 002-02-001 at 10-11 (Nov. 2013). Thus, USCIS should follow existing BIA and appellate court precedent holding that uncorroborated adverse police reports are not probative and should not be afforded significant weight in adjudications,<sup>6</sup> particularly where the report allegations contain hearsay from an unknown source who might be a prohibited source of information under § 1367.

**Recommendation: Revise the Policy Manual and related procedures to include police reports as an example of a potential prohibited source that cannot be relied upon to make adverse determinations of admissibility, deportability, or removability absent a conviction or corroborating evidence of the allegations [1 USCIS-PM A.7(E)(4)] and add the additional prohibited sources (trafficker or other perpetrator) identified in 8 U.S.C. § 1367(a)(1) to the policy manual as well.**

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<sup>6</sup> The BIA and United States Courts of Appeals distinguished cases that involve convictions from those that do not. See *In re Arreguin De Rodriguez*, 21 I. & N. Dec. 38, 42 (BIA 1995) (“We are hesitant to give substantial weight to an arrest report, absent a conviction or corroborating evidence of the allegations contained therein.”); see also *Prudencio v. Holder*, 669 F.3d 472, 483–84 (4th Cir. 2012) (explaining that police reports “often contain little more than unsworn witness statements and initial impressions” and “because these submissions are generated early in an investigation, they do not account for later events, such as witness recantations, amendments, or corrections.”); *United States v. Bell*, 785 F.2d 640, 642 (8th Cir. 1986) (calling police reports are “inherently . . . subjective”); *Olivas-Motta v. Holder*, 746 F.3d 907, 918–19 (9th Cir. 2013) (Kleinfeld, J., concurring) (“It has long been clear that police reports are not generally reasonable, substantial, and probative evidence of what someone did” and “something as potentially inaccurate as a police report cannot be clear and convincing evidence”) (internal quotations omitted); *Garces v. U.S. Att’y Gen.*, 611 F.3d 1337, 1350 (11th Cir. 2010) (“Absent corroboration, the arrest reports by themselves do not offer reasonable, substantial, and probative evidence”).

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Thank you for your time and consideration of our feedback and recommendations. Please do not hesitate to reach out to us with any questions.

Respectfully submitted,



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