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USCIS PM Changes – Safe Address and Special Procedures for Persons Protected by 8 USC § 1367 <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20230411-SafeAddress.pdf>

Dear USCIS,

On April 11, 2023, USCIS announced updated language in the USCIS Policy Manual to provide guidance on mailing address and case handling procedures for protections under 8 USC § 1367 (hereinafter “§ 1367”). We commend USCIS on these changes, which we believe will increase protections for survivors of crime, ensure fair and consistent implementation of § 1367 protections, and facilitate access to immigration benefits for vulnerable noncitizens.

Background on ILRC

The ILRC is a national non-profit organization that provides legal trainings, educational materials, and advocacy to advance immigrant rights. The ILRC’s mission is to work with and educate immigrants, community organizations, and the legal sector to continue to build a democratic society that values diversity and the rights of all people. Since its inception in 1979, the ILRC has provided technical assistance on hundreds of thousands of immigration law issues, trained thousands of advocates, and pro bono attorneys annually on immigration law, distributed thousands of practitioner guides, provided expertise to immigrant-led advocacy efforts across the country, and supported hundreds of immigration legal non-profit organizations in building their capacity. The ILRC has produced legal trainings, practice advisories, and other materials pertaining to immigration law and processes. As the lead organization for the New Americans Campaign, the ILRC receives and re-grants substantial philanthropic dollars to local immigration legal services providers across the United States who help lawful permanent residents (LPRs) apply for naturalization.

The ILRC is a leader in U and T immigration relief, asylum, and VAWA as well, coordinating taskforces and producing trusted legal resources including webinars, trainings, and manuals such as *U Visa: Obtaining Status for Immigrant Survivors of Crime*, *Essentials of Asylum*, *The VAWA Manual: Immigration Relief for Abused Immigrants*, and *T Visas: A Critical Option for Survivors of Human Trafficking*.

Our experience with non-profit legal services providers and applicants for these immigration benefits inform our comments on these changes.

1. ILRC Commends USCIS for Adding Clarifying Guidance to Adjudicators on § 1367 Protections.

Survivors of domestic violence, sexual assault, and other crimes are among the most vulnerable populations in the immigration legal system. In recognition of this vulnerability, confidentiality provisions were enacted to restrict identification of survivors and disclosure of their information. These protections are critical to the safety of many immigrants and must be enforced in order to protect the physical wellbeing of immigrants as well as the ability of these individuals to access relief for which they are eligible. ILRC believes that USCIS's recent addition of updated guidance on case handling and processing to the USCIS Policy Manual will go a long way towards recognizing the importance of these provisions as well as ensuring more uniform implementation of these statutory protections. Moreover, ILRC welcomes USCIS's explicit guidance for mailing procedures to help ensure protected individuals' documents are not erroneously disclosed to abusers.

We hope this guidance will lead to fuller compliance with the statutory protections. We urge USCIS to track § 1367 violations and help enforce compliance.

2. ILRC Commends USCIS for Clarifying that § 1367 Protections Also Apply to Non-Victim-Based Forms of Immigration Relief and Abused Spouses Applying for Work Authorization under INA § 106.

Many immigrant survivors of crime may qualify for non-victim-based forms of immigration relief. ILRC applauds USCIS's clarification that the prohibition on adverse determinations described in § 1367(a)(1) applies to all cases where a protected person is an applicant, beneficiary, or petitioner. This clarification will help ensure § 1367 protections for all qualified survivors and increase access to immigration relief across the board for eligible survivors of crime.

ILRC also commends USCIS's clarification that § 1367 protections apply to abused spouses applying for work authorization under INA § 106.

3. ILRC Commends USCIS for Instructing Adjudicators to Treat Anonymous Tips as Inherently Suspect.

There are currently several methods for abusers to submit derogatory information to USCIS anonymously. For example, the current ICE tip form allows perpetrators of domestic violence, sexual assault, human trafficking, and other forms of violence to submit anonymous tips to further harass their victims. Abusers frequently threaten that if survivors attempt to contact law

enforcement, they will either be arrested due to lack of lawful immigration status or that the abuser will contact law enforcement to have survivors deported. According to the National Domestic Violence Hotline's annual report for 2020, 6,689 individuals who called the Hotline in 2020 raised concerns related to immigration status.¹ Recognizing the established history of perpetrators using law enforcement and legal systems against survivors, ILRC has expressed strong condemnation of the current ICE Tip Form as well as the recently proposed revised ICE Tip Form.² ILRC thus appreciates USCIS's guidance to treat all anonymous tips as inherently suspect and to presume that the derogatory information received from an unknown source came from a prohibited source.

4. ILRC Urges USCIS to Extend Protections Even After a Protected Petition Is Denied.

The statutory protections outlined in INA § 1367 are organized in two sections. The first section prohibits certain government officials from making adverse determinations based solely on information provided by abusers. INA § 1367(a)(1). The second section prohibits use or disclosure of information related to protected persons. INA § 1367(a)(2). The statute states that the protections in the second provision end after the protected person's application has been denied and all opportunities for appeal have been exhausted. However, there is no statutory end date for the prohibition on making adverse determinations based solely on information provided by abusers. ILRC thus asks USCIS to clarify that this prohibition does not end, even after a protected person's application has been denied. It is critical that a survivor of domestic violence who applies for a U visa, even if it is denied (perhaps the U certification had expired before filing), will not be subject to enforcement actions based solely on information from an abuser.

Furthermore, ILRC asks that USCIS extend the confidentiality protections as a public policy matter even if an application has been denied and all appeal opportunities have been exhausted. Many protected applications, such as U and T waiver adjudications, are highly discretionary. If a survivor of domestic violence is ultimately denied U nonimmigrant status as a discretionary matter, they could still be placed at risk of great harm and retaliation if their information were not kept confidential.

5. ILRC Asks USCIS to Extend Protections Despite Deportable Convictions.

The statute prohibits certain government officials from making adverse determinations based solely on information provided by abusers. INA § 1367(a)(1). However, the statute limits this

¹ National Domestic Violence Hotline. 2020 Impact Report, available at https://www.thehotline.org/wp-content/uploads/media/2021/06/Hotline-EOY-Impact-Report-2020_FINAL.pdf.

² ILRC Comment in Response to the DHS/ICE Notice of Revision of a Currently Approved Collection: Suspicious/Criminal Activity Tip Reporting; OMB Control Number 1653-0049, Document number – 2023-15984 (Aug. 23, 2023), <https://www.ilrc.org/resources/ilrc-comments-ice-tip-form>.

protection if the person has been convicted of a deportable crime. As a public policy matter, USCIS should extend the protections even if a person has been convicted of a deportable crime.

First, almost all protected persons are applying for immigration status (such as U nonimmigrant status, T nonimmigrant status, VAWA adjustment of status) where they are subject to the grounds of inadmissibility, not deportability. A deportable conviction would not necessarily make them ineligible for relief. Second, even if the deportable conviction also rendered them inadmissible, it still might not bar them from relief, as U, T, and VAWA all have generous waiver provisions precisely in recognition of the vulnerable situations in which immigrant survivors of crime may have found themselves. Finally, due to over-policing and bias in the criminal legal system, low-income communities of color are more likely to have convictions and thus be left out of these protections. These survivors of crime may be particularly vulnerable to threats and retaliation by an abuser – even though their convictions may not render them ineligible for relief. Thus, the need to prevent decisions based solely on information provided by an abuser should not hinge on whether the person has deportable convictions. In order to provide meaningful protection, USCIS should apply this protection to all immigrant survivors of crime.

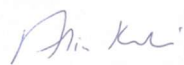
6. ILRC Encourages USCIS to Clarify How Protected Persons Should Change Address on Prior Forms.

The current guidance instructs immigrant survivors to update their address for each individual form they have filed with USCIS. See 1 USCIS-PM 7 (“The protected person must change their address for each individual form they have filed with USCIS. The filing of a subsequent benefit request with a new address does not automatically update the address for the prior filing.”). It is unclear how protected persons will know how to update their address for each form, or even that they need to do this. The AR-11 Form does not refer to any particular form, so it is unclear how protected persons will be able to change their address for prior filings of forms. ILRC thus asks USCIS to clarify how protected persons should change their address on prior forms.

7. ILRC Urges USCIS to Add “Safe Address” Language as Forms are Updated.

ILRC appreciates the effort to recognize a safe address even on forms that do not specifically call for a safe address. As forms are updated, ILRC nevertheless asks USCIS to add a “Safe Address” section so that immigrant survivors can more easily recognize where to provide that information.

Thank you for your attention and promotion of INA § 1367 protections for immigrants.



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