



December 10, 2018

Samantha Deshommnes, Chief,
Regulatory Coordination Division
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue NW
Washington, D.C. 20529-2140

**RE: DHS Docket No. USCIS-2010-0012 - Comments in Response to Proposed Rulemaking
Inadmissibility on Public Charge Grounds**
Submitted via www.regulations.gov

Dear Ms. Deshommnes:

On behalf of ASISTA, I am submitting comments in response to the Department of Homeland Security's (DHS) Notice of Proposed Rulemaking Inadmissibility on Public Charge Grounds published in the Federal Register on October 10, 2018 (hereinafter "proposed rule").¹

ASISTA is a national organization dedicated to safeguarding and advancing the rights of immigrant survivors of violence. ASISTA worked with Congress to create survivor-based forms of immigration relief through the Violence Against Women Act (VAWA). For 15 years, ASISTA has provided attorneys and advocates nationwide with valuable resources to help survivors access the services and status they need to achieve safety and independence.

We stridently oppose the proposed rule. The public charge grounds of inadmissibility do not apply to certain immigration benefits, among them survivor-based protections such as VAWA self-petitions and U and T visas. But the proposed rule will disproportionately impact a wide range of immigrant survivors of domestic violence, sexual assault, human trafficking and other crimes. For this reason, we call on DHS to immediately withdraw the proposed rule. Such a drastic change in policy will deter survivors from accessing the services and programs they need to escape and overcome violence.

¹ 83 Fed. Reg. 51114. "Inadmissibility on Public Charge Grounds" (October 10, 2018). (Hereinafter "Proposed Rule").

A. The proposed rule will harm survivors of domestic violence, sexual assault and human trafficking and impede their safety and self-sufficiency.

A bipartisan majority in Congress created survivor-based forms of immigration relief, most notably VAWA-self petitions and U and T visas, recognizing that survivors may not be willing to reach out for help because their abusers threaten them with removal if they contact the justice system.² As part of its efforts to stop manipulation of our immigration system by abusers, rapists and human traffickers, Congress created an exception to the public charge ground of inadmissibility for these forms of relief.³

The proposed rule may, however, apply to family members sponsored by survivors or to other family members living in their households. In addition, many survivors of domestic violence, sexual assault and human trafficking pursue other routes to secure immigration status which lack such explicit exceptions. Survivors in the U.S. on student or employment-based visas may encounter additional barriers to safety because of this proposed rule, as will survivors who seek lawful permanent residence based on applications or petitions that are not specifically designed for crime survivors.

The chilling effect has already begun: Immigrant families are withdrawing from programs for which they are eligible due to fear of detrimental consequences to their status.⁴ Deterring survivors and their children from seeking the benefits they need to escape violence is deeply significant and distressing.

1. The proposed rule will discourage survivors from accessing critical benefits programs

The proposed rule expands the range of public assistance programs that will count against a person in deciding whether someone is likely to become a public charge, including Medicaid, Supplemental Nutrition Assistance Program (SNAP), housing assistance and others. The

² See H.R. REP. NO. 103-395, at 26-27 (1993)(stating “Consequently, a battered spouse may be deterred from taking action to protect him or herself, such as filing for a civil protection order, filing criminal charges, or calling the police, because of the threat or fear of deportation. Many immigrant women live trapped and isolated in violent homes, afraid to turn to anyone for help. They fear both continued abuse if they stay with their batterers and deportation if they attempt to leave”). See also Section 1513(a)(2)(A), Public Law No: 106-386, 114 Stat. 1464 (2000) (indicating that Congress created the U and T visa program to “strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, trafficking...and other crimes...committed against aliens, while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States.”)

³ See e.g. INA § 212(a)(4)(E)(i); INA § 212(a)(4)(E)(ii), INA § 212(d)(13)(A);

⁴ Helena Bottemiller Evich. “Immigrant families appear to be dropping out of food stamps” Politico (Nov. 14, 2018), available at <https://www.politico.com/story/2018/11/14/immigrant-families-dropping-out-food-stamps-966256>
Kelli Kennedy. “Deportation fears have legal immigrants avoiding health care.” Associated Press (January 21, 2018), available at <https://apnews.com/9f893855e49143baad9c96816ec8f731>

proposed rule would also count receipt of these benefits as a heavily weighted negative factor,⁵ completely discounting the reasons why these benefits may be necessary in the first place.

What the proposed rule ignores is that benefit programs are often essential for survivors given the well-established and acute connection between poverty and domestic violence. Access and use of these benefits may make the difference in whether survivors and their children can escape abuse. DHS should not put survivors in the position of choosing between their immigration status and their ability to survive after abuse.

Domestic and sexual violence is pervasive nationwide--with one in three women and one in six men experiencing some form of sexual violence in a lifetime⁶ and more than 12 million men and women experiencing rape, physical violence, or stalking by an intimate partner each year in the United States.⁷ While intimate partner violence permeates all income levels, "there are unique challenges and barriers at the intersection of these forms of violence and economic disadvantage."⁸ Research cited by the Centers for Disease Control and Prevention (CDC) indicates that intimate partner victimization is associated with economic, food and housing insecurity.⁹

To maintain power and control over their victims, abusers typically prevent survivors from accessing or acquiring financial resources on their own.¹⁰ Survivors may be forced to stay with abusers because they depend on them for financial support or housing. In one study, 99% of domestic violence victims reported experiencing economic abuse.¹¹ A recent survey by the National Domestic Violence Hotline (The Hotline), National Resource Center on Domestic Violence and Casa de Esperanza: National Latin@ Network found that "two-thirds (67%) of

⁵ See Proposed Rule at 51198 and 51199.

⁶ Centers for Disease Control and Prevention. (2017). The National Intimate Partner and Sexual Violence Survey (NISVS): 2010-2012 State Report. Available at: <https://www.cdc.gov/violenceprevention/pdf/NISVS-StateReportBook.pdf>

⁷ Centers for Disease Control and Prevention. (2011). Sexual Violence, Stalking, and Intimate Partner Violence Widespread in the US. Available at: https://www.cdc.gov/media/releases/2011/p1214_sexual_violence.html

⁸ NDVH. NRCDV and Casa de Esperanza: National Latin@ Network. "We Would Have to Stay: Survivors' Economic Security and Access to Public Benefits Programs" (November 2018), available at https://vawnet.org/sites/default/files/assets/files/2018-11/NRCDV_PublicBenefits-WeWouldHaveHadToStay-Nov2018.pdf

⁹ NISVS. "An Overview of Intimate Partner Violence in the United States — 2010 Findings", available at <https://www.cdc.gov/violenceprevention/pdf/ipv-nisvs-factsheet-v5-a.pdf>

¹⁰ This is known as economic or financial abuse, which is "behavior that seeks to control a person's ability to acquire, use, or maintain economic resources, and threatens their self-sufficiency and financial autonomy." NNEDV. "Financial Abuse Fact Sheet" <https://nnedv.org/?mdocs-file=10108>; See also https://www.huffingtonpost.com/2014/10/21/domestic-violence_n_6022320.html

¹¹ Adrienne E. Adams. "Measuring the Effects of Domestic Violence on Women's Financial Well-Being" Center for Financial Security-University of Wisconsin-Madison (2011), available at <https://centerforfinancialsecurity.files.wordpress.com/2015/04/adams2011.pdf>

survivors surveyed said that they stayed longer than they wanted or returned to an abusive relationship because of financial concerns, such as not being able to pay bills, afford rent/mortgage, or feed their family.”¹² The survivors surveyed shared the following experiences with access to benefits:

- “When I was in an abusive relationship, I was unable to work outside of the home at all. I would have died without public benefits.”
- “When trying to break free from an abuser, it may take us a long time to find our footing again. Without public assistance, this would not be possible.”
- “If public benefits were not available, my children and I would have had to stay with the abuser.”¹³

Similarly, nearly 80% of advocates surveyed by the National Resource Center on Domestic Violence reported that “most domestic violence victims rely on SNAP to help address their basic needs and to establish safety and stability.”¹⁴ Furthermore, “55% of respondents report that most sexual assault victims need SNAP to establish safety and stability.”¹⁵ In terms of other benefit programs, one advocate reported:

“Access to housing assistance is critical for DV survivors. Without it, they often struggle to both afford a place to live and with finding landlords willing to rent to them. Access to Medicaid is equally valuable, as health care is another benefit many survivors cannot afford as they leave abusive relationships and may be facing multiple physical and mental health challenges stemming from exposure to long-term abuse.”¹⁶

¹² See Note 8 at 14.

¹³ See Note 8 at 5.

¹⁴ Shaina Goodman. “The Difference Between Surviving and Not Surviving: Public Benefits Programs and Domestic and Sexual Violence Victims’ Economic Security” NRC DV (January 2018), available at https://vawnet.org/sites/default/files/assets/files/2018-10/NRC DV-TheDifferenceBetweenSurvivingandNotSurviving-UpdatedOct2018_0.pdf

¹⁵ *Id.* at 3.

¹⁶ *Id.* at 11.

This statement is supported by ample evidence showing that domestic violence is also one of the leading causes of homelessness for women in the United States.¹⁷ Resources from the Department of Housing and Urban Development state:

“Survivors of violence face complex barriers to shelter and housing that are caused by the power and control dynamics of abuse, which result in financial instability, lasting trauma, and a need for safety and confidentiality. These factors are exacerbated for marginalized and vulnerable communities, such as persons of color and persons living in rural areas. **Housing and supportive services are critical interventions that play major roles in trauma recovery and long-term stability.**”¹⁸

For these reasons, it is imperative that immigrant survivors of domestic and sexual violence and human trafficking be able to access and use public benefits programs without fear of negative immigration consequences. We oppose DHS’ expansion of the the types of benefits that could result in a public charge determination and its consideration of an individual’s use of public benefits as a heavily weighted negative factor.

B. The Proposed Rule Exacerbates the Harm Survivors have Experienced

Abusers and perpetrators of crime cause significant physical, emotional and financial injury to survivors, which increases the likelihood that the new approach to public charge ground will apply to survivors. This section will discuss how certain negative factors created in the proposed rule’s totality of the circumstances framework will create additional barriers and hardship for survivors.

1. Fee Waivers

Under the proposed rule, a survivor’s use of a fee waiver would be counted as a negative financial status factor, as the proposed rule indicates that “requesting or receiving a fee waiver

¹⁷ Department of Housing and Urban Development “Point in Time Count of Homeless Persons: Engaging with Domestic Violence Survivors: What CoCs Need to Know” available at <https://www.hudexchange.info/resources/documents/PIT-and-DV-What-CoCs-Need-To-Know.pdf> See also Amber Clough et al. “Having Housing Made Everything Else Possible”: Affordable, Safe and Stable Housing for Women Survivors of Violence” (2014), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4196210/> (stating For women who have experienced intimate partner violence, access to safe housing and economic resources are two of the most pressing concerns for those who are planning to or have recently left abusers)

¹⁸ Department of Housing and Urban Development “Point in Time Count of Homeless Persons: Engaging with Domestic Violence Survivors: What CoCs Need to Know” available at <https://www.hudexchange.info/resources/documents/PIT-and-DV-What-CoCs-Need-To-Know.pdf> [Emphasis added].

for an immigration benefit suggests weak financial status. Since fee waivers are based on an inability to pay, a fee waiver for an immigration benefit suggests an inability to be self-sufficient.”¹⁹

While certain survivor-based protections are statutorily required to have access to fee waivers,²⁰ fee waivers are critical for survivors with other immigration benefits as well. Again, the proposed rule demonstrates that DHS is not considering the context in which individuals may be facing economic hardship. Survivors may be fleeing abuse and may not have resources to pay for fee-based forms. Through the proposed rule, DHS is now creating unnecessary barriers for survivors who have an economic need.

2. Medical Conditions

The proposed rule would also count as a negative factor the “presence of a medical condition that is likely to require extensive medical treatment or institutionalization, or that will to interfere with the alien's ability to care for him- or herself, to attend school, or to work or whether an individual is uninsured and has neither the prospect of obtaining private health insurance, or the financial resources to pay for reasonably foreseeable medical costs related to the medical condition.”²¹

Survivors often face a myriad of short and long-term health consequences from as a result of the abuse they have endured. A study by the CDC found that more than 550,000 injuries due to IPV require medical attention each year.²² Intimate partner violence (IPV) can cause various physical health problems, including but not limited to circulator conditions, digestive issues, cardiovascular disease, chronic pain syndromes, central nervous system disorders, migraines and headaches.²³ IPV can also cause reproductive issues including but not limited to gynecological disorders, sexually transmitted infections, unintended pregnancies, problems during pregnancy and delayed prenatal care.²⁴

¹⁹ Proposed Rule at 51188.

²⁰ Congress codified the use of fee waivers in certain humanitarian cases in the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, specifically stating that DHS **shall permit applicants to apply for a waiver of any fees associated** with filing a VAWA self-petition, a T or U visa application, or an application for VAWA cancellation or suspension of deportation. William Wilberforce Trafficking Victims Protection Reauthorization Act. Section by section 201(d)(7), Public Law No: 110-457 (December 23, 2008) (codified at 8 U.S.C. § 1255(l)(7)), available at: <https://www.congress.gov/110/plaws/publ457/PLAW-110publ457.pdf>.

²¹ Proposed Rule at 51217.

²² Centers for Disease Control and Prevention. (2003). Costs of Intimate Partner Violence Against Women in the United States. Available at: <https://www.cdc.gov/violenceprevention/pdf/IPVBook-a.pdf>

²³ CDC. “Intimate Partner Violence: Consequences” (last updated: October 23, 2018), available at <https://www.cdc.gov/violenceprevention/intimatepartnerviolence/consequences.html>

²⁴ *Id.*

The CDC also reports that “physical violence is typically accompanied by emotional or psychological abuse. IPV—whether sexual, physical, or psychological—can lead to various psychological consequences for victims” which can include anxiety, depression, symptoms of post-traumatic stress disorder (PTSD), sleep disorders and other issues.²⁵

Thus, survivors of domestic or sexual violence or human trafficking may have complex and multiple health concerns as a result of their victimization. They may not have access to private health insurance, nor the financial resources to pay for the costs related to the injuries they have suffered. “Poverty and economic instability may make it more difficult to cope with the physical, psychological, and financial impacts of domestic violence and sexual assault.”²⁶ In establishing this criteria as a negative factor, the proposed rule completely ignores the economic and health consequences that survivors of domestic and sexual assault and human trafficking often endure.

3. Employment History

The proposed rule indicates that as long as an individual “is not a full-time student and is authorized to work, DHS proposes that the absence of current employment, employment history, or reasonable prospect of future employment will be a heavily weighed negative factor.”²⁷

Again, DHS disregards the reality that many survivors face. “Victims may struggle to meet basic needs and are left trapped – and economically vulnerable – in an abusive relationship or otherwise unsafe situation. Ending an abusive relationship may mean losing not only access to a partner’s income, but also housing, **employment**, health care, or child care.”²⁸

Survivors of domestic violence and sexual assault may lose their jobs due to intense trauma, reduced productivity, harassment at work by perpetrators, and other reasons stemming from

²⁵ *Id.*

²⁶ See Note 14 at 1. See also Kimerling, R., Alvarez, J., Pavao, J., Mack, K. P., Smith, M. W., & Baumrind, N. (2009). “Unemployment Among Women: Examining the Relationship of Physical and Psychological Intimate Partner Violence and Posttraumatic Stress Disorder,” *Journal of Interpersonal Violence*, 24(3): 450-63., available at <http://fcadv.org/sites/default/files/Unemployment%20Among%20Women%20-%20Examining%20the%20Relationship%20of%20Physiological%20and%20Psychological%20Intimate%20Partner%20Violence%20and%20Posttraumatic%20Stress%20Disorder.pdf> (Stating “Most notably, more than 20% of women experiencing any psychological abuse were unemployed, indicating that stalking, controlling, and emotionally abusive behaviors by intimate partners have a substantial impact on women’s workforce participation.”)

²⁷ Proposed Rule at 51198.

²⁸ See Note 14 at 6. [Emphasis added]

the violence.²⁹ Experiencing physical, psychological or economic abuse can affect a survivor’s ability to obtain or maintain stable employment.³⁰ A survey of survivors conducted by the Maine Department of Labor indicated that abuse affected a survivor’s “performance and productivity, including being constantly harassed at work, delayed getting to work, or prevented from going to work. As a result, 60 percent of victims in the study reported having either quit their job or being terminated as a result of the abuse.”³¹

Secure immigration status can help survivors access employment opportunities, escape violent relationships and help alleviate the trauma they have suffered. Yet through the proposed rule, DHS is setting up barriers for survivors to achieve the very thing DHS purports to value--self sufficiency. DHS must not ignore the supportive and protective effects of stable immigration status for survivors.

C. The proposed rule inaccurately states the law, which already provides for a public charge exemption for trafficking victims when applying for a T Visa or T Visa-based Adjustment of Status

The Trafficking Victims Protection Act of 2000 (TVPA) explicitly created a waiver of the public charge ground for T Visa applicants.³² The TVPA likewise allowed the Attorney General to waive the public charge inadmissibility ground for any T Visa holder seeking to adjust status to that of a permanent resident.³³

Congress has continued to expand protections and services for trafficking survivors. In the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Congress added trafficking survivors to the list of “qualified aliens” eligible for federal, state and local public benefits.³⁴ And, in the subsequent 2013 reauthorization, Congress amended the public charge provision by adding qualified aliens to the list of individuals **completely exempt** from the public charge ground.³⁵ In other words, this amendment made even clearer that both individuals applying for *and* persons already granted T Visas are exempt from the public charge ground of

²⁹ See, e.g., Rothman, E.F., Hathaway, J., de Vries, H.F., Stidsen, A. (2007). How Employment Helps Female Victims of Intimate Partner Violence: A Qualitative Study. *Journal of Occupational Health Psychology*, 12, 136-143. DOI: 10.1037/1076-8998.12.2.136;

³⁰ Institute for Women Policy Research. “The Economic Cost of Intimate Partner Violence, Sexual Assault, and Stalking” (August 2017), available at: https://iwpr.org/wp-content/uploads/2017/08/B367_Economic-Impacts-of-IPV-08.14.17.pdf; See also Michelle Chen. “The Economic Costs of Domestic Violence” *The Nation* (Sept. 20, 2017), available at <https://www.thenation.com/article/the-economic-costs-of-domestic-violence/> (reporting that a 2005 survey of survivors found that two-thirds had suffered direct impacts on their work performance).

³¹ Institute for Women Policy Research. “The Economic Cost of Intimate Partner Violence, Sexual Assault, and Stalking” (August 2017), available at: https://iwpr.org/wp-content/uploads/2017/08/B367_Economic-Impacts-of-IPV-08.14.17.pdf

³² Pub. Law 106-386 Sec. 107(e)(3).

³³ Pub. Law 106-386 Sec. 107(f).

³⁴ Pub. Law 110-457 Sec. 211 and codified at 8 § U.S.C. 1641(c).

³⁵ Pub. Law 113-4 Sec. 804 and codified at 8 § U.S.C. 1641(c). [Emphasis added]

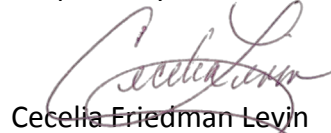
inadmissibility. The ground should not apply, therefore, to individuals who have been granted T visas seeking adjustment of status to lawful permanent residency.

Conclusion

The proposed rule would alter the existing public charge framework drastically. It would deter (and has already deterred) immigrant families from seeking and utilizing benefits for which they are eligible to help support their basic needs. The proposed rule undermines the gains our country has made to protect survivors of domestic violence, sexual assault and human trafficking.

We instead urge that the current guidance around public charge remain in effect. ASISTA urges DHS to withdraw the proposed rule and instead to advance policies and guidance that protect the health, safety, and best interests of survivors and their families.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Cecelia Friedman Levin".

Cecelia Friedman Levin
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