NIWAP

AMERICAN UNIVERSITY
WASHINGTON
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Michael J. McDermott,
Security and Public Safety Division, Office of Policy and Strategy,
U.S. Citizenship and Immigration Services,
Department of Homeland Security,
20 Massachusetts Ave. NW,
Washington, DC 20529-2240

RE: Collection and Use of Biometrics by U.S. Citizenship and Immigration Services; DHS Docket No. USCIS-2019-0007; RIN 1615-AC14
Submitted via: www.regulations.gov

Dear Mr. McDermott:

We are writing on behalf of the National Immigrant Women's Advocacy Project (NIWAP), to submit comments in response to the U.S. Citizenship and Immigration Service (USCIS) proposed rule, entitled " Collection and Use of Biometrics by U.S. Citizenship and Immigration Services" initially published in the Federal Register on September 11, 2020 (hereinafter "proposed rule"). We are providing these comments and are specifically incorporating by reference all of the resources we cite in the footnotes to these comments. We have also provided links to the complete documents that are also being submitted to be considered as part of the full record of these comments.

NIWAP is a non-profit training, technical assistance, and public policy advocacy organization that develops, reforms, and promotes the implementation and use of laws and policies that improve legal rights, services, and assistance to immigrant women and children who are victims of domestic violence, sexual assault, stalking, child abuse, human trafficking, and other crimes. As a national resource center, NIWAP offers technical assistance and training at the federal, state, and local levels to assist a wide range of professionals who work with immigrant crime victims. NIWAP provides direct technical assistance and training for attorneys, advocates, immigration judges, Board judges and staff, state court judges, police, sheriffs, prosecutors, Department of Homeland Security adjudication and enforcement staff, and other professionals. NIWAP has extensive expertise on and is a national expert on Violence Against Women Act (VAWA) self-petitions, U visas, T visas, SIJS and VAWA's confidentiality protections in 8 U.S.C. 1367.

I was personally involved in working with Congress to draft the VAWA self-petition, the U and T visas and VAWA's confidentiality protections (8 U.S.C. 1367) in the Violence Against Women Acts of 1994, 2000, 2005 and 2013 and the VAWA protections in IIRAIRA 1996 as well as the legislative history of these protections. I also have served as an expert assisting Department of Homeland Security staff implementing VAWA confidentiality protections through regulations, policies, directives and instructions. My work has included providing training to ICE, USICS, and CPB staff on VAWA confidentiality protections for immigrant crime victims, assisting in development of the computerized system through which DHS "red flags" VAWA confidentiality cases, and delivering trainings with DHS staff nationally on VAWA confidentiality to police, prosecutors, courts, victim advocates, and attorneys.

We are deeply concerned about the myriad ways that this proposed rule vastly expands the collection of biometrics which will have a unique and significant impact on survivors of domestic violence, sexual assault, human trafficking, stalking, child abuse, and other crimes. Not only will the proposed rule impose additional steps that will deter survivors from coming forward to access benefits specifically created for their protection, it will also increase the level of risk to immigrant survivors' safety, privacy, and security.

NIWAP staff have since the 1990s been involved in conducting and publishing research that documents the needs of immigrant survivors of domestic violence, child abuse, sexual assault and human trafficking. Through our research and research conducted by others we have also learned about the effectiveness of VAWA, T, and U visa immigration relief. We are experts on immigrant survivors' needs and the barriers they encounter accessing the justice system and immigration relief at all stages of each process. As we detail below, we oppose the proposed rule as it creates unnecessary and dangerous barriers for VAWA, T, and U visa eligible victims and for all other immigrant victims applying for other forms of immigration relief for which they are eligible.

I. USCIS has provided insufficient opportunity to comment

The proposed rule is deeply flawed both substantively and procedurally. Executive Order 12866 provides that agencies "should afford the public a ***meaningful opportunity*** to comment on any proposed regulation, which in most cases should include a comment period of ***not less than*** 60 days." USCIS has chosen to provide only a 32 day comment period on this rule which places an unjustified administrative burden on the public and organizations to provide comments, during a pandemic, under a much shorter than normal timeframe. I have personally been involved in submitting comments since the late 1980s to DHS and other federal government agencies on approximately 75 proposed rules that impact immigrant domestic violence, sexual assault, human trafficking, and child abuse victims. Over the course of my career this is one of the shortest timeframes provided for notice and comment.

The importance of a sufficient comment period is even more critical due to the extraordinary changes to working conditions caused by the COVID-19 pandemic. The pandemic has caused an increased rate of domestic violence and child abuse and has augmented the complexity and challenges of serving survivors. All agencies serving survivors nationally are operating at or above capacity and are called upon to navigate and address novel barriers to services. This rule's truncated public comment timeframe is unfair and appears in light of the COVID-19 pandemic to be at least insensitive to what service providers in the field are facing or at worst is calculated to preclude the statutory required and legitimately useful public comment process.

For NIWAP specifically, having to respond within a shortened time frame presents a significant challenge, interfering with our ability to provide timely national technical assistance supporting the family and legal services lawyers who provide urgent legal assistance to immigrant survivors of domestic violence, sexual assault, child abuse, and human trafficking. We also provide assistance to victim advocates who provide the critical first response to victims in crisis. We provide on call assistance and support to attorneys and advocates working on the front lines with victims in crisis. Providing services to victims has become more complex and more complicated due to the COVID-19 crisis.

Immigrant survivors of domestic violence and human trafficking are uniquely impacted by this proposed rule. USCIS does a disservice to immigrant survivors and to the service providers that serve them by providing such a limited time frame to respond to these substantive challenges. For these procedural deficiencies alone, the USCIS should withdraw the proposed rule.

II. The Proposed Rule will exacerbate an already existing chilling effect on survivors coming forward to access protections created for their safety.

As the proposed rule acknowledges, "For many immigrant victims of domestic violence, battery, or extreme cruelty, the U.S. citizen or lawful permanent resident family members who sponsor their applications threaten to withhold legal immigration sponsorship as a tool of abuse." For this reason, a bipartisan majority in Congress enacted the Violence Against Women Acts (VAWA) of 1994, 2000, 2005, and 2013 and the Trafficking Victims Protection Acts (TVPA) of 2000, 2003, 2003, 2008, and 2013. Each of these laws included and continued to improve upon the protections created for immigrant survivors of domestic and sexual violence, child abuse and human trafficking. These forms of relief play a critical role in helping survivors and their families escape abuse, heal following abuse, attain independence from their abusers, rebuild lives shattered by abuse and attain much needed, safety and stability.

These laws also equally importantly help immigrant victims come forward and report crimes and participate in the detection, investigation, prosecution, conviction and/or sentencing of their perpetrators. Research has found that once immigrant victims file their immigration cases, significant numbers call the police for help when they fall victim to future crimes (36.2% of VAWA self-petitioners and 25.2% of U visa victims).[1] This is in addition to the high rate of cooperation in criminal cases provided by U visa victims at over 73.1%.[2] Similarly, once the victim's immigration case was filed, immigrant survivors sought help from the family courts including in protection order cases (self-petitioners 47.6%; U visa victims 43.7%).[3]

However, research has also found that as immigration enforcement and anti-immigrant sentiment has increased in the U.S., although many immigrant victims still turn to the family courts for help,[4] there was a dramatic drop from 2016 to 2017 in the willingness of abused spouses and children of U.S. citizens and lawful permanent residents to file VAWA self-petitions (391%) and a 31% drop in the willingness of eligible victims to file U visa applications.[5] Both the crime fighting purposes and the

[1] Krisztina E. Szabo, et. al., "Early Access to Work Authorization for VAWA Self-Petitioners and U Visa Applicants pp 28-31 (February 12, 2014) https://niwaplibrary.wcl.american.edu/pubs/final_report-on-early-access-to-ead_02-12

[2] Id. at 29. *See also,* Leslye E. Orloff, et. al., "U Visa Victims and Lawful Permanent Residency" 5 (September 6, 2012) (70% of U visa victims provided ongoing cooperation to police and/or prosecutors and another 29.45% were willing to cooperate if further cooperation was requested by law enforcement or prosecutors). https://niwaplibrary.wcl.american.edu/pubs/pb-tkit-uvisalawfulpermanentresidency-9-6-12

[3] Krisztina E. Szabo, et. al., "Early Access to Work Authorization for VAWA Self-Petitioners and U Visa Applicants pp 29-30 (February 12, 2014) https://niwaplibrary.wcl.american.edu/pubs/final_report-on-early-access-to-ead_02-12

[4] Rafaela Rodrigues, et., al., "Promoting Access to Justice for Immigrant and Limited English Proficient Crime Victims in an Age of Increased Immigration Enforcement: Initial Report from a 2017 National Survey 81 (May 3, 2018) https://niwaplibrary.wcl.american.edu/pubs/immigrant-access-to-justice-national-report (From 2016 to 2017, particularly in jurisdictions where judges issued U visa certifications and issued findings in SIJS cases, there was a 23% increase in immigrant survivor's willingness to seek civil protection orders in domestic violence cases).

[5] Id. at 82-83. USCIS data reflect a similar decline in U visa applications. *See,* USCIS, U Visa Filing Trends (April 2020) https://www.uscis.gov/sites/default/files/document/reports/Mini_U_Report-Filing_Trends_508.pdf

victim protection goals of VAWA and the TVPA are not furthered when by regulations, DHS imposes additional deterrents such as those included in this proposed biometrics rule that will inhibit the ability of eligible immigrant crime victims to come forward and file for VAWA, T, and U visa protections.

A. Expansion of Biometrics

The proposed rule endangers victims by vastly expanding USCIS' biometrics collection authority in a way that is overbroad, ambiguous, and needlessly invasive. Specifically, the proposed rule expands USCIS authority to collect biometric data beyond fingerprints and photographs to include additional "modalities" such as iris scan, palm print, facial recognition, voice print, and collection of DNA. For survivors who have endured physical, sexual and emotional abuse or stalking, complying with these new and invasive biometric requirements may exacerbate the harm and trauma they have suffered. Immigrant survivors of sexual assault are particularly vulnerable to re-traumatization that the proposed more invasive biometric techniques would impose. The National Sexual Violence Resource Center in their chapter of a training toolkit for Sexual Assault Response Teams and nurse examiners discusses the particular vulnerability of immigrants to sexual assault and the care that needs to be taken in working with immigrant survivors.[6]

While USCIS states that it will not deploy an absolute biometric requirement in all instances for all forms, the proposed rule fails to specify which modalities will be utilized in the collection of survivor-based relief, particularly in VAWA, T visa, U visa, SJIS, Battered Spouse Waiver, and work authorization for abused spouses of certain visa holder cases. To ensure the safety of immigrant victims of domestic violence, human trafficking, sexual assault, child abuse, stalking and other crimes research has found that privacy is paramount to ensure victim safety.[7] This rule fails to state clearly and thereby allow for full and effective comment on which forms of additional biometrics will be applied to cases involving immigrant survivors so that the agencies who serve survivors can accurately provide detailed information about the full impact that these proposed rules as implemented will have on crime victims.

USCIS' estimates for the costs of this rule's proposed new process to the applicant vastly devalues non-tangible costs, such as missing school, losing a day of paid work, and the costs and risks of having to find a friend or family member to drive the immigrant victim applicant to an Application Support Center (ASC) appointment. For immigrant survivors who are under VAWA confidentiality laws and able to confidentially file their VAWA, T, and U visa applications, each trip to the ASC that requires asking a friend or family member for help with transportation requires that the victim reveal to an individual who may know or be contacted by the abuser the existence of the victim's VAWA confidentiality protected immigration case. The costs USCIS calculates needs to include the time-related opportunity costs of the person offering to transport the victim to the ACE. The USCIS also appears to fail to take into these cost calculations the distances immigrant applicants will need to travel when they live in rural communities where the trip to the ASC can be vastly more than the 50 miles round trip estimated by USCIS.

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[6] Rafaela Rodrigues and Leslye E. Orloff, " Immigrant Victims of Sexual Assault," https://niwaplibrary.wcl.american.edu/pubs/immigrant-access-to-justice-national-report in NSCRC, "SART Toolkit: Sexual Assault Response Team Toolkit" (2019) https://www.nsvrc.org/sarts/toolkit

[7] *See generally*, Victim Rights Law Center, "CCR – A Privacy Toolkit for Coordinated Community Response Teams" (2016) https://www.victimrights.org/sites/default/files/CCR%20Toolkit.pdf and other tools on the importance of privacy and confidentiality when working with survivors of domestic violence, sexual assault, stalking, dating violence and human trafficking. https://www.victimrights.org/resources-professionals#sub_content_1_wrapper

It has been well established that for battered women the ability to access transportation has posed a significant barrier to survivors accessing help to address domestic violence. Research among immigrant survivors has found that this barrier is exacerbated for immigrant survivors who have limited English proficiency. [8] Each time a survivor of domestic violence, child abuse, or human trafficking is required to travel away from the location where the victim has found a safe and often confidential residence for any reason, being publically visible in the process of transportation places the victim at risk that their perpetrator will be able to locate and pursue them. Victims who must rely upon friends or public transportation to travel are most at risk. Many recently separated victims experience stalking and having their movements watched by perpetrators and making them leave a safe location and go to an appointment can place them at risk. It is for this reason, and based on their understanding of this risk, that INS in implementing VAWA self-petitioning protections expanded the forms of evidence that self-petitioners could submit to include state background-checks in addition to or instead of local police clearance reports which often required the victim to travel to a jurisdiction in which the perpetrator resides. Similarly, the additional biometrics procedures being imposed by this rule could place immigrant victims in the position of having to travel to or through jurisdictions where their perpetrator resides or works.

Many of these additional forms of biometrics, like facial recognition, have been found to be extremely unreliable, racially biased, and reinforce bias against transgender individuals. In addition, USCIS' justification for using voice prints to be integrated into USCIS call center processes is not only deeply disturbing, it could pose dangers for immigrant survivors and lead to VAWA confidentiality violations by call center staff.

We are also very concerned about the ways the additional biometrics that will be collected under the proposed rule may link to databases that have incomplete, inaccurate, or outdated information about the applicant. We know from research among immigrant victims that too often when limited English proficient (LEP) and immigrant domestic violence victims call the police for help, too often the police will end up arresting the victim and not the perpetrator of the domestic violence, particularly when the police fail to call a qualified interpreter to the crime scene and end up speaking only with the perpetrator.[9] When victims are wrongly arrested, together with or instead of the perpetrator, at domestic violence crime scenes, even after the case is dismissed the databases continue to contain evidence of the arrest. The fact of the arrest puts the wrongly arrested LEP victim at a disadvantage that the victim will need to overcome as her case is adjudicated by USCIS. USCIS indicates applicants will be offered an opportunity to rebut derogatory information the agency considered. This is not sufficient as the rule does nothing to offer applicants redress when these errors occur or provide a way to affirmatively challenge or correct the information in the database prior to it being used against the victim by DHS officials.

Lastly, the expansion of biometrics is deeply concerning for survivors given that it will necessarily increase *who* has access to this information. Abusers and perpetrators of crime often threaten to report survivors to the police or to the immigration authorities in order to maintain power over their victims

[8] *See e.g.*, Mary Ann Dutton, et. al., "Characteristics of Help-Seeking Behaviors, Resources and Service Needs fo Battered Immigrant Latinas: Legal and Policy Implications" Georgetown Journal on Poverty, Law and Policy Volume VII Number 2 254, 274-275 (Summer 2000) https://niwaplibrary.wcl.american.edu/pubs/characteristics-help-seeking-behaviors

[9] Orloff, Leslye E., LaRiviere, Michael, Ivie, Stacey, "Why Using an Interpreter is Beneficial to Law Enforcement" (2017), https://niwaplibrary.wcl.american.edu/pubs/law-enforcement-benefits-of-qualified-interpreters

and keep them silent. Congress created confidentiality protections for survivors codified at 8 USC § 1367, to ensure that abusers and other perpetrators cannot use the immigration system against their victims.[10] Despite the numerous policies enacted implementing VAWA confidentiality, violations commonly occur including by ICE, CPB, and USCIS staff.

We are deeply concerned that the sweeping expansion of biometrics will lead to additional disclosures. These disclosures can occur intentionally for example when a perpetrator calls to report a spouse to ICE and ICE learns or suspects the caller is a spouse and fails to follow procedures to check the Central Index System for the VAWA confidentiality flag. Disclosures can also occur any time a DHS official is not routinely checking to determining whether the case they are working on is protected by the VAWA confidentiality flag and they reveal information in violation of VAWA confidentiality prohibitions. Also any time the information contained in databases is expanded and the numbers of databased that are connected is expanded, which will both occur under this proposed rule, the likelihood that a victim's information will be vulnerable to hacking and other breaches expands. Any of these confidentiality breaches, however they may occur, pose a safety risk to immigrant crime victims protected by the VAWA, T, and U visa programs and jeopardizes victim safety in ways that are different from the risks to immigrants who are not crime victims.

The proposed rule acknowledges there could be some unquantified impacts related to privacy concerns for risks associated with the collection and retention of biometric information and the rule would expand the population that could have privacy concerns. Whenever sensitive information about a victim is shared between agencies, the security of that information is compromised due to the increasing number of people authorized to access the information, and increased risks of unauthorized access and hacking. Further, any sharing of information about immigrant crime victims both within DHS and outside of the agency must comply with VAWA confidentiality requirements.[11] It is only recently that VAWA confidentiality training has been mandated for DHS personnel. No government agencies outside of DHS currently mandate such training. The dangers when biometric and other information about the existence of a victim's VAWA confidentiality protected immigration case is released are especially true of survivors of domestic violence, sexual assault, stalking and other crimes who may have justified concerns about what information is shared, with whom and for what purpose. For example, in cases of domestic violence or stalking where the abuser or the abuser's friends or family are in law enforcement, this raises significant security concerns regarding who may potentially have access to these biometric databases and the information contained therein. There is nothing in the proposed rule that describes how DHS will protect the additional information proposed to be collected in VAWA confidentiality protected cases.

B. Expansion of DNA collection

The proposed rule will allow immediately for DHS, in its discretion, to request, require, or accept DNA or DNA test results, which include a partial DNA profile, for individual benefit requests requiring

[10] For details about VAWA confidentiality statutes, regulations, policies and the legislative and regulatory history and purpose of these important protections *see,* Alina Hussain and Leslye E. Orloff, VAWA Confidentiality: Statutes, Legislative History, and Implementing Policy (April 4, 2018). https://niwaplibrary.wcl.american.edu/pubs/vawa-confidentiality-statutes-leg-history

[11] Id. at 22-23.

proof of a genetic relationship. Phase V of their implementation plan would permit DHS to request or require DNA evidence in survivor-based relief including but not limited to:

- VAWA Self-Petitions involving abuse of children or parents (Form I-360)
- Application for T Nonimmigrant Status Supplement A (Form I–914A);
- Petition for U Nonimmigrant Status Supplement A (Form I–918A);
- Petition for Qualifying Family Member of a U–1 Nonimmigrant (Form I-929).

USCIS estimates that thousands of immigrants including survivors and their family members may be subject to these new DNA requests. This is particularly problematic given that only a minority of immigrant victims filing for VAWA, U visa, and T visa immigration relief have no criminal histories. An analysis of the data reported in a resent USCIS study of all U visa applications filed between 2012 and 2018 reveals that only 11% of approved U visa cases (13.6% of all U visa applicants) and only 9.5% of approved U visa derivative family members have any criminal histories.[12] NIWAP is concerned that collecting the DNA of immigrants, including crime victims who have no criminal histories, will flood the DNA database systems that are already overburdened. It is well documented that there are significant backlogs in entering DNA from rape kits into the national DNA databased leading to long delays in identifying and prosecuting rapists. If the proposed rule results in the collection of DNA of all immigrants, including immigrant crime victims, and requires entry of all this DNA data in an already overburdened system, this will result in further delays in DNA data entry for rape cases and other criminal cases which cannot be solved if the proposed DHS DNA data collection causes further data entry delays and costs.

Further, as these requests are within the "discretion" of the adjudicator, this undoubtedly will lead to inconsistent treatment of survivors, adding additional costs and burdens to an already arduous adjudication process. The potential costs to survivors is staggering; DNA tests often incur a $440 fee to test first genetic relationship and $220 for each additional test, which are costs ***the applicant*** must pay. USCIS has not demonstrated that there is any systemic problem in establishing qualifying family relationships in VAWA self-petitioning, T, or U visa cases or other forms of immigration relief, nor has the agency acknowledged that these additional costs create significant barriers to survivors who may be facing economic instability related to their victimization. Economic abuse is a powerful tool that abusers of immigrant victims of domestic violence, child abuse and workplace based sexual violence use to control and silence victims.[13] Large numbers of immigrant victims are unable to separate from their abusers by leaving abusive homes or abusive employers until the victim has filed their VAWA or U visa case and has been able to attain legal work authorization.[14] The additional financial burdens to survivors that will be created by the proposed rule will delay a victim's ability to file and proceed with their crime victim based immigration case and will delay the ability of many victims to get to the point

[12] USCIS, "Arrest Histories of U Visa Petitioners" 4-8 (April 2020) (Data calculated from USCIS reported numbers of arrests that were criminal and were not arrests related to immigration violations or traffic tickets or stops. DUI and DWI arrests were included in the criminal calculations.) https://niwaplibrary.wcl.american.edu/pubs/uscis-u-visa-victim-arrest-histories

[13] Leslye Orloff and Olivia Garcia, Dynamics of Domestic Violence Experienced by Immigrant Victims, 5, 11-13 (2014) https://niwaplibrary.wcl.american.edu/pubs/cult-man-ch1-1-dynamicsdomesticviolence2016

[14] Krisztina E. Szabo, et. al., "Early Access to Work Authorization for VAWA Self-Petitioners and U Visa Applicants 10, 21-25 (February 12, 2014) https://niwaplibrary.wcl.american.edu/pubs/final_report-on-early-access-to-ead_02-12; Rafaela Rodrigues, et., al., "Promoting Access to Justice for Immigrant and Limited English Proficient Crime Victims in an Age of Increased Immigration Enforcement: Initial Report from a 2017 National Survey 86-88 (May 3, 2018) https://niwaplibrary.wcl.american.edu/pubs/immigrant-access-to-justice-national-report

in their immigration case where they can gain work authorization and begin to work toward financial stability independent of their abusive spouse, partner or employer.

USCIS purportedly "recognizes that some individuals who submit biometrics/DNA could possibly be apprehensive about doing so and may have concerns germane to privacy, intrusiveness, and security." In cases of domestic violence, stalking, human trafficking and other crimes, survivors may have valid concerns about this process and the privacy of this information. According to the Electronic Privacy Information Center, "Domestic violence victims have high needs for privacy, as they are already the target of an abuser, and often need to keep data from them. This abuse can also involve privacy violations such as surveillance, monitoring, or other stalking. For a domestic violence victim, the need for privacy is a need for physical safety."[15] While the proposed rule acknowledges the protections of VAWA confidentiality (8 USC 1367), it does not sufficiently consider the unique concerns of survivors of crime, and lacks specific details about how victims' biometric information may potentially be used outside the adjudication setting.

III. VAWA and T Visa Adjustment of Status Evidentiary Changes

USCIS proposes new documentary requirements for good moral character determinations in both VAWA self-petitions and T visa adjustment of status applications. In particular, the proposed rule would:

- Remove the requirement that VAWA self-petitioners and T visa-based adjustment applicants who have resided in the United States submit police clearance letters as evidence of good moral character because DHS will be able to obtain the individual's criminal history using the biometrics
- Consider conduct beyond the requisite period immediately before filing, where: (1) The earlier conduct or acts appear relevant to an individual's present moral character; and (2) the conduct of the self-petitioner/applicant during the three years immediately before filing does not reflect that there has been a reform of character from an earlier period. See generally 8 CFR 316.10(a)(2).
- Remove the presumption of good moral character for VAWA self-petitioners and T adjustment applicants 14 years of age and younger.

These provisions are an effort to reform VAWA self-petitioning and T visa regulations through this proposed rule without seriously considering the impact on vulnerable immigrant victims and without providing sufficient time for groups with subject matter expertise serving victims to have the time to meaningfully provide comments on this proposed change to the existing VAWA self-petitioning and T visa rules. These changes are simply unnecessary. Like so much of this proposed rule, these regulation revisions are proposed solutions for problems that do not exist. VAWA self-petitioners ***already*** are required to submit biometrics in order to obtain work permits incident to approval of their self-petition. Similarly, T visa holders ***already*** are required to submit biometric evidence upon filing of their applications for adjustment of status to lawful permanent residency. Thus, USCIS already has existing mechanisms in place in order to verify an applicant's identity and to learn about any criminal history the victim may have. As indicated above, databases that USCIS searches as a result of biometrics may also contain incomplete, inaccurate or outdated information about the applicant. Indeed, USCIS has not

[15] https://www.epic.org/privacy/dv/

sufficiently demonstrated how the current process is unreliable or how review of police clearance letters from each jurisdiction the victim has lived in over the past three years burdens USCIS.

The proposed rule's reliance on regulatory language from the naturalization context is in direct conflict with the statute and is inappropriate for VAWA self-petitions and T visa adjustment adjudications. Congress wanted to recognize the unique circumstances facing survivors and thus established different frameworks to consider good moral character in these forms of relief. For example, in the T visa adjustment of status content, Congress limited the requisite period for evaluating good moral character. This was done to ensure that T visa holders would not be unjustly prejudiced or retraumatized by repeatedly reviewing criminal acts that they were forced to engage in as part of their abuse and exploitation. These issues would ***already have*** been addressed as part of their underlying T visa application. By allowing this look back beyond the period authorized by Congress, USCIS is unlawfully introducing additional subjective elements which can be used to re-traumatize survivors and subjectively deny them the protections afforded under the law.

Lastly, removing the presumption of good moral character for VAWA self-petitioners and T visa adjustment applicants under 14 creates needless barriers for young applicants and increases the burden on survivors. USCIS already has the authority to get more information from applicants if warranted. Imposing these requirements on all applicants in the proposed regulation places additional barriers on victims without documenting in the proposed regulation sufficient justification for this burden.

IV. The Proposed Rule is Overbroad and Creates Needless Administrative Barriers and Costs

The proposed rule unjustly oversteps USCIS's authority under existing law. The laws that USCIS cite in the proposed rule do not support the agency's authority to justify the sweeping changes that the proposed rule will make. This proposed rule, if implemented, will add to the backlogs, delays, and barriers that immigrant survivors applying for VAWA, T and U visa immigration relief have had to endure. All regulations, including the proposed rule, that place additional requirements and impose additional costs on immigrant crime victims applying for VAWA T and U visa protections endanger victims and undermine the effectiveness of these programs as crime fighting tools for state, local and federal law enforcement and prosecution agencies and the courts. Each of the immigration case types that were designed by Congress to help immigrant crime victims flee abuse, report crime and rebuild their lives is currently experiencing historic backlogs in case processing.

The reality is that these shocking backlogs undermine the effectiveness of these critical benefits. Such long waits for the adjudication of their cases, coupled with other barriers (like a lack of access to work authorization or other financial support) can be devastating to survivors, and cause them possibly to either face homelessness, leave injuries untreated, or have to remain in or return to violent homes and work places. Under the proposed rule, survivors who are facing these incredible backlogs will endure even more hurdles as USCIS extends scarce resources for new equipment, training, operating procedures, and steps to the adjudication process. Resources put toward implementing the proposed rule will take away from the adjudication of benefits, which is the principal job of USCIS. The proposed rule will only exacerbate these issues undermining safety for thousands of immigrant crime victims and

their children and limiting the ability of law enforcement and prosecution agencies across the country to fight crime in their communities.[16]

V. Continuous Vetting Erodes Due Process & Survivor Security

The proposed rule would implement "continuous vetting" procedures in which individuals may "be subjected to continued and subsequent evaluation of eligibility for their immigration benefits to ensure they continue to present no risk of causing harm subsequent to their entry. This rule proposes that any individual alien who is present in the United States following an approved immigration benefit may be required to submit biometrics unless and until they are granted U.S. citizenship." There are already numerous points in the adjudication of VAWA self-petition, SIJS, T visa, and U visa immigration cases where USCIS runs background checks on immigrant victim applicants including when the case is adjudicated, when the victim applies for work authorization, and when the victim's case comes off the waitlist and when the victim applies for lawful permanent residency.[17]

Requiring survivors to submit biometrics repeatedly, at any time, until they obtain citizenship not only is a tremendous waste of agency resources and creates instability and insecurity for survivors seeking to heal from victimization, but also as discussed in detail above repeatedly endangers victims. The net effect of this "extreme vetting" on survivor-based cases will be to complicate their adjudications; give license to subjective decision-making without regard to the dynamics of violence and trauma that Congress intended; and lead to wildly inconsistent results by adjudicators across the country.

VI. Conclusion

There are myriad issues of concern to NIWAP that we simply do not have the time nor capacity to address in this comment given the extremely restrictive comment deadline. As a result of the time restrictions of this rule we are incorporating the resources we site in the footnotes and text of this comment as part of this comment by reference and we are not separately submitting each as an attachment. We consider the materials to be given the same weight and consideration as part of these comments as if we had attached each for the record as an appendix to these comments.

We strongly oppose the proposed rule due to the significant, unique, and extremely harmful impact it would have on survivors of domestic violence, child abuse, sexual assault, stalking, human trafficking and other U visa covered crimes. We call on USCIS to promptly withdraw the proposed rule in its entirety.

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[16] Detective Stacey Ivie, et.al., Overcoming Fear and Building Trust with Immigrant Communities and Crime Victims, The Police Chief Magazine, International Association of Chiefs of Police 34-40 (April 2018) https://niwaplibrary.wcl.american.edu/pubs/policechief_april-2018_building-trust-immigrant-victims.

[17] *See*, Katelyn Deibler and Leslye E. Orloff, "U Visa Timeline with Background Checks" (April 9, 2019) https://niwaplibrary.wcl.american.edu/pubs/u-visa-timeline; Katelyn Deibler and Leslye E. Orloff, "Special Immigrant Juvenile Status Timeline with Background Checks" (March 29, 2019) https://niwaplibrary.wcl.american.edu/pubs/sijs-timeline; Katelyn Deibler and Leslye E. Orloff, "VAWA Self-Petition Timeline with Background Checks" (March 29, 2019) https://niwaplibrary.wcl.american.edu/pubs/3f-vawa-timeline-3-29-19; Katelyn Deibler and Leslye E. Orloff, "T Visa Petition Timeline with Background Checks" https://niwaplibrary.wcl.american.edu/pubs/t-visa-timeline.

Thank you for considering these comments in response and opposition to this proposed rule. Please feel free to contact us at info@niwap.org or 202-274-4457 and we would be happy to provide additional information and answer questions about these comments.

Sincerely,

Leslye E. Orloff
Adjunct Professor and Director
National Immigrant Women's Advocacy Project
American University, Washington College of Law