Date

USCIS Desk Officer

Office of Management and Budget

725 17th Street, NW

Washington, DC 20503

Re: OMB Control Number 1615-NEW; USCIS Agency Information Collection Activities;

 New Collection: USCIS Tip Form, Docket ID USCIS-2019-0001

*Submitted via email to* *dhsdeskofficer@omb.eop.gov*

Dear USCIS Desk Officer:

I am writing on behalf of [organization name, if applicable] in strong 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 (hereinafter USCIS Tip Form). I am submitting this comment in response to the second notice and request for public comment published in the Federal Register on August 8, 2019.[[1]](#footnote-1)

[INSERT paragraph describing you or your organization and why this form is particularly problematic given your agency’s mission and/or the community you serve, plus the expertise that you have on issues raised.]

1. **USCIS has ignored widespread public opposition to the USCIS Tip Form.**

When USCIS first solicited public comment in response in February 2019,[[2]](#footnote-2) the overwhelming majority of comments expressed strong opposition to the USCIS Tip Form and called for its withdrawal. Not only is the USCIS Tip Form an unnecessary waste of scarce agency resources, but it also is a dangerous tool of harassment and intimidation for those who seek to interfere with immigrants’ rights and access to immigration benefits.

In this latest Federal Register notice, USCIS blatantly ignored this widespread opposition and provided no response to the hundreds of comments previously submitted. Except for some language added on the applicability of the Paperwork Reduction Act, the updated USCIS Tip Form posted to the Federal Register on August 8, 2019 is identical in form and substance to the one originally published on February 15, 2019.[[3]](#footnote-3)

[If you submitted a comment in the prior comment period, please write about your comments here and whether USCIS addressed your concerns]

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

The August 8, 2019 Federal Register comments note asks the public to “evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility."[[4]](#footnote-4) We maintain that the USCIS Tip Form is wholly unnecessary and lacks practical utility for the agency.

USCIS’s primary function, as established by the Homeland Security Act of 2002, is to adjudicate immigration benefits.[[5]](#footnote-5) Over the last two years, USCIS has transformed into another immigration enforcement agency through its increased focus on fraud and the implementation of other significant policy changes.[[6]](#footnote-6) Furthermore there are already existing divisions and mechanisms within USCIS, such as the Fraud Detection and National Security Directorate (FDNS) to identify and handle fraud issues. USCIS has not explained how the current processes for reporting fraud are deficient nor why the USCIS Tip Form would be a more effective method to do so.

[The Federal Notice announcement asks commenters to “evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency.” Describe in your own words why the USCIS Tip form is unnecessary]

More likely, creating another avenue through which the public can submit unsubstantiated reports of perceived fraud about individual immigrants will fail to fix issues with the existing reporting system, while adding unnecessary redundancies and causing significant harm to immigrant communities. According to the Department of Justice, hate crimes continue to rise, particularly those motivated by racial, ethnic, or religious animus.[[7]](#footnote-7) For example, Muslim, Arab, Iranian, Middle Eastern, and South Asian communities face targeted harassment and violence at alarming rates, particularly in the last few years, like many other communities of color and immigrant communities. 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.[[8]](#footnote-8) Similarly, the FBI reports that hate crimes against Hispanics and Latino communities have risen nationally, most recently with the horrific tragedy in El Paso, Texas.[[9]](#footnote-9) These incidents are underreported, due to an increased fear of reporting racially motivated crimes and incidents to law enforcement.[[10]](#footnote-10)

[INSERT paragraph describing how the USCIS tip form could affect you or members of your particular community.]

1. **The USCIS Tip Form Misuses USCIS Resources**

Resources put toward vetting unsubstantiated tips from anonymous members of the public will take away from the adjudication of benefits, which is the principal job of USCIS. The agency has radically slowed application processing in the past two years, with recent reports showing that the average USCIS case processing time increased 46 percent from fiscal 2016 to fiscal 2018.[[11]](#footnote-11) This past fiscal year, USCIS’ backlog of cases exceeded 5.69 million.[[12]](#footnote-12)

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.

[INSERT: Indicate how processing delays have impacted individuals applying for benefits and how you believe this form will add to these delays.]

1. **The USCIS Tip Form violates due process and diminishes the integrity of the immigration system.**
2. Anonymous reporting encourages misuse

The proposed USCIS Tip Form requests that individuals provide their name and contact information but does not require this information to make a report. USCIS has not indicated how the agency will test its veracity of the reports, nor has it stated whether anonymous reports will be given equal consideration to non-anonymous submissions. Thus, USCIS has not shown it has any formal mechanism for screening, vetting, or following up on allegations submitted through the Tip Form. Perhaps more importantly, USCIS has not shown that applicants for benefits against whom these accusations are made will have an opportunity to learn about derogatory information lodged against them or to refute any allegations when they are made.

In particular, the failure to collect basic information from the person completing the form provides an easy and obvious path for those who wish to target individuals based upon racial or personal animus to submit anonymous baseless claims with no accountability.

[INSERT: Indicate what examples you may have of information that anonymous outsiders tried to give you about a client’s case, and how that information was unreliable, inaccurate, and/or motivated by racism, bigotry, or hate. Or state your opinion about the use of anonymous tips generally - turning the civil population into informants creates fear and mistrust.]

USCIS has not provided any further information about how it intends to handle and respond to anonymous tips. It is not clear what processes, if any, are in place for USCIS to determine the validity of information provided by anonymous tips and to accurately assess whether they are impermissibly motivated. The apparent absence of procedures that would either prevent USCIS from taking action on baseless reports, or permit benefit applicants some measure of recourse against erroneous investigations, raises serious due process concerns.

Rather than advancing USCIS’s purported priority of “protecting the integrity of the immigration system;”[[13]](#footnote-13) the USCIS Tip Form seems poised to corrupt it.

1. 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 Act and in case law. Additionally, it is unclear how the information collected through the USCIS Tip Form will be used in adjudications.

Furthermore, the vague “Other: Immigration Benefit Fraud/Abuse” category listed in the drop-down menu invites those motivated by racial or personal animus to *carte blanche* make allegations against *anyone* who has ever applied for or received an immigration benefit *at any time*.[[14]](#footnote-14) This category is grossly overbroad, creating yet another avenue for bigotry and harassment adding with serious burdens for individuals and communities of color.

For these reasons, the USCIS Tip Form will substantially reduce, not enhance, “the quality, utility and clarity of the information it seeks to collect.”[[15]](#footnote-15)

1. **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.”[[16]](#footnote-16) Abusers often threaten survivors that if they go to the police or the court, they will be arrested because they are undocumented, or threaten to call immigration enforcement to have survivors arrested or deported.[[17]](#footnote-17) Advocates report there has been a “sharp increase in the number of women reporting that their partners are threatening them with deportation as part of broader abuse.”[[18]](#footnote-18) According to the National Domestic Violence Hotline, 4,565 victims who called the Hotline in 2018 experienced threats related to immigration status.[[19]](#footnote-19)

[INSERT: Indicate if there are examples of immigration-related abuse you or your organization have seen in your work with survivors, taking care to protect the privacy and confidentiality of survivors]

Recognizing that perpetrators will try to manipulate legal systems against survivors, 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. It also created confidentiality protections that prohibit the government from making adverse determinations based on information solely provided by a perpetrator or a member of a perpetrator’s household or family member.[[20]](#footnote-20) These protections, codified at 8 USC § 1367 are “designed to ensure that abusers and other perpetrators cannot use the immigration system against their victims.”[[21]](#footnote-21)

This protection applies to abused spouses and children generally as well as to those who are eligible to apply for benefits as VAWA self-petitioner, 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.[[22]](#footnote-22) DHS’ own guidance instructs:

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*.”[[23]](#footnote-23)

[INSERT: Indicate whether your agency has seen abusers try to interfere with survivor’s cases and how this has manifested itself. Consider using examples of cases where this has occurred, taking care to protect the privacy and confidentiality of survivors]

Given USCIS's further mandate to protect domestic violence victims who have applied for benefits under VAWA, the apparent lack of safeguards that would prevent the submission of abusive information threatens statutory protections in VAWA. Furthermore, the USCIS Tip 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 section 1367 which Congress has consistently expanded over time, are enormously important to survivors of violence, and must be taken into account by DHS and USCIS in considering comments to the USCIS Tip Form. It is unknown whether or how these protections have been taken into account in the proposal to publish the USCIS Tip Form, given that the agency has not responded to prior comment.

1. **Information Sharing and Lack of Accountability**

The USCIS Tip Form appears to contemplate that any and all reports provided through the form can be shared liberally with other agencies, including Immigration and Customs Enforcement, for law enforcement purposes. USCIS has not provided any direction on what types of information might be shared. The information provided through the USCIS Tip Form could have serious and detrimental consequences for individuals who are the subject of these reports. And yet, USCIS fails to provide any notice that a submission to this government system is subject to perjury laws and other laws making it illegal to submit false information to a government agency.

[INSERT: Indicate how unsubstantiated information shared with or used by ICE has impacted you, your clients or community]

1. **Conclusion**

The Office of Management and Budget (“OMB”) guidance indicates that “a central goal of OMB review is to help agencies strike a balance between collecting information necessary to fulfill their statutory missions and guarding against unnecessary or duplicative information that imposes unjustified costs on the American public.”[[24]](#footnote-24) The USCIS Tip Form corrupts USCIS’ statutory mission to be a benefit-granting agency; it is an unnecessary and harmful tool that perpetuates unjust narratives against immigrant communities.

[Our organization] stridently opposes the publication of the USCIS Tip Form as it creates 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.

Respectfully submitted:

Name

Agency

1. Department of Homeland Security. U.S. Citizenship and Immigration Services, “Agency Information Collection Activities; New Collection: USCIS Tip Form” OMB Control Number 1615-NEW, 84 FR 39010, (August 8, 2019) available at <https://www.federalregister.gov/documents/2019/08/08/2019-17022/agency-information-collection-activities-new-collection-uscis-tip-form#addresses>

(hereinafter “August 8th Announcement”) [↑](#footnote-ref-1)
2. Department of Homeland Security. U.S. Citizenship and Immigration Services, “Agency Information Collection Activities; New Collection: USCIS Tip Form” USCIS Docket No. USCIS-2019-0001, 84 FR 4518, (February 15, 2019), available at <https://www.regulations.gov/document?D=USCIS-2019-0001-0001>

(hereinafter “February 15 Announcement”) [↑](#footnote-ref-2)
3. Compare <https://www.regulations.gov/document?D=USCIS-2019-0001-0283> with <https://www.regulations.gov/document?D=USCIS-2019-0001-0003>. [↑](#footnote-ref-3)
4. *See* note 1, *supra.* [↑](#footnote-ref-4)
5. 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 <https://www.uscis.gov/about-us/our-history>. [↑](#footnote-ref-5)
6. 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/>. [↑](#footnote-ref-6)
7. 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>. [↑](#footnote-ref-7)
8. John Eligon, Hate Crimes Increase for the Third Consecutive Year, F.B.I. Reports, New York Times (November 13, 2018), available at <https://www.nytimes.com/2018/11/13/us/hate-crimes-fbi-2017.html>. [↑](#footnote-ref-8)
9. *See* Arab American Institute, Hate Crimes Continue to Surge in America (November 13, 2018), available at <http://www.aaiusa.org/hate_crimes_continue_to_surge_in_america> (summarizing FBI 2017 statistics). See also Theresa Waldrop and Paul Murphy. Hate Crime Charges Are Possible For El Paso Shooting Suspect (August 4, 2019), available at <https://www.cnn.com/2019/08/03/us/el-paso-shooting-possible-hate-crime/index.html> [↑](#footnote-ref-9)
10. Brendan Campbell, Angel Mendoza and Tessa Diestel, Rising hate drives Latinos and immigrants into silence, News21 (August 22, 2018), available at <https://www.philly.com/philly/living/rising-hate-drives-latinos-and-immigrants-into-silence-20180822.html>. [↑](#footnote-ref-10)
11. 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 <https://www.aila.org/advo-media/aila-policy-briefs/aila-policy-brief-uscis-processing-delays>. *See also* Leon Rodriguez. “The Trump administration is making legal immigration harder, too” Washington Post (July 29, 2019), available at <https://www.washingtonpost.com/outlook/2019/07/29/trump-administration-is-making-legal-immigration-harder-too/> [↑](#footnote-ref-11)
12. *Id.* [↑](#footnote-ref-12)
13. *See* note 3, supra. [↑](#footnote-ref-13)
14. *See “*USCIS Tip Form Suspected Fraud or Abuse Section“, available at <https://www.regulations.gov/contentStreamer?documentId=USCIS-2019-0001-0008&contentType=pdf> *See also*, Ted Hesson. “USCIS form would allow the public to report immigration fraud” Politico Pro (August 7, 2019), available at <https://subscriber.politicopro.com/employment-immigration/article/2019/08/uscis-form-would-allow-the-public-to-report-immigration-fraud-1639052> [↑](#footnote-ref-14)
15. *See* note 1 *supra.* [↑](#footnote-ref-15)
16. 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>. [↑](#footnote-ref-16)
17. National Domestic Violence Hotline, *Abuse and Immigrants*, available at: <https://www.thehotline.org/is-this-abuse/abuse-and-immigrants/>. [↑](#footnote-ref-17)
18. <https://coloradosun.com/2019/07/29/colorado-domestic-violence-immigration-threats/> [↑](#footnote-ref-18)
19. National Domestic Violence Hotline. 2018 Impact Report, available at <https://www.thehotline.org/wp-content/uploads/sites/3/2019/06/Impact-Report-2018.pdf> [↑](#footnote-ref-19)
20. See 8 USC 1367 [↑](#footnote-ref-20)
21. *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 <https://www.congress.gov/109/crpt/hrpt233/CRPT-109hrpt233.pdf>. [↑](#footnote-ref-21)
22. Department of Homeland Security, *Implementation of Section 1367 Information Provisions*, DHS Instruction Systems. Instruction Number: 002-02-001. Revision Number: 00., available at <https://www.dhs.gov/sites/default/files/publications/implementation-of-section-%201367-%20information-provisions-instruction-002-02-001_0_0.pdf>. [↑](#footnote-ref-22)
23. *Id.* (emphasis added). [↑](#footnote-ref-23)
24. Information Collection under the Paperwork Reduction Act (April 7, 2010), a Memorandum for the Heads of Executive Departments and Agencies, and Independent Regulatory Agencies from Cass R. Sunstein, Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget at 5, available at <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/assets/inforeg/PRAPrimer_04072010.pdf> [↑](#footnote-ref-24)