



Submitted via www.regulations.gov

April 15, 2019

Samantha Deshommès, Chief
Regulatory Coordination Division, Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue NW
Washington, DC 20529-2140

**Re: Public Comment Opposing Form G-1530: USCIS Tip Form
OMB Control Number 1615–NEW
Docket ID USCIS-2019-0001**

Dear Ms. Deshommès:

The Catholic Legal Immigration Network, Inc., or CLINIC, respectfully submits the following comments in opposition to the Department of Homeland Security (DHS), United States Citizenship and Immigration Services (USCIS) proposal to implement the new Form G-1530: USCIS Tip Form, OMB Control Number 1615 - NEW, Docket ID USCIS-2019-0001, published in the Federal Register on February 15, 2019.

CLINIC supports a national network of community-based legal immigration services programs. This network includes 330 programs operating in 47 states, as well as Puerto Rico and the District of Columbia. Nearly all of CLINIC's affiliates offer family-based immigration, naturalization and citizenship, VAWA and other categories that would be affected by the proposed form. CLINIC's Religious Immigration Services section provides direct services to religious organizations and religious workers from all over the world, who could also be affected by the proposed form.

Based on the collective experience of our network and the expertise of our religious immigration section, we recommend that the proposed USCIS Tip Form be withdrawn. It would not meaningfully improve upon existing methods of combatting fraud, but it would open USCIS up to a flood of baseless anonymous reports that would waste USCIS's finite resources, and could target legitimate applicants and crime victims with no accountability for those reporting. As a faith-based organization, we oppose the creation of this USCIS Tip Form because this excessive focus on alleged fraud is contrary to our efforts to welcome the stranger among us.

I. The USCIS Tip Form is unnecessary and encourages the presumption of fraud in the immigration benefits process

USCIS's primary function, as established by the Homeland Security Act of 2002, is to adjudicate immigration benefits.¹ Over the last two years, USCIS appears to be transforming into another immigration enforcement agency through its increased focus on fraud and the implementation of other sweeping policy changes.² There are already existing mechanisms for collecting information about fraud, through the Immigration and Customs Enforcement Homeland Security Investigation (HSI) Tip Line, or USCIS fraud reporting emails for example. USCIS has not stated a rationale for this change. It has not explained why this form is needed now, when it has been operating without it for some time. Creating another avenue to invite the public to submit unsubstantiated reports of fraud about individual immigrants not only creates unnecessary redundancies but also significant harm to immigrant communities.

Immigrant communities are increasingly being targeted for harassment and even physical attacks due to their race, religion or national origin, and this proposed form provides an avenue for further harassment without any accountability for the submitter. According to the Department of Justice, hate crimes continue to rise, particularly those motivated by racial, ethnic, or religious animus.³ Recent reports from the Federal Bureau of Investigations (FBI) show that Muslim, Arab, Iranian, Middle Eastern and South Asian Americans are facing heightened levels of harassment and violence, and these numbers are severely underreported by the FBI's own admission.⁴ Similarly, the FBI reports that hate crimes against Hispanics and Latino communities have risen nationally.⁵ These incidents are also underreported, due to an increased fear of reporting racially motivated crimes and incidents to law enforcement.⁶

The implementation of the USCIS Tip Form permits unsubstantiated tip reporting to USCIS and does not require the submitter's name. At the same time that hate crimes are increasing, the HSI tip line has experienced an increase in reporting of 27 percent.⁷ This increased atmosphere of xenophobia combined with this proposed reporting mechanism with no accountability increases the likelihood that bias and bigotry will play a role in reporting. Reported individuals

¹ U.S. Citizenship and Immigration Services was created with the Congressional intent of focusing on benefits adjudication, rather than an enforcement-focused agency. On its website it states that it was "formed to enhance the security and improve the efficiency of national immigration services by exclusively focusing on the administration of benefit applications. Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP), components within DHS, handle immigration enforcement and border security functions" (emphasis added). USCIS Webpage, "Our History" (May 25, 2011), available at www.uscis.gov/about-us/our-history.

² Joshua Breisblatt. "USCIS Is Slowly Being Morphed into an Immigration Enforcement Agency" (July 9, 2018), available at <http://immigrationimpact.com/2018/07/09/uscis-guidance-immigration-benefit/>.

³ Federal Bureau of Investigations Uniform Crime Reporting Program 2017 Hate Crimes Statistics, available at <https://ucr.fbi.gov/hate-crime/2017/topic-pages/incidents-and-offenses>.

⁴ John Eligon, Hate Crimes Increase for the Third Consecutive Year, F.B.I. Reports, New York Times (November 13, 2018), available at www.nytimes.com/2018/11/13/us/hate-crimes-fbi-2017.html.

⁵ See Arab American Institute, Hate Crimes Continue to Surge in America (November 13, 2018), available at www.aaiusa.org/hate_crimes_continue_to_surge_in_america (summarizing FBI 2017 statistics).

⁶ Brendan Campbell, Angel Mendoza and Tessa Diestel, Rising hate drives Latinos and immigrants into silence, News21 (August 22, 2018), available at www.philly.com/philly/living/rising-hate-drives-latinos-and-immigrants-into-silence-20180822.html.

⁷ Elizabeth Hewitt. "When Tipsters call ICE, the phone rings in Vermont" (July 1, 2018), available at <https://vtdigger.org/2018/07/01/tipsters-call-ice-phone-rings-vermont/>.

could face increased scrutiny, surveillance and potential loss of benefits without any due process that could enable them to refute allegations of fraud.

If this form were implemented, our network of non-profit immigration legal services providers and our in-house religious immigration legal services providers would likely be forced to spend their limited time and resources for responding to requests for evidence or denials based on unfounded, anonymous information based on xenophobia, racism, or even the public's lack of understanding of immigration law. The introduction of this form would increase immigrants' vulnerability to harassment, and tax the capacity of the non-profit organizations that serve them. We oppose the introduction of this form on the basis of both our legal expertise, and on the basis of our Catholic faith that calls us to work within our communities to ensure the well-being of all, particularly the vulnerable.

II. The USCIS Tip Form Misuses USCIS Resources

This information collection provides no information about how USCIS will implement this form, or what resources USCIS would be using to implement it. Without this information, and because there has been no new appropriation for these activities, stakeholders must assume that resources put toward vetting unsubstantiated tips will take USCIS resources away from adjudication of benefits. USCIS has radically slowed application processing in the past two years.⁸ Complicating the adjudications process with anonymous and unfounded allegations of fraud in a system that already suffers from backlogs and lack of transparency will harm applicants and their families.

Due to USCIS's processing delays, our network of non-profit immigration legal services providers is already struggling to help their clients maintain continuous employment authorization and valid driver's licenses, and to assist eligible applicants to obtain lawful permanent residence and citizenship in a timely manner. Additional delays due to investigating unfounded or bad faith "tips" to USCIS would severely affect applicants' ability to maintain employment, provide financially and logistically for their families and successfully participate in the civic life of their communities.

Not only is such reporting and targeting unjust, it is also a waste of government resources to focus on claims that have no relevance to fraud or abuse. Moreover, by creating an "other" category, USCIS is opening its reporting to meritless claims and creating yet another avenue for bigotry and harassment with serious consequences for individuals, minority communities and government administrators.

⁸ Jason Boyd and Greg Chen, AILA Policy Brief: USCIS Processing Delays Have Reached Crisis Levels under the Trump Administration, American Immigration Lawyers Association (January 30, 2019), available at www.aila.org/advo-media/aila-policy-briefs/aila-policy-brief-uscis-processing-delays.

III. The USCIS Tip Form is Overbroad, Vague, and Encourages Misuse

A. The USCIS Tip Form is overbroad and vague

USCIS fails to set any criteria for reporting fraud and there is no requirement that an allegation be made in connection with a pending application for benefits. The form also provides no definition of “fraud,” which has a complex definition under the Immigration and Nationality Act and in case law. Additionally, it is unclear how the information collected through the USCIS Tip Form will be used in adjudications.

B. Anonymous Reporting Encourages Misuse

The proposed USCIS Tip Form requests that individuals provide their name and contact information but does not require it to make a report. Thus, USCIS has no formal mechanism to follow up on allegations, and applicants for benefits have no opportunity to learn about derogatory information lodged against them or refute any allegations.

USCIS has not provided any information about how it will handle and respond to these anonymous tips. It is unknown what mechanisms are in place for USCIS to determine the reliability of information provided by anonymous tips and to accurately assess whether they are impermissibly motivated. Without this information, it is unclear whether reported individuals will have any access to the reports through the Freedom of Information Act, access to due process or any recourse against false reports.

The USCIS, which, as mentioned above, was established to be a benefits adjudication agency and not an enforcement agency, issuing this proposed form to solicit “tips” from the public sends the wrong message to the public and to applicants. Applicants need to have trust in USCIS to be a fair adjudicator of their applications, and not be intimately involved in building cases against them. Further, USCIS reaching into immigrants’ communities and encouraging their neighbors to utilize the immigration process against them breeds fear and mistrust among residents.

Furthermore, the failure to collect information from the person completing the form creates a likelihood that those targeting individuals based upon racism and bigotry will have the option of submitting numerous baseless claims with no accountability, which severely undermines the integrity of the immigration legal process.

IV. Inclusion of Religious Worker Visas among the Enumerated Categories

As a faith-based organization, we are particularly concerned with the inclusion of the Religious Worker Visa as an enumerated category of fraud to be reported. The USCIS Fraud Detection and National Security (FDNS) Directorate already conducts site visits in connection with applications for Religious Worker Visas in order to detect and deter fraud. The addition of this specific category in this fraud tip form would waste agency resources, as significant resources are already spent on a much more reliable method of fraud detection. As described above, the

form allows members of the public to make unsubstantiated allegations that would require agency resources to vet. The form also does not require the submitter to identify him or herself, which allows the submission of false or misleading information with impunity, and omits essential information to enable the subject of the tip to refute false information. Religious Workers are already complying with all agency requests and procedures to combat fraud. This proposed form would introduce an additional risk factor, as the submission of false accusations against applicants would create an undue burden on religious workers and their organizations of faith.

V. The USCIS Tip Form Threatens VAWA Confidentiality and Puts Survivors At Risk

The USCIS Tip Form provides abusers and perpetrators of crime an anonymous tool to weaponize the immigration system against survivors, without consequence or repercussion. This is extremely problematic and dangerous, as “one of the most intimidating tools abusers and traffickers of immigrants use is the threat of deportation.”⁹ Abusers often threaten survivors that if they go to police or to the court they will be arrested because they are undocumented, or threaten to call immigration enforcement to have survivors arrested or deported.¹⁰

To combat this danger, Congress created special immigration protections in the Violence Against Women Act (VAWA) for survivors of domestic violence, sexual assault, human trafficking and other forms of violence to allow survivors to seek protection without fear of deportation.

Recognizing that perpetrators will try to manipulate legal systems against survivors, Congress also created confidentiality protections that mandate, *inter alia*, that the government not make adverse determinations based on information solely provided by a perpetrator or a member of a perpetrator’s household or family member.¹¹ These protections, codified at 8 USC § 1367 are “designed to ensure that abusers and other perpetrators cannot use the immigration system against their victims.”¹²

This protection applies to abused spouses and children generally as well as to those who are eligible to apply for benefits as VAWA self-petitioners, or who are eligible for VAWA cancellation, U visa or T visa relief. These protections are in place regardless of whether an application for immigration relief is pending with USCIS.¹³ DHS’ own guidance instructs:

⁹ Stacey Ivie et al., *Overcoming Fear and Building Trust with Immigrant Communities and Crime Victims*, INT’L ASS’N OF CHIEFS OF POLICE (Apr. 2018), available at http://library.niwap.org/wp-content/uploads/PoliceChief_April-2018_Building-Trust-With-Immigrant-Victims.pdf.

¹⁰ National Domestic Violence Hotline, *Abuse and Immigrants*, available at: www.thehotline.org/is-this-abuse/abuse-and-immigrants/.

¹¹ See 8 USC 1367.

¹² *Id.*; See also, *Department of Justice Appropriations Authorization Act, Fiscal Years 2006 through 2009: Report of the Committee on the Judiciary, House of Representatives, to accompany H.R. 3402* H.R. Rep. No. 109-233, at 120 (2005), available at www.congress.gov/109/crpt/hrpt233/CRPT-109hrpt233.pdf.

¹³ Department of Homeland Security, *Implementation of Section 1367 Information Provisions*, DHS Instruction Systems. Instruction Number: 002-02-001. Revision Number: 00., available at www.dhs.gov/sites/default/files/publications/implementation-of-section-1367-information-provisions-instruction-002-02-001_0_0.pdf.

There are a number of ways DHS employees might receive “tips” from an abuser or an abuser’s family, such as: calling ICE to report the victim as illegal, a “landlord” (who may actually be a human trafficker) calling ICE to report that his “tenants” are undocumented, or providing information to USCIS rebutting the basis for the victim’s application. When a DHS employee receives adverse information about a victim of domestic violence, sexual assault, human trafficking or an enumerated crime from a prohibited source, *DHS employees treat the information as inherently suspect.*¹⁴

Given USCIS's further mandate to protect domestic violence victims who have applied for benefits under VAWA, the lack of safeguards in the process to prevent submission of abusive information contravenes the statutory protections in VAWA. Furthermore, the form poses a risk to the government of liability for violations of the confidentiality provisions, *which are punishable by civil and monetary penalties of up to \$5000 per violation under 8 USC § 1367.*

The obligations of 8 USC § 1367, which Congress has consistently expanded over time, are enormously important to survivors of violence. It is unknown whether or how these protections have been taken into account in the proposal to publish the fraud tip form. The tip form will also have a chilling effect, discouraging victims from accessing much-needed protection for themselves and their children.

CLINIC is very concerned about the potential impact of this proposed form on our network’s work with victims of domestic violence and trafficking. Ensuring the safety and protecting the privacy of VAWA, U and T visa applicants is essential for all involved, including USCIS and the government as a whole, CLINIC, our network, local law enforcement, local communities, and the applicants themselves.

VI. Information Sharing and Lack of Accountability

The USCIS Tip Form appears to allow any unsubstantiated information provided to be shared liberally with other law enforcement agencies, including Immigration and Customs Enforcement. USCIS has not provided any direction on what types of information should be submitted nor provided a notice that a submission to this government system is subject to perjury laws.

VII. Conclusion

CLINIC strongly opposes the publication of the USCIS Tip Form as it would create additional hardship for immigrant communities and vulnerable individuals. USCIS should withdraw the USCIS Tip Form immediately and instead work on developing policies that do not threaten immigrant communities, waste resources, or undermine due process and access to critical immigration benefits.

¹⁴ *Id.*

Thank you for your consideration of these comments. Please do not hesitate to contact Jill Marie Bussey, Director of Advocacy at 301-565-4844 or jbussey@cliniclegal.org, with any questions or concerns about our recommendation.

Sincerely,

A handwritten signature in blue ink that reads "Anna Gallagher". The signature is written in a cursive style with a large initial "A" and a long, sweeping tail on the "g".

Anna Gallagher
Executive Director
Catholic Legal Immigration Network, Inc.